



# PLANNING COMMISSION

## AGENDA

September 25, 2012

ROLL CALL: NEIL \_\_\_\_\_ JENSEN \_\_\_\_\_ FAKKEMA \_\_\_\_\_  
WASINGER \_\_\_\_\_ OLIVER \_\_\_\_\_  
WALLIN \_\_\_\_\_ JOHNSON-PFIEFFER \_\_\_\_\_

1. **Approval of Minutes – August 28, 2012 – Page 3**
2. **Public Comment** – Planning Commission will accept public comment for items not otherwise on the agenda for the first 15 minutes of the Planning Commission meeting.
3. **FAIRWAY POINT PRD DIVISION 4 MODIFICATION TO CONSIDER ADU'S – Public Hearing – Page 52**  
The Planning Commission will hold a public hearing on a proposal to add accessory dwelling units to homes for up to six remaining lots to be developed within Division 4 of Fairway Point PRD. The Planning Commission closed public testimony on the matter at the August 2012 meeting. It is expected that the Planning Commission will deliberate and make a recommendation to the City Council.
4. **NIGHTCLUB ORDINANCE – Public Meeting – Page 60**  
The Planning Commission will be presented with options on occupancy limit thresholds to consider in regulating nightclubs licenses in various zoning districts. This is a continued discussion on regulating the size of nightclubs.
5. **SHORELINE MASTER PROGRAM (SMP) UPDATE – Public Hearing – Page 66**  
The City of Oak Harbor is required by the State of Washington to update its Shoreline Master Program (SMP). The Planning Commission will continue its discussion of the Draft SMP. Staff will present the Washington Department of Ecology's requested changes to the document and concluding remarks to the Commission. Please note it is anticipated this will be the final Planning Commission consideration of this topic. It is expected that Commission will make a recommendation on the Draft SMP document and forward it to City Council for their consideration. Planning Commission will accept comments on the Draft SMP document in a public hearing.
6. **PERMIT EXTENSION FOR ADULT DAY CARE CONDITIONAL USE PERMIT – Public Hearing – Page 73**  
The Planning Commission will hold a public hearing to consider extending for two years a previously approved conditional use permit held by the Oak Harbor Senior Center to operate the Daybreak Adult Day Care out of a modular building at 917 E. Whidbey Avenue (Island County Parcel Number S7600-00-02604-0). This is a final decision of the Planning Commission.
7. **2012 COMPREHENSIVE PLAN AMENDMENT DISCUSSION– Public Meeting – Page 79**  
The Planning Commission will review the draft Capital Improvements Plan for 2012 – 2018. The Capital Improvements Plan is updated every year with the annual Comprehensive Plan Amendments. The Capital Improvements Plan identifies the City's capital needs for the next six years. The Planning Commission will be updated on the changes to the plan.

# MINUTES

August 28, 2012

**PLANNING COMMISSION  
REGULAR MEETING  
CITY HALL – COUNCIL CHAMBERS  
August 28, 2012**

**ROLL CALL:** **Present:** Keith Fakkema, Gerry Oliver, Greg Wasinger and Jeff Wallin.  
**Absent:** Bruce Neil, Kristi Jensen and Jill Johnson-Pfeiffer.  
**Staff Present:** Development Services Director, Steve Powers; Senior Planners, Ethan Spoo and Cac Kamak and Associate Planner, Melissa Sartorius.  
**Guest Speaker:** David Pater, Department of Ecology.

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

**MINUTES: MR. WALLIN MOVED, MR. OLIVER SECONDED, MR. WASINGER ABSTAINED, MOTION CARRIED TO APPROVE THE JULY 24 AND AUGUST 14, 2012 MINUTES AS PRESENTED.**

**PUBLIC COMMENT:**

No comments.

**FAIRWAY POINT PRD MODIFICATION TO CONSIDER ADU'S** – Public Hearing  
Mr. Fakkema recused himself from the discussion of this item.

Mr. Wasinger opened the public hearing.

Ms. Sartorius reported that this item is a continuation from last month's meeting. Planning Commission's discussion and questions at that meeting prompted staff to provide supplemental information regarding Accessory Dwelling Units (ADU's) (PC Attachment 1). The publication from the Municipal Research and Services Center of Washington discusses the benefits and regulatory issues and options of ADU's. Ms. Sartorius pointed out that the exhibit that was shown last month has been revised to show only Division 4 and the six ADU's that are proposed in order to alleviate confusion that was experienced at the previous meeting. Other changes from last month's report to this month's report include:

- Page 23 points out Attachment 4 which is a copy of OHMC Chapter 19.42 so that the Commission and the public understand the criteria and standards that apply to an ADU on a permit-by-permit basis when an applicant applies for a permit on the administrative basis.
- Page 27, the Public Notice section has been updated to reflect the publication for this month's meeting. The Citizen Comment section was revised to include written comments on the proposal as well as summarizing comments made at last month's meeting. One additional comment was provided by Mr. Porritt late last week and was provided to the Planning Commission (PC Attachment 2).
- Page 28, the Conclusions section was revised to remind the Commission that should they decide to approve the modification they may add conditions of approval that mitigate or address concerns by limiting the number of ADU's to a number less than the six proposed by the applicant. In addition, City staff would recommend, and the applicant has indicated agreement with, a condition of approval whereby the ADU's shall be integrated into the primary unit as opposed to detached.

- The draft ordinance was updated to include the Planning Commission authority to impose conditions of approval and include a condition regarding the integration of ADU's as part of the primary unit rather than detached units.

Ms. Sartorius concluded by recommending that the Planning Commission conduct the public hearing, close the public hearing and make a recommendation to the City Council to approve the draft ordinance amending Ordinance 1583.

**Phil Collier** (2118 Fairway Lane) voiced his concerns about overloading a road system that currently has no sidewalks or lighting (Fairway Lane) and changing the single-family plan to what he considers duplexes that will become rental units. He urged the Planning Commission to vote no.

**Bruce Freeman** (2746 SW Fairway Point Drive) said that he bought a home that he thought was in a single-family zone and that the homeowners don't know that Phases 1-3 already allow ADU's and Phase 4 currently doesn't allow ADU's. He was concerned about the ADU becoming a rental unit and that the Home Owners Association (HOA) will have to enforce the rules through a civil action and the problem is that people don't notify the HOA when they are moving. He urged the Planning Commission to vote no.

**Rick Porritt** (2130 Fairway Lane) noted his concern about conflicting, confusing and changing information, potential traffic congestion with vehicles from multiple ADU's that could bring nearly 30 additional cars. He noted that a reference was made at the previous meeting about renting the ADU's as an income producer and a marketing tool to help offset a mortgage. He said that homeowners association should not be the regulatory board for rental units and that property values will be adversely affected.

**Rich Wais** (2142 Fairway Lane) said he was the president of the HOA of 23 families on Fairway Lane and Links Way. Mr. Wise said that their major concern was the increased traffic on a county road that has no speed bumps and basically no law enforcement. He believed that there was an advantage to getting onto Fairway Lane if you are going to the base instead of going through Fairway Point which would increase the traffic. He urged the Planning Commission to vote no.

**Jerry Grunwald** (2145 Fairway Lane) said that if the Planning Commission approves the six units in Division 4 they are setting a dangerous precedent. He asked the Planning Commission to think of the impacts on the community when allowing a sales pitch/gimmick to make the units more attractive to purchase by saying that you could get income on the side. He asked the Commission to how many single-family residents in their neighborhoods have rentals in them. He said this is something new and he didn't like it.

**Kendall Gentry** (of Landed Gentry) introduced himself as the proponent of the density modification to Division 4. Mr. Gentry pointed out that the county residents that provided testimony tonight are not the constituents of the City Planning Commission. Mr. Gentry also stated that it would be very circuitous for the potential homeowners to wind their way back through Fairway Lane and create traffic issues to Fairway Lane. He thought that residents would exit the property through Fort Nugent/Swantown Road. Mr. Gentry said that the issue is convoluted and is really a very succinct simple issue. ADU's are a property right that every single property owner enjoys. The reason it is an issue in Fairway Point Division 4 is because on the face of the plat that was recorded that the density was 40 units even though the allowable density was more than that. For Phases 1-3 the density posted on the face of the plat

was the maximum density allowed and the density that they were using (29 units) is short of the maximum density allowed. Therefore, to add ADU's in Phase 1-3 no additional review is required by the Planning Commission. So the intent of this request is to raise the density of Phase 4 from 40 units to 46 units which is well below the maximum density allowed. The idea that we are changing single-family neighborhoods into multiple-family or rezoning something by using a provision in the code that applies to every single-family home in the City is a mischaracterization of the idea of an ADU. Mr. Gentry conveyed his own experience with an ADU that he rents in his home. Mr. Gentry concurred with staff's recommendation that there be no detached ADU's. Mr. Gentry pointed out that ADU's are market driven and that ADU's will only be done for people that request ADU's. This is a way to help families accommodate their various needs and the positives outweigh the negatives.

Mr. Oliver asked what the parking requirements are. Ms. Sartorius said that one additional space is required in addition to what is required for the underlying zoning district. In this instance the zoning is R-1 and requires two parking spaces so with the addition of an ADU there needs to be three parking spaces (includes spaces inside the garage and driveway).

Mr. Oliver asked Mr. Gentry what the negatives of adding ADU's are. Mr. Gentry said that traffic issue neighbors have raised will be negligible because he won't be building 29 ADU's for people that don't want it. He will only be building them for people that want it.

Mr. Wallin asked if there was anything in the Code that would prevent someone from finishing out the basement as a bedroom and rent that room as versus an ADU. Mr. Powers said that was correct and the distinction is the combination of sleeping, living and cooking facilities that establishes it as an ADU and there is nothing that prevents anyone from renting out a bedroom.

Mr. Gentry said that he valued his relationship with the City and they wanted to be able to promote ADU's as a permissible use and be above board. He said he would be impressed if he got 3 customers for the ADU's out of the six they were asking for.

Mr. Oliver asked the president of the HOA how the ADU's would affect HOA dues and the covenant that is in place now. Will there be something spelled out that says the ADU is specifically for a mother-in-law unit or for rental purposes?

Mike Oberholtzer (2770 SW Fairway Point Drive) said that he was on the Board for the HOA. He said they were wondering how they would enforce the rules and how they would control whether the homeowner rents the residence.

Mr. Powers clarified that the request before the Planning Commission is to change the density to allow additional units in the form of ADU's. The City's Code for ADU's does not draw a distinction between whether the ADU is or is not for a rental situation. This applies across other cities' zoning codes as well. Cities don't regulate the form of ownership. Cities regulate the land use. The City is prevented from placing a restriction that says it should be only for the care of individuals that are part of the family or that it should not allow for a rental.

**Mike Oberholtzer** (2770 SW Fairway Point Drive) added that it is the Planning Commission's objective to understand the impact on the homeowners that are living in that area. If it is an enforcement issue that falls on the HOA it costs us money and they have to raise the dues to pursue legal action for the people that are not in compliance.

Ms. Sartorius noted that there will only be one meter serving the residence so if there are two units within one house the primary unit owner will be billed.

Mr. Gentry noted that part of the ADU covenant that the property owner signs says that the property owner has to live in one of the units. The covenant is also recorded.

**Phil Collier** (2118 Fairway Lane) commented that it doesn't make sense, it is just a gimmick and not enforceable and that the unit are going to be multi-family units not single-family units.

**Bruce Freeman** (2746 SW Fairway Point Drive) commented on the parking issue saying that 95% of the people use their garage as storage so they park vehicles on the street. He also commented that he believe there would be multiple people living in the home, enforcement would be have to be through the HOA and he didn't think that would work.

**Rick Porritt** (2130 Fairway Lane) asked if Mr. Gentry would explain the marketing tool he talked about at the last meeting which involved using the additional rent as extra income to offset the mortgage payments.

Mr. Powers explained that Mr. Porritt's question to Mr. Gentry should be answered outside of this proceeding because whether or not the unit is for the care of family member or whether they are renting the unit is not a factor that the Planning Commission can consider as part of the recommendation to the City Council. Mr. Powers further noted that one of the purposes of an ADU that the ADU Code specifically states is that ADU's are intended to provide homeowners with a means of obtaining through tenants in either the accessory dwelling unit or the principal residence, rental income, companionship, or security.

Mr. Gentry explained that all he is asking the Commission to do is recommend that a couple of digits on the preliminary plat be changed to say 46 instead of 40 and the ADU happen only if someone wants one and it allows him to advertise and sell the home legitimately.

**ACTION: MR. OLIVER MOVED, MR. WALLIN SECONDED A MOTION TO CLOSE PUBLIC TESTIMONY. MOTION CARRIED.**

#### Planning Commission Discussion

Mr. Oliver raised concerns over parking. Mr. Wallin noted that Mr. Gentry could still build homes to accommodate larger families with a basement and there is nothing that would require him to provide extra parking. Mr. Wasinger commented that the density is allowable and that is the issue that needs to be dealt with and it is not uncommon for homeowners to fill their garage up with belongings and park their cars in the street. Mr. Oliver, Mr. Wasinger and Mr. Wallin thought that more of the Commissioners should be present before taking a vote. Mr. Powers said that the Commission could choose to hold the agenda item over for another month and staff will work to ensure that more Commissioners are present recognizing that the Planning Commissioners are volunteers.

**MOTION: MR. OLIVER MOVED TO MAKE A RECOMMENDATION TO THE CITY COUNCIL TO DENY THE APPLICATION. MOTION DIED DUE TO A LACK OF A SECOND.**

**ACTION: MR. WALLIN MOVED, MR. WASINGER SECONDED A MOTION TO CONTINUE THE FAIRWAY POINT PRD MODIFICATION TO CONSIDER ADU'S TO SEPTEMBER 25 TO ALLOW THE COMMISSION TO REVIEW THE**

**TESTEMONY AND MAKE A DECISION IN SEPTEMBER. MOTION CARRIED BY A VOTE OF TWO IN FAVOR AND ONE OPPOSED.**

Mr. Fakkema returned for the remainder of the meeting.

**SHORELINE MASTER PROGRAM (SMP) UPDATE** – Public Meeting

Mr. Spoo introduced David Pater, Shoreline Planner for the Department of Ecology (DOE) as the person that reviews the City's submittal to the DOE. Mr. Pater has already reviewed the City's initial submittal. Mr. Pater will also talk about shoreline stabilization impacts and will provide key guideline standards.

Mr. Pater provided a brief overview on Shoreline Stabilization Impacts and SMP Guideline Standards (PC Attachment 3).

Mr. Fakkema asked about the effectiveness of soft shore stabilization. Mr. Pater said that information is building on how effective it may be and in his experience it is fairly site specific and you need to have a good engineer that understands coastal processes. Mr. Spoo pointed out page 71 of the agenda packet that lists internet resources for more information on soft shore armoring.

Mr. Spoo reviewed Chapters 5 -7 of the draft SMP and provided a PowerPoint presentation (PC Attachment 4). Chapter 5 contains the shoreline modification provisions. Chapter 6 is the permit review and administration chapter and Chapter 7 contains definitions.

Mr. Spoo concluded his presentation and indicated that staff will present the changes resulting from DOE comments at the Planning Commission September regular business meeting. The goal is to have a recommendation from the Planning Commission to the City Council in September.

**Planning Commission Discussion**

Mr. Fakkema asked how long the SMP review process has been in work. Mr. Spoo explained that the process began in 2010 with the review of the State's scope of work and the hiring of the consultant to assist with drafting the SMP.

Mr. Fakkema asked how often the SMP needs to be reviewed. Mr. Pater said that it was every eight years, but this level of update isn't expected every time. Most communities are currently doing a major update this time because their SMP's are outdated and once they are in the eight year cycle this level of update won't be necessary.

Mr. Powers commended Mr. Pater for his assistance with the SMP project.

**ADJOURN: 9:20 p.m.**

# Memo

To: Members of the Planning Commission  
Cc: Steve Powers, Development Services Director  
From: Melissa Sartorius, Associate Planner  
Date: 8/24/12  
Re: Fairway Point PRD Modification to Consider ADU's

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Please find attached a publication on Accessory Dwelling Units (ADU) by the Municipal Research and Services Center of Washington (MRSC). After the July Planning Commission meeting, staff thought it might be helpful to provide you additional information regarding ADU's and their pros and cons. In addition, the revised report to you this month contains the City's Accessory Dwelling Unit Chapter 19.42 from the municipal code so that you may more fully understand the criteria on an administrative permit basis.

Thank you, Melissa



Municipal Research and Services Center of Washington  
Working Together for Excellence in Local Government

## Accessory Dwelling Units

### October 1995 - Report No. 33

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## Foreword

In the 1940s and '50s, many American families rented out an extra apartment over their garages or in the basement of their homes as a way to earn some extra income to help with the mortgage payment or with other household expenses. In fact, backyard cottages and attic and basement apartments were a common feature in many communities across the country. Since then, as more communities have adopted restrictive residential zoning regulations, such apartments, technically known as accessory dwelling units (ADUs), have been either severely limited or banned altogether, usually in the name of protecting single-family neighborhoods.

Recently, however, perceptions and attitudes toward accessory dwelling units are once again beginning to change. Much of this transformation can be attributed to the effects of the affordable housing crisis. Demographic trends that have resulted in growing numbers of smaller households have also contributed to the increased interest in accessory dwelling units. In addition, new growth management laws are requiring many communities to plan for and accommodate higher housing densities. Against this backdrop, many communities in Washington have begun to reexamine the appropriateness of zoning regulations that severely limit or prohibit accessory dwelling units. For cities over 20,000 in population, the Washington Legislature has now mandated that accessory dwelling units be encouraged and allowed in single-family zones.

What are accessory dwelling units? How can they benefit your community? How can your community encourage accessory dwelling units in ways that protect existing neighborhood character? This publication is intended to help local policy-makers answer these and other questions as they consider accessory dwelling units in their communities.

Allowing accessory dwelling units in single-family neighborhoods is not a panacea for all of a community's housing problems. They should also be considered with a variety of other possible approaches for achieving your community's housing goals. For more information on the many other techniques available to promote affordable housing, see *Affordable Housing Techniques - A Primer for Local Government Officials*, Municipal Research & Services Center of Washington, April 1992.

Special acknowledgment is given to Byron Katsuyama, MRSC Public Policy Consultant, who prepared this report. Thanks also to Bob Meinig, MRSC Legal Consultant, Sue Enger, MRSC Planning Consultant, for their review and comments, and to Holly Martin, MRSC Word Processing Specialist, for her assistance in format design and copy preparation.

Richard Yukubousky, Executive Director  
Municipal Research & Services Center of Washington

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## Introduction

Allowing the development of accessory dwelling units, or ADUs, in single-family homes is becoming an increasingly popular technique for creating low- and moderate-income housing for both homeowners and renters. Homeowners benefit from the additional rental income that they can use to pay part of their mortgage payment or to help with the upkeep on their homes. Renters benefit from the availability of moderately priced rental housing in single-family neighborhoods. The community benefits from the addition of affordable housing for little or no public expense.

ADUs are most commonly understood to be a separate additional living unit, including separate kitchen, sleeping, and bathroom facilities, attached or detached from the primary residential unit, on a single-

family lot. ADUs are usually subordinate in size, location, and appearance to the primary unit.

Attached units, contained within a single-family home, known variously as "mother-in-law apartments," "accessory apartments," or "second units," are the most common types of accessory dwelling units. Accessory apartments usually involve the renovation of a garage, basement, attached shed, or similar space in a single-family home.

Less common are detached "accessory cottages" or "echo homes" (an acronym for "elder cottage housing opportunities"), which are structurally independent from the primary residence. These units are often constructed or installed to provide housing for elderly parents being cared for by their adult children. Accessory cottages are permanent structures, while echo homes are temporary and movable. [*Accessory Units: An Increasing Source of Affordable Housing*, p. 5]

To reduce housing costs and meet changing market demands, pressures have increased in recent years to allow higher densities in urban areas, make more efficient use of existing housing stocks, and to eliminate regulatory barriers that unnecessarily limit affordable housing opportunities. Recent state legislation has underscored the need to review local housing needs and to plan for and take action to encourage the development of more affordable housing. Accessory dwelling units have emerged as an important component of the affordable housing strategies being carried out in many Washington cities.

The purpose of this report is to help local officials as they begin to consider proposals to allow ADUs in their communities. It is intended as a primer for city council and planning commission members on the potential of ADUs as a source of affordable housing and on the various regulatory issues and options that are likely to arise as ADUs are discussed. The report begins with a discussion of the reasons for the current interest in ADUs. It also reviews some benefits that ADUs can provide for homeowners, renters, and the community. The remaining sections focus on ADU policy issues and options, including a discussion of common zoning regulations. The report also includes sample ordinance language where applicable.

Appendix A contains the text of a model accessory dwelling unit ordinance developed by the state Department of Community, Trade, and Economic Development in consultation with the Affordable Housing Advisory Board (created by the 1993 Housing Policy Act). Appendix B contains a table summarizing selected ADU ordinance provisions from 10 Washington cities. Finally, Appendix C contains some sample ADU permits and forms.

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## Why the Interest in ADUs?

Three factors have spurred the recent interest in accessory dwelling units—the growing affordable housing crisis, changing demographics and recently adopted state growth management and housing policies.

## The Affordable Housing Crisis

The need for more affordable housing is probably the single most important reason for the growing interest in accessory dwelling units. Several studies by both public and private housing groups have amply documented the nature and extent of the affordable housing crisis in Washington. Many see ADUs, which use existing housing resources, as a simple and inexpensive way for communities to respond to the affordable housing crisis. ADUs typically cost 25 to 40 percent less to build than new, comparably-sized housing units since they do not require development of new land, and because construction costs are lower. Consequently, ADUs are usually much less expensive to rent.

## Demographic Trends

There is a growing need for smaller housing. In Washington, the average household size in 1960 was 3.09 persons. In 1990, it had declined to 2.53 persons. The decline in average household size has

resulted from several factors, including a growing elderly population, increasing numbers of single-person households, decreasing family size preferences, and high divorce rates.

A growing elderly population has led to an increase in the proportion of households having only one or two persons. According to data from the 1990 census, households with one or more persons 65 and older, make up more than 21 percent of the households in Washington. Persons over 65 and living alone (mostly women) make up almost 9 percent of all households in the state. Many of the elderly live in homes that have surplus space, and, while most want to stay in their homes, they often do not need and, in some cases, can no longer take care of a large home. Adding an ADU to their homes may allow many of these homeowners to remain in their homes for a longer time. [*Housing Affordability and Density: Regulatory Reform and Design Recommendations*, p.48]

***These statistics indicate that much of our single-family housing is no longer being used primarily by families with children in residence. These trends call into question the emphasis that exclusive single-family zoning has traditionally placed on promoting a life-style built around female domesticity and childrearing. This emphasis may have made some sense sixty years ago, when almost two-thirds of the households living in single-family houses had children present. But today, when less than half of them do, it is questionable whether promoting homogeneous, family-oriented neighborhoods will produce better residential environments, or even whether it will bolster the family as an institution in contemporary society.***

Growing numbers of single-person households have also increased the demand for smaller housing. Households with single persons under 65 now make up almost 17% of the households in the state.

The number of single-parent households has also increased. A large part of the growth in the numbers of these households is due to continuing high divorce rates. Mothers with one or more children head the majority of single-parent households. This group of single-parent households now represents almost 7 percent of the total number of households in the state. For many single-parent households the only options available for housing may be apartments in large complexes that offer few amenities for families with children. [*Housing Affordability and Density: Regulatory Reform and Design Recommendations*, p.47]

A decrease in family-size preferences has also contributed to the trend toward smaller household size. Many young married couples today are waiting longer to have children and, when they do, are usually deciding to have fewer children than their parents. Many of these families do not need or cannot afford homes as large as the ones that they grew up in.

One consequence of these demographic changes has been a growing need and demand for smaller housing. Many single-parents, single-persons, and young families either cannot afford, or do not need, a large home for themselves or their families. At the same time, many parents of baby boomers are now empty-nesters who live in homes that were originally built to hold families of five or six. The decline in household size has left many of these empty-nesters and other homeowners with unused, surplus housing space. The coincidental increase in the demand for smaller homes and the presence of surplus housing space has led many communities to consider ADUs as an efficient and low cost strategy for increasing affordable housing opportunities.

## State Laws

While many cities in Washington have considered ordinances to allow ADUs in the past, the Washington Growth Management Act and, more recently, the Washington Housing Policy Act are now requiring cities to plan for and provide more affordable housing opportunities, including ADUs, in their communities.

**State Growth Management Act.** The state Growth Management Act (GMA), passed by the legislature in 1990, establishes an extensive planning and land use regulatory framework and requires the counties (and cities within those counties) with the greatest population growth to formulate, under

guidelines in the Act, both a comprehensive plan and development regulations in conformance with the plan. Counties that are not required to plan under the GMA may elect to do so.

The GMA provides that communities in developing comprehensive plans should strive to "encourage the availability of affordable housing to all economic segments of the population" and to "promote a variety of residential densities and housing types, and encourage the preservation of existing housing stock." The Act also discourages the conversion of undeveloped land "into sprawling, low-density development." [RCW 36.70A.020]

Comprehensive plans developed under the GMA are required to have a separate housing element that includes:

- An inventory and analysis of existing and projected housing needs;
- A statement of goals and policies for housing preservation, improvement and development;
- Identification of sufficient land for housing, including government-assisted housing, housing for low-income families, mobile/manufactured housing, multifamily housing, and special needs housing; and
- A plan for meeting the housing needs of all economic segments of the community

[RCW 36.70A.070]

A 1991 amendment to the GMA adds a requirement for county-wide planning policies that must include, among other things, "policies that consider the need for affordable housing for all economic segments of the population and parameters for its distribution." [RCW 36.70A.210(3)(e)]

Finally, the GMA specifically encourages the use of innovative land use management techniques to enhance affordable housing opportunities, including, "density bonuses, cluster housing, planned unit developments, and the transfer of development rights." [RCW 36.70A.090]

**1993 Housing Policy Act.** The Washington Housing Policy Act, passed by the legislature in 1993, establishes the goals of reducing housing costs and improving housing quality for people in all income groups. Encouraging the development and placement of ADUs in single-family homes was recognized as an important part of these goals.

The Act directs the state Department of Community, Trade, and Economic Development (CTED (Dept. of Commerce)), in consultation with the affordable housing advisory board created by the Act, to report to the legislature on the development and placement of accessory apartments. The Act also directs CTED (Dept. of Commerce) to make recommendations to the legislature "designed to encourage the development and placement of accessory apartments in areas zoned for single-family residential use." [RCW 43.63A.215(1)(b)] In response, CTED (Dept. of Commerce), along with the affordable housing advisory board, developed a model accessory dwelling unit ordinance (see Appendix A).

The Act further requires that counties planning under the Growth Management Act and cities with populations of over 20,000 adopt ordinances by the end of 1994 that incorporate the accessory apartment recommendations developed by CTED (Dept. of Commerce) into their "development regulations, zoning regulations, or official controls." To allow some local flexibility, the recommendations are "subject to such regulations, conditions, procedures, and limitations as determined by the local legislative authority." [RCW 43.63A.215(3)]

Although the cities and counties subject to the Act's requirements probably must adopt ordinances to allow ADUs within single-family zones, the "local flexibility" provision appears to give legislative authorities some latitude to adapt CTED (Dept. of Commerce)'s model ordinance recommendations to the needs and preferences of the local community. For example, while the model ordinance recommends that ADUs be allowed in either existing or new homes, some cities have decided to limit them to homes that are over a certain age so as to prohibit ADUs in new construction. Similarly, while the model ordinance recommends that ADUs be allowed as both attached and detached units, some

communities have, due to local preferences or conditions, decided to limit ADUs to units that are attached to the primary residence. However, it is still unclear how far cities may depart from CTED (Dept. of Commerce)'s recommendations and remain in compliance with the intent of the Act

Many cities have already adopted ADU ordinances to comply with the Act, while others are currently in the process of doing so.

## Benefits

ADUs can provide a surprising number of benefits to communities, homeowners and renters. Although much of the attention given to ADUs revolves around their potential for increasing the supply of affordable housing opportunities, ADUs may also help to address other social issues, particularly those relating to housing options for our growing elderly population.

## Community Benefits

### **ADUs Can Help to Increase the Supply of Affordable Housing Without Government Subsidies.**

Allowing ADUs is one way that communities can provide more affordable housing opportunities without the necessity of local government expenditures or subsidies. This is a particularly good feature in view of the recent declines in federal support for the construction of new affordable housing units. When compared to the costs of constructing new government-subsidized apartments, the lower cost of converting existing units, which are paid for by the homeowner, will be an attractive option for most communities.

***If 1 in every 10 of America's owner-occupied single-family homes built before 1975 were to devote space to an accessory unit, 3.8 million rental units would be generated, increasing the supply of rental housing by about 10 percent.***

*"Not In My Backyard": Removing Barriers to Affordable Housing*  
Advisory Commission on Regulatory Barriers to Affordable Housing, U.S. Department of Housing & Urban Development

ADUs also tend to be better integrated into the community, unlike other forms of affordable housing that may be concentrated in a few areas. In most communities this dispersion occurs without the necessity for government intervention. A few communities, however, have adopted provisions that limit concentrations of ADUs by controlling the number of conversions that may occur within a particular area.

ADUs add to affordability both from the perspective of potential tenants, for whom rents are usually cheaper than for market units, and from the perspective of homeowners, who can use the rental income from an ADU to ease the burden of home mortgage and maintenance expenses.

**ADUs Encourage Efficient Use of Existing Housing Stocks and Infrastructure.** Many homes built during the 40's, 50's, and 60's were designed to hold large (by today's standards) households. Demographic trends since those times have resulted in lower fertility rates, a reduction in family size preferences, and smaller average household sizes. One consequence of these trends has been a widespread increase in the number of homes with surplus living space. [*Accessory Apartments in Single-Family Housing*, pp. 60-61]

Survey findings from the federal Housing and Urban Development Department's American Housing Survey show that 32 percent of all homes with five or more rooms are occupied by one- or two-person households. [*"Not In My Backyard": Removing Barriers to Affordable Housing*, p. 7-13] By using surplus space in single-family homes, ADUs promote more efficient use of the community's existing housing stock and supporting infrastructure.

**ADUs Encourage Better Housing Maintenance and Neighborhood Stability.** By allowing ADUs,

communities can encourage better upkeep of the existing housing stock since homeowners can apply a portion of the income from their rental unit to maintaining their property. Homeowners can also exchange rent reductions for maintenance services by tenants.

ADUs also help to enhance neighborhood stability since they can provide homeowners (e.g., elderly homeowners on fixed incomes and single parents with low incomes) with the extra income they may need to remain in their homes for longer periods.

**ADUs Can Help to Meet Growth Management Goals by Creating More Housing Opportunities Within Existing Urban Areas.** A fundamental principle of the state Growth Management Act is to steer new growth to areas that are already urban or urbanizing. Using surplus space in existing housing is one way that communities can take action to meet regional growth management goals to conserve land, house more people within urban growth areas, and prevent more sprawl.

## Homeowner Benefits

**ADUs Make it Possible for Adult Children to Provide Care and Support to a Parent in a Semi-Independent Living Arrangement.** Many baby boomers are now facing the prospect of having to arrange for the care and housing of their aging parents or other close relatives. By allowing ADUs, the community can give these families the option of providing for either live-in care in their parents' house or of having their parents move in with them. With an ADU in their home, adult children can care for an aging parent while retaining a semi-independent living arrangement both for themselves and their parents.

**ADUs Can Provide Homeowners with Extra Income to Help Meet Rising Homeownership Costs.** ADUs can provide many homeowners with needed additional income to meet high mortgage and maintenance costs. For a young family in their first home or for a single parent after a divorce, the additional income from an ADU may spell the difference between being able and not being able to stay in their home.

The additional income from an ADU may be particularly helpful for many elderly homeowners who are living on fixed incomes. Contrary to popular notions, most elderly people do not move to retirement homes or senior citizen communities as they age. The vast majority actually age in place in single-family homes. Housing studies show that the single-family home is not only the most common form of housing for senior citizens, but it is also the type of housing most often preferred by them. [*Planning for and Aging Society*, p. 15] However, many elderly people on fixed incomes may find it difficult to stay in their homes in the face of rising costs for utilities, maintenance and property taxes. ADUs may allow some of these elderly homeowners to stay in their homes, even on fixed incomes, where the extra income from an ADU helps them to offset some of their living expenses.

**ADUs Provide Homeowners with the Ability to Trade Rent Reductions for Needed Services.** Homeowners may also offer lower rents to tenants in exchange for assistance in performing various household services. For some elderly homeowners, being able to exchange rent reductions for needed services could be a deciding factor enabling them to stay in their homes.

The ability to exchange reduced rents for services will also benefit many other groups of homeowners, including young families, single parents, and handicapped persons. For example, a mother with young children may rent an ADU to an elderly couple and make an arrangement for reduced rent in exchange for regular babysitting.

Tenants, of course, would also benefit from service exchange arrangements by having their rents reduced in return for performing various services.

***For owner-occupiers who live alone, for the widowed, retired, or infirm, or for young families with small children, the opportunity to exchange services with tenants next door offers substitutes for social supports that were provided by the extended family in earlier generations.***

### *Accessory Apartments in Single-Family Housing*

Martin Gellen

**ADUs Provide Increased Security and Companionship.** Besides the financial benefits, many homeowners will also benefit from the security and companionship provided by having a tenant who lives close by. For an elderly person, concerns about injuries while they are home alone and fears about rising neighborhood crime rates may be greatly reduced just by the fact of having someone else living under the sameroof. The presence of a tenant may also enhance security while homeowners are out of town.

**ADUs Can Help First-Time Buyers Qualify for Loans and Help Offset Mortgage Payments.** For a single individual or a young family buying their first home, the presence of an ADU and its potential rental income may help them to qualify for a larger mortgage loan than they otherwise might get. After purchasing a home, the rental income from an ADU could help reduce the financial burden of a high mortgage payment. Young families could rent out an ADU until a time when their incomes have risen and they need more room. In this way ADUs allow families the flexibility to adjust the way they use their homes to suit changing life-cycle needs.

## Tenant Benefits

**Moderately-Priced Rental Housing.** Studies have shown that ADUs rent for less than average market rent levels. Lower rents are possible primarily because ADUs do not require the development of new land and are cheaper to build than conventional rental units. [*Accessory Units: An Increasing Source of Affordable Housing*, p. 5] Homeowners are also less likely to charge market rents because of their interest in getting and keeping good tenants.

Lower rents for ADUs may make it easier for some tenants to save for a downpayment on a home of their own. Rising rents for multifamily housing have been cited as a major barrier to many prospective homebuyers who are having a more difficult time saving enough to make the required down payment on a new home.

**ADUs Provide Affordable Rental Housing in Single-Family Neighborhoods.** ADUs also offer housing opportunities in more desirable single-family neighborhoods for some who might not otherwise be able to afford to live there. For many single individuals, single parents, or others with modest incomes, the only other housing option available may be apartment complexes. Living in an ADU would give these households the opportunity to enjoy the amenities typically found in many single-family neighborhoods, including more privacy, a quieter environment, and less traffic congestion.

**ADUs Increase Housing Opportunities for Handicapped People.** Handicapped people often face limited opportunities for housing that can meet their special needs. ADUs can provide many handicapped individuals with the opportunity to live independently in their own home but close enough to others to provide needed assistance.

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## Regulatory Issues and Options

Accessory dwelling units do represent a controversial housing alternative in many communities. Therefore, it is important to carefully assess the local issues and options presented by ADUs. Ultimately, most communities will address ADUs through the adoption of zoning ordinances designed to regulate the conditions under which they will be allowed. However, there are several preliminary issues that policy-makers may want to consider before deciding what zoning regulations may be appropriate for ADUs. Among the more important questions to consider are:

- What are the community's housing goals and how will these affect the regulation of ADUs?
- What is the likely demand for ADUs in the community?

- What are the characteristics of the community's existing housing stock?

The answers to these questions will provide valuable information and insights that can assist and guide policy-makers in deciding the best course for the community.

## **Community Goals: Balancing Neighborhood Concerns with the Need for Affordable Housing**

One of the first issues to consider is the community's housing goals. ADU regulations are likely to vary depending on the goals the community chooses to implement. The most common reasons cited for allowing ADUs are: (1) to expand the supply of affordable housing for both owners and renters in the community; (2) to provide a means for homeowners, particularly the elderly, to obtain extra income, security, companionship, and services; (3) to make more efficient use of existing housing stocks and infrastructure; and (4) to provide a mix of housing that responds to changing family needs.

From the perspective of some homeowners, however, ADUs may be viewed as a potential threat to the stability of single-family neighborhoods that should either not be allowed or, at least, closely controlled to avoid any potential negative impacts. For these homeowners, the most important goals may be to protect property values, neighborhood stability, and to preserve the single-family character of community neighborhoods.

The challenge for policy-makers is to find the right balance between the community's need for more affordable housing and the desire to preserve the quality of residential neighborhoods. There are many opportunities for communities to be creative in meeting this challenge.

### ***The purpose of allowing ADUs is to:***

1. ***Provide homeowners with a means of obtaining, through tenants in either the ADU or the principal unit, rental income, companionship, security, and services.***
2. ***Add affordable units to the existing housing.***
3. ***Make housing units available to moderate-income people who might otherwise have difficulty finding homes within the (city/county).***
4. ***Develop housing units in single-family neighborhoods that are appropriate for people at a variety of stages in the life cycle.***
5. ***Protect neighborhood stability, property values, and the single-family residential appearance of the neighborhood by ensuring that ADUs are installed under the conditions of this Ordinance.***

*Model Accessory Dwelling Unit Ordinance*

Washington State Department of Community, Trade, and Economic Development

## **Neighborhood Concerns**

Opposition to accessory units usually arises from neighborhood concerns about the perceived impacts of ADUs with respect to such issues as property values, density, changes in neighborhood appearance, and increased parking and traffic congestion. In response to these concerns, many communities have adopted regulations designed to deal with such issues as the size of units, their exterior appearance, off-street parking, and their concentration in neighborhoods. The general intent of these types of regulations is to calm neighborhood fears by controlling the number of conversions, minimizing neighborhood change, and upholding prevailing standards.

## **Homeowner Needs**

ADU proponents point out the importance of reducing regulatory obstacles and argue that, if controls are too restrictive, some homeowners will be unwilling or unable to add an ADU. Such regulations might include undue cost-generating requirements, overly-burdensome parking regulations, or restrictions on who will be allowed to live in ADUs. Supporters also argue against cumbersome review procedures, particularly those that may involve public hearings. They point out that many homeowners, particularly the elderly, may be intimidated by and unwilling to go through a lengthy public review process.

## Need and Demand for ADUs - How Many Units Will be Built?

Another issue that bears some consideration before zoning regulations can be adopted is the current need and demand for rental units in general and ADUs in particular. As part of their growth management planning, many communities in Washington are already required to conduct a housing needs assessment that includes an inventory of existing housing stocks and an analysis of housing needs. This type of information can also help policy-makers in evaluating zoning alternatives for ADUs. For example, the existence of low rental vacancy rates may suggest that there is a high potential demand for additional rental units, including ADUs. High vacancy rates also serve to reduce the risk for homeowners who want to install an ADU.

Although this information may be more difficult to collect, some estimate of the number of existing accessory apartments in the community will also be useful to policy-makers. The presence of many illegal units would be one indication of the demand for this housing option. [*Accessory Apartments in Single-Family Housing*, 1985]

Another question that usually comes up in discussions of ADUs concerns the number of units that are likely to be built. The answer to this question will vary for each community and is related to such factors as current vacancy rates, housing characteristics, and the restrictiveness of the community's zoning regulations. Opponents often worry that legalizing ADUs will lead to a flood of applications and conversions resulting in too many units. In response to these concerns, some communities have adopted regulations that attempt to limit, either directly or indirectly, the number of ADUs that can be installed in the community. By all accounts, however, the experience of other communities that have legalized ADUs seems to indicate that the actual number of conversions is likely to be relatively low. One national survey involving 47 communities suggests that communities with "favorable" zoning can expect to get approximately one ADU per 1,000 single family homes per year. [*Accessory Units: An Increasing Source of Affordable Housing*, pp. 5-6]

## Know Your Housing Stock

Policy-makers should also have some familiarity with the makeup and composition of the community's existing housing stock, including any evidence of current or projected surplus space in single-family housing. Information on home and household size will be available from census data on housing. Current census statistics reveal that many people are living in homes that have surplus space. A high percentage of homes with extra habitable space may be another indicator of the potential for ADU conversions in the community.

### **Keys to Success**

***Achievable standards, fast track processing for units meeting standards, and sensitivity to compatibility within existing neighborhoods are all techniques to encourage second unit development.***

***Develop specific performance standards dealing with such issues as minimum lot size, maximum unit size, parking standards, setback and height requirements.***

***Limits on the maximum number of units within a neighborhood, requirements for owner occupancy, and high parking requirements may be necessary to ameliorate community concerns, but they may deter construction of second units.***

***If second unit approvals can be made without a conditional use permit or other action requiring public hearing, property owners will find it less burdensome to add second units.***

***Financial or technical assistance can encourage second unit development and improve their affordability.***

***Allow for the legalizing and upgrading of existing units so as to conform with health and safety requirements. This can be encouraged by establishing building code requirements to achieve minimum health and safety requirements and by streamlining the conformance process.***

*Blueprint for Bay Area Housing*  
Association of Bay Area Governments, et al.

Also, are existing homes in the community of a type that are easily converted? Split level, Cape Cod, and ranch style houses may be good candidates for conversion, while many smaller bungalow style homes may not. Other home features that may lend themselves to adding an ADU include: detached garages, daylight basements, two-story homes, larger homes, and alley access. The relative ease of conversion of the predominant housing types in the community will also have an impact on the potential for ADU conversions.

Again, information of this type can help policy-makers in evaluating the appropriateness of proposed regulatory options.

The remaining sections contain a review of zoning provisions that have been proposed and in many cases adopted to regulate ADU conversions in single-family districts. Each section contains a discussion of the rationale for the regulation together with sample ordinance provisions. For a comparison of ADU zoning regulations adopted by a sample of 10 Washington cities, see Appendix II.

## **Zoning Regulations for ADUs - Issues and Options**

### **Definitions**

Most zoning ordinances contain some definition of the term "accessory dwelling unit," which may also be called an "accessory apartment," "accessory living unit," "accessory cottage," or a similar term. A good definition is important to provide a common understanding of the term and may also be useful to establish basic requirements and limitations. ADUs are most commonly defined as a self-contained living unit created within or detached from a single-family dwelling. Many ordinances also highlight the existence of separate cooking, sleeping, and sanitation facilities as distinguishing ADU features.

*An accessory dwelling unit (ADU) is a habitable living unit added to, created within, or detached from a single-family dwelling that provides basic requirements for living, sleeping, eating, cooking, and sanitation. [Sec. 19.04.0607(B), Mercer Island Municipal Code]*

Note that the above definition includes units that are either "added to, created within, or detached from" a single-family dwelling, which indicates that both attached and detached units are allowed. Some communities, however, have decided to limit ADUs only to units attached to the main residence. ADUs in these communities may be defined in a way that excludes detached units.

*"Accessory dwelling unit" means a subordinate dwelling unit incorporated within a single family structure. Accessory units may not be subdivided or otherwise segregated in ownership from the primary residence structure. [Sec. 20.20.120(A)(1), Bellevue City Code]*

The term "accessory" in "accessory dwelling unit" denotes a use that, under zoning regulations, is commonly understood to be one that is subordinate in size, location, and function to the principal unit. Communities that wish to underscore this point may also choose to highlight the subordinate or secondary nature of ADUs in their definition.

*Accessory Dwelling Unit: A second subordinate dwelling unit added to or created within a single-family dwelling ... with a provision for independent cooking, living, sanitation, and sleeping. [Sec.*

13.06.010(1)(c), Tacoma Municipal Code]

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## Review and Approval Procedures

ADUs are typically regulated either as a permitted use, with an administrative review, or as a conditional use, subject to a public hearing requirement.

ADUs that are regulated as a permitted use are usually allowed "as-of-right," if all applicable zoning and building code requirements are met. The approval process normally involves some type of administrative review and an inspection of the premises to ensure compliance with ordinance requirements. Under an administrative review process, the ADU permit is issued if the applicant meets the development standards without the necessity of a public hearing. The permitted use approach offers the advantage of administrative simplicity and is less intimidating for homeowners who want to install an ADU but who may be reluctant to go through a public hearing review.

*The installation of an ADU in new and existing single-family dwellings (hereinafter principal units) shall be allowed in single-family zones subject to specific development, design, and owner-occupancy standards. [CTED (Dept. of Commerce) Model Accessory Dwelling Unit Ordinance]*

Conditional use procedures are usually more rigorous and often add a neighborhood notice and public hearing requirement to the review process. Conditional use permit procedures have the advantage of providing for a case-by-case review of ADU applications, which may allow a more tailored response to problems.

ADU proponents argue that requirements for conditional use permits and public hearings are too cumbersome and intimidating and will present too much of a barrier to those who might otherwise benefit from this housing alternative. They argue that requirement may actually encourage the installation of more illegal units.

As an alternative procedure, some communities provide for an exemption from the public hearing requirement if, after notification of the property owners within a certain distance from the applicant's property, the planning department receives no requests for a hearing. This approach has the advantage of avoiding unnecessary hearing expenses in cases where neighborhood residents are more accepting of ADUs. It also spares homeowners from the burden of having to comply with a significant regulatory hurdle. [*Model Zoning*, p. 4]

Even when no public hearing is required, some communities require that a notice be sent to residents within a certain distance of the proposed ADU, either before approval to allow residents an opportunity to comment on the permit, or after the approval has been issued, to notify them about the ADU and the requirements of the ordinance. A notice to neighborhood residents lets them know what to expect and what their enforcement options are if problems arise. In some communities, the inclusion of public notice provisions may be necessary to satisfy the concerns of opponents.

*After approval, the Director shall provide notice of the registration of the accessory unit to owners of property within 200' of the registered site. The notice shall state that the unit complies with the standards of this section, shall describe the requirements for maintaining the unit, and shall explain how to obtain general information and how to request inspections. [Bellevue Ordinance No. 4498]*

The current trend among Washington cities that have recently adopted ADU ordinances has been toward a permitted use approach that allows ADUs in single-family zones subject to various development standards designed to preserve neighborhood character and appearance.

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## Owner-Occupancy Requirements

A common apprehension of opponents is that ADUs may harm neighborhood character if they are not

properly maintained by owners and/or renters. Opponents also express concern that too many ADUs may be created if individual speculators can purchase or develop multiple homes with ADUs. In response, many communities require that the homeowner must occupy either the principal or the accessory unit. The expectation is that homeowners will be more likely to maintain the property if they also live there. Also, by limiting ADUs to owner-occupied homes, individual speculators are effectively prevented from building multiple units.

*The property owner, which shall include title holders and contract purchasers, must occupy either the principal unit or the ADU as their permanent residence, but not both, . . . and at no time receive rent for the owner-occupied unit. [CTED (Dept. of Commerce) Model Accessory Dwelling Unit Ordinance]*

*'Owner occupancy' means a property owner, as reflected in title records, makes his or her legal residence at the site, as evidenced by voter registration, vehicle registration, or similar means .... [Ch. 20.20.120(A)(3), Bellevue Municipal Code]*

Owner-occupancy requirements are also thought to have the added benefit of ensuring better tenant management, since resident owners will be more likely to enforce appropriate behavior standards.

Where the community does not intend to require that homeowners must occupy the principal unit, it may be useful to clarify in the ordinance that they can live in either unit. Many homeowners, particular the elderly, who no longer need the space or who wish to avoid the burden of caring for the larger unit, may want the option of living in the smaller unit. [*Accessory Apartments - Using Surplus Space in Single-Family Houses*, p. 6]

Communities that adopt owner-occupancy restrictions may also want to include a provision that exempts temporary absences to allow some flexibility for homeowners while still requiring that the home be maintained as their principal residence.

*One (1) of the dwelling units in the structure shall be occupied by one or more owners of the property as the owner's(s') permanent and principal residence; provided that the Director may waive this requirement for temporary absences of less than one (1) year, where the accessory unit has been a permitted use for at least two (2) years and the owner submits proof of absence from the Puget Sound region. [Sec. 23.44.025(A)(2), Seattle Municipal Code]*

To ensure compliance, some communities require that homeowners sign an affidavit affirming that they will occupy either the primary or accessory residence.

*Affidavit. The property owner shall sign an affidavit before a notary public affirming that the owner occupies either the main building or the ADU .... [Sec. 13.06.196(B)(3), Tacoma Municipal Code]*

For added insurance that owner-occupancy requirements will continue to be met, some communities provide for termination of an ADU permit upon the sale of the property and require new owners to re-register.

*Upon sale of the property, a new owner shall be required to sign a new affidavit and to register the ADU, paying a reauthorization fee of \$100 .... [Sec.13.06.196(B)(2), Tacoma Municipal Code]*

Some ordinances require that the owner occupancy requirement be recorded as a deed restriction to put prospective buyers on notice of the prohibition against renting out both units. Whenever there is a transfer of ownership of the property, the title search turns up the document noting the regulation. See "Recording Requirements" on page 49.

In addition to the requirement that homes with ADUs must be owner-occupied, some communities also require that owners must have lived in their homes for a certain number of years before they can install an ADU. See "Length of Residence" on page 48.

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## **ADU/Principal Residence Size Regulations**

ADU ordinances often contain provisions regulating the size of ADUs and/or the principal unit. Size limits for ADUs are expressed either in absolute terms or some percentage of the principal unit (usually in the range of 20% to 40%). Size regulations may specify minimum and/or maximum sizes for the ADU or the primary residence. Some ordinances also regulate size by specifying a maximum number of bedrooms (e.g., two bedrooms) allowed in an ADU.

*In no case shall an ADU be more than 40 percent of the building's total floor area, nor more than 800 square feet, nor less than 300 square feet, nor have more than 2 bedrooms, unless in the opinion of the (building official), a greater or lesser amount of floor area is warranted by the circumstances of the particular building. [CTED (Dept. of Commerce) Model Accessory Dwelling Unit Ordinance]*

Size limitations serve several purposes. Most often they are designed to ensure that ADUs remain subordinate in size to the primary residence (percentage based limits, in particular, are designed to ensure that an ADU remains subordinate regardless of home size). They are also intended to control neighborhood density, the assumption being that controls on the size of ADUs will also tend to limit the number of tenants who can live in an ADU. Size limits are also aimed at minimizing visual impacts of additions or alterations to the residence.

*The ADU, excluding any garage area and other non-living areas such as workshops or greenhouses, shall not exceed 33 percent of the total square footage of the main building and the ADU combined after modification. The ADU shall not contain less than 300 square feet or more than 800 square feet. [Tacoma Ordinance No. 25624]*

Note that the size limitations in the above provision, which are relatively permissive, effectively require a minimum home size of 900 square feet in order to install a minimum-sized 300 square foot ADU. ADU proponents caution that a size limit based on a ratio between the primary unit and the ADU should be small enough to keep ADUs subordinate to the primary unit, but not so small as to require a large house to establish a viable ADU. Since house size and income are often related, a minimum home size requirement that is too restrictive could eliminate some homeowners who might benefit most from the opportunity to install an ADU.

If minimum/maximum size requirements are adopted, it may be helpful to give some discretion to the reviewing agency to modify requirements in cases where strict adherence would be impractical or uneconomical. For example, many two-story homes may be most economically converted by installing an ADU on the bottom floor which may take up half or nearly half of the entire space available. Or an ordinance may provide exemptions for the use of basement or attic space that are more than the specified maximums.

*The accessory dwelling unit shall contain not less than 300 square feet and not more than 800 square feet, excluding any related garage area; provided, if the accessory unit is completely located on a single floor, the Director may allow increased size in order to efficiently use all floor area, so long as all other standards set forth in this section are met. [Bellevue Ordinance No. 4498]*

Some ordinances do not contain specific size requirements but rely instead on applicable zoning, health, housing and building codes that regulate general height, set-back and lot coverage, and establish minimum space requirements for habitation.

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## Attached Or Detached?

One question that the community must answer is whether to allow detached ADUs. Some cities have limited ADUs to attached units to reduce the visual impact and to preserve the single-family character of neighborhoods. When made a part of the main house an attached unit is kept as a subordinate use and does not give the impression of two separate houses on a single-family lot. Where average lot sizes are very small throughout the community, this may be an appropriate restriction.

Location: Accessory dwelling units shall not be permitted in structures detached from the primary

residence, including but not limited to guest cottages, detached garages, or workshops. [Bellevue Ordinance No. 4498]

Detached units are less frequently allowed in zoning codes and are generally more expensive to build than an attached unit. While they are more visible as detached units, where they are permitted, they are usually required to be located in the rear yard area to minimize the visual impact of two separate residences. [*Accessory Units: An Increasing Sources of Affordable Housing*, p. 5] In many cases, a detached residence may provide a better living arrangement for those who want an ADU but who do not wish to have someone else living in the same physical structure. Even on relatively small lots, a unit may be successfully installed in a previously existing detached garage or similar structure.

*The ADU may be attached to, or detached from, the principal unit.* [CTED (Dept. of Commerce) Model Accessory Dwelling Unit Ordinance]

Some communities allow detached ADUs only on larger lots.

*7.a. Accessory dwelling units: ...*

*(2)Only in the same building as the principal residence unless the lot is at least 10,000 square feet in area and the allowable density of the zone is not exceeded.* [Sec. 21A.08.030(B), King County Zoning Code]

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## ADU Occupant Restrictions

Some ordinances, particularly those adopted 10 or more years ago, contain restrictions on who may live in an ADU. These ordinances typically provide that tenants must be a certain minimum age, usually 60 or 65, and/or that tenants be related to the owner. Ordinances may also specify that tenants be limited to employees of the homeowner or have some other special relationship (e.g., providing in-home care or assistance) to the homeowner. Typically, these types of restrictions are intended to allow residents to install an ADU for the limited purpose of providing in-home care to aging parents while maintaining separate living areas. Ordinance restrictions that limit the age of tenants or that require that the tenant be related to the homeowner are intended to preserve the "family character" of neighborhoods and to keep the number of conversions low, while still allowing them for the purpose of dealing with special family needs.

*Occupancy of the accessory or principal unit is limited to family members related by blood, marriage, or adoption, or persons providing nursing or domiciliary care of assistance to the owner in exchange for lodging.* [Sec. 11.19.3210(B)(3), Spokane Municipal Code]

ADU proponents argue that restrictions based on the age or familial status of tenants may discourage some homeowners from installing an ADU because of the risk of losing their investment in the event that their tenant moves away or dies. Because of the tenant restrictions, homeowners may have difficulty finding another renter who meets the ordinance's requirements. [*Accessory Apartments - Using Surplus Space in Single-Family Houses*, p. 13]

Restrictions on the age of tenants and their relationship to homeowners may also be difficult to enforce. When relatives die or move away, homeowners will be left with an empty and unusable apartment and may be tempted to fill the vacancy in violation of the ordinance. Without adopting a cumbersome enforcement procedure and in the absence of neighbor complaints, it may be difficult for communities to keep tabs on the status of ADU tenants.

As more communities have come to view ADUs as an important means of providing affordable housing alternatives, these types of restrictions, which limit opportunities to install ADUs to relatively few homeowners, have become less common. Few of the ordinances reviewed for this report contained restrictions of this type.

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## Number of Occupants

Limits on the numbers of occupants in homes with ADUs are designed to control overcrowding in homes with ADUs and increased neighborhood density, as well as related parking and traffic impacts.

Some communities limit the aggregate number of persons that may occupy both the ADU and primary unit to the number allowed in the house without the rental unit. [*Accessory Apartments - Using Surplus Space in Single-Family Houses*, p. 8] In theory, under this restriction, the density, parking, and traffic impacts resulting from ADU conversions should be no greater than those from a single-family structure without an ADU. Ordinances may also refer to provisions in the zoning code defining "family" that generally contain limitations on the numbers of related and/or unrelated persons who can live in a single residence.

*The total number of occupants in both the primary residence and the accessory dwelling unit combined may not exceed the maximum number established by the definition of family in Section 20.50.020. [Sec. 20.20.120(B)(2), Bellevue Land Use Code]*

*Any number of related persons may occupy each unit in a single-family residence with an accessory dwelling unit provided that if unrelated persons occupy either unit, the total number of persons occupying both units together may not exceed eight (8). [Sec. 23.44.025(A)(3), Seattle Municipal Code]*

Some ordinances place specific limitations on the occupancy of ADUs based on the size of the unit. This type of occupancy limitation is more sensitive to individual variations in the size of ADUs.

*Occupancy. Occupancy shall be limited to the following: No more than two persons in a unit of 300-400 square feet, no more than three persons in a unit ranging from 401-600 square feet, and no more than four persons in a unit ranging from 601-800 square feet. [Sec. 13.06.196(C)(2), Tacoma Municipal Code]*

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## Parking Requirements

The potential for parking problems generated by the installation of ADUs is one of the most common concerns expressed by residents. Neighborhood groups are generally opposed to any increases in on-street parking, particularly in areas where competition for existing parking is already a problem, or in neighborhoods where prevailing aesthetic standards make on-street parking less acceptable. Many communities have addressed this issue by requiring a certain number of off-street parking spaces for homes with ADUs. Off-street parking requirements typically range from one to one and one-half off-street spaces per ADU. [*Accessory Apartments - Using Surplus Space in Single-Family Houses*, p. 14].

Whether parking will become a problem depends to a great extent on current neighborhood standards and the perceptions of residents about existing parking problems. In some neighborhoods, on-street parking is a common practice and may therefore be more acceptable, while in others, off-street parking in garages is the more common rule. Varying neighborhood standards may suggest the need for a response that is more tailored (e.g., based on performance standards rather than specific parking requirements) to the particular needs of each neighborhood. [*Accessory Apartments in Single-Family Housing*, p. 172]

Once the community decides to require off-street parking for ADUs, the next question is where such spaces will be allowed. One concern expressed by neighborhood groups is that additional off-street parking be provided in a way that will not detract from the neighborhood's low-density, single-family character. Solutions might include restrictions on parking in front yard areas or landscaping requirements to limit visual impacts.

*Parking. One off-street parking space shall be required for the ADU, in addition to the off-street parking required for the main building....Such parking must be provided in the rear of the lot where adequate*

*access is available. Adequate access shall be defined as a dedicated street or alley with a minimum gravel surface. [Tacoma Ordinance No. 25624]*

*One off-street parking space, in addition to that which is required by the Ordinance for the underlying zone, shall be provided or as many spaces deemed necessary by the (building official) to accommodate the actual number of vehicles used by occupants of both the primary dwelling and the ADU. Parking spaces include garages, carports, or off-street areas reserved for vehicles. [CTED (Dept. of Commerce) Model Accessory Dwelling Unit Ordinance]*

Some communities allow homeowners to use tandem parking (one car behind the other) as a less costly alternative for satisfying requirements for off-street parking.

*A minimum of two (2) off-street parking spaces shall be provided, which spaces may be in tandem. The Director may waive the requirement for one (1) or both of the spaces if topography or existing structures makes provision of one (1) or both of the parking spaces unduly burdensome and adequate parking capacity exists. [Sec. 23.44.025(A)(7), Seattle Municipal Code]*

Proponents point out that in many instances single-family homes without ADUs could generate just as much traffic and demand for parking as a home with an ADU, particularly in homes with teenage children. They point out that ADUs are often in the homes of "empty nesters," single parents, and single residents, who tend to have fewer cars. Meeting requirements for additional parking spaces could be an expensive proposition for some homeowners and may discourage them from installing an ADU.

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## Design/Appearance Standards

Provisions that govern the design and appearance of homes with ADUs are intended primarily to preserve the visual and single-family character of neighborhoods. Many ordinances contain conditions limiting certain exterior modifications of homes with ADUs. These may include limitations on additions that increase the size of the home, restrictions on the location of entrances and exterior stairs, and other design guidelines. [*Accessory Apartments - Using Surplus Space in Single-Family Houses*, p. 16]

*The creation of an accessory living unit is subject to the following requirements: ... (5) Any additions to an existing structure for the purpose of the accessory unit do not increase the square footage of the structure by more than ten percent. [Sec. 11.19.3210(B)(5), Spokane Municipal Code]*

While some ordinances contain specific square foot limits on expansions, others simply rely on existing setback and lot coverage requirements to control the size of additions.

*Any additions to an existing building shall not exceed the allowable lot coverage or encroach into the existing setbacks. [CTED (Dept. of Commerce) Model Accessory Dwelling Unit Ordinance]*

Some communities prohibit any increase in home size to accommodate an ADU. Restrictions of this type are intended to minimize any changes to the exterior appearance of homes with ADUs.

*Single-family conversions may only be installed within existing structures, whether primary or accessory structures, subject to the following conditions: ...*

*4. No additions to the existing floor area are necessary as a part of the conversion. [Sec. 18.42.010(D), Tumwater Municipal Code]*

Proponents point out that restrictions on the size of additions may not be either necessary or effective. The high cost of remodeling may be just as effective at limiting large new additions to accommodate ADUs. Additionally, it may be easy for homeowners to avoid this type of restriction simply by adding space at one time to be later converted into an ADU. [*Model Zoning*, p. 15]

In an attempt to discourage homeowners from circumventing size limitations, some communities prohibit the installation of ADUs in homes that have recently added on space. This type of restriction

also seeks to encourage the use of existing surplus space, rather than new additions that increase density, to accommodate ADUs.

*Single-family conversions may only be installed within existing structures, whether primary or accessory structures, subject to the following conditions: ...*

*3. Where no additional floor area has been added in the preceding two years; and [Sec. 18.42.010(D), Tumwater Municipal Code]*

Many of the appearance and design standards applied to homes with ADUs are concerned with those portions of the home that can be seen from the street. One of the most common provisions prohibits the creation of additional front entrances. Communities typically require that entrances to ADUs be located on either the rear or side of the home.

*Only one (1) entrance may be located on each front or street side of the residence ... [Sec. 23.44.025(A)(6), Seattle Municipal Code]*

*The primary entrance to the ADU shall be located in such a manner as to be unobtrusive from the same view of the building which encompasses the entrance to the principal unit. [CTED (Dept. of Commerce) Model Accessory Dwelling Unit Ordinance]*

The installation and/or location of exterior stairs is also likely to be restricted to rear or side yard locations or prohibited altogether.

Many communities also include a stipulation in their ordinance that any modifications to the exterior of the home should conform to the original design characteristics and style of the home.

*When reviewing a conditional use request for an accessory apartment, the hearing examiner shall consider the following guidelines: . . . 3. The design of the accessory apartment is incorporated into the primary unit's design with matching materials, colors, window style and roof design. [Sec. 17.16.030(G)(3), Gig Harbor Municipal Code]*

*Design. An ADU shall be designed to maintain the architectural design, style, appearance and character of the main building as a single-family residence. If an ADU extends beyond the current footprint or existing height of the main building, such an addition must be consistent with the existing facade, roof pitch, siding and windows. [Tacoma Ordinance No.25624]*

Some ordinances simply say that any changes to the exterior of the home should not alter the "single-family character" of the neighborhood.

*The ADU shall be designed so that, to the degree reasonably feasible, the appearance of the building remains that of a single-family residence. [CTED (Dept. of Commerce) Model Accessory Dwelling Unit Ordinance]*

This type of provision allows the reviewing agency some discretion and flexibility in applying design guidelines. However, unless "single-family appearance" or "character" are defined in some way, it may be difficult for a community to deny a permit application.

## Illegal ADUs

What to do with existing illegal ADUs? Illegal units may be common in communities where there is excess demand for rental apartments, where zoning laws prohibit or tightly restrict ADUs, and where enforcement procedures are slow and/or ineffective. [*Accessory Apartments in Single-Family Housing*, p. 187]

So, depending on the circumstances, you may already have a substantial number of ADUs in your community. Some may predate the adoption of your city's zoning code and may therefore be classified as legal nonconforming units. Any ADUs built after the adoption of zoning codes prohibiting them would, of course, be classified as illegal units. Building and planning officials often have some idea of the number of illegal units in the community.

Safety is usually the most important concern of communities with illegal ADUs. When an ordinance allowing ADUs is adopted, many communities provide incentives for the owners of illegal units to legalize them and to bring them up to minimum fire and life safety requirements.

One option for encouraging legalization of existing illegal units is to waive any applicable fines for homeowners who apply for a permit within a certain period (e.g., six months) following adoption of the ordinance. Allowing a grace period for homeowners to modify illegal units that do not meet minimum health and safety standards may also be a useful incentive.

*That portion of a single family residence which meets the definition of accessory dwelling unit which was in existence prior to January 17, 1995, may continue in existence provided the following requirements are met:*

1. *An application for an accessory dwelling unit is submitted within eighteen (18) months of January 17, 1995.*
2. *The unit complies with the minimum requirements of the Uniform Building Code, Section 1208...*

[Sec. 19.04.0607(D), Mercer Island Municipal Code]

Owners of illegal units who apply for a permit within the grace period may also be given some leeway on minor violations of ADU size, lot size, setback, parking, and other requirements where full compliance would be impractical. [*Model Zoning*, p. 29]

*The Director may waive the one thousand (1,000) square feet limitation where exceeded in an accessory dwelling unit existing on January 1, 1993, if an application to legalize the accessory dwelling unit is filed within eighteen (18) months of the effective date of the ordinance codified in this section and if the Director finds that reduction of the floor area would be impractical.*  
[Sec. 23.44.025(A)(5), Seattle Municipal Code]

Imposing a stiff penalty on the owners of illegal units discovered after the grace period has run out may also serve as an effective incentive for owners to legalize their unauthorized units.

*Legalization of Nonconforming ADUs. Nonconforming ADUs existing prior to the enactment of these requirements may be found to be legal if the property owner applies for an ADU permit prior to December 31, 1995, and brings the unit up to Minimum Housing Code standards. After January 1, 1996, owners of illegal ADUs shall be guilty of a misdemeanor and, upon conviction thereof, subject to a fine not to exceed \$1,000, including all statutory costs, assessments, and fees, plus \$75 per day after notice of the violation has been made. All owners of illegal ADUs shall also be required to either legalize the unit or remove it.* [Sec. 13.06.196(C)(11), Tacoma Municipal Code]

***Experience in other jurisdictions indicates that cities may expect only limited success in getting owners of illegal units to come forward and register them even when offered amnesty. Owners of illegal conversions may prefer to keep their accessory apartments secret in order to avoid paying property taxes on them. A more significant motivation may be the desire to avoid income taxes. Even when zoning is not a constraint, property owners may choose to convert without a valid building permit in order to avoid the costs of compliance with building codes.***

*Accessory Apartments in Single-Family Housing*  
Martin Gellen

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## Minimum Lot Size

Some communities restrict ADUs to lots that are over a certain minimum size. The purpose of this type of restriction is to control density and, indirectly, to limit the number of conversions.

Proponents point out that minimum and maximum ADU size requirements along with existing lot coverage, setbacks, and other regulations are sufficient to control density. They argue that minimum lot size requirements may prevent many older homeowners and others with homes on small lots from securing the benefits of an ADU. (Hare, *Model Zoning*, p. 25)

None of the Washington State ordinances reviewed for this report contained a minimum lot size requirement for homes with attached ADUs.

Some communities have adopted a minimum lot size requirement for detached ADUs.

*7.a. Accessory dwelling units: ...*

*(2) Only in the same building as the principal residence unless the lot is at least 10,000 square feet in area and the allowable density of the zone is not exceeded.... [Sec. 21A.08.030(B), King County Zoning Code]*

## Density Controls

Density controls place a limit on the total number of homes within a particular area (e.g., city blocks, census tracts, etc.) that can have ADUs. They are intended to prevent traffic, parking, and other density-related impacts that may result from an overconcentration of homes with ADUs. They are also intended to ensure an even distribution of ADUs throughout the community. Such requirements may limit the number of homes with ADUs that may be located within a certain distance of one another, or they may place a cap on the total number of ADUs that may be installed on a particular block without regard to proximity to other ADUs.

Density controls may serve as a useful reassurance for residents who are concerned about the possibility of numerous new conversions appearing in single-family neighborhoods. Since typical conversion rates are usually quite low, such restrictions may not actually prevent many conversions. Density controls can always be reviewed and possibly lifted at a later date after the community has gained more experience with actual conversion rates. [*Model Zoning*, p. 24]

*If ... applications are filed for accessory dwelling units which would cause the concentration of single-family structures with new accessory dwelling units to exceed twenty percent (20%) of all single-family structures in single-family zones in any one census tract or in an area formed by a circle with a radius of one thousand feet (1,000') from the point at which three (3) or more census tracts meet, no further applications may be accepted for accessory dwelling units in such census tract or area. The Master Use Permit process set forth in Chapter 23.76 shall be followed to authorize these uses. [Sec. 23.44.025, Seattle Municipal Code]*

On the downside, dispersion requirements may be vulnerable to charges of inequity where homeowners who want to install an ADU are prevented from doing so simply because one or two other homeowners on the same block or within a certain distance, have already done so. This may be particularly troublesome in cases where the existing units were formerly illegal units that have recently been legalized. Dispersion requirements may also discourage the owners of illegal units from legalizing them and encourage the creation of new illegal units in areas that have already reached their limit.

## Age of Home

Some communities have adopted restrictions on ADU conversions based on the age of the home. Ordinances that restrict the ADU conversions to homes that are over a certain age (e.g., three years) effectively prohibit ADUs in new construction. Regulations of this type are intended to limit the number of conversions and to prevent developers from constructing and marketing new homes with accessory apartments in single-family zones. Such regulations are also intended to prevent new construction designed specifically for conversion at a later time.

*One accessory dwelling unit is permitted as subordinate to an existing single-family dwelling ...*

*"Existing single-family dwelling" means that permits for construction of the principal dwelling were finalized (occupancy approved) at least three years prior to application for accessory dwelling unit. [Secs. 20.20.120(B) and (A)(2), Bellevue Land Use Code]*

Supporters of restrictions based on the age of homes assert that the goal should be to promote the recycling and better use of existing housing rather than to encourage the development of "duplexes" in single-family neighborhoods.

ADU proponents question the need for restrictions on ADUs in newly constructed homes. They argue that this type of restriction denies homeowners flexibility in the use of their homes to allow for changes in family size, economic status, or other life cycle changes. They also point out that ADUs can be more easily included in new construction with designs that more effectively address exterior appearance and parking issues. Many communities do allow ADUs in new as well as existing homes.

*An ADU may be developed in either an existing or a new residence. [CTED (Dept. of Commerce) Accessory Dwelling Unit Ordinance]*

It is not clear that allowing ADUs in new construction will result in waves of ADU installations. Where there is concern over the potential numbers of ADUs, sunset provisions or reviews that are triggered after a certain number conversions may also provide reassurance to neighborhood groups, without restricting the ability of young homebuyers or others who may benefit from the opportunity to install an ADU in a newly purchased home. [*Accessory Units: State of the Art - Summary of Experience*, p. 23]

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## Length of Residence

Some ordinances limit ADU conversions to situations where the homeowner has lived in the house for a certain number of years (e.g., three years). These regulations are intended to prohibit conversions at the time of purchase and for a period of time after the purchase of both new and existing homes. Restrictions based on length of residence are also designed to prevent homebuyers from purchasing a home with the specific intent of installing an ADU. Such restrictions are usually based on concerns that legalization will result in large numbers of new ADU conversions.

*... no application shall be considered for an accessory dwelling unit, unless the applicant has owned and resided at the subject site for a period of not less than two years prior to the application. [Sec. 20.21.010 Edmonds Municipal Code]*

ADU proponents argue that regulations of this type effectively remove the opportunity for first-time buyers to use the rental income from an ADU to help in qualifying for a mortgage loan and to offset a portion of their house payment.

Only one of the Washington ordinances reviewed for this report contained restrictions based on the length of homeowner residence.

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## Recording Requirements

To ensure continued compliance with owner-occupancy and other ordinance requirements by current, as well as by any subsequent owners, many communities require that either a deed restriction, covenant, or similar instrument be filed and recorded by the homeowner.

Deed restrictions run with the land and put prospective buyers on notice with respect to the requirements and limitations of the ordinance and, in some cases, inform them of the steps they must take to apply for ADU permits. Whenever there is a transfer of ownership of the property, the title search turns up the document noting the regulations.

*The registration form or other forms as required by the (building official) shall be filed as a deed restriction with the (county) Department of Records and Elections to indicate the presence of the ADU, the requirement of owner-occupancy, and other standards for maintaining the unit as described above. [CTED (Dept. of Commerce) Model Accessory Dwelling Unit Ordinance]*

Some ordinances require homeowners to sign and file an agreement binding them to comply with all of the ADU ordinance provisions. The agreement may also provide an additional avenue for enforcement of the ordinance's requirements.

*The applicant shall provide a covenant in a form acceptable to the City Attorney and suitable for recording with the County Auditor, providing notice to future owners or long term lessors of the subject lot that the existence of the accessory dwelling unit is predicated upon the occupancy of either the accessory dwelling unit or the principal dwelling by the person to whom the accessory dwelling unit permit has been issued. The covenant shall also require any owner of the property to notify a prospective buyer of the limitations of this Section and to provide for the removal of improvements added to convert the premises to an accessory dwelling unit and the restoration of the site to a single family dwelling in the event that any condition of approval is violated. [Sec. 39.020(D)(13), Everett Zoning Code]*

## Utility Service Requirements

ADU ordinances sometimes require applicants to get a permit approval affirming the adequacy of existing water and sewer service capacity. This may be important in cases where the principal and accessory units combined have more bedrooms than the original home or in rural areas where older septic systems may be near capacity. In cases where the existing capacity is inadequate, the ordinance may require proof that provisions will be made for adding capacity. [*Accessory Units: State of the Art - Model Zoning*, p. 30]

*Certification by the (city/county) Health Department that the water supply and sewage disposal facilities are adequate for the projected number of residents must be provided to the building official. [CTED (Dept. of Commerce) Model Accessory Dwelling Unit Ordinance]*

Proponents point out that ADUs in most cases will not increase the number of people living in a house beyond the number for which it was originally designed and should not therefore cause any problems with respect to increased burdens on water and sewer systems. [*Accessory Apartments - Using Surplus Space in Single-Family Houses*, p. 15] Instead of requiring new infrastructure, ADUs may actually result in more efficient use of existing underutilized service capacities.

Some ordinances also prohibit the principal and accessory units from having separate utility meters. Requiring service through single water and electrical meters is intended to reinforce owner-occupancy requirements and to avoid the "duplex look" of separate electrical meters.

*An accessory apartment must be connected to the utilities (except telephone and television) of the dwelling unit and may not have separate services. [Sec. 23.70.030(10), Richland Municipal Code]*

## Provisions to Encourage Barrier-Free ADUs

ADUs increase housing opportunities for handicapped persons by allowing them to live independently in a separate dwelling but close to any needed support.

The community may want to consider including provisions to encourage the installation of barrier-free ADUs. One option would be to relax certain requirements where doing so would facilitate the installation of a barrier-free unit. It may also be helpful to add a statement in the ADU ordinance declaring the community's intention to increase affordable housing opportunities for the handicapped. [*Accessory Apartments - Using Surplus Space in Single-Family Houses*, p. 6]

*In order to encourage the development of housing units for disabled and handicapped individuals, and persons with limited mobility, the director may allow reasonable deviation from the prescribed conditions where necessary to install features that facilitate access and mobility of disabled persons.*

*Such facilities are in conformance with Washington State regulations for barrier-free facilities. [Sec. 11.19.3210(B)(13), Spokane Municipal Code]*

*In order to encourage the development of housing units for people with disabilities, the (building official) may allow reasonable deviation from the stated requirements to install features that facilitate accessibility. Such facilities shall be in conformance with the UBC. [CTED (Dept. of Commerce) Model Accessory Dwelling Unit Ordinance]*

## Maximum Number of ADUs per Lot

Most ordinances impose a limit of one ADU per single-family lot, particularly in urban areas that may have smaller average lot sizes. This restriction is intended to minimize increases in neighborhood density resulting from ADU conversions.

*There shall be no more than one single-family conversion per lot. [Sec. 18.42.010(A), Tumwater Municipal Code]*

Such limits may not be necessary or appropriate in some areas such as agricultural zones where multiple accessory housing units may be provided on large lots (e.g., housing for farm workers).

*Only one ADU may be created per residence in single-family zones. Multiple detached ADUs may be created in (agricultural) zones, if one of the occupants of each unit is employed by the property owner. [CTED (Dept. of Commerce) Model Accessory Dwelling Unit Ordinance]*

For most homeowners in single-family zones, the potential for adding more than a single ADU is not great in any event, in view of space requirements and the additional expense.

## ADUs with Home Occupations

It may also be useful to consider what, if any, provisions there should be to regulate home occupations (e.g., bed and breakfast, home businesses, day care, etc.) in homes with ADUs. One option would be to prohibit all or certain types of home occupations in homes with ADUs.

*A property may not have both an accessory dwelling unit and a home occupation as defined by this Ordinance. [Sec. 20.118.030(B)(8), Walla Walla Zoning Code]*

*No home profession, family day care home, or mini day care facility may be undertaken in either the principal or the accessory unit. [Sec. 11.19.3210(B)(8), Spokane Municipal Code]*

Another option would be to allow home occupations in only one of the units, either the primary unit or the ADU, but not both. Many communities have already adopted regulations that are designed to control the impacts of home occupations. These regulations may be sufficient to control any impacts from residences that have both an ADU and a home business.

*Home Occupations. Home occupations shall be allowed, subject to existing regulations, in either the ADU of the main building, but not both. [Sec. 13.06.196(C)(9), Tacoma Municipal Code]*

As an additional safeguard, the ordinance could include a provision requiring a review on a case-by-case basis of the cumulative impacts of a home occupation with an ADU, particularly with respect to parking and traffic. The reviewing agency may be provided with the discretion to modify ADU conditions or deny a permit where the cumulative impacts are deemed to be excessive. [Accessory Units: State of the Art -Model Zoning, p. 23]

## Periodic Permit Renewal

Some ordinances require periodic renewal of ADU permits to allow closer monitoring of ADUs over time

and to ensure that any zoning requirements continue to be met. This type of requirement can serve to allay the fears of neighborhood groups concerned about enforcement of ordinance conditions for the period after the permit has been issued. Periodic renewal of ADU permits also requires more planning department resources for enforcement.

*The owner of a single family dwelling with an accessory dwelling unit shall file an Owner's Certificate of Occupancy in a form acceptable to the City Attorney no later than April 1st of each year. [Sec. 39.020(D)(10), Everett Zoning Code]*

Proponents argue that, where they are adopted, reapproval procedures should be routine unless conditions are no longer being met. A less onerous requirement from the perspective of the homeowner would be to waive permit renewals unless neighbors specifically complain and request a hearing. Another alternative would be to require renewal at longer intervals (e.g., two years), coupled with a survey of neighbors.

Of course, the community may decide not to include any requirement for permit renewal at all. Many communities simply rely on neighbor complaints (particularly those that require notice to neighbors at the time of installation) to ensure continued compliance. This appears to be the most common approach followed in the Washington ordinances reviewed for this report.

Using less restrictive requirements for permit renewals will allow the jurisdiction to concentrate enforcement efforts where they are most needed while at the same time reducing the regulatory burden on ADU homeowners. [Accessory Units: State of the Art - Model Zoning, pp. 5-6].

A related requirement found in some ordinances provides for the automatic expiration of the permit when changes occur causing the ADU to be out of compliance with the required development standards.

*In addition to the conditions which may be imposed by the Planning Director ... all accessory dwelling units shall also be subject to the condition that such a permit shall automatically expire whenever:*

*a. The accessory dwelling unit is substantially altered and is thus no longer in conformance with the plans approved by both the Planning Director and the Building Official; or*

*b. The subject lot ceases to maintain at least three off-street parking spaces; or*

*c. The applicant ceases to own or reside in either the principal or the accessory dwelling unit. [Sec. 39.020(D)(12), Everett Zoning Code]*

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## Automatic ADU Ordinance Review

Some communities have adopted provisions that require an automatic review of ADU ordinances after a certain number of ADU permits have been issued. An automatic review based on the number of permits issued may be based on a certain number issued community-wide or the number of permits issued within a single area (e.g., census tract), or a combination of these.

*At least three (3) months prior to reaching the two thousand five hundred (2,500) limit on applications or on September 1, 1999, whichever is earlier, the Department of Construction and Land Use and the Planning Department shall submit to the City Council a report regarding accessory dwelling units established, and, if deemed necessary, recommendations for revisions to the regulations and procedures related to accessory dwelling units. ....*

*Within six (6) months of receiving the report, the City Council shall review the report and consider the recommendations proposed. If the City has reached or is nearing the two thousand five hundred (2,500) limit on applications, the City Council shall determine whether to authorize further permits or otherwise revise the provisions.*

*If applications are filed for permits for accessory dwelling units which would cause the concentration of new structures with accessory dwelling units to exceed twenty percent (20%) of the number of single-family residences in single-family zones in any one (1) census tract or in an area bounded by a circle with a radius of one thousand feet (1,000') from a point where three (3) or more census tracts meet, the Department of Construction and Land Use shall notify the City Council. Within three*

*(3) months, that department shall submit a report to the City Council containing an analysis of the number, location and character of the single-family structures with accessory dwelling units in the tract or area exceeding the twenty percent (20%) threshold. The City Council shall request that the neighborhood planning organization for the affected neighborhood submit a recommendation within three (3) months of that request regarding action to be taken. Within six (6) months of receiving the neighborhood planning organization's recommendation, the City Council shall review the report and consider recommendations proposed. The City Council shall determine whether to authorize further permits or otherwise revise the provisions. [Sec. 23.44.025(F), Seattle Land Use Code]*

Automatic review provisions may be useful to reassure neighborhood groups that any problems related to ADUs will be reviewed and dealt with at some point.

If this type of provision is adopted, it may also be useful to include a provision grandfathering any ADUs that have been constructed before the ordinance is amended or repealed. This may help to remove any doubts or concerns that homeowners who legally install ADUs may have about the legal status of their units in the event that the ordinance is amended or repealed at a later date. [*Accessory Units: State of the Art -Summary of Experience*, p. 21]

Most of the Washington ordinances reviewed for this report do not provide for an automatic ordinance review.

## Periodic Reports on ADU Applications

Periodic reporting by the planning department on permit applications may be useful to monitor the impacts of ADUs in the community. Some communities have included such requirements to address concerns expressed by neighborhood groups that unanticipated large numbers of conversions could harm single-family neighborhoods without some mechanism for periodic monitoring and review. If the number of conversions is having disproportionate impacts on particular areas in the community, then, presumably, the city council could step in to correct the situation by amending the ordinance to either limit or even prohibit additional conversions.

*Reports. The Building and Land Use Services Division of the Public Works Department shall report annually to the City Council regarding ADU applications. The report shall include: (a) the number of units established; (b) the geographic distribution of the units; (c) the average size of the units; and (d) the number and type of completed regulatory enforcement actions. The ADU ordinance will be reassessed every five years, or sooner, if records show that 20 percent of the single-family structures within any census tract or city-wide have ADUs. [Sec. 13.06.196(B)(8), Tacoma Municipal Code]*

*Biennially (every two (2) years), DCLU [Department of Construction and Land Use] shall prepare a report for the City Council stating the number and location of permits issued for new accessory housing units. [Sec.23.44.025(F), Seattle Land Use Code]*

Periodic reporting and monitoring requirements may give reassurance to neighborhood groups without hindering ADU installations, and may therefore be useful in communities where neighborhood groups are particularly wary of ADUs. Although experience around the country shows that actual installation rates will probably be lower than those predicted by many opponents, adoption of this requirement may be worthwhile to address neighborhood concerns.

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## **Appendix A**

### **MODEL ACCESSORY DWELLING UNIT**

#### **ORDINANCE RECOMMENDATIONS**

**Washington State Department of Community, Trade, and Economic Development, January 1994**

#### **SECTIONS:**

##### **Definitions**

##### **Purpose and Intent**

##### **Standards and Criteria**

##### **Grandfathering**

##### **Application Procedures**

#### **DEFINITIONS**

1. An Accessory Dwelling Unit (ADU) is a habitable living unit that provides the basic requirements of shelter, heating, cooking, and sanitation.

*Comment: The Uniform Building Code (UBC) Sec. 1207 & 1208 lists minimum room sizes for an efficiency unit. The jurisdiction could set up maximum areas in the Standards and Criteria below, if it so desired.*

#### **PURPOSE AND INTENT**

**A.** The installation of an ADU in new and existing single-family dwellings (hereinafter principal units) shall be allowed in single-family zones subject to specific development, design, and owner-occupancy standards.

*Comment: As required by Senate Bill 5584.*

**B.** The purpose of allowing ADUs is to:

1. Provide homeowners with a means of obtaining, through tenants in either the ADU or the principal unit, rental income, companionship, security, and services.
2. Add affordable units to the existing housing.
3. Make housing units available to moderate-income people who might otherwise have difficulty finding homes within the (city/county).
4. Develop housing units in single-family neighborhoods that are appropriate for people at a variety of stages in the life cycle.
5. Protect neighborhood stability, property values, and the single-family residential appearance of the neighborhood by ensuring that ADUs are installed under the conditions of this Ordinance.

### **STANDARDS AND CRITERIA**

**A.** ADUs shall meet the following standards and criteria:

1. The design and size of the ADU shall conform to all applicable standards in the building, plumbing, electrical, mechanical, fire, health, and any other applicable codes. When there are practical difficulties involved in carrying out the provisions of this Ordinance, the (building official) may grant modifications for individual cases.

*Comment: Construction shall conform to all codes which are required for any new construction.*

2. Certification by the (city/county) Health Department that the water supply and sewage disposal facilities are adequate for the projected number of residents must be provided to the building official.

*Comment: More applicable in rural areas for septic and wells. It is actually covered by No. 1 above.*

3. Any additions to an existing building shall not exceed the allowable lot coverage or encroach into the existing setbacks.

*Comment: Planning ordinance already in place in most jurisdictions.*

4. The ADU may be attached to, or detached from, the principal unit.

*Comment: Jurisdictions need to survey their existing housing stock and neighborhood standards to determine where and how ADUs would best fit their housing needs. This would allow the most diversity of choice and honor the uniqueness of each site.*

5. Only one ADU may be created per residence in single-family zones. Multiple detached ADUs may be created in (agricultural) zones, if one of the occupants of each unit is employed by the property owner.

*Comment: The first sentence is to "maintain single-family appearance." The second sentence is appropriate in agricultural zones.*

6. The property owner, which shall include title holders and contract purchasers, must occupy either the principal unit or the ADU as their permanent residence, but not both, for at least (X) months out of the year, and at no time receive rent for the owner-occupied unit.

*Comment: Owner-occupied units are better maintained, and therefore the neighborhood will be better*

*maintained. If the owner has to live on site for more than six months out of the year, they could not own more than one ADU. This would eliminate speculators/developers from developing duplexes throughout an area under the guise of calling them ADUs.*

7. An ADU may be developed in either an existing or a new residence.

*Comment: This would allow new home builders to plan ahead for "mother-in-law" type units and thus save money now and time and inconvenience later.*

8. In no case shall an ADU be more than 40 percent of the building's total floor area, nor more than 800 square feet, nor less than 300 square feet, nor have more than 2 bedrooms, unless in the opinion of the (building official), a greater or lesser amount of floor area is warranted by the circumstances of the particular building.

*Comment: Area limitation. See No. 1 under Definition above. The existing structure, the lot size, or the jurisdiction will determine ADU's size.*

9. The ADU shall be designed so that, to the degree reasonably feasible, the appearance of the building remains that of a single-family residence.

*Comment: To maintain single-family appearance. This is a subjective evaluation and unless specific design standards are adopted by the jurisdiction, this may be difficult to consistently apply.*

10. The primary entrance to the ADU shall be located in such a manner as to be unobtrusive from the same view of the building which encompasses the entrance to the principal unit.

*Comment: The second entrance is located this way to maintain single-family appearance with an attached ADU. Less restrictive than "no second entry on the street side of the principal unit," but it allows for site restriction that may make a side or rear entry impossible.*

11. One off-street parking space, in addition to that which is required by the Ordinance for the underlying zone, shall be provided or as many spaces deemed necessary by the (building official) to accommodate the actual number of vehicles used by occupants of both the primary dwelling and the ADU. Parking spaces include garages, carports, or off-street areas reserved for vehicles.

*Comment: Parking requirements may vary from jurisdiction to jurisdiction depending on density of neighborhood, existing neighborhood standards, etc. Other parking options include more than one additional space, tandem parking, or allowing on-street parking.*

12. In order to encourage the development of housing units for people with disabilities, the (building official) may allow reasonable deviation from the stated requirements to install features that facilitate accessibility. Such facilities shall be in conformance with the UBC.

*Comment: This is an accessibility issue.*

## **GRANDFATHERING**

### 1. Option 1.

ADUs created prior to (date) shall be registered with the (building official) for inclusion into the Certificate of Occupancy Program. Application for registration must contain the name of the owner, the address of the unit, the floor area of the two dwelling units, a plot plan of the property, evidence of the date of establishment of the unit, evidence of the use for the six-month period prior to the application for registration, and a signature of the owner.

*Comment: This provision would allow the building official to verify the compliance of the ADU to the codes, and to require changes as necessary.*

### Option 2.

Ignore.

*Comment: It would be difficult, and very time consuming, to determine under which codes the ADU was originally constructed.*

### **APPLICATION PROCEDURE**

1. Application for a building permit for an ADU shall be made to the (building official) in accordance with the permit procedures established in Section (00.0000), and shall include:

*Comment: For building official's plan check.*

a. A letter of application from the owner(s) stating that the owner(s) shall occupy one of the dwelling units on the premises, except for bona fide temporary absences, (for (X) months out of each year).

*Comment: This is an owner-occupancy requirement. Limits the owner from "living" in several units at the same time.*

2. The registration form or other forms as required by the (building official) shall be filed as a deed restriction with the (county) Department of Records and Elections to indicate the presence of the ADU, the requirement of owner-occupancy, and other standards for maintaining the unit as described above.

*Comment: This is for optional use if the owner-occupancy requirement is adopted.*

3. The (building official) shall report annually to the (council) on ADU registration, number of units and distribution throughout the (city/county), average size of units, and number and type of complaint and enforcement-related actions.

*Comment: This is a local jurisdiction option. This provides a tracking mechanism on the number of ADUs to determine if changes to the Ordinance are needed.*

4. Cancellation of an ADU's registration may be accomplished by the owner filing a certificate with the (building official) for recording at the (city/county) Department of Records and Elections, or may occur as a result of enforcement action.

5. This Ordinance shall take effect and be in force five days after passage and legal publication.

*Comment: This is a local jurisdiction option.*

AUG 24 2012

Kathy Gifford

CITY OF OAK HARBOR  
Development Services Department

**From:** porritt@whidbey.net  
**Sent:** Friday, August 24, 2012 4:24 PM  
**To:** Melissa Sartorius; Kathy Gifford; Steve Powers  
**Subject:** E-mail concerning issue of approving ADUs at Fairway Point division 4

Steve, Melissa and Kathy,

Here are some of my thoughts for submission to public comment on the issue. Thanks for all your hard work and assistance. Have a good weekend.

Oak Harbor Planning Commission

8-24-2012

1. My name is Richard Porritt, Jr. I live at 2130 Fairway Lane, Oak Harbor. My remarks concern the Additional Dwelling Unit (ADU) issue in the adjacent Fairway Point development.
2. First, my compliments to the Planning Commission for their many insightful questions regarding the issue during the July meeting. Through those questions, many other facets of the problem came to light.
3. Second, adjoining property owners have received 3 or 4 pieces of correspondence from the city over the past few months on this issue with conflicting, confusing, and changing information. A public notice sign on lot 19 in Division 1 also changed adding to the confusion. Additionally, the notice for the August meeting now only refers to division 4 as the issue.
4. Planning Commission Report dated July 24, 2012 makes it clear that 29 units in division 3 could each have ADU's and that approval would be "administrative" based on Density Units being in an acceptable range. With the potential for nearly 30 ADU's on the 40 lots in division 3, traffic congestion increase with vehicles from multiple ADU's could be significant—nearly 30 additional vehicles.
5. The ADU's have been described in the various documents and meeting discussion as "cottage apartments", mother-in-law apartments, care giver apartments, and rental apartments. During the comment and discussion portion of the July meeting, a reference was made to renting the ADU's for \$600 a month as an income producer and a marketing tool to help offset a mortgage.
6. Division 4 decisions can set a precedent for administrative actions that could make ADU development easier in Division 3, where 29 lots are affected.
7. Increased traffic congestion and a large number of unregulated, one-bedroom rental apartments in a single-family residential neighborhood seem to be larger issues not measured within the scope of the Density Units per acre index. A homeowners association should not be the regulatory board for rental units. If it must, then property values will likely be adversely affected.

Richard H. Porritt, Jr.

2130 Fairway Lane, Oak Harbor

## Shoreline Stabilization Impacts and SMP Guideline Standards

### Overview

- Shoreline stabilization and flood protection are actions taken primarily to address erosion impacts to upland property and improvements caused or associated with current, flood, wake or wave action. These actions include:
- structural and non-structural methods including but not limited to riprap, bulkheads, jetties, groins, beach nourishment and bioengineering/vegetative management methods.

### Coastal Processes Impacts

Bulkheads and other "hard" shoreline stabilization measures can increase beach erosion: - waves reflect off shoreline armoring structures, particularly concrete bulkheads, can scour away sediments and increase erosion.

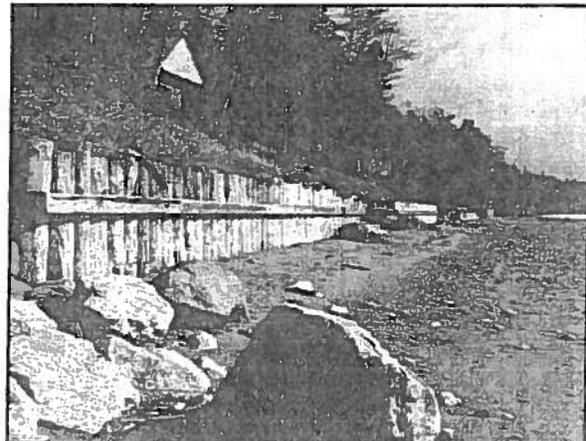
- - Loss of sand: a beach can be transformed into gravel or cobbles, and even scoured down to bedrock, or hard clay.
- Bluffs: Bulkheads at bluff bases can interrupt beach sand/gravel sources, resulting in beach loss and the gradual loss of finer sediment.

### Shoreline Habitat Impacts

- Overhanging trees and shrubs are often removed. This can cause increased siltation, reduced organic matter and changes in near shore habitat.
- The loss of bank vegetation reduces shade and shelter on the upper beach. Spawning habitat for forage fish (ex surf smelt) may be degraded.
- Degrade the near shore habitats that provide food for wildlife and fish, including salmon.

### Soft Shore Stabilization Options

- Bigger Setbacks
- Beach Nourishment, perched beaches
- Large Wood
- Biotechnical techniques
- Geotubes
- Textured or modified surfaces



**SMP Shoreline Stabilization Requirements (WAC 173-26-231)**

**Overall new development:**

- Should be located to avoid the need for future stabilization.
- Setback sufficiently from steep slopes and bluffs
- Avoid impacts to adjacent and down current properties

**New Stabilization Structures**

Geotechnical analysis report required to demonstrate need

- Protect existing primary structures;
- support of new nonwater-dependent development, including single-family residences;
- water-dependent development
- Ecological restoration

**Allowed Under Conditions**

- The erosion is not caused by upland conditions, vegetation loss, drainage.
- Nonstructural measures, planting vegetation, or installing on-site drainage improvements, are not feasible
- need to protect primary structures
- erosion control structure will not result in a net loss of shoreline ecological functions.

**Replacement**

- Demonstrated need to protect principle uses or structures from erosion.
- Replacement structures cannot encroach waterward of existing structure or OHWM unless:
  - Overriding safety or environmental concerns
  - Residence was occupied prior to January 1 1992.
- Soft shore stabilization allowed waterward

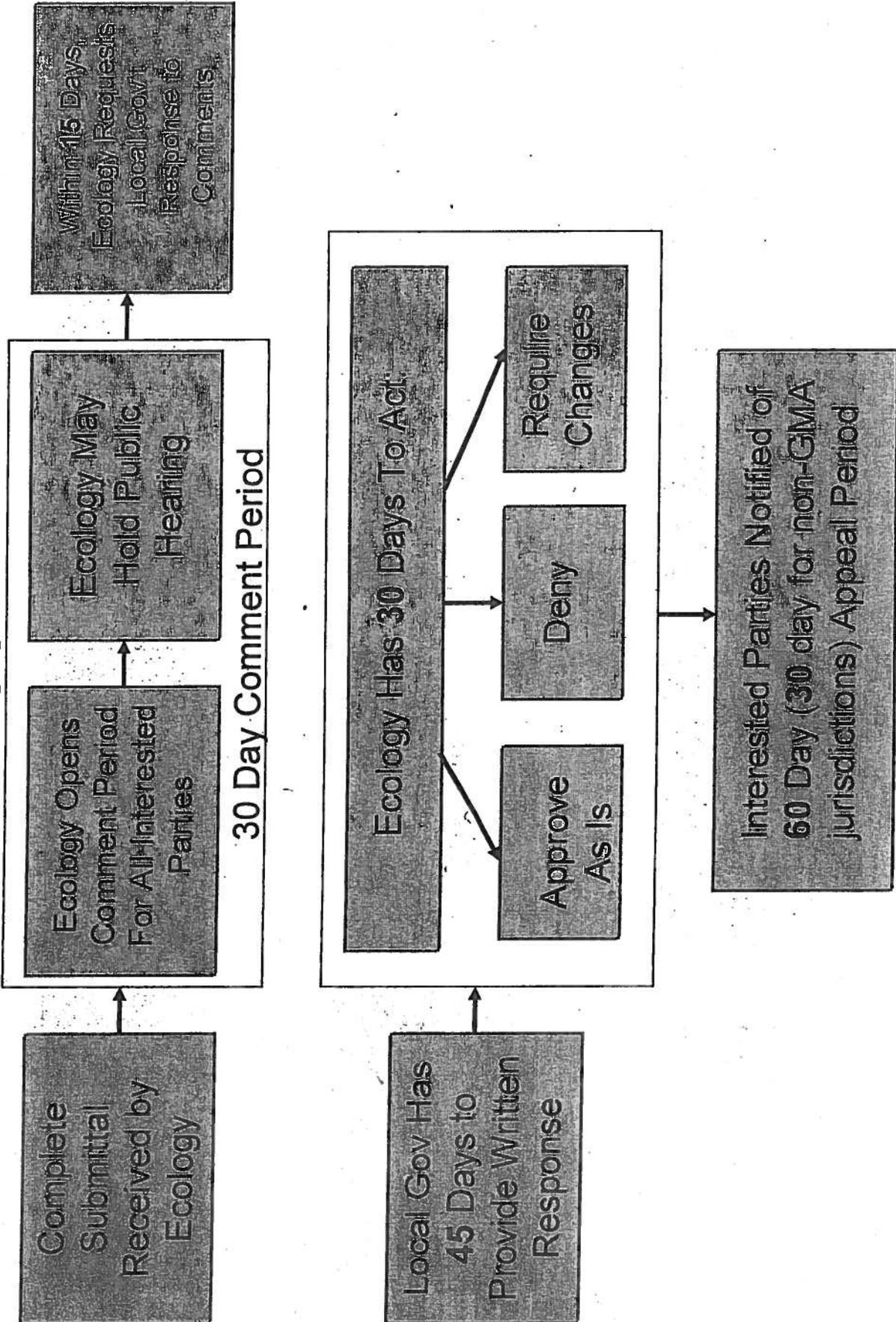
Addressing No Net Loss of Ecological  
Functions

- Limit structure size or stabilization measures to minimum necessary
- Mitigation required for stabilization measures on feeder bluffs.
- Avoid or minimize impacts to sediment transport

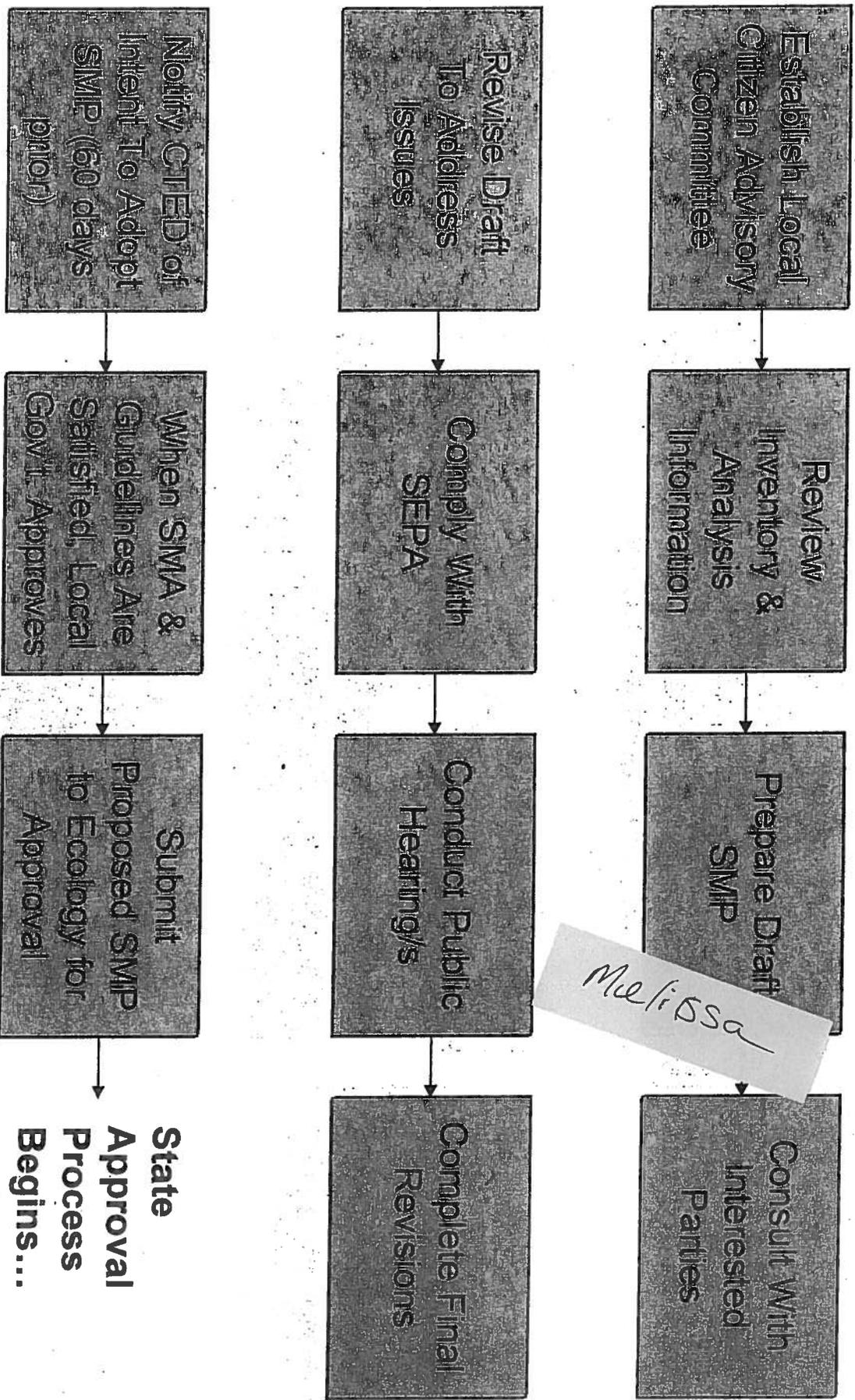
**David Pater**  
**Dept. of Ecology**  
**Shorelands Program**

**425-649-4253**  
**email:**  
**David.Pater@ecy.wa.gov**

# State SMP Approval Process



# Local SMP Update Process



*Melissa*



Planning Commission meeting 8/28/2012

**SHORELINE MASTER PROGRAM UPDATE**

**PURPOSE**

- ✦ Review of Chapters 5 - 7
  - + Stabilization, Chapter 5
  - + Permit review, Chapter 6
  - + Non-conforming development, Chapter 6
  - + Chapter 7, definitions
  
- ✦ Questions

**CHAPTER 5 - MODIFICATIONS**

- ✦ What are modifications?
  
- ✦ Stabilization - what is it?
  - + Spectrum of types from soft to hard ("structural")
  - + Environmental impacts
    - Movement of sediment and large woody debris
    - Beach formation/habitat loss
    - Exacerbate erosion for adjacent properties

**CHAPTER 5 - STABILIZATION**



**CHAPTER 5 - STABILIZATION**



**CHAPTER 5 - STABILIZATION**



**CHAPTER 5 - STABILIZATION**



**CHAPTER 5 - STABILIZATION**



**CHAPTER 5 - STABILIZATION**



**CHAPTER 5 - STABILIZATION**



**CHAPTER 5 - STABILIZATION**



**CHAPTER 5 - STABILIZATION**



### CHAPTER 5 – STABILIZATION

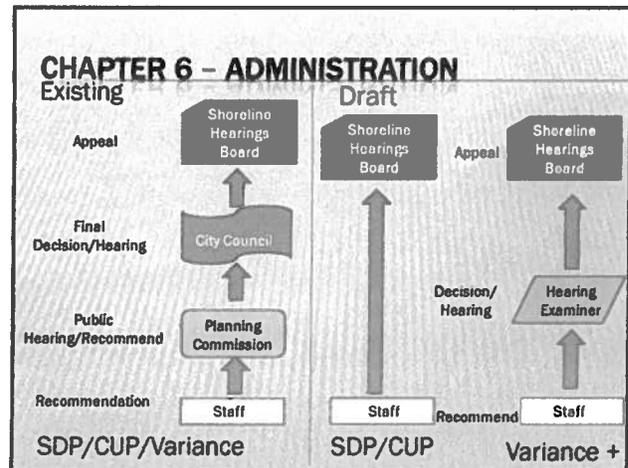
- × The Draft SMP – new hard stabilization
  - + Existing Structures
    - × Geotech demonstration of danger - 3 years
    - × Non-structural not feasible
  - + New Structures
    - × Non-structural not feasible
    - × Erosion not caused by upland
  - + Maintenance and Repair
    - × Replacement /Major repair = over 50% linear length
    - × Minor = less than major. No demonstration needed.

### CHAPTER 6 – ADMINISTRATION

- × Overview
  - + Permit processing
    - × Responsibilities and timelines
  - + Exemptions
    - × Shoreline permit not required
  - + Non-conforming development

### CHAPTER 6 – ADMINISTRATION

- × Permit Processing – Existing SMP
  - + 2001 & 2004 permit reforms
    - × Site-specific & Quasi-judicial = staff/hearing examiner
    - × Shoreline permits not considered
    - × Existing SMP project review= PC, CC review
  - + Draft SMP
    - × SDP & CUP = Type II staff review/Type III, if necessary
    - × Variances = Type III Hearing Examiner
    - × Reinforce PC role as policy advisory committee

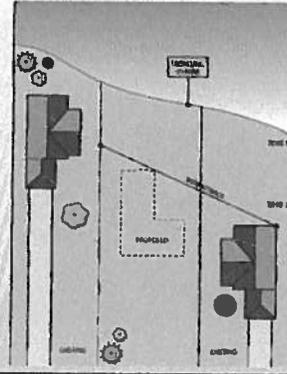


**CHAPTER 6 - ADMINISTRATION**

× **Non-conforming development**

- + What is it?
  - × Existing development does not comply with new regs.
  - × Natural outcome of updating the SMP
  - × Will have lots of non-conforming development after adoption
  
- When to comply?
  - × Extremes: make all comply/make none comply ever
  - × Existing structures - may be enlarged/does not increase degree of non-conformity. Up to 60% FMV.
  - × Existing uses - one time expansion of 50%
  - × Damaged = replacement of 100%

**CHAPTER 6 - ADMINISTRATION**



**QUESTIONS?**

**CHAPTER 5 - STABILIZATION**

- × **The State Guidelines - New hard stabilization**
  - + Existing Structures
    - × Geotechnical demonstration of danger - 3 years
    - × No net loss
  
  - + New Structures (water-depend/non-water depend)
    - × Erosion not from upland conditions
    - × Non-structural measures not feasible
    - × Geotechnical demonstration of danger - 3 years
    - × No net loss

## **CHAPTER 5 – STABILIZATION**

- × The State Guidelines – new hard stabilization
  - × Replacement
    - × Geotechnical demonstration of danger - 3 years for structures AND uses.
    - × No net loss

Fairway Point PRD  
Modification to Consider  
Accessory Dwelling Units (ADU)

Public Hearing

# City of Oak Harbor Planning Commission Report

Date: September 25, 2012  
Subject: Fairway Point PRD Modification  
- To Consider ADU's within  
Division 4

**FROM:** Melissa Sartorius, Associate Planner

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## **INTRODUCTION**

The report this month focuses on the public comments that were received at the public hearing by the Planning Commission at the August 28, 2012 meeting. The report is significantly reduced from that of previous months as most of the information on this item has been included in previous reports and minutes. Staff ask that the Planning Commission reference and rely on the staff reports from June, July, and August of this year, as well as the minutes from those meetings. This report summarizes the public concerns that were voiced at the August 28th meeting for the public and members of the Planning Commission. The minutes from the August 28, 2012 meeting are attached to this report as Attachment 1.

## **SUMMARY**

At the August 28, 2012 meeting, the Planning Commission chose to close the public hearing on the matter after extensive public comment and continue consideration of the item until this month's meeting. By taking such action, no additional public testimony may be taken this month. It is anticipated that the Planning Commission will deliberate on the matter and make a recommendation to City Council.

## **PUBLIC NOTICE**

A Notice of Public Hearing, advertising the Planning Commission public hearing for September 25, 2012 was published in the Whidbey News Times on September 5, 2012. Letters advertising the Planning Commission public hearing for September 25, 2012 were also sent on September 19, 2012 to the interested parties who attended the previous month's hearings or provided written comment.

## **PUBLIC COMMENT**

Members of the public voiced their concerns regarding the inclusion of ADUs in the subdivision at last month's meeting. While there was a request by a citizen for staff to provide an executive summary of the public's concerns, the minutes (Attachment 1) from that meeting provide much more detail and more accurately capture the concerns than can be summarized in this report. However, for the benefit of the public and for the Commissioners not in attendance last month, staff has summarized the main points of concern from citizens. Please note that the bullet points below do not capture all of the public comment received to date on this project; only that heard at the August meeting. Previous public comments are described in the minutes from each month's meeting and, if submitted in written form, were included in the reports as attachments.

### **Concerns Voiced at the August 28, 2012 Meeting (generalized)**

- Homeowners bought into idea of single-family neighborhood not multi-family.

- Concern that ADU will become a multi-family rental unit.
- Negative effect on property values.
- HOA will have to provide enforcement if owner moves out and property becomes a rental. Concerned about cost and implementation of enforcement.
- Concern from HOA over lack of control of rental versus ownership.
- Increased traffic on roadways within subdivision and increase in on-street parking.
- Traffic will use Fairway Lane to get to Ault Field rather than Fort Nugent Ave. Concern about traffic increase on this lane.
- ADU's will become rental units.
- HOA should not be the regulatory board for rental units.
- If approved, it sets a precedent for the City.
- Concern about rentals in a single-family neighborhood.
- Increase in negative aesthetics; more trash cans per residence, cars, etc.

City staff responded to the public's questions and comments at the meeting and the responses are detailed in the August meeting minutes. In addition, the developer, Mr. Gentry, also spoke on the matter and responded to several public concerns (his response is also furnished in the minutes). Furthermore, the City received an email from Mr. Gentry dated September 7, 2012 in which he wishes to restate his position on the matter for the clarification of the Planning Commission (see Attachment 2).

### **REVIEW CRITERIA**

The criteria for review of a major modification to a PRD is listed under OHMC 19.31.200 through 19.31.230 and an analysis of that review by staff was included in the last three month's reports. The conclusion of that analysis is that staff found that the only change to approved plans or regulations is the modification to density on Sheet A1.1 of the Preliminary and Final PRD Drawing Set dated June 7, 2006 and the reference to the former in Ordinance No. 1583. Otherwise, the request is in conformance with all applicable criteria and standards in the OHMC and the approved PRD plans, resolutions and ordinances. If the Planning Commission chooses to recommend approval of the modification, it will allow the applicant to apply for the administrative ADU permits on a house-by-house basis.

The Planning Commission is reminded that they have the authority under OHMC 19.31.210(3) to consider requiring such changes in the proposed project or impose such conditions of approval as are, in its judgment, necessary to ensure conformity with all applicable PRD criteria and standards. As an example, the Commission may consider adding a condition of approval to the draft ordinance that would limit the number of ADU's to a number less than the six proposed by the applicant. In addition, City staff would recommend, and the applicant has indicated agreement with, a condition of approval whereby the ADU's shall be integrated into the primary unit as opposed to detached.

### **CONCLUSION**

While this month's report is brief, the record of review for this item is fairly extensive. There has been significant public input as well as significant deliberation by the Commission at past meetings. The Planning Commission shall review the criteria of a major modification to a PRD, review the public testimony given and conclude deliberation on the matter. The Planning

Commission shall also recommend approval as submitted, approval with conditions or denial to the City Council.

It should also be pointed out that the draft ordinance (Attachment 3) is the same as that considered by the Planning Commission at the August meeting; no changes have been made. The draft ordinance approving the proposed modification for Division 4 is attached for the Planning Commission's consideration.

### **RECOMMENDATION**

Staff recommends that Planning Commission take the following actions:

- Conclude deliberations.
- Recommend approval of the draft ordinance amending Ordinance No. 1583 to City Council.

### **ATTACHMENTS**

1. August 28, 2012 Planning Commission Meeting Minutes (see draft approval minutes, page 3 of this agenda packet)
2. Email from Mr. Gentry dated September 7, 2012
3. Draft Ordinance amending Ordinance No. 1583

**Melissa Sartorius**

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**From:** Kendall Gentry [kendall@landedgentry.com]  
**Sent:** Friday, September 07, 2012 4:06 PM  
**To:** Melissa Sartorius  
**Cc:** Art Shaw; Chris Lofgren; Michelle Lehr; Dave Moreland  
**Subject:** Fairway Point 4, density correction for ADU's

Hi Melissa,

I want to restate the core issues associated with the subject density change for Fairway Point 4 to make sure that the Planning Commission members who have not been party to the meetings have a clear understanding of our request at their September meeting.

- We are asking to change the density number on the face of the Final plat map from 40 to 46 making the possibility for up to 6 Accessory Dwelling Units (ADU) to be applied for under a separate permit on the 6 lots that will take basements, Lots 171-176. Just having the available density to make an application does not mean that all 6 or even one permit will be subsequently applied for.
- As you know this is not an ADU issue as ADU's are eligible to be placed on most lots throughout the City, it is essentially correcting a Scribner's error on the face of the final plat map.
- The only unique difference that an ADU has is that there is a range so that cooking can occur independently from the main house kitchen. In other words, the same space can be provided in a home (ie. a snack bar) without any additional city permits, just without a range.
- Therefore, making a permit available to a homeowner for an ADU, in the end, gives the City more regulatory oversight than not and puts some structure around how the space is used.
- As mentioned earlier, I will agree to conditions that require any ADU's in FP4 to be integral to the home and not be detached.
- My guesstimate is that only one-half of the increased density will be used for ADU's but since the process is so onerous I am asking for the 6 just to be safe and to only be able to use our 6 basement lots for this purpose.

Thank you,

Kendall Gentry, Principal

**Landed Gentry Development, Inc.**

504 E Fairhaven Ave  
Burlington, WA 98233  
360-661-3812, cell  
[Kendall@LandedGentry.com](mailto:Kendall@LandedGentry.com)

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE, AMENDING ORDINANCE NO. 1583 WHICH APPROVED THE PLANNED RESIDENTIAL DEVELOPMENT (PRD) OVERLAY ZONE FOR FAIRWAY POINT DIVISION 4, AND APPROVING A MODIFICATION TO THE PRD PLANS FOR FAIRWAY POINT DIVISION 4 WITH RESPECT TO DENSITY ONLY TO ALLOW FOR THE INCLUSION OF ACCESSORY DWELLING UNITS (ADU) WITHIN FAIRWAY POINT PRD DIVISION 4.

WHEREAS, although not specifically authorized in state statute, planned residential developments are encouraged by the Washington Growth Management Act as an innovative land development technique; and

WHEREAS, the City Council has authority under RCW 58.17 to regulate the subdivision of land, promote the effective use of land, and to adequately provide for the housing needs of the citizens of the state; and

WHEREAS, the City of Oak Harbor's Comprehensive Plan contains policies regarding PRD in both the Land Use Element and the Housing Element of the Plan and the City regulates PRD through Chapter 19.31 of the OHMC; and

WHEREAS, FP4, L.L.C. (current property owner) is requesting to modify the PRD plans of Fairway Point to add ADU to the basements of house plans for up to six remaining lots to be developed within Division 4; and

WHEREAS, accessory dwelling units are normally permitted in all single family zoning districts with an administrative permit however the inclusion of ADU within a PRD may change the approved density of a PRD and is therefore considered a major modification to the PRD; and

WHEREAS, the Oak Harbor Planning Commission has the authority to review plans and hold a public hearing on PRD and modifications to PRD and form a recommendation to City Council under Sections 19.31.210 and 19.31.220 of the OHMC; and

WHEREAS, the City Council has the authority to approve or deny a modification to a PRD at a closed record meeting pursuant to OHMC 19.31.280(2) and 19.31.230; and

WHEREAS, Ordinance No. 1583 approved the PRD overlay zone for Fairway Point Division 4 on August 4, 2010; and

WHEREAS, Ordinance No. 1583 required development of the subject property to be consistent with the Fairway Point Division 4 Final PRD Plan as approved by the Oak Harbor City Council on June 19, 2007 and any development standards not addressed by the Final PRD shall be the same as the underlying zoning and/or other applicable provisions of the OHMC; and

WHEREAS, a PRD Overlay Zone modifies the existing zoning regulations for a district; and

WHEREAS, Ordinance No. 1583 established the density for Division 4 of the PRD to be 4.76 du/ac by reference to the approved PRD plans; and

WHEREAS, the applicant is seeking to change the density established through the PRD Overlay Zone from 4.76 du/ac to 5.48 du/ac for Division 4; and

WHEREAS, pursuant to OHMC 18.20, and after due and proper notice, on July 24, 2012, the Planning Commission held a public hearing regarding the modification to Fairway Point Division 4 PRD to consider the inclusion of ADU within the subdivision; and

WHEREAS, pursuant to OHMC 18.20, and after due and proper notice, on August 28, 2012, the Planning Commission continued the public hearing from July 24, 2012 regarding the modification to Fairway Point Division 4 PRD to consider the inclusion of ADU within the subdivision; and

WHEREAS, pursuant to OHMC 18.20, and after due and proper notice, on September 25, 2012, the Planning Commission continued the public hearing from August 28, 2012 regarding the modification to Fairway Point Division 4 PRD to consider the inclusion of ADU within the subdivision; and

WHEREAS, OHMC 19.31.210(3) authorizes conditions of approval to be imposed upon a PRD major modification that are, in the Planning Commission's judgment, necessary to ensure conformity; and

WHEREAS, the Oak Harbor Planning Commission finds that conditioning this approval whereby the ADU's shall be integrated into the primary unit and such condition is consistent with OHMC 19.31.210(3) and the City Council finds the same; and

WHEREAS, pursuant to OHMC 18.20, and after due and proper notice, on October 16, 2012, the City Council held a closed record meeting regarding the modification to Fairway Point Division 4 PRD to consider the inclusion of ADU within the subdivision; and

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

**Section One.** Section 2 of Ordinance No. 1583 is hereby amended with respect to the project density set forth on the face of Sheet A1.1 of Exhibit F: Preliminary & Final PRD Building Elevations, Typical Residential Landscape Plan, & Fence Detail - dated June 7, 2006 from 4.76 du/ac to 5.48 du/ac as shown in Exhibit A referenced herein and attached to this ordinance.

**Section Two.** Section 2 of Ordinance No. 1583 is hereby amended to add the following sentence: Accessory Dwelling Units within Fairway Point Division 4 PRD shall be integrated into the primary unit and shall not be detached.

**Section Three.** 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 Four. Effective Date.** This Ordinance shall be in full force (5) five days following publication.

PASSED by the City Council this 16th day of October, 2012.

( ) APPROVED by its Mayor this \_\_\_\_ day of \_\_\_\_\_, 2012.

( ) Vetoed

THE CITY OF OAK HARBOR

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk

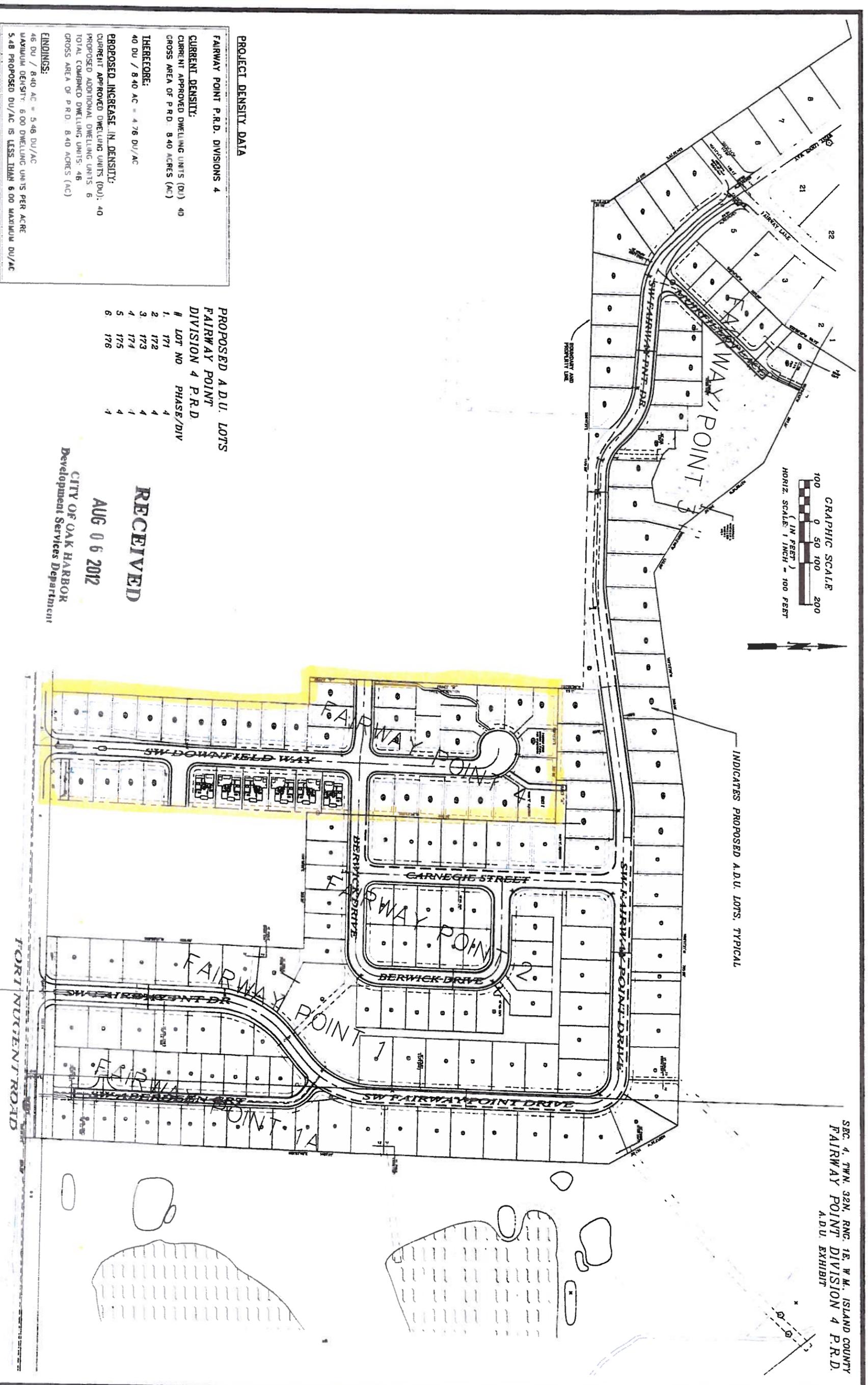
Approved as to Form:

\_\_\_\_\_  
City Attorney

Published: \_\_\_\_\_

EXHIBIT A

SEC. 4, TWN. 32N, RNC. 1E, W.M., ISLAND COUNTY  
 FAIRWAY POINT DIVISION 4 P.R.D.  
 A.D.U. EXHIBIT



PROJECT DENSITY DATA

FAIRWAY POINT P.R.D. DIVISIONS 4  
**CURRENT DENSITY:**  
 CURRENT APPROVED DWELLING UNITS (DU) 40  
 GROSS AREA OF P.R.D. 8.40 ACRES (AC)  
**THEREFORE:**  
 40 DU / 8.40 AC = 4.76 DU/AC  
**PROPOSED INCREASE IN DENSITY:**  
 CURRENT APPROVED DWELLING UNITS (DU): 40  
 PROPOSED ADDITIONAL DWELLING UNITS: 6  
 TOTAL COMBINED DWELLING UNITS: 46  
 GROSS AREA OF P.R.D. 8.40 ACRES (AC)  
**FINDINGS:**  
 46 DU / 8.40 AC = 5.48 DU/AC  
 MAXIMUM DENSITY: 6.00 DWELLING UNITS PER ACRE  
 5.48 PROPOSED DU/AC IS LESS THAN 6.00 MAXIMUM DU/AC

PROPOSED A.D.U. LOTS  
 FAIRWAY POINT  
 DIVISION 4 P.R.D.

#	LOT NO	PHASE/DIV
1.	171	4
2.	172	4
3.	173	4
4.	174	4
5.	175	4
6.	176	4

**RECEIVED**  
 AUG 06 2012  
 CITY OF OAK HARBOR  
 Development Services Department

FILE NAME: 19\_ADU\_121811  
 PLOT SCALE: 1" = 100'  
 LAST REV DATE: 08/07/2012  
 DESIGNED BY: SCB  
 DRAWN BY: SCB  
 CHECKED BY: KC  
 REVISIONS: DATE  
 AM. DESIGN: 08/12/12  
 THE ONLY: 08/07/12

**LANDED GENTRY**  
 HOMES AND COMMUNITIES  
 315 East 28th Street, Ste. 100, Oak Harbor, WA 98291 (360) 335-8171

PROJECT DESCRIPTION  
 FAIRWAY POINT A.D.U. EXHIBIT

PROJECT: A.D.U. MODIFICATION TO FAIRWAY POINT  
 DIVISION 4 P.R.D.  
 OAK HARBOR, WASHINGTON

# Nightclub Ordinance

## Public Meeting

**City of Oak Harbor  
Planning Commission Memo**

Date: September 25, 2012

Subject: Restricting size of nightclubs by zoning districts

**FROM:** Cac Kamak, AICP  
Senior Planner

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**PURPOSE**

This is a continued discussion on restricting nightclubs based on size. A request was made by residents living in the Central Business District to regulate the size of uses that have a nightclub license by zoning district. The request is primarily rooted in the impacts created by the large crowds that patronize such clubs. The request was also supported by the Oak Harbor Police Department.

**BACKGROUND**

The Planning Commission was introduced to this issue on April 24, 2012. The Commission also obtained public input on this issue at the meeting. Speaking to this issues were several members of the public that represented residences adjacent to nightclub licensed establishments, nightclub licensed establishment owners and nightclub patrons. The public comments provided at the meeting outlined the key issues related to the impacts of nightclubs. These comments are summarized below:

- An understanding by the public that adoption of any new codes may not change the operations of current nightclubs (non-conformities)
- Small scale establishments that have nightclub licenses such as the Oak Harbor Tavern and Seven West do not seem to be a negative impacts on surrounding areas
- Only the large scale establishments that have a nightclub license seems to have impacts
- Almost all the complaints heard at the public meeting were related to the Element nightclub.
- The impacts identified were primarily about noise created by large groups of people, loud cars, trespassing, and the seeming lack of respect and poor business practices
- The perceived lack of the Element owner's cooperation, neighborliness and initiative to make the business more compatible
- Preference for specifically restricting nightclubs as opposed to general uses in a district

It was evident from the public input gathered that the scale of nightclubs and the number of people that they can accommodate have a direct nexus to the negative impacts on adjacent properties. Therefore, at its June 26, 2012 meeting, the Planning Commission discussed various methodologies to determine how to address the impacts. The Planning Commission determined that limiting the size of business that can apply for a nightclub license based on the zoning district was a good methodology.

## **DISCUSSION**

As discussed at the April 24, 2012 meeting, nightclubs are not uses regulated by Chapter 19, Zoning but are licenses regulated by Chapter 5, Business Licenses and Regulations. Chapter 5.22, Nightclubs, define the activities for which a license is required. These activities, such as music, singing and dancing (conducted after 10pm) can take place in bars, taverns, restaurants, brew pubs, cocktail lounges, places of entertainment etc., all of which are listed as specific uses in several of the city's zoning districts ranging from C1, Commercial Neighborhood to I, Industrial.

The first step in regulating nightclub licenses by zoning districts is to determine in which zoning district the city would like to prohibited uses from obtaining a Nightclub license. Due to the impacts of nightclub activities on surrounding properties, it is logical to prohibit them in the following zoning districts:

- R1, Single Family Residential
- R2, Limited Multiple-Family Residential
- R3, Multiple-Family Residential
- R4, Multiple-Family Residential
- RO, Residential Use
- C1, Neighborhood Commercial – This zoning district lists Restaurant as a conditional use and allows 20% of its seating for a bar. These kind of establishments (none exit currently -2012) can still have music, singing and dancing as long as it ceases at 10pm.
- C4, Highway Service Commercial – This zoning district lists Restaurants as a permitted use. The intent of this district is to provide uses that take advantage of access to the highway. This district is limited in area and is also located in and around the Accident Potential Districts that intends to limit the number if people that may work, live, shop etc. in the area.
- PF, Public Facilities

Therefore, the zoning districts that would permit them are:

- CBD, Central Business District
- C3, Community Commercial,
- C5, Highway Corridor Commercial
- PIP, Planned Industrial Park
- PBP, Planned Business Park
- I, Industrial

These zoning districts and their characteristics, along with their intent, can be used to establish a gradient for size regulations. The CBD, where pedestrian traffic is emphasized and large surface parking areas are discouraged, it would make sense to limit the size to smaller establishments, whereas in the I district, existing or minimum additional regulations may be sufficient to address the impacts created by large users.

So what should the limits be for uses in the various zoning districts that can obtain a nightclub license? There is no known study or published information on this topic since it is not a common practice to regulate licenses by occupancy limits<sup>1</sup>. Therefore there is no formula or guideline to indicate best case scenarios. However, the city can look at the current conditions and use that as a basis for regulations. The table below provides the occupancy limits of the uses that currently hold a nightclub license. It is clear that the Elements has a considerably larger occupancy limit than the other businesses and that large capacity seems to be the nexus to the impacts that adjacent property owners indicated in the many public input opportunities provided at the Planning Commission and City Council meetings.

<b>Business</b>	<b>Zoning District</b>	<b>Occupancy Limit</b>
El Cazador	C-5, Highway Corridor	291
Oak Harbor Tavern	CBD, Central Business District	108
Mi Pueblo	CBD, Central Business District	280
Seven West	CBD, Central Business District	165
Off the Hook	CBD, Central Business District	201
Elements	CBD, Central Business District	580+219(covered area)

The public input provided to the Planning Commission in May 2012, indicated that the other nightclubs in the Central Business District do not create nearly the impacts as the Elements did and that most of those impacts were tolerable. Since Mi Pueblo is the next largest business that has a nightclub license in the CBD, its occupancy limit may be a indicator for the limit on uses in the CBD.

Currently there are no businesses on the C-3, Community Commercial District that have a nightclub license. This district is the workhorse of all the commercial districts and developments in these districts tend to have more surface parking, access to the major streets etc. It should be noted that the C3 district does allow mixed use developments that include residential uses in upper floors and, and in several areas of the city, C3 zoned properties are located immediately adjacent to low density residential property. The community can consider maintaining the limits in this district similar to CBD or raise it to a higher limit.

The C5, Highway Corridor Commercial zone is intended for uses that are also heavy traffic users and generators and serve a regional population. El Cazador is located in this zone since the entire Kmart/Saars complex is zoned C5. Public comments received on the nightclub issue did not indicate any major impacts by this nightclub user. Similar to the CBD and C3 district, the C5 district does allow for mixed use developments with residential in the upper floors. Similar to the C3 district, the city can consider maintaining the limits in this district similar to CBD or raise it to a higher limit.

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<sup>1</sup> An internet search was done to find articles and other cities zoning regulations that regulate nightclubs. Many cities zoning regulations indicate minimum distance separation from residential, school, parks etc. However, the search also indicated many cities facing the challenge of defining nightclubs since uses such as restaurants, taverns, bars etc. were creating similar impacts but were not regulated as nightclubs. Oak Harbor does not have this issue since nightclubs are licensed activities and not listed as a use in the zoning district.

Currently there are no nightclub license holders in the PBP, Planned Business Park and the PIP, Planned Industrial Park. These districts allow certain accessory uses (brew pubs, restaurants, theatres) that may be interested in a nightclub license. These districts do not permit residential uses. Therefore, these are districts where minimum restrictions may be adequate. This is not to say that large nightclubs won't have impacts on the adjacent uses. Noise impacts may not be detrimental, but other impacts such as vandalism, trespassing etc may be an issue.

Currently there are no nightclub license holders in the I, Industrial zone. However, this is one district where a limit may not be necessary since residential uses are not permitted in this district. This is not to say that large nightclubs won't have impacts on adjacent industrial uses. Noise impacts may not be detrimental, but other impacts such as vandalism, trespassing etc may be an issue.

Based on the above, a few suggestions for limits are provided below for consideration:

<b>Zoning District</b>	<b>Occupancy Limits</b>
Central Business District	300
C3, Community Commercial	300 or 30% increase to 400
C5, Highway Corridor Commercial	300 or 60% increase to approximately 500
PBP, Planned Business Park	300 or 60% increase to approximately 500
PIP, Planned Industrial Park	300 or 60% increase to approximately 500
I, Industrial	No limitations

The Planning Commission is requested to consider the above limitations and provide direction to staff. The code amendments required to implement these regulations will include these restrictions.

Non-conformities

If regulations were adopted with the above proposed limitations, at least one business (Elements) will become out of compliance with the new code. Since this code amendment falls under Title 5 Business Licenses and Regulations, the non-conforming use language in Title 19 Zoning will not apply. Therefore specific language would have to be drafted in Title 5 to address non-conformities.

Currently, nightclub licenses are renewed every year with annual background checks on the owners and review for compliance with state and city laws. With a limit on size for these licenses, language would have to be crafted to allow for the continued use of existing nightclubs that do not meet the requirements. However, change of owners requires an application for a brand new license. Since a non-conforming nightclub will now be larger than what the code permits, a new owner will not be able to apply for a nightclub license. Therefore, an existing non-conforming nightclub will never be able to transfer or endure a change in ownership. If the city would like to overcome this, language can be crafted with specific time lines, similar to how non-conforming land uses are regulated with an amortization period. The city may choose to allow transfer of ownership, within the amortization period. Some of these questions will also need some

legal review and advice prior to consideration for adoption. The City Council will ultimately have to decide on how the city should deal with the specifics of non-conforming licenses.

**CONCLUSIONS**

Staff requests that the Planning Commission provide some direction with respect to the limits on occupancy for the various zoning districts. The transfer of business licenses and related non-conformities are not directly linked to land use and therefore not considered under the authority of the Planning Commission. However, the Planning Commission may choose to formulate a recommendation on it.

# Shoreline Master Program (SMP)

## Update

### Public Hearing

# Memo

To: Members of the Planning Commission  
Cc: Steve Powers, Development Services Director  
From: Ethan Spoo, Senior Planner  
Date: 9/18/12  
Re: Shoreline Master Program Update – Final Review and Overview of Department of Ecology Requested Changes

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## **PURPOSE**

This memorandum reviews the Draft Shoreline Master Program (SMP) document and gives an overview of Department of Ecology (DOE) requested changes to the document. Staff is anticipating that the Planning Commission will make a recommendation at the September Planning Commission meeting and forward it to City Council for their consideration.

## **DRAFT SMP DOCUMENT REVIEW**

The following discussion gives a brief overview of each chapter of the Draft SMP document. Staff believe this may be helpful prior to Planning Commission making a recommendation on the document.

### **CHAPTER 1 - INTRODUCTION**

Topics discussed in Chapter 1 include the purpose of the Shoreline Management Act (SMA), purpose of the SMP, shoreline jurisdiction, applicability of the SMP, SMP basics, and organization of the document.

#### Important points to remember:

- Shoreline jurisdiction extends 200 feet from the Ordinary High Water Mark (OHWM) of Oak and Crescent Harbors. It also extends to the edge of wetlands which have boundaries crossing the 200 feet.
- The SMP applies to all uses, activities, and development within shoreline jurisdiction. Federal agency actions are exempt. All proposed activities, developments, and uses require a shoreline permit, unless specifically exempted. Please note that the SMP applies to all new development and activities in the future, but does not apply to existing structures or uses.

### **CHAPTER 2 – ENVIRONMENT DESIGNATION PROVISIONS**

Chapter 2 lays out a system of “environment designations” for the shoreline which are similar to zones. These zones allow for a variety of uses and designate certain areas as appropriate or inappropriate for specific types of development. The environment designations proposed are: (1) Maritime (2) Urban Mixed Use (3) Residential (4) Residential Bluff Conservancy (5) Urban Public Facilities (6) Conservancy and (7) Aquatic.

Important points to remember:

- The Maritime environment is a new concept for Oak Harbor. This will allow for water-dependent industrial and commercial uses in this map designation, whereas the existing SMP specifically prohibits industrial uses from being located on Oak Harbor's shoreline.
- The Conservancy designation is restrictive and only allows for a very limited number of uses such as recreation. Transportation and utilities infrastructure are allowed conditionally. This designation applies to Freund Marsh, Maylor Point, and Crescent Harbor.

**CHAPTER 3 – GENERAL PROVISIONS**

Chapter 3 is the general provisions which apply to all areas within shoreline jurisdiction. Topics discussed in this Chapter include economic development; archaeological and historic resources; critical areas and flood hazard areas; mitigation sequencing; public access; vegetation conservation; critical saltwater habitat; and water quality.

Important points to remember:

- The archaeological and historic resources section discusses the treatment of these resources under two scenarios: when there is a known resource on a site and when there is an inadvertent discovery. These policies and regulations require that applicants perform an archaeological site assessment when there is a known resource on a site and prepare a plan for dealing with these resources during construction. When an inadvertent discovery is made, work must be stopped, appropriate authorities notified and a plan for dealing with the resources must be developed.
- Chapter 3, Section 4 applies the City's critical areas ordinance (CAO) within shoreline jurisdiction and specifies portions of the CAO which don't apply.
- Public access is required for new shoreline development, unless requiring the access would be unconstitutional. Usually, this means it is required when a development creates demand for such access. Public access is not required for single-family development with less than 5 units.
- All new development which exceeds the threshold for non-conforming development (60% of fair market value) is required to submit a "shoreline landscaping" plan establishing a 30-foot vegetation management zone (VMZ) from the OHWM called "zone 1." Within zone 1, no structures are allowed and only native plants are permitted. A 50-foot structural setback from the OHWM is also required. However, between the 30 – 50 foot area ("zone 2"), water-oriented uses such as decks, patios, gazebos are allowed although impervious surface generally cannot exceed 20% in zone 2

**CHAPTER 4 – SHORELINE USE PROVISIONS**

Chapter 4 discusses permitted, prohibited and conditional uses in each of the environment designations as well as specific restrictions on uses for each designation.

Important points to remember:

- There is a spectrum of uses allowed along Oak Harbor's shoreline within the seven different environment designations.. More intense uses are allowed on Oak Harbor's central shoreline area with more protective designations applying to Freund Marsh, Maylor Point, and Crescent Harbor.
- Boating facilities and marinas are generally relegated to the Maritime environment with key exceptions. Public and private piers are allowed in Urban Mixed Use environment and at Flintstone Park in the Urban Public Facility environment to accommodate a City pier.
- Water-dependent industry and manufacturing are allowed in the Maritime environment.
- Chapter 4 also places height, setback, and impervious surface limits on shoreline uses. Height is generally limited to 35 feet within shoreline jurisdiction, although a height of 55 feet can be permitted in Maritime and Urban Mixed Use subject to a view study. Setbacks are generally 50 feet, but are 75 feet

in Urban Public Facilities environment and 100 feet in Conservancy environment. Setbacks can be averaged for residential uses when there is adjacent development that is closer.

## **CHAPTER 5 – SHORELINE MODIFICATION PROVISIONS**

Modifications are things which are done to prepare the shoreline for a future use such as dredging, fill, or stabilization. Much of Chapter 5 deals with stabilization (bulkheads) for which the State has very specific requirements.

### Important points to remember:

- In compliance with the State Guidelines, the Draft SMP allows hard stabilization (bulkheads) where it can be demonstrated that an existing, primary structure or use is in imminent danger from shoreline erosion, and that soft armoring methods are not feasible. Hard stabilization may also be allowed for new structures under certain conditions. Major repair (50% or more of linear length of hard stabilization) must meet the same provisions as new stabilization. Minor repairs (less than 50% of linear length of hard stabilization) is allowed outright.
- Specific standards apply to new overwater structures (piers, docks, floats, mooring balls/buoys) designed to limit their impact. For example, new private piers are limited to 6 feet in width and must have 24% open area to allow light to pass through.

## **CHAPTER 6 – ADMINISTRATIVE PROVISIONS**

Chapter 6 deals is the “process” portion of the document. It lays out roles and responsibilities for administering the plan and minimum requirements for submitting shoreline permits. Exemptions from permits are also called out. Limits are placed on the expansion of non-conforming development.

### Important points to remember:

- The Draft SMP proposes that shoreline substantial development permits and conditional use permits undergo administrative (staff) review. The Hearing Examiner is the review authority for certain shoreline substantial development and conditional use permits, if recommended to him by the Administrator. The Hearing Examiner has sole authority over variances.
- Non-conforming structures and uses may only be expanded under certain circumstances. Non-conforming uses may be expanded one time at 50% of the floor area provided the expansion is not waterward into the shoreline setback. Non-conforming structures can be expanded or modified provided that the degree of non-conformity is not increased. All modifications which exceed 60% of the fair market value are required to conform with shoreline master program.

## **CHAPTER 7 – DEFINITIONS**

Chapter 7 is the definitions section of the document. Staff has not particular comments on this chapter.

## **OVERVIEW OF DOE REQUESTED CHANGES**

As previously mentioned, DOE has final approval authority for Oak Harbor’s SMP. Development Services staff have been in contact with DOE Shoreline Planner, David Pater, throughout the entire update process. Additionally, DOE has completed two detailed reviews of the entire Draft SMP document and has provided comments to staff. Prior to recommending that Planning Commission approve the Draft SMP document, staff are summarizing the changes to the document for Planning Commission. Because there were approximately 75 changes to the document, staff are briefing Planning Commission on the most significant changes. The changes are discussed topically below.

### **CRITICAL AREAS**

Critical areas are wetlands, geologically hazardous areas, frequently flooded areas, oak trees, fish and wildlife habitat conservation areas, and critical aquifer recharge areas. The State requires that each city throughout the state have a critical areas ordinance (CAO) for protecting these areas. Until a few years ago, there was

confusion at the State and local level as to how CAOs apply within shoreline jurisdiction. The courts have said that critical areas do apply within shoreline jurisdiction, but only to the extent that they do not conflict with the Shoreline Management Act.

DOE offers jurisdictions two options with regard to how they treat CAOs in their SMPs. They can: (1) adopt the entire text of their critical areas regulations into their SMP or (2) they can reference the specific ordinance(s) which are their CAOs. Staff are recommending that Oak Harbor choose the second option. Since staff are recommending this second option, the SMP references the City's CAO in Chapter 3, Section 4 of the SMP. DOE is requiring that the text of our CAO be adopted as an appendix to the SMP document.

There are, however, some conflicts with the SMP and the CAO. DOE is requiring that those conflicts be eliminated prior to adoption and has requested that certain parts of our CAO not apply within shoreline jurisdiction. These "exceptions" are listed in Chapter 3, Section 4 of the CAO. DOE is requiring the following exceptions:

- **Marine Buffers.** The CAO requires that marine riparian buffers be 100 feet, whereas the SMP in Chapters 3 and 4 requires a vegetation management zone of 30 feet and a setback in most shoreline environment designations of 50 feet. Therefore, the CAO and the SMP conflict with the SMP being more lenient. As required by DOE, a sentence has been inserted in Chapter 3, Section 4 of the SMP which states that the marine riparian buffers in OHMC 20.25.040(1) do not apply within shoreline jurisdiction.
- **Marine buffer reductions.** The CAO allows for buffer widths to be reduced up to 50% if low impact land uses and a restoration plan are put in place. According to DOE, reducing buffers by 50% does not meet the current science on buffers. DOE is requiring that buffers be reduced no more than 25%. Therefore, a statement has been inserted into the SMP that says "Within the shoreline jurisdiction, incentive-based buffer reductions shall not exceed a total of 25%."
- **Marine buffer averaging.** The CAO also allows buffer widths to be reduced using "buffer averaging" which essentially means that the buffer is wider than necessary in some places although it may be smaller in some places than required. The CAO allows marine buffers as small as 25 feet. According to DOE, a reduction to 25 feet does not meet the current state of buffer science and it is also inconsistent with other sections of the SMP which generally require a 50-foot setback for structures from the OHWM, as well as a 30-foot vegetation management zone within that 50-foot setback. The SMP has been revised to be consistent, which staff believes will eliminate this problem.
- **Flexibility near steep slopes.** The CAO in OHMC Section 20.28.040 allows for "minor alterations" on steep slopes including impacting up to 20% of the steep slope. According to DOE, this allows for too much intrusion on the steep slopes. Thus, a statement has been included in Chapter 3, Section 4 of the SMP stating that OHMC 20.28.040 does not apply within shoreline jurisdiction.

### NON-CONFORMING USES

The Draft SMP previously included language that allowed for a one-time expansion of non-conforming uses of up to 50%. DOE pointed out that that language does not meet the State Guidelines (WAC 173-27-080) which requires that all expansions of non-conforming uses be subject to a conditional use permit. Staff agreed in conversations with DOE to put some further limiting factors on the ability to expand non-conforming uses. Thus, a statement has been inserted in Chapter 6, Section J indicating that non-conforming uses cannot expand waterward of the existing structure.

### DEFINITIONS

Since both the CAO and the SMP have a definitions section, DOE has requested that the two sets of definitions be reconciled. Staff has made the definition changes to Chapter 7 of the SMP. The SMP document states that CAO definitions do not apply within shoreline jurisdiction. DOE also required changes to definitions not pertaining to the CAO to be consistent with current guidelines.

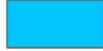
### **THE SHORELINE ENVIRONMENT DESIGNATIONS MAP**

The shoreline environment designations map is attached as Figure 1 to the Draft SMP. This map was revised since its first presentation to the Planning Commission in May, 2012. The revisions were made based upon more accurate information available regarding the extent of wetland boundaries in the Freund Marsh area. Since the introduction of the map in May, staff have been made aware of wetland studies and documents from the Army Corp of Engineers regarding wetlands in this area and have revised the maps to be consistent with this information. Staff have also discussed this information extensively with the DOE and have reached preliminary agreement on the revised map. Please see Exhibit 1 which is attached to the Draft SMP.

Please also note that the shoreline jurisdiction now covers the westernmost lots in the Dillard's and Driftwood Beach subdivisions. The State has provided new information for the ditch along the back of these lots which indicates that the ditch is in shoreline jurisdiction. Staff have notified these property owners to let them know that the new SMP will apply to their property.

**Figure 1**

**Shoreline Environment Designations**

-  Aquatic\*
-  Maritime
-  Urban Mixed Use
-  Residential
-  Residential - Bluff Conservancy
-  Urban Public Facility
-  Conservancy



\*The Aquatic shoreline environment designation extends to the City's in-water jurisdiction line.



0 1,000 2,000  
Feet

Data represented on this map were collected at different accuracy levels by various sources, including the City of Oak Harbor, Island County, NASWI, WA DNR Shorezone data and WDFW. Shoreline jurisdiction and wetland boundaries are approximate and have not been formerly delineated or surveyed and are intended for planning analysis only. Additional site-specific evaluation may be needed to confirm/verify information shown on this map. No warranties of any sort, including, but not limited to accuracy, fitness or merchantability, accompany this map.

Map Date: September 2012



Permit Extension  
for Adult Day Care  
Conditional Use Permit

Public Hearing

**Agenda Item No. 6 – Adult Day Care Facility:  
Extension of modular building permit**

**Project Information**

Property Owners: City of Oak Harbor  
Location: 917 E. Whidbey Avenue  
Zoning: PF Public Facilities  
Comprehensive Plan: Public Facilities  
Site Area: 0.6095 Acres  
Adjacent Uses: Public Facilities, Residential Office

**Request**

Mr. Mike McIntyre, Senior Services Director, requests a permit extension for the existing Daybreak Adult Care Facility. The extension would allow for the continued use of an existing modular structure within the Public Facilities (PF) zone.

In a memo addressed to the Development Services Department Director (PC Attachment 1), Mr. McIntyre notes the existing use of the building for senior services related programs and events.

**History**

Prior to 2001 until mid-2010, the adult daycare program cared for disabled or elderly individuals for periods of time during the day by providing activities and attending to specific needs, offering assistance to caretakers of the individuals. The adult daycare program was relocated to city-owned property, with Public Facilities zoning, in 2001 and was housed in a modular home. From 2010 to present the facility has been used to conduct Washington certified caregiver training courses, houses a foot care clinic for use by the elderly and is used for various meetings and activities associated with senior support. The use of a modular home for these types of activities is specifically allowed by the standards of the Public Facilities zoning district. The initial approval of a modular structure is good for a period of five years; two year extensions of the use are available subject to Planning Commission approval.

**Application Review**

Oak Harbor Municipal Code (OHMC) 19.20.792 authorizes a manufactured home to be placed within the Public Facilities district to serve non-residential uses listed in the permitted and conditional uses of the Public Facilities zoning district. OHMC 19.20.775 (3) provides for senior centers and adult day care centers as a primary permitted use within the Public Facilities zoning district. The modular may be placed in this zoning district for a period not to exceed five years. The building permit for this modular (BLD-01-353) was approved in August 2001. Two-year extensions may be approved by the Planning Commission.

### **Analysis**

When first proposed, project was reviewed by staff and found to be consistent with the intent of the Oak Harbor Comprehensive Plan and the provisions of the Oak Harbor Municipal Code. Specifically, the Comprehensive Plan Government Service Element (Goal 7) outlines the need to continue to provide senior citizens with recreational, social, educational, and health maintenance services designed to meet their needs. All applicable provisions of the Municipal Code were met. Accordingly, staff supported the original request and the subsequent time extensions.

There have been no significant changes in land use or changes in area conditions such either the original approval or the time extension. Staff supports the continuation of this land use at this location. Staff believes that the additional two-year extension to the modular structure will allow the City to continue to provide building space for important senior-related services. Staff finds the proposed project to be in conformance with the Oak Harbor Municipal Code and the Oak Harbor Comprehensive Plan.

### **Conclusion**

Based on the above analysis, staff finds that the two year extension for the Oak Harbor Adult Day Care Modular has met the requirements and development regulations of the Oak Harbor Municipal Code and the Comprehensive Plan and as such the public interest will be served by the extension.

Therefore, staff recommends **APPROVAL** of the two-year extension for the use of an existing modular structure in the Public Facilities zoning district.

### **Recommendation**

1. Conduct the public hearing.
2. Adopt Findings, Conclusions and Record of Decision and approve the two-year extension for the use of an existing modular structure in the Public Facilities zoning district.

### **Attachments:**

1. Memo from Mr. Mike McIntyre, Senior Services Director, dated August 17, 2012.
2. Findings, Conclusion and Record of Decision dated September 25, 2012

August 17, 2012

FROM: Mike McIntyre, OH Senior Services Administrator  
TO: Steve Powers, Development Services Director  
SUBJECT: Request for Permit Extension for OH Adult Day Care Building

**OAK HARBOR ADULT DAY CARE BUILDING PERMIT(BLD01-OO353)**

**BACKGROUND**

In October of 2001, a building permit was issued for a modular unit designated to house the City's adult day care program, located on Public Facilities (PF) zoned property adjacent to the City's Senior Center. In addition, a Variance request (relating to chapter 19.44.100) was approved permitting driveway and parking areas to be gravel, with the exception of the parking area near the building which was paved for disabled accessibility.

The modular unit was used to conduct adult day care services from 2002 until mid-2010. From 2010 to the present the unit has been used for Washington certified caregiver training classes (over 350 people certified to date), a foot care clinic as well as various meetings and activities associated with senior support. The City's current contract with the non-profit group Island Thrift (modular facility owners) permits use of the building for "senior services related programs and events."

In 2006, 2008 and 2010, 2 year permit extensions were granted by the Planning Commission for subject facility. At those times Development Services found no land use issues to exist or likely to be created to preclude approval. An additional two year extension would be in compliance with the dictates of OMHC code 19.20.792 (Manufactured home structures).

OH Senior Services wishes to continue its use of the modular unit. The building's current permit extension will expire in October 2012.

**RECOMMENDATION**

Recommend placing request for an additional 2 year permit extension for the adult day care building on September's Planning Commission agenda for Board consideration/approval.

**BEFORE THE CITY OF OAK HARBOR PLANNING COMMISSION  
STATE OF WASHINGTON**

In Re Permit Application No. BLD01-0035 )	FINDINGS OF FACT
Modular Building Permit )	CONCLUSIONS OF LAW
On Public Facilities Zoned Property )	AND DECISION OF
)	PLANNING COMMISSION

THIS MATTER came before the Oak Harbor Planning Commission upon the application of Mike McIntyre, Oak Harbor Senior Services Administrator, for a two-year time extension of a modular building permit on Public Facilities zoned property. Having considered the evidence in the record, heard arguments of the parties and any public comment, and being fully advised in the premises, the Planning Commission hereby enters the following findings of fact, conclusions of law and decision:

**Findings of Fact**

1. A memorandum seeking the two-year extension of the existing modular building permit on Public Facilities zoned property was filed with the Department of Development Services and deemed complete by the Director on August 17, 2012.
2. The two-year extension sought by the applicant is for the Oak Harbor Adult Day Care Facility, a an existing facility located at 917 E. Whidbey Avenue, located within the City boundaries, and more specifically encompassing Island County parcel number S7600-00-02504-0.
3. The requested two-year extension is exempt from the SEPA process.

**Conclusions of Law**

- A. The Planning Commission has jurisdiction to determine whether to extend this permit pursuant to Oak Harbor Municipal Code Section 19.20.792.
- B. Proper notice of the public hearing was given.
- C. A single open record hearing on the permit application was held before the Planning Commission on September 25, 2012.
- D. The permit application meets the requirements of Oak Harbor Municipal Code Section 19.20.792.

**Decision**

Based upon the foregoing findings of fact and conclusions of law, the Planning Commission hereby grants the application for the permit herein.

APPROVED AND ADOPTED THE 25<sup>th</sup> DAY OF SEPTEMBER 2012.

PLANNING COMMISSION  
CITY OF OAK HARBOR, WASHINGTON

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Chair

Attest:

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Kathy Gifford  
Clerk to the Planning Commission

2012 Comprehensive Plan  
Amendment Discussion

Public Meeting

**Bill No.** 7  
**Date:** September 25, 2012  
**Subject:** 2012-2018 Capital  
Improvements Plan

**FROM: Cac Kamak, AICP  
Senior Planner**

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**PURPOSE**

This memo presents a draft of the 2012-2018 Capital Improvements Plan (CIP). The CIP is reviewed annually as part of the annual Comprehensive Plan Amendment process.

**BACKGROUND**

The Capital Improvements Plan is a planning document that lists the projects the City anticipates to plan, design and implement over a six year planning period. The City of Oak Harbor's CIP includes projects in Enterprise<sup>1</sup> Funds such as wastewater, stormwater, etc and also Non-Enterprise Funds such as streets, parks and recreation, fire and law enforcement. Since this is a "planning" document, it includes all the capital needs of the City and their estimates. Amendments are made every year based on available resources.

The CIP document includes goals and policies, revenue sources, rates and projections for enterprise and non-enterprise funds, infrastructure needs over the next six years and a proposed schedule for implementation. Below is a summary of the various sections contained within the CIP:

- Section 1 provides an introduction to the CIP, its link to the Growth Management Act and the Revised Code of Washington (RCW).
- Section 2 provides the planning context for the CIP and lists the goals and policies that provide the framework for the CIP.
- Section 3 is an inventory of the existing capital facilities within the City. It provides the basic foundation for the CIP.
- Section 4 of the CIP contains the list of projects for the non-enterprise funded systems such as Streets, Parks and Recreation, Windjammer etc., as well as the enterprise funded systems such as Sewer, Water, Wastewater and Marina.
- Section 5 includes the prioritization process for the non growth related capital facilities listed in Table 4.4. The prioritization process was done in 2006.
- Section 6 provides information on revenues sources for the various funds and includes projections for these revenues over the next six years.
- Section 7 is the implementation plan for the non-growth related projects that are listed in Table 4.4 and prioritized in Section 5.
- The appendix section of the CIP contains most of the details of the projects, their cost and the schedule.

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<sup>1</sup> Enterprise Funds are self supporting funds with user fees and includes utilities such as Water, Sewers, Stormwater, Solid Waste and Marina

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The highlights of the changes to this year's CIP are provided below:

- Removal of projects that have been completed – The Pioneer Way reconstruction project and related infrastructure projects have been struck out of the CIP. Though there will be some costs that will overflow into next year as the project gets closed out, it can be deleted from this planning document.
- Update to the current and projected revenues – This is done annually with information obtained from the Finance Department. Most of these changes are in Section 6 of the CIP.
- Updating the list of street projects to reflect the adopted Transportation Improvements Plan (TIP) – The Planning Commission held a hearing on May 22, 2012 on the TIP and made a recommendation to the City Council to approve the document. This year the changes include removing Pioneer Way improvements from the document, updates to cost estimates on the NE 7<sup>th</sup> Avenue reconstruction and reschedule of allocation for future projects.
- Update to project schedules – Most of these changes to the schedule are done in Appendix C of the documents since it contains more details of the project. The schedule is updated every year to match available funds. The major projects that are tracking for implementation over the next few years are:
  - Streets – NE 7<sup>th</sup> Avenue reconstruction followed by SE 4<sup>th</sup> Street
  - Parks – upgrades to the splash park, lagoon bridge, continuing to acquire land for open space, community and neighborhood parks
  - Wastewater System – sewer line replacements and continuing work on a new treatment facility
  - Water System – North Reservoir and associated improvements
  - Stormwater System – 42 inch outfall reconstruction
- Other updates –
  - The CIP document has been updated to reflect the City Council's decision on the location of the wastewater treatment facility.
  - The cost for the improvements on SR20 has been updated to reflect the most recent estimates.
  - Basic statistics (Section 3) on the various facilities that serve the community were updated.

It is clear from the document that the needs of the community greatly outweigh the resources available. Therefore, updates are made every year to reflect the implementation of projects over the upcoming budget year (2013-2014) and make the necessary adjustments over the six-year planning horizon.

The Planning Commission is requested to review the documents and provide input and comments. The CIP will come forward to the Planning Commission with the 2012 Comprehensive Plan amendments for a public hearing at the October 23, 2012 meeting.

## **ATTACHMENTS**

1. 2012-2018 Capital Improvements Plan (document attached separate from the PC agenda packet)