



City of Oak Harbor
City Council Agenda

For

December 21, 2010
6:00 p.m.

**Oak Harbor City Council
REGULAR MEETING
Tuesday, December 21, 2010, 6:00 p.m.**

Welcome to the Oak Harbor City Council Meeting

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

5:45 p.m. to 6:00 p.m. The Fil-Am Choir

CALL TO ORDER

INVOCATION

Dave Jenkins, Living Faith Christian Center

ROLL CALL

MINUTES

NON-ACTION COUNCIL ITEMS:

1. Employee Introduction – Joseph Stowell, Project Engineer.
2. Public Comments.

COUNCIL CONSIDERATION AND ACTION ON THE FOLLOWING MATTERS:

3. Consent Agenda:

Page 35

- a. Increase in Oak Harbor Senior Center Membership Fee.

Page 38

- b. Agreement Extension– for I. T. Services with Oak Harbor School District.

Page 45

- c. Agreement – ICOM Building Lease.

Page 56

- d. Introduction – Building Code Amendments.

Page 88

- e. Resolution – Pioneer Way Sidewalks.

Page 91

- f. Grant Agreement – Approval of Department of Ecology Storm Water Capacity Grant Agreement for Pioneer Way.

Page 115

- g. Introduction – Ordinance Amending Utility Billing Due Date.

- h. Approval of Accounts Payable Vouchers (Pay Bills).

Page 123

4. Memorial Proposal – Early Oak Harbor Families.

Page 158

5. 2010 Solid Waste Franchise – Goldie Road / Byrne Annexation Area.

Page 166

6. Final Consideration – International Fire Code Amendments.

7. City Administrator's Comments.

8. Council Members' Comments.

- Standing Committee Reports

9. Mayor's Comments.

ADJOURN

"Success is not final, failure is not fatal: it is the courage to continue that counts."

~Winston Churchill

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

**City Council Meeting
Tuesday, December 7, 2010, 6:00 p.m.
City Hall – Council Chambers**

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

INVOCATION Councilmember Jim Campbell

ROLL CALL

| | |
|-------------------------------|--|
| Mayor Jim Slowik | Paul Schmidt, City Administrator |
| Seven Members of the Council, | Margery Hite, City Attorney |
| Rick Almberg | Doug Merriman, Finance Director |
| Jim Campbell | Steve Powers, Development Services Director |
| Scott Dudley | Cac Kamak, Senior Planner |
| Beth Munns | Cathy Rosen, Public Works Director |
| Jim Palmer | Eric Johnston, City Engineer |
| Danny Paggao, Mayor Pro Tem | Rick Wallace, Chief of Police |
| Bob Severns | Mark Soptich, Fire Chief |
| | Mack Funk, Harbormaster |
| | Mike McIntyre, Senior Services Director |
| | Renée Recker, Executive Assistant to the Mayor |

MINUTES

MOTION: Councilmember Palmer moved to approve the 11/16/10 regular meeting minutes. The motion was seconded by Councilmember Campbell and carried unanimously.

NON-ACTION COUNCIL ITEMS

Wreath Presentation – By Scout Troop 59

The Troop presented their traditional Christmas wreath and Mayor Slowik introduced Scout Master Jeremy Gaines and the individual scouts. This wreath marks the 50th year that Scout Troop 59 has presented a wreath to the City. The Troop will also be selling wreaths behind the Country Store in Oak Harbor.

Proclamation – National Impaired Driving Prevention Month

Councilmember Campbell read and presented this proclamation to Karen Lewis, one of IDIPIC's founders who was accompanied by Robert May. Ms. Lewis talked about the founding of IDIPIC eleven years ago with JoAnn Hellmann. Last year, IDIPIC served 231 clients; this year it has been 280 clients and 321 driver's education students. Ms. Lewis thanked the City for being a partner in prevention.

Public Comments

Steven Williford, 2541 SW Pete's Lane. Mr. Williford spoke about the Marina dredging project: Occupancy is down due to the dredging assessment and the Marina is losing \$2,000 a month right now. Mr. Williford had four suggestions to help raise funds for the Marina:

1. Sport fisherman and smelt fisherman number 200 or maybe more fisherman on the docks. None are tenants of the Marina and pay nothing toward Marina improvements. Consider a use fee (\$5.00 was suggested).
2. The boat ramp does not charge for its use. The Navy is charging for use of their ramp, as is Deception Pass State Park. Consider an honor box for its use.
3. Crabbers, both commercial and treaty tribes, fish out of the Marina. This is not a commercial Marina or fisherman's wharf. They are heavy users of our Marina and dispose of bait and crab in the Marina's dumpsters. Consider a wharfage fee.
4. B Dock: These 44 covered slips accommodate smaller boats in the 20 to 25 foot range which are trailerable and haul out for the winter. Only 8 are occupied right now. Take off the roof cover and turn this dock into side ties for larger boats who would occupy space all year long.

These ideas have also been brought up to the Marina Committee.

Kristi Jensen, Harborside Merchants Association. Ms. Jensen thanked the Mayor, Council Members, and others who had attended the November 30th Harborside Merchants meeting. There is concern about how Pioneer Way businesses will operate during the construction process. Harborside Merchants has formed a marketing committee and contacted the Washington State Main Street Program (Sarah Hansen) about marketing needs during the construction process. Ms. Jensen felt the City will work with Harborside Merchants and help keep money downtown. Harborside Merchants' marketing committee has proposed a brief outline which will become more detailed, address both downtown and other area merchants, and incorporate ideas from the Chamber of Commerce. Ms. Hansen will be presenting a program in Langley on January 12th and would be available to do a presentation in Oak Harbor on January 13th.

CONSENT AGENDA

- A. Re-Appointment – Dave Thomason, Community Police Advisory Board
- B. Appointment – Pat Morse, Library Board
- C. Grant Application – State Parks Clean Vessel Program
- D. EMS Agreement – Whidbey General Hospital
- E. Introduction – International Fire Code Amendments
- F. Approval of Accounts Payable Vouchers (Pay Bills)

Councilmember Palmer asked that Item E – Introduction of International Fire Code Amendments be removed for discussion.

MOTION: Councilmember Palmer moved to approve Consent Agenda Items A, B, C, D, and F with Item F paying Accounts Payable Check Numbers 143774 – 143799 in the amount of \$2,679.42, Accounts Payable Check Numbers 143800 – 143805 in the amount of \$967.46, Accounts Payable Check Numbers 143806 – 144011 in the amount of \$520,931.18, Payroll Check Numbers 94276 – 94309 in the amount of \$613,198.56, and Payroll Check Numbers 94310 – 94331 in the amount of \$42,946.56. The motion was seconded by Councilmember Campbell and carried unanimously.

4

Consent Agenda Item E – Introduction – International Fire Code Amendments

Discussion followed about more frequent inspection of hood and duct systems, the time for consumer use and discharge of fireworks (language was taken from State law), and the directional swing for doors (dependent on occupancy).

MOTION: Councilmember Palmer moved to approve Consent Agenda Item E, Introduction – International Fire Codes; the motion was seconded by Councilmember Campbell and carried unanimously.

Public Hearing – 2010 Comprehensive Plan Amendments

Development Services Director Steve Powers introduced Senior Planner Cac Kamak who gave a PowerPoint presentation and led this discussion. The 2010 Comprehensive Plan amendment process began in October of 2009 with a call for applications. The call for projects was advertised in the local newspaper, the City's website and on Channel 10 (cable television). The deadline for all applications was December 1, 2009, and despite the notices to the public, no sponsored applications were received. Although no privately-sponsored applications were received, staff identified certain City-owned properties that required land use changes. A preliminary docket that included three City-owned properties (Scenic Heights Trailhead site, Oak Harbor Reservoir site, SE corner of SR 20 and Fakkema Road formerly referred to as the Boyer Tract), an update to the Capital Improvements Plan 2010 – 2015, and an analysis of the City's UGA capacity were reviewed by the Planning Commission and the City Council for the 2010 Comprehensive Plan Amendments. The docket was recommended by the Planning Commission and approved by City Council on March 2, 2010.

Mayor Slowik opened the public hearing at 7:40 p.m. but there were no comments so the public hearing was closed.

Council Discussion

Discussion followed about the SR-20 and Fakkema Road property kept as open space rather than a public facility to meet the intent of this tract's purchase, and if Pioneer Way was in the Plan (yes). Discussion continued about the Reservoir site and the change from Planned Business Park to Public Facility and the requested five acres, a limited use parking area if the SR-20 and Fakkema Road property becomes an oak grove without jeopardizing the APZ designation, and the use of each five acre parcel within the Reservoir site (five acres to be retained by the City for the Reservoir, five acres to be returned to the current property owner). Discussion continued about the SR-20 property, its designation and potential uses, use of the Planning Commission's recommendations in draft minutes format, and mention that the Scenic Heights Trailhead project is proceeding well.

MOTION: Councilmember Munns moved to adopt the ordinance approving the 2010 Comprehensive Plan Amendments. The motion was seconded by Councilmember Palmer and carried unanimously.

Break

Mayor Slowik called for a five minute break at 6:55 p.m. and the meeting reconvened at 7:00 p.m.

Animal Services Contract – Whidbey Animal Improvement Foundation (WAIF)

Chief of Police Rick Wallace presented this agenda bill for the proposed contract between the City and WAIF for the purpose of providing animal shelter services for the City. The City of Oak Harbor and the WAIF Executive Director, on behalf of the WAIF Board of Directors, tentatively agreed to use the terms and conditions of the existing 2010 agreement for 2011, with several changes. Those changes reflect the animal control holding facility duties that WAIF will undertake to take custody of animals brought to the Navy Base facility by authorized animal control officers. City ordinance specifies the holding time periods. Thereafter, unclaimed animals will be transferred to WAIF ownership for adoption, foster care, shelter care, or other appropriate disposition. The current agreement expires December 31, 2010. This proposed contract would expire December 31, 2011.

Mayor Slowik called for public comments.

Barbara Moran, Clinton, WA. Ms. Moran gave City Council sheltering recommendations as reference material for the pending contract (attached to these minutes as Exhibit A). Ms. Moran, founder of Whidbey Animal Guild (WAG) talked about WAG's membership (75 members) and networking, the need for successful customer-based licensing programs to help underwrite shelters' costs, and collaborative community grants to assist with fostering and rescues. WAG has spent a lot of time researching grants and is willing to do the work toward progressive sheltering and would like to continue working toward that end. Good statistics need to be produced for major grant submittals. Dr. (Bob) Baker has visited other cities in the nation who have dynamic programs and generate revenue. Animals can be returned home with a customer-based licensing program. These programs could be brought here and coalitions could be built.

Karen Moore, Langley, WA. Ms. Moore spoke with concern about transparency, accountability, and accurate statistics. Ms. Moore referenced the Municipal Code language (addressing animal control), unavailability of ledgers and documentation at WAIF, and differences in the statistics for the number of dogs that have been euthanized. Animals should be kept a minimum of six days. Ms. Moore asked for better accountability, and talked about animals which could be released to rescue organizations, taken off WAIF's hands, and put into homes. Ms. Moore asked that a point person be assigned to answer questions or deal with WAIF.

Council Discussion

Discussion followed about WAIF Board members and the commendable job that WAIF does, if the contract term could be extended, the inadequacy of the current facility on the Navy Seaplane base, how ownership of animals is transferred to WAIF, recording requirements, use of the term "holding facility" for the new contract, the holding period for animals and the monthly contract amount staying at \$7,083.33. Discussion continued about material which had been provided to City Council members by Ms. Moran earlier in the week and that the proposed contract seemed to be consistent with

some of that material. Chief Wallace noted that Ms. Moore was testifying to statements and refuted her comments that he was not concerned. Public records requests to the City have been met, and there is no record of criminal malfeasance or wrong-doing at WAIF. Chief Wallace noted that this has been looked at by a number of people and complaints are reviewed. Discussion followed about the change from the general reference to animals which is now noted as dogs and cats. Feral cats have been removed from the contract and trap-neuter-release (TNR) is not working in a city setting. The concentration of the animal control officer should be on domestic dogs and cats, but the animal control officer and WAIF will continue to advise the public about feral cats. It was noted that the base, in the past, has had a feral cat population in wooded areas of the facility and Chief Wallace would check on this so animal control could help and assist the base. Discussion continued about financial records and audits as struck and rewritten in the proposed contract, accessibility of records, and if the Navy would be reviewing the contract with specific concern about background checks for the Contractor's employees working in a Naval base with suggestions to change the word "may" to "shall" and adding "if required." Discussion followed about licensing tags and the potential of tags to be a safety problem, and if a no-tag citation could be dismissed if licensing is substantiated.

MOTION: Councilmember AlMBERG moved to approve and authorize the Mayor to sign the WAIF contract on behalf of the City of Oak Harbor with the addition of the monthly amount of \$7,083.33 in Section 7A, Compensation; and add "shall" and "if required" in Section 2(A) 11 Services. The motion was seconded by Councilmember Severns and carried unanimously.

Authorization to Advertise for Bids – Pioneer Way Improvements Project

City Engineer Eric Johnston presented this agenda bill. The SE Pioneer Way Improvements Project involves the replacement and upgrade of street and associated improvements on SE Pioneer Way between City Beach Street and Midway Boulevard with the reconstruction of approximately 2,400 linear feet of roadway within seven downtown business district blocks, replacing pavement, sidewalks, and appurtenances from building face to building face. The work includes the underground conversion of overhead power and telecommunications facilities, the installation of approximately 500 linear feet of 12-inch sanitary sewer, and pipe bursting of approximately 1,200 feet of 12-inch sanitary sewer. Additional work included but is not limited to, warm mix asphalt paving concrete curb and gutter and sidewalks, traffic control, fire hydrants installation, water service line installation, storm drainage water quality facilities, illumination and signal modifications, temporary erosion and sediment control, property restoration, and landscaping. The project is a GreenRoads™ pilot project that will require documentation and assistance by the Contractor. All work shall be in conformance with the contract plans, contract provisions and the 2010 Standard Specifications for Road, Bridge and Municipal Construction. Final review by City staff (including Public Works, Development Services and Legal Departments) and the design engineer are currently underway. Based on the projected schedule, the contract will require that the work be substantially complete by September 2, 2011. Substantially complete means that the public has full access and use of the project but that there may some minor elements of work remaining.

An incentive payment for early completion of approximately 2% (roughly \$70k to \$80k) of the value of the construction will be included in the contract. If the work is completed prior to August 1, 2011, the contractor will receive the full incentive. The incentive payment will be reduced on a prorated basis for each calendar day up to September 1, 2011. A penalty, or liquidated damage will be applied for work not completed by the specified completion date following the standard WSDOT formula for liquidated damages. The schedule reflects one possible way for the contractor to proceed with the work. Limitations are being placed on how much of the work can be undertaken at one time. In basic terms the roadway and City utility work will be undertaken in two halves: City Beach Street to Dock Street and Dock Street to Midway Street. The overhead utility relocation work will not be limited in order to meet the September completion date. While it is reasonable to expect that the Contractor may choose to perform some elements of the project during nighttime hours, the contract requirements do not require night work as part of the project. Night work typically adds a 20% to 30% increase to the project cost and often is less productive than normal working hours. The contract does include prohibitions on work around the Holland Happenings events and other holiday periods including Presidents Day, Martin Luther King Day, Memorial Day and the July 4th Holiday. Previous Council resolutions and the adopted 2009-2010 and 2011-2012 budgets include \$8.35 million in funding for the project. A summary of the project costs is attached. The project costs include the hard construction costs as well as the other estimated project related costs. Contingencies are built into the construction estimates. While not required by OHMC 2.330, Council authorization to advertise for public bidding is consistent with recent practices.

Mayor Slowik called for public comments.

Kristi Jensen, 1380 SE 8th, Oak Harbor. On City Beach Street to Dock Street and then Dock Street to Midway, does City Beach Street to Dock Street become available for use by the public? Done in two sections - City Beach Street to Dock Street and then Dock Street to Midway, would the first section be usable?

Mel Vance, P.O. 2882, Oak Harbor. The bonus money for early completion – how is that accounted for? Since we are committed to a one-way street, retain the parallel parking and work on one half of the street which would ease construction impact and keep traffic moving. Then move forward with the angled parking.

There were no other public comments.

Council Discussion

Mr. Johnston was asked to address Ms. Jensen's and Mr. Vance's questions. This is difficult to answer and has been a concern for some time. In developing the schedule and specs, we would be mostly complete with the first half and then move to the second half; confine the work to one half at a time although all work would not be completely done before moving on to the next section. When a contractor is awarded the bid, the contractor will submit a schedule and we need to reserve the right to say that work can proceed if it is advantageous to the City. The street will be useable and functional before moving to the next section but it may not have all of the refinements. The street will be open to traffic and pedestrians during the course of the project. Our intent is to make the street one-way early on in the project which is an advantage in terms of time

and cost savings. The bonus incentive was also clarified as defined in WSDOT's 2010 Standard Specifications.

Discussion continued regarding funding amounts, soft construction costs, the use of an office in downtown space during the course of this project, how the bid is awarded and qualifications of contractors who respond, no sales tax on roadway construction, night work and costs, infrastructure and what can be done in sections (power infrastructure cannot be split, but sewer manhole-to-manhole can be done in sections), and the bid language. Discussion followed about the 9% contingency, how the timeline is progressing and the structure of the timeline, how the light standards will be used for other purposes, the use of a construction management firm and what they do for a project, how staff is involved with construction management, and the Windjammer Plan and two-way roadway recommendations. Councilmember Alberg stated, for the record, that the Windjammer Plan also said that the City should consider one-way.

MOTION: Councilmember Alberg moved to pass Resolution 10-26 authorizing staff to advertise the SE Pioneer Way Improvements Project for bidding. The motion was seconded by Councilmember Munns.

Discussion continued about tax on roadway projects (no tax), wiring for the light standards being underground (yes) and done all at once (yes), and contact with the property owners about their costs for power to their buildings. Mayor Slowik clarified that the property owners were made aware of those costs as individual owners were contacted concerning the right-of-way.

VOTE ON THE

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

Break

Mayor Slowik called for a break at 8:35 p.m. and the meeting reconvened at 8:40 p.m.

Professional Services Agreement – EnviroIssues, Pioneer Way Improvements Project

Development Services Director Steve Powers presented this agenda bill and introduced Erin Taylor, EnviroIssues who was also in attendance at this meeting. Mr. Powers led a PowerPoint presentation and noted that Attachment Three in the agenda packet was out of order. Mr. Powers also pointed out that there will be three newsletters and the refreshments line item should be \$200 not \$300. This agenda bill requested approval of a professional services contract with EnviroIssues for assistance with the SE Pioneer Way Street Improvements Project. The contract, which has a not to exceed limit of \$149,897.46 will provide construction outreach for the project. EnviroIssues will be a key point of contact providing information to the general public and will track, communicate resolution, and respond to community concerns and questions voiced during construction activities. The contract timeframe is between January 1, 2011 and December 31, 2011. The scope of work includes five tasks as identified below.

Specific deliverables are also listed; the completion date of these items will depend to a very large degree on the construction schedule.

- Task 1: Task management
- Task 2: In-person outreach readiness/execution
- Task 3: City-sponsored outreach events
- Task 4: Attraction-oriented promotional activities
- Task 5: City communications

The proposed contract is for construction outreach services. It does not provide for the marketing activities as described by the Chamber of Commerce's Pioneer Way Revitalization: Marketing and Economic Stabilization Plan that was presented at the October workshop. It is anticipated that a separate agenda item will be presented to the Council on this topic.

Mayor Slowik called for public comments.

Jill Schacht, 690 SE Pioneer Way, Oak Harbor. As a business person in downtown Oak Harbor, please prioritize communication and make it a consistent effort throughout the project to business customers and the general public. Having a professional take on that job would be important.

Mel Vance, P.O. Box 2882, Oak Harbor. I have nothing against EnviroIssues but I've heard this project referred to as a Cadillac plan and it should be and has been scaled back. Some of these tasks could be done by a construction management company. I also have seen no indications on how much will be lost in sales tax revenue during this project. Start thinking Yugo instead of Cadillac and what we have to have instead of what we want to have.

There were no other public comments.

Council Discussion

Discussion followed about EnviroIssues' transportation costs (ferry, company cars, personal cars), onsite EnviroIssues staff members (between three staff members with Katie Fredlund as the primary staff member), choosing another firm closer to Oak Harbor, and the amount of pre-construction funds used to date. Mr. Johnston talked about the City's project specialist who will be in the downtown office each day but cannot be responsible for all of the communication needs. This position will be hired from Public Works' approved operations budget which is separate from the project budget. Discussion continued about the \$149,897.46 being requested for EnviroIssues' outreach assistance, costs for the project specialist (who will also be working on other projects along with Pioneer Way), construction outreach as a large part of this project, inclusion of Harborside Merchants, how to distribute daily updates on the Pioneer Way project, use of Channel 10, and local contact rather than hotlines and blogs that are not staffed in Oak Harbor. The public will want to talk with someone onsite; consider removing task two. The City's project manager will be a reactive position while outreach needs to be proactive and anticipate problems. Discussion continued about the positive use of blogs which, in past projects, have garnered positive hits rather than meeting comments. Graphics and brochures have been excellent and easy for the layman to understand. Discussion followed about returning this proposed agreement to staff for further refinement.

MOTION: Councilmember Munns moved to table this agenda item to the first meeting in January (January 4, 2011) to allow this to be reworked. The motion was seconded by Councilmember Campbell.

Discussion continued about timing and that January and February are critical outreach months. It was suggested that outreach be included in the complete bidding package, that if that is done the City would lose control of outreach since it would be part of construction management, and that staff should have a chance to return this to Council. It was noted (but not a motion) that this could be remanded back to staff until the City receives bids and the construction management contract is in place which would place this in the first meeting in February. It was noted that this is not on the critical path of the construction schedule but there are tasks that may be of importance to the merchants and community. With regard to construction management, the City did consider that this contractor would also become responsible for outreach. One of the construction management companies contacted would be using Envirolssues since construction management deals with contractors. Inclusion with construction management could also increase the City's costs.

AMENDMENT TO THE

MOTION: Councilmember Dudley moved to amend the motion to include the critical public outreach that needs to be done in January and February. The motion was seconded by Councilmember Severns.

VOTE ON THE AMENDMENT TO THE

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

VOTE ON THE ORIGINAL

MOTION (as amended):

The original motion carried unanimously.

Break

Mayor Slowik called for a break at 9:55 p.m. and the meeting reconvened at 10:00 p.m.

Oak Harbor Marina – As part of the Oak Harbor Parks Department

Development Services Director Steve Powers presented this agenda bill in response to a City Council request for information related to the Marina and whether it should be included as part of the Parks Department. Mr. Powers introduced Harbormaster Mack Funk and present and past Marina Committee members, Bob Nelson and Steve Williford. It was assumed that there are two main areas of interest related to this topic: operations and funding. The Marina is an Enterprise Fund operation with moorage and other customer-generated revenues supporting operations, maintenance and capital expenditures. The Marina is already included in the adopted Parks, Recreation and Open Space Plan. Including the Marina in the Plan allows the City to take advantage of State grant opportunities. The Marina is presently the recipient of some General Fund monies in the form of leasehold tax, non-moorage customer generated revenues (storage unit fees), City Hall staff time and park maintenance activities. The Parks

Department budget (General Fund) is allocated to the personnel and material costs associated with maintaining the City's existing parks and open spaces. Assuming that there were un-allocated General Fund monies available, the City Council could make the policy decision to allocate those funds for Marina-related activities without first moving Marina operations under the control of the Parks Department/Public Works Department. Taking the above into consideration, there appears to be no operational or funding advantage to including the Marina as part of the Parks Department. Mayor Slowik asked Councilmember Campbell, who had made this request for information, if his questions had been answered. Councilmember Campbell thanked staff for this thorough presentation but had wanted to review the good and bad points of the Marina as part of the Parks Department.

Mayor Slowik called for public comments.

Bob Nelson, 1415 SE 9th, Oak Harbor. Mr. Nelson felt that this is a public park in reality (as example, the amount of fishing), and complimented the Marina staff for the great job they do in maintaining the facility.

Steve Williford, 2541 SW Pete's Lane, Oak Harbor. Mr. Williford expressed his appreciation to Councilmember Campbell for approaching this idea and other resources for funding was the consideration. Moving the Marina to the Parks Department would lose Enterprise Fund status and the General Fund could funnel monies away from the Marina. We do need to look at alternative funding sources. My Marina bill went up \$46.00 per month with the dredging assessment.

Mel Vance, P.O. Box 2882, Oak Harbor. Operationally, there is no benefit in moving the Marina to the Parks Department. There is financial concern that Marina should be separate but the City could use Parks Funds to augment the Marina. The concern with using Parks Funds though, is we are behind on maintenance in existing City parks.

There were no other comments.

Council Discussion

Discussion followed regarding finding funding sources for the Marina as a goal, if the Marina as part of the Parks Department would see funds taken for Parks, the definition and use of an Enterprise Fund, and use of Parks employees to help staff potential revenue activities such as fishing fee collection. Discussion continued on how the Marina would answer to two different departments since Development Services and Public Works are different in nature, but not necessarily different in administrative oversight. There would also be two advisory boards (Parks Board and Marina Committee) and how would they be coordinated. Unallocated funds are scarce even though General Funds can be spent on any eligible activity. Mr. Williford's earlier suggestions would not necessarily have to fall under the Parks Department and could, through a Code amendment create the appropriate authority. It would be challenging to put an Enterprise Fund inside a General Fund, although the Public Works Department holds both Enterprise and General Funds. There are limited funds in the Parks Department and the Marina's Enterprise Fund is at least producing some of its own revenue. Changing the Marina's funding designation could also adversely affect bonding. If there is issued debt, then under State law (GASB 34) the Marina must keep its Enterprise designation.

Discussion followed that there seemed to be no substantive reason to make a department change or commingle this department yet there was agreement with Mr. Williford's public comments at the beginning of this meeting to find other funding sources such as an honor box for ramp use. Discussion continued that putting the Marina into the Parks Department does not mean funds would have to be commingled and the Marina could be left as an Enterprise Fund in the Parks Department. Catalina Park jointly shares maintenance with Marina and Parks staff. Discussion returned to the lack of funding available in the Parks Department to assist the Marina. Mayor Slowik also noted that moving the Marina to the Parks Department would mean the Marina would be competing with the Parks Board's goals and the Marina Committee would need to fall within that hierarchal organization. The issue is funding and tenant ideas that were presented this evening are good and can remain in the Enterprise Fund. These ideas can be addressed in the first quarter of this coming year.

Councilmember Campbell again thanked staff and Council Members for their comments.

City Administrator's Comments

City Administrator Paul Schmidt asked Finance Director Doug Merriman to give a brief report and Mr. Merriman distributed a Memorandum (Exhibit B) on a final adjustment to the 2011 budget. Mr. Schmidt noted that a workshop will be potentially scheduled in January to discuss the Attorney General's opinion on meetings. As standing committees are noticed today, a quorum of Council members would require double-noticing of these meetings. Mayor Slowik asked that only assigned Council members attend each of the respective four standing committee meetings. Mr. Schmidt talked about upcoming meetings and cancellations.

Council Members' Comments

Council Members gave their respective committee reports. Councilmember Campbell talked about the excellent work that the Joint Tourism Board is doing and suggested the City's funding participation return to 2%. Councilmember Munns talked about AWC, the Pearl Harbor Remembrance Celebration, and the fundraising event for Muscular Dystrophy. Councilmember Almborg talked about the Saratoga Chamber Orchestra's upcoming performance at Oak Harbor High School. Councilmember Dudley asked about the upcoming workshop on the Attorney General's opinion and if staff would be bringing forward options (yes). Councilmember Dudley also asked about Mr. Merriman's Memorandum and if the \$12, 626 reduction in equipment purchases would be the Police Department's digital equipment in the jail (yes). Mr. Dudley felt this purchase should remain a priority and at least come out of the City's reserves.

MOTION: Councilmember Dudley moved to take \$12,626 from reserves to continue funding the digital equipment needed for the jail.
The motion died for lack of a second.

The subject could be discussed during the Finance Standing Committee meeting. Councilmember Dudley thanked everyone associated with the Annual Thanksgiving meal, Harvest Fest. Also thanks to Sunrise Rotary for hanging Christmas decorations

on the light standards. Councilmember Severns thanked everyone associated with the Christmas tree lighting downtown.

Mayor's Comments

Mayor Slowik talked about the snow day and its effect: 66 accidents, 17 street closures, Deception Pass was closed for 7 hours, 10 homes and 1 commercial building had burst pipes, 2 fires, 2 deaths and an earthquake. Mayor Slowik commended Public Works staff who worked late into the night, Police Department staff, and Fire Department staff all of whom added additional crews. Mayor Slowik also spoke about his meeting with the Navy concerning the wastewater treatment plant, Seaplane Base, animal facility, and domestic violence. Mayor Slowik will also be attending the Sailor and Marine of the Year awards on Friday as sponsored by Navy League and Rotary.

ADJOURN

With no other business coming before the City Council, Mayor Slowik adjourned the meeting at 11:10 p.m.

Connie T. Wheeler
City Clerk

The keys to progressive sheltering

Revenues generated by customer service based licensing programs that reward responsible pet owners and educate irresponsible owners

Active coalition building among local animal-based resources to qualify for substantial grant funding and guidance

Transparency and accountability related to record keeping for the purpose of qualifying for grants and getting whatever real assistance is needed (toward reducing euthanasias, building foster programs, working with rescue organizations, creating effective adoption outreach strategies. Shelter statistics are openly published so the community remains engaged in finding solutions)

Adopting a "no-kill" philosophy that emphasizes emptying shelters, not building bigger ones (with specific guidelines related to animal killings using the identifiable terms healthy, treatable-manageable, treatable-rehabilitatable, unhealthy, untreatable) Behavior intervention is valued as much as veterinary intervention, and it is recognized that animals exhibiting negative behaviors may be stressed from the shelter, and do better in loving foster homes, adoptive homes, or under the care of specialized rescue groups

Government that has made animal welfare a priority and 1. treats the issue with intelligence and respect 2. understands that pets are an important part of people's lives 3. sometimes those people need help, too

ASPCA Professional

You Are Here:

[Home](#) > [Saving Lives](#) > [Return to Owner](#)



Return to Owner

Saving Lives Through Successful Dog Licensing

Through an effective licensing program, the City of Calgary, Alberta, Canada Animal Services returns approximately 89% of missing dogs to their owners, with approximately 85% returned within 24 hours.

Animal Services is now viewed as providing a necessary service as opposed to ending the lives of dogs.
Calgary Animal Services

What It Takes

- Support of government and a variety of partnering organizations.
- Strong statutes to support the licensing campaign.
- A zero tolerance policy.
- Aggressive public education program.
- Different ways for people to purchase licenses.



What We Like

Using education and strict licensing law enforcement to increase RTOs and reduce euthanasia.

Step by Step

1. Download the complete profile (.pdf)
2. Assess for yourself whether this program is right for your agency.
3. Grab the sample materials and get started.
4. Tell us how it goes.

Save Lives Now!



See if these provocative adoption ads can work for you.

Go!

Foster Care Starter Kit



Download and distribute this cat foster care manual.

Go!



Sample Materials

[Responsible Pet Ownership ByLaw \(.pdf\)](#)

[Animal Services Newsletter \(.pdf\)](#)

©2010 ASPCA. All rights reserved. | [Legal Information](#) | [Visit ASPCA.org](#)
Powered By Mediasation CMS



City of Calgary Animal Services: Dog Licensing Program



Compiled by ASPCA® and distributed to the field, July 2007.
Visit the ASPCA® National Outreach website for animal welfare
professionals: www.ASPCApro.org.

City of Calgary Animal Services

Successful dog licensing



Calgary has a successful dog licensing program where currently there are more than 90,000 licensed dogs in the city of Calgary, which represents 90% of the dogs in Calgary.

Through an effective licensing program, the city of Calgary Animal Services has a save rate of 97%. Approximately 89% of dogs are returned to their owner, with approximately 85% returned within 24 hours.

Stats

- Of the 5,000 dogs that entered their shelter in 2004, Calgary had a save rate of 97%.
- The 3% that are euthanized are due to significant health or behavioral issues.
- Approximately 85% of the dogs impounded by Animal Services are returned with 24 hours

How Cool is That?

We are impressed with the amazing statistics that Calgary has been able to achieve both in returning dogs to owners and decreasing their euthanasia rates. They have combined a strong education campaign with strict enforcement and remained open and accessible to their community.

Adopt or Adapt

Spokane Regional Animal Protections Services in Spokane, Washington has already taken this model and implemented it. You can read about their program on our website. If you're not ready to implement the whole program, consider implementing on-line license renewals and let your community know exactly what their license monies fund.

If you are looking for grant support in your planning, consider applying for a [PetSmart Charities Curious Cat Grant](#).

City of Calgary Animal Services

Calgary has a successful dog licensing program where currently there are more than 90,000 licensed dogs in the city of Calgary, which represents 90% of the dogs in Calgary.

Through an effective licensing program, the city of Calgary Animal Services has a save rate of 97% of dogs 89% are returned to their owner approximately 85% retd within 24 hours.

As Calgary continues to grow, the demand on the shelter has remained stable with slightly more than 5,000 dogs being impounded annually.



Who They Are and What They Do

Ingredients and Prep Work

Step by Step

Results

Some Words of Wisdom

Your Next Step

Who They Are and What They Do

City of Calgary Animal Services
2201 Portland St. S.E.
Calgary, Alberta T2G 4M7

At Animal and Bylaw Services, their mission is to "encourage a community where pets, their owners and neighbours can live in safety and harmony."

The City of Calgary Animal and Bylaw Services

- Develops, maintains and enforces City of Calgary bylaws
- Cares for all animals impounded under the bylaw
- Educates residents of Calgary about responsible pet ownership

Ingredients and Prep Work

Prerequisites

- A local statute to support the license campaign. Calgary has been aggressive in its Licensing campaign since the 1980's, and success has resulted from many cases of trial and error this program has taken more than 20 years to achieve the results that it has today.
- A municipal government that makes animal issues a priority. Calgary's success comes from having a solid foundation; this foundation is provided by support from politicians and decision makers coupled with strong legislation that provides them with the appropriate penalties and appointments to successfully get the job done.
- A strong group of partners to work together. In Calgary, the veterinarians, rescue agencies, animal control agencies and retailers are involved and supportive.
- A clear statement for dog owners of the value they receive for their license fee.

Timeline

- Calgary has been aggressively pushing the licensing program since the late 1980's and started to see significant results in the latter 90's.
- Since the 80's, the population of Calgary has grown from 500,000 to nearly 1 million. Since 1985, they have seen a reduction in aggressive incidents by approximately 75%.

21

Step by Step

1. Understand the significance of licensing and the impact it has on making owners responsible for their animals.

Calgary's program is a combination of education and strict enforcement. Animal Services is out in the community attending events and visiting schools with a program about responsible pet ownership. They couple education with their strict penalties for unlicensed dogs.

2. Maintain good statistics on return to owner rates and euthanasia rates.

Calgary makes all its statistics available to the public online.

3. Enact strong legislation and penalties related to non-compliance.

In Calgary, the penalty for an unlicensed dog is \$250 and is a zero tolerance policy.

4. Gain commitment from your organization to provide necessary resources to achieve success.

In Calgary they started out with mill rate support which provided for a significant contribution from tax dollars in the beginning to get the program running.

5. A solid computer program to track owners and animals.

Calgary has made it easy for the public to buy and renew licenses online.

Results

The Numbers

- Of the 5,000 dogs that came into the shelter in 2004, Calgary had a save rate of 97%. The 3% that are euthanized are due to significant health or behavioral issues.
- Their euthanasia rate for dogs is 3%. These are euthanized due to aggression, behaviour, or health not because they euthanize healthy adoptable dogs.
- Approximately 85% of the dogs impounded by Animal Services are returned with 24 hours
- There is less stress on staff due to fewer euthanasias.
- Less stress on their facility. Dogs are going home much faster.
- People are becoming more responsible dog owners: they have their dogs licensed. There is an increase in permanent identification (use of microchips or tattoos).

Critical Factors

- To be effective, voluntary compliance needs to be achieved, and Calgary has worked hard to teach people the importance of licensing and responsible dog ownership.
- Continual relationship building among their partners so that they support their program and help educate pet owners that they interact with
- Vision and adaptability: knowing what the trends are in the city and being able to address those trends. For example: when dogs are adopted through the Calgary Humane Society, Calgary gives them a free 6 month license. The advantage is that when the dogs are adopted, they are in their system and easy to track. So they will be licensed for life. They are currently working together with other rescue foundations to grant them free licensing for a limited period of time so that they can get those dogs into their system and track them also.

22

- Continuously strive to be better - examine what other agencies are doing and determine if their program and initiatives can work in Calgary.
- A data system that meets their needs.
- Officers trained in mediation; able to educate people along with enforcement
- Education: sharing the statistics and successes. Renewal system that is easy for people to use and cost and time efficient for the shelter. License renewals are mailed out a month in advance and due the first week of the month. A second notice is mailed on the 10th or 11th of the following month after the license is due. Then any unpaid licenses go on an exception report and the officers call individuals who have not renewed their license. Citizens are advised to pay immediately or they risk a \$250 fine.
- Citizens have a variety of ways to renew their license making it very easy: over the phone, by mail, at the bank at our office, downtown at city hall.
- Approximately every 18 months they have a license campaign to remind people of their zero tolerance policy
- Support from the animal business related community

Thinking Outside the Box

Their licensing program supports a wide range of services, that Calgary is diligent about telling the public. With the income from licenses, they are able to:

- Feed and shelter unclaimed cats and dogs in a veterinarian inspected facility Transport lost dogs that require emergency care to a veterinarian
- Operate dog and cat adoption programs
- Help neighbors resolve dog related problems
- Return lost dogs to their owners where they operate a drive home program
- Operate a volunteer program for socializing dogs and cats awaiting adoption
- Operate school and community education programs
- Provide dog owners with a vinyl emergency window sticker.

How They Feel About What They Did

They are understandably proud of their program. In addition to the powerful statistics they have also noticed a change in perception on the part of the public.

Animal Services is now viewed as providing a necessary service as opposed to ending the lives of dogs.

Their Next Steps

- Calgary is considering life-long dog licensing.

Some Words of Wisdom

Be Prepared For

- Changing attitudes: dog owners becoming advocates for licensing and programs in general
- People becoming intolerant of individuals who aren't responsible dog owners
- When people adapt an attitude of responsible pet ownership, every agency benefits. This attitude impacts other areas of pet ownership: spaying and neutering, permanent identification

- Improving stats all around: there are fewer dogs at large, fewer incidents of dog aggression, less defecation in parks

Your Next Step

With the information we've provided, can you start a program like this in your organization? The profile of the City of Calgary Animal Services on the ASPCA® National Outreach website includes a list of resources to get you started.

Calgary Animal & Bylaw Services: Thumbnail Sketch

City of Calgary Animal & Bylaw Services
2201 Portland St. S.E.
Calgary, Alberta
T2G 4M7



www.calgary.ca/animalservices

The mission of Animal & Bylaw Services is to "encourage a community where pets, their owners and neighbors can live in safety and harmony."

The City of Calgary Animal & Bylaw Services develops, maintains and enforces City of Calgary bylaws; cares for all animals impounded under the bylaw; and educates Calgarians about responsible pet ownership.

Budget

\$2.9 million

Business Type

Government agency

Home // Animal Advocacy // Why Transparency?

Why Transparency? Share This

Richard Avanzino built the first No Kill city as Executive Director of the San Francisco SPCA. In 1999, he became the first President of Maddie's Fund, a family foundation funded by PeopleSoft founder Dave Duffield, and his wife, Cheryl, to help create a No Kill nation.

With transparency as one of the most important ways to bring forth public awareness about the reality that homeless pets face, Maddie's Fund requires all shelters within a city to work together and report detailed statistics of their data, including the number of animals taken in, the number adopted out, and the number killed. This requirement has prevented many communities from getting grants, because many traditional shelters have historically not wanted to disclose their data. Here, Avanzino elaborates on the importance of transparency to the No Kill model.



Transparency is one of the cornerstones of the Maddie's Fund philosophy.

Although transparency in the non-profit world generally refers to financial information, I am referring to shelter data, or specifically tracking and publicly reporting the outcome of every live dog or cat who crosses the shelter threshold.

To achieve transparency, shelters should start by collecting and publishing shelter animal intakes and outcomes, using nationally recognized definitions that categorize animals as "healthy", "treatable" and "unhealthy & untreatable". Publishing this data means promoting it on websites and in newsletters so the whole world can see what's happening.

Many shelters say they don't want to publish their statistics because the organization will look bad. If an agency fears looking bad, something is going on. Regardless the reason, if large numbers of dogs and cats are dying, the public should know. We owe it to the animals to tell the community what's taking place in the shelter system. Not only does the public have the right to know, but once the information is exposed, there is greater opportunity for solutions to be found to reduce the killing. If the community doesn't know what's happening, it can't help.

In my opinion, real transparency means no fudging allowed. If an organization saved all of its healthy animals except for 25 friendly, healthy pit bulls that were killed because of a local mandate, those animals have to be accounted for and listed as healthy deaths. They can be asterisked (e.g., "the Humane Society saved all of its healthy shelter dogs and cats except for 25 pit bulls who were killed because of a local ordinance prohibiting pit bull placement"). But the organization has to be transparent and account for those deaths.

Another situation that tends to go unreported is owner/ guardian requested euthanasia. It's not

26

uncommon for shelters to euthanize animals at a guardian's request then exclude them from overall shelter intakes and deaths. In other words, the animals simply don't show up in public records.

Rather than fearing or fighting transparency, animal welfare organizations should embrace it. When an organization is forthcoming and demonstrates it has nothing to hide, its vulnerability to exposés and allegations is substantially reduced. If there is a problem, the best way to address it is to talk about it. Cover-ups cause people to lose faith and question an organization's honesty. Refusals to disclose information only make people assume the worst.

Transparency is a big plus even if an organization is less than perfect, because it allows the community to monitor improvement. When the public can see that an agency is saving an increasing number of dog and cat lives, it enhances the organization's reputation, which builds community trust, which increases financial support, which saves even more lives — and the positive momentum keeps building for the animals.

For more information, visit maddiesfund.org.



Community Collaborative Grant Guidelines

Maddie's Fund® wants to help communities achieve no-kill status, whereby all their healthy and treatable shelter dogs and cats are guaranteed loving homes within ten years. To achieve this goal, Maddie's Fund intends to financially support community-wide collaborations of adoption guarantee organizations, animal control and traditional shelters, and private practice veterinarians, working together to provide an adoption guarantee for all their healthy shelter dogs and cats by the start of Year Five and to extend that guarantee to include all treatable shelter pets by the end of Year Ten. (For an explanation of these terms, please refer to the [Animal Organization Categories and Health & Behavior Categories for Animal Shelters](#) documents.)

If your community is interested in applying for a Community Collaborative Project Grant, we suggest you begin the application process with the Maddie's Fund Starter Grants.

NEW FEATURES IN REVISED GUIDELINES

- Maddie's Fund has increased the funding for the Adoption and Spay/Neuter programs of the community collaborative project.
- On a case-by-case basis, Maddie's Fund will consider animal control or traditional shelters for Lead Agency.
- The Lead Agency for the Spay/Neuter program can be a veterinary medical association, non-profit animal welfare organization, or a spay/neuter organization.
- In addition to private practice veterinary hospitals, non-profit and government clinics may now participate in the Spay/Neuter program.
- A sustainability requirement has been added.
- To increase the likelihood that funded projects will be able to achieve an adoption guarantee by Year 5, more emphasis is being placed on reducing healthy shelter deaths.
- Maddie's Fund is using new definitions in classifying shelter animals: adoptable, treatable and nonrehabilitatable have been replaced with healthy, treatable-manageable, treatable-rehabilitatable, and unhealthy & untreatable.

There are two programs within the Community Collaborative Project, Adoption Program and Spay/Neuter Program, which both must be applied for together.

[Click here to download the complete Community Collaborative Project Grant Guidelines](#) 

Adoption Program Documents

- [Adoption Application](#) 
- [Contact Information for Participating Groups](#) 
- [Sample Maddie Recognition Plan](#) 

Shelter Reporting Forms

- [Adoption Guarantee & Traditional Shelter Annual Form](#) 
- [Adoption Guarantee & Traditional Shelter Monthly Form](#) 
- [Animal Control & Community Annual Form](#) 
- [Animal Control & Community Monthly Form](#) 
- [Glossary of Terms](#)
- [Animal Organization Categories](#)
- [Health and Behavior Categories](#)
- [A Guide to the Asilomar Definitions](#) 

Spay Neuter Program Documents

- [Spay Neuter Instructions](#) 
- [Spay Neuter Application](#) 
- [Sample Letter to Veterinarians Requesting Stats](#) 
- [Sample Baseline Year Reporting Form](#) 
- [Sample Baseline Year Report to MF](#) 

[Site Map](#) | [Grant Guidelines](#) | [Funded Projects](#) | [Resource Library](#) | [No-Kill Progress](#) | [About Us](#) | [Privacy Policy](#) | [Terms of Use](#)

Facebook  | Twitter  | RSS 

Maddie's Fund® | 2223 Santa Clara Avenue, Suite B | Alameda, CA 94501 | Fax 510.337.8988 | Phone 510.337.8989 | info@maddiesfund.org



Funded Community Collaborative Projects

The ability of diverse animal welfare groups to work together in an environment that promotes trust, cooperation, and harmony is important for creating a community-wide, no-kill safety net for companion animals.

Maddie's Fund supports coalitions of animal control agencies, traditional shelters, adoption guarantee organizations, and private practice veterinarians so entire cities, counties, and states can pool their talent and resources to end the killing of healthy and treatable dogs and cats within ten years.

Projects are funded in diverse geographic, demographic, and socio-economic regions to demonstrate that models of lifesaving can be created throughout the country.

Maddie's Community Collaborative Projects

- [Maddie's Projects in Alachua County, Florida](#)
- [Maddie's Projects in Baldwin County, Alabama](#)
- [Maddie's Projects in Dane County, Wisconsin](#)
- [Maddie's Projects in Erie County, NY](#)
- [Maddie's Projects in Maricopa County, Arizona](#)
- [Maddie's Projects in Mobile, Alabama](#)
- [Maddie's Projects in New York City, New York](#)
- [Maddie's Projects in Tuscaloosa County, Alabama](#)
- [Completed Community Collaborative Projects](#)

[Site Map](#) | [Grant Guidelines](#) | [Funded Projects](#) | [Resource Library](#) | [No-Kill Progress](#) | [About Us](#) | [Privacy Policy](#) | [Terms of Use](#)

Facebook  | Twitter  | RSS 

Maddie's Fund® | 2223 Santa Clara Avenue, Suite B | Alameda, CA 94501 | Fax 510.337.8988 | Phone 510.337.8989 | info@maddiesfund.org



Starter Grants Guidelines

Guided by its mission to revolutionize the status and well-being of companion animals, Maddie's Fund® is devoting its resources to help build a no-kill nation. Towards that end, Maddie's Fund wants to support local coalitions that combine the talents and resources of adoption guarantee organizations, animal control agencies, and traditional shelters to end the killing of healthy and treatable shelter dogs and cats in their communities within 10 years.

To help build coalitions, Maddie's Fund has created a new series of grants. Starter Grants offer coalitions monetary assistance as they work on the various components of their community collaborations: collecting shelter statistics; reporting shelter data using terminology and definitions presented in the Asilomar Accords; preparing yearly business plans; formulating 10-year strategic plans; and developing Pet Evaluation Matrixes.

- Community Shelter Data Grant (\$10,000 - \$40,000)
- Business Plan for Saving Lives (\$5,000 - \$10,000)
- Strategic Plan for Saving Lives (\$10,000 - \$20,000)
- Pet Evaluation Matrix (\$5,000 - \$10,000)

These grants can help collaborative efforts by providing a starting point and the tools necessary to help achieve lifesaving goals. Whether your focus is to lead the animal organizations in the community to a no-kill status on your own through local programs and projects, or to use the starter grants to bring the coalition to the point of applying for a Maddie's Fund Community Collaborative Project Grant, these building block grants can help your coalition close the gap between where your community currently is and where you want it to be in the future.

ELIGIBILITY

Coalitions of animal groups operating in any county, region or state in the United States with a human population of 100,000 or greater are eligible to apply for these grants.

Any animal group can apply on behalf of its coalition. Applicants for Maddie's Fund Starter Grants can be animal control agencies, traditional shelters, or adoption guarantee organizations.

Maddie's Fund Starter Grants must be applied for in order, starting with the Community Shelter Data Grant. Coalitions that receive a Community Shelter Data Grant are eligible to apply for a Business Plan for Saving Lives Grant. Coalitions that receive a Business Plan Grant are eligible to apply for a Strategic Plan for Building a No-Kill Community Grant. In addition, coalitions may apply for funding to develop a community-based Pet Evaluation Matrix (Pet Evaluation Matrix Grant).

Shelter statistics need to be collected from all groups participating in the coalition. At a minimum, the coalition should include all animal control agencies and all traditional shelters located in the target community. The coalition also needs to provide an opportunity for adoption guarantee organizations located in the target community to participate. Each participating group in the coalition must agree to publish their shelter statistics on their website and in at least one major publication (annual report, newsletter, etc.).

[Click here to download the complete Starter Grant guidelines.](#) 

Starter Grants Funding Opportunities

- [Shelter Data Grant Application Instructions](#)
- [Business Plan Grant Application Instructions](#)
- [Strategic Plan Grant Application Instructions](#)
- [Pet Evaluation Matrix Grant Application Instructions](#)

[Site Map](#) | [Grant Guidelines](#) | [Funded Projects](#) | [Resource Library](#) | [No-Kill Progress](#) | [About Us](#) | [Privacy Policy](#) | [Terms of Use](#)

Facebook  | Twitter  | RSS 

Maddie's Fund® | 2223 Santa Clara Avenue, Suite B | Alameda, CA 94501 | Fax 510.337.8988 | Phone 510.337.8989 | info@maddiesfund.org

InterOffice Memo:

To: Members of the City Council
 Jim Slowik, Mayor
 Paul Schmidt, City Administrator

Fr: Doug Merriman, Finance Director

Date: 12/7/2010

RE: Final adjustments to 2011 budget

Prior to the adoption of our 2011-2012 Biennial Budget ordinance at the November 16th City Council meeting, we discussed the announcement by the Police Association of their decision to retain their COLA for 2011. The projected salary impact of the 2% COLA is approximately \$70,000. This change has required further review of the budget in order to adjust, under State law, other areas of revenues or expenditures to balance out this financial impact.

After careful consideration, the following adjustments will be made to the 2011 budget:

| | |
|-----------------|---|
| \$43,486 | Replacement patrol officer will be hired mid-year. |
| 13,888 | 2% reduction in AWC health insurance premiums expense |
| 12,626 | Reduction in equipment purchases |
| <u>\$70,000</u> | |

- 1) The police department currently has a vacant officer position. Based on the recommendation by the police chief, the hiring for this position can be deferred until mid-2011. The associated reduction in payroll and benefits expense is \$43,486.
- 2) The City has been involved in the AWC Wellness program during 2010. As of December, we have been successful in achieving the necessary activity points to receive a 2% reduction in our AWC Health Insurance Premiums for 2011. Total projected premiums for 2011 are \$694,380, making our projected discount to be \$13,888. This discount was not projected in the preliminary budget.
- 3) A review of capital outlay for equipment purchases has been made with an adjustment being made to limit to the amount as shown.

These three items represent the final balancing adjustments to the 2011 General Fund Budget. Please note that the implementation of these three adjustments will ensure that this remaining balancing exercise does not involve a provision for reducing our targeted ending fund balance reserves.

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

Bill No. 2

Date: DECEMBER 21, 2010

Subject: PUBLIC COMMENTS

FROM: Jim Slowik, Mayor

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

SUMMARY STATEMENT

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

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

Bill No. C/A 3A
Date: December 21, 2010
Subject: Senior Center: Setting a New
Membership Dues Amount

FROM: Steve Powers, Development Services Director *RSP*
Mike McIntyre, Senior Services Administrator

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

PURPOSE

This agenda bill presents a proposed increase in the Senior Center annual membership dues. The City Council is asked to consider approving a resolution setting the revised dues at thirty (30) dollars per year per person.

AUTHORITY

RCW 35A.11.020 provides local legislative bodies the authority to provide cultural and recreational services. Under its constitutional police powers, the City has authority to require fees for services rendered.

SUMMARY STATEMENT

The City Council established the present Senior Center membership dues of twenty (20) dollars per year on January 6, 2006. The dues have remained unchanged since that time. When staff was preparing the 2011-2012 Senior Center budget for the City Council's consideration, it became apparent that an increase in the user (membership) fees was needed to help compensate for reductions in Island County government financial support. The staff proposal (an increase in dues of five dollars per year) was included in the 2011-2012 budget adopted by the City Council. This proposal anticipated that an additional five dollar per year increase might be necessary in 2012.

The Senior Center's total approved budget (including ending fund balances) for 2011 is \$549,048 and for 2012 is \$467,166. The budgeted membership fees of \$28,500 (which included the staff proposed five dollar increase) account for approximately 5-6 percent of the total revenue in each of those years. For 2011, expenditures directly related to providing services to members (including staff salaries and benefits, travel program activities and other program support activities) total approximately \$333,315 or 61 percent of the total expenditures. For 2012, the same expenses total approximately \$330,772 or 71% of the total expenditures. At present time

the Senior Center has a membership of approximately 1,300 individuals, although this number does fluctuate.

The staff proposed five dollar increase was presented to the Oak Harbor Senior Services Advisory Board on November 10, 2010. They recommended a Senior Center membership dues increase of ten (10) dollars per year (for a total of \$30 per person per year) to help compensate for the reduction in Island County support and to avoid a second increase at a later time.

Using a very conservative estimate, an increase of ten dollars per year should yield between nine and ten thousand additional dollars to support programs for Senior Center members. The Senior Services Advisory Board and Senior Services Administrator believe the proposed dues increase will likely be acceptable to most members and should not cause undue financial hardship to our membership. Special accommodations are made for those seniors unable to afford dues. In lieu of paying for an annual membership, Senior Center facility users may pay a daily use charge of one dollar per day.

STANDING COMMITTEE REPORT

This item was presented to Governmental Services Standing Committee on December 14, 2010.

RECOMMENDED ACTION

Adopt resolution

ATTACHMENTS

Resolution

MAYOR'S COMMENTS

RESOLUTION No. _____

A RESOLUTION OF THE CITY OF OAK HARBOR SETTING SENIOR CENTER MEMBERSHIP DUES

WHEREAS, the Oak Harbor City Council conducted a public meeting on December 21, 2010, and determined that the Senior Center membership dues should be set at thirty (30) dollars per year per person in order to assist in offsetting the reduction in other sources of funding used for Senior Center operations.

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of Oak Harbor that the Senior Center membership dues are set at thirty (30) dollars per year per person effective January 1, 2011.

PASSED and approved by the City Council this 21st day of December, 2010.

THE CITY OF OAK HARBOR

Jim Slowik
Mayor

Attest:

City Clerk

Approved as to form:

Margery Hite
City Attorney

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

Bill No.

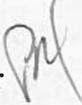
d/a 3B

Date:

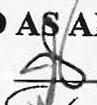
December 21, 2010

Subject:

Technology Services
Agreement - Extension

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

This agenda bill proposes to extend an existing technology services agreement with the Oak Harbor School District for one year. Due to the complexity and volume of contract changes needed, the School District and City mutually agreed it will take more time to thoroughly work through all technology issues but not allow the existing contract to terminate.

AUTHORITY

The Interlocal Cooperation Act, Chapter 39.34 RCW, authorizes public entities to contract to do jointly that which each is authorized to do individually.

SUMMARY STATEMENT

The City of Oak Harbor and the Oak Harbor School District have enjoyed a cost-effective and beneficial agreement for providing technology services these past five years. However, upon review of the existing agreement terms and with the changes in technology during the past five years, it became apparent a total rewrite of the agreement would be required. To do so, both the School District Superintendent and City Administrator propose to extend the current agreement for up to twelve months, while new terms and updates can be considered.

RECOMMENDED ACTION

City Council authorization for the Mayor to sign Addendum No. 1 extending the duration of the Interlocal Agreement for Technology Services between Oak Harbor School District No. 201 and the City of Oak Harbor for one year.

ATTACHMENTS

1. Interlocal Agreement – Addendum No. 1
2. Existing Interlocal Agreement

MAYOR'S COMMENTS

Return to:
City of Oak Harbor
865 SE Barrington Drive
Oak Harbor, WA 98277

INTERLOCAL AGREEMENT – ADDENDUM NO. 1

The City of Oak Harbor, a municipal corporation, and the Oak Harbor School District No. 201, a school district, hereby amend the Interlocal Agreement filed under Island County Auditor No. 4284545 (“Agreement” herein) to extend the duration of the Agreement for one (1) year as follows:

AGREEMENTS Section, paragraph 1, is amended to read:

1. Duration. This Agreement shall become effective upon the filing of executed counterparts of this Agreement with the Island County Auditor pursuant to RCW 39.34.040. The continuing term of this Agreement shall be from the date of filing until December 31, 2011 unless sooner terminated in accordance with paragraph 8 hereof.

All other terms and conditions of the Agreement shall remain in full force and effect.

Dated this _____ day of December, 2010.

CITY OF OAK HARBOR

By _____
Mayor

OAK HARBOR SCHOOL DISTRICT #201

By _____
Superintendent

L:\GLA\WORK\Civ2010\IT Interlocal Agmt Addendum#1-2.doc

Interlocal Agreement
Addendum No. 1

11/09/2010 12:11:16 PM
Recording Fee \$66.00 Page 1 of 5
Agreement
Island County Washington

4284545



WHEN RECORDED RETURN TO:
City of Oak Harbor
865 SE Barrington Drive
Oak Harbor, WA 98277

| |
|---|
| <p>DOCUMENT TITLE(S):</p> <p>Interlocal Agreement for I.T. Services with Oak Harbor School District</p> |
| <p>REFERENCE NUMBERS OF DOCUMENTS ASSIGNED OR RELEASED:</p> |
| <p>GRANTOR(S):</p> <p>Oak Harbor School District</p> |
| <p>GRANTEE(S):</p> <p>City of Oak Harbor</p> |
| <p>ABBREVIATED LEGAL DESCRIPTION:</p> |
| <p>TAX PARCEL NUMBER(S):</p> |

HO

INTERLOCAL AGREEMENT

This Interlocal Agreement ("Agreement") is entered into by and between Oak Harbor School District No. 201 ("District") and the City of Oak Harbor, Washington ("City").

RECITALS

- A. The parties are public agencies, as defined in RCW 39.34.020, who wish to enter into an agreement pursuant to Chapter 39.34 RCW to enable District to provide and City to receive computer network and telephone system support.
- B. The parties have each taken the appropriate action, by ordinance, resolution or otherwise, to authorize the execution and implementation of this Agreement.

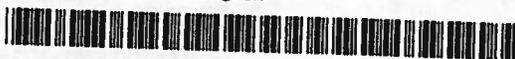
AGREEMENTS

- 1. Duration. This Agreement shall become effective upon the filing of executed counterparts of this Agreement with the Island County Auditor pursuant to RCW 39.34.040. The continuing term of this Agreement shall be from the date of filing until December 31, 2010 unless sooner terminated in accordance with paragraph 8 hereof.
- 2. Purpose. The purpose of this Agreement is to provide for computer network and telephone system support by District to City as specified below.
- 3. Services. District shall provide computer network support to City's network, as currently configured (Windows 2000, Windows XP, Windows Server 2003). Such services shall be provided when necessary, on City premises and/or via secure network connection to the District Network Operations Center. Services shall include network support for installed desktops, servers and telephones including but, not limited to, the following:
 - a. Network, server, IP telephone, voicemail and desktop maintenance in the same manner as is normally performed on its own systems. This includes installation of replacement equipment (except for major



changeovers) and software installation. With the exception of software installation, this Agreement does not cover support for the various vendor-provided software programs installed on the network or individual user's desktops.

- b. Preventive maintenance including cleaning, spot check, and network tuning as required.
 - c. Tape backup of City server systems to include City financial software networked work management software, records management systems, departmental databases and working files for City staff. Tape backups are for disaster recovery only. Archival backups will be addressed in a separate agreement. Tape backups will occur on a weekly basis, unless otherwise specified by City.
 - d. Recommendations for network design and infrastructure improvements where appropriate. Such modifications will take place only with the approval and notification of the City Administrator or Mayor's appointee. Funding for all modifications to city equipment and infrastructure shall be the responsibility of City.
4. Scheduling. Scheduling of maintenance and repair shall be under the direction and supervision of the district Director for Information Services ("Director") in a manner that shall minimize interference with the technology needs of District. The District will notify the City of any anticipated interruptions of network service so that current work in process can be properly exited to prevent data loss.
5. Implementation.
- a. City computers and networks will remain part of the District Helpdesk system and City users will have access to incident reporting and response during normal working hours (Monday – Friday, 0730-1700). Emergency callouts and response will be provided by District if such a response outside of normal working hours is deemed appropriate by Director.



- b. Operational emergencies will take precedence over routine maintenance. In the event either network has an emergency, District shall attempt to correct the emergency in a timely manner. Allocation of technician time and assignment shall be at the discretion of District Director.
 - c. Subject to the approval of District and City, District will design and implement network enhancements when and where appropriate. District will not be responsible for any additional costs caused by these enhancements without the prior approval from the Director.
6. Network Security. Each party shall endeavor to shield, from the other and from unauthorized persons, confidential information and personally identifiable information of its employees, customers, and/or students. Should such information be accessed either inadvertently or in an unauthorized manner, each party shall promptly take steps to prevent further dissemination and shall report the incident to the director for appropriate notifications and other preventive action.
7. Determination of costs to City will be based upon a network "seat." Each seat will consist of a computer, telephone, user account, voicemail account and associated network support services. District will charge City \$500 per year for each seat used. For the first six months of this agreement, District will charge the City for 141 network seats. Payments by City and adjustments to consumption of network seats will be made as follows:
- a. City will pay District \$5875.00 at the beginning of each month.
 - b. On or before the first day of July or January, an adjustment will be made to increase or decrease the number of network seats supported (and accordingly, prorate the amount charged for the next six months). This adjustment will be based upon network usage reports available from the District and will reflect the intentions and desires of City management to control costs and network expansion. The District shall provide a copy of all usage reports and other documentation used in calculating subsequent changes in billing.



8. Equipment. City shall purchase all tools, materials and replacement equipment required to provide service to City. City purchased tools, materials and equipment will remain the property of City. The District will maintain an accurate and complete inventory listing of all City-owned fixed assets in its possession.
9. Termination. Either party may elect to terminate this Agreement at any time by providing a thirty days' written notice to the other party.
10. Breach of Contract. In the event either party breaches its obligations under this agreement, the breaching party shall compensate the other for direct costs resulting from such breach; but all claims for consequential damages and costs are waived.
11. Amendments. On or before the anniversary date of this Agreement, and annually thereafter, the parties shall review and consider adjustments to the financial arrangements and any other issues of concern to either party. Any mutually agreed modifications shall be reduced to writing and shall become a part of this Agreement in an addendum thereto.
12. Reports of Defects. The obligation of District to maintain the City network, desktops and telephone system as set forth above shall not be deemed to relieve City from the obligation to report to District any defects or needed repairs which are observed by City.

OAK HARBOR SCHOOL DISTRICT #201

By Richard J. Schluter
Superintendent

Date 1-10-06

CITY OF OAK HARBOR

By Patricia A. Cohen
Mayor

Date 12.29.05

11/09/2010 12:11:16 PM
Recording Fee \$66.00 Page 5 of 5
Agreement
Island County Washington

4284545



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

Bill No. d/A 3C
Date: December 21, 2010
Subject: I-COM Lease Agreement -
 Renewal

FROM: Paul Schmidt, City Administrator 

INITIALED AND APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

PURPOSE

The purpose of this agenda bill is to propose the renewal of the I-COM lease agreement for another five year term.

AUTHORITY

RCW 39.34.080 states that any one or more public agencies may contract with any one or more other public agencies to perform any governmental service, activity, or undertaking which each public agency entering into the contract is authorized by law to perform: PROVIDED, that such contract shall be authorized by the governing body of each party to the contract. Such contract shall set forth fully the purposes, powers, rights, objectives, and responsibilities of the contracting parties.

SUMMARY STATEMENT

The City of Oak Harbor has leased space for I-COM services since the mid-nineties. The current lease agreement expires on December 31, 2010. The terms of the new proposed lease are similar to prior lease terms. The monthly rent amount was reviewed for current market rates by contacting a local realtor and, based upon local realtor input, there appears to be no need for a significant adjustment in rent or the method used to adjust the rent annually. The monthly square foot rate in 2006 was \$0.3964, in 2010 it was \$0.4660, and now for 2011 it would be \$0.48 per square foot. Beyond that, the proposed agreement includes the usual terms of restrictions and indemnifications.

RECOMMENDED ACTION

City Council authorization for the Mayor to sign the proposed five year lease agreement with I-COM.

ATTACHMENTS

Lease Agreement

MAYOR'S COMMENTS

Return to:
City of Oak Harbor
865 SE Barrington Drive
Oak Harbor, WA 98277

LEASE AGREEMENT

GRANTOR: City of Oak Harbor
GRANTEE: Island County Emergency Services Communication Center (I-COM)
PARCEL#: R13202-319-2800

LEGAL DESCRIPTION: That portion of the Public Safety Building which was formerly the fire station and is further designated as: (See Exhibit "A" for complete legal description)

This Agreement is made and entered into on the _____ day of _____, 2010, between the CITY OF OAK HARBOR, a municipal corporation of the State of Washington, located in Island County, herein referred to as "Lessor", and ISLAND COUNTY EMERGENCY SERVICES COMMUNICATIONS CENTER, herein referred to as "Lessee".

In consideration of the mutual covenants herein set out, the parties agree as follows:

1. **Premises.** Lessor hereby leases to Lessee and Lessee hereby leases from Lessor the Premises described in Section 1 constituting a portion of the building ("Building") located on the Property legally described on Exhibit "A" hereto.
2. **Term.** The term of this lease begins on January 1, 2011 and continues for a five (5) year period, expiring on December 31, 2015.
3. **Rent.** For purposes of rent calculation, the parties agree that the premises consist of 4,200 square feet of building space.
 - 3.1 **Monthly Rent.** Beginning January 1, 2011, the Lessee shall pay Lessor monthly rent at the rate of Forty-eight Cents (\$0.48) per square foot. During the Term, Lessee shall pay to Lessor the Monthly Rent adjusted as set forth below, without notice or demand, at the address to which notices to Lessor are to be given. Lessee shall pay Monthly Rent to Lessor, without deduction or offset, in advance on or before the first day of each month of the Term, except

that Base Monthly Rent for the first month or any portion thereof shall be paid on or before the date the Term commences.

3.2 Monthly Rent Adjustment Based on CPI.

3.2.1 Monthly Rent will be adjusted as of the effective dates every January 1st of the term of this Lease by using the Consumer Price Index for All Urban Consumers for the Seattle Metropolitan area (the "CPI-U"). The percentage of change, if any, will be determined based on the CPI-U semi-annual figure and will be added to the initial Monthly Rent amount set out above as the annual adjustment.

4. Personal Property Taxes, Rent Taxes and Other Taxes. Lessee shall pay all taxes, charges and other governmental impositions assessed against or levied upon Lessee's fixtures, furnishings, equipment and personal property located in the Premises prior to delinquency. Whenever possible, Lessee shall cause such items to be assessed and billed separately from Lessor's property. In the event such items are billed with Lessor's property, Lessee shall pay Lessor Lessee's share of such governmental impositions within thirty (30) days of request by Lessor. Lessee shall pay any rent tax, sales tax, value added tax, or other tax currently applicable or which becomes applicable in the future, to the Rent.

5. Use of Premises.

5.1 Permitted Use. Lessee shall use the Premises exclusively for the purpose of providing dispatch and related services to entities as authorized by law. Such use shall conform to applicable City ordinances and state and federal law and Lessee agrees that by taking possession of the Premises, Lessee has determined to its satisfaction that the Premises can be used for that purpose. Lessee waives any right to terminate this Lease if the Premises cannot be used for that purpose. The Premises may not be used for any other purpose without Lessor's prior written consent.

5.2 Restrictions on Use. Lessee may not use or occupy the Premises or the Property in violation of any law, ordinance, regulation or the certificate of occupancy issued for the Property, and may not do, bring, or keep anything in or about the Premises that will cause an increased premium for or the cancellation of any insurance covering the Property. If Lessee does cause any such increase in insurance premiums, Lessee shall pay or reimburse Lessor for the entire amount thereof, without regard to whether Lessor elects to terminate this Lease as a result of Lessee's unauthorized use of the Premises. Lessee may not use the Premises in any manner that will constitute waste, nuisance or unreasonable annoyance to other Lessees in the Property, nor may Lessee do anything that will cause damage to the Property. Lessee may not place any signs, symbols, drapes or other materials in windows or other openings or in

interior hallways or on the exterior of the Premises without prior written approval from Lessor. Lessee may not permit floor loading in excess of the pounds per square foot limitation, if any, which Lessor notifies Lessee is the maximum permissible for the Premises.

6. Lessee Maintenance. By taking possession of the Premises, Lessee accepts the Premises as being in good and sanitary order, condition and repair. Lessee shall, at its expense, clean, maintain and keep the Premises and all appurtenances, including, without limitation, carpet, wall-coverings, signs, windows, doors, skylights, plumbing and other fixtures, equipment and improvements in "first class" condition and repair throughout the Term.
7. Liens. Lessee shall keep the Premises and the real property upon which the Premises are situated free from any liens arising out of any work performed, materials furnished, or obligations incurred by Lessee. Lessor has the right at all reasonable times to post any notices on the Premises which it deems necessary for Lessor's protection from such liens. If any such liens are filed, Lessor may, without waiting its rights and remedies for breach, and without releasing Lessee from any of its obligations hereunder, require Lessee to post security in form and amount reasonably satisfactory to Lessor or cause such liens to be released by any means Lessor deems proper, including payment in satisfaction of the claim giving rise to the lien. Lessee shall pay to Lessor upon demand any sum paid by Lessor to remove the liens, together with interest from the date of payment by Lessor, at the lesser of 1-1/2% per month or the maximum rate permissible by law.
8. Indemnification and Exculpation of Lessor. Lessee shall indemnify, defend, and hold Lessor harmless from all claims arising from Lessee's use of the Premises or the conduct of its business, or from any activity, work or thing done, permitted or suffered by Lessee in or about the Premises or the Property. Lessee shall further indemnify, defend, and hold Lessor harmless from all claims, liabilities, costs, attorneys' fees and expenses arising from any breach or default in the performance of any obligation to be performed by Lessee under the terms of this Lease, or arising from any act or omission of Lessee or of its agents or employees. Lessee's obligation to indemnify Lessor under this section includes an obligation to indemnify for losses resulting from death or injury to Lessee's employees, and Lessee accordingly hereby waives any and all immunities it now has or hereafter may have under any Industrial Insurance Act, or other worker's compensation, disability benefit or other similar act which would otherwise be applicable in the case of such a claim. In case any action or proceeding is brought against Lessor by reason of any such claim, Lessee, upon notice from Lessor, shall defend the same at Lessee's expense, by counsel approved in writing by Lessor. Lessee, as a material part of the consideration to Lessor, hereby assumes all risk of and waives any claims Lessee might have in respect to damage to property or injury to persons in, upon or about the Premises from any cause whatsoever, except that which is caused by Lessor's gross negligence.

9. Insurance. The Lessee shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the Lessee's operation and use of the leased Premises.

9.1 No Limitation. Lessee's maintenance of insurance as required by the agreement shall not be construed to limit the liability of the Lessee to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

9.1.1 Minimum Scope of Insurance. Lessee shall obtain insurance of the types described below:

9.1.1.1 General Liability insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover premises and contractual liability. The City shall be named as an insured on Lessee's General Liability insurance policy using ISO Additional Insured-Managers or Lessors of Premises Form CG 20 11 or a substitute endorsement providing equivalent coverage.

9.1.1.2 Property insurance shall be written on an all risk basis.

9.1.2 Minimum Amounts of Insurance. Lessee shall maintain the following insurance limits:

9.1.2.1 General Liability insurance shall be written with limits no less than One Million Dollars (\$1,000,000) each occurrence, Two Million Dollars (\$2,000,000) general aggregate.

9.1.2.2 Property insurance shall be written covering the full value of Lessee's property and improvements with no coinsurance provisions.

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

9.1.3.1 The Lessee'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 Lessee's insurance and shall not contribute with it.

9.1.3.2 The Lessee'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.

- 9.1.4 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.
 - 9.1.5 Verification of Coverage. Lessee 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 Lessee.
 - 9.1.6 Waiver of Subrogation. Lessee and City hereby release and discharge each other from all claims, losses and liabilities arising from or caused by any hazard covered by property insurance on or in connection with the premises or said building. This release shall apply only to the extent that such claim, loss or liability is covered by insurance.
 - 9.1.7 City's Property Insurance. City shall purchase and maintain during the term of the lease all-risk property insurance covering the Building for their full replacement value without any coinsurance provisions.
10. Destruction. In the event the Premises are destroyed or injured by fire or earthquake or other casualty, to the extent that they are untenable in whole or in part, then Lessor may, at Lessor's option, proceed with reasonable diligence to build and restore said Premises or such part thereof, provided that within sixty (60) days after such destruction or injury, Lessor shall notify Lessee in writing of Lessor's intention to do so. During the period from destruction or damage to restoration, Rent will be abated in the same ratio as that portion of the Premises which Lessor determines is unfit for occupancy bears to the whole Premises.
11. Assignment, Subletting and Succession. Lessee may not assign or sublet this Lease or the Premises, or any part of either, without first obtaining Lessor's written consent. This Lease is not assignable by operation of law.
12. Defaults - Remedies.
- 12.1 Default by Lessee. The occurrence of any one or more of the following events constitutes a default under this Lease by Lessee:
 - 12.1.1 Vacation or abandonment of the Premises;
 - 12.1.2 Failure by Lessee to make any payment of Rent when due, or failure to make any other payment required hereunder when due when that failure continues for a period of 5 days after written notice from Lessor;

- 12.1.3 Failure by Lessee to observe or perform any of the covenants, conditions or provisions of this Lease, other than the making of any payment, where that failure continues for a period of thirty (30) days after written notice from Lessor; provided, that if the nature of Lessee's obligation is such that more than thirty (30) days are reasonably required for cure, Lessee will not be in default if Lessee commences to cure within thirty (30) days of Lessor's notice and thereafter diligently pursues completion and completes performance within a reasonable time;
- 12.1.4 Lessee's failure to comply with the same Lease term or covenant on three occasions during the Term, even if such breach is cured within the applicable cure period.
- 12.2 Remedies. In the event of any default, Lessor may at any time, without waiving or limiting any other right or remedy, re-enter and take possession of the Premises, terminate this Lease, accelerate all Rent payments due hereunder which payments will then become immediately due and payable, or pursue any other remedy allowed by law. Lessee shall pay Lessor the costs of recovering possession of the Premises, the expenses of re-letting, and any other costs or damages arising out of Lessee's default. Notwithstanding any re-entry or termination, Lessee will remain liable for all sums Lessee is obligated to pay hereunder for the balance of the Term, and Lessee shall compensate Lessor for any deficiency arising from re-letting the Premises, provided, however, that Lessor shall use reasonable efforts to mitigate its damages. Unless the Lessor elects to accelerate the Rent owed hereunder, Lessee shall pay such deficiency each month as the amount thereof is ascertained by Lessor.
- 12.3 Default by Lessor. Lessor will not be in default unless Lessor's failure to perform an obligation within thirty (30) days after notice by Lessee, which notice must specify the alleged breach; provided, that if the nature of Lessor's obligation is such that more than thirty (30) days are reasonably required for cure, Lessor will not be in default if Lessor commences to cure within thirty (30) days of Lessee's notice and thereafter diligently pursues completion and completes performance within a reasonable time.
13. Waiver. Failure of Lessor to promptly enforce its rights hereunder will not waive such rights. Lessor's acceptance of Rent subsequent to a Lessee breach will not waive such breach.
14. Access. Lessor may enter the Premises at all times to: inspect, provide Services required hereunder; post notices of non-responsibility; or, alter, improve or repair the Premises or any other portion of the Property, all without being deemed a constructive eviction. Lessee shall ensure that Lessor at all times has a key with which to unlock all doors and gates in the Premises, excluding Lessee's vaults and safes. No re-keying

of doors or gates may be done without Lessor's prior written approval. Lessor has the right to use any and all means that Lessor deems proper to open doors and gates in an emergency in order to obtain entry to the Premises.

15. Prior Agreements. This Lease contains all of the agreements of the parties with respect to any matter covered or mentioned in the Lease, and no prior agreement, letter of intent or understanding pertaining to any such matter will be effective for any purpose. No provisions of this Lease may be amended or added to, except by an agreement in writing signed by the parties or their respective successors in interest.
16. Americans with Disabilities Act. Within ten (10) days after receipt, Lessee shall advise Lessor in writing, and provide Lessor with copies of (as applicable)(a) any notices alleging violation of the Americans with Disabilities Act of 1990 ("ADA") relating to any portion of the Premises; (b) any claims made or threatened in writing regarding non-compliance with the ADA and relating to any portion of the Premises; or (c) any governmental or regulatory actions or investigations instituted or threatened regarding non-compliance with the ADA and relating to any portion of the Premises.
17. Surrender of Premises. The voluntary or other surrender of this Lease by Lessee, or a mutual cancellation thereof, will not work a merger, and will, at the option of Lessor, operate as an assignment to it of any or all subleases or subtenancies. Upon the expiration or earlier termination of this Lease, Lessee shall peaceably surrender the Premises and all of the alterations and additions thereto, leave the Premises broom clean, in as good order, repair and condition as was provided to Lessee on the Commencement Date, reasonable wear and tear excepted, and Lessee shall comply with the provisions of Sections 9 and 10. The delivery of keys to any employee of Lessor or to Lessor's agent or any employee thereof shall not be sufficient to constitute a termination of this Lease or a surrender of the Premises.
18. Severability. Any provision of this Lease which proves to be invalid, void or illegal will in no way affect, impair, or invalidate any other provision hereof, and such other provisions will remain in full force and effect.
19. Governing Law; Venue. This Lease is to be governed by and construed in accordance with the laws of the State of Washington. Lessor and Lessee hereby agree that venue of any action between parties relating to this Lease will be in Island County, Washington.
20. Hazardous Substances. Lessee shall not generate, handle, store, or dispose of any Hazardous Substance on, under, or in the Premises, the Property, or the real property upon which the remises are situated. As used herein, the term "Hazardous Substance" means any hazardous, toxic, or dangerous substance, waste, or material, which is or becomes regulated under any federal, state or local statute, ordinance, rule, regulation, or other law now or hereafter in effect pertaining to environmental protection, contamination, or cleanup. Lessee agrees to hold harmless, protect, indemnify, and

EXHIBIT "A"

That portion of the Public Safety Building which was formerly the fire station and is further designated as:

Located on that portion of the CW Sumner Donation Land Claim and the Z Martin Taftzon Donation Land Claim in Section 2, Township 32 North, Range 1 East, WM Island County, Washington, lying South of 400 Avenue West, West of 30 Northwest Street, North of 300 Avenue West, and East of Tract B of City of Oak Harbor Boundary Line Adjustment No. 8-84 as approved September 25, 1984, and recorded September 25, 1984, in Volume 1 of Short Plats, page 288, under Auditor's File No. 84003599, records of Island County.

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

Bill No. CJA 3D
Date: December 21, 2010
Subject: 2009 International Building
Codes - Introduction

FROM: Steve Powers, Development Services Director *SP*
David W. Anderson, Building Official

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

PURPOSE

This agenda bill introduces an ordinance to amend the City's Building Code to reflect changes to the 2009 International Building Code, 2009 International Residential Code, 2009 International Mechanical Code, 2009 Uniform Plumbing Code and the 2009 Washington State Energy Code as regulated and approved by the Washington State Building Code Council on July 1, 2010 and with changes reflecting City practices.

This item is for introduction only. The City Council is asked to set a public meeting date for final action for January 4, 2011.

AUTHORITY

The various codes contained herein are adopted by the Washington State Building Code Council pursuant to Chapter 19.27 and 70.92 RCW. Those codes are periodically updated by the Building Code Council. State law provides that unless amended by the City Council, the State Building Code shall be in effect in the City (RCW 19.27.031).

SUMMARY STATEMENT

The City is currently using the 2006 version of these codes unless noted otherwise. The following 2009 International Codes have been adopted by the Washington State Building Code Council and became effective on July 1, 2010. Under state law, cities and counties are responsible for enforcing these codes. Rather than adopting each code, this ordinance provides that the most recent edition is in effect as amended by City Code. Since the codes are in effect by state law, only local amendments should be actually adopted. Listed below is a summary of the 2009 codes and some of the most significant changes from the 2006 version.

- 2009 International Building Code (IBC): the most significant changes pertain to fire resistive separations between occupancies. These fire resistive assemblies are required to be identified and labeled. All group M occupancies, where the display and sale of upholstered furniture occurs, are now required to be sprinklered. Luminous egress path

markings shall be provided in certain occupancies over 75 feet in height. Nightclubs are required to be sprinklered as of December 1, 2010 if they have viewing areas of live performances areas in excess of 350 square feet.

- 2009 International Residential Code (IRC): residential single-family homes are now required to be sprinklered if this provision is adopted by local cities and counties. The City of Oak Harbor is not proposing such a requirement at this time. Habitable attic spaces now require emergency escape and rescue openings. Where fixed seating is adjacent to a guardrail, the height of the guardrail is measured from the top of the fixed seating (36 inches). Carbon monoxide alarms are now required in new and existing Group R occupancies.
- 2009 International Mechanical Code (IMC): is similar in format and requirements to our current adopted Mechanical Code, the 2006 IMC. The Mechanical Code establishes minimum installation standards for all heating, ventilation, air conditioning, ductwork and commercial hood installation requirements. This proposal is only an upgrade to a more current edition as adopted by the State.
- 2009 Uniform Plumbing Code (UPC): is similar in format and requirements to our current adopted Plumbing Code, the 2006 UPC. The Plumbing Code establishes minimum installation standards for all plumbing installations, cross connection, potable water supply, traps, fixtures, sanitary drainage and indirect wastes. This proposal is only an upgrade to a more current edition as adopted by the State.
- 2009 Washington State Energy Code (WSEC): has been formatted to include both residential and commercial energy requirements into one code. One of the significant changes is the requirement for advanced framing of residential trusses to comply with the R-38 requirements for attic insulation. The 2009 Energy Code establishes minimum installation standards for all buildings and structures for heating, insulation, ventilation, HVAC systems and commercial hoods. The effective date of the Washington State Energy Code has been delayed by the Washington State Building Code Council to January 1, 2011.

STANDING COMMITTEE REPORT

This item was presented to the Government Services Standing Committee on June 8, 2010 and on October 12, 2010.

RECOMMENDED ACTION

Set public meeting for January 4, 2011.

ATTACHMENTS

Draft ordinance.

MAYOR'S COMMENTS

ORDINANCE NO.

AN ORDINANCE AMENDING TITLE 17 "BUILDINGS" AND SECTION 3.64.535 "BUILDING AND MISCELLANEOUS DEVELOPMENT PERMIT FEES" OF THE OAK HARBOR MUNICIPAL CODE TO ADOPT THE INTERNATIONAL BUILDING CODES WITH SPECIFIC PROVISIONS APPLICABLE TO THE CITY OF OAK HARBOR.

WHEREAS, the City of Oak Harbor is authorized to adopt ordinances for the general welfare of its citizens; and

WHEREAS, the City is further authorized to adopt and enforce building codes and to adopt and amend provisions of the State building codes under Chapter 19.27 of the Revised Code of Washington; and

WHEREAS, the International Existing Building Code has been included in the State adoption of the International Building Code 51-50 WAC; and

WHEREAS, the Washington State Ventilation and Indoor Air Quality Code has been included in the State adoption of the Washington State Energy Code 51-11WAC; and

WHEREAS, the City Council deems adoption of this ordinance to be in the best interest of its citizens;

NOW, THEREFORE, the City Council of the City of Oak Harbor, Washington does hereby ordain as follows:

Section One. Oak Harbor Municipal Code Section 3.64.535 adopted in §9 of Ordinance 1399 in 2004 is hereby amended to read as follows:

3.64.535 Building Code and miscellaneous development permit fees.

(1) Floodplain Ordinance. The following fees shall be charged for permits under Chapter 17.20 OHMC.

| Description | Fee |
|-------------------------------|----------|
| Floodplain Development Permit | \$120.00 |
| Variance | \$89.00 |

(2) Building permits and fees under Chapter ~~17.04~~ 17.05, 17.10 and 17.12 OHMC are hereby adopted by reference under this subchapter.

(3) Grading Permits. Grading permits under Chapter ~~17.04~~ 17.05 OHMC shall be charged as follows:

| Description | Fee |
|--------------------------------------|------------|
| 50 cubic yds or less | |
| Plan Review | No Fee |
| Permit Fee | \$23.50 |
| 51 to 100 cubic yds | |
| Plan review | \$23.50 |
| Permit Fee | \$37.00 |
| 101 to 1,000 cubic yds | |
| Plan Review | \$37.00 |
| Permit Fee | |
| First 100 cubic yds | \$37.00 |
| Each additional 100 cubic yds | \$17.50 |
| 1001 to 10,000 cubic yds | |
| Plan Review | \$49.25 |
| Permit Fee | |
| First 1,000 cubic yds | \$194.50 |
| Each additional 1,000 cubic yds | \$14.50 |
| 10,001 to 100,000 cubic yds | |
| Plan review | |
| First 10,000 cubic yds | 49.25 |
| Each additional 10,000 cubic yds | \$24.50 |
| Permit fee | |
| First 10,000 cubic yds | \$325.00 |
| Each additional 10,000 cubic yds | \$66.00 |
| 100,001 to 20,000 200,000 | |
| Plan Review | |
| First 100,000 cubic yds | \$269.75 |
| Each additional 10,000 cubic yds | \$13.25 |

59

| Description | Fee |
|--|----------|
| Permit fee (100,001 cubic yds or more) | |
| First 100,000 cubic yds | \$919.00 |
| Each additional 10,000 cubic yds | \$36.50 |
| 200,001 cubic yds or more | |
| Plan review | |
| First 200,000 cubic yds | \$402.25 |
| Each additional 10,000 cubic yds | \$7.25 |
| Permit fee (see above) | |

Section Two. The table of contents of Title 17 of the Oak Harbor Municipal Code is hereby amended to read as follows for the following chapters:

Title 17

BUILDINGS

Chapters:

- 17.05 ~~2006~~ International Building Code
- 17.06 ~~2006~~ International Residential Code
- 17.10 ~~2006~~ International Mechanical Code
- 17.12 ~~2006~~ Uniform Plumbing Code
- 17.14 ~~2006~~ Washington State Energy Code
- ~~17.18 2006 Washington State Ventilation and Indoor Air Quality Code~~
- 17.20 Flood Damage Prevention
- 17.22 2006 International Property Maintenance Code
- 17.24 Sidewalks, Curbs and Gutters Installation
- ~~17.28 2006 International Existing Building Code~~
- 17.30 Noise Attenuation Standards
- 17.40 Survey Monuments

Section Three. Oak Harbor Municipal Code Chapter 17.05 adopted by §4 of Ordinance 1514 in 2007 is hereby amended to read as follows:

Chapter 17.05

~~2006~~ INTERNATIONAL BUILDING CODE

Sections:

- 17.05.010 Title.
- 17.05.015 ~~Documents adopted by reference~~ Applicability of the International Building Code.
- 17.05.020 Administration and enforcement – Rules and regulation.
- 17.05.025 Administration and enforcement – Building official authority.
- 17.05.030 Permit fees.

- 17.05.035 **Building permit – Additional charge.**
- 17.05.040 **Notices.**
- 17.05.050 **Liability limitations.**
- 17.05.060 **Amendments – Additions.**
- 17.05.090 **Penalties.**
- 17.05.110 **Severability.**
- 17.05.120 **Hearing examiner to function as appeals board.**

17.05.010 Title.

This chapter shall be known as the International Building Code of the city of Oak Harbor.

17.05.015 ~~Documents adopted by reference~~ Applicability of the International Building Code.

~~The 2006 Edition~~ most recent edition of the International Building Code, ~~including the chapters of its Appendix: E, F, G, I, and J as published by the International Code Council, and changes thereto as set forth in Chapter 51-50 WAC and adopted by the Washington State Building Code Council under the provisions of Chapter 19.27 RCW and as amended herein is in effect as the City's building code,~~ are hereby adopted by reference with the deletions, additions, and exceptions as set out in this chapter and shall be the city's building code. One A copy of each document listed in this section shall be filed in the office of the city clerk for examination by the public.

17.05.020 Administration and enforcement – Rules and regulation.

The city council may, upon notice and hearing, promulgate, adopt, and issue those rules and regulations necessary for the effective and efficient administration of this code.

17.05.025 Administration and enforcement – Building official authority.

The building official of the city shall be deemed to be the "building official" as defined in ~~Section 202 of~~ the International Building Code. The International Building Code shall be administered and enforced by the building official of the city.

17.05.030 Permit fees.

The city of Oak Harbor hereby adopts the following fee schedule for the building code:

- (1) Building Permit Fees Adopted. For determining the value of a structure, the most current issue of the Building Safety Journal Magazine, which offers the square foot construction costs table building valuation data fee schedule as published by the International Code Council, is adopted by reference.
- (2) Plan Review Fees Adopted. When submittal documents are required by the International Building Code Section 107, a plan review fee shall be paid at the time of submitting the submittal documents for plan review. The said plan review fee shall be 65 percent of the building permit fee as determined in Table 17-1. The plan review fees specified are separate fees from the permit fees and are in addition to the permit fees. When submittal documents are incomplete or changed so as to require additional plan review or when the project involves deferred submittals items, an additional plan review fee shall be charged at the rate shown in Table 17-2.

61

TABLE 17-1 BUILDING PERMIT FEES

| Total Valuation | Fees |
|--------------------------|--|
| \$1.00 to \$500.00 | \$23.50 |
| \$501.00 to \$2,000 | \$23.50 for the first \$500.00 plus \$3.05 for each additional \$100.00 or fraction thereof, to and including \$2,000 |
| \$2,001 to \$25,000 | \$69.25 for the first \$2,000 plus \$14.00 for each additional \$1,000 or fraction thereof, to and including \$25,000 |
| \$25,001 to \$50,000 | \$391.25 for the first \$25,000 plus \$10.10 for each additional \$1,000 or fraction thereof, to and including \$50,000 |
| \$50,001 to \$100,000 | \$643.75 for the first \$50,000 plus \$7.00 for each additional \$1,000 or fraction thereof, to and including \$100,000 |
| \$100,001 to \$500,000 | \$993.75 for the first \$100,000 plus \$5.60 for each additional \$1,000 or fraction thereof |
| \$500,001 to \$1,000,000 | \$3,233.75 for the first \$500,000 plus \$4.75 for each additional \$1,000 or fraction thereof, to and including \$1,000,000 |
| \$1,000,001 and up | \$5,608.75 for the first \$1,000,000 plus \$3.65 for each additional \$1,000 or fraction thereof |

TABLE 17-2 OTHER INSPECTIONS AND FEES:

| | |
|--|--|
| 1. Inspections outside of normal business hours (minimum charge – two hours) | \$47.00 per hour |
| 2. Reinspection fee assessed under provision of Section 305(c) | \$47.00 per hour |
| 3-2. Inspections for which no fee is specifically indicated (minimum charge – one-half hour) | \$47.00 per hour |
| 4-3. Additional plan review required by changes, additions or revisions to approved plans (minimum charge – one-half hour) | \$47.00 per hour |
| 5-4. For use of outside consultants for plan checking and inspections, or both | Actual costs |
| 6. Residential energy code plan review | \$30.00 per unit |
| 7. Occupancy permit fee | \$20.00 |
| 8. Nonresidential energy code plan review and inspection fees: | Building permit fees shall be as listed in Table 17-3. |

TABLE 17-3 MISCELLANEOUS BUILDING PERMIT FEES

| ACTION | FEE |
|--|--|
| Antenna Tower | \$25.00 |
| Building Code Interpretation | \$329.00 |
| Change Lot After Plan Review or Issuance of Permit | \$100.00 |
| Change Plans During or After Plan Review | New Plan Review Fee |
| Change or Revise Plans After Issuance of Permit | Current Hourly Rate per IBC or New Plan Review Fee |
| Covered Patio | Varies by Valuation |
| Covered Porch | Varies by Valuation |
| Decks | Varies by Valuation |
| Demolitions | \$50.00 Plus \$4.50 State Surcharge |
| Espresso Carts (portable and stand alone) | \$250.00 |
| Factory Built Structures | Varies by Valuation |

TABLE 17-3 MISCELLANEOUS BUILDING PERMIT FEES

| | |
|---|---|
| Fences Over 6 Feet in Height | Current Hourly Rate per IBC for Plan Review Plus \$25.00 Permit Fee |
| Flagpoles | \$25.00 |
| Fireplaces, Freestanding, Wood, Gas, and Propane | \$35.00 |
| Fireplaces, Inserts, Wood, Gas and Propane | \$25.00 |
| Mobile Homes, Single Wide | \$120.00 |
| Mobile Home, Double and Triple Wide | \$150.00 |
| Modular Homes or Buildings | \$500.00 |
| Modular Offices (Job Shacks) | \$350.00 |
| Moved Buildings | \$50.00 Prior to Moving Together with a Building Permit Fee Based on the IBC Valuation for New Building and Cost of Moved Building. |
| Occupancy Permit | \$21.00 |
| Penalty Permit Fee | Double Permit Fee |
| Residential Energy Code Plan Review | \$30.00 per unit |
| Re-Roofs Residential | (Permit Required for Overlays of Two Layers or More) \$25.00 |
| Commercial | Varies by Valuation |
| Retaining Walls (Permit Not Required Under Four Feet) | \$100.00 or IBC Valuation, Whichever Is Greater |
| Satellite Dish | (48" Diameter or Greater) \$25.00 |
| Signs 25 Sq. Ft. or Less (New Construction) | Permit Fee, Plan Review Fee, and \$4.50 Surcharge Plus \$25.00 |
| 26 Sq. Ft. or More (New Construction) | Permit Fee, Plan Review Fee, and \$4.50 Surcharge Plus \$50.00 |
| 25 Sq. Ft. or Less (Existing) | Permit Fee, and \$4.50 Surcharge Plus \$25.00 |
| 26 Sq. Ft. or More (Existing) | Permit Fee, and \$4.50 Surcharge Plus \$50.00 |
| Solariums | Varies by Valuation |
| Work Commencing Before Issuance of Permit | (Whichever Is Greater) Double Permit Fee or \$100.00 |
| Wood Stoves Including Inserts | \$100.00 |

~~(2)~~(3) International Property Maintenance Code. A fee for an on-site compliance inspection by the building official or his representative shall be as set forth by Table 17-2, Miscellaneous Building Inspection Fees. Upon such application and payment of the fee herein provided the building official shall notify the applicant of the date and time of the inspection.

~~(3)~~(4) Uniform Swimming Pool, Spa and Hot Tub Code. The fees for swimming pools, spas, and hot tubs shall be as set forth in Table 17-5, Plumbing Permit Fees.

~~(4)~~(5) Washington State Energy Code. A fee for an on-site compliance inspection by the building official or his representative shall be as set forth by Table 17-2, Miscellaneous Building Inspection Fees. Upon such application and payment of the fee herein provided the building official shall notify the applicant of the date and time of the inspection.

~~(5) — Washington State Ventilation and Indoor Air Quality Code. A fee for an on-site~~

~~compliance inspection by the building official or his representative shall be as set forth by Table 17.2, Miscellaneous Building Inspection Fees. Upon such application and payment of the fee herein provided the building official shall notify the applicant of the date and time of the inspection.~~

~~(6) Washington State Historic Building Code. A fee for an on-site compliance inspection by the building official or his representative shall be as set forth by Table 17.2, Miscellaneous Building Inspection Fees. Upon such application and payment of the fee herein provided the building official shall notify the applicant of the date and time of the inspection.~~

17.05.035 Building permit – Additional charge.

- (1) An additional charge of \$4.50 shall be added to the cost of a building permit and an additional surcharge of \$2.00 per residential unit on buildings with more than one unit for purposes of paying fees required by RCW 19.27.085 as now in effect or hereafter amended.
- (2) The funds collected under subsection (1) of this section shall be held by the city treasurer and transmitted to the state as required by law.

17.05.040 Notices.

It is unlawful for any person to remove, mutilate, destroy or conceal any lawful notice issued or posted by the building official pursuant to the provisions of this code.

17.05.050 Liability limitations.

Nothing contained in this chapter or in the International Building Code is intended to be, nor shall be, construed to create or form the basis for any liability on the part of the city or its officers, employees or agents, for any injury or damage resulting from the failure of a building to conform to the provisions of the International Building Code.

17.05.060 Amendments – Additions.

The following sections and appendix chapters of the International Building Code ~~as adopted in OHMC 17.05.015~~ in effect are amended to read as follows:

~~(1) Appendix chapters E, F, G, I and J of the International Building Code are hereby adopted.~~

~~(2)~~ (2) Section 101.1 is hereby amended to read as follows:

101.1 Title. These regulations shall be known as the Building Code of the City of Oak Harbor, Washington hereinafter referred to as "this code".

~~(2) Section 101.4.1 is hereby amended to read as follows:~~

~~101.4.1 Electrical. The provisions of the National Electrical Code as set forth in the Washington Administrative Code Chapter 296-46B as regulated and enforced by State of Washington Labor & Industries, Electrical Division shall apply to the installation of electrical systems, including alterations, repairs, replacement, equipment, appliances, fixtures, fittings and appurtenances thereto.~~

(3) Section ~~101.4.4~~ 101.4.3 is hereby amended to read as follows:

~~101.4.4~~101.4.3 Plumbing. The provisions of the City of Oak Harbor Plumbing Code as adopted by the Oak Harbor Municipal Code Chapter 17.12 shall apply to the installation, alteration, repair and replacement of plumbing systems, including equipment, appliances, fixtures, fittings and appurtenances, and where connected to a water or sewage system and all aspects of medical gas system. The provisions of the State of Washington requirements for private sewage disposal shall apply to private sewage disposal systems.

(4) Section ~~101.4.5~~ 101.4.4 is hereby amended to read as follows:

~~101.4.5~~101.4.4 Property Maintenance. The provisions of the City of Oak Harbor Property Maintenance Code as adopted by Oak Harbor Municipal Code Chapter 17.22 shall apply to existing structures and premises; equipment and facilities; light, ventilation, space heating, sanitation, life and fire safety hazards, responsibilities of owners, operators and occupants; and occupancy of existing premises and structures.

(5) Section ~~101.4.7~~ 101.4.6 is hereby amended to read as follows:

~~101.4.7~~101.4.6 Energy. The provisions of the State of Washington Energy Code as adopted by Oak Harbor Municipal Code Chapter 17.14 ~~and the State of Washington Ventilation and Indoor Air Quality Code as adopted by Oak Harbor Municipal Code Chapter 17.18~~ shall apply to all matters governing the design and construction of buildings for energy efficiency.

(6) Section 101.4.7 is hereby added to read as follows:

101.4.7 Electrical. The provisions of the National Electrical Code as set forth in the Washington Administrative Code Chapter 296-46B as regulated and enforced by State of Washington Labor & Industries, Electrical Division shall apply to the installation of electrical systems, including alterations repairs, replacement, equipment, appliances, fixtures, fittings and appurtenances thereto.

~~(6)~~(7) Section 105.2 is hereby amended to read as follows:

105.2 Work exempt from permit. Exemptions from permit requirements of this code shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this code or any other laws or ordinances of this jurisdiction. Permits shall not be required for the following:

Building:

1. One-story detached accessory structures used as tool and storage sheds, playhouses and similar uses, provided the floor area does not exceed 120 square feet (11 m²).
2. Fences not over 6 feet (1829 mm) high.
3. Oil derricks.
4. Retaining walls that are not over 4 feet (1219 mm) in height measured from the bottom of the footing to the top of the wall, provided the wall is set back from any adjacent property lines or structures a distance at least equal to the height of the wall and the material retained slopes 1 vertical to 2 horizontal (or less) up and away from the wall unless supporting a surcharge or impounding Class I, II or IIIA liquids.

5. Water tanks supported directly on grade if the capacity does not exceed 5,000 gallons (18925 L) and the ratio of height to diameter or width does not exceed 2:1.
6. Sidewalks and driveways not more than 30 inches (762 mm) above adjacent grade, and not over any basement or story below and are not part of an accessible route.
7. Painting, papering, tiling, carpeting, cabinets, counter tops and similar finish work.
8. Temporary motion picture, television and theater stage sets and scenery.
9. Prefabricated swimming pools accessory to a Group R-3 occupancy that are less than 24 inches (610 mm) deep, do not exceed 5,000 gallons (18925 L) and are installed entirely above ground.
10. Shade cloth structures constructed for nursery or agricultural purposes, not including service systems.
11. Swings and other playground equipment.
12. Window awnings supported by an exterior wall that do not project more than 54 inches (1372 mm) from the exterior wall and do not require additional support of Group R-3 and U occupancies.
13. Nonfixed and movable fixtures, cases, racks, counters and partitions not over 5 feet 9 inches (1753 mm) in height.

Electrical:

Repairs and maintenance: Minor repair work, including the replacement of lamps or the connection of approved portable electrical equipment to approved permanently installed receptacles.

Radio and television transmitting stations: The provisions of this code shall not apply to electrical equipment used for radio and television transmissions, but do apply to equipment and wiring for a power supply and the installations of towers and antennas.

Temporary testing systems: A permit shall not be required for the installation of any temporary system required for the testing or servicing of electrical equipment or apparatus.

Gas:

1. Portable heating appliance.
2. Replacement of any minor part that does not alter approval of equipment or make such equipment unsafe.

Mechanical:

1. Portable heating appliance.
2. Portable ventilation equipment.
3. Portable cooling unit.
4. Steam, hot or chilled water piping within any heating or cooling equipment regulated by this code.
5. Replacement of any part that does not alter its approval or make it unsafe.

6. Portable evaporative cooler.
7. Self-contained refrigeration system containing 10 pounds (5 kg) or less of refrigerant and actuated by motors of 1 horsepower (746 W) or less.

Plumbing:

1. The stopping of leaks in drains, water, soil, waste or vent pipe, provided, however, that if any concealed trap, drain pipe, water, soil, waste or vent pipe becomes defective and it becomes necessary to remove and replace the same with new material, such work shall be considered as new work and a permit shall be obtained and inspection made as provided in this code.

2. The clearing of stoppages or the repairing of leaks in pipes, valves or fixtures and the removal and reinstallation of water closets, provided such repairs do not involve or require the replacement or rearrangement of valves, pipes or fixtures.

~~(7)~~(8) Section 105.3.1.1 is hereby added to read as follows:

105.3.1.1 Prerequisites for Issuance of Permit.

The Building Official shall determine whether the following requirements have been met prior to issuance of a permit:

1. Any requirements or regulations imposed on a project as a condition of a land use approval process;
2. Any requirements or regulations imposed on a project as a condition of the site civil process;
3. Any transportation, school, parks or other mitigation or impact fees are paid as adopted by Oak Harbor Municipal Code Sections 11.32 or 19.48 respectively;
4. Approval of Design Review as required by Oak Harbor Municipal Code for Design Guidelines and Regulation as required by Title 19.
5. Compliance with the State Environmental Policy Act, as adopted by Oak Harbor Municipal Code Title 20.
6. Compliance with the Flood Management requirements as adopted by Oak Harbor Municipal Code Title 11 and Title 20.
7. Compliance with environmentally Critical Areas Protection requirements as required by Oak Harbor Municipal Code Title 20.

~~(8)~~(9) Section ~~106.1107.1~~ is hereby amended to read as follows:

~~106.1107.1 Submittal Documents. General. Submittal documents consisting of~~ construction documents, statement of special inspections geotechnical report and other data shall be submitted in ~~one~~ two or more sets with each permit application. The construction documents shall be prepared by a registered design professional where required by the statutes of the jurisdiction in which the project is to be constructed. Where special conditions exist, the building official is authorized to require additional construction documents to be prepared by a registered design professional. All plans for construction, erection, enlargement, alteration or repairs of building or structures 4,000

square feet or over shall be designed, prepared and stamped by an architect or engineer licensed by the state of Washington.

Exception: The building official is authorized to waive the submission of construction documents and other data not required to be prepared by a registered design professional if it is found that the nature of the work applied for is such that review of construction documents is not necessary to obtain compliance with this code.

~~(9)~~(10) Section ~~408.3~~109.3 is hereby amended to read as follows:

~~408.3~~109.3 Building permits valuations. The applicant for a permit shall provide an estimated permit value at time of application. Permit valuations shall include total value of work, including materials and labor, for which the permit is being issued, such as electrical, gas, mechanical, plumbing equipment and permanent systems. If, in the opinion of the building official, the valuation is underestimated on the application, the permit shall be denied, unless the applicant can show detailed estimates to meet the approval of the building official. Final building permit valuation shall be set by the building official. The valuation for commonly built structures shall be determined by the most current issue of the Building Safety Journal, which offers ~~building valuation data fee schedule~~ square foot construction costs table as published by the International Code Council, adopted herein by reference.

~~(10)~~(11) Section ~~408.6~~109.6 is hereby amended to read as follows:

~~408.6~~109.6 Refunds. The building official is authorized to establish a refund policy. The building official may authorize refunding of any fee paid hereunder which was erroneously paid or collected. The building official may authorize refunding of not more than 80 percent of the permit fee paid when no work has been done under a permit issued in accordance with this code. The building official may authorize refunding of not more than 80 percent of the plan review fee paid when an application for a permit for which a plan review has been paid is withdrawn or canceled before any plan reviewing is done. The building official shall not authorize refunding of any fee paid except on written application filed by the original permittee not later than 180 days after the date of fee payment.

~~(11)~~(12) Section ~~410.5~~111.5 is hereby added to read as follows:

~~410.5~~111.5 Violation of requirements for certificate of occupancy. The City Council affirms that the issuance of any certificate of occupancy is of vital importance in the safeguarding of life safety, property safety and health of occupants of any structure; and further, that the enforcement of all city development regulations is of vital importance to the city's economic vitality and the public good. Any person allowing a building to be occupied without a certificate of occupancy first being issued as required by this Chapter shall be subject to the civil penalty provisions of the Oak Harbor Municipal Code Section 17.05.090.

~~(12)~~(13) Section ~~412.1~~113 is hereby amended to read as follows:

~~412.1~~113.1 Board of Appeals. All references to the term "board of Appeal(s)" shall deem to mean the Hearing Examiner as per OHMC 18.40.180. Permits under this chapter shall be Type I review process as per OHMC 18.20.230. Appeals of decisions of applicable codes adopted under this chapter shall be to the hearing examiner.

~~(13)~~(14) Section 202 is hereby amended to read as follows:

GRADE PLANE. A referenced plane representing the average of the finished ground

level, adjoining the building at all exterior walls. Where the finished ground level slopes away from the exterior walls, the reference plane shall be established by the lowest points within the area between the building and the lot line or, where the lot line is more than 10 feet from the building between the structure and a point 10 feet from the building.

~~(14) Section 403.1 is hereby amended to read as follows:~~

~~403.1 Applicability. The provisions of this section shall apply to buildings with an occupied floor located more than 50 feet (15240 mm) above the lowest level of fire department vehicle access. Such buildings shall be provided with an approved automatic sprinkler system throughout in accordance with Section 4.3.2.~~

~~Exception: The provisions of this section shall not apply to the following buildings and structures:~~

- ~~1. Airport traffic control towers in accordance with Section 412.~~
- ~~2. Open parking garages in accordance with Section 4.6.3.~~
- ~~3. Buildings with an occupancy in Group A-5 in accordance with Section 3.3.1.~~
- ~~4. Low-hazard special industrial occupancies in accordance with Section 503.1.1.~~
- ~~5. Buildings with an occupancy in Group H-1, H-2 or H-3 in accordance with Section 415.~~

(15) Section 3201.5 is hereby added to read as follows:

3201.5 Right-of-Way Permits. A permit is required for any construction, alteration, repair, move, demolish, replace, use or encroachment into the public right-of way as determined by the City Engineer.

(16) Appendix Section J103.1 is hereby amended to read as follows:

J103.1 Permits Required. Except as exempted in Section J103.2, no grading shall be performed without first having obtained a permit therefor from the City Engineer. A grading permit does not include the construction of retaining walls or other structures.

(17) Appendix Section J104.3 is hereby amended to read as follows:

~~J104.3 Soils report. A soils report prepared by registered design professionals shall be provided which shall identify the nature and distribution of existing soils; conclusions and recommendations for grading procedures; soil design criteria for any structures or embankments required to accomplish the proposed grading; and, where necessary, slope stability studies, and recommendations and conclusions regarding site geology.~~

~~Exception: A soils report is not required where the building official or the city engineer determines that the nature of the work applied for is such that a report is not necessary.~~

~~J104.3 Geotechnical report.~~

~~A geotechnical report prepared by a registered design professional shall be provided. The report shall contain the following:~~

- ~~1. The nature and distribution of existing soils;~~
- ~~2. conclusions and recommendations for grading procedures;~~
- ~~3. Soil design criteria for any structures or embankments required to accomplish the proposed grading; and~~
- ~~4. where necessary, slope stability studies, and recommendations and conclusions regarding site geology.~~

~~Exception: A geotechnical report is not required where the building code official~~

or city engineer determines that the nature of the work applied for is such that a report is no necessary.

- (18) Appendix J106.1 is hereby amended to read as follows:

J106.1 Maximum slope. The slope of cut surfaces shall be no steeper than is safe for the intended use, and shall be no steeper than 2 horizontal to 1 vertical (50 percent) unless the applicant furnishes a soils report justifying a steeper slope.

Exceptions:

1. A cut surface may be at a slope of 1.5 horizontal to 1 vertical (67 percent) provided that all the following are met:

1.1 It is not intended to support structures or surcharges.

1.2 It is adequately protected against erosion.

1.3 It is no more than 8 feet (2438 mm) in height.

1.4 It is approved by the city engineer.

2. A cut surface in bedrock shall be permitted to be at a slope of 1 horizontal to 1 vertical (100 percent).

- (19) Appendix J108.3 is hereby amended to read as follows:

J108.3 Slope protection. Where required to protect adjacent properties at the toe of a slope from adverse effects of the grading, additional protection, approved by the city engineer, shall be included. Such protection may include but shall not be limited to:

1. Setbacks greater than those required by Figure J108.1.

2. Provisions for retaining walls or similar construction.

3. Erosion protection of the fill slopes.

4. Provision for the control of surface waters.

- (20) Appendix J109.3 is hereby amended to read as follows:

J109.3 Interceptor Drains. Interceptor drains shall be installed along the top of cut slopes receiving drainage from a tributary width greater than 40 feet, measured horizontally. They shall have a minimum depth of 1 foot and a minimum width of 3 feet. The slope shall be approved by the city engineer, but shall not be less than 50 horizontal to 1 vertical. The drain shall be paved with concrete not less than 3 inches in thickness, or by other materials suitable to the application. Discharge from the drain shall be accomplished in a manner to prevent erosion and shall be approved by the city engineer.

17.05.090 Penalties.

(1) It shall be unlawful for a person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy or maintain any building, structure or building service equipment or cause or permit the same to be done in violation of this chapter or the technical codes.

(2) Civil Violation. Except as provided in subsections (4) and (5) of this section, any violation of any of the provisions of this chapter or of the technical codes constitutes a

civil violation as provided for in Chapter 1.28 OHMC, for which a monetary penalty may be imposed as provided therein.

- (3) **Criminal Penalty.** In addition to or as an alternative to any other penalty provided in this chapter or by law, any person who intentionally or knowingly violates any of the provisions of this chapter or the technical codes shall be guilty of a misdemeanor and upon conviction shall be punishable by a fine of up to \$1,000 or a jail sentence of up to 90 days in jail, or both such fine and jail time.
- (4) **Plumbing Code Violations.** Violations of the Uniform Plumbing Code ~~and Plumbing Code Standards~~ as adopted under OHMC 17.12.020 shall be misdemeanors punishable by a fine of up to \$1,000 or a jail sentence of up to 90 days, or both such fine and jail time.
- (5) **Violations of Orders under This Chapter.** Any person constructing, repairing, operating, maintaining, changing an occupancy, occupying or moving a building, structure, occupancy, or premises contrary to the provisions of this chapter or who continues to construct, repair, operate, maintain, change occupancy, occupy or move such building, structure, occupancy or premises when ordered by the building official to desist from violating a provision or provisions of this chapter shall be guilty of a misdemeanor punishable by a fine of up to \$1,000 or a jail sentence of up to 90 days, or both such fine and jail time.
- (6) **Separate Offense.** Each day or portion thereof upon which a violation occurs constitutes a separate offense under subsections (1), (2), (3), (4) and (5) of this section.
- (7) **Destruction of Notice.** It shall be unlawful for any person to remove, mutilate, destroy or conceal any notice issued and posted by the building official pursuant to the provisions of this chapter or the building code which violations shall be a civil offense as described in subsection (2) of this section.

17.05.110 Severability.

Should any section, paragraph, sentence or word of this chapter or codes hereby adopted be declared for any reason to be invalid, it is the intent of the city council that it would have passed all other portions of this chapter and of the codes hereby adopted independent of the elimination herefrom of any such portions as may be declared invalid and accordingly such declaration of invalidity shall not affect the validity of this chapter as a whole nor any part hereof other than the part so declared to be invalid.

17.05.120 Hearing examiner to function as appeals board.

Permits under this chapter shall be Type I review process. Appeals of decisions of codes adopted under this chapter shall be to the hearing examiner. References to the board of appeals shall be to the hearing examiner.

Section Four. Oak Harbor Municipal Code Chapter 17.06 adopted by §6 of Ordinance 1514 in 2007 is hereby amended to read as follows:

Chapter 17.06
2006 INTERNATIONAL RESIDENTIAL CODE

Sections:

- 17.06.010** Title.
- 17.06.020** ~~Documents adopted by reference~~Applicability of the International Residential Code.
- 17.06.030** Administration and enforcement – Rules and regulation.
- 17.06.040** Administration and enforcement – Building official authority.
- 17.06.050** Notices.
- 17.06.060** Liability limitations.
- 17.06.070** Amendments – Additions.
- ~~**17.06.075** Amendments – Deletions~~
- 17.06.080** Penalties.
- 17.06.090** Severability.
- 17.06.100** Hearing examiner to function as appeals board.

17.06.010 Title.

This chapter shall be known as the International Residential Code of the city of Oak Harbor.

17.06.020 ~~Documents adopted by reference~~Applicability of the International Residential Code.

The ~~2006~~ ~~2009~~ most recent Edition of the International Residential Code, ~~including the chapters of its Appendix: A, B, C, D, G, H, J, and K as~~ published by the International Code Council, ~~and changes thereto as set forth in Chapter 51-51 WAC and as~~ adopted by the Washington State Building Code Council under the provisions of Chapter 19.27 RCW and amended herein, are in effect in the City of Oak Harbor. ~~adopted by reference with the deletions, additions, and exceptions as set out in this chapter and shall be the city's residential code; provided, however, that chapters 11 and 25 through 42 43 of the 2006 2009 International Residential Code are not adopted.~~ One ~~One~~ copy of ~~each the~~ document identified in this section shall be filed in the office of the city clerk for examination by the public.

17.06.030 Administration and enforcement – Rules and regulation.

The city council may, upon notice and hearing, promulgate, adopt, and issue those rules and regulation necessary for the effective and efficient administration of this code.

17.06.040 Administration and enforcement – Building official authority.

The building official of the city shall be deemed to be the "building official" as defined in ~~Section 202 of~~ the International Building Code. The International Residential Code shall be administered and enforced by the building official of the city.

17.06.050 Notices.

It is unlawful for any person to remove, mutilate, destroy or conceal any lawful notice issued or posted by the building official pursuant to the provisions of this code.

17.06.060 Liability limitations.

Nothing contained in this chapter or in the International Residential Code is intended to be, nor shall be, construed to create or form the basis for any liability on the part of the city or its officers, employees or agents, for any injury or damage resulting from the failure of a building to conform to the provisions of the International Residential Code.

17.06.070 Amendments – Additions.

The following sections and appendix chapters of the International Residential Code ~~as adopted in OHMC 17.06.020~~ ineffect are amended to read as follows:

(1) Appendix chapters H, J, and K of the International Residential Code are hereby adopted.

(2) Section R101.1 is hereby amended to read as follows:

R101.1 Title. These provisions shall be known as the International Residential Code for One and Two-Unit Dwellings of the City of Oak Harbor, and shall be cited as such and will be referred to herein as "this code."

(3) Section R108.3 is hereby amended to read as follows:

R108.3 Building Permit Valuations:

The applicant for a permit shall provide an estimated permit value at the time of application. Building permit valuations shall include total value of work for which the permit is being issued, such as electrical, gas, mechanical, plumbing equipment and permanent systems, including materials and labor. If in the opinion of the building official, the valuation is underestimated on the application, the permit shall be denied, unless the applicant can show detailed estimates to meet the approval of the building official. Final building permit valuation shall be set by the building official. The valuation for commonly built structures shall be determined by the most current issue of the Building Safety Journal, which offers building valuation data fee schedule as published by the International Code Council, adopted herein by reference.

(4) Section R108.5 is hereby amended to read as follows:

R108.5 Refunds. The building official is authorized to establish a refund policy. The building official may authorize refunding of any fee paid hereunder which was erroneously paid or collected. The building official may authorize refunding of not more than 80 percent of the permit fee paid when no work has been done under a permit issued in accordance with this code. The building official may authorize refunding of not more than 80 percent of the plan review fee paid when an application for a permit for which a plan review has been paid is withdrawn or canceled before any plan reviewing is done. The building official shall not authorize refunding of any fee paid except on written application filed by the original permittee not later than 180 days after the date of fee payment.

(5) Section R112 is hereby amended to read as follows:

R112.1 Board of Appeals. All references to the term "board of Appeal(s)" shall deem to mean the Hearing Examiner as per OHMC 18.40.180. Permits under this chapter shall be Type I review

process as per OHMC 18.20.230. Appeals of decisions of applicable codes adopted under this chapter shall be to the hearing examiner.

(5)(6) Table R301.2(1) is hereby amended to read as follows:

| TABLE R301.2(1) Climate and Geographic Design Criteria | |
|---|--------------------|
| Ground Snow Load | 20-17 PSF |
| Wind speed: | 85 MPH |
| Seismic Design Group: | D1 |
| Damage from Weathering: | Moderate |
| Frost Line Depth: | 12 Inches |
| Termite: | None to Slight |
| Decay: | Slight to Moderate |
| Winter Design Temp: | 27 Degrees |
| Ice Shield Underlayment: | No |
| Air Freezing Index: | N/A |
| Mean Annual Temperature: | 50 Degrees |

(6)(7) Section R310.1 is hereby amended to read as follows:

R310.1 Emergency escape and rescue required. Basements and every sleeping room shall have at least one operable emergency and rescue opening. Such opening shall open directly into a public street, public alley, yard or court. Where basements contain one or more sleeping rooms, emergency egress and rescue openings shall be required in each sleeping room, but shall not be required in adjoining areas of the basement. Where emergency escape and rescue openings are provided they shall have a sill height of not more than 44 inches (1118 mm) above the floor. Where a door opening having a threshold below the adjacent ground elevation serves as an emergency escape and rescue opening and is provided with a bulkhead enclosure, the bulkhead enclosure shall comply with Section R310.3. The net clear opening dimensions required by this section shall be obtained by the normal operation of the emergency escape and rescue opening from the inside. Emergency escape and rescue openings with a finished sill height below the adjacent ground elevation shall be provided with a window well in accordance with Section R310.2. Emergency escape and rescue openings shall open directly into a public way, or to a yard or court that opens to a public way.

Exception: Basements used only to house mechanical equipment and not exceeding total floor area of 200 square feet (18.58 m2).

R310.1.1 Minimum opening area.

All emergency escape and rescue openings shall have a minimum net clear opening of 5.7 square feet (0.530 m2).

Exception: Grade floor openings shall have a minimum net clear opening of 5 square feet (0.465 m2).

R310.1.2 Minimum opening height.

The minimum net clear opening height shall be 24 inches (610 mm).

R310.1.3 Minimum opening width.

The minimum net clear opening width shall be 20 inches (508 mm).

R310.1.4 Operational constraints.

Emergency escape and rescue openings shall be operational from the inside of the room without the use of keys, tools or special knowledge.

74

310.1.5 Replacement of Emergency Escape and Rescue Opening. If emergency escape and rescue openings are replaced or renewed, except for glazing replacement or renewal, the opening sizes shall be as required for new construction.

~~17.06.075 Amendments Deletions:~~

~~Chapters 11 and 25-43 of the International Residential Code are deleted and not applicable within the City of Oak Harbor.~~

17.06.080 Penalties.

- (1) It shall be unlawful for a person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, or utilize a mechanical system, or cause same to be done, in conflict with or in violation of any of the provisions of this chapter or the technical codes.
- (2) Civil Violation. Except as provided in subsections (4) and (5) of this section, any violation of any of the provisions of this chapter or of the technical codes constitutes a civil violation as provided for in Chapter 1.28 OHMC, for which a monetary penalty may be imposed as provided therein.
- (3) Criminal Penalty. In addition to or as an alternative to any other penalty provided in this chapter or by law, any person who intentionally or knowingly violates any of the provisions of this chapter or the technical codes shall be guilty of a misdemeanor and upon conviction shall be punishable by a fine of up to \$1,000 or a jail sentence of up to 90 days in jail, or both such fine and jail time.
- (4) Violations of Orders under This Chapter. Any person constructing, repairing, operating, maintaining, changing an occupancy, occupying or moving a building, structure, occupancy, or premises contrary to the provisions of this chapter who continues to construct, repair, operate maintain, change occupancy, occupy or move such building, structure, occupancy or premises when ordered by the building official to desist from violating a provision or provisions of this chapter shall be guilty of a misdemeanor punishable by a fine of up to \$1,000 or a jail sentence of up to 90 days, or both such fine and jail time.
- (5) Separate Offense. Each day or portion thereof upon which a violation occurs constitutes a separate offense under subsections (1), (2), (3) and (4) of this section.
- (6) Destruction of Notice. It shall be unlawful for any person to remove, mutilate, destroy or conceal any notice issued and posted by the building official pursuant to the provisions of this chapter or the building code which violations shall be a civil offense as described in subsection (2) of this section.

17.06.090 Severability.

Should any section, paragraph, sentence or word of this chapter or codes hereby adopted be declared for any reason to be invalid, it is the intent of the city council that it would have passed all other portions of this chapter and of the codes hereby adopted independent of the elimination herefrom of any such portions as may be declared invalid and accordingly such declaration of

75

invalidity shall not affect the validity of this chapter as a whole nor any part hereof other than the part so declared to be invalid.

17.06.100 Hearing examiner to function as appeals board.

All references to the term "board of appeal(s)" shall deem to mean the hearing examiner as per OHMC 18.40.180. Permits under this chapter shall be Type I review process as per OHMC 18.20.230. Appeals of decisions of applicable codes adopted under this chapter shall be to the hearing examiner.

Section Five. Oak Harbor Municipal Code Chapter 17.10 adopted by §8 of Ordinance 1514 in 2007 is hereby amended to read as follows:

Chapter 17.10
2006 INTERNATIONAL MECHANICAL CODE

Sections:

| | |
|------------------|---|
| 17.10.010 | Title |
| 17.10.020 | Document adopted by reference <u>Applicability of International Mechanical Code.</u> |
| 17.10.030 | Administration and enforcement – Rules and regulations. |
| 17.10.040 | Administration and enforcement – Building official authority. |
| 17.10.050 | Notices. |
| 17.10.060 | Liability limitations. |
| 17.10.070 | Amendments – Additions. |
| 17.10.080 | Penalties. |
| 17.10.090 | Severability. |
| 17.10.100 | Hearing examiner to function as appeals board. |

17.10.010 Title.

This chapter shall be known as the International Mechanical Code of the city of Oak Harbor.

17.10.020 ~~Document adopted by reference~~ Applicability of International Mechanical Code.

The ~~2006 2009~~ most recent edition of the International Mechanical Code ~~including Appendix A~~ as published by the International Code Council, ~~and changes thereto as set forth in Chapter 51-52 WAC~~ and adopted by the Washington State Building Code Council under the provisions of Chapter 19.27 RCW as amended herein is in effect in the City of Oak Harbor, ~~are adopted by reference with the deletions, additions, and exceptions as set out in this chapter and shall be the city's mechanical code.~~ One copy of each document listed in this section shall be filed in the office of the city clerk for examination by the public.

17.10.030 Administration and enforcement – Rules and regulations.

The city council may upon notice and hearing promulgate such rules and regulations as may be necessary to the effective and efficient administration of the code.

17.10.040 Administration and enforcement – Building official authority.

The International Mechanical Code shall be administered and enforced by the city building official.

17.10.050 Notices.

It is unlawful for any person to remove, mutilate, destroy or conceal any lawful notice issued or posted by the building official pursuant to the provisions of this code.

17.10.060 Liability limitations.

Nothing contained in this chapter or in the International Mechanical Code is intended to be, nor shall be, construed to create or form the basis for any liability on the part of the city or its officers, employees or agents, for any injury or damage resulting from the failure of a building to conform to the provisions of the International Mechanical Code.

17.10.070 Amendments – Additions.

The following sections and appendix chapters of the International Mechanical Code ~~as adopted in OHMC 17.10.020~~ in effect are amended to read as follows:

(1) Appendix A of the International Mechanical Code is hereby adopted.

(2) Section 106.4.3 is hereby amended to read as follows:

106.4.3 Expiration. Every permit issued by the building official under the provisions of this code shall expire by limitation and become null and void if the work authorized by such permit is not commenced within one hundred eighty (180) days from the date of such permit, or if the work authorized by such permit is suspended or abandoned at any time after the work is commenced for a period of one hundred eighty (180) days. Before such work recommences, a new permit shall be first obtained and the fee, therefore, shall be one-half the amount required for a new permit for such work, provided no changes have been made or will be made in the original construction documents for such work, and provided further that suspension or abandonment has not exceeded one year. In order to renew action on a permit after expiration, the permittee shall pay a new full permit fee.

(3) Section 106.5.2 is hereby amended to read as follows:

106.5.2 Fee Schedule. The fees for mechanical work shall be as indicated in Table 17-6 Mechanical Permit Fees.

(4) Table 17-6 Mechanical Permit Fees.

TABLE 17-6 MECHANICAL PERMIT FEES

| ACTION | FEE |
|--|------------|
| Permit Issuance and Heaters | |
| For the issuance of each mechanical permit | \$23.50 |
| For issuing each supplemental permit for which the original permit has not expired, been canceled or finalized | \$7.25 |
| Unit Fee Schedule (In addition to required permits as listed above.) | |
| Furnaces | |
| For the installation or relocation of each forced air or gravity type furnace or burner, including ducts and vents attached to such appliance, up to and | \$15.00 |

| ACTION | FEE |
|---|------------|
| including 100,000 Btu/h (29.3 kW) | |
| For the installation or relocation of each forced air or gravity type furnace or burner, including ducts and vents attached to such appliance over 100,000 Btu/h (29.3 kW) | \$18.00 |
| For the installation or relocation of each floor furnace, including vent | \$15.00 |
| For the installation or relocation of each suspended heater, recessed wall heater or floor mounted unit heater | \$15.00 |
| Appliance Vents | |
| For the installation, relocation or replacement of each appliance vent installed and not included in an appliance permit | \$7.00 |
| Repairs or Additions | |
| For the repair of, alteration of, or addition to each heating appliance, refrigeration unit, cooling unit, absorption unit, or each heating, cooling, absorption or evaporative cooling system, including installation of controls regulated by the Mechanical Code | \$14.00 |
| Boilers, Compressors and Absorption Systems | |
| For the installation or relocation of each boiler or compressor to and including 3 horsepower (10.6 kW), or each absorption system to and including 100,000 Btu/h (29.3 kW) | \$15.00 |
| For the installation or relocation of each boiler or compressor over 3 horsepower (10.6 kW) to and including 15 horsepower (52.7 kW), or each absorption system over 100,000 Btu/h (29.3 kW) to and including 500,000 Btu/h (146.6 kW) | \$27.00 |
| For the installation or relocation of each boiler or compressor over 15 horsepower (52.7 kW) to and including 30 horsepower (105.5 kW), or each absorption system over 500,000 Btu/h (146.6 kW) to and including 1,000,000 Btu/h (293.1 kW) | \$37.00 |
| For the installation or relocation of each boiler or compressor over 30 horsepower (105.5 kW) to and including 50 horsepower (176 kW), or each absorption system over 1,000,000 Btu/h (293.1 kW) to and including 1,750,000 Btu/h (512.9 kW) | \$55.00 |
| For the installation or relocation of each boiler or compressor over 50 horsepower (176 kW), or each absorption system over 1,750,000 Btu/h (512.9 kW) | \$93.00 |
| Air Handling | |
| For each air handling unit to and including 10,000 cubic feet per minute (cfm) (4719 Us), including ducts attached thereto Note: This fee does not apply to an air handling unit which is a portion of a factory assembled appliance, cooling unit, evaporative cooler or absorption unit for which a permit is required elsewhere in the Mechanical Code. | \$11.00 |
| For each air handling unit over 10,000 cfm (4719 Us) | \$18.00 |
| Evaporative Coolers | |
| For each evaporative cooler other than portable type | \$11.00 |
| Ventilation and Exhaust | |
| For each ventilation fan connected to a single duct | \$7.00 |
| For each ventilation system which is not a portion of any heating or air conditioning system authorized by a permit | \$11.00 |
| For the installation of each hood which is served by mechanical exhaust, including the ducts for such hood | \$11.00 |
| Incinerators | |
| For the installation or relocation of each domestic type incinerator | \$18.00 |
| For the installation or relocation of each commercial or industrial type incinerator | \$15.00 |
| Gas Piping Systems | |

| ACTION | FEE |
|--|---------|
| For each gas piping system of one to five outlets | \$5.00 |
| For each additional outlet over five, each | \$1.00 |
| Miscellaneous | |
| For each appliance or piece of equipment regulated by the Mechanical Code but not classed in other appliance categories, or for which the fee is listed in the table | \$11.00 |
| Other Inspection and Fees Refer to Table 17-2. | |

(4)(5) Section 106.5.3 is hereby amended to read as follows:

106.5.3 Fee Refunds. The building official shall authorize the refunding of fees as follows:

1. The full amount of any fee paid hereunder which was erroneously paid or collected.
2. Not more than 80 percent of the permit fee paid when no work has been done under a permit issued in accordance with this code.
3. Not more than 80 percent of the plan review fee paid when an application for a permit for which a plan review fee has been paid is withdrawn or canceled before any plan reviewing is done.

The building official shall not authorize refunding of any fee paid except on written application filed by the original permittee not later than 180 days after the date of fee payment.

(5)(6) Section 108.1 is hereby amended to read as follows:

108.1 Unlawful Acts. It shall be unlawful for a person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert, demolish or utilize a mechanical system, or cause the same to be done, in conflict with or in violation of any of the provisions of this code. Each separate day or any portion thereof, during which any violation of this code occurs or continues, shall be deemed to constitute a separate offense.

(6)(7) Section 202 is hereby amended to read as follows:

SUBSTANTIALLY REMODELED. Substantially Remodeled is any alteration or restoration of a building exceeding 60 percent of the assessed valuation of such building within a twelve-month period.

(7)(8) Section 901.5 is hereby added to read as follows:

901.5 Solid Fuel Burning Devices. No used fuel-burning device shall be installed in new or existing buildings unless such device is United States Environmental Protection Agency certified or a pellet stove either certified or exempt from certification by the United States Environmental Protection Agency. EXCEPTION: antique wood cook stoves and heaters manufactured prior to 1940.

17.10.080 Penalties.

- (1) It shall be unlawful for a person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy or maintain any building, structure or building service equipment or cause or permit the same to be done in violation of this chapter or the technical codes.
- (2) Civil Violation. Except as provided in subsections (4) and (5) of this section, any violation of any of the provisions of this chapter or of the technical codes constitutes a civil violation as provided for in Chapter 1.28 OHMC, for which a monetary penalty may

be imposed as provided therein.

- (3) **Criminal Penalty.** In addition to or as an alternative to any other penalty provided in this chapter or by law, any person who intentionally or knowingly violates any of the provisions of this chapter or the technical codes shall be guilty of a misdemeanor and upon conviction shall be punishable by a fine of up to \$1,000 or a jail sentence of up to 90 days in jail, or both such fine and jail time.
- (4) **Violations of Orders under This Chapter.** Any person constructing, repairing, operating, maintaining, changing an occupancy, occupying or moving a building, structure, occupancy, or premises contrary to the provisions of this chapter who continues to construct, repair, operate, maintain, change occupancy, occupy or move such building, structure, occupancy or premises when ordered by the building official to desist from violating a provision or provisions of this chapter shall be guilty of a misdemeanor punishable by a fine of up to \$1,000 or a jail sentence of up to 90 days, or both such fine and jail time.
- (5) **Separate Offense.** Each day or portion thereof upon which a violation occurs constitutes a separate offense under subsections (1), (2), (3) and (4) of this section.
- (6) **Destruction of Notice.** It shall be unlawful for any person to remove, mutilate, destroy or conceal any notice issued and posted by the building official pursuant to the provisions of this chapter or the building code which violations shall be a civil offense as described in subsection (2) of this section.

17.10.090 Severability.

Should any section, paragraph, sentence or word of this chapter or codes hereby adopted be declared for any reason to be invalid, it is the intent of the city council that it would have passed all other portions of this chapter and of the codes hereby adopted independent of the elimination herefrom of any such portions as may be declared invalid and accordingly such declaration of invalidity shall not affect the validity of this chapter as a whole nor any part hereof other than the part so declared to be invalid.

17.10.100 Hearing examiner to function as appeals board.

All references to the term "board of appeal(s)" shall deem to mean the hearing examiner as per OHMC 18.40.180. Permits under this chapter shall be Type I review process as per OHMC 18.20.230. Appeals of decisions of applicable codes adopted under this chapter shall be to the hearing examiner.

Section Six. Oak Harbor Municipal Code Chapter 17.12 adopted by §10 of Ordinance 1514 in 2007 is hereby amended to read as follows:

Chapter 17.12
2006 UNIFORM PLUMBING CODE

Sections:

- 17.12.010 **Title.**
- 17.12.020 ~~Document adopted by reference~~ **Applicability of Uniform Plumbing Code.**
- 17.12.030 **Administration and enforcement – Rules and regulations.**
- 17.12.040 **Administration and enforcement – Building official authority.**
- 17.12.050 **Notices.**
- 17.12.060 **Liability limitations.**
- 17.12.070 **Amendments – Additions.**
- ~~17.12.075 **Amendments – Deletions**~~
- 17.12.080 **Penalties.**
- 17.12.090 **Severability.**
- 17.12.100 **Hearing examiner to function as appeals board.**
- 17.12.010 **Title.**

This chapter shall be known as the Uniform Plumbing Code of the city of Oak Harbor.

17.12.020 ~~Document adopted by reference~~ **Applicability of Uniform Plumbing Code.**
The ~~2006 2009~~ ~~most recent~~ edition of the Uniform Plumbing Code, ~~including Appendix H~~ as published by the International Association of Plumbing and Mechanical Officials and ~~changes thereto as set forth in Chapter 51-56 WAC~~ as adopted by the Washington State Building Code Council under the provisions of RCW 19.27 ~~as amended herein is in effect in the City of Oak Harbor are adopted by reference with the deletions, additions, and exceptions as set out in this chapter and shall be the city's plumbing code; provided, however, that Chapter 51215 Water Heaters, Chapter 7, Part II, Building Sewers, Chapter 12, Gas Piping, and Chapter 15, Fire Stop Protection, are not adopted.~~ ~~One~~ copy of ~~each~~ ~~the~~ document listed in this section shall be ~~filed on file~~ in the office of the city clerk for examination by the public.

17.12.030 **Administration and enforcement – Rules and regulations.**
The city council may upon notice and hearing promulgate such rules and regulations as may be necessary to the effective and efficient administration of the code.

17.12.040 **Administration and enforcement – Building official authority.**
The Uniform Plumbing Code shall be administered and enforced by the city building official.

17.12.050 **Notices.**
It is unlawful for any person to remove, mutilate, destroy or conceal any lawful notice issued or posted by the building official pursuant to the provisions of this code.

17.12.060 **Liability limitations.**
Nothing contained in this chapter or in the Uniform Plumbing Code is intended to be, nor shall be, construed to create or form the basis for any liability on the part of the city or its officers, employees or agents, for any injury or damage resulting from the failure of a building to conform to the provisions of the Uniform Plumbing Code.

17.12.070 Amendments – Additions.

The following sections of the Uniform Plumbing Code ~~as adopted in OHMC 17.12.020~~ in effect are amended to read as follows:

- (1) Section 103.4.1 is hereby amended to read as follows:

103.4.1 Permit Fees. Fees shall be assessed in accordance with the provisions of this section and as set forth in the fee schedule Table 17-5. The fees are determined and adopted by the city of Oak Harbor.

TABLE 17-5 PLUMBING PERMIT FEES

| ACTION | FEE |
|---|-------------------------------------|
| Permit Issuance | |
| For the issuance of each plumbing permit | \$20.00 |
| For issuing each supplemental permit for which the original permit has not expired, been canceled or finalized | \$10.00 |
| Unit Fee Schedule (In addition to required permits as listed above) | |
| For each plumbing fixture or on one (1) trap or set of fixtures on one trap (including water, drainage piping and backflow protection thereof) | \$7.00 |
| For each building sewer and each trailer park sewer | \$15.00 |
| Rainwater systems per drain (inside building) | \$7.00 |
| For each cesspool (where permitted) | \$7.00 |
| For each private sewage disposal system | \$40.00 |
| For each water heater including vent | \$12.00 |
| For each industrial waste pretreatment interceptor, including its trap and vent, excepting kitchen type grease interceptors functioning as fixture traps | \$7.00 |
| For each installation, alteration, or repair of water piping or water treating equipment, or both, each | \$7.00 |
| For repair or alteration of drainage or vent piping, each fixture | \$7.00 |
| For each lawn sprinkler system on any one meter, including backflow protection devices thereof | \$7.00 |
| For atmospheric type vacuum breakers or backflow protection devices not included in lawn sprinkler systems | |
| 1 to 5 devices | 45.00 |
| Over 5 devices, each | \$1.00 |
| For each backflow protection device other than atmospheric type vacuum breakers: | |
| 2 inches (50.8 mm) diameter and smaller | \$7.00 |
| Over 2 inches (50.8 mm) diameter | \$15.00 |
| For each graywater system. | \$40.00 |
| For initial installation and testing for a reclaimed water system | \$30.00 |
| For each annual cross-connection testing of a reclaimed water system (excluding initial test) | \$30.00 |
| For each medical gas piping system serving one to five inlets or outlets for a specific gas. | \$50.00 |
| For each additional medical gas inlet or outlet | \$5.00 |
| Swimming Pools For each swimming pool or spa: | |
| Public pool | Varies by Valuation Plus Permit Fee |
| Public spa | Varies by Valuation Plus Permit Fee |
| Private pool | Varies by Valuation Plus Permit Fee |
| Private spa | \$30.00 |

82

| ACTION | FEE |
|--|--------|
| Miscellaneous | |
| For each appliance or piece of equipment regulated by the Plumbing Code but not classed in other appliance categories, or for which no other fee is listed in this code. | \$7.00 |
| <i>Other Inspections and Fees Refer to Fee Table 17-2.</i> | |

(2) Section 103.4.5 is hereby amended to read as follows:

103.4.5 Fee Refunds.

103.4.5.1 The building official may authorize the refunding of any fee paid hereunder which was erroneously paid or collected.

103.4.5.2 The building official may authorize refunding of 80 percent of the permit fee paid when no work has been done under a permit issued in accordance with this code.

103.4.5.3 The building official shall not authorize the refunding of any fee paid except on written application filed by the original permittee not later than 180 days after the date of fee payment.

103.4.5.4 The building official may authorize refunding of not more than 80 percent of the plan review fee paid when an application for a permit for which a plan review has been paid is withdrawn or canceled before any plan reviewing is done.

17.12.075 — Amendments — Deletions:

The following sections of the Uniform Plumbing Code are deleted and not in effect in the City of Oak Harbor:

Chapter 12:

Chapter 15:

Those requirements of Chapter 5 relating to venting and combustion air of fuel-fired appliances:

Those portions of the Uniform Plumbing Code addressing building sewers:

17.12.080 Penalties.

- (1) It shall be unlawful for a person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy or maintain any building, structure or building service equipment or cause or permit the same to be done in violation of this chapter or the technical codes.
- (2) **Civil Violation.** Except as provided in subsections (4) and (5) of this section, any violation of any of the provisions of this chapter or of the technical codes constitutes a civil violation as provided for in Chapter 1.28 OHMC, for which a monetary penalty may be imposed as provided therein.
- (3) **Criminal Penalty.** In addition to or as an alternative to any other penalty provided in this chapter or by law, any person who intentionally or knowingly violates any of the provisions of this chapter or the technical codes shall be guilty of a misdemeanor and

upon conviction shall be punishable by a fine of up to \$1,000 or a jail sentence of up to 90 days in jail, or both such fine and jail time.

- (4) **Plumbing Code Violations.** Violations of the Uniform Plumbing Code as adopted under this chapter shall be misdemeanors punishable by a fine of up to \$1,000 or a jail sentence of up to 90 days, or both such fine and jail time.
- (5) **Violations of Orders under This Chapter.** Any person constructing, repairing, operating, maintaining, changing an occupancy, occupying or moving a building, structure, occupancy, or premises contrary to the provisions of this chapter who continues to construct, repair, operate, maintain, change occupancy, occupy or move such building, structure, occupancy or premises when ordered by the building official to desist from violating a provision or provisions of this chapter shall be guilty of a misdemeanor punishable by a fine of up to \$1,000 or a jail sentence of up to 90 days, or both such fine and jail time.
- (6) **Separate Offense.** Each day or portion thereof upon which a violation occurs constitutes a separate offense under subsections (1), (2), (3), (4) and (5) of this section.
- (7) **Destruction of Notice.** It shall be unlawful for any person to remove, mutilate, destroy or conceal any notice issued and posted by the building official pursuant to the provisions of this chapter or the building code which violations shall be a civil offense as described in subsection (2) of this section.

17.12.090 Severability.

Should any section, paragraph, sentence or word of this chapter or codes hereby adopted be declared for any reason to be invalid, it is the intent of the city council that it would have passed all other portions of this chapter and of the codes hereby adopted independent of the elimination herefrom of any such portions as may be declared invalid and accordingly such declaration of invalidity shall not affect the validity of this chapter as a whole nor any part hereof other than the part so declared to be invalid.

17.12.100 Hearing examiner to function as appeals board.

All references to the term "board of appeal(s)" shall deem to mean the hearing examiner as per OHMC 18.40.180. Permits under this chapter shall be Type I review process as per OHMC 18.20.230. Appeals of decisions of applicable codes adopted under this chapter shall be to the hearing examiner.

Section Seven. Oak Harbor Municipal Code Chapter 17.14 adopted by §12 of Ordinance 1514 in 2007 is hereby amended to read as follows:

Chapter 17.14

~~2006~~ WASHINGTON STATE ENERGY CODE

2009 International Building Code Ordinance

Page 27 of 30

P:\CC\10\Dec 21\CURRENT Building Code Revision\Building Code Amendments Ord 11.19.2010 DWA.doc

84

Sections:

- 17.14.010 Title.**
17.14.020 ~~Document adopted by reference~~ Applicability of Washington State Energy Code.
17.14.030 Administration and enforcement – Rules and regulations.
17.14.040 Administration and enforcement – Building official authority.
17.14.050 Notices.
17.14.060 Liability limitations.
17.14.070 Penalties.
17.14.080 Severability.
17.14.090 Hearing examiner to function as appeals board.

17.14.010 Title.

This chapter shall be known as the ~~energy code~~ Washington State Energy Code of the city of Oak Harbor.

17.14.020 ~~Document adopted by reference.~~ Applicability of Washington State Energy Code.

The ~~most recent version of the~~ Washington State Energy Code, ~~2006 Edition, and Chapter 51-11 WAC,~~ as adopted by the Washington State Building Code Council under the provisions of Chapter 19.27A RCW, ~~are adopted by reference with the deletions, additions, and exceptions as set out is in effect in the~~ City of Oak Harbor and in this chapter and shall be the city's energy code. One copy of ~~each document listed in this section~~ the Energy Code shall be filed in the office of the city clerk for examination by the public.

17.14.030 Administration and enforcement – Rules and regulations.

The city council may upon notice and hearing promulgate such rules and regulations as may be necessary to the effective and efficient administration of the code.

17.14.040 Administration and enforcement – Building official authority.

The Washington State Energy Code shall be administered and enforced by the city building official.

17.14.050 Notices.

It is unlawful for any person to remove, mutilate, destroy or conceal any lawful notice issued or posted by the building official pursuant to the provisions of this code.

17.14.060 Liability limitations.

Nothing contained in this chapter or in the Washington State Energy Code is intended to be, nor shall be, construed to create or form the basis for any liability on the part of the city or its officers, employees or agents, for any injury or damage resulting from the failure of a building to conform to the provisions of the Washington State Energy Code.

17.14.070 Penalties.

- (1) It shall be unlawful for a person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy or maintain any building, structure or building service equipment or cause or permit the same to be done in violation of this chapter or the technical codes.

- (2) **Civil Violation.** Except as provided in subsections (4) and (5) of this section, any violation of any of the provisions of this chapter or of the technical codes constitutes a civil violation as provided for in Chapter 1.28 OHMC, for which a monetary penalty may be imposed as provided therein.
- (3) **Criminal Penalty.** In addition to or as an alternative to any other penalty provided in this chapter or by law, any person who intentionally or knowingly violates any of the provisions of this chapter or the technical codes shall be guilty of a misdemeanor and upon conviction shall be punishable by a fine of up to \$1,000 or a jail sentence of up to 90 days in jail, or both such fine and jail time.
- (4) **Violations of Orders under This Chapter.** Any person constructing, repairing, operating, maintaining, changing an occupancy, occupying or moving a building, structure, occupancy, or premises contrary to the provisions of this chapter who continues to construct, repair, operate, maintain, change occupancy, occupy or move such building, structure, occupancy or premises when ordered by the building official to desist from violating a provision or provisions of this chapter shall be guilty of a misdemeanor punishable by a fine of up to \$1,000 or a jail sentence of up to 90 days, or both such fine and jail time.
- (5) **Separate Offense.** Each day or portion thereof upon which a violation occurs constitutes a separate offense under subsections (1), (2), (3) and (4) of this section.
- (6) **Destruction of Notice.** It shall be unlawful for any person to remove, mutilate, destroy or conceal any notice issued and posted by the building official pursuant to the provisions of this chapter or the building code which violations shall be a civil offense as described in subsection (2) of this section.

17.14.080 Severability.

Should any section, paragraph, sentence or word of this chapter or codes hereby adopted be declared for any reason to be invalid, it is the intent of the city council that it would have passed all other portions of this chapter and of the codes hereby adopted independent of the elimination herefrom of any such portions as may be declared invalid and accordingly such declaration of invalidity shall not affect the validity of this chapter as a whole nor any part hereof other than the part so declared to be invalid.

17.14.090 Hearing examiner to function as appeals board.

All references to the term "board of appeal(s)" shall deem to mean the hearing examiner as per OHMC 18.40.180. Permits under this chapter shall be Type I review process as per OHMC 18.20.230. Appeals of decisions of applicable codes adopted under this chapter shall be to the hearing examiner.

Section Eight. Oak Harbor Municipal Code Chapter 17.18 adopted by §15 of Ordinance 1514 in 2007 is hereby deleted in its entirety.

Section Nine. Oak Harbor Municipal Code Chapter 17.28, 2006 International Existing Building Code adopted by §19 of Ordinance 1514 in 2007 is hereby deleted in its entirety.

Section Ten. Severability and Savings Clause

- (1) 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.
- (2) Deletion or amendment of provisions from the Oak Harbor Municipal Code shall not terminate any obligation to the City already vested or incurred thereunder.

Section Eleven. Effective Date. This Ordinance shall be in full force and effect (5) five days after its publication.

PASSED by the City Council this ____ day of _____ 2011.

CITY OF OAK HARBOR

Approved () _____
 Vetoed () Jim Slowik, Mayor

Date

ATTEST:

Approved as to Form:

City Clerk

City Attorney

Published: _____

87

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

Bill No. C/A 3 E
Date: December 21, 2010
Subject: Pioneer Way Sidewalk
Construction Resolution

**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 considers a resolution for constructing sidewalks as part of the SE Pioneer Street Improvements Project and declaring the City's intent to not assess property owners for said improvements.

AUTHORITY

The City has authority under RCW 35.A.11.020 to enter into contracts for municipal operations such as the construction of capital improvements. Furthermore, under Chapter 35.68 RCW the City is authorized to construct sidewalk improvements.

SUMMARY STATEMENT

As described in RCW 35.68.010, the City of Oak Harbor is" authorized to construct, reconstruct, and repair sidewalks, gutters and curbs along and driveways across sidewalks, which work is hereafter referred to as the improvement, and to pay the costs thereof from any available funds, or to require the abutting property owner to construct the improvement at the owner's own cost or expense, or, subject to the limitations in RCW 35.69.020 (2) and (3), to assess all or any portion of the costs thereof against the abutting property owner."

RCW 35.68.020 goes further in stating that "no such improvement shall be undertaken or required except pursuant to a resolution of the council or commission of the city or town, hereinafter referred to as the city council. The resolution shall state whether the cost of the improvement shall be borne by the city or whether all or a specified portion shall be borne by the city or whether all or a specified portion shall be borne by the abutting property owner."

Under previous resolutions and actions, the City Council has determined that the City of Oak Harbor has sufficient funds for the project and that assessments against property owners are not required. In order to maintain strict compliance with the RCW related to sidewalks, an additional resolution meeting the requirements of RCW 35.68.030 is necessary. The attached resolution meets these requirements.

STANDING COMMITTEE REPORT

The item was discussed at the December 4, 2010 Public Works Standing Committee.

RECOMMENDED ACTION

Pass Resolution 10-28.

ATTACHMENTS

Resolution 10-28

MAYOR'S COMMENTS

RESOLUTION NO. 10-28

A RESOLUTION OF THE CITY OF OAK HARBOR AUTHORIZING CONSTRUCTION OF SIDEWALKS AND DECLARING THAT THE COST THEREOF SHALL NOT BE ASSESSED AGAINST THE ABUTTING PROPERTY OWNERS.

WHEREAS, the City of Oak Harbor has authority under Chapter 35.68 RCW to construct, reconstruct and repair sidewalks, gutters and curbs along and driveways across sidewalks or to require the abutting property owner to construct such improvements; and

WHEREAS, the SE Pioneer Way Improvements Project will reconstruct, upgrade, replace and repair sidewalks, streets, utilities, street lighting, pavement, landscaping between SE City Beach Street and SE Midway Boulevard together with limited improvements at the intersections; and

WHEREAS, funding for the project has been included in 2009-2010 and 2011-2012 City of Oak Harbor Biennial Budgets consisting of a combination of real estate excise taxes (\$5,500,000), utility funds (\$1,850,000), and an Island County Economic Development Grant (\$1,000,000); and

WHEREAS, all costs associated with the public improvements will be borne by the City; and

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

1. The City shall undertake sidewalk, gutter and curb improvements through the SE Pioneer Way Street Improvements Project; and
2. The cost of the sidewalk and street improvements associated with the SE Pioneer Street Improvements Project shall be borne by the City of Oak Harbor and not assessed against the abutting property owners.

PASSED and approved by the City Council this 21st day of December, 2010.

THE CITY OF OAK HARBOR

_____, Mayor

Attest:

City Clerk

Approved as to Form:

City Attorney

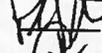
90

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

Bill No. d/A 3F
Date: December 21, 2010
Subject: Storm Water Grant Agreement

**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 considers authorizing the Mayor to sign an agreement with the Washington State Department of Ecology for a storm water capacity grant.

AUTHORITY

The City has authority under RCW 35A.11.020 to enter into contracts for municipal operations such as the construction of capital improvements.

SUMMARY STATEMENT

The 2010 Washington State Legislature appropriated over \$54 million to the Department of Ecology (Ecology) for a storm water retrofit and low-impact development grant program. The funding targets local governments to address storm water management and control, by building staffing capacity, improving local storm water programs, research, data management, and monitoring. In addition, the program provides funds for local governments to plan, design, and implement storm water retrofit or low-impact development (LID) projects.

From this program, \$23,510,000 was offered as direct pass through grants to NPDES Phase II permittees. The City of Oak Harbor was offered a \$131,908 grant based on our population. The attached agreement is necessary to implement the grant.

The grant agreement has been drafted to assist the City in providing retrofit water quality treatment and low impact development improvements as part of the SE Pioneer Way Street Improvements Project. The project is eligible for the grant program since the City is providing more storm water quality and treatment than is required by the code or by compliance with the NPDES permit.

The form of the agreement was prepared by the Department of Ecology.

STANDING COMMITTEE REPORT

The grant was discussed at the December 4, 2010 Public Works Standing Committee.

RECOMMENDED ACTION

Pass Resolution No. 10-29.

ATTACHMENTS

Resolution No. 10-29

Grant Agreement

MAYOR'S COMMENTS

RESOLUTION NO. 10-29

A RESOLUTION OF THE CITY OF OAK HARBOR AUTHORIZING THE MAYOR TO SIGN GRANT AGREEMENT NUMBER G1100077.

WHEREAS, the Department of Ecology has offered the City of Oak Harbor a \$131,908 grant under the FY 2011 Municipal Stormwater Capacity Grant Program; and

WHEREAS, the City will be constructing storm water quality improvements as part of the SE Pioneer Street Improvements Project and that the improvements are an eligible project under the Department of Ecology program; and

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

1. That the Mayor is authorized to sign Grant Agreement Number G1100077 with the Department of Ecology.

PASSED and approved by the City Council this 21st day of December, 2010.

THE CITY OF OAK HARBOR

_____, Mayor

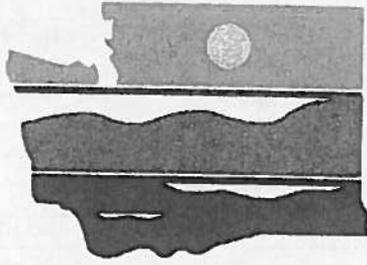
Attest:

City Clerk

Approved as to Form:

City Attorney

93



DEPARTMENT OF
ECOLOGY
 State of Washington

FY 2011 MUNICIPAL STORMWATER CAPACITY GRANTS PROGRAM

GRANT AGREEMENT BETWEEN THE

**STATE OF WASHINGTON DEPARTMENT OF ECOLOGY
 AND
 CITY OF OAK HARBOR**

**GRANT AGREEMENT NUMBER
 G1100077**

TABLE OF CONTENTS

PART I. GENERAL INFORMATION 3
 PART II. PERFORMANCE MEASURES 4
 PART III. PROJECT DESCRIPTION 4
 PART IV. PROJECT BUDGET 5
 PART V. SCOPE OF WORK 5
 PART VI. SPECIAL TERMS AND CONDITIONS 9
 ATTACHMENT I: GENERAL PROJECT MANAGEMENT REQUIREMENTS FOR THE
 FEDERAL CLEAN WATER ACT SECTION 319 NONPOINT SOURCE FUND 11
 ARCHEOLOGICAL AND CULTURAL RESOURCES 11
 EQUIPMENT PURCHASE 11
 FUNDING RECOGNITION 11
 INDIRECT RATE 11
 MINORITY AND WOMEN'S BUSINESS PARTICIPATION 11
 PAYMENT REQUEST SUBMITTALS 12
 POST PROJECT ASSESSMENT 13
 PROCUREMENT 13
 PROGRESS REPORTS 13
 REQUIRED DOCUMENT SUBMITTALS 13
 WATER QUALITY MONITORING 14
 ATTACHMENT II: GENERAL TERMS AND CONDITIONS PERTAINING TO GRANT
 AND LOAN AGREEMENTS OF THE DEPARTMENT OF ECOLOGY 15
 A. RECIPIENT PERFORMANCE 15
 B. SUBGRANTEE/CONTRACTOR COMPLIANCE 15
 C. THIRD PARTY BENEFICIARY 15
 D. CONTRACTING FOR SERVICES (BIDDING) 15
 E. ASSIGNMENTS 15
 F. COMPLIANCE WITH ALL LAWS 15

| | |
|---|----|
| G. KICKBACKS | 16 |
| H. AUDITS AND INSPECTIONS | 16 |
| I. PERFORMANCE REPORTING | 16 |
| J. COMPENSATION | 16 |
| K. TERMINATION..... | 17 |
| L. WAIVER..... | 18 |
| M. PROPERTY RIGHTS | 18 |
| N. SUSTAINABLE PRODUCTS..... | 19 |
| O. RECOVERY OF PAYMENTS TO RECIPIENT..... | 19 |
| P. PROJECT APPROVAL | 20 |
| Q. DISPUTES..... | 20 |
| R. CONFLICT OF INTEREST..... | 20 |
| S. INDEMNIFICATION | 20 |
| T. GOVERNING LAW | 21 |
| U. SEVERABILITY..... | 21 |
| V. PRECEDENCE..... | 21 |

**MUNICIPAL STORMWATER CAPACITY GRANTS PROGRAM
FUNDING AGREEMENT BETWEEN
THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY
AND
CITY OF OAK HARBOR**

THIS is a binding agreement entered into, by, and between the state of Washington Department of Ecology (DEPARTMENT), and the City of Oak Harbor (RECIPIENT). The purpose of this agreement is to provide funds to the RECIPIENT to carry out the requirements described herein.

PART I. GENERAL INFORMATION

Project Title: **Municipal Stormwater Capacity Grant Program**

State Fiscal Year: **FY2011**

Grant Number: **G1100077**

RECIPIENT Name: **City of Oak Harbor**

Mailing Address: **865 Barrington Dr.
Oak Harbor, WA 98277**

RECIPIENT Federal ID Number: **91-6001476**

Total Eligible Cost (\$70,000 plus per capita calculated amount): **\$131,908**

DEPARTMENT Share: **\$131,908**

DEPARTMENT Maximum Percentage: **100%**

RECIPIENT Contact: **Eric Johnston**
Telephone Number: **(360) 279-4522**
Fax Number: **(360) 679-3902**
E-Mail Address: **ejohnston@oakharbor.org**

RECIPIENT Billing Contact: **Tallie Boyer**
Telephone Number: **(360) 279-4536**
Fax Number: **(360) 279-4507**
E-Mail Address: **tboyer@oakharbor.org**

DEPARTMENT Project/Financial Manager: **Tracy Farrell**
Mailing Address: **Water Quality Program**
Washington State Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600
Telephone Number: **360- 407-6502**
Fax Number: **360- 407-7151**
E-Mail Address:

The effective date of this grant agreement is **July 1, 2010**. Any work performed prior to the effective date of this agreement is not eligible for reimbursement.

This agreement expires on **June 30, 2012**.

PART II. PERFORMANCE MEASURES

A. The overall goals of this project are focused on the protection of **Oak Harbor Bay** and include one or more of the following:

1. Stormwater system retrofits
2. Low impact development best management practices

B. Water Quality Project Outcomes. The following summarize the quantitative results anticipated from the project:

1. Elimination of possible combined sewer overflow
2. Installation of at least a 12 Filterra bioretention treatment system for storm water quality and treatment

C. Post Project Assessment.

The RECIPIENT agrees to submit a brief survey three years after project completion regarding the key project outcomes and the status of environmental results or goals from the project. The DEPARTMENT's Performance Measures Lead will e-mail the RECIPIENT the Post Project Assessment Survey.

The DEPARTMENT may conduct on-site interviews and inspections, and may otherwise evaluate the Project. The DEPARTMENT will enter the information provided into its performance measures database to be provided to the Washington State Legislature, United States Environmental Protection Agency, and other natural resource agencies.

Approximate Post Project Assessment Date: June 30, 2015

PART III. PROJECT DESCRIPTION

Funding through this agreement will provide partial funding in support of the City of Oak Harbor project to reconstruct SE Pioneer Way. The street improvements will add storm water runoff treatment both within the street improvements area as well for runoff generated outside the project limits. This funding will be used to install the Filterra bioretention storm water quality units proposed for use on the project. Approximately 27 Filterra units will be installed as a

retrofit to provide storm water quality to a street that currently has no stormwater pollution control. The Filterra units are intended to remove or reduce the following pollutants: Total suspended solids, nitrogen, heavy metals, predicated oils and grease, and phosphorus. Filterra units were selected as the preferred means of stormwater control due to the limitations on space required for more traditional BMPS. This grant is to be used to fund solely the construction, purchase and installation of the filterra units.

PART IV. PROJECT BUDGET

| Municipal Stormwater Capacity Grants Program, FY2011 | | |
|---|---------------------------|-----------------------------------|
| Elements/Objects | TOTAL PROJECT COST | TOTAL ELIGIBLE COST (TEC)* |
| Task 1 – Project Administration/Management (limited to 10% of total) | \$0 | \$0 |
| Task 2 – Implementation and management of Stormwater Program | \$0 | \$0 |
| Task 3 – Plans and Specifications | \$0 | \$0 |
| Task 4 – Construction Management | \$0 | \$0 |
| Task 5 – Construction | \$268,200 | \$131,908 |
| Total | \$0 | \$131,908 |
| *The DEPARTMENT's Fiscal Office will track to the Total Eligible Project Cost. | | |
| MATCHING REQUIREMENTS (There are no matching requirements) | | |
| DEPARTMENT Share FY 2011 (100% of TEC) | \$131,908 | \$131,908 |

Payment Request Submittals. Payment requests will not be submitted more often than monthly, unless allowed by the DEPARTMENT's Project/Financial Manager. The DEPARTMENT's Project/Financial Manager may require the RECIPIENT to submit regular payment requests to ensure efficient and timely use of funds.

Payment Schedule. Payments will be made on a cost-reimbursable basis.

PART V. SCOPE OF WORK

The RECIPIENT will ensure that this project is completed according to the details of this agreement. The RECIPIENT may elect to use its own forces or it may contract for professional services necessary to perform and complete project related work. The RECIPIENT certifies by signing this agreement that all applicable requirements have been satisfied in the procurement of any professional services. Eligible and ineligible project costs are separate and identifiable for

billing purposes. If professional services are contracted, the RECIPIENT will submit a copy of the final contract to the DEPARTMENT's Project/Financial Manager.

Task 1 - Project Administration/Management

- A. The RECIPIENT will administer the project. Responsibilities will include, but not be limited to: maintenance of project records; submittal of payment vouchers, fiscal forms, and progress reports; compliance with applicable procurement, contracting, and interlocal agreement requirements; application for, receipt of, and compliance with all required permits, licenses, easements, or property rights necessary for the project; and submittal of required performance items.
- B. The RECIPIENT will manage the project. Efforts will include: conducting, coordinating, and scheduling project activities and assuring quality control. Every effort will be made to maintain effective communication with the RECIPIENT's designees; the DEPARTMENT; all affected local, state, or federal jurisdictions; and any interested individuals or groups. The RECIPIENT will carry out this project in accordance with any completion dates outlined in this agreement.
- C. The RECIPIENT will submit all invoice voucher submittals and supportive documentation, to the DEPARTMENT's Project/Financial Manager. Copies of all applicable forms will be included with an original A19-1A, and will be submitted to the DEPARTMENT. Blank forms are found in Administrative Requirements for Recipients of Ecology Grants and Loans at <http://www.ecy.wa.gov/biblio/9118.html>

Required Forms:

Form A19-1A (original signature)
Form B2 (ECY 060-7)
Form C2 (ECY 060-9)
Form D (ECY 060-11)

Where Eligible Costs Have Incurred:

Form E (ECY 060-12)
Form F (ECY 060-13)
Form G (ECY 060-14)
Form H (F-21)
Form I (ECY 060-15)

- D. If work conducted results in a report, the RECIPIENT will submit the following to the DEPARTMENT's Project/Financial Manager and in the quantities identified:
 - Draft project completion reports – one electronic copy
 - Final project completion reports – five copies
 - Electronic copy of final project completion report

The RECIPIENT will submit two copies of any document(s) which requires DEPARTMENT approval. Once approval is given, one copy will be returned to the RECIPIENT. If the RECIPIENT needs more than one approved copy, the number of submittals should be adjusted accordingly.

Task 2 – Implementation of Stormwater Planning and Management Needs

- A. The RECIPIENT will address stormwater management needs that protect or restore water quality. The RECIPIENT may conduct work related to implementation of activities

required by the municipal stormwater National Pollutant Discharge Elimination System (NPDES) permits.

The following is a list of elements your project may include. Please check all boxes that apply to your project.

- Public education and outreach activities
- Public involvement and participation activities
- Illicit discharge detection and elimination (IDDE) program activities, including:
 1. Mapping or geographic information systems of municipal separate storm sewer systems (MS4s);
 2. Staff training;
 3. Activities to identify and remove illicit stormwater discharges;
 4. Dry weather outfall screening procedures and field activities;
 5. Complaint hotline database or tracking system improvements.
- Activities to support programs to control runoff from new development, redevelopment, and construction sites, including:
 1. Development of an ordinance and associated technical manual;
 2. Inspections before, during, and upon completion of construction, or for post-construction long-term maintenance;
 3. Training for plan review and/or inspection staff.
- Pollution prevention, good housekeeping, and operation and maintenance program activities, such as:
 1. Inspecting and/or maintaining the MS4 infrastructure;
 2. Developing and/or implementing policies, procedures, or stormwater pollution prevention plans at municipal properties or facilities.
- Annual reporting activities, including developing a summary of identified barriers to the use of low impact development.
- Establishing and refining stormwater utilities, including stable rate structures.
- Water quality monitoring to implement permit requirements for a Water Cleanup Plan (TMDL). Note that any monitoring funded by this program requires submittal of a Quality Assurance Project Plan that Ecology approves prior to awarding funding for monitoring.
- Monitoring, including:
 1. Developing a report to plan for monitoring the next permit cycle;
 2. Monitoring activities to meet Phase I permit requirements;
- Structural stormwater controls program activities (Phase I permit requirement)
- Source control for existing development (Phase I permit requirement), including:
 1. Inventory and inspection program;
 2. Technical assistance and enforcement;
 3. Staff training.
- Equipment purchases that result directly in improved compliance with permit requirements. Allowed costs for equipment purchases must be specific to implementing a permit requirement (such as a vector truck) rather than general use (such as a general use pick-up truck). Qualified equipment purchases include but are not limited to:
 1. Illicit discharge testing equipment and materials;

2. Vector truck or sweeper truck or MS4 maintenance activities;
3. Electronic devices dedicated to mapping of MS4 facilities and attributes;
4. Software dedicated to tracking permit implementation activities.

Task 3 – Plans and Specifications (Total Task Cost: \$0)

- A. Plans and specifications must be submitted to the DEPARTMENT's Project Manager 45 days prior to bid advertisement. The DEPARTMENT's Project Manager will work with Ecology's engineer to review the plans and specifications for consistency. The RECIPIENT must justify significant deviations from the following:
1. The following depends on the region that your project is conducted:

Western Washington Stormwater Maintenance Manual (SWMMWW), found at:
<http://www.ecy.wa.gov/programs/wq/stormwater/manual.html>, or

Eastern Washington Stormwater Maintenance Manual found at:
<http://www.ecy.wa.gov/biblio/0410076.html>, or

Puget Sound Low Impact Development – Technical Guidance found at:
http://www.psp.wa.gov/downloads/LID/LID_manual2005.pdf,

or equivalent design manuals.
 2. Good engineering practices and generally recognized engineering standards,
 3. The project pre-design report.
- B. The plans, specifications, construction contract documents, and addenda must be approved by the RECIPIENT prior to submittal to the DEPARTMENT.
- C. The RECIPIENT will prepare and submit projected construction schedule to the DEPARTMENT.
- D. The RECIPIENT will submit a current, updated construction cost estimate along with each plans and specifications submittal.
- E. All construction plans submitted to the DEPARTMENT will be reduced to no larger than 11-1/2" x 17" in size. The RECIPIENT may bind them with the specifications or related construction contract documents or bound as a separate document. All reduced drawings must be legible.
- F. The RECIPIENT will develop and submit a maintenance plan for the stormwater treatment and low impact development (LID) features. The maintenance plan will describe how the RECIPIENT will ensure project success consistent with the design manual used; an example may be plant establishment and survival rates. The maintenance plan must also address long term activities to assure ongoing pollutant removal and flow-control capability of the project. (See the Stormwater Maintenance Manual for Eastern or Western Washington Volume 5, Section 4.6)

Required Performance:

1. Project will be issued for public bidding not later than June 1, 2011

2. Building not later than February 1, 2011

Task 4 – Construction Management (Total Task Cost: \$0)

- A. The RECIPIENT will submit a detailed construction quality assurance plan to the DEPARTMENT before the start of construction. This plan must describe how adequate and competent construction oversight will be performed.
- B. The RECIPIENT will submit a construction schedule to the DEPARTMENT within 30 days of the start of construction. The construction schedule will be revised and/or updated whenever major changes occur and at a minimum of every three months.
- C. The RECIPIENT will, upon completion of construction, provide the DEPARTMENT's Project Manager with a set of "as-built" plans that include a record of construction drawings which reflect major changes, modifications, or other significant revisions made to the project during construction.
- D. The RECIPIENT will provide a Declaration of Completion, signed by the professional responsible for construction inspection, indicating that the project was completed in accordance with the plans, specifications, and major change orders.

Required Performance:

1. City of Oak Harbor will submit a copy of the final payment voucher upon completion of the project.

Task 5 – Construction (Total Task Cost: \$131,908)

- A. The RECIPIENT will submit to the DEPARTMENT's Project Manager a copy of the construction contract within 30 days of execution.

Required Performance:

1. Installation of at least approximately 27 Filterra bioretention units.

PART VI. SPECIAL TERMS AND CONDITIONS

- A. Failure to Commence Work. In the event the RECIPIENT fails to commence work on the project within four months of the signatory date, the DEPARTMENT reserves the right to terminate this agreement.
- B. Use of Force Account. In the event the RECIPIENT elects to use its own forces to accomplish eligible project work, the RECIPIENT acknowledges that it has the legal authority to perform the work, adequate and technically qualified staff to perform the work without compromising other government functions.

PART VII. ALL WRITINGS CONTAINED HEREIN

The following contain the entire understanding between the parties, and there are no other understandings or representations other than as set forth, or incorporated by reference, herein:

- This agreement

- Attachment I: General Project Management Requirements for the Municipal Stormwater Capacity Grants Program.
- Attachment II: General Terms and Conditions
- The effective edition, at the signing of this agreement, of the DEPARTMENT's "Administrative Requirements for Ecology Grants and Loans"
- The associated funding guidelines that correspond to the fiscal year in which the project is funded
- The applicable statutes and regulations

No subsequent modifications or amendments of this agreement will be of any force or effect unless signed by authorized representatives of the RECIPIENT and the DEPARTMENT and made a part of this agreement, EXCEPT that in response to a request from the RECIPIENT, the DEPARTMENT may redistribute the grant budget. The DEPARTMENT or the RECIPIENT may change their respective staff contacts without the concurrence of either party.

The RECIPIENT acknowledges that they have had the opportunity to thoroughly review the terms of this agreement, the attachments, all incorporated or referenced documents, as well as all applicable statutes, rules, and guidelines mentioned in this agreement.

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

CITY OF OAK HARBOR

KELLY SUSEWIND, P.E., P.G. DATE
WATER QUALITY PROGRAM MANAGER

JIM SLOWIK DATE
MAYOR

APPROVED AS TO FORM ONLY
ASSISTANT ATTORNEY GENERAL

ATTACHMENT I: GENERAL PROJECT MANAGEMENT REQUIREMENTS FOR THE FEDERAL CLEAN WATER ACT SECTION 319 NONPOINT SOURCE FUND

ARCHEOLOGICAL AND CULTURAL RESOURCES

The RECIPIENT must comply with all requirements listed in Executive Order 05-05 prior to implementing any project that involves disturbing soil. Compliance includes coordinating with the Department of Historic and Archeological Preservation and affected tribes. Executive Order 05-05 is found at:

http://www.dahp.wa.gov/pages/EnvironmentalReview/documents/EO05_05.pdf

The Department of Historic and Archeological Preservation has provided guidance to initiate the 05-05 process that can be accessed online at:

<http://www.dahp.wa.gov/pages/Documents/EnvironmentalReview.htm> and

http://www.dahp.wa.gov/pages/EnvironmentalReview/documents/eo0505Guidance_000.pdf.

EQUIPMENT PURCHASE

The total cost of all equipment purchased under this project will not exceed \$131,908. Changes in equipment type must have prior approval from the DEPARTMENT.

FUNDING RECOGNITION

The RECIPIENT must inform the public about DEPARTMENT or EPA funding participation in this project through the use of project signs, acknowledgement in published materials, reports, the news media, or other public announcements. Projects addressing site-specific locations must utilize appropriately sized and weather-resistant signs. Sign logos are available from the DEPARTMENT upon request.

INDIRECT RATE

To acknowledge overhead costs, the RECIPIENT may charge an indirect rate of up to 25 percent based on employees' direct salary and benefit costs incurred while conducting project-related work. The DEPARTMENT's Financial Manager may require a list of items included in the indirect rate at any time.

MINORITY AND WOMEN'S BUSINESS PARTICIPATION

The RECIPIENT agrees to solicit and recruit, to the extent possible, certified minority-owned (MBE) and women-owned (WBE) businesses in purchases and contracts initiated after the effective date of this agreement.

Contract awards or rejections cannot be made based on MBE or WBE participation. M/WBE participation is encouraged, however, and the RECIPIENT and all prospective bidders or persons submitting qualifications should take the following steps, when possible, in any procurement initiated after the effective date of this agreement:

- a) Include qualified minority and women's businesses on solicitation lists.
- b) Assure that qualified minority and women's businesses are solicited whenever they are potential sources of services or supplies.
- c) Divide the total requirements, when economically feasible, into smaller tasks or quantities, to permit maximum participation by qualified minority and women's businesses.
- d) Establish delivery schedules, where work requirements permit, which will encourage participation of qualified minority and women's businesses.
- e) Use the services and assistance of the State Office of Minority and Women's Business Enterprises (OMWBE) and the Office of Minority Business Enterprises of the U.S. Department of Commerce, as appropriate.

The RECIPIENT must report to the DEPARTMENT at the time of submitting each invoice, on forms provided by the DEPARTMENT, payments made to qualified firms. Please include the following information:

- a) Name and state OMWBE certification number (if available) of any qualified firm receiving funds under the invoice, including any sub-and/or sub-subcontractors.
- b) The total dollar amount paid to qualified firms under this invoice.

PAYMENT REQUEST SUBMITTALS

Frequency. The RECIPIENT must submit payment requests at least quarterly but no more often than monthly, unless allowed by the DEPARTMENT's Financial Manager. The DEPARTMENT's Financial Manager may require the RECIPIENT to submit regular payment requests to ensure efficient and timely use of funds.

Supporting Documentation. The RECIPIENT must submit all payment request vouchers and supportive documentation to the DEPARTMENT's Financial Manager. Payment request voucher submittals are based on match requirements found in the budget.

Required Forms.

| <u>Any Match Combination</u> | <u>Cash Only Match</u> | <u>Where Applicable</u> |
|----------------------------------|----------------------------------|-------------------------|
| Form A19-1A (original signature) | Form A19-1A (original signature) | Form E (ECY 060-12) |
| Form B1 (ECY 060-3) | Form B2 (ECY 060-7) | Form F (ECY 060-13) |
| Form C1 (ECY 060-8) | Form C2 (ECY 060-9) | Form H (F-21) |
| Form D (ECY 060-11) | Form D (ECY 060-11) | Form I (ECY 060-15) |

Reporting eligible costs. The RECIPIENT must report all eligible costs incurred on the project, regardless of the source of funding for those costs. This includes costs used as match. All eligible and ineligible project costs must be separate and identifiable.

Reimbursements. Payments will be made on a cost-reimbursable basis.

POST PROJECT ASSESSMENT

The RECIPIENT agrees to submit a brief survey regarding the key project results or water quality project outcomes and the status of long-term environmental results or goals from the project three years after project completion.

The DEPARTMENT's Water Quality Program Performance Measures Lead will contact the RECIPIENT before the Post Project Assessment date to request this data.

The DEPARTMENT may also conduct site interviews and inspections, and may otherwise evaluate the Project, as part of this assessment.

PROCUREMENT

The RECIPIENT certifies by signing this agreement that all applicable requirements have been satisfied in the procurement of any professional services.

PROGRESS REPORTS

The RECIPIENT must submit quarterly progress reports to the DEPARTMENT's Financial Manger and Project Manager. Payment requests will not be processed without a progress report.

Reporting Periods.

- January 1 through March 31
- April 1 through June 30
- July 1 through September 30
- October 1 through December 31

Reporting Due Date. Quarterly progress reports are due 15 days following the end of the quarter.

Report Content. At a minimum, all progress reports must contain a comparison of actual accomplishments to the objectives established for the period, the reasons for delay if established objectives were not met, analysis and explanation of any cost overruns, and any additional pertinent information specified in this agreement. The recipient must also attach all landowner agreements signed during the respective quarter to each progress report.

REQUIRED DOCUMENT SUBMITTALS

The RECIPIENT must submit the following documents to the DEPARTMENT as requested by the DEPARTMENT's Project Manager or Financial Manager:

- Draft project completion reports – up to 3 copies
- Electronic copy of final project completion report – 1 copy
- Final project completion reports – up to 8 copies
- Final project completion reports of statewide significance – up to 50 copies
- Educational products developed under this agreement – up to 2 copies

- Documents that require DEPARTMENT Approval – 2 copies (one for the DEPARTMENT and one for the RECIPIENT)
- Interlocal agreements – 1 copy for the DEPARTMENT's Financial Manager
- Professional services procurement agreements – 1 copy to the DEPARTMENT's Financial Manager

WATER QUALITY MONITORING

Quality Assurance Project Plan (QAPP). Prior to initiating water quality monitoring activities, the RECIPIENT must prepare a Quality Assurance Project Plan (QAPP). The QAPP must follow Ecology's *Guidelines and Specifications for Preparing Quality Assurance Project Plans for Environmental Studies*, February 2001 (Ecology Publication No. 01-03-003). The applicant may also reference the *Technical Guidance for Assessing the Quality of Aquatic Environments*, revised February 1994 (Ecology Publication No. 91-78) or more current revision, in developing the QAPP.

The RECIPIENT must submit the QAPP to Ecology's project manager for review, comment, and must be approved before starting the environmental monitoring activities.

The RECIPIENT must use an environmental laboratory accredited by Ecology to analyze water samples for all parameters to be analyzed that require bench testing. Information on currently accredited laboratories and the accreditation process is provided on the Department of Ecology's Environmental Assessment Program's website, available at:

<http://www.ecy.wa.gov/programs/eap/labs/search.html>

The RECIPIENT should manage all monitoring data collected or acquired under this agreement in order to be available to secondary users and meet the "ten-year rule." The ten-year rule means that data documentation is sufficient to allow an individual not directly familiar with the specific monitoring effort to understand the purpose of the data set, methods used, results obtained, and quality assurance measures taken ten years after data are collected.

Monitoring Data Submittal / Environmental Information Management System. Funding recipients that collect water quality monitoring data must submit all data to Ecology through the Environmental Information Management System (EIM). Data must be submitted by following instructions on the EIM website, currently available at:

<http://www.ecy.wa.gov/eim>

The data submittal portion of the EIM website provides information and help on formats and requirements for submitting tabular data. Specific questions about data submittal can be directed to the EIM Data Coordinator, currently available at:

eim_data_coordinator@ecy.wa.gov

If GIS data is collected, Ecology data standards are encouraged. An Ecology Focus Sheet entitled *GIS Data and Ecology Grants* (Publication No. 98-1812-SEA) outlines the standards. Common standards must be used for infrastructure details, such as geographic names, Geographic Information System (GIS) coverage, list of methods, and reference tables.

ATTACHMENT II: GENERAL TERMS AND CONDITIONS PERTAINING TO GRANT AND LOAN AGREEMENTS OF THE DEPARTMENT OF ECOLOGY

A. RECIPIENT PERFORMANCE

All activities for which grant/loan funds are to be used shall be accomplished by the RECIPIENT and RECIPIENT's employees. The RECIPIENT shall only use contractor/consultant assistance if that has been included in the agreement's final scope of work and budget.

B. SUBGRANTEE/CONTRACTOR COMPLIANCE

The RECIPIENT must ensure that all subgrantees and contractors comply with the terms and conditions of this agreement.

C. THIRD PARTY BENEFICIARY

The RECIPIENT shall ensure that in all subcontracts entered into by the RECIPIENT pursuant to this agreement, the state of Washington is named as an express third-party beneficiary of such subcontracts with full rights as such.

D. CONTRACTING FOR SERVICES (BIDDING)

Contracts for construction, purchase of equipment and professional architectural and engineering services shall be awarded through a competitive process, if required by State law. RECIPIENT shall retain copies of all bids received and contracts awarded, for inspection and use by the DEPARTMENT.

E. ASSIGNMENTS

No right or claim of the RECIPIENT arising under this agreement shall be transferred or assigned by the RECIPIENT.

F. COMPLIANCE WITH ALL LAWS

1. The RECIPIENT shall comply fully with all applicable Federal, State and local laws, orders, regulations and permits. Prior to commencement of any construction, the RECIPIENT shall secure the necessary approvals and permits required by authorities having jurisdiction over the project, provide assurance to the DEPARTMENT that all approvals and permits have been secured, and make copies available to the DEPARTMENT upon request.
2. Discrimination. The DEPARTMENT and the RECIPIENT agree to be bound by all Federal and State laws, regulations, and policies against discrimination. The RECIPIENT further agrees to affirmatively support the program of the Office of Minority and Women's Business Enterprises to the maximum extent possible. If the agreement is federally-funded, the RECIPIENT shall report to the DEPARTMENT the percent of grant/loan funds available to women or minority owned businesses.
3. Wages And Job Safety. The RECIPIENT agrees to comply with all applicable laws, regulations, and policies of the United States and the State of Washington which affect wages and job safety.
4. Industrial Insurance. The RECIPIENT certifies full compliance with all applicable state industrial insurance requirements. If the RECIPIENT fails to comply with such laws, the DEPARTMENT shall have the right to immediately terminate this agreement for cause as provided in Section K.1, herein.

G. KICKBACKS

The RECIPIENT is prohibited from inducing by any means any person employed or otherwise involved in this project to give up any part of the compensation to which he/she is otherwise entitled or, receive any fee, commission or gift in return for award of a subcontract hereunder.

H. AUDITS AND INSPECTIONS

1. The RECIPIENT shall maintain complete program and financial records relating to this agreement. Such records shall clearly indicate total receipts and expenditures by fund source and task or object. All grant/loan records shall be kept in a manner which provides an audit trail for all expenditures. All records shall be kept in a common file to facilitate audits and inspections.

Engineering documentation and field inspection reports of all construction work accomplished under this agreement shall be maintained by the RECIPIENT.

2. All grant/loan records shall be open for audit or inspection by the DEPARTMENT or by any duly authorized audit representative of the State of Washington for a period of at least three years after the final grant payment/loan repayment or any dispute resolution hereunder. If any such audits identify discrepancies in the financial records, the RECIPIENT shall provide clarification and/or make adjustments accordingly.
3. All work performed under this agreement and any equipment purchased, shall be made available to the DEPARTMENT and to any authorized state, federal or local representative for inspection at any time during the course of this agreement and for at least three years following grant/loan termination or dispute resolution hereunder.
4. RECIPIENT shall meet the provisions in OMB Circular A-133 (Audits of States, Local Governments & Non Profit Organizations), including the compliance Supplement to OMB Circular A-133, if the RECIPIENT expends \$500,000 or more in a year in Federal funds. The \$500,000 threshold for each year is a cumulative total of all federal funding from all sources. The RECIPIENT must forward a copy of the audit along with the RECIPIENT'S response and the final corrective action plan to the DEPARTMENT within ninety (90) days of the date of the audit report.

I. PERFORMANCE REPORTING

The RECIPIENT shall submit progress reports to the DEPARTMENT with each payment request or such other schedule as set forth in the Special Conditions. The RECIPIENT shall also report in writing to the DEPARTMENT any problems, delays or adverse conditions which will materially affect their ability to meet project objectives or time schedules. This disclosure shall be accompanied by a statement of the action taken or proposed and any assistance needed from the DEPARTMENT to resolve the situation. Payments may be withheld if required progress reports are not submitted. Quarterly reports shall cover the periods January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31. Reports shall be due within thirty (30) days following the end of the quarter being reported.

J. COMPENSATION

1. Method of compensation. Payment shall normally be made on a reimbursable basis as specified in the grant agreement and no more often than once per month. Each request for payment will be submitted by the RECIPIENT on State voucher request forms provided by the DEPARTMENT along with documentation of the expenses. Payments shall be made for

each task/phase of the project, or portion thereof, as set out in the Scope of Work when completed by the RECIPIENT and approved as satisfactory by the Project Officer. The payment request form and supportive documents must itemize all allowable costs by major elements as described in the Scope of Work.

Instructions for submitting the payment requests are found in "Administrative Requirements for Ecology Grants and Loans", part IV, published by the DEPARTMENT. A copy of this document shall be furnished to the RECIPIENT. When payment requests are approved by the DEPARTMENT, payments will be made to the mutually agreed upon designee. Payment requests shall be submitted to the DEPARTMENT and directed to the Project Officer assigned to administer this agreement.

2. **Period of Compensation.** Payments shall only be made for actions of the RECIPIENT pursuant to the grant/loan agreement and performed after the effective date and prior to the expiration date of this agreement, unless those dates are specifically modified in writing as provided herein.
3. **Final Request(s) for Payment.** The RECIPIENT should submit final requests for compensation within forty-five (45) days after the expiration date of this agreement and within fifteen (15) days after the end of a fiscal biennium. Failure to comply may result in delayed reimbursement.
4. **Performance Guarantee.** The DEPARTMENT may withhold an amount not to exceed ten percent (10%) of each reimbursement payment as security for the RECIPIENT's performance. Monies withheld by the DEPARTMENT may be paid to the RECIPIENT when the project(s) described herein, or a portion thereof, have been completed if, in the DEPARTMENT's sole discretion, such payment is reasonable and approved according to this agreement and, as appropriate, upon completion of an audit as specified under section J.6. herein.
5. **Unauthorized Expenditures.** All payments to the RECIPIENT may be subject to final audit by the DEPARTMENT and any unauthorized expenditure(s) charged to this grant/loan shall be refunded to the DEPARTMENT by the RECIPIENT.
6. **Mileage and Per Diem.** If mileage and per diem are paid to the employees of the RECIPIENT or other public entities, it shall not exceed the amount allowed under state law for state employees.
7. **Overhead Costs.** No reimbursement for overhead costs shall be allowed unless provided for in the Scope of Work hereunder.

K. TERMINATION

1. **For Cause.** The obligation of the DEPARTMENT to the RECIPIENT is contingent upon satisfactory performance by the RECIPIENT of all of its obligations under this agreement. In the event the RECIPIENT unjustifiably fails, in the opinion of the DEPARTMENT, to perform any obligation required of it by this agreement, the DEPARTMENT may refuse to pay any further funds there under and/or terminate this agreement by giving written notice of termination.

A written notice of termination shall be given at least five working days prior to the effective date of termination. In that event, all finished or unfinished documents, data studies, surveys,

drawings, maps, models, photographs, and reports or other materials prepared by the RECIPIENT under this agreement, at the option of the DEPARTMENT, shall become Department property and the RECIPIENT shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

Despite the above, the RECIPIENT shall not be relieved of any liability to the DEPARTMENT for damages sustained by the DEPARTMENT and/or the State of Washington because of any breach of agreement by the RECIPIENT. The DEPARTMENT may withhold payments for the purpose of setoff until such time as the exact amount of damages due the DEPARTMENT from the RECIPIENT is determined.

2. **Insufficient Funds.** The obligation of the DEPARTMENT to make payments is contingent on the availability of state and federal funds through legislative appropriation and state allotment. When this agreement crosses over state fiscal years the obligation of the DEPARTMENT is contingent upon the appropriation of funds during the next fiscal year. The failure to appropriate or allot such funds shall be good cause to terminate this agreement as provided in paragraph K.1 above.

When this agreement crosses the RECIPIENT's fiscal year, the obligation of the RECIPIENT to continue or complete the project described herein shall be contingent upon appropriation of funds by the RECIPIENT's governing body; provided, however, that nothing contained herein shall preclude the DEPARTMENT from demanding repayment of ALL funds paid to the RECIPIENT in accordance with Section O herein.

3. **Failure to Commence Work.** In the event the RECIPIENT fails to commence work on the project funded herein within four months after the effective date of this agreement, or by any date agreed upon in writing for commencement of work, the DEPARTMENT reserves the right to terminate this agreement.

L. WAIVER

Waiver of any RECIPIENT default is not a waiver of any subsequent default. Waiver of a breach of any provision of this agreement is not a waiver of any subsequent breach and will not be construed as a modification of the terms of this agreement unless stated as such in writing by the authorized representative of the DEPARTMENT.

M. PROPERTY RIGHTS

1. **Copyrights and Patents.** When the RECIPIENT creates any copyrightable materials or invents any patentable property, the RECIPIENT may copyright or patent the same but the DEPARTMENT retains a royalty-free, nonexclusive and irrevocable license to reproduce, publish, recover or otherwise use the material(s) or property and to authorize others to use the same for federal, state or local government purposes. Where federal funding is involved, the federal government may have a proprietary interest in patent rights to any inventions that are developed by the RECIPIENT as provided in 35 U.S.C. 200-212.
2. **Publications.** When the RECIPIENT or persons employed by the RECIPIENT use or publish information of the DEPARTMENT; present papers, lectures, or seminars involving information supplied by the DEPARTMENT; use logos, reports, maps or other data, in printed reports, signs, brochures, pamphlets, etc., appropriate credit shall be given to the DEPARTMENT.

3. **Tangible Property Rights.** The DEPARTMENT's current edition of "Administrative Requirements for Ecology Grants and Loans", Part V, shall control the use and disposition of all real and personal property purchased wholly or in part with funds furnished by the DEPARTMENT in the absence of state, federal statute(s), regulation(s), or policy(s) to the contrary or upon specific instructions with respect thereto in the Scope of Work.
4. **Personal Property Furnished by the DEPARTMENT.** When the DEPARTMENT provides personal property directly to the RECIPIENT for use in performance of the project, it shall be returned to the B-4 DEPARTMENT prior to final payment by the DEPARTMENT. If said property is lost, stolen or damaged while in the RECIPIENT's possession, the DEPARTMENT shall be reimbursed in cash or by setoff by the RECIPIENT for the fair market value of such property.
5. **Acquisition Projects.** The following provisions shall apply if the project covered by this agreement includes funds for the acquisition of land or facilities:
 - a. Prior to disbursement of funds provided for in this agreement, the RECIPIENT shall establish that the cost of land/or facilities is fair and reasonable.
 - b. The RECIPIENT shall provide satisfactory evidence of title or ability to acquire title for each parcel prior to disbursement of funds provided by this agreement. Such evidence may include title insurance policies, Torrens certificates, or abstracts, and attorney's opinions establishing that the land is free from any impediment, lien, or claim which would impair the uses contemplated by this agreement.
6. **Conversions.** Regardless of the contract termination date shown on the cover sheet, the RECIPIENT shall not at any time convert any equipment, property or facility acquired or developed pursuant to this agreement to uses other than those for which assistance was originally approved without prior written approval of the DEPARTMENT. Such approval may be conditioned upon payment to the DEPARTMENT of that portion of the proceeds of the sale, lease or other conversion or encumbrance which monies granted pursuant to this agreement bear to the total acquisition, purchase or construction costs of such property.

N. SUSTAINABLE PRODUCTS

In order to sustain Washington's natural resources and ecosystems, the RECIPIENT is encouraged to implement sustainable practices where and when possible. These practices include use of clean energy, and purchase and use of sustainably produced products (e.g., recycled paper). For more information, see <http://www.ecy.wa.gov/sustainability/>.

O. RECOVERY OF PAYMENTS TO RECIPIENT

The right of the RECIPIENT to retain monies paid to it as reimbursement payments is contingent upon satisfactory performance of this agreement including the satisfactory completion of the project described in the Scope of Work. In the event the RECIPIENT fails, for any reason, to perform obligations required of it by this agreement, the RECIPIENT may, at the DEPARTMENT's sole discretion, be required to repay to the DEPARTMENT all grant/loan funds disbursed to the RECIPIENT for those parts of the project that are rendered worthless in the opinion of the DEPARTMENT by such failure to perform. Interest shall accrue at the rate of twelve percent (12%) per year from the time the DEPARTMENT demands repayment of funds. If payments have been discontinued by the DEPARTMENT due to insufficient funds as in

Section K.2 above, the RECIPIENT shall not be obligated to repay monies which had been paid to the

RECIPIENT prior to such termination. Any property acquired under this agreement, at the option of the DEPARTMENT, may become the DEPARTMENT'S property and the RECIPIENT'S liability to repay monies shall be reduced by an amount reflecting the fair value of such property.

P. PROJECT APPROVAL

The extent and character of all work and services to be performed under this agreement by the RECIPIENT shall be subject to the review and approval of the DEPARTMENT through the Project Officer or other designated official to whom the RECIPIENT shall report and be responsible. In the event there is a dispute with regard to the extent and character of the work to be done, the determination of the Project Officer or other designated official as to the extent and character of the work to be done shall govern. The RECIPIENT shall have the right to appeal decisions as provided for below.

Q. DISPUTES

Except as otherwise provided in this agreement, any dispute concerning a question of fact arising under this agreement which is not disposed of in writing shall be decided by the Project Officer or other designated official who shall provide a written statement of decision to the RECIPIENT. The decision of the Project Officer or other designated official shall be final and conclusive unless, within thirty days from the date of receipt of such statement, the RECIPIENT mails or otherwise furnishes to the Director of the DEPARTMENT a written appeal. In connection with appeal of any proceeding under this clause, the RECIPIENT shall have the opportunity to be heard and to offer evidence in support of this appeal. The decision of the Director or duly authorized

representative for the determination of such appeals shall be final and conclusive. Appeals from the Director's determination shall be brought in the Superior Court of Thurston County. Review of the decision of the Director will not be sought before either the Pollution Control Hearings Board or the Shoreline Hearings Board. Pending final decision of dispute hereunder, the RECIPIENT shall proceed diligently with the performance of this agreement and in accordance with the decision rendered.

R. CONFLICT OF INTEREST

No officer, member, agent, or employee of either party to this agreement who exercises any function or responsibility in the review, approval, or carrying out of this agreement, shall participate in any decision which affects his/her personal interest or the interest of any corporation, partnership or association in which he/she is, directly or indirectly interested; nor shall he/she have any personal or pecuniary interest, direct or indirect, in this agreement or the proceeds thereof.

S. INDEMNIFICATION

1. The DEPARTMENT shall in no way be held responsible for payment of salaries, consultant's fees, and other costs related to the project described herein, except as provided in the Scope of Work.
2. To the extent that the Constitution and laws of the State of Washington permit, each party shall indemnify and hold the other harmless from and against any liability for any or all

injuries to persons or property arising from the negligent act or omission of that party or that party's agents or employees arising out of this agreement.

T. GOVERNING LAW

This agreement shall be governed by the laws of the State of Washington.

U. SEVERABILITY

If any provision of this agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this agreement which can be given effect without the invalid provision, and to this end the provisions of this agreement are declared to be severable.

V. PRECEDENCE

In the event of inconsistency in this agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order: (a) applicable Federal and State statutes and regulations; (b) Scope of Work; (c) Special Terms and Conditions; (d) Any terms incorporated herein by reference including the "Administrative Requirements for Ecology Grants and Loans"; and (e) the General Terms and Conditions.

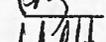
SS-010 Rev. 04/04

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

Bill No. C/A 3G
Date: December 21, 2010
Subject: Introduction: Public Hearing and
Final Consideration - Ordinance
Amendment, Utility Billing Due
Date

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

PURPOSE

This ordinance proposes to amend Chapter 3.95 for the purpose of updating a component of the City utility billing and collection procedures. This agenda bill introduces the ordinance, and asks that Council schedule a public hearing for this matter on January 4, 2011 at which time the ordinance will be presented for final consideration.

AUTHORITY

The City has authority under RCW 35A.11.020 to regulate its internal affairs and to provide for the improvement and beautification of public ways in the rendering of local social, cultural, recreational, educational, governmental, or corporate services, including operating and supplying of utilities and municipal services commonly or conveniently rendered by cities or towns.

SUMMARY STATEMENT:

This ordinance will specifically update OHMC 3.95.070 to clarify the language used to set the date on which utility bills become delinquent. The Finance Department has been receiving inquiries from the public regarding the possibility of adding a few additional days to the current delinquency date in order to facilitate timely payment by customers. Based on this input, the Finance Department recommends that the delinquency date be moved to the 18th day of the month following the month in which the bills were mailed to customers. Doing so gives customers more notice and lead time between the date they receive their invoices and the final date that payment is due.

STANDING COMMITTEE REVIEW:

This item has not been reviewed by the Finance Standing Committee.

RECOMMENDED ACTION:

1. Set a public hearing date of January 4, 2011 with the ordinance to be presented for final consideration.

ATTACHMENTS:

Proposed ordinance amending Oak Harbor Municipal Code Chapter 3.95 "Utility Billing and Collection Procedures."

115

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF OAK HARBOR AMENDING OAK HARBOR MUNICIPAL CODE CHAPTER 3.95 ENTITLED "UTILITY BILLING AND COLLECTION PROCEDURES"

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

Section One. Oak Harbor Municipal Code Chapter 3.95 entitled "Utility Billing and Collection Procedures" is hereby amended to read as follows:

**Chapter 3.95
UTILITY BILLING AND COLLECTION PROCEDURES**

Sections:

- 3.95.010 Policy and scope.
- 3.95.020 Definitions.
- 3.95.040 Application – Account initiation fee.
- 3.95.050 Account to be initiated by property owner or agent.
- 3.95.060 Payments applied.
- 3.95.070 Charges – Due date.
- 3.95.080 Delinquency.
- 3.95.090 Hearing prior to utility service turn-off.
- 3.95.100 Water cut-offs – Lien enforcement.
- 3.95.110 Disconnect water service – Charge – Unpaid – Payment requisite for reconnect.
- 3.95.120 Turning water on – Charges.
- 3.95.130 Utility connection charges – Waiver for low-income persons.
- 3.95.140 Security deposits for service and late fees.
- 3.95.150 Collection agency.
- 3.95.160 Billing error appeals.
- 3.95.170 NSF check – Fee for collection.

3.95.010 Policy and scope.

- (1) The policy of the city is to apply standardized utility billing and collection procedures to simplify customer and administrative response to the process involved.
- (2) This chapter shall apply to the water, stormwater, sewer and solid waste utilities.

3.95.020 Definitions.

- (1) "Utility" refers to any of the city of Oak Harbor utilities which include stormwater utility (rates and regulations which are codified under OHMC Title 12), sewer utility (rates and regulations which are codified in OHMC Title 14), water utility (rates and regulations

which are codified under OHMC Title 13) and the solid waste utility (rates and regulations which are codified in OHMC Title 15).

- (2) "Finance director" means the chief financial officer of the city of Oak Harbor.
- (3) "Lien" is the lien for utilities authorized by state law. For the water utility, the lien statutes are RCW 35.21.290 and 35.21.300. For the solid waste utility, the lien statutes are RCW 35.21.140 and 35.21.150. For the stormwater utility and sewer utility, the lien statutes are RCW 35.67.200 through 35.67.290.
- (4) "Supervisor of the Water Department" means the public works director or his or her designee.

3.95.040 Application – Account initiation fee. Application to have utility accounts initiated shall be made during normal working hours in writing on forms directed by the finance director. An account initiation fee of Twenty-five Dollars (\$25.00) shall be paid in advance by each applicant for utility service before the utility service is provided. The account initiation fee shall be nonrefundable. The account initiation fee shall only apply to new accounts and not existing accounts or transferring accounts within the city limits of Oak Harbor.

3.95.050 Account to be initiated by property owner or agent

- (1) Utility accounts shall be opened by and billed to the owner of the property to which the services are rendered or to such property owner's designated agent. Utility accounts for water and sanitary sewer service must be based upon service to at least one meter. No account may be opened for service to a customer unless that customer is responsible for all service to the water meter applicable to that account.
- (2) A "designated agent" may be a tenant, property manager, or other person designated in writing by the property owner as the property owner's agent for all purposes related to the utility account. The finance director shall prescribe the requisite form to be used by property owners wishing to designate an agent pursuant to this section. All owners of property, however, shall remain ultimately and legally liable for the payment of any and all utility charges against the premises to which such utility service has been furnished or is available to the maximum extent allowed by law.
- (3) Tenant Accounts. In the event that a tenant meeting the requirements of RCW 35.21.217 requests to open a new account due to non-payment of the existing account by the landlord, the tenant shall be allowed to open such an account PROVIDED that the tenant agrees to pay all charges owing which accrued during the tenant's occupancy of the premises. In no event shall an account be opened for service unless the customer is responsible for all service to the water meter applicable to that account.

3.95.060 Payments applied. Payments received by the city for utility service shall be applied in the following order:

- (1) Outstanding late charges;
- (2) Solid waste charges;
- (3) Stormwater utility charges;
- (4) Sanitary sewer charges;
- (5) Water charges.

3.95.070 Charges – Due date. Utility service charges shall be billed monthly for services provided during the previous billing period. Bills shall be due upon billing and payable not later than the eighteenth (18th) day of the calendar month following after the calendar month date of mailing. Thereafter the utility service charges shall become delinquent. Sewer, stormwater and solid waste utility charges shall bear interest at the rate of eight percent (8%) per annum, prorated monthly, and water utility charges shall bear interest at the rate of eight percent (8%) per annum.

3.95.080 Delinquency. If the account is not paid when due, the city shall assess a Fifteen Dollar (\$15.00) delinquency payment and give notice that the utility account is delinquent.

In addition, the notice shall:

- (1) Set a date for water turn-off not less than (7) seven days after giving of notice; and
- (2) Specify that service will be shut off unless payment in full is made to the City within (7) seven days; and
- (3) Advise that a hearing may be requested by contacting the finance department prior to the scheduled date for water turn-off; and
- (4) Provide the address and telephone number of the finance department; and
- (5) Advise that an additional charge of Ten Dollars (\$10.00) will be added to the bill if water cut-off or meter removal is implemented as a charge for cutting off the water and/or meter removal; and
- (6) Provide that service will not be shut off while a hearing is pending.

3.95.090 Hearing prior to utility service turn-off. Upon customer request of the finance director or his/her designee, the customer shall be given the opportunity to explain why the utility service should not be turned off. Service will not be shut off while this hearing is pending. The finance director or his/her designee shall set the hearing date to be held within three (3) days of the customer's request for a hearing.

3.95.100 Water cut-offs – Lien enforcement.

- (1) Sewer and Stormwater Lien. As an alternative method to enforce the lien for nonpayment of sewer or stormwater services or both, the city may cut off water service and refuse to provide water service to premises which were furnished water after the charges have become delinquent and unpaid; provided, that unless the lien is filed with the Island County auditor, the lien shall not be for more than (6) six months' service.
- (2) Water Lien. As a means of enforcement, the lien for water services supplied by the city may cut off and refuse to supply water to the premises which were furnished with the water services after the charges have become delinquent and unpaid; provided, that the lien may not be for more than four (4) months of water services.
- (3) The fee charged for turning off water shall be Ten Dollars (\$10.00) and shall be assessed by 4:30 p.m. the day before the water is turned off.

3.95.110 Disconnect water service – Charge – Unpaid – Payment requisite for reconnect. If the service has been disconnected because the water, sewer or stormwater bill has not been paid, the water service shall not be turned on until the charges under the applicable lien or liens have been paid.

3.95.120 Turning water on – Charges. No water from the city water supply shall be turned on for service into any premises by any person except the supervisor of the water department or his/her designee. A fee of Fifteen Dollars (\$15.00) shall be charged for turning water on for service. This charge shall not be assessed when turning water on for purposes of account initiation pursuant to OHMC 3.95.040. The charge for turning on the water after 5:00 p.m. on any work day or on weekends shall be Seventy-five Dollars (\$75.00) except for emergency responses.

3.95.130 Utility connection charges – Waiver for low-income persons. The finance director may waive connection charges for properties purchased by low-income persons from organizations exempt from tax under Section 501(c)(3) of the federal Internal Revenue Code as amended prior to July 23, 1995. Waivers of connection charges for the same class of utility service must be uniformly applied to all qualified property. Nothing in this section authorizes the impairment of a contract.

3.95.140 Security deposits for service and late fees.

- (1) Security Deposit for Continuing Service. The finance director may order a deposit as a condition of continuing or restoring any utility service where it appears, in his/her discretion, there is a risk of nonpayment or underpayment or as permitted by 11 USC Section 366 or any other applicable law. The deposit shall be a reasonable amount, but in no case less than four (4) months' established billing.

- (2) **Solid Waste Only Billing.** Where premises are not served by city water or sewer service, the customer is required to tender a deposit to the utility department equal to four (4) months of the estimated cost of the service to be provided as determined by the utility department.
- (3) **Front Load Dumpster Security.** The solid waste utility shall collect advance payment for container placement and up to four (4) months of charges for rental. The city finance director may accept satisfactory securities or surety bond in lieu of cash payment. Such payment or security may be applied toward the payment of service charges whenever the same shall become due. The solid waste utility reserves the right to require additional advance payment for subsequent service that may be requested by the customer.
- (4) When a utility deposit required under this section remains unpaid for more than thirty (30) days after giving notice of the same, the city may terminate utility service for the utility requiring deposit including turning off water so long as notice and availability of hearing is provided as per this chapter.

3.95.150 Collection agency.

- (1) The city may refer unpaid accounts for collection to a collection agency approved by the city council for which there is a contract.
- (2) Accounts referred to collection shall be only after written notice has been given to the account holder at his/her last known address by certified mail, return receipt requested, and by regular mail, postage prepaid thirty (30) days in advance of the referral to collection.

3.95.160 Billing error appeals.

- (1) **Time for filing.** A utility account-holder objecting to any utility service charge billing may request a hearing before the city administrator by filing a written request with the finance director within sixty (60) days of the first service date on the challenged billing.
- (2) **Form of appeal.** The request shall set forth the name, address and phone number of the person requesting the hearing; the nature of the service charges at issue, such as water, sewer, stormwater or solid waste; the amount of the billing; the dates of service; and the basis for the objection.
- (3) **Setting of hearing date.** The city administrator or his/her designee shall set a hearing date and time within two (2) weeks of the date of receipt of the request for a hearing, and shall advise the person requesting the hearing of the hearing date, time and location using the address and telephone information provided by the requestor.
- (4) **Failure to appear.** Failure of the requestor to appear for this hearing without prior notice and excuse shall constitute a waiver of the hearing.

- (5) Format of the hearing. At the hearing, the requestor shall have the opportunity to present evidence and argument in support of requestor's objections to the utility service charge billing.
- (6) Determination of City Administrator. The city administrator shall consider the evidence and argument submitted by the requestor and make a determination on requestor's challenge in writing within ten (10) days.
- (7) Time for Appeal from City Administrator Determination. The determination of the city administrator shall be final unless appealed within five (5) business days of the date of mailing the determination to the address provided by the requestor above.
- (8) Appeals to Hearing Examiner. Appeals from the determination of the city administrator shall be to the hearing examiner. The procedures of OHMC 1.24.020 – 1.24.110 shall apply to these appeals.
- (9) Decision of Hearing Examiner Final. The decision of the hearing examiner shall be final unless appealed to a court of competent jurisdiction within thirty (30) days of issuance of the hearing examiner's decision.
- (10) Amount Owing, In the event that the account-holder's appeal results in a determination that an amount is owing to the city, the amount must be paid within three (3) days of the date of the final decision.

3.95.170 NSF check – Fee for collection. The fee charged for a nonsufficient fund check (NSF check) shall be Forty Dollars (\$40.00), or the amount of the NSF check, whichever is less.

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 publication.

PASSED by the City Council this ____ day of _____, 2010.
 APPROVED by its Mayor this ____ day of _____, 2010.

THE CITY OF OAK HARBOR

 Mayor

Attest:

City Clerk

Approved as to Form:

City Attorney

Published: _____

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

Bill No. 4

Date: December 21, 2010

Subject: Memorial to the City of Oak
Harbor's First Three Settlers

FROM: Cathy Rosen, Public Works Director

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

PURPOSE

The purpose of this agenda bill is to consider the placement of a public memorial honoring the first three settlers to take up land claims in Oak Harbor: Mr. Freund, Mr. Sumner and Mr. Tafetzon. This memorial commemorates the first land claims made 160 years ago at the location where the settlers arrived. The proposed memorial will be an attractive art piece that will promote opportunities for public interactions and social activities through conversations about Oak Harbor's history.

AUTHORITY

Oak Harbor Municipal Code 2.29.030 gives the Oak Harbor City Council the authority to accept or reject gifts of public art. The City of Oak Harbor Parks Gifts and Memorials Catalog includes a Substantial Gift, Memorial or Tribute policy which also allows for the acceptance or rejection of gifts, memorials or tributes, with the discretion of the Park Board and City Council.

SUMMARY STATEMENT

At the October 11, 2010 Park Board meeting, Sue Karahalios requested permission for a memorial to be placed at Windjammer Park commemorating the three original land claim holders: Mr. Freund, Mr. Sumner and Mr. Tafetzon, who filed the claims in Oak Harbor on January 4, 1851.

January 4, 2011 is the 160th anniversary of this event. Local Artist, Richard Nash, has been tasked with the design and construction of three sculptures, which will be approximately 9 ½ feet tall, representing the claim holders. The sculptures will be made of corten steel and placed in a triangle formation on a concrete surface that will be connected to the waterfront trail. The concrete pad will be large enough for easy access between and around the three pillars and will meet ADA standards. Three lights are proposed to individually light each pillar, adding to the aesthetics after dark. A plaque will be placed on the concrete pad explaining the history and significance of the sculpture. The proposed location for the memorial is on the east side of Windjammer Park, near the location of the first landing by boat of Mr. Freund, Mr. Sumner and Mr. Tafetzon.

The Parks Division staff will conduct the site work, preparing the concrete pad for the art piece, with materials to be purchased and supplied by the donors.

Ms. Karahalios has agreed to raise donations in the amount of \$22,000, which will be required to construct and install the sculpture. Once the art piece has been completed, the sculpture will be gifted to the City. City staff has taken this proposal through all of the necessary steps, as noted in the Substantial Gift, Memorial or Tribute policy. The City of Oak Harbor will reserve the right to relocate the art piece if deemed necessary in the future.

At the October 11 Park Board meeting, Ms. Karahalios received feedback and was tasked to respond to a list of approval criteria, provided by staff, which would be necessary for further consideration of the project at a second Park Board meeting. Senior Planner, Cac Kamak, informed the Board that the proposal would also have to be brought to the Arts Commission, and that we would be required to gather public input before action could be taken on the proposal.

On November 2 a public notice was placed at the proposed sculpture site at Windjammer Park. The project was also advertised in the November 3 and 6, 2010 Whidbey News-Times inviting public comments. On November 8 the proposal went before the Arts Commission, where the commission members unanimously approved the acceptance of the proposed memorial as public art and agreed with its installation at Windjammer Park. A special Park Board meeting was then held at City Hall on November 15 to consider the approval or denial of the proposed memorial based on the approval criteria and public input. The Park Board unanimously agreed to accept the Memorial to the City of Oak Harbor's First Three Settlers (Freund, Sumner and Tafetzon), as per the City's Substantial Gift, Memorial or Tribute Policy, and forward the recommendation to the City Council.

STANDING COMMITTEE REPORT

The Public Works Standing Committee reviewed the proposal for the memorial to the City's First Three Settlers on November 4, 2010. The Arts Commission reviewed the proposal at November 8, 2010 meeting. The Government Services Standing Committee will review the proposal at the December 14 meeting.

RECOMMENDED ACTION

The Park Board has recommended that the City Council:

1. Approve the Memorial to the City of Oak Harbor's First Three Settlers and accept the gift of the art piece, once completed, as per the Substantial Gift, Memorial or Tribute Policy;
2. Approve the Resolution and authorize the Mayor to sign; and
3. Approve the Agreement for the Memorial Donation and authorize the Mayor to sign.

ATTACHMENTS

- Resolution regarding Art Donation
- Agreement for Art Donation
- Park Board Meeting Notes – October 11, 2010 (2 pages)
- Public Works and Utilities Standing Committee Notes – November 4, 2010 (2 pages)
- Park Board Meeting Notes – November 15, 2010 (2 pages)
- Memo to Park Board from Hank Nydam (1 page)
- Letter from Sue Karahalios to Park Board (1 page)
- Memorial Project – Approval Criteria Responses from Sue Karahalios (4 pages)
- Artist Renderings (8 pages)
- Site Maps (2 pages)
- Substantial Gift, Memorial or Tribute Policy (5 pages)
- OHMC 2.29.030 – Monetary Donations and Gifts of Works of Art to the City (1 page)
- Artist Waiver of Rights

MAYOR'S COMMENTS

RESOLUTION NO. 10-27

A RESOLUTION OF THE CITY OF OAK HARBOR COUNCIL REGARDING THE ACCEPTANCE OF A MEMORIAL TO THE CITY OF OAK HARBOR'S FIRST THREE SETTLERS, GIFTED TO THE CITY BY LOCAL DONORS.

WHEREAS, the City of Oak Harbor has established a Substantial Gift, Memorial or Tribute Policy in order to accept such gifts of permanent artwork within the City; and

WHEREAS, Sue Karahalios has agreed to raise the appropriate funding to donate a permanent art piece to be placed at Windjammer Park commemorating the City of Oak Harbor's first three settlers, Mr. Freund, Mr. Sumner and Mr. Tafetzon, who took up land claims 160 years ago in Oak Harbor; and

WHEREAS, City staff has reviewed the request, addressed the Approval Criteria and taken the request through all appropriate approval steps including the Park Board, Standing Committees and the Arts Commission and received their support; and

WHEREAS, the art piece will be designed and constructed by artist Richard Nash and will include three corten steel sculptures, standing approximately 9 ½ feet tall, representing the three settlers; and

WHEREAS, the donor and the artist have agreed to sign a waiver of rights as identified in the Visual Artists Rights Act; and

WHEREAS, the art piece will be placed at Windjammer Park near the Waterfront Trail on a concrete pad with a plaque explaining the history and significance of the sculpture; and

WHEREAS, the Agreement for Art Donation with the donor regarding the acceptance of the art piece as a gift to the City once completed is attached hereto as Exhibit A to this Resolution; and

WHEREAS, the City will reserve the right to relocate the art piece if deemed necessary in the future.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAK HARBOR, WASHINGTON, RESOLVES TO ACCEPT A MEMORIAL TO THE CITY OF OAK HARBOR'S FIRST THREE SETTLERS, ONCE COMPLETED, IN ACCORDANCE WITH THE AGREEMENT FOR ART DONATION.

PASSED and approved by the City Council this _____ day of _____ 2010.

THE CITY OF OAK HARBOR

Mayor

Attest:

City Clerk

Approved as to Form:

City Attorney

126

AGREEMENT FOR ART DONATION

This Agreement is entered into this _____ day of _____, 2010, by and between the City of Oak Harbor, a municipal corporation (hereafter referred to as "City"), and Sue Karahalios (hereafter referred to as "the donor") representing citizens proposing to place a memorial honoring the first original land claims holders in the City of Oak Harbor at Windjammer Park.

WHEREAS, the donor is desirous of making a donation of a public memorial to the City commemorating Freund, Sumner and Tafetzon, the first three settlers to take up land claims (on January 4, 1851) on the 160th anniversary as a historical marker in the form of public art.

WHEREAS, Oak Harbor Municipal Code 2.29.030 and the Substantial Gift, Memorial or Tribute Policy gives the City the authority to accept gifts of public arts and memorials.

WHEREAS, the donor has chosen a memorial that is aesthetically pleasing, architecturally compatible with its surroundings, is safe and low maintenance.

WHEREAS, the City is pleased to receive the memorial to the original land claim holders and wishes to ensure that the rights and obligations of all parties concerning the donation are clear.

NOW, THEREFORE, the parties agree to the following terms and conditions:

Rights and Obligations of the Memorial Donor

1. On or before December 31, 2012, an art piece, designed and constructed by artist Richard Nash, shall be donated to the City. The art piece, consisting of three corten steel pillars standing approximately 9 ½ feet tall, will be placed on a concrete surface. The pillars represent the three settlers who were the first land claim holders in the City of Oak Harbor.
2. Located along the Waterfront Trail at Windjammer Park, the memorial shall be available to the public to promote public interactions and social activities through conversations about Oak Harbor's history.
3. As part of the donation, the donor will be responsible for the installation of the memorial in accordance with City Parks and Building Division's requirements and will bear the cost of all necessary permits.
4. The donor is responsible for complying with all federal, state and local laws, which might include competitive bidding and state prevailing wage laws.
5. No contingencies shall be placed on the acceptance of the gift from the donor.
6. Prior to acceptance of the memorial, a waiver of certain rights and conditions attributed to the artist, in the Visual Artists Rights Act 106A, must be signed by the artist and donor.

Rights and Obligations of the City of Oak Harbor

1. The City shall prepare the site for installation of the memorial, subject to the donor supplying the necessary building materials.
2. Upon installation of the memorial, the City Parks Division shall inspect the memorial and, if satisfied that it meets all City requirements, accept it as a gift to the City.
3. Upon acceptance of the memorial by the Parks Division, it shall become the sole property of the City and the donor shall have no special rights to its use other than as members of the general public.
4. Upon acceptance of the memorial, the City shall have responsibility for the maintenance and repair of the memorial. The donor shall have no liability for any defect or use of the memorial arising out of the generous donation to the City by the donor.
5. The City reserves the right to relocate the memorial, if deemed necessary in the future, at its sole discretion.
6. Prior to acceptance of the memorial a waiver of certain rights and conditions attributed to the artist in the (visual artists rights act 106A) must be signed by the artist and donor

This Agreement for the donation of a Memorial to he City of Oak Harbor's First Three Settlers as public art was approved by the Oak Harbor City Council this _____ day of _____ 2010.

Jim Slowik, Mayor

Entered into this _____ day of _____ 2010

By _____

OAK HARBOR PARK BOARD
Monday, October 11, 2010, 11:30 a.m.
Public Works Facility Conference Room
1400 NE 16th Avenue
Oak Harbor, WA 98277
(360) 279-4750

NOTES

1. **Call to Order/Review of Notes (September 13)** - Helen Chatfield-Weeks called the meeting to order. Park Board members in attendance were Helen, Mike Wright and Daisy Sapida. Dee Harbour was out of town and K.C. Pohtilla was absent. Staff members in attendance were Hank Nydam, Cac Kamak and Kathy Wagoner. Also in attendance was Sue Karahalios.

The September 13 meeting notes were reviewed with no changes.

2. **Parks Update** - Hank Nydam gave the update:
- The flower baskets on Pioneer Way have been taken down for the season.
 - The Parks Division will begin maintaining the greenbelts on Oak Harbor Street.
 - The Scenic Heights Trailhead project has begun.
 - Discussions and review are underway concerning the new building at Flintstone Park. The City has received the 95% submittal and the project is scheduled to begin in 2011.
 - There are three new memorial benches: A memorial bench from the Kemp family, in honor of their daughter, will be placed at Hal Ramaley Park. A memorial bench for Jeff Lambert is located at the corner of Midway and Pioneer Way, the Firefighter's Memorial. The bench honoring Pastor David Lura is at Windjammer Park near the Little League fields and the Condos.
 - Hank indicated there has been requests for benches along the trail at Maylor's Point, however, the Interlocal Agreement with the Navy states that there will be no benches on the military property.

3. **Introduction of a Proposal for a Memorial to the City of Oak Harbor's Founding Fathers** - Sue Karahalios requested the Park Board's permission for a memorial to be placed at Windjammer Park in honor the three founders of Oak Harbor: Mr. Freund, Mr. Sumner and Mr. Tafetzon, who filed the original land claim for the City of Oak Harbor on January 4, 1851. January 4, 2011, is Oak Harbor's 160th Anniversary.

Sue has spoken with local artist, Richard Nash, who is proposing a setting of three sculptures, approximately eight feet tall, each one representing one of the founders. They would be made of corten steel. The sculptures would cost approximately \$20,000, which includes tax, a plaque, site prep, and a concrete foundation. Ms. Karahalios indicated that she presented the concept to the noon Rotary Club on October 8, 2010. At present there is rock with a plaque, located approximately 50 feet from the proposed site. Ms. Karahalios is recommending the rock and plaque be moved nearer the proposed site for the sculptures. If possible, she would like a ribbon cutting ceremony to take place on January 4, 2011 (the anniversary), with Arnie Freund cutting the ribbon.

OAK HARBOR PARK BOARD
Monday, October 11, 2010, 11:30 a.m.
Page 2

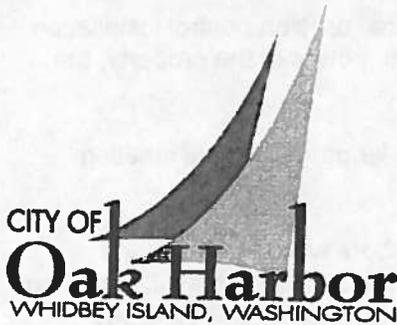
Hank said, if the proposal is approved, it might be possible to hold the ribbon cutting on the proposed date, but it may not be possible to have the project completed within this time frame. Ms. Karahalios said, because Pioneer Way is so contentious, the memorial to the founding fathers might be cause for community celebration.

Hank said he has discussed the Park Board's review process with Ms. Karahalios. He indicated the last project from two years ago and passed out a checklist. Hank knows the timeline is aggressive but, if possible, would like to have more information to the Park Board members prior to the next meeting. Cac said the public input process must be met, as it is a requirement. The project will also need to go before the Arts Commission and the Standing Committee. Hank said the project will eventually go before the City Council for approval.

Daisy said this project is something the City needs. Mike said his concern would be placing a metal sculpture by the beach. Ms. Karahalios said the artist assured her the corten steel would involve low to no maintenance. Hank said not a lot of time has been spent on the proposed project so far. He indicated the outfall runs directly where the memorial is proposed. Mike suggested it could go near the windmill. Hank said the criteria and other locations will need to be reviewed. Ms. Karahalios said she is agreeable to looking at other locations. Hank and Cac will look at the site.

Being no further business, the meeting adjourned.

Kathy Wagoner, Engineering Administrative Assistant



PUBLIC WORKS AND UTILITIES STANDING COMMITTEE
Thursday, November 4, 2010, 7:00 a.m.
Public Works Facility Conference Room

MEETING NOTES

1. Chairman Danny Paggao called the meeting to order at 7:00 a.m. Public Works Standing Committee Members in attendance were Rick Almberg, and Scott Dudley. City staff in attendance was Mayor Slowik, Paul Schmidt, Steve Powers, Cathy Rosen, Eric Johnston, Cac Kamak, Ethan Spoo, and Kathy Wagoner. Also in attendance was Justin Burnett from the *Whidbey News-Times*.
2. **Review Meeting Notes** – September 2, 2010 and October 7, 2010.
3. **Shoreline Public Participation Plan (Ethan Spoo)** – Presented a power point presentation on the Shoreline Master Program Update Project and Public Participation Overview. A copy of the presentation was given to those in attendance.
4. **Introduction of a Proposal for a Memorial to the City of Oak Harbor Founding Fathers (Cac Kamak)** – Discussed a proposal by Sue Karahalios to honor Mr. Freund, Mr. Sumner, and Mr. Taftazon who filed the original land claim for the City of Oak Harbor on January 4, 1851. An artist's rendition, created by local artist Richard Nash, of three corten steel sculptures representing the "founders" was presented. The Arts Commission will look at the proposal on November 8; and, a public meeting will be held November 15. The location is to be determined.
5. **SE Pioneer Way Project Update** – Eric presented a Project Communication and Management Structure. He also went over some of the project costs. The Council will be presented with an Agenda Bill at the November 16 Council Meeting requesting authorization to advertise for bids.
6. **Wastewater Treatment Plant Facility Plan Project Update** – Eric said the Facility Plan is underway. Staff has met with the Navy. The key point for the navy is where the facility will be located. If on Navy property there could be a lease option or a surplus of property option ... either option could take four years. The Navy on Whidbey Island is in support of the project. Eric went through the website www.oakharborcleanwater.org. This will be linked to the Oak Harbor website. A Public Meeting is being targeted for early December.
7. **Fuel Station Upgrade Project Update** – The project is ahead of schedule and going very well.
8. **Reservoir Project Update** – Eric said the project is proceeding toward construction. The project has been divided into two parts for construction; the Gun Club Road waters mains and the North Reservoir. Currently working on a drainage issue.

9. **Scenic Heights Trallhead Project Update** – Eric reported the initial erosion control installation and grading are complete. Stormdrain pipes, sanitary sewer pipes, power to the property, the Plaza Wall and Viewing Area Wall footings have been installed.
10. **42-inch Outfall Project Update** – Eric said this was discussed at length at the last meeting. Getting ready for the permit process, which is a requirement.
11. **Public Works Director's Comments** – Cathy reported staff members will be going to the Anacortes Treatment Plant for sandbag training to prepare for La Nina weather conditions being predicted. City of Oak Harbor Public Works staff, as well as personnel from NAS Whidbey Island will be called in the event of flooding.
12. **Next Meeting** – December 2, 2010, 7:00 a.m.
13. **Meeting Adjourned** – 8:25 a.m.

OAK HARBOR PARK BOARD
Monday, November 15, 2010, 4:00 p.m.
City Hall (Engineering) Conference Room
865 SE Barrington Drive
Oak Harbor, WA 98277
(360) 279-4750

NOTES

1. **Call to Order/Review of Notes (October 11)** - Helen Chatfield-Weeks called the meeting to order. Park Board members in attendance were Helen, Dee Harbour, Mike Wright, K.C. Pohtilla and Daisy Sapida. Staff members in attendance were Hank Nydam, Cac Kamak and Debbie Mueller. Also in attendance were Richard Nash and Councilmember Jim Campbell.

There were no changes to the October 11 meeting notes.

Hank gave a letter of appreciation to Mike Wright who, along with his wife Lynnette, has maintained Lueck Park faithfully for many years.

2. **Proposal for a Memorial to the City of Oak Harbor's First Three Settlers** - Sue Karahalious was unable to attend today's meeting but sent a letter explaining that Rick Nash, the artist, would be presenting the proposed memorial to the Board. Rick was introduced and stated that he had been approached by Sue Karahalious several months ago and he began working on several designs. It was determined that corten steel (3/16" wide) would be used as the material for the sculpture, and Rick has researched how this material holds up in our environment. He said the alloy has copper in it, and it is designed to oxidize over about a ten year period, eventually turning a deep brown-red color. Rick said this material is close in strength to stainless steel. The sculpture (six pieces total, weighing over 275 pounds each) will be 9 1/2" tall and the display will be ADA accessible. The concrete pad will be sloped to sit a couple inches higher than the sidewalk so that surf water will not accumulate around the base, and it will be plumbed with electrical conduit for (eventual) lighting. Cac added that staff will work with the artist to prepare the raised concrete pad for the art piece.

Mike asked about the exact location for the sculpture. Hank stated that staff had made a site visit and moved the proposed sculpture site to a location east of the original site. Daisy asked about preventing birds from soiling the sculpture. Rick said he is exploring ways to minimize birds perching, including the use of solar strips. Daisy asked how big the plaque would be. Rick said that has yet to be determined. Hank added that staff will come back to the Park Board at a later date to have the language of the plaque approved.

Dee and Helen took issue with Mr. Freund, Mr. Sumner and Mr. Tafetzon being referred to as the City of Oak Harbor's "founding fathers". Hank clarified that research will continue but, at this time, they will be referred to as the first three settlers to take up donation land claims in the City (January 4, 1851).

OAK HARBOR PARK BOARD

Monday, November 15, 2010, 4:00 p.m.

Page 2

Helen was concerned that the sculptures do not resemble the settlers. Rick stated that his proposed sculpture is more symbolic and architectural than representative. K.C. mentioned that the Arts Commission would like the sculptures to be taller (10-11 feet), with a larger pad and lighting included. Mike asked about making the sculptures taller and Rick responded that cost would be an issue. Daisy asked how much more lighting might cost. Mike asked if there was a budget for lighting. Hank indicated a cost estimate on lighting has not been done and there is no budget for lighting at this time, but conduit will be installed and lighting will be explored, including solar energy.

Helen asked about the public process, indicating that she had spoken with many citizens who knew nothing about the proposed sculpture. Hank explained that it is standard practice to advertise in the local newspaper and on the website for all City meetings. Also, a notice was posted at Windjammer Park at the proposed sculpture site. Hank said the concept was initially presented at a Park Board meeting and the approval criteria (contained in the Parks Gifts & Memorials Catalog - Substantial Gift, Memorial or Tribute Policy) was discussed and submitted to Sue Karahalios and Rick Nash to respond to, which they did. The concept was also presented at an Arts Commission meeting and two City Council Standing Committee meetings before coming back to the Park Board at this time. No citizen comments have been received by City staff. Mike asked if an article could be placed in the newspaper. Cac indicated that he would look into it.

Mike asked if the sculptures would be vandal-proof. Rick said any damage done would continue to oxidize and corrode. Mike was concerned that the proposed location for the sculpture might be too corrosive. Rick stated that he had spoken with Skagit Steel and the minimum life span is projected to be at least 50 years. Jim Campbell indicated the project would be paid for by citizen donations. He said he likes this art and thinks others will like it also. Helen said there will be a lot of people who won't like it. Dee said if the art is explained to them they may like it. Rick said he thought it would grow on the public. K.C. said art is supposed to raise questions. Helen asked where the plaque will be located. Hank stated it will be in the cement pad.

MOTION: Moved by Mike Wright, seconded by Dee Harbour, unanimously agreed to accept the Memorial to the City of Oak Harbor's First Three Settlers (Freund, Sumner and Tafetzon), as per the City's Substantial Gift, Memorial or Tribute Policy, and forward the recommendation to the City Council.

Being no further business, the meeting adjourned.

Respectfully submitted,

Deborah Mueller
Public Works Administrative Assistant

134



MEMORANDUM

TO: City of Oak Harbor Park Board
FROM: Hank Nydam, Parks Manager
SUBJECT: Founders Memorial Sculpture
DATE: November 12, 2010

At the November 8, 2010 Arts Commission meeting, the commission members unanimously approved the acceptance of the proposed memorial to the City's founding fathers as public art and agreed with its installation at Windjammer Park. As part of the motion, they requested that the artist consider the scale of the art piece to fit into the proposed site with the thought that the monument might need to be taller. They also felt strongly that lighting would add significantly to the art piece and that the conduits should be put in place for future lighting options.

Park Board Meeting
Monday, November 15, 2010
4:00 p.m.
City Hall Council Chambers
865 SE Barrington Drive
Oak Harbor, WA 98277
(360) 279-4750

City of Oak Harbor Park Board Members
November 12, 2010

I am writing to apologize for not being able to attend the Special Park Board Meeting that is being held Monday, November 15, 2010, to discuss the application I have initiated to raise monies to be able to purchase a corten steel sculpture to honor the Founders, who had the first land claim donations in Oak Harbor. As soon as I was given the date that had already been agreed upon by City personnel and the members of the Park Board I contacted staff to let them know I would be out of town on a trip I had committed too over six months ago. I was also informed that there was no chance of any date changes. So please understand that I do not take this meeting lightly but my inability to attend was out of my control.

I am indebted to Richard "Rick" J. Nash, the artist of the proposed sculpture, who will be standing in for me on this second presentation of the project proposal to the Park Board. He and I have worked closely with City staff, especially Hank Nydam, to complete the criteria paperwork, which you have. Rick will also be adding the computer simulations that Greg Hancock, computer "guru" par excellence, put together as a volunteer to help us present this project in a more cohesive format which makes it easier for others to now visualize what can possibly be.

I am aware that the Arts Commission has asked that increasing the size of the sculpture be considered. I appreciate the members time and thoughts on this but there are two major drawbacks that come to mind one, the cost of the sculpture and installation will both go up and two, I have concerns that if it were to be much larger there may be concerns from the condominium owners to the east on their shoreline view and I would like to avoid any possible conflicts.

I appreciate very much the time; consideration and resources to date that have been expended to try to get this project to a "yes". If there are questions still pending that are specific to me please if possible could you call me on my cell phone (360) 941-2476 as I will have it on during your meeting in case you do need answers from me.

As you can also see plans are also in place to come to you individually and later as a Park Board to elicit your suggestions and specific help in what is the exact appropriate wording for the plaque if this project receives a "yes" through you and then the City Council. The Park Board may also want to "weigh in" on trying to find out who/what organization created the original plaque on the rock that is in place today and what suggestions you may have about correcting/not correcting the name. Again, pending a "yes" it is hoped to be able to have a site ribbon cutting on January 4, 2011, which commemorates the 160th anniversary.

Sincerely,

Sue Karahalios, Founders Project Applicant

134

MEMORIAL PROJECT

Founders Sculpture and Placement

Information on How:

1. **The memorial has timeless qualities and makes a statement of significance for future generations.**

The Memorial is architectural, as well as sculptural. It is designed to embrace the public, allowing it to be viewed from the outside as well as being ADA accessible to the inner parts of the sculpture. The memorial plaque information will address the history, as it is perceived this will be the major designation of Oak Harbor's initial donation land claims, which initiated the existence of Oak Harbor.

2. **The memorial represents a person or event deemed significant to Oak Harbor's history.**

The three units represent the first three settlers to take up donation claims – Sumner, Freund, and Tafteson, January 4, 1851.

3. **Is the memorial safe, aesthetically pleasing, and interesting?**

The Memorial is safe in that all edges will be "eased." Aesthetics are primary to me so the Memorial should be pleasing and interesting to most. It is constructed with corten steel known for its enriching patina as it ages. The sculpture is composed of three 9-foot 6-inch units, each with two parts. Each unit fits into the corner of an equilateral triangle with the outside of the units being vertical and the inside angling in. The concrete pad is large and can support foot and wheelchair traffic. The piece is designed to be engaging from the outside as well as from the interior and should easily fit "promotion of opportunities for community interactions and social activities" through conversation, and invitingly lend itself to be the subject of photography.

4. **What is the geographical significance for selecting this location?**

This area is the known site of past Indian encampments where Sumner, Freund and Tafteson initially set to arrive.

5. **Were any other sites considered for the memorial?**

Yes, other sites were considered but were determined to be unsatisfactory because of utility conflicts and future construction concerns.

6. **Are the quality, scale and character of the memorial at a level commensurate with the existing park setting?**

Yes – the scale will be somewhat dwarfed by being in an open environment (no trees, etc., to give it scale). However, it will have an appropriate presence. That is to say, it is large enough to be noticed, but not so large as to be intrusive especially being near the water view.

7. The memorial adds to the aesthetic quality of the park setting.

The aesthetics of the memorial have been addressed with earlier information. It will be an historical marker that enhances the walkway of the waterfront trail from Scenic Heights to Maylor's Point.

8. The proposal meets ADA requirements by providing access to all park users.

The concrete pad where the sculptural units are to be set can be easily accessed with a hard surface pathway connecting to the existing asphalt trail. There will be enough room around the monuments for ADA accessibility from all sides.

9. The applicant will provide 100% of the costs of the project.

| | |
|---------------------------|--------------------|
| Price of the sculpture | \$15,000.00 |
| Tax at 8.7% | \$1,305.00 |
| Delivery and Installation | \$1,000.00 |
| Concrete, etc. | \$2,000.00 |
| Plaque | \$1,695.00 |
| Miscellaneous, if needed | \$1,000.00 |
| Total | \$22,000.00 |

It is the intent of the applicant to raise all of the funds necessary to complete this project. Fundraising cannot take place pending approval. Once the approval is given, fundraising will occur and no work will occur until all funds have been secured.

It should be noted that arrangements are included as to allow for future lighting in that conduits, etc. will be put in place, but that actual implementation of lighting is not a part of the project in behalf of the applicant. That is something the City may wish to undertake in the future.

Specifications:

1. Site plan showing the location of the memorial in the park with existing and proposed surrounding features, landscaping, access etc.

See attached.

2. Scale drawings of the proposal with dimensions-plan view (looking down at the site).

Scale drawings are attached.

3. Provide specifications/drawings for the installations of the monuments (concrete foundations, site preparations, etc.).

Specifications are attached.

4. Information on the colors and the finishes of the monument including the ground surface material.

Samples for colors, finishes will be provided at the Park Board meeting.

5. Provide visual simulations of your proposal if available.

See attached visual simulations provided by Greg Hancock.

6. A narrative description of the purpose of the monument including who it is memorializing, relevance to the community and other relevant history.

The narrative to be used, if not from the plaque (currently at the beach), will be determined by the appropriate historians and will not be finalized until the exact wording has been reintroduced to the Park Board for approval before being finally approved by the appropriate City of Oak Harbor personnel and the Council Standing Committee.

7. Detail the phasing of the proposal including the timing of the construction.

Phasing/timing of Construction:

Nothing will happen until all funds have been raised and are secured. Then;

- The materials will be ordered from Skagit Steel in Burlington when the funds are secured and available and will take two (2) weeks.
- Once the materials arrive they will be delivered to Don's Welding in Oak Harbor. Don and I will begin fabrication soon after delivery. If there is no rush (Don has other customers) it may take up to two (2) months to complete the separate components and have them "installation ready."
- The concrete work will require 1-2 days to set up forms for the main pour. The pour and finishing will take 4-6 hours depending on the weather. Stripping the forms will happen roughly one week later. My intent at this point is to have a smaller separate pour into the remaining triangular shape. The second pour will take place after the sculptural components have been properly located.
- Any drainage or electrical conduits must be set up before the pour. Power location must be discussed with the appropriate officials.

8. Any public safety or security issues.

Any "sharp" edges of the steel will be "eased". The installation will be in a lighted area right near existing light posts along the waterfront walkway dissuading potential problems.

9. The maintenance requirements for the memorial to include recommended schedule annual maintenance.

The corten steel, an alloy with one of them being copper, is often selected by artists because of its resistance to corrosion. In our rainy environment, the steel will form an even rust-brown patina taking up to ten years. At this point the steel will have completed the oxidation process and formed a protective layer. Technically, the sculpture will require no maintenance in regard to its durability.

The concrete pad will have two finishes. The main part will "brushed" and will be "natural". The triangle holding the sculpture will be more "finished" and will have a "rustier" colorant in it. This way, any "bleeding" that might occur from the sculpture will have a reduced impact.

If lighting is to be used, there will be the occasional changing of a bulb, although research for an LED system would almost eliminate all but cleaning.

10. Identify the specific language and location of plaque(s).

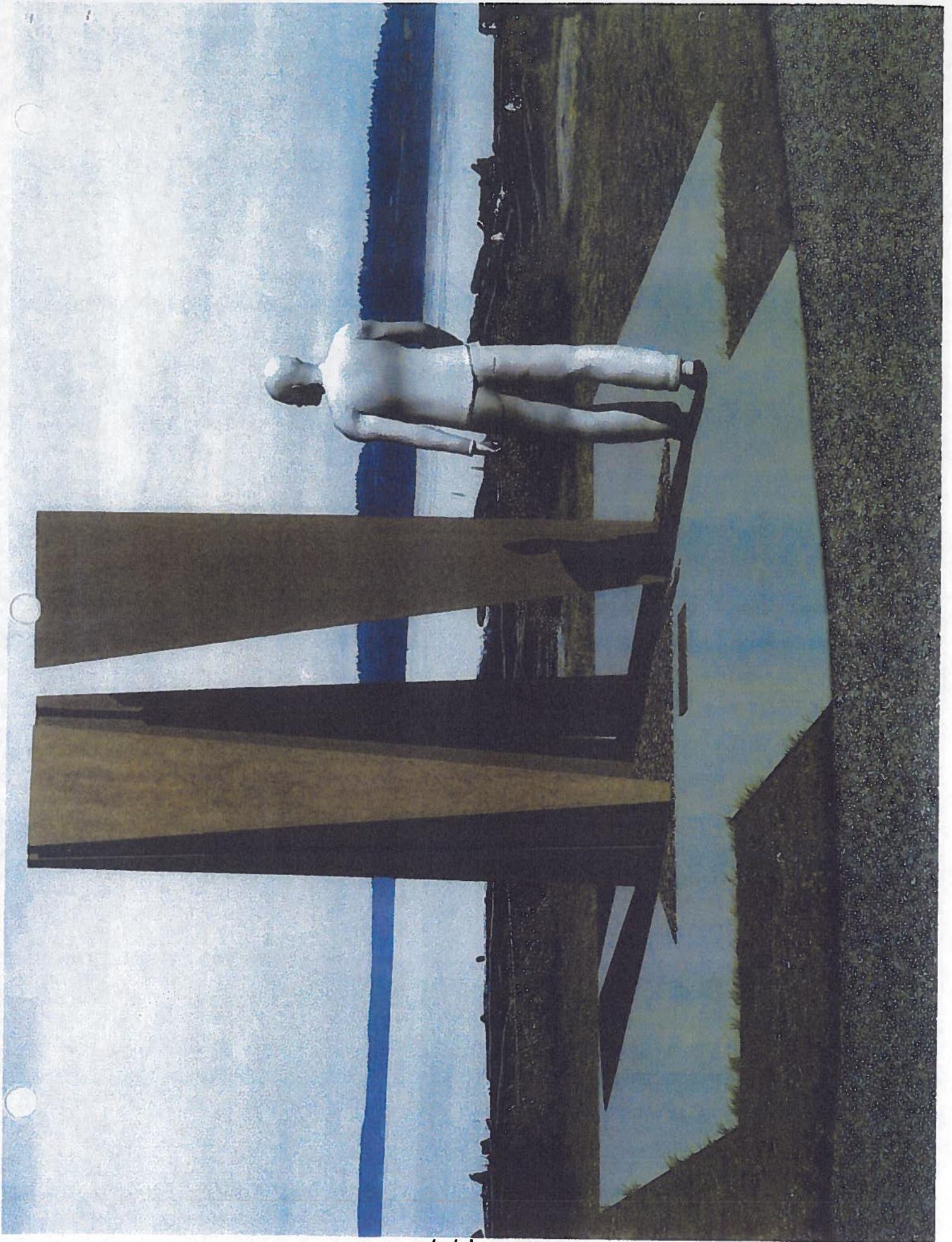
The exact wording is to be determined by those with a vested interest in the Memorial and final approval and review will be made this spring by the Park Board, City of Oak Harbor personnel and the City Council Standing Committee, however, the plaque will not be on the sculpture, it will be placed in the cement.

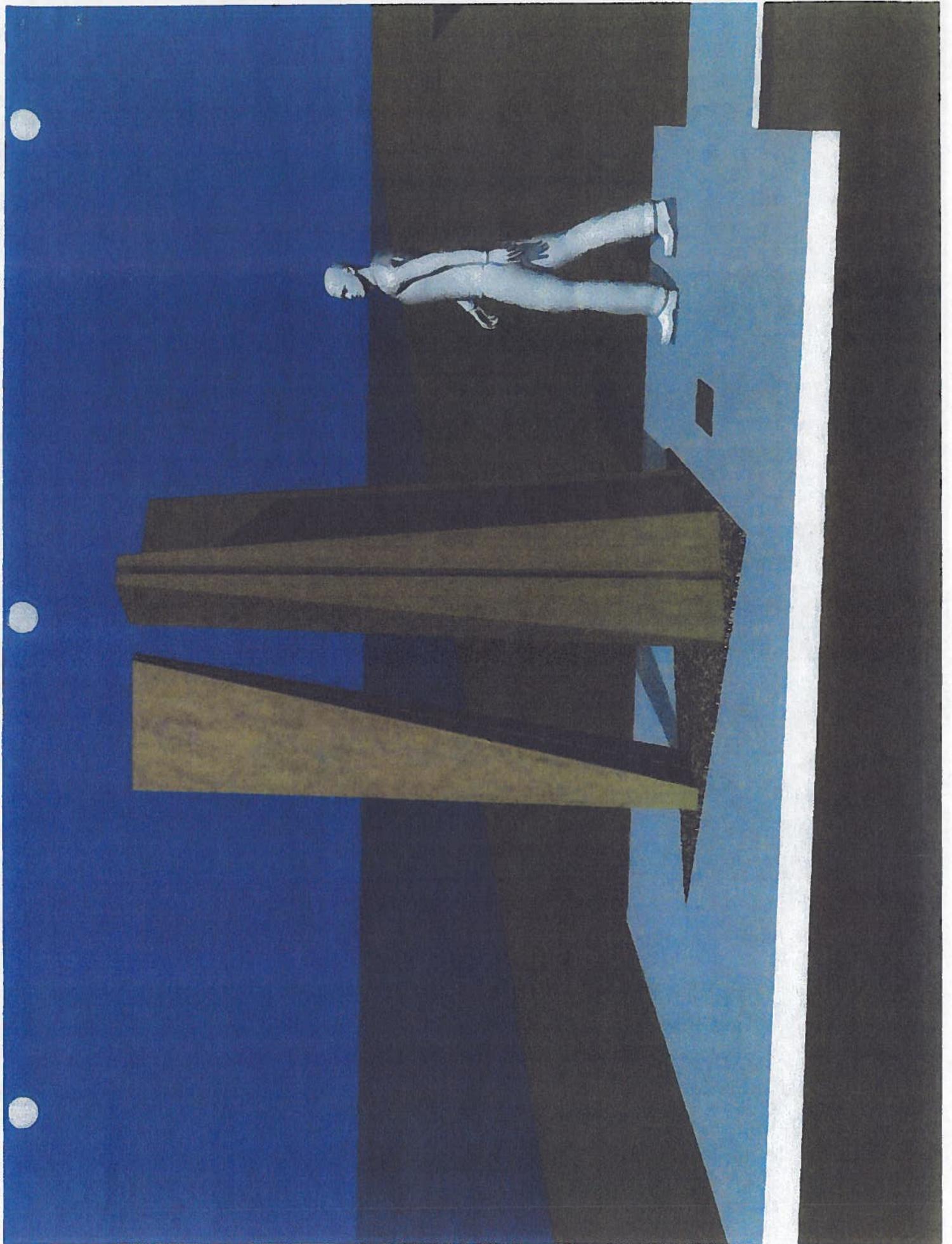
11. Identify who will have ownership of the memorial once complete.

Ownership will belong to the City once the project is completed.

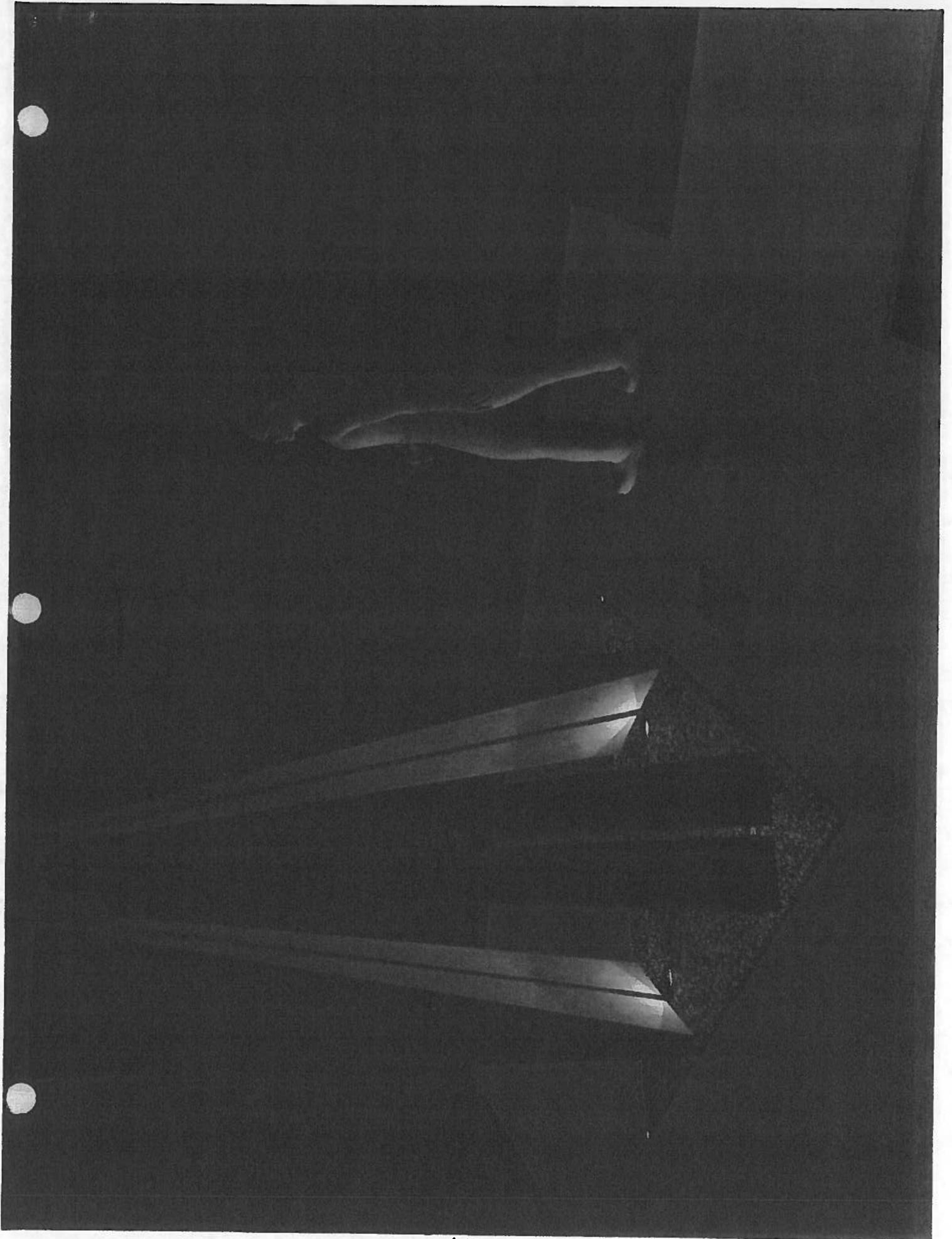
12. Is the memorial insurable (what is the estimated value of the memorial?)

Yes, once the memorial has been gifted to the City, it will be insured under the City's insurance policy.

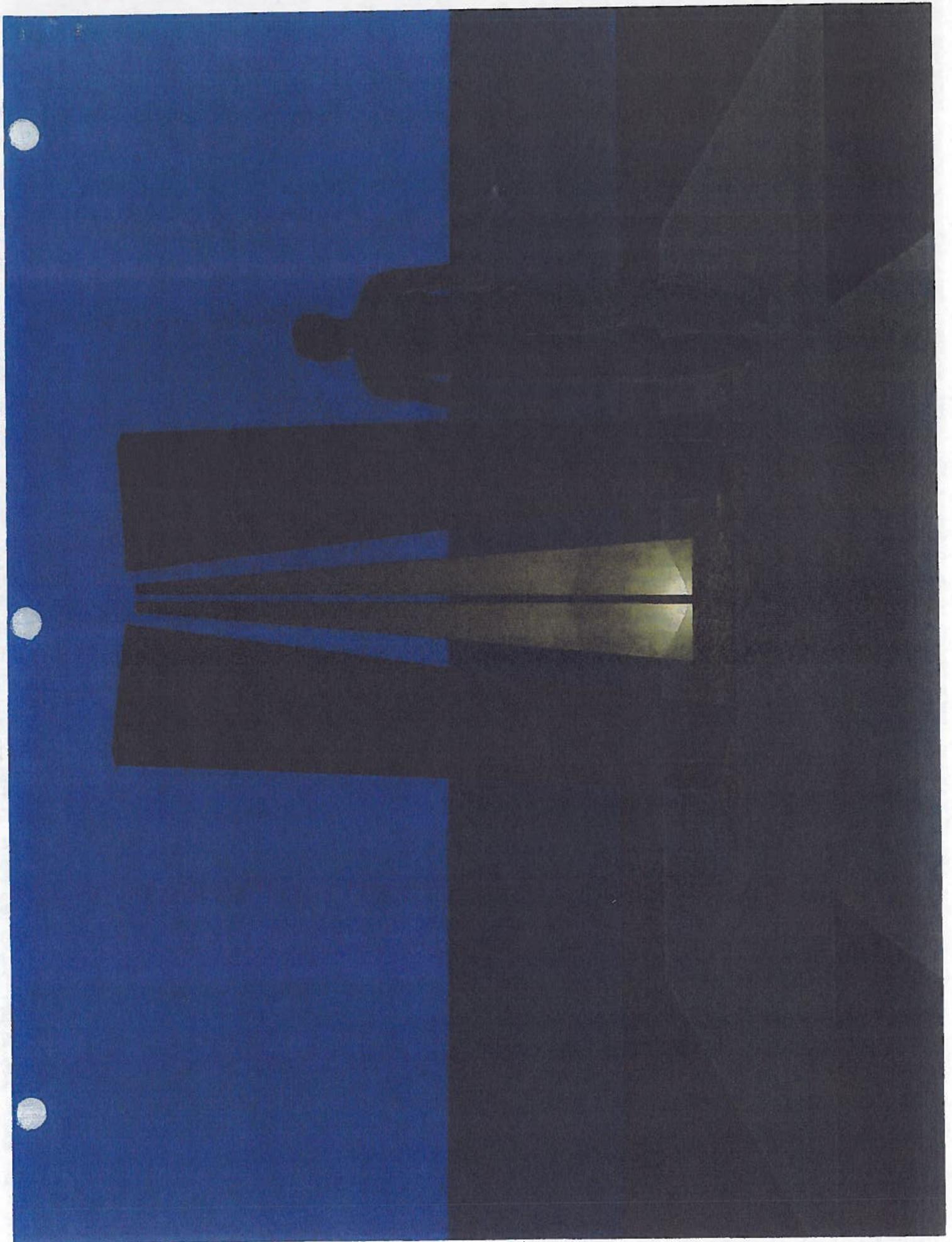




142

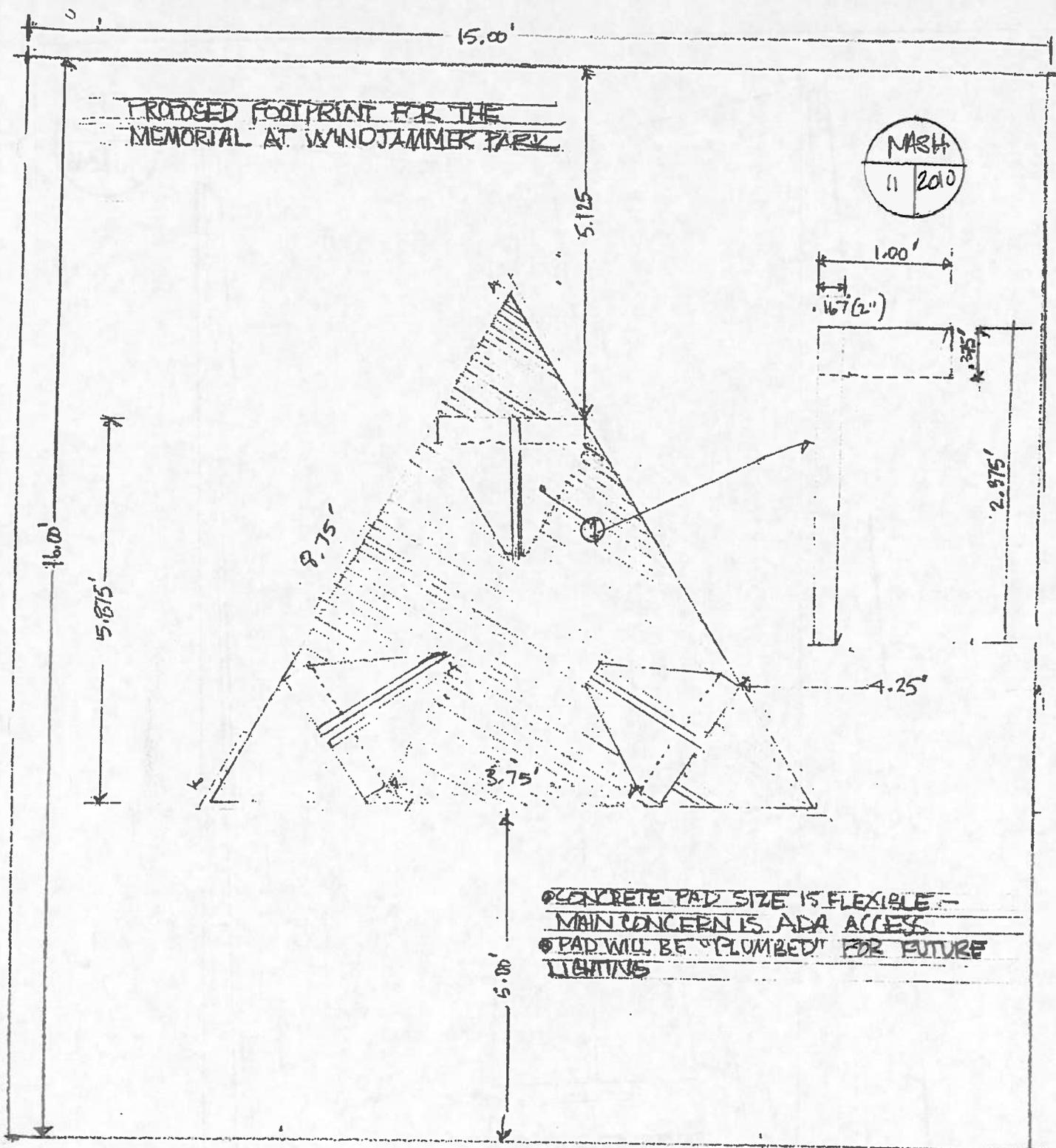


143



144

PROPOSED FOOTPRINT FOR THE
MEMORIAL AT WINOJAMMER PARK



CONCRETE PAD SIZE IS FLEXIBLE -
MAIN CONCERN IS ADA ACCESS
PAD WILL BE "PLUMBED" FOR FUTURE
LIGHTING

WALK PAD TO WALKWAY (ASPHALT)



RICHARD NASH
RTNASH ART
30675 4856
www.rjnash.com

11 2010
NASA

PROPOSED FUTURE
LIGHTING FOR SCULPTURE

• PAD DEPTH TO BE 1 FOOT
• WILL CHECK TO SEE IF A SHORT
STEM WALL WILL BE NECESSARY

RICHARD NASH
RT NASH ART
360.675.4856
www.rndshart.com

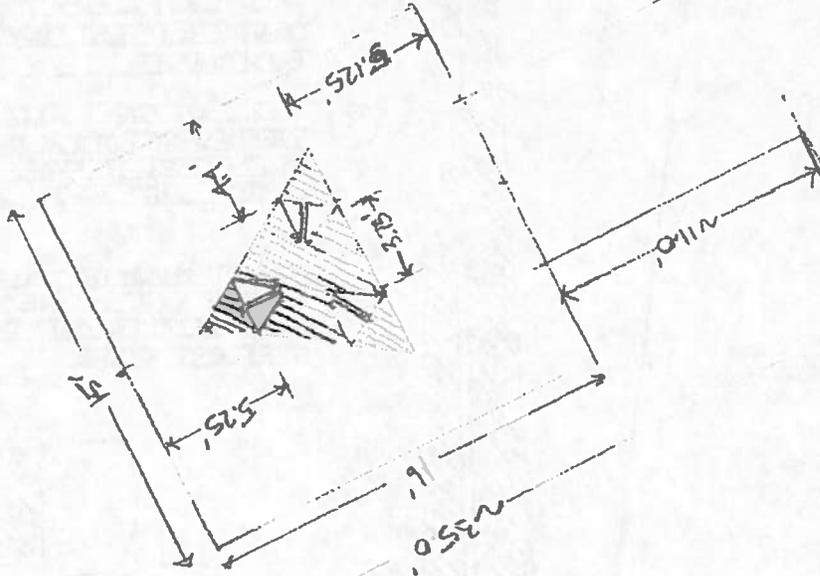
144



CONCRETE PAD WILL BE APPROXIMATELY LEVEL WITH WALKWAY.

- FIRST POUR WILL BE THE PAD MINUS THE TRIANGLE.
- THE SECOND POUR WILL BE THE TRIANGLE AFTER THE MEMORIAL UNITS ARE IN PLACE. THE CONCRETE WILL SECURE UNITS TO THE SITE.
- THE CONCRETE FOR THE TRIANGLE WILL BE TINTED TO MATCH THE NATURE CORTEN STEEL.

EXISTING ASPHALT FOR PARK BENCH



SECURITY BEACH ST

NS



RICHARD NASH
 RJ NASH ART
 360-675-4854
 WWW.RJNASHART.COM

WINDHAMMER PARK

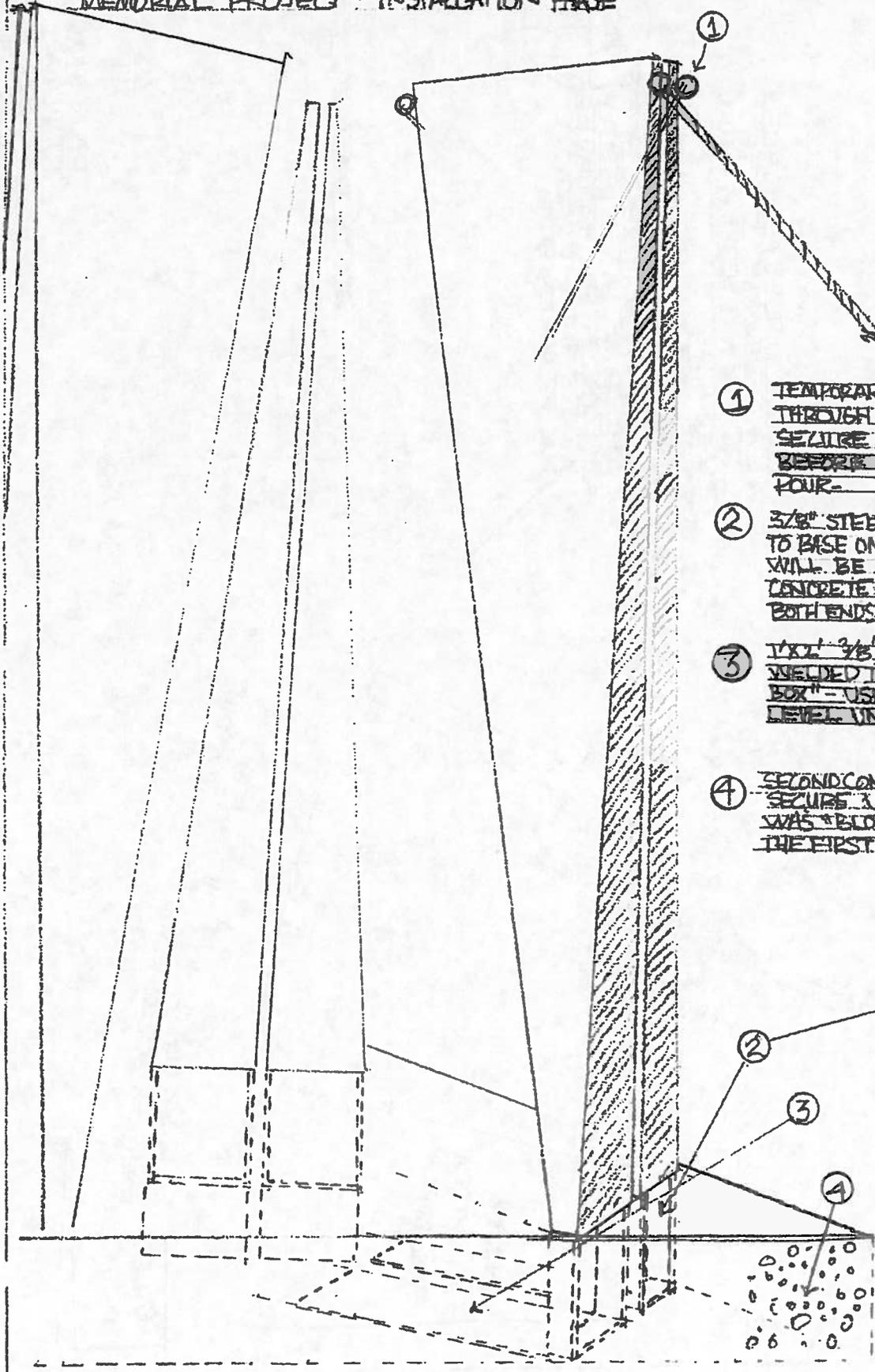
WALKWAY CONNECTING TRAIL TO WATERFRONT TRAIL FROM SCENIC HTS TO WATERFRONT

EXISTING ASPHALT FOR PARK BENCH

SCALE 1" = 70'

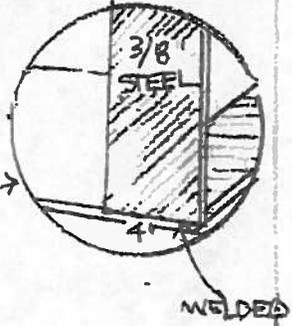
FOUNDERS SCULPTURE & PLACEMENT
MEMORIAL PROJECT - INSTALLATION PHASE

11/2010
 NASHA

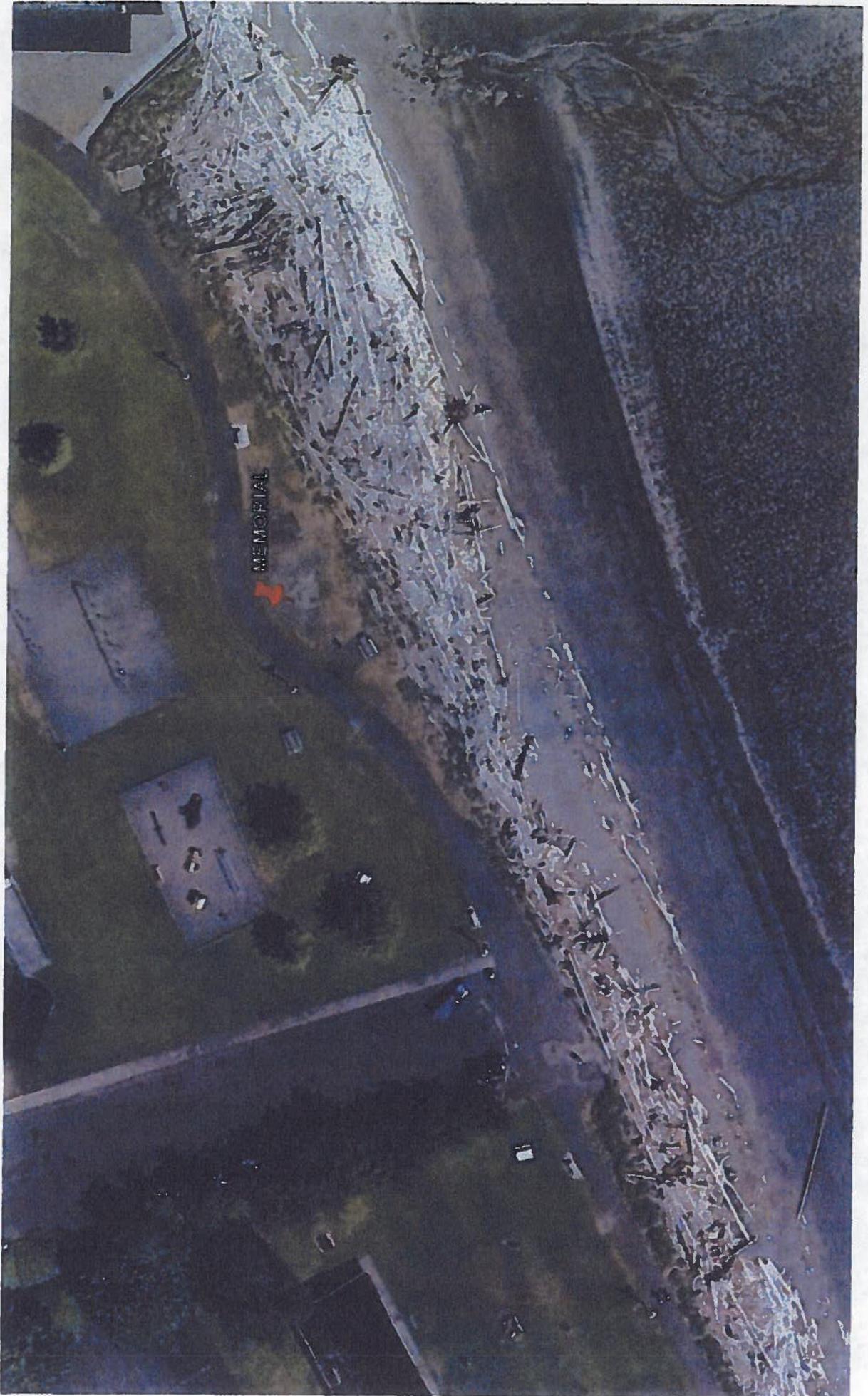


SECURED TO STAKES

- ① TEMPORARY "EYELETS" CABLES THROUGH EYELETS HELP SECURE SEPARATE UNITS BEFORE FINAL CONCRETE POUR.
- ② 3/8" STEEL PLATES WELDED TO BASE ON SCULPTURAL UNITS, WILL BE FILLED WITH CONCRETE (STEEL BOX OPEN AT BOTH ENDS)
- ③ 1'x1' 3/8" STEEL PLATE WELDED TO BOTTOM OF "STEEL BOX" - USED TO STABILIZE AND LEVEL UNITS BEFORE POUR
- ④ SECOND CONCRETE POUR WILL SECURE UNITS - THE TRIANGLE WAS "BLOCKED OUT" DURING THE FIRST POUR



RICHARD NASH
 RYNASH ART
 360-675-2856
 www.rynashart.com





Substantial Gift, Memorial or Tribute Policy



Anything other than a typical park amenity will be considered a substantial gift. Examples of a substantial gift, memorial or tribute include sculptures, permanent artwork, fountains, gardens and plazas.

Definitions

Memorial: an item, object or monument established to preserve the memory of a deceased person(s) or an event that occurred in the past.

Tribute: an item, object or gift designed to acknowledge the contributions of living people to society. Projects recognizing people with illnesses such as AIDS or cancer are considered tributes.

Public Art: works of art acquired through the Public Art Program.

Park Amenity: typical park improvements that contribute to the traditional use of park land. Items include benches; play structures, picnic tables/shelters, sport facilities, trails, small plaques, etc.

Related Policies

- Policy for Naming and Renaming Parks, Facilities and Features.
- The Oak Harbor Arts Commission will establish a policy for the Donation of Public Artwork.
- City of Oak Harbor Comprehensive Plan, urban design plan policy 4.a.

Review Process

As donations and memorials vary greatly in their impact on parks, the review process should be tailored according to the proposal's complexity. There are two levels of review, which in some cases may be simplified.

Initial Review of Proposal Concept with City Staff

This review is focused on the idea or concept. Design drawings are premature at this point.

1. Following the initial review, preliminary research regarding land use and legal concerns, potential community concerns and costs will be conducted by both the donor and Parks staff.

151

2. If deemed necessary, the Oak Harbor Arts Commission will be consulted to determine if the donation would be considered public art, in which case the commission would first review the proposal for appropriateness to the public art collection.
3. Application is submitted with information regarding intent of proposal, cost estimates, size, siting, timeline and a site drawing.

Park Board Review

1. The Park Board reviews the request in two separate meetings. The first offers the applicant an opportunity to present their ideas and hear feedback. The Board will also give feedback regarding public input and Parks staff will draft a public involvement plan.
2. At the second meeting, the Board will review the formal request from the sponsor in terms of the approval criteria included in this policy. Public input will be gathered according to a plan approved by the Parks Manager.
3. In consultation with City staff, the Park Board recommends the approval or denial of any "substantial gift, memorial or tribute", or proposal. The Oak Harbor Park Board acts as an advisory board to the City Council. The recommendation is sent to City Council for final approval.

Approval Criteria

Approving or denying any gift, memorial or tribute is wholly within the discretion of the Oak Harbor Park Board and City Council. No individual or organization has the right to make any improvement or place any items in public parks, regardless of whether they think their proposal meets the following approval criteria. Approval criteria focus on three general categories:

Significance of Event/Person Being Memorialized or Significance of a Gift

- A person memorialized must have been deceased for a minimum of three years, or an event must have occurred at least three years ago.
- The memorial has timeless qualities and makes a statement of significance to future generations.
- The memorial represents a person or event deemed significant to Oak Harbor's history.
- The gift or memorial must be consistent with the mission of Oak Harbor's Parks Division.
- The memorial must meet the policy guidelines and goals specified within the City of Oak Harbor Comprehensive Plan. Goal 4 states: Develop a public realm that is safe, aesthetically pleasing and interesting while promoting street life, opportunities for community interactions, and commercial and social activities.
- Proposals should focus on characteristics that define a particular sense of place and support activities and uses that strengthen those qualities. Waterfront and down town policies should focus on improving the function of these areas as highly livable districts primarily for the

community and secondarily as an attraction for visitors. It is important that these policies build upon the context of the City and not develop as artificial thematic programming. These policies may include public art plans and street furniture design guidelines that add visual and tactile interest throughout the City.

Location/Siting

Donors may be asked to broaden their search for an appropriate location and consider other public or privately owned spaces, which may provide a more suitable location.

- The proposed site offers opportunities for enhancement without diminishing a park's ability to offer undefined open space for quiet contemplation and/or spontaneous activities.
- The increased use of a park due to a gift or memorial is appropriate for the park's context and surrounding uses.
- The quality, scale, and character of the gift or memorial are at a level commensurate with the particular park setting. (Also to be considered during project design.)
- There should be some specific geographic justification for the memorial being located in that spot.
- Alternative sites in rights-of-way, private property or other public property were considered and determined inappropriate.

Project Design

- The proposal must be in concurrence with the Park Master Plan. If a Park Master Plan does not exist, a Needs Assessment of the park's service area must be completed in order to determine the need for future park elements and circulation patterns.
- The quality, scale, and character of the memorial are at a level commensurate with the particular park setting.
- The design of the memorial, tribute or public art should not be solely representative of the person(s) or event being memorialized but should be of a broader community appeal.
- The memorial, tribute or public art is encouraged to be designed as a park amenity or as a functional component of the park (i.e. an interactive fountain).
- Contributes to the aesthetic quality of the park setting.
- Reuse, rehabilitate or restore an existing park feature where appropriate.
- Addresses existing and/or future maintenance concerns by meeting Parks Division's design standards and specifications.
- Meets the requirements of ADA by providing accessibility to all park users.
- Enhances a park by adding elements that add to identity and ambiance.
- The proposal does not create any public safety or security issues.

Requirements

1. The donor will involve the Oak Harbor Parks Division at the earliest possible stage of proposal development, prior to a particular park site being contemplated.
2. At any point in the review, the Parks Manager can halt the process for further Park Board review if it is determined that the proposal is incomplete or clearly does not meet the criteria identified in the Substantial Gift, Memorial or Tribute policy. The applicant will be asked to resubmit their proposal addressing the identified discrepancy
3. If a design professional is to be hired by the donor, the Parks Division and the Development Services Department must be involved in creating the scope of work and approving each design phase of the project.
4. The donor is responsible for complying with all federal, state and local laws, which might include competitive bidding and state prevailing wage laws.
5. Applicant will bear the cost of all-necessary permits, approvals, project management, design, installation, manufacture and maintenance of the gift or memorial, even if the City Parks Division provides these services. Budget details of these project elements will be spelled out in an agreement with the donor.
6. A revocable permit from the City will be required. Proof of general liability insurance and workers compensation insurance will be required from the contractor and/or organizations doing the installation.
7. No contingencies shall be placed on the acceptance of a gift by the donor. Acknowledgement of the donor in the form of a 5" x 8" plaque, purchased by the donor, is allowed. Improvements made in a public space become the property of the City and are subject to the laws, policies, and procedures that govern park property.

Funding the Total Project Cost

The applicant will be asked to cover 100% of the costs. These costs will include the cost of park modifications, incidentals and Parks Division staff time that will be needed to ensure the project meets park specifications and is properly installed. Park modifications and other incidental costs required because of the improvement are to be estimated during the review process.

Defining Annual Maintenance Costs

The level of maintenance varies depending upon the nature of the project. In general, donors will be asked to contribute enough money to cover long term maintenance costs. Maintenance costs will be estimated at the time of project review. If the donor will be maintaining the improvement, long-term contributions may not apply. Any annual operation and maintenance costs not covered by the donor become the responsibility of the General Fund. Improvements requiring ongoing General Fund support must be approved by the City Council before the donation is accepted.

154

The City of Oak Harbor reserves the right to remove any donated park amenity for safety reasons, deterioration caused by age, neglect or vandalism, and/or the City's inability to finance ongoing maintenance and/or repairs.

Exceptions

In some cases it may be reasonable to ask the private party to cover a greater or lesser percentage of the maintenance. The Parks Manager, with the Development Services Director, may make exceptions based upon the following criteria:

- The community's need for the improvement.
- How much the amenity strengthens the park system as a whole.
- Whether it is located in a park that is under-developed and lacking sufficient amenities.
- The financial capacity of the donor.
- Whether the annual maintenance cost is so low as to be negligible.



(2) Foster the development of a local arts community, encouraging an environment for the success of working individual artists.

(3) Coordinate and strengthen new and existing art organizations and develop cooperation with regional entities.

(4) Develop a program for public art, including identifying sources of funding.

(5) Further the vision of Oak Harbor as a vibrant and progressive community.

(6) Review this chapter and make recommendations for changes. (Ord. 1548 § 1, 2009; Ord. 1438 § 4, 2005).

2.29.030 Monetary donations and gifts of works of art to the city.

The city shall establish a separate fund to receive monetary donations for public art. Gifts of art to the city shall be reviewed by the Oak Harbor arts commission and shall be forwarded to the city council prior to acceptance or rejection by the city. (Ord. 1548 § 1, 2009; Ord. 1438 § 5, 2005).

2.29.040 Membership of commission.

The majority voting membership of said commission must reside within the city of Oak Harbor or work within the city. (Ord. 1548 § 1, 2009; Ord. 1454 § 1, 2006; Ord. 1438 § 6, 2005).

2.29.050 Term of office of members.

The term of office of the members appointed shall be for periods of four years; provided, initial appointments shall be as follows:

(1) Three shall be appointed for initial terms of two years.

(2) Three shall be appointed for initial terms of three years.

(3) Five shall be appointed for initial terms of four years. (Ord. 1548 § 1, 2009; Ord. 1438 § 7, 2005).

2.29.060 Appointment, vacancy or removal.

(1) In appointing members and filling vacancies, the mayor and council should endeavor to obtain a diverse cross-section of Oak Harbor's residents as members and also appoint members from groups having an interest in the arts and cultural activities, practicing artists and other persons employed in artistic endeavors.

(2) Vacancies on said commission from whatever cause, except temporary vacancies as hereinafter provided, shall be filled by the mayor, subject to city council approval, for the unexpired term.

(3) Any member of the commission may be removed from said commission prior to the expira-

tion of his/her term by a two-thirds vote of the city council, subject to the provisions of subsection (2) of this section.

(4) The appointment of any member of the commission who has been absent from three consecutive regular or special meetings of the commission without the approval of said commission shall automatically terminate. The administrator shall notify any member whose appointment has automatically ended and report to the appointing authority that a vacancy exists on said commission and that an appointment should be made for the unexpired term. The commission shall have the power and authority to excuse any member from attendance at any regular business meeting or study session for good cause. (Ord. 1548 § 1, 2009; Ord. 1438 § 8, 2005).

2.29.070 Temporary vacancies.

A member of the commission may be granted a leave of absence by the city council and a temporary vacancy shall thereupon exist for the period of such leave of absence.

During the period of such temporary vacancy, the city council may fill such vacancy by a temporary appointment to said commission; provided, however, that the period of such temporary appointment shall not exceed the period of the temporary vacancy.

At the expiration of a leave of absence so granted, the member shall automatically resume full and permanent membership on said commission. (Ord. 1548 § 1, 2009; Ord. 1438 § 9, 2005).

2.29.080 Officers.

The arts commission shall elect its officers, including a chairperson, vice chairperson and other officers, as it may deem necessary. The commission may set up committees. (Ord. 1548 § 1, 2009; Ord. 1438 § 10, 2005).

2.29.090 Meetings of the commission.

The Oak Harbor arts commission shall establish a regular time and place of meeting, and shall hold at least six regular meetings a year. Special meetings of the commission may be called at any time by the chairperson or by a quorum of the members of the commission upon personal notice being given to all members of the commission. If personal notice cannot be given, written notice must be received by such members at least 24 hours prior to said meeting. (Ord. 1548 § 1, 2009; Ord. 1438 § 11, 2005).

ARTIST WAIVER OF RIGHTS

On this date, _____, in Oak Harbor, Washington, Mr. Richard Nash, artist, in consideration of being retained as the artist to complete the memorial to the City of Oak Harbor's first three settlers, hereby voluntarily releases and waives all artist rights to the artwork described as:

"City of Oak Harbor's Founding Fathers Sculpture of three pillars of corten steel - erected in Windjammer Park, Oak Harbor, Washington".

This Waiver has been executed by artist Mr. Richard Nash, voluntarily and with full knowledge of the rights afforded him under the Visual Artist Right's Act, Section 106A of Title 17 of the United States Code.

Dated: _____

Mr. Richard Nash

City of Oak Harbor
City Council Agenda Bill

Agenda Bill No. 5
Date: December 21, 2010
Subject: 2010 Solid Waste Franchise - Goldie Rd/Byrne Annexation Area

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

SUMMARY STATEMENT:

Purpose: This ordinance provides a solid waste franchise to Island Disposal for the area annexed under Ordinance No. 1574.

Authority: Pursuant to RCW 35A.14.900, the City is required to award a franchise for a term of not less than seven (7) years to a garbage disposal firm which had been operating pursuant to permit or franchise in territory that was annexed by the City. Further, such a firm has a cause of action for "measurable damages" for cancellation of the prior franchise through annexation. Island Disposal was operating a solid waste disposal firm pursuant to Washington UTC certificate at the time of the annexations and is, therefore, entitled to a franchise from the City.

Description: This ordinance grants the franchise required by RCW 35A.14.900. The franchise covers territory annexed under the following ordinances:

Ordinance #1574 -- Goldie Road/Byrne Annexation

It also provides an additional three-year term in satisfaction of any claim for "measurable damages".

The additional three-year term (a total of 10 years) is an agreed settlement of any claim for "measurable damages" that Island Disposal otherwise might have.

RECOMMENDED ACTION:

Adopt the ordinance granting a franchise for solid waste disposal services to Island Disposal for a period of ten (10) years in recently annexed portions of the City. This requires an affirmative vote of the entire membership of the Council, i.e., at least four votes. RCW 35A.12.120.

ATTACHMENTS:

Ordinance

MAYOR'S COMMENTS:

L:\GLA\WORK\RES-ORD2010\Island Disposal Franchise AB for Ord 1574 - #1.doc

2010 Solid Waste Franchise
Agenda Bill - 2

SC 159

Return to:
City of Oak Harbor
865 SE Barrington Drive
Oak Harbor, WA 98277

GRANTOR: City of Oak Harbor

GRANTEE: Island Disposal

LEGAL DESCRIPTION:

- That portion of the Northeast Quarter of Section 35, Township 33 North, Range 1 East, WM, described as follows (See Exhibit "A" attached for entire legal description)

PARCEL NUMBERS: R13335-429-3050, R13335-427-3300, R13335-427-2400,
R13335-422-3530, R13335-454-3220, R13335-487-3100 and
R13335-519-3090

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF OAK HARBOR PROVIDING A SOLID WASTE FRANCHISE TO ISLAND DISPOSAL FOR AREAS ANNEXED UNDER ORDINANCE NO. 1574

WHEREAS, Island Disposal (hereafter referred to as "Grantee") holds a permit from the State of Washington Utilities and Transportation Commission ("WUTC") to collect solid waste in unincorporated areas within Island County; and

WHEREAS, Ordinance No. 1574 annexed certain lands subject to the Grantee's franchise from the WUTC into the City of Oak Harbor; and

WHEREAS, RCW 35.13.280 provides that a solid waste collection franchise in unincorporated areas is canceled for that area upon annexation of the area to a city; and

WHEREAS, RCW 35.13.280 requires the annexing city to grant at least a seven (7) year franchise to a business whose franchise was extinguished by annexation or to purchase or condemn the original franchise rights;

Island Disposal Solid Waste Franchise
Ordinance - 1
12/8/2010 9:00 AM

160

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

Section One. A franchise to provide solid waste disposal services to certain areas within the city limits of the city of Oak Harbor is hereby granted to Island Disposal on the following terms and conditions:

- (1) **Franchise area.** This franchise applies to the areas annexed into the city through the adoption of Ordinance No. 1574, described in Exhibit "A" hereto attached.
- (2) **Nature of the franchise.** Grantee shall hereby have an exclusive right during the term of the franchise granted by this ordinance to collect and haul for hire over the streets and alleys of the city all solid waste collected from private customers located within the corporate limits of the city in the franchise area described in paragraph (1) above.

"Solid waste", as used herein, shall be interpreted to mean and include all solid waste, animal and vegetable matter, rubbish, trash, debris, ashes, tin cans, and other waste materials generally, including articles ordinarily and customarily hauled away and dumped.

- (3) **Duration of the franchise.** The franchise shall become effective five (5) days after publication of this ordinance and shall continue for ten (10) years from its effective date. Thereafter, the franchise shall terminate unless extended by written agreement approved by City Council.
- (4) **Acceptance of franchise.** Acceptance of this franchise shall constitute Grantee's agreement that the ten (10) year franchise period provided herein constitutes full and fair compensation to Grantee for any damages that Grantee may have suffered as a result of the annexation of territory pursuant to Ordinance No. 1574.
- (5) **Utility tax.** The Grantee shall pay utility taxes imposed on solid waste utility services by the City of Oak Harbor for all solid waste utility services provided by the franchise within the city of Oak Harbor and all areas listed in this franchise ordinance in which a franchise is granted or extended or both granted and extended.

It is further provided that such taxes shall apply to this franchise upon its effective date.

- (6) **Collection rates.** Grantee's collection rates inside the city shall be at the same levels as those filed with and approved by the WUTC for regulated Island County service by Grantee or its successor; provided, nothing in this section shall be construed as preventing Grantee from increasing the collection rates approved by the WUTC to

account for the cost of any utility taxes or increases in utility taxes imposed by the City on solid waste services.

Grantee will provide notice to the City of applications for changes in rates or charges made to WUTC which affects rates in the franchise area. Grantee will further notify the City if WUTC ceases to regulate rates for Grantee in Island County.

It is further provided, that if the WUTC ceases regulating rates for Grantee in Island County, then the Grantee's rates for solid waste collection services in the franchise area shall be the same as those rates established by the City for customers of the City solid waste utility; provided, that the Grantee shall have the right to request a public hearing within thirty (30) days of notice of the application of City rates to the franchise area to establish a different rate structure for the franchise area. After public hearing on the Grantee's proposed rates, the City shall establish such rates as are reasonable based on the charges last approved by the WUTC to cover the cost of service and to allow for sufficient profit in the provision of solid waste collection service.

At the time of enactment of this franchise, the City requires mandatory accounts within all franchise areas. Grantee will cooperate in providing information in this regard unless and until the franchise expires or the City amends its requirements for mandatory accounts.

- (7) Frequency of collections. Grantee shall offer regular collections of solid waste throughout the business areas assigned to the Grantee and shall offer once a week collection in all residential districts assigned to the Grantee in accordance with the franchise issued by the WUTC; provided, that the City may modify this clause as to frequency of collections or solid waste and may prescribe the hours during which collections will be made, and Grantee shall comply with all such regulations so adopted and prescribed.
- (8) Service required. Grantee shall furnish collection service to any person or organization, public or private, within the franchise area within thirty (30) days of receipt of a written request for such service.

Grantee shall not, however, be required to furnish service to any household, dwelling, business establishment or other building requiring service unless the owner thereof shall furnish an opening to his yard or grounds from the alley or street where solid waste is customarily collected, and Grantee shall not be required to service any household, dwelling, business establishment or other building, where a private road must be used to obtain access thereto unless such private road is more than twenty (20) feet in width. The Grantee shall notify the City of addresses and locations of any household, dwelling, business establishment or other building in the area which it is

not providing service under this provision with the reason why it is not providing service.

- (9) Customer list. Grantee will advise City of lists of customers on a regular basis to be established by the City so that the City may use such information to assure universal collection of solid waste service for the City of Oak Harbor.
- (10) Yard Waste Services. The City may provide yard waste collection services in the annexation areas.
- (11) Reserved regulations. The City reserves the right to impose additional regulations upon Grantee in its discretion for purposes of health, welfare and safety.

Section Two. Notice of Tax on Utility Business. This ordinance shall establish written notice to Island Disposal that the rate for solid waste utilities is presently set at six and one-quarter percent (6.25%) on the gross income derived from doing business in Oak Harbor. This rate is subject to change by Oak Harbor ordinance.

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 shall not be affected.

Section Four. Effective Date. This Ordinance shall be in full force and effect five (5) days after publication as required by law.

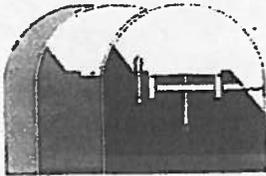
PASSED by the City Council and approved by its Mayor this ____ day of _____, 2010.

THE CITY OF OAK HARBOR

Mayor

Attest:

City Clerk



SOUND DEVELOPMENT GROUP, LLC.

Engineering, Surveying, GPS Construction Modeling and Land Development Services

04/28/2010 03:45:36 PM
Recording Fee \$86.00 Page 4 of 4
Ordinance
Island County Washington

4273046



4-1-10

Annexation Boundary

That portion of the Northeast Quarter of Section 35, Township 33 North, Range 1 East, WM, described as follows:

Beginning at the Northeast corner of the Plat of Goldie Road Acres, as per plat recorded in Volume 4 of Plats at Page 31 under Auditors File No. 3997832, records of Island County Washington; Thence Westerly along the North line of Goldie Road Acres and the North line of Easy Street in the City of Oak Harbor, 684.77 feet to the Southeast corner of that certain parcel as described in document recorded under Auditors File No. 95003094; Thence North along the West line thereof and the West line of that certain parcel as described in document recorded under Auditors File No. 4159678 a distance of 574.2 feet, more or less to the Northwest corner thereof; Thence West 233 feet, more or less, to the Southerly extension of the West line of Government Lot 8, in said Section 35; Thence North, along said line, 525 feet to the Northwest corner of said Government Lot 8; Thence East, along the North line of said Government Lot 8, a distance of 762 feet, more or less, to the West margin of Goldie Road; Thence Southerly, along said West margin, 541 feet, more or less, to the existing city limit of the City of Oak Harbor; Thence the following courses along the city limits of the City of Oak Harbor, West 198 feet more or less; Thence South 366 feet, more or less; Thence East 115 feet, more or less; Thence South 103 feet, more or less; Thence East 126 feet, more or less, to the West margin of Goldie Road; Thence Southerly along the West margin of Goldie Road 105 feet, more or less, to the point of Beginning.

Containing 16.6 Ares, more or less

Situate in the County of Island, State of Washington



145

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

Bill No. 6
Date: December 21, 2010
Subject: Final Consideration – Ordinance
Amending Chapter 8.03 of the Oak
Harbor Municipal Code “International
Fire Code,” and Ordinance Amending
Chapter 8.08 “Unauthorized Burning,
Interfering with Firefighting, Inspections”

FROM: Mark Soptich
Fire Chief

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

PURPOSE

This agenda is for final consideration of two ordinances: one amending Chapter 8.03 of the Oak Harbor Municipal Code and one amending Chapter 8.08 of the Oak Harbor Municipal Code. These ordinances were introduced at the December 7, City Council meeting.

AUTHORITY

Pursuant to Chapter 19.27 RCW, the Washington State Building Code Council periodically adopts updated International Fire Codes. Unless amended by City Council within state law limitations, the International Fire Code is in effect in the City. RCW 19.27.031.

SUMMARY STATEMENT

The International Fire Code (IFC) is updated every three years. WAC 51-54-003 adopted the 2009 Edition of the IFC with amendments. Local jurisdictions may amend the codes but such codes shall not result in a code that is less than the minimum performance standards and objectives contained in the State Building Code (RCW 19.27.060).

Some of the more significant differences between the 2006 and 2009 IFC are:

- Appendix J requires 2 way radio capabilities from the interior of larger facilities for emergency operations.
- Chapter 4 includes provisions for general safety requirements and emergency management procedures for business and schools.
- Chapter 9 requires more frequent inspections of hood and duct systems.

501/64

- Chapter 903 requires sprinkler systems for enclosed parking areas, balconies, and decks. Sprinkler systems are also required for “M” type occupancies that display or sell upholstered furniture.
- The ordinance amending Chapter 8.08 changes the clearance area around fire hydrants from a radius of 10 feet to 3 feet.

STANDING COMMITTEE REPORT

The 2009 IFC was discussed at the June 17th Public Safety Standing Committee.

RECOMMENDED ACTION

Adopt:

The ordinance amending Chapter 8.03 of the Oak Harbor Municipal Code “International Fire Code.”

The ordinance amending Chapter 8.08 of the Oak Harbor Municipal Code “Unauthorized Burning, Interfering with Firefighting, Inspections.”

ATTACHMENTS

Draft ordinances.

MAYOR'S COMMENTS

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF OAK HARBOR AMENDING OAK HARBOR MUNICIPAL CODE CHAPTER 8.03 ENTITLED "INTERNATIONAL FIRE CODE" PERTAINING TO FIRE CODE REGULATIONS IN EFFECT IN THE CITY OF OAK HARBOR

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

Section One. Oak Harbor Municipal Code Chapter 8.03 entitled "International Fire Code", adopted by Ordinance No. 1515 in 2007, is hereby amended to read as follows:

**CHAPTER 8.03
INTERNATIONAL FIRE CODE**

Sections:

- | | |
|----------|---|
| 8.03.010 | Title. |
| 8.03.020 | <u>Adoption Applicability</u> of the International Fire Code. |
| 8.03.030 | Administration and enforcement – Rules and regulations. |
| 8.03.040 | Administration and enforcement – Fire chief authority. |
| 8.03.050 | Notices. |
| 8.03.060 | Liability limitations. |
| 8.03.070 | Amendment – Additions. |
| 8.03.080 | Penalties. |
| 8.03.090 | Severability. |
| 8.03.100 | Hearing examiner to function as appeals board. |

8.03.010 Title. This chapter shall be known as the International Fire Code of the city of Oak Harbor.

8.03.020 Adoption Applicability of the International Fire Code. ~~The most recent version of the 2006 Edition of the International Fire Code, including Sections 503 and Appendices B, C, D, E, F, and G, adopted by the and as published by the International State Building Code Council pursuant to Ch. 19.27 RCW and as amended in this Chapter of the Oak Harbor Municipal Code, shall be in effect in the City of Oak Harbor as set forth in Chapter 51-54 WAC and adopted by the Washington State Building Code Council under the provisions of Chapter 19.27 RCW, is adopted by reference as the city's fire code. A copy of the most recent International Fire Code together with applicable this code together with the referenced appendices is on file in the office of city clerk and is available for public inspection.~~

8.03.030 Administration and enforcement – Rules and regulations. The city council may upon notice and hearing promulgate such rules and regulations as may be necessary to the effective and efficient administration of the code.

8.03.040 Administration and enforcement – Fire chief authority.

- (1) The International Fire Code shall be administered and enforced by the bureau of fire prevention in the fire department of the city of Oak Harbor which is established and which shall be operated under the supervision of the chief of the fire department.
- (2) The chief of the Oak Harbor fire department shall assign the duties of the fire marshal to one or more career civil service members of the Oak Harbor fire department.
- (3) The chief of the fire department may detail such members of the fire department as inspectors as shall from time to time be necessary. The chief of the fire department shall recommend to the mayor the employment of technical inspectors, who, when such authorization is made, shall be selected through examination to determine their fitness for the position. The examination shall be open to members and nonmembers of the fire department and appointment made after examination shall be for an indefinite term with removal only for cause.

8.03.050 Notices. It is unlawful for any person to remove, mutilate, destroy or conceal any lawful notice issued or posted by the fire chief or his designee pursuant to the provisions of this code.

8.03.060 Liability limitations. Nothing contained in this chapter or in the International Fire Code or in OHMC Title 8 is intended to be, nor shall be, construed to create or form the basis for any liability on the part of the city or its officers, employees or agents, for any injury or damage resulting from the failure of a building to conform to the provisions of the International Fire Code.

8.03.070 Amendment – Additions. The following sections of the International Fire Code as adopted in OHMC 8.03.020 are amended to read as follows:

- (1) Section 101.1 is hereby amended to read as follows:

101.1 Title. These regulations shall be known as the Fire Code of the City of Oak Harbor, hereinafter referred to as "this code."

- (2) Section 103.1 is hereby amended to read as follows:

103.1 General. The Department of Fire Prevention, also known as the Oak Harbor Fire Department, is established within the City of Oak Harbor under the direction of the fire chief. The function of the department shall be the implementation, administration and enforcement of the provisions of this code.

- (3) Section 105.1.1 is hereby amended to read as follows:

105.1.1 Permits Required. Operational Permits as described in Section 105.1.2(1) as required by this code shall be obtained from the fire chief. Permit fees, if any,

shall be as set forth in Section 8.06.010. Fees shall be paid prior to issuance of the permit. Construction Permits as described in Section 105.1.2(2) as required by this code shall be obtained from the fire chief. Permit fees, if any, shall be as set forth in Section 8.06.010, and shall be paid prior to issuance of the permit. Issued permits shall be kept on the premises designated therein at all times and shall be readily available for inspection by the fire chief.

- (4) Section 108 is hereby amended to read as follows:

108.1 Board of Appeals Established. All references to the term "Board of Appeal(s)" shall be deemed to mean the hearing examiner as per OHMC 18.40.180. Permits under this chapter shall be Type I review process as per OHMC 18.20.230. Appeals of decisions of applicable codes adopted under this chapter shall be to the hearing examiner.

- (5) The following definitions shall apply to the ~~2006~~2009 Edition of the International Fire Code and supersede other definitions of the same term therein:

"Chief of the bureau of fire prevention" shall mean the person or persons who are assigned by the Chief of the Oak Harbor Fire Department to perform the duties of the fire marshal under the supervision of the chief of the Oak Harbor Fire Department. The Chief of the Oak Harbor Fire Department may appoint any career civil service member of the Oak Harbor Fire Department to fulfill any or all of the duties of the chief of the bureau of fire prevention or fire marshal.

"Jurisdiction" shall be referred to as the City of Oak Harbor.

"Appeal Board" shall refer to the hearing examiner as provided under OHMC Title 18.

- ~~(6) Section 316 is hereby added to read as follows:~~

~~Section 316 Marinas. Marina's facilities shall be in accordance with the following:~~

~~316.1 Plans and Approvals. Plans for marina fire protection facilities shall be approved prior to installation. The work shall be subject to final inspection and approval after installation.~~

~~316.2 Permits. Permits are required to use open flame devices for maintenance or repair on vessels, floats, piers or wharves.~~

~~316.3 Definitions. The following words and terms shall, for the purpose of this chapter and as used elsewhere in this code, have the meanings shown herein:~~

- ~~1. "Float" is a floating structure normally used as a point of transfer for passengers and goods, or both, for mooring purposes.~~

2. ~~"Marina" is any portion of the ocean or inland water, either naturally or artificially protected, for the mooring, servicing or safety of vessels and shall include artificially protected works, the public or private lands ashore, and structures or facilities provided within the enclosed body of water and ashore for the mooring or servicing of vessels or the servicing of their crews or passengers.~~
3. ~~"Pier" is a structure built over water, supported by pillars or piles, and used as a landing place, pleasure pavilion or similar purpose.~~
4. ~~"Vessel" is a watercraft of any type, other than seaplanes on the water, used or capable of being used as a means of transportation. Included in this definition are non-transportation vessels such as houseboats and boathouses.~~
5. ~~"Wharf" is a structure or bulkhead constructed of wood, stone, concrete or similar material built at the shore of a harbor, lake or river for vessels to lie alongside of, and piers or floats to be anchored to.~~

316.4 General Precautions:

1. ~~Combustible Debris. Combustible debris and rubbish shall not be deposited or accumulated on land beneath marina structures, piers or wharves.~~
2. ~~Sources of Ignition. Open flame devices used for lighting or decoration on the exterior of a vessel, float, pier or wharf shall be approved.~~
3. ~~Flammable or Combustible Liquid Spills. Spills of flammable or combustible liquids at or upon the water shall be reported immediately to the fire department or jurisdictional authorities.~~
4. ~~Rubbish Containers. Containers with tight fitting or self closing lids shall be provided for the temporary storage of combustible trash or rubbish.~~
5. ~~Electrical Equipment. Electrical equipment shall be installed and used in accordance with its listing and Section 605 of the IFC as required for wet, damp and hazardous locations.~~

~~316.5 General. Marinas, piers, wharves and floats with facilities for mooring or servicing five or more vessels, and marine motor vehicle fuel dispensing stations shall be equipped with fire protection equipment in accordance with this section.~~

1. ~~Standpipes. Marinas shall be equipped throughout with standpipe systems in accordance with National Fire Protection Standard for Marinas 303.~~

~~2. Access and Water Supply. Piers and wharves shall be provided with fire apparatus access roads and water supply systems with on-site fire hydrants when required and approved by the fire code official.~~

~~3. Portable Fire Extinguishers. One fire extinguisher for ordinary (moderate) hazard types shall be provided at each required hose station. Additional fire extinguishers, suitable for the hazards involved, shall be provided and maintained in accordance with Section 906 of the IFC.~~

~~4. Communications. A telephone not requiring a coin to operate or other approved, clearly identified means to notify the fire department shall be provided on the site in a location approved by the fire code official.~~

~~316.6 Marina Motor Vehicle Fuel Dispensing Stations. Marina motor vehicle fuel dispensing stations shall be in accordance with Chapter 22 of the IFC.~~

(76) Section 501.4 is hereby amended to read as follows:

501.4 Timing of Installation. When fire apparatus access roads or a water supply for fire protection is required to be installed, such protection shall be installed and made serviceable prior to issuance of any building permit for the project, except grading permits, except when approved alternative methods of protection are provided. Temporary street signs shall be installed at each street intersection when construction of new roadways allows passage by vehicles in accordance with Section 505.2.

(87) Section 503.2.89 is hereby amended to read as follows:

503.2.89 Distance from Structures. Fire apparatus access roadways shall be a minimum of 5 feet away from the exterior wall of structures, or as otherwise required due to construction type.

(98) Section 503.7 is hereby added to read as follows:

503.7 Enforcement. Enforcement of Section 503.1.4 of the International Fire Code shall be the responsibility of the City Fire Department which shall have the authority to impound or otherwise cause such obstruction to be removed, and said remedies shall be in addition to the criminal penalties provided in the Oak Harbor Municipal Code.

(109) Section ~~508.5~~1507.5.1 is hereby amended to read as follows:

Section ~~508~~1507.5.1 Where Required. Where a portion of the facility or building hereafter constructed or moved into or within the jurisdiction is more than 150 feet from a hydrant on a fire apparatus access road, as measured by an approved route

around the exterior of the facility or building, on-site fire hydrants and mains shall be provided where required by the fire code official.

EXCEPTION:

1. For Group R-3 and U occupancies, the distance requirement shall be 600 feet (183 m).
2. For buildings equipped throughout with an approved automatic sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.1.2, the distance requirement shall be 600 feet (183 m).

| ~~(1110)~~ Section 903.3.7 is hereby amended to read as follows:

903.3.7 Fire Department Connections. The location of fire department connections shall be approved by the fire code official. A fire department connection shall be located within 50 feet of a fire hydrant.

| ~~(1211)~~ Section 3301.1.3 is hereby amended to read as follows:

3301.1.3 Fireworks. The possession, manufacture, storage, sale, handling and use of fireworks are prohibited.

Exception:

1. The use of fireworks for display as allowed in section 3308.
2. The possession, storage, sale, handling and use of specific types of Division 1.4G fireworks where allowed by applicable laws, ordinances and regulation, provided such fireworks comply with CPSC 16CFR, Parts 1500 and 1507, and DOTn 49 CFR, Parts 100-178, for consumer fireworks.
3. Manufacture of fireworks within the jurisdictional area is prohibited.
4. Except as hereinafter provided, it shall be unlawful for any person to possess, store, or offer for sale, expose for sale, sell at retail, or use or explode any fireworks.
 - a) The fire chief shall have power to adopt reasonable rules and regulations for the granting of permits for supervised and public displays of fireworks by a jurisdiction, fair associations, amusement parks, and other organization or for the use of fireworks by artisans in pursuit of their trade. Every such use or display shall be handled by a competent operator approved by the chief and every operator shall have first obtained a State License pursuant to RCW 70.77.305. The display shall be of such character and so located,

discharged or fired as in the opinion of the chief after proper investigation so as not to be hazardous to property or endanger any person.

- b) The fire chief shall make a recommendation to the City Council concerning the issuance of permits for the sale of fireworks to persons, corporations, or organizations, after investigation and his/her determination that the location where the fireworks are to be sold is not hazardous to property or endangers any person and that the persons in charge of selling the fireworks are competent and trained to handle such fireworks. No person under the age of 18 shall be employed by the permittee in connection with such sale.
 - c) The provisions of Oak Harbor Municipal Code Chapter 5.32 shall remain in full force and effect and nothing herein shall be construed as repealing the same.
5. Applications for permits shall be made in writing at least 10 days in advance of the date of the display in a manner prescribed by the chief. After such privilege shall be granted, sale, possession, use and distribution of fireworks for such display shall be lawful for that purpose only. No permit granted hereunder shall be transferable.
6. Fireworks may be sold, purchased, issued, fired, or discharged in the City, except as provided in Paragraphs (11), (12), (13) and (14) below, as follows:
- a) It is legal to sell and purchase consumer fireworks within the City from twelve o'clock noon to eleven o'clock p.m. on the twenty-eighth of June, from nine o'clock a.m. to eleven o'clock p.m. on each day from the twenty-ninth of June through the fourth of July, from nine o'clock a.m. to nine o'clock p.m. on the fifth of July, from twelve o'clock noon to eleven o'clock p.m. on each day from the twenty-seventh of December through the thirty-first of December each year, and as provided in RCW 70.77.311.
 - b) Consumer fireworks may be used or discharged each day between the hours of twelve o'clock noon and eleven o'clock p.m. on the twenty-eighth of June and between the hours of nine o'clock a.m. and eleven o'clock p.m. on the twenty-ninth of June to the third of July, and on July Fourth between the hours of nine o'clock a.m. and twelve o'clock midnight, and between the hours of nine o'clock a.m. and eleven o'clock p.m. on July fifth, and from six o'clock p.m. on December thirty-first until one o'clock a.m. on January first of the subsequent year, and as provided in RCW 70.77.311.

Nothing in this ordinance shall be construed as modifying, repealing or in any way affecting the ordinance regulating noise or nuisance.

7. Approved "No Smoking" signs shall be posted at conspicuous locations on all four sides of the fireworks stand or structure and such other places as may be designated by the inspecting authority. Each sign shall have the words "NO SMOKING BY ORDER OF THE FIRE MARSHAL" in red letters not less than two inches in height on white background. All signs shall be maintained in a legible condition.
8. Smoking and the discharge of fireworks shall be prohibited within 25 feet of any building or stand in which fireworks are sold at retail or stored after hours.
9. Each retail fireworks location shall have at least two water-type extinguishers of at least two and one-half gallon capacity.
10. There shall be no accumulation of dry grass, paper, cardboard, trash, lumber or other combustibles within 100 feet of any retail fireworks outlet.
11. Temporary structures or stands used for the retail sale of fireworks shall be removed from the premises within one week after the sale of such fireworks ends as regulated by RCW 70.77.311. Any such stand or structure remaining beyond one week may be removed by the regulating authority at the expense of the permittee or owner.
12. Fireworks shall not be sold or given to minor children under the age of sixteen.
13. It shall be unlawful to use, fire, or discharge any fireworks along the route of and during any parade or at any place of public assembly or in any commercial use district.
14. It shall be unlawful at any time to throw or toss any fireworks at any person, animal, vehicle or other thing or object.

| (~~43~~12) Section 3301.2.3 is hereby amended to read as follows:

3301.2.3 Permit Restrictions. The fire code official is authorized to limit the quantity of explosives, explosive materials permitted at a given location. Permit restrictions for fireworks shall be as described in section 3301.1.3. No person, possessing a permit for storage of explosives at any place, shall keep or store an amount greater than authorized in such permit. Only the kind of explosive specified in such permit shall be kept or stored.

175

(1413) Section 3804.2 is hereby amended to read as follows:

3804.2 Maximum Capacity within Established Limits. Within the limits established by law restricting the storage of liquefied petroleum gas for the protection of heavily populated or congested areas, the aggregate capacity of any one installation shall not exceed a water capacity of 2,000 gallons in all areas within the City of Oak Harbor except as zoned industrial.

Exception: In particular installations, this capacity limit shall be determined by the fire code official, after consideration of special features such as topographical conditions.

8.03.080 Penalties.

- (1) It shall be unlawful for a person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy or maintain any building, structure or building service equipment or cause or permit the same to be done in violation of this chapter and/or Chapter 8.05 OHMC as now in effect or hereafter amended or added to, or the technical codes.
- (2) **Civil Violation.** Except as provided in subsection (5) of this section, any violation of any of the provisions of this chapter and/or Chapter 8.05 OHMC as now in effect or hereafter amended or added to, or of the technical codes, constitutes a civil violation as provided for in Chapter 1.28 OHMC, for which a monetary penalty may be imposed as provided therein and not to exceed \$250.00.
- (3) **Criminal Penalty.** In addition to or as an alternative to any other penalty provided in this chapter or by law, any person who intentionally or knowingly violates any of the provisions of this chapter and/or Chapter 8.05 OHMC as now in effect or as hereafter amended or added to, or the technical codes, shall be guilty of a misdemeanor and upon conviction shall be punishable by a fine of up to \$1,000 or a jail sentence of up to 90 days in jail, or both such fine and jail time.
- (4) **Violations of Orders by the Fire Chief.** Persons operating or maintaining an occupancy, premises or vehicle subject to the International Fire Code who allow a hazard to exist or fail to take immediate action to abate a hazard on such occupancy, premises or vehicle when ordered to do so by the fire chief shall be guilty of a misdemeanor punishable by a fine of up to \$1,000 or a jail sentence of up to 90 days, or both such fine and jail time.
- (5) **Separate Offense.** Each day or portion thereof upon which a violation occurs constitutes a separate offense under subsections (1), (2), (3) and (4) of this section.
- (6) **Destruction of Notice.** It shall be unlawful for any person to remove, mutilate, destroy or conceal any notice issued and posted by the fire official pursuant to the provisions of this chapter or the fire code which violations shall be a civil offense as described in subsection (2) of this section.

8.03.090 Severability. Should any section, paragraph, sentence or word of this chapter or codes hereby adopted be declared for any reason to be invalid, it is the intent of the city council that it would have passed all other portions of this chapter and of the codes hereby adopted independent of the elimination here from as any such portions as may be declared invalid and accordingly such declaration of invalidity shall not affect the validity of this chapter as a whole nor any part hereof other than the part so declared to be invalid.

8.03.100 Hearing examiner to function as appeals board. Permits under this chapter shall be Type I review process as set forth in OHMC 18.20.230. Appeals of decisions of applicable codes adopted under this chapter shall be to the hearing examiner. References to the board of appeals shall be to the hearing examiner as set forth in OHMC 18.40.180.

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 publication.

PASSED by the City Council this _____ day of _____, 2010.

THE CITY OF OAK HARBOR

Veto ()

Approve ()

Mayor

Date

Attest:

City Clerk

Approved as to Form:

City Attorney

Published: _____

L:\GLA\WORKRES-ORD2010\Fire Code Chapter 8 03 Ord #2 (2) Oct 2010.doc

AN ORDINANCE OF THE CITY OF OAK HARBOR AMENDING CHAPTER 8.08 OF THE OAK HARBOR MUNICIPAL CODE REGARDING UNAUTHORIZED BURNING, INTERFERING WITH FIREFIGHTING, INSPECTIONS

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

Section One. Oak Harbor Municipal Code Chapter 8.08 entitled "Unauthorized Burning, Interfering with Firefighting, Inspections", last amended by Ordinance No. 1380 in 2004, is hereby amended to read as follows:

**CHAPTER 8.08
UNAUTHORIZED BURNING, INTERFERING WITH FIREFIGHTING, INSPECTIONS**

Sections:

- 8.08.020 Fire hydrant clearance.
- 8.08.030 Fire alarms unlawful.
- 8.08.040 Damage to or interference with equipment prohibited.
- 8.08.070 Penalty for violation.

8.08.020 Fire hydrant clearance. It is unlawful for any person to park, place or leave any vehicle within ~~103~~ feet of any fire hydrant within the city of Oak Harbor, or to place or leave within ~~103~~ feet of a fire hydrant any object or material that does or may obstruct or interfere with the immediate use of or approach to such fire hydrant.

8.08.030 Fire alarms unlawful. It is unlawful for any person to wilfully or purposely falsely give or transmit or cause to be given or transmitted any sign, alarm, signal, notice, message, instruction or information of any kind, for the purpose of securing or causing the fire department in or of the city of Oak Harbor or any member thereof to move or operate or cause to be moved or operated all or any part of its apparatus or equipment.

8.08.040 Damage to or interference with equipment prohibited. It is unlawful for any person to wilfully injure, destroy, impair, alter, change, break or interfere with, or lessen the effective operation of, the apparatus or equipment of the fire department in and of the city of Oak Harbor.

8.08.070 Penalty for violation. Any person violating any of the provisions of this chapter is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than \$1,000 or 90 days in jail or both such fine and jail time.

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 publication.

PASSED by the City Council this _____ day of _____, 2010.

THE CITY OF OAK HARBOR

Veto ()
Approve ()

Mayor

Date

Attest:

City Clerk

Approved as to Form:

City Attorney

Published: _____

85 179