



October 15, 2013

CITY COUNCIL AGENDA

6:00 p.m.

1. CALL TO ORDER

Invocation/Pledge of Allegiance

HONORS AND RECOGNITIONS

Proclamation – Friends of the Library Week

2. APPROVAL OF AGENDA

3. CITIZEN COMMENT PERIOD

4. CONSENT AGENDA

- a. Minutes of the Regular City Council meeting held October 1, 2013
- b. Approval of Accounts Payable Voucher Nos. 155721 through 155724 in the amount of \$950.00; Nos. 155725 through 155735 in the amount of \$1,756.85; and Nos. 155736 through 155913 in the amount of \$1,376,898.53
- c. Resolution 13-23: Authorizing an Interlocal Agreement with the Association of Washington Cities Benefit Trust Creating the Health Care Program Subject to Required Assessments
- d. Motion to authorize the Mayor to sign the Interagency Agreement with the Coupeville School District for 2014 Whidbey Island Marathon volunteers in an amount not to exceed \$1,000.00
- e. Motion to confirm the Mayor's re-appointment of Anne Sullivan to the Library Board for a term to expire December 2018
- f. Motion to confirm the Mayor's re-appointment of Margaret Grunwald to the Library Board for a term to expire December 2017
- g. Motion to authorize the Mayor to sign a Retainer Agreement for Interim City Attorney Services with the firm of Weed, Graafstra and Benson, Inc., beginning on October 16, 2013 and ending on December 31, 2013
- h. Motion to authorize the Mayor to sign a Professional Services Agreement with Equinox Research Consulting International, Inc. for Archaeological Services related to installation of new water mains in the amount of \$35,360.98 and a management reserve of \$2,000.00
- i. Motion to authorize the purchase of 500 roll carts for the Solid Waste Utility in the amount of \$28,000.00

5. STAFF, MAYOR AND COUNCIL COMMENTS

- a. City Administrator
- b. Mayor
- c. Councilmembers



October 15, 2013

CITY COUNCIL AGENDA

6:00 p.m.

6. ORDINANCE AND RESOLUTIONS

- a. Ordinance 1672: Relating to Nightclubs and Amending Chapter 5.22 of the OHMC
- b. Resolution 13-24: Changing the Health Insurance Benefit Plans Available to Eligible Employees and Directing Staff to Implement the Changes

7. PUBLIC HEARINGS/PUBLIC MEETINGS

- a. Resolution 13-25: Authorizing the Sale of Vessels for Unpaid Moorage (Public Meeting)
- b. Ordinance 1668: Mid-Biennial Budget Amendment
- c. Ordinance 1673: Adopting the 2014 Property Tax Levy

8. UNFINISHED BUSINESS

- a. Chamber of Commerce 2014 Budget Presentation

9. NEW BUSINESS

- a. Executive Session – Property Acquisition

10. ADJOURNMENT

As a courtesy to Council and the audience, PLEASE TURN YOUR CELL PHONES OFF before the meeting begins. During the meeting's Public Comments section, Council will listen to your input regarding subjects of concern or interest that are not on the agenda.

For scheduled public hearings, if you wish to speak, please sign your name to the sign-up sheet, located in the Council Chambers. The Council will take all information under advisement. To ensure your comments are recorded properly, state your name and address clearly into the microphone. Please limit your comments to three minutes in order that other citizens have sufficient time to speak.

Thank you for participating in your City Government!

To assure disabled persons the opportunity to participate in or benefit from City services, please provide 24-hour advance notice to the City Clerk at (360) 279-4539 for additional arrangements to reasonably accommodate special needs.

City of Oak Harbor

OFFICE OF THE MAYOR
SCOTT DUDLEY
MAYOR



PROCLAMATION TO DECLARE

FRIENDS OF THE LIBRARY WEEK WEEK OF OCTOBER 20, 2013

WHEREAS, The Friends of the Oak Harbor Library is a community-based group of citizens who promote and enhance the work of their local library; and

WHEREAS, there has been a Friends of the Library group in Oak Harbor since 1962; and

WHEREAS, the members volunteer countless hours of service to their local library; and

WHEREAS, these dedicated citizens assist the library in raising money and communicating the library's services to the community; and

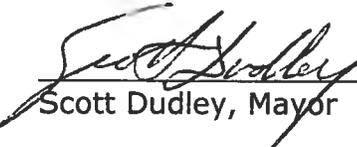
WHEREAS, this group raises funds annually to enhance the services of the Oak Harbor Library, contributing more than \$12,000 this year alone; and

WHEREAS, the Library's Center for Lifelong Learning was created in partnership with the Friends of the Library; and

WHEREAS, the Friends of the Oak Harbor Library is vital to the enhancement of the library in Oak Harbor.

NOW, THEREFORE, WE, Scott Dudley, Mayor, and Councilmembers of the City of Oak Harbor do hereby proclaim the week of October 20, 2013 as **Friends of the Library Week** in Oak Harbor and urge all citizens to recognize and applaud their invaluable service.

Signed this 15th day of October, 2013



Scott Dudley, Mayor

Oak Harbor City Council
Regular Meeting Minutes
October 1, 2013

CALL TO ORDER

Mayor Scott Dudley called the meeting to order at 6:00 p.m.

INVOCATION/PLEDGE OF ALLEGIANCE

Councilmember Tara Hizon gave the Invocation and Mayor Dudley led the Pledge of Allegiance.

ROLL CALL

Present:

Mayor Scott Dudley
Mayor Pro Tempore Danny Paggao
Councilmember Rick Almberg
Councilmember Jim Campbell
Councilmember Tara Hizon
Councilmember Beth Munns
Councilmember Joel Servatius
Councilmember Bob Severns

Staff Present:

City Administrator Larry Cort
Finance Director Doug Merriman
Development Service Director Steve Powers
Public Works Director Cathy Rosen
Assistant City Attorney Nikki Esparza
Interim City Attorney Grant Weed
City Engineer Joe Stowell
City Clerk Valerie J. Loffler
Captain Tim Sterkel
Fire Chief Ray Merrill

HONORS AND RECOGNITIONS

Community Planning Month

Development Services Director Steve Powers and Senior Planners Ethan Spoo and Cac Kamack joined Councilmember Rick Almberg as he read the proclamation for Community Planning Month. Also present were Planning Commissioners Keith Fakkema, Bruce Freeman, and Sandi Peterson.

International Day of the Girl Child

Soroptimist International of Oak Harbor President Paige Bates and members joined Councilmember Paggao as he read the proclamation that proclaimed October 11, 2013, as International Day of the Girl Child. President Bates thanked Council for promoting and recognizing girls' rights and the unique challenges girls face around the world.

Honoring Helen Chatfield-Weeks

Helen Chatfield-Weeks joined Parks Manager Hank Nydam and Parks Board Chairman Mike Knight as she was honored with a certificate for her 17 years of service to the Park Board. She thanked City staff for their kindness and direction.

Skip Pohtilla led a cheer for Helen. (As corrected during 10/15/13 meeting.)

APPROVAL OF AGENDA

Motion: Councilmember Munns moved, seconded by Councilmember Campbell, to include a discussion on property acquisition to the Executive Session. The motion carried unanimously.

Motion: Councilmember Hizon moved to approve the Agenda as amended. The motion was seconded by Councilmember Almberg and carried unanimously.

CITIZEN COMMENT PERIOD

Mel Vance expressed disappointment in the behavior of his elected officials.

CONSENT AGENDA

- a. Minutes of the Regular City Council meeting held September 17, 2013
- b. Approval of Accounts Payable Voucher Nos. 155605 through 155609 in the amount of \$702.91; and Nos. 155610 through 155762 in the amount of \$705,388.27
- c. Motion to confirm the appointment of Jeff Malmgren to the Marina Advisory Committee to fill an unexpired term ending December 2014

Motion: Councilmember Hizon moved to approve the Consent Agenda as presented. The motion was seconded by Councilmember Severns and carried unanimously.

STAFF AND COUNCIL COMMENTS

City Administrator Dr. Larry Cort discussed potential workshop dates to discuss financing options for the WWTP and capital facilities. Several Councilmembers had a conflict.

Councilmember Munns briefed Council on the AWC Board of Directors meeting last Friday where legislative priorities were established.

In addition, Mrs. Munns announced that City employees Hank Nydam and Tim Shelley were recognized by the Navy League for their volunteer work at Gateway Park.

Councilmember Severns reported on the Economic Development Council Board meeting held September 18th stating the Board will be studying the financial impact of NASWI.

Councilmember Hizon asked about providing input on the City's legislative priorities.

Mayor Dudley responded the subject would be addressed in November.

ORDINANCES AND RESOLUTIONS

Ordinance 1671: Relating to Bed and Breakfast Establishments

Senior Planner Ethan Spoo provided the staff report describing the types of bed and breakfast establishments, zoning requirements, parking, lighting, and signage regulations and other operational provisions.

Mel Vance suggested more flexibility in the Commercial Business District (CBD) because the proposed language appears to prevent a bed and breakfast establishment where someone owns a restaurant downstairs and apartments above.

Mr. Spoo clarified the types of bed and breakfast establishments allowed in the Commercial Business District.

Mr. Spoo responded to questions from Councilmembers Munns and Campbell related to prohibiting bed and breakfast establishments in the highest noise zone, which was requested by the Navy.

Councilmember Paggao asked about any revenue generated from bed and breakfast establishments.

Councilmembers Almberg and Severns spoke in support and thanked Mr. Spoo for doing a nice job.

Ordinance 1671 An Ordinance of the City of Oak Harbor, Washington Amending Chapter 19.08 of the Oak Harbor Municipal Code Entitled “Definitions” and also Amending Chapter 19.20 Entitled “Zoning”

Motion: Councilmember Hizon moved to adopt Ordinance 1671. The motion was seconded by Councilmember Munns and carried unanimously.

At 6:51 p.m. Mayor Dudley announced a five-minute recess.

The meeting reconvened at 6:59 p.m.

PUBLIC HEARINGS/PUBLIC MEETINGS

Ordinance 1669: Relating to the Parks Code

Public Works Director Cathy Rosen provided the staff report.

Mayor Dudley opened the public hearing at 7:02 p.m.

Speaking in opposition to alcohol in the parks were:

John Hellmann
Sandi Peterson
Mel Vance
JoAnn Hellmann

Speaking in support was Jason Tritt, owner of Flyers Restaurant. Mr. Tritt has operated many beer gardens and spoke of the diligence of the Washington State Liquor Control Board and local law enforcement.

The public hearing closed at 7:15 p.m.

Councilmember Hizon questioned the City’s liability and Interim City Attorney Grant Weed stated there is nothing in state law that forbids a city from making their public properties available for the consumption of alcohol. The decision is at Council’s discretion.

Councilmembers spoke in support of the ordinance although there was concern with special events in Fort Nugent Park where the majority of youth athletic activities are held.

Councilmember Paggao asked what conditions Council would be approving.

Brian Jones, Vice President of the Oak Harbor Youth Football League, recommended prohibiting events that coincide with youth events, in addition to asking participants to turn over their car keys in an effort to monitor alcohol limits.

Councilmember Paggao stated he would like to see standard conditions included on the application for a special event.

Councilmember Campbell spoke in opposition.

Councilmember Munns asked Captain Sterkel to address enforcement concerns.

Captain Sterkel responded that the Washington State Liquor Control Board handles the liquor permit including the background checks and they also provide undercover work. He believes the WSLCB combined with Council approval is sufficient. They've had zero arrests in the City.

Ordinance 1669 An Ordinance of the City of Oak Harbor, Washington Amending 5.50.020 (6), Repealing Chapters 6.12, "Conduct in Parks and Playgrounds," and 6.14, "Park Code," of the Oak Harbor Municipal Code, and Adopting a New Consolidated Chapter 6.12, Parks Code

Motion: Councilmember Paggao moved to adopt Ordinance 1669 deleting "Fort Nugent Park". The motion was seconded by Councilmember Almberg.

Councilmember Paggao spoke in support of the amendment to delete Fort Nugent Park.

Council and staff discussed organizations who would be interested in utilizing Fort Nugent Park and the limitations on playground access during an event.

Councilmember Munns called for the question.

The motion to adopt Ordinance 1669, as amended, carried 6 to 1; Campbell opposed.

Ordinance 1666: Relating to Medical Marijuana Moratorium

Development Services Director Steve Powers provided the staff report and stated action is necessary following the public hearing to adopt the Findings and Conclusions in support of Ordinance 1666.

Mayor Dudley opened the public hearing at 7:49 p.m.

Lucas Jushinski spoke in support stating his medical cannabis access point located in Freeland has been in business almost two years without any problems or complaints.

The public hearing closed at 7:53 p.m.

Councilmembers spoke in support of the moratorium and expressed the need to get the regulations in place within the 6-month timeframe.

Motion: Councilmember Munns moved to adopt the Findings of Fact in support of Ordinance 1666. The motion was seconded by Councilmember Campbell and carried unanimously.

Ordinance 1665: Relating to Initiative 502 Moratorium
Development Services Director Steve Powers provided the staff report.

Mayor Dudley opened the public hearing at 8:04 p.m. No testimony was provided and the hearing was closed.

In response to questions from Councilmember Hizon, Mr. Powers explained questions about locations were premature and that a recommendation would come from the Planning Commission.

Councilmembers Severns and Servatius indicated public input has been positive.

City Attorney Grant Weed related a Task Force has been formed to reconcile the two statutes and merge the laws.

The public hearing closed at 8:10 p.m.

NEW BUSINESS

SPIN Café/Permaculture Food Forest
Public Works Director Cathy Rosen provided the staff report.

Councilmembers spoke in support.

Councilmember Munns suggested delivering extra produce to the HELP House.

Motion: Councilmember Hizon moved to authorize the Mayor to sign an agreement with SPIN Café for the development of a Permaculture food forest at 658 Bayshore Drive, adjacent to Hal Ramaley Park, with the understanding that the site will remain open to the public, that SPIN Café will not use the site as a for-profit enterprise, and that if the City needs to utilize the property for another purpose the Permaculture food forest may be removed. The motion was seconded by Councilmember Servatius and carried unanimously.

Settlement Agreement with Frontier Communications Northwest, Inc.
Finance Director Doug Merriman provided the staff report.

Skip Pohilla asked if the refund is for taxes paid and whether or not it's returned to the consumer.

Staff clarified the claims made by AT&T and Verizon were for taxes overpaid and that weren't owed. At the time the utility carrier was paying the tax, the Supreme Court ruled the DSL feature to be non-taxable.

Motion: Councilmember Servatius moved to approve and authorize the Mayor to sign the Settlement Agreement with Frontier Communications Northwest, Inc. The motion was seconded by Councilmember Munns and carried unanimously.

EXECUTIVE SESSION

At 8:32 p.m. the Mayor announced an Executive Session to discuss pending litigation and property acquisition. The executive session would last approximately 28 minutes and no action would be taken.

The meeting reconvened at 9:01 p.m.

ADJOURNMENT

Motion: Councilmember Hizon moved, seconded by Councilmember Campbell, to adjourn the meeting. The motion carried unanimously.

The meeting adjourned at 9:02 p.m.

Valerie J. Loffler, City Clerk

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

Bill No. C/A 4.b.
Date: October 15, 2013
Subject: Approval of Accounts Payable
Vouchers

FROM: Doug Merriman, Finance Director 

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

 Scott Dudley, Mayor
 Larry Cort, City Administrator
_____ Grant Weed, Interim City Attorney, as to form

SUMMARY STATEMENT

Oak Harbor Municipal Code Chapter 3.72 establishes procedures for claims (vouchers) payment. The documentation that regularly supports the signature coversheets is attached. Claim coversheets will be provided prior to the City Council meeting for appropriate Council signatures.

RECOMMENDED ACTION

Motion to approve Accounts Payable Voucher Nos. 155721 through 155724 in the amount of \$950.00; Nos. 155725 through 155735 in the amount of \$1,756.85; and Voucher Nos. 155736 through 155913 in the amount of \$1,376,898.53.

ATTACHMENTS

Voucher Lists

Bank code : bank

Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
155721	9/27/2013	0007240 WHIDBEY ENVIRONMENTAL ACTION	091213		ATTORNEY'S FEES	200.00
					Total :	200.00
155722	9/27/2013	0004691 KING COUNTY DISTRICT COURT	092713		BAIL/WARRANT# 220157827	500.00
					Total :	500.00
155723	9/27/2013	0001041 MUNICIPAL ATTORNEYS, WASHINGTON STA' 81516			MEMBERSHIP/LEWIS	10.00
					Total :	10.00
155724	9/27/2013	0001041 MUNICIPAL ATTORNEYS, WASHINGTON STA' 1260733-60682191			REGISTRATION/LEWIS	240.00
					Total :	240.00
4 Vouchers for bank code :		bank			Bank total :	950.00
4 Vouchers in this report					Total vouchers :	950.00

Voucher List
 City of Oak Harbor

Bank code : bank

Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount	
155725	10/3/2013	0003462 ACHZIGER, HARRY OR PHYLLIS	Ref000208678		UB Refund Cst #00126315	114.42	
					Total :	114.42	
155726	10/3/2013	0007246 GRIFFIN, GARTH	Ref000208682		UB Refund Cst #00155446	72.57	
					Total :	72.57	
155727	10/3/2013	0007248 GRIMES, TONY	Ref000208684		UB Refund Cst #00161322	109.16	
					Total :	109.16	
155728	10/3/2013	0007243 JENKINS, JAMAR OR ALLENDIA	Ref000208676		UB Refund Cst #00125059	509.70	
					Total :	509.70	
155729	10/3/2013	0007247 LAROUX, LISA	Ref000208683		UB Refund Cst #00161117	202.53	
					Total :	202.53	
155730	10/3/2013	0007244 MACASKILL, BRIANNE	Ref000208680		UB Refund Cst #00154177	253.04	
					Total :	253.04	
155731	10/3/2013	0007241 SINIBALDI, ERIC J	Ref000208674		UB Refund Cst #00123357	102.60	
					Total :	102.60	
155732	10/3/2013	0007242 STRACHAN, MARILYN	Ref000208675		UB Refund Cst #00123383	127.96	
					Total :	127.96	
155733	10/3/2013	0001365 TARA PROPERTIES	Ref000208685		UB Refund Cst #00161521	82.70	
					Total :	82.70	
155734	10/3/2013	0007245 THOMAS, CHARLES	Ref000208681		UB Refund Cst #00154644	62.00	
					Total :	62.00	
155735	10/3/2013	0001391 WINDERMERE	Ref000208677		UB Refund Cst #00125151	102.22	
			Ref000208679		UB Refund Cst #00126629	17.95	
					Total :	120.17	
11 Vouchers for bank code : bank						Bank total :	1,756.85
11 Vouchers in this report						Total vouchers :	1,756.85

Voucher List
City of Oak Harbor

Bank code : bank

Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
155736	10/3/2013	0006844 LAWLER, CHERYL			TRAVEL ADVANCE	244.50
Total :						244.50
155737	10/3/2013	0006740 FRONTIER COMM NORTHWEST, INC	100113		CLAIM SETTLEMENT	207,924.81
Total :						207,924.81
155738	10/7/2013	0000066 AWC EMPLOYEES BENEFITS TRUST	093013		PREMIUMS	1,466.74
Total :						1,466.74
155739	10/7/2013	0000860 STANDARD INSURANCE COMPANY	093013		LONG TERM DISABILITY	4,269.81
Total :						4,269.81
155740	10/8/2013	0005826 ESPARZA, NIKKI			TRAVEL ADVANCE	72.75
Total :						72.75
155741	10/8/2013	0007251 LEWIS, ERIN			TRAVEL ADVANCE	72.75
Total :						72.75
155742	10/9/2013	0000018 ADS EQUIPMENT	34044 34045		MODULE TRANSDUCER	1,420.71 822.66
Total :						2,243.37
155743	10/9/2013	0000029 ALL PHASE ELECTRIC SUPPLY	0952-670824		PLUG-IN/RCPT	714.81
Total :						714.81
155744	10/9/2013	0007253 ALLEN, EDWARD	4642		MOORAGE REFUND	166.05
Total :						166.05
155745	10/9/2013	0000034 AMERICAN PLANNING ASSOCIATION	087067-1355		ZONING PRACTICE	95.00
Total :						95.00
155746	10/9/2013	0000712 AMERIGAS	3020824271		PROPANE	131.26
Total :						131.26
155747	10/9/2013	0002044 ANACORTES.NET/HOW IT WORKS	43855		WEBSITE SERVICES	245.00
Total :						245.00

Bank code : bank

Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
155748	10/9/2013	0001139 ANDERSON, MARION	1		TRAVEL REFUND	70.00
Total :						70.00
155749	10/9/2013	0000046 APPLIED INDUSTRIAL	7000964201		BALL BEARINGS	268.80
Total :						268.80
155750	10/9/2013	0006865 ARMADA	100313		COLLECTION FEE-2352006/2707194-38	162.81
Total :						162.81
155751	10/9/2013	0007252 ARNTZEN, TIM	7325		MOORAGE REFUND	320.21
Total :						320.21
155752	10/9/2013	0004019 ASSOCIATED PETROLEUM PRODUCTS	0478447-IN 0479224-IN 0480866-IN		FUEL FUEL FUEL	37,130.44 13,492.87 4,670.27
Total :						55,293.58
155753	10/9/2013	0000159 AT&T MOBILITY	287249477751X0924201		AIRCARDS	461.08
Total :						461.08
155754	10/9/2013	0000065 AVOCET ENVIRONMENTAL TESTING	1303065-IN		TESTING SERVICES	112.00
Total :						112.00
155755	10/9/2013	0000083 BAZA, ALVIN	100413		WELLNESS INCENTIVE	20.00
Total :						20.00
155756	10/9/2013	0002560 BELL, DOROTHY	1		TRAVEL REFUND	110.00
Total :						110.00
155757	10/9/2013	0005649 BELLEVUE, CITY OF	28390		MEMBERSHIP FEES	1,200.00
Total :						1,200.00
155758	10/9/2013	0007249 BJORLING, BERT	1		TRAVEL REFUND	220.00
Total :						220.00
155759	10/9/2013	0004631 BLAKE, KAY	1		TRAVEL REFUND	110.00
Total :						110.00

Bank code : bank

Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
155760	10/9/2013	0000109 BLUMENTHAL UNIFORMS	11037 20293		SHIPPING HOLSTERS/GREEN	14.67 65.22 Total : 79.89
155761	10/9/2013	0000112 BOB BARKER COMPANY, INC	WEB000284059		JAIL SUPPLIES	186.81 Total : 186.81
155762	10/9/2013	0001558 BOUND TREE MEDICAL, LLC	81209278		RESUSCITATOR MASK	97.86 Total : 97.86
155763	10/9/2013	0003097 BOYER, TALLIE	100413		WELLNESS INCENTIVE	20.00 Total : 20.00
155764	10/9/2013	0000139 BUXTON, MIKE	TRAVEL REIMB		TRAVEL REIMB	33.40 Total : 33.40
155765	10/9/2013	0000146 CAPITAL INDUSTRIES INC	086629 086630 086665		CONTAINERS CONTAINERS BOTTOM	2,804.46 1,776.16 750.03 Total : 5,330.65
155766	10/9/2013	0007259 CAREY, JOHN	7318		MOORAGE REFUND	206.00 Total : 206.00
155767	10/9/2013	0005208 CARTER, SERLOYD	100413		WELLNESS INCENTIVE	20.00 Total : 20.00
155768	10/9/2013	0000150 CASCADE NATURAL GAS	08793000004 18583000007 36624000000 40661045647 58793000009 80434000008 82193000005 90134000000		NATURAL GAS/POLICE STATION NATURAL GAS/TREATMENT PLANT NATURAL GAS/FIRE STATION NATURAL GAS/ANIMAL SHELTER NATURAL GAS/CITY HALL NATURAL GAS/CITY SHOP NATURAL GAS/ANNEX NATURAL GAS/ADULT CARE CENTER	15.87 10.00 67.25 27.75 117.15 115.69 10.73 22.48 Total : 386.92
155769	10/9/2013	0005889 CASCADE RECREATION, INC	6075		WASTE BAGS	251.44

Bank code : bank

Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
155769	10/9/2013	0005889 0005889 CASCADE RECREATION, INC	(Continued)			Total : 251.44
155770	10/9/2013	0007206 CLARK, ARLENE	1		TRAVEL REFUND	35.00
						Total : 35.00
155771	10/9/2013	0000179 CLERKS PETTY CASH	093013		PETTY CASH	198.96
						Total : 198.96
155772	10/9/2013	0005773 COMCAST	8498300270032028 8498300290363841		XFINITY INTERNET	12.71 207.56
						Total : 220.27
155773	10/9/2013	0000197 CONCRETE NORWEST	907869 907880 909464		CRUSHED ROCK CRUSHED ROCK CONCRETE	148.90 166.98 409.72
						Total : 725.60
155774	10/9/2013	0003065 COVENANT JANITORIAL	1335917		SEP 2013/JANITORIAL SERVICES	3,465.40
						Total : 3,465.40
155775	10/9/2013	0007074 COX, GENEVIEVE	100413		WELLNESS INCENTIVE	20.00
						Total : 20.00
155776	10/9/2013	0000220 CUMMINS NORTHWEST, INC	001-75748 005-80903		ISOLATOR/GASKET TUBE/UNION	25.72 37.86
						Total : 63.58
155777	10/9/2013	0000222 CUSTOM ENGRAVING	13-1140 13-1141 13-1142 13-1143		PLAQUE FOLSOM NAME TAG/CORT PLAQUE/SEVERNS PLAQUE/FOLSOM	48.92 8.15 59.79 65.22
						Total : 182.08
155778	10/9/2013	0000247 DIAMOND RENTALS	1-500608-21 1-500619-21 1-500627-21 1-509920-5 1-512792		PORTABLES PORTABLES PORTABLES PORTABLES BOOM LIFT	49.95 49.95 49.95 99.90 2,679.46

Bank code : bank

Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
155778	10/9/2013	0000247 DIAMOND RENTALS	(Continued)			
			1-512930		PORTABLES	49.95
			1-512934		PORTABLES	99.90
			1-513206		GENIE GS	163.06
			1-513290		CAN PUMPING	31.90
			1-513459		CAN PUMPING	31.90
			1-513465		CAN PUMPING	15.95
			1-513529		FILTER AND HOUSING	59.73
			1-513594		BLADES/BOLTS/NUTS	2,145.93
					Total :	5,527.53
155779	10/9/2013	0000253 DIVERSINT	99411		PRINTER SERVICE	223.87
					Total :	223.87
155780	10/9/2013	0000257 DUTCH MAID CLEANERS	093013		SEP 2013/LAUNDRY SERVICES	427.93
			1048		UNIFORM SERVICES	11.15
					Total :	439.08
155781	10/9/2013	0000273 EDGE ANALYTICAL, INC	13-1170		TESTING SERVICES	28.00
			13-15764		TESTING SERVICES	28.00
			13-16743		TESTING SERVICES	28.00
			13-18248		TESTING SERVICES	18.00
					Total :	102.00
155782	10/9/2013	0005826 ESPARZA, NIKKI	TRAVEL ADVANCE2		TRAVEL ADVANCE	17.25
					Total :	17.25
155783	10/9/2013	0001789 ESPARZA, RONALD W	100413		WELLNESS INCENTIVE	20.00
					Total :	20.00
155784	10/9/2013	0007161 EWING	6999586		CHECK POPU	29.02
			6999587		ROTAT/ASSY	70.11
					Total :	99.13
155785	10/9/2013	0004508 FAKKEMA, RICHARD	TRAVEL ADVANCE		TRAVEL ADVANCE	104.00
					Total :	104.00
155786	10/9/2013	0002900 FASTENAL	WAOAK15070		BOLTS/LINKS/DISCS/SHLD	86.42

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Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
155786	10/9/2013	0002900 FASTENAL	(Continued) WAOAK15085 WAOAK15097 waoak15111 WAOAK15175 WAOAK15180 WAOAK15193 WAOAK15255 WAOAK15265		EPOXY/NOZZLE/CAULKING GUN TAPIT/CONICAL MIDGET FUSE FASTENERS FEND/NWH TAPCON DRILL BIT 3/8-16 X 1S/S FHSCS ASPHAL	89.57 9.70 175.21 2.53 20.83 11.12 8.72 457.26 Total : 861.36
155787	10/9/2013	0006480 FENWICK, KAREN	1		TRAVEL REFUND	110.00 Total : 110.00
155788	10/9/2013	0007254 FERGUSON, JAMES	6120		MOORAGE REFUND	17.29 Total : 17.29
155789	10/9/2013	0000309 FERGUSON, LARRY	100413		WELLNESS INCENTIVE	20.00 Total : 20.00
155790	10/9/2013	0007033 FERRER, MARY	1		TRAVEL REFUND	220.00 Total : 220.00
155791	10/9/2013	0006991 FIKSE, JOSH	100413		WELLNESS INCENTIVE	20.00 Total : 20.00
155792	10/9/2013	0006836 FINDLEY, JACKIE	1		TRAVEL REFUND	220.00 Total : 220.00
155793	10/9/2013	0006093 FRAZIER SURVEYING, LLC	75 77		SURVEYING SURVEYING	1,130.00 1,525.00 Total : 2,655.00
155794	10/9/2013	0004971 FREEMAN, DENISE L	2013-64		UNIFORM ITEMS	1,057.11 Total : 1,057.11
155795	10/9/2013	0000355 FRONTIER	007-9244 240-2350		CURRENT PHONE CHARGES CURRENT PHONE CHARGES	282.32 1,132.86

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Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
155795	10/9/2013	0000355 FRONTIER	(Continued)			
			675-1568		CURRENT PHONE CHARGES	205.65
			675-1572		CURRENT PHONE CHARGES	59.59
			675-2111		CURRENT PHONE CHARGES	60.02
			675-3121		CURRENT PHONE CHARGES	54.26
			675-6794		CURRENT PHONE CHARGES	54.73
			675-6858		CURRENT PHONE CHARGES	54.26
			679-0500		CURRENT PHONE CHARGES	59.12
			679-1640		CURRENT PHONE CHARGES	54.41
			679-1651		CURRENT PHONE CHARGES	59.59
			679-1789		CURRENT PHONE CHARGES	54.41
			679-2628		CURRENT PHONE CHARGES	322.61
			679-3902		CURRENT PHONE CHARGES	59.23
			679-8477		CURRENT PHONE CHARGES	78.99
			679-8702		CURRENT PHONE CHARGES	95.93
			770-2694		CURRENT PHONE CHARGES	40.11
			770-2715		CURRENT PHONE CHARGES	31.50
					Total :	2,759.59
155796	10/9/2013	0000326 FRONTIER BUILDING SUPPLY	81527		STUDS/PLATES	31.75
					Total :	31.75
155797	10/9/2013	0004088 FULLER, MARY	1		TRAVEL REFUND	220.00
					Total :	220.00
155798	10/9/2013	0007131 FULLERTON & ASSOCIATES	13-026		PROF SVC/PROPERTY ACQUISITION	300.00
					Total :	300.00
155799	10/9/2013	0006854 GEARIETY LAW OFFICE, PLLC	415-13		PROF SVC/NORTH RESERVOIR PROJE	5,075.00
					Total :	5,075.00
155800	10/9/2013	0000340 GIFFORD, KATHY	100413		WELLNESS INCENTIVE	20.00
					Total :	20.00
155801	10/9/2013	0000349 GRAINGER	9252129995		ACETYLNE CUTTING TIPS	73.92
					Total :	73.92
155802	10/9/2013	0002940 GRAY & OSBORNE, INC	13489.00-5		PROF SVC/NORTH RESERVOIR	893.87

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Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
155802	10/9/2013	0002940 GRAY & OSBORNE, INC	(Continued) 13518.00-3		PROF SVC/WATER SYSTEM IMPROVEM	74,337.65
					Total :	75,231.52
155803	10/9/2013	0006990 GRUBB, GARY	100413		WELLNESS INCENTIVE	20.00
					Total :	20.00
155804	10/9/2013	0006590 HAFFNER, OTTO	100413		WELLNESS INCENTIVE	20.00
					Total :	20.00
155805	10/9/2013	0003505 HAMLIN, BERNADINE	1		TRAVEL REFUND	15.00
					Total :	15.00
155806	10/9/2013	0000694 HD SUPPLY WATERWORKS	B398594 B477032 B485032 B486752		CLAMP SCREW PLUGS TUBING HEAD GASKET/COUPLING	382.09 145.61 289.14 309.38
					Total :	1,126.22
155807	10/9/2013	0006119 HOLMAN, DAYMAN SCOTT	TRAVEL ADVANCE		TRAVEL ADVANCE	137.50
					Total :	137.50
155808	10/9/2013	0003095 HOME DEPOT CREDIT SERVICES	1024578 1560095 1560099 1570982 1571066 2024419 2083612 22831 2560023 2563177 2590297 2593351 3021885 3024181 3574168		L/CNCEPXSUR 201 HENRY 3/4X100NSFPE MCRWV OVEN PAINT/PROJPAKF FG STEP LMPHLDR BRZ/CONN ADAPTERS/ELS/PLUGS/CEMENT CONST/PT/CS/SCREWS DEEPBLUE STA 8OZ SHIMS/HF X5L NUTS/BOLTS FLOOR SCRAP	21.71 57.62 50.84 86.96 20.88 291.33 53.08 37.24 91.67 4.22 33.35 9.62 24.09 182.83 27.15

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Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
155808	10/9/2013	0003095 HOME DEPOT CREDIT SERVICES	(Continued)			
			4164771		GAS SPOUTS	15.16
			43952		HYDRANT//CLMP/TEES/ELBOWS	198.64
			5562946		R2310 MINIC	19.35
			5574674		GORILLA TAPE	10.80
			582670		LBBYDSTPNBLK	32.56
			6013367		RND ROD PLN	23.86
			6023062		PWRD	15.16
			6023215		POULTRY NET	8.01
			6081334		BUCKETS/PWRD/BRUS	38.58
			7020686		FLASH/BRACKETS	30.01
			7020776		NAILS/STRIPS/FLASH/PANELTS/STUDS	247.37
			7083191		RGD/BRZ	14.03
			8020461		BARS	24.61
			8041992		HOSE REPAIR/MALE REPAIR	30.87
			8594825		WNHTLIT	4.93
			8594845		FLASH/LATHE	24.67
			9023203		REBAR	14.58
			9025191		HF/GDF/FENCE BRACKET	325.31
			9563535		RAPID SET	28.85
			9574356		GR DRV 2PK	33.64
			9973516		S/OROPPE	68.68
					Total :	2,202.26
155809	10/9/2013	0005250 HONEYMOON BAY COFFEE ROASTERS	019253		COFFEE SUPPLIES	93.22
					Total :	93.22
155810	10/9/2013	0006520 HOPKINS, CAMERON	100413		WELLNESS INCENTIVE	20.00
					Total :	20.00
155811	10/9/2013	0000392 HUBBARD, SCOTT	100413		WELLNESS INCENTIVE	20.00
					Total :	20.00
155812	10/9/2013	0000394 HUMAN RESOURCE SERVICES	092413		OCT 2013/UNEMPLOYMENT SERVICES	110.00
					Total :	110.00
155813	10/9/2013	0005872 IMPAIRED DRIVING IMPACT PANEL	092413		DUI/UNDERAGE DRINKING PREVENTIC	166.67

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Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
155813	10/9/2013	0005872	0005872 IMPAIRED DRIVING IMPACT PANEL	(Continued)		Total : 166.67
155814	10/9/2013	0000417	INDUSTRIAL BOLT & SUPPLY	545058-1	WASHERS/UNIONS/O-RINGS/HEX NUT:	356.52
						Total : 356.52
155815	10/9/2013	0001756	INTERNATIONAL MUNICIPAL SIGNAL	6736361	REGISTRATION/HOLMAN	560.00
						Total : 560.00
155816	10/9/2013	0000410	ISLAND COUNTY SOLID WASTE	093013	SEP 2013/TIPPNG FEES	71,730.72
						Total : 71,730.72
155817	10/9/2013	0000411	ISLAND COUNTY TREASURER	100213	CRIME VICTIM COMPENSATION	202.08
						Total : 202.08
155818	10/9/2013	0000441	ISLAND SYSTEMS	217699	WATER/MARINA	11.80
				218009	WATER/MARINA	11.80
						Total : 23.60
155819	10/9/2013	0006311	JANSEN, JONATHAN	100413	WELLNESS INCENTIVE	20.00
						Total : 20.00
155820	10/9/2013	0000454	JET CITY EQUIPMENT RENTAL	19261	DUMPING	23.48
						Total : 23.48
155821	10/9/2013	0005010	JOHNSON DDS, SAMUEL F	091113	INMATE SERVICES	437.00
						Total : 437.00
155822	10/9/2013	0000476	KERR, JACK	09-13	SEP 2013/PUBLIC DEFENSE SCREENIN	1,400.00
						Total : 1,400.00
155823	10/9/2013	0000494	LAKESIDE INDUSTRIES	5101958MB	ASPHALT	638.48
				5101982MB	ASPHALT	1,350.26
						Total : 1,988.74
155824	10/9/2013	0006695	LANG GLASS	816694	FRONT DOOR REPLACEMENT	554.37
						Total : 554.37
155825	10/9/2013	0000889	LANGUAGE EXCHANGE	15	MUNICIPAL COURT INTERPRETER	227.50

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Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
155825	10/9/2013	0000889 0000889 LANGUAGE EXCHANGE	(Continued)			Total : 227.50
155826	10/9/2013	0007251 LEWIS, ERIN	TRAVEL ADVANCE2		TRAVEL ADVANCE	17.25
						Total : 17.25
155827	10/9/2013	0004502 LEXISNEXIS RISK DATA MANAGE	1404645-20130831		AUG 2013/MINIMUM COMMITMENT	54.35
						Total : 54.35
155828	10/9/2013	0003460 LISZAK, ANN	1		TRAVEL REFUND	330.00
						Total : 330.00
155829	10/9/2013	0000515 LOGGERS & CONTRACTORS, INC	00059534		BOLTS	239.98
						Total : 239.98
155830	10/9/2013	0000522 LUEHR, TOM	1		DRIVING SERVICES	174.00
			1		DRIVING SERVICES	102.00
			1		DRIVING SERVICES	-126.00
			1		DRIVING SERVICES	132.00
						Total : 282.00
155831	10/9/2013	0000524 LYNDEN ICE	114005191		ICE	162.00
			117005169		ICE	135.00
						Total : 297.00
155832	10/9/2013	0001661 MACAULAY & ASSOCIATES LTD	13-165		APPRAISAL SERVICES	9,950.00
						Total : 9,950.00
155833	10/9/2013	0000530 MAILLIARD'S LANDING NURSERY	77048		YARD WASTE	183.05
			77080		YARD WASTE	91.70
			77112		YARD WASTE	116.20
			77134		YARD WASTE	119.00
			77239		YARD WASTE	79.80
			77303		YARD WASTE	95.20
			77329		YARD WASTE	104.65
			77373		YARD WASTE	134.40
			77408		YARD WASTE	179.55
			77527		YARD WASTE	87.85
			77564		YARD WASTE	65.45

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Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
155833	10/9/2013	0000530 MAILLIARD'S LANDING NURSERY	(Continued)			
			77642		YARD WASTE	125.65
			77687		YARD WASTE	221.55
			77766		YARD WASTE	126.70
			77795		YARD WASTE	114.45
			77826		YARD WASTE	10.00
			77832		YARD WASTE	151.20
			77884		YARD WASTE	175.00
			77910		YARD WASTE	222.95
			77967		YARD WASTE	118.30
					Total :	2,522.65
155834	10/9/2013	0000660 MARKET PLACE FOOD & DRUG	346358		GROCERIES	771.19
			635936		GROCERIES	264.59
			635938		GROCERIES	198.15
					Total :	1,233.93
155835	10/9/2013	0000544 MATERIALS TESTING & CONSULTING	11421		PROF SVC/NORTH RESERVOIR	1,993.00
			11608		PROF SVC/NORTH RESERVOIR	11,443.00
					Total :	13,436.00
155836	10/9/2013	0000040 MATRIX	608160130		LONG DISTANCE	441.43
					Total :	441.43
155837	10/9/2013	0006028 MCI COMM SERVICE	679-3902		LONG DISTANCE	36.81
					Total :	36.81
155838	10/9/2013	0003369 MICRON CONSUMER PRODUCTS GROUP	249531776		PINS	389.13
					Total :	389.13
155839	10/9/2013	0007255 MONK, DOUG	5140		MOORAGE REFUND	43.40
					Total :	43.40
155840	10/9/2013	0006992 MOON, ANDREW	100413		WELLNESS INCENTIVE	20.00
					Total :	20.00
155841	10/9/2013	0000587 MOTOR TRUCKS, INC	MV58284		INSPECT	173.87
			MV58602		LIGHT	32.19

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Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
155841	10/9/2013	0000587 0000587 MOTOR TRUCKS, INC			(Continued)	Total : 206.06
155842	10/9/2013	0006602 MTS, INC	2055		TECH SHIRTS	8,670.00
						Total : 8,670.00
155843	10/9/2013	0000593 MUELLER, DEBORAH	100413		WELLNESS INCENTIVE	20.00
						Total : 20.00
155844	10/9/2013	0006700 MUJKANOVIC-CARR, MAJDA	100413		WELLNESS INCENTIVE	20.00
						Total : 20.00
155845	10/9/2013	0007256 NEIL, KATHY	7507		MOORAGE REFUND	30.26
						Total : 30.26
155846	10/9/2013	0000621 NIIRO, CEDRIC	100413		WELLNESS INCENTIVE	20.00
						Total : 20.00
155847	10/9/2013	0006974 NORTH AMERICAN RESUCE, LLC	IN136333 IN136473 IN136885		EXTRICATION DEVICE/BANDAGES/DRE EXTRICATION DEVICE/BANDAGES/DRE TOURNIQUET	658.40 270.75 208.59
						Total : 1,137.74
155848	10/9/2013	0000648 NORTHWEST PUMP & EQUIPMENT CO	2448831-00		GASKETS/KEYS/RINGS	2,468.05
						Total : 2,468.05
155849	10/9/2013	0000672 OAK HARBOR ACE	227968 227992 227997 228282 228287 228333 228344 228350 228359 228367 228401 228420 228434		TROWELS/BUCKET TROWELS BRUSH/HANDLE CEMENT/ADAPTERS/TEES/NIPPLES/EL TEES/STRAPS/TUBE NIPPLES COUPLE INSERT CAULK COUPLES/TEE/CLAMPS COUPLES PIPE/OUTLET/COUPLING CAPS/CAULK ANGLE	10.83 27.16 21.72 91.27 31.68 17.37 0.86 26.02 25.78 -6.52 85.89 3.18 39.12

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Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
155849	10/9/2013	0000672 OAK HARBOR ACE	(Continued)			
			228506		FASTENERS/EAR DROP/DRAIN	20.91
			228514		RIVET/COUPLE FLEX	16.83
			228610		BLADE	28.25
			228625		PEST SPRAY	23.88
			228632		COUPLE/NIPPLES	32.03
			228676		PAIL/WIRE/CUP/FUNNELS	33.84
			228691		LIGHTERS	1.63
			228704		SPOUT/FUNNEL	21.16
			228722		WRENCHES/PLIERS/PEST SPRAY	152.11
			228723		FREIGHT	15.59
			228731		PIPE/HOOK	11.94
			228746		CASTER	4.88
			228821		TOTE/DISPENSERS	36.66
			228841		FASTENERS/DUCT TAPE	51.89
			228865		NOZZLE	5.42
			228903		PRESSURE GUAGE	23.89
			229028		FASTENERS	8.83
			229045		FREIGHT	14.89
			229085		SANDWICH BAGS	4.34
			229096		FILE/CHAIN LOOP	30.41
			229135		CAR WASH	15.20
			229143		ELECTRICAL SUPPLIES/FASTENERS/S	69.10
			229145		GRASS SEED	11.12
			229229		CHAINS	42.38
					Total :	1,051.54
155850	10/9/2013	0000668 OAK HARBOR AUTO CENTER	001-177586		BRAKE PAD	-28.55
			001-179846		CORE RETURN	-54.35
			001-179937		CORE RETURN	-10.87
			001-180519		MINI LAMP	9.98
			001-180542		FILTERS	4.60
			001-180611		EXTRACT	10.71
			001-180620		FILTERS	7.40
			001-180810		QUICK BOND	14.31
			001-180998		ROTOR/PADS/FILTER	189.93
			001-181000		CRC	7.85

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Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
155850	10/9/2013	0000668 OAK HARBOR AUTO CENTER	(Continued)			
			001-181137		MIRRORS/DISC BRA	17.69
			001-181187		FILTERS	26.58
			001-181200		FILTERS	8.82
			001-181277		COPPER PLUS	10.29
			001-181278		FILTERS	84.73
			001-181371		UTILITY LAMP	5.44
					Total :	304.56
155851	10/9/2013	0000681 OAK HARBOR SCHOOL DISTRICT	0000130047		SEP 2013/COMPUTER NETWORK SUPP	6,708.33
					Total :	6,708.33
155852	10/9/2013	0003092 OAK HARBOR SIGNS	251		NEIGHBORHOOD WATCH SIGNS	380.45
					Total :	380.45
155853	10/9/2013	0003007 OFFICE DEPOT	677675070001		BINDERS	96.78
					Total :	96.78
155854	10/9/2013	0001377 ORCA INFORMATION	339184		PRE-EMPLOYMENT/LEWIS	40.00
					Total :	40.00
155855	10/9/2013	0002985 PACIFIC TIRE CO. INC	0070012		TIRES	63.84
			0070013		TIRES	127.68
			0070369		TIRES	1,552.25
			0070533		TIRES	35.71
					Total :	1,779.48
155856	10/9/2013	0003164 PAINTERS ALLEY	22424		PAINT	368.12
			22515		PAINT	521.76
			22638		PAINT	144.03
					Total :	1,033.91
155857	10/9/2013	0005130 PEACOCK, PE, WILLIAM R	2013T00089		TRAINING/VON HADEN	400.00
					Total :	400.00
155858	10/9/2013	0007181 PICCONE, JOHN	EXP REIMB		EXP REIMB	195.47
			TRAVEL REIMB		TRAVEL REIMB	15.00

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Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
155858	10/9/2013	0007181 0007181 PICCONE, JOHN			(Continued)	Total : 210.47
155859	10/9/2013	0007258 PICCONE, JOHN	288		MOORAGE REFUND	55.00 Total : 55.00
155860	10/9/2013	0007257 PIKE, TIMOTHY	6699		MOORAGE REFUND	319.77 Total : 319.77
155861	10/9/2013	0000299 PLACE, SANDRA	100413 EXP REIMB		WELLNESS INCENTIVE EXP REIMB	20.00 1,470.00 Total : 1,490.00
155862	10/9/2013	0000710 PLATT ELECTRIC SUPPLY, INC	5549114		CONTACTS	974.88 Total : 974.88
155863	10/9/2013	0000730 POWELL, JANIS	1		DRIVING SERVICES	162.00 Total : 162.00
155864	10/9/2013	0000743 PUGET SOUND ENERGY	200000881421 200002036164 200002037097 200002511539 200003459654 200005933094 200010322895 200010499446 200013734963 200015399153 200017654415 20002037501 200022988147 300000009906 4345		ELECTRICITY/DISPOSAL PLANT ELECTRICITY/30505 ST ROUTE 20 ELECTRICITY/2000 SW SCENIC HEIGH ELECTRICITY/2075 SW FT ELECTRICITY/1957 FORT NUGENT RD ELECTRICITY/700 SE PIONEER WAY ELECTRICITY/2330 SW ROSARIO PLAC ELECTRICITY/1661 NE 16TH AVE ELECTRICITY/672 CHRISTIAN ROAD ELECTRICITY/1678 SW 8TH AVE ELECTRICITY/1000 SW THORNBERRY ELECTRICITY/3285 SW SCENIC HEIGH ELECTRICITY/TRAILER PK S END ELECTRICITY/2220 SW VISTA PARK DR GUTTERBROOM	4,030.38 166.32 19.37 73.06 158.27 4,190.11 34.14 23.53 574.40 10.16 154.87 75.79 25.48 25.76 547.71 Total : 10,109.35
155865	10/9/2013	0000965 REVENUE, WASHINGTON STATE DEPT OF	100313		3RD QTR 2013/LEASEHOLD EXCISE TA	29,098.92 Total : 29,098.92

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Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
155866	10/9/2013	0004654 RILEY, KENNETH	EXP REIMB		EXP REIMB	10.00
					Total :	10.00
155867	10/9/2013	0002508 RINEY PRODUCTION SERVICES	10-1109		TAPING SERVICES	2,841.76
					Total :	2,841.76
155868	10/9/2013	0004528 ROBERTS-EDLIN, LISA	TRAVEL REIMB		TRAVEL REIMB	68.05
					Total :	68.05
155869	10/9/2013	0000775 ROSEN, CATHERINE	TRAVEL ADVANCE		TRAVEL ADVANCE	79.00
					Total :	79.00
155870	10/9/2013	0005400 RYBIJ, JOHN	1		TRAVEL REFUND	220.00
					Total :	220.00
155871	10/9/2013	0006455 SCHNEIDER, BRIAN	100413		WELLNESS INCENTIVE	20.00
					Total :	20.00
155872	10/9/2013	0000799 SCOTTIES PLUMBING AND REPAIR	36599		CARTRIDGE	43.47
					Total :	43.47
155873	10/9/2013	0000801 SEA WESTERN, INC	171485		DEFENDER VISOR NOSE PAD	78.52
					Total :	78.52
155874	10/9/2013	0000852 SENIOR CENTER PETTY CASH	093013		PETTY CASH	190.51
					Total :	190.51
155875	10/9/2013	0000809 SENIOR SERVICES OF ISLAND	OH08-2013		AUG 2013/SENIOR SERVICES	1,500.00
					Total :	1,500.00
155876	10/9/2013	0002358 SERVICEMASTER OF THE ISLAND	9217		OCT 2013/JANITORIAL SERVICES	775.00
					Total :	775.00
155877	10/9/2013	0000817 SHELLEY, TIM	100413		WELLNESS INCENTIVE	20.00
					Total :	20.00
155878	10/9/2013	0000822 SHRED-IT USA, INC	9402414897		SHREDDING	58.00
					Total :	58.00

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Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
155879	10/9/2013	0007250 SIEBERT, BRENDA	1		TRAVEL REFUND	110.00
						Total :
155880	10/9/2013	0000831 SIX ROBBLEES', INC	14-276313		ROTATOR LIGHT	177.77
						Total :
155881	10/9/2013	0000814 SKAGIT FARMERS SUPPLY	308611		SUPERLUBE	83.07
						Total :
155882	10/9/2013	0000833 SKAGIT HYDRAULICS	128236		MUNCIE	2,147.88
						Total :
155883	10/9/2013	0000853 SKAGIT RIVER STEEL & RECYCLING	34945		GALV SHEETS	254.79
						Total :
155884	10/9/2013	0006499 SMITH, PATTY	1		TRAVEL REFUND	220.00
						Total :
155885	10/9/2013	0000843 SOLID WASTE SYSTEMS, INC	0065288-IN 0065299-IN		BUSHINGS/SEAL SHAFTS GASKETS	421.44 35.80
						Total :
155886	10/9/2013	0000851 SPRINT	414568819-070		CURRENT CELL CHARGES	508.09
						Total :
155887	10/9/2013	0000851 SPRINT	182311697		LONG DISTANCE	5.79
						Total :
155888	10/9/2013	0000860 STANDARD INSURANCE COMPANY	092013		LIFE/POCFF	208.63
						Total :
155889	10/9/2013	0003883 STAPLES BUSINESS ADVANTAGE	3208331600 3208331601 3208331602 3209205135 3209624173 3209624177 3209624178		FOLDERS LIQUID PAPER HEATER TONER/HANGING FOLDERS DESK MOUNT LCD ARM FOLDERS/PENS/STAPLES CREDIT	20.21 33.52 111.79 201.40 145.10 58.74 -24.59

Bank code : bank

Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
155889	10/9/2013	0003883 STAPLES BUSINESS ADVANTAGE	(Continued)			
			3209624181		HANGING FOLDERS	43.34
			3210112048		TONER	257.38
			3210112049		TONER	257.38
			3210112050		TONER	234.12
			3210112051		BINDER	93.36
			3210112055		TONER	60.21
			3210112057		MEMORY CARD/GLIDE USB	37.08
					Total :	1,529.04
155890	10/9/2013	0006190 STOWELL, JOSEPH	TRAVEL REIMB		TRAVEL REIMB	12.75
					Total :	12.75
155891	10/9/2013	0005786 STOWES SHOES & CLOTHING	0007181		BOOTS/NUCKOLS	150.00
					Total :	150.00
155892	10/9/2013	0000874 SURETY PEST CONTROL	379340		PEST EXTERMINATION	59.79
					Total :	59.79
155893	10/9/2013	0001053 TREASURER, WASHINGTON STATE	100213		COURT/BC FEES	11,984.40
					Total :	11,984.40
155894	10/9/2013	0000923 UNITED PARCEL SERVICE	0000A0182W333		SHIPPING	20.00
			0000A0182W373		SHIPPING	1.20
					Total :	21.20
155895	10/9/2013	0000922 UNUM LIFE INSURANCE COMPANY	091813		LONG TERM CARE	142.20
					Total :	142.20
155896	10/9/2013	0004903 US BANK	4485591000611990		CREDIT CARD PURCHASES	2,155.07
					Total :	2,155.07
155897	10/9/2013	0004903 US BANK	4485590100104948		CREDIT CARD PURCHASES	1,119.00
					Total :	1,119.00
155898	10/9/2013	0004903 US BANK	4485590100104922		CREDIT CARD PURCHASES	585.06
					Total :	585.06

Bank code : bank

Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
155899	10/9/2013	0004903 US BANK	4485591000222970		CREDIT CARD PURCHASES	420.33
Total :						420.33
155900	10/9/2013	0004903 US BANK	4485591000646855		CREDIT CARD PURCHASES	97.67
Total :						97.67
155901	10/9/2013	0004903 US BANK	4485590001840921		CREDIT CARD PURCHASES	39.06
Total :						39.06
155902	10/9/2013	0006694 VALLQUIST, MARIE	1		TRAVEL REFUND	115.00
Total :						115.00
155903	10/9/2013	0007166 VETERANS NORTHWEST CONST	4		PROF SVC/NORTH RESERVOIR	785,875.20
Total :						785,875.20
155904	10/9/2013	0002557 WAGNER, CLIFF	1		TRAVEL REFUND	220.00
Total :						220.00
155905	10/9/2013	0003917 WALTON, DAVID	100413		WELLNESS INCENTIVE	20.00
Total :						20.00
155906	10/9/2013	0007260 WE FILE, INC	093013		BUSINESS LICENSE OVERPAYMENT RI	25.00
Total :						25.00
155907	10/9/2013	0007178 WENDT, PETE	1		TRAVEL REFUND	110.00
Total :						110.00
155908	10/9/2013	0003486 WESTERN FACILITIES SUPPLY, INC	417289-00		AIR FRESHENERS	306.53
Total :						306.53
155909	10/9/2013	0005064 WHATCOM COUNTY AS FINANCE	19853		3RD QTR 2013 NW MINI	444.75
Total :						444.75
155910	10/9/2013	0001000 WHIDBEY AUTO PARTS, INC.	189389		IMPACT SOCKET SET	9.83
Total :						9.83
155911	10/9/2013	0001017 WHIDBEY PRINTERS	46468		INSPECTION REPORTS	380.81
			46478		BUSINESS CARDS/BLANK PATROL	117.12

Voucher List
 City of Oak Harbor

Bank code : bank

Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
155911	10/9/2013	0001017 WHIDBEY PRINTERS	(Continued) 46493		BUSINESS CARDS/PICCONE	55.71
					Total :	553.64
155912	10/9/2013	0004247 WINKEL, TOM	4033		MOORAGE REFUND	143.79
					Total :	143.79
155913	10/9/2013	0001067 ZEP SALES & SERVICE	9000539312		AERO DZ	200.70
					Total :	200.70
178 Vouchers for bank code : bank						Bank total : 1,376,898.53
178 Vouchers in this report						Total vouchers : 1,376,898.53

City of Oak Harbor City Council Agenda Bill

Bill No. C/A 4.c.
Date: October 15, 2013
Subject: AWC Employee Benefit Trust
Healthcare Program - Resolu-
tion 13-23

FROM: Cheryl Lawler, HR Manager

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

 Scott Dudley, Mayor
Larry Cort, City Administrator
Doug Merriman, Finance Director
Grant Weed, Interim City Attorney

PURPOSE

To adopt Resolution 13-23.

SUMMARY STATEMENT

The City of Oak Harbor is a member of the Association of Washington Cities (AWC) Benefits Trust. On August 26, 2013, the State Risk Manager approved the AWC Trust's application to self-insure the medical plans through Group Health and Regence Blue Shield, the Vision Service Plan, and Washington Dental Service plan effective January 1, 2014.

RCW 48.62 authorizes local government entities to self-insure for health care benefits, and delegates rule-making authority and oversight to the Washington State Risk Manager. Chapter 200-110 Washington Administrative Code sets forth that members of the health care program (pool) must be a signatory to the health care program's Interlocal Agreement, and the Interlocal Agreement must be adopted by the local governing body by resolution.

In order for the Trust to meet the state deadlines, member jurisdictions must provide the adopted resolution and Interlocal Agreement no later than November 15, 2013.

FISCAL IMPACT

None

RECOMMENDED ACTION

Adopt Resolution 13-23.

ATTACHMENTS

- AWC Cover Letter and Fact Sheet
- Interlocal Agreement
- Resolution 13-23

Self-Funded Health Care Program

On August 26, 2013, the State Risk Manager approved the AWC Trust's application to self-insure the medical plans through Group Health and Regence Blue Shield, the Vision Service Plan, and Washington Dental Service plan effective January 1, 2014. The remaining insurance products will continue to be fully-insured. This fact sheet is intended to provide background of the Trust and insight into the Board of Trustee conversation ultimately leading to the decision to self-insure.

Trust history

The AWC Employee Benefit Trust is a Voluntary Employees' Beneficiary Association (VEBA), as defined in IRC 501 (c) (9). The Trust was formed in 1970 by the Association of Washington Cities to offer affordable coverage for its cities and towns with participants in Law Enforcement Officers and Fire Fighters Pension Plan 1 (LEOFF 1). Since that time, the Trust has broadened its insured membership to include all walks of municipal government and their families. Today, the Trust serves 275 participating entities and insures approximately 36,000 employees and family members.

The Trust currently offers medical, dental, vision, employee assistance program, life insurance, long-term disability insurance, and long-term care insurance.

In 1984, the Board of Trustees proved to be true visionaries in the health care industry and adopted an innovative health promotion project (wellness) as a cost containment tool. Today, the award-winning Total Health Management services of the Trust (available to Regence and Group Health medical subscribers) continues to reduce health care costs and improve quality of life for our insured members.

The AWC Trust, one of the first of its kind as a municipal league pool, is nationally recognized for excellence and innovation. Industry respect and long-term, stable relationships with insurance carriers, vendors, and consultants have benefited the pool members with quality health care programs, trust-worthy technical assistance and financial predictability. Customer advocacy and member-driven decisions continue to be the cornerstone of the Trust mission, vision and goals.

Planning retreat priority: self-insurance

As one of the highest priorities emerging from the 2011 Long Range Strategic Planning Retreat, the Trustees dedicated its 2013 meetings to learning about the world of self-insurance; hearing in-depth analysis from benefit, legal and actuarial consultants; and weighing the pros and cons of self-insuring the health care plans.

On July 25, Trustees instructed staff and consultants to proceed with a self-insurance application to the State Risk Manager. Approval was granted on August 26, and the Trust will transition its Regence/Asuris, Group Health, WDS and VSP plans to self-insurance effective January 1, 2014.

Self-Insurance means a formal program of advance funding and management of entity financial exposure to a risk of loss that is not transferred through the purchase of an insurance policy or contract.

Cost savings

One of the overriding factors in the decision is the potential for cost savings to members. Self-insurance allows the Trust to eliminate several taxes mandatory for fully insured plans including a 2% state tax and a 2% - 3% new 2014 federal insurer tax. While our retention and stop loss fees were extremely competitive as a fully insured plan, these fees were also lowered with the aid of a competitive self-insurance marketplace. Along with all these cost savings, we'll be able to focus on our own trend line, which has been lower than carriers' trends for many years. This bodes well for not only this year's rate projections, but future year's as well.

continued

The transition to self-insurance will not change the manner in which plans are rated (i.e., the Trust will continue to pool all member claims rather than develop rates based upon individual employer loss experience). However, the discussion of large city claims rating is slated to be discussed by the Board of Trustees in 2014, and being self-insured certainly enables a broader scope of analysis.

With all these factors considered, the Trust's 2014 rate projections are very favorable with 0% increase projected for most plans.

Self-insurance plans		Fully-insured plans	
Regence/Asuris Medical	0%	LEOFF I Medicare Advantage Plan	8%
Group Health Medical	0%	Willamette Dental	0%
WDS Dental	0%	Life & LTD	0%
VSP Vision	0%	EAP	0%

Final rates will be adopted by the Board of Trustees on September 26. Look to our website by end of day on Friday, September 27, for an updated posting.

WellCity rate impact

The WellCity discount is 2% less than the base rate. Ongoing WellCity Award recipients - your current rate will be 2% less than the base rate - which means your rate stays the same. For cities earning the 2013 WellCity Award for the first time, you'll get a 2% discount on the 2014 base rate, meaning your rate this year is actually a 2% savings from your 2013 rate.

Employee impacts

For now, know that the impact to employees and their family members is minimal to none:

- Benefit plan designs remain the same, including the mandated benefit changes under the ACA for 2014
- Employees have access to the same provider networks.
- Claims will be processed by the same carriers.
- It is possible that a new ID card will be generated.

Member employer impacts

Impact to employers is equally minimal:

- Members will still be part of the Trust's large pool, which will now be self-insured.
- The monthly bill will still be generated by NWA and due at the same time as current (by the 10th of the month).
- The most notable change for employers will be the council-adoption by resolution of an Interlocal Agreement between the jurisdiction and the AWC Trust.

Interlocal Agreement

RCW 48.62 authorizes local government entities to self-insure for health care benefits, and delegates rule-making authority and oversight to the Washington State Risk Manager. Chapter 200-110 Washington Administrative Code sets forth that members of the health care program (pool) must be a signatory to the health care program's Interlocal Agreement, and the Interlocal Agreement must be adopted by the local governing body by resolution.

In order for the Trust to meet the state deadlines, member jurisdictions must provide the adopted resolution and Interlocal Agreement no later than November 15, 2013.

AWC Employee Benefit Trust Health Care Program reserve funding

Self-insured health care programs must establish reserves necessary to fund the termination costs of the program and to insulate the program against unusual severity or frequency of claims. The Board of Trustees have pledged reserve funds pursuant to actuarially established amounts to satisfy this requirement.

Health Care Program 2014 financials at a glance	
Beginning program deposits/assets ¹	\$15,420,000
Projected employer contributions	\$174,672,167
Projected employee contributions	\$19,408,091
Other projected revenues	\$308,400
Total projected revenues	\$194,388,586
Projected claims payments	\$179,155,972
Projected operational expenses ²	\$12,334,777
Projected Stop Loss Insurance Policy	\$813,875
Projected Wellness Program expenses	\$1,775,561
Total projected annual expenses	\$194,080,186
Projected year-end program assets/reserves	\$15,728,400

¹Projected reserves as of December 31, 2013 are \$75,471,971 of which \$15,420,000 are pledged as beginning health care program assets.

²Includes claims adjudication, broker fee-for-service, actuary, legal, consultants, and operations.

Questions

As always, the Trust is committed to communicating with members. You can expect ongoing communications in upcoming *For Your Health* e-newsletters. If you have any questions regarding the Trust's decision to self-insure, the new rate projections, or the Interlocal Agreement feel free to contact an AWC Trust staff member at 1-800-562-8981 or benefitinfo@awcnet.org.

**CITY OF OAK HARBOR
RESOLUTION NO. 13-23**

A RESOLUTION OF THE CITY OF OAK HARBOR, WASHINGTON, AUTHORIZING THE MAYOR TO SIGN AN INTERLOCAL AGREEMENT WITH THE ASSOCIATION OF WASHINGTON CITIES BENEFIT TRUST CREATING THE HEALTH CARE PROGRAM SUBJECT TO REQUIRED ASSESSMENTS

WHEREAS, the Association of Washington Cities Employee Benefit Trust (the "Trust") is an entity to which contributions by cities and towns and non-city entities organized and existing under the Constitution or laws of the State of Washington and who are members of the Trust ("Participating Cities and Towns," and "Participating Non-City Entities") and their employees can be paid and through which the Board of Trustees of the Trust ("Trustees") provides one or more insured health and welfare benefit plans or programs to Participating Cities and Towns' and Non-City Entities' employees, their dependents and other beneficiaries ("Beneficiaries"), on whose behalf the contributions were paid; and

WHEREAS, the Trust qualifies as a voluntary employee beneficiary association within the meaning of Section 501(c)(9) of the Internal Revenue Code, providing for the payment of life, sick, accident or other benefits to Beneficiaries; and

WHEREAS, the Trust and Participating Cities and Towns and Non-City Entities have determined that it is in the best interest of Participating Cities and Towns and Non-City Entities to jointly self-insure certain health benefit plans and programs for Beneficiaries through a designated account within the Trust, while at the same time having the Trust continue as the entity to which other insured health and welfare benefit program contributions are paid and through which insured health and welfare benefit plans and programs are provided to Beneficiaries; and

WHEREAS, it appears economically feasible and practical for the parties to do so; and

WHEREAS, Chapter 48.62 RCW provides that two or more local government entities may, by Interlocal agreement under chapter 39.34 RCW, jointly self-insure health benefit plans and programs, and/or jointly hire risk management services for such plans or programs by any one or more of certain specified methods; and

WHEREAS, the Association of Washington Cities Employee Benefit Trust Interlocal Agreement (the "Interlocal Agreement") attached hereto creates a joint self-insured health and welfare benefit program (the "Health Care Program") to be administered by the Trustees for the purposes of providing self-insured health benefits to Beneficiaries; and

WHEREAS, WAC 200-110-030 requires every local government entity participating in a joint self-insurance health and welfare benefit program to adopt such program by resolution; and

WHEREAS, Chapter 48.62 requires Health Care Program assets to be managed consistent with existing authority over use of municipal funds in RCW 35.39.030. The Trust will manage Health Care Program reserves in compliance with Chapter 48.62 RCW; RCW 35.39.030, and the Health Care Program Investment Policy; and

WHEREAS, all premium contributions for use in the Health Care Program are deposited into a designated account within the Trust, the Health Care Program Account (the "HCP Account"), and the HCP Account represents a pool of funds that is independent of all other Trust or AWC funds; and

WHEREAS, the Trust intends to manage the HCP Account assets in compliance with federal and state laws and the Interlocal Agreement; and

WHEREAS, the City of Oak Harbor believes it is in the best interest of the Health Care Program to allow the Trust to manage the HCP Account; NOW, THEREFORE,

BE IT RESOLVED, that

1. The Interlocal Agreement creating the Health Care Program is hereby adopted, and the Mayor is authorized to execute the Interlocal Agreement with the Association of Washington Cities Benefit Trust; and
2. By adopting such Interlocal Agreement, the City of Oak Harbor, Washington, acknowledges that it shall be subject to assessments as required by the Health Care Program.

PASSED by the City Council and approved by its Mayor this 15th day of October 2013.

CITY OF OAK HARBOR

SCOTT DUDLEY, MAYOR

Attest:

Valerie J. Loffler, City Clerk

Approved as to form:

Grant K. Weed, Interim City Attorney

**ASSOCIATION OF WASHINGTON CITIES EMPLOYEE BENEFIT TRUST
HEALTH CARE PROGRAM
INTERLOCAL AGREEMENT**

This Agreement is made and entered into in the State of Washington by and among the Association of Washington Cities Employee Benefit Trust (the "Trust") and cities and towns, and non-city entities organized and existing under the Constitution or laws of the State of Washington and who are members of the Trust ("Participating Cities and Towns," or "Participating Non-City Entities"), all of whom are signatories to this Agreement.

RECITALS

WHEREAS, the Trust is an entity to which contributions by Participating Cities and Towns and Non-City Entities (defined below) and Participating Employees (defined below) are paid and through which the Board of Trustees provides one or more insured health and welfare benefit plans or programs to Participating Employees, their covered dependents and other beneficiaries ("Beneficiaries"), on whose behalf the contributions were paid; and

WHEREAS, the Trust qualifies as a voluntary employee beneficiary association within the meaning of Section 501(c)(9) of the Internal Revenue Code ("VEBA"), providing for the payment of life, sick, accident or other benefits to Beneficiaries; and

WHEREAS, the Trust and the Participating Cities and Towns have determined that it is in the best interest of Participating Cities and Towns to jointly self-insure certain health benefit plans and programs for Beneficiaries through a designated account within the Trust, while at the same time having the Trust continue as the entity to which health and welfare benefit plan or program contributions are paid and through which insured health and welfare benefit plans and programs are provided to Beneficiaries; and

WHEREAS, it appears economically feasible and practical for the parties to this Agreement (defined below) to do so; and

WHEREAS, Chapter 48.62 RCW provides that two or more local government entities may, by Interlocal agreement under Chapter 39.34 RCW, jointly self-insure health benefit plans and programs, and/or jointly hire risk management services for such plans or programs by any one or more of certain specified methods; and

WHEREAS, each local government entity that is a signatory hereto, as required by WAC 200-110-030, acts upon the authority of a resolution adopting this Agreement and the Health Care Program (defined below) created herein;

NOW, THEREFORE, for and in consideration of all of the mutual benefits, covenants and agreements contained herein, the parties hereto agree as follows:

ARTICLE 1

DEFINITIONS

The following are definitions of terms used in the Agreement. Unless indicated otherwise, other terms are defined where they are first used. Defined terms are capitalized when used in the defined context.

- 1.1 **Agreement** means this Interlocal Agreement entered into under the authority of Chapter 39.34 RCW and as required by RCW 48.62.031(2) between the Trust and Participating Employers.
- 1.2 **Association of Washington Cities** or **AWC** means the Association of Washington Cities, a not-for-profit membership association established pursuant to the laws of the state of Washington for the purpose of providing various services to and on behalf of its member cities.
- 1.3 **Association of Washington Cities Employee Benefit Trust** or the **Trust** means the trust and all property and money held by such entity, including all contract rights and records, established for the sole purpose of providing life, sick accident or other health and welfare benefits to Participating Employees, their covered dependents and other beneficiaries, and which is approved by the Internal Revenue Service as a VEBA.
- 1.4 **Employee Benefits Advisory Committee** or **EBAC** means the committee defined in Article V of the Trust Agreement that may be delegated responsibility by the Board of Trustees, including but not limited to: overseeing the operations of the Health Care Program, analyzing and developing annual premium levels and benefit coverage changes for recommendation to the Board of Trustees and performing other duties necessary to ensure that the needs of Participating Employers are met and the long-term financial health of the Health Care Program is maintained.
- 1.5 **Health Care Program** means the joint self-insurance program offering self-insured health benefit options through the HCP Account.
- 1.6 **HCP Account** means a designated account within the Trust and created by this Agreement, the Trust Agreement and Trust Health Care Program policies all under the authority of Chapter 48.62 RCW to provide self-insured health benefits to Participating Employees, their covered dependents and other beneficiaries and further described in Article 6.
- 1.7 **Non-City Entity** means any public agency, public corporation, intergovernmental agency or political subdivision, within the state of Washington that meets the requirements of Article IX, Section 1(c)(ii) and (iii) of the Trust Agreement for participation in the Health Care Program.
- 1.8 **Participating City** means any city or town within the state of Washington that meets the requirements of Article IX, Section 1(a) or Section 1(b) of the Trust Agreement.

- 1.9 **Participating Employee** means any individual employed by a Participating Employer and for whom the Participating Employer makes contributions to the Trust, and any individual who may have been so employed but is subsequently laid off, terminated, or retired.
- 1.10 **Participating Employer** means a Participating City or Non-City Entity that is also a party to this Agreement.
- 1.11 **Resolution** means the resolution adopted by each Participating City or Non-City Entity that authorizes the Health Care Program.
- 1.12 **State Risk Manager** or **Risk Manager** means the risk manager of the Risk Management Division within the Department of Enterprise Services.
- 1.13 **Stop Loss Insurance** or **Reinsurance** means a promise by an insurance company that it will cover losses of the Health Care Program over and above an agreed-upon individual or aggregated amount, which definition shall be modified by any changes to the definition of stop loss insurance in WAC 200-110-020.
- 1.14 **Third-Party Administrator** means the independent association, agency, entity or enterprise which, through a contractual agreement, provides one or more of the following ongoing services to the Health Care Program: pool management or administration services, claims administration services, risk management services, or services for the design, implementation, or termination of an individual or joint self-insurance program.
- 1.15 **Trust Agreement** means the Trust Agreement Governing the Trust amended and restated July 1, 2013, and any subsequent amendments thereto.
- 1.16 **Trustees** or **Board of Trustees** means the following individuals and their successors, who together, govern the Trust and the Health Care Program:
- 1.16.1 the AWC President and the AWC Vice President;
 - 1.16.2 the EBAC Chair and the EBAC Vice Chair; and
 - 1.16.3 an individual elected pursuant to the procedures in Article III, Section 5 of the Trust Agreement to serve as the trustee from one of the following regions:
 - (a) North East Region (known as the “North East Region Trustee”);
 - (b) North West Region (known as the “North West Region Trustee”);
 - (c) South East Region (known as the “South East Region Trustee”); and
 - (d) South West Region (known as the “South West Region Trustee”).

Individuals from Non-City Entities are not eligible to serve as Trustees.

ARTICLE 2

PURPOSE

This Agreement is entered into for the purpose of authorizing the Health Care Program created by the Trust to provide self-insured health benefits to Participating Employees, their covered dependents and other beneficiaries. The Health Care Program shall comply with the statutory provisions found in Chapters 48.62 and 39.34 RCW and the regulatory requirements contained in WAC 200-110 applicable to joint self-insurance programs.

ARTICLE 3

PARTIES

Each party to this Agreement certifies that it intends to participate in the Health Care Program. Participating Employers are signatories of this Agreement to become effective on a date to be mutually determined (the "Effective Date") and with such other Participating Cities and Non-City Entities as may later be added to and become signatories to this Agreement.

ARTICLE 4

DURATION OF AGREEMENT

- 4.1 This Agreement shall become effective on the Effective Date.
- 4.2 This Agreement shall have perpetual duration unless terminated as hereinafter provided.

ARTICLE 5

MEMBERSHIP COMPOSITION

The Health Care Program shall be open to Participating Cities and Non-City Entities. Participation in the Health Care Program is voluntary and not a requirement of AWC membership. The Board of Trustees shall provide for the reasonable admission of new Participating Cities and Non-City Entities.

ARTICLE 6

HCP ACCOUNT

- 6.1 All premium contributions by Participating Employers, Non-City Entities and Participating Employees for use in the Health Care Program are deposited into the HCP Account.
- 6.2 The HCP Account represents a pool of funds that is independent of all other Trust or AWC funds and independent of all other Participating Employer and Non-City Entity funds. The funds deposited into the HCP Account are held, managed and expended only for the Health Care Program and reasonable expenses, consistent with applicable state

and federal statutes and rules governing joint self-insurance programs and self-insurance programs generally.

- 6.3 The HCP Account is subject to audit by the State Auditor's Office.

ARTICLE 7

TRUSTEE POWERS RELATED TO HEALTH CARE PROGRAM

The Board of Trustees is provided with the powers and functions established under RCW 48.62.031 to accomplish the following:

- 7.1 Promote the economical and efficient means by which health benefits coverage is made available to Participating Employers and Non-City Entities and provided to Participating Employees, their covered dependents and other beneficiaries;
- 7.2 Protect the financial integrity of the Health Care Program through purchase of Stop Loss Insurance or Reinsurance in such form and amount as needed;
- 7.3 Contract for or otherwise provide risk management and loss control services;
- 7.4 Contract for or otherwise provide legal counsel for the defense of claims and other legal services;
- 7.5 Consult with the state insurance commissioner and the State Risk Manager;
- 7.6 Obligate the Participating Employers and Non-City Entities to pledge revenues or contribute money to secure the obligations or pay the expenses of the Health Care Program, including the establishment of a reserve or fund for coverage; and
- 7.7 Exercise all other powers and perform all other functions reasonably necessary to carry out the purposes of the Health Care Program, Chapter 48.62 RCW and Chapter 200-110 WAC.

ARTICLE 8

ORGANIZATION OF HEALTH CARE PROGRAM

- 8.1 The operations of the Health Care Program are managed by the Board of Trustees or its delegates. The Trustees or any delegates review and analyze Health Care Program-related matters and make operational decisions regarding premium contributions, reserves, plan options and benefits in compliance with Chapter 48.62 RCW.
- 8.2 The Board of Trustees has decision authority consistent with the Trust Agreement, Health Care Program policies, Chapter 48.62 RCW and Chapter 200-110 WAC.

ARTICLE 9

RESPONSIBILITIES OF THE TRUSTEES

- 9.1 The Board of Trustees shall discharge its responsibilities under this Agreement as follows:
- 9.1.1 Provide for the efficient management and operation of the Health Care Program;
 - 9.1.2 Provide for health benefit coverage options for Participating Employees, their covered dependents and other beneficiaries;
 - 9.1.3 Determine the level of Stop Loss Insurance or Reinsurance coverage for claims expenses above the amounts deemed appropriate for self-insurance;
 - 9.1.4 Ensure that the Health Care Program meets required state and federal statutes and rules;
 - 9.1.5 Contract with vendors required to meet the responsibilities established by the Trust Agreement, Health Care Program policies, and applicable state and federal statutes and rules;
 - 9.1.6 Maintain the balance between meeting the Health Care Program needs of Participating Employers and the long-term financial integrity of the Health Care Program;
 - 9.1.7 Prepare an annual financial report on the operations of the Health Care Program; and
 - 9.1.8 Provide for other services deemed appropriate by the Board of Trustees to meet the purposes of this Agreement.
- 9.2 The Board of Trustees may delegate the responsibilities described in this Article 9 to the EBAC or other delegates at its complete discretion.

ARTICLE 10

RESPONSIBILITIES OF THE PARTICIPATING EMPLOYERS

In order to participate in the Health Care Program, Participating Employers shall:

- 10.1 Be a Participating City or Non-City Entity in good standing and comply with the requirements of admission or qualification as established by the Board of Trustees;
- 10.2 Adopt this Agreement by Resolution, agreeing to its terms and provisions;
- 10.3 Submit the Resolution and Agreement to the Trust;

- 10.4 Read the terms, conditions and representations set forth in the application agreement related to participation in the Health Care Program;
- 10.5 Designate an employee of the Participating Employer to be a contact person for all matters relating to the Participating Employer's participation in the Health Care Program;
- 10.6 Pay premiums for the Health Care Program to the Third-Party Administrator no later than the tenth day of the month in which the premium is due;
- 10.7 By formal action of the legislative body of the Participating Employer, approve policies and procedures necessary to secure protected health information ("PHI") in accordance with Chapter 70.02 RCW and the Health Insurance Portability and Accountability Act ("HIPAA") privacy and security rules, codified at 45 C.F.R. Parts 160-164;
- 10.8 Provide the Health Care Program with such information or assistance as is necessary for the Health Care Program to meet its responsibilities under this Agreement; and
- 10.9 Cooperate with and assist the Health Care Program and any insurer of Stop Loss Insurance or Reinsurance, in all matters relating to the administration and operation of the Health Care Program and all matters relating to this Agreement.
- 10.10 Comply with all bylaws, rules, regulations and policies adopted by the Board of Trustees relating to the Health Care Program.

ARTICLE 11

RESERVE FUND INVESTMENT

All reserve fund investments from the HCP Account shall be made in a manner that is consistent with RCW 48.62.111, Chapter 39.59 RCW, WAC 200-110-090 and the Health Care Program Investment Policy.

ARTICLE 12

FINANCIAL RECORDS

- 12.1 The Board of Trustees shall develop estimated revenue and expenditures to establish a budget for each fiscal year covering January 1 through December 31 annually. Actual Health Care Program revenues and expenditures shall be monitored monthly by the Board of Trustees and reported at its quarterly meetings.
- 12.2 The accounting records of the Health Care Program are maintained in accordance with methods prescribed by the State Auditor's office under the authority of Chapter 43.09 RCW. The Health Care Program also follows applicable accounting standards established by the Governmental Accounting Standards Board ("GASB"). Year-end financial reporting is done on an accrual basis and submitted to the Office of the State Auditor as required by Chapter 200-110 WAC. Once reviewed and approved by the

Office of the State Auditor the year-end financial report is transmitted to the Office of the State Risk Manager.

- 12.3 Financial records of the Health Care Program shall be subject to audit by the Office of the State Auditor. Year-end financial reports and audit results shall be made available to interested parties. The Health Care Program shall provide financial information as required by state statute and rule to the Office of the State Risk Manager.

ARTICLE 13

PARTICIPATING EMPLOYER TERMINATION AND WITHDRAWAL

- 13.1 A Participating Employer must remain in good standing with the Trust and adhere to the requirements of this Agreement. In the event that a Participating Employer fails to be a Participating City or Non-City Entity in good standing, participation in the Health Care Program shall automatically terminate without notice as shall all health and welfare benefits provided through the Health Care Program.
- 13.2 The Board of Trustees may take action to terminate membership or deny membership in the Health Care Program where it determines that such termination or denial is in the best interest of the Health Care Program
- 13.3 When a Participating Employer's eligibility in the Health Care Program is affected due to merger or annexation, the affected Participating Employer may petition the Board of Trustees to remain in the Health Care Program.
- 13.4 A Participating Employer may only withdraw its participation in the Health Care Program at the end of the calendar year and must provide written notice to the Trust at least thirty-one (31) days in advance of the end of the calendar year (December 31st).
- 13.5 In the event of withdrawal or non-renewal, the Health Care Program will cover any of the Participating Employer's remaining outstanding Health Care Program claims expenses incurred prior to the Participating Employer's withdrawal from or non-renewal in the Health Care Program.
- 13.6 No Participating Employer, because of withdrawal or any other reason, has any right or interest in the HCP Account because of its nature as a rate stabilization fund. In the event any Participating Employer withdraws from the Health Care Program, its Participating Employees, their covered dependents and other beneficiaries and any Consolidated Omnibus Budget Reconciliation Act of 1985 as amended (COBRA) participants and contract personnel and dependents approved by the Board of Trustees, shall forfeit all right and interest to the HCP Account.

ARTICLE 14

TERMINATION OF HEALTH CARE PROGRAM

- 14.1 In the event the Health Care Program is terminated, the Board of Trustees shall distribute the remaining funds in the HCP Account to the Trust or any successor association authorized by Chapter 39.34 RCW for like purposes for use in any program with similar purposes.
- 14.2 Upon termination, this Agreement and the HCP Account shall continue for the purpose of paying remaining outstanding claims and expenses and fulfilling all other functions necessary to complete the business of the Health Care Program.

ARTICLE 15

MEETINGS, NOTICES AND COMMUNICATIONS

- 15.1 The Board of Trustees and the EBAC, if any responsibilities for Trust management have been delegated thereto, shall provide notice of their regular and special meetings and hold their meetings in accordance with Chapter 42.30, RCW Open Public Meetings Act.
- 15.2 Communications with Participating Employers may occur using mail, email or posting on the Health Care Program website. The website shall be partitioned to provide information for the general public and information specific to Participating Employers and their employees.
- 15.3 Communications may come directly from the Health Care Program, through the Third-Party Administrator or through another vendor on behalf of the Health Care Program.

ARTICLE 16

AMENDMENTS TO INTERLOCAL AGREEMENT

- 16.1 The Board of Trustees shall review and analyze any proposed amendment to this Agreement. An amendment may be proposed for review by any party to this Agreement.
- 16.2 The Board of Trustees upon its discretion may take action by resolution on any amendment at any regular meeting of the Board of Trustees.

ARTICLE 17

PROHIBITION ON ASSIGNMENT

- 17.1 No Participating Employer may assign any right or claim of interest it may have under this Agreement.

- 17.2 No creditor, assignee or third-party beneficiary of any employer shall have the right, claim or title to any party, share, interest, premium or asset of the Trust, HCP Account or the Health Care Program.

ARTICLE 18

HEALTH CLAIM DISPUTES AND APPEALS

In the event that a dispute arises over a health claim, the procedures, adjudication requirements and administrative remedies shall be found in the Health Care Program's plan document applicable to the Health Care Program covering the claimant.

ARTICLE 19

PLAN ADMINISTRATION DISPUTES AND APPEALS

- 19.1 In the event that a dispute arises between a Participating Employer and the Health Care Program, the Participating Employer shall document the circumstances causing the dispute and submit a written request for review of the disputed circumstances to the Board of Trustees. Upon review of such information, the Board of Trustees shall attempt to resolve the dispute.
- 19.2 If the Board of Trustees' resolution to the dispute is deemed unsatisfactory, then alternative dispute resolution through mediation or binding arbitration may be necessary.

ARTICLE 20

ENFORCEMENT OF TERMS OF AGREEMENT

- 20.1 The Board of Trustees may enforce the terms of this Agreement.
- 20.2 In the event legal action is initiated to enforce any term or provision of this Agreement against any present or previous Participating Employer, the prevailing party shall receive such reimbursement of costs as the court deems reasonable for attorneys' fees and costs related to the relevant legal action.

ARTICLE 21

DEFAULT

- 21.1 If any Participating Employer fails to perform any term or condition of this Agreement and such failure continues for a period of sixty (60) days after the Board of Trustees has given the Participating Employer written notice describing such failure, the Participating Employer shall be considered in default.
- 21.2 Upon default, the Board of Trustees may immediately cancel the Participating Employer's participation in the Health Care Program without additional notice or exercise some other remedy otherwise provided by law.

- 21.3 The rights and remedies of the Board of Trustees are cumulative in nature and pursuit of any particular remedy shall not be deemed an election of remedies or a waiver of any other remedies available hereunder or otherwise available by law.

ARTICLE 22

NO WAIVERS

No waiver or forbearance of a breach of any covenant, term, or condition of this Agreement shall be construed to be a waiver or forbearance of any other or subsequent breach of the same or of any other covenant, term or condition, and the acceptance of any performance hereunder, or the payment of any sum of money after the same has become due or at a time when any other default exists hereunder, shall not constitute a waiver or right to demand payment of all sums owing or a waiver of any other default then or thereafter existing.

ARTICLE 23

CONTRACT MANAGEMENT

The Health Care Program shall designate a person to whom the State Risk Manager shall forward legal process served upon the Risk Manager; **The AWC Chief Executive Officer** (designee or successor). **The Health Care Program Director** shall be responsible for and shall be the contact person for all communications regarding the performance of this Agreement.

ARTICLE 24

SEVERABILITY

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this Agreement, and to this end the provisions of this Agreement are declared to be severable.

ARTICLE 25

COUNTERPART COPIES

This Agreement may be signed in counterpart or duplicate copies and any signed counterpart or duplicate copy shall be equivalent to a signed original for all purposes.

ARTICLE 26

HEADINGS

The Article and Section headings in this Agreement are inserted for convenience only and are not intended to be used in the interpretation of the contents of the Articles and Sections they introduce.

ARTICLE 27

AGREEMENT COMPLETE

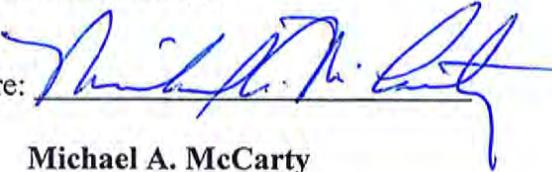
This Agreement and the documents referenced herein contains all the terms and conditions agreed to by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto.

[Signature page follows]

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement.

**Association of Washington Cities
Employee Benefit Trust**

Participating Employer

Signature: 

Signature: _____

Name: **Michael A. McCarty**

Name (print): Scott Dudley

Title: Chief Executive Officer

Title: Mayor of Oak Harbor, WA

Date: August 30, 2013

Date: October 1, 2013

Effective Date: January 1, 2014

City of Oak Harbor City Council Agenda Bill

Bill No. C/A 4.d.
Date: October 15, 2013
Subject: Coupeville School District Interagency Agreement

FROM:  Larry Cort, City Administrator

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

 Scott Dudley, Mayor
 Doug Merriman, Finance Director
 Grant Weed, Interim City Attorney, as to form

PURPOSE

The purpose of this agenda bill is to seek City Council authorization to sign an Interagency Agreement with the Coupeville School District to provide at least 30 track team volunteers for the Whidbey Island Marathon at a cost to the City of \$1,000.00.

SUMMARY STATEMENT

For the past few years, the Coupeville School District track team has provided an important block of volunteers for the Whidbey Island Marathon. The attached Interagency Agreement proposes to continue this relationship under the identical terms as previous years for the 2014 Marathon. The \$1,000 compensation payable to the School District has been budgeted as part of overall Marathon budget.

RECOMMENDED ACTION

Authorize Mayor to sign the Interagency Agreement with the Coupeville School District for 2014 Whidbey Island Marathon volunteers in an amount not to exceed \$1,000.00.

ATTACHMENTS

Interagency Agreement

AGREEMENT BETWEEN PUBLIC AGENCIES

BETWEEN: Coupeville School District No. 204, a special purpose district, and the City of Oak Harbor, a municipal corporation.

REGARDING: Student track team volunteers on the date of the 2014 Whidbey Island Marathon for the purpose of providing assistance as course monitors and other related duties as assigned in support of the Whidbey Island Marathon.

This Agreement is entered into by and between the Coupeville School District No. 204 (hereinafter referred to as the "District") and the City of Oak Harbor (hereinafter referred to as the "City"), effective as of the date of the last signature below.

WHEREAS, the City desires to utilize the volunteer services of members of the Coupeville School District track team for assistance on the marathon course and other related duties as assigned; and

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

WHEREAS, the District has the necessary volunteers willing and able to perform such services; and

WHEREAS, the District has the necessary volunteers willing and able to perform the services set forth in the Scope of Services attached hereto as Exhibit A.

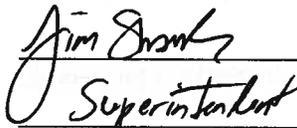
NOW, THEREFORE, the District and City enter into this Agreement and agree as follows:

1. The City shall provide course monitor training as determined by the Whidbey Island Marathon Race Coordinator for the track team volunteers.
2. Compensation and Method of Payment. The City shall pay the District for work performed under the Agreement an amount not to exceed the lump sum of one thousand dollars (\$1,000) within 30 days of receipt of invoice.
3. The term of this Agreement is for the 2014 Whidbey Island Marathon, scheduled for April 13, 2014.
4. Hold Harmless/Indemnification.
 - 2.1 The District shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the District in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

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

IN WITNESS WHEREOF, the parties have executed this Agreement dated this 17 day of ~~September~~ 2013.

COUPEVILLE SCHOOL DISTRICT NO. 204



(Name/Title)

CITY OF OAK HARBOR

(Name/Title)

ATTEST:

City Clerk, City of Oak Harbor

**AGREEMENT BETWEEN PUBLIC AGENCIES
SCOPE OF SERVICES**

EXHIBIT A

1. The District will provide no less than thirty (30) track team volunteers for a time commitment of five (5) hours each or as otherwise determined by the Whidbey Island Marathon Event Coordinator, for the purpose of providing assistance as course monitors and other related duties as assigned.

City of Oak Harbor City Council Agenda Bill

Bill No. C/A 4.e.
Date: October 15, 2013
Subject: Library Board Re-Appointment
- Anne Sullivan

FROM: Scott Dudley, Mayor 

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

 Larry Cort, City Administrator
 Doug Merriman, Finance Director
 Grant Weed, Interim City Attorney, as to form

PURPOSE

The purpose of this agenda bill is for the Council to confirm Mayor Dudley's re-appointment of Anne Sullivan to the Library Board.

SUMMARY STATEMENT

Anne Sullivan was appointed to the Library Board in December 2008. Ms. Sullivan has confirmed that she is willing to serve another term. If confirmed, Ms. Sullivan's term would expire December 2018.

Mayor Dudley recommends Anne Sullivan's re-appointment to the Library Board with her term to expire December 2018.

RECOMMENDED ACTION

Confirm Ms. Sullivan's re-appointment to the Library Board.

ATTACHMENTS

Correspondence from Susan Norman, President Oak Harbor Library Board.

received
9-18-13 RR

September 9, 2013

Mayor Scott Dudley
City of Oak Harbor
865 SE Barrington Drive
Oak Harbor, WA 98277

Dear Mayor Dudley,

The members of the Oak Harbor Library Board have notified me that they recommend reappointment of Anne Sullivan to the Library Board. Ms. Sullivan has expressed her willingness to be reappointed. The board recommends that Ms. Sullivan, who currently serves as Library Board Secretary, be reappointed to the Library Board for another five-year term, to expire December 2018.

Thank you for your ongoing support of the library and our community.

Sincerely,



Susan Norman, President
Oak Harbor Library Board

cc: Anne Sullivan, Secretary, Oak Harbor Library Board
Becky Bolte, West District Manager, Sno-Isle Libraries
Mary Campbell, Managing Librarian, Oak Harbor Library

City of Oak Harbor City Council Agenda Bill

Bill No. C/A 4.f.
Date: October 15, 2013
Subject: Library Board Re-Appointment
- Margaret Grunwald

FROM: Scott Dudley, Mayor 

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

 Larry Cort, City Administrator
 Doug Merriman, Finance Director
 Grant Weed, Interim City Attorney, as to form

PURPOSE

The purpose of this agenda bill is for the Council to confirm Mayor Dudley's re-appointment of Margaret Grunwald to the Library Board.

SUMMARY STATEMENT

Margaret Grunwald was appointed to the Library Board in June 2011 to fill an unexpired term, with an expiration date of December 2012. Due to a clerical oversight, her term expired prior to re-appointment. If confirmed, Ms. Grunwald's term would expire December 2017.

Mayor Dudley recommends Margaret Grunwald's re-appointment to the Library Board with her term to expire December 2017.

RECOMMENDED ACTION

Confirm Ms. Grunwald's re-appointment to the Library Board.

ATTACHMENTS

None.

City of Oak Harbor City Council Agenda Bill

Bill No. C/A 4.g.
Date: October 15, 2013
Subject: Retainer Agreement for Interim
City Attorney Services


FROM: Larry Cort, City Administrator

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

 Scott Dudley, Mayor
 Doug Merriman, Finance Director

PURPOSE

At the April 16, 2013 City Council meeting, the Council approved a Retainer Agreement for Interim City Attorney Services with the firm of Weed, Graafstra and Benson. In doing so, this action established a contract termination date of October 16, 2013. This agenda bill proposes to extend the Retainer Agreement for Interim City Attorney under the same terms with effect from October 17, 2013 to December 31, 2013.

FISCAL IMPACT DESCRIPTION

Funds Required: Retainer is \$6,400 per month for 40 hours, \$170 per hour above 40 hours
Appropriation Source: Primarily General Fund (Legal)

SUMMARY STATEMENT

The City retained interim legal services beginning June 4, 2012 from the Snohomish, WA firm of Weed, Graafstra and Benson. The City Council confirmed the hiring of this firm on June 18, 2012 through August 8, 2012 approved extensions on four separate occasions, most recently on April 16, 2013 through October 16, 2013. Over the past several months, a decision has been made to implement a transitional staffing period during which Assistant City Attorney Nikki Esparza would switch her primary responsibilities from prosecution to civil work under the mentorship of Grant Weed. At some point in mid- to late-2014, it is anticipated that Ms. Esparza will be appointed as City Attorney.

The attached Retainer Agreement, if approved, would extend the City's contractual arrangement with Weed, Graafstra and Benson to December 31, 2013. The short term of the extension is proposed because the firm is anticipating a rate increase effective January 1, 2014 so an agreement reflecting that increase will be brought before the City Council in December of this year.

City staff continues to be pleased with the overall quality, responsiveness and expertise by the small team of lawyers working at the firm. With the exception of the termination date, which has been amended from October 17, 2013 to December 31, 2013, the provisions in this Agreement are identical to those in the Agreement approved on April 16, 2013.

RECOMMENDED ACTION

Authorize the Mayor to sign a Retainer Agreement for Interim City Attorney Services with the firm of Weed, Graafstra and Benson, Inc., beginning on October 17, 2013 and ending on December 31, 2013.

ATTACHMENTS

Retainer Agreement for Interim City Attorney Services

**RETAINER AGREEMENT
FOR INTERIM CITY ATTORNEY SERVICES**

I - PARTIES/EMPLOYMENT

The CITY OF OAK HARBOR (hereinafter "CITY") agrees to retain the law firm of WEED, GRAAFSTRA AND BENSON, INC., P.S., 21 Avenue A, Snohomish, Washington, and said law firm (hereinafter "CITY ATTORNEY") agrees to serve as interim CITY ATTORNEY on the terms and conditions stated below. The CITY ATTORNEY shall serve at the pleasure of the Mayor; PROVIDED, that all decisions relative to such employment, or termination of the same, shall be subject to confirmation by a majority vote of the City Council.

II - QUALITY OF SERVICES

The CITY ATTORNEY shall perform all legal services covered by this contract in a capable and efficient manner, and in accordance with the professional and ethical standards of the Washington State Bar Association.

III - COMPENSATION

A. Basic Retainer: The CITY shall pay the CITY ATTORNEY a retainer in the amount of \$6,400.00 per month, which retainer shall be compensation for up to 40 hours of work per month for the following legal services:

1. To oversee and supervise the prosecution function for the CITY in municipal court.
2. To attend the two regularly scheduled meetings of the City Council per month.
3. To provide legal advice to the Mayor, Councilpersons, City Administrator and administrative heads of the various departments of the CITY under the direction of the Mayor and City Administrator.
4. To prepare such ordinances, resolutions, and instruments as the Mayor, City Council and City Administrator may direct, to render legal advice on all civil and criminal matters, and to prepare or review such correspondence, contracts, easements, and instruments as may be necessary and appropriate.

B. Additional Services: The CITY shall pay the CITY ATTORNEY for the following additional or special legal services at the rate of \$170.00 per hour, or, if said services are performed by a paralegal in the CITY ATTORNEY's office the same shall be compensated at the rate of \$130.00 per hour:

1. Time in excess of basic retainer. Any and all hours expended on legal services referred to in paragraph A above (Basic Retainer) in excess of 40 hours per month.

2. Extra meetings. Attendance, at the request of the Mayor or City Administrator, at evening meetings of CITY boards, commissions or committees, except for regular City Council meetings held two times a month.

3. Local Improvement Districts. All legal services performed in connection with the formation and financing of any LID or ULID (although it is understood that the primary responsibility for this type of legal work will fall under the exceptions referred to in paragraph V below).

C. Litigation. The CITY shall pay the CITY ATTORNEY for all superior and appellate court litigation and all administrative hearings of a quasi-judicial nature, except those conducted by the CITY itself, at the rate of \$180.00 per hour.

D. Time Records. In order to determine appropriate compensation, the CITY ATTORNEY shall maintain accurate time records, copies of which shall be made available to the CITY.

E. Time for Payment. The CITY shall pay all compensation provided herein to the CITY ATTORNEY on a monthly basis, and within two weeks of the date on which each billing statement is received.

IV - REIMBURSEMENT

In addition to compensation for the legal services specified above, the CITY shall reimburse the CITY ATTORNEY for direct expenses incurred, and costs advanced, including but not limited to court costs, filing fees, witness fees, recording fees, copying expenses at cost, long distance phone calls, library charges for municipal law books, and the cost of travel, at the Retainer Agreement

hourly rate one way, lodging and tuition relating to meetings of the Association of Washington Cities and Association of Municipal Attorneys which shall be pro-rated. However, ordinary law office operating expenses, such as rent and secretarial services, shall not be compensated or reimbursed.

V - EXCEPTIONS

This contract shall not cover legal representation relating to insurance defense, the formation and financing of local improvement districts, or other specialized fields where it is agreed by the parties that outside legal counsel should be retained.

VI - INSURANCE COVERAGE

The CITY ATTORNEY shall provide errors and omissions, and malpractice insurance coverage, while acting in the capacity of CITY ATTORNEY. Provided, the CITY shall indemnify and hold the CITY ATTORNEY harmless from any and all claims brought by third parties against the CITY ATTORNEY acting in said capacity.

VII – EMPLOYMENT

The CITY agrees for a period of two years from the effective date of this Agreement it shall not employ or contract with any employee, former employee or independent contractor of WEED, GRAAFSTRA AND BENSON, INC., P.S., for services. This provision shall survive expiration and/or termination of this Agreement.

VIII - EFFECTIVE DATE AND DURATION

This contract shall take effect on October 17, 2013 and shall continue in effect through December 31, 2013 unless earlier terminated or renegotiated by either party upon 60 days' written notice.

DATED this 15th day of October, 2013.

WEED, GRAAFSTRA AND
BENSON, INC., P.S.

CITY OF OAK HARBOR

By: _____
GRANT K. WEED, PRESIDENT

By: _____
SCOTT DUDLEY, MAYOR

ATTEST:

By: _____
Valerie J. Loffler, City Clerk

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

Bill No. C/A 4.h.
Date: October 15, 2013
Subject: North Booster Station and
Transmission Main –
Professional Services Agreement
with ERCI

**FROM: Cathy Rosen, Public Works Director
Joe Stowell, City Engineer**

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

 Scott Dudley, Mayor
 Larry Cort, City Administrator
 Doug Merriman, Finance Director
 Grant Weed, Interim City Attorney, as to form

PURPOSE

The purpose of this agenda bill is to seek City Council's approval of a Professional Services Agreement with Equinox Research and Consulting International (ERCI) for Archaeological Services related to the new water mains, the Cross-City Transmission and NE Trunk mains.

FISCAL IMPACT DESCRIPTION

Funds Required: \$37,360.98
Appropriation Source: Water Fund 401

SUMMARY STATEMENT

New water mains across Oak Harbor between the North Reservoir and NE Regatta Drive and between the Ault Field Pump Station and Ault Field Road are currently in the design phase. Installation of the new water mains will require excavating approximately 15,000 feet of trench across northern Oak Harbor. As archaeological resources are known to exist below ground in Oak Harbor, it is necessary and prudent to investigate the proposed water main routes for the presence of resources. It is best to do this during the design phase of the project rather than as a prelude to construction.

The proposed scope of services from Equinox Resources International includes providing a crew of eight on site(s) for a week to survey each of the work areas. The primary field work is digging approximately 400 or 500 shovel test holes. ERCI will compile the field data into a report consistent with State and Federal standards which will be provided to the Washington State Department of Archaeology and Historic Preservation.

ERCI was previously selected based on qualifications and interviews conducted by the city in March of 2012. They have subsequently proven to be expert, capable and helpful in support of City projects.

Scope of Services

The attached Professional Services Agreement includes the tasks necessary to assist the city in investigating the water main routes for the presence of archaeological resources. There are no known archaeological resources along the proposed main routes and the scope of services assumes that no human remains will be found.

Schedule

The archaeological investigation is coordinated with the design and routes of the water mains. Contract expiration date is January 31, 2014.

CITY COUNCIL WORKSHOP

This item has not been discussed at a City Council Workshop.

CITY COUNCIL PREVIOUS ACTIONS

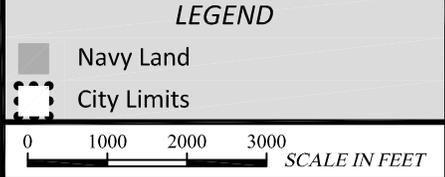
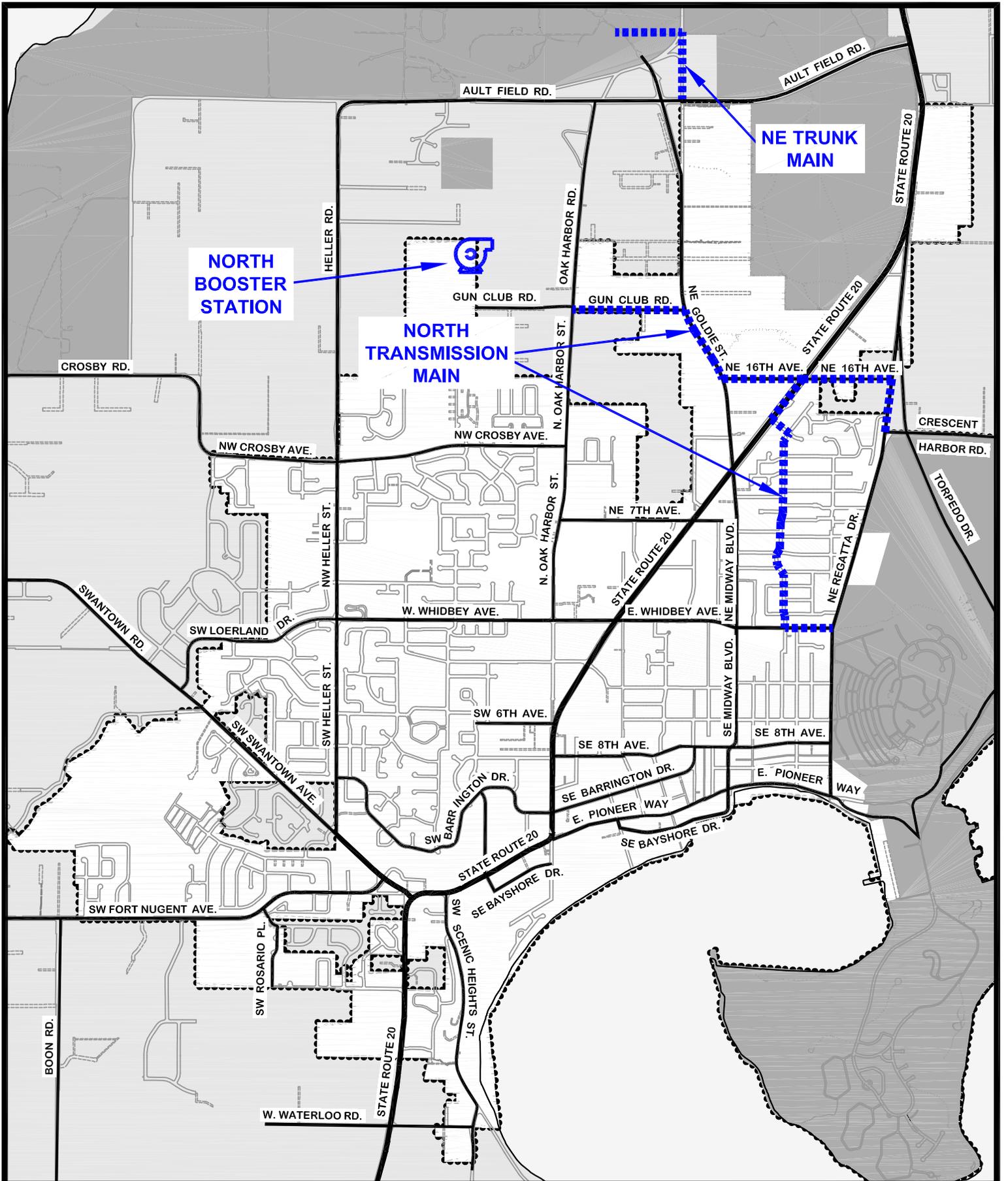
July 2, 2013 - City Council awarded a professional services contract to the engineering firm of Gray & Osborne, Inc. to prepare construction plans, specifications and estimates for three new water mains in north Oak Harbor and a booster pump station at the North Reservoir site. The archaeological investigation services proposed herein is part of the design effort for these water system capital improvements.

RECOMMENDED ACTION

A motion authorizing execution of a Professional Services Agreement with Equinox Research Consulting International, Inc. for Archaeological Services related to installation of new water mains in the amount of \$35,360.98 and a management reserve of \$2,000.00.

ATTACHMENTS

- Professional Services Agreement w/Scope of Services
- Figure 1 – Site Map



**VICINITY MAP
FIGURE 1**

CONSULTANT/PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, is made and entered into in duplicate this 10/15/2013, and between the CITY OF OAK HARBOR, a Washington municipal corporation, hereinafter referred to as the "CITY" and Equinox Research and Consulting International Inc. (ERCI) hereinafter referred to as the "SERVICE PROVIDER".

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

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

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

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

1. Scope of Services.

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

2. Term.

The Project shall begin on October 15th, 2013, and shall be completed no later than January 31st, 2014 unless sooner terminated according to the provisions herein.

3. Compensation and Method of Payment.

3.1 Payment for services provided hereunder shall be made following the performance of such services, unless otherwise permitted by law and approved in writing by the CITY.

3.2 No payment shall be made for any service rendered by the SERVICE PROVIDER except for services identified and set forth in this Agreement.

3.3 The CITY shall pay the SERVICE PROVIDER for work performed under this Agreement as follows: see attached Scope of Work, titled "Exhibit A".

4. Reports and Inspections.

4.1 The SERVICE PROVIDER at such times and in such forms as the CITY may require, shall furnish to the CITY such statements, records, reports, data, and information as the CITY may request pertaining to matters covered by this Agreement.

- 4.2 The SERVICE PROVIDER shall at any time during normal business hours and as often as the CITY or State Auditor may deem necessary, make available for examination all of its records and data with respect to all matters covered, directly or indirectly, by this Agreement and shall permit the CITY or its designated authorized representative to audit and inspect other data relating to all matters covered by this Agreement. The CITY shall receive a copy of all audit reports made by the agency or firm as to the SERVICE PROVIDER'S activities. The CITY may, at its discretion, conduct an audit at its expense, using its own or outside auditors, of the SERVICE PROVIDER'S activities that relate, directly or indirectly, to this Agreement. As required by CITY, SERVICE PROVIDER will cooperate to respond to public record requests under the laws of the State of Washington.
- 4.3 The SERVICE PROVIDER shall keep in strict confidence, and will not disclose, communicate or advertise to third parties, without the express written consent of CITY the confidences of CITY or any information regarding the CITY or services provided to the CITY under this Agreement.

5. Independent Contractor Relationship.

- 5.1 The parties intend that an independent SERVICE PROVIDER/CITY relationship will be created by this Agreement. The CITY is interested primarily in the results to be achieved; subject to paragraphs herein, the implementation of services will lie solely with the discretion of the SERVICE PROVIDER. No agent, employee, servant or representative of the SERVICE PROVIDER shall be deemed to be an employee, agent, servant or representative of the CITY for any purpose, and the employees of the SERVICE PROVIDER are not entitled to any of the benefits the CITY provides for its employees. The SERVICE PROVIDER will be solely and entirely responsible for its acts and for the acts of its agents, employees, servants, subcontractors or representatives during the performance of this Agreement.
- 5.2 In the performance of the services herein contemplated, the SERVICE PROVIDER is an independent contractor with the authority to control and direct the performance of the details of the work, however, the results of the work contemplated herein must meet the approval of the CITY and shall be subject to the CITY'S general rights of inspection and review to secure the satisfactory completion thereof.

6. Service Provider Employees/agents.

The CITY may at its sole discretion require the SERVICE PROVIDER to remove an employee(s), agent(s) or servant(s) from employment on this Project. The SERVICE PROVIDER may, however, employ that (those) individual(s) on other non-CITY related projects.

7. Hold Harmless/Indemnification.

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

8. Insurance.

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

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

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

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

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

8.4 Acceptability of Insurers and policies. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII. Unless otherwise agreed by CITY all insurance policies shall be written on an "occurrence" policy and not a "claims-made" policy.

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

9. Treatment of Assets.

Title to all property furnished by the CITY shall remain in the name of the CITY and the CITY shall become the owner of the work product and other documents, if any, prepared by the SERVICE PROVIDER pursuant to this Agreement. The SERVICE PROVIDER may keep one copy of the work product and documents for its records.

10. Compliance with Laws.

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

certification and operation of facilities, programs and accreditations, and licensing of individuals, and any other standards or criteria as described in this Agreement to assure quality of services.

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

11. Nondiscrimination.

- 11.1 The CITY is an equal opportunity employer.

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

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

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

12. Assignment/subcontracting.

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

13. Changes.

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

14. Maintenance and Inspection of Records.

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

15. Other Provisions.

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

16. Termination.

- 16.1 Termination for Convenience. The CITY may terminate this Agreement, in whole or in part, at any time, by giving at least thirty (30) days' written notice to the SERVICE PROVIDER. Upon such termination for convenience, the CITY shall pay the SERVICE PROVIDER for all services provided under this Agreement through the date of termination.
- 16.2 Termination for Cause. If the SERVICE PROVIDER fails to perform in the manner called for in this Agreement, or if the SERVICE PROVIDER fails to comply with any other provisions of the Agreement and fails to correct such noncompliance within five (5) days' written notice thereof, the CITY may terminate this Agreement for cause. Termination shall be effected by serving a notice of termination on the SERVICE PROVIDER setting forth the manner in which the SERVICE PROVIDER is in default. The SERVICE PROVIDER will only be paid for services performed in accordance with the manner of performance set forth in this Agreement through the date of termination.
- 16.3 Work Product. In the event of any termination whether for convenience or cause, all work product of the SERVICE PROVIDER, along with a summary of the work to the date of termination shall become the property of CITY.

17. Notice.

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

18. Attorneys Fees and Costs.

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

19. Jurisdiction and Venue.

- 19.1 This Agreement has been and shall be construed as having been made and delivered with the State of Washington and it is agreed by each party hereto that this Agreement shall be governed by laws of the State of Washington, both as to interpretation and performance.
- 19.2 Any action of law, suit in equity, or judicial proceeding for the enforcement of this Agreement or any provisions thereof shall be instituted and maintained only in any of the courts of competent jurisdiction in Island County, Washington.

20. Severability.

20.1 If, for any reason, any part, term or provision of this Agreement is held by a court of the United States to be illegal, void or unenforceable, the validity of the remaining provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.

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

21. Addenda.

21.1 This Agreement is subject to additional terms as set out in Addenda as follows: *None*

22. Entire Agreement.

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

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

CITY:

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

Scott Dudley, Mayor

Attest:

Valerie Loffler, City Clerk

SERVICE PROVIDER:

Equinox Research and Consulting (ERCI)
41507 South Skagit Highway
Concrete, WA 98237



Kelly Bush, Principal

“EXHIBIT A”



41507 South Skagit Hwy Concrete, WA 98237 Tel.360-826-4930 Fax. 360-826-4830 www.equinoxerci.com

September 6, 2013

Arnie Peterschmidt
City of Oak Harbor Public Works
1400 NE 16th Avenue
Oak Harbor, WA 98277

Re: Survey for Cross City Transmission Main Water System Improvements, Oak Harbor, Washington

Dear Mr. Peterschmidt:

Thank you for the considering Equinox Research and Consulting International Inc. (ERC I) for your cultural resource management needs. ERC I provides a full service cultural resource management program and we look forward to providing you timely and professional fieldwork and reporting.

Section 106 of the National Historic Preservation Act (NHPA), SEPA and Executive Order 05-05 requires agencies to consider the effects of their actions on historic properties and to consult with others in carrying out historic preservation activities. The State of Washington also has a series of RCWs and associated WACs concerning cultural resources that we are guided by. In providing cultural resource management services for clients, Equinox Research and Consulting International Inc. (ERC I) works in accordance with all applicable laws and regulations.

We are providing this scope and budget for sub surface testing along the 5 corridors associated with the Cross City Transmission:

1. East Reservoir,
2. North Trunk,
3. South 384 Zone Extension,
4. Whidbey & Regatta and
5. the Cross City Main.

No Archaeological Sites are currently recorded within any of the above referenced corridors. This scope presumes that no permit from DAHP will be required to carry out this testing. The scope we are providing is for a not to exceed number. We will be clustering our sub surface testing locations to the high and medium potential locations for archaeological material. This will mean a crew of 5 for 8 days and 1 additional day for the senior archaeologist for Geotechnical Monitoring is the most it will take us to adequately test your project area. As always we will be working to reduce our time commitment while still collecting the maximum amount of data to reduce the possibility of encountering archaeological material during the implementation of the project. We recognize that identifying archaeological sites prior to construction is of paramount concern to the City.

Scope

- Provide 1 full day of monitoring services for Geotechnical monitoring
- Design and implement field survey with shovel testing along corridor for Cross City Transmission Mainline and associated upgrade locations. This will include approximately 400 – 500 shovel test holes.
- Provide draft report to the City for Review within 3 weeks of the completion of the fieldwork.
- Provide final report to state and federal standards as per the Washington State Standards for Cultural Resource Reporting.
(http://www.dahp.wa.gov/sites/default/files/External%20FINAL_0.pdf)
- The distribution of the final report falls to the Lead Agency for Cultural Resources this can be the funding or permitting agency.

Qualifications:

- Experience working in Puget Sound and on projects associated with public works systems and infrastructure.
- Principal investigator meets the Secretary of Interior's professional qualification standards for archaeology
- Expertise on prehistoric and historic archaeology of Western Washington
- Experience in Executive Order 05-05 and NHPA Section 106 work and in working with additional state laws related to historic preservation and human remains.
- Positive working relationship with federally recognized Tribes in and adjacent to the project area and experience in tribal consultation.
- Experience in processes that balance competing resource needs
- Strong record of completing work on time within budget

The following estimate covers the identification and evaluation for historic properties in this project area. The following costs are not included in this estimate:

- Costs associated with encountering human remains during this fieldwork.
- Costs associated with completing Historic Property Inventory Forms (HPIFs) for any buildings older than 50 years. HPIFs can be *requested* by DAHP for any intact historic properties older than 50 years that will be affected by your project activities. This can include but not be limited to historic homes that will have a walkway or stairwell that is changed by construction activities. HPIFs can also be *required* by WSDOT for any intact properties older than 50 years that are inside of your project APE regardless of potential impacts to those properties. Certainly if an intact building older than 50 years were slated for removal this would trigger the need for an HPIF.
- Costs associated with developing any additional agreements, plans, protocols, or permits should they be required.

The team at ERCI is comprised of individuals with strong personal research specialties who pride themselves on efficiency, performance and integrity. We provide the highest quality product in a timely fashion. Please check out our web site for additional details www.equinoxerc.com

Thank you for the opportunity to provide excellent heritage planning services for the City of Oak Harbor.

Regards,

A handwritten signature in black ink, appearing to read 'KB', with a long horizontal flourish extending to the right.

Kelly R. Bush
Equinox Research and Consulting International Inc. (ERCI)

Description	Units	Rate/HR	Sub Total
Project Orientation, meetings and project management	4.00	143.75	575.00
Archival background research	4.00	97.75	391.00
Coordinate with governments of affected Tribes regarding cultural resource issues including the cultural heritage value of sites within the vicinity of the Area of Potential Effect (APE).	1.00	143.25	143.25
Determine eligibility of identified historic properties for listing in the National Register of Historic Places.	4.00	143.75	575.00
Consider the effects of Project alternatives on all cultural resources and provide recommendations about how to avoid, minimize, or mitigate the adverse effect.	4.00	143.75	575.00
Consultation with SHPO and agencies	1.00	143.25	143.25
Document control, transcriptions, site forms	32.00	63.75	2,040.00
Report editing	2.00	143.25	286.50
Report writing	12.00	97.75	1,173.00
Report Production	0.00	63.75	0.00
Report printing and postage	0.00	23.00	0.00
Graphics, layout	12.00	97.75	1,173.00
SUB TOTAL			7,075.00
Field Work: Survey, identification and evaluation of historic properties within the APE.			
DESCRIPTION	Units	Rates Daily	Sub Total
Principal Investigator	2.00	143.75	287.50
Senior Archaeologist	72.00	97.75	7038.00
Archaeological Field Technician	64.00	74.75	4784.00
Archaeological Field Technician	64.00	74.75	4784.00
Archaeological Field Technician	64.00	74.75	4784.00
Archaeological Field Technician	64.00	74.75	4784.00
Supplies bags, tags etc.	0.00	130.00	0.00
Travel (1.5 hours R/T per person per day)	31.50	40.00	1260.00
Mileage	1008.00	0.56	564.48
SUB TOTAL			28,285.98
GRAND TOTAL			35,360.98

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

Bill No. CA 4.i.
Date: October 15, 2013
Subject: Roll Cart Purchase

FROM: Cathy Rosen, Public Works Director

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

 Scott Dudley, Mayor
Larry Cort, City Administrator
Doug Merriman, Finance Director
Grant Weed, Interim City Attorney, as to form

PURPOSE

The purpose of this agenda bill is to authorize the purchase of 500 roll carts for the Solid Waste Utility in the amount of \$28,000.00

FISCAL IMPACT DESCRIPTION

Funds Required: \$28,000.00
Appropriation Source: 403.30.537.000.3150

SUMMARY STATEMENT

The City of Oak Harbor Solid Waste Utility has over 13,000 roll carts issued to customers. These roll carts are used for refuse, recycling and yard waste collection. Many of these roll carts have been around since the inception of the automated collection program. They are beginning to show their age and the wear and tear on these carts has been increasing.

Staff will fix the roll carts if at all possible and even reuse parts from other roll carts, however some are beyond fixing. In order to keep service to our customers running efficiently, the Solid Waste Division keeps a continual supply of roll carts available.

Formal bids are not required for this acquisition; however, council approval is required per OHMC 2.390.010.

Therefore, staff is requesting to purchase 500 roll carts in the amount of \$28,000.00

STANDING COMMITTEE REPORT

This item has not been reviewed at the monthly workshop.

RECOMMENDED ACTION

I move to authorize the purchase of 500 roll carts for the Solid Waste Utility in the amount of \$28,000.00.

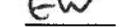
ATTACHMENTS

City of Oak Harbor City Council Agenda Bill

Bill No. 6.a.
Date: October 15, 2013
Subject: Amendments to
OHMC 5.22 Nightclubs

FROM: Steve Powers
Development Services Director

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

 Scott Dudley, Mayor
 Larry Cort, City Administrator
 Doug Merriman, Finance Director
 Grant Weed, Interim City Attorney, as to form

PURPOSE

This agenda bill presents an ordinance (Attachment 1) that amends OHMC 5.22 Nightclubs. The proposed amendments to the code regulate the size of nightclubs based on occupancy limits and zoning districts; they clarify the issuance restrictions, license conditions, violations sections and modify license revocation process to include proceedings with the Hearing Examiner.

FISCAL IMPACT DESCRIPTION

Funds Required: \$ None
Appropriation Source: not applicable

The adoption of the ordinance by itself will not cause any fiscal impact to the City. The implementation of the revised code may reduce calls for service for the Police Department. Including the Hearing Examiner in the license revocation process is not expected to significantly increase his caseload.

SUMMARY STATEMENT

The City received a request in early 2012 to consider restricting nightclubs based on size. The request to amend the regulations was made by residents living in the Central Business District and stemmed from the large number of people patronizing nightclubs creating impacts (noise, loitering, etc) to the surrounding uses. The request was to regulate the size of uses that have a nightclub license by the zoning district in which they are located. The request was also supported by the Oak Harbor Police Department.

The Planning Commission was introduced to this issue in April 2012 and conducted a public meeting to take input from nightclub owners and the impacted residents. The Commission held subsequent meetings in July and September 2012 to determine a methodology to address the impacts. After

City of Oak Harbor City Council Agenda Bill

considering several options, the Planning Commission decided that regulating nightclub license applications based on the occupancy limit of a use was an effective way to address impacts created by large crowds on neighboring properties.

In addition to reviewing the proposed code, the City's Police and Legal Departments reviewed the existing nightclub code and recommended several clarifications and amendments to streamline the violation and license revocation process. The amendments include a public hearing process before the Hearing Examiner for the license revocation process with the final decision by the City Council.

PLANNING COMMISSION

As was previously noted the Planning Commission conducted public meetings in April, July and September of 2012. The reports and minutes from those meetings are attached as Attachments 2, 3 and 4, respectively. The Planning Commission conducted a public hearing on the proposed amendments at its September 24, 2013 meeting. Several members of the public attended the meeting and provided comments. The staff report and minutes from that hearing are included Attachment 5. At the conclusion of the public hearing the Planning Commission unanimously recommended approval of the amendments.

RECOMMENDED ACTION

Adopt Ordinance 1672.

ATTACHMENTS

Attachment 1 – Ordinance No. 1672 amending OHMC 5.22 Nightclubs

Attachment 2 – Planning Commission report and minutes from April 13, 2012

Attachment 3 – Planning Commission report and minutes from June 26, 2012

Attachment 4 – Planning Commission report and minutes from September 25, 2012

Attachment 5 – Planning Commission report and minutes from September 24, 2013.

ORDINANCE NO. XXXX

AN ORDINANCE OF THE CITY OF OAK HARBOR AMENDING OAK HARBOR MUNICIPAL CODE CHAPTER 5.22 NIGHTCLUBS TO INCLUDE APPLICATION RESTRICTIONS, APPLICATION CONDITIONS, REVOCATION OF LICENSE PROCEDURES TO INCLUDE HEARING EXAMINER AND OTHER CLARIFICATIONS.

WHEREAS, the City of Oak Harbor finds that restaurants and other businesses that offer food and drink in conjunction with musical entertainment at night have a tendency to create noise, traffic and similar public health and safety issue impacts on residential uses located in the vicinity of those businesses; and

WHEREAS, existing residential neighborhoods and potential residential uses are allowed in zones in which such businesses are also allowed in furtherance of a planning goal of mixed-use neighborhoods and economic diversity within the City; and

WHEREAS, response to resident complaints concerning noise, traffic and similar public health and safety impacts associated with those businesses requires significant expenditure of police and other City resources; and

WHEREAS, the City finds that the possible noise, traffic, or other similar public health and safety impacts could be addressed by regulating the size of uses that can apply for nightclub licenses based on the zoning district they are located in; and

WHEREAS, by addressing the size of nightclubs in zoning districts that permit residential uses, the City finds that the conflict among uses and neighbors may be minimized; and

WHEREAS, the expressive content of the musical entertainment should not be a consideration in determining the noise, traffic and similar public health and safety impacts on residential uses now, therefore,

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

Section One. Section 5.22.030 of the Oak Harbor Municipal Code last adopted by Ordinance 1544 Section 1 in 2008 is hereby amended to read as follows:

5.22.030 Issuance restrictions.

No license shall be issued to:

- (1) If the nightclub serves alcohol, a person who has not resided in the state of Washington for at least one month prior to making application.

(2) A person whose place of business is conducted by a manager or agent, unless such manager or agent also applies and qualifies for a nightclub license for the same business location.

(3) A copartnership, unless all the members thereof shall be qualified to obtain a license as provided herein.

(4) A corporation or a limited liability company, unless it was created under the laws of the state of Washington or holds a certificate of authority to transact business in the state of Washington and all of the officers and, directors ~~and stockholders thereof~~ shall be qualified to obtain a license as provided in this chapter. Such license shall be issued to the manager or other directing head of the corporation or company thereof.

Section Two. There is hereby added a new Section 5.22.035 entitled “Application restrictions” to Chapter 5.22 of the Municipal Code as follows:

5.22.035 Application restrictions.

- (1) No application for a nightclub license can be made for buildings and uses located in the R-1 Single Family, R-2 Limited Multi-Family, R-3 Multi-Family, R-4 Multi-Family, R-O Residential Office, C-1 Neighborhood Commercial, C-4 Highway Service, PF Public Facilities, OS Open Space or any other zoning district not specifically regulated below.
- (2) An application for a nightclub license can be made for buildings and uses in the CBD Central Business District, CBD-1 Central Business District 1, CBD-2 Central Business District 2, and the C-3, Community Commercial District only if the occupancy limit for said building or use is less than 300 as determined by the Building Official and the Fire Chief.
- (3) An application for a nightclub license can be made for buildings and uses in the C5, Highway Corridor Commercial District Buildings only if the occupancy limit for said building or use is less than 400 as determined by the Building Official and the Fire Chief.
- (4) An application for a nightclub license can be made for any building and use in the PBP, Planned Business Park, PIP Planned Industrial Park and I Industrial zones.

Section Three. Section 5.22.040 of the Oak Harbor Municipal Code last adopted by Ordinance 1544 Section 1 in 2008 is hereby amended to read as follows:

5.22.040 Filing of application.

Application for a nightclub license shall be made to the city clerk, together with a receipt from the city finance director or designee for the amount of the license in full. The license application shall include personal identification information requested by the city including date of birth and Social Security number. The application shall also specify the primary use, zoning district and the business location upon which the nightclub activities will be conducted. The application fee includes the fee to cover the cost of a WATCH criminal background check, as provided in OHMC 3.64.100. Upon filing of the application and fees, the applicant(s) shall be issued a temporary license which shall

expire upon the city council determination set forth in OHMC 5.22.045, unless stayed by filing of a judicial appeal within 30 days of the city council decision appealed.

Section Four. Section 5.22.045 of the Oak Harbor Municipal Code last adopted by Ordinance 1544 Section 1 in 2008 is hereby amended to read as follows:

5.22.045 License conditions.

(1) Upon receipt of an application for a nightclub license, the city clerk shall transmit copies of the application to the chief of police, fire chief and the building official.

(2) The fire chief and the building official shall determine if the application meets the provisions of 5.22.035.

(3) The chief of police ~~who~~ shall immediately conduct a WATCH criminal background check of the applicant(s).

(2) The chief of police shall also investigate the business location to determine whether there are any features of the establishment which pose noise, traffic or other similar public health or safety concerns for the operation of a nightclub. The chief of police may request the assistance of other city departments, including the fire department and/or the building official, in assessing the impacts of the proposed business location if used as a nightclub.

(3) The chief of police shall report to the city council the result of his investigation and make recommendations concerning any conditions that should be placed upon the nightclub license to reduce noise, traffic or other similar public health and safety impacts. Allowable conditions may include, but are not limited to, restrictions upon the hours of operation, structural improvements to the premises to reduce noise impacts on neighboring uses, limitations on the numbers of patrons at any one time, landscaping or other screening, and requirements for traffic control. Periodic review of the efficacy of the imposed conditions may also be a condition of the nightclub license.

(4) The city council shall hold a public hearing with respect to the issuance of the nightclub license. The applicant(s) shall be entitled to respond to any findings of the police chief or other city officials and any proposed conditions on the nightclub license. Unless the applicant is restricted from holding a nightclub license pursuant to OHMC 5.22.030, the city council shall then determine whether the noise, traffic and other similar public health and safety impacts of the nightclub require mitigation through specified conditions and, if so, shall impose such conditions on the license. In no event shall the expressive content of any music, singing or dancing be the basis for denial of a nightclub license or any conditions placed thereon.

(5) The decision of the city council shall be the final decision of the city. No rights shall vest in a license issued under this chapter and all licenses are subject to modification and/or revocation in accordance with the provisions of this chapter.

Section Five. Section 5.22.065 of the Oak Harbor Municipal Code last adopted by Ordinance 1544 Section 1 in 2008 is hereby amended to read as follows:

5.22.065 Violation of license conditions.

A license holder who violates any license condition of his/her nightclub license shall be subject to civil penalties or license revocation as follows:

- (1) A First violation of a license condition since initial license issuance: \$500.00 fine per violation;
- (2) A Second violation of anysame license condition since initial license issuance: \$750.00 fine per violation;
- (3) A Third violation of any license condition since initial license issuance same license condition: \$1,000 fine per violation.

First, second and third violations of license conditions shall constitute civil offenses and shall be governed by the procedures of Chapter 1.28 OHMC.

Any fourth ~~The fourth~~ or greater violation of any ~~the same~~ license condition since initial license issuance shall be deemed a material violation and shall subject the license to revocation under the provisions of Section 5.22.070. ~~shall constitute a misdemeanor punishable by a fine not exceeding \$1,000, up to 90 days in jail, or both such fine and jail time.~~

Section Six. Section 5.22.070 of the Oak Harbor Municipal Code last adopted by Ordinance 1544 Section 1 in 2008 is hereby amended to read as follows:

5.22.070 Revocation of license.

The Ceity council reserves unto itself the power to revoke any license issued under the provisions of this chapter at any time upon a finding that:

- (1) The license was procured by fraud or false representation of fact; or
- (2) The applicant is barred from holding a nightclub license due to violation of any of the restrictions of OHMC 5.22.030; or
- (3) The conditions imposed upon the license pursuant to OHMC 5.22.045 were materially knowingly and willfully violated;
- (4) If the nightclub serves alcohol, material violation of any regulation of the Washington State Liquor Control Board or material violation of any condition imposed by the Washington State Liquor Control Board; ~~by the person holding such license or at his/her direction; or~~
- (5) Conditions imposed upon the license pursuant to OHMC 5.22.045 have been violated more than three times with notices of violation issued with the civil offense sustained; or
- (6) Fines levied for a sustained notice of violation under OHMC 5.22.065 are due and have been unpaid more than thirty (30) days since the date the fine became final
- (4) A crime or offense involving moral turpitude is committed on the premises in which the nightclub is conducted with knowledge of the licensee.

Before revoking any such license, the Ceity council shall, provide ~~upon~~ at least 10 days' written notice to the licensee of intent to seek revocation and the grounds for the same and schedule and, hold a public hearing concerning such revocation ~~before the City's hearing examiner.~~ The jurisdiction of the Office of Land Use Hearing Examiner under Chapter 18.40 OHMC is hereby expanded to include jurisdiction over any revocation hearing under this section. The decision of the Examiner shall be a Type IV decision. The City shall bear the burden of proof at the public hearing. ~~The at which~~

~~time the~~ licensee shall be entitled to be heard and introduce the testimony of witnesses. Members of the public may also be permitted to testify at such public hearing. ~~The~~The Examiner shall conduct the hearing and submit recommended findings of fact, conclusions of law and a decision to the City Council. Final action shall be by the city council. Any appeal of the final action of the City council shall be by writ of review under Chapter 7.16 RCW. ~~action of the city council after such hearing, relative to such revocation, shall be final.~~

Section Seven. Section 5.22.080 of the Oak Harbor Municipal Code last adopted by Ordinance 1544 Section 1 in 2008 is hereby amended to read as follows:

5.22.080 License – Compliance required.

In addition to the conditions imposed pursuant to OHMC 5.22.045, all nightclub licensees, if they serve alcohol, shall comply with the rules or regulations of the Washington State Liquor Control Board relating to the sale of intoxicating liquor. A finding of violation by the Washington State Liquor Control Board shall also constitute a violation of license conditions pursuant to OHMC 5.22.065.

Section Eight. Section 5.22.090 of the Oak Harbor Municipal Code last adopted by Ordinance 1544 Section 1 in 2008 is hereby amended to read as follows:

5.22.090 Revision of license conditions.

The city council also reserves to itself the power to revise the conditions of the nightclub license upon information received indicating that the existing conditions are not sufficient to mitigate the noise, traffic and public health and safety impacts associated with the nightclub business location. A revision proceeding shall be initiated by an investigative report by the chief of police, fire chief, building official or other city official.

In the event that such investigative report is filed, the license holder shall be sent a copy of the complaint and/or report and provided at least 10 days' notice of a hearing before the city council to determine whether the conditions of the license shall be modified. At a public hearing before the city council, the license holder shall have the opportunity to respond to the investigative report, and to present any evidence in opposition to a modification of conditions. The city council shall base any change in conditions on the license upon noise, traffic or other similar public health and safety impacts. In no event shall the expressive content of any music, singing or dancing be the basis for denial of a nightclub license or any conditions placed thereon. The decision of the city council, after a public hearing on the proposed change in conditions, shall be final, subject only to a writ of review before the Superior Court pursuant to Chapter 7.16 RCW.

Section Nine. Section 5.22.100 of the Oak Harbor Municipal Code last adopted by Ordinance 1544 Section 1 in 2008 is hereby amended to read as follows:

5.22.100 Appeal to court.

Appeal of any final decision of the city under this chapter shall be to superior court by writ of review pursuant to Chapter 7.16 RCW. The city's decision shall be stayed upon appeal filed within 30 days of the city council decision appealed, pending judicial review.

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 and effect five days after publishing.

PASSED by the City Council this _____ day of _____ 2013.

CITY OF OAK HARBOR

SCOTT DUDLEY, MAYOR

Attest:

Approved as to Form:

Valerie J. Loffler, City Clerk

Grant K. Weed, Interim City Attorney

Published: _____

ATTACHMENT

1

ORDINANCE NO. 1672

AN ORDINANCE OF THE CITY OF OAK HARBOR AMENDING OAK HARBOR MUNICIPAL CODE CHAPTER 5.22 NIGHTCLUBS TO INCLUDE APPLICATION RESTRICTIONS, APPLICATION CONDITIONS, REVOCATION OF LICENSE PROCEDURES TO INCLUDE HEARING EXAMINER AND OTHER CLARIFICATIONS

WHEREAS, the City of Oak Harbor finds that restaurants and other businesses that offer food and drink in conjunction with musical entertainment at night have a tendency to create noise, traffic and similar public health and safety issue impacts on residential uses located in the vicinity of those businesses; and

WHEREAS, existing residential neighborhoods and potential residential uses are allowed in zones in which such businesses are also allowed in furtherance of a planning goal of mixed-use neighborhoods and economic diversity within the City; and

WHEREAS, response to resident complaints concerning noise, traffic and similar public health and safety impacts associated with those businesses requires significant expenditure of police and other City resources; and

WHEREAS, the City finds that the possible noise, traffic, or other similar public health and safety impacts could be addressed by regulating the size of uses that can apply for nightclub licenses based on the zoning district they are located in; and

WHEREAS, by addressing the size of nightclubs in zoning districts that permit residential uses, the City finds that the conflict among uses and neighbors may be minimized; and

WHEREAS, the expressive content of the musical entertainment should not be a consideration in determining the noise, traffic and similar public health and safety impacts on residential uses; NOW, THEREFORE,

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

Section One. Section 5.22.030 of the Oak Harbor Municipal Code last adopted by Ordinance 1544 Section 1 in 2008 is hereby amended to read as follows:

5.22.030 Issuance restrictions.

No license shall be issued to:

- (1) If the nightclub serves alcohol, a person who has not resided in the state of Washington for at least one month prior to making application.
- (2) A person whose place of business is conducted by a manager or agent, unless such manager or agent also applies and qualifies for a nightclub license for the same business location.
- (3) A co-partnership, unless all the members thereof shall be qualified to obtain a license as provided herein.

(4) A corporation or a limited liability company, unless it was created under the laws of the state of Washington or holds a certificate of authority to transact business in the state of Washington and all of the officers and, directors shall be qualified to obtain a license as provided in this chapter. Such license shall be issued to the manager or other directing head of the corporation or company.

Section Two. There is hereby added a new Section 5.22.035 entitled “Application restrictions” to Chapter 5.22 of the Municipal Code as follows:

5.22.035 Application restrictions.

(1) No application for a nightclub license can be made for buildings and uses located in the R-1 Single Family, R-2 Limited Multi-Family, R-3 Multi-Family, R-4 Multi-Family, R-O Residential Office, C-1 Neighborhood Commercial, C-4 Highway Service, PF Public Facilities, OS Open Space or any other zoning district not specifically regulated below.

(2) An application for a nightclub license can be made for buildings and uses in the CBD Central Business District, CBD-1 Central Business District 1, CBD-2 Central Business District 2, and the C-3, Community Commercial District only if the occupancy limit for said building or use is less than 300 as determined by the Building Official and the Fire Chief.

(3) An application for a nightclub license can be made for buildings and uses in the C5, Highway Corridor Commercial District Buildings only if the occupancy limit for said building or use is less than 400 as determined by the Building Official and the Fire Chief.

(4) An application for a nightclub license can be made for any building and use in the PBP, Planned Business Park, PIP Planned Industrial Park and I Industrial zones.

Section Three. Section 5.22.040 of the Oak Harbor Municipal Code last adopted by Ordinance 1544 Section 1 in 2008 is hereby amended to read as follows:

5.22.040 Filing of application.

Application for a nightclub license shall be made to the city clerk, together with a receipt from the city finance director or designee for the amount of the license in full. The license application shall include personal identification information requested by the city including date of birth and Social Security number. The application shall also specify the primary use, zoning district and the business location upon which the nightclub activities will be conducted. The application fee includes the fee to cover the cost of a WATCH criminal background check, as provided in OHMC 3.64.100. Upon filing of the application and fees, the applicant(s) shall be issued a temporary license which shall expire upon the city council determination set forth in OHMC 5.22.045, unless stayed by filing of a judicial appeal within 30 days of the city council decision appealed.

Section Four. Section 5.22.045 of the Oak Harbor Municipal Code last adopted by Ordinance 1544 Section 1 in 2008 is hereby amended to read as follows:

5.22.045 License conditions.

(1) Upon receipt of an application for a nightclub license, the city clerk shall transmit copies of the application to the chief of police, fire chief and the building official.

(2) The fire chief and the building official shall determine if the application meets the provisions of 5.22.035.

(3) The chief of police shall immediately conduct a WATCH criminal background check of the applicant(s).

(2) The chief of police shall also investigate the business location to determine whether there are any features of the establishment which pose noise, traffic or other similar public health or safety concerns for the operation of a nightclub. The chief of police may request the assistance of other city departments, including the fire department and/or the building official, in assessing the impacts of the proposed business location if used as a nightclub.

(3) The chief of police shall report to the city council the result of his investigation and make recommendations concerning any conditions that should be placed upon the nightclub license to reduce noise, traffic or other similar public health and safety impacts. Allowable conditions may include, but are not limited to, restrictions upon the hours of operation, structural improvements to the premises to reduce noise impacts on neighboring uses, limitations on the numbers of patrons at any one time, landscaping or other screening, and requirements for traffic control. Periodic review of the efficacy of the imposed conditions may also be a condition of the nightclub license.

(4) The city council shall hold a public hearing with respect to the issuance of the nightclub license. The applicant(s) shall be entitled to respond to any findings of the police chief or other city officials and any proposed conditions on the nightclub license. Unless the applicant is restricted from holding a nightclub license pursuant to OHMC 5.22.030, the city council shall then determine whether the noise, traffic and other similar public health and safety impacts of the nightclub require mitigation through specified conditions and, if so, shall impose such conditions on the license. In no event shall the expressive content of any music, singing or dancing be the basis for denial of a nightclub license or any conditions placed thereon.

(5) The decision of the city council shall be the final decision of the city. No rights shall vest in a license issued under this chapter and all licenses are subject to modification and/or revocation in accordance with the provisions of this chapter.

Section Five. Section 5.22.065 of the Oak Harbor Municipal Code last adopted by Ordinance 1544 Section 1 in 2008 is hereby amended to read as follows:

5.22.065 Violation of license conditions.

A license holder who violates any license condition of his/her nightclub license shall be subject to civil penalties or license revocation as follows:

(1) A First violation of a license condition since initial license issuance: \$500.00 fine per violation;

(2) A Second violation of any license condition since initial license issuance: \$750.00 fine per violation;

(3) A Third violation of any license condition since initial license issuance : \$1,000 fine per violation.

First, second and third violations of license conditions shall constitute civil offenses and shall be governed by the procedures of Chapter 1.28 OHMC.

Any fourth or greater violation of any license condition since initial license issuance shall be deemed a material violation and shall subject the license to revocation under the provisions of Section 5.22.070.

Section Six. Section 5.22.070 of the Oak Harbor Municipal Code last adopted by Ordinance 1544 Section 1 in 2008 is hereby amended to read as follows:

5.22.070 Revocation of license.

The City reserves unto itself the power to revoke any license issued under the provisions of this chapter at any time upon a finding that:

- (1) The license was procured by fraud or false representation of fact; or
- (2) The applicant is barred from holding a nightclub license due to violation of any of the restrictions of OHMC 5.22.030; or
- (3) The conditions imposed upon the license pursuant to OHMC 5.22.045 were materially violated;
- (4) If the nightclub serves alcohol, material violation of any regulation of the Washington State Liquor Control Board or material violation of any condition imposed by the Washington State Liquor Control Board;
- (5) Conditions imposed upon the license pursuant to OHMC 5.22.045 have been violated more than three times with notices of violation issued with the civil offense sustained; or
- (6) Fines levied for a sustained notice of violation under OHMC 5.22.065 are due and have been unpaid more than thirty (30) days since the date the fine became final

Before revoking any such license, the City shall provide at least 10 days' written notice to the licensee of intent to seek revocation and the grounds for the same and schedule and hold a public hearing concerning such revocation before the City's hearing examiner. The jurisdiction of the Office of Land Use Hearing Examiner under Chapter 18.40 OHMC is hereby expanded to include jurisdiction over any revocation hearing under this section. The decision of the Examiner shall be a Type IV decision. The City shall bear the burden of proof at the public hearing. The licensee shall be entitled to be heard and introduce the testimony of witnesses. Members of the public may also be permitted to testify at such public hearing. The Examiner shall conduct the hearing and submit recommended findings of fact, conclusions of law and a decision to the City Council. Final action shall be by the city council. Any appeal of the final action of the City council shall be by writ of review under Chapter 7.16 RCW.

Section Seven. Section 5.22.080 of the Oak Harbor Municipal Code last adopted by Ordinance 1544 Section 1 in 2008 is hereby amended to read as follows:

5.22.080 License – Compliance required.

In addition to the conditions imposed pursuant to OHMC 5.22.045, all nightclub licensees, if they serve alcohol, shall comply with the rules or regulations of the Washington State Liquor Control Board relating to the sale of intoxicating liquor. A finding of vio-

lation by the Washington State Liquor Control Board shall also constitute a violation of license conditions pursuant to OHMC 5.22.065.

Section Eight. Section 5.22.090 of the Oak Harbor Municipal Code last adopted by Ordinance 1544 Section 1 in 2008 is hereby amended to read as follows:

5.22.090 Revision of license conditions.

The city council also reserves to itself the power to revise the conditions of the nightclub license upon information received indicating that the existing conditions are not sufficient to mitigate the noise, traffic and public health and safety impacts associated with the nightclub business location. A revision proceeding shall be initiated by an investigative report by the chief of police, fire chief, building official or other city official.

In the event that such investigative report is filed, the license holder shall be sent a copy of the complaint and/or report and provided at least 10 days' notice of a hearing before the city council to determine whether the conditions of the license shall be modified. At a public hearing before the city council, the license holder shall have the opportunity to respond to the investigative report, and to present any evidence in opposition to a modification of conditions. The city council shall base any change in conditions on the license upon noise, traffic or other similar public health and safety impacts. In no event shall the expressive content of any music, singing or dancing be the basis for denial of a nightclub license or any conditions placed thereon. The decision of the city council, after a public hearing on the proposed change in conditions, shall be final, subject only to a writ of review before the Superior Court pursuant to Chapter 7.16 RCW.

Section Nine. Section 5.22.100 of the Oak Harbor Municipal Code last adopted by Ordinance 1544 Section 1 in 2008 is hereby amended to read as follows:

5.22.100 Appeal to court.

Appeal of any final decision of the city under this chapter shall be to superior court by writ of review pursuant to Chapter 7.16 RCW. . The city's decision shall be stayed upon appeal filed within 30 days of the city council decision appealed, pending judicial review.

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 and effect five days after publishing.

PASSED by the City Council this _____ day of _____ 2013.

CITY OF OAK HARBOR

SCOTT DUDLEY, MAYOR

Attest:

Approved as to Form:

Valerie J. Loffler, City Clerk

Grant K. Weed, Interim City Attorney

Published: _____

ATTACHMENT

2

**City of Oak Harbor
Planning Commission Memo**

Date: April 13, 2012

Subject: Restricting size of Nightclubs
by zoning districts

FROM: Cac Kamak, AICP
Senior Planner

PURPOSE

The City has received a request to consider restricting Nightclubs based on size. The request is based on impacts (noise, loitering, etc) that large nightclubs are having on surrounding uses. The purpose of this memo is to provide the Planning Commission with information on current codes and regulations regarding Nightclubs¹.

Since the request originated from the public, it is appropriate for the Planning Commission to consider this item and take public comment. Comments and discussions at the meeting can help frame the problem and also provide options/amendments to pursue.

BACKGROUND

The City Council has received several complaints about the impact of large nightclubs on surrounding uses. Most of them originate from residences around the nightclub Element, however, a few comments have also originated from residences along SE Hathaway Street and SE Ireland Street that are in proximity to nightclubs along Pioneer Way. The most common complaint is noise from parking lots adjacent to these uses, but other impacts such as loitering, trespassing, public urinations and lewd conduct are also significant impacts.

The City does have ordinances against excessive noise in OHMC Chapter 6.56 (Exhibit A). The Police Department is aware of these impacts and respond to or provides their presence at these locations when resources are available. However, police presence alone may not fully address the noise problem since the voice and sounds of a large group of patrons leaving the nightclub is still high even though individuals are well within the public nuisance noise levels.

The nightclub business owners have also instituted various strategies in curbing the noise and impacts by implementing security and by providing options for the patrons so that the mass exodus from the club at closing can be regulated. These measures have had minimum effects on the impacts.

Since the impacts from nightclubs have been continuous with little to no relief, citizens impacted by the use have requested a change to the code to restrict nightclubs by size as a way to reduce the number of people that can congregate or exit a nightclub with the hope

¹ The term Nightclub is being used loosely in this report to uses that have a Nightclub License. The Oak Harbor Municipal Code (OHMC) defines Nightclubs only in the Business License and Regulations Chapter. Nightclub is not specifically defined or listed as a use in any of the zoning districts.

that it will help reduce noise impacts and also prevent other impacts associated with large groups.

DISCUSSION

Nightclubs are regulated by OHMC Chapter 5.22 under the Business Licenses & Regulation section (Exhibit B). As defined in OHMC 5.22.010, any use such as but not limited to a restaurant, bar, tavern, cocktail lounges etc, that will provide music, singing, dancing or a combination of these activities past 10 pm is required to obtain a “Nightclub” license. The regulations exempt establishments from obtaining a “Nightclub” license for music if the food sales contribute to 75% or more of the gross business income. Therefore, it is important to note that currently the term “Nightclub” in the OHMC is used only in reference to the license and is not listed as a “Use” in any of the zoning districts because any use can get a “Nightclub” license if they are going to provide for activities as defined above.

Currently six establishments have obtained “Nightclub” licenses in Oak Harbor. They are Elements, Seven West, Off the Hook, Oak Harbor Tavern, El Cazador and Mi Pueblo. These six establishments can be categorized as bars, taverns or restaurants. These are all permitted uses in the CBD, Central Business District, C3, Community Commercial District and C5, Highway Corridor Commercial District.

There are several questions that arise in considering the request to reduce the size of uses that have “Nightclub” licenses.

- Should the size restriction that is being requested apply only to uses that apply for a “Nightclub” license? - since a “Nightclub” license is required only if activities defined above are past 10pm, this may address the late night impacts, however, it may not apply to other potential large establishments such as Brew Pubs, Billiards and Pool Hall, Theatre, Conference Center etc., that can generate similar impacts.
- Should a size restriction for “Nightclub” license applicants apply to only certain districts? – Most of today’s complaints on impacts are originating in the CBD district.
- If the restrictions should apply to only certain districts (CBD) and if the impacts are related to large groups exiting uses after 10 pm, should there be a general size limitation on uses in that district? – Even though many of today’s complaints originate from “Nightclub” license holders, similar impacts can be caused by other uses. Restricting general size requirements may have other impacts such as redevelopment and economic vitality.
- One of the suggestions made was to limit the occupancy load for “Nightclub” license holders. This is not a practical solution and is difficult to review, regulate, monitor and enforce. It may also not be legally defensible. Occupancy limits are national or state adopted standards and the City cannot arbitrarily pick a limit less than those standards for a particular use. Restrictions by area are more practical and achievable. However, picking the area/size of these uses that will achieve the desired result will be the challenge.

It is natural for the community to focus on the current impacts based on the layout of uses today. Uses change over time and so will the impacts. It would be wise to consider changes, if any, in the larger context of the zoning district and all the permitted and

conditional uses that can potentially develop in the future. The zoning regulations for the CBD district (Exhibit C) have been attached for your reference.

RECOMMENDATIONS

This memo is to provide the Planning Commission with information on this issue. The item has been placed on the agenda and advertised so that the Planning Commission can provide an opportunity to the public, impacted citizens and business owners to give input and comments on the issue. No action is required on the item at this time. Any direction that comes out of this public input process will be used to present changes for consideration. Those changes will go through a formal approval process that will include public hearings at the Planning Commission.

Attachments:

Exhibit A – OHMC 6.56 Public Nuisance Noise

Exhibit B – OHMC 5.22 Nightclubs

Exhibit C- OHMC 19.20 Article VIII CBD Central Business District

**Chapter 6.56
PUBLIC NUISANCE NOISES**

Sections:

- 6.56.010 Findings and declaration of necessity.
6.56.020 Unnecessary noise prohibited.
6.56.030 Specific noises prohibited.
6.56.040 Further relief under the law.

6.56.010 Findings and declaration of necessity.

The making, creation or maintenance of excessive, unnecessary or unusual loud noises which are prolonged and unusual in their time, place and use affect and are a detriment to public health, comfort, convenience, safety, welfare and prosperity of the people of the city of Oak Harbor. The necessity in the public interest for the provisions, controls and prohibitions of this chapter is declared to be a matter of legislative determination and public policy; and it is further declared that the provisions, controls and prohibitions of this section are in pursuance of and for the purpose of securing and promoting the public health, comfort, convenience, safety, welfare and prosperity and the peace and quiet of the city of Oak Harbor and its inhabitants. (Ord. 597 § 1, 1981).

6.56.020 Unnecessary noise prohibited.

It is unlawful for any person to make, continue, or cause to be made or continued any excessive, unnecessary or unusual loud noise or any noise which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others, within the city of Oak Harbor. (Ord. 597 § 2, 1981).

6.56.030 Specific noises prohibited.

(1) The following acts, among others, are declared to be loud, disturbing and unnecessary noises in violation of this chapter, but the following enumeration shall not be deemed to be exclusive, namely:

(a) Horns, Signaling Devices, Etc. The sounding of any horn or signaling device on any automobile, motorcycle or other vehicle on any street or public place of the city, except as a danger warning; the creation by means of any such horn or signaling device of any unreasonably loud or harsh sound; and the sounding of any such horn or signaling device for any unnecessary and unreasonable period of time. The use of any horn or signaling device, except one operated by hand or electricity; the use of any horn, whistle or other device operated by engine exhaust; and the use of any such horn or signaling device for any purpose when traffic is delayed, except as a danger warning;

(b) Radios, Phonographs, Sound Systems. The using, operating or permitting to be played, used or operated any machine or device such as a radio receiving set, musical instrument, phonograph, CD player, tape player or recorder, sound system, or other machine or device used for the producing or reproducing of sound in such a manner so as to disturb the peace, quiet and comfort of the neighboring inhabitants or at any time with louder volume than is necessary for convenient hearing of the person or persons who are in the room, vehicle or chamber in which such machine or device is operated

and who are voluntary listeners thereto;

(c) Operation of Radios, Phonographs and Sound Systems in the Night. The playing, using, operating or permitting to be played, used or operated any such radio receiving set, musical instrument, phonograph, CD player, tape player or recorder, sound system machine or device between the hours of 9:00 p.m. and 7:00 a.m., the next morning, in such a manner as to be plainly audible at a distance of 75 feet from the building, apartment, condominium, structure, vehicle or other location where the machine or device is located;

(d) Loudspeakers, Amplifiers for Advertising. The using, operating or permitting to be played, used or operated any radio receiving set, musical instrument, phonograph, CD player, tape player or recorder, loudspeaker, sound amplifier, sound system or other machine or device for the producing or reproducing of sound which is cast upon the public streets for the purpose of commercial advertising or attracting the attention of the public to any building or structure;

(e) Yelling, Shouting, Etc. Yelling, shouting, hooting, whistling or singing on the public street, particularly between the hours of 9:00 p.m. and 7:00 a.m., the next morning, or at any time or place so as to annoy or disturb the quiet, comfort or repose of persons in any office, or in any dwelling, hotel or other type of residence, or any persons in the vicinity;

(f) Animals, Birds, Etc. The keeping of any animal or bird which by causing frequent or long continued noise shall disturb the comfort or repose of any persons in the vicinity;

(g) Noisy Operation of a Vehicle. Operating or using any automobile, truck, motorcycle, or other vehicle in such a manner as to create the squealing or chirping of tires, loud and unnecessary grating, grinding, rattling or other noise, except as deemed necessary by those operating or using a vehicle for emergency response. It shall be unlawful for a vehicle to emit excessive loud exhaust or other operating noises. Mufflers shall be in such condition so that they will not create unreasonably loud noises;

(h) Construction, Demolition or Repairing of or on Buildings, Structures or Other Property. The erection (including excavation), demolition, alteration or repair of or on any buildings, structures or other property other than between the hours of 7:00 a.m. and 9:00 p.m., on weekdays, except in the case of urgent necessity in the interests of public health and safety, and then only with a permit from the building official, which permit may be granted for a period not to exceed three days or less while the emergency continues and which permit may be renewed for a period of three days or less while the emergency continues. If the building official should determine that the public health and safety will not be impaired by the erection, demolition, alteration or repair of or on any building, structures or other property on weekends and/or within the hours of between 8:00 a.m. and 5:00 p.m., and if he/she shall further determine that substantial loss or inconvenience would not result to any party in interest, the building official may grant permission for such work to be done within the hours of 8:00 a.m. and 5:00 p.m., upon application being made at the time the permit for the work is issued or during the progress of the work;

(i) Vehicle Stereos, Radios, Etc. Operating a motor vehicle which produces, creates, generates, amplifies, continues or causes to be produced, created, generated or

amplified any excessive noise or sound, when such vehicle is being driven or is parked on public property, public ways, or public rights-of-way. For the purpose of this section, the term "excessive noise" shall mean noise or sound which injures or endangers the comfort, repose, peace, safety or health of a human being, or annoys or disturbs a reasonable person and which is produced, created, generated, or amplified by radios, stereos, television equipment, electronic audio equipment, musical instruments and similar devices which is plainly audible to any person 30 feet or more from the motor vehicle which produces, creates, generates, amplifies, continues or causes to be produced, created, generated or amplified the excessive noise or sound and the term "plainly audible" means any person who can hear the content of the sound produced by the noise source including, but not limited to, musical rhythms, spoken words, and vocal sounds.

(2) Noise Permit and Parade Permit as Exceptions.

(a) Noise Permit. The city council may grant a permit to make noise or perform acts otherwise controlled or prohibited by this chapter upon application by a person specifying the nature and extent of noise to be made or continued, or the act to be performed, upon a determination by the city council that to deny the permit under the circumstances surrounding the making of the application would create undue hardship upon the applicant, and upon a further determination by the city council that to grant the permit would not create an undue and prolonged hardship on others, for whose benefit and protection the noise or act is prohibited by this chapter. Any permit so granted may contain conditions or requirements upon which it is granted as the city council deems necessary to minimize the adverse effect upon the people of the community or surrounding neighborhood which may be affected by granting the permit, and the permit shall specify a reasonable time for which it is to be effective. In addition to the basis of undue hardship as a standard for granting such a permit, the city council may grant such a permit upon determination that:

- (i) The granting of the permit is necessary to allow applicant to modify his customary activities so as to comply with this chapter, if the city council determines that such customary activity of the applicant was not originally undertaken or performed under circumstances and in a manner evidencing a disregard for the rights of others; or
- (ii) The activity, operation or noise source will be of temporary duration and cannot reasonably be performed or controlled in such a manner so as to comply with the provisions of this chapter; or
- (iii) The activity creating the noise constitutes a program of a temporary nature for the benefit of the entire municipality or for the benefit of a charitable purpose.

(b) Parade and Motorcade Permits. The provisions, controls and prohibitions of this section shall not apply to noise made by acts performed by bona fide participants in a parade or motorcade authorized by a permit issued pursuant to the provisions of OHMC 5.36.010 through 5.36.030.

(3) Additional Remedies – Injunction and Summary Abatement.

(a) Injunction. The making or continuing of noise or the performing of acts in violation of this chapter which causes discomfort or annoyance to reasonable persons of normal sensitiveness or which endangers the comfort, repose, health or peace of residents in the area affected by the unlawful act or noise is a public nuisance subject to abatement by a restraining order or injunction issued by a court of competent jurisdiction.

(b) Abatement. Any unlawful act or noise prohibited by this chapter shall be subject to abatement as provided by law. (Ord. 1511 § 1, 2007; Ord. 1329 § 1, 2002; Ord. 939 § 1, 1992; Ord. 597 § 3, 1981).

6.56.040 Further relief under the law.

Nothing in this chapter shall be construed to limit the city's or any person's rights or powers to obtain relief applicable under state or federal law. (Ord. 597 § 5, 1981).

This page of the Oak Harbor Municipal Code is current through Ordinance 1604, passed May 17, 2011.

Disclaimer: The City Clerk's Office has the official version of the Oak Harbor Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

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**Chapter 5.22
NIGHTCLUBS**

Sections:

- 5.22.010 Definitions.
- 5.22.020 License required.
- 5.22.030 Issuance restrictions.
- 5.22.040 Filing of application.
- 5.22.045 License conditions.
- 5.22.050 Annual license fee.
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- 5.22.070 Revocation of license.
- 5.22.080 License – Compliance required.
- 5.22.090 Revision of license conditions.
- 5.22.100 Appeal to court.

5.22.010 Definitions.

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

(2) "Premises" means any room, place, or space whatsoever in the city of Oak Harbor which is open to the general public in connection with any hotel, restaurant, cafe, club, tavern or eating place directly or indirectly selling, serving, or providing the public liquor, with or without food.

(3) "Liquor" means all beverages defined in RCW 66.04.200.

(4) "Person" means one or more natural persons of either sex, firms, copartnerships and corporations; whether acting by themselves or by servant, agent or employee.

The provisions of this chapter shall not apply to temporary activities conducted pursuant to a city special event permit issued pursuant to Chapter 5.50 OHMC and lasting no longer than 48 hours. (Ord. 1544 § 1, 2008; Ord. 321 § 1, 1972).

5.22.020 License required.

It is declared to be unlawful for any person to conduct, manage or operate a nightclub unless such person is the holder of a valid license from the city of Oak Harbor so to do, obtained in the manner provided in this chapter. A first violation of the requirement to obtain a license shall be a civil infraction filed pursuant to Chapter 1.28 OHMC, punishable by a fine of \$250.00. A second violation shall be a civil infraction punishable by a fine of \$500.00. A first or second violation of the requirement to obtain a license shall be a civil offense subject to the procedures of Chapter 1.28 OHMC. Thereafter, further violation of the requirement to obtain

a license of this chapter shall be a misdemeanor punishable by a fine not exceeding \$1,000, up to 90 days in jail, or both such fine and jail time. (Ord. 1544 § 1, 2008; Ord. 321 § 2, 1972).

5.22.030 Issuance restrictions.

No license shall be issued to:

(1) A person who has not resided in the state of Washington for at least one month prior to making application.

(2) A person whose place of business is conducted by a manager or agent, unless such manager or agent also applies and qualifies for a nightclub license for the same business location.

(3) A copartnership, unless all the members thereof shall be qualified to obtain a license as provided herein.

(4) A corporation, unless all of the officers, directors and stockholders thereof shall be qualified to obtain a license as provided in this chapter. Such license shall be issued to the manager or other directing head thereof. (Ord. 1544 § 1, 2008; Ord. 588 § 1, 1981; Ord. 321 § 3, 1972).

5.22.040 Filing of application.

Application for a nightclub license shall be made to the city clerk, together with a receipt from the city finance director or designee for the amount of the license in full. The license application shall include personal identification information requested by the city including date of birth and Social Security number. The application shall also specify the business location upon which the nightclub will be conducted. The application fee includes the fee to cover the cost of a WATCH criminal background check, as provided in OHMC ~~3.64.100~~. Upon filing of the application and fees, the applicant(s) shall be issued a temporary license which shall expire upon the city council determination set forth in OHMC 5.22.045, unless stayed by filing of a judicial appeal within 30 days of the city council decision appealed. (Ord. 1544 § 1, 2008; Ord. 321 § 4, 1972).

5.22.045 License conditions.

(1) Upon receipt of an application for a nightclub license, the city clerk shall transmit the application to the chief of police, who shall immediately conduct a WATCH criminal background check of the applicant(s).

(2) The chief of police shall also investigate the business location to determine whether there are any features of the establishment which pose noise, traffic or other similar public health or safety concerns for the operation of a nightclub. The chief of police may request the assistance of other city departments, including the fire department and/or the building official, in assessing the impacts of the proposed business location if used as a nightclub.

(3) The chief of police shall report to the city council the result of his investigation and make recommendations concerning any conditions that should be placed upon the nightclub license to reduce noise, traffic or other similar public health and safety impacts. Allowable conditions may include, but are not limited to, restrictions upon the hours of operation, structural improvements to the premises to reduce noise impacts on neighboring uses, limitations on the numbers of patrons at any one time, landscaping or other screening, and requirements for

traffic control. Periodic review of the efficacy of the imposed conditions may also be a condition of the nightclub license.

(4) The city council shall hold a public hearing with respect to the issuance of the nightclub license. The applicant(s) shall be entitled to respond to any findings of the police chief or other city officials and any proposed conditions on the nightclub license. Unless the applicant is restricted from holding a nightclub license pursuant to OHMC 5.22.030, the city council shall then determine whether the noise, traffic and other similar public health and safety impacts of the nightclub require mitigation through specified conditions and, if so, shall impose such conditions on the license. In no event shall the expressive content of any music, singing or dancing be the basis for denial of a nightclub license or any conditions placed thereon.

(5) The decision of the city council shall be the final decision of the city. (Ord. 1544 § 1, 2008).

5.22.050 Annual license fee.

Any person desiring to operate a nightclub shall first procure a nightclub license. The annual fee for a nightclub license shall be \$200.00 plus \$10.00 for an annual WATCH criminal background check. (Ord. 1544 § 1, 2008; Ord. 321 § 5, 1972).

5.22.060 Proration of license fee.

There shall be no prorating of the fee mentioned in OHMC 5.22.050, and such license fee shall expire on December 31st of each year; except that in the event that the original application be made subsequent to June 30th, then one-half of the annual license fee may be accepted for the remainder of the year. The license shall not be assignable. (Ord. 1544 § 1, 2008; Ord. 321 § 6, 1972).

5.22.065 Violation of license conditions.

A license holder who violates any license condition of his/her nightclub license shall be subject to civil penalties as follows:

- (1) First violation of a license condition: \$500.00 fine per violation;
- (2) Second violation of same license condition: \$750.00 fine per violation;
- (3) Third violation of same license condition: \$1,000 fine per violation.

First, second and third violations of license conditions shall constitute civil offenses and shall be governed by the procedures of Chapter 1 28 OHMC.

The fourth or greater violation of the same license provision shall constitute a misdemeanor punishable by a fine not exceeding \$1,000, up to 90 days in jail, or both such fine and jail time (Ord. 1544 § 1, 2008).

5.22.070 Revocation of license.

The city council reserves unto itself the power to revoke any license issued under the provisions of this chapter at any time upon a finding that:

- (1) The license was procured by fraud or false representation of fact; or
- (2) The applicant is barred from holding a nightclub license due to violation of any of the restrictions of OHMC 5.22.030; or

(3) The conditions imposed upon the license pursuant to OHMC 5.22.045 were knowingly and willfully violated by the person holding such license or at his/her direction; or

(4) A crime or offense involving moral turpitude is committed on the premises in which the nightclub is conducted with knowledge of the licensee.

Before revoking any such license, the city council shall, upon at least 10 days' notice to the licensee, hold a public hearing concerning such revocation, at which time the licensee shall be entitled to be heard and introduce the testimony of witnesses. Members of the public may also be permitted to testify at such public hearing. The action of the city council after such hearing, relative to such revocation, shall be final. (Ord. 1544 § 1, 2008; Ord. 996 § 1, 1995; Ord. 321 § 7, 1972).

5.22.080 License – Compliance required.

In addition to the conditions imposed pursuant to OHMC 5.22.045, all nightclub licensees shall comply with the rules or regulations of the Washington State Liquor Control Board relating to the sale of intoxicating liquor. A finding of violation by the Washington State Liquor Control Board shall also constitute a violation of license conditions pursuant to OHMC 5.22.065. (Ord. 1544 § 1, 2008; Ord. 321 § 8, 1972).

5.22.090 Revision of license conditions.

The city council also reserves to itself the power to revise the conditions of the nightclub license upon information received indicating that the existing conditions are not sufficient to mitigate the noise, traffic and public health and safety impacts associated with the nightclub business location. A revision proceeding shall be initiated by an investigative report by the chief of police, fire chief, building official or other city official.

In the event that such investigative report is filed, the license holder shall be sent a copy of the complaint and/or report and provided at least 10 days' notice of a hearing to determine whether the conditions of the license shall be modified. At a public hearing before the city council, the license holder shall have the opportunity to respond to the investigative report, and to present any evidence in opposition to a modification of conditions. The city council shall base any change in conditions on the license upon noise, traffic or other similar public health and safety impacts. In no event shall the expressive content of any music, singing or dancing be the basis for denial of a nightclub license or any conditions placed thereon. The decision of the city council, after a public hearing on the proposed change in conditions, shall be final. (Ord. 1544 § 1, 2008; Ord. 321 § 9, 1972)

5.22.100 Appeal to court.

Appeal of any final decision of the city under this chapter shall be to superior court. The city's decision shall be stayed upon appeal filed within 30 days of the city council decision appealed, pending judicial review (Ord 1544 § 1, 2008).

Article VIII. CBD – Central Business District

19.20.300 Purpose and intent.

The central business district (CBD) is intended to preserve and enhance the unique harbor location of the city's heritage with the character of the traditional center of social, cultural and retail activity. Mixed use developments, combining retail and visitor-oriented activities on the ground floor with office, retail and residential uses above, are required. Within the district, pedestrian-oriented activity is encouraged. Standards and design guidelines are adopted to enhance and maintain a pedestrian-friendly environment. Incentives are also provided to encourage the development of mixed use projects. Subdistricts CBD-1 and CBD-2 are created in order to provide for flexibility of residential development within specific areas of the central business district. Large surface parking lots are not encouraged. Shared clustered parking areas in the middle of blocks are allowed away from street frontages. Access driveways are to be kept at a minimum to promote safety and convenience of pedestrians. (Ord. 1573 § 1, 2010; Ord. 1555 § 8, 2009).

19.20.305 Principal permitted uses.

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

- (1) Antique shop (R);
- (2) Artist's studios and supplies (R);
- (3) Bakery, retail only (R);
- (4) Bank;
- (5) Barber and beauty shops;
- (6) Bars (R);
- (7) Bicycle shop (R);
- (8) Billiards and pool hall (R);
- (9) Blueprinting;
- (10) Bookstore (R);
- (11) Brew pub (R);
- (12) Camera and supply shop (R);

- (13) Clothes and apparel shop (R);
- (14) Cocktail lounge (R);
- (15) Coffee house (R);
- (16) Confectionery store (R);
- (17) Conference center;
- (18) Data processing facility;
- (19) Delicatessen (R);
- (20) Department store (R);
- (21) Dry cleaners;
- (22) Furniture shop (R);
- (23) Florist shop (R);
- (24) Gift shop (R);
- (25) Grocery store, neighborhood, provided gross floor area shall not exceed 12,000 square feet (R);
- (26) Hardware store (R);
- (27) Hobby shop (R);
- (28) Hotel and motel;
- (29) Ice cream shop (R);
- (30) Interior decorator studio (R);
- (31) Jewelry store (R);
- (32) Leather goods store (R);
- (33) Music store (R);
- (34) Offices;
- (35) Office supply and equipment store (R);

- (36) Pet shop (R);
- (37) Pharmacy and drug store (R);
- (38) Photographic film processing and associated retail sales (R);
- (39) Photographic studio and supplies;
- (40) Photocopying;
- (41) Post office;
- (42) Printing shop;
- (43) Residential uses, provided:
 - (a) In the CBD district: mixed use sites with multiple street frontages may locate dwelling units on the ground level on any street frontages other than Pioneer Way;
 - (b) In subdistricts CBD-1 or CBD-2: dwelling units may be the primary use of the site;
- (44) Restaurant, including sidewalk cafe (R);
- (45) Schools for the fine arts;
- (46) Shoe repair shop (R);
- (47) Shoe store (R);
- (48) Sporting goods shop (R);
- (49) Tailor shop (R);
- (50) Tavern (R);
- (51) Taxi service;
- (52) Theater;
- (53) Tobacco shop (R);
- (54) Toy store (R);
- (55) Travel agencies;
- (56) Trophy shop (R);

(57) Upholstery shop;

(58) Variety store (R);

(59) Visitor information center;

(60) Other uses similar to those identified above and having equal or less impact on the purposes of this section. (Ord. 1573 § 1, 2010; Ord. 1555 § 8, 2009).

19.20.310 Accessory permitted uses.

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

- (1) A use customarily incidental and subordinate to a principal use permitted outright;
- (2) On-site hazardous waste treatment and storage facilities as an accessory use to any activity generating hazardous waste and lawfully allowed in this zone; provided, that such facilities meet the state siting criteria adopted pursuant to the requirements of RCW 70.105.210;
- (3) Television satellite dish reflectors, roof-mounted and within building setback lines not to exceed the height limitations and other standards as set out in OHMC 19.20.320; provided said height limitation may be increased when such height is permitted per OHMC 19.28.040 and 19.28.050. (Ord. 1573 § 1, 2010; Ord. 1555 § 8, 2009).

19.20.315 Conditional uses permitted.

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

- (1) Coffee kiosk;
- (2) Dancehall;
- (3) Governmental buildings for administrative or protective services;
- (4) Health club;
- (5) Land reclamation with water-dependent marine development;
- (6) Parking lots or garages not in conjunction with permitted uses;
- (7) Places of entertainment and amusement, if conducted within a wholly enclosed building;
- (8) Private nursery school, kindergarten, or child day care center not qualifying as a home occupation on a legal lot; provided, there is established in connection therewith an outdoor play

area having a minimum area of 1,000 square feet plus an additional 50 square feet for each child in excess of eight;

(9) Public utility and communications facility;

(10) Transit terminals;

(11) Swimming pools or beaches, public or private;

(12) Other uses similar to uses permitted or conditionally permitted and normally located in the central business district; provided, that there shall be no manufacturing, compounding, processing or treatment of products other than that which is essential to the retail store or business where all such products are sold on the premises. (Ord. 1573 § 1, 2010; Ord. 1555 § 8, 2009).

19.20.320 Density provisions.

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

(1) Allowable density:

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

(2) Minimum lot area, no limitation;

(3) Minimum lot width, no limitation;

(4) Minimum lot depth, no limitation;

(5) Minimum front yard, no limitation, except when opposite a residentially zoned property, then a 10-foot front yard is required. Front yard setback may also be increased to 10 feet if needed for traffic safety; front yard setback shall be provided so as to maintain a 12-foot sidewalk measured from the existing curb or future curb line;

(6) Minimum side yard, no limitation except when abutting a residentially zoned property, then 10 feet each. For corner lots, side yard may also be increased to 10 feet if needed for traffic safety;

(7) Minimum rear yard, no limitation except when opposite a residentially zoned property, then 10-foot rear yard is required or except when abutting a public street where the setback may be increased to 10 feet if needed for traffic safety;

(8) Maximum building height; 35 feet; except:

(a) In CBD: building height may be increased to 45 feet if ground floor retail space (as defined in OHMC 19.20.300) is developed in conjunction with a residential use;

(b) In CBD-2: building height may be increased to 45 feet for residential development (without a retail component);

(c) In CBD: building height may be increased to 45 feet for nonresidential uses or mixed use projects upon approval of the design review board and by providing additional urban amenities as defined in the Oak Harbor commercial and industrial design guidelines;

(d) In CBD: building height may be increased to 55 feet for nonresidential uses or mixed use projects upon approval of the design review board and by providing additional urban amenities as defined in the Oak Harbor commercial and industrial design guidelines. The design review board shall specifically review the proposed project and building height for its impacts on waterfront and mountain views and require reasonable mitigation as necessary;

(9) Maximum lot coverage, no limitation;

(10) Parking.

(a) Nonresidential Uses. There shall be no required parking for nonresidential uses; except, however, if parking is provided, it shall meet the parking space size and access requirements of OHMC 19.44.110;

(b) Residential uses shall provide parking per Chapter 19.44 OHMC, except that guest parking need not be provided. If guest parking is provided it shall meet the parking space size and access requirements of OHMC 19.44.110;

(c) Any parking provided beneath a permitted residential use shall be enclosed;

(d) No more than 50 percent of the gross floor area along pedestrian-oriented streets may be used for residential parking;

(11) Design Standards.

(a) Development shall be in accordance with the provisions of the Oak Harbor commercial and industrial design guidelines;

(b) Residential development shall have ground level access independent of nonresidential uses from an inside lobby, elevators and/or corridors, from an enclosed interior court, or from other separate access provisions;

(c) Nonresidential development along Pioneer Way, between SE City Beach Street and SE Midway Boulevard, shall meet the following standards:

- (i) Ground-floor, nonretail development shall not comprise more than 50 percent of the lineal street frontage of the lot;
- (ii) Window areas for nonresidential portions of a building's facades shall not be less than 40 percent or greater than 60 percent of the total facade area;
- (iii) Conformance with the above standards shall be determined by using the design guideline applicability standards established under OHMC 19.48.040;
- (d) Residential development in subdistrict CBD-1 or CBD-2 shall be under a planned residential development per Chapter 19.31 OHMC;
- (e) Nonresidential development with building heights greater than 45 feet, as approved by the design review board, shall provide a minimum of 450 square feet of pedestrian-oriented space (as defined in the Oak Harbor commercial and industrial design guidelines) plus an additional 25 square feet for each vertical foot of building height above 45 feet;
- (f) All buildings in the CBD greater than three stories must set back upper stories by at least 10 feet. (Ord. 1573 § 1, 2010; Ord. 1555 § 8, 2009).

19.20.325 Conditions governing permitted uses.

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

- (1) All business, service, repair, storage, or merchandise display shall be conducted within a wholly enclosed building, except for the following:
 - (a) Off-street parking and loading;
 - (b) Food and drink service in connection with cafes, restaurants or other eating establishments.
- (2) The use of property must not result in the creation of offensive odors or offensive or harmful quantities of dust, smoke, exhaust fumes, noise or vibration.
- (3) Landscaping and buffers shall be constructed and maintained in accordance with the provisions of Chapter 19.46 OHMC. (Ord. 1573 § 1, 2010; Ord. 1555 § 8, 2009).

19.20.330 Site plan and design review required.

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

Minutes

**Planning Commission
April 24, 2012**

Mr. Kamak explained that they do not need to match and that the designations in the SMP are slightly different than the zoning classifications. They can be considered as layers on a map. We have a Comprehensive Plan amendment this year and if those amendments go forward then those properties will be rezoned.

Mr. Fakkema asked what a Scribner's error was. Ms. Sartorius said they were minors such as grammatical errors and typographical errors.

Mr. Fakkema opened the hearing for public comment. Seeing none, the public hearing was closed.

ACTION: MR. OLIVER MOVED, MRS. JOHNSON-PFEIFFER SECONDED A MOTION TO RECOMMEND THAT THE CITY COUNCIL ADOPT THE ORDINANCE AND THE ATTACHED ZONING MAP. MOTION CARRIED UNANIMOUSLY.

NIGHTCLUB ORDINANCE – Public Meeting

Mr. Kamak reported that the City Council has received several complaints about the impact of large nightclubs on surrounding uses. Most of them originate from residences around the nightclub Element; however, a few comments have also originated from residences along SE Hathaway Street and SE Ireland Street that are in proximity to nightclubs along Pioneer Way. The most common complaint is noise from parking lots adjacent to these uses, but other impacts such as loitering, trespassing, public urinations and lewd conduct are also significant impacts. Since the request originated from the public, it is appropriate for the Planning Commission to consider this item and take public comment. Comments and discussions at the meeting can help frame the problem and also provide options/amendments to pursue.

Mr. Kamak explained that night clubs are regulated in the business license section of the Oak Harbor Municipal Code (OHMC). "Nightclub" means any "premises" as defined herein on which any music, singing, dancing or other combination of these activities is permitted as entertainment after 10:00 p.m., on one or more days per week. The playing of incidental music on any premises where the receipts for the sale of food constitute 75 percent or more of the gross business income of the establishment shall not be considered a "nightclub" for purposes of this chapter, unless an opportunity for social dancing is provided on the premises.

Mr. Kamak noted that nightclubs are not listed as a use in any of the zoning districts in OHMC Title 19 Zoning. Any use can apply for a nightclub license. The review process for nightclub licenses currently goes through the police department and the City Council will either approve or deny the application. Mr. Kamak reiterated that the review of nightclub licenses is not a land use issue but a license issue. That is why the Planning Commission doesn't review the license and it goes straight to City Council.

Mr. Kamak said the following six businesses currently have nightclub licenses in Oak Harbor:

- Element – CBD (Central Business District)
- Seven West – CBD (Central Business District)
- Off the Hook – CBD (Central Business District)
- Oak Harbor Tavern – CBD (Central Business District)
- Mi Pueblo – CBD (Central Business District)
- El Cazador – C5, Highway Corridor Commercial

These uses are classified as Bars, Taverns and Restaurants – all of which are permitted uses in their respective zoning districts. Some of these uses can continue to exist without a nightclub license.

Mr. Kamak asked the Planning Commission to consider the following:

- Should the size restriction that is being requested apply only to uses that apply for a “Nightclub” license?
- Should a size restriction for “Nightclub” license applicants apply to only certain districts?
- If “size” is the issue, should there be a general size limitation on uses in certain zoning districts?

Mr. Kamak noted that the City of Anacortes doesn’t allow uses larger than 25,000 square feet in their downtown.

Mr. Kamak recommended that the Planning Commission take comments from the public and he provided copies of public comment that he had recently received through the mail and e-mail.

Mr. Fakkema opened the meeting for public comment.

Billie Cook (651 SE Bayshore Drive) indicated that she was one of the initiators of the request before the Planning Commission. Ms. Cook stated that after reading page 9 of the staff report she recognized that her suggestion to the Planning Commission to limit the size of night clubs may not be feasible but Mr. Kamak’s comments on the possibility of restriction nightclubs by area to achieve noise reduction are encouraging.

Ms. Cook asked the Planning Commission to start the process of solving the negative impacts of nightclubs versus the rights of other land users. She noted that there were the same problems 30 years ago with Cathay Palace, the Blue Dolphin and then the Lava Lounge and now Element. She recognized that any action taken now would not be retroactive but asked the Planning Commission to review, discuss and modify the City’s zoning code so as to alleviate the very real problems concerning nightclub impacts.

Ms. Cook stated she didn’t believe that nightclubs should be allowed close to churches, schools, residences or public amenities such as parks. There needs to be a conditional use permit required in any zone where nightclubs reside next to these land uses. The current practice of allowing nightclubs anywhere is unfair to surrounding land users and not in the best interest of the nightclub owners who may be unaware of the objections of nearby land users and they have to deal with them after the fact.

Ms. Cook thought that the base of the problem is that nightclubs are not a recognized land use and piggy-back onto another land use. She believed that nightclubs should be a separate land use so that they have to adhere to the same rules that other land uses have to follow. She stated that licenses are all but impossible to deny, regulate or revoke and the City finds itself in a morass in trying to impose conditions to mitigate but they have to have the cooperation of the licensee.

Ms. Cook offered to serve on a citizens committee to further work on this issue.

Richard Everett (651 SE Bayshore Drive) stated that he believed the problem began when the condominiums were built inside of the Central Business District (CBD). Now there is a conflict

between residences and businesses. He recommended considering the type and size of a business to restrict them from encroaching on areas where we know families or elders live. Mr. Everett noted that there are people with health issues that have been severely impacted and can't even live in their unit anymore. He asked that the Planning Commission consider the elderly that are looking for some semblance of peace in their years as senior citizens.

Yvonne Howard (2300 SW Vista Park Drive) stated that she works at 656 SE Bayshore Drive Suite 2 which is the church next door to Element. She said that they are affected by Element with the people that hang out in the parking lot, the smoking in front of the door and all of the colorful language that they have to endure while holding Bible study. The young kids in the youth group are affected by Element activities as well. She believed that this needed to be addressed.

Kelly Beedle (940 SE Pioneer Way) stated that she was the owner of the Oak Harbor Tavern which has been there since 1859. The tavern is right next to a church and houses and they haven't had any problems. She didn't understand how the City could limit the size because when someone rents a building it is already a certain size. She believed that business is about respect. Respect of the citizens, the City of Oak Harbor and the police. She asked why Element owners weren't present because she knew that business owners were notified of this meeting. She also wondered why there were only six licenses in the City because restaurants should have licenses too since they are playing music after 10:00 p.m.

Ms. Beedle suggested:

- Talking to the Element owners
- Borrowing equipment that monitors noise levels from the Naval Air Station
- Element should lean on their customers and require the customers be respectful and not just feed them alcohol and let them act like animals
- A fine system

Paul Newman (886 SE Bayshore Drive) stated that he could be considered at "ground zero" because he is located right next to Mi Pueblo, opposite the old Lava Lounge or The Hook and the Oak Harbor Tavern. He echoed what Ms. Beedle said about the Oak Harbor Tavern not being a problem and he added that Mi Pueblo is not a problem either. Most of the so called night clubs are not the problem it is just Element. He hoped the Planning Commission would consider "Nuclear options" with regard to the Element.

Mr. Newman noted that the City of Oak Harbor spent tens of thousands of tax dollars on the best study that he has seen Oak Harbor conduct. The study defined the concept and character of Windjammer Park. Element represents an absolute contradiction of the character and the concept of what the City was aiming for and it is just as much land use as it is licensing or anything else. He said that Element in that area is about as appropriate as an adult book store next to an elementary school. Within 100 yards of Element are kids playing T-ball and Little League, families picnicking and a bus depot where teenagers hang out to take advantage of the free busses. Within a couple of hundred yards, the chain link fence is falling down because people climb over it because they don't want to walk on the street to get from Mi Pueblo to Element and back. Some of the neighbors have put in gates and they don't use the gates and still jump over them because they are drunk.

Mr. Newman talked about the noise restrictions in OHMC Section 6.56.030 that describes specific noises that are prohibited. Mr. Newman said that all of the noises listed are noises coming out of Element.

Mr. Newman was concerned that during the summer when it stays light later and kids are still playing that there may be another fight in the parking lot or another shooting in the parking lot and it is another incident or tragedy waiting to happen and Element should never been allowed there in the first place and is violating noise restrictions.

Mr. Newman asked why Element's license is automatically renewed and how couldn't the license be reviewed year after year? Mr. Newman pointed out OHMC Section 5.22.070 Revocation of License and recited Section 5.22.070(1) which says "The license was procured by fraud or false representation of fact: or..." Mr. Newman said that false representation of fact does not have to be intentionally done. It can be false with all the good intent in the world. If the police investigated this and believed there wouldn't be problems with all the best intent in the world but there are problems then there is a false representation of fact that has been made. Mr. Newman didn't think that a revocation of the license would be beyond what can be done in this respect. That is what he meant by "Nuclear options". He thought that the City should encourage Element to relocate and to cooperate in that relocation. Mr. Newman pointed out that there is all of Goldie Road and all of Ault Field Road. There are locations for Element where it would do better and the City would do better than putting it in Windjammer Park where it has no business being in the first place and represents a contradiction of a lot of tax payer money.

Quentin Reeves-Herbert said that he frequents some of the nightclubs that are being discussed and most of the nightclubs have no problems other than Element. He noted that he was involved in the bottle slashing incident at Element. He thought that the size was a problem and if you don't have enough security to watch over a place that big then problems will occur. He said that there were two other incidents that occurred on the same night that the bottle slashing incident occurred and because they didn't have enough staff or manpower to cover the entire building the slashing was allowed to happen and the other person involved was allowed to actually walk straight out the front door, get in a vehicle and leave. Security and a sense of security for the patrons and the neighbors is a point that he wanted the City to address.

Darnell Allen (7-West business owner) said that when Element lets out at night there are a lot of people coming out of the bar all at the same time and it sounds like a stadium in downtown Seattle when a game just let out. Mr. Allen said that the police are there every weekend doing the best they can to help. The magnitude of people that come out at one time is overwhelming and chaotic. He thought maybe cutting down the size might work. Mr. Allen pointed out Mr. Reeves-Herbert as a peacemaker, and since we are a small community we know the people that are bad actors and there is no reason for those people to be allowed in. You have a right to refuse anybody and if you can't identify that and you are taking money over respect to these people I would be upset too. My best suggestion would be to cut down the size.

Mr. Oliver asked what Element's square footage is and of that square footage, how much is taken up by Bayside Casino? Mr. Kamak did not have the square footage information yet but would bring square footage information about the average building sizes downtown as a gauge for comparison of the building stock available downtown. He believed that Element was a little less than 10,000 square feet.

Mr. Oliver said that normally people will go to the central business district to find music and entertainment. His concern was that if there is a restriction of 2,000 square feet, as an example, that would potentially cause more nightclubs to pop up and potentially multiply the problem.

Mr. Oliver asked if it was going to mandatory for all nightclubs licenses to renew every 90 days since that is what Element has to do. Mr. Kamak said that the 90-day license renewal was a special condition place on Element because of all the complaints and issues surrounding them and he did not think the other like nightclub license holders had the same conditions imposed on them.

Mr. Oliver suggested a sponsor night. Seniors and condo owners should be sponsored by some of the people that frequent the nightclub so they can physically see who Element is affecting as opposed to just paper complaints to police. Mr. Oliver also suggested a meeting between all tavern, bar and nightclub owners and have a workshop to figure it out.

Richard Everett (651 SE Bayshore Drive) said that they have dealt with Chief Wallace and the Mayor extensively and have suggested things like Mr. Oliver has suggested repeatedly. On the surface the suggestion is excellent but the reality is that Mr. Kumberfelt has failed to meet with them on several occasions when we were supposed to get together. We can go forward with a get-together but there has to be some teeth in that to make it happen because Mr. Kumberfelt's only concern is serving his customers inside his bar and he submitted a letter to the City Council saying that that was where his responsibility as a business man is. He has also made the statement that when they walk out the door they are no longer his problem. Until he is made to participate, I think you are spinning your wheels. It is our opinion that the 90-day review is not being done and that it has been over a year since the last review.

Ms. Johnson-Pfeiffer clarified that the Planning Commission is a land use commission and she is listening for comments that are within the scope of the Planning Commission and what they are allowed to refer to the City Council. From a land use perspective looking at the scale and size of businesses allowed in the CBD, she was more comfortable with targeting any type of business by saying that 20,000 feet of any type of business is too big for the CBD, she said she was less comfortable with a conversation that says 20,000 square of nightclub use. From a licensing perspective, if the conversation is how you administer a license; that is not within the Planning Commission's scope. Ms. Johnson-Pfeiffer referred to Mr. Newman's comment about Windjammer Park. She noted that all of the downtown development is predicated on the mixed use concept which is in the Comprehensive Plan. We have built this entire downtown concept on this idea that life in urban areas can be consolidated living. She was concerned that land use decisions will be made on a particular problem and that would be in contradiction to this value that is in multiple documents in the City, that we want people to work and live in the same area. The bigger problem for the City is how do you keep integrating these types of uses and if these uses are incompatible and if the community is saying we don't like our businesses where our residential is then there is a bigger picture problem in terms of what our foundation document is which is that we want all of this infill and mixed use living. Reaction to one situation isn't okay in terms of a land use perspective. Ms. Johnson-Pfeiffer said that she had fundamental concerns where anything that is specific about one individual's behavior dictating land use. So if it is an Element problem she was not sure that that conversation should be a land use conversation. She has concerns that even happened and thought that a specific problem with a specific business needs to be dealt with appropriately and not dealt with a broad brush like this. She summarized, if we don't want mixed use as a community that is the conversation, and we need to look at our source documents and the second part is that if we don't want 20,000 square feet of retail or anything else, then deal with the size and not a specific use.

Richard Everett (651 SE Bayshore Drive) said that their comments were made so that the Planning Commission would understand the nature of the problem and to encourage the

Planning Commission to find a solution in the Planning Commission's domain that would support the City Council and the objectives of the City. Mr. Everett said that he hoped the Planning Commission would say to the City Council that you perceive obvious problems with mixed use and he didn't think there would be cut and dry rule for all situations. He suggested that the Planning Commission say to the Council that you need support in achieving your goals by making a 90-day review on establishments that clearly indicate conduct that is inappropriate. There are a lot of good businesses down there and I would support their existence and location.

Paul Newman (886 SE Bayshore Drive) said that Ms. Johnson-Pfeiffer has made some important points. He began thinking that this was a land use decision and that is one of the reasons he was here. He said Element is simply the first example of what can go wrong and dealing with that will prevent things from happening in the future. The second more important thing is the mixed use concept. He wanted Windjammer Park to be what it is suppose to be and the mixed use concept may be a more important thing. If you have retail below and people above and the business district evolves in that fashion I guarantee you Element and any other operation like it is going to become more and more of a thorn in everybody's paw. The more mixed use you have the bigger problem you are going to have and the more people you are going to see here inevitably. Other tavern owners have testified that it is the size and volume of it. Whether the owner is the corporate citizen he ought to be is a point we can debate but it is not the relevant part. The fundamental inherent quality of the size and scope of Element or any place like it is going to be at odds not just with Windjammer Park but with the mixed use development as a whole.

Mr. Oliver asked if the size limitation is adopted, how that would affect businesses that are in that district now. Mr. Kamak said that if we take that approach we would have to decide where the restriction would be, whether it will be in the land use section or will the restrictions be in the business license section. If current license holders will be impacted we may have to amend that section as well, to address the issue of what the consequences are for existing nightclub license holders. Either they will be non-conforming, which means that they can continue to exist in their current capacity but won't be able to expand any further, only minor modifications will be allowed. Any restrictions that we may consider will not directly impact existing uses.

Mr. Wallin commented that it comes down to the annual license review or the 90-day license review and that most of the other businesses conform to a certain standard and Element is not. He thought that the initial problem can be addressed through the license review process. Mr. Wallin asked if the license were revoked would they be forced to close their doors at 10 p.m. and would it alleviate the problem of 100 people coming out the door a two in the morning.

Mr. Kamak said that there was more frequent police reporting on Element and the police chief gives a report to the City Council and City Council gets to choose whether they want to renew the license. Mr. Kamak said he would have more information at the next meeting. Mr. Kamak said that Element could continue to operate as a business and if they don't have singing, dancing or a combination thereof after 10 p.m. they could continue to use the space, they just can't do it after 10 p.m., that is where they need the nightclub license. Mi Pueblo is a restaurant and can continue to operate as a restaurant without the nightclub license. The license is just another layer on top. If music and dancing is integral to the business and the license is removed, whether they will be able to sustain themselves is a question I cannot answer. When Element started they were a restaurant and then they had some recreation and amusement elements and then the space changed over time. That is the other challenge that we have with some of the uses in downtown. During certain hours they are a certain use and like to have tables and chairs and be a restaurant and when that is not sufficient to pay the bills they add on

extra uses of that space where they can move the tables and now they have room for dancing and music. The mixture of uses gives the business a choice on whether they want to apply for the nightclub license or not.

Mr. Oliver asked what size would not be disruptive to the residences.

Kelly Beedle (940 SE Pioneer Way) said that her place was 1,440 square feet which is plenty of room and she asked how the City could control the size of a building that someone buys or rents.

Darnell Allen (7-West business owner) said that his business is 1,400 square feet and hold 117 people maximum.

Mr. Oliver said that it sound like controlling 100 to 150 people is controllable and that anything above that is difficult. Mr. Allen agreed.

Ms. Johnson-Pfeiffer said that she would not be opposed to having nightclubs listed as a specific land use item with a strict definition that would need to be fleshed out.

Mr. Fakkema thanked the citizens for their participation and noted how important their input is.

Mr. Kamak echoed the same and said that at the next meeting we will try and address some of the concerns and provide options to consider.

Mr. Wallin asked for size information on all of the current nightclubs for the next meeting.

Mr. Fakkema closed the public meeting.

SIGN CODE – Public Hearing

Mr. Spoo explained that the item before the Planning Commission tonight is simply a notification to Planning Commission that staff will be requesting that City Council renew the interim sign code for another six-month period. Staff will return to Planning Commission with the draft temporary sign code in May. The draft temporary sign code will include comments voiced at the March Planning Commission meeting.

Mr. Spoo recommended that Planning Commission hold a public hearing to take testimony regarding extending the interim sign code for an additional six-month period. Any public testimony will be included in information forwarded to the City Council. Another public hearing will be conducted before the City Council when extension of the interim sign code is considered.

Mr. Fakkema asked if the Planning Commission needed to recommend that the City Council extend the interim sign code. Mr. Spoo said that it isn't necessary because it the interim code has been in place for almost a year and they will only be extending it for another six months.

Mr. Fakkema opened the public hearing for public comment, seen none he closed the public hearing.

SHORELINE MASTER PROGRAM (SMP) – Public Meeting

Mr. Spoo explained that the SMP project has been an ongoing since 2010. Staff have provided several updates to the Planning Commission in pre-meetings and at the regular meeting since 2010. This introduction marks the formal start of discussions and consideration of the shoreline

ATTACHMENT

3

**City of Oak Harbor
Planning Commission Memo**

Date: June 26, 2012

Subject: Restricting size of Nightclubs
by zoning districts

FROM: Cac Kamak, AICP
Senior Planner

PURPOSE

This is a continuation of the discussion on the request to consider restricting nightclubs based on size. The Planning Commission held a public meeting at the April 24, 2012 meeting and obtained public input on this issue. Speaking to this issues were several members in the public that represented residences adjacent to nightclub licensed establishments, nightclub licensed establishment owners and nightclub patrons.

DISCUSSION

In reviewing the public comments and input from the April 24th Planning Commission meeting, we can determine certain key factors. Listed below are some of these factors which may eventually help in regulating the impacts of large nightclubs:

- Understanding by the public that adoption of any new codes may not change the operations of current nightclubs
- Small scale establishments that have nightclub licenses such as the Oak Harbor Tavern and Seven West don't seem to be a negative impact on surrounding areas
- Only the large scale establishments that have a nightclub license seem to have impacts
- Almost all the complaints heard at the public meeting were related to a specific nightclub (the Element).
- The impacts identified were primarily about noise created by large groups of people, loud cars, trespassing, 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 restricting specifically nightclubs as opposed to general uses in a district

It seems evident from the public input gathered that the scale of nightclubs and the number of people that they can accommodate has a direct nexus to the negative impacts on adjacent properties. Therefore the success of any solution would seem to be directly related to the ability of any proposed regulation to restrict the number of people that can patronize such an establishment on any given night. There are potentially several ways to address this issue and a few methodologies are discussed below.

1. **Regulate nightclubs as a land use:** There were several comments received at the public meeting on amending the zoning code to include nightclubs as a use in certain zoning districts and requiring such uses to obtain a Conditional Use Permit.

- Pros: Requiring a nightclub to obtain a conditional use permit is a public process that will require public hearings and therefore adjacent property owners will have an opportunity to comment on the permit. This will allow the Hearing Examiner to consider impacts and impose appropriate conditions on the use.
- Cons: It is possible for a nightclub to be approved if the proposed use meets all the identified criteria and still be an impact on the adjacent properties. It is then a difficult and legally challenging process to identify and document violations of conditions of approval and to revoke the conditional use permit.

Under the current structure of the code, where any use can obtain a nightclub license, defining nightclubs separately in the zoning ordinance will add an extra layer of confusion. For example, would a restaurant (currently listed as a use) wanting to apply for a nightclub license be considered as a restaurant or as a nightclub? The requirements for these from a building code and zoning code stand point are different and review of these permits can be challenging. Situations such as these can potentially create legal loop holes.

2. **Licensing uses by area:** This idea was included in the last memo to Planning Commission as a potential option to follow. This idea would keep all the current codes in place and add an area threshold to OHMC Chapter 5.22, Business Licenses & Regulation. For instance, only structures/spaces below 5000 square feet are eligible for nightclub licenses.
 - Pros: This will definitely limit the size of building or use that can apply for a nightclub license.
 - Cons: This option may not address the actual impact of large groups of people generated from nightclubs because occupancy limits vary based on primary use and interior features/fixtures of the building. Therefore, there is a high probability that a 5000 square feet space can vary in occupancy limit ranging from 50 to 500. For example, a restaurant under 5000 square feet and a occupant limit of 120 can apply for a nightclub license and so can a piano bar under 5000 square feet and a occupant limit of 400. So, although the square footage is the same, the occupancy limits can vary substantially.
3. **Licensing uses by occupant limit:** Using occupancy limits to restrict nightclubs was discouraged in the last memo to Planning Commission. However, further discussion with the City's Building Official has indicated that occupancy limits can be used creatively to regulate nightclubs. The use of occupancy limits was discouraged earlier because it would not be feasible to implement a regulation that limited nightclub license holders to certain occupancy limits. For example, if the City adopted a code to limit all nightclubs to an occupancy limit of 100, and if a restaurant that has an occupancy limit of 150 applies for a nightclub license, the City cannot now require the restaurant to maintain a occupancy limit of 100 which is less than the approved occupancy limit for the primary use (restaurant). However, the City can adopt a code that sets an occupancy limit threshold to apply for the nightclub license. For example, the code can restrict nightclub

licenses to only uses that have an occupancy limit of 100 or less. Therefore the restaurant in the above example that has an occupancy limit of 150 will not be able to apply for a nightclub License.

- Pros: This will get to the heart of the impacts created by large nightclubs and will therefore limit the concentration of people in one location.
- Cons: This will limit the buildings and uses that can apply for a nightclub license and has the potential to create many small nightclubs that can still have a cumulative impact in an area.

CONCLUSIONS

From the above information it appears that regulating nightclub licenses based on an occupancy limit threshold may address the impacts that adjacent property owners and residences feel from large nightclubs. If the Planning Commission feels that option 3 is the best course of action, code amendments related to it would go directly to City Council since the amendment would be in OHMC Chapter 5.22, Business Licenses & Regulation, and not in OHMC Title 19, Zoning.

Minutes

**Planning Commission
July 24, 2012**

have that option out there and we have a responsibility as a community to think through these types of needs as well.

Mr. Wallin said that the Planning Commission should continue the public hearing to next month's regular Planning Commission meeting to allow the public an opportunity to review the staff report.

Mr. Powers said that continuing the hearing was possible and staff would mail the staff report to those wishing to receive a copy.

ACTION: MR. OLIVER MOVED, MR. WALLIN SECONDED A MOTION TO CONTINUE THE FAIRWAY POINT PRD MODIFICATION TO CONSIDER ADU'S AGENDA ITEM TO NEXT MONTH'S PLANNING COMMISSION MEETING. MOTION CARRIED.

Planning Commission took a 5 minute break.

NIGHTCLUB ORDINANCE – Public Meeting

Mr. Kamak reported that this is a continuation of the discussion to regulate the size of night clubs. Mr. Kamak highlighted several items discussed at the previous meeting and noted that the result of the public input at the last meeting was that the scale of nightclubs and the number of people that they can accommodate has a direct nexus to the negative impacts on adjacent properties. Therefore the success of any solution would seem to be directly related to the ability of any proposed regulation to restrict the number of people that can patronize such an establishment on any given night. Mr. Kamak presented the following methodologies for addressing the issue as well as some pros and cons for each:

1. **Regulate nightclubs as a land use:** Several comments received at the public meeting on amending the zoning code to include nightclubs as a use in certain zoning districts and requiring such uses to obtain a Conditional Use Permit.
 - Pros: Requiring a nightclub to obtain a conditional use permit is a public process that will require public hearings and therefore adjacent property owners will have an opportunity to comment on the permit. This will allow the Hearing Examiner to consider impacts and impose appropriate conditions on the use.
 - Cons: It is possible for a nightclub to be approved if the proposed use meets all the identified criteria and still be an impact on the adjacent properties. It is then a difficult and legally challenging process to identify and document violations of conditions of approval and to revoke the conditional use permit.

Under the current structure of the code, where any use can obtain a nightclub license, defining nightclubs separately in the zoning ordinance will add an extra layer of confusion. For example, would a restaurant (currently listed as a use) wanting to apply for a nightclub license be considered as a restaurant or as a nightclub? The requirements for these from a building code and zoning code stand point are different and review of these permits can be challenging. Situations such as these can potentially create legal loop holes.

2. **Licensing uses by area:** This idea was included in the last memo to Planning Commission as a potential option to follow. This idea would keep all the current codes in place and add an area threshold to OHMC Chapter 5.22, Business Licenses &

Regulation. For instance, only structures/spaces below 5000 square feet are eligible for nightclub licenses.

- Pros: This will definitely limit the size of building or use that can apply for a nightclub license.
- Cons: This option may not address the actual impact of large groups of people generated from nightclubs because occupancy limits vary based on primary use and interior features/fixtures of the building. Therefore, there is a high probability that a 5000 square feet space can vary in occupancy limit ranging from 50 to 500. For example, a restaurant under 5000 square feet and a occupant limit of 120 can apply for a nightclub license and so can a piano bar under 5000 square feet and a occupant limit of 400. So, although the square footage is the same, the occupancy limits can vary substantially.

3. **Licensing uses by occupant limit:** Using occupancy limits to restrict nightclubs was discouraged in the last memo to Planning Commission. However, further discussion with the City's Building Official has indicated that occupancy limits can be used creatively to regulate nightclubs. The use of occupancy limits was discouraged earlier because it would not be feasible to implement a regulation that limited nightclub license holders to certain occupancy limits. For example, if the City adopted a code to limit all nightclubs to an occupancy limit of 100, and if a restaurant that has an occupancy limit of 150 applies for a nightclub license, the City cannot now require the restaurant to maintain a occupancy limit of 100 which is less than the approved occupancy limit for the primary use (restaurant). However, the City can adopt a code that sets an occupancy limit threshold to apply for the nightclub license. For example, the code can restrict nightclub licenses to only uses that have an occupancy limit of 100 or less. Therefore the restaurant in the above example that has an occupancy limit of 150 will not be able to apply for a nightclub License.
- Pros: This will get to the heart of the impacts created by large nightclubs and will therefore limit the concentration of people in one location.
 - Cons: This will limit the buildings and uses that can apply for a nightclub license and has the potential to create many small nightclubs that can still have a cumulative impact in an area.

Mr. Kamak pointed out the occupancy limits of existing nightclub license holders as follows:

El Cazador - 291
 Oak Harbor Tavern - 108
 Mi Pueblo - 280
 7 West – 165
 Off the Hook – 201
 Elements – 580 +219 (covered area)

Mr. Kamak concluded that it appears that regulating nightclub licenses based on an occupancy limit threshold may address the impacts that adjacent property owners and residences feel from large nightclubs. If the Planning Commission feels that Option 3 is the best course of action, code amendments related to it would go directly to City Council since the amendment would be in OHMC Chapter 5.22, Business Licenses & Regulation, and not in OHMC Title 19, Zoning.

Mr. Kamak asked the Planning Commission for their recommendation on the methodology that should be use.

Mr. Oliver pointed out that he was representing Mr. Kumberfelt in a couple of real estate transactions as well as a couple of people in the Bayshore Condominium Association. He asked the public if they cared to hear what he had to say.

Mr. Powers noted that this was not a quasi-judicial proceeding so if this is a code amendment it is legislative so this is not focused on a particular piece of property.

A member of the public asked if it was appropriate for Mr. Oliver to recuse himself from voting on the issue and that he would like to hear what Mr. Oliver has to say but was a little reluctant to have him voting on the issue.

Mr. Wallin asked if whatever is decided would have no effect on what Element has currently. Mr. Powers said that was correct. Mr. Neil said this would affect new nightclubs.

Mr. Wallin asked if the City be creating two different occupancy licenses if occupancy load was used as the criteria. Mr. Kamak said yes, we could regulate by zoning districts. You could have a limitation in occupancy depending on the zoning district.

Ms. Johnson-Pieffer asked if Option 3 would mean that a business would have to choose whether it was applying for a restaurant license or a nightclub license. Mr. Kamak said that when a business comes in for a building permit they are applying for a particular use such as a restaurant perhaps, the building official will review the plans against the building code and establish what the occupancy load for that restaurant is which sets the limit. If later the restaurant determines that they want live music and extend the use they would come in a get a license on top of what they already have. So the established occupancy load for the primary use would apply. Ms. Johnson-Pieffer asked if a 400 capacity restaurant was applying for a nightclub license restricted to capacity of 300 would they be denied a nightclub license. Mr. Kamak said they would have to be qualified to even apply. If they wanted the nightclub license they would have to redesign the interior space to meet the building code. They would have to make substantial changes to their capacity in order to accommodate the nightclub. Mr. Powers noted that there is no language crafted yet and that so far we are only discussing the methodology.

Mr. Oliver asked if an established nightclub were to sell and we have set the occupancy load at a lower level how will the new business owner be affected. Mr. Kamak said that the new owner would have to apply for a new license and in that case we can either write a code that would allow the continued use of existing businesses or we can do it by location. These are details that would need to be worked out if this methodology is chosen.

Ms. Johnson-Pieffer said she did not support the conditional use permit methodology (Option 1) because she felt it was too volatile and was not a predictable enough process for a business model to operate in.

Mr. Neil asked for public comment.

Richard Everett (651 SE Bayshore Drive) asked how the occupancy limits would be developed. Mr. Powers said that the occupancy load was a function of the building code and the fire code. It is prescribed based upon uses, exits, construction materials, hallways and a variety of life safety issues. Mr. Everett said that he felt an occupancy load of 800 was too high regardless of what the code says especially when patrons are drinking. He also pointed out the tragedy in

New Jersey in which many people were burned to death. Mr. Powers noted that the fire code was changed as a result of that tragedy. Mr. Powers also pointed out that the numbers are calculations and there is a difference between what the capacity is and what normally happens and the practical limitations. Mr. Powers said that we are not in a position to change what the occupancy loads are and this is not a subject of discussion this evening.

Mr. Everett said that in 2007 the condominium residents recommended that the City Council not authorize formation of the Element in that area and Captain Wallace made a statement for the record that he advised against it because it exposed the City to continuing problems from the mass of people that were going to be coming out of the club and the proximity of residents. Captain Wallace's arguments were brushed aside and here we are four years later with this dilemma still before us. He implored the City to use whatever power it has to do something constructive about it. The Element is impacting the residents and others in terms of health, welfare and economic loss. It should never have been and has got to cease as soon as possible.

Billie Cook (651 SE Bayshore Drive) said that a small business district was never meant to bear the use or the impact of a mega-nightclub in like this. She asked if this was the image that we want to project in our mixed use business district of large nightclubs that have violence, drunkenness and lewd behavior that goes on there all the time. In other parts of the county these mega nightclubs are referred to as "roadhouses" where the venue is very loud and excessive drinking and finding a date or "hooking up" is the goal. She stated that she didn't feel that people who frequent the "roadhouse" or mega-nightclub are criminals or wrong in any way but that she didn't want them in her front yard. She asked if we wanted more of them in an area that we present to tourists, many whom are family-oriented or older visitors that don't feel comfortable with that venue. Is this the image that we want to present to attract businesses and jobs? Ms. Cook believed that there should be a limit on the size of nightclubs in the Central Business District (CBD) because it is too small for the impact of the mega-nightclub. Along with a limitation on the size the CBD she hoped there would be some action taken to designate an area where the mega-club can operate.

Mr. Oliver asked what Ms. Cook thought the best occupancy limit would be for the CBD. Ms. Cook thought the limit should be 100 but maybe 200.

Planning Commission Discussion

Mr. Oliver said that the problem with anything that people do in the business world is what they offer and he wasn't sure how to address this issue. Mr. Kamak said that the nexus is large groups of people create impacts and that is what we are trying to address. Mr. Oliver asked if there was a count that can be gauged. Mr. Kamak said that if the Planning Commission chooses occupancy load as a methodology the mission would be to see how we can write a code that would address the impacts to prevent large users from obtaining nightclub licenses. The occupant loads are based on their current uses and not based on nightclubs. They are based their underlying use and that is a limitation established by the building code, so that will determine whether they can apply for a nightclub license or not. We are not limiting the number of people in a particular building by the nightclub license we are saying who can apply for it so larger users may not be able to apply for it. Or if the community wants to choose a special process that will accommodate the larger uses we would have to write that into the code as well.

Mr. Wallin noted that Mi Pueblo has a particular room that is designated as the nightclub area and asked if each of their rooms has a separate occupancy load. Mr. Powers said yes and that it is a combined occupancy. Mr. Powers restated that the mission tonight is to get a consensus

on which of the three options that the Planning Commission would like staff to pursue and then staff will start trying to answer these questions.

Ms. Johnson-Pieffer said that she liked the combination of zoning and occupancy but that she believed that it doesn't matter what zone you put the nightclub in you are going to have the same problem but we can't just say that we don't want them. There are members of the community that do use these establishments and we have a responsibility to allow these types of businesses to exist. Mr. Kamak said that he didn't think limiting the occupancy load is denying a certain type of business but just the size.

Mr. Neil said he would like staff to pursue Option 3 - Licensing uses by occupant limit method.

Mr. Wallin said he would like a combination of occupancy limit tied to the specific zones.

Mr. Oliver said he prefers the occupancy limit but not tied to the specific zone. Mr. Kamak said it was possible to have different occupancy limits in the different zoning districts and it will be a business license requirement. By saying in the license requirement that any business with an occupancy load of greater than 200 in the CBD is prohibited from applying for a license, that will limit the number in the CBD. You can say no business greater than 400 in the C-3 zone is permitted to apply for the nightclub license. You can have that staggering in varying zoning districts if you choose. So therefore you are not limiting or you can say in no zoning district shall be greater than 200, it is a community choice.

Ms. Johnson-Pieffer liked that approach and asked if you put a 100 person limit in the CBD and you had a business that broke their building into three separate rooms in which they had a hip-hop nightclub, a county/western club and a ballroom dancing each in a separate space that had the same 100 person occupancy limitation in each room and the same hours and they all left that facility at the same time we won't have accomplished anything. Mr. Kamak said that was correct and that is the risk. The entire downtown could have nightclubs but those businesses would have to be separate from a building code standpoint.

Mr. Oliver asked how the occupancy load is calculated. Mr. Kamak said it was calculated by each business. Each business has to be separate. We are not limiting by area within the building we are calculating by the entire business's occupancy load.

Mr. Neil confirmed with the Planning Commission that they were directing staff to pursue option 3 – Licensing uses by Occupancy Limit with some consideration to zoning.

Mr. Kamak said that since the Planning Commission wishes to consider zoning categories it will still be in the Planning Commission's realm to make a recommendation. If the Planning Commission had said just occupancy load and not zoning it would no longer have been a Planning Commission issue and only a City Council issue.

Mr. Oliver suggested thinking about barriers to mitigate sound also. Mr. Kamak said that could be considered as part of the licensing requirement.

Staff and Planning Commission discussed how to handle the remaining items on the agenda and decided to hold a special meeting on Monday, August 13, 2012 at 5:00 p.m. to discuss the Shoreline Master Program Update and the 2012 Comprehensive Plan Amendments.

ADJOURN: 10:30 p.m.

ATTACHMENT

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**City of Oak Harbor
Planning Commission Memo**Date: September 25, 2012Subject: Restricting size of nightclubs by zoning districts**FROM:** Cac Kamak, AICP
Senior Planner**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 exist 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 limits¹. 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.

Business	Zoning District	Occupancy Limit
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.

¹ 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:

Zoning District	Occupancy Limits
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.

Minutes

**Planning Commission
September 25, 2012**

MOTION: MR. WALLIN MOVED TO RECOMMEND THAT THE ORDINANCE BE APPROVED AS PRESENTED. MS. JOHNSON-PHIEFFER SECONDED THE MOTION.

Planning Commission Discussion

Ms. Johnson-Pfeiffer asked if was possible to allow ADU's in the four lots that do not abut existing homes.

Mr. Powers suggested adding "shall only occur on the four southern lots" to the end of Section Two. The lots would be identified by lot number.

ACTION: MR. WALLIN WITHDREW HIS MOTION. MS. JOHNSON-PHEIFFER WITHDREW HER SECOND.

ACTION: MS. JOHNSON-PHEIFFER MOVED, MR. WALLIN SECONDED TO RECOMMEND THAT CITY COUNCIL APPROVE THE ORDINANCE WITH THE ADDED LANGUAGE THAT ADU'S SHOULD ONLY OCCUR ON THE FOUR SOUTHERN LOTS. MOTION CARRIED UNANIMOUSLY.

Mr. Powers noted for the record that the four lots would be identified by lot number in the ordinance so that it is clear which lots the Planning Commission is referring to.

Mr. Fakkema returned for the remainder of the meeting.

NIGHTCLUB ORDINANCE – Public Meeting

Mr. Kamak reported that this is a continuing discussion that started in April of this year. Mr. Kamak presented the attached PowerPoint presentation (PC ATTACHMENT 1) which provided the information presented to-date, public input to-date and options considered. Planning Commission directed staff to pursue the option to license nightclubs by occupancy limit. Mr. Kamak presented the idea of licensing nightclubs by occupancy limit in the various zoning districts based on the intent of the zoning district as follows.

- CBD – pedestrian emphasis, mixed uses, residential – lowest occupancy limit (most restrictive)
- C3, - workhorse commercial, auto intensive, mixed uses, residential upper floors – same as CBD or higher (less restrictive)
- C5, - Highway Corridor, auto oriented, mixed uses, residential upper floors – same as CBD or higher (less restrictive)
- PIP, PBP – Planned Developments, no residential (less or no restrictions)
- I, - Industrial, no residential (less or no restrictions)

Mr. Kamak noted that there are no national standards or best solution and that the decisions are community driven.

Mr. Kamak displayed the occupancy limits of existing nightclub license holders to use as a starting point for considering what the occupancy limit should be in the various zoning districts:

- El Cazador – 291 – no impacts reported
- Oak Harbor Tavern – 108 – min impacts
- Mi Pueblo – 280 – less impacts

- 7 West – 165 – min impacts
- Off the Hook – 201 – min impacts
- Elements – 580 +219 (covered area) – most impacts

Mr. Kamak explained that occupancy limits are determined by the use and how the spaces in the building are allocated. Staff is proposing that if an occupancy limit is greater than the number that the Planning Commission selects tonight you cannot apply for a nightclub license. If a current business is more than the limit that the Planning Commission selects then they become non-conforming license holder. Specific language for dealing with non-conforming license holders would have to be written. Options are: allow them to continue to operating as they are in a non-conforming status as long as they remain under the same ownership or allow X number of years to become compliant (20 to 40 years). The specific language will require legal assistance and is not a land use issue and not under Planning Commission's review authority however, the Planning Commission can choose to make a recommendation or not to make a recommendation on this.

Mr. Fakkema asked for public input.

Billie Cook (651 SE Bayshore Drive) read her comments (PC ATTACHMENT 2).

Vernon Meyers (651 SE Bayshore Drive) said he received the staff report by mail and reviewed it and his first thoughts were that someone has really put a lot of work into this and he wanted to thank them for listening. He was happy that the City is aware of the situation and is responding to their concerns. He asked the Planning Commission, when making their decision, to think about how they would feel living next to the business.

Planning Commission Discussion

Mr. Fakkema asked if Industrial or Planned Industrial Park zoning districts are next to residential properties and if they are, should distance requirements be included. Mr. Kamak said that the zones are next to residential properties and that distance requirements could be included. The distance requirement can be tricky if there are several and whoever comes in last can't meet any of the distance requirements. This can be unfair. Many cities that have distance requirements are facing challenges.

Mr. Fakkema voiced concern about creating a situation where there will be an impact on residential uses. Mr. Kamak said that is the challenge, the fact that the property is zoned Industrial and that there are residential uses adjacent to it, that impact can happen whether we implement this code revision or not. Industrial properties exist with certain intensity or with the potential of certain intensity already so we are acting within that zoning intensity and classification.

Ms. Johnson-Pfeiffer asked if the Central Business District (CBD), C3 and C5 all allow mixed use. Mr. Kamak acknowledged that they do allow mixed use.

Mr. Kamak displayed the following table to give a starting point for setting a capacity limit for each zoning district

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

Mr. Fakkema asked where the 30% was derived. Mr. Kamak explained that he increased it by 100 which equated to about 30%. From a gradation standpoint as you go higher in intensity that seems to be a reasonable increase between zoning districts.

Mr. Kamak displayed the zoning map to give the Commission an idea of where the zoning districts are located.

Mr. Powers asked Mr. Kamak if the Commissioners could assume that the numbers are a maximum number subject to the building to support that occupancy based upon the Building Code and the Fire Code. Mr. Kamak said that was true and the occupancy limits were not negotiable and are fixed by the Building Code and the Fire Code. This does not mean that just because we decide to set the maximum limit at 400 for a nightclub license that anyone that has a license can have up to 400 people, they are still limited by what the building occupancy load can support.

Ms. Johnson-Pfeiffer asked if there was a reason for recommending the incremental increases rather than setting at the same number anytime there is residential and commercial use mixed together. Mr. Kamak explained that the City of Oak Harbor zoning districts gradually increase in intensity so there is a natural understanding that the uses are also getting more intense and therefore it is logical to consider increasing intensity for such uses as well.

Commissioners discussed the commercial areas and the noise impacts on adjacent residential areas along Midway Boulevard. Mr. Kamak noted that if a business owner has an occupancy load of 600 in the CBD they won't qualify for a nightclub license if the City adopts a capacity limit of 300 in the CBD. Mr. Fakkema asked if that business owner were to split the building in half could he apply. Mr. Kamak said he could and the owner would have to submit the building plans, calculations and what the business is and then staff would calculate the new occupancy load based on the information provided and if that falls under 300 they can apply for a night club license.

Mr. Kamak also noted that the Planning Commission isn't obliged to use the progression and that they could choose another method.

Planning Commissioners discussed the police enforcement limitations if allowing a limit of 500 or no limitation. Mr. Kamak said that when we say no limitation we are not putting a restriction on the size of a business in the PBP, PIP and Industrial can apply. The size of a business will be market driven for a city of our size. Mr. Powers also noted that there are site development drivers such as parking and stormwater. The more parking the more stormwater will have to be handled. The number of parking spaces required is a function of the size of the building so there are more limitations than just what the occupant load is, there will be the economics of developing the site plus the economics of having a business.

Mr. Kamak also reminded the Planning Commission that the Code doesn't allow any new residential uses north of NE 16th Avenue.

Planning Commissioners settled on the following limitations and to not make a recommendation regarding dealing with non-conforming license holders:

Zoning District	Planning Commission Recommendation
Central Business District	300
C3, Community Commercial	300
C5, Highway Corridor Commercial	400
PBP, PIP	No limit
I, Industrial	No limit

SHORELINE MASTER PROGRAM (SMP) UPDATE – Public Meeting

Mr. Spoo explained that this is a continuing discussion of the SMP and the goal is to move toward making a recommendation to City Council tonight if Planning Commission is ready after the presentation and discussion.

Mr. Spoo asked Planning Commission what their preference was for a review of the chapters or to skip the review and go into the Department of Ecology (DOE) required changes and then to talk about chapters that the Commission may have questions on. Commissioners preferred a presentation of the DOE required changes.

Commissioners asked if the changes had to be made or could the City take a stand against something we don't agree with. Mr. Spoo said that other cities have taken a stand on some things and have been successful and unsuccessful at times but that DOE has final approval authority.

Mr. Spoo gave an overview of the Department of Ecology required changes. One of the changes regards how we are treating critical areas (wetlands, steep slopes, and fish and wildlife conservation areas along marine shorelines). DOE has requested that when we adopt the SMP to include our Critical Areas Ordinance (CAO) as an appendix. However there is one change. Initially DOE asked that a redline version be attached to the SMP but this creates confusion so staff is proposing to substitute the red-line version of the CAO with the CAO without the redline so there are not two versions of the CAO. So any planner or citizen can see that the CAO is adopted and attached to the SMP without any changes. If there are areas where the SMP and the CAO conflict, that will be called out in the body of the SMP. This occurs in Chapter 3, Section 4 of the SMP where the SMP talks about the CAO and how it relates to the SMP and item number 4 identifies exceptions in the CAO. Exceptions to applicability are:

ATTACHMENT

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**City of Oak Harbor
Planning Commission Memo**

Date: September 24, 2013

Subject: Amendments to OHMC 5.22
Nightclubs

FROM: Cac Kamak, AICP
Senior Planner

PURPOSE

The City received a request in early 2012 to consider restricting nightclubs based on size. The request stemmed from the large number of people patronizing nightclubs creating impacts (noise, loitering, etc) to the surrounding uses. The request to amend the regulations was made by residents living in the Central Business District. The request was to regulate the size of uses that have a nightclub license by the zoning district in which they are located. The request was also supported by the Oak Harbor Police Department.

BACKGROUND

The Planning Commission was introduced to this issue on April 24, 2012 (Attachment 2). The Commission discussed the issue and received public input at the meeting. Speaking to this issue 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 in the June 26, 2012 report to Planning Commission (Attachment 3)¹.

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 July 24, 2012 meeting, the Planning Commission discussed various methodologies to determine how to address the impacts. The Planning Commission determined that occupancy limit was an effective methodology in limiting the size of business that can apply for a nightclub license based on the zoning district.

At its September 25, 2012 meeting, the Planning Commission further discussed the issue and provided input on the size thresholds of occupancy limits for nightclubs in various zoning districts. The thresholds based on the discussion are provided below:

Zoning District	Occupancy Limits
Central Business District	300
C3, Community Commercial	300
C5, Highway Corridor Commercial	400
PBP, Planned Business Park	No limitations
PIP, Planned Industrial Park	No limitations
I, Industrial	No limitations

¹ The June 26, 2012 Planning Commission was cancelled therefore the agenda packet for the June 26, 2012 was reused for the July 24, 2012 meeting.

The Planning Commission reports and associated minutes have been included as attachments to update the commission on this amendment.

DISCUSSION

While the Planning Commission was discussing the issue of nightclubs in relation to zoning districts, the City's legal department and the police department were looking at the licensing conditions and procedures of the nightclub ordinance. Several amendments were generated from their review and have been included with this review process. Their review includes amendments to issuance restrictions, license conditions, violations, expansion of the license revocation process to include proceedings with the Hearing Examiner and other clarifications.

Since the last time the Planning Commission reviewed the proposed amendments, a few nightclub license holder businesses have closed (Element, Seven West). Currently there are four businesses that have a nightclub license. They are Oak Harbor Tavern, Mi Pueblo, Off the Hook and El Cazador. The proposed amendments, if approved, will not impact any of these current businesses and all of them would be legally conforming (in terms of size) in their respective zoning districts.

RECOMMENDATIONS

- Conduct a public hearing.
- Recommend approval of the draft ordinance amending OHMC Chapter 5.22, Nightclubs, to the City Council.

Attachments

1. OHMC 5.22 Nightclubs – strikeout version with amendments
2. Planning Commission report April 24, 2012 and associated minutes
3. Planning Commission report June 26, 2012² and associated minutes of July 24, 2012
4. Planning Commission report September 25, 2012 and associated minutes

² The June 26, 2012 Planning Commission meeting was cancelled therefore the June 26, 2012 packet was reused for the July 24, 2013 meeting.

VOTE ON:

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

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

AMENDMENTS TO OHMC 5.22 – NIGHTCLUBS – Public Hearing

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

Mr. Fakkema opened the public hearing.

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

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

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

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

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

Seeing no further public comment the public hearing was closed.

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

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

ECONOMIC DEVELOPMENT STRATEGY – Public Hearing

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

Request to restrict by size and zoning

Nightclubs

Nightclubs

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

Nightclubs

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

Nightclubs

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

Nightclubs

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

Nightclubs

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

Nightclubs

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

Nightclubs

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

Nightclubs

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

Nightclubs

- Occupancy limits suggested by Planning Commission

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

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

Nightclubs

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

ATTACHMENT 5
ATTACHMENT 3

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

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

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

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

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

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

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

City of Oak Harbor City Council Agenda Bill

Bill No. 6.b.
Date: October 15, 2013
Subject: Resolution No. 13-24 Health
Insurance Plan Changes


FROM: Larry Cort, City Administrator
Cheryl Lawler, Human Resources Manager

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

 Scott Dudley, Mayor
 Doug Merriman, Finance Director
____ Grant Weed, Interim City Attorney, as to form

PURPOSE

This agenda bill presents a proposed Resolution that would, if approved, change the health insurance plan choices available to eligible employees at the City of Oak Harbor. It would also direct staff to begin implementation of these changes for the 2014 benefit year.

SUMMARY STATEMENT

For almost a year, the City Administration and Council have been assessing the financial picture of the cost of providing quality health insurance coverage for eligible City workers. Over the past six months, in a series of public workshops, the Administration and Council have been working together to consider potential options for maintaining good quality health care while also addressing the stark economic reality of costs that are rising much quicker than new revenues to pay for those costs.

In accordance with Section 2.34.085 of the Oak Harbor Municipal Code, the City's health benefit policy is to provide levels of coverage comparable to benefits provided by other Washington cities. Further, this section states that such health benefits "promote the health and well-being of city employees, reduce the use of sick leave, and promote employee retention." These and other objectives have been discussed and considered by the City Council in workshops over the past few months.

As part of their review and analyses, and for consistency with the health care policy noted above, the City Council requested information on comparing total compensation (health benefits, wages, vacation, etc.) with other cities, on the immediate and long-term impact of the federal Affordable Care Act, on different plan options available through the Association of Washington Cities (AWC) Benefit Trust and on aggregated employee participation levels in our current health plan. Most of this information was presented at a Council Workshop on July 15, 2013, with Carol Wilmes of AWC presenting the Affordable Care Act and Plan Options on August 20.

At the workshop in August and again in September, the Council considered different plan options and constructed financial scenarios using an interactive tool devised by Finance Director Doug Merriman. At the conclusion of the September 25 Workshop, the staff received the following direction from the Council:

City of Oak Harbor City Council Agenda Bill

1. Offer employees three plan options for 2014 (Health First 250 or Health First 500, Group Health \$10 Copay, and High Deductible Health Plan with fully-funded Health Savings Account);
2. Continue to fund premiums at 100% for employees and 75% for family members of employees;
3. In order to assess the potential financial impact of these changes, conduct an employee survey to gather early and non-binding preferences for the different plans;
4. Develop a comprehensive outreach effort to inform and assist employee orientation to the new plan options.

The attached Resolution No. 13-24 responds to Council directions 1,2, and 4 above. With respect to the employee survey, we received 52 responses with the following results. Please note that the question was asked twice, once with Health First 250 in the mix and once with Health First 500.

SCENARIO 1

Question: Of the following three choices, which one are you leaning toward?

- 50% Group Health \$10 Copay**
- 12% High Deductible Health Plan (with funded HSA)**
- 38% Health First 250 Plan**

SCENARIO 2

Question: Of the following three choices, which one are you leaning toward?

- 70% Group Health \$10 Copay**
- 16% High Deductible Health Plan (with funded HSA)**
- 14% Health First 500 Plan**

Plugging these survey results into Doug Merriman’s model yields the following estimated summary results, the details of which can be seen on the attached “What if” Scenarios.

	Savings to City	Savings to Employees
Scenario 1	\$155,995.12	\$42,209.84
Scenario 2	\$189,122.06	\$53,616.50

Please note that the Administration is recommending two refinements for Council consideration which are reflected in the two “What if” Scenarios. First, based on the survey results, the administration is recommending that the Council select the Health First 250 Plan (Scenario 1 above) as the third option for the simple reason that it appears to represent a significantly more desirable choice for our employees than the Health First 500 Plan (24% difference).

Second, the Administration would support allowing those who choose the High Deductible Health Plan to make a change starting December 1, 2013 rather than January 1, 2014. This decision would allow the City to fully fund the accompanying Health Savings Account for 2013 which should be a positive feature for employees. It would mean that those under that Plan would start 2014 with a significant balance (\$3,250 for employees or \$6,450 for employees with families minus any medical expenses accrued in the month of December) should the need for medical care come early in 2014.

City of Oak Harbor City Council Agenda Bill

Draft Resolution No. 13-24 is attached for Council consideration and includes Scenario 1 and the “early in” option for those employees choosing the High Deductible Health Plan. The Resolution also authorizes staff to begin implementation of these changes, including outreach and education for our employees, adjusting our payroll as it relates to health care and working with AWC to put all the pieces together. A kickoff series of informational workshops with AWC is already scheduled for Thursday, October 17, 2013.

RECOMMENDED ACTION

Adopt Resolution No. 13-24

ATTACHMENTS

Draft Resolution No. 13-24

“What if” Scenarios (2)

RESOLUTION NO. 13-24

A RESOLUTION OF THE CITY OF OAK HARBOR CHANGING THE HEALTH INSURANCE BENEFIT PLANS AVAILABLE TO ELIGIBLE EMPLOYEES AND DIRECTING STAFF TO IMPLEMENT SAID CHANGES

WHEREAS, health insurance benefits for City of Oak Harbor employees promote the health and well-being of City employees and their families, reduce the use of sick leave and promote employee retention; and

WHEREAS, pursuant to Section 2.34.085(1) OHMC, it is the policy of the City of Oak Harbor to provide health insurance benefits to its employees at a level which is comparable to benefits provided by other municipal government entities in the State of Washington; and

WHEREAS, the cost of providing health insurance benefits to City of Oak Harbor employees has been rising at rates that on average substantially exceed the average rate of overall revenue growth year over year, which has led over time to the cost of health insurance consuming a proportionately larger share of the City's budget; and

WHEREAS, over the past 12 months the administration and City Council have studied comparisons with other cities and analyzed the financial, public policy and personnel ramifications of changing the health insurance benefit plans available to eligible employees; and

WHEREAS, for consistency with Section 2.34.085(1) OHMC and in recognition of the need to re-balance the City's fiscal obligations for the provision of quality health insurance for its employees, the City Council has decided to offer three different plans to promote employee choice and to discontinue the AWC Health First (zero deductible) Plan;

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. Effective January 1, 2014, the City of Oak Harbor will discontinue the availability of the AWC HealthFirst Plan (zero deductible) to eligible employees, except to the extent that the City will continue to honor collective bargaining agreements;
2. For 2014, the City of Oak Harbor will offer three health insurance plans to eligible employees: (1) Regence High Deductible Health Plan with Health Savings Account; (2) HealthFirst 250 Plan; and (3) Group Health \$10 Copay Plan. Employees are at liberty to choose the plan of their choice during an October/November open period.
3. For all three plans, the City will continue to pay 100% of the employee's premium and 75% of the premium for family members enrolled in the plans.
4. Effective December 1, 2013, the City of Oak Harbor will begin offering the Regence High Deductible Health Plan with Health Savings Account.

- a. Employees enrolling in this Plan on December 1, 2013 will at City expense have their Health Savings Accounts funded to the IRS maximum for 2013 of \$3,250 for employees or \$6,450 for employees with families. Employees selecting this plan may not change health insurance plans before January 1, 2015.
 - b. Beginning with the first pay period after January 1, 2014, monthly payments amounting to one-twelfth of the IRS maximum for 2014 of \$3,300 for employees or \$6,550 for employees with families will be paid by the City into the Health Savings Accounts of participating employees.
5. Effective, January 1, 2014, the City of Oak Harbor will begin offering the HealthFirst 250 Plan and the Group Health \$10 Copay Plan.
6. The administration is authorized to implement these changes in health insurance and to take whatever steps are necessary to promote a smooth transition. Special attention should be given to working closely with the City's employees to make sure each employee has sufficient information to make the best choice for their personal circumstances.

PASSED by the City Council this 15th day of October, 2013.

CITY OF OAK HARBOR

SCOTT DUDLEY, MAYOR

ATTEST:

Valerie Loffler, City Clerk

APPROVED AS TO FORM:

Grant Weed, Interim City Attorney

"What if Scenario" Financial Impact of Options

		0.00%	0.00%	14.00%	70.00%	16.00%	
<u>Montly Paid by City</u>	<u>Currently</u>	<u>Health First 0</u>	<u>Health First 250</u>	<u>Health First 500</u>	<u>Group Health</u>	<u>HDHP/HSA</u>	<u>Monthly Total</u>
	133,417	0	0	15,463	73,445	28,748	117,657
Total % Paid by City	87.81%	0.00%	0.00%	87.80%	87.71%	94.72%	
<u>Monthly Paid by Employees</u>	<u>Currently</u>	<u>Health First 0</u>	<u>Health First 250</u>	<u>Health First 500</u>	<u>Group Health</u>	<u>HDHP/HSA</u>	<u>Monthly Total</u>
	18,513	0	0	2,148	10,294	1,602	14,045
Total % Paid by Employees	12.19%	0.00%	0.00%	12.20%	12.29%	12.25%	
<u>Annual Combined Plan Cost</u>	<u>Currently</u>	<u>Health First 0</u>	<u>Health First 250</u>	<u>Health First 500</u>	<u>Group Health</u>	<u>HDHP/HSA</u>	<u>Annual Total</u>
Paid by City	\$1,601,002	\$0	\$0	\$185,561	\$881,343	\$344,975	1,411,880
Paid by Employee	222,152	0	0	25,778	123,531	19,228	168,536
Total Plan Cost	\$1,823,154	\$0	\$0	\$211,339	\$1,004,874	\$364,203	\$1,580,416

Savings for City:	Monthly:	15,760.17	Annually:	189,122.06
Savings for Employees:	Monthly:	4,468.04	Annually:	53,616.50



		Limited to One Health First Plan					Must = 100%
Plan Allocation		0.00%	0.00%	14.00%	70.00%	16.00%	100%
		<u>Health 1st 0</u>	<u>Health 1st 250</u>	<u>Health 1st 500</u>	<u>Group Health</u>	<u>HDHP/HSA</u>	
Employee %		100%	100%	100%	100%	100%	
City Contribution %	Dependents %	75%	75%	75%	75%	75%	

2013		2014	
Employer HSA Contribution	\$3,250	Employer HSA Contribution	\$3,300
	\$6,450		\$6,550
	Single		Single
	Married		Married

70% Group Health
 16% High Deductible Health Plan (with funded HSA)
 14% Health First 500 Plan

"What if Scenario" Financial Impact of Options

	Currently	0.00% Health First 0	38.00% Health First 250	0.00% Health First 500	50.00% Group Health	12.00% HDHP/HSA	Monthly Total
Montly Paid by City	133,417	0	46,395	0	52,461	21,561	120,417
Total % Paid by City	87.81%	0.00%	87.81%	0.00%	87.71%	94.72%	
Monthly Paid by Employees	18,513	0	6,440	0	7,353	1,202	14,995
Total % Paid by Employees	12.19%	0.00%	12.19%	0.00%	12.29%	12.25%	
Annual Combined Plan Cost	Currently	Health First 0	Health First 250	Health First 500	Group Health	HDHP/HSA	Annual Total
Paid by City	\$1,601,002	\$0	\$556,744	\$0	\$629,531	\$258,731	1,445,007
Paid by Employee	222,152	0	77,286	0	88,236	14,421	179,943
Total Plan Cost	\$1,823,154	\$0	\$634,030	\$0	\$717,767	\$273,152	\$1,624,950

Savings for City:	Monthly:	12,999.59	Annually:	155,995.12
Savings for Employees:	Monthly:	3,517.49	Annually:	42,209.84



		Limited to One Health First Plan					Must = 100%
Plan Allocation		0.00%	38.00%	0.00%	50.00%	12.00%	100%
		Health 1st 0	Health 1st 250	Health 1st 500	Group Health	HDHP/HSA	
Employee %		100%	100%	100%	100%	100%	
City Contribution %	Dependents %	75%	75%	75%	75%	75%	

2013		2014	
Employer HSA Contribution	\$3,250	Employer HSA Contribution	\$3,300
	\$6,450		\$6,550
	Single		Single
	Married		Married

- 50% Group Health
- 12% High Deductible Health Plan (with funded HSA)
- 38% Health First 250 Plan

City of Oak Harbor City Council Agenda Bill

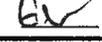
Bill No. 7.a.

Date: October 15, 2013

Subject: Authorization to Sell 3 Vessels

FROM: Steve Powers, Director of Development Services
Chris Sublet, Harbormaster

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

 Scott Dudley, Mayor
 Larry Cort, City Administrator
 Doug Merriman, Finance Director
 Grant Weed, Interim City Attorney, as to form

PURPOSE

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

SUMMARY STATEMENT

The owners of the vessels with ID's WN8320RH, WN8995R and WN0971RG have not made any moorage payments and the accounts are delinquent. The owners have been notified of the delinquent account status via letters. As a result of this non-payment, these vessels have been secured by the marina as provided for by OHMC 6.36.040(1). The owners were notified by registered mail of this action. After securing the vessel, the City must wait for 90 days before seeking authorization to sell the vessel as provided for by OHMC 6.36.040(5). The 90 day waiting period has now elapsed. The vessel owners have been notified of the October 15, 2013 Council meeting. A memo summarizing the above actions was sent to the Mayor and City Council as required by City policy. The next step in the process requires City Council authorization for the Harbormaster to conduct an auction for sale of these vessels. A resolution directing the Harbormaster to take this action is attached to this agenda bill.

Please see the next page for a table summarizing the relevant information for each owner and vessel.

RECOMMENDED ACTION

Conduct a public meeting and approve resolution authorizing the sale of three boats with Vessel ID's WN8320RH, WN8995R and WN0971RG.

ATTACHMENTS

- A: Holland letters (Attachments A1 – A5)
- B: Harper letters (Attachments B1 – B5)
- C: Smith/Smitwalt letters (Attachments C1 – C5)
- D: Memo to Mayor and Council from the Harbormaster
- E: Resolution No. 13-25

City of Oak Harbor City Council Agenda Bill

In Marina	Owners	Monthly Moorage Cost	Current Amount Owed	Moorage Unpaid Since	Delinquent Account Letter Sent On <i>(Attachment 1)</i>	Boat Secured Letter Sent On <i>(Attachment 2)</i>	Boat Secured <i>Attachment 3)</i>	City Council Action Notice Sent on <i>(Attachment 4)</i>	Mayor and City Council Memo Sent On <i>(Attachment D)</i>
8/01/2009	John Holland <i>(Attachment A documents)</i>	\$50.72	\$3314.21	No payments made	8/02/2011	8/23/11	8/23/11	09/11/13	09/11/13
5/17/2008	Ed Harper <i>(Attachment B documents)</i>	\$50.72	\$300.00	09/17/09	9/23/2011	10/1 1/11	10/11/11	09/11/13	09/11/13
12/23/2005	Claud Smith/ Harrison Smitwalt <i>(Attachment C documents)</i>	\$179.81	\$4324.50	01/13/12	02/24/2012	10/09/12	10/09/12	09/11/13	09/11/13

RESOLUTION NO. 13-25

RESOLUTION AUTHORIZING SALE OF BOATS FOR “MARINA CHARGES”

WHEREAS, the City Council duly held a public meeting on October 1, 2013, wherein the City Council considered whether or not the boats located in the Oak Harbor Marina with vessel ID's WN8320RH, WN8995R and WN0971RG are abandoned; and

WHEREAS, having found that the boats was moored or stored at the Oak Harbor Marina; and

WHEREAS, storage charges owing on the boats were not paid in full within 90 days from the time the owners of the boats were notified by registered mail of the delinquent charges; and

WHEREAS, the owners were notified of their right to commence legal proceeding to contest that such charges are owing; and

WHEREAS, the owners have not commenced legal proceedings; and

WHEREAS, the boats are presumed to have been abandoned by the owners; and

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

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

PASSED and approved by the City Council this 15th day of October, 2013.

CITY OF OAK HARBOR

Scott Dudley, Mayor

Attest:

Valerie J. Loffler, City Clerk

Approved as to form:

Grant Weed, Interim City Attorney

Date: August 2, 2011

John Holland
3712 Home Rd. Apt 204
Bellingham, WA 98225

FIRST CLASS AND REGISTERED MAIL
RETURN RECEIPT REQUESTED

Re: Past Due Moorage - - Oak Harbor Marina
Account No.4276 Slip #DL-05
Registration Number: WN8995R

Dear Mr. Holland,

This account is more than sixty (60) days past due. The amount owed as of August 2, 2011 is \$1534.65.

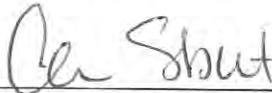
You should be aware that if this amount is not paid in full within fifteen (15) days of the date of this letter, your vessel, described above, is subject to seizure by the City of Oak Harbor. You have a right to a hearing to adjudicate whether the amount owed is correct or the securing of the vessel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

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

We hope this will not be necessary.

Yours truly,

CITY OF OAK HARBOR

By 

Chris Sublet, Marina Manager

August 23, 2011

**REGISTERED AND FIRST Class MAIL
RETURN RECEIPT REQUESTED**

John Holland
3712 Home Rd. Apt 204
Bellingham, WA 98225

Re: Past Due Moorage - - Oak Harbor Marina
Account No. 4276 Dry Storage Space DL-05
Vessel ID: WN8995R

Dear Mr. Holland:

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

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

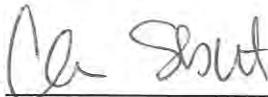
The amount owing to date is \$1573.58. Failure to pay this amount *in full* or to commence legal proceedings for the return of your vessel within ninety (90) days of the above-stated date may result in your vessel being offered for sale at public auction.

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

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

Yours truly,

CITY OF OAK HARBOR

By 
Marina Manager

NOTICE

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

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

CITY OF OAK HARBOR

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

VESSEL ID WN8995R
SLIP / LOCATION DL-05
ATTACHED: DATE 8/23/2011 TIME 9:00AM

BY: _____
Representative, City of Oak Harbor

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



September 11, 2013

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

John Holland
3712 Home Rd. Apt 204
Bellingham, WA 98225

Re: Vessel ID WN 8995 R

Dear Mr. Holland

The public meeting of the City Council has been scheduled for October 1, 2013, so that the City Council can consider selling the above-referenced boat at public auction to recover "Marina charges".

Very truly yours,

Chris Sublet
Harbormaster

September 23, 2011

Ed Harper
PO BOX 518
Oak Harbor, WA 98277

REGISTERED MAIL AND FIRST CLASS MAIL
RETURN RECEIPT REQUESTED

RE: Past Due Moorage—Oak Harbor Marina
Account No. 5076
FENCELINE DL-51

Dear Mr. Harper,

This account is again more than sixty (60) days past due. The amount owed as of September 23, 2011 is \$1748.54.

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

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

We hope this will not be necessary.

CITY OF OAK HARBOR

By Ch Stout

October 11, 2011

**REGISTERED AND FIRST Class MAIL
RETURN RECEIPT REQUESTED**

Ed Harper
PO BOX 518
Oak Harbor, WA 98277

Re: Past Due Moorage -- Oak Harbor Marina
Account No. 5076 Slip # DL-51
Vessel ID WN0971RG

Dear Mr. Harper:

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

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

The amount owing to date is \$1838.19. Failure to pay this amount *in full* or to commence legal proceedings for the return of your vessel within ninety (90) days of the above-stated date may result in your vessel being offered for sale at public auction.

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

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

Yours truly,

CITY OF OAK HARBOR

By



Marina Manager

NOTICE

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

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

CITY OF OAK HARBOR

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

VESSEL ID _____ WN0971RG _____
SLIP / LOCATION _ Fence Line _____
ATTACHED: DATE 10/11/2011 TIME 1400 _____

BY: _____ Chris Sublet _____
Representative, City of Oak Harbor

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



September 11, 2013

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

Ed Harper
PO Box 518
Oak Harbor, WA 98277

Re: Vessel ID WN 0971 RG

Dear Mr. Harper

The public meeting of the City Council has been scheduled for October 1, 2013, so that the City Council can consider selling the above-referenced boat at public auction to recover "Marina charges".

Very truly yours,

A handwritten signature in black ink, appearing to read "Chris Sublet".

Chris Sublet
Harbormaster

February 24, 2012

Harrison Smitwalt
Claud Smith
118 Pine Ridge Acres
Valencia, PA 16059

REGISTERED MAIL AND FIRST CLASS MAIL
RETURN RECEIPT REQUESTED

RE: Past Due Moorage—Oak Harbor Marina
Account No. 4221
Vessel # WN8320RH

Dear Mr. Smithwalt/Smith,

This account is again more than sixty (60) days past due. The amount owed as of February 24, 2012 is \$464.73.

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

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

We hope this will not be necessary. If you have any questions regarding your account please contact the marina office at (360) 279-4575.

Sincerely,

CITY OF OAK HARBOR

By 
Chris Sublet Marina Manager

Oct 09, 2012

**REGISTERED AND FIRST Class MAIL
RETURN RECEIPT REQUESTED**

Harrison Smitwalt
Claud Smith
118 Pine Ridge Acres
Valencia, PA 16059

Re: Past Due Moorage -- Oak Harbor Marina
Account No. 4221 Slip # A-45
Vessel ID WN8320RH

Dear Mr. Smitwalt:

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

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

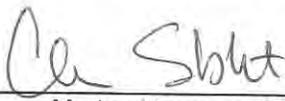
The amount owing to date is \$1895.45. Failure to pay this amount *in full* or to commence legal proceedings for the return of your vessel within ninety (90) days of the above-stated date may result in your vessel being offered for sale at public auction.

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

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

Yours truly,

CITY OF OAK HARBOR

By 
Marina Manager, Chris Sublet

NOTICE

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

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

CITY OF OAK HARBOR

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

WN8320RH

VESSEL ID _____

SLIP / LOCATION A-45

ATTACHED: DATE 10/09/2012 TIME 2:00PM

BY: _____ CHRIS SUBLET _____

Representative, City of Oak Harbor

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



September 11, 2013

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

Claud Smith
Harrison Smitwalt
118 Pine Ridge Acres
Valencia, PA 16059

Re: Vessel ID WN 8995 R

Dear Mr. Smith/Smitwalt,

The public meeting of the City Council has been scheduled for October 1, 2013, so that the City Council can consider selling the above-referenced boat at public auction to recover "Marina charges".

Very truly yours,

Chris Sublet
Harbormaster



MEMORANDUM

TO: Mayor and City Council

FROM: Chris Sublet, Harbormaster

RE: Delinquent Accounts

The boats described below were placed at the Oak Harbor Marina, by agreement with the owners. Moorage for these vessels has been unpaid.

In Marina	Owners	Address	Monthly Moorage Cost	Moorage unpaid since	Delinquent Account Letter sent on	Boat secured on	Boat Secured Letter sent on	Current Amount Owed
8/01/2009	John Holland	3712 Home Rd. Apt 204 Bellingham WA 98225	\$50.72	No payments made	8/02/2011	8/23/2011	8/23/2011	\$3314.21
5/17/2008	Ed Harper	PO Box 518 Oak Harbor, WA 98277	\$50.72	09/17/2009	9/23/2011	10/11/2011	10/11/2011	\$300.00
12/23/2005	Claud Smith/Harrison Smitwalt	118 Pine Ridge Acres Valencia, PA 16059	\$179.81	01/13/2012	02/24/2012	10/09/2012	10/09/2012	\$4324.50

A letter was sent by both regular and registered mail, return receipt requested, to the owners at the above address advising that if the moorage was not brought current, the boat would be secured and not released until payment was made.

These boats have been secured by authorized personnel of the Oak Harbor Marina. A Notice was attached to each boat advising of the seizure. A letter was sent by both regular mail and certified mail, return receipt requested, with a copy of the Notice advising that if the Marina charges were not paid within ninety (90) days these boats would be sold at public auction.

More than ninety (90) days have elapsed since the date of mailing the Notice and the owners have not paid the Marina charges and the boats are now presumed to be abandoned. Therefore, I will be requesting at a future City Council meeting, that you authorize the sale of the boat at auction so that the City may recover the "Marina charges".

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

09/11/2013 Oak Harbor Marina
Date and Place of Signing


Chris Sublet, Harbormaster

Attachment D

City of Oak Harbor City Council Agenda Bill

Bill No. 7.b.
Date: October 15, 2013
Subject: Ordinance No. 1668: Mid
Biennial Budget Amendment

FROM: Doug Merriman, Finance Director 

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

Scott Dudley, Mayor
 Larry Cort, City Administrator
____ Grant Weed, Interim City Attorney, as to form

PURPOSE

An ordinance to amend the 2013-2014 Biennial Budget to adjust 2013 beginning fund balances to actual balances on hand at January 1, 2013, and to amend the 2013 budget for adjustments noted in the City's 2013 mid-biennial budget review.

FISCAL IMPACT DESCRIPTION

Funds required: \$ Not Applicable

SUMMARY STATEMENT

Finance has completed its 2013 mid-biennial review of 2013 revenue and expenditures, and has determined that a budget amendment is required to authorize increased appropriation authority in a number of funds. The attached worksheet reflects the calculations required to adjust 2013 beginning fund balances to actual as of January 1, 2013, and other amendments needed in various funds as outlined in Ordinance No. 1668.

RECOMMENDED ACTION

1. Hold public hearing.
2. Adopt Ordinance No. 1668.

ATTACHMENTS

1. Draft Ordinance No. 1668
2. Amendment calculation spreadsheet

City of Oak Harbor
2013 Mid-biennial budget amendment

Fund #	Name	Adopted BFB	Actual BFB	Change	STOP Grant	Animal Control	Legal	Arterial	Storm Drain	Paths & Trails	Totals	Adopted	Amended	Change reasons
001	General	\$504,233	\$1,057,856	\$553,623	\$7,500	\$34,000	\$156,000			\$12,500	\$763,623	\$12,326,725	\$13,090,348	Carryover from 2012
005	Whidbey Marathon	177,032	131,069	(45,963)							(45,963)	326,532	280,569	Miscellaneous
101	Streets	710,124	1,208,984	498,860							498,860	1,630,324	2,129,184	Carryover from 2012
104	Arterials	0	37,287	37,287				1,500,000			1,537,287	110,000	1,647,287	Miscellaneous
105	Transportation Capital Improvement	1,160,507	983,246	(177,261)							(177,261)	1,195,425	1,018,164	Decrease Impact Fees
106	Paths and Trails	22,173	22,186	13							13	24,348	24,361	Miscellaneous
115	Art Acquisition & Maintenance	19,784	20,613	829							829	52,365	53,194	Miscellaneous
116	Civic Improvement(2%)	404,375	433,229	28,854							28,854	566,375	595,229	Higher Revenues
125	Neighborhood Parks	87,842	85,071	(2,771)							(2,771)	99,842	97,071	Decrease Impact Fees
126	Community Parks	348,601	347,998	(603)							(603)	383,381	382,778	Decrease Impact Fees
129	Senior Center	50,031	29,108	(20,923)							(20,923)	445,480	424,557	Miscellaneous
311	REET 1st 1/4 %	1,931,993	619,098	(1,312,895)							(1,312,895)	2,031,993	719,098	Pioneer Way Funding
312	REET 2nd 1/4%	980,069	30,500	(949,569)							(949,569)	1,080,069	130,500	Pioneer Way Funding
320	Municipal Pier	0	167,377	167,377							167,377	0	167,377	Residual Funds to be Transferred
325	Waterfront Redevelopment	475,788	476,788	1,000							1,000	501,278	502,278	Miscellaneous
401	Water	3,256,016	3,835,804	579,788							579,788	13,088,716	13,668,504	Increased Revenue; Underbudget on water purchase
402	Sewer	8,062,610	8,649,149	586,539							586,539	12,478,110	13,064,649	Under budget - Projects
403	Solid Waste	2,348,911	1,828,169	(520,742)							(520,742)	5,423,711	4,902,969	Revenues less than budgeted
404	Storm Drain	85,662	300,431	214,769					115,000		329,769	1,471,262	1,801,031	Deferral of capital project; DOE grant
410	Marina	410,000	138,130	(271,870)							(271,870)	1,554,354	1,282,484	Reduced revenues; residual dredging costs
411	Water Cumulative Reserve	5,830,736	5,841,904	11,168							11,168	5,979,736	5,990,904	Miscellaneous
412	Sewer Cumulative Reserve	4,942,272	4,953,745	11,473							11,473	5,029,772	5,041,245	Miscellaneous
413	Solid Waste Cumulative Reserve	115,946	116,193	247							247	116,546	116,793	Miscellaneous
414	Storm Drain Cumulative Reserve	409,203	414,223	5,020							5,020	411,203	416,223	Miscellaneous
420	Marina Cumulative Reserve	96,224	100,580	4,356							4,356	96,224	100,580	Miscellaneous
501	Equipment Rental	547,115	108,359	(438,756)							(438,756)	1,441,735	1,002,979	Estimated high
502	Equipment Replacement	7,111,675	7,107,847	(3,828)							(3,828)	8,121,703	8,117,875	Miscellaneous
510	Facilities	678,687	89,807	(588,880)							(588,880)	2,926,205	2,337,325	Estimated high
		\$40,767,609	\$39,134,751	(\$1,632,858)	\$7,500	\$34,000	\$156,000	\$1,500,000	\$115,000	\$12,500	\$192,142	\$78,913,414	\$79,105,556	

ORDINANCE NO. 1668

AN ORDINANCE OF THE CITY OF OAK HARBOR TO AMEND THE 2013-2014 BIENNIAL BUDGET TO RECONCILE 2013 BUDGETED BEGINNING FUND BALANCES TO ACTUAL BEGINNING FUND BALANCES AS OF JANUARY 1, 2013, AND TO AMEND THE 2013-2014 BIENNIAL BUDGET FOR REQUIRED CHANGES NOTED IN THE CITY OF OAK HARBOR'S MID-BIENNIAL REVIEW PROCESS

WHEREAS, during the compilation of the City of Oak Harbor 2013-2014 Biennial Budget during the latter months of 2012, estimates of projected expendable resources as of January 1, 2013 are made to estimate the dollar amount of financial resources or beginning fund balances required to meet the anticipated costs of operations and capital construction projects for the biennial period; and

WHEREAS, the City has determined that a budget amendment is needed for the fiscal year 2013 of the 2013-2014 Biennial Budget to adjust the 2013 Budgeted Beginning Fund Balances to Actual Beginning Fund Balances; and

WHEREAS, the City has determined that a budget amendment is needed to increase the 2013 General Fund #001 budget spending authority in the amount of \$210,000 for the CADA STOP grant program (\$7,500), the Animal Control Shelter rental agreement (\$34,000), for additional legal services required (\$156,000), and for capital outlay expenditures needed to repair the Waterfront Trail (\$12,500).

WHEREAS, the City has determined that a budget amendment is needed to increase the 2013 Arterial Fund #104 budget spending authority in the amount of \$1,500,000 for on-going archeology costs pertaining to the Pioneer Way project.

WHEREAS, the City has determined that a budget amendment is needed to increase the 2013 Storm Drain Fund #404 budget spending authority in the amount of \$115,000 for on-going archaeology costs pertaining to the Pioneer Way project.

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

Section One: The revenues and expenditures for all funds requiring a mid-biennial change are hereby amended for the budget year 2013 as set forth below:

Fund #	Name	Amended
001	General	\$13,090,348
005	Whidbey Marathon	280,569
101	Streets	2,129,184
104	Arterials	1,647,287
105	Transportation Capital Improvement	1,018,164
106	Paths and Trails	24,361
115	Art Acquisition & Maintenance	53,194
116	Civic Improvement (2%)	595,229
125	Neighborhood Parks	97,071
126	Community Parks	382,778

129	Senior Center	424,557
311	REET 1st 1/4 %	719,098
312	REET 2nd 1/4%	130,500
320	Municipal Pier	167,377
325	Waterfront Redevelopment	502,278
401	Water	13,668,504
402	Sewer	13,064,649
403	Solid Waste	4,902,969
404	Storm Drain	1,801,031
410	Marina	1,282,484
411	Water Cumulative Reserve	5,990,904
412	Sewer Cumulative Reserve	5,041,245
413	Solid Waste Cumulative Reserve	116,793
414	Storm Drain Cumulative Reserve	416,223
420	Marina Cumulative Reserve	100,580
501	Equipment Rental	1,002,979
502	Equipment Replacement	8,117,875
510	Facilities	2,337,325
		\$79,105,556

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

Section Three: Effective Date. This ordinance shall take effect five days after publication as provided by law.

Adopted by the City Council this 15th day of October 2013.

CITY OF OAK HARBOR

SCOTT DUDLEY, MAYOR

Attest:

Valerie J. Loffler, City Clerk

Approved as to Form:

Grant K. Weed, Interim City Attorney

Published: _____

City of Oak Harbor City Council Agenda Bill

Bill No. 7.c.
Date: October 15, 2013
Subject: Ordinance 1673 Adopting the
Property Tax for 2014

FROM: Doug Merriman 
Finance Director

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

Scott Dudley, Mayor
 Larry Cort, City Administrator

Grant Weed, Interim City Attorney, as to form

PURPOSE

An ordinance to increase the 2014 City of Oak Harbor property tax levy by 1%.

FISCAL IMPACT DESCRIPTION

Funds to be generated: \$ \$39,137.53 annually

SUMMARY STATEMENT

This agenda bill presents the ordinance required to establish the property tax levy rate for the City of Oak Harbor for 2014. Under and RCW 84.55.005(1) and RCW 84.55.005(2)(c), the City may increase the collection of property tax revenues by the lower of 1% or the rate of inflation as set by the Implicit Price Deflator (IPD) as published by the Bureau of Economic Analysis (BEA). The IPD measurement to be utilized for 2014 is 1.314%. Accordingly, the allowed levy adjustment for 2014 is 1%.

RECOMMENDED ACTION

1. Hold public hearing
2. Adopt ordinance 1673

ATTACHMENTS

1. Draft Ordinance
2. IPD information (Source: MRSC)

ORDINANCE NO. 1673

AN ORDINANCE TO INCREASE BY \$39,137.53 THE AMOUNT TO BE RAISED BY AD VALOREM TAXES FOR THE 2014 PROPERTY TAX LEVY WHICH REPRESENTS A 1% INCREASE OVER THE ACTUAL LEVY ASSESSED IN 2013

WHEREAS, proper public notice of this ordinance and the related public hearing was given in the Whidbey News Times on October 5, 2013, and

WHEREAS, a public hearing was held October 15, 2013, to consider the City of Oak Harbor's Current Expense budget for the Year 2014; and

WHEREAS, the population of the City of Oak Harbor is greater than 10,000; and

WHEREAS, the City of Oak Harbor's actual levy amount from the previous year was \$3,913,753.37; and

WHEREAS, RCW 84.55.005(1) defines "inflation" as the percentage change in the implicit price deflator for personal consumption expenditures for the United States as published for the most recent 12-month period by the Bureau of Economic Analysis of the federal Department of Commerce in September of the year before the taxes are payable. Inflation as evidenced by the change for the twelve month period ending June 2013 as measured by the change in the implicit price deflator (IPD) is 1.314% (percent); and

WHEREAS, the City Council of the City of Oak Harbor has met and considered its budget for the calendar year 2014, and after hearing and after duly considering all relevant evidence and testimony presented, has determined that the City of Oak Harbor requires an increase in property tax revenue from the previous year, in order to discharge the expected expenses and obligations of the City of Oak Harbor.

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

Section One: An increase in the regular property tax levy is hereby authorized for the levy to be collected in 2014 tax year. The dollar amount of the increase over the actual levy amount of the previous year shall be \$39,137.53, which is an increase of one percent (1%) from the previous year. This increase is exclusive of any additional revenues resulting from under-utilized levy capacity, from new construction, improvements to property, newly constructed wind turbines, and from any increase in the value of state-assessed property, any annexations that have occurred and refunds made. The total regular property taxes will be budgeted at \$4,150,000 for 2014.

Section Two: The City Clerk shall file a certified copy of this ordinance with the Island County Auditor.

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 take effect five days after publication as provided by law.

PASSED by the City Council this 15th day of October 2013.

CITY OF OAK HARBOR

SCOTT DUDLEY, MAYOR

Attest:

Valerie J. Loffler, City Clerk

Approved as to Form:

Grant K. Weed, City Attorney

Published: 10/19/13



STATE OF WASHINGTON
DEPARTMENT OF REVENUE

September 20, 2013

Dear County Assessors:

What is the rate of inflation (IPD rate) for 2014?

The rate of inflation (IPD rate) for property taxes due in 2014 is **1.314 percent**.

What is the limit factor for 2014 provided the taxing district adopts a resolution/ordinance authorizing an increase over the prior year's levy?

For the state and taxing districts with populations of 10,000 or greater, the limit factor for property taxes due in 2014 is **101 percent**. The limit factor for these districts is defined as 100 percent plus the lesser of the rate of inflation or 1 percent.

For taxing districts with populations under 10,000, the limit factor for property taxes due in 2014 is **101 percent**.

How is the rate of inflation (IPD rate) calculated?

The rate of inflation is the percent change in the implicit price deflator for personal consumption as published in the Bureau of Economic Analysis' September *Survey of Current Business*.

However, as the result of the comprehensive revision of the national income and product accounts, the Bureau of Economic Analysis did not publish the implicit price deflator for personal consumption in their September publication. The most recent publication available is August and so the numbers published in August were used to calculate the percent change in implicit price deflator for personal consumption for taxes due in 2014.

The percent change is calculated by dividing the June 2013 number by the June 2012 number, subtracting one, and then multiplying by 100. The values used in the calculation this year were as follows:

June 2012	105.842
June 2013	107.233

You may notice these numbers are considerably different than last year. The comprehensive revision updated the reference year for these numbers from 2005 to 2009.

If you have any questions, please contact me.

Sincerely,

Valerie Torres
Tax Policy Specialist
Research & Fiscal Analysis
Department of Revenue

cc: County Treasurers

Research & Fiscal Analysis Division
P O Box 47467 ♦ Olympia, Washington 98504-7459 ♦ (360) 534-1521 ♦ Fax (360) 534-1526
E-mail Address: ValerieT@dor.wa.gov