



City of Oak Harbor  
City Council Meeting Agenda  
For  
Wednesday, November 4, 2009

*Veteran's Day  
November 11th*



**Oak Harbor City Council**  
**Wednesday, November 4, 2009, 6:00 p.m.**

**Welcome to the Oak Harbor City Council Meeting**

*As a courtesy to Council and the audience, **PLEASE TURN YOUR CELL PHONES OFF** before the meeting begins. The City Council values your ideas, and sets aside time at the beginning of each meeting, from 6:45 p.m. to 7:00 p.m., to talk to citizens. During the meeting's Public Comments section, Council will listen to your input regarding subjects of concern or interest that are not on the agenda. For scheduled public hearings, please sign your name to the sign up sheet, located in the Council Chambers if you wish to speak. The Council will take all information under advisement, but generally will not take any action during the meeting. To ensure your comments are recorded properly, state your name and address clearly into the microphone. Please limit your comments to three minutes in order that other citizens have sufficient time to speak.*

**Thank you for participating in your City Government!**

**CALL TO ORDER**

**PLEDGE OF ALLEGIANCE**

**INVOCATION**      **Dave Veach – Living Word**

**ROLL CALL**

**MINUTES**              10/6/09 Regular Meeting, 10/8/09 Special Meeting

**NON-ACTION COUNCIL ITEMS:**

1. Employee Recognition – Al Baza, Public Works, 25 years.
2. Public Comments.

**COUNCIL CONSIDERATION AND ACTION ON THE FOLLOWING MATTERS:**

3. Consent Agenda.  
*Page 38*
  - a. Authorization to Solicit Bids – Public Works Administration Remodel.  
*Page 40*
  - b. Library Board Appointment – Marshall Goldberg.  
*Page 43*
  - c. Award of Agreement - For Beverage Vending Services.  
*Page 54*
  - d. Agreement Amendment – PERTEET – Pioneer Way.  
*Page 60*
  - e. Memorandum of Understanding – State of Washington Unified Certification Program.  
*Page 68*
  - f. Introduction – Ordinance, Property Taxes.
  - g. Pay Bills.  
*Page 84*
4. Final Consideration – Ordinance Repealing Breed-Specific Legislation (BSL), Oak Harbor Municipal Code (OHMC) Chapter 7.34.  
*Page 126*
5. Pioneer Way Improvements – Proposed Project Development Sequence.
6. City Administrator's Comments
7. Councilmembers' Comments
  - a. Standing Committee Reports
8. Mayor's Comments

**ADJOURN**

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



**City Council Regular Meeting  
Tuesday, October 6, 2009 - 7:00 p.m.  
City Hall Council Chambers**

**CALL TO ORDER**

Mayor Slowik called the meeting to order at 7:00 p.m.

**INVOCATION**

Ron Lawler – Family Bible Church

**ROLL CALL**

Mayor Jim Slowik

Five members of the Council,

Rick Almborg

James M. Campbell

Danny Paggao, Mayor Pro Tem

Jim Palmer

Bob Severns

Paul Schmidt, City Administrator

Margery Hite, City Attorney

Mark Soptich, Fire Chief

Ray Merrill, Battalion Chief

Cathy Rosen, Public Works Director

Steve Powers, Development Services Director

Rick Wallace, Chief of Police

Eric Johnston, City Engineer

Councilmember Beth Munns was absent and formally excused from this meeting.  
Councilmember Eric Gerber was absent.

**MINUTES**

**MOTION: COUNCILMEMBER CAMPBELL MOVED TO APPROVE THE SEPTEMBER 15, 2009 REGULAR MEETING MINUTES. THE MOTION WAS SECONDED BY COUNCILMEMBER ALMBERG AND CARRIED UNANIMOUSLY. COUNCILMEMBER PALMER ABSTAINED AS HE WAS NOT IN ATTENDANCE AT THE SEPTEMBER 15, 2009 MEETING.**

**NON-ACTION COUNCIL ITEMS**

**Employee Recognition – Ray Merrill, Oak Harbor Fire Department - Twenty Years**

Chief Soptich introduced Battalion Chief Merrill. He advised Council and members of the audience of the many accomplishments Battalion Chief Merrill has achieved and congratulated him on his 35 years of fire services. He added Battalion Chief is a dedicated employee who has a true passion for what he does to protect the citizens of our community. Battalion Chief Merrill thanked the Council, noting he has had a great 20 years.

**Proclamation – New Leaf 40<sup>th</sup> Anniversary**

The Proclamation was read by Mayor Pro Tem Paggao, who is also a Board Member of New Leaf. The Proclamation was gratefully accepted by CEO Rhea Nelson. Ms. Nelson introduced staff members Shawnie McAdams, Carol Stoddard, Michele McKenna, Mickey Powers, Raina

Girton, Elizabeth Wellman, Al Enriquez, Loren (Mo) Morrison and Board Member Dick Toft. Ms. Nelson described the New Leaf Organization and thanked the Mayor and Council for their acknowledgement.

Mayor Slowik introduced City Council candidates Gerry Oliver and Scott Dudley and called for a five minute break from 7:10 p.m. to 7:15 p.m.

**Public Comments**

There were no public comments.

**COUNCIL CONSIDERATION AND ACTION ON THE FOLLOWING MATTERS:**

**Consent Agenda**

- A. Excused Absence – Danny Paggao for 10/21/09 and 11/4/09 meetings.
- B. Animal Control Truck Replacement.
- C. Department of Ecology (DOE) Pass-through Grant Agreement.
- D. Final Consideration – Amend Oak Harbor Municipal Code Section 1.04.010(3) – Time and Place of Council Meetings.
- E. Pay Bills.

Councilmember Palmer pulled Item D for discussion.

**MOTION: COUNCILMEMBER PALMER MOVED TO APPROVE CONSENT AGENDA ITEMS A, B, C, AND E WITH ITEM E PAYING ACCOUNTS PAYABLE CHECKS #138597-138602 IN THE AMOUNT OF \$58,928.36, ACCOUNTS PAYABLE CHECKS #138603-138610 IN THE AMOUNT OF \$803.87, ACCOUNTS PAYABLE CHECKS #138611-138862 IN THE AMOUNT OF \$1,067,387.54 AND PAYROLL CHECKS #93226-93294 IN THE AMOUNT OF \$949,210.30. THE MOTION WAS SECONDED BY COUNCILMEMBER CAMPBELL AND CARRIED UNANIMOUSLY.**

With regard to *Item D - Final Consideration – Amend Oak Harbor Municipal Code Section 1.04.010(3) – Time and Place of Council Meetings*, Councilmember Palmer requested information regarding any public feedback on the proposed time change. City Administrator Schmidt responded that staff had not received any public comment since the item was initially introduced at the Council’s September 15<sup>th</sup> meeting. He added a public survey was sent out to all Oak Harbor residents and of those who did respond, the majority favored the time change. Councilmember Campbell noted his opinion the Item should have been on the Regular Agenda as opposed to the Consent Agenda. His concern was noted by staff and the Mayor.

The Council continued their discussion regarding the adequacy of public notification regarding the proposed change, survey results and the lack of public comment in opposition. Mayor Slowik added the time could be changed back if it becomes problematic.

**MOTION: COUNCILMEMBER CAMPBELL MADE A MOTION TO APPROVE THE ORDINANCE AMENDING OHMC SECTION 104.010 – TIME AND PLACE OF COUNCIL MEETINGS. THE MOTION WAS SECONDED BY COUNCILMEMBER PAGGAO AND CARRIED UNANIMOUSLY.**

**Public Hearing – Illicit Discharge Ordinance which will add a new Oak Harbor Municipal Chapter – Chapter 12.50**

City Engineer Johnston presented the agenda bill. He advised Council this item was introduced to Council at the August 5, 2009 meeting as a new chapter to Title 12 of the Oak Harbor Municipal Code related to stormwater management in the City of Oak Harbor. He noted the proposed code change is required by the National Pollutant Discharge Elimination System (NPDES) Phase II, Municipal Stormwater Permit issued to the City of Oak Harbor by the Washington State Department of Ecology. He added at the August 5 meeting, the strict language in the code was discussed and Council recommended that staff rewrite portions of code and bring it back for further discussion.

Mr. Johnston advised Council the NPDES permit requires the City of Oak Harbor to undertake a significant number of operational changes as well as policy and code changes in order to reduce or eliminate sources of pollution through the City's stormwater drainage system. The ordinance will not only prohibit the discharge of all non-stormwater discharges throughout the City of Oak Harbor stormwater drainage system, but will also provide for enforcement actions if an unlawful discharge occurs. He added the ordinance is geared toward voluntary compliance and public education.

Mr. Johnston noted the agenda bill includes two ordinances, one in draft final form and one outlines changes made to the version of the Ordinance introduced at the August 5, 2009 meeting. He said the recommended Council action for this evening's meeting is to open the public hearing for initial comment and continue the hearing to the November 17, 2009 Council meeting to allow for additional review by the Council Standing Committees.

Mayor Slowik opened the meeting to public comment.

**Mel Vance - Post Office Box 2882, Oak Harbor.** Mr. Vance discussed the definition of ground water and the difficulty residents will have in complying with the restrictions contained in the ordinance. He added he would prefer to see a specific amount of allowable illicit discharges to make compliance easier.

Mayor Slowik announced the public hearing will remain open for anyone who wishes to make a comment until the November 17<sup>th</sup> meeting. Members of the public may comment by letter or email if they are unable to attend the meeting.

Staff addressed questions of Council regarding the importance of public education, enforcement of the ordinance, and penalties imposed for non-compliance. Councilmember Alberg noted the ordinance deadline and the fact the City's ordinance was not in place as required by the NPDES permit.

City Engineer Johnston responded that although the NPDES permit requires the adoption of code changes related to illicit discharge be in place by August, 2009, the Department of Ecology (DOE) did not provide a model ordinance in which smaller cities could rely before the due date. City Attorney Hite added very few cities have submitted their ordinances as other cities were also waiting for the model from DOE and the City of Oak Harbor is actually further along in the process than most cities.

Discussion followed regarding which standing committees would like to review the ordinance prior to the next Council review. It was determined the ordinance would return to the Public Works Standing Committee. Mayor Slowik advised Council to let staff know if they would like the ordinance brought to a committee of which they are a member.

**ACTION: THE COUNCIL AGREED UPON CONSENSUS TO CONTINUE THE PUBLIC HEARING TO THE NOVEMBER 17, 2009 COUNCIL MEETING TO ALLOW FOR ADDITIONAL REVIEW BY THE COUNCIL STANDING COMMITTEES.**

**Ordinance Introduction – Repealing Breed-Specific Legislation (BSL), Oak Harbor Municipal Code Chapter 7.34.**

Police Chief Wallace presented the agenda bill. Chief Wallace advised Council and members of the audience the purpose of the agenda bill is to consider and possibly repeal Oak Harbor Municipal Code Chapter 7.34, Breed-Specific Restrictions.

Chief Wallace provided a history of this matter, noting that on September 20, 2006, the Breed Specific Restriction Ordinance was introduced to the Oak Harbor City Council, and subsequently adopted on November 21, 2006. He added the intent at that time was to include the Breed Specific Restriction proposal as part of an overall update of the existing OHMC Animal Control Chapter. Previously, the City of Oak Harbor listed "pit bull breeds" outright as potentially dangerous animals which were apparently creating enforcement problems. The Breed Specific Restriction was thus meant to soften the harsh restrictions of being designated a "potentially dangerous dog", yet still maintain the "pit bull breed" as a distinct breed warranting some specific restrictions.

Chief Wallace advised Council that earlier this year, the City was approached by a number of citizens questioning why the City of Oak Harbor places certain restrictions on a certain type of dog solely based on breed. In reviewing the matter, it was discovered that the City's insurance pool (Washington Cities Insurance Authority) does not recommend breed specific legislation and our own Animal Control Officer is of the same position. The principle reasons are that the burden of breed identification probably rests with the City in enforcement activities; and that the City's experience does not bear out the presumption that pit bulls are the primary source of dog bites.

Chief Wallace added that as a result of staff research, it is staff's recommendation that Chapter 7.34 (Breed Specific Restrictions) be repealed and the City rely instead upon other behavior based dog restrictions already in place in the City Code.

Chief Wallace added this issue was brought to the Public Safety Committee on August 27, 2009 and the Governmental Services Committee on September 14, 2009.

Mayor Slowik opened the meeting to public comment.

**Bob Baker – Post Office Box 790, Freeland.** Mr. Baker read a prepared letter to the Council which is attached hereto as Exhibit A. He expressed support of the proposed repeal of Oak Harbor Ordinance 1479 and thanked the Council for reviewing this issue.

**Mel Vance – Post Office Box 2882, Oak Harbor.** Mr. Vance spoke in support of the proposed Ordinance repeal.

There being no further comment, the comment period was closed.

Councilmember Severns noted this item will return for Council's final decision on November 4, 2009. He asked if Council would receive any additional information.

Police Chief Wallace advised Council that OHMC Chapter 7.32 addresses dangerous dogs and potentially dangerous dogs and will remain in place. He added the provisions found in that ordinance are sufficient to protect the public from aggressive dog behavior.

Discussion continued regarding dog licensing, methods of determining breed, the number of recorded animal bites in the City associated with the "pit bull" breed and provisions contained in the dangerous dog and potentially dangerous dog ordinance.

**MOTION: COUNCILMEMBER PALMER MADE A MOTION TO CONSIDER THE ORDINANCE THAT REPEALS OAK HARBOR ORDINANCE 1479 AND SET A PUBLIC MEETING ON NOVEMBER 4, 2009. THE MOTION WAS**

**SECONDED BY COUNCILMEMBER SEVERNS AND CARRIED UNANIMOUSLY.**

**Right-of-Way Acquisition – Oak Harbor Street Project.**

City Engineer Johnston presented the agenda bill which requests Council authorization for the Mayor to enter into purchase and sale agreements with Muleskinners, Inc. for the outright purchase of a previously approved right-of-way acquisition instead of exchange for street improvements. Mr. Johnston added on June 2, 2009, the City Council provided authority for the Mayor to sign a purchase and sale agreement with Muleskinners, Inc. to acquire 5,306 square feet of right-of-way appraised at \$44,000 in exchange for “certain street improvement waivers” valued at approximately \$35,000. Mr. Johnston advised Council that staff has been recently informed that Muleskinners, Inc. would now prefer to receive the appraised cash amount of \$44,000 instead of exchanging the value of the “certain street improvements waivers” for the right-of-way acquisition.

Council discussion followed regarding a possible change in property ownership, who appraised the property, funding for the purchase and what name should be on the purchase and sale agreement.

**MOTION: COUNCILMEMBER SEVERNS MOVED TO AUTHORIZE THE MAYOR TO SIGN A PURCHASE AND SALE AGREEMENT WITH MOLESKINNERS, INC. OR THEIR SUCCESSOR TO ACQUIRE 5,306 SQUARE FEET OF RIGHT-OF-WAY APPRAISED FOR \$44,000. THE MOTION WAS SECONDED BY COUNCILMEMBER PALMER AND CARRIED UNANIMOUSLY.**

**City Administrator’s Comments**

City Administrator Schmidt thanked the Public Works Department for their quick response in addressing a concern expressed by a resident at the September 1, 2009 Council meeting regarding an address issue on Ernst Street.

Mr. Schmidt reviewed upcoming meeting dates, times and locations. He added there would be no second Council meeting this month as the original date of October 20<sup>th</sup> had been moved to October 21<sup>st</sup> due to an AWC Regional Meeting which several members of Council are attending. He added the October 21, 2009 meeting was cancelled due to the lack of time-sensitive agenda items.

**Councilmembers’ Comments**

*Councilmember Paggao* reported on the October 1, 2009 Public Works and Utilities Standing Committee meeting. He noted the agenda items included Subdivision Code revisions, the

NPDES Illicit Discharge Ordinance, DOE Grant Funding Opportunities, an Engineering Division remodel, the Oak Harbor Street Right-of-Way and Pioneer Way Improvements.

*Councilmember Campbell* announced there had not been a Governmental Service Standing Committee meeting since his last report. He noted on October 7<sup>th</sup> the Island County Elections Office will certify the equipment that will be used in the upcoming election.

*Councilmember Palmer* announced there had not been a Finance Standing Committee meeting since his last report. He noted he attended the recent Police and Fire Training exercise and was very impressed.

*Councilmember Severns* reported recent Public Safety Standing Committee agenda items included the Fire Department reorganization and the Breed Specific Ordinance.

### **Mayor's Comments**

*Mayor Slowik* advised Council and members of the public a League of Woman Voters Candidate Forum will be held October 7, 2009 at the Elks Lodge. He announced a series of upcoming meetings regarding the Pioneer Way Improvement Project and encouraged the public's participation.

### **Adjourn**

With no other business coming before Council, **Councilmember Alberg moved to adjourn; the motion was seconded by Councilmember Palmer** and the meeting adjourned at 8:30 p.m.

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Karen Crouch  
Deputy City Clerk



## EXHIBIT A

Oct. 6, 2009

Dear Council members:

There is only one reason to repeal Breed Specific Legislation.

It doesn't work.

BSL hurts responsible dog owners. It doesn't get the "bad guys" who abuse, overbreed, and exploit dogs. It overburdens animal shelters. It costs taxpayers additional money to enforce without improving public safety. And it's based on poor legal standards that increase the potential for lawsuits.

The Centers for Disease Control and Prevention, which studies fatal wounds inflicted by dog bites, does not advocate breed-specific legislation, instead encouraging "Dangerous Dog" laws that focus on individual dogs of ANY breed that exhibit aggressive behavior.

Oak Harbor is studying some of the best laws possible, including the "Calgary Law" and Best Friends model ordinances. Good laws are fair, truly protect the public, and generate revenue in positive ways for animal control AND CARE.

Others opposing BSL include the American Veterinary Medical Association, the American Kennel Club, the National Canine Research Council, the National Animal Control Association, the ASPCA, the national Humane Society, and leading dog trainers such as Cesar Milan.

Many families and professional people love these dogs and own them responsibly, but are precluded from even buying real estate in Oak Harbor because of BSL.

This is about regulating irresponsible HUMAN behavior and not punishing innocent animals just for existing. Plus, many dogs are mistaken for pit bulls when they are really just mutts.

Those of us who rescue, train, and maintain our dogs properly want to get the "bad guys" as much as anyone. Our dogs are not the bad guys. We are not the bad guys. People who exploit, neglect, abuse, over breed, fight, torture, beat, and kill these dogs are the "bad guys." Let's go get them together. Enlist us in the battle. Let us help you. We care about public safety and fair, humane solutions as much as anyone.

Thank you Oak Harbor for moving in the right direction. You are fortunate to have such a high-caliber, forward thinking administration in place.

Bob Baker  
Barbara Moran

### **Additional points to consider**

Among key recommendations of those who oppose BSL:

1. Pass a dangerous dog (or animal) law that recognizes that any dog, regardless of breed, is potentially dangerous or considered dangerous if the dog has demonstrated aggressive behavior. The dangerous dog law should allow for different levels of aggressive behavior. The point is to protect the public by encouraging owners to take action to control and manage their dogs - through spay/neuter, training and pet owner responsibility classes - before their dogs' behavior causes them to be classified at a higher level of aggression.
2. Pass strictly enforced leash or dog-at-large laws that require spay/neuter after the second violation. 82% of dog bites are by dogs running loose. (JAVMA, September 15, 2000) After passing a leash law, the city of Portsmouth, New Hampshire, reported a 35% drop in dog bites. Designate areas where off-leash activity is approved.
3. Pass laws that restrict the tethering, chaining and penning or caging of dogs. Dogs that are chained are 2.8 times more likely to be aggressive. The American Veterinary Medical Association has stated: "Confine your dog in a fenced yard or dog run when it is not in the house. Never tether or chain your dog because this can contribute to aggressive behavior." (May 15, 2003). Lawrence County, Kansas, adopted an anti-tethering ordinance. From 2005 to 2006, the number of calls concerning cruelty and dog fighting dropped from 800 to 260. Officials attribute the decline in large part to the anti-tethering law.  
  
(BSL laws that require dogs to be caged actually increase frustration in the animals.)
4. Encourage spay/neuter and provide low-cost spay/neuter in the community. 90% of fatal dog attacks are by dogs that are not spayed or neutered. Research cited in a 2000 Journal of American Veterinary Medical Association study indicated unsterilized dogs are 2.6 times more likely to bite. (Delise, National Canine Research Council) 80% of dogs seen by veterinary behaviorists for dominance aggression were not spayed/neutered. (JAVMA, Vol. 218, No. 11, June 1, 2001) More than 81% of dogs involved in bites or attacks were found in one survey not to have been spayed/neutered. (Texas 2002 Severe Animal Attack and Bite Surveillance Summary) The key to encouraging spay/neuter is education and also the availability of a subsidized, low cost spay neuter program. Also, support low-cost spay/neuter for potentially dangerous dogs, dogs adopted out by shelters or rescues or sold by pet stores, and dogs impounded more than once or found at large.
5. Encourage responsible dog ownership, including socialization at an early age and training. Dogs should be part of the family. 81% of fatal dog attacks are by dogs that were isolated or not included in the family's activities. There are low-cost or free model programs available for this.

6. Strengthen dog-fighting laws, and ban training of dogs for aggression. Make animal neglect and cruelty laws more specific and easier to enforce, with tougher penalties. Breeders should be registered or licensed and subject to inspections and sales of their dogs tracked. After all, selling dogs is a business, so a business license is not unreasonable. Sales of dogs along roads, in flea markets and other public places should be banned. Stop felons from owning dangerous dogs. 61% of fatal dog attacks are by dogs that were not humanely controlled, or had been abused or neglected.

Many responsible people own and love dogs identified as "pit bulls." Jon Stewart has pit bulls. So does Rachel Ray. So do doctors, lawyers, taxpayers, property owners, young professionals and families (the dogs are nicknamed "Nanny Dogs"). These dogs are funny, smart, loyal and need to be owned by responsible human beings (as do ANY dogs). Good laws are aimed at human beings and don't punish any type of animal merely for existing.

Barbara Moran and Bob Baker  
PIT (Pitbull/mix Information Taskforce)  
Based on Whidbey Island



**City Council and Planning Commission  
Joint Meeting on Planning Topics  
Wednesday, October 8, 6:00 p.m. – 8:00 p.m.**

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**IN ATTENDANCE**

Mayor Slowik

Six City Council Members:

Rick Almberg

Jim Campbell

Eric Gerber

Danny Paggao

Jim Palmer

Bob Severns

Six Planning Commissioners:

Julie Dale

Keith Fakkema

Nancy Fey

Kristi Jensen

Greg Wasinger

Mark Wiggins

Staff members: City Administrator Paul Schmidt, City Attorney Margery Hite, Development Services Director Steve Powers, Senior Planner Cac Kamak, Senior Planner Ethan Spoo, and Associate Planner Melissa Sartorius.

Mayor Slowik called the meeting to order at 6:05 p.m. He welcomed everyone to the meeting and thanked them for their attendance.

Development Services Director Powers thanked the Council and Planning Commissioners for making the time to get together. He noted several members of the Planning Commission recently attended a short course on Planning in Coupeville and at the next Planning Commission meeting a discussion was held regarding the benefits of holding a joint meeting with the City Council. It was felt a joint meeting would be a great time to discuss common interests and expectations of the Planning Commission by the City Council. He reviewed the meeting agenda and encouraged the participants to ask questions or make comments as the topics are discussed.

Mr. Powers reviewed three broad areas the Planning Commission and City Council share: comprehensive planning, code amendments and project permits as well as Planning Commission and City Council roles. He reviewed specific information on each topic as described in Exhibit A.

Mr. Powers noted City Attorney Hite will give a brief presentation regarding Quasi-Judicial versus Legislative Proceedings later in the evening.

Councilmember Gerber asked the Planning Commissioners their thoughts on how the Commission is working and if they felt their input was valued.

Commissioner Wiggins expressed frustration the Planning Commission has been reactive as opposed to proactive in planning matters.

Commissioner Fakkema stated the Commissioners don't always hear what the City Council's response is to their recommendations and suggested more following up from staff. This was noted by staff and the Planning Commissioners will be included as recipients of the action agenda provided after each Council meeting.

Commissioner Fey would like to hear information regarding what the City Council foresees in the future in order for the Planning Commission to be aware and work toward the same direction. She added that would benefit the City budget wise as well.

Commissioner Jensen agreed with Commissioner Wiggins on his proactive comment. She is happy with the Commission.

Commissioner Dale noted she enjoyed the Commission's work on the sub-division code and feels the importance of her role in planning the direction of the City. She feels the City is moving in the right direction.

Commissioner Wasinger thanked staff for their efforts and is happy to give input as planning topics are brought forward.

General discussion followed regarding the importance of public participation and discussed ways to reach the public who do not attend City meetings. Senior Planner Kamak discussed the City's blog.

With regard to the reactive versus proactive discussion, Development Services Director Powers noted permit review is reactive and as the number of permit applications has decreased, the Commission will be able to be more proactive. He noted the recent review by the Commission of the sub-division code is a good example of a proactive activity.

Mr. Powers introduced City Attorney Hite, who gave a power-point presentation on Legislative vs. Quasi-Judicial Proceedings. During this interactive presentation, Ms. Hite posed a series of scenarios for discussion. Appearance of fairness procedures was also discussed and Ms. Hite addressed questions regarding specific circumstances. Her presentation is attached as Exhibit B.

Development Services Director Powers thanked City Attorney Hite for her presentation.

Mr. Powers continued the meeting with a discussion regarding the upcoming planning work program. He discussed the 2010 Urban Growth Area (UGA) Capacity Review, the 2012 Shoreline Master Program Update and the 2012 Comprehensive Plan Update. Specific information is attached hereto as Exhibit C.

Mr. Powers noted the City is not going to advertise for people to submit letters of interest for inclusion in the UGA area during the study period. He added it will be a better process for the community to go through the analysis and discussion without pending applications and requests.

Mr. Powers noted Senior Planner Ethan Spoo will head up the Shoreline Master Program update.

With regard to the 2012 Comprehensive Plan Update, Mr. Powers noted that Washington's Growth Management Act (GMA) requires that plans be reviewed, and if necessary amended, on a set schedule. He reviewed the proposed timeline, noting the state deadlines.

Mayor Slowik discussed the Pioneer Way Improvement Project, adding the fact that numerous public presentations regarding the project have been given. He asked for comments regarding the project and the 1-way versus 2-way traffic flow from the Commissioners.

Commissioner Jensen stated her preference for 2-way in order to slow the traffic and alleviate cars parked in front of every single building. She felt there would be more open space with that option.

General discussion followed regarding the project, the 1-way versus 2-way alternative and a pedestrian only option.

Mayor Slowik announced dates and times of upcoming open-house style public meetings that have been scheduled to discuss the project.

The Mayor called for a ten minute break at 7:05 p.m.

The meeting was called back to order at 7:15 p.m. Mayor Slowik introduced City Council candidate Scott Dudley.

Development Services Director Powers introduced the topic of the comprehensive plan docket process. He added the proposed process will help in organizing the comprehensive plan process. He added the process is not memorialized in the Municipal Code – we have some procedural guidelines, but a lack of how the department acts on topics in any particular year. He noted the proposed docket process will be a more formal way to handle the amendment process.

Senior Planner Kamak reviewed the current comprehensive plan review process as outlined in Exhibit D. He noted there are no public timelines so it is difficult for persons interested in submitting a letter of interest to know when their application will be brought forth for review and possible action.

Mr. Kamak reviewed the proposed docket process attached hereto as Exhibit E. He noted the public participation opportunities have increased at the beginning of the process. He added the Planning Commission and the City Council can suggest that certain items be placed on the docket. This initial intake process will include public comment opportunities and will have a strict schedule that will be codified.

Discussion followed regarding the procedure for placing items on the docket, prioritization, sponsored amendments, mandatory amendments and discretionary amendments. Mr. Kamak noted the docket is used as a planning document and once the docket items have been finalized and comments and suggestions obtained from the public and advisory bodies the City Council will vote on the prioritization and the approved docket will be advertised to the public. Mr. Kamak reviewed the specific timelines as outlined in the exhibit.

Discussion continued regarding the benefits of an annual joint meeting of the Planning Commission and City Council and the benefits of the proposed docket process.

Mr. Powers advised the Planning Commission is the lead working group responsible for forming the docket and discussed the possibility of the formation of a Technical Advisory Group if needed. He added the City is moving away from a seated task force. He noted the Mayor would decide if a Technical Advisory Group should be formed and this group would be ratified by the City Council. Mr. Powers added Senior Planner Kamak has drafted code language which is currently under staff review which will be followed by Planning Commission review and will possibly be before the City Council before the end of the year. He added the various Council standing committees will also review the proposal.

Discussion followed regarding which UGA baseline will be used. Mr. Powers advised the UGA that is recognized by both the City and Island County would be used. Mayor Slowik added the City intends to aggressively pursue the City's 2005 UGA. Mr. Kamak noted the proposed docket process will help in talks with the county regarding the UGA boundary.

Discussion continued regarding the benefits of the proposed process, the fact that sponsored amendments have to be put on the docket as opposed to a policy change, which can be discretionary. It was noted land applications within the UGA will not be excluded from the docket.

The group expressed general approval of the proposed process.

Mayor Slowik thanked everyone for their participation in the discussion.

The meeting adjourned at 8:00 p.m.

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Karen Crouch  
Deputy City Clerk

**City Council and Planning Commission  
Joint Meeting on Planning Topics  
October 8, 2009**

**Planning: Topics and Roles**

• **Three Categories of Topics:**

1. Comprehensive Planning
2. Code Amendments
3. Project Permits

• **Comprehensive Planning**

1. The City is required by the Growth Management Act (GMA) to have a Comprehensive Plan.
2. The GMA dictates the elements (topics) that must be addressed in the Plan.
3. The Plan is organized around an extensive series of goal and policy statements that direct (plans!) all aspects of the community's growth (land use, transportation, housing, urban design, etc).

• **Code Amendments**

1. The goals and policies of the Comprehensive Plan form the basis for the development regulations found in the Municipal Code.
2. These regulations address items such as zoning, development standards (e.g. landscaping, building setbacks and residential density), environmental regulations, subdivision regulations and the project approval process.
3. Amendments to the Code are periodically necessary to reflect changing community direction or conditions, new state mandates, changes in technology, etc.

• **Project Permits**

1. The approval of a project, be it a new store or a new neighborhood, involves a series of decisions on a variety of permits.
2. The decision 'type' ranges from administrative ones made by staff to those requiring a public hearing before the Planning Commission or Hearing Examiner with a final decision made by the City Council.
3. Examples of permits include: site plan approval, subdivision plat approval, shoreline permit, wetland permit, transportation concurrency, conditional use permit and variance.

• **Planning Commission and City Council Roles**

1. In general, the Planning Commission is responsible for reviewing the proposed plan, code amendment or permit application and forwarding a recommendation to the City Council. This process includes reviewing the staff analysis on the item, accepting public comment or testimony and may involve providing policy suggestions.
2. The City Council reviews the Planning Commission recommendation, may provide additional or different policy direction and ultimately approves or disapproves the item.
3. The nature of the Planning Commission and City Council roles vary depending on whether the matter is quasi-judicial or legislative in nature.



# Legislative vs. Quasi-Judicial Proceedings

# Legislative

- Legislative matters are ones in which the council or commission sets policy. Policies may be said to be principles that will apply to activities within the city's jurisdiction.
- Legislative actions include adoption, amendment, or revision of comprehensive, community, or neighborhood plans or other land use planning documents, or adoption of zoning ordinances or amendments which are of area-wide significance.

See RCW 42.36.010

# Quasi-Judicial

- Quasi-judicial decisions are ones that apply policy to specific individuals in specific cases.
- Quasi-judicial actions are defined by state statute to be: “...those actions of the legislative body, planning commission, hearing examiner, zoning adjuster, board of adjustment, or boards *which determine the legal rights, duties, or privileges of specific parties in a hearing or other contested case proceeding.*”

RCW 42.36.010

# Legislative vs. Quasi-Judicial?

- Q: Adoption of an area-wide zoning ordinance?
- A: This type of proceeding is *legislative* rather than *adjudicatory* or *quasi-judicial*.

➤ Q: A rezone hearing?

➤ A: Quasi-judicial. The decision to change the zoning of particular parcels of property is *adjudicatory*.

➤ Q: An annexation?

➤ A: An annexation is a legislative action  
and not a quasi-judicial action.

- Q: Preliminary plat approval?
- A: Quasi-judicial in nature and must be preceded by a public hearing.

➤ Q: Street vacations?

➤ A: This is a legislative policy decision, not an adjudicatory matter.

Quasi-judicial decision-making is also bound by two important legal principles:

- Appearance of Fairness
- Prohibition on *ex parte* contacts

# Appearance of Fairness

- Council or commission members must not only be fair but appear to be fair so they are asked prior to sitting in judgment whether they have apparent interests in the matter to be decided.
- Impartiality
  - No Personal Interest in Outcome:
    - Financial Gain
    - Property Ownership
    - Employment by Interested Person
    - Prospective Employment by Interested Person
    - Associational or Membership Ties
    - Family or Social Relationships

## Impartiality (cont'd)

- No Prejudgment of Issues
  - Although public officials are not prohibited from expressing their opinions about general policy, it is inappropriate for decision-makers to be close-minded before they even hear testimony on a contested matter. Decision-makers need to reserve judgment until after all the evidence has been presented.

# Partiality

- The existence of hostility or favoritism can turn an otherwise carefully conducted hearing into an unfair proceeding.

# Appearance of Fairness Procedures

- After disclosing any potential interest in the case, the public or applicant may challenge a council or commission member.
- The decision whether the council or commission member can be fair or whether there is a valid concern about the appearance of fairness by that council or commission member is made first by the council or commission member but may be reversed by the council or commission as a whole.

## *Ex parte* Contacts

- *Ex parte* contacts are communications that occur outside of the proceedings.
- *Ex parte* communications do not disqualify a council or commission member necessarily, unless the council or commission member feels he/she has been influenced by them.
- *Ex parte* communications must be disclosed at the outset of any proceedings to give the other party the opportunity to respond and/or rebut them.

**Upcoming Planning Work Program**

**•2010: Urban Growth Area (UGA) Capacity Review**

1. The periodic review of the UGA is directed by the City's Comprehensive Plan:

*"Every five years, the City will review development capacity within the designated Urban Growth Area and consider amendments as necessary to meet projected growth as provided by the Growth Management Act."*

2. The City last reviewed the UGA capacity for residential development in 2005. A commercial lands analysis was conducted in 2006.
3. The 2010 review will examine the 20-year capacity needs for all land use categories.

**•2012: Shoreline Master Program Update**

1. Washington's Shoreline Management Act (SMA) was adopted by the public in a 1972 referendum "to prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines." The SMA has three broad policies: encourage water-dependent uses, protect shoreline natural resources and promote public access to the shoreline.
2. The City's Shoreline Master Program was adopted in December 1998.
3. State law requires the City to amend our master program for regulation of uses of the shorelines of the state consistent with the required elements of the guidelines adopted by the Department of Ecology by December 1, 2012 (RCW 90.58.080).
4. Work on this project will need to start in 2010.

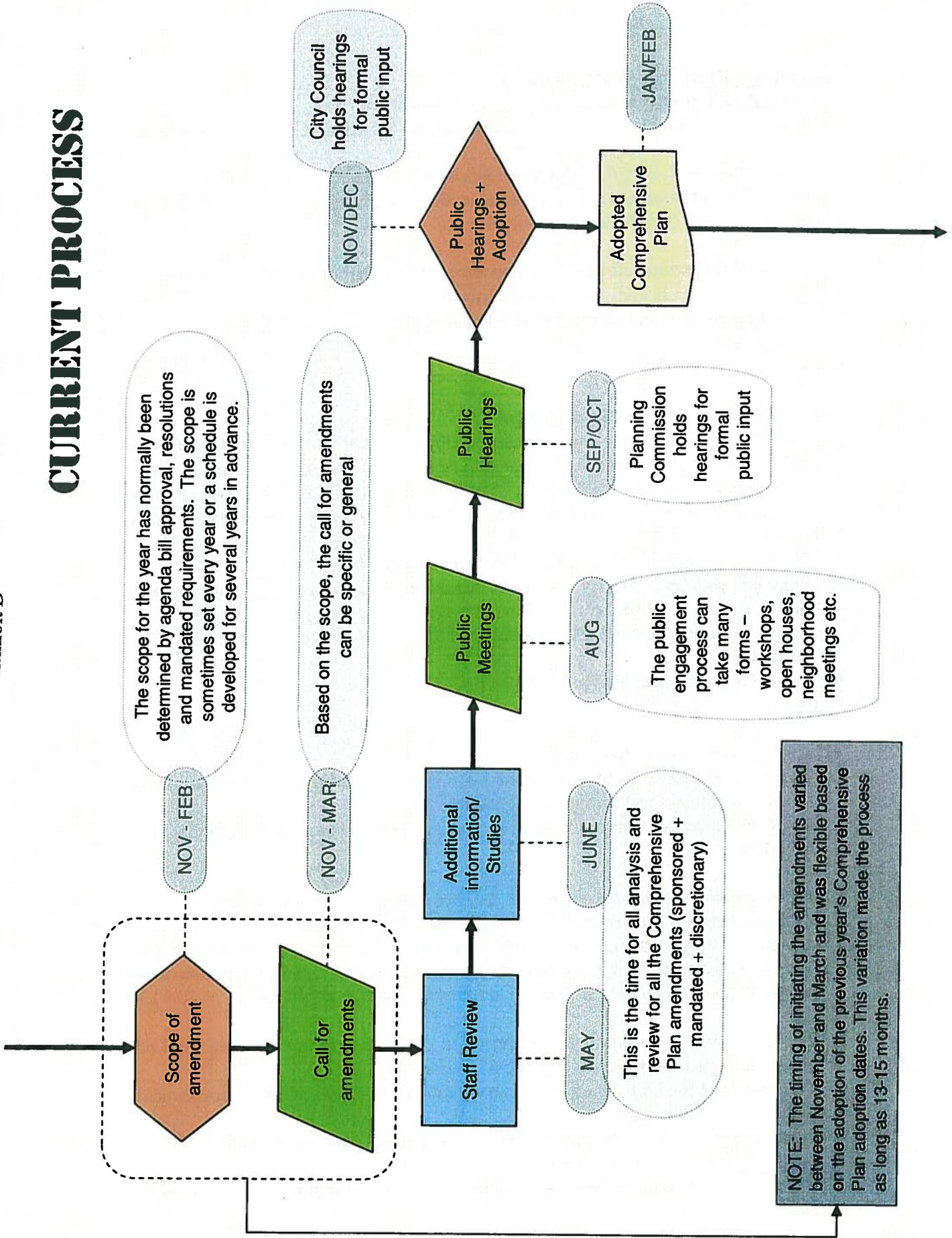
**•2012: Comprehensive Plan Update**

1. Washington's Growth Management Act (GMA) was adopted in 1990 to respond to uncoordinated and unplanned growth.
2. The GMA requires that plans be reviewed, and if necessary amended, on a set schedule:

*Each comprehensive land use plan and development regulations shall be subject to continuing review and evaluation by the county or city that adopted them. A county or city shall take legislative action to review and, if needed, revise its comprehensive land use plan and development regulations to ensure the plan and regulations comply with the requirements of this chapter according to the time periods specified. RCW 36.70A.130*

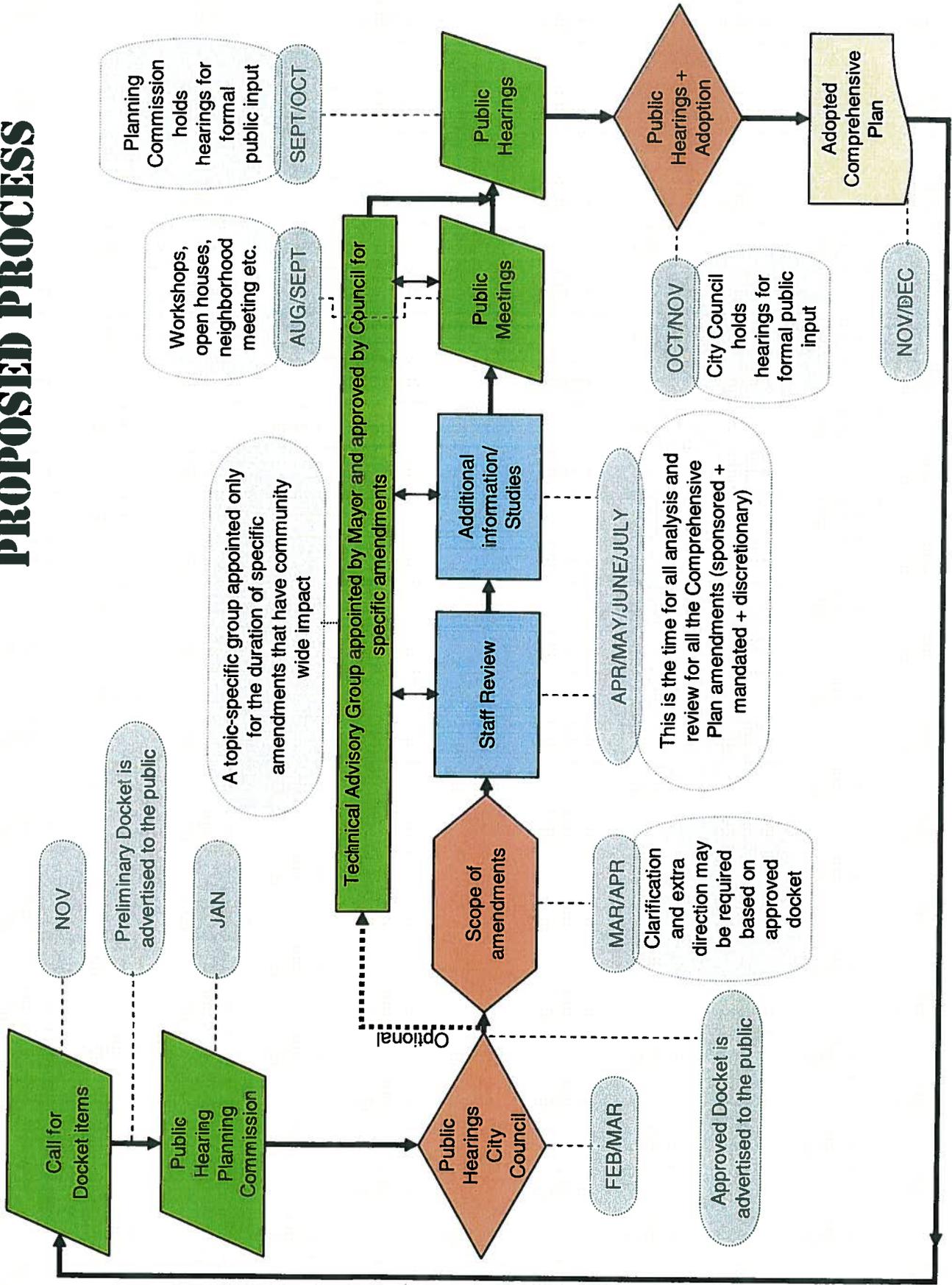
3. The first mandated update was required in 2005. The updates are required on a seven-year cycle so the next one is due December 1, 2012.
4. The results of the UGA capacity analysis discussed above will be incorporated in this review and update process.
5. Work on the Shoreline Master Program update and the Comprehensive Plan update will be closely coordinated.
6. Work on this project (independent of the UGA analysis) will need to start in 2011.

# CURRENT PROCESS



**NOTE:** The timing of initiating the amendments varied between November and March and was flexible based on the adoption of the previous year's Comprehensive Plan adoption dates. This variation made the process as long as 13-15 months.

# PROPOSED PROCESS





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

Bill No. 1  
Date: November 4, 2009  
Subject: Employee Recognition

**FROM: Jim Slowik, Mayor**

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



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

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**PURPOSE**

To recognize a City employee for 25 years of service.

**AUTHORITY**

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

**SUMMARY STATEMENT**

The Mayor and City Council will recognize the following employee for his years of service with the City:

- Al Baza / Public Works – 25 years

**STANDING COMMITTEE REPORT**

None

**RECOMMENDED ACTION**

Congratulate Mr. Baza for completing 25 years of service.

**ATTACHMENTS**

None

**MAYOR'S COMMENTS**

None

**Al Baza**  
**25 year award**

Al Baza began his career with the City of Oak Harbor in the Solid Waste Division on November 1, 1984. In June 1988 Al transferred to the Street and Water Division in the position of Utility I, and was promoted to a Specialist II in 1990.

When the Street and Water Divisions were separated in the mid-1990s, Al was assigned to the Street Division where he gained much expertise in street and sidewalk maintenance, street and signal light maintenance, street signage and painting, shoulder work, and inspection and rating of existing road surfaces for the Pavement Management Program.

In June 2004, Al applied for a transfer to the Storm Drain/Wastewater Collections Division, where he is currently working as a Storm Drain/Wastewater Collections Specialist II. Al is greatly respected for his knowledge and expertise. He is a dependable employee and an asset to the City of Oak Harbor staff.

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

Bill No. 2  
Date: NOVEMBER 4, 2009  
Subject: **PUBLIC COMMENTS**

**FROM: Jim Slowik, Mayor**

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

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

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**SUMMARY STATEMENT**

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



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

Bill No. CJA 3A  
Date: November 4, 2009  
Subject: Authorization to Advertise for Bids  
Public Works Administration Remodel

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

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

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

**PURPOSE**

This agenda bill seeks authorization to advertise the Public Works Administration Remodel project for competitive bidding.

**AUTHORITY**

The City has authority under RCW 35A.11.020 to enter into contracts for common municipal operations such as the construction of capital improvements. Competitive bids are required for all public works and improvements in excess of \$30,000 if more than one trade or craft is involved or \$20,000 if only one trade or craft is involved. OHMC 2.330.010.

**SUMMARY STATEMENT:**

As part of the organizational structure changes involving several City departments, the Engineering Division was reassigned to the Public Works Department in January 2009 and subsequently was physically relocated to the Public Works Facility in February 2009. As part of the relocation, storage areas were converted to temporary offices for use by the engineering staff. It was anticipated that one of the large conference classroom areas and the administration area of the Public Works Facility would be remodeled to provide workstations for the engineering staff soon after the move. Given the high work load in the engineering division it has taken several months to develop the plans for the remodel work. The project is now ready to proceed to construction.

As defined in the draft contract document, the scope of work for the project is as follows:

“The City is soliciting proposals to reconstruct an existing conference/training area of approximately 1350 square feet into a work area for the Engineering Division and other miscellaneous remodeling work . The location of the remodel is in Building # C of the Public Works Facility located at 1400 NE 16<sup>th</sup> Avenue in Oak Harbor. The work will include demolition and construction of walls, relocation of electrical and HVAC items, installation of new electric circuits, painting and other miscellaneous work. In addition, removal of existing

carpeting and installation of owner-furnished carpeting and base is required.

The work shall be completed within 20 working days after the commencement date stated in the Notice to Proceed.”

Also included is replacement of the carpeting in the entrance area and west conference room together with painting, purchase of office equipment and furnishings, electrical, HVAC and associated work typical of remodeling projects. Purchase of the carpeting and office furniture will be through a procurement process separate from the construction contract but is included with the cost estimate below to better reflect the total cost of the project.

This project is necessary to provide long term work areas for the engineering staff. The engineer’s estimate for the improvements is \$80,000. Funds are available in the Public Works budget.

Staff’s recommendation is to authorize staff to advertise the project for competitive bid. Prior to advertising of the project, it is recommended that the City Attorney review and approve in writing the contract documents for conformity with relevant City codes, policies and state law. If so authorized, it is anticipated that the award of a construction contract to the lowest responsible bidder will be scheduled for Council’s consideration in December.

**STANDING COMMITTEE REVIEW:**

The Public Works Standing Committee reviewed this item at their meeting on September 3, 2009.

**RECOMMENDED ACTION:**

Approval of the following motion:

“Staff is authorized to proceed with advertisement of the Public Works Administration Remodel Project, Contract No. ENG 09-06, for competitive bidding upon written approval by the City Attorney as to the form of the project contract documents.”

**ATTACHMENTS:**

None.

**MAYOR'S COMMENTS:**

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

Agenda Bill No. CHA 38  
Date: November 4, 2009  
Subject: Library Board Appointment

**FROM:** Jim Slowik, Mayor

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

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

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**SUMMARY STATEMENT:**

The Library Board consists of five Board Members. Per OHMC 2.31.020, the board members are appointed by the Mayor with confirmation of the City Council. There is presently one vacancy on the Library Board as Kathleen Shaw has served the limit of two consecutive terms. This appointment will fill a five-year term.

Mayor Slowik is forwarding a recommendation that Marshall Goldberg, MD be appointed to the Library Board.

Dr. Goldberg's term would commence November 5, 2009 and would terminate on November 5, 2014.

**STANDING COMMITTEE REVIEW:**

There was no standing committee review.

**RECOMMENDED ACTION:**

Approve the recommendation to appoint Marshall Goldberg, MD to the Library Board for a term of five years beginning November 5, 2009 and terminating November 5, 2014.

**ATTACHMENTS:**

Letter of Interest and resume

**MAYOR'S COMMENTS:**



[REDACTED]  
Oak Harbor, WA 98277  
September 11, 2009

Oak Harbor Library Board  
1000 SE Regatta Drive  
Oak Harbor, WA 98277  
Attn: Kathleen Shaw, President

Dear Ms. Shaw:

I read with interest the recent advertisement for a new Oak Harbor Library Board Member.

I have been a resident of North Whidbey since 1999 and regularly use the Oak Harbor Library. As a consequence, I am familiar with its resources and some of the personnel who work there.

Because of my favorable experiences, I am a strong supporter of the library and I want to ensure that that the library continues to be a valuable asset to the community.

I am a physician and have been involved in various community affairs since I formally retired from full-time practice in March of 2005. My activities have included the following: 1) signature gatherer for petitions that led to two successful Washington State initiatives (I-1000, I-937); 2) active participant in several political campaigns for local and state offices; 3) commissioner candidate for a proposed public utility district for Whidbey Island, as well as for the hospital board at Whidbey General last year; 4) chair of the local Democratic party organization from 2007-2009; 5) chair of the architectural control committee of my local homeowners' association; and 6) leader of a local activist group for health care reform.

My professional history is outlined in the attached resume.

After speaking with you and Mary Campbell regarding the position and its attendant responsibilities, and the contributions that I might be able to make based on my background and interests, I would like to be a candidate for the North Whidbey Oak Harbor Library Board position.

Thank you for your consideration,

*Marshall F Goldberg, MD / MC*  
Marshall F. Goldberg, M.D.

[REDACTED]

RESUME

Marshall F. Goldberg, M.D., M.P.H., F.A.C.O.G.

November 2008

Current Home Address: [REDACTED]  
Oak Harbor, Washington 98277

Home Telephone: [REDACTED]

Home e-mail address: [REDACTED]

Current Position: semi-retired

November 2006, January/February/March 2007: Provided locum tenens coverage as an OB-GYN physician at Mid-Valley Hospital in Omak, Washington.

December 2005, March/April 2006: Provided in-hospital OB-GYN care as a locum tenens physician for the Alaska Native Medical Center in Anchorage, Alaska.

June 2005 to November 2005: Performed mobile medical examinations for various insurance companies in the north Puget Sound area.

March 1999 to March 2005: PhyAmerica Contract OB-GYN Physician, Naval Hospital Oak Harbor, Oak Harbor, Washington: Provided general ob-gyn care to a diversified, high risk military population in a remote clinical setting with limited resources; served on the hospital's Pharmacy and Therapeutics Committee.

June 1998 to February 1999: Private OB-GYN practice, Sutter West Medical Group, Davis, California: Provided general ob-gyn care in a multi-cultural, clinical setting that included a Birthing Center attached to Sutter Davis Hospital.

April 1996 to April 1998: Private OB-GYN practice, The Yreka Womens Clinic, Yreka, California: Provided general ob-gyn care in an isolated rural setting that included a large indigent patient population; served on the Medical Executive Committee of the Fairchild Medical Center in 1998.

June 1994 to March 1996: Private GYN/Infertility practice, Hertzler Clinic, Halstead, Kansas: Helped establish a gynecologic laparoscopy program at Halstead Hospital; developed a Patient Care Advisory Committee to improve patient care at the Hospital; served as Medical Director of the Harvey County Health Department, July 1995 - March 1996.

June 1989 to April 1994: Private GYN/Infertility practice, Fairbanks, Alaska: Established a successful solo practice; became Vice-Chairman of the Alaska Section of the American College of Obstetricians and Gynecologists (A.C.O.G.) in 1990; served as Chairman of the Department of Obstetrics and Gynecology at Fairbanks Memorial Hospital, 1992; developed a successful natural cycle IVF program in 1992; became Chairman of the Alaska Section of the A.C.O.G. in 1993.

January 1984 to May 1989: Private OB-GYN practice, Fairbanks Clinic, Fairbanks, Alaska: Established a successful practice in a multi-specialty fee-for-service clinic; was the first physician to use laser in GYN surgery in Fairbanks; served as Chairman of the Fairbanks Clinic Quality Assurance/Risk Management Committee, 1985-1986; was elected to the Board of Directors of the Fairbanks Clinic in 1987.

July 1982 to December 1983: Associate Professor of Obstetrics and Gynecology, East Tennessee

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

Bill No. C/A 30  
Date: November 4, 2009  
Subject: Beverage Vending  
Machine Services Bid Award

**FROM: Cathy Rosen, Public Works Director**

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

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

**PURPOSE**

This agenda bill seeks authorization to award the bid received from Walton Beverage for an exclusive license to sell beverages from vending machines in City Parks for the time period of November 5, 2009 through December 31, 2010.

**AUTHORITY**

OHMC Chapter 2.390 - Contract Authority.

**SUMMARY STATEMENT**

Beverage vending machine services have been made available to members of the public who visit the City's parks and marina since 1997. In 2000, the City Council approved a contract with *Coca-Cola* Bottling Company of Washington for the sale of soft drinks, water, isotonic, and juice products for a term of six years. The contract has expired and *Coca-Cola* Bottling Company of Washington has removed all of their machines.

Notice was published on September 19, 2009 and September 26, 2009 in the Whidbey News Times and the Seattle Daily Journal of Commerce to obtain proposals from qualified providers of beverage vending machine services.

Staff received one bid from Walton Beverage (WBC). The bid price to the City was reviewed; the qualifications, experience and references checked and found them to be satisfactory. It is recommended that a Vending Agreement be approved for the remainder of the 2009 biennial budget with the option to renew for an additional two years.

Walton Beverage has been in business for 78 years and has provided the City <sup>with</sup> excellent references.

**STANDING COMMITTEE REPORT**

This item was brought before the Public Works and Utilities Standing Committee on September 3, 2009.

**RECOMMENDED ACTION**

Authorize the bid award to Walton Beverage for an exclusive license to sell beverages from vending machines in City parks and authorize the Mayor to sign the agreement.

**ATTACHMENTS**

Vending Agreement

**MAYOR'S COMMENTS**

44

## VENDING AGREEMENT

THIS AGREEMENT made and entered into on this \_\_\_\_\_ day of \_\_\_\_\_ by and between the CITY OF OAK HARBOR, a municipal corporation under the laws of the State of Washington, hereinafter referred to as the "City," and \_\_\_\_\_, whose address is \_\_\_\_\_, hereinafter referred to as the "Vending Machine Operator."

1. License.

1.1 In accordance with the Vending Machine Services proposal submitted by Vending Machine Operator on \_\_\_\_\_, the City hereby grants Vending Machine Operator an exclusive license to locate and sell from vending machines on City-owned parks on the terms and conditions set forth herein and in the Request for Proposals – License for Beverage Vending Machine Services – issued by the City on \_\_\_\_\_.

1.2 The parks at which the Vending Machine Operator may locate and conduct sales from vending machines are:

Ft. Nugent Park	Up to 2 Machines
Windjammer Park	Up to 4 Machines
Flintstone Park	Up to 2 Machines
Oak Harbor Marina	Up to 1 Machine

1.3 Exclusive Right. This Agreement grants the Vending Machine Operator the exclusive right to locate and sell from vending machines on the City-owned park property designated in Paragraph 1.2 above for the duration of this Agreement.

2. Operational Responsibilities of Vending Machine Operator. Vending Machine Operator represents that it is fully qualified to provide and service vending machines appropriate for the above-listed locations.

2.1 Vending Machine Operator shall perform and conduct, in accordance with all requirements of this Agreement, the installation and operation of up to nine (9) vending machines, to be located in the above-listed four (4) City-owned parks as described in 1.2 above. Vending Machine Operator shall be solely responsible for installation of the vending machines and shall install all vending machines within ten (10) calendar days of the beginning of the Term of this Agreement. Vending Machine Operator shall install and operate its vending machines and conduct all its operations at the above-listed locations in conformity with all applicable federal and state laws, rules and regulations, local ordinances, and City Rules and Regulations for the above-listed locations.

2.2 Vending Machines. Automatic vending machines shall be new and/or of good quality as determined by the City. All vending machines shall be attractive in appearance using the latest designs in the marketplace and shall reasonably match each other at the same location either in color or style. Energy efficient machines

are required and must have an energy saving device at each point of sale. In addition, the City reserves the right to turn off the interior vending lighting. Power to the vending machines must fit the present configuration at each location. The machines must accept any combination of nickels, dimes, quarters and one dollar bills. Vending machines must sense whether the product was dispensed and refund payment if the product is not dispensed.

- 2.3 **Products Vended.** Vending Machine Operator shall provide a list of products to be sold from the vending machines prior to the execution of this Agreement. Products shall generally be national brands. Vending Machine Operator will maintain fresh products in its vending machines and will ensure that all products vended shall conform in all respects to local, state, and federal laws and regulations relating to the standards of food and drink and shall be suitable for human consumption in all respects.
- 2.4 **Prices for Products.** Vending Machine Operator will not increase the prices charged for products sold in its vending machines, as detailed in the Bid Proposal, above the sales prices for the corresponding products specified for each year during the Term. City and Vending Machine Operator may, by mutual written agreement, adjust the sales prices for any product or products sold from the vending machines.
- 2.5 **On-Call Service.** Vending Machine Operator will provide on-call maintenance and repair service for its machines. Vending Machine Operator will make available to the City and to consumers a toll-free telephone number for service calls that will be displayed on machines.
- 2.6 **Maintenance of Vending Machines.** Vending Machine Operator shall service all its vending machines and related equipment as often as is necessary to keep the machines and equipment properly supplied and in good working order. Vending Machine Operator will maintain a program of regular preventive maintenance and replacement of worn, damaged, or malfunctioning machines. City may require Vending Machine Operator to replace vending machines that cannot be returned to service within four (4) working days of the service call. Replacement vending machines will be of a type and condition at least equal to the machines that are replaced. Vending Machine Operator will keep its vending machines neat and sanitary. Vending Machine Operator will clean all spills that occur while filling, cleaning, or maintaining its machines, clean the front and top of each vending machine each time Vending Machine Operator restocks or services it. Vending Machine Operator shall cooperate with City to promptly remedy any sanitary problems related to Vending Machine Operator's machines. The City shall not be responsible in any way for any damage or loss to Vending Machine Operator's property, including vending machines, due to vandalism, theft, fire, casualty, natural disaster, crime, acts of terrorism, riot, or civil disorder.
- 2.7 **Restocking Vending Machines.** Vending Machine Operator will inspect and restock its machines as needed to ensure that the products advertised for sale are

available upon payment. Vending Machine Operator may not maintain, store or keep any products outside of the vending machines or on the premises.

- 2.8 **Operating Notices.** Vending Machine Operator will affix to each vending machine a prominent notice containing instructions on how to (1) operate the machine, (2) report malfunctions, (3) comment on product quality, and (4) request refunds. Vending Machine Operator will affix a visible Unit Number to easily identify each machine for accounting and servicing requirements.
  - 2.9 **Refunds.** All refunds will be processed exclusively between the Vending Machine Operator and the customer.
  - 2.10 **Costs of Operation.** Vending Machine Operator shall have sole responsibility for paying all costs for installing, operating, servicing, and replacing its vending machines and any necessary related equipment. City shall furnish Vending Machine Operator with electrical energy for operation of Vending Machine Operator's vending machines free of cost. Vending Machine Operator shall absorb all money shortages that may develop due to theft, burglary, vandalism, inoperable vending machines or other cause.
  - 2.11 **Signs.** Vending Machine Operator will not post signs or posters on the vending machines area, or elsewhere, and will not engage in any marketing or promotional activity without the City's written permission, which may be denied in the City's sole discretion.
3. **Royalty Payments and Reports.**
    - 3.1 **Royalty to City.** In consideration for the license granted to Vending Machine Operator by the City under this Agreement, Vending Machine Operator shall pay a minimum of twenty-five percent (25%) of its gross revenue from sales pursuant to this license on a quarterly basis to the City of Oak Harbor, 865 SE Barrington Drive, Oak Harbor, WA 98277. Vending Machine Operator shall make all royalty checks payable to "The City of Oak Harbor". A statement of accounts which includes the timeframe for the collections, the dollar amount of sales from each vending machine referenced by Unit Number, gross receipts, and the percentage due the City must be included with each check.
    - 3.2 Vending Machine Operator will keep accurate records of its sales and will make these records available to the City upon request during the Term of the Agreement and for up to four (4) years after the expiration of the Term. Vending Machine Operator shall permit authorized representatives of City to accompany Vending Machine Operator's employees during cash collection and counting and to randomly examine the receipts of the vending machines operated by Vending Machine Operator.

4. **Term.** This Agreement begins on November 5, 2009, and ends on December 31, 2010, unless terminated sooner. This Agreement will be renewable annually for an additional two (2) years.
5. **Termination.** Either party may terminate this Agreement with or without cause on ten (10) calendar days' written notice to the other party. Termination does not waive, release, or forego any legal remedy for any violation, breach, or non-performance of any of the provisions of this Agreement.
6. **Risk Management.**

6.1 **Indemnification/Hold Harmless.** The Vending Machine Operator shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

For purposes of this indemnification and hold harmless agreement, the Vending Machine Operator waives any immunity that may be granted to it under the Washington State Industrial Insurance Act, Title 51 RCW. The parties expressly agree that this waiver of workers' compensation immunity has been negotiated.

6.2 **Insurance.** The Vending Machine Operator shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with products and materials supplied to the City.

6.2.1. **No limitation.** Vending Machine Operator's maintenance of insurance as required by the Agreement shall not be construed to limit the liability of the Vending Machine Operator to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

6.2.2 **Minimum Scope of Insurance.** Vending Machine Operator shall maintain the following insurance limits:

**Commercial General Liability** insurance shall be written with limits no less than One Million Dollars (\$1,000,000) each occurrence, One Million Dollars (\$1,000,000) general aggregate and a Two Million Dollar (\$2,000,000) products liability aggregate limit.

Automobile Liability Insurance with a minimum combined single limit for bodily injury and property damage of One Million Dollars (\$1,000,000) per accident.

- 6.2.3 Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions for Commercial General Liability insurance:

The Vending Machine Operator's insurance coverage shall be primary insurance with respect to the City. Any Insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Vending Machine Operator's insurance and shall not contribute with it.

The Vending Machine Operator's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

- 6.2.4 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.
- 6.2.5 Verification of Coverage. Vending Machine Operator shall furnish the City with original certificates and a copy of the amendatory endorsements including, but not necessarily limited to, the additional insured endorsement, evidencing the insurance requirements of the Vending Machine Operator before goods, materials or supplies will be accepted by the City.
- 6.2.6 Material Breach. Vending Machine Operator acknowledges that any failure to comply with the requirements of this section may be deemed by the City to be a material breach and cause for termination of this Agreement.

7. Independent Contractor.

- 7.1 The parties do not intend to constitute nor create an employer-employee relationship because Vending Machine Operator is an independent contractor. Vending Machine Operator shall be responsible for all obligations relating to federal income tax, self-employment FICA taxes and contributions, and all other so called employer taxes and contributions including, but not limited to, industrial insurance (Workmen's Compensation). Vending Machine Operator agrees to indemnify, defend and hold the City harmless from any claims, valid or otherwise, made against the City, because of these obligations.
- 7.2 Any and all employees of Vending Machine Operator, while engaged in the performance of any work, shall be considered employees of Vending Machine Operator only and not of the City, and any and all claims that may or might arise under the Worker's Compensation Act on behalf of said employees or Vending Machine Operator, while so engaged in any and all claims made by a third party as a consequence of any negligent act or omission on the part of Vending

Machine Operator's employees, while so engaged on any of the work, shall be the sole obligation and responsibility of Vending Machine Operator.

7.3 Vending Machine Operator assumes full responsibility for the payment of all payroll taxes, use, sales, income, or other form of taxes (such as state, and city business and occupation taxes), fees, licenses, excises or payments required by any city, federal or state legislation which are now or may during the term of the Agreement be enacted as to all persons employed by Vending Machine Operator and as to all duties, activities and requirements by Vending Machine Operator in performance of the work and Vending Machine Operator shall assume exclusive liability therefore, and meet all requirements thereunder pursuant to any rules or regulations that are now or may be promulgated in connection therewith.

8. Employment. Vending Machine Operator warrants that it had not employed or retained any company or person, other than a bona fide employee working solely for Vending Machine Operator, to solicit or secure this Agreement and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for Vending Machine Operator, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the City shall have the right to terminate this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

9. Miscellaneous.

9.1 Audits and Inspections. At any time during normal business hours and as often as the City may deem necessary, Vending Machine Operator shall make available to the City for the City's examination all of Vending Machine Operator's books, records and documents with respect to all matters covered by this Agreement and, furthermore, Vending Machine Operator will permit the City to audit, examine and make copies, excerpts or transcripts from such records, and to audit all contracts, invoices, materials, deposits, receipts, tax returns and other data relating to all matters covered by this Agreement.

9.2 City of Oak Harbor Business License. Vending Machine Operator shall obtain a City of Oak Harbor business license prior to performing any work pursuant to this Agreement.

9.3 State of Washington Requirements. Vending Machine Operator shall register and obtain any State of Washington business licenses, Department of Revenue account and/or unified business identifier number as required by RCW 50.04.140 and RCW 51.08.195 prior to performing this Agreement.

9.4 Compliance with Federal, State and Local Laws. Vending Machine Operator shall comply with and obey all federal, state, and local laws, regulations, and

ordinances applicable to the operation of its business and to its performance of work hereunder.

9.5 Subletting/Assignment of Agreement. Vending Machine Operator shall not sublet or assign any of the work without the express, prior written consent of the City.

9.6 Waiver. Any waiver by Vending Machine Operator or the City or the breach of any provision of this Agreement by the other party will not operate, or be construed, as a waiver of any subsequent breach by either party or prevent either party from thereafter enforcing any such provisions.

9.7 Complete Agreement. This Agreement contains the complete and integrated understanding and Agreement between the parties and supersedes any understanding, Agreement or negotiation whether oral or written not set forth herein.

9.8 Non-Discrimination.

9.8.1 The CITY is an equal opportunity employer.

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

9.8.3 Non-discrimination in Services. The Vending Machine Operator will not discriminate against any recipient of any services or benefits provided for

in this Agreement on the grounds of race, creed, color, national origin, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental or physical disability or the use of a trained guide dog or service animal by a person with a disability.

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

9.9 Modification of Agreement. This Agreement may be modified by a writing explicitly identified as a modification of this Agreement that is signed by authorized representatives of the City and Vending Machine Operator.

9.10 No Partnership. The parties do not intend to create any joint venture or partnership by this Agreement.

9.11 Other Rights. The parties do not intend to confer any rights or benefits on any third parties by this Agreement.

9.12 Severability. If any part of this Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null and void, insofar as it is in conflict with said laws, and the remainder of the Agreement shall remain in full force and effect.

9.13 Notices. Notices to the City of Oak Harbor shall be sent to the following address:

City of Oak Harbor  
Attn: Connie Wheeler, City Clerk  
865 SE Barrington Drive  
Oak Harbor, WA 98277

Notices to Vending Machine Operator shall be sent to the following address:

Vending Machine Operator  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

9.14 Venue. Any lawsuit arising out of this Agreement shall be brought in Island County Superior Court and the laws of the state of Washington shall apply to this Agreement.

IN WITNESS WHEREOF, the City and Vending Machine Operator have executed this Agreement as of the date first above written.

CITY:

VENDING MACHINE OPERATOR

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Jim Slowik, Mayor

\_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Connie Wheeler, City Clerk



City of Oak Harbor  
City Council Agenda Bill

Bill No. C/A 30  
Date: November 4, 2009  
Subject: Perteet Inc. Agreement Amendment Approval

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

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

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

**PURPOSE:**

This agenda bill requests approval of an amendment totaling \$12,265.00 to the Consultant Agreement with Perteet Inc. for the SE Pioneer Way Improvements Project. The amendment provides for the preparation and filing of a record of survey for the project. The amendment will increase Phase I of the Agreement to a new total of \$328,840.00

**AUTHORITY:**

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

**SUMMARY STATEMENT:**

On March 3, 2009, City Council approved an Agreement with Perteet Inc. for Phase 1 of an Agreement for engineering services to provide improvements to Pioneer Way in the downtown core. A portion of the services authorized was a comprehensive land survey of the project area including property and right-of-way boundaries. That survey has been completed in accordance with the original Agreement scope. However, survey information on file with Island County contains inconsistencies that need to be resolved in order to establish what additional right-of-way acquisition is necessary to construct the improvements. The inconsistencies have accrued over time since the original plat of the area was recorded. RCW 58.09 provides specific requirements for the filing of a Record of Survey to correct discrepancies in survey records. Compliance with those requirements was not included in the original Agreement scope. A Record of Survey serves the purpose of pulling together recorded information with actual field measurements resulting in a comprehensive correction for the area that is the subject of the Record of Survey. Once this document is recorded, legal descriptions for necessary right-of way acquisitions can be prepared and actual acquisitions can be made.

Funding is available in the project budget for the amendment.

9.8.410  
11/11/09



**STANDING COMMITTEE REVIEW**

This item was presented to the Public Works and Utilities Standing Committee on August 6, 2009

**RECOMMENDED ACTION:**

Authorize the Mayor to sign an amendment, for \$12, 265 to the agreement with Perteet Inc .for the preparation and filing of a record of survey for the SE Pioneer Way Improvement Project

**ATTACHMENTS:**

Amendment No. 1 to City of Oak Harbor Agreement with Perteet Inc.

**MAYOR'S COMMENTS:**

#2 55

<b>Consultant Agreement Amendment Number 1</b>	<b>Organization and Address</b> City of Oak Harbor 865 SE Barrington Drive Oak Harbor, WA 98239  Phone: 360.279.4520	
Original Agreement Title: SE Pioneer Way Improvement Project Engineering Services		
Project Number: ENG-06-50	Execution Date March 5, 2009	Completion Date June 10, 2010
Project Title SE Pioneer Way Improvements	New Maximum Amount Payable \$631,379.00 (\$328,840.00 Phase 1)	
Description of Work Prepare Record of Survey to reconcile discrepancies discovered during control survey for the project as described in the attached scope of work.		

The Local Agency of City of Oak Harbor  
desires to supplement the agreement entered into with Perteet Inc  
and executed on March 5, 2009 and identified as Agreement City of Oak Harbor Agreement with Perteet Inc.

All provisions in the basic agreement remain in effect except as expressly modified by this supplement

The changes to the agreement are described as follows:

**SCOPE OF WORK** is hereby changed to read:  
Prepare Record of Survey as described in the attached scope of work

**TIME FOR BEGINNING AND COMPLETION** IS AMENDED to read: No change

**PAYMENT** shall be amended as follows:  
Maximum amount payable is increased \$12,265.00 to a new maximum of \$631,379.00 (\$328,840.00 Phase 1) as indicated in the attached Survey Cost Estimate Worksheet.

If you concur with this amendment and agree to the changes as stated above, please sign in the appropriate spaces and return to this office for final action.

By: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
Consultant Signature

\_\_\_\_\_  
Approving Authority Signature

\_\_\_\_\_  
Date



**City of Oak Harbor**  
**Scope of Services**  
**PIONEER WAY RECORD OF SURVEY**  
20 October 2009

**BACKGROUND**

The intent of a Record of Survey is to protect the public by putting on public notice the findings of a land survey when, according to RCW 58.09.040, one of the followings occurs:

- (a) The establishment of a corner which materially varies from the description of record;
- (b) The establishment of one or more property corners not previously existing;
- (c) Evidence that reasonable analysis might result in alternative positions of lines or points as a result of an ambiguity in the description;
- (d) The reestablishment of lost government land office corners.

Sub-paragraph (c) is the paramount factor based on "discovery" from the land survey work performed under Phase 1 of this project, both for analysis of ambiguities regarding original plats intent and for differences of professional opinion differing from some existing recorded Records of Survey.

As a portion of the Pioneer Way Phase 1 professional services work, street right of way margins were retraced as follows:

- Pioneer Way, being of variable width, lying easterly of the westerly right of way margin of City Beach Road and westerly of the easterly right of way margin of Midway Boulevard.
- The southerly 100 feet of SE Ely Street, SE Dock Street, SE Hathaway Street, SE Ireland Street, SE Ilwaco Alley and SE Jensen Street as they adjoin Pioneer Way.

During the course of the retracement, a total of 64 monuments, consisting of street monuments, property comers and other miscellaneous markers were field located within the project area. Survey research documents used for retracement included relevant plats (one of which did not close mathematically by 3.5 feet, more or less), recorded records of survey, unrecorded surveys or other unrecorded survey related documents obtained from the Department of Natural Resources, deed descriptions of each adjoining tax lot parcel and the original General Land Office Cadastral Survey.

Unlike, existing recorded Records of Survey which were performed for smaller, isolated portions of this site, land survey work performed during Phase 1 allowed the privilege of examining the intent to location of Pioneer Way right of way "as a whole". Numerous prior surveys retrace only a portion of Pioneer Way which reflects only a segment "of the whole". With this project, as well as other similar

projects where historical plats and deeds control right of way placement, the longer the lineal distance of street retracement, the better the results as to intent of location and establishment. In some areas, building frontage which adjoins street rights of way were constructed as a "zero" front yard building setback which best fulfilled intent of plat and street location.

Street right of way retracement conducted under Phase 1, differs from a few tenths of a foot up to 3.5 feet in location from right of way limits delineated on some recorded Records of Survey. This proposed Record of Survey will show what was found, survey references listed, a narrative as to what and why professional decisions were made, adjoining occupation features and other researched survey mathematical data on common measured or computed lines, boundaries and margins.

**SERVICES** - This proposed Record of Survey will show what was found, survey references listed, a narrative as to what and why professional decisions were made, adjoining occupation features and other researched survey mathematical data on common, measured or computed lines, boundaries and margins.

The Record of Survey will be prepared subject to applicable Washington State Statutes and filed with the Island County Recorder's Office.

**COMPLETION** – Work will be completed within 25 working days after the Notice to Proceed from the City is provided.





# City of Oak Harbor City Council Agenda Bill

Agenda Bill No. 4A 3E  
Date: November 4, 2009  
Subject: Memorandum of  
Understanding – State of Washington  
Unified Certification Program

FROM: Paul Schmidt  
City Administrator



INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:



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

## SUMMARY STATEMENT

In order to request and receive Federal grant funds for local government projects, cities are required to demonstrate compliance with many Federal mandates. One such mandate is membership in the State of Washington Unified Certification Program.

## AUTHORITY

49 CFR 26.81 requires all United States Department of Transportation recipients in each state to participate in a Unified Certification Program.

## BACKGROUND

On May 19, 2009, the City Council adopted Resolution No. 09-13 which accepted a Memorandum of Understanding for the State of Washington Unified Certification Program (UCP). Since that time, it has been determined by the Office of Minority and Women's Business Enterprises that the Memorandum of Understanding previously approved was not the correct version and the City is required to re-adopt a version designed specifically for direct recipients of federal funding.

As a means of review, the City of Oak Harbor provided notification to the Federal Transit Authority to obligate funds to construct the "upland portion" of the Municipal Pier Project. Federal Transit Authority requirements associated with the distribution of funding for the project include the establishment of a Title VI Program, a Disadvantaged Business Enterprise (DBE) Program and membership in the Washington State Unified Certification Program (UCP).

The primary purpose of participation in a Unified Certification Program is to designate an exclusive certification authority as required by 49 CFR Part 26. Chapter 39.19.120 Revised Code of Washington (RCW) designates the State of Washington Office of Minority & Women's Business Enterprises ("OMWBE") as the exclusive authority for certification of minority, women, and socially and economically disadvantaged business enterprises for all programs administered by the state of Washington, any city, town, county, special purpose district, public corporation created by the state, municipal corporation, or quasi-municipal corporation within the state of Washington.

# City of Oak Harbor City Council Agenda Bill

By entering into the Memorandum of Understanding with the Washington State Office of Minority and Women's Business Enterprises for the State of Washington Unified Certification Program, the City fulfills the United States Department of Transportation requirement as outlined in 49 CFR 26.81.

## STANDING COMMITTEE REPORT

None

## RECOMMENDED ACTION

1. Adopt Resolution No. \_\_\_\_\_ authorizing the Mayor to sign the Memorandum of Understanding between the Washington State Office of Minority and Women's Business Enterprises and the City of Oak Harbor for the State of Washington Unified Certification Program (Exhibit A) and the Memorandum of Acknowledgement and Acceptance (Exhibit B).

## ATTACHMENTS

Resolution No. \_\_\_\_\_  
Exhibits A and B

## MAYOR'S COMMENTS

RESOLUTION NO.

A RESOLUTION BY THE CITY OF OAK HARBOR ACKNOWLEDGING AND ACCEPTING THE MEMORANDUM OF UNDERSTANDING BETWEEN THE WASHINGTON STATE OFFICE OF MINORITY AND WOMEN'S BUSINESS ENTERPRISES AND THE CITY OF OAK HARBOR FOR THE STATE OF WASHINGTON UNIFIED CERTIFICATION PROGRAM

WHEREAS, the City of Oak Harbor is a recipient of funding and assistance programs administered by the U.S. Department of Transportation (USDOT) and its operational modal, the Federal Transit Administration (FTA), in the state of Washington; and

WHEREAS, 49 CRF 26.81 requires all USDOT recipients in each state to participate in a Unified Certification Program (UCP); and

WHEREAS, the primary purpose of participation in a Unified Certification Program is to designate an exclusive certification authority as required by 49 CFR Part 26; and

WHEREAS, on May 19, 2009 the City Council adopted Resolution No. 09-13 which accepted a Memorandum of Understanding (MOU) for the State of Washington Unified Certification Program; and

WHEREAS, as the City of Oak Harbor is a direct recipient of federal funding, the Office of Minority and Women's Business Enterprises has determined the previously adopted MOU is insufficient and has requested adoption of the MOU attached hereto as Exhibit A and the Memorandum of Acknowledgement and Acceptance attached hereto as Exhibit B; and

WHEREAS, the Memorandum of Acknowledgement and Acceptance of the Memorandum of Understanding between the Washington State Office of Minority and Women's Business Enterprises and the City of Oak Harbor for the State of Washington Unified Certification Program acknowledges the City of Oak Harbor's acceptance and agreement to be bound by the terms and conditions contained therein.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Oak Harbor, Washington, that the City of Oak Harbor authorizes the Mayor to sign the Memorandum of Understanding between the Washington State Office of Minority and Women's Business Enterprises and the City of Oak Harbor for the State of Washington Unified Certification Program (Exhibit A to this Resolution) and the Memorandum of Acknowledgement and Acceptance (Exhibit B to this Resolution).

PASSED by the City Council of the City of Oak Harbor and approved by its Mayor this 4<sup>th</sup> day of November, 2009.

CITY OF OAK HARBOR

\_\_\_\_\_  
MAYOR

ATTEST:

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

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**EXHIBIT "A"**

**MEMORANDUM OF UNDERSTANDING**  
*between*  
**THE WASHINGTON STATE**  
**OFFICE OF MINORITY AND WOMEN'S BUSINESS ENTERPRISES**  
*and*  
**THE CITY OF OAK HARBOR**  
*for the*  
**STATE OF WASHINGTON**  
**UNIFIED CERTIFICATION PROGRAM**

This Memorandum of Understanding for participation in the State of Washington Unified Certification Program (UCP) is between the City of Oak Harbor and the State of Washington, through its Office of Minority and Women's Business Enterprises (OMWBE) and is effective as of the date of the last signatory hereto.

**WITNESSETH:**

**WHEREAS**, the City of Oak Harbor is a recipient of funding and assistance programs administered by the U.S. Department of Transportation (USDOT) and its operational modal, the Federal Transit Administration (FTA), in the state of Washington;

**WHEREAS**, 49 CFR 26.81 requires all USDOT recipients in each state to participate in a Unified Certification Program (UCP);

**WHEREAS**, the Washington State Office of Minority and Women Business Enterprises (OMWBE) is approved by the USDOT to be the UCP provider in the state of Washington;

**WHEREAS**, performs certification following the regulations in 49 Code of Federal Regulations (CFR) Part 26;

**WHEREAS**, Chapter 39.19.120 Revised Code of Washington (RCW) designates OMWBE as the exclusive authority for certification of minority, women, and socially and economically disadvantaged business enterprises for all programs administered by the state of Washington, any city, town, county, special purpose district, public corporation created by the state, municipal corporation, or quasi-municipal corporation within the state of Washington; and

In Consideration of the foregoing recitals, the Undersigned agree as follows:

**1. Acknowledgement and Acceptance of Unified Certification Program**

The City of Oak Harbor agrees to participate in a UCP, as required by 49 CFR Part 26.

**2. Designation of Exclusive Certifying Authority; Binding Effect**

The City of Oak Harbor agrees as follows:

**2.1** OMWBE is now, and shall continue to be the sole and exclusive certification authority for participation in the USDOT DBE Program in the state of Washington in accordance with 49 CFR Part 26 and Chapter 39.19 RCW.

**2.2** Final certification determinations made by OMWBE shall be binding and have the full force and effect of law as may be provided by 49 CFR Part 26.

**2.3** Only final certification determinations issued by OMWBE prior to the due date for bids or offers on a contract which a firm seeks to participate as a DBE shall be recognized for purposes of award.

### **3. Notification Responsibilities of the Parties**

Each party to this agreement agrees to notify the other parties of all regulatory changes, interpretations and other communications affecting the operation, duties, and/or responsibilities of each party under this agreement.

### **4. Duties and Responsibilities of OMWBE**

In its capacity as the sole and exclusive certification authority in the state of Washington, it is acknowledged that OMWBE shall perform the following duties and have the following responsibilities:

**4.1** Comply with and follow all certification standards and nondiscrimination requirements of 49 CFR Part 26, as may be approved from time to time, including without limitation, implementation of all USDOT directives and guidance concerning certification matters.

**4.2** Only process applications for certification from firms with principal places of business outside the state of Washington if such firms have received certification determinations from the designated UCPs of the states in which the firms maintain principal places of business.

**4.3** Issue administratively final determinations to certify, recertify or remove a firm based upon applications submitted to it for certification and recertification, appeals, third party challenges, ineligibility complaints, recipient-initiated proceedings, and USDOT directives.

**4.4** Share information and documents concerning firms certified in the state of Washington with other state UCPs that are considering applications of certification from such firms.

**4.5** Maintain a unified *DBE Directory* of firms certified by OMWBE pursuant to this UCP that shall contain all of the information required by 49 CFR 26.31 and be available to the public electronically, on the internet, and in print.

**4.6** Cooperate fully with all oversight, review and monitoring activities of USDOT and the other parties, as it relates to the implementation and ongoing activities of the UCP.

4.7 Cooperate fully with and participate in any audits or certification performance reviews and/or respond to and reply to other requests for information as may be directed to the UCP by USDOT and/or the Federal Transit Administration and/or [AGENCY NAME]

**5. Duties and Responsibilities of the City of Oak Harbor**

The City of Oak Harbor shall perform the following duties and have the following responsibilities:

5.1 Provide OMWBE with a copy of the City of Oak Harbor Disadvantaged Business Enterprise Program Plan, and a copy of the City of Oak Harbor Annual DBE Agency Goal Submittal as provided to the Federal Transit Administration.

5.2 Comply with and follow all certification standards and nondiscrimination requirements of 49 CFR Part 26, as may be approved from time to time, including without limitation, implementation of all USDOT directives and guidance to grantees and recipients concerning certification matters.

5.3 Cooperate fully with all oversight, review and monitoring activities of USDOT and/or the Federal Transit Administration, as it relates to the implementation and ongoing activities of the UCP.

5.4 Cooperate fully with and participate in any audits or certification performance reviews and/or respond to and reply to other requests for information as may be directed to the City of Oak Harbor by USDOT and/or the Federal Transit Administration and/or OMWBE.

**IN WITNESS WHEREOF**, the parties have executed this Memorandum of Understanding effective as of the last date of all the signatories appearing here below.

**ACCEPTED:**

**Washington State Office of Minority and Women's Business Enterprises**

By: \_\_\_\_\_  
Cynthia Cooper  
Director

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

Approved as to Form:

\_\_\_\_\_  
Assistant Attorney General  
State of Washington

**City of Oak Harbor**

By: \_\_\_\_\_  
Jim Slowik  
Mayor

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

Approved as to Form (if required):

\_\_\_\_\_  
Legal Counsel

**EXHIBIT "B"**

**MEMORANDUM OF ACKNOWLEDGEMENT AND ACCEPTANCE –  
MEMORANDUM OF UNDERSTANDING BETWEEN THE WASHINGTON  
STATE OFFICE OF MINORITY AND WOMEN’S BUSINESS ENTERPRISES  
AND THE CITY OF OAK HARBOR FOR THE STATE OF WASHINGTON  
UNIFIED CERTIFICATION PROGRAM**

The Undersigned hereby acknowledges its acceptance and agreement to be bound by the terms and conditions of the *Memorandum of Understanding between the Washington State Office of Minority and Women’s Business Enterprises and the City of Oak Harbor for the State of Washington Unified Certification Program* ((Exhibit 1) approved by the U.S. Department of Transportation on January 31, 2003.

City of Oak Harbor

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title: \_\_\_\_\_

Dated: \_\_\_\_\_, 2009



**City of Oak Harbor  
City Council Agenda Bill - Introduction Only**

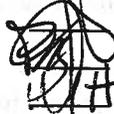
Bill No. 01A 3F

Date: November 4, 2009

**SUBJECT: Property Tax ordinance to set  
2010 Property Tax Levy.**

**FROM: Doug Merriman, Finance Director** 

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

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

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**SUMMARY STATEMENT**

This agenda bill introduces alternative proposed ordinances required to establish the property tax levy rate for the City of Oak Harbor for 2010. Under and RCW 84.55.005(1) and RCW 84.55.005(2)(c), the City may increase the collection of property tax revenues by the lower of 1% or the rate of inflation as set by the Implicit Price Deflator (IPD) as published by the Bureau of Economic Analysis (BEA). The IPD measurement to be utilized for 2010 is -.848 (negative). This creates an unusual condition where, for the first time in our history of using this index, the cost of living as reflected by the IPD has decreased.

The City has two alternatives to consider in addressing the 2010 property tax levy in this type of economic scenario. These two alternatives are:

- 1) Pass an ordinance lowering the 2010 property tax levy by -.848%. The financial impact of this alternative would require a reduction of 2010 budgeted general fund revenues by \$70,149.47. Accordingly, this reduction in revenues would require an equal amount of budget cuts in the 2010 general fund budget to maintain a legally required balanced budget.
- 2) Pass one ordinance declaring a "finding of substantial need" that states specific reasons the City requires a one percent increase to meet the 2010 budget. Pass a second ordinance, with a majority plus one vote, increasing the 2010 property tax levy by 1% over 2009. The financial impact of this increasing the property tax levy by 1% has no effect on the currently adopted 2010 General Fund budget as the 1% increase was included in the projected revenues for 2010.

At the time of writing of this agenda bill, the Washington State Department of Revenue has not finalized the wording and format of the required ordinances. The Department has scheduled meetings with the various county assessor offices in Washington to present the materials as they become finalized. I have arranged to be informed by the Island County Assessors Office of any required ordinance formats that may be required. Accordingly, the ordinances presented herein are in draft form utilizing information that is currently available. Any changes directed to be used by the Department of Revenue will be incorporated in the agenda bill presenting the ordinance(s) for final passage on November 17, 2009.

# City of Oak Harbor City Council Agenda Bill - Introduction Only

## AUTHORIZATION

RCW 84.55.010 provides that a taxing jurisdiction may levy taxes in an amount no more than the limit factor multiplied by the highest levy of the most recent three years plus additional amounts resulting from new construction and improvements to property, newly constructed wind turbines, and any increase in the value of state-assessed utility property.

RCW 84.55.005(1) defines "inflation" as the percentage change in the implicit price deflator for personal consumption expenditures for the United States as published for the most recent 12-month period by the Bureau of Economic Analysis of the federal Department of Commerce in September of the year before the taxes are payable;

RCW 84.55.005(2)(c), provides the limit factor for the City of Oak Harbor, a taxing jurisdiction with a population of over 10,000, is the lesser of 101 percent or 100 percent plus inflation;

## RECOMMENDED ACTION

- 1) This agenda bill is solely to introduce the proposed ordinances and to provide a copy to City Council for their review prior to the November 17, 2009 meeting.
- 2) Set a public hearing date for the 2010 property tax increase on November 17, 2009.
- 3) Additional information on this topic will be presented on November 17, 2009.

## ATTACHMENTS:

### Draft Ordinances

- ◆ Alternative 1 decreasing the 2010 property tax levy by -.848% (negative).
- ◆ Alternative 2 utilizing two ordinance to increase the 2010 property tax levy by 1%.

Levy limit information from the Department of Revenue.

Excerpts from RCW 84.55

## MAYOR'S COMMENTS

**1<sup>st</sup> Alternative: Decreasing the 2010 Property Tax Levy -.848%**

Draft



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

AN ORDINANCE TO DECREASE BY \$32,289.80 THE AMOUNT TO BE RAISED BY AD VALOREM TAXES FOR THE 2010 TAX LEVY WHICH REPRESENTS A .848% DECREASE OVER THE ACTUAL LEVY OF THE PREVIOUS YEAR.

WHEREAS, proper public notice of this ordinance and the related public hearing was given in the Whidbey News Times on November 4, 2009, and

WHEREAS, a public hearing was held November 17, 2009, to consider the City of Oak Harbor's Current Expense budget for the Year 2010; and

WHEREAS, the amount required for the 2010 special voted levy to fund the bonding schedule of the 1996 Public Safety Bond issue is \$254,040.00. This represents \$240,000.00 in principal and \$14,040.00 in interest costs; and

WHEREAS, RCW 84.55.010 provides that a taxing jurisdiction may levy taxes in an amount no more than the limit factor multiplied by the highest levy of the most recent three years plus additional amounts resulting from new construction and improvements to property, newly constructed wind turbines, and any increase in the value of state-assessed utility property;

WHEREAS, under one provision of RCW 84.55.005(2)(c), the limit factor for the City of Oak Harbor, a taxing jurisdiction with a population of over 10,000, is the lesser of 101 percent or 100 percent plus inflation;

WHEREAS, RCW 84.55.005(1) defines "inflation" as the percentage change in the implicit price deflator for personal consumption expenditures for the United States as published for the most recent 12-month period by the Bureau of Economic Analysis of the federal Department of Commerce in September of the year before the taxes are payable;

WHEREAS, inflation for the twelve-month period ending July 2009 as measured by the change in the Implicit Price Deflator (IPD) is -0.848 percent (negative) and the limit factor is 99.152 percent.

WHEREAS, the City Council has further determined that the ad valorem taxes for the 2010 tax levy shall be decreased by an amount of -.848% (negative) equaling 99.152% of the property tax assessment that could have been received during the previous year. This decrease is exclusive of any additional revenues received from under-utilized levy capacity, from the addition of new construction, improvements to property, any annexations that have occurred, newly constructed wind turbines, and from any increase in the value of state-assessed property.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAK HARBOR do hereby ordain as follows:

**Section One:** As provided in RCW Ch. 84.55.010 and .030, a decrease in the regular property tax levy is hereby authorized for the levy to be collected in 2010 tax year. The dollar amount of the decrease over the actual levy amount of the previous year shall be \$32,289.80, which is a decrease of -.848 percent (-.848%). This decrease is exclusive of any additional revenues received from under-utilized levy capacity, from the addition of new construction, from improvements to property, any annexations that have occurred and refunds made, from newly constructed wind turbines, and from any increase in the value of state-assessed property. The total regular property taxes will be budgeted at \$3,943,777.00 for 2010. Total Voted Bond property taxes will be budgeted at \$254,040.00.

**Section Two:** The City Clerk shall file a certified copy of this ordinance with the Island County Auditor.

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

**Section Three: Effective Date.** This ordinance shall take effect five days after publication as provided by law.

Passed by the City Council this 17th day of November, 2009.

Approved by the Mayor this \_\_\_\_\_ day of November, 2009.

THE CITY OF OAK HARBOR

\_\_\_\_\_  
Mayor

Attest:

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

Approved as to Form:

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

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

**2nd Alternative:**

- a) Declaring a find of substantial need, and;
- b) Increasing the 2010 Property Tax Levy by 1%.

Draft



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

AN ORDINANCE MAKING A DECLARATION OF SUBSTANTIAL NEED FOR PURPOSES OF THE SETTING THE LIMIT FACTOR FOR THE PROPERTY TAX LEVY FOR 2010.

WHEREAS, RCW 84.55.010 provides that a taxing jurisdiction may levy taxes in an amount no more than the limit factor multiplied by the highest levy of the most recent three years plus additional amounts resulting from new construction and improvements to property, newly constructed wind turbines, and any increase in the value of state-assessed utility property;

WHEREAS, under RCW 84.55.005(2)(c), the limit factor for a taxing jurisdiction with a population of 10,000 or over is the lesser of 101 percent or 100 percent plus inflation;

WHEREAS, RCW 84.55.005(1) defines "inflation" as the percentage change in the implicit price deflator for personal consumption expenditures for the United States as published for the most recent 12-month period by the Bureau of Economic Analysis of the federal Department of Commerce in September of the year before the taxes are payable;

WHEREAS, "inflation" for July 2009 is -0.848 percent and the limit factor is 99.152 percent, meaning the taxes levied in the City of Oak Harbor in 2009 for collection in 2010 will decrease except for the amounts resulting from new construction and improvements to property, newly constructed wind turbines, and any increase in the value of state-assessed utility property;

WHEREAS, RCW 84.55.0101 provides for use of a limit factor of 101 percent or less with a finding of substantial need by a majority plus one vote of council members;

WHEREAS, a finding is made of substantial need under RCW 84.55.0101, which authorizes the use of a limit factor of 101 percent for the property tax levy for 2010, and is declared for the following reasons:

- ◆ Due to the economic downturn experienced during the last 18 months and the approximate 7% decrease in Washington state sales tax and other revenue sources, the 1% cost of living increase in real estate property taxes is needed to maintain existing levels of operating service to our citizens in fire, police, legal services, city parks, and other general fund operations protection services;
- ◆ While the change in the Implicit Price Deflator represents a broad based measure of price changes across the United States, a better inflationary measure of our immediate location is the net change in the Seattle area CPI-U which measures costs changes in the local area, and is based the cost of goods, supplies and construction commodities that are incurred by the City of Oak Harbor in the normal course of business. The change in the Seattle CPI-U during the first half of 2009 is an increase of 2.101%. The 1% cost of living increase in real estate property taxes is needed to ensure that City revenues keep pace with the current rate of local inflation.
- ◆ The 2010 general fund budget includes a subsidy of the Street Fund #101 for roadway improvement capital projects in the amount of \$40,000.00. The 1% cost of living increase in the real estate property tax is required to maintain this subsidy for critical roadway improvements.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAK HARBOR do hereby ordain as follows:

**Section One:** Section 1. A finding is made of substantial need under RCW 84.55.0101, which authorizes the use of a limit factor of 101 percent of the 2009 property tax levy for the property tax levy for 2010.

**Section Two:** The City Clerk shall file a certified copy of this ordinance with the Island County Auditor.

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

**Section Four: Effective Date.** This ordinance shall take effect five days after publication as provided by law.

Passed by no less than a majority plus one vote of the City Council this ~~17th~~ 17th day of November, 2009.

Approved by the Mayor this \_\_\_\_\_ day of November, 2009.

THE CITY OF OAK HARBOR

\_\_\_\_\_  
Mayor

Attest:

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

Approved as to Form:

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

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

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

AN ORDINANCE INCREASE BY \$37,959.67 THE AMOUNT TO BE RAISED BY AD VALOREM TAXES FOR THE 2010 PROPERTY TAX LEVY WHICH REPRESENTS A 1% INCREASE OVER THE ACTUAL LEVY ASSESSED IN 2009.

WHEREAS, proper public notice of this ordinance and the related public hearing was given in the Whidbey News Times on November 4, 2009, and

WHEREAS, a public hearing was held November 17, 2009, to consider the City of Oak Harbor's Current Expense budget for the Year 2010; and

WHEREAS, the amount required for the 2010 special voted levy to fund the bonding schedule of the 1996 Public Safety Bond issue is \$254,040.00. This represents \$240,000.00 in principal and \$14,040.00 in interest costs; and

WHEREAS, RCW 84.55.010 provides that a taxing jurisdiction may levy taxes in an amount no more than the limit factor multiplied by the highest levy of the most recent three years plus additional amounts resulting from new construction and improvements to property, newly constructed wind turbines, and any increase in the value of state-assessed utility property;

WHEREAS, under one provision of RCW 84.55.005(2)(c), the limit factor for the City of Oak Harbor, a taxing jurisdiction with a population of over 10,000, is the lesser of 101 percent or 100 percent plus inflation;

WHEREAS, RCW 84.55.005(1) defines "inflation" as the percentage change in the implicit price deflator for personal consumption expenditures for the United States as published for the most recent 12-month period by the Bureau of Economic Analysis of the federal Department of Commerce in September of the year before the taxes are payable;

WHEREAS, inflation for the twelve month period ending July 2009 as measured by the change in the implicit price deflator (IPD) is -0.848 percent and the limit factor is 99.152 percent, meaning the taxes levied in Oak Harbor in 2009 for collection in 2010 will decrease except for the amounts resulting from new construction and improvements to property, newly constructed wind turbines, and any increase in the value of state-assessed utility property;

WHEREAS, a second provision is included in RCW 84.55.0101 for use of a finding of substantial need should the city desire to implement a limit factor of up to 101 percent by a majority plus one vote of the City Council. The City Council has previously adopted Ordinance # \_\_\_\_\_ on November 17, 2009 declaring a finding of substantial need ;

WHEREAS, the City Council, after hearing and after duly considering all relevant evidence and testimony presented, has determined that the City of Oak Harbor requires an increase in property tax revenue from the previous year, in order to discharge the expected expenses and obligations of the City of Oak Harbor.

WHEREAS, the City Council has further determined that in order to discharge the expected expenses and obligations of the Current Expense budget, the ad valorem taxes for the 2010 tax levy shall be increased by an amount of one percent (1%) equaling 101.00% of the property tax assessment that could have been received during the previous year. This increase is exclusive of any additional revenues received from under-utilized levy capacity, from the addition of new construction, improvements to

property, any annexations that have occurred, newly constructed wind turbines, and from any increase in the value of state-assessed property.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAK HARBOR do hereby ordain as follows:

**Section One:** An increase in the regular property tax levy is hereby authorized for the levy to be collected in 2010 tax year. The dollar amount of the increase over the actual levy amount of the previous year shall be \$37,959.67, which is an increase of one percent (1%). This increase is exclusive of any additional revenues received from under-utilized levy capacity, from the addition of new construction, from improvements to property, any annexations that have occurred and refunds made, from newly constructed wind turbines, and from any increase in the value of state-assessed property. The total regular property taxes will be budgeted at \$4,013,926.00 for 2010. Total Voted Bond property taxes will be budgeted at \$254,040.00.

**Section Two:** The City Clerk shall file a certified copy of this ordinance with the Island County Auditor.

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

**Section Four: Effective Date.** This ordinance shall take effect five days after publication as provided by law.

Passed by no less than a majority plus one vote of the City Council this 17th day of November, 2009.

Approved by the Mayor this \_\_\_\_\_ day of November, 2009.

THE CITY OF OAK HARBOR

\_\_\_\_\_ Mayor

Attest:

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

Approved as to Form:

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

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

## **Levy Limit Factor Questions That Arise When the Implicit Price Deflator (IPD) is a Negative Value**

The following questions and answers are designed to help taxing districts and assessors determine the levy limit factor when the change in the implicit price deflator (IPD) is a negative value.

### **Determining the Limit Factor**

**Q. What is the levy limit factor?**

A. This is the percentage applied to a taxing district's maximum levy allowed by chapter 84.55 RCW to calculate the district's levy limit.

**Q. How is the levy limit factor determined?**

- A. The levy limit factor is defined in RCW 84.55.005 and WAC 458-19-005:
- For taxing districts with a population of less than 10,000 in the calendar year prior to the assessment year, the limit factor is 101 percent.
  - For taxing districts with a population of 10,000 or greater, the limit factor is the lesser of 100 percent plus inflation or 101 percent.
  - For taxing districts with a population of 10,000 or greater having made a finding of substantial need; the limit factor is the lesser of 101 percent or the limit factor contained in the resolution or ordinance of substantial need.

**Q. What is the 2010 tax year rate of inflation as used for property tax levy limits?**

A. The rate of inflation is based on the percentage change in the IPD, which for the 2010 tax year is -0.848 percent (negative).

**Q. Who determines the population of a taxing district?**

A. The taxing district is responsible for determining its population and providing that information to the county assessor.

**Q. Will the negative IPD result in a reduced levy amount?**

A. Probably not. In addition to an adjustment to the maximum levy allowed based on the ordinances or resolutions adopted by the taxing district, the levy limit is increased due to new construction and other allowable items. More than likely, this increase will exceed the negative IPD factor.

### **Taxing Districts With a Population of Less Than 10,000**

**Q. How does the negative rate of Inflation affect processes and levies made by taxing districts with a population of less than 10,000?**

- A. These smaller districts are not impacted by the negative rate of inflation. These districts continue to have a limit factor of 101 percent and must continue to adopt an ordinance or resolution if they intend to increase their levies. The ordinance or resolution must indicate the dollar and percentage increase, exclusive of increases due to new construction and certain other items, over the previous year's levy.

If a district does not adopt an ordinance or resolution authorizing an increase, the district's levy is limited to 100 percent of the prior year's levy plus additional amounts for new construction and certain other items. (RCW 84.55.120)

### **Taxing Districts With a Population of 10,000 or More**

- Q. What limit factor will be used in the 2010 tax year levy calculations to levy the maximum levy allowed by law (chapter 84.55 RCW)?**

- A. That depends on which ordinances or resolutions the taxing district adopts concerning property tax levies:
- If no ordinances or resolutions are adopted by the district, the limit factor is 99.152%.
  - If one ordinance or resolution is adopted, the limit factor is 99.152%.
  - If the district adopts a second resolution finding a substantial need, the limit factor specified in the ordinance or resolution will be used. (RCW 84.55.0101) The limit factor can be greater than 99.152%, but cannot exceed 101%.

- Q. Is a taxing district required to adopt an ordinance or resolution to increase its prior year's levy amount?**

- A. Yes. The negative rate of inflation did not change this requirement.

- Q. What percentage of the taxing district's governing board must sign the resolutions or ordinances increasing the levy amount or establishing a limit factor?**

- A. A simple majority is required to increase the levy from the prior year.

Number of Board Members	Signatures Required
3	2
4	3
5	3
6	4
7	4
8	5
9	5

Approval of the levy limit increase in the substantial need resolution or ordinance requires two-thirds of the members of a governing board of four members or less, and a majority plus one in governing boards made up of more than four members. For example:

Number of Board Members	Signatures Required
3	2
4	3
5	4
6	5
7	5
8	6
9	6

**Q. What information is required to be included in the resolution or ordinance increasing the district's levy?**

- A. The ordinance or resolution must state both the dollar increase and percentage increase of the current budget request compared to the prior year's actual levy, exclusive of increases due to new construction and certain other items. The percentage increase in the document may be greater than 1% if the district is levying previously unused levy capacity (banked capacity). A resolution may look something like this example:

WHEREAS, the Board of Commissioners of \_\_\_\_\_ Taxing District has met and considered its budget for the calendar year 2010; and,

WHEREAS, the district's actual levy amount from the previous year was \$100,000 and,

WHEREAS, the population of this district is more than 10,000; now, therefore,

BE IT RESOLVED by the governing body of the taxing district that an increase in the regular property tax levy is hereby authorized for the levy to be collected in the 2010 tax year. The dollar amount of the increase over the actual levy amount from previous year shall be **\$1,000** which is a percentage increase of 1% from the previous year. This increase is exclusive of additional revenue resulting from new construction, improvements to property, newly constructed wind turbines, any increase in the value of state assessed property, any annexations that have occurred, and refunds made.

**Q. What information is required to be included in the substantial need resolution or ordinance increasing the district's limit factor?**

- A. The resolution or ordinance must include the reason for the substantial need and the limit factor (not to exceed one hundred one percent). For example:

WHEREAS, the Board of Commissioners of \_\_\_\_\_ Taxing District has determined that, due to general maintenance and operation expenses, the Board of Commissioners finds that there is a substantial need to set the levy limit at one hundred one percent.

**RCW 84.55.010**  
**Limitations prescribed.**

Except as provided in this chapter, the levy for a taxing district in any year shall be set so that the regular property taxes payable in the following year shall not exceed the limit factor multiplied by the amount of regular property taxes lawfully levied for such district in the highest of the three most recent years in which such taxes were levied for such district plus an additional dollar amount calculated by multiplying the increase in assessed value in that district resulting from new construction, increases in assessed value due to construction of electric generation wind turbine facilities classified as personal property, improvements to property, and any increase in the assessed value of state-assessed property by the regular property tax levy rate of that district for the preceding year.

[2006 c 184 § 1; 1997 c 3 § 202 (Referendum Bill No. 47, approved November 4, 1997); 1979 ex.s. c 218 § 2; 1973 1st ex.s. c 67 § 1; 1971 ex.s. c 288 § 20.]

**NOTES:**

**Reviser's note:** Throughout chapter 84.55 RCW the phrase "this 1971 amendatory act" has been changed to "this chapter." For codification of "this 1971 amendatory act" [1971 ex.s. c 288], see Codification Tables, Volume 0.

**Intent -- 1997 c 3 §§ 201-207:** "It is the intent of sections 201 through 207 of this act to lower the one hundred six percent limit while still allowing taxing districts to raise revenues in excess of the limit if approved by a majority of the voters as provided in RCW 84.55.050." [1997 c 3 § 208 (Referendum Bill No. 47, approved November 4, 1997).]

**Application -- Severability--Part headings not law -- Referral to electorate -- 1997 c 3:** See notes following RCW 84.40.030.

**Effective date -- Applicability -- 1979 ex.s. c 218:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately: PROVIDED, That the amendment to RCW 84.55.010 by section 2 of this act shall be effective for 1979 levies for taxes collected in 1980, and for subsequent years." [1979 ex.s. c 218 § 8.]

**RCW 84.55.0101****Limit factor -- Authorization for taxing district to use one hundred one percent or less -- Ordinance or resolution.**

Upon a finding of substantial need, the legislative authority of a taxing district other than the state may provide for the use of a limit factor under this chapter of one hundred one percent or less. In districts with legislative authorities of four members or less, two-thirds of the members must approve an ordinance or resolution under this section. In districts with more than four members, a majority plus one vote must approve an ordinance or resolution under this section. The new limit factor shall be effective for taxes collected in the following year only.

[2007 sp.s. c 1 § 2; 1997 c 3 § 204 (Referendum Bill No. 47, approved November 4, 1997).]

**NOTES:**

**Reviser's note:** On November 8, 2007, Initiative Measure No. 747 was declared unconstitutional in its entirety in *Washington Citizens Action of Washington v. State*, Washington State Supreme Court (No. 78844-8).

**Application -- 2007 sp.s. c 1:** "This act applies both prospectively and retroactively to taxes levied for collection in 2002 and thereafter." [2007 sp.s. c 1 § 3.]

**Effective date -- 2007 sp.s. c 1:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [November 29, 2007]." [2007 sp.s. c 1 § 4.]

**Intent -- 1997 c 3 §§ 201-207:** See note following RCW 84.55.010.

**Application -- Severability -- Part headings not law -- Referral to electorate -- 1997 c 3:** See notes following RCW 84.40.030.

**RCW 84.55.005****Definitions.**

As used in this chapter:

(1) "Inflation" means the percentage change in the implicit price deflator for personal consumption expenditures for the United States as published for the most recent twelve-month period by the bureau of economic analysis of the federal department of commerce in September of the year before the taxes are payable;

(2) "Limit factor" means:

(a) For taxing districts with a population of less than ten thousand in the calendar year prior to the assessment year, one hundred one percent;

(b) For taxing districts for which a limit factor is authorized under RCW 84.55.0101, the lesser of the limit factor authorized under that section or one hundred one percent;

(c) For all other districts, the lesser of one hundred one percent or one hundred percent plus inflation; and

(3) "Regular property taxes" has the meaning given it in RCW 84.04.140.

[2007 sp.s. c 1 § 1. Prior: 1997 c 393 § 20; 1997 c 3 § 201 (Referendum Bill No. 47, approved November 4, 1997); 1994 c 301 § 49; 1983 1st ex.s. c 62 § 11.]

**NOTES:**

**Reviser's note:** On November 8, 2007, Initiative Measure No. 747 was declared unconstitutional in its entirety in *Washington Citizens Action of Washington v. State*, Washington State Supreme Court (No. 78844-8).

**Application -- Effective date -- 2007 sp.s. c 1:** See notes following RCW 84.55.0101.

**Intent -- 1997 c 3 §§ 201-207:** See note following RCW 84.55.010.

**Application -- Severability -- Part headings not law -- Referral to electorate -- 1997 c 3:** See notes following RCW 84.40.030.

**Short title -- Intent -- Effective dates -- Applicability -- 1983 1st ex.s. c 62:** See notes following RCW 84.36.477.

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

Bill No. 4  
Date: November 4, 2009  
Subject: Ordinance – Repeal Oak Harbor  
Municipal Code Chapter 7.34 - Breed-Specific  
Restrictions

FROM: Paul Schmidt   
City Administrator

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

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

**PURPOSE**

To consider and possibly repeal Oak Harbor Municipal Code Chapter 7.34, Breed-Specific Restrictions (Ord. 1479 passed 11/21/2006).

**AUTHORITY**

RCW 16.08.070 – Dangerous Dogs and Related Definitions, which sets forth the basic procedures that cities and counties must follow when dealing with dangerous dogs, places significant responsibilities on the owner of a dangerous dog, and provides that local government jurisdictions can impose more restrictive conditions on owners of dangerous dogs.

**SUMMARY STATEMENT**

On September 20, 2006, the Breed Specific Restriction Ordinance was introduced to the Oak Harbor City Council, and subsequently adopted on November 21, 2006 (Exhibit A). The intent at that time was to include the Breed Specific Restriction proposal as part of an overall update of the existing OHMC Animal Control Chapter. Previously, the City of Oak Harbor listed “pit bull breeds” outright as potentially dangerous animals which were apparently creating enforcement problems. The Breed Specific Restriction was thus meant to soften the harsh restrictions of being designated a “potentially dangerous dog”, yet still maintain the “pit bull breed” as a distinct breed warranting some specific restrictions.

Earlier this year, the City was approached by a number of citizens questioning why the City of Oak Harbor places certain restrictions on a certain type of dog solely based on breed. We agreed to review the matter.

In doing so, we discovered that our insurance pool (Washington Cities Insurance Pool) does not recommend breed specific legislation and our own Animal Control Officer is of the same position. The principle reasons are that the burden of breed identification probably rests with the City in enforcement activities; and that the City’s experience does not bear out the presumption that pit bulls are the primary source of dog

## City of Oak Harbor City Council Agenda Bill

bites. A secondary reason to question the breed specific restriction voiced loudly by the concerned citizens is the unintended impact of the swelling numbers of pit bull dogs that are surrendered to our animal shelter due possibly to the cost and restrictions associated with maintaining a restrictive breed dog in the City of Oak Harbor. As a result, the animal shelter contains a disproportionately higher population of pit bull dogs which also means they are euthanized at a much greater rate.

**Additionally, it is staff's opinion that if the Breed Specific Language, (OHMC 7.34), were repealed, that the existing language in the Animal Control ordinance, specifically the Dangerous Dog and Potentially Dangerous Dog chapter, (OHMC 7.32 – Exhibit B), is more than sufficient to protect the public from actual aggressive dog behavior as well as behavior that would lead a reasonable person to believe that a specific dog is potentially dangerous.**

The recommendation from Staff based on our research findings is to simply repeal all of Chapter 7.34 (Breed Specific Restrictions) and rely instead upon other behavior based dog restrictions in the City Code.

### **STANDING COMMITTEE REPORT**

This issue was brought to the Public Safety Committee on August 27, 2009 and the Governmental Services Committee on September 14, 2009.

### **RECOMMENDED ACTION**

Consider Ordinance that repeals Oak Harbor Ordinance 1479 and set for public meeting on November 4, 2009.

### **ATTACHMENTS**

- Ordinance No. \_\_\_\_\_  
Exhibit A - OHMC Chapter 7.34  
Exhibit B – OHMC Chapter 7.32  
Exhibit C – Animal Bite Information 2006 through September 2009  
Exhibit D – Public comment received since 10/6/09 meeting

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

AN ORDINANCE REPEALING OAK HARBOR MUNICIPAL CODE SECTION 7.34  
ENTITLED BREED SPECIFIC RESTRICTIONS

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

**Section One.** Oak Harbor Municipal Code Chapter 7.34 entitled Breed Specific Restrictions, adopted by Ordinance No. 1479 on November 21, 2006 as shown in Exhibit A, is hereby repealed.

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

**Section Three.** Effective Date. This Ordinance shall be in full force and effect five days after its passage and publication as required by law.

PASSED by the City Council and approved by its Mayor this \_\_\_ day of \_\_\_\_\_, 2009.

THE CITY OF OAK HARBOR

\_\_\_\_\_  
Mayor

Attest:

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

Approved as to form:

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

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



EXHIBIT A

ORDINANCE NO. 1479

AN ORDINANCE ADDING A NEW CHAPTER 7.34 TO THE OAK HARBOR MUNICIPAL CODE ENTITLED "BREED SPECIFIC RESTRICTIONS" IMPOSING SPECIFIC RESTRICTIONS ON CERTAIN BREEDS OF DOGS FOR THE PROTECTION OF THE COMMUNITY AT LARGE.

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

**Section One.** Oak Harbor Municipal Code Chapter 7.34 entitled "Breed Specific Restrictions" is hereby added to the OHMC and codified to have the following title and sections:

**CHAPTER 7.34  
BREED SPECIFIC RESTRICTIONS**

**Sections:**

7.34.010 Findings  
7.34.020 Applicability  
7.34.030 Definitions  
7.34.040 Restrictions  
7.34.050 Exemptions  
7.34.060 Penalties

**Section Two.** Oak Harbor Municipal Code Section 7.34.010 entitled "Findings" is hereby added to the Oak Harbor Municipal Code to read as follows:

**7.34.010 Findings.** The potential for harm from mishandling of certain breeds of dogs with known aggressive tendencies, such as pit bull terriers, far outweighs the burden of added requirements imposed on owners for the keeping of such dogs.

**Section Three.** Oak Harbor Municipal Code Section 7.34.020 entitled "Applicability" is hereby added to the Oak Harbor Municipal Code to read as follows:

**7.34.020 Applicability.** The provisions of this chapter shall apply to adult dogs only, which means any dog over the age of six (6) months.

**Section Four.** Oak Harbor Municipal Code Section 7.34.030 entitled "Definitions" is hereby added to the Oak Harbor Municipal Code to read as follows:

**7.34.030 Definitions.** The following definitions shall apply throughout this chapter:

- (1) "Animal Control Authority" means the department of the City charged with the responsibility of administering the provisions of this chapter, or the department and any other agency to which this responsibility is contractually delegated and which is, thereby,

charged with the duty of enforcing the animal control laws of the City and/or with the shelter and welfare of animals.

- (2) "Animal Control Officer" means any person or agency designated by the City as a law enforcement officer or quasi-law enforcement officer who is authorized to implement the provisions of this chapter and this title.
- (3) "Owner" means any person, firm, corporation, organization, or department in possession of, harboring, keeping, having an interest in, or having control or custody of an animal.
- (4) "Pit Bull Terrier" means American Pit Bull Terrier or Staffordshire Bull Terrier or American Staffordshire Terrier breed of dog or any mixed breed of dog which contains as an element of its breeding the breed of American Pit Bull Terrier, Staffordshire Bull Terrier or American Staffordshire Terrier as to be identifiable as partially of the breed of American Pit Bull Terrier, Staffordshire Bull Terrier or American Staffordshire Terrier.
- (5) "Proper enclosure" of a dangerous dog or a potentially dangerous dog means that while on the owner's property, a dangerous dog shall either be:
  - (a) securely confined indoors; or
  - (b) in a securely enclosed and locked pen or structure suitable to prevent the entry of children under the age of ten (10) years and designed to prevent the animal from escaping. Such pen or structure shall have secure sides and a secure top and provide protection from the elements for the dog. If such pen or structure does not have a bottom that is secured to the sides, the sides must be embedded at least one (1) foot into the ground.
- (6) "Running at large" means to be 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.

**Section Six.** Oak Harbor Municipal Code Section 7.34.040 entitled "Restrictions" is hereby added to the Oak Harbor Municipal Code to read as follows:

**7.34.040**      **Restrictions.** The following restrictions apply to all dogs identified in this chapter:

- (1) Dogs must be kept in a proper enclosure as defined in OHMC 7.34.030(5);
- (2) Dogs may not be allowed outside of a proper enclosure, unless the dog is muzzled in a manner that will not cause injury to the dog or interfere with its vision or respiration but shall prevent it from biting any person or animal, and:

- (a) is restrained by a substantial chain or leash and under the physical control of a person over the age of 18 years who is of sufficient size and stature to restrain the animal; or
- (b) is secured within a vehicle in a manner that protects the public from harm when the vehicle is parked and the public may have access to the dog and protects the dog from harm when the vehicle is in motion.

**Section Seven.** Oak Harbor Municipal Code Section 7.34.050 entitled “Exemptions” is hereby added to the Oak Harbor Municipal Code to read as follows:

**7.34.050 Exemptions.** Owners of dogs falling under the breed(s) defined by this chapter may earn an exemption from the restrictions listed in OHMC 7.34.040 by showing proof that their dog has passed the Canine Good Citizen (CGC) test of the American Kennel Club (AKC), as administered by any AKC certified trainer, and received appropriate certification from the AKC. Such animal shall be retested at least once every two (2) years and must pass each time in order to maintain this exemption. The exemption shall be noted on the dog license application.

**Section Eight.** Oak Harbor Municipal Code Section 7.34.060 entitled “Penalties” is hereby added to the Oak Harbor Municipal Code to read as follows:

**7.34.060 Penalties.** Violations of any of the restrictions in this chapter may result in the following penalties:

- (1) **Impoundment.** The Animal Control Officer shall immediately impound any dog restricted by the provisions of this chapter found:
  - (a) outside a proper enclosure as defined in OHMC 7.34.030(4); or
  - (b) running at large as defined in OHMC 7.34.030(6); or
  - (c) under the care and control of a minor; or
  - (d) off the owner’s property without a muzzle.
- (2) **Crime.** In addition to impoundment, the owner of said dog shall be guilty of a misdemeanor punishable by a fine of up to One Thousand Dollars (\$1,000) or a jail sentence of up to Ninety (90) days in jail or both fine and jail time.

**Section Nine. 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 Ten. Effective Date.** This Ordinance shall be in full force and effect five days after its passage and publication as required by law.

PASSED by the City Council and approved by its Mayor this 21st day of November, 2006.

THE CITY OF OAK HARBOR

*Pamela A. Cohen*

Mayor

Attest:

*[Signature]*

City Clerk

Approved as to Form:

*[Signature]*

City Attorney

Published: December 6, 2004

EXHIBIT B

*This ordinance remains in place.*

ORDINANCE NO. 1480

AN ORDINANCE ADDING, AMENDING, READOPTING AND RECODIFYING SECTIONS OF OAK HARBOR MUNICIPAL CODE CHAPTER 7.32 RELATING TO THE DECLARATION OF DANGEROUS DOGS AND POTENTIALLY DANGEROUS DOGS AND THE RESTRICTIONS ON THE POSSESSION THEREOF.

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

**Section One.** Oak Harbor Municipal Code Chapter 7.32 entitled "Dangerous and Potentially Dangerous Dogs" is amended, readopted and recodified to have the following sections:

**Chapter 7.32**  
**DANGEROUS DOG AND POTENTIALLY DANGEROUS DOG**

**Sections:**

7.32.010	Title
7.32.020	Applicability
7.32.030	Definitions
7.32.040	Defense
7.32.050	Declaration of dangerous dog or potentially dangerous dog – Procedure
7.32.060	Notice of potential declaration
7.32.070	Evidence
7.32.080	Final declaration
7.32.090	Service
7.32.100	Registration of dangerous and potentially dangerous dogs required
7.32.110	Prohibited acts
7.32.120	Penalties
7.32.130	Destruction
7.32.140	Costs
7.32.150	Failure to Redeem
7.32.160	Nuisance
7.32.170	Civil damages

**Section Two.** Oak Harbor Municipal Code Section 7.32.010 entitled "Title" is hereby amended and readopted to read as follows:

**7.32.010 Title.** The ordinance codified in this chapter shall be referred to as the dangerous dog and potentially dangerous dog ordinance.

**Section Three.** Oak Harbor Municipal Code Section 7.32.020 entitled "Findings" is hereby amended to read as follows:

**7.32.020 Applicability.** The provisions of this chapter shall apply to adult dogs only, which means any dog over the age of six (6) months. The declaration of dangerous dog or potentially dangerous dog follows the dog, regardless of ownership or change of ownership.

**Section Four.** Oak Harbor Municipal Code Section 7.32.030 entitled "Definitions" is hereby amended and readopted to read as follows:

**7.32.030 Definitions.** The following definitions shall apply throughout this chapter:

- (1) "Animal Control Authority" means the department of the City charged with the responsibility of administering the provisions of this chapter, or the department and any other agency to which this responsibility is contractually delegated and which is thereby charged with the duty of enforcing the animal control laws of the City and/or with the shelter and welfare of animals.
- (2) "Animal Control Officer" means any person or agency designated by the City as a law enforcement officer or quasi-law enforcement officer who is authorized to implement the provisions of this chapter and this title.
- (3) "Dangerous dog" means any dog that:
  - (a) inflicts severe injury on a human being without provocation on public or private property; or
  - (b) kills a domestic animal, without provocation, while the dog is off the owner's property; or
  - (c) has been previously found to be potentially dangerous because of injury inflicted on a human, the owner having received notice of such and the dog again aggressively bites, attacks, or endangers the safety of humans or domestic animals.
- (4) "Owner" means any person, firm, corporation, organization, or department in possession of, harboring, keeping, having an interest in, or having control or custody of an animal.
- (5) "Potentially dangerous dog" means:
  - (a) Any dog with a known propensity, tendency, or disposition to attack unprovoked, to cause injury to, or to otherwise endanger the safety of humans or other domestic animals; or
  - (b) Any dog which unprovoked inflicts bites on a human or domestic animal either on public or private property; or

- (c) Any dog which unprovoked chases or approaches a person upon the streets, sidewalks or other public grounds in a menacing fashion or apparent attitude of attack.
- (6) "Proper enclosure" of a dangerous dog or a potentially dangerous dog means that while on the owner's property, a dangerous dog shall either be:
- (a) securely confined indoors; or
  - (b) in a securely enclosed and locked pen or structure suitable to prevent the entry of children under the age of ten (10) years and designed to prevent the animal from escaping. Such pen or structure shall have secure sides and a secure top and provide protection from the elements for the dog. If such pen or structure does not have a bottom that is secured to the sides, the sides must be embedded at least one (1) foot into the ground.
- (7) "Running at large" means to be 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.
- (8) "Severe injury" means any physical injury that results in broken bones or lacerations requiring multiple sutures or cosmetic surgery.

**Section Five.** Oak Harbor Municipal Code Section 7.32.040 entitled "Defense" is hereby amended to read as follows:

**7.32.040 Defense.** Dogs shall not be declared dangerous or potentially dangerous if the threat, injury, or damage was sustained by a person who, at the time:

- (1) was committing a willful trespass or other tort upon the property, or vehicle, occupied or owned by the owner of the dog; or
- (2) was tormenting, abusing, or assaulting the dog; or
- (3) has, in the past, tormented, abused, or assaulted the dog; or
- (4) was committing or attempting to commit a crime.

**Section Six.** Oak Harbor Municipal Code Section 7.32.050 entitled "Notice" is hereby amended to read as follows:

**7.32.050 Declaration of dangerous dog or potentially dangerous dog – Procedure.**

- (1) The Animal Control Officer shall issue a Notice of Potential declaration to the owner of the dog following the guidelines of service found at Oak Harbor Municipal Code (OHMC) 7.32.090. Said notice will include an opportunity for the owner to discuss the action in writing or orally with the Animal Control Officer within fourteen (14) days of receipt of the notice.
- (2) After the discussion or the fourteen (14) day period, whichever comes first, the Animal Control Officer shall issue a final decision in the form of either a final declaration or a letter of no finding.
- (3) If the dog has been impounded due to its actions, such impoundment shall continue during the pendency of the above procedure. The owner shall be responsible for the cost of impoundment regardless of the outcome of the action.
- (4) The City Administrator in an OHMC 1.24 appeal can take note of and consider the owner's failure to discuss the action with the Animal Control Officer or failure to raise any and all defenses at the discussion with the Animal Control Officer.

**Section Seven.** Oak Harbor Municipal Code Section 7.32.060 entitled "Information" is hereby amended to read as follows:

**7.32.060 Notice of potential declaration.** Notice in the form of a declaration given to an owner in the manner described below or in OHMC 7.32.080 shall be *prima facie* evidence that the owner acted knowingly, although notice is not the only way to prove the owner's knowledge of the animal's propensity. Any notice of potential declaration must be in writing and include the following:

- (1) A description of the animal;
- (2) The name and address of the owner, if known;
- (3) The whereabouts of the animal if it is not in the custody of the owner;
- (4) A brief statement of why the dog is being considered a dangerous or potentially dangerous dog;
- (5) The specific provision or provisions of OHMC 7.32.030(3) or (5) which the Animal Control Officer has found applicable;
- (6) The restrictions that could be placed on the dog as a result of a final declaration;

- (7) The penalties for violation of the restrictions of a final declaration, including the possibility of destruction of the dog, civil damages assessed against the owner, imprisonment and fines incurred by the owner through criminal prosecution;
- (8) The date, time and location to meet with the Animal Control Officer to discuss the action.

**Section Eight.** Oak Harbor Municipal Code Section 7.32.070 entitled "Dangerous dogs" is hereby amended to read as follows:

**7.32.070 Evidence.** Based on an investigation, the Animal Control Officer may find and declare a dog dangerous or potentially dangerous if he has a reasonable belief that the dog falls within the definitions set forth in OHMC 7.32.030 (3) or (5). For the purposes of this chapter, a reasonable belief may be supported by any of the following:

- (1) The written complaint of a citizen who has witnessed the animal acting in a manner which causes it to fall within the definitions in OHMC 7.32.030(3) or (5) and is willing to so testify in a court of law; or
- (2) Dog bite reports filed with the Animal Control Officer; or
- (3) Actions of the dog witnessed by the Animal Control Officer or any law enforcement officer; or
- (4) A verified report that the animal previously has been found to be either potentially dangerous or dangerous by the Animal Control Officer; or
- (5) Other substantial evidence admissible in a court of law.

**Section Nine.** Oak Harbor Municipal Code Section 7.32.080 entitled "Destruction of dangerous dogs and potentially dangerous dogs" is hereby amended to read as follows:

**7.32.080 Final decision.** The final decision shall consist of either a final declaration or a letter of no finding issued to the owner.

- (1) In the event the Animal Control Officer finds reason to issue a final declaration, it shall contain the following:
  - (a) a description of the animal;
  - (b) the name and address of the owner, if known;
  - (c) the date and time of the meeting with the owner, if any;
  - (d) a brief statement of why the dog has been found to be a dangerous or potentially dangerous dog;

- (e) the specific provision or provisions of OHMC 7.32.030(3) or (5) which the Animal Control Officer found applicable;
  - (f) the restrictions placed on the dog as a result of the declaration;
  - (g) the penalties for violation of the restrictions, including the possibility of destruction of the dog, civil damages assessed against the owner, imprisonment and fines incurred by the owner through criminal prosecution;
  - (h) a statement that the declaration can be appealed to the City Administrator pursuant to OHMC 1.24 within fourteen (14) days; and
  - (i) a statement that failure to file a timely and complete notice of appeal will constitute a waiver of all rights to appeal said declaration.
- (2) A letter of no finding shall include:
- (a) a description of the animal;
  - (b) the name and address of the owner;
  - (c) the date and time of the meeting with the owner;
  - (d) a brief summary of testimony and evidence presented at such discussion;
  - (e) a brief summary of why the animal is not being found dangerous or potentially dangerous.

**Section Ten.** Oak Harbor Municipal Code Section 7.32.090 entitled "Civil damages" is hereby amended to read as follows:

**7.32.090 Service.** Service of the notice of potential declaration, final declaration or letter of no finding shall be in writing, and shall be served on the owner in one of the following methods:

- (1) Certified mail, return receipt requested or delivery confirmation requested, to the owner's last known address; or
- (2) Personally delivered with proof of personal service made by written declaration under penalty of perjury by the person effecting service declaring the time, date and manner in which service was made; or
- (3) Posting the declaration on the front door of the living unit of the owner, or person with right to control the animal if said owner is not home; or

- (4) Publication in a newspaper of general circulation, if the owner cannot be located by one of the above methods.

**Section Eleven.** Oak Harbor Municipal Code Section 7.32.100 entitled "Nuisance" is hereby amended to read as follows:

**7.32.100 Registration of dangerous and potentially dangerous dogs required.** All dangerous dogs and potentially dangerous dogs residing within the City of Oak Harbor must be registered to the current owner. The fee for registration of a dangerous dog is Fifty Dollars (\$50.00) and the fee for registration of a potentially dangerous dog is Twenty-Five Dollars (\$25.00). Registration must be renewed annually.

- (1) A Dangerous Dog certificate of registration shall be issued by the Animal Control Officer to the owner of a dangerous dog if the owner presents, to the Animal Control Officer, sufficient evidence of:
- (a) a proper enclosure as defined in OHMC 7.32.030(6) in which to confine the dangerous dog;
  - (b) the posting of the premises with a clearly visible warning sign that there is a dangerous dog on the property, including a conspicuously displayed sign with a warning symbol that informs children of the presence of a dangerous dog;
  - (c) a surety bond issued by a surety insurer qualified under Revised Code of Washington (RCW) Chapter 48.28 in a form acceptable to the City in the sum of at least Two Hundred and Fifty Thousand Dollars (\$250,000), payable to any person injured by the dangerous dog; or a policy of liability insurance, such as homeowner's insurance, issued by an insurer qualified under RCW Title 48 in the amount of at least Two Hundred and Fifty Thousand Dollars (\$250,000), insuring the owner for any personal injuries inflicted by the dangerous dog;
  - (d) proof of payment of the annual registration fee;
  - (e) proof that the dog has been microchipped, including providing the microchip serial number or proof that the dog has been tattooed including providing the tattoo number;
  - (f) written acknowledgement of receipt of a copy of OHMC 7.32 that includes a statement that the acknowledger has read and understood what is required to keep a dangerous dog within the city.
- (2) A Potentially Dangerous Dog certificate of registration shall be issued by the Animal Control Officer to the owner of a potentially dangerous dog if the owner presents, to the Animal Control Officer, sufficient evidence of:

- (a) a proper enclosure as defined in OHMC 7.32.030(6) in which to confine the potentially dangerous dog;
- (b) proof of payment of the annual registration fee;
- (c) proof that the dog has been microchipped, including providing the microchip serial number or proof that the dog has been tattooed including providing the tattoo number;
- (d) written acknowledgement of receipt of a copy of OHMC 7.32 that includes a statement that the acknowledger has read and understood what is required to keep a potentially dangerous dog within the city and what actions may lead to a dangerous dog declaration.

**Section Twelve.** Oak Harbor Municipal Code Section 7.32.110 entitled "Construction" is hereby amended to read as follows:

**7.32.110 Prohibited acts.** It shall be unlawful for any person to:

- (1) Fail to register a dangerous dog under OHMC 7.32.060(1) within thirty (30) days of bringing the dog into the city limits or after it has been declared a dangerous dog;
- (2) Fail to secure, and maintain, the liability insurance coverage required under OHMC 7.32.060(1)(c) within thirty (30) days of bringing a dangerous dog into the city limits or after it has been declared a dangerous dog;
- (3) Fail to register a potentially dangerous dog under OHMC 7.32.060(2) within thirty (30) days of bringing the dog into the city limits or after it has been declared a potentially dangerous dog;
- (4) Fail to keep a dangerous dog or a potentially dangerous dog in a proper enclosure as defined in OHMC 7.32.030(6);
- (5) Allow a dangerous dog or a potentially dangerous dog outside of a proper enclosure, unless the dog is muzzled, restrained by a substantial chain or leash and under the physical control of a person over the age of eighteen (18) years who is of sufficient size and stature to control the animal. The muzzle shall be made in a manner that will not cause injury to the dog or interfere with its vision or respiration but shall prevent it from biting any person or animal.

**Section Thirteen.** Oak Harbor Municipal Code Section 7.32.120 entitled "Appeal" is hereby amended to read as follows:

**7.32.120 Penalties.**

- (1) Violations of any of the prohibited acts under OHMC 7.32.070 may result in the following penalties:
  - (a) Immediate confiscation of the dog:
    - (i) The Animal Control Officer shall immediately confiscate and impound any dangerous dog not registered, or insured, or kept in a proper enclosure and the Animal Control Authority shall hold the same until such time as the prohibited act is abated.
    - (ii) The Animal Control Officer shall immediately impound any dangerous dog or potentially dangerous dog found running at large as defined in OHMC 7.32.030(7).
  - (b) The owner of said dog shall be guilty of a gross misdemeanor punishable by a fine of up to Five Thousand Dollars (\$5,000) or a jail sentence of one (1) year or both fine and jail time.
  - (c) Each day of violation is a separate offense.
- (2) If a dangerous dog of an owner with a prior conviction under this chapter or RCW chapter 16.08 attacks or bites a person or another domestic animal, the dog's owner is guilty of a Class C felony, punishable in accordance with RCW 9A.20.021. In addition, the dangerous dog shall be immediately confiscated by an Animal Control Officer, placed with the Animal Control Authority to be held in quarantine for the proper length of time, and thereafter destroyed in an expeditious and humane manner.
- (3) The owner of any dog that aggressively attacks and causes severe injury or death of any human, whether the dog has previously been declared potentially dangerous or dangerous, shall be guilty of a Class C felony, punishable in accordance with RCW 9A.20.021. In addition, the dangerous dog shall be immediately confiscated by an Animal Control Officer, placed with the Animal Control Authority to be held in quarantine for the proper length of time, and thereafter destroyed in an expeditious and humane manner.

**Section Fourteen.** Oak Harbor Municipal Code Section 7.32.130 entitled "Violation - Penalty" is hereby amended to read as follows:

**7.32.130 Destruction.** Whenever the Animal Control Authority comes into possession of a dangerous dog or potentially dangerous dog they shall destroy the same if the dog is not reclaimed by the owner within thirty (30) days. Under no circumstances shall a dangerous dog be sold or given to another as a pet.

**Section Fifteen.** There is hereby added a new section to the Oak Harbor Municipal Code at Section 7.32.140 entitled "Costs" to read as follows:

**7.32.140 Costs.**

- (1) The owner of any dog found to be a potentially dangerous dog or dangerous dog under this chapter shall be assessed all actual service costs expended under OHMC 7.32.050(3).
- (2) The owner of any dog found to be a potentially dangerous dog or dangerous dog under this chapter shall be assessed all costs of confinement for any dog impounded pursuant to a violation of OHMC 7.32.080(1).
- (3) The owner of any dog found to be a potentially dangerous dog or dangerous dog under this chapter shall be assessed all costs of destruction expended for any dog impounded and not reclaimed under OHMC 7.32.100.

**Section Sixteen.** There is hereby added a new section to the Oak Harbor Municipal Code at Section 7.32.150 entitled "Failure to redeem" to read as follows:

**7.32.150 Failure to Reclaim.** Whenever a dog is seized and impounded under this chapter the failure to either reclaim the dog or to give a written surrender of the dog to the Animal Control Authority shall result in the owner being prohibited from registering any new dogs in the City for a period of one (1) year. This prohibition shall not apply to the renewal of any existing dog license.

**Section Seventeen.** Oak Harbor Municipal Code Section 7.32.100 entitled "Nuisance" is hereby recodified and readopted as:

**7.32.160 Nuisance.** The harboring, keeping and maintaining of a potentially dangerous dog or dangerous dog contrary to this chapter is a public nuisance and is subject to abatement by judicial procedure or by a summary abatement in an emergency or life threatening situation. If summary removal of a dog occurs, the dog shall not be destroyed before a hearing can be held concerning the removal and destruction.

**Section Eighteen.** Oak Harbor Municipal Code Section 7.32.090 entitled "Civil Damages" is hereby recodified and readopted as:

**7.32.170 Civil damages.**

- (1) In addition to criminal penalties, the following civil damages shall be incurred by the owner of a potentially dangerous dog or dangerous dog:
  - (a) If a potentially dangerous dog or dangerous dog enters onto the property of another without permission, the owner of the potentially dangerous dog or dangerous dog shall be liable for all direct damages incurred as a result of such

intrusion and for general damages, even if no special damages are proved, of a minimum of \$250.00.

- (b) If a potentially dangerous dog or dangerous dog menaces a person, the owner shall be liable for damages not to be less than \$250.00.
  - (c) If a potentially dangerous dog or dangerous dog injures a person, the owner of the potentially dangerous dog or dangerous dog shall be liable for damages of three times all the medical expenses in addition to any other damages or relief the person injured is entitled to under law.
- (2) The damage enumerated under subsection (1) of this section may be imposed as restitution requirements for criminal violations of this chapter; provided, that in no event may damages awarded as restitution exceed \$5,000.

**Section Nineteen. 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 Twenty. Effective Date.** This Ordinance shall be in full force and effect five days after its passage and publication as required by law.

PASSED by the City Council and approved by its Mayor this 21<sup>st</sup> day of November 2006.

THE CITY OF OAK HARBOR

Patricia A. Allen  
Mayor

Attest:

[Signature]  
City Clerk

Approved as to Form:

[Signature]  
City Attorney

Published: December 6, 2006

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## EXHIBIT C

### Animal Bite Information

#### 2006

9 bites

- 1 Australian cattle dog (aka Blue Heeler)
- 1 Chihuahua
- 2 German Shepard mix
- 3 Labrador
- 1 Pit Bull
- 1 Unknown

#### 2007

10 bites

- 1 Cat
- 1 Husky mix
- 1 Jack Russell
- 1 Labrador
- 1 Malamute
- 1 Miniature Pincher
- 3 Pit Bull
- 1 Pit Bull mix

#### 2008

10 bites

- 1 Australian cattle dog (aka Blue Heeler)
- 1 Bulldog
- 1 Chihuahua mix
- 1 German Shepard/Husky
- 1 Labrador mix
- 1 Maltese/Poodle
- 1 Pit Bull
- 1 Rottweiler mix
- 2 Unknown

#### 2009 – to date

14 bites

- 2 Australian cattle dog (aka Blue Heeler)
- 1 Beagle
- 1 Bichon
- 1 Fox Terrier
- 1 German Shepard mix
- 1 Great Dane
- 1 Labrador
- 3 Pit Bull
- 1 Pit Bull mix
- 1 Weimaraner
- 1 Unknown



**Connie Wheeler**

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**From:** Kirsten E Silven [kirstensilven@insightbb.com]  
**Sent:** Saturday, October 03, 2009 9:58 AM  
**To:** Connie Wheeler  
**Subject:** Breed Specific Legislation  
**Attachments:** Moses.jpg; Dirt Smilin Sideways.jpg

I was saddened to hear that Oak Harbor currently has breed specific legislation, but I was happy to learn that this is up for repeal! As someone who has owned Rottweilers and "pit bulls" for my entire life (never by choice - they always have found me), I can tell you that it's not the dog - it's the owners! When you ban them, it only hurts people like me who are responsible and have their animals properly trained and registered with the city and local government - it won't do anything to stop the irresponsible dog owners who are already breaking the law and breeding these animals to fight or worse.

Instead of a continuing to ban certain dogs, I would urge you to look at more reasonable options that include cracking down on irresponsible dog ownership and breeding practices. There is plenty that has been written about this subject, and I hope you will all take the time to become better informed before trying to use a Band-aid to repair a severed limb. Sweeping "bans" hardly ever accomplish what they set out to do - which is ostensibly to punish those who deserve it and protect those who need it.

My Rottie was the first of her breed to pass the test to become a certified Children's Hospital Dog in 1994, and my "pit bull" is already following in her footsteps (see photos attached). Both of these dogs have blessed the lives of so many people that it breaks my heart to think they could ever be banned in my town - please, please reconsider!

Best,  
Kirsten E. Silven-Hoell

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**Connie Wheeler**

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**From:** ~Erika Marie~ [seagal51@verizon.net]

**Sent:** Wednesday, October 14, 2009 3:07 PM

**To:** Connie Wheeler

**Subject:** Help repeal BSL!

Hi Connie, My name is Shane Hoffmire. I am a responsible dog owner and my dog is a pit bull. Yet that said I can not legally play ball with my dog in my own back yard and I have a fence, nor can I legally walk him down the sidewalk without a muzzle on and that is just not right because then people are afraid of him and he loves people so much. I just wanted to send you this email in hope that the city of Oak Harbor does the right thing as I have faith they will. If a group of us could put together a PowerPoint presentation would that be helpful. Let me know what I can do to help my dog and his kind. I just want to know how long before my family and I can play with our dog without being worried about him being took away or being given a fine we cant afford as basic bills are a struggle right now.

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**Connie Wheeler**

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**From:** Bob Baker and Barbara Moran [pitinfotaskforce@yahoo.com]  
**Sent:** Wednesday, October 14, 2009 10:40 AM  
**To:** ~Erika Marie~  
**Subject:** Re: Bsl help!

Hi Erika,

The law will hopefully be rescinded on Nov. 6! Then your pittie will be treated like any other dog, as long as it is on a leash and kept safely in your own yard. Please send an email stating what you have told me to Oak Harbor's City Administrator Paul Schmidt and to Oak Harbor's City Clerk Connie Wheeler. You may tell them that Dr. Bob Baker said you should write.

Explain what you have explained here. And ask them to please suspend enforcement of BSL pending the vote. Ask them if you can throw a ball in your yard to your dog without being cited.

Please cc me on the email.

If anything bad is happening (you're getting tickets; your dog is being threatened with seizure) email me right away!

If you have other friends with pitties, ask them to write, too. The Council needs to hear that it is about to do the right thing. Make sure your letters are very polite, but tell the truth about how awful it is to have a loving dog treated like this.

Let me know what happens.

I will tell you that Mr. Schmidt and Ms. Wheeler have been really understanding about this issue, and worked very hard on the council action to get it rescinded, so they are friends on this. Thank them for working so hard. Ask them how soon you can play with your dog in your own yard. Write them at [cwheeler@oakharbor.org](mailto:cwheeler@oakharbor.org); [pschmidt@oakharbor.org](mailto:pschmidt@oakharbor.org); Ask them if you can bring a PowerPoint to the next meeting.

Again, cc me and contact me immediately if anyone tries to hassle you or take your dog away.

I will tell Mr. Schmidt and Ms. Wheeler that you will be sending them an email.  
Dr. Bob

Pitbull/mix Information Taskforce (PIT)  
Bob Baker and Barbara Moran, Co-Chairs  
Based on Whidbey Island, WA  
Visit PIT blog <http://msbmoran.com/Pets/DOGS.html>

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**From:** ~Erika Marie~ <seagal51@verizon.net>  
**To:** pitinfotaskforce@yahoo.com  
**Sent:** Tue, October 13, 2009 9:36:23 PM  
**Subject:** Bsl help!

Hi Bob, This is Shane Hoffmire I met you at the OakHarbor City council meeting. I feel that I to should speak to the council but I am not really sure where to start. My family and I have a pitbull we think that they are the kindest

10/19/2009

201 105

animal that there is. That said We cant leagaly throw him a ball in our own backyard and we have a chain link fence, nor can we walk him down the sidewalk without a muzzle on and that is just not right because then people are affraid of him and he loves people so much. I dont know how but I want to help my dog as well as his kind. Do you think they would allow some type of powerpoint presentation against the Bsl. Wow I just hope the city does the right thing.

Thanks for your time

**Connie Wheeler**

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**From:** Bob Baker and Barbara Moran [pitinfotaskforce@yahoo.com]  
**Sent:** Tuesday, October 13, 2009 1:03 PM  
**To:** Connie Wheeler; Paul Schmidt  
**Subject:** Fw: ARTICLE: Dog owner challenges Denver's pit bull evaluation and wins

just fyi.

Pitbull/mix Information Taskforce (PIT)  
Bob Baker and Barbara Moran, Co-Chairs  
Based on Whidbey Island, WA  
Visit PIT blog <http://msbmoran.com/Pets/DOGS.html>

----- Forwarded Message -----

**From:** "SCHULTZ, LENA M (ATTSI)" <LG9993@att.com>  
**Sent:** Tue, October 13, 2009 12:51:09 PM  
**Subject:** ARTICLE: Dog owner challenges Denver's pit bull evaluation and wins

## **Dog owner challenges Denver's pit bull evaluation and wins**

By Julie Hayden KDVR Denver

October 9, 2009

Lawyers with the Animal Law Center say a ruling today could challenge the way Denver enforces its pit bull ban. Dogs that are deemed to be predominantly "pit bull" are banned in Denver, and can be seized and put down.

They say as many as four thousand dogs have been euthanized under this ban, but today's ruling raises the question that many of them might have been by mistake.

The city uses three experts to evaluate the dogs and determine whether they are predominantly pit bull. But one man, whose dog ,Dexter, was sized, challenged the city's experts. In this case, it was two animal control officers and a vet tech.

He brought in three experts of his own, world renowned experts on dog breeds.

All three agreed Dexter was not predominantly pit bull and therefore was not banned. The hearing officer ruled the dog owner's experts were right, and the City's experts were wrong. The dog's life was spared and he went home with his owner.

Lawyers with the Animal Law Center say if Denver is going to put dogs on "death row" based on the evaluation of so-called experts, the city has a duty to make sure the experts know what they are doing.

<http://www.kdvr.com/news/kdvr-pitbull-100909,0,5301116.story>

Thanks for all you do to help fight BSL!

10/19/2009

301 107

**Connie Wheeler**

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**From:** Patty Chavez [pattyc@AmericanHumane.org]  
**Sent:** Friday, October 02, 2009 12:49 PM  
**To:** Connie Wheeler  
**Subject:** BSL Repeal Support Letter  
**Attachments:** Oak Harbor WA BSL Repeal Support Letter.pdf; American Humane Pit Bull Fact Sheet.pdf

Ms. Wheeler,

The American Humane Association has learned that the City of Oak Harbor is considering repealing its ban on pit bulls. We support the repeal and I have attached our support letter and more information on pit bulls. If you could please distribute these documents to the Mayor and members of the council before the city council's next meeting I would greatly appreciate it.

Please let me know if we can be of further assistance.

Patty Chavez

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**Patty Chávez**

Legislative Analyst  
American Humane Association  
206 N. Washington St., Suite 300  
Alexandria, VA 22314  
p = 703.836.PETS (7387)  
f = 703.549.KIDS (5437)  
[www.americanhumane.org](http://www.americanhumane.org)

*Protecting Children and Animals since 1877*



## AMERICAN HUMANE

*Protecting Children & Animals Since 1877*

City of Oak Harbor  
865 SE Barrington Drive  
Oak Harbor, WA 98277

October 2, 2009

Dear Mayor and Council Members:

Our members in Washington have alerted us that the City of Oak Harbor is considering repealing its ban on “dangerous” dogs such as Pit Bulls. The American Humane Association urges you to repeal the City’s breed ban and would like to provide you with information on why breed specific legislation (BSL) does not work and some breed neutral alternatives to consider.

American Humane Association, a national, nonpartisan membership organization, was founded in 1877 to protect the welfare of children and animals. The Public Policy office has played a leadership role, working in coalition with other nonprofits, in addressing the critical need for preventative measures reducing the need for euthanasia of healthy, adoptable animals. Our concerns today reflect an over 100-year history of progressively advocating at the federal, state and local levels for laws that protect children and animals from abuse and neglect.

### Why BSL Does Not Work

Many states, counties and municipal governments are turning to legislation targeting specific breeds as an answer to dog attacks. While supporters of this type of provision – commonly called breed specific legislation (BSL) – argue the only way to be safe from dog bites is to eradicate “dangerous breeds” from the community, there is **little evidence that BSL reduces dog bites and dog attacks**. In contrast, studies have shown that it is not the breeds themselves that are dangerous, but unfavorable situations that are creating dangerous dogs.

Legislation targeting specific breeds simply does not work because dog attacks tend to be a result from several situations that are statistically more dangerous than a simple breakdown of breed culpability. According to the American Veterinary Medical Association, these factors are:

- **Breeding:** Dogs that are bred to be aggressive will be aggressive regardless of the breed;
- **Socialization:** Puppies need socialization to learn how to live in human society;
- **Training:** Beyond socialization, puppies need training so they will at least obey basic commands; and
- **Health:** Some dogs bite because they are uncomfortable or in pain.<sup>1</sup>

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<sup>1</sup> See generally, The American Veterinary Association, Dog Bite Prevention: A Community Approach. JAVMA, Vol 218, No. 11, June 1, 2001. [http://www.avma.org/public\\_health/dogbite/dogbite.pdf](http://www.avma.org/public_health/dogbite/dogbite.pdf)

There are also practical problems with legislation targeting specific breeds. According to the American Pet Products Manufacturers Association, out of 73 million pet dogs, 31 million are classified by the owners as "mutts".<sup>2</sup> Additionally, while almost all legislation targeting specific breeds list "pit bulls", **many breeds of dogs actually have the facial and body characteristics of the "pit bull", but are actually not pitbulls at all.**

**Enforcing breed specific legislation can be burdensome and costly.** Many cities have repealed breed-specific legislation due to enforcement costs, which can be prohibitively high. Legislation targeting specific breeds of dogs is enforced by animal control agencies on tight budgets. It expands their enforcement duties without necessarily expanding their budget. Costs can include additional animal control staff necessary for enforcement of the law, kenneling both for dogs awaiting breed determination and/or appeal, and veterinary care.

Once Animal Control has a dog in their custody, proving that a particular dog is within the purview of the regulation usually requires the time and resources of the courts, along with expert testimony, which can be expensive to obtain. Even with an expert, the identification can be controversial.

In 2003, Prince George's County, Maryland formed a task force to evaluate the effectiveness of its vicious animal legislation, including its pit bull ban, and make recommendations for improvements and amendments. The task force recommended repealing the ban and strengthening the city's dangerous-dog law. The recommendation was based on numerous cost concerns:

- The cost of maintaining a single pit bull throughout the entire determination and appeals process was approximately \$68,000;
- Fees from pit bull registrations over a two year period generated only \$35,000 while the cost to the Animal Management Division for maintenance of pit bulls over the same period was about \$560,000;
- The costs did not include expenditures such as payroll, cross-agency costs, and utilities.<sup>3</sup>

Interestingly, the task force also found that **while the county spends more than a quarter-million dollars each year to enforce the ban, "public safety has not improved as a result [of the ban]"**. Additionally, the task force noted that "there is no transgression committed by owner or animal that is not covered by another, non-breed specific portion of the Animal Control Code."<sup>4</sup>

Many counties in rural areas do not even have adequate funding to establish and run an animal control division. A lack of funding can make it difficult, if not impossible, to enforce any laws or regulation. Even when a county can fund a local animal control agency, it is often underfunded and understaffed.

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<sup>2</sup> American Pet Manufacturers Association, 2007/2008 National Survey. [http://www.appma.org/pubs\\_survey.asp](http://www.appma.org/pubs_survey.asp)

<sup>3</sup> Vicious Animal Legislation Task Force, Report of the Vicious Animal Legislation Task Force

<sup>4</sup> *ibid.*

### Alternatives to BSL

There are alternatives to targeting breeds. **We must have dangerous dog laws that are breed neutral and identify dangerous dogs based on actions.** This can include enforcing leash laws; animal-at-large and licensing laws, with adequate penalties; enacting laws that prohibit chaining or tethering for excessive periods of time; and creating mandatory spay/neuter laws for shelters, as well as an aggressive education program and the provision of low-cost spay/neuter services. Other legal options can include obtaining a court ruling, after a dog has bitten a person, that the owner of the dog is required to have the dog neutered, muzzled at all times when off the owner's property, and to be microchipped.

Legislation targeting breeds of dogs not only puts the onus on Animal Control, it also allows bad owners to continue to be irresponsible. Most importantly, we need to educate dog owners so that environments are not created that foster biting and mauling incidences. All dogs must be socialized and trained, regardless of breed. As dog-bite law expert and attorney Kenneth Phillips states, "Any dog--literally any dog--can be a bad dog if the owner is a bad owner or the breeder is a bad breeder".<sup>5</sup> An untrained, un-socialized dog suffers from a lack of guidance from its owner, and consequently does not understand the world around him, or how to interact with humans or other dogs.

**Children should not be left alone with dogs** and must be taught to behave properly with and around dogs. Children make up almost half of all dog bites in the United States and nearly 80% of all dog bites are received from the family or neighbor's dog.

Instead of legislation specifically targeting breeds of dogs, we must have good laws that encourage **sterilization and leashing of dogs and enforce those laws.** Good leash laws and animal at large laws are of particular importance, although unfortunately, the punishment for these violations are typically minor, and are rarely enforced. Loose roaming dogs are more likely to threaten or attack a human. In 2005, ten people died because of dogs that were not contained on their owner's property. According to Karen Delise, "Of these ten fatal attacks by loose roaming dogs, eight cases involved owners allowing not only a single dog, but multiple dogs, to run loose."<sup>6</sup>

Not incidentally, all of the above cases involved dogs that were not spayed or neutered. Legislation funding for targeted spay/neuter programs is essential to reducing dog bites and attacks. The facts are clear - 97 percent of dogs involved in fatal dog attacks in 2006 were not sterilized. An unneutered male dog is 2.6 times more likely to bite than a neutered dog.<sup>7</sup>

Also of importance is the **enactment of tethering laws.** Dogs should not be extensively tethered - one out of every four fatal dog attacks involves a chained dog.<sup>8</sup> Chaining and/or neglect results in anxious, lonely, bored, under-stimulated, untrained, un-socialized, isolated dogs. Chained dogs are not "family" dogs - as such, they can never be given the same level of socialization as dogs that live in a household. They often will demonstrate higher levels of territoriality as they live in a well defined and limited territory.

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<sup>5</sup> Mike McKee, A Legal Career Goes to the Dogs: L.A. Solo Represents the Human Victims of Canine Attacks, Recorder (S.F.), Dec. 27, 1999, at 1 (discussing the career of attorney Kenneth Morgan Phillips).

<sup>6</sup> See supra, note 2, page 164.

<sup>7</sup> ASPCA, Are Breed Specific Laws Effective?

[http://www.asPCA.org/site/PageServer?pagename=cruelty\\_dogfighting\\_breedspecific](http://www.asPCA.org/site/PageServer?pagename=cruelty_dogfighting_breedspecific)

<sup>8</sup> See supra, note 7.

Dogs that are chained cannot flee threatening situations, which not only make them more susceptible to torment by people, they are much more likely to react aggressively because of their fear.

Strict enforcement of all laws designed to protect or with the effect of protecting the public from dangerous dogs, including existing dangerous-dog laws, could reduce the number of dog bites and attacks. Aggressive enforcement of dangerous dog laws would ensure that dogs declared to be dangerous by a court ruling are muzzled or contained. Enforcing licensing laws enable a city to maintain accurate records of dogs and document any incident involving a dog within its jurisdiction. This gives county officials the information they need to enforce and verify continued compliance with regulations. Additionally, **enacting and enforcing leash and anti-roaming laws** also reduce the likelihood of bites or more serious attacks by requiring owners to train, socialize, and exercise control over their dogs.

On behalf of our members in your state, thank you for this opportunity to comment on this important matter. We look forward to continuing to work with you. Please do not hesitate to contact Patty Chávez, Legislative Analyst, if we can be of further assistance.

Sincerely,

Allie Phillips, J.D.  
Vice President of Public Policy  
[AllieP@AmericanHumane.org](mailto:AllieP@AmericanHumane.org)

Patty Chávez  
Legislative Analyst  
[PattyC@AmericanHumane.org](mailto:PattyC@AmericanHumane.org)

Attachment: Pit Bull Fact Sheet



# AMERICAN HUMANE

Protecting Children & Animals Since 1877

## Pit Bull Fact Sheet

- 1. FACT: There is no system in place to track statistics on dog bites and attacks accurately in the U.S., and many incidents are never reported so we don't know which breed bites the most.** The Centers for Disease Control study "Breeds of dogs involved in fatal human attacks in the United States between 1979 and 1998" explains the inherent problems in attempting to calculate breed involvement in fatal attacks.<sup>1</sup> The CDC further explained that a major flaw in the study was the inability to factor in total breed populations relative to breed-related fatalities. The CDC concluded that fatal attacks are so rare as to be statistically insignificant in addressing canine aggression.



Pit Bull and Canine Good Citizen® Maison

- 2. FACT: According to Karen Delise in *The Pit Bull Placebo*, the classification of an attack as unprovoked is usually based on the declarations of owners who are unable to understand canine behavior, or are too busy to have seen the signals dogs usually display through body language or vocalization. Dogs do this with stares; body stiffening; positioning of ears, tail and head; and growling, to name only a few. Pit bulls give these signals as much as any other breed of dog.<sup>2</sup>** Additionally, dog attacks tend to be a result of several factors that are statistically more dangerous than a simple breakdown of breed culpability. According to the American Veterinary Medical Association, these factors are:
  - **Breeding:** Dogs that are bred to be aggressive will be aggressive regardless of the breed.
  - **Socialization:** Puppies need socialization to learn how to live in human society.
  - **Training:** Beyond socialization, puppies need training so they will at least obey basic commands.
  - **Health:** Some dogs bite because they are uncomfortable or in pain.<sup>3</sup>
  - **Spayed or Neutered:** 97 percent of dogs involved in fatal dog attacks in 2006 were not sterilized.<sup>4</sup>
  - **Tethering:** One out of every four fatal dog attacks involves a chained dog.<sup>5</sup>

<sup>1</sup> CDC. (2000) Breeds of dogs involved in fatal human attacks in the United States between 1979 and 1998. <http://www.cdc.gov/ncipc/duip/dogbreeds.pdf>.

<sup>2</sup> Delise, K. (2007). *The Pit Bull Placebo: The Media, Myths and Politics of Canine Aggression*. Anubis Publishing.

<sup>3</sup> See generally, The American Veterinary Association, Dog Bite Prevention: A Community Approach. JAVMA, Vol. 218, No. 11, June 1, 2001. [http://www.avma.org/public\\_health/dogbite/dogbite.pdf](http://www.avma.org/public_health/dogbite/dogbite.pdf).

<sup>4</sup> ASPCA, Are Breed Specific Laws Effective? [http://www.aspc.org/site/PageServer?pagename=cruelty\\_dogfighting\\_breedspecific](http://www.aspc.org/site/PageServer?pagename=cruelty_dogfighting_breedspecific).

<sup>5</sup> See supra, note 3.

**3. FACT: Pit bulls' jaws are the same as any other breed of dog.**

There are statements by experts that refute the locking myth, such as:

- Dr. I. Lehr Brisbin of the University of Georgia conducted research on the functional morphology of the jaws of various breeds and showed that:  
“...there were no mechanical or morphological differences between the jaws of American Pit Bull Terriers and those of any of the other comparable breeds of dogs which we studied. In addition, we found that the American Pit Bull Terriers did not have any unique mechanism that would allow these dogs to lock their jaws.”<sup>6</sup>
- Dr. Howard Evans (professor emeritus, College of Veterinary Medicine at Cornell University, Ithaca, N.Y., and author of the world's definitive work on canine anatomy [*Anatomy of the Dog*]), in conjunction with Dr. Sandy deLahunta, one of the foremost dog neurologists in the country, along with Dr. Katherine Houpt, a leading dog behaviorist, wrote the following statement about the supposed “locking jaw” in pit bulls:  
“We all agree that the power of the bite is proportional to the size of the jaws and the jaw muscles. There is no anatomical structure that could be a locking mechanism in any dog.”<sup>7</sup>

**4. FACT: Dr. Brady Barr of *National Geographic* conducted a study on animal bites. A German shepherd, American pit bull terrier and Rottweiler were tested using a bite sleeve equipped with a specialized computer instrument. The American pit bull terrier had the *least* amount of pressure of the three dogs tested.**<sup>8</sup>

The force of bite (in pounds of bite pressure) in the test subjects were:

Crocodiles: 2,500 lbs.  
Hyenas: 1,000 lbs.  
Snapping turtles: 1,000 lbs.  
Lions: 600 lbs.  
White sharks: 600 lbs.  
Domestic dogs: 320 lbs. (on average)  
Humans: 120 lbs.

**5. FACT: Pit bulls have better temperament than several other breeds. In a recent study of 122 dog breeds by the American Temperament Testing Society, pit bulls had a passing rate of 83.9%. That was better than miniature poodles (76.6%), beagles (80.3%) and collies (79.4%).**<sup>9</sup>

**6. FACT: While most dogs do not respond to pain while in the frenzied state of a severe attack, pit bulls feel pain just like other breeds do.**<sup>10</sup>

Pit bulls have the same nervous system as any other breed, and they do feel pain. Historically, dogs that would tolerate or ignore discomfort and pain and finish the task they were required to perform were the dogs that were bred and the type of dogs breeders strove to produce. This is the trait of “gameness” that so many breed fanciers speak of, which may be defined as “The desire to continue on and/or complete a task despite pain and discomfort.”<sup>11</sup>

<sup>6</sup> Ontario Superior Court of Justice Affidavit of Dr. I. Lehr Brisbin, Jr., senior research scientist, University of Georgia.

<sup>7</sup> See supra, note 2.

<sup>8</sup> Dr. Brady Barr. *National Geographic*. “Dangerous Encounters: Bite Force.” August 18, 2005.

<sup>9</sup> American Temperament Testing Society. Retrieved January 8, 2009. <http://www.atts.org/statistics.html>.

<sup>10</sup> See supra, note 2.

<sup>11</sup> New Hope Pit Bull Rescue. [http://www.nhpbr.org/index.php?option=com\\_content&task=view&id=18&Itemid=32](http://www.nhpbr.org/index.php?option=com_content&task=view&id=18&Itemid=32).

26 October 2009

City Council  
City of Oak Harbor  
865 SE Barrington Dr  
Oak Harbor, WA 98277  
(360) 279-4500 Fax (360) 279-4507

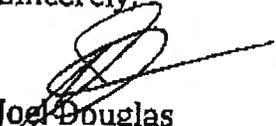
RE: Dog Attacks

I have walked a small dog (10 lbs.) for 8 years in several Cities. It has been my observance that, in two dog attacks, both were Pit Bulls. In 90% of all aggressive behavior toward myself or my pet, it was a Pit Bull.

Pit Bulls have no more place in society than Hyenas or Leopards. They are bred for killing and that's a fact! In addition, there owners are usually, if not always, angry irresponsible people. On average, 39 people are killed by Pit Bulls yearly.

Regulations could save those 39 people. Compare this to the sprinkler requirements on tri-plexes, du-plexes, and homes; there are no proven lives saved by such actions, it's economic.

Sincerely,

  
Joel Douglas

Enc: Pit Bull article

 **Coachman Inn**  
Grandview Business Center  
Harbor Business Center



Harbor Lands Co.  
Harbor Enterprises  
Pacific Resources, Inc.

P.O. Box 4082  
Bellingham, WA 98227  
(360) 734-8191 734-2222  
FAX (360) 647-9225

27 October 2009

City Council  
City of Oak Harbor  
865 SE Barrington Dr  
Oak Harbor, WA 98277  
(360) 279-4500 Fax (360) 279-4507

A local Santa Barbara Newscast reported that a baby sitter's Pit Bull grabbed a young child by the throat and dragged him around the yard until the owner used a fork to distract the Staffordshire Pit Bull Terrier. In 10 years there have been over 300 persons killed or injured, including faces, jaws, and throats torn off.

Why do we allow these beasts to walk freely in a civilized society. the owners are not responsible, otherwise they would not own them.

Sincerely,

*Joel Douglas*  
Joel Douglas

 **Coachman Inn**  
Grandview Business Center  
Harbor Business Center

 Harbor Lands Co.  
Harbor Enterprises  
Pacific Resources, Inc.

P.O. Box 4082  
Bellingham, WA 98227  
(360) 734-8191 734-2222  
FAX (360) 647-9223

114

# Pit bulls injure woman, attack officers

## 2 incidents put breed back in the spotlight

BY LEVI PULKKINEN  
P-I reporter

A Pierce County woman was still in bed Tuesday morning when she was awakened by a pair of pit bulls that charged into her home and began tearing into her.

Bloodied with wounds that would later require hospitalization, she fired a gun at the dogs — missing — and fought her way to a car parked in her Gig Harbor driveway to wait for rescue, police said.

That attack came less than 48 hours after a Seattle patrol officer fired on another pit bull when it charged him after a routine stop.

The incident ended with the dog dead and its owner, a federal fugitive, in jail on a counterfeiting warrant.

The two attacks return the spotlight to an often maligned — and, some argue, usually misunderstood — breed, the pit bull.

For the past seven or eight years, animal shelters across the country have been flooded with the breed, said Don Jordan, director of Seattle's municipal animal shelter. In Seattle, pit bull purebreds and mixes now account for about half the dogs turned in at the shelter.

"Myself and my staff have met just as many nice pit bulls and pit bull mixes as we have nasty ones," Jordan said. "They don't come out of the chute ready to bite — this is a learned behavior."

It wasn't clear what, if anything, prompted the two pit bulls to storm through a dog door in the Gig Harbor woman's door at about 9 a.m. Tuesday morning.

Pierce County sheriff's Detective Ed Troyer said in a statement that the dogs attacked the woman in the bedroom of her home, just outside the

## PIT BULLS: Charging dog is shot dead by officer

FROM A1

Gig Harbor city limits.

Rescuers found the woman in her car where she fled after shooting at the dogs, which also killed a neighbor's Jack Russell terrier, Troyer said. The woman was taken to St. Joseph Medical Center in Tacoma with serious injuries.

Animal control officers used pepper spray to subdue the dogs before taking them to the Pierce County Humane Society. Troyer said the pit bulls' owner — who lives on the same street where the attack occurred — had been contacted and that Pierce County Animal Control will be investigating.

The attack followed a Seattle dog incident where authorities used lethal force.

Just before 6 p.m. Sunday, a Seattle police officer spotted a car with an altered temporary license plate parked in the Museum of History and Industry parking lot.

A pit bull corralled in the car's rear seat lunged toward officers as they approached, according to reports. The dog's owner, a 42-year-old Seattle man, later told police he'd brought his pet to neighboring McCurdy Park to celebrate its third birthday.

The dog's owner bolted as police prepared to arrest him on a federal counterfeiting warrant, according to reports. Seeing its owner flee, the dog lunged and broke away from the passenger who'd been attempting to hold it back.

As the dog charged toward the officers, one drew his service pistol and fatally shot the pit bull.

The car's driver was arrested shortly after and was in King County Jail Tuesday on a felony counterfeiting warrant. According to police reports, officers searching the car found photocopies of identification papers and drugs.

ATTACHED TO JOEL DOUGLAS LETTER 217 (Dug 7/2)

Jordan, the Seattle shelter director, said pit bulls are the latest in a long line of strong, intimidating dogs to gain popularity. Like Rottweilers and Dobermans before them, pit bulls often do damage when they bite and are more likely to be reported.

"With their muscular stature, they can inflict very serious injury," Jordan said. "And that's not going to go unreported."

Strong and quick to learn, pit bulls are popular dogs among people who train dogs to fight, said Brenda Barnette, chief executive of the Humane Society for Seattle/King County.

Barnette said only about 20 percent of the pit bulls her shelter takes in pass the temperament test that dictates whether they can be put up for adoption. But, she said, that has more to do with the dog's former owners than the breed.

"If you have one that's well bred, they can be an absolutely amazing companion animal," Barnette said. "If you get one that's of questionable breeding, or maybe of a fighting background, it can be a dangerous weapon."

# Is a pit bull by any other name, say 'patriot terrier,' the answer?

**NEW YORK** — Pit bull terriers are being "rebranded" across the U.S. in an effort to relaunch them as family-friendly pets instead of fearsome fighting dogs.

The plan was devised by Ed Boks, the director of New York's pound, after he learned nearly 6,000 of the abandoned or confiscated terriers were put down in the city last year. Boks, who arrived in New York last month from a similar job in Arizona, believes most pit bulls are "misunderstood" and decided that marketing was the answer to the problem. Last week, the pound — officially known as the City Animal Care and Control Agency — declared that pit bulls would henceforth be known as New Yorkies.

"I figured that we need to do a little marketing here, however wacky the idea, and rebrand this dog," Boks explained.

His plan initially faltered when the new name was greeted with howls of protest from human New Yorkers — and the owners of Yorkshire Terriers, known commonly as Yorkies. The agency has now asked the public for suggestions for a new name, with front-runners including Yankee terrier and patriot terrier.

Last year, only 460 of 6,300 pit bulls

were reclaimed or retrieved from the pound. The others were put down in "an appalling slaughter," Boks said. "The only solution is to persuade people to adopt them, and people are wary of adopting a 'pit bull' — with all that the name implies."

Pit bull terriers were banned in Britain under the Dangerous Dogs Act of 1991 following a series of attacks there. Imports and breeding were outlawed and dogs already in the country had to be registered, neutered, marked with a tattoo and fitted with a microchip.

First imported to America at the end of the 19th century, pit bulls became the dog of choice among U.S. drug dealers in the 1980s.

In New York, they are the fourth most popular breed, after labradors,

alsatians and shih tzus. They are also responsible for the second greatest number of bites, after alsatians.

Bernadette Peters, a popular Broadway musical actress, owns a pit bull named Stella, who she says has shown no signs of aggression.

Peters believes that a name change could rescue the breed, and that "with a different name, maybe the guys who train them to be macho won't want them anymore."

But Keith Galley, a 37-year-old doorman for a Park Avenue apartment building, expressed doubt about the renaming exercise as he walked Jade, his three-year-old, 30-kilogram terrier in Central Park.

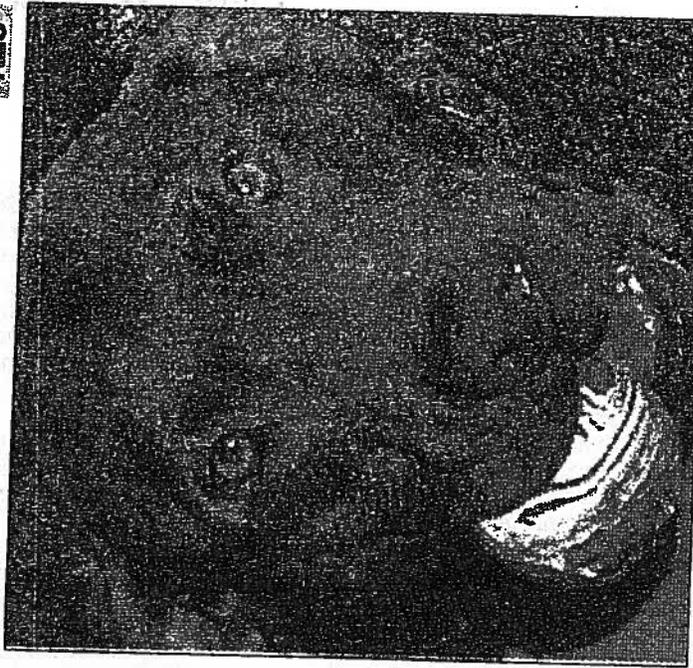
"It will only last until the next time that there is a big story over a bite."

— Sunday Telegraph

copy

THE PROVINCE · Sunday, January 11, 2004

A25



'Rebranding' the pit bull terrier could lead to adoptions. — Province file photo

New Employment Insurance  
Compassionate Care Benefit

If you must be absent from work

ATTACHED TO  
JUEL DOUGLAS LETTER

# Pit bull problems

ATTACHED TO  
JOEL DOUGLAS  
LETTER

*Feared breed  
overwhelms  
island shelters*

By PAUL BORING  
Staff reporter

In the race for most maligned canine breed, pit bulls have emerged as the clear winner, each reported attack adding weight to what is becoming a morbidly obese albatross hung about the necks of the pooches.

Debates rage over how the specialty breed can one moment be seemingly playful and the next exhibit violent, suddenly lethal behavior. The dogs have polarized the nation with their erratic and headline-making assaults.

Whidbey Island is a microcosm where pit bulls have propagated at an alarming rate suggestive of spontaneous generation. Local animal shelters have become overrun with the dogs to the point of no longer accepting surrendered pit bulls.

## THE SITUATION

Eleven of the 18 kennels at Whidbey Animals' Improvement Foundation's Oak Harbor facility currently house pit bulls. The nonprofit organization took over management of the shelter from the city in 2005 just as the pit bull situation was worsening.

"It's continued to get worse," said Shari Bibich, manager of the WAIF shelters.

Both the Oak Harbor and Coupeville shelters have seen an influx of pit bulls this year.

The sheer numbers of stray pits and pit bull mixes picked up has created a burden for the minimum-kill shelters. The Oak Harbor facility took in 29 pit bulls in 2006, 30 so far in 2007, and is now housing 11 of the animals.

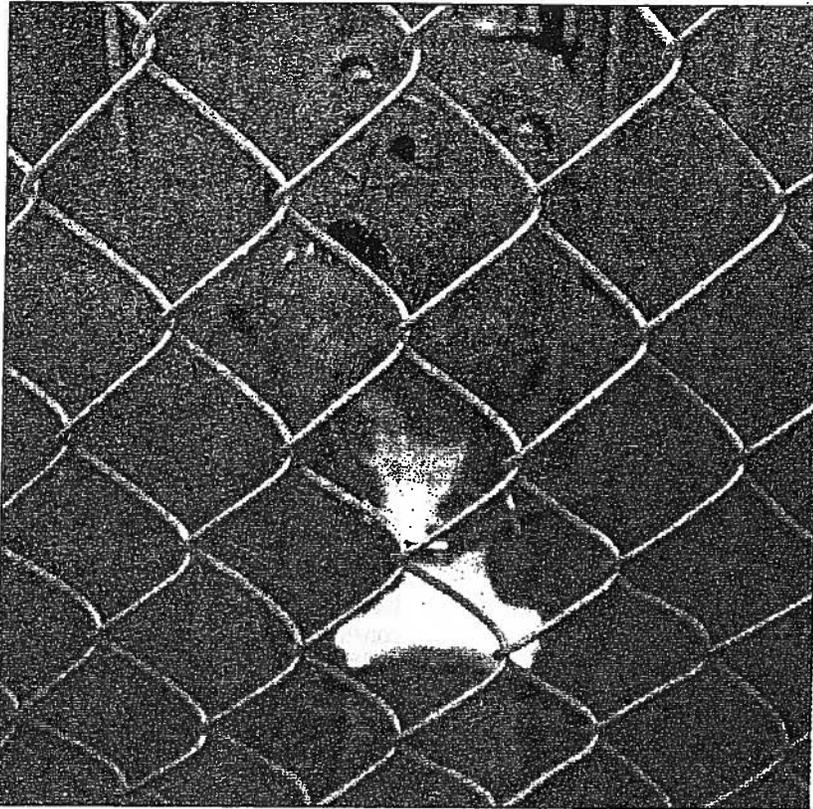
"That doesn't sound like a big number, but then you figure that many of these 29 spilled over into 2007," Bibich said.

The Coupeville numbers are even worse. Forty-five pit bulls were picked up and brought to the shelter last year, with 27 in 2007. Seven of the dogs now reluctantly call the facility home.

## THE CANINE ORPHANAGE

Two of the Coupeville pit bulls have been there for more than a year, the situation a telling example of WAIF's difficult Catch-22. Very few people are adopting pit bulls because of the specialty breed's blanket stigmatization and negative press. At the same time, not just anyone is deemed a suitable owner.

"We are very discerning," Bibich said. "Owners don't always understand. It's in their breed to



Paul Boring / Whidbey News-Times

*Monica, a pit bull mix waiting to be adopted from Whidbey Animals' Improvement Foundation's Coupeville shelter, opens up and says "Ahhhh." Highly-publicized pit bull attacks and over-breeding have created problems on Whidbey Island, not the least of which is the inability to find good homes for the specialty breed.*

fight and that puts other animals at risk. In inappropriate or inexperienced homes they can be dangerous. That doesn't mean they're a bad dog, but people need to know what they're adopting."

Specific adoption guidelines at WAIF were drafted after Bibich witnessed firsthand the harm, both psychological and physical, that owners and people harboring unconditional hatred for the breed can inflict. A pit bull puppy adopted out ended up back at the shelter a short time later exhibiting strange behavior.

"His head was tilted to the side and he was spinning in circles," the shelter manager said. "An X-ray showed that his brain was filled with buckshot. It broke my heart. I held Dan when we euthanized him. And I held him before when he was just a happy little puppy and loved everyone. I made a commitment right then to never put these animals in situations like that."

The guidelines range from fencing requirements, to city restriction adherence, to age restrictions. Families with small children need not apply.

"We don't know the background of the dogs," Bibich said. "That doesn't mean pit bulls aren't good around kids, that just

**"It broke my heart. I held Dan when we euthanized him. And I held him before when he was just a happy little puppy and loved everyone."**

Shari Bibich,  
manager of WAIF shelters

means we don't know what their early life was like. You read too many stories. How many people say, "Oh, I never saw that coming."

Many of the injuries occur when humans attempt to intervene in a dogfight and enter the fray.

WAIF has been forced to stop accepting pit bulls that owners are unable to care for or no longer want.

"Until the situation on the island gets under control, we will no longer be taking any surrendered pit bulls to adopt out," Bibich said.

When kennel stress becomes too much for the dogs, euthanasia is the only solution.

"We just had to euthanize Jockster, a long-term pit bull mix who was much beloved," the shelter manager said with damp eyes. "He would have been here two

years in October and time at the shelter just took its toll and we started seeing behavior concerns."

## THE CAUSE

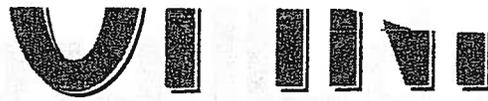
Simple overpopulation is not the crux of the pit bull problem. Rabbits are ubiquitous in Island County. But rabbits are not heavily-muscled animals capable of disfiguring a child. In the past, Rottweilers were the media dog.

"We had some behavior concerns because of the popularity of the breed," said Carol Barnes, Island County animal control officer. "Now it's pit bulls. Owners are not realizing the propensity and tendencies of the breed, either because of how they were raised or because of lack of training or knowledge."

Whether the problem lies with

SEE PIT BULLS, PAGE A5

ATTACHED  
TO JOEL DOUGLAS  
LETTER



Page A4

## SOUND OFF

Pit Bull  
file

# Stop adopting out pit bulls

By BARBARA SHEFFIELD

The American people are typically not passive, nor shy, in generating loud social outcries when learning of the marketing of products that have potential to harm the consumer — especially our children. And so I must confess to being totally mystified at the passiveness of so many U.S. communities, including Oak Harbor and my Illinois hometown, in dealing decisively and forcefully with the pit bull problem that grows slowly but surely with each passing year.

When I read the recent "Pit Bull Problems", the first thing that left me shaking my head is the report that WAIF works to find homes for surrendered pit bulls. I simply don't understand how they, in all good conscience, can adopt out animals that may well have questionable backgrounds and genetics.

I understand they make good efforts to screen animals and potential owners. But despite their efforts, it is a total lack of social responsibility to hand over these animals. They should be banned from our communities, and they should be euthanized when surrendered.

I am not lacking in compassion for the pit bull. It has become the victim of miscreants who breed them for fighting, who own them to portray a manly man image, who sell them as a mat-

without question, the victims of man's ill intent. But to refuse to face up to the fact that we must take a hard stand on this issue is to contribute to an ever growing and notably dangerous problem.

Another thing that I find objectionable is that WAIF has now refused to accept surrendered pit bulls. What do they think will happen as a result? How many of those animals will be set loose to roam the streets and fend for themselves? Would it not be wiser to accept them and then euthanize them?

I understand that WAIF is a "minimal kill" facility. And, as a dog and cat owner and a strong supporter of the organization, I appreciate that. However, there comes a time when the citizens who did nothing to create this problem, but who have the power to take the very hard and not compassionate steps toward solving it, must step to the forefront and make those very difficult decisions.

Our city leaders are among those citizens with the power. Our caring and compassionate WAIF workers are among those citizens.

How many more adults, children, and pets must be mauled or killed before we wake up?

Are we deliberately asleep at the wheel?

*Barbara Sheffield is an Oak Harbor resident.*



ATTACHED TO JOEL DOUGLAS LETTER

# Pit Bulls: Pets or Killer Dogs?

*This week's fatal attack by a pit bull on an unattended 14-month-old child in South Los Angeles put the popular breed in the spotlight as an aggressive and dangerous animal. According to a survey by the Centers for Disease Control and Prevention in Atlanta, pit bulls, Rottweilers and Dobermans lead the list of dogs most frequently involved in fatal attacks. MAURA E. MONTELLANO spoke with a Northridge woman about the problems with pit bulls in her neighborhood and with a pit bull advocate.*

PATRICIA E. BAKER  
Caterer, Northridge

Until recently you could walk your dog without any problems in my middle-class neighborhood. But two weeks ago, I was out walking my dog—an Irish setter mix—when we came to a property surrounded by a wrought iron fence. All of a sudden, two dogs—one a pit bull—charged at the fence. The pit bull kept putt-

ing its face between the spokes of the fence. I noticed it had been digging a hole under the fence where it could extend its legs and its muzzle.

This was not a warning bark; this dog was in attack mode. It was clearly trying to get at us.

The owners never came out even when they heard the commotion outside. I also noticed the dog did not have a dog tag. This dog has gotten loose before and people were terrified of it. After finally getting past that house, we went around the block only to find another pit bull hanging over a fence, its head, shoulders and legs, scrambling to get over the fence. You wonder what will happen when this dog finally, after getting worked up enough, manages to escape its holding cell.

I contacted animal control and was told that if the dog did not get over the fence and onto the sidewalk, there was nothing they could do. I asked if they could do something after it attacked me and, of course, only then could they. There is an elementary

school near by, and I have seen children walk past this house and run across the street when these dogs come to the fence. They can't even walk on the sidewalk without the fear of being attacked by one of these dogs.

The breed has a potential for violence. These dogs are bred to destroy. If they panic, they will snap. We are not obligated to treat all dogs as equals; they are not people. Common sense and a concern for the safety of our communities tell us we must take a few simple steps to get this problem under control.

The City Council must enact strong nuisance laws to prohibit the storing of threatening, barking dogs in front yards. It is a public nuisance.

To hear about that poor child mauled to death is heartbreaking. It just furthers the argument that these dogs are loaded guns. That dog was a family pet. It seemed benign and there was no warning. No one could have predicted it. I'd like the city to strike while the iron is hot.

## 'It's More About Owner Than Dog'

DAWN CAPP  
Director, the Chako Rescue Assn. for the American Pit Bull Terrier, San Diego

As far as I'm concerned, there is no dog with a better temperament than the American pit bull terrier. I have been around these dogs for 20 years. I have taken them in, have worked closely with them and can say I have never been snapped at, bitten, attacked or in any way felt threatened by one.

They are very good with people and have been bred, historically, to be good with people. Before dogfighting was illegal, they were trained to fight dogs only. Dogs that bit out of pain or fear were culled.

This breed has been honed over generations to be a powerful fighting dog and it is one of the strongest dogs of any breed. Today, many of the people who fight these dogs also use them to guard illegal drugs. When they are used for illegal purposes, people have a vested interest in making the dog aggressive.

All dog experts will tell you that it is the responsibility of the owner to train their pets for any

breed. For pit bull owners, it's about how they socialize them and how they train them. If they keep them away from people while they are puppies, the dogs become stranger-wary. They learn what they are taught. Dogs learn most about the world within the first five months; this is a critical socialization period for any dog.

Pit bulls were never meant to be protection dogs. If you have a well-bred and responsibly raised American pit bull terrier, it will often not be good protection against property theft, though they are protective of their family. The classic pit bull is peo-

ple-stable, enjoys attention and being around children.

It's all about the owner. Alaska's first certified hearing dog was an American pit bull terrier. Helen Keller owned one. America's first war dog, Stubby, who served in World War I was a pit bull. Stubby was invited to the White House by two presidents and inspired the creation of the U.S. K-9 Corps.

Unfortunately, if an owner wants an aggressive dog, they will produce one. However, in the right hands these dogs can be incredible pets. In the wrong hands, they can be dangerous.

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# THE BELLINGHAM

TheBellinghamHerald.com

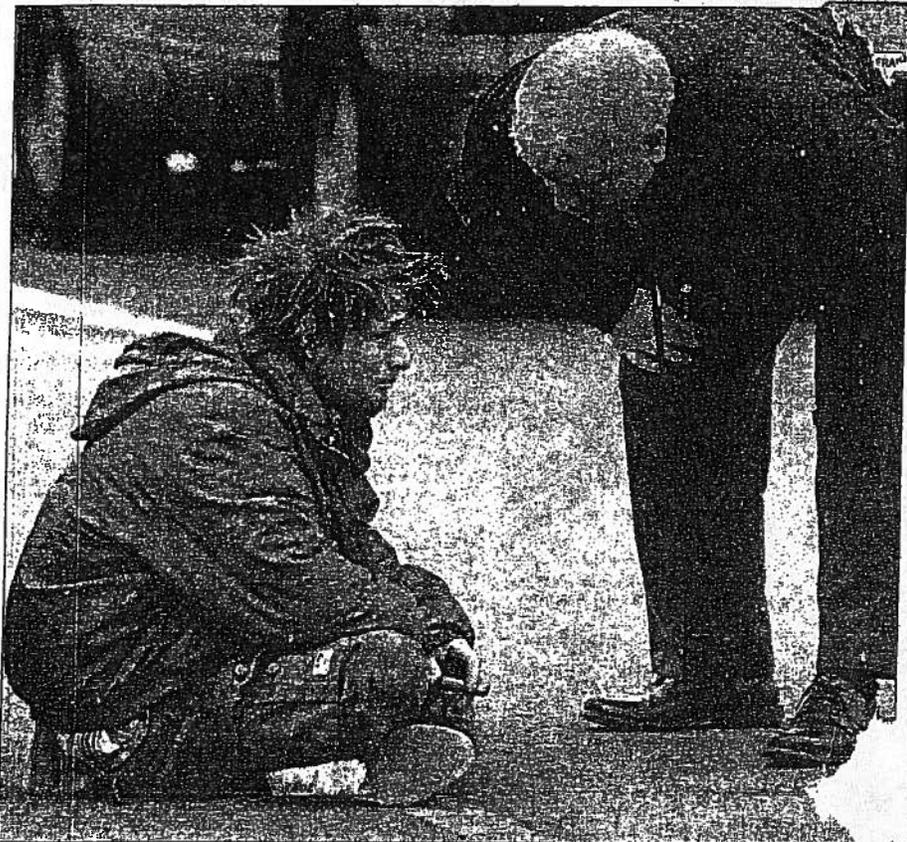
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ATTACHED TO  
JOEL DOUGLAS  
LETTER

INSIDE ► Bad day for county's three teams at state basketball tournament. D1

## PUBLIC SAFETY

# Cop kills attacking dog



PHILIP A. DWYER THE BELLINGHAM H. J.D.

Bellingham police Detective Glenn Hutchings, right, talks to Allen Pierce on Friday morning after another police officer shot Pierce's attacking pit bull at the Wal-Mart parking lot in Bellingham. The officer who was attacked was taken to the hospital.

## Officer hurt in struggle with pit bull

KIRA MILLAGE  
THE BELLINGHAM HERALD

**BELLINGHAM** — A Bellingham police officer had to shoot and kill a pit bull Friday morning in the Wal-Mart parking lot after the dog bit the officer's arm and wouldn't let go, said Lt. Flo Simon.

The officer was taken to St. Joseph Hospital for treatment and is expected to recover, Simon said. The dog died at the scene and was taken by the Whatcom County Humane Society for disease testing.

Police had been called to the Wal-Mart lot in the 4400 block of Meridian Street about 8:20



PHILIP A. DWYER THE BELLINGHAM HERALD

Bellingham police officers investigate the scene Friday morning at the Wal-Mart parking lot.

a.m. by store employees because the occupants of a trailer parked there reportedly were dumping sewage into the parking lot and refusing to leave.

Wal-Mart stores across the

country generally allow people in trailers or RVs to stay overnight provided they park at the outer edge of the lot and do not cause trouble. Police rarely have a problem with campers at the Bellingham

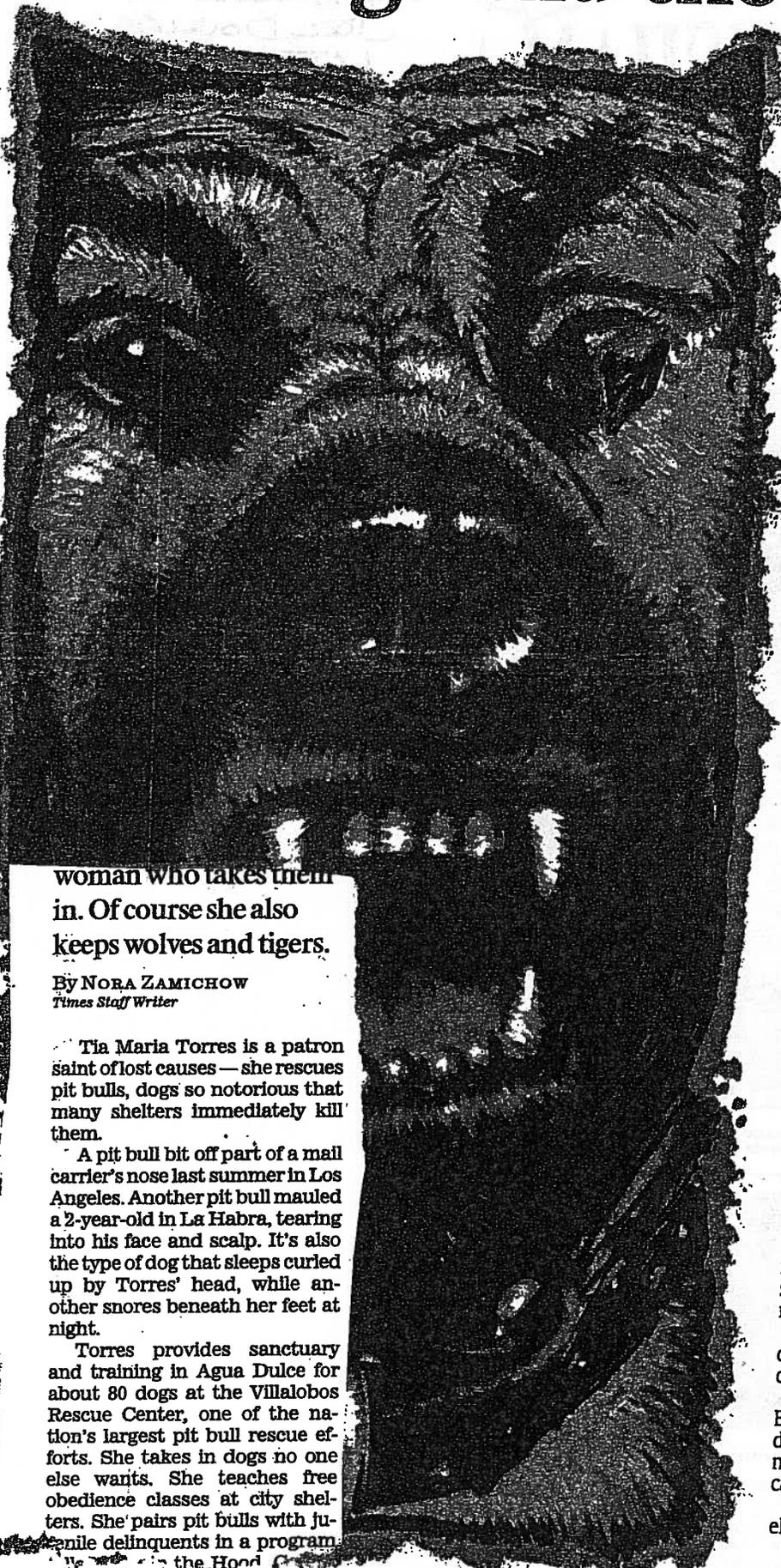
store, Simon said.

When the officers knocked on the trailer parked near the new liquor store, the trailer door opened and the pit bull

See DOG SHOT, A6

# Killer dogs and the human factor

ATTACHED TO JOEL DUGLAS LETTER



woman who takes them in. Of course she also keeps wolves and tigers.

By NORA ZAMICHOW  
Times Staff Writer

Tia Maria Torres is a patron saint of lost causes — she rescues pit bulls, dogs so notorious that many shelters immediately kill them.

A pit bull bit off part of a mail carrier's nose last summer in Los Angeles. Another pit bull mauled a 2-year-old in La Habra, tearing into his face and scalp. It's also the type of dog that sleeps curled up by Torres' head, while another snores beneath her feet at night.

Torres provides sanctuary and training in Agua Dulce for about 80 dogs at the Villalobos Rescue Center, one of the nation's largest pit bull rescue efforts. She takes in dogs no one else wants. She teaches free obedience classes at city shelters. She pairs pit bulls with juvenile delinquents in a program

## San Franciscans are scared and angry after 2 vicious canines maul a woman to death

By Marco R. della Cava and Anita Manning  
USA TODAY

SAN FRANCISCO — About the only thing truly scary about Pacific Heights is its rental prices, well over \$2,000 a month for one-bedroom apartments overlooking the Bay.

Until last week, that is.

When 33-year-old Diane Whipple returned to her apartment here last Friday and slipped the key into her lock, two massive dogs belonging to her neighbor down the hall broke free and lunged at her neck.

### Cover story

The owner was unable to control the dogs, which weighed 235 pounds combined. Whipple was nationally lauded lacrosse player who coached locally. But when athletic, her 5-3, 110-pound frame could not withstand the attack. She died a few hours later.

The death has rocked pet-friendly San Francisco and sparked debate from coast to coast among animal experts, breeders and owners on issues such as dog behavior and owner responsibility.

Although dogs kill roughly 20 people a year in the USA, most victims are either children or seniors, not fit young women confidently strolling the halls of their upscale, big-city apartment building.

Is this a case of dogs gone bad? Or the owner missing antisocial cues from a canine ill-suited to mixing with humans? Either way, experts insist no dog is born evil but rather is led down that path by man.

"It is almost childishly easy to raise any dog to be friendly to all people," says Ian Dunbar, a Berkeley veterinarian and author of *How to Teach a New Dog Old Tricks*. "But we are not talking about a pet dog" in Whipple's attack, he says. "I wouldn't even call it livestock. It was behaviorally neglected and psychologically abused, trained in a ... way to be an assassin."

The dogs that unexpectedly charged Whipple were Presa Canarios, traditionally measuring up to 25 inches across at the shoulders and bred as guard dogs and herders, says breeder Dana Childers of Medford, Ore.

"They're no different than any other large, powerful breed of dog," she says. "In the right hands, it's a fantastic family guard dog. In the wrong hands, you can run into trouble."

The dog most responsible for Whipple's death was 123-pound Bane, put down by local authorities after the attack. The other dog is 112-pound Hera, who tore at Whipple's clothes. Hera remains with animal control pending a police investigation of a case that is becoming as bizarre as it is tragic.

The odd pieces of the puzzle so far: Two attorneys, Robert Noel and Marjorie Knoller, were keeping the dogs in their Pacific



By Jose Carlos Fajardo, Contra Costa Times

Whipple: Died after being attacked in the hallway of her apartment building.

Illustration by Keith Simmons, USA TODAY

Please see COVER STORY next page

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ATTACHED TO  
JOEL DOUGLAS LETTER

**PUBLIC SAFETY**

# Dangerous dog laws

## Va. lawmaker seeks harsher penalties

**KRISTEN GELINEAU**  
ASSOCIATED PRESS

RICHMOND, Va. — A Virginia lawmaker is proposing tough legislation to punish dog owners whose pets injure or kill, following a fatal attack on an elderly widow by three roaming pit bulls.

Dorothy Sullivan, 82, was attacked March 8 while walking her small dog, Buttons, in her own front yard in Partlow. Buttons also was killed.

Her family and some legislators say her death spotlights the need for legislative action.

"The horrific nature of Mrs. Sullivan's death, coupled with the prosecutor telling me he really didn't have a whole lot legally as means to pursue the case, told me that Virginia law really seemed to be lacking," said state Sen. R. Edward Houck. He plans

to present the Dorothy Sullivan Memorial Bill to the General Assembly when it convenes next month.

In the absence of a specific law, the woman who prosecutors say owned the pit bulls,



**Dorothy Sullivan**  
Killed by three roaming pit bulls.

Deanna Large, faces trial Tuesday on a charge of involuntary manslaughter. It is the first time in Virginia a dog owner will be prosecuted on such a charge in a fatal mauling.

Large, 37, who lives down the road from Sullivan's house,

could be sentenced to up to 13 years in prison if convicted of the felony and of three misdemeanor counts of allowing a dangerous dog to run at large.

Houck's bill would add a provision to state law to make fatal dog attacks a felony, punishable by up to 10 years in prison

If worldwide, 315 people get torn apart by Pit Bulls each year; children with arms torn off, Moms and daughters with faces ripped off,

Is a Pit Bull a pet or an outrageous attack animal? Sadly, it's usually a people problem. Responsible, insured people, don't own Killer Dogs!

Require 8' fences, \$1,000,000 liability insurance, and put to death any dog if it charges any other animal or person.

Monday, December 19, 2005 **The Bellingham Herald** A7

# reviewed after woman's death

## RULES ELSEWHERE

Most regulation of dog laws is done at the local level. Some cities, including Denver and Miami, ban pit bulls. Last month in San Francisco city supervisors passed a

and a fine of up to \$2,500. The penalties would be harsher for owners whose pets have previ-

law requiring spaying and neutering of pit bulls following the killing of a 12-year-old boy.

In August, Ontario became the first province in Canada to ban pit bulls following a string of attacks by the dogs.

ously been declared dangerous. "There should be an option for the commonwealth to seek

a stiffer penalty," said Kim Hamilton, executive director of the Virginia State Crime Commission.

The measure also would allow law enforcement officials to petition a court to declare a dog dangerous. Currently, only animal control officers have such authority. Owners of dogs declared dangerous would be required to maintain a \$300,000 insurance policy, up from the \$100,000 required now.



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

Bill No. 5  
Date: November 4, 2009  
Subject: Pioneer Way Improvements:  
Proposed Project Development  
Sequence

**FROM:** Steve Powers *SP*  
Director, Development Services Department

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

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

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**PURPOSE**

This agenda bill presents a proposed project development sequence for the Pioneer Way Improvements project.

**SUMMARY STATEMENT**

**Background**

On March 3, 2009 the City Council approved an engineering design and services contract with Pertect Engineering for the Pioneer Way Improvements Project. The approved contract contains three phases. These phases can be summarized as follows:

- Phase 1 – preliminary design and analysis and the development of street configuration alternatives;
- Phase 2 – development of plans, specifications and contract documents;
- Phase 3 – construction engineering and construction management assistance.

The Council has approved the funding for the Phase 1 work; additional approvals are required for any of the remaining phases. To date work accomplished under the contract includes topographic and utility surveying, geotechnical investigations, archeological review with DAHP, preliminary alternatives design, coordination with overhead utility companies, right-of-way mapping and preliminary cost estimating.

In order for the design process to continue several decisions must be made by the City. One of the more important decisions is whether the street reconfiguration is a pedestrian-focused design (resulting in a one-way street) or a vehicle-focused design (resulting in a two-way street). In seeking an answer to this important question staff has made a series of presentations over the last

several weeks to property owners, business owners, civic groups, the Chamber of Commerce, the general public and City Council standing committees.

During these presentations a number of questions have arisen regarding topics other than the street configuration. These questions include:

- When will construction start?
- When will construction end?
- Can the City delay construction until the economy is better?
- Will the power and other overhead utilities be placed underground?
- What sort of construction impact mitigation will the City undertake to protect our businesses?

After listening to these questions, and to other community input, it became apparent to staff that there are a number of important decisions to be made by the City Council before the project can move on to the next steps. In some instances these decisions must be made before the project design is finalized, in others before the project is advertised for bids or before construction starts. Staff recommends tackling these decisions in a logical sequence, rather than attempting them all at a single time. This approach will allow for focused decision making, with subsequent decisions building on previous ones. It will also allow additional time for public input into the design process. With this in mind staff has drafted a proposed 'Project Development Sequence' schedule for the City Council's consideration.

### **Discussion**

The proposed sequence of necessary Council actions is shown below. Where specific dates are shown they correspond with regular City Council meeting dates. Please note the schedule has also been developed to avoid the November-December holiday shopping season. While every effort has been made to develop a realistic schedule, the schedule shown below is subject to change to adapt to the needs of both the community and the variables inherent in project of this scope. It is staff's intention to present the City Council an agenda bill with a recommended action for each of the decision points.

## Pioneer Way Improvements: Project Development Sequence

Date	Step or Action
November 4, 2009	<ul style="list-style-type: none"> <li>•Project development sequence proposal to City Council</li> <li>•Engineering services contract amendment No. 1, record of survey, authorization to City Council</li> </ul>
November 17, 2009	<ul style="list-style-type: none"> <li>•Funding designation resolution to City Council</li> <li>•Authorization to proceed with ROW acquisitions by City Council (authorize Mayor to make/accept offers up to a max of \$ TBD per parcel)</li> </ul>
December 1, 2009	<ul style="list-style-type: none"> <li>•Street configuration selection by City Council</li> </ul>
January 5, 2010	<ul style="list-style-type: none"> <li>•Under grounding of utilities funding concept presented to City Council</li> </ul>
January 19, 2010	<ul style="list-style-type: none"> <li>•Under grounding of utilities funding concept considered by City Council</li> <li>•Notice to proceed with construction design- Phase 2 engineering services contract authorization by City Council</li> </ul>
February-August 2010	<ul style="list-style-type: none"> <li>•Various Council workshops/committee meetings and meetings with property owners and merchants on construction sequencing. Formal City Council action not required</li> </ul>
June 2010	<ul style="list-style-type: none"> <li>•Council consideration of Shoreline Substantial Development permit</li> </ul>
August 2010	<ul style="list-style-type: none"> <li>•Council authorization to advertise project for bidding</li> </ul>
August -October 2010	<ul style="list-style-type: none"> <li>•Construction bid advertise and award</li> <li>•Phase 3 engineering services contract authorization by City Council</li> </ul>
January 2011	<ul style="list-style-type: none"> <li>•Groundbreaking ceremony</li> </ul>
September 2011	<ul style="list-style-type: none"> <li>•Ribbon cutting ceremony</li> </ul>

While the majority of the steps are self-explanatory, a few warrant explanation. The 'Funding Designation' step will present a resolution for the Council's consideration. Given the sizable investment in this single project and the variety of funding sources utilized it is appropriate to seek City Council approval of the funding plan. The 2009-2010 Budget includes \$3.5 million in REET funds for the project in the Arterial Street Fund (Fund 104). An estimated \$1,000,000 of additional REET funds should be designated for the storm drain portion of the project. Approval of the resolution will reaffirm designating REET funds as the major funding source for the project. The balance of funding for the project is from two sources: an economic development grant from Island County and City sewer funds. The grant (\$1,000,000) has been awarded to the City but it must be secured through the approval of a Memorandum of Understanding (MOU) between the City of Oak Harbor and Island County. The necessary sewer enterprise funds (approximately \$550,000) are available.

The 'Street Design Plan Finalized' step will seek City Council's selection and approval of one of the two street design alternatives. Upon selection of the street configuration (one way vs. two way) the scope of work with Perteeet for Phase 2 of the design contract will be finalized and presented for Council authorization.

The steps noted as 'Undergrounding of Utilities Funding Concept' will seek Council's decision as to whether or not the undergrounding of the overhead utilities should be included as part of the project. Relocation of the overhead utilities has major implications to the project schedule and project cost. Staff anticipates presenting a funding concept for the conversion however it may take several months for all of the details of the concept to become available. If the concept is approved then the consulting engineer will move forward with the final design to include the underground conversion.

**STANDING COMMITTEE REPORT**

The various items addressed by the proposed schedule have generally been discussed with the Public Works and Governmental Services Standing Committees in the context of the overall project briefing. However, the concept of a decision-making schedule has not been specifically presented to either committee. As the need for this schedule was not identified until after the most recent committee meetings, this item was placed directly on the full Council's agenda.

**RECOMMENDED ACTION**

Staff recommends the City Council approve the proposed project development sequence.

**ATTACHMENTS**

None

**MAYOR'S COMMENTS**