



City of Oak Harbor

City Council Meeting Agenda for

April 6, 2010
6:00 p.m.

Oak Harbor City Council
Tuesday, April 6, 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 Ron Eerkes, New Covenant Four Square Church

ROLL CALL

MINUTES 3/23/2010 Council Meeting

NON-ACTION COUNCIL ITEMS:

1. Employee Recognition – Rhonda Severns, 30 Years of Service.
2. Employee Recognition – 2009 Patrol Officer of the Year.
3. Proclamation – Arbor Day.
4. Proclamation – Earth Day.
5. Public Comments.

COUNCIL CONSIDERATION AND ACTION ON THE FOLLOWING MATTERS:

Page 49

6. Consent Agenda:

- a. Taxi (For Hire Vehicle) License – Whidbey SeaTac Shuttle Limousine Service.
- b. Approval of Accounts Payable Vouchers (Pay Bills).

Page 60

7. Annual Report – Oak Harbor Fire Department.

Page 61

8. Contract – EnviroIssues, Inc.

Page 76

9. Pioneer Way Improvements – Engineering Design Contract, Phase 2 Authorization.

Page 113

10. Public Hearing – Amendment to C-3 Zoning Code.

Page 179

11. Grant Authorization – Diesel Retrofit.

12. City Administrator's Comments.

13. Councilmembers' Comments.

- Standing Committee Reports.

14. Mayor's Comments.

ADJOURN

*"Change your thoughts and you change your world."
- Norman Vincent Peale*

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.

City Council Meeting
Tuesday, March 23, 2010, 6:00 p.m.
(Lack of a quorum on March 16, 2010)
City Hall – Council Chambers

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

INVOCATION David Lura, First United Methodist Church

ROLL CALL

Jim Slowik, Mayor

Six Members of the Council,

Rick Alberg

Scott Dudley

Jim Palmer

Beth Munns

Danny Paggao, Mayor Pro Tem

Bob Severns (arrived at 6:15 p.m.)

Jim Campbell was absent and formally excused from this meeting.

Paul Schmidt, City Administrator

Margery Hite, City Attorney

Bill Hawkins, Prosecuting Attorney and Law and Justice Coordinator

Doug Merriman, Finance Director

Steve Powers, Development Services Director

Cathy Rosen, Public Works Director

Eric Johnston, City Engineer

Rick Wallace, Chief of Police

Mark Soptich, Fire Chief

Mack Funk, Harbormaster

Mike McIntyre, Senior Services Director

Renée Recker, Executive Assistant to the Mayor

MINUTES

MOTION: Councilmember Alberg moved to approve the 2/27/10 Council retreat minutes and the 3/2/10 regular meeting minutes. The motion was seconded by Councilmember Palmer and carried unanimously. Councilmember Severns was not present for this vote.

NON-ACTION COUNCIL ITEMS

Introduction of “Caught in the Act” Youth Award Winners

The Island County Children’s Commission recognizes youth who make a significant contribution to their community such as a Good Samaritan act, being a positive role model, random acts of kindness, assisting others, or any positive contribution to our community. Lt. John Dyer, Ann Murphy, and Peggy Dyer presented awards to:

Rebecca Moeai – For her work collecting canned foods outside of Safeway for the Ronald McDonald House. Becca made the contacts with the Ronald McDonald House people, set up the event, did the advertisements, and insured that the food was delivered to Seattle.

Chad Merrill – For organizing a group of youths at the Library who play a particular card game and creating a club called EDIT (Every Duelist In Town). The club has rules and officers, is self-regulating, and has grown to 20 youth who enjoy the social network and welcoming environment of the library.

Paul Derting – For being a positive role model to two young boys through the Big Brothers Big Sisters mentoring program. As a young boy, Paul was mentored, matched with a big brother at the age of 11, and remained matched with his big brother for 6 ½ years until he turned 18. Paul learned the value of having a role model and chose to become one.

Mayor Slowik congratulated the recipients and encouraged them to keep serving the community.

Employee Recognition – Rhonda Severns and Butch Reinstra, 30 years

Ms. Severns was not able to attend this meeting. Public Works Director Cathy Rosen talked about Mr. Reinstra's employment with the City beginning in 1980 in the Solid Waste Division, transferring to Streets in 1985 and, when Streets and Water Divisions separated in 1995, working in the Water Division and now holding the title of Water Specialist II. His responsibilities include specialized and advanced water system maintenance, troubleshooting, and repair. His knowledge of specialized equipment operation, such as track-hoes and bulldozers, has been put to use on special projects throughout the City. Mr. Reinstra has a high aptitude for fabrication and anything mechanical. Mayor Slowik congratulated Mr. Reinstra for his 30 years of faithful and loyal service to the City.

Proclamation – United States 2010 Census

Councilmember Dudley read this proclamation encouraging the citizens of Oak Harbor to participate in the U.S. 2010 census.

Proclamation – Lions Club Day

Councilmember AlMBERG read this proclamation declaring March 26th as Lions Clubs International Day and presented it to Lions Club members who talked about upcoming and ongoing projects in the community along with zone projects with five other clubs.

Public Comments

Frank Scelzi, P.O. 2249, Oak Harbor. Mr. Scelzi is the newly elected president of the Harborside Merchants Association and spoke with concern about the Pioneer Way Street Improvements Project. Mr. Scelzi talked about the Windjammer Project, historical renovation, and concern over a one-way design on Pioneer Way citing cities who are now returning to two-way traffic flow. Mr. Scelzi felt that Oak Harbor is not a business-friendly city and downtown businesses are facing bankruptcy.

Gerry Oliver, 947 NW Prow. Mr. Oliver spoke in support of the one-way design for Pioneer Way. As a local realtor, he noted that 15 businesses were on the market prior to the discussions about one-way and two-way street designs and pointed out that a new storefront was in place last week. Mr. Oliver does not believe that businesses fail because of the City; they fail on their own merits. Entrepreneurship succeeds.

Helen Chatfield-Weeks, 1415 SE 9th. Ms. Chatfield-Weeks thanked the Police Department, Public Works Department, Mayor Pro Tem Paggao, Pastor Lura, and Councilmember Palmer for supporting this year's St. Patrick's Day Parade and Celebration. Everyone had a wonderful time.

Mel Vance, P.O. 2882, Oak Harbor. In reference to the 2/27/10 retreat minutes, Mr. Vance spoke with concern about electronic media, time limits, and asked for reconsideration of time limitations. Mr. Vance felt that City staff are allowed as much time as they need for agenda presentations and the same should be true for the public. Mr. Vance also objected to combining items 7 and 8 of this evening's agenda.

With no other comments coming forth, Mayor Slowik closed public comments.

COUNCIL CONSIDERATION AND ACTION ON THE FOLLOWING MATTERS

Consent Agenda

- A. Noise Permit – Holland Happening
- B. Noise Permit – Whidbey Island Tea Party
- C. Noise Permit – Filipino Christian Fellowship
- D. Change Fund Resolution
- E. Sale of Boat, Vessel ID# WN 0971 RG, a 1974 American Sailboat
- F. Sale of Boat, Vessel ID# WN 2961 P, a 1969 Fairliner Powerboat
- G. Sale of Boat, Vessel ID# CF 457 CU, a Powerboat
- H. Bid Award – Regenerative Sweeper
- I. Approval of Accounts Payable Vouchers

Councilmember Palmer asked that Consent Agenda items B and F be removed for discussion.

MOTION: Councilmember Palmer moved to approve Consent Agenda items A, C, D, E, G, H, and I with item I paying accounts payable check numbers 140674 – 140844 in the amount of \$642,587.83, and payroll check numbers 93688 – 93694 in the amount of \$83,490.00. The motion was seconded by Councilmember Severns and carried unanimously.

Consent Agenda Item B, Noise Permit for Whidbey Island Tea Party

Councilmember Palmer had been contacted by a citizen who made negative comments and Mr. Palmer asked that police be available for this event. Councilmember Almberg asked about the applicant since personal information is redacted from the packet's application.

Consent Agenda Item F, Sale of Boat, Vessel ID# WN 2961 P, a 1969 Fairliner Powerboat

Discussion followed about the recent boatowner's letter to Council asking that the sale be delayed. Council felt that consideration should be given to this request since this is a responsive Oak Harbor owner who is trying to sell the Fairliner for \$7,000. City Attorney Hite noted that this is a statutory procedure. The owner has not been paying their

Marina charges, has had an opportunity to pay, and that is the basis for auctioning the boat in order to collect unpaid moorage charges. Harbormaster Funk also concurred that the normal procedure had been followed. No moorage payments have been made since June 2009. A letter was sent to the owner advising that if moorage payments were not brought current, the boat would be secured and not released until payment was made. The boat was secured in October 2009 by authorized personnel of Oak Harbor's Marina. A notice was attached to the boat advising of the seizure. A letter was sent in October 2009 by both regular mail and registered mail with return receipt requested along with notice that if the Marina charges were not paid within 90 days, the boat would be sold at public auction, leading to this request for Council action. Council discussion continued about costs to hold the boat, lost revenue if the slip has a waiting list, that these owners have at least responded and this not an abandoned boat, if partial payment could be accepted (that would begin the lengthy collection process again), if this would set a precedence, and if Council can modify and defer this decision to show leniency.

MOTION: Councilmember Palmer moved to give the owners of the 1969 Fairliner sixty (60) days to pay their moorage charges in full. The motion was seconded by Councilmember Severns.

AMENDMENT TO THE ORIGINAL

MOTION: Councilmember AlMBERG moved to amend the original motion to allow the City to lease the slip if requested or available to other boats, whichever comes first. The amendment to the motion was seconded by Councilmember Munns.

City Attorney Hite noted that the statute just allows notice on abandonment.

Councilmember AlMBERG and Councilmember Munns withdrew the amending motion and second to that motion.

Councilmember Dudley asked if this matter will return to Council if payment is not made. Mr. Powers and Ms. Hite noted that the statute requires Council to make a decision and it would return to Council.

SECOND AMENDMENT TO THE ORIGINAL

MOTION: Councilmember Paggao moved to amend the original motion to afford the same leniency to the other two boats to be sold at auction (Consent Agenda items E and G).

City Attorney Hite asked if this motion's intent is to recind the decision of abandonment. **Councilmember Paggao withdrew this second amendment to the original motion.**

VOTE ON THE ORIGINAL

MOTION: Councilmembers AlMBERG, Palmer, Munns, and Severns voted in favor of the original motion. Councilmembers Paggao and Dudley opposed. The motion carried.

MOTION: Councilmember Paggao moved to recind the vote on Consent Agenda Items E and G. The motion was seconded by Councilmember Dudley.

Discussion followed about the lengthy process to bring these proposed vessel sales before Council, that there has been no communication on behalf of these boats except a partial payment with a check that had insufficient funds and has since gone to collection, and that ownership is unknown for the other boat.

VOTE ON THE

MOTION: Councilmembers Paggao and Dudley voted in favor of the motion. Councilmembers Almberg, Palmer, Munns, and Severns opposed. The motion did not carry.

Consent Agenda Item B, Noise Permit – Whidbey Island Tea Party

MOTION: Councilmember Palmer moved to approve the noise permit for the Whidbey Island Tea Party. The motion was seconded by Councilmember Munns and carried unanimously.

Public Hearing – Proposed Ordinance banning Public Nudity

Public Hearing – Proposed Ordinance for Adult Entertainment Licensing and Regulation

City Attorney Hite explained that the two proposed ordinances for public hearing both have to do with nude expression and were combined for comments so the public does not have to comment twice. Comments will be included on both. Ms. Hite talked about the effective dates for each of these ordinances as well as the third ordinance which is not set for public hearing but will be open to public comment.

1. Ordinance banning Public Nudity: This Ordinance shall be in full force and effect five days after publication.
2. Ordinance for Adult Entertainment Licensing and Regulation: 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.
3. Interim Ordinance – Adult Entertainment Facilities Overlay Zone: 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.

Ms. Hite also explained that this last ordinance must be adopted by a majority plus one of the whole membership of the Council and there must be a public hearing on the interim ordinance within 60 days of adoption. The hearing would be set for May 4, 2010. The interim ordinance must also come before the Planning Commission, undergo SEPA review and review by the Department of Commerce. It may remain in effect for six months subject to an extension of up to a year to allow for this review process.

Prosecuting Attorney / Law and Justice Coordinator Bill Hawkins gave the presentation for the proposed ordinance banning public nudity and the proposed ordinance for adult entertainment licensing and regulation. Mr. Hawkins began his presentation by noting that Oak Harbor will be celebrating its centennial in five years and has done without this type of adult entertainment establishment through all of these years. This has changed within the last couple of months and we have been asked to address legal principles. This is a heavily regulated area. Why can't we ban it? The answer is that you cannot ban it legally but you can regulate it extensively. Total bans on nude dancing have been invalidated. Municipalities may regulate protected expression. We do not start from scratch; we are allowed by law to consider the collective weight of studies and communities from Washington and around the country. Council must find that regulations are specific to address the impact of an establishment and curb the harmful secondary effects without limiting expressive conduct. Negative secondary effects: Those that are found inside the establishment (prostitution, involvement of minors, alcohol and drugs, licensing violations) and then outside of the establishment through impact on neighborhoods, the business community, lifestyles, property values, churches, schools, parks, increased criminal activity, increased traffic problems, and increased need for police protection and response. Mr. Hawkins gave examples of other communities and the problems experienced with adult entertainment establishments and cited Palm Beach, FL as a helpful example for Oak Harbor's proposed ordinance language.

Proposed Ordinance Banning Public Nudity

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. 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 Ordinance – Adult Entertainment Licensing and Regulation

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. 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.

Mayor Slowik opened the public hearing at 7:30 p.m.

Michelle O'Kelley, 1753 SE 4th. I am the person in the paper. I think that what City staff and City Council are doing is great. I believe in First Amendment rights. I believe that efforts can succeed. My opposition is to the zoning ordinance and I would like to talk about a modification to the public nudity and licensing ordinances: the 10 foot rule between patrons and the stage. I am asking for a physical barrier of no less than 4 feet to allow less distance between stage and patrons. I am hoping for the best, leniency, and sympathy for small business owners. I want to be at the top of the ladder of success.

Rev. Tim Geist, 1076 Landing Circle. Rev. Geist spoke in opposition to adult entertainment and his complete statement is attached to these minutes as Exhibit A.

Carolyn Pivarnik, 745 SE 8th Avenue. I am concerned with secondary effects. Dancers make their living dancing close. It puts them in a position of not making a living or breaking the law. Lap dances are the most lucrative source of tips. Ms. Pivarnik talked about an attorney's statement which was meant to elicit sympathy for the dancers which defined dancers as independent contractors. Ms. Pivarnik talked about the arrest of two dancers for prostitution which included a 16 year old. Rules can be posted, but those rules will not last long in order for dancers to make a living. Crime elements will take a foothold. The common denominator for sex trafficking of women in the U.S. is adult entertainment establishments including strip clubs.

Mel Vance, P.O. Box 2882. Mr. Vance felt that the public nudity ordinance should be sent back to committee and not passed this evening. The ordinance for adult entertainment licensing and regulation should also sent back to committee and a moratorium should be put in place while the City works on these proposals. There are exemptions that are very specific and do not include everything that we should be exempting. The ordinances do not include massage businesses, tattoo and piercing parlors, both of which can involve nudity. I found at least 30 separate language revisions that need to be made in the adult entertainment ordinance which include a broader range than strip clubs such as adult videos. This has been rushed through. It is legal to impose a temporary moratorium. These ordinances are not ready and need more work. Impose a moratorium.

Jim Kiesel, 1372 Orchard Loop. Mr. Kiesel thanked Council for their service to our City. We are approving adult entertainment in our community. Mr. Kiesel then talked about this evening's invocation. You have a hard decision to make and I encourage you to do what is right. We have a supreme God above the Supreme Court. I am sure there is an appetite for this type of entertainment and that there is money to be made. Pornography is a drug.

Kali Waldron, 1678 Zylstra Road. I want to see the next generation make a difference and these establishments will bring about the destruction of youth. This can ruin their lives.

Michele Sladko, 1199 SE 9th. I am against this. Do the ban on nudity. As far as adult entertainment, I am concerned with the effect on the community. I am awakened by the bars on Pioneer Way right now. If these businesses come in, it will adversely affect the area. I will not feel safe.

Brian Jones, 959 SW 3rd Avenue. As a father of two young ladies, I cringe at the thought of having this in our community. I have lived in larger areas, and chose to come back to Oak Harbor because these establishments don't exist here. If you can't ban it, I ask that you make it hard for a business like this to operate in our City.

Juan Palm, 2090 Crosswoods. As a former Minnesota resident, I know that these types of businesses look for areas that are ill-equipped to monitor them. Do not think that our long history without adult entertainment establishments will prevent this. I commend Mr. Hawkins and Council and ask that regulations be quickly put in place.

Nicole Brown, 1313 NW Falls Creek. I was a dancer for 4 years. This is difficult lifestyle and I moved back to Whidbey Island to get away from this lifestyle. Oak Harbor already has enough problems with drugs and violence.

Michael Harris, 590 Birch Street. I was in the Navy and was stationed in Oak Harbor after 20 years in the Navy. I love this town for its lifestyle. I was stationed in San Diego for the first 17 years and adult entertainment could be viewed there. As a Christian man, I find it distasteful. Think about what it can do to the sailors. I have seen, firsthand, the statistics that Mr. Hawkins mentioned; grief, brawls, murder, prostitution – it all happens. No alcohol – it doesn't matter, they will get drunk beforehand. The police department, hospitals, and mortuaries will all be involved.

Dan Renner, 950 SW Silverberry Street. I am the pastor of Calvary Chapel here in Oak Harbor. We don't want this to come to our community. I also grew up in San Diego and don't want to see this come here.

Dawn King, 549 SE Quaker Street. I have been an Oak Harbor resident for 29 years. I am a Christian, married, and have 4 young boys. I am against adult entertainment. The sex industry is a \$97.6 billion dollar industry; \$5 billion for strip clubs alone. How many more will be allowed in our community? The Seattle Times reported that police departments working the strip club beat find illegal sexual activity. Who will pay for the growing law enforcement need? Dancers are assaulted, threatened with weapons, sexually abused as children, use drugs, have sexually transmitted diseases, and many dancers feel desperately isolated and alone. Would you want this for your daughter? Would you encourage your son to frequent such an establishment?

Carley Knapp, 505 Grandview. I am very concerned about this. Why does Michelle want to do this to our town; degrade our town. Other cities would do anything to keep this from happening. We should not allow it. I am concerned about Michelle's children.

Wayne Knapp, 505 Grandview. Other speakers have done a good job. This is a cancer on our society. It denigrates our society. You have got to make the right decision. This industry breeds crime, death, and destruction of personal lives. We say the Supreme Court says it's alright, I don't think so. It is foolish to let this industry come into our town. I think it is wrong.

Jerry Pitsch, 2527 West Beach Road. Most of what I wanted to say has been covered. Whether the Supreme Court decision is right or wrong, we need to make a moral decision. I encourage you to challenge the First Amendment and do the right thing morally.

Mike Thelan, 1401 SE Dock Street. People's rights are usurped by governing bodies above us; the Supreme Court. The church building down the street is being challenged because it wants a steeple, yet we can allow this and have to protect a business of this nature. Sex sells. I find it interesting that this is a way to put children through school. I can't imagine the impact on existing businesses. You need to put this in the most remote place that you can to protect other businesses. What Mr. Hawkins said bothers me; that everything predicts more crime, problems, policing, yet we are at the edge of City budgets. We are volunteering to step up to something that we have no ability to provide for.

Kathleen Bourbeau, 976 NW Prow. My family has been here for over 50 years and my husband has been in the Navy for 15 years. I wanted to come back here to start a family. I love this town, I love this country. This is all about the Constitution. I am a card-carrying member of the NRA. I love our town and we need to save our small town. This terrifies me. Look at Lynden. Lynden is very creative about keeping things out.

Helen Chatfield-Weeks, 1415 se 9th. I never thought I would be present for such a suggestion for Oak Harbor, but I am not a bit worried about what the result will be. I depend on Mr. Hawkins' advice.

Ivan Lathrop, 2606 Airline Way. I am an ordained minister (retired) in the Church of Nazarene. My first pastorate was in Oak Harbor. Our son wanted to come back here and I told him what a great town this is. We can see that you are working hard on this situation. We are behind you and know that you will do everything you can. We will support and work with you. Yes, I am opposed to this and wish we could ban it, and I hope you can come close to that.

Dolly Griffith, 76 N. Oak Harbor Street. I have been a resident for 2 years. Protect the women if this is allowed. My best friend was sexually abused, was told she could end up as a dancer. It takes advantage of them. To get to top of ladder from people who are weak or who have lost their self worth, and then think that money is happiness is wrong. Life is full of problems; money won't make you happy without spiritual fulfillment. We will all be judged some day.

Gerry Oliver, 947 NW Prow. When I spoke of entrepreneurship to succeed earlier this evening, I don't believe that adult entertainment is right. I am a lifetime resident of Oak Harbor and it is obvious that this type of entertainment attracts the wrong kind of people. People come here for the beauty of this area and the community. Regulate this heavily and make it tough for this type of business to exist in Oak Harbor. How do I explain this to my daughters? I don't think this needs to only be a church issue; it needs to be a community issue.

Richard Felds, 547 SE 6th Avenue. I first came here in 1995 to visit. We moved here in 2003 from a city of over 200,000. This is heavy on everyone's mind and heart. It is just not right for this type of community. We went to a lot of work to promote Oak Harbor through the Windjammer Project.

Joel Geist, 1076 Landing Circle. My views have been expressed by most of the other speakers. This is a beautiful town and I would hate to see our reputation ruined.

Jeff Waldron, 1678 Zylstra Road. I am strongly opposed to this. Take a rotten piece of fruit and it will ruin the whole bowl.

Rev. David Jenkins, 2111 Pinewood Way. My church is in the same building that they want to move into. All that is required for evil to prevail is for good men to do nothing.

Don't change the flavor of this community. Where are the benefits to our community? We open the door if we don't regulate this out of our community. I have been here for over 20 years. Don't allow undesirable elements to come into our City.

Beatrice LaMay, P.O. Box 3014, Oak Harbor. Think about the children. Look at our playgrounds, parks, and your children. They can be easily reeled in. It is easy to say "adult," but think of children and what happens when patrons leave the clubs. People have to live in these environments. They are not operating on their own; an 18 year old does not say they want to be a stripper. The environment is already here.

Tina Bowman, 2461 Highpoint Lane. We moved here 9 years ago. I was born and raised in Escondido which used to be a cow town and is now a metropolis. We fell in love with Oak Harbor. I heard it was a wonderful place to raise your kids. Raise them according to good morals. I would hate to leave this town for the same reasons we left another. Make the choice for humanity and not the Supreme Court. Make the right decision.

With no other comments coming forth, Mayor Slowik closed the public hearing at 8:30 p.m.

Break

Mayor Slowik called for a five-minute break at 8:30 and the meeting reconvened at 8:35 p.m.

Response from Mr. Hawkins and Chief of Police Wallace

Mr. Hawkins noted that he had heard some moving and wise comments this evening even though they might not be legally correct. In answer: What are the City's chances if we fight this? If you choose to ban, your chance of winning that would be zero. The City would be hauled into court, sued for damages, and would lose. It is reckless to take on the Supreme Court. This is an emergency measure than can be tightened up. The interim zoning ordinance comes back for additional review. In response to the inclusion of tattoo parlors, tattooing does not exist in public so this would not be a factor. With regard to a theater being turned into adult entertainment, there is language in the adult entertainment ordinance addressing plays, operas, musicals, or other dramatic works which are not obscene. Changing the 10 foot barrier to 4 feet, as suggested by Ms. O'Kelley – the record documents clearly that 3 feet, 4 feet, was difficult to enforce; 6 feet and 8 feet are still within arms reach, and 10 feet is now the most aggressive ban in place. It is clear that shorter barriers do not work. A 10 foot distance does not stop prostitution, but it forces the club to be set up in a certain way, and I disagree strongly with going to a 4 foot distance. With regard to Rev. Geist's comments on public nudity and that the ordinance does not ban nude dancing. The U.S. Supreme Court does say that a locality can ban nude dancing. We have not gone to that type of a ban because the Washington State Supreme Court holds a conflicting opinion and we don't believe a ban on nude dancing would be tolerated. No other jurisdiction in Washington has attempted that and we would spend a great deal of money in expensive litigation. The City of Renton spent \$1 million in 1986. We are presenting the best ordinances that we believe can be sustained in court.

Mayor Slowik swore in Chief of Police, Rick Wallace for his testimony.

Chief Wallace:

This testimony is directed towards the ban on public nudity and not necessarily to the adult entertainment ordinance. We have used indecent exposure and lewd conduct, but there is no ordinance/language in place in our Municipal Code that regulates public nudity. Prior to 2008, it was determined that an existing ordinance was too vague and subsequently repealed. It was used toward amateur nights, wet T-shirt contests, but we were on weak ground. What could we do without an ordinance in place; especially addressing public nudity. This ordinance will fulfill that need.

Council Discussion

In response to a question about a majority plus one vote, City Attorney Hite explained that the vote is needed for the adult entertainment facilities overlay zone interim ordinance to be adopted on an emergency basis. The adult entertainment and licensing ordinance has a section explaining what is being talked about in the zoning ordinance. Discussion continued about citizen's rights and minimal/moderate government involvement and that what has been presented is the best direction, how to define morality (found in OHMC's nuisance language), and that larger cities, by size, have more areas to help with a buffer zone but Oak Harbor is a small and tightly developed community which limits the buffering area and zoning choices. Suggested changes to the public nudity ordinance:

On page one: The first Whereas, second sentence add the word "is" in front of the word "detrimental."

On page two: In Definitions, number 2 "person": say "any legal entity authorized to do business in the State of Washington" instead of corporation, partnership or association.

Discussion continued about wet T-shirt contests (covering must be fully opaque per the public nudity ordinance), how to keep 18 year olds from entering a club, the 5-year suspension/revocation term and if that is set by the state (a matter of case law), and the license application process. Discussion followed about conversation between dancers and patrons, cubical room size and doors, how bathrooms can be watched (cannot be electronically monitored), the use of uniformed PD officer inspections and undercover officers, and signage. Photography in a club (most likely monitored by club management), the 10 foot barrier, and use of moratoriums was also discussed. In the past, it was typical for cities to impose moratoriums, but the 30-day time limit is not enough of a study period and the City needs to move forward right now. The sale of alcohol brings a club under the strict enforcement and large staff of the Liquor Control Board and clubs usually avoid the potential for Liquor Control Board violations by not serving alcohol. This then allows 18 year olds to enter a club. Legislation was recently changed to allow local jurisdictions more local control. Discussion continued about "applicant control persons" in the definitions section of the adult entertainment ordinance which speaks to significant interest in the club and keeps silent partnership at bay. The application process was discussed again, the under the age of 10 years exemption in the public nudity ordinance was also discussed (uniformly used in other

jurisdiction's ordinances) and the finality of the first two ordinances – public nudity and adult entertainment. Ordinances can be amended; the zoning overlay ordinance is interim as discussed earlier. Ms. Hite had worked on these issues for Snohomish County and noted that this is an elaborate industry. The public is our strongest voice and it is the community that stands up and keeps the community true. Discussion continued about how quickly the license must be turned around along with discussion about the license fees. The City is allowed to charge enough to cover costs and, looking at other ordinances, these fees are the best estimate of actual costs. Discussion returned to the allowable age of patrons, 18 or 21 depending on alcohol or no alcohol, and that clubs would prefer to sell liquor even though they would lose a younger patron, but considering the nature of the club's activity, would not risk a Liquor Control Board violation and closure.

MOTION: Councilmember Munns moved to adopt the ordinance banning public nudity. The motion was seconded by Councilmember Palmer and carried unanimously.

MOTION: Councilmember Munns moved to adopt the ordinance regulating adult entertainment. The motion was seconded by Councilmember Severns.

Council asked if a club can be forced to sell liquor (no) and Ms. Hite also clarified that OHMC 5.20.020 of the adult entertainment ordinance shall be in full force and effect immediately.

**VOTE ON THE MOTION TO ADOPT
THE ADULT ENTERTAINMENT ORDINANCE:**
The motion carried unanimously.

Interim Ordinance – Adult Entertainment Facilities Overlay Zone

Development Services Director Steve Powers presented this agenda bill. 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. 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. 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. 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.

Mr. Powers also gave a summarizing PowerPoint presentation which is attached to these minutes as Exhibit B.

Mayor Slowik called for public comments at 10:20 p.m.

Michele Sladkow, 1199 SE 9th Avenue. Ms. Sladkow objected to the location by the Safeway parking lot since there are a lot of teenagers in this area.

Juan Palm, 2090 Crosswoods. How many proposed areas are occupied by existing businesses? At the intersection of SR-20 and 16th, there are multi-family homes directly across the street.

Jill Johnson, 1499 SE 9th. Highway 20 is designated a scenic byway and the Chamber of Commerce receives grant funds through that status. How would an adult entertainment business on the highway affect or impact the scenic byway status? I would hate to see Oak Harbor become the Amsterdam of Whidbey Island.

Tashia LaMay I work two jobs. I don't want to see this by Safeway. A lot of traffic goes by there, including teens.

Tim Geist, 1076 Landing Circle. I would like to see the sites out of sight; Goldie Road or Gun Club Road.

Mel Vance, P.O. Box 2882. I recall Mayor Cohen's administration addressing zoning for adult entertainment in industrial areas. I would like to see C-3 zoning taken off the table since there are established businesses there. Another area that should be included is the Hackney property at the end of Gun Club Road. That would be an out of sight area away from churches and businesses. The south edge of this property is clipped by proximity to a church and residential area, but the bulk of this property is out of the way.

With no other comments coming forth, Mayor Slowik closed comments on this subject at 10:30 p.m.

Mr. Powers noted that this is an interim ordinance which will be worked on over the next six months but the City does need to meet its obligation to provide a sufficient number of sites. Businesses are not an automatically excluding criteria. The Hackney property is designated as a planned business park. It was not excluded from consideration because of the buffer; it was excluded because it cannot be served by sewer at this time. We are challenged by where we have commercial property locations and the relationship to churches, schools, and the highway. As said earlier, we are a compact community and we are trying to handle a convergence of factors. The multi-family units near 16th and SR-20 were excluded because of the 100 foot buffer and properties on the west side of the highway are actually in commercial zoning. This matter has been before the Council two separate times in the last ten years, but was not adopted by Council. Mr. Powers also called attention to the thirteen separate findings of fact within the ordinance and that Oak Harbor is relying on the experience and findings done by other communities, as well. These studies are extensive and significant and document secondary impacts.

Ms. Hite referred to her legal memorandum noting that this is an interim ordinance that, if not adopted tonight, would not be available for consideration until the second meeting in April.

Council Discussion

Discussion followed about the urgency of this interim ordinance, the buffer zone size and whether it could match the 1,000 foot drug and gun free zones around schools or become uniformly a 750 foot radius for all buffers. Mr. Powers noted that staff worked toward balancing how the buffers work and that larger buffers covered more land area but then excluded any site provisions. It was also noted that the City would not redraw the buffer zone as uses move into the City. Definitions of churches and schools were discussed, Safeway Center was eliminated because of its proximity to Beekma/Gateway Park, and the discrepancy between buffer zone radiuses continued to be discussed along with what a sufficient number of sites would be for a city the size of Oak Harbor. Adult entertainment cannot be zoned out of existence and the courts do not have a flat answer. Discussion continued about bringing utilities to a proposed property and why an undeveloped property could not be included. Oak Harbor will have greater flexibility at an interim stage but a property has to be part of the general commercial real estate market. Council felt there should be greater separation between residential areas and adult entertainment and returned to discussing planned business parks. If a 750 foot buffer was used around residential properties, the community would be covered with the exception of industrial and planned industrial on Goldie Road. Mr. Powers again commented on the issue of infrastructure: We cannot look at adult entertainment sites the way we look at regular development. With adult activity, by its very nature, we have a limited number of locations. Without infrastructure, other cities have run into trouble. Potential sites have to be reasonably served by infrastructure. Ms. Hite, responding to a question about annexations, noted that this is not a moving target; we are adopting a map and just this map and not addressing future annexations. This is written as its own overlay zone.

Mayor Slowik noted that this discussion had also been held on a staff level and he, too, had been uncomfortable with certain site selections. If we are creating an emergency ordinance on a temporary basis to allow a reasonable amount of site inventory, what if we flip that around, tightened this up tonight, and then allow the next six months to consider available areas. City Attorney Hite felt this would put the City in the realm of risk. If you reduce the number of available parcels, you are less likely to sustain. On the other hand, it is an interim ordinance; is there available opportunity in the other parcels. Mr. Powers added that the Goldie Road parcels, the PIP (Planned Industrial Park) include one developed and one undeveloped parcel. Ms. Hite noted that the industrially zoned parcels have general uses like C-3 parcels and this is not true for PIP.

Discussion continued about the Goldie Road parcels and if they are sub-dividable (yes for industrial, no for PIP which are 5-acres in size; the parcels have to be considered as they are today). Discussion continued about the impact of adult entertainment establishments on SR-20, how schools are defined (daycare centers and kindergarten

schools do not fall under the definition but could be covered by the residential buffer if they are in a residential area), and repeated discussion about the use of a 1,000 foot buffer instead of a 750 foot buffer for churches, schools, and parks. A 1,000 foot buffer would then include the Goldie Road properties, SR-20 locations, and some of the industrial area, but maybe not the PIP. It would decrease the number of available parcels and potentially create a ban. Cities that use 1,000 feet as a buffer zone have remaining space available for potential sites.

MOTION: Councilmember Munns moved to adopt the Interim Adult Entertainment Facilities Overlay Zone Ordinance. The motion was seconded by Councilmember Alberg.

Discussion continued about adopting this ordinance now and how it would affect a club six months from now that establishes on SR-20. Mr. Powers noted that, if it becomes a nonconforming condition, it then requires a nonconforming use to close in one year.

AMENDMENT TO THE MOTION: Councilmember Dudley moved to amend the motion and add the same 750 foot buffer zone to residential zones as we allow for churches, parks and schools. The motion was seconded by Councilmember Paggao.

Discussion followed about the Goldie Road parcels and if they would be eliminated (possibly the industrial, but not PIP), if it is likely that properties on SR-20 are going to be used at this point, and the risk involved in eliminating potential properties for adult entertainment use. City Attorney Hite noted that this interim ordinance requires a public hearing in sixty days, and has to return to Council in six months following Planning Commission review, SEPA review, and notification to and review by the Department of Commerce. In the absence of this ordinance, an adult entertainment establishment can locate anywhere in C-3.

Councilmember Dudley spoke to the amendment: I do think there is a risk with that first parcel on the right coming down SR-20. Discussion included removing that one parcel (which would need a rationale) and how the Goldie Road parcels and SR-20 parcels would be measured (buffered).

VOTE ON THE AMENDMENT TO THE ORIGINAL MOTION: Councilmembers Dudley and Paggao voted in favor of the amendment. Councilmembers Alberg, Munns, Palmer, and Severns opposed. The amendment to the original motion did not carry.

VOTE ON THE ORIGINAL

MOTION: Councilmembers Almberg, Munns, Paggao, Palmer, and Severns voted in favor of the original motion. Councilmember Dudley opposed. The original motion received a five to one vote in favor and carried.

Mayor Slowik thanked Ms. Hite, Mr. Hawkins, Mr. Powers, Mr. Schmidt and Mr. Wallace for their extensive work on these ordinances – it took a monumental effort.

Authorization to Negotiate Scope of Work with Carollo Engineers – Wastewater Treatment Facility

City Engineer Eric Johnston presented this agenda bill which summarized the engineering consultant selection process for the wastewater treatment facility project. 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 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. Each of the four firms short listed were invited to a formal interview in February 2010. Councilmembers Paggao, Almberg and Munns together with Mayor Slowik and City staff formed the interview panel and 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.

MOTION: Councilmember Munns moved to authorize staff to begin contract negotiations with Carollo Engineers for the wastewater treatment facility project. The motion was seconded by Councilmember Almberg and carried unanimously.

City Administrator's Comments

Due to the lateness of the hour, Mr. Schmidt mentioned meeting dates and Council and Mayor deferred their comments this evening.

Councilmembers' Comments

None this evening.

Mayor's Comments

None this evening.

ADJOURN

On motion from Councilmember Munns, Mayor Slowik adjourned the meeting at 11:50 p.m.

Connie T. Wheeler
City Clerk

Exhibit A

Tim Geist
Public Comment

- I. **MORAL:**
- A. As a Minister in a church that's been serving this Community for over 35 years; and more simply as a Christian, a Husband, a Father of five children, and as a 20-year Navy Veteran and proud resident of Whidbey Island...
 - 1. I am in favor of the Proposed Ban on Public Nudity, but not its exemption for nude dancing, as that exemption is less restrictive than regulations that have been ruled constitutional by the U.S. Supreme Court;
 - 2. I am in favor of most provisions of the draft Adult Entertainment Licensing and Regulation Ordinance, but further desire to see a prohibition against complete nude dancing, vice the simple stage height and patron distance restrictions;
 - 3. I am in favor of a version of the zoning ordinance that in addition to the church, park, school, and neighborhood buffers, would keep any adult entertainment businesses out of sight from the main thoroughfares of our town.
- II. **CRIMINAL:**
- A. For anyone to assert that their adult entertainment business in Oak Harbor would somehow be different than other similar establishments around the state and country, and not result in a rise in secondary criminal elements and activity, is to deny the scientific empirical data available in countless studies conducted by other states and municipalities similar to ours.
 - B. It's this type of documented criminal activity that would arrive with said establishments that would have a significant budgetary impact on our City in the area of a requirement for increased law enforcement resources – negating any tax revenues gained from such a business.
- III. **LEGAL:**
- A. I keep hearing and reading quotes that The First Amendment covers nude dancing. That's certainly contrary to the intent of our Founding Fathers, and a misrepresentation of the actual Supreme Court decision that I presume is being referenced.
 - B. In the 1991 U.S. Supreme Court case, *Barnes v. Glen Theatre*, the Court ruled that the state has the constitutional authority to regulate this form of expression, as it furthers a substantial government interest in protecting the morality and order of society.
 - C. The decision ruled that the law preventing complete nudity in businesses open to the public was indeed constitutional!
 - D. It was erotic dancing as a form of expressive conduct that was found to fall under the First Amendment, but "only marginally so."
 - E. We as a City therefore have a constitutional right to prohibit nude dancing, and to further regulate erotic dancing in the interest of, and in obligation to the good order and morality of our Community.
- IV. Thank you Mayor Slowik, Council Members, City Attorneys, Engineers, Planners, and Administrators for your work to further these goals in an expeditious manner.

Adult Entertainment Facilities Overlay Zone

City Council

March 23, 2010



Adult Entertainment Facilities Overlay Zone

- Purpose
- Summary Statement
- Proposed Interim Ordinance
- Mapping Process
- Emergency Ordinance Procedures
- Policy Considerations
- Recommended Action

Adult Entertainment Facilities Overlay Zone

■ Purpose

- 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

Adult Entertainment Facilities Overlay Zone

■ **Summary Statement**

- 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 Facilities Overlay Zone

■ **Summary Statement (cont.)**

- Adult entertainment is a form of expression protected by the First Amendment to the U.S. Constitution.
- Well-studied negative secondary effects associated with this use in the form of impacts on crime, neighborhoods and property values.
- In considering this ordinance the City enters into the record the court cases, experiences and studies of other communities

Adult Entertainment Facilities Overlay Zone

■ **Summary Statement (cont.)**

- 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 (i.e. sites available).

28



Adult Entertainment Facilities Overlay Zone

■ **Proposed Interim Ordinance**

- Adopts a zoning ordinance which permits adult entertainment establishments to be located in an "Adult entertainment facilities overlay zone" within portions of the C-3, Industrial and Planned Industrial Park zones. This overlay zone was drawn to create a buffer around sensitive uses.

Adult Entertainment Facilities Overlay Zone

■ **Proposed Interim Ordinance (cont.)**

- Overlay draws a 750 ft. buffer around churches, parks and schools.
- Also draws a 100 ft. buffer between the overlay and residentially zoned neighborhoods.
- Establishes parking lot and exterior lighting standards intended to reduce adverse effects

Adult Entertainment Facilities Overlay Zone

■ **Proposed Interim Ordinance (cont.)**

- Establishes a number of regulations for adult entertainment facilities if they become non-conforming uses or in non-conforming structures
- Requires non-conforming uses to close in one year
- Amends OHMC 18.20.250 to include extensions of time for non-conforming adult entertainment facilities

Adult Entertainment Facilities Overlay Zone

■ **Mapping Process**

- Tried buffers of 250, 500, 750 & 1,000 feet
 - Buffers intended to mitigate the negative secondary effects of adult entertainment facilities upon sensitive uses (churches, schools, parks and neighborhoods)
- Buffers must leave sufficient parcels for adult entertainment uses to be located within the city to meet our legal needs

Adult Entertainment Facilities Overlay Zone

■ **Mapping Process (cont.)**

- Reviewed commercial zoning districts:
 - C-1 & CBD: eliminated by buffers
 - C-4: eliminated by buffers and APZ
 - C-5: eliminated by buffers and highway development goals

Adult Entertainment Facilities Overlay Zone

■ **Mapping Process (cont.)**

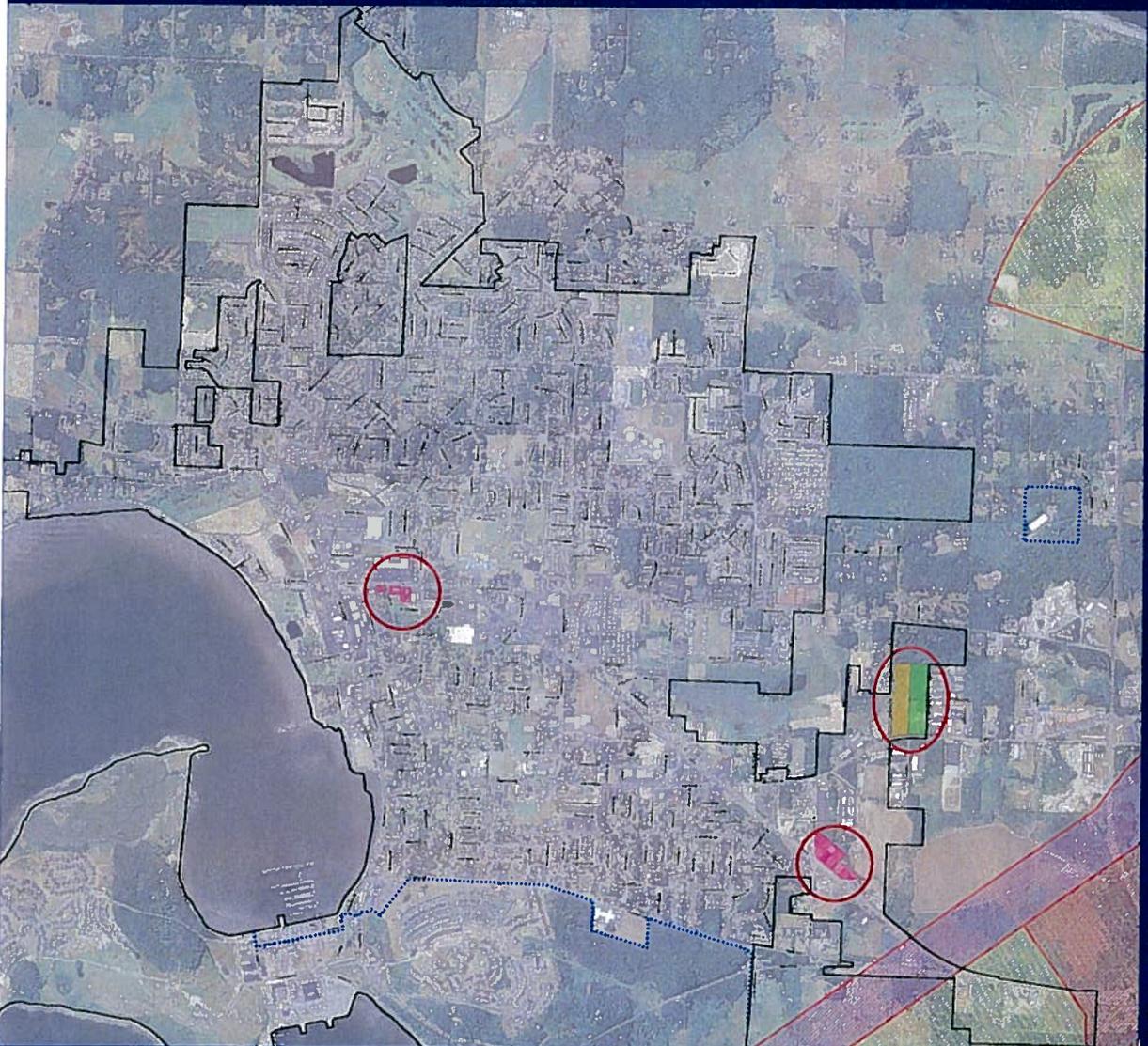
- C-3, Industrial & Planned Industrial Park:
 - Only whole parcels considered
 - Eleven sites available outside of buffer zones
 - Includes developed and undeveloped sites
 - All served by water and sewer

34

Adult Entertainment Facilities Overlay Zone



Adult Entertainment Facilities Overlay Zone



35



Adult Entertainment Facilities Overlay Zone

■ **Emergency Ordinance**

- Adopt interim ordinance to address possibility of uses locating within city in near future
- No regulations presently exist to provide guidance
- Without regulations, an adult use could locate next to a sensitive use (e.g. church or school)
- Provides time for City to study issue and refine regulations

Adult Entertainment Facilities Overlay Zone

■ **Emergency Ordinance (cont.)**

- Must be passed by majority plus one
- Council must find ordinance is necessary for protection of public health, safety, property or peace
- Must be a hearing within 60 days of adoption (Staff recommends May 4, 2010)

Adult Entertainment Facilities Overlay Zone

■ **Policy Considerations**

- If the Council decides to regulate adult entertainment facilities, it must do so in light of U.S. Supreme Court decisions
- Due to First Amendment considerations the use is protected within established limitations
- City Council may regulate use for negative secondary impacts

87

Adult Entertainment Facilities Overlay Zone

■ **Policy Considerations (cont.)**

- Well studied negative impacts upon schools, churches, parks and neighborhoods
- Associated criminal activity, too
- Proposed ordinance establishes zoning framework for addressing negative secondary impacts

Adult Entertainment Facilities Overlay Zone

■ **Policy Considerations (cont.)**

- Interim ordinance provides regulations for applicant and staff use until a final ordinance can be adopted
- Council asked to adopt interim ordinance, direct further study, public participation and Planning Commission recommendation take place before adopting a final ordinance

Adult Entertainment Facilities Overlay Zone

■ **Recommended Action**

- Consider the record
- Allow public comment
- Adopt the interim Adult Entertainment Facilities Overlay Zone Ordinance
 - With findings that an emergency exists, findings of fact substantiating the need to establish zones and setting a public hearing date for May 4, 2010

57



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

Bill No. 1
Date: April 6, 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 Rhonda Severns 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 employee for her years of service with the City:

- Rhonda Severns – 30 years

STANDING COMMITTEE REPORT

None

RECOMMENDED ACTION

Congratulate Ms. Severns for completing 30 years of service.

ATTACHMENTS

None

MAYOR'S COMMENTS

None

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

Bill No. 2
Date: April 6, 2010
Subject: Patrol Officer of the Year
Officer Serloyd Carter

FROM: Rick Wallace
Chief of Police

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

To recognize Oak Harbor Police Department Officer Serloyd Carter as Patrol Officer of the Year.

AUTHORITY

It is the practice of the Oak Harbor Police Department to annually recognize an officer of the Patrol Division for their dedication.

SUMMARY STATEMENT

The men and women of the Oak Harbor Police Patrol Division are dedicated to the service of the citizens of Oak Harbor. In order to highlight this dedication, in 2009 we instituted a "Patrol Officer of the Year" Award. The purpose of the award is to recognize an Officer who exemplifies the qualities and attributes that make this profession one of which we can all be proud.

The Patrol Officer of the Year, for 2009, is **Officer Serloyd Carter**. Some of the factors in that selection were:

- Officer Carter was in the top 25% in 8 of the 9 categories of activity measured in the Patrol Division.
- Examples of areas in which Officer Carter rated high, in surveys completed by numerous groups, are:
 - Quality of investigations and reports
 - Positive teamwork within the Law Enforcement community
 - Positive interaction with the public
- Officer Carter's collateral duties include:
 - Department DRE (Drug Recognition Expert) Officer

- Hostage Negotiator
- Firearms Instructor
- PBT (Portable Breath Test) Equipment Maintenance Officer
- Officer Carter received the Department's Life Saving Award in 2009

We are very proud of all of our officers and congratulate Officer Carter for this recognition.

STANDING COMMITTEE REPORT

This agenda bill did not come before the Public Safety Standing Committee (the March meeting was cancelled).

RECOMMENDED ACTION

None.

ATTACHMENTS

None.

MAYOR'S COMMENTS

City of Oak Harbor

OFFICE OF THE MAYOR
JIM SLOWIK
MAYOR



PROCLAMATION IN RECOGNITION OF

ARBOR DAY

WHEREAS, In 1872, J. Sterling Morton proposed to the Nebraska Board of Agriculture that a special day be set aside for the planting of trees, and;

WHEREAS, this holiday, called Arbor Day, was first observed with the planting of more than a million trees in Nebraska, and;

WHEREAS, Arbor Day is now observed throughout our nation and the world, and;

WHEREAS, trees can reduce the erosion of our precious topsoil by wind and water, cut heating and cooling costs, moderate the temperature, clean the air, produce life-giving oxygen and provide habitat for wildlife, and;

WHEREAS, trees are a renewable resource giving us paper, wood for our homes, fuel for our fires, and countless other wood products, and;

WHEREAS, trees in our City increase property values, enhance the economic vitality of business areas, and beautify our community, and;

WHEREAS, since 2003, the City of Oak Harbor has been continually recognized by the Arbor Day Foundation as a Tree City, and;

NOW, THEREFORE, WE, Jim Slowik, Mayor, and Councilmembers of the City of Oak Harbor do hereby proclaim **April 30, 2010** as **Arbor Day** in the City of Oak Harbor, and urge all citizens to celebrate Arbor Day, support efforts to protect our trees and woodlands, and to plant trees.

Signed this 6th day of April, 2010



Jim Slowik, Mayor

City of Oak Harbor

OFFICE OF THE MAYOR
JIM SLOWIK
MAYOR



PROCLAMATION IN RECOGNITION OF

EARTH DAY

WHEREAS, April 22, 2010 is the 40th anniversary of Earth Day, founded by Gaylord Nelson, then a U.S. Senator from Wisconsin, and;

WHEREAS, the first Earth Day led to the creation of the Environmental Protection Agency and the passage of the Clean Air, Clean Water and Endangered Species Acts, and;

WHEREAS, a natural environment is the foundation of a healthy society and robust economy. There are currently methods and technology available to help us live in harmony with our environment, and;

WHEREAS, human activities around the globe are causing severe environmental damage that threatens human health and our planet's ability to sustain a diverse community of life, and;

WHEREAS, there are economic, environmental and social reasons for state and local governments to initiate energy efficiency and renewable energy practices, and;

WHEREAS, Earth Day offers citizens an unprecedented opportunity to commit to building a healthy planet and flourishing communities.

NOW, THEREFORE, WE, Jim Slowik, Mayor, and Councilmembers of the City of Oak Harbor do hereby designate **April 22, 2010** as **Earth Day**.

Signed this 6th day of April, 2010



Jim Slowik, Mayor

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

Bill No.

5

Date:

APRIL 6, 2010

Subject:

PUBLIC COMMENTS

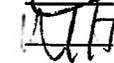
FROM: Jim Slowik, Mayor

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**

Bill No. c/A 6A
Date: April 6, 2010
Subject: Application for License -
For Hire Vehicle - Limousine
Service to be provided by
Whidbey SeaTac Shuttle, LLC

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

Consider the application for a For Hire Vehicle License - Limousine as submitted by Whidbey SeaTac Shuttle, LLC.

AUTHORITY

Oak Harbor Municipal Code Chapter 5.30, For Hire Vehicles.

5.30.110 Disqualification of licensing for criminal conviction.

- (1) No person shall receive a taxi license or a taxi driver license who has been convicted of assault within the last ten years, a felony in the last seven years, a gross misdemeanor in the last five years, or who has ever been convicted of sexual offenses as defined under state law or an offense which is similar to those as defined in Chapter 9A.44 RCW.
- (2) A license granted under this chapter shall be revoked when license holder is convicted of a felony, gross misdemeanor, assault or sexual offense as defined under state law or an offense which is similar to those defined in Chapter 9A.44 RCW.

5.30.050 Compliance with state law required.

No vehicle shall be used that does not fully comply with all requirements of the State Department of Licenses and with the state law for the protection and safety of its passengers. Each vehicle shall be maintained in a condition of continued fitness for public use, and shall be subject to inspection, at all reasonable times by the chief of police.

5.30.060 Application for license – Issuance.

In order to obtain the license, an applicant shall make written request to the city clerk for a license to do so. Such request shall be made upon blanks furnished by the city clerk. Such request shall be filed with the city clerk and the chief of police. The police chief shall make an investigation and report and on approval of

the City Council the applicant shall be issued a license upon payment of the license fee herein provided.

5.30.070 Items which may be considered.

In making the decision to grant or deny a license the Council may consider the following:

- (1) Whether the applicant will provide safe and reasonable service;
- (2) Whether the proposed rate structure is reasonable and other personnel are licensed and qualified;
- (3) Whether the licensee will operate within the law; and
- (4) Whether additional taxi service will cause unreliability and instability in the taxi service business for Oak Harbor.

SUMMARY STATEMENT

Whidbey SeaTac Shuttle has completed the appropriate paperwork as shown in the list of attachments. The Police Department, in compliance with OHMC 5.30.060, has finished an investigation, and the application for taxi license (for hire vehicle) and drivers' applications/background checks have been approved pursuant to OHMC 5.30.110. All applicable fees have been paid. With respect to 5.30.070(4) OHMC, the City currently has four operating taxi companies: Ault Field Taxi, Whidbey Taxi, Roadrunner Taxi, and Triangle Taxi. This will be the first limousine service in Oak Harbor.

STANDING COMMITTEE REPORT

Since the Public Safety Standing Committee meeting will not be held before this Council meeting, this agenda bill was not reviewed by that committee.

RECOMMENDED ACTION

Approve the application for limousine service (for hire vehicle) – Whidbey SeaTac Shuttle.

ATTACHMENTS

1. Full Text of Oak Harbor Municipal Code Chapter 5.30, For Hire Vehicles
2. Application for City Business License
3. Application for Taxi License (For Hire Vehicle) and Rate Sheet
4. Insurance coverage

MAYOR'S COMMENTS

CITY OF OAK HARBOR

APPLICATION FOR TAXI LICENSE

Fee: \$50.00 first two taxi's
\$25.00 each additional
Due January 1 each year
Stalls: \$5.00 per month per stall

* * * * *

Name of Applicant SEATAC SHUTTLE, LLC - MIKE LAUER, PARTNER

Address 1751 NE GOLDIE, OH 98277 Phone Number 360-679-4003

Fax Number 360-323-8894 Date of Birth _____

Name and address of Taxi Company INDIBEY SEATAC SHUTTLE

OPERATORS OF VEHICLES:

SEE ATTACHED

		Driver's Lic. #	(police approval)
1.	Name _____	_____	YES NO
2.	Name _____	_____	YES NO
3.	Name _____	_____	YES NO

Name of Insurance Company FERGUSON & ASSOC.
Policy Number PA00201097

VEHICLES

	Make	Year	License Number
1.	<u>LINCOLN</u>	<u>2003</u>	
2.	_____	_____	_____
3.	_____	_____	_____

Vehicles inspected by Police. YES, NO
SEE WSP. UNIFORM LIMOUSINE VEHICLE INSPECTION.


Signature of Applicant _____ Date 3-17-2010

(Rate charges and schedule must be attached to application. All amendments to the rate schedule must be filed with the City Clerk.)

DUPLICATE DUPLICATE DUPLICATE DUPLICATE
CITY OF OAK HARBOR
865 SE BARRINGTON DR
OAK HARBOR, WA 98277-4092
360-279-4530

Reg# #/Rcpt#: 001-00179285 [SV]
Accounting Date: Thu, Mar 18, 2010
Date/Time: Thu, Mar 18, 2010 3:22 PM

0154/TAXI LICENSE
REF#:SEATAC SHUTTLE LLC
FEE AMOUNT:\$50.00
0048/BACKGROUND CK - WSP WATCH
REF#:KEVIN KRUEGER
FEE AMOUNT:\$10.00
0904/POLICE-FEES-FINGERPRINTS/PHOTO
REF#:KEVIN KRUEGER
FEE AMOUNT:\$10.00
0048/BACKGROUND CK - WSP WATCH
REF#:JOHN THARP
FEE AMOUNT:\$10.00
0904/POLICE-FEES-FINGERPRINTS/PHOTO
REF#:JOHN THARP
FEE AMOUNT:\$10.00
0048/BACKGROUND CK - WSP WATCH
REF#:ROBERT OLSON
FEE AMOUNT:\$10.00
0904/POLICE-FEES-FINGERPRINTS/PHOTO
REF#:ROBERT OLSON
FEE AMOUNT:\$10.00
0048/BACKGROUND CK - WSP WATCH
REF#:ROY SMITH
FEE AMOUNT:\$10.00
0904/POLICE-FEES-FINGERPRINTS/PHOTO
REF#:ROY SMITH
FEE AMOUNT:\$10.00
0048/BACKGROUND CK - WSP WATCH
REF#:JAMES JOHNSON
FEE AMOUNT:\$10.00
0904/POLICE-FEES-FINGERPRINTS/PHOTO
REF#:JAMES JOHNSON
FEE AMOUNT:\$10.00

RECEIPT TOTAL = \$150.00

Payment Data:

Pmt# :1
Payer: SEATAC SHUTTLE LLC
Method: CASH
AMOUNT = \$150.00

RECEIPT SUMMARY

TOTAL TENDERED = \$150.00
RECEIPT TOTAL = \$150.00

CHANGE DUE = \$0.00

THANK YOU!!

53



WASHINGTON STATE PATROL
Uniform Limousine Vehicle Inspection

L - 43533

Personnel No. <i>X863</i>	Dist./Detachment <i>7-10</i>	PASS <input checked="" type="checkbox"/>	FAIL <input type="checkbox"/>
------------------------------	---------------------------------	---	----------------------------------

GENERAL

Date <i>3-30-10</i>	Time (Military) Start <i>0900</i>	Time (Military) Finish <i>0930</i>	Initial Inspection <input checked="" type="checkbox"/>	Re-Inspection <input type="checkbox"/>
Location: SR/MP <i>SR 22 MP 54</i>	Detachment Office <i>Burlington</i>	Terminal <i>SL/de 35</i>	County Code	

CARRIER

Carrier Name (include DBA when applicable) <i>SEATAC SHUTTLE LLC</i>	UBI# (optional)		
Address <i>P.O. Box 2895</i>	Phone Number <i>360-679-4003</i>		
City <i>OLK Harbor</i>	State <i>WA</i>	ZIP Code <i>98277</i>	Interstate <input type="checkbox"/> Yes <input type="checkbox"/> No

DRIVER

Driver Name <i>KRUEGER, Kevin L.</i>	DOB <i>[REDACTED]</i>	License No. <i>[REDACTED]</i>	State <i>WA</i>	Exp. Year <i>10</i>
---	--------------------------	----------------------------------	--------------------	------------------------

VEHICLE

Exec. Sedan Min. wheelbase 114.5" Rear Seating Cap: (Max. 3 passengers)	Exec. Van Rear Seating Cap: (7 to 14 passengers)	Stretch Limo. Max. wheelbase 285" Rear Seating Cap: (Max. 12 passengers) <i>8</i>	Exec. SUV Min. wheelbase 116" Rear Seating Cap: (3 to 6 passengers)	Stretch SUV Max. wheelbase 325" Rear Seating Cap: (Max. 14 passengers)	Classic Car (over 30 years old) <input type="checkbox"/>
--	--	---	--	---	--

Registered Owner
SEATAC Shuttle

Year/Make <i>03/Linc</i>	License No. <i>B27290N</i>	VIN No. <i>1L1FMB1W23Y607584</i>	State <i>WA</i>
-----------------------------	-------------------------------	-------------------------------------	--------------------

A -- Lights/Signal System	Pass	Fail	D -- Steering - Suspension	Pass	Fail	I -- Body Components	Pass	Fail
1. Headlamps	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1. Steering Wheel Play	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1. Doors/Locks	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. Hazard/Warning System	<input checked="" type="checkbox"/>	<input type="checkbox"/>	2. Suspension	<input checked="" type="checkbox"/>	<input type="checkbox"/>	2. Floor	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. Stop Lamps	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	3. Seats	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. Turn Signal	<input checked="" type="checkbox"/>	<input type="checkbox"/>	E -- Wheel System	Pass	Fail	4. Front Hood Latch	<input checked="" type="checkbox"/>	<input type="checkbox"/>
5. License Lamp	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1. Tires, Spare	<input checked="" type="checkbox"/>	<input type="checkbox"/>	5. Trunk Latch	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. Clearance/Side Marker	<input checked="" type="checkbox"/>	<input type="checkbox"/>	2. Wheels	<input checked="" type="checkbox"/>	<input type="checkbox"/>	6. Seat Belts	<input checked="" type="checkbox"/>	<input type="checkbox"/>
7. Horn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	3. Lugs	<input checked="" type="checkbox"/>	<input type="checkbox"/>	7. Bumpers	<input checked="" type="checkbox"/>	<input type="checkbox"/>
8. Interior Lamp	<input checked="" type="checkbox"/>	<input type="checkbox"/>	4. Hubcaps	<input checked="" type="checkbox"/>	<input type="checkbox"/>	8. Paint Condition	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	F -- Exhaust System	Pass	Fail	9. Body Condition	<input checked="" type="checkbox"/>	<input type="checkbox"/>
B -- Visibility	Pass	Fail	1. Exhaust	<input checked="" type="checkbox"/>	<input type="checkbox"/>	J -- Interior Cond/Cleanliness	Pass	Fail
1. Windshield	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	1. Seats	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. Wipers/Washers	<input checked="" type="checkbox"/>	<input type="checkbox"/>	G -- Fuel System	Pass	Fail	2. Carpet	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. Side/Rear Windows	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1. Fuel Caps	<input checked="" type="checkbox"/>	<input type="checkbox"/>	3. Headliner	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. Defrost/Defogger	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	4. Door Panels	<input checked="" type="checkbox"/>	<input type="checkbox"/>
5. Tinting	<input checked="" type="checkbox"/>	<input type="checkbox"/>	H -- Other	Pass	Fail	5. Trunk	<input checked="" type="checkbox"/>	<input type="checkbox"/>
C -- Brake System	Pass	Fail		<input type="checkbox"/>	<input type="checkbox"/>	6. Amenities	<input checked="" type="checkbox"/>	<input type="checkbox"/>
1. Master Cylinder Fluid	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Comments:					
2. Pedal	<input checked="" type="checkbox"/>	<input type="checkbox"/>						
3. Lines/Fittings	<input checked="" type="checkbox"/>	<input type="checkbox"/>						
4. Emergency Brake	<input checked="" type="checkbox"/>	<input type="checkbox"/>						

Driver/Carrier's Signature
[Signature]

Officers' Signature
[Signature]

 **Whidbey → SeaTac**
Shuttle & Charter

March 18, 2010

*****INTRODUCTORY LIMOUSINE RATES FOR WHIDBEY SEATAC SHUTTLE*****

Single hour	\$139
3 or more hours	\$89 per hour
6 hour rental package	\$400
12 hour rental package	\$700

When booked alongside with a charter \$60 per hour

Gratuities, fees, tolls, and surcharges in addition to base rate may apply.

Washington
(STATE)

INSURANCE IDENTIFICATION CARD

COMPANY NUMBER

COMPANY



COMMERCIAL



PERSONAL

State National Insurance Co.

POLICY NUMBER
PA00201097

EFFECTIVE DATE
08/01/09

EXPIRATION DATE
08/01/10

YEAR MAKE/MODEL
2003 Lincoln TC

VEHICLE IDENTIFICATION NUMBER
1L1FM81W23Y607584

AGENCY/COMPANY ISSUING CARD
Ferguson & Associates, Inc.
Ken Shimomura
PO Box 1835
Kingston, WA 98346-1835
360-297-4844
INSURED

Seatac Shuttle, LLC
John Solin
PO Box 2895
Oak Harbor, WA 98277

SEE IMPORTANT NOTICE ON REVERSE SIDE

THIS CARD MUST BE KEPT IN THE INSURED
VEHICLE AND PRESENTED UPON DEMAND

IN CASE OF ACCIDENT: Report all accidents to your Agent/Company as soon as possible. Obtain the following information:

1. Name and address of each driver, passenger and witness.
2. Name of Insurance Company and policy number for each vehicle involved.

STATE OF WASHINGTON
DEPARTMENT OF LICENSING
PO Box 9038 • Olympia, Washington 98507-9038

VEHICLE TITLE APPLICATION/REGISTRATION CERTIFICATE

03/18/2010

1007715120198902

B27290N

Lic/Plt B27290N	Issue-Date 03/2010	Tab-No V312325	Reg-Exp 03/18/2011	Value-Code/Yr 40765/2003	Depre 1	Mo-Reg 12	Mo-Gwt 12	
Power G	Use F/H	Mod-Yr 2003	Make LINC	Ser/Body TOW4D	Model/BT EX /LM	VIN or Serial No 1L1FM81W23Y607584	Res-Co 15	Prev-Plt
Sclwt 5650	Seats 08	Gwt 8000	Gwt-Strt 03/18/2010	Gwt-Exp 03/18/2011	Fleet	Equip	Prev Title 20030715	Prev St CA

BRANDS:
CA 12/27/2002 ORIG TAXI

COMMENT:

COLOR-WHITE - DISPLAY TAB ON BACK LICENSE PLATE ONLY - FRONT PLATE IS STILL REQUIRED.

MILEAGE 41500 A

REGISTERED OWNER

LEGAL OWNER

SEATAC SHUTTLE LLC
POB 2895
OAK HARBOR WA 98277

I certify that the information contained hereon is accurate and complete.

X [Signature] GENERAL MANAGER
Signature of Registered Owner(s) [Signature] Signature of Registered Owner(s)
Subscribed and sworn to before [Signature] this 18th Day of March, 2008
1572-11

FILING	\$ 7.00	TBD FEE 0000	\$	CHECK	\$ 1860.50
SUBAGENT	\$ 10.00	RTA EXCISE	\$	CASH	\$
LOCAL FEE	\$	USE TAX 1503	\$ 1755.00	TOTAL FEES	\$ 1860.50
LICENSE SRVC	\$	OTHER	\$ 30.50		
GWT/VWT FEE	\$ 58.00	DONOR AWARENESS	\$		
		STATE PARKS	\$		

VALIDATION CODE 11151203100770318100030019890

ORIGINAL

RPT ID: ATITPR-1

THIS DOCUMENT IS NOT PROOF OF OWNERSHIP

FPD: ATITPR:2008/10/12.00003(2)



STATE OF
WASHINGTON

MASTER LICENSE SERVICE

PO Box 9034 • Olympia, WA 98507-9034 • (360) 664-1400

REGISTRATIONS AND LICENSES

Unified Business ID #: 602 283 265
Business ID #: 1

Expires: 04-30-2010

SEATAC SHUTTLE, LLC
1751 NE GOLDIE ST UNIT A
PO BOX 2895
OAK HARBOR WA 98277

Domestic Limited Liability Company
Renewed by Authority of Secretary of State

REGISTERED TRADE NAMES:

AIRPORT SHUTTLE
BAKER SHUTTLE
BELLAIR AIRPORTER
BELLAIR CHARTERS
ISLAND SHUTTLE
OAK HARBOR SHUTTLE
SEATAC SHUTTLE
SPORTS SHUTTLE
WHIDBEY - SEATAC SHUTTLE
WHIDBEY CHARTER & EXCURSION
WHIDBEY SHUTTLE
WHIDBEY WEDDING TRANSPORTATION

The licensee named above has been issued the business registrations or licenses listed. By accepting this document the licensee certifies the information provided on the application for these licenses was complete, true, and accurate to the best of his or her knowledge, and that business will be conducted in compliance with all applicable Washington state, county, and city regulations.

Elizabeth A. Luce

Director, Department of Licensing



BUSINESS LICENSE
865 S.E. BARRINGTON DRIVE
OAK HARBOR, WA 98277
(360) 279-4500

EXPIRATION DATE: 12/31/2010

ISSUED DATE: 01/11/2010

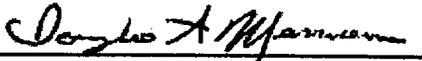
LICENSE NUMBER: BL-003377

LOCATION OF BUSINESS
1751 NE GOLDIE ST, A
OAK HARBOR, WA 98277-4092

BUSINESS CLASSIFICATIONS:
GENERAL BUSINESS

THIS CERTIFIES that the business or individual listed below is hereby
licensed to do business within the **CITY OF OAK HARBOR**

WHIDBEY-SEATAC SHUTTLE
DBA: WHIDBEY-SEATAC SHUTTLE
PO BOX 2895
OAK HARBOR, WA 98277-4092


FINANCE DIRECTOR

owner SALES MANAGER JOHN SOLIN

This license is to be displayed conspicuously at the location of business, and is not transferable or assignable.

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

Bill No. 7
Date: April 6, 2010
Subject: Fire Department Annual Report

FROM: Mark Soptich
Fire Chief

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 annual report provides information about the fire department and how well it performed in 2009.

AUTHORITY

No authority required. An annual report will be given.

SUMMARY STATEMENT

The Fire Chief provides an annual report of the fire department's accomplishments and activities.

STANDING COMMITTEE REPORT

n/a

RECOMMENDED ACTION

No action required.

ATTACHMENTS

MAYOR'S COMMENTS

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

Bill No. 8
Date: April 6, 2010
Subject: Pioneer Way Improvements
Professional Services

FROM: Cathy Rosen, Public Works Director
Eric Johnston, City Engineer

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 agenda bill requests approval of a professional services contract with EnviroIssues Inc, for assistance with the SE Pioneer Way Street Improvements Project. The contract, which has a not to exceed limit of \$90,994.36 will provide for communication and public outreach support for the 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.

SUMMARY STATEMENT

On January 19, 2010, the City Council reaffirmed the decision to proceed with the final design and construction contract preparation associated with the SE Pioneer Way Street improvements project. With the decision on the basic street configuration the project moves into a more intense and detailed level of work that will require a greater level of coordination with business and property owners. Specifically, as changes to the streetscape, sidewalks, overhead utility connections, and elevations of sidewalks are being designed collaboration with the adjacent properties will be essential. Of equal if not greater importance will be the input of the merchants, residents, restaurateurs, and property owners related to the construction sequencing and phasing.

Critical to the success of the project from this point forward is a clear line of communication between the technical designers, the project managers, business owners and the general public. With projects of this size it is fairly common in the industry to bring a specialist into the project team who has the expertise to help facilitate and improve the lines of communication. These

types of public involvement firms are also used to provide facts on the project to the entire community and are generally more effective at doing so than the technical designers.

EnviroIssues has contributed to the success of numerous projects similar to the Pioneer Way Improvements throughout western Washington. Building on that experience EnviroIssues has demonstrated a clear understanding of the needs of the Oak Harbor community related to the project. Quoting from the attached EnviroIssues scope of work,

“ ‘Doing this project right’ means that businesses and the community understand the reason for the project, have input into the final outcome, and are able to survive and thrive during roadway construction.”

As described in the attached scope of work, EnviroIssues will be responsible for a number of activities intended to foster and improve communication and outreach. Notably, EnviroIssues will be responsible for the following specific activities:

- Organize and facilitate meetings with merchants and property owners for input on the aesthetic features of the project.
- An independent outreach effort to understand current business practices, hours of operations, deliveries, and patrons along Pioneer Way intended to assist in design efforts and construction planning.
- Build and maintain an online database to track all data collected related to individual business attributes.
- Develop a project logo.
- Assistance to the City of Oak Harbor in preconstruction marketing and economic sustainability efforts.
- Gathering input on options for construction signage and economic development techniques during construction.
- Development of community wide project newsletter prior to construction.
- Development of fact sheets/flyers during final design.

A more detailed scope of work is included in the attached contract. This contract is for services during final design and leading up to the start of construction. It is anticipated that EnviroIssues will be retained for additional assistance during the construction as well; however, the scope of work for that effort has yet to be defined.

Justification: The scope of work proposed by EnviroIssues includes nearly 800 hundred hours of effort between now and the start of construction. At current levels and workloads, City staff has neither the availability nor the expertise necessary to provide the same level of effort needed for this project.

Amount of contract: The contract is based on an hourly not to exceed limit of \$90,994.86.

Funding: Funding for the project is included in the Arterial Streets, Fund 104, 2007-2008 budget. Specifically, the budget includes \$4,500,000 which is a combination of \$3,500,000 in real estate excise taxes (REET) and a \$1,000,000 Island County economic development project as reaffirmed by City Council on November 17, 2009. An application for CDBG funding in the amount of \$1,000,000 was authorized by City Council on January 5, 2010 and staff are working with Island County to identify funding sources that could be used to either offset City funds or to supplement the project budget to pay for elements not currently included in the project scope, such as relocation of the overhead utilities. It is also expected that staff will develop a supplemental budget proposal to include wastewater utility funds (and possible other fund sources) to pay for rehabilitation or replacement of the sewer lines.

STANDING COMMITTEE REPORT

This item was presented to the Public Works and Utilities Standing Committee on March 4, 2010 and on April 1, 2010.

RECOMMENDED ACTION:

A motion authorizing the Mayor to sign a professional services contract with EnviroIssues for assistance on the Pioneer Way Street Improvements project with a not to exceed limit of \$90,994.86.

ATTACHMENTS:

Agreement

MAYOR'S COMMENTS:

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, is made and entered into in duplicate this ____ day of April, 2010, by and between the CITY OF OAK HARBOR, a Washington municipal corporation, hereinafter referred to as the "CITY" and EnviroIssues, hereinafter referred to as the "SERVICE PROVIDER."

WHEREAS, the CITY desires to have certain services and/or tasks performed as set forth below requiring specialized skills and other supportive capabilities; and

WHEREAS, sufficient CITY resources are not available to provide such services; and

WHEREAS, the SERVICE PROVIDER represents the SERVICE PROVIDER is qualified and possesses sufficient skills and the necessary capabilities, including technical and professional expertise, where required, to perform the services and/or tasks set forth in this Agreement.

NOW, THEREFORE, in consideration of the terms, conditions, covenants and performance contained herein, the parties hereto agree as follows:

1. Scope of Services.

The SERVICE PROVIDER shall perform such services and accomplish such tasks, including the furnishing of all materials and equipment necessary for full performance thereof, as are identified and designated as SERVICE PROVIDER responsibilities throughout this Agreement and as detailed in Exhibit "A" as the responsibilities of the "CONSULTANT" attached hereto and incorporated herein (the "Project").

2. Term.

The Project shall begin on April 6, 2010, and shall be completed no later than January 1, 2011, unless sooner terminated according to the provisions herein.

3. Compensation and Method of Payment.

- 3.1 Payments for services provided hereunder shall be made following the performance of such services, unless otherwise permitted by law and approved in writing by the CITY.
- 3.2 No payment shall be made for any service rendered by the SERVICE PROVIDER except for services identified and set forth in this Agreement.
- 3.3 The CITY shall pay the SERVICE PROVIDER for work performed under this Agreement as follows: Not more than monthly for services provided in the preceding month not to exceed a total of \$90,994.86.

- 7.1 **SERVICE PROVIDER shall defend, indemnify and hold the CITY, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the SERVICE PROVIDER in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.**
- 7.2 **For purposes of this indemnification and hold harmless agreement, the SERVICE PROVIDER waives any immunity that may be granted to it under the Washington State Industrial Insurance Act, Title 51 RCW. The parties expressly agree that this waiver of workers' compensation immunity has been negotiated.**
- 7.3 **No liability shall attach to the CITY by reason of entering into this Agreement except as expressly provided herein.**

8. Insurance.

The SERVICE PROVIDER shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the SERVICE PROVIDER, its agents, representatives, or employees.

- 8.1 **Minimum Scope of Insurance. SERVICE PROVIDER shall obtain insurance of the types described below:**
- a. **Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.**
 - b. **Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The City shall be named as an insured under the SERVICE PROVIDER'S Commercial General Liability insurance policy with respect to the work performed for the City.**
 - c. **Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.**
 - d. **Professional Liability Insurance appropriate to the SERVICE PROVIDER'S profession.**
- 8.2 **Minimum Amounts of Insurance. SERVICE PROVIDER shall maintain the following insurance limits:**

- a. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of One Million Dollars (\$1,000,000) per accident.
- b. Commercial General Liability insurance shall be written with limits no less than One Million Dollars (\$1,000,000) each occurrence, Two Million Dollars (\$2,000,000) general aggregate.
- c. Professional Liability insurance shall be written with limits no less than One Million Dollars (\$1,000,000) per claim and One Million Dollars (\$1,000,000) policy aggregate limit.

8.3 Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability and Commercial General Liability insurance:

- a. The SERVICE PROVIDER'S insurance coverage shall be primary insurance with respect to the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the SERVICE PROVIDER'S insurance and shall not contribute with it.
- b. The SERVICE PROVIDER'S insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

8.4 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

8.5 Verification of Coverage. SERVICE PROVIDER shall furnish the City with original certificates and a copy of the amendatory endorsements including, but not necessarily limited to, the additional insured endorsement, evidencing the insurance requirements of the SERVICE PROVIDER before commencement of the work.

9. Treatment of Assets.

Title to all property furnished by the CITY shall remain in the name of the CITY and the CITY shall become the owner of the work product and other documents, if any, prepared by the SERVICE PROVIDER pursuant to this Agreement.

10. Compliance with Laws.

10.1 The SERVICE PROVIDER, in the performance of this Agreement, shall comply with all applicable federal, state or local laws and ordinances, including regulations for licensing, certification and operation of facilities, programs and

666

accreditation, and licensing of individuals, and any other standards or criteria as described in this Agreement to assure quality of services.

10.2 The SERVICE PROVIDER specifically agrees to pay any applicable business and occupation (B&O) taxes that may be due on account of this Agreement.

11. Nondiscrimination.

11.1 The CITY is an equal opportunity employer.

11.2 Nondiscrimination in Employment. In the performance of this Agreement, the SERVICE PROVIDER will not discriminate against any employee or applicant for employment on the grounds of race, creed, color, national origin, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental or physical disability, or the use of a trained dog guide or service animal by a person with a disability; provided that the prohibition against discrimination in employment because of disability, or the use of a trained dog guide or service animal by a person with a disability, shall not apply if the particular disability prevents the proper performance of the particular worker involved. The SERVICE PROVIDER shall ensure that applicants are employed, and that employees are treated during employment without discrimination because of their race, creed, color, national origin, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental or physical disability or the use of a trained guide dog or service animal by a person with a disability. Such action shall include, but not be limited to: employment, upgrading, demotion or transfers, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and programs for training including apprenticeships. The SERVICE PROVIDER shall take such action with respect to this Agreement as may be required to ensure full compliance with local, state and federal laws prohibiting discrimination in employment.

11.3 Nondiscrimination in Services. The SERVICE PROVIDER will not discriminate against any recipient of any services or benefits provided for in this Agreement on the grounds of race, creed, color, national origin, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental or physical disability or the use of a trained guide dog or service animal by a person with a disability.

11.4 If any assignment and/or subcontracting has been authorized by the CITY, said assignment or subcontract shall include appropriate safeguards against discrimination. The SERVICE PROVIDER shall take such action as may be required to ensure full compliance with the provisions in the immediately preceding paragraphs herein.

12. Assignment/subcontracting.

- 12.1 The SERVICE PROVIDER shall not assign its performance under this Agreement or any portion of this Agreement without the written consent of the CITY, and it is further agreed that said consent must be sought in writing by the SERVICE PROVIDER not less than thirty (30) days prior to the date of any proposed assignment. The CITY reserves the right to reject without cause any such assignment.
- 12.2 Any work or services assigned hereunder shall be subject to each provision of this Agreement and proper bidding procedures where applicable as set forth in local, state and/or federal statutes, ordinances and guidelines.
- 12.3 Any technical/professional service subcontract not listed in this Agreement, must have express advance approval by the CITY.

13. Changes.

Either party may request changes to the scope of services and performance to be provided hereunder, however, no change or addition to this Agreement shall be valid or binding upon either party unless such change or addition be in writing and signed by both parties. Such amendments shall be attached to and made part of this Agreement.

14. Maintenance and Inspection of Records.

- 14.1 The SERVICE PROVIDER shall maintain books, records and documents, which sufficiently and properly reflect all direct and indirect costs related to the performance of this Agreement and shall maintain such accounting procedures and practices as may be necessary to assure proper accounting of all funds paid pursuant to this Agreement. These records shall be subject at all reasonable times to inspection, review, or audit, by the CITY, its authorized representative, the State Auditor, or other governmental officials authorized by law to monitor this Agreement.
- 14.2 The SERVICE PROVIDER shall retain all books, records, documents and other material relevant to this Agreement, for six (6) years after its expiration. The SERVICE PROVIDER agrees that the CITY or its designee shall have full access and right to examine any of said materials at all reasonable times during said period.

15. Other Provisions.

The following additional terms shall apply: It is agreed between the parties that pursuant to changes in state law necessitating that services hereunder be expanded, the parties shall negotiate an appropriate amendment. If after thirty (30) days of negotiation, agreement cannot be reached, the CITY may terminate this Agreement no sooner than sixty (60) days thereafter.

16. Termination.

16.1 **Termination for Convenience.** The CITY may terminate this Agreement, in whole or in part, at any time, by giving at least thirty (30) days' written notice to the SERVICE PROVIDER. Upon such termination for convenience, the City shall pay the SERVICE PROVIDER for all services provided under this Agreement through the date of termination.

16.2 **Termination for Cause.** If the SERVICE PROVIDER fails to perform in the manner called for in this Agreement, or if the SERVICE PROVIDER fails to comply with any other provisions of the Agreement and fails to correct such noncompliance within five (5) days' written notice thereof, the CITY may terminate this Agreement for cause. Termination shall be effected by serving a notice of termination on the SERVICE PROVIDER setting forth the manner in which the SERVICE PROVIDER is in default. The SERVICE PROVIDER will only be paid for services performed in accordance with the manner of performance set forth in this Agreement through the date of termination.

17. Notice.

Notice provided for in this Agreement shall be sent by certified mail to the addresses designated for the parties on the last page of this Agreement.

18. Attorneys Fees and Costs.

If any legal proceeding is brought for the enforcement of this Agreement, or because of a dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover from the other party, in addition to any other relief to which such party may be entitled, reasonable attorney's fees and other costs incurred in that action or proceeding.

19. Jurisdiction and Venue.

19.1 This Agreement has been and shall be construed as having been made and delivered within the State of Washington, and it is agreed by each party hereto that this Agreement shall be governed by laws of the State of Washington, both as to interpretation and performance.

19.2 Any action of law, suit in equity, or judicial proceeding for the enforcement of this Agreement or any provisions thereof shall be instituted and maintained only in any of the courts of competent jurisdiction in Island County, Washington.

20. Severability.

20.1 If, for any reason, any part, term or provision of this Agreement is held by a court of the United States to be illegal, void or unenforceable, the validity of the remaining provisions shall not be affected, and the rights and obligations of the

parties shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.

20.2 If it should appear that any provision hereof is in conflict with any statutory provision of the State of Washington, said provision that may conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform to such statutory provisions.

21. Entire Agreement.

The parties agree that this Agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated herein are excluded. Further, any modification of this Agreement shall be in writing and signed by both parties. Failure to comply with any of the provisions stated herein shall constitute a material breach of contract and be cause for termination. Both parties recognize time is of the essence in the performance of the provisions of this Agreement. It is also agreed by the parties that the forgiveness of the nonperformance of any provision of this Agreement does not constitute a waiver of the provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first hereinabove written.

CITY:

CITY OF OAK HARBOR
865 SE Barrington Drive
Oak Harbor, WA 98277

SERVICE PROVIDER:

EnviroIssues
101 Stewart Street, Suite 1200
Seattle, Washington 98101

Jim Slowik, Mayor

Attest:

Connie Wheeler, City Clerk

Scope of Services for City of Oak Harbor

Submitted by EnviroIssues

Pioneer Way Improvements Business and Community Outreach Planning and Support

INTRODUCTION AND PROJECT APPROACH

The City of Oak Harbor Public Works Department (CLIENT) is working to ready Pioneer Way for conversion from a two-way street to a one-way street as part of a broader downtown streetscape improvement and revitalization effort. Design of the corridor has been underway since early 2009; the project has been met with some concern by the business community.

“Doing this project right” means that businesses and the community understand the reason for the project, have input into the final outcome, and are able to survive and thrive during roadway construction. EnviroIssues (CONSULTANT) has been asked to provide planning/construction community outreach support to support this process. This scope of services includes targeted outreach activities to make information available to the broader community, as well as engage merchants along Pioneer Way in a dialogue about the project. It also includes support services to assist the City of Oak Harbor in construction planning from a community outreach perspective.

GENERAL PROJECT ASSUMPTIONS

- Activities outlined within this scope of services are assumed to be implemented between April 2010 and December 31, 2010, for total contract duration of eight months. In December 2010, the project is expected to have been bid and will be readying for active construction, set to begin in January 2011. If desired by CLIENT, outreach services related specifically to construction would be under an amendment to this contract, with a level of effort to be determined following preparation of construction community relations plan.
- The CONSULTANT will work collaboratively with City of Oak Harbor staff/project manager, in addition to other Consultants, to complete the scope of work. To create work products, especially those being disseminated to the public, CONSULTANT will work with Project Manager and other team members to ensure accuracy of information prior to distribution.
- Each work product will go through one review via one conference call to resolve comments.
- Invoices will be submitted to CLIENT on a monthly basis, and will be documented within the task structure outlined below.
- Related to direct costs: no direct-buy display or online advertising is included in this scope of work or associated budget; all direct costs related to mailings, including printing and postage required are assumed to be billed directly to CLIENT; any direct costs for construction outreach/marketing mechanisms are assumed to be billed directly to CLIENT, with CONSULTANT coordination assistance.

SCOPE OF SERVICES

Task 1: Task Management

The CONSULTANT will:

- Prepare and submit monthly invoices related to this scope of services, with progress report of work completed during invoice period.
- Prepare for and participate in up to monthly coordination meetings with CLIENT. For budgetary purposes, it is assumed that five meetings are held in Oak Harbor, and four meetings are held via teleconference. Action items will be tracked at these meetings for follow up.

Deliverables under Task 1:

- 8 progress reports and invoices

Task 2: Community Involvement Plan(s) and Construction Preparation

Specific tasks outlined below are intended to guide outreach and communications during design, and later plan for construction outreach from a communications and community outreach perspective.

The CONSULTANT will:

- Coordinate with CLIENT to finalize an outreach and communications plan for the duration of this project.
- Using information learned via consultation with businesses during the design process, develop a construction community relations plan for implementation during construction. Review of this document is anticipated to include one meeting in person to discuss recommendations related to community outreach for construction for possible incorporation into contractor bid documents.

Deliverables under Task 2:

- One design-related outreach/community relations plan
- One construction community relations plan

Task 3: Business Survey and Tracking

This task includes an independent outreach effort to understand current business practices, hours of operations, deliveries, and patrons along Pioneer Way, in addition to assessment of current attitudes toward the project. This business survey is intended to assist in design efforts and construction planning. Specifically, the CONSULTANT will:

- Craft a standardized interview script.
- Coordinate and conduct in person business surveys with property managers, owners and/or business purveyors. Assumed to be up to 55 business surveys. This effort is assumed to require four days for two staff to complete in the field.

-
- Build and maintain an online database to track all data collected related to individual business attributes. The database will be searchable by the design team for construction and design purposes and password protected. At the conclusion of EnviroIssues' involvement with this project, all data will be exported into format compatible with Microsoft Office products, and provided in spreadsheet format to CLIENT. This database tool is a proprietary product of EnviroIssues; data contained is owned by CLIENT. One-time set up and ongoing maintenance of this system is considered a direct cost to the project, with customization requiring labor hours. A service and use agreement for this tool will be provided for signature to the City of Oak Harbor.
 - Produce a summary of themes, outcomes and outreach recommendations from the business survey.

Deliverables under Task 3:

- One survey script
- One active, online database for duration of contract
- One summary outreach activity

Task 4: Public Sessions: Drop-in Sessions, Design Workshop and City Council/Committee Meetings

The following activities are anticipated readied and open to the public for engagement related to final designs. They include:

- Conduct two business "Drop-In Sessions" to provide additional information related to project designs. Both sessions are assumed similar format/information and be held within one week of each other. This task includes preparation of logistics, venue coordination and materials related to the event, in addition to on-site event staffing. A postcard will be developed to use as advertisement. Time to coordinate printing is included in this task; direct costs for postage and printing are not. A summary of these events and input received will be produced.
- Conduct one design workshop to gather input into development of (to be determined) corridor aesthetic improvements. A postcard will be developed to use as advertisement and distribution. This is intended to be a facilitated workshop. This task includes preparation of logistics, venue and materials related to the event, in addition to facilitation and staffing. Time to coordinate printing is included in this task; direct costs for postage and printing are not. A summary of the workshop and input received will be produced.
- Support development of up to two presentations for City Council and/or Public Works Committee at key points of the project.

Deliverables under Task 4:

- Drop-in Session postcard
- Drop-in Session coordination and staffing
- Drop-in Session summary

-
- Design workshop postcard
 - Design workshop coordination, staffing and facilitation
 - Design workshop summary
 - Two PowerPoint presentations

Task 5: Materials Development and Support of City Proceedings

Deliverables and support under this task are intended to provide materials for community outreach tools, as described above. Specifically, the CONSULTANT will:

- Develop a project logo and “look and feel.” The CONSULTANT will develop three options for presentation to CLIENT for dialogue related to development of this consistent look and feel for all subsequent materials, including signage materials during construction.
- Coordination and attendance at up to two organizational briefings (with group such as Greater Oak Harbor Chamber of Commerce) to gather input on options for construction signage and possible economic development/marketing techniques during construction.
- Following consultation with City staff and organizations, support marketing efforts of the City to ready for construction. This will include consultation to produce graphical materials as follows:
 - Graphical preparation of up to four different sign formats for use during construction to indicate that “businesses are open.” Time to coordinate printing is included in this task; direct costs for signage creation are not.
 - Create up to three additional printed one-page pieces (such as postcards), and one “Flash” online advertisement for use in economic development activities of the city during construction to help maintain foot traffic along Pioneer Way. Time to coordinate printing is included in this task; direct costs for signage creation are not.
- Creation of up to one newsletter at the conclusion of project design to let the broader community know the status of the project and final design. Time to coordinate printing is included in this task; direct costs for postage and printing are not.
- Creation of up to three fact sheets and/or flyers for the duration of the project.

Deliverables under Task 5:

- “Look and feel” for project
- Up to four sign formats (anticipated to be created later in construction process)
- Up to three printed pieces
- One “Flash” online display advertisement
- One newsletter
- Three fact sheets or flyers

Compensation Schedule

**City of Oak Harbor - SE Pioneer Way Improvements - EnviroIssues
Business and Community Outreach Planning and Support**

LABOR COSTS By Task				
Task 1: Task Management				
<i>Total Hours this Task</i>		<i>Total Cost this Task</i>		
109		\$ 9,152.00		
Task 2: Community Involvement Plans and Construction Prep				
<i>Total Hours this Task</i>		<i>Total Cost this Task</i>		
60		\$ 4,910.00		
Task 3: Business Survey and Tracking				
<i>Total Hours this Task</i>		<i>Total Cost this Task</i>		
225		\$ 18,805.00		
Task 4: Public Sessions: Drop-In Sessions/Workshop and City Council/Committee Meetings				
<i>Total Hours this Task</i>		<i>Total Cost this Task</i>		
234		\$ 18,632.00		
Task 5: Materials Development and Support				
<i>Total Hours this Task</i>		<i>Total Cost this Task</i>		
336		\$ 30,080.00		
LABOR COSTS By Staff & Rates***				
Staff Name	Position	2010 Rate	Total Hours	Total
Erin Taylor	Project Manager/Associate 2	\$ 108.00	207	\$ 22,356.00
Katie Fredlund	Associate 1	\$ 73.00	357	\$ 26,061.00
Brian Feldman	Project Coordinator	\$ 53.00	161	\$ 8,533.00
Lisa Roeser / Katherine Andrews	Graphic Designer	\$ 95.00	187	\$ 17,765.00
Stepen Enloe	Information Systems Associate II	\$ 132.00	52	\$ 6,864.00
Total			964	\$ 81,579.00
Summary				
Total Labor Cost				\$ 81,579.00
Direct Costs (includes copies, web & database administration, mileage, ferry)				\$ 9,415.86
Total Project Cost				\$ 90,994.86

***EnviroIssues revises salary and overhead rates on January 1 each year. These rates reflect 2010 rates; 2011 rates would be adjusted if project were to be extended.

75

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

Bill No. 9

Date: April 6, 2010

Subject: Pioneer Way Improvements Design
Services Agreement Approval to Proceed Phase 2

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

SUMMARY STATEMENT

This agenda bill requests approval of the second phase of an engineering design and services agreement with Perteet Inc. for the SE Pioneer Way improvements project. Council is requested to authorize funding to continue with Phase 2 of the agreement and modify the scope and cost to include the preparation of National Environmental Protection Act (NEPA) documents resulting from the City's application for Community Development Block Grant (CDBG) Funding, design work for overhead utility relocations, retaining wall design for additional parking, the preparation of illustrative documents to assist in presenting the project design to the public and support for the City's public outreach program.

AUTHORITY

The authority to enter into agreements for improvements or use of real property is granted to the City of Oak Harbor under 35A.11.020.

SUMMARY STATEMENT

City Council approved an agreement with Perteet Inc. for the preparation of improvement plans for Pioneer Way between City Beach Street and Midway Boulevard at its meeting on March 3, 2009. The contract is separated into three separate phases as follows:

- Phase 1 – Preliminary design
- Phase 2 – Final design and construction document preparation
- Phase 3 – Construction

Funding in the amount of \$316,575.00 for Phase 1 services was also approved at that meeting. Phase 1 services included the evaluation of several alternative configurations for the project and the preparation of preliminary engineering for the selected alternative. On November 4, 2009,

City Council approved Amendment No. 1 to the agreement with Perteet Inc. for the preparation of a record of survey to establish the true right of way of Pioneer Way in the project area and approved an increase of \$12,265.00 to the Phase 1 fee.

Phase 1 – Preliminary design

Council action:	Date:	Amount
Contract authorized	March 3, 2009	\$316,575.00
Amendment (1) (survey)	November 4, 2009	\$12,265.00
Total for Phase I as amended:		\$328,840.00

Phase 2 - The existing agreement with Perteet has a single scope of work, with tasks designated for the three phases set out above. As the project proceeds, new information and new direction from the Council requires that the scope of work be amended to reflect new tasks. Also, Council approval is required before Perteet is directed to proceed to the next phase of work. For those reasons, this agenda bill seeks Council authorization to direct Perteet to begin the Phase 2 work, and, at the same time, the Council is asked to add tasks to the scope of work for Phase 2. If authorized by Council, the contract would allow the following tasks and fees:

Phase 2 - Final Design and construction document preparation

Council action:	Date:	Amount
Authorize Phase 2	April 6, 2010	\$269,208.00
Amendment (2)		
NEPA compliance		\$26,902.00
Utility relocation		\$94,271.00
Additional parking		\$17,050.00
Production of a 3-Dimensional model and exhibits		\$14,890.00
Support for EnviroIssues		\$ 9,431.00
Total for Phase 2 as amended		\$431,752.00

Authorization for Phase 3, Construction phase engineering, is not being sought at this time. However, Phase 3 is currently budgeted at \$33,331.00. If no further amendments are made to the contract, the total Perteet contract amount will be \$793,923.00. The agreement outlined a scope and fee for both phase 2 and phase 3 however authorization by the City Council for each of the subsequent phases is needed. Authorization of phase 2 of the contract is needed at this time.

As approved the agreement with Perteet for Phase 2 of the existing contract includes the majority of the final design plan preparation. During Phase 2 the design engineer will prepare the construction plans, design the underground utilities, determine and establish the grades and elevation of the streets and sidewalks, address door thresholds and ADA requirements select and place street furniture, landscaping and street lighting. In addition, a construction sequencing plan and utility relocation plan will be developed. Finally, the construction specifications and contract documents will be compiled and prepared to be issued for bidding in time for January 2011 construction start date.

As the preliminary design moved forward during the phase 1 work, several issues and events have resulted in the need to modify and amend the phase 2 scope currently described in the agreement. On January 5, 2010, City Council approved the submission of an application for CDBG funding. The purpose of the grant application is to acquire funds to assist the City with the relocation of the overhead utilities. The acceptance and use of federal funds through the CDBG program will require the preparation of NEPA documents for the project. Perteet has proposed a fee of approximately \$26,902.00 to prepare the necessary NEPA documentation. Ranking of the CDBG grant application by the Washington State Department of Commerce is expected by May first. Associated with the utility relocation is additional effort by Perteet and their sub consultants for design work and coordination with the utility companies. This effort will cost approximately \$94,271.00.

After receiving direction from the City Council on street configuration staff directed Perteet to proceed with the one-way option. As the preliminary designs are being refined and moved forward opportunities for changes or modifications to the scope of the project will be discussed. One such opportunity, to add additional parking along the south side of Pioneer Way, is worth looking at further. With currently vacant property on the south side of Pioneer Way near Jensen Street, the City could consider acquiring additional Right-of-way and constructing a retaining wall structure to allow for additional on street parking. This would increase the amount of available on street parking which, through public involvement and comment, has been an area of interest for the community. It is recommended that the Phase 2 contract be amended to include design efforts to consider adding this parking area to the Project. The cost of this "parking" amendment is approximately \$17,050.00 Adding this area for parking will require additional expenditures for property acquisition and construction costs that are not currently in the project estimates however the cost for the design is a reasonable cost in developing the project and can be paid for with the current project funding.

During the public outreach in the fall of 2009, the engineering plans and profiles were not sufficient to convey "what will it look like?" information. As a result staff requested that Perteet recommend a better method of communicating design results. The attached illustrates the method proposed. The fee for production of a 3-Dimensional model and presentation exhibits is approximately \$14,890.

In an effort to build both Community and Pioneer Way owner and business owner support, Council is being asked to authorize an Agreement with EnviroIssues, a community outreach consultant by a separate action this evening. The Perteet Agreement will need to be amended to include additional meetings and support for EnviroIssues. The cost of that effort is approximately \$9,431.00

Amount of contract: The proposed amendments will increase the cost of the agreement by \$162,544.00 for a new, not-to-exceed limit of \$793,923.00 for all three phases. Authorization of \$760,592.00 for Phase 2, as amended, is being requested at this time. Phase 3 will not begin until authorized by the Council.

Funding: Funding for the project is included in the Arterial Streets, Fund 104, 2007-2008 budget. Specifically, the budget includes \$4,500,000 which is a combination of \$3,500,000 in real estate excise taxes (REET) and a \$1,000,000 Island County economic development project as reaffirmed by City Council on November 17, 2009. An application for CDBG funding in the amount of \$1,000,000.00 was authorized by City Council on January 5, 2010 and staff are working with Island County to identify funding sources that could be used to either offset City funds or to supplement the project budget to pay for elements not currently included in the project scope, such as relocation of the overhead utilities. It is also expected that staff will develop a supplemental budget proposal to include wastewater utility funds (and possible other fund sources) to pay for rehabilitation or replacement of the sewer lines.

STANDING COMMITTEE REPORT

This item was presented to the Public Works and Utilities Standing Committee on January 7, 2010 and April 1, 2010.

RECOMMENDED ACTION:

1. Authorize the Mayor to direct Perteet Inc. to proceed with Phase 2 of the Consultant Agreement dated March 5, 2009. for a fee not to exceed \$269,208.00
2. Authorize the Mayor to enter into a contract amendment for Phase 2 work as outlined on draft Amendment No. 2. for a fee not to exceed \$431,752.00, and in a form approved by the City Attorney.

ATTACHMENTS:

Budget Recap of Agreement with Perteet Inc.

Original Contract Scope of Work

Draft Amendment No. 2

MAYOR'S COMMENTS:

Budget Recap of Agreement with Perteeet Inc. for SE Pioneer Way Improvements

	Phase 1 Preliminary Engineering	Phase 2 Final Design Plans	Phase 3 Construction Engineering	Maximum Contract Total	Authorized Maximum expenditure	Council Approval
Original Agreement Authorization	\$316,575.00	\$269,208.00	\$33,331.00	\$619,114.00	\$316,575.00	3/3/2009
Amendment No. 1	\$12,265.00					
Subtotal	\$328,840.00	\$269,208.00	\$33,331.00	\$631,379.00	\$341,105.00	11/4/2009
Amendment No. 2		\$162,544.00				
Subtotal	\$328,840.00	\$431,752.00	\$33,331.00	\$793,923.00	\$760,592.00	Pending

EXHIBIT B

Scope of Services

Revised: 18 February 2009

CITY OF OAK HARBOR SE PIONEER WAY IMPROVEMENT PROJECT

During the term of the Contract, Pertect Inc. (CONSULTANT) will perform civil engineering and related services for the City of Oak Harbor (CITY), as detailed in the following:

INTRODUCTION

The CITY proposes to complete a street improvement project in the historic downtown along SE Pioneer Way between City Beach Street and Midway Boulevard. This includes the services for surveying, right-of-way determination, civil engineering, geotechnical, hazardous waste investigation, right of way, landscaping, and services during construction. The project's objectives are to enhance pedestrian and vehicle safety, restore the condition of the infrastructure, and enhance the downtown visitor experience. The work includes restoration or replacement of the street structural sections, curb, gutter, sidewalk, street lighting, storm drainage, and sanitary sewer. Undergrounding of overhead utilities and street amenities will be evaluated if budget permits. The project is to be ready for construction by spring 2010.

The work will be performed in three phases with each phase being approved by the City prior to performance of the work.

PHASE I

Work is for preliminary engineering that includes: the development of a survey base map with right of ways; performance of geotechnical analysis including site exploration and soils testing; development of an underground storage tank mitigation plan; development of three planning level street layout alternatives for angle or parallel parking configuration with two way traffic and parallel parking with one way traffic eastbound within the project limits; storm water assessment and preliminary layout; preliminary sanitary sewer layout; identification and evaluation of overhead utility relocation/undergrounding; right of way needs determination, Executive Order 05-05 requirements initiated, preliminary engineering opinion of cost; street landscaping and street amenities concepts; evaluation of the two parking configuration alternatives, and presentation of findings to the CITY. All Phase I work shall be completed prior to December 30, 2009.

PHASE 2

Work is for the development of the construction plans, specifications, and engineering cost estimate (PS&E) based on the CITY's selection of the preferred alternative developed in Phase 1. Included in this phase will be environmental permit services for the preparation of a Shoreline

Permit and SEPA Checklist. Final PS&E documents will be the preparation of a set of bid ready construction documents.

PHASE 3

Work is for Construction Support during the bid opening, award process, and on-call support during construction and project close out.

The sub-consultants that may be used throughout the life of the project are:

GeoEngineers (GE)	Geotechnical
Murray Smith & Associate (MSA)	Sanitary Sewer and Utility Undergrounding
Hough Beck & Baird (HBB)	Landscape Architect

GENERAL SCOPE OF SERVICE

The work for this project will be divided into three phases. At the option of the CITY, the CONSULTANT may be asked to provide additional phases of work, such as construction engineering services. The phases of work in this Scope of Services include the following tasks:

Phase 1 – Preliminary Engineering,

- Task 1 Project Management
- Task 2 City Council and Public Outreach
- Task 3 Survey and Mapping
- Task 4 Geotechnical
- Task 5 Hazardous Waste Investigation
- Task 6 Preliminary Civil Design, Including Preliminary Opinion of Cost
- Task 7 Preliminary Landscape Design
- Task 8 Funding Application
- Task 9 Environmental Early Action

Phase 2 – Construction Plans, Specifications, and Engineer's Estimate (PS&E)

- Task 10 PS&E
- Task 11 Landscape Design Plans
- Task 12 Environmental Permitting

Phase 3 – Construction Support.

- Task 13 Construction Support

FEE

The total fee determination for the entire scope of services is \$595,035. The following is the breakdown of the 3 phases including direct salary costs and non-salary costs:

▪	Phase 1	\$316, ⁵⁷⁵ 675	CLD
▪	Phase 2	\$269,208	
▪	Phase 3	\$33,331	

Phase 1 shall be performed at an amount not to exceed \$316,575

Phase 2 shall be performed as a continuation of the Phase 1 contract amount and shall not exceed \$585,783 total for the combined fee of Phase 1 and Phase 2. This amount includes an optional service for a Licensed Archeologist services of \$14,000.

Phase 3 shall be performed as a continuation of Phase 1 and Phase 2 contract amount and shall not exceed \$619,114 total for the combined fee of Phase 1, Phase 2, and Phase 3.

The total amount of Phase 1, 2, and 3 shall not exceed a total contract amount of \$619,114.

Additional services not included in this scope of services can be added at the direction of the City. Fees for additional services shall be agreed upon by both the CITY and CONSULTANT and shall be an amendment to the approved Phased contract amount.

PHASE I – PRELIMINARY ENGINEERING, RIGHT OF WAY, AND COST ESTIMATE

TASK 1 PROJECT MANAGEMENT

- a) *Project Administration* - Provide project management including; monitoring budget, overseeing sub-consultants, preparation of a task level project schedule, project work plan, preparation of invoices and progress reports through the projects duration (assumes 12 months).
- b) *Agency Coordination* - Coordination with CITY on project via-phone, e-mail, and at the agency. This task assumes up to 6 meetings at the City of Oak Harbor.
- c) *Quality assurance* - Conduct QA/QC review of the design by a senior staff.

Deliverables

- Project kick-off meeting to include discussion of design criteria
- Project Work Plan (within two weeks of Notice to Proceed (NTP))
- Task level project schedule (within two weeks of NTP)
- Attending project meetings on site (up to 6 meetings)
- Monthly Progress Reports with invoices (12)

TASK 2 CITY COUNCIL AND PUBLIC OUTREACH

The CONSULTANT will assist the CITY with presentations/meetings with the City Council, general public, and business community as requested by the CITY.

- a) *Public Outreach* – The CONSULTANT will assist the CITY with up to three (3) community meetings, up to 2 hour meetings each. The CONSULTANT will provide a roll sheet plan for presentation material and design specific presentation boards (up to 4 per meeting). The CONSULTANT will be present to respond to questions and will prepare a summary of comments. The CITY will arrange for the public meetings, provide all notifications, and arrange for a meeting facility. All meetings will be facilitated by the CITY.
- b) *Council Meetings* – The CONSULTANT will attend up to two (2) City Council meetings and present information on the three (3) design alternatives and streetscape amenities alternatives. The CITY will schedule the Council meeting, prepare staff reports, and prepare any follow up response to Council. It is assumed that the CITY will select a preferred alternative during this process.

Deliverables

- Attending up to 3 community meetings
- Roll Plots and 3 presentation graphics per meeting
- Attending up to 2 City Council meetings
- 1 copy of summary of public comments

TASK 3 SURVEY AND MAPPING

Survey Mapping Limits

- SE Pioneer Way, being of variable width, lying easterly of the westerly right of way margin of SE City Beach Street and westerly of the easterly right of way margin of SE Midway Boulevard. The outer mapping limits will extend to the face of adjoining structures or 20 feet beyond the right of way margin, whichever provides the widest mapping strip.
- The southerly 100 feet of SE Ely Street, SE Dock Street, SE Hathaway Street, SE Ireland Street, SE Ilwaco Alley and SE Jensen Street as they adjoin Pioneer. Their outer mapping limits will extend to the face of adjoining structures or 20 feet beyond the right of way margin, whichever provides the widest mapping strip and shall include the storm drain outfall at the southeast corner of the intersection of Bayshore Drive and Pioneer Way

Reconnaissance Topographic Mapping

A topographic base map will be prepared at a horizontal scale of 1 inch = 20 feet for the above-described area and subject to the project assumptions described below. The base map will reflect the following features:

- Spot elevations at 25 foot intervals along the centerline of Pioneer Way.
- Underground "dry" utilities and domestic water locations as marked on the surface by a private underground utility locate service.
- Underground storm water and sanitary sewer line connections between surface structures.
- As-built of storm, water and sanitary sewer structures including pipe invert elevations and size and material type of pipes. Water line elevations will be provided from the City's as-built records of the 2007-08 SE Pioneer Way water main replacement project.
- Connection of underground storm water and sanitary sewer systems to closest structure lying outside the above-described mapping limits in the event an underground located within mapping limits connects to a structure lying outside of the mapping area.
- Surface and above-ground utility features including location of overhead utility wires.
- Street appurtenances including, but not limited to, stripping, signals, curb, gutter, sidewalks, signs, street trees, etc.
- Fences, mailboxes, building signs, building awnings and retaining structures.
- Visible improvements situated within the above-described mapping limits.
- 1 foot contour intervals.

- Street centerlines and right of way margins at “survey” grade location.
- Adjoining building frontage lines including front entrance door sill elevations required for ADA compliance.

Control Surveys and Right of Way Determination

Control surveys for the project will include datum control surveys, ground control for topographic completion surveys and control surveys for road right-of-ways. Parcel boundary calculations will be conducted during Phase 2, once potential right of way easements are identified. Property corner monuments discovered during the field survey will be field located and included in the project base map.

Datum control surveys will be to provide the project in Washington State Plane Coordinate System (WSPCS), North Zone (NAD 83/91) horizontal datum; and North American Vertical Datum (NAVD 88). We will identify or establish approximately 10 horizontal control points and 10 vertical benchmarks for the project.

A thorough search through the records will be performed at, but not limited to, the Public Land Survey Office (Dept. of Natural Resources), Island County Auditor’s and Assessor’s Offices and the City of Oak Harbor Public Works Department. The intent of this research is to provide a historical record of previous platting, street establishment and locations of monuments existing, if any, activity. Once the research records are compiled and analyzed, a field plan will be formulated which the field crews will use to recover and field located pertinent monuments which govern street centerline and rights of way margin location. Field data will then be analyzed against the records and appropriate computations for said centerlines and margins performed. Centerline and rights of way margins will be incorporated into the topographic base map, described-above.

Project Assumptions and/or Criteria

- The Control network will be based on the Washington State Plane Coordinate System (WCS) of 1983 (1991 Adjustment), North Zone, for horizontal control and the North American Vertical Datum (NAVD) 1988 for vertical control.
- Primary survey control will be based upon monuments and corresponding data sheets prepared by the Washington State Department of Transportation, Geodetic Services Division or National Geodetic Control Monuments.
- Coordinate mapping values will be based upon a “Project Datum” being that mathematical shift from state plane grid coordinates as specified by Washington State Department of Transportation policy, unless otherwise specified by the CITY.
- CITY shall pay for title reports for impacted properties requiring easements however CONSULTANT will contact and order directly with a title company doing business in the City of Oak Harbor, unless directed otherwise.
- Underground utilities will be surface marked by others prior to field crew visit.

84

- This project is not subject to Subsurface Utility Engineering (SUE) quality levels as defined by the American Society of Civil Engineers (ASCE) publication 38-02.
- Underground utility location will not investigate the depth of said utilities and will be represented on a horizontal plane only, except for underground gravity lines.
- A total of 25 sanitary and/or storm water structures are quantified for as-builds by this project.
- A total of 7 impacted parcels are proposed for boundary determination and legal description preparation.
- Entries into underground utility structures that require confined space entry training are not included as a portion of this scope of services.
- This Scope of Services assumes that rights of entry onto adjoining private lands and traffic control are not needed or will be provided by the City.

Deliverables

- Final design-level base mapping of the defined mapping area including right of way and DTM file.
- Supplemental Control report containing coordinates, elevations, network schematic (if applicable), adjustments, monument type and descriptions.
AutoCAD 2008 electronic drawing files subject to APWA field coding and drafting standards, including symbology, text, lines and layers. Final digital files are to be contiguous at a 1 to 1 scale in model space. Point data blocks will include number identifier; elevation and description fields will also be included. Mapping is to be planimetric with digital terrain modeling. The mapping will comply with the National Map Accuracy Standards for 1" = 20' scale mapping, 1-foot contour interval.
- Digital photographs of interior of storm water and sanitary sewer structures and utility poles with attached appurtenances.

TASK 4 GEOTECHNICAL

The CONSULTANT shall perform sampling exploration of the existing soils material under the pavement area and analysis of the soil composition. Recommendation for the roadway area structure design section will be provided for the earthwork, pavement, utility placement, and street lighting base.

- Review existing information* – The GEOENGINEERS will perform a review of existing information for the site vicinity. The CITY will provide geotechnical studies and reports performed in the site vicinity from their records, provide any soils inspection reports performed during the recent NE Pioneer Way water main replacement projects, and other know soils information on records. GEOENGINEERS will make a determination of the boring and pavement core sampling location based on the site visit and information gathered from existing documents.
- Site investigation* – The GEOENGINEERS will perform site investigation to determine areas of potential structure base material concerns. The GEOENGINEERS will conduct

a site visit to identify exploration locations and contact the "one-call" utility locate services. A plan with proposed boring locations and any necessary access permissions will be provided to the City prior to execution of the borings. Borings will be performed on a Monday if possible. Borings will be completed to obtain geotechnical data for visual and potential laboratory analysis. Up to 4 borings with a depth up to 20 feet will be performed for evaluation of proposed light foundations, stormwater vault, and deeper soil conditions and roadway/pavement conditions. Up to 4 additional shallow borings/pavement core samples of the existing pavement will be performed to evaluate pavement thickness and subgrade soil conditions. We assume the explorations can be completed in one full day. It is assumed that traffic control will be required to perform the boring and core sampling and will be subcontracted by GEOENGINEERS.

- c) *Laboratory testing* - Laboratory testing of representative soil samples will be performed to determine soil composition including moisture content, grain size analysis, and Atterberg limits as appropriate for the soil types encountered. CBR values will be approximated based on correlations with soil type.
- d) *Analysis and design* - Analysis of the soil composition and roadway structure design section will be provided for the earthwork, pavement, utility placement, and street lighting base. Provide a recommend design soil bearing pressure and a design lateral soil pressure for a concrete vault site for a stormwater treatment option taking into consideration the potential for high groundwater.
- e) *Geotechnical report* - Geotechnical report will include summary on field investigation finds, sampling locations, laboratory test results, and recommend roadway section design recommendations.
- f) *Provide support and review for PS&E*

Deliverables

- 1 copy of the draft and final Geotechnical Report in hard copy form (submitted to the City by 9/1/09)

TASK 5 CONTAMINATION ASSESSMENT AND UST MITIGATION PLAN

The CONSULTANT shall provide environmental services related to potential soil contamination and removal of underground storage tanks (USTs). Assessment will include review of data, site reconnaissance, interviews, and limited exploration and chemical testing. Conclusions and recommendations will be provided regarding the potential for encountering contamination during earthwork, an action plan for the contractor to handle USTs, and a mitigation plan for disposal of impacted soils.

- a) *Research* - GEOENGINEERS will review the results of a federal, state, local environmental database search subcontracted to an outside environmental data service

(Parcel Insight [PI]) for listings of sites with known or suspected environmental conditions along the project corridor.

- b) *Site Reconnaissance* – While identifying the exploration locations to coordinate a utility locate, GEOENGINEERS will perform a site reconnaissance related to potential contaminated sites, focusing on old gas stations or other potential sites that might have USTs.
- c) *Interviews* – Interview property owners of parcels that have identified history of contamination or field evidence of suspected USTs.
- d) *Site investigation* - GEOENGINEERS will coordinate with the City and design team to locate one boring in the immediate vicinity of a known UST encountered during a recent City water line project, and three additional borings in the vicinity of historic UST locations that have been identified in a historic fire insurance map. These borings will be completed concurrently with the geotechnical program. In addition to conventional geotechnical sampling, the soil samples at these boring locations will be field screened for evidence of petroleum contamination. We assume that these additional explorations can be completed in one half day. It is assumed that traffic control will be required to perform the boring and core sampling and will be subcontracted by GEOENGINEERS.
- e) *Chemical testing* – Submit up to three soil samples from each boring for chemical analyses of hydrocarbon identification by NWTPH-HCID, BETX by EPA Method 8020 and/or gasoline-, diesel- and oil-range hydrocarbons by NWTPH-Gx and NWTPH-Dx with sulfuric acid/silica gel cleanup. Initially, one sample will be submitted for NWTPH-HCID to determine if any petroleum contamination is present. Additional testing will be performed to (a) characterize the contaminant and (b) vertical extent of the impacted area.
- f) *Analysis and plan development* – Compare field screening and chemical analytical results with appropriate cleanup regulations. Develop an action plan for removal of USTs encountered within the ROW. Develop a cleanup action plan for handling and disposal of petroleum impacted soil.
- g) *Report Sections* – Prepare a summary of investigation and chemical testing results, include discussion of action and mitigation plans as appropriate in the geotechnical report.
- h) *PS&E Support* – Provide support and review PS&E for environmental tasks.

Deliverables

- 1 copy of the report sections as described above in the draft and final Geotechnical Report in hard copy form (submitted to City by 9/1/09)

TASK 6 PRELIMINARY CIVIL DESIGN

The CONSULTANT shall prepare two alternatives of conceptual street layouts at a planning level for angled parking along one side of the roadway and parallel parking along both sides of the roadway. A planning level opinion analysis will be performed for the project street as a one-way eastbound street. Landscaping and street amenities for the two alternatives will be performed under Task 7.

- a) *Develop two street layout alternatives* - CONSULTANT will develop three (3) concept street layouts at a planning level: 1) angle parking along one side of the roadway; 2) parallel parking along both sides of the roadway; and 3) parallel parking along both sides of the roadway with one way traffic eastbound). The number of existing parking spaces is intended to be preserved in the conceptual street layout. Assume layout may be performed using an aerial map and will be approximated for scaling using up to 8 field measurements on street width. The CITY will provide scalable aerial maps and existing survey and assumed right of way information.
- b) *City review and comments on layout alternatives* - CONSULTANT will present two (2) concept street layouts to the CITY. The CITY will review and provide the CONSULTANT with comments stating any changes needed on the three (3) concepts.
- c) *Site assessment for storm water* - CONSULTANT will review city records of on-site and down-gradient storm pipe system and drainage facilities, and existing drainage reports of record at the CITY. Documents to be provided by CITY staff at beginning of this task. Prepare drainage basin maps showing threshold discharge areas (TDA's), existing and proposed discharge points, and direction of flow. Show existing and proposed ditches, culverts and pipes. The drainage basin maps shall use existing topographic maps. Identify where there is contributing off-site runoff that discharges onto the road right-of-way.
- d) *Prepare storm drainage analysis and layouts* - CONSULTANT will prepare up to two stormwater treatment design concept alternatives. Runoff treatment is needed for new impervious surfaces that meet the thresholds of the design standards. Providing treatment of equivalent areas shall be utilized where it is determined to be most practical given site constraints. Prepare planning level opinion of cost to construct the two stormwater treatment facilities. Low Impact Development concepts will be considered in the design of storm drainage design.
- e) *Storm Conveyance* - CONSULTANT will determine the pipe size needed to convey the design flow for the storm pipes within the road project limits, using the simplified Rational Method and Manning equation while considering the City's Comprehensive Plan storm conveyance sizing. (A more detailed backwater analysis is not included in

this task but it can be performed as an additional service.) There is an existing storm pipe that conflicts with another utility, in the storm pipe system located down-gradient of the project site. CONSULTANT will evaluate alternatives and recommend a design solution for the City.

- f) *Prepare sanitary sewer layout* - Under this task sanitary sewer improvements will be defined and a preliminary sewer layout will be developed. The work is distributed into the following subtasks:
- o Existing information regarding the project will be collected and reviewed as available. This information will include existing sanitary sewer as-builts, service and inspection records, geotechnical reports regarding the subsurface soil condition information, other available plans and specifications for improvements in the existing right of way by utilities or others, and other relevant information.
 - o Review alternatives for sewer rehabilitation and/or replacement. Alternatives will take into consideration potential cost savings associated with trenchless technologies, where applicable, and the need to coordinate with other improvements in the corridor.
 - o Develop a preliminary design of the sanitary sewer improvements, taking into consideration other utility and roadway improvements for the Pioneer Way project. Preliminary sanitary sewer plan and profile will be based on street layout developed under this task, total project length 2,300 feet with approximately 400 feet per plan sheet. It is assumed that the profile will be developed following the completion of the survey basemap.
- g) *Overhead Utility Relocation* - Under this task overhead utilities (power, communication, and cable) will be identified. Acquire future design plans prepared by utilities. Schedule meetings with utilities to discuss project and define utility needs and design criteria for undergrounding elements. A total of up to six (6) individual utility company meetings are anticipated under this subtask. Meeting minutes will be prepared by MSA. For the purpose of preparing this Scope of Services, it is anticipated that up to six overhead utilities are located in the project corridor; Puget Sound Energy, Verizon, Comcast, Black Rock Cable, TCI of Washington and Oak Harbor School District (fiber optic)
- h) *Evaluate Overhead to Underground Cost*- Based on information provided by the utility companies (Puget Sound Energy, Verizon, Comcast, Black Rock Cable, TCI of Washington, and Oak Harbor School District); develop design criteria for each utility, estimating conduit size and numbers, vaults, pull boxes, pedestals and services. Develop a preliminary design of the utility undergrounding, taking into account the design criteria and other utility and roadway improvements for the SE Pioneer Way project. The

preliminary design will consider location of conduits, structures and other utility features to minimize conflicts and maintain serviceability. Preliminary plans will be based on street layout developed under this task, total project length 2,300 feet with approximately 400 feet per plan sheet.

Coordinate with each utility to estimate costs for undergrounding, this includes project costs and costs incurred by the utility. Also estimate each utility's policy for cost sharing with respect to utility undergrounding. Prepare an overall project cost estimate (City's cost) for utility undergrounding.

- i) *Determine right of way needs* – The CONSULTANT will determine right of way needs for the immediate affected improvement project area of the three (3) concept street layouts. This will include estimating right of way area needs based on calculations performed using AutoCAD area command. Right of way needs will be shown on a roll plot sheet for each concept street layout.
- j) *Prepare planning level opinion of cost* – Based on the two concept street layouts, prepare a planning level opinion of cost that includes a notation of the specification section that covers the pay item.
- k) *Analysis of one way street* – CONSULTANT will perform a planning level opinion analysis for the concept of the project street as an eastbound one-way roadway. (No modeling or circulation study will be performed.) The analysis will include a review of operations and safety along the project street, potential circulation patterns on streets within one block of the project street, and construction implementation impacts. Construction opinion of costs of the two concept street layouts with a one-way street, developed under Task 6.a, will be performed.
- l) *Evaluate alternatives* – CONSULTANT will perform an evaluation of the three concept street layouts. This will include a review of construction costs, drainage impacts, operations and safety (engineering opinions on parking configuration impacts to through vehicle travel and pedestrian movement, and non-motorized movement), on street parking, and overhead to underground utility conversion. Findings (including opinion of cost) will be summarized in a technical memorandum and a roll plot drawing will be prepared for each concept in plan-view layout at 1"=40' scale.
- m) *City review and comments on findings* - CITY will review the memorandum and provide written comments to the CONSULTANT. It is assumed that the CITY will provide the CONSULTANT with a selection of the preferred concept street layout.

Deliverables

- Draft roll plot plan set (10% level) of two concept street layouts with two-way street configuration and one with a one way street configuration (parallel parking) (a total of 3 concept layouts) with preliminary storm drainage layouts. (submitted to City by 7/1/09)
- Draft plan (30% level) of preferred one-way or two-way alternative concept street layout with storm drainage and sanitary sewer design layout. (submitted to City by 9/1/09)
- Preliminary opinion of cost for the two concept street layouts with one-way and two-way street configuration (a total of 3 concept layouts).
- Draft and final copy of planning level opinion analysis for a one-way street technical memorandum.
- Draft and final copy of preliminary civil design technical memorandum.

TASK 7 LANDSCAPE ARCHITECTURE SERVICES

Through qualified subconsultant HBB, the CONSULTANT shall provide landscape architecture and urban design services for improvements to approximately 2300 linear feet of SE Pioneer Way. Proposed landscape and urban design improvements have been separated into basic infrastructure improvements and streetscape amenities. Basic improvements include trees in tree grates or planting areas and assisting in the selection of a street/pedestrian light fixture. Streetscape amenities include special sidewalk paving patterns, container planting, site furnishings, banners and hanging baskets. Preliminary design includes up to two (2) families of landscape and urban design improvements to provide a "shopping list" of potential opportunities along the street. Final design (PS&E) will be based on the selection of a preferred alternative.

- a) *Project Coordination* – HBB will coordinate base map drawings and maintain the project notebook and schedules.
- b) *Quality Control* – HBB will perform internal reviews while the work is in progress. Quality control reviews will be performed by a licensed senior staff member.
- c) *Data Collection and Review* – HBB will walk and photograph the site. Existing site conditions will be verified and relevant background information will be reviewed.
- d) *Basic Improvements & Streetscape Amenity Alternatives* – HBB will prepare two alternatives consisting of the basic improvements (street trees and light fixtures) and a "family" of urban design and landscape elements representing a "shopping list" of basic improvements and streetscape amenities available along the street. Each "family" will include recommendations for landscape locations and character, site furniture, roadway/pedestrian light fixtures, banners and hanging baskets, paving patterns and materials. HBB will provide a typical urban design and landscape plan and section (scale as needed) to depict each alternative, along with a photo board representing the overall concept and/or product recommendations.
- e) *Design Revision and Preferred Alternative* – HBB will revise plans, sections, and photo

boards based upon comments received from the city or the design team. A preferred alternative will be prepared based upon information received from the city and design team. The preferred alternative will be revised up to one time based on city or design team discussions.

- f) *30% Plans and Details* – HBB will prepare 30% level plans and details based on the preferred alternative to include general plant massing plan, paving plan and standard details.
- g) *Opinion of Cost*– HBB will provide square footage and lump sum cost estimates for landscape and urban design improvements defined above.

Deliverables

- Draft alternative roll plot 10% plans for two concept street layouts with one photo board (submitted to City by 7/1/09)
- 30% plans and details (submitted to City by 9/1/09)
- Opinion of cost based on square footage and lump sum (submitted to city by 9/1/09)

TASK 8 FUNDING APPLICATION

The CONSULTANT will prepare one funding application as determined by the CITY that will be either:

- State of Washington Public Works Trust Fund application
- OR
- Community Development Block Grant application

Deliverables

Completed funding application form (submitted at appropriate date for earliest possible application cycle)

TASK 9 ENVIRONMENTAL EARLY ACTION

The CONSULTANT will perform early environmental action in accordance with Executive Order 05-05.

- a) *Coordination with the Department of Archaeology and Historic Preservation (DAHP)* – CONSULTANT will coordination with DAHP staff on project.

- b) *Geographic Screening* – CONSULTANT will perform a GIS screening t DAHP and prepare and submit the EZ1 form (project review sheet) and determination of no resources affect.

Deliverables

- EZ1 form(project review sheet (submitted by 7/1/09)
- Letter of determination to DAHP of no resources affected (submitted by 8/1/09).

PHASE 2 –PLANS, SPECIFICATIONS, AND ENGINEER’S ESTIMATE (PS&E)

TASK 10 DESIGN PLANS (60%, 90%AND Final)

- a) *Prepare 60% plan set* - The CONSULTANT will prepare a 60% design based on the CITY’s selected preferred concept street design layout.

The plan sheet estimate is as follows:

Plan Sheet Estimate	Scale at 1:20 on 22x34 inch layout - 1:40 half size	Count
Cover	Officials, vicinity map	1
Legends	APWA symbols and abbreviations	1
Survey Control	Control point and alignment plan	2
Details		
- Road	Cross section, ramps, accesses, ADA	3
- Storm	CBs, treatment,	1
- Sewer	MH, connections, CO	1
- Utilities	Monuments, adjustment details, electrical, lighting	2
- Landscape	Plants, irrigation, amenities	3
- Misc	TESC, special features	2
Site Prep	Demolition, project staging & TESC	6
Plan & Profile	Includes curb, gutter, pavement, structures, lighting	6
Storm & Sewer		6
Utility Plan	Utility adjustment, relocation of overhead	6
Channelization	Pavement markings, signage	3
Planting		3
Lumination	Street lighting, electrical	3
Irrigation		3
	TOTAL SHEET COUNT	52

95

- b) *City review and comments on 60% plan set* – Submit to the CITY three (3) copies 60% plan set which will include 1" = 40' scale drawings on 11x17 inch paper. The CITY will perform a review and provide written comments to the CONSULTANT.
- c) *Refine additional right of way needs* – The CONSULTANT will review the 60% plan set against the survey right of way plans to determine the final need for additional right of way and/or easements needed to construct the project. This information will be presented to the CITY for comments and directions on what type of property action is preferred (easement or take).
- d) *Perform title search & prepare legal description of right of way takes* – This task includes the preparation of up to seven (7) descriptions and exhibits of areas to be acquired for rights of way and other construction requirements. These descriptions will be prepared based upon the existing legal descriptions and recorded deeds of the properties as determined from title reports. The purpose of these descriptions and exhibits are to allow the CITY to begin negotiations with the existing property owners and subsequently used as the "described" area disclosed by recorded document executed by and between the CITY and private ownerships.
- e) *City to perform property negotiation for right of way and easement takes* – This Scope of Services assumes all right of way and easement acquisition will be performed by the CITY. The CONSULTANT may provide these services as an Optional Services at the request of the CITY for an additional fee.
- f) *Preparation of 90% plan set* – Preparation and QA/QC review of 90% contract plans. Review utility corridor needs to accommodate future utility undergrounding.
- g) *Contract and Specification preparation* – The CONSULTANT will prepare the contract and specification document in accordance with WSDOT Standard Specification for Road, Bridge, and Municipal Construction 2008 edition. The CITY's provided contract document will be used in place of WSDOT as directed by the CITY. Contract specifications will be submitted with the 90% plans
- h) *City review and comments on 90% plan set* – Present to the CITY a 90% plan set which will include 1" = 40' scale drawings on 11x17 inch paper, specifications, and cost opinion. The CITY will perform a review and provide written comments to the CONSULTANT.
- i) *Preparation of Final plan set and contract document* – Preparation and QA/QC review of Final contract plans, specifications, and cost estimate for construction contract.
- j) *Submittal of Final PS&E package* – Present to the CITY the Final construction contract document package that includes plan set, specifications, and opinion of cost. A print

copy set will be provided with plan sheets at 1" = 40' scale drawings on 11x17 inch paper.

- k) *City to Publish PS&E* – This Scope of Services assumes the CITY will perform all services to publish the advertisement and printing of all Contract Documents.
- l) *Bid review and recommendation* – The CONSULTANT will assist the CITY in reviewing the received top two bids and provide a recommendation based on bid balance, unit pricing, responsiveness, and reference check.
- m) *Drainage technical memorandum* – The CONSULTANT will prepare a draft and final drainage technical memorandum, which will include a summary of the storm drainage mapping of the existing system, proposed new and replacement system, water quality treatment facility design, , and calculations.

Deliverables

- Draft and Final drainage technical memorandum
- 60%, 90%, and 100% design plan sets (1 copy printer ready)
- Final design plan set in AutoCAD 2009 Civil 3D files on CD
- Engineer's Opinion of Cost
- Contract specification document (1 copy printer ready)

TASK 11 LANDSCAPE DESIGN PLANS (60% & Final)

- a) *Site Visit* – Visit the site to review Preliminary Design documents in relation to existing site conditions and relevant site context.
- b) *Final Design Basic Landscape* – Develop final design documents (plans, specifications and cost estimates) for planting and irrigation of the basic infrastructure improvements, including street trees in grates or planted areas.
- c) *Final Design Basic Lighting* – Coordinate final roadway/pedestrian light fixture for product selection only with Electrical Engineer.
- d) *Final Design Site Furnishings* – Develop final design documents (plans, specifications and cost estimates) for site furnishings (benches, trash/recycling receptacles, planter boxes, and bollards).
- e) *Final Design Special Paving* – Develop final design documents (plans, specifications and cost estimates) for special paving material and/or patterns. Civil Engineer to provide structural section and specifications for all paved areas. HBB drawings limited to finish treatment only.

- f) *Final Design Banners & Baskets* – Coordinate final design documents (plans, specifications and cost estimates) for banner arms and hanging baskets. Electrical Engineer to provide all construction documents relating to hanging baskets and/or banner arms. HBB will assist in product selection, coordination with irrigation as needed, and providing red-lined comments to construction documents prepared by others.
- g) *Final Design LID* – Develop final design documents (plans, specifications and cost estimates) for Low Impact Design (LID) features (rain-gardens, storm water treatment, etc.), limited to planting and irrigation design only.
- h) *Arborist Coordination* – Coordinate with arborist to review existing trees, identify existing trees to remain or be removed, and develop tree protection measures.
- i) *Arborist Services* – Inventory existing trees, document tree health and recommendations for tree protection or removal.

Deliverables

- 60% and 100% landscaping and amenities design plan sets (1 copy printer ready)
- Contract specification document for landscaping and amenities (1 copy printer ready)
- Detailed Cost Estimate for landscaping and amenities

TASK 12 ENVIRONMENTAL PERMITTING

- a) *Prepare shoreline permit* – The CONSULTANT will prepare a shoreline permit application and associated materials in accordance with the CITY requirements.
- b) *Provide SEPA checklist* – The CONSULTANT will prepare a SEPA checklist for the project, and the CITY shall provide information to the CONSULTANT as needed to complete the checklist.
- c) *City review and processing of permits* – The CONSULTANT will provide 1 electronic draft copy of the shoreline permit application and SEPA checklist. The CITY will perform 1 review of both the shoreline permit application and SEPA checklist and return comments to the CONSULTANT. The CONSULTANT will make changes as needed to the 2 documents and return final printed and electronic documents to the CITY for processing.
- d) *Archeologist Review* – This action is optional and will be performed only if historical buildings, tribal resources or extensive ground disturbance is a determination of DAHP. Work will be performed by a sub-consultant Licensed Archeologist.

Deliverables for Tasks 9a-c

- Draft and final Shoreline Permit application and associated materials

Deliverables for Task 9c

- Letter to DAHP and Tribes
- Letter Report of Archeologist

PHASE 3 – CONSTRUCTION SUPPORT SERVICES

TASK 13 CONSTRUCTION SUPPORT

It is assumed that the CITY will perform the construction management. Construction support provides services to assist the CITY as needed and will be performed as directed by the CITY. The level of service provided is limited by the amount of the fee allocated for this Task.

- Preconstruction meeting* – At the direction of the CITY, the CONSULTANT will provide services for the preconstruction meeting that include preparation of agenda, keeping meeting minutes, presentation of project, respond to questions and answers, and review on pre-construction submittals.
- Construction support* – At the direction of the CITY, the CONSULTANT will provide construction support services that can include inspection, design changes, change orders, reporting, engineering decisions, review of material submittals, and review of construction practice.
- Project close out* – At the direction of the CITY, the CONSULTANT will provide project close out support services that can include, final inspection, preparation of punch list, review of punch list work, providing review and recommendation of project acceptance, project close out documentation, and assist in final payment review and preparation.

ASSUMPTIONS

- The project is funded entirely with local dollars. No federal or state dollars are included in the project cost.
- City will prepare and process any needed permits, such as right of way, grading, construction, utility, NPDES, and other required permits not listed in this Scope of Services.
- Costs by the City and other agencies for services such as applications, reviews, and permits are paid directly by the City.
- Unforeseen events that may cause extensions of the project schedule will be brought to the CITY'S attention immediately.
- Pertect will use the JARPA application for the City's shoreline permit.
- City staff will be responsible for processing the application, including any meetings or hearings if necessary.

- Design Standards:
 - City of Oak Harbor Standards will be used for the design of the roadway.
 - WSDOT Standards may be used where applicable.
 - Design work will be performed using AutoCAD 2009 Civil 3D.
 - Plan sets shall be provided at 1" = 40' scale on 11x17 inch paper.
 - 1 copy of a 100% full size plan set master copy will be provided at 1"=20' on 22x34 inch paper.
 - Documents will be prepared using MS Word (2007)
 - Spreadsheets will be prepared using MS Excel (2007)
 - Schedules will be prepared using MS Project Manager (2003)
- Traffic and pedestrian signal design, relocation, and associated other improvements (such as loops) is not required in this project.
- Storm drainage:
 - The design will follow the City or WSDOT standards.
 - The pipe sizes of the existing pipe system servicing the project are adequate to handle storm runoff. No analysis on pipe size will be necessary.
 - No backwater curve analysis is included in this scope. The CONSULTANT has the capability to perform this service.
 - Water quality treatment will be installed within the project surveyed limits as described in this scope of services.
 - The project corridor is within the receiving waters of Puget Sound. No detention/retention system is required.
- Sanitary Sewer:
 - The design will follow the City or APWA standards.
 - City will provide information for future side sewer stub out locations where existing structures do not exist.
 - No analysis of capacity for upstream or downstream will be performed.
- Undergrounding of over overhead utilities:
 - Undergrounding of utilities may be incorporated into this project at a later date or pursued as a separate project in the future.
 - Utility corridors for the potential future undergrounding of overhead utilities will be incorporated into the design of the Pioneer Way Improvements.
- Construction:
 - City will perform all construction coordination with utilities including relocation services.

ITEMS NOT INCLUDED IN THIS SCOPE OF SERVICES (OPTIONAL SERVICES)

- Right-of-Way Negotiations
- Permit preparation for NPDES, right of way, grading, construction, and utilities
- Public meetings and/or hearings for permit approvals

- Construction management services
- Construction surveying

TIME OF COMPLETION

Services associated with this scope will be completed within twelve (12) months of the execution of the contract (date to be inserted).

APPLICABLE STANDARDS

- City of Oak Harbor Design Standards
- City of Oak Harbor Sanitary "Sewer Standards"
- City of Oak Harbor Standard Plans
- City of Oak Harbor Comprehensive Stormwater Drainage Plan
- City of Oak Harbor Sewer Comprehensive Plan
- AASHTO 2001 "A Policy of Geometric Design of Highways and Streets"
- WSDOT "Standard Specifications for Road and Bridge Construction"
- WSDOT "Design Manual"
- FHWA and WSDOT "Manual on Uniform Traffic Control Devices for Streets and Highways"
- WSDOT "Highway Runoff Manual"
- WSDOT "Hydraulics Manual"
- 2001 Department of Ecology "Stormwater Management Manual for Western Washington"

ITEMS TO BE PROVIDED BY THE CITY

Items requested by the CONSULTANT to be provided by the CITY to the CONSULTANT include:

- City contract document section in MS Word
- City "Boilerplate" Special Provisions in MS Word
- City Engineering Design Standards
- Current Storm Water and Sanitary Sewer master plans
- GIS map of storm, water and sewer system along project limits
- Current aerial map
- Geotechnical reports performed within the vicinity of the project in the past 5 years
- Access to historical City maps on corridor
- Record drawings of applicable and nearby projects.
- Title Reports

EXHIBIT D1

City of Oak Harbor - SE Pioneer Way Improvement
FEE DETERMINATION
 Revision: 18 Feb 2009

DIRECT SALARY COSTS	Perfest Design	GeoEngrs Geotechnical	MSA Utilities	HBB Landscape	TOTAL
Task 1. Project Management	\$ 36,010	\$ -	\$ 5,058	\$ -	\$ 41,068
Task 2. Council and Public Outreach	\$ 17,905	\$ -	\$ -	\$ -	\$ 17,905
Task 3. Survey and Mapping	\$ 38,680	\$ -	\$ -	\$ -	\$ 38,680
Task 4. Geo-Technical	\$ 1,030	\$ 10,582	\$ -	\$ -	\$ 11,612
Task 5. Hazardous Waste Investigation	\$ -	\$ 6,319	\$ -	\$ -	\$ 6,319
Task 6. Preliminary Civil	\$ 109,090	\$ -	\$ 28,824	\$ -	\$ 137,914
Task 7. Preliminary Landscape Design	\$ -	\$ -	\$ -	\$ 37,884	\$ 37,884
Task 8. Funding Application	\$ 5,970	\$ -	\$ -	\$ -	\$ 5,970
Task 9. Environmental Early Action	\$ 3,900	\$ -	\$ -	\$ -	\$ 3,900
Direct Salary Costs	\$ 212,685	\$ 16,901	\$ 33,882	\$ 37,884	\$ 301,252
Non Salary Costs	\$ 5,338	\$ 12,105	\$ 1,348	\$ 949	\$ 15,323
TOTAL PHASE 1	\$ 217,921	\$ 29,006	\$ 35,228	\$ 38,833	\$ 316,578
Task 10. Design Plans	\$ 155,870	\$ 1,904	\$ 15,182	\$ -	\$ 172,966
Task 11. Landscape Design Plans	\$ -	\$ -	\$ -	\$ 63,883	\$ 63,883
Task 12. Environmental Permitting	\$ 20,300	\$ -	\$ -	\$ -	\$ 20,300
Direct Salary Costs	\$ 176,170	\$ 1,904	\$ 15,182	\$ 63,883	\$ 257,149
Non Salary Costs	\$ 4,080	\$ 1,384	\$ 604	\$ 1,600	\$ 12,069
TOTAL PHASE 2	\$ 180,250	\$ 3,267	\$ 15,786	\$ 65,483	\$ 268,208
TOTAL PHASE 1 & 2	\$ 398,170	\$ 32,273	\$ 51,024	\$ 104,316	\$ 585,783
Task 13. Construction Support	\$ 32,980	\$ -	\$ -	\$ -	\$ 32,980
Non Salary Costs	\$ 351	\$ -	\$ -	\$ -	\$ 351
TOTAL PHASE 3	\$ 33,331	\$ -	\$ -	\$ -	\$ 33,331
GRAND TOTAL PHASE 1, 2 & 3 w Non Salary Costs	\$ 431,501	\$ 32,273	\$ 51,024	\$ 104,316	\$ 619,114

Direct Non-Salary Costs - Perfest

Item	Quantity	Unit	Rate	Cost
Color copies from CAD/GIS	1872	sq. ft.	\$0.10	187
Courier/Mail	4	lump sum est.	\$21.00	84
CADD Station	816	hour	\$10.00	8,160
Survey GPS Receiver	5	day	\$150.00	750
Mileage	1000	miles	\$0.585	585
TOTAL DIRECT NON-SALARY COSTS				\$ 9,766

Direct Non-Salary Costs - GeoEngineers

Item	Quantity	Unit	Rate	Cost
Mileage	490	miles	\$0.585	287
Misc (phone, courier, truck, equipment)	1	est	\$300.00	300
Sub-contractors (drilling, chem testing, traffic ctrl, locate)	1	calc	\$10,692.00	10,692
Direct Expenses	1	calc	\$586.00	586
Sub-contractor markup	1	calc	\$1,603.80	1,604
TOTAL DIRECT NON-SALARY COSTS				\$ 13,469

Direct Non-Salary Costs - MSA

Item	Quantity	Unit	Rate	Cost
Mileage	500	miles	\$0.585	293
Misc (phone, courier, truck, equipment)	1	est	\$1,657.50	1,658
TOTAL DIRECT NON-SALARY COSTS				\$ 1,951

Direct Non-Salary Costs - HBB

Item	Quantity	Unit	Rate	Cost
Color copies from CAD/GIS	1200	sq. ft.	\$0.10	120
Courier/Mail	4	lump sum est.	\$21.00	84
Graphic Station	176	hour	\$10.00	1,760
Mileage	1000	miles	\$0.585	585
TOTAL DIRECT NON-SALARY COSTS				\$ 2,549

Exhibit "B"
Scope of Services

DRAFT

Addendum No. 2
Revised: 21 Dec 2009

CITY OF OAK HARBOR
SE PIONEER WAY IMPROVEMENT PROJECT
STREET VIEW PHOTO RENDERING

During the term of the Contract, Perteet Inc. (CONSULTANT) will perform civil engineering and related services for the City of Oak Harbor (CITY), as detailed in the following:

PHASE II: PLANS, SPECIFICATIONS, AND ENGINEER'S ESTIMATE

Task 2- PUBLIC OUTREACH

The City has retained EnviroIssues to provide planning/construction community outreach support for the Pioneer Way Project. This scope of services is to provide support and expertise in EnviroIssues outreach activities. It also includes support services to assist the City of Oak Harbor in construction planning from a community outreach perspective. Specific tasks will include:

- Coordinate with EnviroIssues and the City to finalize an outreach and communications plan for the duration of this project. Provide review and input in the development of the plan including one meeting
- Support EnviroIssues in conducting a design workshop to gather input into development of (to be determined) corridor aesthetic improvements.
- Support development of up to two presentations for City Council and/or Public Works Committee at key points of the project.
- Provide review and support in the development of materials for community outreach tools, as described above. Item of work may include: The attendance of up to two organizational briefings, review of graphical of sign formats for use during construction
- Review of newsletters.
- Review of fact sheets and/or flyers for the duration of the project.

Task 4A – GEOTECHNICAL

In development of the alternatives, there was desire to add additional parking on the south side of Pioneer Way in the vicinity of Jensen Street. A fill wall of approximately ten feet in height would need to be constructed to provide the parking. This task will provide geotechnical analysis for the construction of a wall on the south side of Pioneer. Tasks include:

- Conduct a site visit and observe one to two test pit explorations near the base of the wall. The City will gain access to the property, obtain necessary utility locates and provide a backhoe an operator to dig the pit.

- Conduct limited laboratory testing on samples collected from our explorations including moisture content and one or two grain size analyses.
- Prepare a brief report addendum letter or memo with a summary of our observations, logs of explorations, laboratory test results and recommended design parameters for MSE retaining wall design and discussion of construction considerations as appropriate.

Deliverables

- Wall Memorandum with design parameters

DRAFT

Task 9A- UTILITY

This task will develop plans and specifications for final design of the relocation of overhead electrical power and telecommunication utility lines. Overhead utility companies involved in the relocation include Puget Sound Energy, Verizon, Comcast, Black Rock Cable, and Oak Harbor School District. Utility relocation designs are to incorporate respective utility standards and are to be based on conversion plans to be provided by each utility. The development of plans and specifications for the relocation of overhead utilities is dependent on the timely delivery and coordination of accurate and complete plans and information from each utility.

The design phase will consist of the following work elements:

- a. Overhead Utility Coordination. The overhead utility coordination includes the following subtasks:
 1. *Coordination Meetings*: The Consultant will coordinate project design with overhead utility companies. Up to five (5) meetings will be conducted with utilities to coordinate design of aerial utility relocation in conjunction with the other improvements along Pioneer Way. Meeting minutes will be prepared.
 2. *Design Coordination*: The Consultant will acquire design plans prepared by utilities. The Consultant will review plans and evaluate possible conflicts with existing and proposed utilities. The revised plans prepared by the utilities will be incorporated into a complete set of plans for final design of this project, making them suitable for bidding and as identified under the following tasks.
- b. Coordination with Property Owners. Coordinate future service installation and conversion work with existing property owners along project corridor. The Consultant will meet with up to 42 property owners to discuss proposed work. It is anticipated that the meetings with property owners can be consolidated into four (4) site visits.
- c. Prepare 60% Plan Set. Preparation and QA/QC review of 60% contract plans and opinion of cost for the proposed sanitary sewer improvements and overhead utility relocation.
 1. *Overhead Utility Relocation*: Preparation of plans will include proposed utilities alignments and details for underground facilities and joint trench based on designs provided by the utilities. It is anticipated that six (6) plan sheets, one (1) detail sheet, and two (2) installation schedule sheets will be required.

104

- 2. *Electrical Service Conversions:* PSE will provide electrical service connections and Comcast, Black Rock and Verizon will provide telecommunication service connections up to the property line, potentially terminating at individual junction boxes, pedestals or pull boxes. It is assumed that work associated with new service connection from the property line to the customer's junction box or meter shall be the City's responsibility. As sub to MSA, electrical subconsultant K-Engineers, Inc. will evaluate each existing service connection and provide recommendations for replacement. Based on this evaluation, The Consultant will develop general service connection designs and details from the customer's junction box or meter to the property line to assist the contractor during the bidding process. It is assumed the Contractor will be required to obtain a license electrician to complete the work. It is anticipated that 12 service conversion schedule sheets and four (4) detail sheets will be required. Work that maybe required beyond the customer's meter or junction box due to code requirements or other issues is not anticipated in this scope.

Connections to the new system will involve service conversions at the existing meter bases. It is assumed that there are up to 22 existing service connections along the alignment. Designs will include provisions and details for minimal impact conversions that will be installed adjacent to each existing electrical service meter base, involving the installation of a new parallel weatherhead with cut-over connections being made via a short jumper to the existing weatherhead. The conversion designs will minimize service interruptions, simplify connections, and reduce uncertainty and complications in permitting, bidding and construction. Where future development improvements may be reasonably anticipated, it is advised that stub-outs be provided and marked for future access to prevent disturbance to new roadway and sidewalk improvements. Designs can readily incorporate such provisions as the City and other utilities may desire.

- d. City Review on 60% Plan Set. Participate in review meeting of 60% Plan Set.
- e. Prepare 90% Plan Set. Preparation and QA/QC review of 90% contract plans and opinion of cost for the proposed sanitary sewer improvements and overhead utility relocation.
- f. Contract and Specification Preparation. Prepare technical specifications for the proposed sanitary sewer improvements and overhead utility relocation in WSDOT format for 60% and 90% submittals.
- g. City Review on 90% Plan Set. Participate in review meeting of 90% plan set and specifications.
- h. Preparation of Final Plan Set and Contract Documents. Preparation and QA/QC review of Final (100%) plan set, opinion of cost and specifications for the proposed sanitary sewer improvements and overhead utility relocation.

Deliverables

- 60%, 90%, and Final Plans
- Contract Documents
- Private property electrical service design recommendations.

105

Task 10A - STREET VIEW PHOTO RENDERING

The CITY proposes to complete a street improvement project in the historic downtown along SE Pioneer Way between City Beach Street and Midway Boulevard. As part of the project, the CITY seeks to have photo quality architectural rendered images created to depict concept level of what the final street frontage could appear like upon the completion of the road improvements. This includes the services to create master images of concept street frontage that reflect the one way street layout with angle parking along one side of the street and streetscape improvements such as trees, street lighting, and street furnishings.

A 3-dimensional model will be created at a concept level that will include several of the buildings fronting Pioneer Way along with the concept level of the one way road with pavement and sidewalk. From this modeling, the photo quality architectural rendered images will be developed with details that include the streetscape improvements.

PHOTO REALISTIC ARCHITECTURAL RENDERED IMAGES

DRAFT

- a) *3-Dimensional Modeling* – Develop a 3-D model of Pioneer Way that will include several of the buildings fronting Pioneer Way and will incorporate the one way street concept layout into the design showing pavement and sidewalks.
- b) *Coordination with image locations and selection on streetscape* – Using 3-D modeling of Pioneer Way, select up to eight locations to develop photo quality architectural rendered images. CITY will provide direction on streetscape detail to include street trees, street lighting, and street furnishings to be provided in the images.
- c) *Development of Streetscape* – Coordinate with CITY on urban design features to include street trees, lighting standards, and street furnishings.
- d) *Draft Photo Renderings* – Provide to the CITY eight photo realistic architectural rendered images for review and comments. CITY will provide any angle changes and minor modifications.
- e) *Final Photo Renderings* - Provide to the CITY eight photo realistic architectural rendered images in final configuration and layout.

Assumptions

- The CITY will provide direction on the streetscape to be provided in the images. This includes street trees, street lighting, street furnishings (benches, trash receptacles, landscape planters), and pavement pattern (bulb out areas and main sidewalk).
- Rendered images are assumed to be prepared for 11 x 17 inch paper.
- The CITY will provide the location of the eight sites or direct CONSULTANT to select.
- Detail will not show ramps, driveways, utilities, or real people and will assume daytime.
- The quality of the photo realistic rendering will be similar in quality as the image shown in Attachment A.

Deliverables

DRAFT

- 3-Dimension model on a DVD format disc.
- Eight photo realistic architectural rendered images on 11 x 17 inch paper.
- Eight photo realistic architectural rendered images on a DVD format disc.

Task 12A - NEPA ENVIRONMENTAL DOCUMENTATION

The City of Oak Harbor is anticipating the receipt of federal funding for improvements to Pioneer Way in downtown Oak Harbor between City Beach Street and Midway Boulevard. The project's objectives are to enhance pedestrian and vehicle safety, restore the condition of the infrastructure, and enhance the downtown visitor experience. The work includes restoration or replacement of the street structural sections, curb, gutter, sidewalk, street lighting, storm drainage, and sanitary sewer. Undergrounding of overhead utilities and street amenities will be evaluated if budget permits. Federal funding through the Federal Housing and Urban Development (HUD) requires compliance with the National Environmental Policy Act (NEPA).

NEPA DOCUMENTED CATEGORICAL EXCLUSION

It is anticipated that the NEPA determination for this project will result in a Categorical Exclusion subject to Section 24 CFR 58.5. This level of NEPA documentation requires development of supporting material in the following environmental categories:

- Historic Preservation
- Floodplain Management
- Wetland Protection
- Coastal Zone Management Act
- Sole Source Aquifers
- Endangered Species Act
- Wild and Scenic Rivers Act
- Clean Air Act
- Farmland Protection Policy Act
- Environmental Justice
- Noise abatement
- Explosive and Flammable Operations
- Toxic Chemicals and Radioactive Materials
- Airport Clear Zones and Accident Potential Zones

Deliverables:

- Determination of Categorical Exclusion (draft and final)
- Statutory Worksheet (draft and final)
- Other Requirements Documentation Checklist (draft and final)

- Supplemental documentation for all environmental elements listed above (draft and final)

Assumptions:

DRAFT

- Due to the location and nature of the project, a more detailed level of documentation is expected the areas of Coastal Zone Management, Sole Source Aquifers, ESA, Clean Air, Environmental Justice, and Airport Zones.
- For all other areas, screening and documentation of existing source material is expected. If screening in any of these areas results in the revelation that a significant environmental impact or the presence of environmental hazards exist, and documentation is required beyond the screening process, such work shall be approved in a supplemental scope of services.
- For Historic Preservation, the DAHP EZ Form shall be utilized. This scope includes an initial screening of cultural resources, including one trip to Olympia to check DAHP records.
- The CITY shall provide one round of comments on all draft documents.

AGENCY COORDINATION

The CONSULTANT shall coordinate as needed with the following agencies for consultation on the environmental elements listed above and for completion of the NEPA process.

- City of Oak Harbor (CITY)
- US Department of Housing and Urban Development (HUD)
- Army Corps of Engineers (Corps)
- Federal Emergency Management Agency (FEMA)
- National Marine Fisheries Service (NMFS)
- National Park Service (NPS)
- Natural Resources Conservation Service (NRCS)
- U.S. Census (Census)
- U.S. Department of Fish and Wildlife Service (DFWS)
- U.S. Environmental Protection Agency (ESA)
- State Department of Commerce (Commerce)
- State Department of Archeological and Historic Preservation (DAHP)
- State Department of Fish and Wildlife (WDFW)
- State Dept of Ecology (Ecology)
- Island County (County)
- Naval Air Station Whidbey Island (NAS)

3.2 Development of Environmental Review Record

NEPA procedural requirements for CBDG grants require the development of an Environmental Review Record (ERR). The purpose of the ERR is to document the environmental review for the project, including NEPA and SEPA reviews and determinations. The CONSULTANT shall

108

prepare a binder to collect and organize all environmental documents associated with this project. Upon completion of the NEPA and SEPA environmental process, the CONSULTANT shall transmit the final ERR to the CITY.

DRAFT

3.3 Request for Release Assistance

NEPA procedural requirements for CBDG grants require the development of several notices and forms to complete and document the NEPA process prior to the release of funds from the Department of Commerce. These forms include the Concurrent Notice, the Notice of Intent to Release Funds, and the Request for the Release of Funds. The CONSULTANT shall prepare the notices and forms for the CITY's signature and publication.

Deliverables:

- ERR
- Notices and documentation to affected agencies
- Concurrent Notice
- Notice of Intent to Release Funds
- Request for the Release of Funds

Assumptions:

- The CITY shall appoint a staff person to act as the Environmental Review Officer for the project. This person shall be the CITY contact and responsible entity for the environmental review process and public access to the ERR.
- This scope assumes a NEPA determination of Categorical Exclusion. If the documentation of environmental impacts results in the need for an Environmental Assessment (EA) or Environmental Impact Statement (EIS), a separate scope shall be required.
- The CONSULTANT shall prepare materials and notices to affected agencies.
- Up to two (2) agency meetings are included in this scope.
- If consultation with any of the agencies requires additional documentation or meetings beyond the total of two scoped above, a separate scope shall be required.
- During the documentation process, the CITY may request a copy of the ERR as it has been prepared to date by the CONSULTANT.
- The CITY shall be responsible for making the ERR available to the public for review and copies.
- The CITY shall be responsible for sending prepared notices to the CITY's newspaper of record and ensuring publication in a timely manner.
- This Scope does not include environmental review under SEPA or tasks associated with a SEPA determination or publication.

OPTIONAL SERVICES (Not included in this Scope)

The following optional services can be provided as needed according to the original Scope of Services. A fee determination will be negotiated separately as a supplement to this Agreement.

1. Preparation of an Environmental Assessment
2. Preparation of an Environmental Impact Statement (NEPA or SEPA)
3. Biological Assessment for effects to ESA species
4. Wetlands or Critical Areas studies/field investigations
5. Environmental Justice Report based on identification of disadvantaged populations and potential effects from the project
6. Section 106 Archaeological Survey
7. Traffic Study
8. Air Quality or Noise Analysis
9. Local permitting assistance
10. Soils or geotechnical reports
11. Hazardous or toxic materials reports or disposal
12. Additional agency meetings

DRAFT

ATTACHMENT A

SAMPLE



City of Oak Harbor - SE Pioneer Way Improvement						
FEE DETERMINATION						
Revision: 5 January 2009						
	Pertest Design	GeoEngrs Geotechnical	MSA Utilities	HBB Landscape	TOTAL	
DIRECT SALARY COSTS						
Phase 1 - Preliminary Engineering, Right-of-Way/Easement Descriptions and Cost Estimate						
Task 1. Project Management	\$ 4,760	\$ -	\$ 3,578	\$ -	\$ -	\$ 8,338
Task 2. Council and Public Outreach	\$ 7,840	\$ -	\$ -	\$ -	\$ -	\$ 7,840
Task 9A Utility Relocation	\$ 8,750	\$ -	\$ 60,296	\$ -	\$ -	\$ 69,046
Task 10A Street View Photo Rendering	\$ 1,540	\$ -	\$ -	\$ 2,868	\$ -	\$ 4,408
Task 12A. NEPA Environmental	\$ 26,275	\$ -	\$ -	\$ -	\$ -	\$ 26,275
Task 4A. Geotechnical	\$ -	\$ 3,055	\$ -	\$ -	\$ -	\$ 3,055
Task 8 Wall PS&E	\$ 10,480	\$ -	\$ -	\$ -	\$ -	\$ 10,480
	0	\$ -	\$ -	\$ -	\$ -	\$ -
TOTAL	\$ 59,645	\$ 3,055	\$ 63,874	\$ 2,868	\$ -	\$ 129,442
NON-SALARY COSTS	\$ 11,096	\$ 359	\$ 21,647	\$ -	\$ -	\$ 33,102
GRAND TOTAL PHASE 1, 2 & 3 w Non Salary Costs	\$ 70,741	\$ 3,413	\$ 85,521	\$ 2,868	\$ -	\$ 162,544
Direct Non-Salary Costs - Pertest						
	Item	Quantity	Unit		Rate	Cost
	Color copies from CAD/GIS	1872	sq. ft.	@	\$0.10	\$ 187
	Courier/Mail	4	lump sum est.	@	\$21.00	\$ 84
	CADD Station	24	hour	@	\$10.00	\$ 240
	Apex Contracting (renderings)	1	LS	@	\$10,000.00	\$ 10,000
	Mileage	1000	miles	@	\$0.585	\$ 585
	TOTAL DIRECT NON-SALARY COSTS					\$ 11,096
Direct Non-Salary Costs - GeoEngineers						
	Item	Quantity	Unit		Rate	Cost
	Mileage	100	miles	@	\$0.585	\$ 59
	Misc (phone, courier, truck, equipment)	1	est	@	\$100.00	\$ 100
	Sub-contractors (drilling, chem testing, traffic ctrl, locale)		catc	@	\$ -	\$ -
	Direct Expenses	1	catc	@	\$200.00	\$ 200
	Sub-contractor markup	1	catc	@	\$0.00	\$ -
	TOTAL DIRECT NON-SALARY COSTS					\$ 359
Direct Non-Salary Costs - MSA						
	Item	Quantity	Unit		Rate	Cost
	Mileage		miles	@	\$0.585	\$ -
	Misc (phone, courier, truck, equipment)	1	est	@	4047	\$ 4,047
	K-Engineering	1	Est	@	\$17,600.00	\$ 17,600
					\$ -	\$ -
					\$ -	\$ -
	TOTAL DIRECT NON-SALARY COSTS					\$ 21,647
Direct Non-Salary Costs - HBB						
	Item	Quantity	Unit		Rate	Cost
	Color copies from CAD/GIS		sq. ft.	@	\$0.10	\$ -
	Courier/Mail		lump sum est.	@	\$21.00	\$ -
	Graphic Station		hour	@	\$10.00	\$ -
			day	@	\$ -	\$ -
	Mileage		miles	@	\$0.585	\$ -
	TOTAL DIRECT NON-SALARY COSTS					\$ -

112

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

Bill No. 10
Date: April 6, 2010
Subject: Text Amendment to restrict
dwelling units in the C-3,
Community Commercial District
north of NE 16th Avenue

FROM: Steve Powers *SP*
Development Services Director

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

PURPOSE

This agenda bill presents a text amendment to the Oak Harbor Municipal Code Sections 19.20.335 and 19.20.340 to restrict dwelling units on properties designated as C-3, Community Commercial, for properties located north of NE 16th Avenue. The proposed text amendment furthers goals and policies in the Comprehensive Plan to ensure that new development proposals in the area do not include dwelling units that may impact the operation of aircraft or reduce the operational capability of NASWI Ault Field.

AUTHORITY

RCW 36.70A.040 (4) requires that development regulations be consistent with the Comprehensive Plan. RCW 35.63.110 provides the authority to establish zoning classifications and regulate land uses. OHMC 19.80.020 establishes the review criteria to consider text amendments to the zoning ordinance.

BACKGROUND

The City has long recognized the importance of limiting residential uses and other incompatible uses from encroaching northward towards NASWI Ault Field. This is reflected in the Oak Harbor Municipal Code with regulations to address noise levels, accident potential zones and limited use districts. These intentions are reflected in the adoption of goals and policies in the Comprehensive Plan Land Use Element and the Community Coordination Element. The goals and policies are further supported by the adoption of Resolution No. 04-03 (Attachment 1) Resolution Expressing the City Continued Commitment to Preserve, Protect, and Enhance the Training Environment Critical to the Joint Services Mission of NAS Whidbey Island. The resolution recommends considering changes to the land use table to remove uses which have high population concentrations in proximity to NAS Whidbey Island.

Issues regarding residential uses and their possible encroachment northward toward NAS Whidbey Island were raised in conjunction with the 2008 Comprehensive Plan Amendments in

conjunction with a request for Community Commercial land use designation along Goldie Road. (The Community Commercial zoning permits dwelling units above the ground floor.) The request for change was eventually approved with conditions to prohibit dwelling units from being included in the development of the property.

DISCUSSION

This proposed text amendment is a follow-up to the 2008 Comprehensive Plan Amendments and, if approved, will restrict any dwelling units from being developed in the C-3, Community Commercial, district for properties located north of a line commensurate with NE 16th Avenue extended westward and eastward to the City limits.

The proposed text amendment will primarily apply to properties that may be rezoned for Community Commercial in the future. The City is currently not aware of any requests for change nor does it have any plans to change land use designation north of NE 16th Avenue to Community Commercial. However, if a trend develops to convert industrial land into commercial land due to a slow rate of absorption for industrial uses or any other reason, the proposed text amendment will ensure that dwelling units will not be part of any development plans.

The proposed text amendment will apply to three properties that are currently zoned C-3, Community Commercial, on the west side of SR 20 and north of NE 16th Avenue. Any existing dwelling units located on the ground floor on these properties are currently non-conforming and will continue to remain non-conforming. Therefore their status will not be impacted by the proposed amendment.

The proposed restriction on dwelling units in the C-3, Community Commercial, district is area specific since the City does believe that it is appropriate to continue support of dwelling units in the Community Commercial to promote mixed use developments and encourage urban densities where it can be supported. Therefore the proposed amendment will continue to permit dwelling units above the ground floor on C-3, Community Commercial, property south of NE 16th Avenue.

Review Criteria

The Oak Harbor Municipal Code Chapter 19.80.020 provides the review criteria for text amendments. These have been addressed below.

- 19.80.020(a) The amendment must be consistent with the Oak Harbor Comprehensive Plan: The goals and policies in the Land Use Element that support the proposed amendments are provided below. The proposed text amendment is also supported by the Aircraft Installation Compatible Use Zones (AICUZ) study. Recommendations of the AICUZ study have been incorporated into the City's Comprehensive Plan and Oak Harbor Municipal Code in Title 17 Buildings and in Title 19 Zoning. The AICUZ study recommends compatible uses in the Accident Potential Zones (APZ) and noise zones that are categorized into sub districts. The noise zones are categorized into Noise Zone 1(55-64 Ldn), Noise Zone 2 (65-74 Ldn) and Noise Zone 3 (75-84+ Ldn). Housing units are discouraged in noise levels 65-69Ldn, strongly discouraged in noise leveles 70-74 Ldn and considered incompatible in noise levels above 75 Ldn. Most of the

area north of NE 16th Avenue is located above the 70Ldn noise levels where the AICUZ study strongly discourages household unit.

Goal 9 - To consider and, where appropriate, implement the Navy's Air Installation Compatible Use Zones (AICUZ) recommendations, and all other pertinent related information, in making land use decisions.

Comprehensive Plan Policies:

- 9.a Require residential development to occur outside of high aircraft noise level areas (above 70 Ldn).
- 9.b Encourage residential development to locate outside of moderate aircraft noise areas (60 to 70 Ldn), allowing for residential development where a demonstrated need exists and compliance is met with policy 9.e.
- 9.c Ensure that land use and population densities in Accident Potential Zones remain low to conserve the highest degree of public health, safety, and welfare.
- 9.d Ensure that no new land use proposals, structures or objects interfere with the safe operation of aircraft or deny the existing operational capability of Ault Field. Land use proposals, structures, or objects that may create an obstruction to air navigation will be reviewed for compatibility with airport operations. Hazards to air navigation will not be permitted.
- 9.e Ensure that new structures built for human occupancy in designated noise impacted areas, as identified in the aviation environs section of the city code, are constructed to a noise level reducing standard that is appropriate for the outdoor noise levels that will be experienced by the inhabitants. In addition to indoor noise level reducing construction design standards, outdoor noise level reducing measures should be considered in site planning, building location and alignment, and site design.
- 9.f Ensure the disclosure of potential noise and accident potential impacts on prospective buyers, renters, or lessees of property or structures they intend to purchase, rent, lease, or otherwise occupy.
- 9.g Continue monitoring and update the Aviation Environs portion of the municipal code.

19.80.020(b) The amendment must substantially promote the public health, safety and welfare:

The restriction on dwelling units for the area north of NE 16th Avenue is intended to protect human beings from exposure to high noise levels at their primary place of residence. The welfare of the community is enhanced by

limiting the area for development that otherwise might interfere with the safe operation of aircrafts or reduce the operational capability of Ault Field and thus retain NAS Whidbey on the island and provide a stable economic base for the residents.

Process

Text amendments are a Type V review process in which the Planning Commission conducts a hearing and makes a recommendation to the City Council. The Council also conducts a public hearing before making a decision.

The owners of property zoned C-3, Community Commercial, located north of NE 16th Avenue have been notified by letter of the proposed amendment and the public hearing. No comments were received. Letters were also sent to the Commanding Officer of NAS Whidbey Island and Navy's community liaison planner. A letter from the Commanding Officer expressing support for the proposed amendment was received on March 15, 2010 and has been attached to this report.

The Department of Commerce authorized an expedited review of the proposed regulations. No comments were received. A SEPA checklist was also been completed for the proposed amendment with a comment period that ended on March 8, 2010. No comments were received. A SEPA determination of non-significance was issued for the project on March 17, 2010.

PLANNING COMMISSION

The Planning Commission opened a public hearing on February 23, 2010 and continued it to the March 23, 2010 meeting. The Planning Commission concluded the public hearing on March 23, 2010, unanimously recommending approval of the proposed amendment. The minutes of the February 23, 2010 meeting and the March 23, 2010 have been attached for your reference (Attachment 3).

LEGAL DEPARTMENT REVIEW

As part of the agenda bill approval process the Legal Department reviewed the proposed amendment. During this review they raised a concern that the staff proposed language using the word 'commensurate' to describe where the dwelling unit restriction applies is too vague. The language proposed by staff and acted upon by the Planning Commission reads as follows:

19.20.340 Principal permitted uses.

In a C-3 district, the following are principal uses permitted outright:

- (1) Any principal use permitted in a C-1 and CBD district, provided that dwelling units are:
 - (a) For properties located south of a line commensurate with the alignment of NE 16th Avenue between Regatta Drive and Heller Road are:
 - (i) Above and secondary to essential or primary floor uses;
 - (ii) Accessed at the ground level access is independent of the business uses from an inside lobby, elevators, and/or corridors, and an enclosed interior court, or other separate access provisions;
 - (b) Are not permitted on properties located north of the line commensurate with the alignment of 16th Avenue between Regatta Drive and Heller Road;

It is important that the meaning of the Municipal Code be as clear as possible. To address the Legal Department's comment, the City Council could choose to amend the recommendation of the Planning Commission and adopt the following language instead:

19.20.340 Principal permitted uses.

In a C-3 district, the following are principal uses permitted outright:

- (1) Any principal use permitted in a C-1 and CBD district, provided that dwelling units are:
 - (a) For properties located south of a line commensurate with the adopted alignment of NE 16th Avenue (existing or future) between Regatta Drive and Heller Road are:
 - (i) Above and secondary to essential or primary floor uses;
 - (ii) Accessed at the ground level access is independent of the business uses from an inside lobby, elevators, and/or corridors, and an enclosed interior court, or other separate access provisions;
 - (b) Are not permitted on properties located north of the line commensurate with the adopted alignment of NE 16th Avenue (existing or future) between Regatta Drive and Heller Road;

To assist the City Council with consider this change, staff has taken the liberty of revising the draft ordinance to include the above language

STANDING COMMITTEE REPORT

The Government Services Standing Committee reviewed the proposed text amendment on February 9, 2010.

RECOMMENDED ACTION

- Conduct the Public Hearing
- Amend the Planning Commission's recommendation and adopt the ordinance amending Oak Harbor Municipal Code Section 19.20.340 Principal Permitted Uses in the C-3, Community Commercial District to restrict dwelling units north of NE 16th Avenue, as shown in the attached ordinance.

ATTACHMENTS

1. Resolution 04-03
2. Location Map
3. February 23, 2010 and March 23, 2010 Planning Commission minutes
4. Ordinance adopting the text amendment
5. Letter of support from the NAS Whidbey Island

MAYOR'S COMMENTS

RESOLUTION NO. 04-03

RESOLUTION EXPRESSING THE CITY'S CONTINUED COMMITMENT TO PRESERVE, PROTECT, AND ENHANCE THE TRAINING ENVIRONMENT CRITICAL TO THE JOINT SERVICES MISSION OF NAS WHIDBEY ISLAND

WHEREAS, the City of Oak Harbor recognizes the significant Department of Defense investments; and

WHEREAS, airports and military bases attract activities adjacent to them which can compromise the functioning of such facility; and

WHEREAS, incompatible uses adjacent to an airport or military base can conflict seriously with the functioning of the Navy base; and

WHEREAS, the City has implemented measures to reduce development impacts on NAS Whidbey Island, including:

- (a) Not providing water to intense residential development in Island County adjacent to NAS Whidbey Island;
- (b) Imposing noise attenuation construction standards in noise impacted zones in Oak Harbor;
- (c) Changing commercial and industrial zoning use tables to remove uses which have high population concentrations;
- (d) Adopted current AICUZ maps to assure our codes are updated to meet NAS standards;
- (e) Restricting residential growth in noise impact areas;
- (f) Adopted Comprehensive Plan Element or Navy City Cooperation in planning (a copy is attached); and

WHEREAS, the City should consider additional measures to be taken to reduce even further, if possible, impacts on NAS Whidbey; and

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

1. The City of Oak Harbor's long term commitment has been and will continue to be that of helping to assure that development will not adversely impact the ability of NAS Whidbey Island to carry out the mission assigned to it.

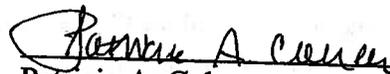
The City Council of Oak Harbor states that there will be no further residential development permitted at City density north of the east and west boundary of Redwing Subdivision. Further residential development in these areas will be at the density adopted by Island County which is as follows:

1 dwelling unit per 5 acres.

3. In addition, the City Council requests the Mayor to direct staff to
- (a) Identify if current development ordinances should be modified to decrease even further incompatible urbanization near NAS Whidbey;
 - (b) Develop and recommend utility financing strategies which channel residential development away from NAS Whidbey; and
 - (c) Study whether additional regulatory responses should be implemented to help protect NAS Whidbey noise impacted areas.

PASSED and approved by the City Council this 06 day of April, 2004.

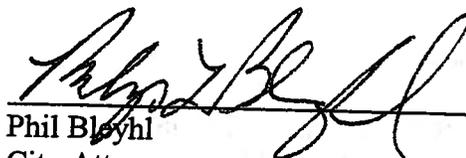
THE CITY OF OAK HARBOR

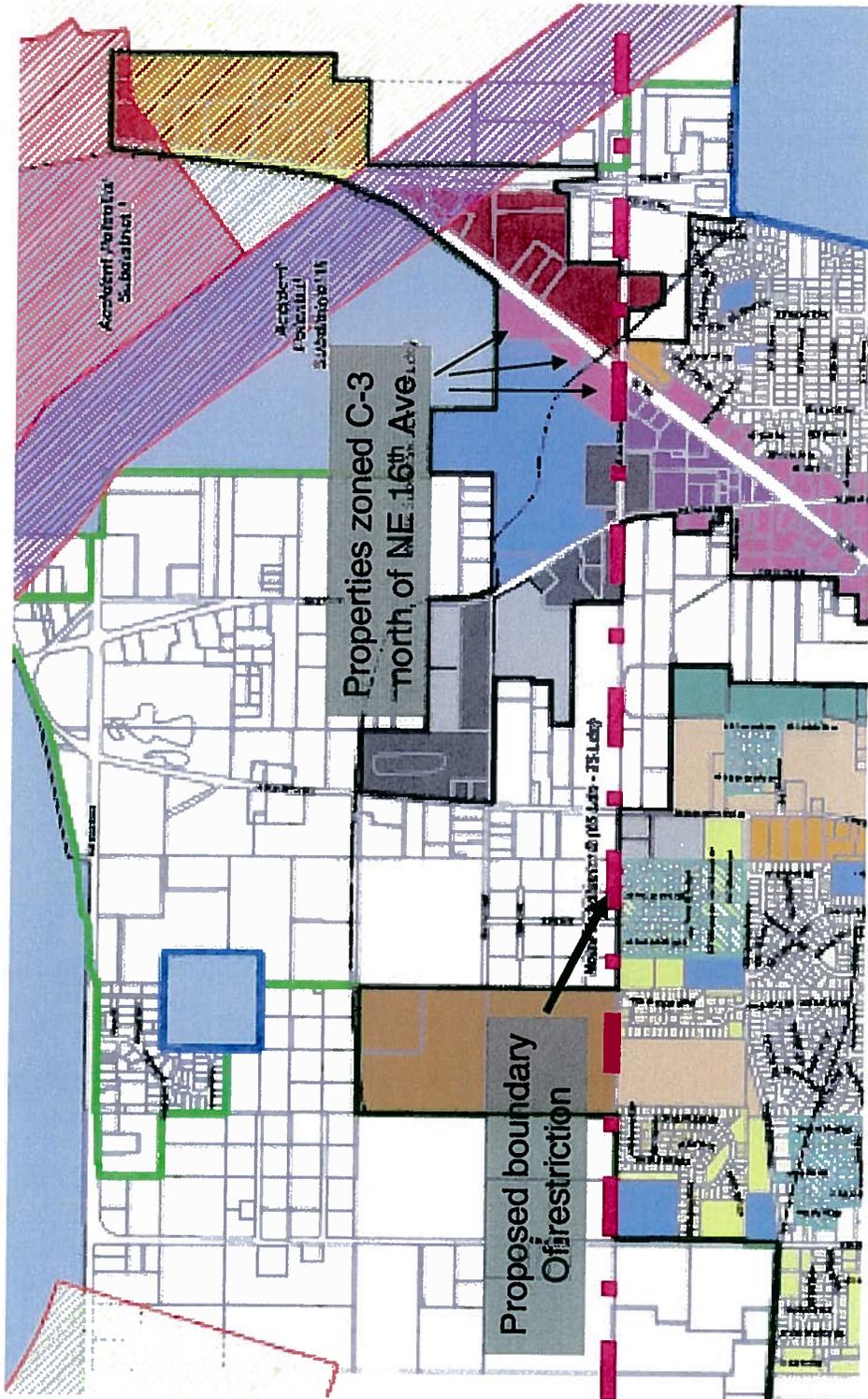

Patricia A. Cohen
Mayor

Attest:


City Clerk

Approved as to Form:


Phil Bloyhl
City Attorney



Properties zoned C-3
north of NE 16th Ave

Proposed boundary
Ofirestriction

North of 16th St @ 165 1/2 Ave - 233 Lots

Academy Park
Subdistrict I

Academy Park
Subdistrict II

**PLANNING COMMISSION
REGULAR MEETING
February 23, 2010**

ROLL CALL: **Present:** Mark Wiggins, Bruce Neil, Julie Dale, Keith Fakkema and Kristi Jensen.
 Absent: Nancy Fey and Greg Wasinger.
 Staff Present: Development Services Director, Steve Powers; Senior Planners, Ethan Spoo and Cac Kamak, Associate Planner, Melissa Sartorius and Civil Engineer, Brad Gluth.

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

MINUTES: MS. JENSEN MOVED, MS. DALE SECONDED, MOTION CARRIED TO APPROVE THE JANUARY 26, 2010 MINUTES AS PRESENTED.

PUBLIC COMMENT – None present to offer comment.

TEXT AMENDMENT TO INCLUDE RESTRICTIONS ON DWELLING UNITS IN THE C-3, COMMUNITY COMMERCIAL DISTRICT NORTH OF NE 16TH AVENUE – Public Hearing

The Planning Commission held a public hearing on a text amendment that will restrict dwelling units in the C-3, Community Commercial District north of NE 16th Avenue.

Mr. Kamak reported:

The text amendment is a follow-up to the 2008 Comprehensive Plan Amendments during which recommendations were made to limit dwelling units in proximity to NAS Whidbey. The proposed text amendment furthers goals and policies in the Comprehensive Plan to ensure that new land use and development proposals do not include dwelling units that may impact the operation of aircraft or reduce the operational capability of NASWI Ault Field.

The current C-3 designation allows residential use as an accessory to the primary use above the ground floor. The proposed restriction on dwelling units in the C-3, Community Commercial District, is area specific; which means that dwelling units are not permitted in the C-3 district for properties located north of the line commensurate with the alignment of NE 16th Avenue, extending between Regatta Drive and Heller Road. Since the City believes that it is appropriate to continue support of dwelling units in the Community Commercial to promote mixed use developments and encourage urban densities where it can be supported; the proposed amendment will continue to permit dwelling units above the ground floor on C-3, Community Commercial for properties south of NE 16th Avenue.

Mr. Kamak detailed the review criteria for the text amendment. Amendments must be consistent with the Oak Harbor Comprehensive Plan and must substantially promote the public health, safety and welfare. As such, the restriction on dwelling unit in the area north of NE 16th Avenue is intended to protect human beings from exposure to high noise levels at their primary place of residence. The welfare of the community is enhanced by limiting the area for development that will not interfere with the safe operation of aircrafts or reduce the operational capability of Ault Field and thus retaining NAS Whidbey on the island and providing a stable economic base for the residents.

At present, the proposed text amendment will apply to three properties that are currently zoned C-3, Community Commercial on the west side of SR 20 and north of NE 16th Avenue. Any existing dwelling units located on the ground floor on these properties are currently non-conforming and will continue to remain non-conforming. Therefore their status will not be impacted by the proposed amendment.

The owners of property zoned C-3, Community Commercial, located north of NE 16th Avenue have been notified by letter of the proposed amendment and the public hearing. Letters have also been sent to the Commanding Officer of NAS Whidbey Island and community liaison planner. A SEPA checklist has also been completed for the amendment and the comment period ends on March 8, 2010.

Mr. Kamak concluded by recommending that the Planning Commission opening the public hearing on the proposed amendments to the C-3, Community Commercial District, to restrict dwelling units north of NE 16th Avenue, and to continue the hearing to March 23, 2010 in order to meet all the process requirements.

Planning Commission Questions/Comments

Mr. Neil asked if the County was also doing the same. Mr. Kamak stated that the County was not.

Mr. Fakkema asked if this text amendment was creating another zoning district. Mr. Kamak said that it can be looked at as an overlay zone.

Ms. Jensen asked if hotels would be considered as a dwelling. Mr. Kamak clarified that dwelling units are defined as a place of primary residence.

Ms. Jensen asked if the mobile home park was to make improvements, would they be able to continue their current use. Mr. Kamak stated that non-conforming uses are not able to increase units and are only able to continue as they are, they can make minor improvements.

Ms. Dale asked if there were residential zoned properties in that area. Mr. Kamak indicated that there were some in the County but if they were annexed into the City they would take on the City's zoning.

Mr. Wiggins asked if there had been any response from the letters that were sent to the property owners or NAS. Mr. Kamak stated that he was meeting with the NAS liaison tomorrow and he would have more information at the March 23rd meeting.

Mr. Wiggins opened the hearing for public comment. No members of the public were present to offer comment.

ACTION: MS. DALE MOVED, MS. JENSEN SECONDED, MOTION CARRIED TO CONTINUE THE PUBLIC HEARING TO MARCH 23, 2010.

LOW IMPACT DEVELOPMENT (LID) CODE UPDATE PROJECT– Public Meeting (NO ACTION REQUIRED)

Mr. Spoo started by passing out illustrations of LID street sections that should have been included in the agenda packet (Attachment 1).

Mr. Spoo outlined the LID discussion as follows:

The practices that will be discussed are: (1) LID streets, (2) LID parking facilities, and (3) Coverage limits. Within each of these topics, the discussion is organized as follows:

- **Summary of the practice.** A description of the practice.
- **The decision tool.** How the specific practice effects, the environment, city costs, private costs and the economy.
- **Policy issues/questions.** Questions for each specific practice that staff needs guidance on from Planning Commission. Staff requests that Planning Commission come prepared to discuss these questions.

LID Streets

Mr. Spoo revealed that streets make up 65%-80% of total impervious surfaces. Residential streets make up 60% of that total, yet handle the least traffic. LID streets are usually focused on three things: layout, width and surface. Layout and width were covered as part of the subdivision code. Now the focus will be the street surface.

Mr. Spoo displayed three LID street sections which PSP has proposed. One consists of a 60 foot arterial, with swale on one side and 36 feet of pavement; the second consisted of a 50-foot right-of-way and only 24 feet of pavement; the third was of a local street with 24 feet of pavement, a pervious parking lane, a swale on one side, pervious parking lane, and pervious shoulder.

Mr. Spoo displayed the decision tool table to assist the Commission in making decisions about what the impact of LID streets are on environment, city costs, private costs, and the economy. Mr. Spoo pointed out, as you move from making LID streets voluntary to mandatory; the table indicates that the environmental impacts are lessened. But, there may be some added expense in maintaining LID streets. Currently, there's very little information on maintenance costs of LID streets. But logically, there will be some added maintenance because you have the maintenance for a regular street, but will also have to send the vector truck out, as well. Also, conventional streets don't have rain gardens, so there will be maintenance required for the rain gardens. But, there could be some cost savings from better use of the site due to having smaller ponds to maintain. There are also questions as to who maintains the rain gardens. City of Seattle requires the property owners to maintain these, but they've had limited success with that.

Mr. Spoo asked for the Commission's policy guidance on the use of pervious pavements and rain gardens in public rights-of-way, as well as the use of LID streets with narrow designs (as narrow as 20 feet). Do we make LID streets voluntary, incentive, mandatory, who maintains them? Does staff need to look into customized design for streets? What about arterials and collectors?

Planning Commission Questions/Comments

Planning Commission offered the following:

- Make a certain percentage mandatory and the rest incentives to go above that percentage.
- Since the cost is unknown and there is limited income to the city, don't do anything until we have to.
- Uncomfortable with not knowing what that cost will be for maintenance because ultimately, the city will have to bear the cost because of the transient nature of the

community. Mr. Powers suggested that the maintenance cost could be built into the rate structure, but that is a question that the Council will have to answer.

- Commissioners liked the concept of LID and treating the stormwater at the source, aesthetically there is great potential, but not comfortable with making it mandatory.
- Commissioners liked the idea of offering open space credit for LID facilities.

LID Parking Facilities

Mr. Spoo reported that parking facilities make up a large percentage of the impervious surfaces in urban areas, second only to streets. As with streets, the main issues are the added maintenance of pervious surfaces and rain gardens. But, there's also some maintenance saved because of the possibility of a smaller stormwater pond.

Mr. Spoo raised the issue of parking maximums and noted that some jurisdictions are beginning to use parking maximum numbers now instead of minimums. Over time, many jurisdictions have found out that parking goes unused during much of the year. Oak Harbor uses minimums, which means that that you have to provide a minimum number of spaces. So, the question is, do we set parking maximums and let people go over that maximum if they can show that the demand is there for them to do that. The policy questions are whether to make LID parking facilities voluntary, encourage them through incentives, or mandatory. Does the Planning Commission want to look into parking maximums? Is that something the City should pursue?

Planning Commission Questions/Comments

- Consider hiring a company to perform the maintenance and build that cost into the utility bill.
- Commissioners liked the idea of having parking maximums and would like staff to pursue this idea.
- This would be a good place to start if the City was to make any of the LID practices mandatory. But mandatory is not the preference. A gradual approach may be to have larger parking lots have a percentage of pervious or other treatment.
- Commissioners expressed concern about mandating a practice that the research is still out on.

Mr. Gluth added, the longevity and clogging in the pours of the material is a concern and that he recently attended a class and found out that Seattle only allows pervious sidewalks in the public right-of-way. They don't allow pervious road sections because of the longevity concern and the special equipment needed to clean it. Mr. Spoo indicated that cities are allowing private property owners to use pervious surfaces because it is the private property owners' maintenance responsibility and those areas are not high traffic areas.

Limits on Impervious Surfaces

Mr. Spoo explained that this practice would restrict the amount of impervious surface that can be built on each lot. Those limits apply for each zone. The higher intensity zones, such as commercial and multifamily, will have fewer restrictions because we know that they will use more of the site. Lower intensity zones, such as R1, residential will have higher restrictions – meaning more of the site must be left undisturbed or have pervious surfaces. The Oak Harbor code does not currently have any restrictions on the amount of impervious surface that you can have for each lot. These proposed limits on impervious surface are most likely to affect developments in the R4, RO, C1 and C3 zones.

Mr. Spoo displayed the following table that is expressed as a percentage of the site by zone and compares the existing and proposed limits on impervious surface with the typical (average amount) seen in each zone.

Zone	Existing Limit	Proposed Limit	Typical Impervious Maximum
PRE	None	45%	Less than 30
R-1	None	55%	35 – 40%
R-2	None	80%	40%
R-3	None	80%	75%
R-4	None	80%	75-80%
RO	None	80%	80-90%
C-1	None	90%	80-90%
C-3	None	90%	70-90%
C-4	None	Encourage permeable	75%
C-5	None	Encourage permeable	90%
CBD	None	90%	75%
PBP	None	Encourage permeable	75%
PIP	None	Encourage permeable	75%
PF	None	85%	60%
M-H	None	55%	40-50%

The policy questions are whether we make limits on pervious surfaces voluntary, incentive-based or mandatory? What does the Planning Commission think about the limits that have been proposed, are they restrictive enough, too restrictive?

Mr. Spoo noted, currently the City has an incentive-based system thorough our stormwater fees because our stormwater fees are tied to the amount of impervious surface that is on the site; so, the more hard surface there is, the more the stormwater fee is.

Mr. Powers conveyed, this topic will be discussed further at a later date as more of the pieces come together to put more context around limiting impervious surfaces.

Mr. Spoo indicated that next month the Planning Commission will consider open space in PRDs, native vegetation areas and grading practices.

BEING NO FURTHER BUSINESS BEFORE THE PLANNING COMMISSION, THE MEETING WAS ADJOURNED AT 8:50 P.M.

Draft

**PLANNING COMMISSION
REGULAR MEETING
March 23, 2010**

ROLL CALL: **Present:** Mark Wiggins, Julie Dale, Keith Fakkema, Kristi Jensen, Nancy Fey and Greg Wasinger.
 Absent: Bruce Neil
 Staff Present: Senior Planners, Ethan Spoo and Cac Kamak and Associate Planner, Melissa Sartorius.

Chairman Wiggins called the meeting to order at 7:35 p.m.

MINUTES: **MS. JENSEN MOVED, MR. FAKKEMA SECONDED, MOTION CARRIED TO APPROVE THE FEBRUARY 23, 2010 MINUTES AS PRESENTED.**

PUBLIC COMMENT – None present to offer comment.

TEXT AMENDMENT TO INCLUDE RESTRICTIONS ON DWELLING UNITS IN THE C-3, COMMUNITY COMMERCIAL DISTRICT NORTH OF NE 16TH AVENUE – Continued Public Hearing

The Planning Commission continued their public hearing on a text amendment that will restrict dwelling units in the C-3, Community Commercial District north of NE 16th Avenue.

Mr. Kamak reminded the Commission that the public hearing was continued to March 23, 2010 in order to meet all the process requirements regarding notification and public input. Since the meeting in February, the State has been notified that we are amending our development regulations and requested an expedited review which was authorized. The State notified other agencies for comment and no comments were received. A letter was sent to NAS Whidbey Island and the Commanding Officer supporting the text amendment. No comments were received regarding the SEPA Checklist or the Determination of Non-significance.

Mr. Kamak concluded by recommending that the Planning Commission close the public hearing and forward a recommendation to the City Council to adopt the ordinance amending Oak Harbor Municipal Code Section 19.20.340 Principal Permitted Uses in the C-3, Community Commercial District to restrict dwelling units north of NE 16th Avenue.

Planning Commission Questions/Comments

Commissioner Jensen asked if the zoning designation could be C-3a in order to differentiate it from regular C-3. Mr. Kamak said that it would be like creating a new zoning category which is more involved. What the Commission is doing is similar to creating a restriction in the C-3 zone.

Chairman Wiggins called for additional public comment. No comments were forthcoming.

Chairman Wiggins closed the public hearing.

ACTION: MS. FEY MOVED, MR. FAKKEMA SECONDED, MOTION CARRIED TO FORWARD A RECOMMENDATION TO THE CITY COUNCIL TO APPROVE THE ORDINANCE AMENDING OAK HARBOR MUNICIPAL CODE SECTION 19.20.340 PRINCIPAL PERMITTED USES IN THE C-3, COMMUNITY COMMERCIAL DISTRICT TO RESTRICT DWELLING UNITS NORTH OF NE 16TH AVENUE.

LOW IMPACT DEVELOPMENT (LID) CODE UPDATE PROJECT– Public Meeting
(NO ACTION REQUIRED)

Mr. Spoo stated that this session was a follow-up on issues and questions the Commission had last month regarding parking maximums. Staff researched parking maximums, and found that jurisdictions use parking maximums to reduce impervious surface and encourage transit use.

The following are several variations on parking maximums depending on what the end goal is.

- A maximum parking standard, with no minimum standard can be set. This type of maximum can be seen in very dense downtowns like Portland or Seattle, because they have alternative transportation. These downtowns purposely don't have enough parking for to meet the demand for cars, because they want people taking other forms of transportation.
- A range which is both a minimum and a maximum is more common in the suburbs where you want to ensure there's at least a minimum number of parking spaces so that you don't experience overflow parking into adjacent neighborhoods.
- A hard maximum – no exceptions.
- A soft maximum – with exceptions, so that somebody can vary from the maximum under certain criteria.
- Maximum amount of impervious spaces, if you go above the maximum impervious surface the rest has to be pervious. Therefore, a limit is not being set on the number of spaces, just what those spaces are made of.

Based on the above there are some points to consider. Should the City should consider using a range (both minimums and maximums), and using a soft maximum whereby exceptions to the maximum would be allowed in extenuating circumstances? Finally, where the maximum is set is key – the more restrictive the maximum is the more you have to think and plan carefully. Staff isn't asking the Commission to set the maximum number of spaces at this meeting, but just to consider the general features.

Mr. Spoo stated that the following guidelines could be drafted for as part of the LID Code update if the Planning Commission agrees:

- **Use a range.** The City could use a range (both minimum and maximum standards). The minimum will ensure that there are not too few spaces provided, while the maximum will reduce the number of excessively large, underutilized parking areas.

- **Use a “soft” maximum.** This would allow applicants to exceed the maximum subject to specific criteria being met. For example, the criteria might specify that 95 percent (as an example) or more of the parking must be occupied during five days or more per year for an exception to be granted. In other words, having large numbers of underutilized parking spaces which are only occupied only during the holidays (and a few other times of the year) would not be allowed. To exceed parking maximums, applicants would be required to apply for a variance, whereby they demonstrate that the extra parking is needed more than five days per year.
- **Set the maximum to equal demand on an “average” day.** If the intent of a parking maximum is to reduce the number of parking spaces which are only used a few times per year, the City could use a maximum which is set to equal peak demand on an “average” day as opposed to peak demand on the busiest shopping day of the year.

Planning Commission Questions/Comments

- Commissioners discussed businesses that have more parking than was necessary and business owner’s ability to reduce the number of parking spaces in order to utilize the property more efficiently should they choose to do so. Commissioners also recognized that some corporations have standard designs that are used.
- Commissioners noted that there are many variables such as types of business and hours of operation that enter into the equation for setting parking limits. Mr. Spoo stated that the city can set criteria that would have to be met before the city would allow parking spaces beyond the maximum allowed.
- Commissioners asked staff about staff’s experience with developer demands for parking. Staff indicated that usually want as much parking as possible.
- Commissioners liked the idea of being flexible but with parameters.

BEING NO FURTHER BUSINESS BEFORE THE PLANNING COMMISSION, THE MEETING WAS ADJOURNED AT 8:11 P.M.

ORDINANCE NO.

AN ORDINANCE AMENDING OAK HARBOR MUNICIPAL CODE SECTION 19.20.335, PURPOSE AND INTENT OF C-3 COMMUNITY COMMERCIAL DISTRICT TO SUPPORT MIXED USE DEVELOPMENT AND 19.20.340, PRINCIPAL PERMITTED USES IN THE C-3 COMMUNITY COMMERCIAL DISTRICT, TO RESTRICT DWELLING UNITS NORTH OF NE 16TH AVENUE.

WHEREAS, the City of Oak Harbor has established zoning districts to establish standards for the type of uses permitted and conditioned along with density provisions and conditions governing permitted uses in order to protect the public health, safety and welfare; and

WHEREAS, it is the purpose of the regulations, standards and criteria of this code to permit and encourage compatible uses to locate adjacent to each other and discourage incompatible uses; and

WHEREAS, the City of Oak Harbor has established the C-3, Community Commercial District to provide for those type of retail, wholesale, transportation and service uses which, because of their traffic and other requirements, depend on particular locations to serve the needs of the community and its trading area; and

WHEREAS, the C-3, Community Commercial District permits dwelling units above and secondary to essential or primary uses to provide on-site residency and mixed use developments; and

WHEREAS, dwelling units are not compatible in areas that are in close proximity to NAS Whidbey Ault Field; and

WHEREAS, the City of Oak Harbor is desirous of restricting dwelling units on properties designated for C-3, Community Commercial for properties located north of NE 16th Avenue due to their proximity to NAS Whidbey; and

WHEREAS, restricting dwelling units north of NE 16th Avenue is consistent with policies in the Comprehensive Plan as required by RCW 36.70A.040(4); and

WHEREAS, the proposed amendment to restrict dwelling units north of 16th Avenue is consistent with the text amendment criteria identified in OHMC 19.80, namely consistency with the Oak Harbor Comprehensive Plan and substantial promotion of the public health, safety and welfare; and

WHEREAS, a Determination of Non-significance was issued on March 17, 2010 after an environmental assessment was made of the proposed text amendment in accordance with the checklist requirements of the State Environmental Policy act and determined that an Environmental Impact Statement is not required; and

WHEREAS, the Department of Commerce authorized an expedited review of the proposed text amendments and determined it to meet the notification requirements of RCW 36.70A.106 on March 1, 2010; and

WHEREAS, the Planning Commission of the City of Oak Harbor, after due notice of hearing did consider the proposed text amendment at its regular meetings on February 23, 2010 and March 23, 2010, recommending approval of the amendment; and

WHEREAS, the proposed text amendments is in accordance with the review criteria established in OHMC 19.80.020; and

WHEREAS, being satisfied that the proposed amendment is consistent with the above requirements;

NOW, THEREFORE

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

Section One. Chapter 19.20, last amended by Ordinance 1555, § 8, is hereby amended to read as follows:

**Chapter 19.20
ZONING DISTRICTS**

Sections:

Article I. PRE – Planned Residential Estate

- 19.20.005 Purpose and intent.
- 19.20.010 Principal permitted uses.
- 19.20.015 Accessory permitted uses.
- 19.20.020 Conditional uses permitted.
- 19.20.025 Density provisions.
- 19.20.030 Relation to aviation environs overlay zone.
- 19.20.035 Combined applications.
- 19.20.040 Preapplication meeting.
- 19.20.045 Application requirements.
- 19.20.050 Master plan – Filing requirements.
- 19.20.055 Master plan – Staff recommendation.
- 19.20.060 Master plan – Public hearing.
- 19.20.065 Master plan – Planning commission review.
- 19.20.070 Master plan – Council review.
- 19.20.075 Modifications to the plan.
- 19.20.080 Adherence to approved plan.
- 19.20.085 Subdivision requirements.
- 19.20.090 Lots subject to final master plan.
- 19.20.095 Judicial review.

Article II. R-1 – Single-Family Residential

- 19.20.100 Purpose and intent.

- 19.20.105 Principal permitted uses.
- 19.20.110 Accessory permitted uses.
- 19.20.115 Conditional uses permitted.
- 19.20.120 Density provisions.

Article III. R-2 – Limited Multiple-Family Residential

- 19.20.125 Purpose and intent.
- 19.20.130 Principal permitted uses.
- 19.20.135 Accessory permitted uses.
- 19.20.140 Conditional uses permitted.
- 19.20.145 Density provisions.
- 19.20.150 Landscaping requirements.
- 19.20.155 Site plan review required.

Article IV. R-3 – Multiple-Family Residential

- 19.20.160 Purpose and intent.
- 19.20.165 Principal permitted uses.
- 19.20.170 Accessory permitted uses.
- 19.20.175 Conditional uses permitted.
- 19.20.180 Density provisions.
- 19.20.185 Landscaping requirements.
- 19.20.190 Site plan review required.

Article V. R-4 – Multiple-Family Residential

- 19.20.195 Purpose and intent.
- 19.20.200 Principal permitted uses.
- 19.20.205 Accessory permitted uses.
- 19.20.210 Conditional uses permitted.
- 19.20.215 Density provisions.
- 19.20.220 Landscaping requirements.
- 19.20.225 Site plan review required.

Article VI. RO – Residential Office

- 19.20.230 Purpose and intent.
- 19.20.235 Principal permitted uses.
- 19.20.240 Accessory permitted uses.
- 19.20.245 Conditional uses permitted.
- 19.20.250 Density provisions.
- 19.20.255 Landscaping requirements.
- 19.20.260 Site plan and design review required.

Article VII. C-1 – Neighborhood Commercial

- 19.20.265 Purpose and intent.
- 19.20.270 Principal permitted uses.
- 19.20.275 Accessory permitted uses.
- 19.20.280 Conditional uses permitted.
- 19.20.285 Density provisions.
- 19.20.290 Conditions governing permitted uses.
- 19.20.295 Site plan and design review required.

Article VIII. CBD – Central Business District

- 19.20.300 Purpose and intent.

- 19.20.305 Principal permitted uses.
- 19.20.310 Accessory permitted uses.
- 19.20.315 Conditional uses permitted.
- 19.20.320 Density provisions.
- 19.20.325 Conditions governing permitted uses.
- 19.20.330 Site plan and design review required.

Article IX. C-3 – Community Commercial

- 19.20.335 Purpose and intent.
- 19.20.340 Principal permitted uses.
- 19.20.345 Accessory permitted uses.
- 19.20.350 Conditional uses permitted.
- 19.20.355 Density provisions.
- 19.20.360 Conditions governing permitted uses.
- 19.20.365 Site plan and design review required.
- 19.20.368 Relation to aviation environs overlay zone.

Article X. C-4 – Highway Service Commercial

- 19.20.370 Purpose and intent.
- 19.20.375 Principal permitted uses.
- 19.20.380 Accessory permitted uses.
- 19.20.385 Prohibited uses.
- 19.20.390 Conditional uses permitted.
- 19.20.395 Density provisions.
- 19.20.400 Conditions governing permitted uses.
- 19.20.405 Site plan and design review required.
- 19.20.408 Relation to aviation environs overlay zone.

Article XI. C-5 – Highway Corridor Commercial

- 19.20.410 Purpose and intent.
- 19.20.415 Principal permitted uses.
- 19.20.420 Accessory permitted uses.
- 19.20.425 Conditional uses permitted.
- 19.20.430 Density provisions.
- 19.20.435 Conditions governing permitted uses.
- 19.20.440 Site plan and design review required.

Article XII. PBP – Planned Business Park

- 19.20.445 Purpose and intent.
- 19.20.450 Principal permitted uses.
- 19.20.455 Accessory permitted uses.
- 19.20.460 Prohibited uses.
- 19.20.465 Site requirements.
- 19.20.470 Building heights.
- 19.20.475 Building coverage.
- 19.20.480 Building setbacks.
- 19.20.485 Loading areas.
- 19.20.490 Off-street parking.
- 19.20.495 Building design.
- 19.20.500 Landscaping requirements.
- 19.20.505 Environmental performance standards.
- 19.20.510 Relation to aviation environs overlay zone.

- 19.20.515 Preapplication meeting.
- 19.20.520 Application requirements.
- 19.20.525 General standards and requirements – Professional design.
- 19.20.530 Preliminary master plan – Filing requirements.
- 19.20.535 Preliminary master plan – Staff recommendation.
- 19.20.540 Preliminary master plan – Public hearing.
- 19.20.545 Preliminary master plan – Planning commission review.
- 19.20.550 Preliminary master plan – Council review.
- 19.20.555 Final master plans – Filing requirements.
- 19.20.560 Final master plan – Staff recommendation.
- 19.20.565 Final master plan – Planning commission approval.
- 19.20.570 Modifications to the plan.
- 19.20.575 Phased development.
- 19.20.580 Appeals to council.
- 19.20.585 Adherence to approved plan.
- 19.20.590 Lots subject to final master plan.
- 19.20.595 Judicial review.

Article XIII. PIP – Planned Industrial Park

- 19.20.600 Purpose and intent.
- 19.20.605 Principal permitted uses.
- 19.20.610 Accessory permitted uses.
- 19.20.615 Conditional uses permitted.
- 19.20.620 Prohibited uses.
- 19.20.625 Density provisions.
- 19.20.630 Building heights.
- 19.20.635 Outdoor storage.
- 19.20.640 Loading areas.
- 19.20.645 Off-street parking.
- 19.20.650 Building design.
- 19.20.655 Landscaping requirements.
- 19.20.660 Environmental performance standards.
- 19.20.665 Relation to aviation environs overlay zone.
- 19.20.670 Preapplication meeting.
- 19.20.675 Application requirements.
- 19.20.680 Site plan review – Filing requirements.
- 19.20.685 Site plan review (parcels five to 20 acres) – Staff approval.
- 19.20.690 Site plan review (over 20 acres) – Staff recommendation.
- 19.20.695 Site plan review (over 20 acres) – Planning commission approval.
- 19.20.700 Modifications to the plan.
- 19.20.705 Appeals to council.
- 19.20.710 Adherence to approved plan.
- 19.20.715 Lots subject to final site plan.
- 19.20.720 Judicial review.

Article XIV. I – Industrial

- 19.20.725 Purpose and intent.
- 19.20.730 Principal permitted uses.
- 19.20.735 Principal uses permitted – Location limited.
- 19.20.740 Accessory permitted uses.
- 19.20.745 Prohibited uses.

- 19.20.750 Conditional uses permitted.
- 19.20.755 Density provisions.
- 19.20.760 Conditions governing permitted uses.
- 19.20.765 Site plan and design review required.
- 19.20.768 Relation to aviation environs overlay zone.

Article XV. PF – Public Facilities

- 19.20.770 Purpose and intent.
- 19.20.775 Principal permitted uses.
- 19.20.780 Accessory permitted uses.
- 19.20.785 Conditional uses permitted.
- 19.20.790 Prohibited uses.
- 19.20.792 Manufactured home structures.
- 19.20.795 Density provisions.
- 19.20.800 Landscaping requirements.
- 19.20.805 Site plan and design review required.

Article XVI. OS – Open Space, Recreation and Agriculture

- 19.20.810 Purpose and intent.
- 19.20.815 Principal permitted uses.
- 19.20.820 Accessory permitted uses.
- 19.20.825 Conditional uses permitted.
- 19.20.830 Density provisions.
- 19.20.835 Conditions governing permitted uses.
- 19.20.840 Site plan and design review required.

Article I. PRE – Planned Residential Estate

19.20.005 Purpose and intent.

The planned residential estate (PRE) district is intended to provide existing rural uses in the areas of the expanded urban growth area which, because of surrounding land uses, noise impacts from the Naval Air Station, environmentally sensitive area, and existing land use patterns, are better planned for preservation of low density uses under a master planned concept.

19.20.010 Principal permitted uses.

In a PRE district, the following are principal permitted buildings and uses:

- (1) One single-family detached dwelling structure on each lot.
- (2) Development under a planned residential development as per Chapter 19.31 OHMC.

19.20.015 Accessory permitted uses.

In a PRE district, the following are accessory permitted uses:

- (1) Accessory uses and structures incidental to any permitted residential uses, such as servants' quarters, garages, greenhouses, or workshops; provided, that none shall be rented or occupied for gain;
- (2) All radio, television and microwave receiving antennas, whether variously described as a wire, dish, tower antenna, or otherwise, located within the setback lines of the lot;
- (3) Home occupations as regulated in Chapter 19.34 OHMC.

19.20.020 Conditional uses permitted.

The following principal uses and their accessory uses may be permitted in a PRE district when approved in conformance with Chapter 19.67 OHMC:

- (1) All radio, television and microwave receiving antennas, whether variously described as a wire, dish, tower antenna, or otherwise, located outside of the setback lines of the lot. The

permit may be granted only when:

- (a) Reception cannot be obtained when located within the setback lines;
- (b) The location in a setback yard does not block the view of Oak Harbor Bay proposed from other property;
- (c) The antenna does not cause a danger to adjacent properties.

19.20.025 Density provisions.

Specific densities shall be determined by the planning commission based on the criteria established under the provisions of Chapter 19.48 OHMC.

- (1) Minimum density, zero DU/AC; maximum density, three DU/AC.
- (2) Minimum front yard, 30 feet; or as established by the master plan.
- (3) Minimum side yard setbacks are 10 feet; or as established by the master plan.
- (4) Minimum side yard along the flanking street of a corner lot, 20 feet; or as established by the master plan.
- (5) Minimum rear yard, 30 feet; or as established by the master plan.
- (6) Maximum building height, 35 feet; or as established by the master plan.
- (7) Maximum lot coverage, 35 percent of lot area; or less as established by the master plan.
- (8) Minimum lot size, 15,000 square feet; or as established by the master plan.
- (9) Development as a planned residential development may occur subject to Chapter 19.31 OHMC.

19.20.030 Relation to aviation environs overlay zone.

Property located in an aviation environs overlay zone, as governed in Chapter 19.50 OHMC, shall meet the requirements for noise attenuation in Chapter 17.30 OHMC and the comprehensive plan land use element.

19.20.035 Combined applications.

- (1) The preliminary master plan and the final master plan may be combined and together processed through review as a final development plan.
- (2) The application may be filed by either of the following:
 - (a) The Oak Harbor planning department for all or any portion of the district; or
 - (b) The owner, or owners in a joint application, of more than 10 acres.
- (3) A concurrent subdivision application, meeting the requirements of OHMC Title 21, may be processed concurrently with the planned residential estate application.
- (4) The applicant may file a concurrent rezone application, meeting the requirements where such application is consistent with the Oak Harbor comprehensive plan, which shall proceed concurrently with the planned residential estate application.
- (5) In case of conflict between time limits set forth in this title and in other provisions of the Oak Harbor Municipal Code or applicable state law, those provisions requiring public notice to be given the furthest in advance of the pending action shall prevail over conflicting provisions specifying that notice shall be given within a shorter time prior to the action; likewise, any conflict in provisions requiring a specific action on the part of the city, or any body thereof, within a specific time period shall be resolved in favor of those provisions requiring action within the lesser period of time.

19.20.040 Preapplication meeting.

Prior to formal submittal of the application by any owner or owners, the applicant(s) may present to the planning department a master plan, which shall contain, in a rough and approximate manner, all of the information required for the application under OHMC 19.20.050. Upon submittal, the planning department shall schedule a meeting with representatives of applicable city departments. The planning director may also invite, because of the nature, size and scope of the development, others outside of the city to participate in the preapplication meeting. The

purpose of the meeting is to enable the applicant to obtain the advice of city staff as to the intent, standards and provisions of this code with regard to the proposed plan. Information presented for and at the preapplication meeting shall not be a part of the public record as no applications are submitted for formal review.

19.20.045 Application requirements.

An application by an owner or owners for approval of a proposed planned residential estate shall be made to the planning director upon forms furnished by the city. Application shall be made by the owner or owners of the parcel or parcels intended to be developed as a unit or their duly authorized agent or agents. The ownership of all parcels to be included must be represented in the application.

19.20.050 Master plan – Filing requirements.

Any owner or owners filing an application shall file with the planning director a master plan, including the following:

- (1) A legal description of the site and plot plan indicating location of all existing and proposed adjacent streets, private rights-of-way and easements;
- (2) Twenty copies of the proposed site plan and/or drawings, which include the following information:
 - (a) Topographic contours at a minimum interval of 10 feet;
 - (b) The general location of all areas proposed for buildings and structures;
 - (c) Location and nature of vehicular and pedestrian circulation features within the site and adjacent streets and alleys;
 - (d) The extent, location, arrangement and proposed improvements of all open space, and common areas;
 - (e) Location, nature and dimension (where applicable) of all utilities including fire protection facilities;
- (3) A text describing any conditions or features which cannot be adequately displayed on maps or drawings.

19.20.055 Master plan – Staff recommendation.

After receiving the master plan, the planning director shall route the same to all appropriate city departments, and each department shall submit to the planning director comments and recommendations. After receiving such information from the city departments, the planning director shall present recommendations and conclusions before the planning commission at the public hearing on the master plan.

19.20.060 Master plan – Public hearing.

The master plan shall be considered at a public hearing before the planning commission after notice given in the manner required by Chapter 18.20 OHMC.

19.20.065 Master plan – Planning commission review.

Following the public hearing, the planning commission may approve as proposed, approve with changes or disapprove the application and the accompanying master plan. The commission's action shall be based on the following criteria:

- (1) The proposal meets the requirements of this title;
- (2) The densities permitted shall be based on:
 - (a) Potential impacts to and from surrounding land uses, such as noise impacts from the Naval Air Station;
 - (b) The presence of environmentally sensitive areas; and/or
 - (c) Existing land use pattern;
- (3) The proposal shall not be detrimental to existing or potential surrounding land uses as

defined by the Oak Harbor comprehensive plan.

19.20.070 Master plan – Council review.

If and when the commission approves said application or if approval is granted by decree of commission action, the city council shall be informed of such action and shall indicate its concurrence or disapproval. The determination of the council shall become final 10 days after the date of decision unless directed otherwise or appealed to the city council in accordance with OHMC 19.20.580.

19.20.075 Modifications to the plan.

Requests for modifications of the master plan shall be made in writing and shall be submitted to the planning department in the manner and form prescribed by the planning director.

- (1) Modifications shall be deemed minor if the proposal does not change any of the following:
 - (a) Land uses;
 - (b) General location or number of access points, or general circulation patterns; and
 - (c) The amount of open space.
- (2) Examples of minor modifications include but are not limited to lot line adjustments, minor changes in setbacks and building height (10 percent or less) and the location of open space.
- (3) Minor modifications may be approved by the planning director.
- (4) Major modifications are those which, as determined by the planning director, substantially change the basic intent of the master plan or change to overall density greater than 10 percent. Major changes to master plans shall be reviewed by the planning commission and city council under the same process as outlined under OHMC 19.20.540 and 19.20.550.

19.20.080 Adherence to approved plan.

- (1) The building official shall only issue building permits for buildings and structures which conform with the approved master plan and with all other applicable city ordinances, regulations, applicable rezone, annexation or development agreements.
- (2) No building permit shall be issued on a lot where there is a current violation of the zoning code or a misuse of public easements to the property.

19.20.085 Subdivision requirements.

The approval of a subdivision shall be required of all projects which involve or contemplate the subdivision of land and the procedures set forth in the Oak Harbor subdivision ordinance, codified in OHMC Title 21, shall be followed concurrently herewith. The approved final master plan shall be a binding site plan under RCW 58.17.040(5), so that a lease of land shall be exempt from the subdivision ordinance if the lease conforms to the final master plan.

19.20.090 Lots subject to final master plan.

All lots or other divisions of a subdivided planned residential estates development shall remain subject to compliance with the final master plan regardless of compliance with OHMC Title 21, or subsequent conveyance of such individual lots.

19.20.095 Judicial review.

Any legal action to review a decision of the city council or planning commission under this title shall be filed in Island County superior court within 30 days of the decision, notwithstanding the effective date of any ordinance passed or proposed to effectuate said decision.

Article II. R-1 – Single-Family Residential

19.20.100 Purpose and intent.

The R-1 single-family residential district is intended for low density, urban, single-family residential uses, while providing sufficient density to allow the city to effectively provide needed urban services. Manufactured home subdivisions are also allowed in this zone. The densities for this district range between a minimum of three units per gross acre and a maximum of six units per gross acre.

19.20.105 Principal permitted uses.

In an R-1 district, the following are principal permitted uses:

- (1) One single-family detached dwelling structure on each lot;
- (2) Development under a planned residential development as per Chapter 19.31 OHMC;
- (3) Manufactured home subdivisions as defined by OHMC 19.08.565 and in compliance with Chapter 19.25 OHMC.

19.20.110 Accessory permitted uses.

In an R-1 district, the following are accessory permitted uses:

- (1) Accessory uses and structures incidental to any permitted residential uses, such as servants' quarters, garages, greenhouses, or workshops, and barns; provided, that none shall be rented or occupied for gain;
- (2) All radio, television and microwave receiving antennas, whether variously described as a wire, dish, tower antenna, or otherwise, located within the setback lines of the lot.

19.20.115 Conditional uses permitted.

The following principal uses and their accessory uses may be permitted in an R-1 district when authorized by the hearing examiner:

- (1) All radio, television and microwave receiving antennas, whether variously described as a wire, dish, tower antenna, or otherwise, located outside of the setback lines of the lot when:
 - (a) Reception cannot be obtained when located within the setback lines;
 - (b) The location in a setback yard does not block the view of Oak Harbor Bay proposed from other property;
 - (c) The antenna does not cause a danger to adjacent properties;
 - (d) The antenna installation complies with all other zoning and building provisions of this code.
- (2) Assisted living facility.
- (3) Cemetery, mausoleum, or crematorium, but only in connection therewith.
- (4) Churches and associated rectories, convents or other similar structures.
- (5) Community center building.
- (6) Excavations, other than simple foundation.
- (7) Garages, for storage only of automobiles as an accessory to a public or quasi-public institution.
- (8) Golf course, including club house, but not an independent pitch-and-putt course, golf driving range or miniature golf.
- (9) Government buildings for administrative or protective services, government storage yards, treatment plants, well sites, pump stations and sanitary landfills.
- (10) Group home.
- (11) Home occupations as regulated in Chapter 19.34 OHMC.
- (12) Hospital.
- (13) Landfills, reclamation to improve steep, low or otherwise unusable land.
- (14) Mortuaries.
- (15) Nursery and landscape material, including greenhouses.
- (16) Private club, lodge, social or recreation building or community assembly hall (except

those having a chief activity carried on for monetary gain); provided, that the buildings used for such purpose may require additional front, rear or side yard setback from an adjoining lot in any residential district beyond the established requirements in the parent zoning district.

- (17) Private nursery school, foster home, kindergarten, or child day care center, not qualifying as a home occupation, on a legal lot, provided there is established in connection therewith an outdoor play area having a minimum area of 1,000 square feet plus an additional 50 square feet for each child in excess of eight.
- (18) Private park or recreational area operated by a nonprofit community organization or association as a neighborhood playground, or local community recreational area, operated for the benefit of and exclusive use of members and their invited guests. Applications for a conditional use under this section shall state the specific use or uses to which the proposed neighborhood playground or local community recreational area shall be put. Conditional uses granted under this section shall be limited to one or more of the specific use or uses requested. Any use or uses in addition to or different from those specifically permitted by the hearing examiner hereunder shall require the separate approval of the hearing examiner. Included within the generality of the phrase "neighborhood playground, or local community recreational areas," but not limited thereto, are swimming pools, community beaches and tennis courts, together with appurtenances thereto.
- (19) Public school.
- (20) Public or private college.
- (21) Public, private or parochial school and supporting dormitory facilities.
- (22) Public or semi-public building serving as a library, museum or other similar purpose.
- (23) Public transportation shelter stations.
- (24) Public utility and communications facility, such as a branch telephone exchange, static transformer, booster station, or pumping station, provided there shall be no service or storage buildings or yards in connection therewith.
- (25) Radio and television broadcasting stations and towers.
- (26) Rapid transit terminals.
- (27) Skilled nursing facility.

19.20.120 Density provisions.

For single-family dwelling structures, in an R-1 district, the following density provisions apply:

- (1) Minimum density, three DU/AC; maximum density, six DU/AC;
- (2) Minimum lot area, 7,200 square feet;
- (3) Minimum lot width, 60 feet;
- (4) Minimum lot depth, 90 feet;
- (5) Minimum front yard, 20 feet;
- (6) Minimum side yard setbacks are 12 feet and five feet; however, minimum side yard along the flanking street of a corner lot, 15 feet;
- (7) Minimum rear yard, 20 feet;
- (8) Maximum building height, 35 feet;
- (9) Maximum lot coverage, 35 percent of lot area;
- (10) A single-story accessory building containing less than 600 square feet of floor area may be constructed within five feet of either sideline or rear property line provided there is six feet of unencumbered space between the principal structure and the accessory building. Accessory buildings shall not have a metal finish except when the finish is listed by the manufacturer or approved by the building department as a nonglare finish. The maximum floor area of an accessory structure shall not exceed 50 percent of the floor area of the primary structure;

- (11) Development as a planned residential development may occur subject to Chapter 19.31 OHMC.

Article III. R-2 – Limited Multiple-Family Residential

19.20.125 Purpose and intent.

The R-2 limited multiple-family residential district is intended for medium density residential housing. Manufactured home subdivisions and parks are allowed in this zone. The densities for this district range between a minimum density of three units per gross acre and a maximum density of 12 units per gross acre. The R-2 districts are intended only for those areas having safe and convenient access to improved collector or arterial streets and adequate public services.

19.20.130 Principal permitted uses.

In an R-2 district, the following are principal permitted buildings and uses:

- (1) Principal use permitted in an R-1 district;
- (2) Duplexes, two-family dwelling structures;
- (3) Multifamily dwellings;
- (4) Development under a planned residential development as per Chapter 19.31 OHMC;
- (5) Manufactured home subdivisions and parks in compliance with Chapter 19.25 OHMC.

19.20.135 Accessory permitted uses.

In an R-2 district, the following are accessory permitted uses:

- (1) Accessory uses and structures incidental to any permitted residential uses, such as servants' quarters, garages, greenhouses, or workshops; provided, that none shall be rented or occupied for gain;
- (2) Television satellite dish reflectors, ground-mounted within required building setback lines.

19.20.140 Conditional uses permitted.

The following principal uses and their accessory uses may be permitted in an R-2 district when authorized by the hearing examiner:

- (1) Any conditional use permitted in an R-1 district;
- (2) Bed and breakfast inns subject to the following conditions:
 - (a) There shall be no more than four guest rooms;
 - (b) Service of meals shall be to registered guests only;
 - (c) There shall be a full-time manager domiciled on the premises;
 - (d) Parking of guest vehicles shall be accommodated on the same site with the main building;
 - (e) Only one on-premises sign not exceeding four square feet in area shall be permitted. Maximum height of pole signs shall be 42 inches;
- (3) Bed and breakfast rooms subject to the following conditions:
 - (a) A resident family is domiciled within the structure;
 - (b) No more than 50 percent of the existing bedrooms are devoted to bed and breakfast;
 - (c) Parking of guest vehicles shall be accommodated on the premises;
 - (d) Only one on-premises sign not more than four square feet in area shall be permitted. Maximum height of pole signs shall be 42 inches;
 - (e) No commercial dining or other hospitality facilities are maintained for the entertainment of guests;
 - (f) The use of the building as a dwelling is the predominant use.

19.20.145 Density provisions.

In an R-2 district, the following density provisions apply:

- (1) Minimum density, three DU/AC; maximum density, 12 DU/AC;
- (2) Minimum lot area: 6,000 square feet;
- (3) Minimum lot width, 60 feet;
- (4) Minimum lot depth, 90 feet;
- (5) Minimum front yard setback, 20 feet; see also subsection (6) of this section;
- (6) Minimum side yard setbacks are 20 feet, five feet on one side for duplexes and multiple-family dwellings while single-family detached dwelling structures must provide minimum 12-foot and five-foot side yard setbacks. For both single-family and multiple-family dwellings, side yard along the flanking street of a corner lot is 15 feet (see also subsection (7) of this section);
- (7) Minimum rear yard setbacks where distinguishable from side yards and where required for a platted lot shall not be less than 25 feet for duplexes and multiple-family dwellings, while for single-family detached dwelling structures they shall not be less than 20 feet. In addition to the above, any building of more than two stories in height must provide a minimum of two feet additional front, side and rear yard setback for each additional story;
- (8) Maximum building height, 35 feet;
- (9) Maximum lot coverage by buildings, 45 percent. A minimum of 20 percent of lot is to be kept free of impervious surfacing;
- (10) A single-story accessory building containing less than 600 square feet of floor area may be constructed within five feet of either sideline or rear property line; provided, there is six feet of unencumbered space between the principal structure and the accessory building. Accessory buildings shall not have a metal finish except when the finish is listed by the manufacturer or approved by the building department as a nonglare finish. The maximum floor area of an accessory structure shall not exceed 50 percent of the floor area of the primary structure;
- (11) Development may occur as a planned residential development subject to Chapter 19.31 OHMC.

19.20.150 Landscaping requirements.

Except for single-family dwellings and duplexes, landscaping and buffers shall be constructed and maintained in accordance with the provisions of Chapter 19.46 OHMC.

19.20.155 Site plan review required.

Site plan review shall be required as defined in Chapter 19.48 OHMC.

Article IV. R-3 – Multiple-Family Residential

19.20.160 Purpose and intent.

The R-3 multiple-family residential district is intended to provide for and protect areas for medium to high density multiple-family residential development. The densities for this district range between a minimum density of six units per gross acre and a maximum density of 16 units per gross acre. The R-3 districts are intended only for those areas adjacent to arterials or collector streets, without generation of additional traffic upon residential streets, and with adequate public services.

19.20.165 Principal permitted uses.

In an R-3 district, the following are principal permitted buildings and uses:

- (1) Principal uses permitted in an R-2 district, except single-family uses;
- (2) Manufactured home park, subject to the provisions of Chapter 19.25 OHMC;
- (3) Multifamily dwellings;

- (4) Development under a planned residential development as per Chapter 19.31 OHMC.

19.20.170 Accessory permitted uses.

In an R-3 district, the following are accessory permitted uses:

- (1) Accessory uses and structures incidental to any permitted residential uses, such as servants' quarters, garages, greenhouses, or workshops; provided, that none shall be rented or occupied for gain;
- (2) Television satellite dish reflectors, ground-mounted within required building setback lines.

19.20.175 Conditional uses permitted.

The following principal uses and their accessory uses may be permitted in an R-3 district when authorized by the hearing examiner:

- (1) Any conditional use permitted in an R-2 district;
- (2) Assembly hall;
- (3) Gymnasium or stadium in connection with public or private schools certified by the State of Washington Board of Education.

19.20.180 Density provisions.

In an R-3 district, the following density provisions apply:

- (1) Minimum density, six DU/AC; maximum, 16 DU/AC;
- (2) Minimum lot area: 6,000 square feet;
- (3) Minimum lot width, 60 feet;
- (4) Minimum lot depth, 90 feet;
- (5) Minimum front yard setback, 20 feet; see subsection (7) of this section;
- (6) Minimum side yard setbacks are 20 feet, five feet on one side. Minimum side yard along flanking street of a corner lot is 15 feet; see subsection (7) of this section;
- (7) Minimum rear yard setbacks, where distinguishable from side yards and where required for a platted lot, shall not be less than 25 feet. In addition to the above, any building of more than two stories in height must provide a minimum of two feet additional front, side and rear yard setback for each additional story;
- (8) Maximum building height, 35 feet;
- (9) Maximum lot coverage by buildings, 45 percent. A minimum of 20 percent of lot area is to be kept free of impervious surfacing;
- (10) A single-story accessory building containing less than 600 square feet of floor area may be constructed within five feet of either sideline or rear property line, provided there is six feet of unencumbered space between the principal structure and the accessory building. Accessory buildings shall not have a metal finish except when the finish is listed by the manufacturer or approved by the building department as a nonglare finish. The maximum floor area of an accessory structure shall not exceed 50 percent of the floor area of the primary structure;
- (11) Development as a planned residential development may occur subject to Chapter 19.31 OHMC.

19.20.185 Landscaping requirements.

Landscaping and buffers shall be constructed and maintained in accordance with the provisions of Chapter 19.46 OHMC.

19.20.190 Site plan review required.

Site plan review shall be required as defined in Chapter 19.48 OHMC.

Article V. R-4 – Multiple-Family Residential

19.20.195 Purpose and intent.

The R-4 multiple-family residential district is intended to provide for and protect areas for high density multiple-family residential development for persons who desire to live in an apartment environment. The densities for this district range between a minimum of 12 units per gross acre and a maximum density of 22 units per gross acre. The R-4 district shall be considered only for those areas adjacent to arterials or collector streets. Safe and convenient streets must be available or developed to the district without generation of additional traffic upon residential streets.

19.20.200 Principal permitted uses.

In an R-4 district, the following are principal permitted buildings and uses:

- (1) Principal uses permitted in an R-3 district;
- (2) Multifamily dwellings;
- (3) Development under a planned residential development as per Chapter 19.31 OHMC.

19.20.205 Accessory permitted uses.

In an R-4 district, the following are accessory permitted uses:

- (1) Accessory uses and structures incidental to any permitted residential uses, such as servants' quarters, garages, greenhouses, or workshops; provided, that none shall be rented or occupied for gain;
- (2) Television satellite dish reflectors, ground-mounted within required building setback lines.

19.20.210 Conditional uses permitted.

The following principal uses and their accessory uses may be permitted in an R-4 district when authorized by the hearing examiner:

- (1) Any conditional use permitted in an R-3 district;
- (2) Roller rink;
- (3) Dance and music school.

19.20.215 Density provisions.

In an R-4 district, the following density provisions apply:

- (1) Minimum density, 12 DU/AC; maximum density, 22 DU/AC;
- (2) Minimum lot area: 6,000 square feet;
- (3) Minimum lot width, 72 feet;
- (4) Minimum lot depth, 90 feet;
- (5) Minimum front yard setback, 20 feet; see subsection (7) of this section;
- (6) Minimum side yard setbacks are 20 feet, five feet on one side. Minimum side yard along the flanking street of a corner lot is 15 feet;
- (7) Minimum rear yard setbacks where distinguishable from side yards and where required for a platted lot shall not be less than 25 feet. In addition to the above, any building of more than two stories in height must provide a minimum of two feet additional front, side and rear yard for each additional story;
- (8) Maximum building height, 35 feet;
- (9) Maximum lot coverage by buildings, 45 percent. A minimum of 20 percent of lot area is to be kept free of impervious surfacing;
- (10) A single-story accessory building containing less than 600 square feet of floor area may be constructed within five feet of either sideline or rear property line, provided there is six feet of unencumbered space between the principal structure and the accessory building. Accessory buildings shall not have a metal finish except when the finish is listed by the manufacturer or approved by the building department as a nonglare finish. The maximum area of an accessory structure shall not exceed 50 percent of the floor area of the primary structure;

- (11) Development may occur as a planned residential development subject to Chapter 19.31 OHMC.

19.20.220 Landscaping requirements.

Landscaping and buffers shall be constructed and maintained in accordance with the provisions of Chapter 19.46 OHMC.

19.20.225 Site plan review required.

Site plan review shall be required as defined in Chapter 19.48 OHMC.

Article VI. RO – Residential Office

19.20.230 Purpose and intent.

It is the purpose of the RO residential office district to provide for areas appropriate for professional and administrative offices. It is intended that such districts shall buffer residential districts and the development standards are such that office uses should be compatible with residential districts.

19.20.235 Principal permitted uses.

In an RO district, the following are principal permitted uses:

- (1) Offices for the following:
 - (a) Accountants;
 - (b) Attorneys;
 - (c) Physicians, osteopaths, dentists, optometrists, opticians, chiropractors and others licensed by the state of Washington to practice the healing arts;
 - (d) Engineers, architects, surveyors, planners and those engaged in the practice of drafting or graphics;
 - (e) Insurance brokers;
 - (f) Lumber brokers;
 - (g) Real estate sales;
 - (h) Stockbrokers;
 - (i) Software developers;
 - (j) Offices similar to the above but not specifically listed; subject to approval by the planning director;
- (2) Principal uses permitted outright in an R-4 district;
- (3) Other uses as defined by the planning director to be similar to those identified above and having equal or less impact on the purposes of this section.

19.20.240 Accessory permitted uses.

- (1) Accessory uses and structures incidental to any permitted residential uses, such as servants' quarters, garages, greenhouses, or workshops; provided, that none shall be rented or occupied for gain;
- (2) Gardening and horticultural activities and related structures for noncommercial purposes;
- (3) Television satellite dish reflectors, ground-mounted within required building setback lines.

19.20.245 Conditional uses permitted.

The following principal uses and their accessory uses may be permitted in an RO district when authorized by the hearing examiner:

- (1) Any conditional uses permitted in an R-4 district;
- (2) Restaurants, excluding drive-up windows; provided, that any area devoted to a bar must be less than 20 percent of the restaurant seating area.

19.20.250 Density provisions.

In an RO district, the following density provisions apply:

- (1) Minimum lot area, 7,200 square feet;
- (2) Minimum lot width, 72 feet;
- (3) Minimum lot depth, 90 feet;
- (4) Minimum front yard, 20 feet; see subsection (6) of this section;
- (5) Minimum side yard setbacks are 12 feet and five feet on one side, except on corner lots abutting a public street, then 20 feet;
- (6) Minimum rear yard, 20 feet except when abutting a public street, then 35 feet. In addition to the above, any building of more than two stories in height must provide a minimum of two feet additional front, side and rear yard setback for each additional story;
- (7) Maximum building height, 35 feet;
- (8) Maximum lot coverage by building, 45 percent. A minimum of 20 percent of lot area is to be kept free of impervious surfacing;
- (9) A single-story accessory building containing less than 600 square feet of floor area may be constructed within five feet of either sideline or rear property line, provided there is six feet of unencumbered space between the principal structure and the accessory building. Accessory buildings shall not have a metal finish except when the finish is listed by the manufacturer or approved by the building department as a nonglare finish. The maximum floor area of an accessory structure shall not exceed 50 percent of the floor area of the primary structure.

19.20.255 Landscaping requirements.

- (1) All nonresidential development shall be in accordance with the provisions of the Oak Harbor design guidelines.
- (2) Landscaping and buffers shall be constructed and maintained in accordance with the provisions of Chapter 19.46 OHMC.

19.20.260 Site plan and design review required.

Site plan and design review shall be required as defined in Chapter 19.48 OHMC.

Article VII. C-1 – Neighborhood Commercial

19.20.265 Purpose and intent.

The C-1 neighborhood commercial district is intended to provide for limited commercial facilities serving residents of the surrounding residential district.

19.20.270 Principal permitted uses.

In a C-1 district, the following are principal permitted uses:

- (1) Principal uses permitted in an RO district;
- (2) Artist's studios and supplies;
- (3) Auto convenience market;
- (4) Bakery, retail only;
- (5) Barber shop or beauty shop;
- (6) Book and stationery store;
- (7) Clothing store;
- (8) Confectionery;
- (9) Dairy products, retail only;
- (10) Delicatessen;
- (11) Dress and millinery shop;
- (12) Drug store, including fountain;
- (13) Dry cleaners;

- (14) Florist shop;
- (15) Garden supplies and horticultural nursery, not including greenhouses;
- (16) Grocery store;
- (17) Hardware store;
- (18) Health club;
- (19) Laundry, self-service;
- (20) Library;
- (21) Office supply and equipment store;
- (22) Photographic studio and supplies;
- (23) Private nursery school, child day care center or kindergarten, provided there is established in connection therewith an outdoor play area having a minimum area of 1,000 square feet plus an additional 50 square feet for each child in excess of eight;
- (24) Radio and television sales and service;
- (25) Restaurant, including sidewalk cafes;
- (26) Service station;
- (27) Single-family residential uses when located on the second floor above a permitted use;
- (28) Shoe repair shop;
- (29) Variety store;
- (30) Other uses as defined by the planning director to be similar to those identified above and having equal or less impact on the purposes of this section.

19.20.275 Accessory permitted uses.

In a C-1 district, following are accessory uses permitted outright:

- (1) A use customarily incidental and subordinate to a principal use permitted outright;
- (2) On-site hazardous waste treatment and storage facilities as an accessory use to any activity generating hazardous waste and lawfully allowed in this zone; provided, that such facilities meet the state siting criteria adopted pursuant to the requirements of RCW 70.105.210;
- (3) Television satellite dish reflectors, roof-mounted and within building setback lines not to exceed 35-foot height limitations;
- (4) Outdoor storage as an accessory use is not permitted.

19.20.280 Conditional uses permitted.

The following principal uses and their accessory uses may be permitted in a C-1 district when authorized by the hearing examiner:

- (1) Church;
- (2) Excavations, other than simple foundation;
- (3) Garages, for storage only of automobiles as an accessory to a public or quasi-public institution;
- (4) Governmental buildings for administrative or protective service, government storage yards, treatment plants, well sites, pump stations and sanitary landfills;
- (5) Landfill, reclamation to improve steep, low or otherwise unusable land;
- (6) Nursery and landscape material including greenhouses;
- (7) Public transportation shelter stations;
- (8) Public utility and communications facility, such as a branch telephone exchange, static transformer, booster station, pumping station; provided there shall be no service or storage building or yards in connection therewith, including microwave relay stations;
- (9) Rapid transit terminals;
- (10) Roller rink;
- (11) Swimming pools or beaches, public or private.

19.20.285 Density provisions.

In a C-1 district, the following density provisions apply:

- (1) Multifamily dwelling structures shall conform to the requirements of the R-4 district;
- (2) Other uses shall conform to the following standards:
 - (a) Minimum lot area, 5,000 square feet;
 - (b) Minimum lot width, 50 feet;
 - (c) Minimum lot depth, 90 feet;
 - (d) Minimum front yard, 15 feet;
 - (e) Minimum side yard, 10 feet each side;
 - (f) Minimum side yard along flanking street of corner lot, 15 feet;
 - (g) Minimum rear yard, 20 feet;
 - (h) Minimum rear yard abutting a public street, 15 feet;
 - (i) Maximum building height, 35 feet;
 - (j) Maximum lot coverage, 60 percent of lot area.

19.20.290 Conditions governing permitted uses.

Uses permitted in a C-1 district, except conditional uses and dwellings, shall be subject to the following conditions:

- (1) All business, service, repair, processing, storage, or merchandise display shall be conducted within a wholly enclosed building except for the following:
 - (a) Off-street parking or loading;
 - (b) Drive-in windows, but not including food or drink service;
 - (c) Food and drink service in connection with a delicatessen or confectionery;
 - (d) Sale of plant materials in connection with a florist shop;
- (2) Items produced or wares and merchandise handled shall be limited to those sold at retail on the premises;
- (3) The use shall not be objectionable because of odor, dust, smoke, cinders, exhaust fumes, noise, vibration, disturbance to television or radio reception or because of unsightly structure, facilities or use of land;
- (4) Design shall be in accordance with the provisions of the design guidelines;
- (5) Landscaping and buffers shall be constructed and maintained in accordance with the provisions of Chapter 19.46 OHMC.

19.20.295 Site plan and design review required.

- (1) Site plan and design review shall be required as defined in Chapter 19.48 OHMC.
- (2) The planning director, under site plan review, may impose the following conditions before a building permit will be issued for the proposed development:
 - (a) Limit or prohibit openings to structures on sides within 50 feet of a residential district if the openings will cause glare, excessive traffic, noise or other adverse effects on adjacent residential areas;
 - (b) Access shall be limited to streets designated as collector or arterial streets in the comprehensive plan;
 - (c) Require additional setbacks and landscaping or screening abutting a residential district if necessary to minimize the detrimental effects of commercial activity such as glare and noise.

Article VIII. CBD – Central Business District

19.20.300 Purpose and intent.

The central business district (CBD) is intended to preserve and enhance the unique harbor location of the city's heritage with the character of the traditional center of social, cultural and retail activity. Mixed use developments, combining retail and visitor-oriented activities on the ground floor with office, retail and residential uses above, are required. Within the district,

pedestrian-oriented activity is encouraged. Standards and design guidelines are adopted to enhance and maintain a pedestrian-friendly environment. Incentives are also provided to encourage the development of mixed use projects. Subdistricts CBD-1 and CBD-2 are created in order to provide for flexibility of residential development within specific areas of the central business district. Large surface parking lots are not encouraged. Shared clustered parking areas in the middle of blocks are allowed away from street frontages. Access driveways are to be kept at a minimum to promote safety and convenience of pedestrians.

19.20.305 Principal permitted uses.

In a central business district (CBD, CBD-1 or CBD-2), the following are principal permitted uses (for the purposes of this district only, uses considered to be "retail" are denoted with an (R)):

- (1) Antique shop (R);
- (2) Artist's studios and supplies (R);
- (3) Bakery, retail only (R);
- (4) Bank;
- (5) Barber and beauty shops;
- (6) Bars (R);
- (7) Bicycle shop (R);
- (8) Billiards and pool hall (R);
- (9) Blueprinting;
- (10) Bookstore (R);
- (11) Brew pub (R);
- (12) Camera and supply shop (R);
- (13) Clothes and apparel shop (R);
- (14) Cocktail lounge (R);
- (15) Coffee house (R);
- (16) Confectionery store (R);
- (17) Conference center;
- (18) Data processing facility;
- (19) Delicatessen (R);
- (20) Department store (R);
- (21) Dry cleaners;
- (22) Furniture shop (R);
- (23) Florist shop (R);
- (24) Gift shop (R);
- (25) Grocery store, neighborhood, provided gross floor area shall not exceed 12,000 square feet (R);
- (26) Hardware store (R);
- (27) Hobby shop (R);
- (28) Hotel and motel;
- (29) Ice cream shop (R);
- (30) Interior decorator studio (R);
- (31) Jewelry store (R);
- (32) Leather goods store (R);
- (33) Music store (R);
- (34) Offices;
- (35) Office supply and equipment store (R);
- (36) Pet shop (R);
- (37) Pharmacy and drug store (R);
- (38) Photographic film processing and associated retail sales (R);
- (39) Photographic studio and supplies;

- (40) Photocopying;
- (41) Post office;
- (42) Printing shop;
- (43) Residential uses, provided:
 - (a) In the CBD district: mixed use sites with multiple street frontages may locate dwelling units on the ground level on any street frontages other than Pioneer Way;
 - (b) In subdistricts CBD-1 or CBD-2: dwelling units may be the primary use of the site;
- (44) Restaurant, including sidewalk cafe (R);
- (45) Schools for the fine arts;
- (46) Shoe repair shop (R);
- (47) Shoe store (R);
- (48) Sporting goods shop (R);
- (49) Tailor shop (R);
- (50) Tavern (R);
- (51) Taxi service;
- (52) Theater;
- (53) Tobacco shop (R);
- (54) Toy store (R);
- (55) Travel agencies;
- (56) Trophy shop (R);
- (57) Upholstery shop;
- (58) Variety store (R);
- (59) Visitor information center;
- (60) Other uses similar to those identified above and having equal or less impact on the purposes of this section.

19.20.310 Accessory permitted uses.

In a central business district (CBD, CBD-1, or CBD-2), the following are accessory permitted uses:

- (1) A use customarily incidental and subordinate to a principal use permitted outright;
- (2) On-site hazardous waste treatment and storage facilities as an accessory use to any activity generating hazardous waste and lawfully allowed in this zone; provided, that such facilities meet the state siting criteria adopted pursuant to the requirements of RCW 70.105.210;
- (3) Television satellite dish reflectors, roof-mounted and within building setback lines not to exceed the height limitations and other standards as set out in OHMC 19.20.320; provided said height limitation may be increased when such height is permitted per OHMC 19.28.040 and 19.28.050.

19.20.315 Conditional uses permitted.

The following principal uses and their accessory uses may be permitted in a central business district (CBD, CBD-1, or CBD-2) when authorized by the hearing examiner:

- (1) Coffee kiosk;
- (2) Dancehall;
- (3) Governmental buildings for administrative or protective services;
- (4) Health club;
- (5) Land reclamation with water-dependent marine development;
- (6) Parking lots or garages not in conjunction with permitted uses;
- (7) Places of entertainment and amusement, if conducted within a wholly enclosed building;

- (8) Private nursery school, kindergarten, or child day care center not qualifying as a home occupation on a legal lot; provided there is established in connection therewith an outdoor play area having a minimum area of 1,000 square feet plus an additional 50 square feet for each child in excess of eight;
- (9) Public utility and communications facility;
- (10) Transit terminals;
- (11) Swimming pools or beaches, public or private;
- (12) Other uses similar to uses permitted or conditionally permitted and normally located in the central business district; provided, that there shall be no manufacturing, compounding, processing or treatment of products other than that which is essential to the retail store or business where all such products are sold on the premises.

19.20.320 Density provisions.

In CBD, CBD-1 and CBD-2, the following density provisions apply:

- (1) Allowable density:

District	Minimum	Maximum
CBD	None	None
CBD-1	9 du/ac	None
CBD-2	13 du/ac	None

- (2) Minimum lot area, no limitation;
- (3) Minimum lot width, no limitation;
- (4) Minimum lot depth, no limitation;
- (5) Minimum front yard, no limitation, except when opposite a residentially zoned property, then a 10-foot front yard is required. Front yard setback may also be increased to 10 feet if needed for traffic safety; front yard setback shall be provided so as to maintain a 12-foot sidewalk measured from the existing curb or future curb line;
- (6) Minimum side yard, no limitation except when abutting a residentially zoned property, then 10 feet each. For corner lots, side yard may also be increased to 10 feet if needed for traffic safety;
- (7) Minimum rear yard, no limitation except when opposite a residentially zoned property, then 10-foot rear yard is required or except when abutting a public street where the setback may be increased to 10 feet if needed for traffic safety;
- (8) Maximum building height; 35 feet; except:
 - (a) In CBD: building height may be increased to 45 feet if ground floor retail space (as defined in OHMC 19.20.300) is developed in conjunction with a residential use;
 - (b) In CBD-2: building height may be increased to 45 feet for residential development (without a retail component);
 - (c) In CBD: building height may be increased to 45 feet for nonresidential uses or mixed use projects upon approval of the design review board and by providing additional urban amenities as defined in the Oak Harbor commercial and industrial design guidelines;
 - (d) In CBD: building height may be increased to 55 feet for nonresidential uses or mixed use projects upon approval of the design review board and by providing additional urban amenities as defined in the Oak Harbor commercial and industrial design guidelines. The design review board shall specifically review the proposed project and building height for its impacts on waterfront and mountain views and require reasonable mitigation as necessary;
- (9) Maximum lot coverage, no limitation;

- (10) Parking.
 - (a) Nonresidential Uses. There shall be no required parking for nonresidential uses; except, however, if parking is provided it shall meet the parking space size and access requirements of OHMC 19.44.110;
 - (b) Residential uses shall provide parking per Chapter 19.44 OHMC, except that guest parking need not be provided. If guest parking is provided it shall meet the parking space size and access requirements of OHMC 19.44.110;
 - (c) Any parking provided beneath a permitted residential use shall be enclosed;
 - (d) No more than 50 percent of the gross floor area along pedestrian-oriented streets may be used for residential parking;
- (11) Design Standards.
 - (a) Development shall be in accordance with the provisions of the Oak Harbor commercial and industrial design guidelines;
 - (b) Residential development shall have ground level access independent of nonresidential uses from an inside lobby, elevators and/or corridors, from an enclosed interior court, or from other separate access provisions;
 - (c) Nonresidential development along Pioneer Way, between SE City Beach Street and SE Midway Boulevard, shall meet the following standards:
 - (i) Ground-floor, nonretail development shall not comprise more than 50 percent of the lineal street frontage of the lot;
 - (ii) Window areas for nonresidential portions of a building's facades shall not be less than 40 percent or greater than 60 percent of the total facade area;
 - (iii) Conformance with the above standards shall be determined by using the design guideline applicability standards established under OHMC 19.48.040;
 - (d) Residential development in subdistrict CBD-1 or CBD-2 shall be under a planned residential development per Chapter 19.31 OHMC;
 - (e) Nonresidential development with building heights greater than 45 feet, as approved by the design review board, shall provide a minimum of 450 square feet of pedestrian-oriented space (as defined in the Oak Harbor commercial and industrial design guidelines) plus an additional 25 square feet for each vertical foot of building height above 45 feet;
 - (f) All buildings in the CBD greater than three stories must set back upper stories by at least 10 feet.

19.20.325 Conditions governing permitted uses.

All principal uses permitted outright in a CBD, CBD-1, or CBD-2 district shall meet the following conditions:

- (1) All business, service, repair, storage, or merchandise display shall be conducted within a wholly enclosed building, except for the following:
 - (a) Off-street parking and loading;
 - (b) Food and drink service in connection with cafes, restaurants or other eating establishments.
- (2) The use of property must not result in the creation of offensive odors or offensive or harmful quantities of dust, smoke, exhaust fumes, noise or vibration.
- (3) Landscaping and buffers shall be constructed and maintained in accordance with the provisions of Chapter 19.46 OHMC.

19.20.330 Site plan and design review required.

Site plan and design review shall be required as per Chapter 19.48 OHMC.

Article IX. C-3 – Community Commercial

19.20.335 Purpose and intent.

The C-3 community commercial district is intended to provide for those types of retail, wholesale, transportation, and service uses which, because of traffic and other requirements, depend upon particular locations to serve the needs of the community and its trading area. Generally, the permitted uses require large sites and access from either major or minor arterials. This district also supports mixed use developments except in proximity to NAS Whidbey Ault Field where residential uses should be restricted.

19.20.340 Principal permitted uses.

In a C-3 district, the following are principal uses permitted outright:

- (1) Any principal use permitted in a C-1 and CBD district, provided that dwelling units are:
 - (a) For properties located south of the adopted alignment of NE 16th Avenue (existing or future) between Regatta Drive and Heller Road are:
 - (i) Above and secondary to essential or primary floor uses;
 - (ii) Accessed at the ground level access is independent of the business uses from an inside lobby, elevators, and/or corridors, and an enclosed interior court, or other separate access provisions;
 - (b) Are not permitted on properties located north of the adopted alignment of NE 16th Avenue (existing or future) between Regatta Drive and Heller Road;
- (2) Amusement enterprise including bowling alley, roller or ice rink, dancehall, shooting gallery, and trampoline;
- (3) Animal hospital when located not closer than 200 feet from a residential zoning district, provided all animals are housed in a completely enclosed building;
- (4) Assembly hall;
- (5) Automobile or truck service station;
- (6) Automobile repair of all kinds, including body and fender work, provided there shall be no wrecking, junking, dismantling, or salvaging operations;
- (7) Automobile sales and service;
- (8) Bakery;
- (9) Book publishing and binding;
- (10) Car wash;
- (11) Contractor's plants and storage yards;
- (12) Currency exchange;
- (13) Extended stay motel;
- (14) Feed and seed store, retail or wholesale;
- (15) Film processing plant;
- (16) Grocery store;
- (17) Laboratory for experimental or research work or testing;
- (18) Laundry and dry cleaning, dyeing, or rug cleaning plant;
- (19) Nursery and landscape material including greenhouses;
- (20) Offices;
- (21) Plumbing shop;
- (22) Places of entertainment;
- (23) Recycling of glass and metal cans when conducted within a wholly enclosed building, including scrap paper or rag storage;
- (24) Shopping centers;
- (25) Sign shop, but not manufacture or assembly of electrically illuminated signs;
- (26) Supermarket;
- (27) Taxidermist;

- (28) Upholstery shop;
- (29) Veterinary clinic (hospital) (see animal hospital);
- (30) Other uses of similar character, but not including a specific listed industrial use permitted in an I industrial district, subject to approval by the city council;
- (31) Other uses as defined by the planning director to be similar to those identified above and having equal or less impact on the purposes of this section.

19.20.345 Accessory permitted uses.

In a C-3 district, the following are accessory uses permitted outright:

- (1) A use customarily incidental and subordinate to a principal use permitted outright;
- (2) On-site hazardous waste treatment and storage facilities as an accessory use to any activity generating hazardous waste and lawfully allowed in this zone; provided, that such facilities meet the state siting criteria adopted pursuant to the requirements of RCW 70.105.210;
- (3) Television satellite dish reflectors, roof-mounted and within building setback lines not to exceed 35-foot height limitations.

19.20.350 Conditional uses permitted.

The following principal uses and their accessory uses may be permitted in a C-3 district when authorized by the hearing examiner:

- (1) Conditional uses permitted in a C-1 and CBD district;
- (2) Drive-in theater;
- (3) Fuel oil distribution, retail and wholesale, provided incidental storage is maintained underground;
- (4) Fuel yard;
- (5) Go-kart tracks;
- (6) Gymnasium;
- (7) Lumber yard, retail or wholesale, including building supplies, hardware, and related items;
- (8) Mobile home and trailer sales lot;
- (9) Mortuary;
- (10) Outdoor use, activity or storage only in conjunction with a permitted use. A solid sight-obscuring fence or other appropriate screening approved by the planning director is required around the outside edges of the area devoted to the outdoor use, activity or storage. The height of outdoor storage abutting public streets or residential zones shall not be higher than the height of the screen device approved by the planning director. Outdoor use, activity or storage areas located adjacent to C-3 property may be located in the required interior side and rear setback yards. All outdoor use, activity or storage areas located adjacent to residential zones must meet required setbacks for the primary use. No outdoor use, activity or storage shall be permitted in the front yard setback;
- (11) Produce stand;
- (12) Schools for drop-out and at-risk students;
- (13) Stadium;
- (14) Truck terminal;
- (15) Wholesale warehouse or storage establishments, but only occupying a completely enclosed building.

19.20.355 Density provisions.

In a C-3 district, the following provisions apply:

- (1) Minimum lot area, no limitation;
- (2) Minimum lot width, no limitation;
- (3) Minimum lot depth, no limitation;

- (4) Minimum front yard, 35 feet. The building setback may be reduced to 15 feet if the entire setback area from property line to building is landscaped where reduction occurs;
- (5) Minimum side yard, no limitation, except when abutting a residentially zoned property, then 30 feet each. For corner lots, the side yard abutting a public street shall be the same as the front setback;
- (6) Minimum rear yard, no limitation, except when abutting a public street, then it shall be the same as the front setback;
- (7) Maximum building height, 35 feet;
- (8) Maximum lot coverage, no limitation.

19.20.360 Conditions governing permitted uses.

All principal uses permitted outright in a C-3 district shall meet the following requirements:

- (1) With the exception of sales lots, outside storage or equipment yard, or yards containing outside industrial operation in connection with a use permitted outright or a conditional use in a C-3 district abutting, adjoining, or located across a street from a residential zoning district, or located along a street designated by the comprehensive plan as a state highway, or a major or secondary arterial, shall be enclosed by a fence. The fence shall be sight-obscuring, obstructing the storage from view on the sides of the property abutting, adjoining, or facing a residential district. The fence shall be of such material and design as will not detract from adjacent residences and shall be built according to plans submitted by the owner or his authorized agent and approved by the planning director. In no case shall the fence be required to have a height in excess of 10 feet;
- (2) Automobile, mobile home or trailer sales lots shall be drained and surfaced with crushed rock except in those portions of the lot maintained as landscape areas;
- (3) The use of property shall not be objectionable because of odor, dust, smoke, cinders, exhaust fumes, noise, or vibration, or because of unsightly structures, facilities or open storage;
- (4) Design shall be in accordance with the provisions of the Oak Harbor design guidelines;
- (5) Landscaping and buffers shall be constructed and maintained in accordance with the provisions of Chapter 19.46 OHMC.

19.20.365 Site plan and design review required.

Site plan and design review shall be required as defined in Chapter 19.48 OHMC.

19.20.368 Relation to aviation environs overlay zone.

Property located in an aviation environs overlay zone, as governed in Chapter 19.50 OHMC, shall meet the requirements for noise attenuation in Chapter 17.30 OHMC and the comprehensive plan land use element.

Article X. C-4 – Highway Service Commercial

19.20.370 Purpose and intent.

The C-4 highway service commercial district is intended to permit the establishment of facilities oriented toward uses dependent upon highway location. The district is primarily intended to allow for the concentration of automobile and other motor vehicle sales centers. Other commercial and limited industrial activities are also permitted. The uses permitted by this district are compatible with the NAS Whidbey AICUZ Study. Access to the highway is controlled so as to minimize conflicts and maximize traffic efficiencies.

19.20.375 Principal permitted uses.

The following uses are permitted outright in the C-4 district:

- (1) Automobile and truck service stations;

- (2) Automobile sales and service;
- (3) Boat sales and boat repair;
- (4) Car washes;
- (5) Coffee kiosks;
- (6) Contractor offices and related storage;
- (7) Drive-in banks;
- (8) Equipment rental;
- (9) Farm and garden supplies, plant nurseries;
- (10) Furniture manufacturing;
- (11) Furniture sales;
- (12) Mobile and modular home sales;
- (13) Printing and publishing;
- (14) Professional and scientific instrument manufacturing;
- (15) Real estate sales;
- (16) Recreational vehicle sales;
- (17) Restaurants;
- (18) Retail or wholesale building supplies and hardware;
- (19) Self-storage facilities.

19.20.380 Accessory permitted uses.

The following uses are permitted as accessory uses to a permitted use in the C-4 district:

- (1) A use customarily incidental and subordinate to a principal use permitted outright;
- (2) On-site hazardous waste treatment and storage facilities as an accessory use to any activity generating hazardous waste and lawfully allowed in this zone; provided, that such facilities meet the state siting criteria adopted pursuant to the requirements of RCW 70.105.210;
- (3) Television satellite dish reflectors, roof-mounted and within building setback lines not to exceed 35-foot height limitations.

19.20.385 Prohibited uses.

No building, structure or premises, or a portion thereof, established after the effective date of the ordinance codified in this chapter shall be used for human habitation, permanent, transient or temporary, except as quarters for a caretaker, guard or other person whose permanent residency on the premises is required for operational safety or protective purposes.

19.20.390 Conditional uses permitted.

The following principal uses and their accessory uses may be permitted in a C-4 district when authorized by the hearing examiner:

- (1) Amateur radio tower and antenna;
- (2) Government buildings for administrative or protective services;
- (3) Government storage yards, treatment plants, well sites, pump stations;
- (4) Public transportation shelter stations;
- (5) Public utility and communications facility;
- (6) Radio and television broadcasting stations and towers;
- (7) Crematorium or mortuary, but only if adjacent to or across the street from a cemetery.

19.20.395 Density provisions.

In a C-4 district, the following density provisions apply:

- (1) Minimum Lot Size. There is no minimum lot size for this district; provided, that no residence for a caretaker, guard or other person whose permanent residency on the premises is required for operational safety or protective purposes shall be erected, maintained or enlarged on a lot which is less than 6,000 square feet;

- (2) There is no minimum lot depth;
- (3) There is no minimum lot width;
- (4) Front setback shall be 35 feet;
- (5) There is no side setback except as follows:
 - (a) Along side lot lines abutting residentially zoned property there shall be a 10-foot setback;
 - (b) For corner lots the side setback shall be 15 feet, except that the city council may approve a variable setback of not less than the established building line of the adjoining property after consideration at a public meeting or public hearing;
- (6) There is no minimum rear setback except where abutting a street. In the case of a lot where the rear lot line abuts a street, the rear setback shall be 15 feet;
- (7) Maximum building height, 35 feet;
- (8) Maximum lot coverage, no limitation.

19.20.400 Conditions governing permitted uses.

All principal uses permitted outright in a C-4 district shall meet the following requirements:

- (1) Design shall be in accordance with the provisions of the design guidelines;
- (2) Landscaping and buffers shall be constructed and maintained in accordance with the provisions of Chapter 19.46 OHMC;
- (3) Access to SR 20 is limited to a circulation plan approved under Chapter 19.48 OHMC. Access to individual parcels may be permitted through adjacent parking lots;
- (4) Automobile and boat sales lots shall be drained and paved or surfaced with crushed rock except in those portions of the lot maintained as landscaped areas;
- (5) The use of property shall not be objectionable because of odor, dust, smoke, cinders, exhaust fumes, noise or vibration, or because of unsightly structures, facilities or open storage;
- (6) Outdoor Use, Activity or Storage Only in Conjunction with a Permitted Use. A solid sight-obscuring fence or other appropriate screening approved by the planning department is required around the outside edges of the area devoted to the outdoor use, activity or storage. The height of outdoor storage abutting public streets or residential zones shall not be higher than the height of the screen device approved by the planning department. Outdoor use, activity or storage areas located adjacent to C-4 property may be located in the required interior side and rear setback yards. All outdoor use, activity or storage areas located adjacent to residential zones must meet required setbacks for the primary use. No outdoor use, activity or storage shall be permitted in the front yard setback;
- (7) Towers, antennas or other objects exceeding 200 feet above the ground or that penetrate the 100:1 angle slope criteria established in Federal Aviation Regulation (FAR) Part 44 (Sections 77.13(a)(1) and 77.13(a)(2)(I), respectively) shall be reviewed for compatibility with airport operations. No tower, antenna or other object shall constitute a hazard to air navigation, interfere with the safe operation of aircraft or deny the existing operational capability of Ault Field.

19.20.405 Site plan and design review required.

Site plan and design review shall be required as defined in Chapter 19.48 OHMC.

19.20.408 Relation to aviation environs overlay zone.

Property located in an aviation environs overlay zone shall meet the requirements for land use compatibility in Chapter 19.50 OHMC, noise attenuation in Chapter 17.30 OHMC and the comprehensive plan land use element.

Article XI. C-5 – Highway Corridor Commercial

19.20.410 Purpose and intent.

The C-5 highway corridor commercial district is intended to provide for those types of uses which, because of traffic and other requirements, are regional in impact and may be located in the highway corridor. It is intended to provide a means of allowing these uses along the highway corridor but with limited access to SR 20.

19.20.415 Principal permitted uses.

Principal uses permitted outright in a C-5 district are:

- (1) Any principal use permitted in a C-1 and CBD district, provided dwelling units are:
 - (a) Above and secondary to essential or primary floor uses;
 - (b) Ground level access is independent of the business uses from an inside lobby, elevators, and/or corridors, and an enclosed interior court, or other separate access provisions;
- (2) Animal hospital when located not closer than 200 feet from a residential district, provided all animals are housed in a completely enclosed building;
- (3) Assembly hall;
- (4) Automobile service station;
- (5) Bakery;
- (6) Dry cleaning or laundry establishment, pickup and delivery only;
- (7) Feed and seed store, retail or wholesale;
- (8) Grocery store;
- (9) Gymnasium and sports center;
- (10) Movie theater;
- (11) Nursery and landscape material including greenhouses;
- (12) Offices;
- (13) Places of entertainment;
- (14) Plumbing shop;
- (15) Shopping centers;
- (16) Supermarket;
- (17) Veterinary clinic (hospital);
- (18) Other uses as defined by the planning director to be similar to those identified above and having equal or less impact on the purposes of this section.

19.20.420 Accessory permitted uses.

Accessory uses permitted outright in a C-5 district are:

- (1) A use customarily incidental and subordinate to a principal use permitted outright;
- (2) On-site hazardous waste treatment and storage facilities as an accessory use to any activity generating hazardous waste and lawfully allowed in this zone; provided, that such facilities meet the state siting criteria adopted pursuant to the requirements of RCW 70.105.210;
- (3) Television satellite dish reflectors, roof-mounted and within building setback lines not to exceed 35-foot height limitations.

19.20.425 Conditional uses permitted.

The following principal uses and their accessory uses may be permitted in a C-5 district when authorized by the hearing examiner:

- (1) Conditional uses permitted in a C-1 and CBD district;
- (2) Home improvement center;
- (3) Retail or wholesale building supplies, hardware and related items;
- (4) Produce stand.

19.20.430 Density provisions.

Density provisions in a C-5 district are as follows:

- (1) Minimum lot area, no limitation;
- (2) Minimum lot width, no limitation;
- (3) Minimum lot depth, no limitation;
- (4) Minimum front yard, 50 feet from any adjoining public street right-of-way. The building setback may be reduced to 30 feet if the entire setback area from property line to building is landscaped where reduction occurs;
- (5) Minimum side yard, 30 feet. For corner lots, the side yard abutting a public street shall be the same as front setback;
- (6) Minimum rear yard, 50 feet, except when abutting a public street it shall be the same as front setback;
- (7) Maximum building height, 35 feet;
- (8) Maximum lot coverage, no limitation.

19.20.435 Conditions governing permitted uses.

All principal uses permitted outright in a C-5 district shall meet the following conditions:

- (1) Design shall be in accordance with the provisions of the design guidelines;
- (2) Landscaping and buffers shall be constructed and maintained in accordance with the provisions of Chapter 19.46 OHMC;
- (3) The use of property shall not be objectionable because of odor, dust, smoke, cinders, exhaust fumes, noise, or vibration, or because of unsightly structures, facilities or open storage;
- (4) Access to SR 20 highway is limited to an approved circulation plan. Access to individual parcels may be permitted through adjacent parking lots.

19.20.440 Site plan and design review required.

Site plan and design review shall be required as defined in Chapter 19.48 OHMC.

Article XII. PBP – Planned Business Park

19.20.445 Purpose and intent.

The purpose and intent of the planned business park (PBP) district is to:

- (1) Allow the development of larger-scaled master planned developments related to businesses;
- (2) Preserve or create environmental amenities superior to those generally found in conventional developments;
- (3) Encourage comprehensive planning of large business park sites in order to create a park-like environment;
- (4) Preserve to the greatest possible extent the natural characteristics of the land, including topography, significant natural vegetation, waterways, views, etc.;
- (5) Establish development standards which provide compatibility with surrounding residential, commercial or other developments and offer protection from blight;
- (6) Provide for maximum efficiency in the layout of streets, utility networks, open space, landscaping requirements and other public improvements;
- (7) Provide a guide for developers, city officials and the planning commission in meeting the purpose and provisions of this section.

19.20.450 Principal permitted uses.

Primary uses permitted in the planned business park district provide a broad range of activities including research, light assembly and light manufacturing. Specific primary types of uses allowable include:

- (1) Assembly, manufacture, packaging, compounding or treatment of articles or merchandise

from the following previously prepared materials: cloth, glass, lacquer, leather, paper, plastics, precious or semi-precious metals or stones, wood (excluding sawmills, lumber mills and planing mills), paint, clay, sand, rubber;

- (2) Printing, publishing and book binding;
- (3) Manufacturing, processing and packaging of food, pharmaceuticals, toiletries, cosmetics, optical goods, scientific instruments and equipment, and precision instruments and equipment;
- (4) Scientific research, testing and experimental development laboratories;
- (5) Corporate headquarters, regional headquarters and administrative offices of commercial, industrial, financial, charitable or governmental institutions;
- (6) Uses similar to, related to, or compatible with those listed or described in this chapter are permitted upon a finding by the planning director that a proposed use does not conflict with the intent of this section or the policies of the Oak Harbor comprehensive plan. The criteria for such finding of similarity, relationship or compatibility shall include, but is not limited to, the following:
 - (a) The proposed use will not unreasonably adversely impact surrounding uses;
 - (b) The development standards for permitted uses can be met by the proposed use;
 - (c) Impacts, such as traffic, noise and air quality, will not be significantly different than those generated by permitted uses.

19.20.455 Accessory permitted uses.

Accessory uses complement but do not conflict with the primary use. Specific secondary types of uses allowable include:

- (1) Warehousing and distribution facilities and the storage of goods or products clearly subordinate to, and an integral part of, the primary permitted uses;
- (2) Engineering, development, administrative or executive offices which are part of a primary use;
- (3) Retail development may be permitted where it can be demonstrated that the business park will be clearly and primarily benefited by the convenience of such retail facilities. The total square footage devoted to retail development shall not exceed 15 percent per phase of the developable floor area of the business park district in which it is located or district cumulative total. The total square footage of a single retail use may not exceed 7,500 square feet and the total square footage of all retail uses may not exceed 25 percent of a building's gross floor area. Signs for retail uses shall be visible only within the business park area and attached to the building wall. Retail uses include:
 - (a) Support retail, such as food and drug stores, banks and office supplies;
 - (b) Personal services such as barber and beauty shops, dry cleaning, laundry;
 - (c) Business services, such as printing and copying, photo processing, postal/mail, word processing, travel agencies;
 - (d) Food services, such as delicatessens, restaurants (except drive-through windows), brew pubs;
 - (e) Recreation facilities, except mechanical or electronic games centers, theaters (live and movie) and games of skill such as bowling;
- (4) Day care centers;
- (5) Showrooms and galleries;
- (6) Hotels and conference centers; and
- (7) Caretaker's quarters.

19.20.460 Prohibited uses.

- (1) All uses or activities which would require extraordinary equipment, devices or technology for the control of odors, dust, fumes, smoke, noise or other wastes and/or

byproducts which, if uncontrolled, would contaminate the environment to a degree unacceptable by contemporary community standards; or which would exceed the acceptable limits established by competent and recognized public and quasi-public agencies for the protection of industrial and/or environmental health. Such uses include, but are not limited to, the following:

- (a) Manufacturing involving outdoor storage;
 - (b) Manufacture or storage of explosives;
 - (c) Stockyards, dairies, slaughterhouses, rendering plants, canneries, breweries, wineries and other agricultural industries;
 - (d) Petroleum refineries;
 - (e) Bulk fuel storage, unless stored in tanks and accessory to a permitted use occurring on the same lot;
 - (f) Truck parking, repair and maintenance unless accessory to a permitted use located on the same lot;
 - (g) Cement manufacturing;
 - (h) Blast furnaces;
 - (i) Smelting;
 - (j) Drop forge industries;
 - (k) Fertilizer manufacture;
 - (l) Sanitary landfills;
 - (m) Waste to energy facilities;
 - (n) Solid waste transfer stations;
 - (o) Sewage treatment plants;
 - (p) Lumber, pulp or paper mills;
 - (q) Cargo container storage;
 - (r) Asphalt or concrete batch plant;
- (2) Single-family or multifamily residences.

19.20.465 Site requirements.

In a PBP district, the following minimum site requirements shall apply:

- (1) Minimum site acreage for the development of a new planned business park district: 20 acres;
- (2) Minimum area for an existing lot or for a lot within a planned business park plat district: 2.5 acres unless, as provided in a binding site plan, it may be less;
- (3) Minimum lot width: 100 feet;
- (4) Minimum lot depth: 200 feet;
- (5) Minimum area for a subdivision plat is 10 acres which must be coordinated with the surrounding properties such as circulation, access, pedestrian and bike paths.

19.20.470 Building heights.

Permitted building height is determined by the distance the building is separated from any residential zone, or from any area designated in the Oak Harbor comprehensive plan for residential uses, as follows:

- (1) Less than 100 feet: 35 feet in height;
- (2) One hundred one feet and above: 50 feet in height;
- (3) Two hundred feet and above: 65 feet in height.

19.20.475 Building coverage.

The maximum building coverage shall not exceed 40 percent of the total lot area.

19.20.480 Building setbacks.

In a PBP district, all buildings and structures, except for fencing, shall meet the following

minimum setback requirements:

- (1) Front yard: 30 feet. In cases where no parking or service occurs between the face of the building and the street, the front yard may be reduced to 15 feet;
- (2) Interior side yards: 15 feet or zero as established by master plan;
- (3) Corner lot abutting a street: 30 feet. In cases where no parking or service occurs between the face of the building and the street, the side yard may be reduced to 20 feet;
- (4) Rear yard: 15 feet or zero as established by master plan;
- (5) When abutting any residential zoned property or any area planned for residential uses under the Oak Harbor comprehensive plan, the minimum setback shall be 50 feet.

19.20.485 Loading areas.

- (1) Truck loading and maneuvering areas shall not be located within the required building setback areas.
- (2) Truck loading and unloading shall not be permitted on streets.
- (3) Truck loading and unloading areas, parking and maneuvering areas shall be screened by a sight-obscuring fence eight feet in height, except when stored materials cannot be seen from any public roadway or from surrounding properties.

19.20.490 Off-street parking.

- (1) The total required off-street parking facilities shall be in accordance with Chapter 19.44 OHMC.
- (2) Parking lots shall be landscaped in accordance with Chapter 19.46 OHMC.

19.20.495 Building design.

- (1) Buildings and structures should be designed in accordance with the Oak Harbor commercial and industrial design guidelines.
- (2) Buildings shall be sited so as not to project or reflect natural or artificial light or glare into residential zoned areas or areas planned for residential uses under the Oak Harbor comprehensive plan.
- (3) Mechanical equipment located on the roof, facade, or external portion of a building shall be architecturally screened by including the equipment in the building or site design so as not to be visible from adjacent properties or public streets.
- (4) Equipment or vents which generate noise or air emissions shall be located on the opposite side of the building from adjoining residentially zoned properties.

19.20.500 Landscaping requirements.

- (1) The following requirements are in addition to the requirements contained in Chapter 19.46 OHMC:
 - (a) A minimum of 10 percent of the site will be retained as open space and/or common recreation area in addition to the minimum landscaping requirements and setbacks;
 - (b) Existing natural vegetation and significant stands of trees should be retained in accordance with Chapter 19.46 OHMC.
- (2) Additional landscaping may be required in order to protect surrounding uses and to meet the intent and purpose of this section and the Oak Harbor comprehensive plan.

19.20.505 Environmental performance standards.

It shall be the responsibility of the operator and/or the proprietor of any permitted use to provide such reasonable evidence and technical data as the planning director may require to demonstrate that the use or activity is or will be in compliance with this title and all federal, state and city requirements, codes and standards. Failure of the planning director to require such information shall not be construed as relieving the operator and/or proprietor from compliance with this title

and all state, federal and city requirements, codes and standards.

19.20.510 Relation to aviation environs overlay zone.

Property located in an aviation environs overlay zone, as governed in Chapter 19.50 OHMC, shall meet the requirements for noise attenuation in Chapter 17.30 OHMC and the comprehensive plan land use element.

19.20.515 Preapplication meeting.

Prior to formal submittal of the application, the applicant shall present to the planning department a preliminary site plan, which shall contain, in a rough and approximate manner, all of the information required for the application under OHMC 19.20.530. Upon submittal, the planning department shall schedule a meeting with representatives of applicable city departments. The planning director may also invite, because of the nature, size and scope of the development, others outside of the city to participate in the preapplication meeting. The purpose of the meeting is to enable the applicant to obtain the advice of city staff as to the intent, standards and provisions of this code with regard to the proposed plan. Information presented for and at the preapplication meeting shall not be a part of the public record as no applications are submitted for formal review.

19.20.520 Application requirements.

An application for approval of a proposed planned business park shall be made to the planning director upon forms furnished by the city. Application shall be made by the owner or owners of the parcel or parcels intended to be developed as a unit or their duly authorized agent or agents. The ownership of all parcels to be included must be represented in the application.

19.20.525 General standards and requirements – Professional design.

- (1) The applicant for all proposed planned business park developments shall certify that registered professional personnel will plan, guide and inspect the development and shall list the personnel by name, address and profession on the application. The planning director may direct the applicant, because of the nature, size and scope of the development, to utilize any or all of the following professions:
 - (a) An architect licensed by the state of Washington;
 - (b) A landscape architect licensed by the state of Washington;
 - (c) An urban planner holding a full membership in the American Institute of Certified Planners;
 - (d) A registered civil engineer licensed by the state of Washington.
- (2) One of the professional persons chosen shall be designated by the applicant as the applicant's representative in conferring with the planning commission and/or the city staff regarding the master plan and the execution thereof.
- (3) The selection of the professional coordinator of the design team will not limit the owner or the developer in consulting with the planning staff or the planning commission.

19.20.530 Preliminary master plan – Filing requirements.

The applicant shall file with the planning director a preliminary master plan, including the following:

- (1) A legal description of the site and plot plan indicating location of all existing and proposed adjacent streets, private rights-of-way and easements;
- (2) The proposed site plan and drawings shall include the following information:
 - (a) Topographic contours at a minimum interval of five feet;
 - (b) Individual trees over 12 inches in trunk diameter measured four feet above the base of the trunk in areas to be developed or otherwise disturbed;
 - (c) Existing and approximate proposed finished grades of the property with

162

- (d) Conceptual planning level, all drainage features; Conceptual planning level, location of all proposed structures together with the usage to be contained therein and approximate location of all entrances thereto and heights, and gross floor area thereof;
 - (e) Conceptual planning level location and nature of vehicular and pedestrian circulation features within the site and adjacent streets and alleys;
 - (f) The extent, location, arrangement, and proposed improvements of all off-street parking and loading facilities;
 - (g) The extent, location, arrangement and proposed improvements with conceptual planning level of all open space, landscaping, fences and walls;
 - (h) Architectural drawings, sketches and typical layouts demonstrating the planning and character of the proposed development;
- (3) Proposed conditions, covenants and restrictions, including continuous maintenance provisions for the project;
 - (4) A text describing conditions or features which cannot be adequately displayed on maps or drawings; and
 - (5) Proposed phasing.

19.20.535 Preliminary master plan – Staff recommendation.

After receiving the preliminary master plan, the planning director shall route the same to all appropriate city departments, and each department shall submit to the planning director comments and recommendations. After receiving such information from the city departments, the planning director shall present recommendations and conclusions before the planning commission at the public hearing upon the preliminary master plan.

19.20.540 Preliminary master plan – Public hearing.

The preliminary master plan shall be considered at a public hearing before the planning commission after notice given in the manner required in Chapter 18.20 OHMC.

19.20.545 Preliminary master plan – Planning commission review.

Following the public hearing, the planning commission may approve as proposed, approve with changes or disapprove the application and the accompanying master plan. The commission's action shall be based on the following criteria:

- (1) The proposal meets the requirements of this title;
- (2) The perimeter of the project shall be compatible with the land use of adjoining properties. Compatibility includes, but is not limited to, size, scale, mass and architectural design;
- (3) The proposal shall not be unreasonably detrimental to existing uses or potential surrounding land uses as defined by the Oak Harbor comprehensive plan.

19.20.550 Preliminary master plan – Council review.

If the commission approves said application, the city council shall be informed of such action and shall indicate its concurrence or disapproval. The determination of the council shall become final 10 days after the date of decision unless directed otherwise or appealed to the city council in accordance with OHMC 19.20.580.

19.20.555 Final master plans – Filing requirements.

Within one year after the approval or modified approval of the preliminary master plan, the applicant shall file with the planning director a final plan for the entire development or, when submission in stages has been authorized, for the first phase of development. The final plan shall conform in all major respects with the approved preliminary master plan. The final plan shall include all information included in the preliminary plan plus the following:

- (1) The location of water, sewer and drainage facilities;

- (2) Detailed building and landscaping plans and elevations;
- (3) The character and location of signs;
- (4) Plans for street improvements;
- (5) Grading or earth moving plans; and
- (6) Common lighting for streets, parking and common areas.

The final plan shall be sufficiently detailed to indicate fully the ultimate operation and appearance of the development. Fully drafted, properly executed legal documents are required by the planning commission for dedication or reservation of public facilities.

19.20.560 Final master plan – Staff recommendation.

After receiving the final master plan, the planning director shall route the same to all appropriate city departments, and each department shall submit to the planning director comments regarding the conformance of the final development to the preliminary master plan approval. After receiving such information from the city departments, the planning director shall present recommendations and conclusions to the planning commission.

19.20.565 Final master plan – Planning commission approval.

Upon receipt of the final master plan, the planning commission shall examine such plan and determine whether it conforms to all applicable criteria and standards and whether it conforms in all substantial respects to the previously approved planned business park permit. In the event the planning commission determines that the final master plan does not conform to the previously approved permit, they may require such changes in the proposed development or impose such conditions of approval as are, in its judgment, necessary to ensure conformity to the previous approval.

If the commission does grant final approval, the decision of the commission shall become final 10 days after the date of the final action unless appealed to the city council in accordance with OHMC 19.20.580; provided, that if all other requirements of this title have been met, the permit shall not be granted until the proper drafting, executing and recording (all at applicant's expense) of all documents necessary to fulfill the requirements of this title.

19.20.570 Modifications to the plan.

Requests for modifications of preliminary or final master plans shall be made in writing and shall be submitted to the planning department in the manner and form prescribed by the planning director.

- (1) Modifications up to 10 percent shall be deemed minor if the proposal does not change any of the following:
 - (a) Land use;
 - (b) Floor area ratio;
 - (c) General location or number of access points;
 - (d) The amount of open space;
 - (e) The amount of parking;
 - (f) The total square footage of structures;
 - (g) The amount and location of outdoor storage;
 - (h) The general height and character of the structures; and
 - (i) As described in the master plan provide for a percentage of change for modification.
- (2) Examples of minor modifications include but are not limited to lot line adjustments, minor relocations of buildings or landscaped areas, minor changes in phasing and timing, minor changes in building design, minor changes to outdoor storage and truck loading area and minor changes in elevations of buildings.
- (3) Minor modifications may be approved by the planning director.
- (4) Major modifications are those which, as determined by the planning director,

substantially change the basic design, floor area ratios, open space or other similar requirements or provisions. Major modifications to the master plans shall be reviewed by the planning commission and city council under the same process as outlined under OHMC 19.20.545 and 19.20.550.

19.20.575 Phased development.

Development of the project may be phased, in which case the preliminary master plan must indicate all phases and indicate how each phase shall relate to other phases. The information appearing in the preliminary master plan shall include how common open space areas, common parking areas, landscaping and buffer areas relate to the development and timing of each phase of development. Each phase may be processed separately as a final master plan review. The binding site plan process may be used if the property is to be subdivided.

19.20.580 Appeals to council.

- (1) Within 10 days after the date of decision by the planning commission on an application of approval of a preliminary or final master plan in accordance with OHMC 19.20.545 or 19.20.565 such approval may be appealed to the city council by the applicant, the permit holder or any other interested party. Such appeal shall be made on a form prescribed by the commission and shall be filed within the prescribed time with the office of the city clerk and must be accompanied by a filing fee of \$100.00. The appeal shall state specifically wherein it is claimed there was an error or abuse of discretion by the commission or wherein its decision is not supported by the evidence in the record or where ample consideration of good planning principles have not been made.
- (2) Upon receipt of such appeal, together with the filing fee, the city council shall set the time for consideration thereof. The city clerk shall notify the chairman of the planning commission of the receipt of said appeal and of the time set for consideration thereof and the city clerk shall, not less than five days prior to the date set for the hearing on the appeal, give written notice to the appellant and to any known adverse parties or to their representatives of the time and place of the hearing.
- (3) In considering the appeal, the city council shall determine whether the proposal conforms to the applicable criteria and standards of the preliminary approval based on the criteria set forth in OHMC 19.20.545 and may refer the matter back to the planning commission for further information or reconsideration or approve or disapprove the proposed development or require such changes therein or impose such reasonable conditions of approval as are, in its judgment, necessary to ensure conformity to said preliminary approval. The decision of the city council shall be final.

19.20.585 Adherence to approved plan.

The building official shall issue building permits only for buildings and structures which conform with the approved final master plan for the planned business park and with all other applicable city ordinances, regulations, rezone, annexation or development agreements. The building official shall issue a certificate of occupancy only for completed buildings or structures which conform to the requirements of the approved final master plans and all other applicable city ordinances, regulations, rezone, annexation or development agreements.

19.20.590 Lots subject to final master plan.

All lots or other divisions of a subdivided planned business park shall remain subject to compliance with the final master plan regardless of compliance with OHMC Title 21, or subsequent conveyance of such individual lots.

19.20.595 Judicial review.

Any legal action to review a decision of the city council or planning commission under this title

shall be filed in Island County superior court within 21 days of the decision, notwithstanding the effective date of any ordinance passed or proposed to effectuate said decision.

Article XIII. PIP – Planned Industrial Park

19.20.600 Purpose and intent.

The purpose and intent of the PIP planned industrial park district is to:

- (1) Encourage comprehensive planning of large industrial sites in order to create a park-like environment;
- (2) Preserve or create environmental amenities superior to those generally found in conventional industrial developments;
- (3) Preserve to the greatest possible extent the natural characteristics of the land, including topography, a portion of significant natural vegetation, waterways, views, etc.;
- (4) Establish development standards which provide compatibility with surrounding residential, commercial or other developments and offer protection from industrial blight;
- (5) Provide for maximum efficiency in the layout of streets, utility networks, open space, landscaping requirements and other public improvements;
- (6) Provide a guide for developers and city officials in meeting the purpose and provisions of this section.

19.20.605 Principal permitted uses.

Primary uses permitted in the PIP district provide a broad range of activities including research, light assembly and light manufacturing. Specific primary types of uses allowable include:

- (1) Assembly, manufacture, packaging, compounding or treatment of articles or merchandise from the following previously prepared materials: cloth, glass, lacquer, leather, paper, plastics, precious or semi-precious metals or stones, wood (excluding sawmills, lumber mills and planing mills), paint, clay, sand, rubber;
- (2) Printing, publishing and book binding;
- (3) Manufacturing, processing and packaging of food, pharmaceuticals, toiletries, cosmetics, optical goods, scientific instruments and equipment, and precision instruments and equipment;
- (4) Scientific research, testing and experimental development laboratories;
- (5) Corporate headquarters, regional headquarters and administrative offices of commercial, industrial, financial, charitable or governmental institutions;
- (6) Upholstery shop;
- (7) Auto repair of all kinds, including body and fender work, provided there shall be no wrecking, junking, dismantling, or salvaging operations;
- (8) Feed and seed store, retail or wholesale;
- (9) Marine craft, equipment and supply sales, and repair and service of small craft;
- (10) Nursery and landscape material including greenhouses;
- (11) Plumbing shop;
- (12) Sign shop;
- (13) Lumber yard, retail or wholesale, including building supplies, hardware, and related items;
- (14) Mini-storage facilities;
- (15) Vocational and technical schools;
- (16) Private club, lodge, convent, social or recreational building or community assembly hall (except those having a chief activity carried on for monetary gain);
- (17) Training facilities, including but not limited to music, dance, martial arts, photography, health clubs;
- (18) Warehousing and distribution centers;
- (19) Automobile sales and service;

1664

- (20) Uses similar to, related to, or compatible with those listed or described in this section are permitted upon a finding by the planning director that a proposed use does not conflict with the intent of this section or the policies of the Oak Harbor comprehensive plan. The criteria for such finding of similarity, relationship or compatibility shall include, but not be limited to, the following:
- (a) The proposed use will not significantly impact surrounding uses;
 - (b) The development standards for permitted uses can be met by the proposed use;
 - (c) Impacts, such as traffic, noise and air quality, will not be significantly different than those generated by permitted uses.

19.20.610 Accessory permitted uses.

Accessory uses complement but do not conflict with the primary use. Specific accessory types of uses allowable include:

- (1) Warehousing and distribution facilities and the storage of goods or products clearly subordinate to, and an integral part of, the primary permitted uses;
- (2) Engineering, development, administrative or executive offices which are part of a primary use;
- (3) Retail development may be permitted where it can be demonstrated that the industrial park will be clearly and primarily benefited by the convenience of such retail facilities. The total square footage devoted to retail development shall not exceed 10 percent of the developable floor area of the PIP district in which it is located. The total square footage of a single retail use may not exceed 5,000 square feet and the total square footage of all retail uses may not exceed 25 percent of a building's gross floor area. Signs for retail uses shall be visible only within the planned industrial park area and attached to the building wall. Retail uses include:
 - (a) Support retail, such as food and drug stores, banks and office supplies;
 - (b) Personal services such as barber and beauty shops, dry cleaning, laundry;
 - (c) Business services, such as printing and copying, photo processing, postal/mail, word processing, travel agencies;
 - (d) Food services, such as delicatessens, restaurants (except drive-ins);
 - (e) Recreation facilities, except mechanical or electronic games centers, theaters (live and movie) and games of skill, such as bowling;
 - (f) Day care centers;
 - (g) Showrooms and galleries; and
 - (h) Caretaker's quarters.

19.20.615 Conditional uses permitted.

The following principal uses and their accessory uses may be permitted in a PIP district when authorized by the board of adjustment under Chapter 19.67 OHMC:

- (1) Fuel yards;
- (2) Concrete and asphalt batch plants for a defined temporary period of time;
- (3) Fuel oil distribution, retail and wholesale, provided incidental storage is maintained underground;
- (4) Dog kennels;
- (5) Equipment rental businesses;
- (6) Excavations, other than simple foundation;
- (7) Public transportation transfer stations;
- (8) Public utility and communications facility, such as a branch telephone exchange, static transformer, booster station, pumping station; and
- (9) Small businesses specializing in the production of chemical products, fertilizers, rodenticide, insecticide, and pesticide, but not including ammonia and explosives, may be

permitted where it meets the following criteria:

- (a) The business will meet the environmental performance standards in OHMC 19.20.660;
- (b) There shall be no outside storage of chemicals, ingredients, products or byproducts.

19.20.620 Prohibited uses.

- (1) All uses or activities which would require extraordinary equipment, devices or technology for the control of odors, dust, fumes, smoke, noise or other wastes and/or byproducts which, if uncontrolled, would contaminate the environment to a degree unacceptable by contemporary community standards; or which would exceed the acceptable limits established by competent and recognized public and quasi-public agencies for the protection of industrial and/or environmental health. Such uses include, but are not limited to, the following:
 - (a) Manufacture or storage of explosives;
 - (b) Stockyards, dairies, slaughterhouses, rendering plants, canneries, breweries, wineries and other agricultural industries;
 - (c) Petroleum refineries;
 - (d) Cement manufacturing;
 - (e) Blast furnaces;
 - (f) Smelting;
 - (g) Drop forge industries;
 - (h) Sanitary landfills;
 - (i) Waste to energy facilities;
 - (j) Sewage treatment plants;
 - (k) Lumber, pulp or paper mills.
- (2) Single-family or multifamily residences.

19.20.625 Density provisions.

- (1) In a PIP district, the following minimum site requirements shall apply:
 - (a) Minimum site area for the development of a new planned industrial park plat: five acres;
 - (b) Minimum lot area: 20,000 square feet, except where there is a binding site plan;
 - (c) Minimum lot width: 100 feet;
 - (d) Minimum lot depth: 100 feet.
- (2) The maximum building coverage shall not exceed 40 percent of the total lot area.
- (3) All buildings and structures, except for fencing, shall meet the following minimum setback requirements:
 - (a) Front yard: 30 feet. In cases where no parking or service occurs between the face of the building and the street, the front yard may be reduced to 20 feet;
 - (b) Interior side yards: 15 feet;
 - (c) Corner lot abutting a street: 30 feet. In cases where no parking or service occurs between the face of the building and the street, the side yard may be reduced to 15 feet;
 - (d) Rear yard: 15 feet;
 - (e) When abutting any residential-zoned property or any area planned for residential uses under the Oak Harbor comprehensive plan, the minimum setback shall be 50 feet;
 - (f) Parking is allowed in setbacks.

19.20.630 Building heights.

Permitted building height is determined by the distance the building is separated from any

residential zone, or from any area designated in the Oak Harbor comprehensive plan for residential uses, as follows:

- (1) Less than 100 feet: 35 feet in height;
- (2) One hundred one feet and above: 50 feet in height plus 10 feet for mechanical equipment;
- (3) Two hundred feet and above: 65 feet in height plus 10 feet for mechanical equipment.

19.20.635 Outdoor storage.

- (1) Outdoor storage shall not be allowed within the required building setback areas.
- (2) All outdoor storage areas shall not be visible from public rights-of-way or private streets.
- (3) All outdoor storage areas shall be screened from public view through landscaping, walls, and/or fencing.
- (4) In no event shall materials be stacked or stored higher or to exceed the height of the screening wall or fence: eight feet maximum.

19.20.640 Loading areas.

- (1) Truck loading and maneuvering areas shall not be located within the required building setback areas.
- (2) Truck loading and unloading shall not be permitted on streets.
- (3) Truck loading and unloading areas, parking and maneuvering areas shall be designed in accordance with the provisions of the Oak Harbor design guidelines and shall be buffered and screened in accordance with the provisions of Chapter 19.46 OHMC.

19.20.645 Off-street parking.

- (1) The total required off-street parking facilities shall be in accordance with Chapter 19.44 OHMC.
- (2) Parking lots shall be landscaped in accordance with Chapter 19.46 OHMC.

19.20.650 Building design.

- (1) Buildings and structures should be designed in accordance with the Oak Harbor commercial and industrial design guidelines.
- (2) Buildings shall be sited so as not to project or reflect natural or artificial light or glare into residential zoned areas or areas planned for residential uses under the Oak Harbor comprehensive plan.
- (3) Mechanical equipment located on the roof, facade, or external portion of a building shall be architecturally screened or mitigated by including the equipment in the building or site design so as not to be visible from public streets.
- (4) Equipment or vents which generate noise or air emissions shall be located on the opposite side of the building from adjoining residentially zoned properties.
- (5) Buildings within the aviation environs overlay zone shall be built to the standards of OHMC Title 17.

19.20.655 Landscaping requirements.

Landscaping and screening shall be in conformance with the requirements contained in Chapter 19.46 OHMC.

19.20.660 Environmental performance standards.

It shall be the responsibility of the operator and/or proprietor of any permitted use to provide such reasonable evidence and technical data as the planning director may require to demonstrate that the use or activity is or will be in compliance with this title, the Oak Harbor comprehensive plan and all federal, state and city requirements, codes and standards. Failure of the planning director to require such information shall not be construed as relieving the operator and/or proprietor from compliance with this title, the Oak Harbor comprehensive plan, and all federal, state and city

requirements, codes and standards.

19.20.665 Relation to aviation environs overlay zone.

Property located in an aviation environs overlay zone, as governed in Chapter 19.50 OHMC, shall meet the requirements for noise attenuation in Chapter 17.30 OHMC and the comprehensive plan land use element.

19.20.670 Preapplication meeting.

Prior to formal submittal of any application, the applicant may present to the planning department a preliminary site plan, which shall contain, in a rough and approximate manner, all of the information required for the application under OHMC 19.20.680. Upon submittal, the planning department shall schedule a meeting with representatives of applicable city departments. The planning director may also invite, because of the nature, size and scope of the development, others outside of the city to participate in the preapplication meeting. The purpose of the meeting is to enable the applicant to obtain the advice of city staff as to the intent, standards and provisions of this code with regard to the proposed plan. Information presented for and at the preapplication meeting shall not be a part of the public record as no applications are submitted for formal review.

19.20.675 Application requirements.

Site plan review shall be required for any building permit or change in use, as defined in OHMC 19.48.020. Site plan review is not required for regular maintenance activities, or emergency actions to protect the public health, safety or welfare.

For parcels containing between five acres and 20 acres, the site plan review requirements of OHMC 19.20.685 shall apply.

For parcels containing more than 20 acres, the review requirements of OHMC 19.20.690 and 19.20.695 shall apply.

An application for site plan approval of a proposed planned industrial park shall be made to the planning director upon forms furnished by the city. Application shall be made by the owner or owners of the parcel or parcels intended to be developed as a unit or their duly authorized agent or agents. The ownership of all parcels to be included must be represented in the application.

19.20.680 Site plan review – Filing requirements.

For all parcels five acres and over, the applicant shall file with the planning director a site plan, including the following:

- (1) A legal description of the site and plot plan indicating location of all existing and proposed adjacent streets, private rights-of-way and easements;
- (2) The proposed site plan and drawings for design review shall include the following information:
 - (a) Topographic contours at a minimum interval of 10 feet;
 - (b) Approximate proposed finished grades of the property with all drainage features;
 - (c) Location of all proposed building areas;
 - (d) Location and nature of vehicular and pedestrian circulation features within the site and adjacent streets and alleys;
 - (e) The extent, location, arrangement, and proposed improvements of all off-street parking and loading facilities;
 - (f) The extent, location, arrangement and proposed improvements of all open space and common areas; and
 - (g) Proposed future lots.

19.20.685 Site plan review (parcels five to 20 acres) – Staff approval.

After receiving the site plan, the planning director shall route the same to all appropriate city

departments, and each department shall submit to the planning director comments and recommendations. After receiving such information from the city departments, the planning director may approve as proposed, approve with changes or disapprove the application and the accompanying site plan. The director's action shall be based on the following criteria:

- (1) The proposal meets the requirements of this title;
- (2) The perimeter of the project shall be compatible with the land use of adjoining properties. Compatibility includes, but is not limited to, size, scale and mass and architectural design;
- (3) The proposal shall not be detrimental to existing or potential surrounding land uses as defined by the Oak Harbor comprehensive plan.

19.20.690 Site plan review (over 20 acres) – Staff recommendation.

For parcels over 20 acres in size, the planning director shall route the application to all appropriate city departments, and each department shall submit to the planning director comments and recommendations. After receiving such information from the city departments, the planning director shall present recommendations and conclusions to the planning commission.

19.20.695 Site plan review (over 20 acres) – Planning commission approval.

After receiving such information from the city departments, the planning commission may approve as proposed, approve with changes or disapprove the application and the accompanying site plan. The planning commission's action shall be based on the following criteria:

- (1) The proposal meets the requirements of this title;
- (2) The perimeter of the project shall be compatible with the land use of adjoining properties. Compatibility includes, but is not limited to, size, scale and mass and architectural design;
- (3) The proposal shall not be detrimental to existing or potential surrounding land uses as defined by the Oak Harbor comprehensive plan.

If the commission does grant final approval, the decision of the commission shall become final 10 days after the date of the final action unless appealed to the city council in accordance with OHMC 19.20.705; provided, that if all other requirements of this title have been met, the permit shall not be granted until the proper drafting, executing and recording (all at applicant's expense) of all documents necessary to fulfill the requirements of this title.

19.20.700 Modifications to the plan.

Requests for modifications of preliminary or final site plans shall be made in writing and shall be submitted to the planning department in the manner and form prescribed by the planning director.

- (1) Modifications up to 10 percent shall be deemed minor if the proposal does not change any of the following:
 - (a) Land use;
 - (b) General location or number of access points;
 - (c) The amount of open space;
 - (d) The amount of parking;
 - (e) General height of the structure;
 - (f) Total square footage of structures; and
 - (g) Amount and location of outdoor storage.
- (2) Examples of minor modifications include but are not limited to lot line adjustments, minor relocations of landscaped areas and buffers, minor changes to outdoor storage and truck loading area and minor changes in circulation patterns.
- (3) Minor modifications may be approved by the planning director.
- (4) Major modifications are those on lots greater than 20 acres in size and which, as determined by the planning director, substantially change the basic design, floor area ratios, open space or other similar requirements or provisions. Major adjustments to the

master plans shall be reviewed by the planning commission under the same process as outlined under this chapter.

19.20.705 Appeals to council.

- (1) Within 10 days after the date of decision by the planning commission on an application of approval of a site plan in accordance with OHMC 19.20.695, such approval or revocation shall be taken to the city council by the applicant, the permit holder or any other interested party. Such appeal shall be made on a form prescribed by the commission and shall be filed within the prescribed time with the office of the city clerk and must be accompanied by a filing fee of \$100.00. The appeal shall state specifically wherein it is claimed there was an error or abuse of discretion by the commission or wherein its decision is not supported by the evidence in the record or where ample consideration of good planning principles have not been made.
- (2) Upon receipt of such appeal, together with the filing fee, the city council shall set the time for consideration thereof. The city clerk shall notify the chairman of the planning commission of the receipt of said appeal and of the time set for consideration thereof and the city clerk shall, not less than five days prior to the date set for the hearing on the appeal, give written notice to the appellant and to any known adverse parties or to their representatives of the time and place of the hearing.
- (3) In considering the appeal, the city council shall determine whether the proposal conforms to the applicable criteria and standards of approval based on the criteria set forth in OHMC 19.20.695 and may refer the matter back to the planning commission for further information or reconsideration or approve or disapprove the proposed development or require such changes therein or impose such reasonable conditions of approval as are, in its judgment, necessary to ensure conformity to said preliminary approval. The decision of the city council shall be final.

19.20.710 Adherence to approved plan.

The building official shall issue building permits only for buildings and structures which conform with the approved final master plan for the planned industrial park and with all other applicable city ordinances, regulations, rezone, annexation or development agreements. The building official shall issue a certificate of occupancy only for completed buildings or structures which conform to the requirements of the approved final master plans and all other applicable city ordinances, regulations, rezone, annexation or development agreements.

19.20.715 Lots subject to final site plan.

All lots or other divisions of a subdivided planned industrial park shall remain subject to compliance with the site plan regardless of compliance with OHMC Title 21, or subsequent conveyance of such individual lots.

19.20.720 Judicial review.

Any legal action to review a decision of the city council or planning commission under this title shall be filed in Island County superior court within 21 days of the decision, notwithstanding the effective date of any ordinance passed or proposed to effectuate said decision.

Article XIV. I – Industrial

19.20.725 Purpose and intent.

The I industrial district is intended to accommodate certain industrial structures and uses having physical and operational characteristics which might adversely affect the adjoining residential and commercial uses. Regulations are designed to permit those industrial uses which can be operated in a relatively clean, quiet and safe manner compatible with adjoining land uses.

19.20.730 Principal permitted uses.

In an I district, the following are principal permitted buildings and uses:

- (1) Principal uses permitted in a C-3 district except those as specifically prohibited in OHMC 19.20.620;
- (2) Automobile sales and service;
- (3) Bedding, carpet and pillow manufacture, cleaning and renovating;
- (4) Bottling and processing of nonalcoholic beverages, the production of which is devoid of fumes, noxious odors, or waste products;
- (5) Cold storage plants;
- (6) Food and drug processing;
- (7) Manufacture and assembly of light and small items made from previously prepared materials and includes operations which do not create noise, smoke, odor, vibration or other objectionable nuisances to the extent that they are detrimental to surrounding uses;
- (8) Public utilities;
- (9) Welding and machine shop;
- (10) Other uses of similar character, subject to approval by the city council.

19.20.735 Principal uses permitted – Location limited.

The following principal uses are permitted outright if located 200 feet or more from the boundary of any residential zoning district:

- (1) Assembly, manufacture, rebuilding, compounding, processing, preparation, or treatment of such articles or products as batteries, bottles, mattresses, furniture, tools, hardware, and paper products, but not the manufacture of paper itself;
- (2) Canning, processing and freezing of fruit and vegetables;
- (3) Electroplating;
- (4) Machine, welding, or metalworking shop, but not including punch presses, drop hammers, or other noise and vibration producing equipment;
- (5) Tire retreading;
- (6) Woodworking shop.

19.20.740 Accessory permitted uses.

In an I district, the following are accessory uses permitted outright:

- (1) A use customarily incidental and subordinate to a principal use permitted outright;
- (2) On-site hazardous waste treatment and storage facilities as an accessory use to any activity generating hazardous waste and lawfully allowed in this zone; provided, that such facilities meet the state siting criteria adopted pursuant to the requirements of RCW 70.105.210.

19.20.745 Prohibited uses.

No building, structure or premises or a portion thereof, established after the effective date of the ordinance codified in this chapter, shall be used for human habitation, permanent, transient or temporary except as quarters for a caretaker, guard or other person whose permanent residency on the premises is required for operational safety or protective purposes.

19.20.750 Conditional uses permitted.

The following principal uses and their accessory uses may be permitted in an I district when authorized by the hearing examiner:

- (1) Any conditional use permitted in a C-3 district;
- (2) Cement and asphalt plants;
- (3) Manufacture or processing of such nondurable goods as chemical and allied products, petroleum products, fertilizers, but excluding explosives and ammonia;
- (4) Metal fabrication and boiler or tank works;

- (5) Mixing plants for concrete or paving material;
- (6) Off-site hazardous waste treatment and storage facilities; provided, that such facilities meet the state siting criteria adopted pursuant to the requirements of RCW 70.105.210;
- (7) Oxygen manufacture and/or storage;
- (8) Produce stand;
- (9) Rodenticide, insecticide and pesticide mixing plants;
- (10) Wrecking yard.

19.20.755 Density provisions.

In an I district, the following density provisions apply:

- (1) Minimum lot area, no limitation;
- (2) Minimum lot width, no limitation;
- (3) Minimum lot depth, no limitation;
- (4) Minimum front yard, 35 feet;
- (5) Minimum side yard, no limitation, except when abutting a residentially zoned property, then 10 feet each. For corner lots, a side yard abutting a public street shall be 35 feet except that the city council may approve a variable setback of not less than 20 feet or the established building line on adjoining property, whichever is greater, after consideration at a public meeting or public hearing;
- (6) Minimum rear yard, no limitation except when abutting a public street, then 35 feet;
- (7) Maximum building height, 35 feet;
- (8) Maximum lot coverage, no limitation.

19.20.760 Conditions governing permitted uses.

- (1) Design shall be in accordance with the provisions of the Oak Harbor design guidelines.
- (2) Landscaping and buffers shall be constructed and maintained in accordance with the provisions of Chapter 19.46 OHMC.

19.20.765 Site plan and design review required.

Site plan and design review shall be required as defined in Chapter 19.48 OHMC.

19.20.768 Relation to aviation environs overlay zone.

Property located in an aviation environs overlay zone, as governed in Chapter 19.50 OHMC, shall meet the requirements for noise attenuation in Chapter 17.30 OHMC and the comprehensive plan land use element.

Article XV. PF – Public Facilities

19.20.770 Purpose and intent.

The PF public facilities district is intended to accommodate public facilities and institutional land uses, including but not limited to public parks, schools, churches, governmental offices, public works yards, utility structures, hospitals, and other similar public and quasi-public uses. The zone was established to aid the city in planning for public facilities, while preventing conflicts between incompatible land uses.

19.20.775 Principal permitted uses.

In a PF district, the following are principal permitted buildings and uses:

- (1) Public parks and recreational facilities, including, but not limited to, regional parks, city parks and play fields, public golf courses, historic landmarks, indoor recreation centers, swimming pools and marinas;
- (2) Government facilities, including, but not limited to, administrative offices, postal stations, police stations, fire stations, parking lots, public water wells, storm drainage facilities, water and sewer pump stations, and family health/resource centers;

- (3) Community services, including, but not limited to, libraries, museums, community centers and senior centers and adult day care;
- (4) Churches and other religious institutions;
- (5) Public and private schools providing education at the preschool level or higher, excluding commercial trade schools;
- (6) Public utilities, except as regulated in OHMC 19.20.785;
- (7) Quarters for a caretaker, guard or the person whose permanent residency on the premises is required for operational safety or protective purposes;
- (8) Landfill reclamation to improve steep, low or otherwise unusable land.

19.20.780 Accessory permitted uses.

- (1) A use customarily incidental and subordinate to a principal use permitted outright.
- (2) On-site hazardous waste treatment and storage facilities as an accessory use to any activity generating hazardous waste and lawfully allowed in this zone; provided, that such facilities meet the state siting criteria adopted pursuant to the requirements of RCW 70.105.210.
- (3) Parking areas operated in conjunction with permitted uses.

19.20.785 Conditional uses permitted.

The following principal uses and their accessory uses may be permitted in a PF district when authorized by the board hearing examiner in conformance with Chapter 19.67 OHMC:

- (1) Electric substations, treatment plants, public works yards, public telecommunications towers, and other similar uses. Distribution or collection line rights-of-way and easements are exempt from the requirements of the PF district;
- (2) Private lodges and clubs, fraternal organizations, and commercial establishments when ancillary to a permitted use;
- (3) Child day care when ancillary to a permitted use.

19.20.790 Prohibited uses.

The following uses are expressly prohibited by this chapter:

- (1) Permanent, transient and temporary dwelling units, except as allowed under OHMC 19.20.775(7);
- (2) Private lodges and clubs, fraternal organizations, private golf courses, and other similar clubs, except as allowed under OHMC 19.20.785;
- (3) Private radio, television and communications stations.

19.20.792 Manufactured home structures.

A manufactured home (mobile home) is authorized to be placed within this district for a temporary time period, not to exceed five years, to serve nonresidential uses as provided for in permitted and conditional use code sections (OHMC 19.20.775 and 19.20.785). A two-year extension may be approved by separate application. Development is subject to all other provisions of this code the same as on-site construction. Manufactured homes shall not be authorized for use predominantly as storage. Manufactured homes shall not be permitted in a public facilities district where the public facility zone is adjacent to central business district zones. All applications for manufactured home structures, including time extensions, must be approved by the planning commission.

19.20.795 Density provisions.

- (1) Minimum lot area: No limitation.
- (2) Minimum lot width: No limitation.
- (3) Minimum lot depth: No limitation.
- (4) Minimum front yard: 35 feet.

- (5) Minimum side yard: No limitation, except when buildings abut a residentially zoned property, then 12 feet each side. For corner lots, a side yard abutting a public street shall be 35 feet.
- (6) Minimum rear yard: No limitation except:
 - (a) When abutting a public street, then 35 feet;
 - (b) When abutting a residential zone, then 12 feet.
- (7) Maximum building height: 35 feet. For manufactured home structures: single story of 25 feet.
- (8) Maximum lot coverage: No limitation.
- (9) Exemptions. Public parking lots are exempt from the density provisions of the PF zone; provided, that other provisions of this title shall apply.

19.20.800 Landscaping requirements.

- (1) Design shall be in accordance with the provisions of the Oak Harbor design guidelines.
- (2) Landscaping and buffers shall be constructed and maintained in accordance with the provisions of Chapter 19.46 OHMC.

19.20.805 Site plan and design review required.

Site plan and design review shall be required as defined in Chapter 19.48 OHMC.

Article XVI. OS – Open Space, Recreation and Agriculture

19.20.810 Purpose and intent.

The OS open space, recreation and agriculture district is intended to allow the retention of natural, rural character, open space areas within the city of Oak Harbor, and to allow for annexation of lands to the city without forcing immediate development, and generally conserve the land, water and other natural resources of the city. Further, the OS district is intended to help prevent development of special community resources such as golf courses, wetlands, forest land and farming areas having scenic and other environmental value. Except for special circumstances, it is anticipated that this district will be used only for land brought into the city by annexation or for which special tax considerations are already provided by Island County.

19.20.815 Principal permitted uses.

In the OS district, the following are principal permitted buildings and uses:

- (1) Agriculture land;
- (2) Forest land;
- (3) Outdoor recreation lands such as golf courses, shooting ranges left in natural vegetative state;
- (4) Wetlands and wildlife habitat dedicated to open space.

19.20.820 Accessory permitted uses.

In the OS district the following are accessory permitted uses:

- (1) For an agricultural use, a set of farm buildings including a single-family residence. Nothing herein shall be construed as authorizing the keeping of domestic livestock beyond what is otherwise authorized by ordinance.
- (2) For forest land, a storage building in which to store items needed for tree management.
- (3) For recreation land, such as a golf course, storage buildings, signs, club house and caretaker's residence.
- (4) Single-family residence otherwise permitted by law.

19.20.825 Conditional uses permitted.

The following principal uses and their accessory uses may be permitted in an OS district when authorized by the hearing examiner:

- (1) Private club or lodge on tracts or lots of more than four acres. More than 60 percent of the area must not be hard surfaced (paved) in building or both building and hard surfaced area. Areas not hard surfaced must be in natural vegetation;
- (2) Campground on tracts or lots of more than two acres. More than 80 percent of the area must not be hard surfaced (paved) or in buildings or both such buildings and hard surfaced areas. Areas not hard surfaced in a building must be in natural vegetation;
- (3) Radio or television tower where 80 percent of the area must not be hard surfaced (paved) or in buildings or both such buildings and hard surfaced areas. Areas not hard surfaced in a building must be in natural vegetation.

19.20.830 Density provisions.

In an OS district, the following density provisions apply:

- (1) Setbacks for any structure shall be 25 feet from any property line;
- (2) One dwelling unit per five acres, where residential use is permitted.

19.20.835 Conditions governing permitted uses.

- (1) As a condition to continued designation as "open space," for any use other than agricultural and residential, the owner shall enter into an agreement with the city allowing public or semi-public access under mutually agreed terms and conditions.
- (2) Any hard surface parking or roads must be accessory to a permitted use.

19.20.840 Site plan and design review required.

Site plan and design review shall be required as defined in Chapter 19.48 OHMC.

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 Thirteen. Effective Date. This Ordinance shall be in full force and effect (5) five days after its publication as required by law.

PASSED by the City Council this ___ day of _____ 2010.

CITY OF OAK HARBOR

Approved () _____
 Vetoed () Jim Slowik, Mayor

 Date

ATTEST:

Approved as to Form:

 City Clerk

 City Attorney



DEPARTMENT OF THE NAVY
NAVAL AIR STATION WHIDBEY ISLAND
OAK HARBOR, WASHINGTON 98278-5000

Received
3-17-10 RR

cc: Paul Schmidt
Steve Powers

5216
Ser N00/0338
March 15, 2010

The Honorable Jim Slowik
Mayor, City of Oak Harbor
865 S.E. Barrington Drive
Oak Harbor, WA 98277

Dear Mayor Slowik:

SUBJECT: OAK HARBOR MUNICIPAL CODE AMENDMENT (ZONING CODE)

Naval Air Station Whidbey Island is in complete support of the proposed amendment to the Municipal Code to restrict dwelling units on properties designated as C-3, Community Commercial, located northeast of 16th Avenue. This amendment will eliminate any confusion regarding residential uses being incorporated into commercial development in high noise areas without limiting opportunities for mixed use in more appropriate commercial developments.

Thank you for the opportunity to be active partners in planning for the safety of our citizens and aircrew.

Sincerely,

G. K. DAVID
Captain, U. S. Navy
Commanding Officer

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

Bill No. 11
Date: April 6, 2010
Subject: Northwest Clean Air
Agency Clean Diesel Grant

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 bill is to authorize staff to submit the application for the Clean Air Diesel Grant to the Northwest Clean Air Agency (NWCAA).

AUTHORITY

OHMC 2.310.040 Grants.

- (1) Nothing in this chapter shall prevent the city from complying with the terms and conditions of any grant, gift or bequest which is otherwise consistent with law.
- (2) The Mayor or his/her designee is authorized to apply for grants in any amount and to execute grant contracts for grants of not more than \$30,000. The mayor or his/her designee shall notify the city council periodically of such grant applications and grant contract approvals.
- (3) Grant contracts in excess of \$30,000 shall require council approval. (Ord. 1470 § 2, 2006).

SUMMARY STATEMENT

Diesel emissions contain a hazardous mixture of pollutants that have serious health effects. Diesel exhaust has been linked to the onset or worsening of most major, chronic and/or terminal ailments, including cancer, emphysema, auto-immune disorders, asthma, heart disease, stroke, and the underdevelopment of children's lungs.

The California Air Resource Board has found that every dollar invested in reducing diesel emissions results in \$3 to \$8 savings in improving health, avoided health problems, or lower operating and maintenance costs for diesel fleets. The Union of Concerned Scientists estimates that for every dollar invested in diesel retrofits, \$9 to \$16 are returned to society.

NWCAA and local clean air agencies are working with public and private fleets to reduce harmful diesel emissions by installing retrofit emission control technologies on vehicles and equipment. These technologies effectively reduce toxic emissions by 50% to 95%. Statewide,

the Department of Ecology and local clean air agencies have retrofitted more than 8,000 diesel vehicles with a variety of technologies. Most public fleets, including those of school districts, transit authorities, cities, counties, and public utility districts have now been retrofitted. Many private fleets, including refuse and recycle vehicles and port cargo handling equipment, are currently being retrofitted.

In 2005, the City was awarded a grant from the Department of Ecology Air Quality Program in the amount of \$30,000.00 to retrofit 6 diesel vehicles. Those 6 vehicles were retrofitted in 2008 and have been reducing the amount of toxic diesel emissions the City releases into the environment.

Northwest Clean Air Agency has given the City notice that there are more funds available to install retrofit exhaust emission control technologies and idle reduction technologies on heavy-duty diesel vehicles and equipment throughout Island, Skagit and Whatcom counties.

The Equipment Rental Division's mission is to provide safe, efficient and economical fleet services for the City of Oak Harbor. By pursuing this grant, we hope to make our fleet safer for our community by retrofitting an additional 15 diesel vehicles.

No matching funds are required for the purchase and installation of the retrofit emission control technology for idle reduction technology.

STANDING COMMITTEE REPORT

The Public Works Standing Committee reviewed this item at their meeting on April 1, 2010.

RECOMMENDED ACTION

Authorize staff to move forward to obtain the Clean Diesel Grant from the Northwest Clean Air Agency.

ATTACHMENTS

MAYOR'S COMMENTS