



**NOTICE OF WORKSHOP MEETING**

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NOTICE IS HEREBY GIVEN that the Oak Harbor City Council will hold a Workshop Meeting on Wednesday, September 25, 2013, at 3:00 – 5:30 p.m. to discuss the following agenda items. The meeting will be held in the Council Chambers, 865 SE Barrington Drive.

DATED this 20th day September 2013.

Valerie J. Loffler, City Clerk

The City Council may meet informally in workshop sessions (open to the public) to do concentrated strategic planning, to review forthcoming programs of the City, receive progress reports on current programs or projects, or receive other similar information from the City Administrator, provided that all discussions and conclusions thereon shall be informal. Council shall make no disposition of any item at a workshop meeting. Public comment is not normally allowed at workshop meetings, although Council may allow, or request participation.

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**WORKSHOP MEETING  
CITY COUNCIL**

**September 25, 2013**

**AGENDA**

**3:00 p.m. to 5:30 p.m.**

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**Public Comment**

**1. Departmental Briefings**

- a. Animal Holding Facility Update – Police
- b. City Council Workshop Meetings – Administration
- c. Technology Plan – Administration
- d. Other Items/Questions

**2. Pending Agenda Items**

- a. Ordinance 1669: Relating to the Parks Code (Public Hearing 10/01/15)
- b. Ordinance 1671: Relating to the Bed and Breakfast Code Amendment (10/01/13)
- c. Resolution 13-23: Interlocal Agreement with the AWC Benefit Trust Creating the Health Care Program Subject to Required Assessments (10/15/13)

**3. Emerging Issues**

- a. Wastewater Treatment Plant
  - Value Engineering Analysis
  - Coordination with Navy
  - Outfall Timeline
  - Status of Property Analysis



# City Council Meeting Schedule September – December 2013

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September 23, 2013 Monday, 6:00 p.m.	WORKSHOP MEETING Employee Health Benefits
September 25, 2013 Wednesday, 3:00 – 5:30 p.m.	WORKSHOP MEETING 1. Departmental Briefings 2. Pending Agenda Items 3. Emerging Issues
October 1, 2013 Tuesday, 3:00 - 5:00 p.m. Tuesday, 6:00 p.m.	WORKSHOP MEETING 1. Archaeology Recovery Costs REGULAR COUNCIL MEETING
October 15, 2013 Tuesday, 6:00 p.m.	REGULAR COUNCIL MEETING
October 23, 2013 Wednesday, 3:00 – 5:30 p.m.	WORKSHOP MEETING
November 6, 2013 <u>Wednesday</u> , 6:00 p.m.	REGULAR COUNCIL MEETING
November 19, 2013 Tuesday, 6:00 p.m.	REGULAR COUNCIL MEETING
November XX, 2013 TBD, 3:00 – 5:30 p.m.	WORKSHOP MEETING - TBD
December 3, 2013 Tuesday, 6:00 p.m.	REGULAR COUNCIL MEETING
December 17, 2013 Tuesday, 6:00 p.m.	REGULAR COUNCIL MEETING
December XX, 2013 TBD, 3:00 – 5:30 p.m.	WORKSHOP MEETING - TBD

**ORDINANCE NO. 1669**

**AN ORDINANCE OF THE CITY OF OAK HARBOR, WASHINGTON REPEALING CHAPTER 6.12 OAK HARBOR MUNICIPAL CODE, “CONDUCT IN PARKS AND PLAY-GROUNDS,” REPEALING CHAPTER 6.14 OAK HARBOR MUNICIPAL CODE, “PARK CODE,” AND ADOPTING A NEW CONSOLIDATED CHAPTER 6.12 PARKS CODE**

The City Council of the City of Oak Harbor, Washington do ordain as follows:

Section 1. Chapter 6.12 Oak Harbor Municipal Code, “Conduct in Parks and Playgrounds” is hereby repealed.

Section 2. Chapter 6.14 Oak Harbor Municipal Code, “Park Code” is hereby repealed.

Section 3. A new Chapter 6.12 Oak Harbor Municipal Code, entitled “Parks Code” is hereby adopted reading as follows:

**Chapter 6.12  
PARKS CODE**

**Sections**

- 6.12.010 Purpose**
- 6.12.020 Construction**
- 6.12.030 Definitions**
- 6.12.040 Rule Making Authority; Code of Conduct**
- 6.12.050 Closing Hours for Parks**
- 6.12.060 Vendors and Concessionaires in Parks**
- 6.12.070 Special Events under Permit**
- 6.12.080 Reservations for Camping in Selected Parks or Park Areas**
- 6.12.090 Offenses in Parks that are Gross Misdemeanors**
- 6.12.100 Offenses in Parks that are Misdemeanors**
- 6.12.110 Violations in Parks that are Infractions**
- 6.12.120 Park Exclusion**
- 6.12.130 Emergency Park Closings**
- 6.12.140 Discrimination Prohibited**
- 6.12.150 Reward Posting**
- 6.12.160 Severability**

**Section 6.12.010 Purpose.** The City of Oak Harbor finds as follows, and declares that this chapter is passed to address the following facts:

(1) Unlawful and inappropriate behavior in the City's parks diminishes these precious assets and deprives citizens of the full use and enjoyment of the natural beauty and amenities of the City's parks;

(2) A wide range of illegal disorderly behavior can transform a park into an unwelcoming, unattractive, and ultimately an unsafe public place requiring increased expenditures for public safety and maintenance;

(3) To preserve the City's parks in their desired condition for all citizens, the City needs a range of criminal sanctions and civil tools to deter illegal behavior, prevent its recurrence and provide for the removal of offenders from the City's parks.

**Section 6.12.020 Construction.** This Chapter is hereby declared to be an exercise of the police power of the State of Washington and the City of Oak Harbor for the public peace, health, safety and welfare, and its provisions shall be liberally construed.

**Section 6.12.030 Definitions.** The terms used in this Chapter and other Chapters concerning or referring to parks, unless clearly contrary to or inconsistent with the context in which used, shall be construed and mean as follows:

(1) "Administrator" means the public works superintendent or his or her designee in charge of the parks department except for the marina in which case, the harbormaster is the administrator. During absences from the City for whatever reason, the mayor may designate an alternative "administrator" to carry out the duties under this chapter. The person appointed need not be the same person as the one to take over other duties of the public works superintendent in charge of the Oak Harbor park system.

(2) "Athletic facility in a park" shall be those open air facilities in a park prepared for a specific athletic activity, including but not limited to softball or baseball fields, soccer fields, football fields, tennis courts, and a running tract. Said athletic facilities shall be identified with a sign identifying them as an athletic facility.

(3) "Chief of police" means the chief of police of the Oak Harbor police department or his or her designee.

(4) "Camp" means to remain overnight, to erect a tent or shelter, or to use sleeping equipment, a vehicle, or a trailer or camper for the purpose or in such a way as will permit remaining overnight.

(5) "Council" means the members of the city council of the City of Oak Harbor.

(6) "Felony violation" means the violation of a criminal law, the conviction of which would (a) carry a maximum sentence in excess of one (1) year's imprisonment, or (b) constitute a felony in Title 9A of the Revised Code of Washington.

(7) “Park” or “Parks” means all parks and well sites maintained by the City, public squares, park drives, parkways in parks, boulevards in parks, bathing beaches, play and recreation grounds owned by or under the jurisdiction of the City, and marine facilities. Most but not necessarily all parks as defined herein are identified and described in the comprehensive plan as is now in effect or hereafter amended.

(8) “Park rule” means those particular rules or codes of conduct adopted in accordance with Section 6.12.040 of this Chapter.

(9) “Running at large” “ means a dog or animal off the premises of the owner and not under the immediate control of the owner or other competent person authorized by the owner by means of a leash, cord or chain except when in or on any vehicle and securely confined to such vehicle.”

(10) “Weapon violation” means possession or use of a weapon in violation of Chapter 9.41 Revised Code of Washington.

(11) Wherever consistent with the context of this chapter, words in the present, past or future tenses shall be construed to be interchangeable with each other and words in the singular number shall be construed to include the plural.

**Section 6.12.040 Rule Making Authority; Code of Conduct.** The Administrator and the Chief of Police or their designees shall have the power to enforce this Chapter. The Administrator and the Chief of Police or their designees shall have the power to draft, secure public input on, and present to the Council for final adoption rules and regulations consistent with this Chapter to manage and control the parks of the City. Such rules and regulations may:

- (1) Clarify, interpret or apply this Chapter;
- (2) Further regulate the use of City parks consistent with this Chapter;
- (3) Further regulate conduct in City parks consistent with this Chapter;
- (4) Designate restricted areas in City parks;
- (5) Establish, change or alter opening and closing hours for particular parks, or particular facilities in a park, or the times and hours for entry of motor vehicles into parks;
- (6) Regulate public or private recreation programs using City parks;
- (7) If otherwise allowed by this Chapter, restrict and/or prohibit the use of any skateboard, roller skate, coaster or any other wheeled device in any park where necessary for the public safety or public convenience in using parks. This right to

regulate shall not apply to a person with a disability who uses wheeled equipment in order to be ambulatory.

(8) Impose more restrictive speed limits on the use of all park paths, trails and walks, whether improved or unimproved, as required for public safety.

(9) Establish a permit system, consistent with law, for activities not requiring a lease or concessionaire agreement, or a special event permit under Chapter 5.50 OHMC but having unique or special effects on the parks, including reserving a room, area or facility in a park, posting notices of signs, any digging or excavating in any park, chaining any property to trees or improvements in the parks, making a use different in kind from the normal use of a park. No permits shall be required of City park employees, or City contractors acting in the scope and course of their duties. Any permits issued under the authority of rules or code of conduct under the authority of this section shall be temporary, and may be revoked at any time by the Administrator or the Chief of Police or their respective designees.

**Section 6.12.050 Closing Hours for Parks.** Unless a different closing hour has been established by a duly approved rule or regulation, all City parks, and all facilities in all City parks shall be closed between the hours of 10:00 p.m. and 5:00 a.m. of any day. Park and facility closing hours shall be clearly posted at main entrances to each park and on each park facility.

**Section 6.12.060 Vendors and Concessionaires in Parks.** Subject to activities allowed by the U.S. Constitution or comparable provision of the Washington State Constitution, and subject to activities allowed by either a lease with the City, a concession agreement with the City, or a special event permit issued pursuant to Chapter 5.50 OHMC, no person shall sell, rent, or offer to sell or rent any service or merchandise, including but not limited to any liquid, edible, or other tangible object, in a City park. Vendors and concessionaires in parks shall be authorized to sell or rent consistent with their lease or concession agreement with the City.

**Section 6.12.070 Special Events under Permit.** Where an activity in a park would be a special event under Chapter 5.50 OHMC, a special event permit consistent with that chapter shall be obtained. All activities in City parks under a special event permit shall be conducted strictly in accordance with the terms of the special event permit issued under Chapter 5.50 OHMC.

**Section 6.12.080 Reservations for Camping in Selected Parks or Park Areas.** Camping is prohibited in City parks except at such places designated for camping and designated by signs for camping. Areas for camping may be reserved consistent with rules and regulations adopted under this Chapter or as allowed in Chapter 6.13 OHMC.

**Section 6.12.090 Offenses in Parks that are Gross Misdemeanors.** Each of the following actions or inactions, as the case may be, are unlawful and a gross misdemeanor. Any person convicted of such a crime may be punished by a fine in any sum not to ex-

ceed \$5,000 or by imprisonment not to exceed 364 days, or by both such fine and imprisonment.

(1) It is unlawful and a gross misdemeanor to knowingly or intentionally and unreasonably to interfere with any individual or group engaged in lawful use of a park or park facility.

(2) It is unlawful and a gross misdemeanor to willfully mark, mar, deface, disfigure, injure, tamper with, displace, remove, burn, cut, carve, dig up or damage any park property or attendant facility, statute, structure, monument, fountain, vase, wall, fence, railing, vehicle, bench, plant, tree, shrub or buried object.

(3) It is unlawful and a gross misdemeanor to urinate or defecate in any place in a park other than in a designated restroom, or where allowed in a port-a-potty or restroom of a recreational vehicle.

(4) Except because of the health condition of the person, it is unlawful and a gross misdemeanor to urinate or defecate on the floor or walls of a public restroom.

(5) Except in lawful self defense or defense of another, or except as part of an authorized activity in the park, it is unlawful and a gross misdemeanor to use or discharge a weapon in a park.

(6) Except for a City employee in the performance of his or her duties, or except for persons given permission by the Administrator or Chief of Police or their designee, it is unlawful and a gross misdemeanor for any person to enter or go upon an area of a park, building or structure in a park which has been designated and posted by the Administrator or Chief of Police or their designee as “no admittance” or “no trespassing” area by signage.

(7) It is unlawful and a gross misdemeanor for any person subject to a valid notice of exclusion to enter or go upon a park contrary to the terms of the notice of exclusion.

**Section 6.12.100 Offenses in Parks that are Misdemeanors.** Each of the following actions or inactions, as the case may be, are unlawful and a misdemeanor. Any person convicted of such a crime may be punished by a fine in any sum not to exceed \$1,000 or by imprisonment not to exceed 90 days, or by both such fine and imprisonment.

(1) It is unlawful and a misdemeanor to willfully attach a rope, wire or other contrivance to a tree, plant shrub or structure in a park.

(2) Except for a City employee in the performance of his or her duties, or except for persons given permission by the Administrator or Chief of Police or their de-

signee, it is unlawful and a misdemeanor for any person to enter or go upon a park or part of a park when the park or the area of the park is closed.

(3) It is unlawful and a misdemeanor to operate any motor vehicle or motorcycle for the purposes of testing it, or ascertaining its fitness for service, along or upon any park drive, parkway or park boulevard in any park.

(4) It is unlawful and a misdemeanor for any person to use tobacco products within twenty five (25) feet of the entrance to any park facility or within twenty five (25) feet of any athletic facility in a park.

**Section 6.12.110 Violations in Parks that are Infractions.** Each of the following actions or inactions, as the case may be, is a violation and an infraction. Any person convicted of such violation shall be punished as set out in Chapter 1.20 OHMC, as now in effect or hereafter amended.

(1) It is a violation and an infraction to block any sidewalk or pathway in a park or adjacent to a park. "Blocking" means standing, sitting, or reclining on a sidewalk by oneself or in concert with others in such a way that more than half of the width of a sidewalk or walkway is blocked for normal use as a sidewalk or walkway.

(2) It is a violation and an infraction to unreasonably impede access to any restroom or restroom stall in a park. "Unreasonably impede" means impede by their person, or by the placement of personal property in such a fashion that a normal pathway into the restroom, or stalls in a restroom is not maintained.

(3) Except for a City employee in the performance of his or her duties, or except for persons given permission by the Administrator or Chief of Police or their designee, it is a violation and infraction to enter, remain in, rest, stand, or sit in any flower bed or landscaped area within a City park. A "landscaped area" shall not include an area where a bench is provided, or an area devoted only to planted lawn.

(4) It is a violation and an infraction to stand or walk or lay down on the table tops of any picnic table or counter-top in a kitchen area of a park.

(5) Except for persons given permission by the Administrator or Chief of Police or their designee or concessionaires or lessees consistent with their concession agreement or lease, it is a violation to throw, leave, tack, or post any poster, advertisement, or sign advertising for any good, service, meeting of people or otherwise within a City park.

(6) It is a violation and an infraction to aggressively solicit, interfere with, and/or accost other persons in City parks for the purposes of selling, begging or otherwise interfering with another's use of the park or adjacent sidewalks or walkways.

- (7) Except in areas allowed for concessionaires or lessees, or for areas under special use permit under Chapter 5.50 OHMC, it is a violation and an infraction to possess an open liquor container in a park.
- (8) Except in areas allowed for concessionaires or lessees, or for areas under special use permit under Chapter 5.50 OHMC, it is a violation and an infraction to consume intoxicating liquors in a park.
- (9) It is a violation and an infraction to dispose of or deposit any refuse or other material in a park, except in designated receptacles.
- (10) It is a violation and an infraction to dump or dispose of garbage generated or created outside a park in a receptacle within a park. Wrappings for edibles purchased outside the park, but consumed within a park shall not be deemed to violate this subsection.
- (11) It is a violation and an infraction to chain, lock, connect or store any item of tangible personal property, including but not limited to a bicycle, in any area of a park except for areas designated for such storage for such times as allowed by posted notice.
- (12) It is a violation and an infraction to allow or permit any dog or other animal to run at large in any park, or enter any lake, pond, pool, fountain or stream therein, with the exception of areas designated as “off-leash.”
- (13) It is a violation and an infraction to allow a dog or animal to defecate in a park and not clean up after the dog or animal and properly dispose of the dog or animal waste.
- (14) Except for a service animal, it is a violation and an infraction to allow or permit any dog or other animal in any building in any park.
- (15) It is a violation and an infraction to explode any fireworks, firecrackers, torpedo or any explosive of any kind in any park.
- (16) For devices not weapons under state law, it is a violation and an infraction to discharge any air gun, paint ball gun, B.B. gun or any other type of gun or rocket (i.e. potato guns and the like) in any park.
- (17) Except in conjunction with an activity authorized by the Administrator or Chief of police or designee, it is a violation and an infraction to shoot any sling-shot or bow and arrow in any park.

(18) Except as allowed by properly adopted rules and regulations, it is a violation and infraction to take up collections as a strolling musician, organ grinder, street performer, or street artist in any park.

(19) Except at places set apart for such purposed use and so designated by signs, or in an emergency, it is a violation and infraction to have, keep or operate any boat, float, raft or other watercraft in or upon any bay, lake, slough, river or creek within the limits of any park or to land the same at any point upon the shores thereof bordering upon any park.

(20) Except in areas designated for such riding, and then only at speeds less than 15 miles per hour, it is a violation and infraction to ride or drive any motorcycle, motor vehicle, motorized skateboard, motorized bicycle, motorized scooter, horse or pony over or through any park.

(21) Except in places designated for such use, it is a violation and infraction to practice, or play golf, baseball, cricket, lacrosse, polo, archery, hockey, tennis, badminton, football, soccer or other games of like character or to hurl any airborne or other missile, including the flying of model airplanes or rockets in any park. Playing catch with any type of ball or playing catch with a Frisbee shall not be deemed to violate this subsection.

(22) Except where permission has been obtained from the Administrator or Chief of Police or designee, it is a violation and an infraction to engage in, conduct or hold any trials or competitions for speed, endurance, or hill climbing involving any vehicles, power boat, aircraft or animal in any park.

(23) It is a violation and an infraction to build any fires in any park except in areas designated for such use and posted for such use by appropriate signage.

(24) Except as authorized by a Special Event Permit issued pursuant to Chapter 5.50 OHMC, it is a violation and an infraction to use any public address system, loudspeaker, or other sound amplifying device in any park.

**6.12.120 Park Exclusion.** The Administrator or the Chief of Police or designee may by delivering an exclusion notice in person to the offender exclude from a City park anyone who within a City park (1) violates any provision within this Chapter, (2) violates any park rule or code of conduct properly adopted under OHMC 6.12.040, or (3) violates any other provision of the Oak Harbor Municipal Code or the Revised Code of Washington. The offender need not be charged, tried, or convicted of any crime or infraction in order for an exclusion notice to be issued or effective. The exclusion may be based upon observation or upon reports that would ordinarily be relied upon by police officers in the determination of probable cause.

(1) If the offender:

(a) Has not been excluded from any City park by an exclusion notice issued within one (1) year prior to the violation and the current violation is not a felony or weapon violation, the Administrator or Chief of Police or designee may exclude the offender from the City park in which the current violation occurred for a period not exceeding seven (7) days from the date of the exclusion notice.

(b) Has been the subject of only one (1) prior exclusion notice issued within one (1) year prior to the current violation and neither the current nor the past violation was a felony or weapon violation, then the Administrator or Chief of Police or designee shall exclude the offender from the City park in which the current violation occurred for a period of ninety (90) days from the date of the exclusion notice.

(c) Has been the subject of two (2) or more prior exclusion notices issued within one (1) year prior to the current violation, all from the same City park in which the current violation occurred, or if the current violation is a felony or weapon violation, then the Administrator or Chief of Police or designee shall exclude the offender from the City park in which the current violation occurred for a period of one (1) year from the date of the exclusion notice.

(d) Has been the subject of two (2) prior exclusion notices within one (1) year prior to the current violation and, in combination, the current violation and those prior violations, and those prior violations took place in two (2) or more City parks, then the Administrator or Chief of Police or designee shall exclude the offender from all City parks for a period of one (1) year from the date of the exclusion notice.

(2) The exclusion notice shall be in writing and shall contain the date of issuance. The exclusion notice shall specify the length and places of exclusion. It shall be signed by the issuing individual. Warning of the consequences of failure to comply shall be prominently displayed on the notice.

(3) Only after a hearing may an exclusion notice be shortened or rescinded.

(4) An offender receiving an exclusion notice longer than seven (7) days may seek a hearing before the City Administrator to have the exclusion notice rescinded or the period of exclusion shortened. The request for a hearing shall be in writing and shall be delivered to the City Clerk, 865 SE Barrington Drive, Oak Harbor WA, 98277, or postmarked no later than ten (10) days after the issuance date of the exclusion notice. A copy of the exclusion notice shall be included with the request for hearing. The hearing shall occur within ten (10) days after the request for a hearing is received. The City shall take reasonable steps to notify the offender of the date, time and place of the hearing.

(5) At the hearing, the City must prove the violation by a preponderance of the evidence to uphold the exclusion notice. If the exclusion notice was issued because of the alleged violation of any criminal law, the offender need not be charged, tried or convicted for the exclusion notice to be upheld. The exclusion notice establishes a prima facie case that the offender committed the violation as described. The hearing officer may consider evidence that would not be admissible under the rules of evidence in a court of law, but must consider only relevant and trustworthy evidence.

(6) If the violation is proved, the exclusion notice shall be upheld, but upon good cause shown, the hearing officer may shorten the duration of the exclusion. If the violation is not proved by a preponderance of the evidence, the hearing officer shall rescind the exclusion. If the hearing officer rescinds the exclusion, the exclusion shall not be considered a prior exclusion for purposes of this Chapter.

(7) The decision of the hearing officer is final. An offender seeking judicial review of the hearing officer's decision must file an application for a writ of review in the Island County Superior Court within fourteen (14) days of the date of that decision.

(8) The exclusion shall remain in effect during the pendency of any administrative or judicial proceeding.

(9) No determination of facts made by a person conducting a hearing under this section shall have any collateral estoppel effect on a subsequent criminal prosecution or civil proceeding and shall not preclude litigation of those same facts in a subsequent criminal or civil proceeding.

(10) This section shall be enforced so as to emphasize voluntary compliance with laws and park rules, and so that inadvertent minor violations that would fall under this section can be corrected without resort to an exclusion notice.

#### **6.12.130 Emergency Park Closing.**

(1) The Administrator, with the approval of the mayor, may close areas of a park for the purpose of protecting the environment or for the purpose of protecting the public from conditions which constitute a potential hazard to life or physical well-being, or when it is in the interest of the public health, welfare and safety.

(2) The Administrator, with the approval of the mayor, may forbid a usually permitted activity when in the interest of public health, welfare or safety.

(3) As a method of controlling vandalism, criminal activity, riot or disorder, the administrator, with the approval of the mayor, may close a park or designated part of a park, or park facility for up to three months duration within any calendar year.

(4) The administrator may close buildings in City parks whenever he or she determines the same is for the best interest of the City.

(5) Upon making a decision to complete such a closure or restriction as authorized by this section, the administrator shall make written notice of the closure or restriction to the parks board and the city council setting forth the reasons for the closure or restriction. Such closure or restriction must be noticed by signs clearly demarking the closure or restriction made, the date of the closure or restriction and the duration.

**6.12.140 Discrimination Prohibited.** No person occupying or using any park for any event, activity or exhibition open to the public, may deny any other person the full use and enjoyment of such park because of race, creed, color, sex, marital status, sexual orientation, political ideology, age, religion, ancestry, national origin or the presence of any sensory, mental or physical handicap. Any permit issued, in the event of violation of this section may be cancelled.

**6.12.150 Reward Posting.** The council may offer, post and pay a suitable reward not exceeding \$500.00 for information leading to the arrest and conviction of anyone violating the provisions of this chapter.

**6.12.160 Severability.** If any part, provision or section of this Chapter is held to be void or unconstitutional, all other parts not expressly so held shall continue in full force and effect.

PASSED by the City Council this 1<sup>st</sup> day of October 2013.

CITY OF OAK HARBOR

Attest:

\_\_\_\_\_  
Scott Dudley, Mayor

\_\_\_\_\_  
Valerie J. Loffler, City Clerk

Approved as to Form:

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Grant K. Weed, Interim City Attorney

Published: 10/05/13

# City of Oak Harbor City Council Agenda Bill

**Bill No.** 6.a.  
**Date:** October 1, 2013  
**Subject:** Bed and Breakfast  
Draft Code

**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

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### **PURPOSE**

This agenda bill requests City Council approval of amendments to the Oak Harbor Municipal Code (OHMC) to more permissively allow bed and breakfast establishments (“B&Bs) in residential and select commercial zones. The proposed amendments affect OHMC Chapters 19.08 (Definitions), 19.20 (Zoning Districts), 19.36 (Sign Code), and 19.44 (Parking).

### **FISCAL IMPACT DESCRIPTION**

Funds Required: \$ N/A

Appropriation Source: N/A

The proposed code amendments will not affect the receipt or outlay of City funds.

### **SUMMARY STATEMENT**

The Mayor’s Economic Development Committee requested that the City look at the locations where B&Bs are allowed and consider permitting these establishments in more locations. The Committee felt that more flexible regulations for bed and breakfast regulations would help create more opportunities for new businesses and tourism in Oak Harbor. Planning Commission began discussions on this topic in April of this year.

The existing city code allows for B&Bs through a conditional use permit in the R2 (Limited Multifamily Residential), R3 (Multifamily Residential), R4 (Multifamily Residential), and RO (Residential Office) zones. Comparative research for other jurisdictions including Langley, Coupeville, Anacortes, Friday Harbor, and Port Townsend showed that each of these jurisdictions is more lenient than Oak Harbor in where it allows B&Bs (see Attachment 2).

# City of Oak Harbor City Council Agenda Bill

Using the regulatory framework from other jurisdictions, the draft bed and breakfast code (Attachment 1), allows B&Bs in a wider range of zones than currently permitted. The draft code, if adopted, would establish three different types of B&Bs:

- (1) bed and breakfast inns – facilities with up to ten guest rooms
- (2) bed and breakfast rooms (residential) – facilities with a limit of four rooms
- (3) bed and breakfast rooms (commercial) – facilities with a limit of four rooms

The following table shows where each of these types of B&Bs would be allowed under the draft code:

Type of B&B	R1 Low Density Residential	R2 Limited Multifamily Residential	R3 Multifamily Residential	R4 Multifamily Residential	RO Residential Office	C1 Neighborhood Commercial	CBD Central Business District
Inns	X	X	P	P	P	P	P
Residential Rooms	C	C	P	P	P	P	P
Commercial Rooms	X	X	X	X	X	P	P

Note: P = Permitted, C = Conditional, X = Prohibited.

The inherent philosophy reflected in the table is one of allowing B&Bs outright as permitted uses in higher density residential zones and appropriate commercial zones. At the same time, the code would protect the character of lower-density residential areas (R1 and R2) by prohibiting B&B Inns and B&B rooms (commercial), but allowing B&B rooms (residential) through a conditional use permit.

In addition to zoning controls, the draft code would also regulate the parking, signage, lighting, and operational characteristics of B&Bs to promote their compatibility with adjacent land uses, as follows:

- **Parking:** The draft code would require that B&Bs provide their own, off-street parking to meet their needs and limit the parking impacts on adjacent areas. Two spaces would be required for the owner/operator of the B&B plus one additional space per guest room.
- **Signage:** B&Bs would be permitted to have a single, four square-foot sign. Freestanding signs (pole or pylon) would be prohibited. Only building mounted or monument signs would be allowed. Signs would have to be of “non-reflective, non-flashing materials.”
- **Lighting:** Exterior lighting at the B&B must be downward directed so as not to impact adjacent uses.
- **Operations:** A manager or permanent resident would have to be domiciled onsite at the B&B at all times. No meals can be served to members of the general public at the B&B. In residential zones, only accessory commercial of 100 square feet or less is permitted for the sale of gifts, postcards, trinkets, etc. There is no limit on the amount of floor space devoted to commercial use in commercial zones.

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

## **PLANNING COMMISSION**

Planning Commission discussed the draft bed and breakfast code on April 23, June 25, July 23, and August 27 of 2013 and recommended approval of the draft code to the City Council on August 27.

## **RECOMMENDED ACTION**

Staff recommends that City Council approve the draft bed and breakfast code (Ordinance No. 1671).

## **ATTACHMENTS**

- Attachment 1: Ordinance 1671 – Draft Bed and Breakfast Code
- Attachment 2: Comparison of Bed and Breakfast Code Regulations
- Planning Commission Minutes (April 23, June 25, July 23, and August 27 of 2013)

ORDINANCE NO. 1671

AN ORDINANCE OF THE CITY OF OAK HARBOR AMENDING CHAPTER 19.08 OF THE OAK HARBOR MUNICIPAL CODE ENTITLED "DEFINITIONS" AND ALSO AMENDING CHAPTER 19.20 ENTITLED "ZONING."

WHEREAS, the City's Comprehensive Plan, Economic Development Goal 6 says: "Ensure tourism with an emphasis on strengthening Oak Harbor as a tourist destination." and;

WHEREAS, the City's Comprehensive Plan, Land Use Element, Goal 5 says "To protect existing land uses as new development occurs" and;

WHEREAS, the City's Comprehensive Plan, Land Use Element Goal 6 says "To encourage land use opportunities for diversified economic development, and;

WHEREAS, the City's Comprehensive Plan, Land Use Element, Goal 8 says "to ensure that the location, situation, configuration, and relationship of the varied land uses within the UGA are consistent and compatible" and;

WHEREAS, the City's Comprehensive Plan, Land Use Element Goal 19 says "to create and maintain a balanced community that mixes residential and non-residential uses in a way that promotes environmental quality and community aesthetics."

WHEREAS, the City of Oak Harbor conducted a public hearing before the Planning Commission on August 27, 2013. A public meeting was held before the Planning Commission on April 23, 2013.

WHEREAS, the Oak Harbor Planning Commission recommended approval of the subject ordinance to the City Council and;

WHEREAS, the City of Oak Harbor issued Notice of Application on July 13, 2013 and a Mitigated Determination of Non-Significance (MDNS) on August 8, 2013 for a SEPA Environmental Checklist in accordance with Chapter 43.21 RCW and;

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

**Section One.** Chapter 19.08 of the Oak Harbor Municipal Code last amended by Ordinance 1555 section 4 in 2009 is hereby amended to read as follows:

## Chapter 19.08 DEFINITIONS

### Sections:

- 19.08.005 Definitions.
- 19.08.010 Accessory dwelling unit.
- 19.08.015 Accessory use.
- 19.08.020 Alley.
- 19.08.025 Alteration.
- 19.08.030 Assisted living facility.
- 19.08.035 Auto convenience market.
- 19.08.040 Automatic teller machine.
- 19.08.045 Automobile service station including self-service.
- 19.08.050 Aviation environs.
- 19.08.055 Banner.
- 19.08.060 Basement.
- [19.08.061 Bed and Breakfast Inns](#)
- [19.08.062 Bed and Breakfast Room \(residential\)](#)
- [19.08.063 Bed and Breakfast Room \(commercial\)](#)
- 19.08.065 Berm.
- 19.08.070 Binding site plan.
- 19.08.075 Hearing examiner.
- 19.08.078 Building code.
- 19.08.079 Fire code.
- 19.08.080 Brew pub.
- 19.08.085 Buffer.
- 19.08.090 Buildable area.
- 19.08.095 Building.
- 19.08.100 Building, accessory.
- 19.08.105 Building area.
- 19.08.110 Building, detached.
- 19.08.115 Building height.
- 19.08.120 Building line.
- 19.08.125 Building, multiple-occupancy.
- 19.08.130 Building, office.
- 19.08.135 Building, quasi-public.
- 19.08.140 Building, single-occupancy.
- 19.08.145 Building site.
- 19.08.150 Canopy.
- 19.08.155 Carport.
- 19.08.160 Certificate of occupancy.
- 19.08.165 Child day care center.
- 19.08.170 Church.
- 19.08.175 City.
- 19.08.180 City staff.

19.08.185	Club.
19.08.190	Coffee kiosk.
19.08.195	Commercial use.
19.08.200	Commercial vehicle.
19.08.205	Conditional use.
19.08.210	Condominium.
19.08.215	Court.
19.08.220	Covered moorage building area.
19.08.225	Currency exchange.
19.08.230	Data processing facility.
19.08.235	Day-night average sound level (Ldn).
19.08.240	Deciduous.
19.08.245	Density.
19.08.250	Design review board.
19.08.252	Director of development services.
19.08.255	Dock.
19.08.260	Dwelling, multifamily.
19.08.265	Dwelling, single-family.
19.08.270	Dwelling unit.
19.08.275	Electrical distribution substation.
19.08.280	Essential public facility.
19.08.285	Essential use.
19.08.290	Evergreen.
19.08.295	Extended stay motel.
19.08.300	Factory-built structure.
19.08.305	Family.
19.08.310	Floor area.
19.08.315	Fraternity, sorority or student cooperative.
19.08.320	Garage, commercial.
19.08.325	Gated community.
19.08.330	General promotions.
19.08.335	Grade (adjacent ground elevation).
19.08.340	Grand openings and anniversaries.
19.08.345	Greenbelt.
19.08.350	Ground cover.
19.08.355	Health club.
19.08.360	Home, family child day care.
19.08.365	Home, foster.
19.08.370	Home, group.
19.08.375	Home improvement center.
19.08.380	Home occupation.
19.08.385	Hospital.
19.08.390	Hospital, animal.
19.08.395	Hotel.
19.08.400	House, apartment.
19.08.405	House, boarding, lodging or rooming.

19.08.410 House, guest.  
19.08.415 Institution, educational.  
19.08.420 Junkyard.  
19.08.425 Kennel, commercial.  
19.08.430 Kitchen.  
19.08.435 Land clearing.  
19.08.440 Landscape perimeter.  
19.08.445 Landscape policy manual.  
19.08.450 Landscape setback.  
19.08.455 Landscaping.  
19.08.460 Ldn contour.  
19.08.465 Lot.  
19.08.470 Lot area.  
19.08.475 Lot, corner.  
19.08.480 Lot coverage.  
19.08.485 Lot depth.  
19.08.490 Lot, developed single-family residential.  
19.08.495 Lot, interior.  
19.08.500 Lot, irregular shaped.  
19.08.505 Lot line.  
19.08.510 Lot line, front.  
19.08.515 Lot line, rear.  
19.08.520 Lot line, side.  
19.08.525 Lot, partially developed single-family residential.  
19.08.530 Lot, through.  
19.08.535 Lot, undeveloped.  
19.08.540 Lot width.  
19.08.545 Marquee.  
19.08.550 Mixed use.  
19.08.555 Manufactured home.  
19.08.560 Manufactured home park.  
19.08.565 Manufactured home subdivision.  
19.08.570 Moorage.  
19.08.575 Motel.  
19.08.580 Multiple-occupancy complex.  
19.08.585 Neighborhood convenience store.  
19.08.590 Noise zone map.  
19.08.595 Nonconforming structure.  
19.08.600 Nonconforming use.  
19.08.605 Nonconforming use, land.  
19.08.610 Occupant.  
19.08.615 Opaque.  
19.08.620 Open space.  
19.08.625 Parapet.  
19.08.630 Parking, employee.  
19.08.635 Parking, off-street.

- 19.08.640 Parking space.
- 19.08.645 Penthouse.
- 19.08.650 Permit, conditional use.
- 19.08.655 Permit, land clearing.
- 19.08.660 Permit, minor clearing.
- 19.08.665 Permit, temporary use.
- 19.08.670 Permitted use.
- 19.08.675 Primary use.
- 19.08.680 Professional office.
- 19.08.685 Property line.
- 19.08.690 Public utility.
- 19.08.695 Qualified affordable housing.
- 19.08.700 Recreation facilities.
- 19.08.705 Recreational vehicle.
- 19.08.710 Reside.
- 19.08.715 School, commercial.
- 19.08.720 Schools – Elementary, junior or senior high, including public, private and parochial.
- 19.08.725 Screen.
- 19.08.730 Secondary use, incidental or accessory.
- 19.08.735 Setback and yard requirements.
- 19.08.740 Shelter station.
- 19.08.745 Shopping center.
- 19.08.750 Shrub.
- 19.08.755 Sign.
- 19.08.760 Sign, abandoned.
- 19.08.765 Sign, area or surface area.
- 19.08.770 Sign, billboard.
- 19.08.775 Sign, building-mounted.
- 19.08.780 Sign, canopy.
- 19.08.785 Sign, construction.
- 19.08.790 Sign, freestanding.
- 19.08.795 Sign, grade.
- 19.08.800 Sign, height of.
- 19.08.805 Sign, incidental.
- 19.08.810 Sign, low-profile.
- 19.08.815 Sign, noncommercial public service.
- 19.08.820 Sign, political.
- 19.08.825 Sign or signs, primary.
- 19.08.830 Sign, projection.
- 19.08.835 Sign, reader board.
- 19.08.840 Sign, roof.
- 19.08.845 Signs, subdivision.
- 19.08.850 Signs, temporary and special.
- 19.08.855 Sign, window.
- 19.08.860 Skilled nursing facility.

19.08.865	Solid planting.
19.08.870	Sorority.
19.08.875	Story.
19.08.880	Street.
19.08.885	Structure.
19.08.890	Structural alteration.
19.08.895	Surface area or facade.
19.08.896	Temporary.
19.08.897	Tree.
19.08.898	Tree cluster, grove or stand.
19.08.899	Tree root zone.
19.08.900	Understory.
19.08.901	Tree, ornamental.
19.08.905	Tree, shade.
19.08.910	Tree, significant.
19.08.915	Upholstery shop.
19.08.920	Use.
19.08.925	Use district.
19.08.930	Used car lot.
19.08.935	Uses, prohibited.
19.08.940	Variance.
19.08.945	Vehicular surface area.
19.08.950	Video rental store.
19.08.955	Waste, hazardous.
19.08.960	Waste, hazardous – Off-site treatment and storage facility.
19.08.965	Waste, hazardous – On-site treatment and storage facility.
19.08.970	Waste, hazardous – Storage of.
19.08.975	Waste, hazardous – Treatment of.
19.08.980	Way open to public.
19.08.985	Wireless communications facility, macro.
19.08.990	Wireless communications facility, micro.
19.08.995	Wireless communications facility, mini.
19.08.1000	Wireless communications facility, monopole.
19.08.1005	Xeriscape.
19.08.1010	Yard.
19.08.1015	Yard, front.
19.08.1020	Yard, rear.
19.08.1025	Yard, service.
19.08.1030	Yard, side.

### **19.08.061 Bed and Breakfast Inn**

“Bed and Breakfast Inn” means a building or group of buildings on a lot which is designed or used for rental for transient lodging, where:

- (1) Not more than ten rooms are available for such rental;
- (2) No meals are served to members of the general public;
- (3) In residential zones, only accessory business, service, or commercial activity is allowed or provided on premises which shall not exceed 100 square feet in size. Such business shall only serve guests of the bed and breakfast establishment.
- (4) No room is rented to more than four persons.

### **19.08.062 Bed and Breakfast Rooms (residential)**

“Bed and breakfast room (residential) means a room used for rental to not more than four persons for transient lodging situated in a building which is used primarily as the dwelling for a non-transient family, or in the case where there is an approved accessory dwelling unit on the same property, the principal dwelling is owner-occupied, and where:

- (1) Not more than four rooms are available for such rental
- (2) No meals are served to members of the general public; and
- (3) In the residential zones, only accessory business, service, or commercial activity is allowed or provided on premises which shall not exceed 100 square feet in size. Such business shall only serve guests of the bed and breakfast establishment.
- (4) If the principal dwelling ceases to be owner-occupied, the bed and breakfast use shall be terminated.

### **19.08.063 Bed and Breakfast Rooms (commercial)**

“Bed and breakfast room (commercial)” means a room used for rental to not more than four persons for transient lodging situated in a building which is used primarily as a commercial establishment, where:

- (1) Not more than four rooms are available for such rental
- (2) No meals are served to members of the general public; and
- (4)(3) The room(s) are located above the first or street level or behind the street front side of the building.

**Section Two.** Sections 19.20.100 through 19.20.120 of the Oak Harbor Municipal Code last amended by Ordinance 1573 section 1 in 2010 are hereby amended to read as follows:

## **Article II. R-1 – Single-Family Residential**

### **19.20.100 Purpose and intent.**

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

### **19.20.105 Principal permitted uses.**

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

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

### **19.20.110 Accessory permitted uses.**

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

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

### **19.20.115 Conditional uses permitted.**

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

- (1) All radio, television and microwave receiving antennas, whether variously described as a wire, dish, tower antenna, or otherwise, located outside of the setback lines of the lot when:
  - (a) Reception cannot be obtained when located within the setback lines;
  - (b) The location in a setback yard does not block the view of Oak Harbor Bay proposed from other property;
  - (c) The antenna does not cause a danger to adjacent properties;
  - (d) The antenna installation complies with all other zoning and building provisions of this code.
- (2) Assisted living facility.
- (3) Bed and breakfast rooms (residential only) subject to the following conditions:
  - (a) A resident is domiciled onsite;
  - (b) Parking of guest vehicles shall be accommodated on the premises and the number of spaces must meet OHMC 19.44.100. The size and dimensional requirements of OHMC 19.44 are not required to be met.
  - (c) Signs shall be permitted per OHMC 19.36.070.
  - (d) No commercial dining or other hospitality facilities are maintained for the entertainment of guests;
  - (e) Bed and breakfast rooms (residential) shall not be located in Noise Subdistrict C as that area is shown on the City of Oak Harbor's Official Zoning Map.
  - (f) If exterior lighting is proposed for the bed and breakfast room (residential) establishment, it shall be downward directed so as not to impact adjacent properties.
- (34) Cemetery, mausoleum, or crematorium, but only in connection therewith.
- (54) Churches and associated rectories, convents or other similar structures.

- | ~~(65)~~ Community center building.
- | ~~(76)~~ Excavations, other than simple foundation.
- | ~~(87)~~ Garages, for storage only of automobiles as an accessory to a public or quasi-public institution.
- | ~~(98)~~ Golf course, including club house, but not an independent pitch-and-putt course, golf driving range or miniature golf.
- | ~~(910)~~ Government buildings for administrative or protective services, government storage yards, treatment plants, well sites, pump stations and sanitary landfills.
- | ~~(4011)~~ Group home.
- | ~~(4112)~~ Home occupations as regulated in Chapter 19.34 OHMC.
- | ~~(4213)~~ Hospital.
- | ~~(4314)~~ Landfills, reclamation to improve steep, low or otherwise unusable land.
- | ~~(4415)~~ Mortuaries.
- | ~~(4516)~~ Nursery and landscape material, including greenhouses.
- | ~~(4617)~~ Private club, lodge, social or recreation building or community assembly hall (except those having a chief activity carried on for monetary gain); provided, that the buildings used for such purpose may require additional front, rear or side yard setback from an adjoining lot in any residential district beyond the established requirements in the parent zoning district.
- | ~~(4718)~~ Private nursery school, foster home, kindergarten, or child day care center, not qualifying as a home occupation, on a legal lot, provided there is established in connection therewith an outdoor play area having a minimum area of 1,000 square feet plus an additional 50 square feet for each child in excess of eight.
- | ~~(4819)~~ Private park or recreational area operated by a nonprofit community organization or association as a neighborhood playground, or local community recreational area, operated for the benefit of and exclusive use of members and their invited guests. Applications for a conditional use under this section shall state the specific use or uses to which the proposed neighborhood playground or local community recreational area shall be put. Conditional uses granted under this section shall be limited to one or more of the specific use or uses requested. Any use or uses in addition to or different from those specifically permitted by the hearing examiner hereunder shall require the separate approval of the hearing examiner. Included within the generality of the phrase "neighborhood playground, or local community recreational areas," but not limited thereto, are swimming pools, community beaches and tennis courts, together with appurtenances thereto.
- | ~~(4920)~~ Public school.
- | ~~(2021)~~ Public or private college.
- | ~~(2422)~~ Public, private or parochial school and supporting dormitory facilities.
- | ~~(2223)~~ Public or semi-public building serving as a library, museum or other similar purpose.
- | ~~(2324)~~ Public transportation shelter stations.
- | ~~(2425)~~ Public utility and communications facility, such as a branch telephone exchange, static transformer, booster station, or pumping station, provided there shall be no service or storage buildings or yards in connection therewith.
- | ~~(2526)~~ Radio and television broadcasting stations and towers.
- | ~~(2627)~~ Rapid transit terminals.

| (2728) Skilled nursing facility.

**19.20.120 Density provisions.**

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

- (1) Minimum density, three DU/AC; maximum density, six DU/AC;
- (2) Minimum lot area, 7,200 square feet;
- (3) Minimum lot width, 60 feet;
- (4) Minimum lot depth, 90 feet;
- (5) Minimum front yard, 20 feet;
- (6) Minimum side yard setbacks are 12 feet and five feet; however, minimum side yard along the flanking street of a corner lot, 15 feet;
- (7) Minimum rear yard, 20 feet;
- (8) Maximum building height, 35 feet;
- (9) Maximum lot coverage, 35 percent of lot area;
- (10) A single-story accessory building containing less than 600 square feet of floor area may be constructed within five feet of either sideline or rear property line provided there is six feet of unencumbered space between the principal structure and the accessory building. Accessory buildings shall not have a metal finish except when the finish is listed by the manufacturer or approved by the building department as a nonglare finish. The maximum floor area of an accessory structure shall not exceed 50 percent of the floor area of the primary structure;
- (11) Development as a planned residential development may occur subject to Chapter 19.31 OHMC.

**Section Three.** Sections 19.20.125 through 19.20.155 of the Oak Harbor Municipal Code last amended by Ordinance 1573 section 1 in 2010 are hereby amended to read as follows:

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

**19.20.125 Purpose and intent.**

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

**19.20.130 Principal permitted uses.**

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

- (1) Principal use permitted in an R-1 district;
- (2) Duplexes, two-family dwelling structures;
- (3) Multifamily dwellings;
- (4) Development under a planned residential development as per Chapter 19.31 OHMC;

- (5) Manufactured home subdivisions and parks in compliance with Chapter 19.25 OHMC.

**19.20.135 Accessory permitted uses.**

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

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

**19.20.140 Conditional uses permitted.**

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

~~(1) (1) Any conditional use permitted in an R-1 district;~~

~~(2) Bed and breakfast rooms (residential only) subject to the following conditions:~~

~~(a) A resident is domiciled onsite;~~

~~(b) Parking of guest vehicles shall be accommodated on the premises and the number of spaces must meet OHMC 19.44.100. The size and dimensional requirements of OHMC 19.44 are not required to be met.~~

~~(c) Signs shall be permitted as per OHMC 19.36.060.~~

~~(d) No commercial dining or other hospitality facilities are maintained for the entertainment of guests;~~

~~(e) Bed and breakfast rooms (residential) shall not be located in Noise Subdistrict C as that area is shown on the City of Oak Harbor's Official Zoning Map.~~

~~(f) If exterior lighting is proposed for the bed and breakfast room (residential) establishment, it shall be downward directed so as not to impact adjacent properties.~~

~~(2) Bed and breakfast inns subject to the following conditions:~~

~~(a) There shall be no more than four guest rooms;~~

~~(b) Service of meals shall be to registered guests only;~~

~~(c) here shall be a full-time manager domiciled on the premises;~~

~~(d) Parking of guest vehicles shall be accommodated on the same site with the main building;~~

~~(e) Only one on-premises sign not exceeding four square feet in area shall be permitted. Maximum height of pole signs shall be 42 inches;~~

~~(3) Bed and breakfast rooms subject to the following conditions:~~

~~(a) A resident family is domiciled within the structure;~~

~~(b) No more than 50 percent of the existing bedrooms are devoted to bed and breakfast;~~

~~(c) Parking of guest vehicles shall be accommodated on the premises;~~

- ~~(d) Only one on-premises sign not more than four square feet in area shall be permitted. Maximum height of pole signs shall be 42 inches;~~
- ~~(e) No commercial dining or other hospitality facilities are maintained for the entertainment of guests;~~
- ~~(f) The use of the building as a dwelling is the predominant use.~~

#### **19.20.145 Density provisions.**

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

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

#### **19.20.150 Landscaping requirements.**

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

#### **19.20.155 Site plan review required.**

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

**Section Four.** Sections 19.20.160 through 19.20.190 of the Oak Harbor Municipal Code last amended by Ordinance 1573 section 1 in 2010 are hereby amended to read as follows:

#### **Article IV. R-3 – Multiple-Family Residential**

##### **19.20.160 Purpose and intent.**

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

##### **19.20.165 Principal permitted uses.**

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

- (1) Principal uses permitted in an R-2 district, except single-family uses;
- (2) Bed and breakfast inns subject to the following conditions:
  - (a) There shall be a full-time manager domiciled on the premises;
  - (b) Parking of guest vehicles shall be accommodated on the same site with the main building and shall meet the requirements of OHMC Chapter 19.44;
  - (c) Signs shall be permitted as per OHMC 19.36.060.
  - (d) Bed and breakfast inns shall not be located in Noise Subdistrict C as that area is shown on the City of Oak Harbor's Official Zoning Map.
  - (f) If exterior lighting is proposed for the bed and breakfast inn establishment, it shall be downward directed so as not to impact adjacent properties.
- (3) Bed and breakfast rooms (residential only) subject to the following conditions:
  - (a) A resident is domiciled onsite;
  - (b) Parking of guest vehicles shall be accommodated on the premises and the number of spaces must meet OHMC 19.44.100. The size and dimensional requirements of OHMC 19.44 are not required to be met.
  - (c) Signs shall be permitted as per OHMC 19.36.060.
  - (d) No commercial dining or other hospitality facilities are maintained for the entertainment of guests;
  - (e) Bed and breakfast rooms (residential) shall not be located in Noise Subdistrict C as that area is shown on the City of Oak Harbor's Official Zoning Map.
  - (f) If exterior lighting is proposed for the bed and breakfast room (residential) establishment, it shall be downward directed so as not to impact adjacent properties.
- ~~(2)~~(4) (42) Manufactured home park, subject to the provisions of Chapter 19.25 OHMC;
- ~~(3)~~(5) (53) Multifamily dwellings;
- ~~(4)~~(6) (64) Development under a planned residential development as per Chapter 19.31 OHMC.

**19.20.170 Accessory permitted uses.**

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

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

**19.20.175 Conditional uses permitted.**

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

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

**19.20.180 Density provisions.**

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

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

**19.20.185 Landscaping requirements.**

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

**19.20.190 Site plan review required.**

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

**Section Five.** Sections 19.20.265 through 19.20.295 of the Oak Harbor Municipal Code last amended by Ordinance 1573 section 1 in 2010 are hereby amended to read as follows:

**Article VII. C-1 – Neighborhood Commercial**

**19.20.265 Purpose and intent.**

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

**19.20.270 Principal permitted uses.**

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

- (1) Principal uses permitted in an RO district;
- (2) Artist's studios and supplies;
- (3) Auto convenience market;
- (4) Bakery, retail only;
- (5) Barber shop or beauty shop;

(6) Bed and breakfast inns subject to the following conditions:

- (a) There shall be a full-time manager domiciled on the premises;
- (b) Parking of guest vehicles shall be accommodated on the same site with the main building and shall meet the requirements of OHMC Chapter 19.44;
- (c) Signs shall meet the requirements of OHMC

19.36.040

- (d) Bed and breakfast inns shall not be located in Noise Subdistrict C as that area is shown on the City of Oak Harbor's Official Zoning Map.
- (e) If exterior lighting is proposed for the bed and breakfast inn establishment, it shall be downward directed so as not to impact adjacent properties.

(7) Bed and breakfast rooms (residential or commercial) subject to the following conditions:

- (a) A resident or manager is domiciled onsite;
- (b) Parking of guest vehicles shall be accommodated on the premises and the number of spaces must meet OHMC 19.44.100. The size and dimensional requirements of OHMC 19.44 are not required to be met.
- (c) Signs shall meet the requirements of OHMC 19.36.
- (d) Bed and breakfast rooms (residential or commercial) shall not be located in Noise Subdistrict C as that area is shown on the City of Oak Harbor's Official Zoning Map.

(e) If exterior lighting is proposed for the bed and breakfast room (residential or commercial), it shall be downward directed so as not to impact adjacent properties.

- (~~86~~) Book and stationery store;
- (~~97~~) Clothing store;
- (~~108~~) Confectionery;
- (~~119~~) Dairy products, retail only;
- (~~1240~~) Delicatessen;
- (~~1344~~) Dress and millinery shop;
- (~~1442~~) Drug store, including fountain;
- (~~1543~~) Dry cleaners;
- (~~1644~~) Florist shop;
- (~~1745~~) Garden supplies and horticultural nursery, not including greenhouses;
- (~~4186~~) Grocery store;
- (~~1947~~) Hardware store;
- (~~2048~~) Health club;
- (~~2149~~) Laundry, self-service;
- (~~2220~~) Library;
- (~~2324~~) Office supply and equipment store;
- (~~2422~~) Photographic studio and supplies;
- (~~2523~~) Private nursery school, child day care center or kindergarten, provided there is established in connection therewith an outdoor play area having a minimum area of 1,000 square feet plus an additional 50 square feet for each child in excess of eight;
- (~~2624~~) Radio and television sales and service;
- (~~2725~~) Restaurant, including sidewalk cafes;
- (~~2826~~) Service station;
- (~~2927~~) Single-family residential uses when located on the second floor above a permitted use;
- (~~3028~~) Shoe repair shop;
- (~~3129~~) Variety store;
- (~~3230~~) Other uses as defined by the planning director to be similar to those identified above and having equal or less impact on the purposes of this section. .

#### **19.20.275 Accessory permitted uses.**

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

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

**19.20.280 Conditional uses permitted.**

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

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

**19.20.285 Density provisions.**

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

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

**19.20.290 Conditions governing permitted uses.**

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

- (1) All business, service, repair, processing, storage, or merchandise display shall be conducted within a wholly enclosed building except for the following:
  - (a) Off-street parking or loading;
  - (b) Drive-in windows, but not including food or drink service;
  - (c) Food and drink service in connection with a delicatessen or confectionery;
  - (d) Sale of plant materials in connection with a florist shop;
- (2) Items produced or wares and merchandise handled shall be limited to those sold at retail on the premises;

- (3) The use shall not be objectionable because of odor, dust, smoke, cinders, exhaust fumes, noise, vibration, disturbance to television or radio reception or because of unsightly structure, facilities or use of land;
- (4) Design shall be in accordance with the provisions of the design guidelines;
- (5) Landscaping and buffers shall be constructed and maintained in accordance with the provisions of Chapter 19.46 OHMC.

**19.20.295 Site plan and design review required.**

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

**Section Six.** Sections 19.20.300 through 19.20.330 of the Oak Harbor Municipal Code last amended by Ordinance 1573 section 1 in 2010 are hereby amended to read as follows:

**Article VIII. CBD – Central Business District**

**19.20.300 Purpose and intent.**

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

**19.20.305 Principal permitted uses.**

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

- (1) Antique shop (R);
- (2) Artist’s studios and supplies (R);

- (3) Bakery, retail only (R);
- (4) Bank;
- (5) Barber and beauty shops;
- (6) Bars (R);
- (7) Bed and breakfast inns subject to the following conditions:
  - (a) There shall be a full-time manager domiciled on the premises;
  - (b) Signs shall meet the requirements of OHMC 19.36.030.
  - (c) Bed and breakfast inns shall not be located in Noise Subdistrict C as that area is shown on the City of Oak Harbor's Official Zoning Map.
  - (d) If exterior lighting is proposed for the bed and breakfast inn, it shall be downward directed so as not to impact adjacent properties.
- (8) Bed and breakfast rooms (residential or commercial) subject to the following conditions:
  - (a) A resident or manager is domiciled onsite;—
  - (b) Signs shall meet the requirements of OHMC 19.36.030.
  - (c) Bed and breakfast rooms (residential or commercial) shall not be located in Noise Subdistrict C as that area is shown on the City of Oak Harbor's Official Zoning Map.
  - (d) If exterior lighting is proposed for the bed and breakfast room (residential or commercial), it shall be downward directed so as not to impact adjacent properties.
- (97) Bicycle shop (R);
- (108) Billiards and pool hall (R);
- (119) Blueprinting;
- (1210) Bookstore (R);
- (1311) Brew pub (R);
- (1412) Camera and supply shop (R);
- (1513) Clothes and apparel shop (R);
- (1614) Cocktail lounge (R);
- (1715) Coffee house (R);
- (1816) Confectionery store (R);
- (1917) Conference center;
- (2018) Data processing facility;
- (2119) Delicatessen (R);
- (2220) Department store (R);
- (2321) Dry cleaners;
- (2422) Furniture shop (R);
- (2523) Florist shop (R);
- (2624) Gift shop (R);
- (2725) Grocery store, neighborhood, provided gross floor area shall not exceed 12,000 square feet (R);
- (2826) Hardware store (R);
- (2927) Hobby shop (R);
- (3028) Hotel and motel;

- ([3129](#)) Ice cream shop (R);
- ([3230](#)) Interior decorator studio (R);
- ([3331](#)) Jewelry store (R);
- ([3432](#)) Leather goods store (R);
- ([3533](#)) Music store (R);
- ([3634](#)) Offices;
- ([3735](#)) Office supply and equipment store (R);
- ([3836](#)) Pet shop (R);
- ([3937](#)) Pharmacy and drug store (R);
- ([4038](#)) Photographic film processing and associated retail sales (R);
- ([4139](#)) Photographic studio and supplies;
- ([4240](#)) Photocopying;
- ([4341](#)) Post office;
- ([44442](#)) Printing shop;
- ([4543](#)) 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;
- ([4644](#)) Restaurant, including sidewalk cafe (R);
- ([4745](#)) Schools for the fine arts;
- ([4846](#)) Shoe repair shop (R);
- ([4947](#)) Shoe store (R);
- ([5048](#)) Sporting goods shop (R);
- ([5149](#)) Tailor shop (R);
- ([5250](#)) Tavern (R);
- ([5351](#)) Taxi service;
- ([5452](#)) Theater;
- ([5553](#)) Tobacco shop (R);
- ([5654](#)) Toy store (R);
- ([5755](#)) Travel agencies;
- ([5856](#)) Trophy shop (R);
- ([5957](#)) Upholstery shop;
- ([6058](#)) Variety store (R);
- ([6159](#)) Visitor information center;
- ([6260](#)) Other uses similar to those identified above and having equal or less impact on the purposes of this section.

**19.20.310 Accessory permitted uses.**

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

- (1) A use customarily incidental and subordinate to a principal use permitted outright;
- (2) On-site hazardous waste treatment and storage facilities as an accessory use to any activity generating hazardous waste and lawfully allowed in this zone;

provided, that such facilities meet the state siting criteria adopted pursuant to the requirements of RCW 70.105.210;

- (3) Television satellite dish reflectors, roof-mounted and within building setback lines not to exceed the height limitations and other standards as set out in OHMC 19.20.320; provided said height limitation may be increased when such height is permitted per OHMC 19.28.040 and 19.28.050.

**19.20.315 Conditional uses permitted.**

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

- (1) Coffee kiosk;
- (2) Dancehall;
- (3) Governmental buildings for administrative or protective services;
- (4) Health club;
- (5) Land reclamation with water-dependent marine development;
- (6) Parking lots or garages not in conjunction with permitted uses;
- (7) Places of entertainment and amusement, if conducted within a wholly enclosed building;
- (8) Private nursery school, kindergarten, or child day care center not qualifying as a home occupation on a legal lot; provided, there is established in connection therewith an outdoor play area having a minimum area of 1,000 square feet plus an additional 50 square feet for each child in excess of eight;
- (9) Public utility and communications facility;
- (10) Transit terminals;
- (11) Swimming pools or beaches, public or private;
- (12) Other uses similar to uses permitted or conditionally permitted and normally located in the central business district; provided, that there shall be no manufacturing, compounding, processing or treatment of products other than that which is essential to the retail store or business where all such products are sold on the premises.

**19.20.320 Density provisions.**

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

(1) Allowable density:

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

- (2) Minimum lot area, no limitation;
- (3) Minimum lot width, no limitation;
- (4) Minimum lot depth, no limitation;
- (5) Minimum front yard, no limitation, except when opposite a residentially zoned property, then a 10-foot front yard is required. Front yard setback may also be increased to 10 feet if needed for traffic safety; front yard setback shall be provided so as to maintain a 12-foot sidewalk measured from the existing curb or future curb line;
- (6) Minimum side yard, no limitation except when abutting a residentially zoned property, then 10 feet each. For corner lots, side yard may also be increased to 10 feet if needed for traffic safety;
- (7) Minimum rear yard, no limitation except when opposite a residentially zoned property, then 10-foot rear yard is required or except when abutting a public street where the setback may be increased to 10 feet if needed for traffic safety;
- (8) Maximum building height; 35 feet; except:
  - (a) In CBD: building height may be increased to 45 feet if ground floor retail space (as defined in OHMC 19.20.300) is developed in conjunction with a residential use;
  - (b) In CBD-2: building height may be increased to 45 feet for residential development (without a retail component);
  - (c) In CBD: building height may be increased to 45 feet for nonresidential uses or mixed use projects upon approval of the design review board and by providing additional urban amenities as defined in the Oak Harbor commercial and industrial design guidelines;
  - (d) In CBD: building height may be increased to 55 feet for nonresidential uses or mixed use projects upon approval of the design review board and by providing additional urban amenities as defined in the Oak Harbor commercial and industrial design guidelines. The design review board shall specifically review the proposed project and building height for its impacts on waterfront and mountain views and require reasonable mitigation as necessary;
- (9) Maximum lot coverage, no limitation;
- (10) Parking.
  - (a) Nonresidential Uses. There shall be no required parking for nonresidential uses; except, however, if parking is provided, it shall meet the parking space size and access requirements of OHMC 19.44.110;

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

**19.20.325 Conditions governing permitted uses.**

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

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

**19.20.330 Site plan and design review required.**

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

**Section Seven** Section 19.36.040 of the Oak Harbor Municipal Code last amended by Ordinance 1553, Section 3 in 2009 is hereby amended to read as follows:

**19.36.040 Residential/office district and neighborhood commercial district signs – RO and C-1 zones.**

(1) General. ~~Subsections 1-4~~~~This section~~ applies only to office and apartment buildings in RO and buildings in C-1 zones of the city. Such buildings in other zones are governed by the sign regulations of the applicable zone. As the RO and C-1 zones are primarily placed as a buffer between CBD, C-3, C-4 and C-5 business district zones and residential zones, the permissible signs are scaled down from those allowed in business districts.

(2) Setback Limitations – Freestanding Signs. The size of any freestanding sign in an RO or C-1 district shall not exceed the following limits, based on the sign setback of the sign:

Minimum Setback: 5 feet from front property line

Maximum Area: 35 square feet (per side)

(a) Sign Height – Freestanding Signs. The height of any freestanding sign in an RO or C-1 district shall not exceed the following limits, based on the sign setback of the sign:

Maximum Height: 15 feet

(b) Facade Limitations – Building-Mounted Signs, Roof and Canopy-Mounted Signs. The surface area of any building-mounted sign and roof or canopy-mounted sign in the RO and C-1 districts shall not exceed the figures derived from the following schedule:

Relevant Surface Area of Facade as Determined Pursuant to OHMC 19.36.020(40) (sq. ft.)	Maximum Sign Surface Area for That Facade
Below 100	20 percent of the sign area
100 – 199	21 sq. ft. + 9 percent of facade area over 100 sq. ft.
200 – 499	30 sq. ft. + 10 percent of facade area over 200 sq. ft.
500 – 999	60 sq. ft. + 9 percent of

	facade area over 500 sq. ft.
Over 1,000	105 sq. ft. maximum

In multiple-occupancy buildings the facade area for each occupant is derived by measuring only the surface area of the exterior facade of the premises actually used by the tenant or user, and the sign displayed by that tenant or user must be located on the facade used to determine the size of the sign, except as provided in this section.

Unused sign surface area for a facade may be used by any tenant or user within the same multiple occupancy building, if:

- (i) The applicant files with the city a written statement signed by the tenant or user permitted to utilize that sign area under this code permitting the applicant to utilize the unused sign surface area;
- (ii) The display of a sign on that facade by the nondependent sign user will not create a significant adverse impact on dependent sign users of that facade;
- (iii) The display of the nondependent sign is necessary to reasonably identify the use, and the provisions of this code do not provide the use with adequate sign display options.

In no case may the maximum sign surface area permitted on a building facade be exceeded.

- (c) Sign Height – Building-Mounted Signs. No building-mounted sign in the RO or C-1 district, regardless of type, shall exceed a height of 20 feet above grade, or above the height of the building to which it is attached, whichever is less.
  - (d) Limitation. Any freestanding or building-mounted sign located in these districts shall be limited in content and message to identify the building and the name of the firm, or the major enterprise, and the principal service or product of the business without references to prices or the characteristics of the product or services offered.
- (3) Number of Signs. In the RO and C-1 districts no more than two primary signs are permitted for buildings facing on one street, only one of which may be freestanding. Buildings or building complexes on street corner locations may have two freestanding signs only if they are located on two different streets and are separated more than 100 feet, measured in a straight line between the signs. Buildings or building complexes which extend a block to face on two parallel streets are permitted two primary signs on each street, only one of which may be freestanding for each street.

For purposes of determining the limit on number of signs for apartments, a single apartment complex, regardless of the number of buildings, shall be considered one building.

- (4) Types and Placement. Within RO and C-1 districts the permissible types of signs, their placement and other limitations are as follows:
- (a) Freestanding Signs. Requirements are identical to OHMC 19.36.030(5)(a), except that advertising shall not be permitted.
  - (b) Building-Mounted Signs. Requirements are identical to OHMC 19.36.030(5)(b), except that advertising shall not be permitted.
  - (c) Electronic Message Center Signs. These signs are allowed only in the C-1 district. Requirements are identical to OHMC 19.36.030(5)(g) except that brightness may not exceed 0.3 footcandles above ambient night-time lighting levels.
  - (d) Incidental Signs. In addition to the permitted primary signs, each building or complex of buildings is permitted the incidental signs as described and limited in OHMC 19.36.030(6).
  - (e) Street Address Identification. Each building or complex of buildings shall display and maintain on-premises street address number identification.
  - (f) Signs or portions of signs indicating premises for rent (e.g., "Apartment for Rent," "Apartment Available," "Vacancy," "Now Renting," "Free Rent," etc.) shall not exceed a surface area of six square feet and many remain up until the premises are sold or rented.
  - (g) The illumination of any sign in the RO and C-1 districts shall be shaded, shielded, directed or reduced so that it is not visible from a public street or adjoining residential property.
  - (h) Legal nonconforming signs same as OHMC 19.36.030(10) and (11).
  - (i) Monument signs shall not exceed six feet in height measured from the finished grade to top of the sign and not exceed 32 square feet in area. Monument signs shall be located within the center two-thirds of street frontage. Signs may be located up to the property line when there is no sight visibility obstruction from driveways or intersections caused by placement of the sign.
- (5) Bed and breakfast establishments. Only one on-premises monument sign or building mounted sign not more than four square feet in area shall be permitted. Such signs shall use non-flashing, non-reflective materials; and the legend shall show only the name of the facility and/or the operator and/or the address. Pole or pylon signs are prohibited.

**Section Eight** Section 19.36.070 of the Oak Harbor Municipal Code last amended by Ordinance 1640, Section 3 in 2012 is hereby amended to read as follows:

**19.36.070 Single-family residential signs – R-1 zones.**

- (1) General. Two categories of sign uses are covered by this section:
- (a) Existing, Legal Nonconforming Commercial Uses. The provisions herein for signs for commercial uses apply only to legal nonconforming uses which have been approved under applicable zoning ordinances prior to the enactment of this code.

- (b) Noncommercial uses such as schools, churches, fire stations and house number identification.
- (2) Signs for Existing Legal Nonconforming Uses. No more than one primary sign is permitted for each use in this category so long as the building remains legally nonconforming under the provisions of this title as follows:
  - (a) Such sign may be either freestanding or building-mounted.
  - (b) If freestanding, the sign shall conform to the requirements of OHMC 19.36.030(5)(a) in regard to placement and OHMC 19.36.040(2)(a) in regard to size and height.
  - (c) A building-mounted sign shall conform to the requirements of OHMC 19.36.030(5)(b); provided, however, that no sign shall exceed 20 square feet in surface area.
- (3) Signs for Noncommercial Uses.
  - (a) On-premises signs for churches, schools, golf courses, fire stations, police stations, noncommercial use or public service, or other similar noncommercial uses:
    - (i) Signs shall be unobtrusive, in keeping with the character of the neighborhood and constructed of quality materials, as approved in advance by the administrator of this code. No building-mounted signs shall exceed 20 feet in height and 50 square feet in surface area and no freestanding sign located between the building line and the property line shall exceed five feet in height and 25 square feet in surface area. A freestanding sign located at the building line or behind it shall not exceed 15 feet in height or 35 square feet in area. No more than one freestanding sign and one building-mounted sign is permitted from the above uses per street frontage.
    - (ii) Off-premises signs for nonconforming uses may be approved by the site plan review committee subject to the following conditions:
      - (A) The sign is to identify current events or activities;
      - (B) The sign or message is for a temporary period of time sufficient to inform the public of the event or activity with a maximum of two weeks;
      - (C) The sign shall not be located on street right-of-way except when a part of a permanent subdivision or neighborhood designation sign (see subsection (3)(d) of this section);
      - (D) The sign shall not exceed 15 square feet in area nor five feet in height;
      - (E) Not more than two such signs shall be permitted.
  - (b) Illumination. Illumination from or upon any signs in single-family residential districts shall be shaded, shielded, directed or reduced so that the light intensity or brightness does not affect the enjoyment of residential property in the vicinity in any substantial way.
  - (c) House Numbers. All houses in the single-family residential district shall display house numbers visible from the street and letters or numbers shall be a minimum of five inches in height.

(d) Permanent Subdivision or Neighborhood Designation Signs. Signs shall be unobtrusive, in keeping with the character of the neighborhood, and constructed of quality materials, as approved in advance by the administrator of this code. Signs shall not exceed five feet in height and 25 square feet in surface area, and shall be located between the building line and property line unless a location of excess city right-of-way is approved by the superintendent of public works. Responsibility for the future maintenance or removal of these signs must be determined prior to their construction. (Ord. 1553 § 5, 2009; Ord. 1307 § 8, 2002; Ord. 1221 § 1, 2000. Formerly 19.36.060).

(e) Bed and breakfast establishment signs. Only one on-premises monument sign or building mounted sign not more than four square feet in area shall be permitted. Such signs shall use non-flashing non-reflective materials; and the legend shall show only the name of the facility and/or the operator and/or the address. Pole or pylon signs are prohibited.

**Section Nine.** Section 19.44.100 of the Oak Harbor Municipal Code last amended by Ordinance 1614 section 1 in 2011 is hereby amended to read as follows:

**19.44.100 Minimum parking space standards.**

Use	Required Parking
Residential, single-family	Two per dwelling
Residential, duplex	Two per dwelling
Residential, multiple	One and one-half per dwelling unit
Three or more bedroom dwelling unit	Two per three or more bedroom dwelling unit. In addition, multifamily projects with eight or more units shall provide one visitor parking space for each eight units.
Banks	One per 400 square feet of gross floor area, plus employee parking
<u>Bed and breakfast inns and rooms</u>	<u>Two for primary resident or on-site manager plus one for each guest room</u>
Bowling alleys	Four per alley, plus employee parking
Churches, auditoriums and similar enclosed places of assembly	One per four seats and/or one per 30 square feet of assembly space without fixed seats
Skilled nursing facilities	One per five beds, plus owner and employee parking
College	One space per 200 square feet of classroom space
Assisted living facilities	Minimum of 0.8 spaces per unit, with a maximum of one and one-half spaces per unit
Food and beverage places with sales and consumption on premises	One per three seats, plus one space for every two employees on the largest shift
Furniture, appliance, hardware, clothing and shoe	One per 600 square feet gross floor area, plus

Use	Required Parking
stores, personal service stores such as beauty parlors, barbershops and physical fitness centers	employee parking
Gasoline stations	15 spaces, including pump and service area
Hospital	One per two beds, excluding bassinets
Hotels, motor hotels	One per sleeping room, plus owner and employee parking
Libraries and museums	One per 200 square feet gross floor area, plus employee parking
Manufacturing uses, research testing and processing, assembling, all industries	One per each two employees on maximum shift and not less than one per each 800 square feet gross floor area
Mortuaries	One per 100 square feet of gross floor area used for assembly or one per five seats, plus employee parking
Motels	One per unit, plus owner and employee parking
Motor vehicle, machinery, plumbing, heating, ventilating, building supplies stores and services	One per 1,000 square feet floor area, plus employee parking
Offices, medical and dental (including optometrists)	One per 200 gross square feet of floor area, plus employee parking
Offices not providing customer services	One per each employee
Offices of opticians, chiropractors and others licensed by the state of Washington to practice the healing arts	One per 400 square feet of gross floor area, plus employee parking
Offices, business and professional (other than medical and dental) with on-site customer service	One per 400 square feet of gross floor area, plus employee parking
Rooming houses, similar uses	One per dwelling unit
Schools, elementary and junior high	One per each employee and faculty member, plus 15 visitor parking
Schools, high	One per each 10 students, plus one per each employee and faculty member, plus 15 visitor parking
Shopping centers with over 30,000 square feet of gross floor area	Four and one-half spaces per 1,000 square feet gross floor area, but not to exceed five spaces per 1,000 square feet of gross floor area
Stadiums, sport arenas and similar open assemblies	One per four seats and/or one each 30 square feet of assembly space without fixed seats
Theaters	One per four seats, plus employee parking
Warehouses, storage and wholesale business	One per each employee, plus two additional spaces
Other retail	One per 300 square feet gross floor area, plus employee parking

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

PASSED by the City Council this 1<sup>st</sup> day of October 2013.

CITY OF OAK HARBOR

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SCOTT DUDLEY, MAYOR

Attest:

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Valerie J. Loffler, City Clerk

Approved as to Form:

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Grant K. Weed, Interim City Attorney

Published:

## Comparison of Bed and Breakfast Regulations

Characteristics	Oak Harbor	Langley	Coupeville	Anacortes	Friday Harbor	Port Townsend
<b>How Defined?</b>	Not defined	Two definitions: "B&B residential" and " B&B commercial." Residential is situated in same building as principal dwelling or an ADU. Commercial is situated in building primarily for commercial purposes.	Home or accessory structure and operator must live on premises	A single-family unit providing transient lodging...up to six rooms	A building which is primary residence for owner plus transient lodging	A building which is primary residence for owner plus transient lodging
<b>Zones</b>	Permitted: none. Conditional: Limited Multiple-Family Residential (R4), Multiple Family Residential (R3 and R4).	B&B residential is "secondary" use in RS5000, RS7200, RS15,000 zones. B&B commercial is conditional use in RS5000, RS7200, RS15,000, and Mixed Residential Zone. Principal use in Central Business and Neighborhood Business Zone.	Principal Use in: High Density Residential, Historic/Limited Commercial District, Town Commercial, and General Commercial. Conditional Use in: Residential Reserve, Low Density Residential, Medium Density Residential.	Permitted use in: CBD, Commercial, High Density Residential. Conditional Use in: Commercial Marine, Low Density Residential and Medium Density Residential	Permitted: professional service zone	Permitted Use in: C3 Historic Commercial. Conditional in: all residential zones
<b>Room Limit</b>	No more than 4 rooms for B&B inns; B&B rooms cannot have more than 50% of existing rooms as lodging	B&B residential = 2. B&B commercial = no limit.	Residential Reserve = 6 rooms. Low, Medium and High Density Residential = 2 rooms. Commercial uses, no limit.	6 rooms	5 rooms	No limit
<b>Parking</b>	Not specified, but all parking must be onsite	B&B commercial = "parking for all guest vehicles on premises"	0.7 spaces per guest room	2 for owner and 1 per guest room	2 plus 1 per sleeping room	1 space per room
<b>Process</b>	Conditional Use = Hearing Examiner Review	B&B residential = administrative review. B&B commercial = administrative or conditional use. Conditional use is reviewed by hearing examiner	Principal use = administrative review. Conditional Use = Town Council	Permitted use = administrative. Conditional = City Council	Permitted = administrative review	Permitted = administrative. Conditional = Hearing Examiner

Ms. Peterson commented on 19.36.030(5)(h)(v). It says, "...which are bright and distracting to traffic". Ms. Peterson said the language is subjective and should be taken out. Staff concurred and will delete the language.

Ms. Peterson asked why signs could not be located within 100 feet of open space zoned properties. Mr. Spoo explained that people go there for solitude and for recreation and the function of an open space zoned area is a low impact sensitive area and should be guarded from the effect of the light that digital signs may have on those areas..

Ms. Peterson also noted that there is no exception for a 24-hour business in 19.36.030(5)(h)(x). Staff and Planning Commission agreed that the language should be changed to say "Digital sign displays must be turned off between the hours of 10:00 p.m. and 6:00 a.m. when located within 100 feet of a residentially zoned property."

Mr. Fikse pointed out that 19.36.020(52) should be completely eliminated because RGB technology in electronic signs is required for any form of color including white so the problem is a video board with any color including white, it doesn't meet code. Staff concurred and will delete this section.

Mr. Fakkema pointed out that 19.36.030(5)(vi) is unclear and should be change to say "when the sign is transitioning it must be within one second and no less than 0.5 seconds." Staff concurred and will change the language.

Mr. Fakkema opened the public hearing at 8:13 p.m.

**Billie Cook** (651 SE Bayshore Drive) questioned turning off the signs between 6:00 a.m. and 10 p.m. She asked if businesses could have their sign on at 6:00 a.m. if they are only open between 9:00 a.m. and 5:00 p.m. Ms. Cook asked that there be some mechanism for a resident to take action if they were negatively affected by a digital signs.

**ACTION: MR. FREEMAN MOVED, MS. PETERSON SECONDED A MOTION TO CONTINUE THE PUBLIC HEARING TO THE PLANNING COMMISSION'S MAY 28, 2013 BUSINESS MEETING, MOTION CARRIED.**

There was further discussion about the digital signs hours of operation. Staff noted that enforcement tied to individual business hours would be impractical for staff to enforce and also noted that the language in 19.36.00(5)(h)(ii) limits the digital portion of a pole or pylon primary sign to 50% and the portion of the sign that is not digital would still be lit. Mr. Fikse noted that the nits drop at night so the signs would not be as bright.

#### **BED AND BREAKFAST CODE – INTRODUCTION – Public Meeting**

Mr. Spoo reported that the ad hoc Economic Development Committee suggested loosening up the restrictions on where a bed and breakfast could be located and possibly create opportunities for lodging and tourism for businesses in Oak Harbor. The Committee looked at other jurisdictions to see how they compared to Oak Harbor and found that Oak Harbor is more restrictive. The new draft code provides definitions for three different types of bed and breakfast establishments and allows them outright in more zones. Mr. Spoo asked the Planning Commission to review the draft code and to be prepared to discuss it next month.

Planning Commission asked about a definition for “transient lodging”, parking requirements (tying parking spaces to physical space instead of people) and the possibilities for bed and breakfast uses between Midway Boulevard and the Marina.

**2012 COMPREHENSIVE PLAN AMENDMENT – Scenic Views** – Public Meeting

Mr. Kamak provided a Power Point presentation (Attachment 2) which presented the progress to date and further analysis of the nine views selected. The analysis included line of view, view zones and possible actions for preserving the views.

Planning Commission suggested staggering buildings to protect views and requiring low growing landscape to camouflage parking lots.

Mr. Powers talked about the competing goals within the Comprehensive Plan such as tree preservation and preserving of views. Mr. Kamak said that once the views are identified as scenic views the regulations will be area specific.

**2016 COMPREHENSIVE PLAN UPDATE – Public Meeting**

Mr. Kamak reported that staff has been working with the County on their plan update and the County has provided information on their schedule. The County has taken a similar approach to their update as the City has by dividing the update into two phases. Phase I will be to determine the scope of the update and Phase II will be addressing the deficiencies identified in Phase I. The County has initiated a discussion on these policies that will eventually determine policies and procedures related to Urban Growth Areas (UGA), population projections, growth allocations etc. Some of these policies and procedures will impact the City’s 2016 update to the Comprehensive Plan.

The Department of Commerce has produced a checklist for jurisdictions to use in evaluating comprehensive plans for consistency with the GMA. City planning staff has begun reviewing Oak Harbor’s Comprehensive Plan against this checklist. Staff will share the review with the Planning Commission over the next few meetings.

**ADJOURN: 9:26 p.m.**

Mr. Spoo also provided a handout from the ISA with additional information about how to measure foot-candles and why ISA recommends it (Attachment 2).

Mr. Fakkema asked if anyone wanted to offer public comment.

**Billie Cook** (651 SE Bayshore Drive) thanked everyone for their hard work and was glad that the Planning Commission is addressing duration and brightness of electronic message center signs.

**ACTION: MS. PETERSON MOVED, MS. JENSEN SECONDED A MOTION TO CONTINUE THE PUBLIC HEARING TO THE PLANNING COMMISSION'S JULY 23, 2013 BUSINESS MEETING, MOTION CARRIED.**

**BED AND BREAKFAST CODE – Public Meeting**

Mr. Spoo explained that the Economic Development Committee has request that Planning Commission consider more permissive regulations for bed and breakfast (B&B). Mr. Spoo displayed a Power Point presentation that provided a summary of the existing code and the proposed code (Attachment 3). In the current code there are only two type of B&B's, which are B&B Inns (4 rooms) and B&B Rooms (50% of existing rooms). B&B Inns & B&B rooms are conditional uses in R-2, R3, R-4, & R-O, require parking on premises, resident/manager domiciled, signs can be no greater than 4 SF and no commercial dining is allowed.

The propose code suggests three types of B&B's, they are B&B Inns, Residential B&B and Commercial B&B with the following restrictions:

	Inns	Residential	Commercial
<b>Max # Rooms</b>	10	4	4
<b>Room Capacity</b>	4	4	4
<b>Commercial Meals</b>	No	No	No
<b>Other Business</b>	No	No	No
<b>Resident/Manager</b>	Full-time Mgr domiciled onsite	Resident in primary dwelling	Mgr onsite
<b>Parking</b>	Onsite/2+ 1 per room. Meet dimensions.	Onsite/2+ 1 per room. No dimensions.	Onsite/2+ 1 per room. No dimensions.
<b>Signs</b>	Per OHMC 19.36	4 SF monument/building	4 SF monument/building

**Discussion**

Planning Commission questioned staff about the restriction regarding other business being conducted on site within the B&B, the conditional use process, the on-site parking requirement as it relates to the Central Business District (CBD) and whether it makes sense to have B&B's in R1 zoning districts. Mr. Powers indicated that there is no prohibition on having more than one home occupation and we may have to consider whether that makes sense with a B&B and whether there is a land use impact on the surrounding neighborhood that should be of concern. The conditional use permit can take between 60 and 90 days depending on the submittal and the public process. Staff will look at that the parking requirement for the CBD and the possibility of allowing B&B's in only certain R1 zoning districts.

system (nits OR foot-candles). **Commissioners agreed to table this item until the August meeting.**

Mr. Fikse commented on the maximum duration of 5 seconds in Section 19.36.030 (5) (g) (vii) and displayed video clips of a flag in motion and a diamond ring rotating on his sign. He didn't think that the duration of the motion shown in the videos was a traffic distraction or a safety issue. Mr. Fikse said that the flag ran all day on the 4<sup>th</sup> of July. The proposed code is written so that there is only a 2 to 5 second window with a static time after 5 seconds. He stated that it would look silly running the flag 5 seconds and stopping, running for 5 seconds and stopping.

**MOTION: MS. PETERSON MOVED, MR. FIKSE SECONDED A MOTION TO REMOVE THE MAXIMUM DURATION OF 5 SECONDS, MOTION CARRIED UNANIMOUSLY.**

**Aaron Syring** owner of Island Drug asked the Planning Commission to change the duration restriction for static images to 2 seconds instead of 10 seconds. **Planning Commission agreed to table this issue until the August 27<sup>th</sup> meeting.**

**Planning Commission also agreed to table the hours of operation restriction when EMC's are within 300 feet of residentially zoned property until the August 27<sup>th</sup> meeting.**

**ACTION: MR. FREEMAN MOVED, MR. FIKSE SECONDED A MOTION TO CONTINUE THE PUBLIC HEARING TO THE PLANNING COMMISSION'S AUGUST 27, 2013 BUSINESS MEETING, MOTION CARRIED.**

**BED AND BREAKFAST CODE – Public Meeting**

Mr. Spoo displayed a Power Point presentation (Attachment 3) and reviewed the changes since last month's meeting. At last month's meeting there was discussion about the ability for bed and breakfast (B&B) establishments to have some sort of accessory commercial on site to sell items like trinkets, mugs or t-shirts. The proposed code has been revised to allow accessory commercial in residential zones but the area is limited to 100 SF and is for patrons only. On-site parking will not be required in the Central Business District (CBD) and the sign size in commercial districts should be the same as any other commercial use in that zone but in residential there is a 4 sq. ft. restriction as well as a restriction on the appearance of the sign in residential areas. The proposed code also clarifies that a resident or manager has to be domiciled onsite.

Mr. Spoo reviewed the zones where B&B's are permitted or where a conditional use permit is required show in the table below.

Type of B&B	R1	R2	R3	R4	R0	C1	CBD
Inns	X	X	P	P	P	P	P
Residential	C	C	P	P	P	P	P
Commercial	X	X	X	X	X	P	P

Note: P = permitted, C = conditional use permit required, X = prohibited

Mr. Spoo noted that the conditional use process in the R1 and the R2 zoning districts allows staff to access the impacts on a case-by-case basis and craft appropriate conditions.

Discussion

Commissioners discussed the conditional use process and agreed that B&B's should be a conditional use in the R1 and R2 districts. They also discussed parking in the CBD and agreed that parking is a management issue best left to downtown landlords and tenants to work out privately rather than having restrictions on specific uses in the zoning regulations. Commissioners asked staff to include a recommendation or a statement on the conditional use checklist advising the applicant to check their neighborhood covenants.

**ECONOMIC DEVELOPMENT STRATEGY – Public Meeting**

Mr. Spoo reported the Economic Development Committee is still reviewing the strategy and he hopes to have it for the Planning Commission soon.

**2016 COMPREHENSIVE PLAN AMENDMENT – Public Meeting**

Mr. Kamak reported that there are no items ripe for discussion yet and staff is still reviewing the checklist. Staff is continuing meeting with the County and discussing the county-wide planning policies and the Comprehensive Plan update.

**ADJOURN: 9:50 p.m.**

OHMC 21.80.180(2)(c) - Authority to submit alteration or vacation application. The alteration or vacation application shall contain the signatures of all those owners of lots who are directly affected by the proposed alteration or vacation.

The Planning Commission allowed public comment.

**Sue Karahalios** (1085 SE Regatta Drive) spoke with concern about the impact of the proposed code on the owners of the Pier Point Condominium. She also noted that there have been other decisions since the 2011 Planning Commission recommendation the City Council and only two members of the current Planning Commission voted in 2011.

**Bob Severns** (1085 SE Regatta Drive) disclosed that he is a member of the City Council and talked about the questions that were addressed in Superior Court regarding the Pier Point Condominiums. He believed that if the BSP amendment goes forward and is challenged in Superior Court again, the judge will ask why Pier Point was not excluded from the proposed BSP amendment. Mr. Severns asked that the Pier Point Condominiums be excluded from the proposed BSP amendment.

#### Discussion

Planning Commissioner's discussed whether the current Planning Commission would be able to consider the proposed BSP amendment again since the Planning Commission's recommendation has already been forwarded to the City Council. Mr. Powers said that an agenda bill will be prepared for Council action and that the agenda bill could indicate that that the Planning Commission would like to consider the code amendment again if that is what the Planning Commission wants to do. Mr. Powers noted that City Council could also decide that they will take up the issues themselves. Ms. Peterson wanted it on record that her strong desire was that the City Council be very aware of the issues.

#### **BED AND BREAKFAST CODE – Public Meeting**

Mr. Spoo displayed a Power Point presentation (Attachment 2) which presented changes since last month, a brief discussion of compliance and staff's recommendation.

Mr. Spoo reported one of the changes made resulted from a request from the Navy. The Navy asked that Bed and Breakfast (B&B) establishments be prohibited in Noise Subdistrict C. The second change requires that B&B lighting be directed downward so as not to impact adjacent uses. The last change was to move the sign language that was previously in Section 19.20 Zoning to Section 19.36 Sign Code.

Mr. Spoo reviewed how the propose code complies with the Oak Harbor Comprehensive Plan and recommended that the Planning Commission recommend approval of the B&B draft code to the City Council.

#### Discussion

Planning Commissioners discussed sign size allowance, lighting for B&B establishments and whether two B&B's under the same ownership would need to have a resident domiciled at each site. Mr. Power indicated that for two B&B's on the same property you could reasonable conclude that is a single entity and a resident manager in one or the other would suffice. In the case where there are two separate pieces of property in the R1 the conditional use permit and the Hearing Examiner could approve conditions which apply to both pieces of property.

The public hearing was opened at 8:30 p.m.

**Billie Cook** (651 SE Bayshore Drive) expressed concern that persons living in the R3 and R4 districts should be afforded the same protection as those in the R1 and R2 district by requiring B&B establishments get a conditional use permit for the R3 and R4 districts.

Mr. Spoo explained that there would be a site plan review process required for new B&B establishments and the review process requires public notice to the adjacent property owners. Adjacent property owners would have input during the public hearing. If there is a home that is converted in a residential neighborhood in the R3 and R4, a site plan review might not be required. Mr. Spoo indicated that mitigations could be placed in the code. Efforts have been made to allow B&B where staff believes is appropriate as well as including mitigations for some of the impacts they would have on neighborhoods.

Discussion

Planning Commissioners discussed the character of B&B's and the desire to be business friendly.

**ACTION: MS. PETERSON MOVED, MR. FREEMAN SECONDED A MOTION TO RECOMMEND THAT CITY COUNCIL APPROVE THE BED AND BREAKFAST CODE AS PRESENTED. MOTION CARRIED.**

**ECONOMIC DEVELOPMENT STRATEGY – Public Meeting**

Mr. Spoo displayed a Power Point presentation (Attachment 3) which presented a summary of key trends and an overview of the economic development strategy.

Discussion

Planning Commissioner Fakkema commented that he remembered hearing that the City always spends money planning but never did anything e.g. the amphitheater and the municipal pier. He was concerned that a couple of the action items require hiring someone to do additional studies and thought the City should look carefully at that.

Mr. Spoo indicated that the Planning Commission could make a motion to remove items or revise the language in the strategy in order to give staff direction.

Planning Commissioner Freeman was also concerned about the feasibility of a dock and that the sound from an amphitheater will carry to the surrounding residential developments. Mr. Freeman also noted that tourism only brings minimum wage jobs and we won't get to the \$50,000 to \$70,000 jobs with would be nice for the City. Mr. Freeman also questioned some of the data in the Economic Profile and Needs Assessment.

Mr. Spoo indicated that the Planning Commission will have this agenda item again next month.

**Nancy Hakala** (painting the mural on Pioneer Way) commented on how unique and patriotic Oak Harbor is compared to the other cities on the Island and that it is a little piece of Americana. She suggested that the City capitalize on that.

**2016 COMPREHENSIVE PLAN AMENDMENT – Public Meeting**

Mr. Kamak reported that staff is still assessing the scope. Staff is continuing meeting with the County and discussing the county-wide planning policies and the Comprehensive Plan update.

**ADJOURN: 9:15 p.m.**

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

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

<sup>2</sup>Includes 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.

**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**

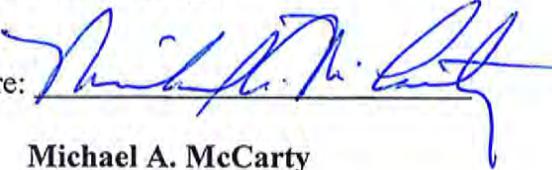
This Agreement and the documents referenced herein contains all the terms and conditions agreed to by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto.

**[Signature page follows]**

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

**Association of Washington Cities**  
**Employee Benefit Trust**

**Participating Employer**

Signature: 

Name: **Michael A. McCarty**

Title: Chief Executive Officer

Date: August 30, 2013

Signature: \_\_\_\_\_

Name (print): \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Effective Date: January 1, 2014

**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
2. By adopting such 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 15<sup>th</sup> 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