



PLANNING COMMISSION

AGENDA

September 24, 2013

ROLL CALL: FAKKEMA _____ WASINGER _____
 JENSEN _____ PETERSON _____
 FIKSE _____ FREEMAN _____
 SCHLECHT _____

Page 3

1. **Approval of Minutes – August 27, 2013**
2. **Public Comment** – Planning Commission will accept public comment for items not otherwise on the agenda for the first 15 minutes of the Planning Commission meeting.

Page 21

3. **DIGITAL SIGNS CODE UPDATE – Public Hearing**
This item is a continuation of the public hearing that was opened in April. Staff will facilitate continued discussion on brightness, duration, and hours of operation of these signs, among other topics. Planning Commission will accept public comments and is expected to close the hearing.

Page 93

4. **AMENDMENTS TO OHMC 5.22 - NIGHTCLUBS – Public Hearing**
The Planning Commission will conduct a public hearing on amendments to OHMC Chapter 5.22 regarding Nightclubs. The Planning Commission has discussed amendments to this chapter in 2012. The Planning Commission is expected to make a recommendation on the amendments to the City Council.

Page 148

5. **ECONOMIC DEVELOPMENT STRATEGY – Public Hearing**
Economic development staff will facilitate continued discussions of the “Economic Development Strategy and Action Plan” which will direct the City’s economic development efforts for the next 3-5 years. Planning Commission is expected to open a public hearing, accept public comments, close the public hearing and forward a recommendation to the City Council.

Page 167

6. **2016 COMPREHENSIVE PLAN UPDATE – Public Meeting**
Staff will update the Planning Commission on the continuing work and effort with the 2016 Comprehensive Plan Update. An update will also be provided on staff’s coordination with Island County and the work that’s related to the County Wide Planning Policies.

MINUTES

August 27, 2013

**PLANNING COMMISSION
REGULAR MEETING
CITY HALL – COUNCIL CHAMBERS
August 27, 2013**

ROLL CALL: Present: Keith Fakkema, Greg Wasinger, David Fikse, Bruce Freeman, Sandi Peterson and Ana Schlecht
Absent: Kristi Jensen
Staff Present: Development Services Director, Steve Powers; Senior Planners, Cac Kamak and Ethan Spoo

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

MINUTES: MS. PETERSON MOVED, MR. WASINGER SECONDED, MOTION CARRIED TO APPROVE THE JULY 23, 2013 MINUTES AS PRESENTED.

PUBLIC COMMENT:
None

DIGITAL SIGNS CODE UPDATE – Public Hearing

Mr. Powers asked Planning Commission to continue this item to the Planning Commission's regular business meeting on September 24, 2013 in order allow more time for staff to address public and Planning Commission input from the previous meeting.

ACTION: MR. FREEMAN MOVED, MR. FIKSE SECONDED A MOTION TO CONTINUE THE PUBLIC HEARING FOR THE DIGITAL SIGNS CODE UPDATE TO SEPTEMBER 24, 2013. MOTION CARRIED.

BINDING SITE PLAN CODE AMENDMENT – Public Meeting

Mr. Powers displayed a Power Point presentation (Attachment 1) briefing the Planning Commission on the status of the pending Binding Site Plan (BSP) code amendment. Mr. Powers explained that the Planning Commission has made a recommendation to the City Council that is pending before the City Council. The Council can send it back to the Planning Commission if they decide to do so or the Council could take up the issues themselves if they feel that there is anything else to be addressed in the code amendment.

Mr. Powers explained what Binding Site Plans are and displayed RCW 58.17.035 which authorizes cities, towns, or counties to adopt, by ordinance, procedures for the divisions of land by use of a binding site plan as an alternative to the procedures required by the RCW. Mr. Powers noted that this chapter also states that those procedures shall provide for the alteration or vacation of the binding site plan. Work on the Pier Point applications resulted in a review of the existing code language and staff found that the current code did not specifically or adequately address a process for the alteration or vacation of previously approved BSPs. Mr. Power said that the proposed amendment would fix the deficiency and applies to all BSP's.

Mr. Powers also reviewed the BSP amendment project history as well as the Pier Point application history.

Mr. Powers detailed the key issues regarding the proposed code language. The proposed language is as follows:

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

The Planning Commission allowed public comment.

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

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

Discussion

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

BED AND BREAKFAST CODE – Public Meeting

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

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

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

Discussion

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

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

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

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

Discussion

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

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

ECONOMIC DEVELOPMENT STRATEGY – Public Meeting

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

Discussion

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

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

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

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

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

2016 COMPREHENSIVE PLAN AMENDMENT – Public Meeting

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

ADJOURN: 9:15 p.m.

**Binding Site Plan Code
Amendment**

Oak Harbor Planning Commission
August 27, 2013

Purpose

- Brief the Planning Commission on the status of this pending code amendment.
- This item is for information only. In keeping with this purpose, the item was advertised as a public meeting, not a public hearing
- No action is required by the Planning Commission.

Presentation Overview

- Binding Site Plans
- Project History
- Pier Point Condominium BSP
- Proposed Code
- Conclusion
- Recommendation
- Questions

Binding Site Plans

Binding Site Plans

- What are BSPs?
 - Alternative type of land division
(as opposed to subdivision plats or short plats)
 - Primarily used for commercial/industrial properties
 - May also be used for residential condos
 - Governed by RCW 58.17.035
 - OHMC 21.80, Binding Site Plans
 - Approved BSP are recorded with the County

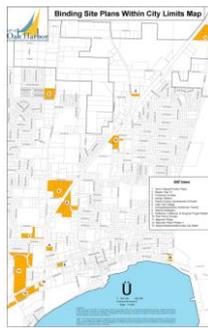
Binding Site Plans (cont.)

- **RCW 58.17.035** - A city, town, or county may adopt by ordinance procedures for the divisions of land by use of a binding site plan as an alternative to the procedures required by this chapter. The ordinance shall be limited and only apply to one or more of the following: (1) The use of a binding site plan to divisions for sale or lease of commercially or industrially zoned property as provided in RCW 58.17.040(4) [industrial or commercial]; (2) divisions of property for lease as provided for in RCW 58.17.040(5) [mobile homes]; and (3) divisions of property as provided for in RCW 58.17.040(7) [condominiums]. Such ordinance may apply the same or different requirements and procedures to each of the three types of divisions and shall provide for the alteration or vacation of the binding site plan, and may provide for the administrative approval of the binding site plan.

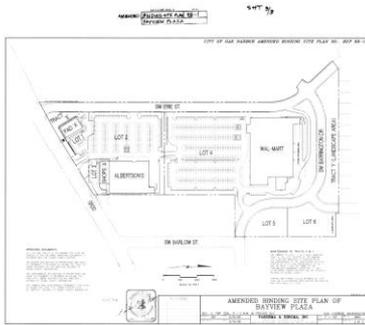
Binding Site Plans (cont.)

- BSPs within Oak Harbor:
 - 13 total
 - 10 commercial/industrial
 - 3 residential condominiums
 - Only 1 of 13 with construction schedule

Binding Site Plans (cont.)



Examples – Bayview Plaza



Examples – Oak Tree Village



Pier Point



Pier Point



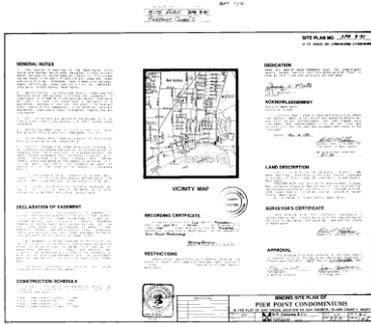
- BSP approved in 1991
- Approval included a construction schedule
- All phases were to have been constructed by 1996
- Schedule was not met; un-built phases remain
- Alpine Village, Inc. applied in 2005 and in 2010 to amend expired schedule

Pier Point (cont.)

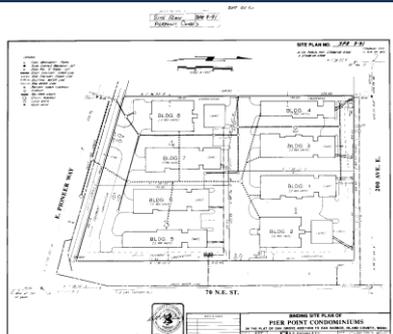


- Central question: Can an expired schedule be amended?
 - (This raised the question as to who must sign applications.)
- Staff, Hearing Examiner & Island County Superior Court decisions say no
- It appears that development rights do exist for the vacant land

Pier Point (cont.)

Pier Point (cont.)

Project History



Project History 
<ul style="list-style-type: none"> • A review of the existing code language found that it did not specifically or adequately address a process for the alteration or vacation of previously approved BSPs. • This review resulted from work on the Pier Point applications.

Project History (cont.) 
<ul style="list-style-type: none"> • Staff worked with the Planning Commission in late-2010 and early-2011 to identify necessary revisions to the existing code. • The Planning Commission conducted the required public hearing over three meeting dates and accepted testimony from the public (representing different interests) and from staff. • On February 22, 2011 the Commission forwarded a recommendation of approval of the draft code to the City Council.

Project History (cont.) 
<ul style="list-style-type: none"> • Work on the project was suspended shortly after that time pending the resolution of LUPA appeal on Pier Point. • Final action on the appeal occurred by the Hearing Examiner in June 2012. • After that, the recommended draft was reviewed for consistency with final action – it was determined no changes required.

Project History (cont.) 
<ul style="list-style-type: none"> • City Council was briefed on this project at their May 29, 2013 workshop. • As a follow-up to the Council briefing, the Mayor requested staff brief the Planning Commission on the status of the project for following reasons: <ul style="list-style-type: none"> – To keep you informed – Due to length of time since heard by PC – New PC members


Proposed Code


Proposed Code (cont.)

- Key Points
 - The City must have an alteration or vacation process
 - The code amendment addresses all BSPs; it is not intended to apply only to one specific BSP
 - What information should be included on binding site plans?


Proposed Code

- Key Issue
 - Who must sign an application seeking to amend or vacate a previously approved binding site plan?
 - May a single property owner sign; or
 - Must all owners sign; or
 - Should it depend on the request?


Proposed Code (cont.)

- Proposed code language
 - City accepts applications pertaining to public interest/land division
 - Limit what is recorded on BSPs
 - Protects public interest
 - Keeps City out of private property disputes
 - Applications for alteration/vacation may be submitted by property owners directly affected by proposed change
 - o In some cases = single signature
 - o In other cases = more than one signature

Proposed Code (cont.)



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

Conclusion



- BSPs authorized under State law
- State grants authority to City to determine process
- If BSPs used, City must have an alteration and vacation process
- Existing code lacks these processes
- Proposed amendment would fix deficiency
- Proposed amendment applies to all BSPs, as appropriate

Recommendation



- No action is required. The Planning Commission has already made a recommendation to the City Council on this matter.

- Questions?



BED & BREAKFAST CODE

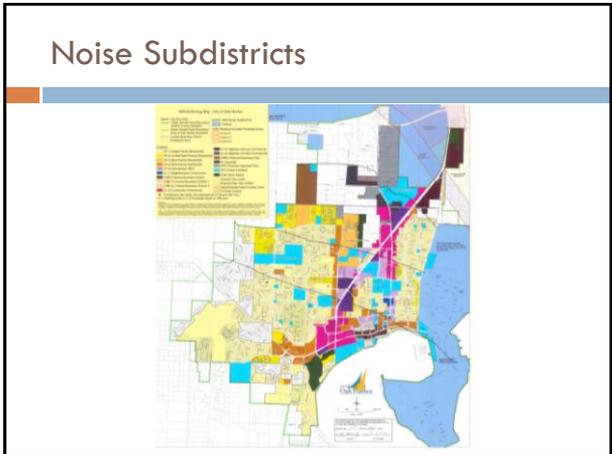
Draft Regulations for Planning Commission
Consideration: August 27, 2013

Purpose

- Discuss changes since last month
- Brief discussion of compliance
- Recommendation

Changes since last month

- Navy: prohibit B&Bs in Noise Subdistrict C (see zoning map)
- Lighting: downward directed
- Signs: 19.36 is appropriate location



Compliance

- OHMC 19.80 – Criteria for approval of text amendments:
 - Consistency with comprehensive plan
 - Substantially promote the public health, safety, and welfare

Compliance cont.

- Land Use Goal 1: To respect the “small town” heritage of Oak Harbor while enhancing the unique character of its neighborhoods and districts with development that is fitting with the City’s future as a regional center.
- Land Use Goal 5: To protect existing land uses as new development occurs.

Compliance cont.

- Land Use Goal 7: To encourage land use opportunities for diversified economic development.
- Land Use Goal 8: To ensure that the location, situation, configuration, and relationship of the varied land uses within the UGA are consistent and compatible.
- Economic Development Goal 5: Implement long-range diversification projects to provide job opportunities and reduce economic reliance on Naval Air Station Whidbey Island.

Recommendation

- Staff recommends that Planning Commission recommend approval of the bed and breakfast code to the City Council.

PC Questions?

Proposed Code

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

Conditional Use Permit Process

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

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

DRAFT ECONOMIC DEVELOPMENT STRATEGY & ACTION PLAN

Planning Commission: August 27, 2013

Purpose

- Reminder of key trends
- Overview of the strategy
- Questions



KEY TRENDS

Key Trends

- Slowing population growth: what does the future hold?
- Young demographic: lots of people
- Housing affordability: prices don't correspond to incomes
- High unemployment: persistently higher than other communities
- Low incomes
- High sales: OH is reg center, Navy allowances & disposable income
- Defense: Pivot to Asia Pacific
- Has implications for businesses and the workforce
- Doesn't include Navy allowances
- Structural problems in economy: those leaving military service have difficulty finding jobs.
- Private sector economy concentrated in services
- Implications for attracting new businesses

SUMMARY OF STRATEGY & ACTION PLAN

Overview

1. Focus on actions and implementation – hence “action plan”
 - List of projects rather than policies
2. What can we accomplish with staff, time, funding?
 - Stay on task
3. Approachable document
 - Short, organized

Goals

1. Retain and Grow Existing Business
2. Foster a Business-Friendly Culture at the City
3. Redevelop to Catalyze Job Growth
4. Welcome Tourists to Oak Harbor

Actions

1. 31 in total, 19 with existing funding, 12 which will require more funding
2. Themes:
 - Communicate
 - Build capacity of businesses & owners
 - Incentivize
 - Streamline
 - Market/Attract

Theme	Action
Communicate	1, 6, 7, 8, 9, 11, 13, 16, 17, 18, 21
Build capacity	3, 4
Incentivize	5, 10, 22, 23
Streamline	14, 15, 19, 20, 25
Market/Attract	12, 26, 27, 28, 29, 30, 31

Actions - Highlights

- 13. Make a stronger link between CIP and the budget with realistic reflections of cost and time to complete projects to reduce guesswork and risk for developers.
- 14. Revise the list of permitted/conditional uses for its CBD code to streamline permitting and align uses with community policies.
- 16. Complete a buildable lands analysis to ensure that there is an adequate supply of residential, commercial, and industrial land in the City and incorporate the finding from this study into the Comprehensive Plan.
- 19. Consider developing a streamlined development review process and implementing it, including a "fast response" review team for the review of new business and job-generating uses.

Actions - Highlights

- 20. Complete a cultural resources management plan to more accurately quantify risk of encountering resources and to inform developers/builders about their responsibilities.
- 22. Gauge parking supply and demand in downtown for now and the future. Explore feasibility of a public garage downtown which will help facilitate redevelopment of this area. Adequate parking is a precursor to investment in new retail and office space in downtown.
- 23. Explore selling land to a developer to create a catalyst development in downtown or elsewhere. The developer would need to meet City objectives for development of the land. The catalyst development might include a new City library.
- 29. Commission a study to explore ways that it can create a more tourist-oriented atmosphere in the City including an arch/gateway for downtown and updated design regulations for downtown.

Actions - Highlights

- 30. Study the feasibility of constructing an amphitheater near the waterfront as envisioned by the Waterfront Redevelopment, Branding, and Marketing Program as well as other improvements envisioned by that plan such as vendors. The Windmill is a potential location for a vendor.

Recommendation

- What will PC recommendation be?
 - To include projects/actions with additional funding?
 - Only those projects which don't require additional funding
- Keeping in mind resources, do goals and actions need to be altered any?



Digital Signs

Code Update

Public Hearing

Memo

To: Members of the Planning Commission
Cc: Steve Powers, Development Services Director
From: Ethan Spoo, Senior Planner
Date: 9/24/13
Re: Electronic Message Centers – Further Discussion of Draft Code and Public Hearing

PURPOSE

In response to public and Planning Commission input offered in July, this memorandum highlights changes to the draft electronic message center (EMC) code (Attachment 1). The draft code presented with this memo reflects input from the public and Planning Commission, as well as additional staff research since the last meeting.

SUMMARY OF CHANGES TO THE DRAFT CODE

Staff made the following changes to the draft code based on additional public and Planning Commission input at the July Planning Commission meeting and in response to motions made by the Planning Commission:

- **“Grandfathering” of non-conforming signs:** Planning Commission directed staff to include a provision in the draft code which would “grandfather” all existing EMC signs. Staff drafted new language to address this issue.
- **Maximum duration of videos/animation:** Planning Commission approved a motion to remove the maximum duration restriction of five seconds for videos. Accordingly, staff removed this provision from the draft code.
- **Multitenant buildings language deleted.** Staff deleted the provision regarding limiting multitenant buildings to one electronic message center sign. The code already contains language regarding “multi-occupancy buildings” in 19.36.030(1)(c & d), which limits these types of buildings to one freestanding sign. Staff believes this language is sufficient to address Planning Commission’s expressed concern regarding the potential for proliferation of freestanding EMCs along Highway 20 or other locations.

In addition, the definition for EMCs has been revised to exclude gas/service station reader boards as the character and operation of these signs are different than those primarily discussed as part of this code amendment process.

OUTSTANDING ITEMS FOR DISCUSSION

BRIGHTNESS

Over the past few months, Planning Commission has had a number of discussions on the issue of EMC brightness. At the July meeting, Planning Commission continued the discussion for brightness until this meeting. As part of the July meeting packet, staff provided Planning Commission a summary of the brightness standards used in other jurisdictions in the Northwest. Staff is doing so again in September as Attachment 2 to this memorandum for ease of Planning Commission review of this information. As has been previously stated, brightness levels in the jurisdictions researched ranged from 500-1,000 nits at night and no more than 8,000 nits

during the day for those jurisdictions measuring in nits. For those jurisdictions using footcandles, the range was 0.3 to 0.8 footcandles above night-time ambient lighting levels, depending on the zone. Whether nits or footcandles were used, nearly all jurisdictions required the use of autodim technology.

Background

When discussions first began on EMCs in January of 2013, staff's research showed that many jurisdictions used a standard of 500 nits during the night and 5,000 nits during the day to regulate brightness based on an issue paper called "The Regulation of Signage: Guidelines for Local Regulation of Digital On-Premise Signs." This standard has the advantage of simplicity, applies the same standard to all digital signs, and is an absolute standard not tied to the ambient light level.

After Planning Commission discussion indicating that 500 nits night/5,000 nits day was too restrictive, a revised proposal emerged linking the brightness level to the zone. The brightness levels were set to 1,000 nits night/8,000 nits day in the C1 (Neighborhood Commercial), I (Industrial), PIP (Planned Industrial Park), PBP (Planned Business Park), and PF (Public Facilities) zones. In the C3 (Community Commercial), C4 (Highway Service Commercial), and C5 (Highway Corridor Commercial) zones, the level would be 1,500 nits night/13,000 nits day. These are absolute standards not dependent on the ambient light level. For purposes of this memo this approach is identified as Option A.

In May, 2013 Planning Commission accepted comments from Mr. James Carpentier of the International Sign Association (ISA) an advocacy group for signs. Mr. Carpentier provided staff with a publication called "Recommended Night-time Brightness Levels for On Premise Electronic Message Centers (EMCs)." The publication recommended a maximum brightness level of 0.3 footcandles above night-time ambient lighting levels based upon the research of a scientist, Dr. Ian Lewin, of Lighting Sciences. For purposes of this memo this approach is identified as Option B.

Due to additional public and Planning Commission questions in August, staff contacted the Lighting Design Lab (LDL), a research organization operated by Seattle City Light, with support from utilities across the Northwest and the Northwest Energy Efficiency Alliance. Staff spoke with Mr. Jeff Robbins who is a certified lighting specialist (LC) and a member of the Illuminating Engineering Society of North America (MIES). Mr. Robbins reviewed the ISA publication and provided staff verbal comments in a telephone conversation on August 13, 2013. Mr. Robbins commented that the ISA publication is "excellent" and said that Dr. Lewin is one of the "most well-respected" individuals in the lighting industry. Mr. Robbins went on to say that he would "lean heavily on the ISA document" as a basis for formulating code and he recommended using footcandles, rather than nits as a measurement. Mr. Robbins also provided a letter as Attachment 3 in support of using the ISA document "both for measuring and regulating brightness levels."

Staff also had a discussion with Dr Lewin of Ian Lewin PhD Consulting, LLC whose research formed the basis of the ISA "Recommended Night-time Brightness Levels for On-Premise Electronic Message Centers (EMCs)" document. Staff and Dr. Lewin discussed the ISA document, as well as his background research and the appropriate level of brightness for digital signs in Oak Harbor. Dr. Lewin indicated that his research had been simplified in the ISA document to be 0.3 footcandles above ambient light levels for all environments (rural or urban). Dr. Lewin, recommended that as a suburban community with a commercial highway corridor, a standard of 0.8 footcandles above ambient light levels may be appropriate for EMCs in Oak Harbor.

The brightness limits in this option are consistent both with the research of industry experts and Planning Commission comments received to date. Comments made by Planning Commission in July indicated that brightness levels should be set higher than 0.3 footcandles in some areas and be consistent with the regulations in Monroe and Jefferson County which both have limits of up to 0.8 footcandles above ambient levels in the more intense commercial zones.

This approach recognizes that ambient lighting levels are higher along Highway 20 and the Midway Commercial corridor where there are many C3 zoned properties, with reduced brightness limits proposed in less the Public Facilities (PF) and Neighborhood Commercial (C1) zones. For purposes of this memo this approach is identified as Option C.

Summary of Brightness Options

The following table summarizes the three brightness options.

	Option A	Option B	Option C
Brightness Level	C1, I, PIP, PBP, PF: 1,000 nits (night)/8,000 nits (day). C3, C4, C5: 1,500 nits (night)/13,000 nits (day).	0.3 footcandles above ambient (for all zoning districts).	C1: 0.3 footcandles above ambient. C3, C4, C5, I, PIP, PBP, PF: 0.8 footcandles above ambient.
Standard Type	Absolute – does not take into account ambient light	Relative – takes into account ambient light	Relative– takes into account ambient light
Measurement Occurrence	Day or night	Night	Night

As was previously noted, different jurisdictions allow different brightness levels and use either nits or footcandles as the means of measurement. The options shown above are in-line with those used by other jurisdictions.

Draft Ordinance Language

Staff has prepared draft language for each of the options listed above. This approach allows the Planning Commission to choose the option and the draft language that, in their opinion, best meets the needs and values of the community. In light of the most recent Planning Commission discussions, staff suggests Option C may best meet the community's needs. The Commission is of course free to suggest revisions to the options.

Option A

Brightness/Luminance. The brightness of electronic message center signs shall not exceed the standards specified herein.

Zone	Luminance/brightness Level
<i>C1</i>	<i>1,000 nits night/8,000 nits day</i>
<i>I</i>	<i>1,000 nits night/8,000 nits day</i>
<i>PIP</i>	<i>1,000 nits night/8,000 nits day</i>
<i>PBP</i>	<i>1,000 nits night/8,000 nits day</i>
<i>PF</i>	<i>1,000 nits night/8,000 nits day</i>
<i>C3</i>	<i>1,500 nits night/13,000 nits day</i>
<i>C4</i>	<i>1,500 nits night/13,000 nits day</i>
<i>C5</i>	<i>1,500 nits night/13,000 nits day</i>

Digital signs shall come equipped with automatic dimming technology. Owners of digital signs shall include a signed letter accompanying their permit application certifying that they will not tamper with the settings of the sign so as to exceed the brightness standards specified herein. The brightness of the sign shall be measured with the electronic message center turned off and then again with the sign turned on displaying a white image for a full color sign or a solid message for a monochrome sign.

Option B

Brightness/Illuminance. During the night, the sign shall not exceed a maximum illumination of 0.3 foot-candles above ambient light as measured using a foot-candle meter at a preset distance depending on sign size. The measuring distance shall be determined by the square root of the product of the sign area and one-hundred. In addition, electronic message center signs shall come equipped with automatic dimming technology which automatically adjusts brightness because of ambient light conditions. The owners of electronic message center signs shall include a signed letter accompanying their permit application certifying that they will not tamper with the manufacturer preset automatic brightness levels on such sign so as to exceed the standard specified herein. The brightness of the sign shall be measured with the electronic message center turned off and then again with the sign turned on displaying a white image for a full color sign or a solid message for a monochrome sign.

Option C

Brightness/Illuminance. During the night, electronic message center signs shall not exceed the following maximum brightness standards above the ambient light as measured using a foot-candle meter at a preset distance depending on the sign size.

Zone	Brightness Limit
<i>C1 (Neighborhood Commercial)</i>	<i>0.3 footcandles above ambient</i>
<i>C3 (Community Commercial)</i>	<i>0.8 footcandles above ambient</i>
<i>C4 (Highway Service Commercial)</i>	<i>0.8 footcandles above ambient</i>
<i>C5 (Highway Corridor Commercial)</i>	<i>0.8 footcandles above ambient</i>
<i>I (Industrial)</i>	<i>0.8 footcandles above ambient</i>
<i>PIP (Planned Industrial Park)</i>	<i>0.8 footcandles above ambient</i>
<i>PBP (Planned Business Park)</i>	<i>0.8 footcandles above ambient</i>
<i>PF (Public Facilities)</i>	<i>0.8 footcandles above ambient</i>

The measuring distance shall be determined by the square root of the product of the sign area and one-hundred. The brightness of the sign shall be measured with the electronic message center turned off and then again with the sign turned on displaying a white image for a full color sign or a solid message for a monochrome sign. Electronic message center signs shall come equipped with automatic dimming technology which automatically adjusts brightness because of ambient light conditions. The owners of electronic message center signs shall include a signed letter accompanying their permit application certifying that they will not tamper with the manufacturer preset automatic brightness levels on such sign so as to exceed the standard specified herein.

HOURS OF OPERATION:

The existing code requires that EMCs “adjacent to a residential use or district...be turned off between the hours of 10:00 p.m. and 6:00 a.m.” There are two distance offset requirements in the draft code: (1) a requirement that

no EMC signs be located within 200 feet of a residentially zoned property and (2) a requirement that all EMC signs within 300 feet of residentially zoned property be turned off between the hours of 10:00 p.m. and 6:00 a.m.

In an effort to better define “adjacent” and in response to Planning Commission discussion, staff inserted a provision in the draft code in May indicating that EMCs within 100 feet of residentially zoned property must turn their sign off between 10:00 p.m. and 6:00 a.m. Planning Commission noted in May that the 100 feet for hours of operation conflicted with the 200-foot outright prohibition. Following the Planning Commission discussion in May, staff’s intent was to change the draft code so that EMCs within 200 feet of residentially zoned property would need to be turned off between the hours of 10:00 p.m. and 6:00 a.m. At that time, however, a clerical error led to the insertion of 300 feet, although 200 feet is what was always intended as evidenced by the memo to Planning Commission in June.

Based on public testimony received in July, the draft code now contains a standard requiring that EMCs located within 100 feet of residentially zoned property be turned off between the hours of 11:00 p.m. and 6:00 a.m. Staff also reduced the outright prohibition on EMCs from residential uses to 100 feet.

MINIMUM DURATION OF GRAPHICS, IMAGES AND TEXT

Staff researched the relationship between the duration of *moving* graphics, images, and text on the EMC screens and driver distraction and suggested a maximum of 10 seconds in May. The 10-second rule was taken from a 2001 report prepared for the City of Seattle. In addition, the report “The Regulation of Signage: Guidelines for Local Regulation of Digital On-Premise Signs”¹ indicates that many jurisdictions around the country have adopted an 8-second minimum static image requirement.

Planning Commission indicated that the 10-second *maximum* was confusing because they thought it applied to all graphics, text, and images, not just *moving* elements. Staff subsequently changed the rule to be a 10-second *minimum* that *all* graphics, text, and images had to remain on the EMC screen and a 2-5 second duration for videos. The 2-5 second duration for videos comes from the April, 2008 *Zoning Practice* publication from the American Planning Association.

The research is still ongoing and inconclusive as to how the duration of elements on an EMC screen affects traffic safety. The City of Seattle study and the University of Toronto study both indicate that animated and video billboards are potentially distracting. On the other side of the debate, a 2012 University of Texas study sponsored by the sign industry indicated that EMCs do not significantly contribute to auto accidents.

Planning Commission has discretion to recommend a duration limit which will provide sign owners flexibility while also considering possible distracting effects of these signs on traffic. As was previously stated, many communities have adopted an 8-second minimum duration. Public comments provided to the Planning Commission in July recommended that 2 seconds was more appropriate and this is the standard used in the draft code.

CONCLUSION

Over the last several months, staff has assisted the Planning Commission identify and address a variety of size, placement, location and operational issues associated with electronic message center signs. With the Commission’s guidance, new code language has been drafted to respond to these issues. This staff memorandum presents revised and/or fine-tuned language of the following issues: sign brightness, hours of operation, and minimum duration of graphics, images and text.

¹ Menelaos Triantafillou, University of Cincinnati and Weinstein, Alan C., Cleveland State University. “The Regulation of Signage: Guidelines for Local Regulation of Digital On-Premise Signs.”

Revisions to the hours of operation and minimum duration sections are already incorporated in the draft.² To complete the draft the Commission is asked to select the standard and method of measurement for brightness they believe best meets the community's needs and values. Once this selection is made, the Commission can then direct staff which option to include in the draft code. Staff will incorporate the option into the existing code structure as appropriate.

Staff recommends the Planning Commission conclude the public hearing process and forward a recommendation to the City Council.

RECOMMENDATION

- Conclude public hearing.
- Select option for brightness standard and measurement.
- Make a recommendation to the City Council to approve the draft electronic message center (EMC) sign code.

ATTACHMENTS

1. Electronic Message Center Draft Code –Amendments to OHMC Sections 19.36.020 and 19.36.030.
2. Summary of EMC Regulations in Washington and the Northwest
3. Letter from Mr. Jeff Robbins, Lighting Design Lab.
4. Recommended Night-time Brightness Levels for On-Premise Electronic Message Centers (EMCs).
5. Report to International Sign Association by Dr. Ian Lewin regarding Electronic Message Center Sign Luminance
6. Compliance with Review Criteria

² Please note that the draft code has also been updated to be consistent with the draft bed and breakfast code previously forwarded to the City Council by the Planning Commission.

ORDINANCE NO. XXXX

AN ORDINANCE OF THE CITY OF OAK HARBOR AMENDING CHAPTER 19.36 OF THE OAK HARBOR MUNICIPAL CODE ENTITLED "SIGN CODE" TO ALLOW FOR ELECTRONIC MESSAGE CENTER SIGNS WITH VIDEO, ANIMATION, GRAPHIC AND IMAGE CAPABILITIES.

WHEREAS, the City's Comprehensive Plan, Land Use Element, Goal 1 says: "To respect the "small town" heritage of Oak Harbor while enhancing the unique character of its neighborhoods and districts with development that is fitting with the City's future as a regional center."

WHEREAS, the City's Comprehensive Plan, Land Use Element, Policy 1(d) says: "Business-related signs, both temporary and permanent, should serve the needs of the business owner and public to identify business locations but should not proliferate in a manner whereby the sum of all signs detracts from a positive aesthetic experience of the City's commercial areas," and;

WHEREAS, the City's Comprehensive Plan, Land Use Element, Policy 1(e) says "Signage standards should promote design sensitivity to the context in which signs are placed and scaled to both the mass of the building and the location of the sign on the lot" and;

WHEREAS, the City's Comprehensive Plan, Urban Design Element, Policy 5(c) says "Free standing business signs should be consistent with the speed limit of roadways, and the character of land use districts."

WHEREAS, the City of Oak Harbor Comprehensive Plan, Economic Development Element, Goal 3 says: "Increase Oak Harbor's market share of retail sales to reduce the economic leakage off island."

WHEREAS, the City of Oak Harbor conducted a public hearing before the Planning Commission on April 23, 2013, May 28, 2013, June 25, July 23, and August 27, 2013. The public hearing was closed on August 27, 2013. Public meetings were held before the Planning Commission on January 22, 2013, February 26, 2013, and March 26, 2013 and;

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

WHEREAS, the City of Oak Harbor issued Notice of Application on April 27, 2013 and a Determination of Non-Significance (DNS) on June 5, 2013 for a SEPA Environmental Checklist in accordance with Chapter 43.21 RCW and;

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

Section One. Section 19.36.020 of the Oak Harbor Municipal Code last amended by Ordinance 1640 section 1 in 2012 is hereby amended to read as follows:

19.36.020 Definitions.

- (1) "Abandoned sign" means a sign which no longer identifies or advertises a bona fide business, lessor, service, owner, product, or activity, and/or for which no legal owner can be found.
- (2) "Animation" means the use of movement or some element thereof, to depict action or create a special effect or scene.
- (3) "Area or surface area of sign" means the greatest area of a sign on which copy or artwork can be placed and not just the portion of which is covered by letters or symbols, enclosed within not more than three circles, rectangles or squares, or any combination of these forms which produces the smallest area. Sign structure, architectural embellishments, framework and decorative features which contain no written or advertising copy and are not internally lighted shall not be included.
- (4) "Architectural blade" means a projecting sign with no exposed legs or braces, designed to look as though it could have been part of the building structure rather than something suspended from the building.
- (5) "Banner" means a flexible material (i.e., cloth, paper, vinyl, etc.) on which a sign is painted or printed.
- (6) "Billboard" means outdoor advertising signs containing a message, commercial or otherwise, unrelated to any use or activity on the property on which the sign is located, but not including directional signs as defined herein.
- (7) "Building line" means a line established by ordinance defining the limits of buildings in relation to streets. A building line in some instances may coincide with the property line. "Building line" is sometimes referred to as "required setback line."
- (8) "Building-mounted sign" means a single- or multiple-faced sign attached to the face of a building or marquee.
- (9) "Campaign sign" means a sign which exclusively and solely advertises a candidate or candidate's public elective office, a political party, or promotes a position on a ballot issue.
- (10) "Canopy" means a freestanding structure affording protection from the elements to persons or property thereunder.
- (11) "Canopy sign" means any sign erected upon, against or directly above a canopy.
- (12) "Commercial sign" means a sign containing expression related to the economic interests of the advertiser and its audience or a sign proposing a commercial transaction.
- (13) "Construction sign" means an information sign which identifies the architect, engineers, contractors and other individuals or firms involved with the construction of a building, or announcing the character of the building or enterprise, which is erected during the building construction period.

~~(14)~~(14) "Electronic message center" means a sign capable of displaying words ~~or~~ symbols, graphics, images, or video that can be electronically or mechanically changed by remote or automatic means. An electronic message center is considered a primary sign and may be either freestanding or building-mounted. Electronic message center signs do not include gas station reader boards.

- ~~(15)~~(165) “Flashing” means pattern of changing light illumination where the sign illumination alternates suddenly between fully illuminated and fully non-illuminated for the purpose of drawing attention to the sign. Flashing is not permitted in any zoning district.
- (16) “Foot-candle” means a unit of illuminance or illumination, equal to one lumen incident per square foot.
- ~~(16)~~(17) “Frame effect” means a visual effect on an electronic message center applied to a single frame to transition from one message to the next. Such usage must comply with the 2-1-2 provision.
- ~~(17)~~(18) “Freestanding sign” means a single- or multiple-faced sign supported from the ground by one or more columns, uprights or braces. Freestanding signs include monument, pylon and pole signs.
- ~~(18)~~(199) “General promotions” means events which occur on a regular basis in retail business for the purpose of boosting sales, attracting new business, selling of certain items (i.e., year-end, seasonal sales, civic events, etc.).
- ~~(19)~~(2020) “Grade” means the elevation or level of the street closest to the sign to which reference is made, as measured at the street’s centerline, or the relative ground level in the immediate vicinity of the sign.
- ~~(20)~~(21) “Grand openings and anniversaries” means events that are held on a once-per-year basis for the purpose of advertising grand openings, ownership changes, or anniversaries.
- ~~(21)~~(22) “Height” or “height of sign” means the vertical distance from the grade to the highest point of a sign or any vertical projection thereof, including its supporting columns, or the vertical distance from the relative ground level in the immediate vicinity of the sign.
- ~~(22)~~(23) “Incidental sign” means a single- or double-faced sign not exceeding four square feet in surface area of a noncommercial nature, intended primarily for the convenience of the public. Included are signs designating restrooms, address numbers, hours of operation, public telephone, etc. Also included are signs designed to guide pedestrian or vehicular traffic to an area or place on the premises of a business, building or development. Also included are building directories with the letters not to exceed four inches in height. (See OHMC 19.36.100.)
- ~~(23)~~(24) “Marquee” means a covering structure projecting horizontally from and attached to a building, affording protection from the elements to persons or property thereunder.
- ~~(24)~~(25) “Monument sign” means a primary freestanding sign, generally mounted on a solid base. Monument signs shall not contain or include reader boards.
- ~~(25)~~(26) “Multiple-occupancy building” means a single structure housing more than one type of retail business office or commercial venture.
- ~~(26)~~(27) “Multiple-occupancy complex” means a group of structures housing more than one type of retail business, office or commercial venture and generally under one ownership and control.
- (28) “Nit” means a luminance unit equal to one candle per square meter measured perpendicular to the rays from the source.

- | ~~(27)~~~~(2829)~~ “Noncommercial public service sign” means noncommercial signs devoted to religious, charitable, cultural, governmental or educational messages, including, but not limited to, the advertising of events sponsored by a governmental agency, a school, church, civic or fraternal organization or other organizations engaged in activities for profit.
- | ~~(28)~~~~(2930)~~ “Occupant” means the person, firm or corporation that occupies the land or building.
- | ~~(29)~~~~(319)~~ “Office building” means an office building in the commercial and residential-office land use districts as defined by the Oak Harbor zoning ordinance.
- | ~~(30)~~~~(3132)~~ “Parapet” means that portion of a building wall which extends above the roof of the building.
- | ~~(31)~~~~(3233)~~ “Penthouse” means a structure on top of a building roof such as houses an elevator shaft or similar form.
- | ~~(32)~~~~(3334)~~ “Pole sign” means a primary freestanding sign where the sign is supported by a pole or other similar structural element that is substantially narrower than the width of the sign.
- | ~~(33)~~~~(3435)~~ “Political free speech sign” means a sign which promotes a position on a public or social issue.
- | ~~(34)~~~~(3536)~~ “Primary sign or signs” means all signs, including freestanding signs, of a user which are not exempt (see OHMC 19.36.100), or which do not come within the category of incidental signs (see OHMC 19.36.030 and subsection (22) of this section) or temporary or special signs (see 19.36.080). The term “primary sign” is intended to include virtually all signs of a commercial nature.
- | ~~(35)~~~~(3637)~~ “Property line” means the line denoting the limits of legal ownership of property.
- | ~~(36)~~~~(338)~~ “Pylon sign” means a primary freestanding sign other than a pole sign with the appearance of a solid base. The base of a pylon sign shall be distinctive in appearance from the sign area.
- | ~~(39)~~ “Public service information” means amber alerts or information about community events sponsored by a government or non-profit.
- | ~~(37)~~~~(3840)~~ “Reader board” means a sign or part of a sign on which the letters are readily replaceable such that the copy can be changed from time to time at will.
- | ~~(38)~~~~(41)~~ “Right-of-way” means either a publicly owned fee, an easement or privilege to traverse over land. A right-of-way is for public travel. Rights-of-way may be opened or unopened, and when open usually contain street improvements.
- | ~~(39)~~~~(42)~~ “Roof sign” means any sign erected upon, against or directly above a roof or on top of or above the parapet of a building, including a sign affixed to any structure erected upon a roof, including a structure housing building equipment.
- | ~~(40)~~~~(43)~~ “Sign” means any letters, figures, design, symbol, trademark or device intended to attract attention to any activity, service, place, subject, person, firm, corporation, public performance, article, machine or merchandise whatsoever. Sources of light used primarily to illuminate a sign, or a building, or ground surrounding the building, shall not be considered signs themselves; provided, however, that sources of light used primarily to attract attention to the light itself or

as a decorative feature of the display shall be considered as part of the sign. Lighted canopies, with the exception of the signed portion, shall not be considered signs themselves. Excluded from the definition are official traffic signs or signals, sheriff's notices, court notices or official public notices and the flag of a government or noncommercial institution, and signs not visible from the street or sidewalk (see OHMC 19.36.100 for more detailed treatment of exempt signs), and religious symbols.

~~(41)~~(4244) "Single-occupancy building" means a commercial building or structure with one major enterprise, generally under one ownership. A building is classified as single-occupancy only if:

- (a) It has only one occupant;
- (b) It has no wall in common with another building;
- (c) No part of its roof in common with another building.

~~(42)~~(45) Special Signs. See "Temporary and Special Signs."

~~(43)~~(4446) "Special projection sign" means a sign no larger than six square feet projecting out from the side of a building.

~~(44)~~(47) "Street" means any automobile thoroughfare so designated by city ordinance. "Street" includes portions thereof used for parking.

~~(45)~~(48) "Subdivision signs" means signs used to identify a land development which is to be or was accomplished at essentially one time.

~~(46)~~(49) Surface Area. See "Area or surface area of sign."

~~(47)~~(50) "Surface area of facade" means the area of that front, side or back elevation, including doors and windows, but excluding any roof area and structures or elevators or air conditioning equipment thereon; provided, that in the case of a roof sign, the surface area of facade shall be the area of that front, side or back immediately beneath the roof, including doors and windows, but excluding the roof area and structures for elevators or air conditioning thereon.

~~(48)~~(51) Temporary and Special Signs. "Temporary and special signs" are those which are not defined as "primary signs" or "incidental signs" by this chapter. Different types of temporary and special signs include, but are not limited to, construction signs, grand opening displays, real estate signs, open house signs, residential land subdivision signs, subdivision directional signs, A-frame signs, political signs, and campaign signs (see OHMC 19.36.080).

~~(52)~~ Transition. "Transition" means the time interval between display changes of graphics, text, messages, or images on electronic message center signs.

~~(49)~~(53) Transitory signs. Transitory signs, also known as "human signs," are those carried by or worn by a human being usually for the purposes of a protest, demonstration, rally, or other similar event.

~~(50)~~(54) "Video" means the use of live action footage shot with a video camera or similar device which is sized to fit and be displayed by an electronic message center or similar device. ~~The use of video is not permitted in any zoning district.~~

~~(51)~~(52) ~~"Video board" means an electronically activated sign that creates the effect of motion or animation, except as allowed by this chapter for changing electronic message signs which are in compliance with the 2-1-2 provision, and the prohibition of RGB technology. Video board signs are not permitted in any zoning district.~~

~~(52)~~(55) “Way open to public” means any paved or unpaved area on private property open to the general public for driving or parking.

~~(53)~~(556) “Window sign” means all signs located inside and affixed to or within three feet of windows of a building, whether temporary or permanent, except lighted signs of a commercial advertisement nature which may be viewed from the exterior of the building. The term does not include merchandise located within three feet of a window. Lighted window signs shall be included in determining the number of primary signs and in determining the permissible sign area for each facade. Does not include incidental signs. (See OHMC 19.36.030.)

Section Two. Section 19.36.030 of the Oak Harbor Municipal Code last amended by Ordinance 1553 section 3 in 2009 is hereby amended to read as follows:

19.36.030 Business district signs – Zones CBD, CBD-1, CBD-2, C-3, C-4 and C-5.

(1) General.

- (a) In general, this city takes the view that signs should be scaled to the building to which the sign is related. Accordingly, in the following sections will be found regulations on the area, number and height of signs, which are a function of the size of the building to which the sign is related.
- (b) Any single-occupancy building in the business district shall be permitted the primary signs described in subsections (2) through (6) of this section. No more than one freestanding sign is permitted per single-occupancy building unless the building faces on more than one street (see subsection (4) of this section), and is not a part of a multiple-building complex.
- (c) Each occupant in a multiple-occupancy building in the business district shall be permitted the primary signs described in subsections (2) through (5) of this section and the incidental signs described in subsection (6) of this section except that no more than one freestanding sign is permitted per multiple-occupancy building unless the building faces more than one street (see subsection (4) of this section), and is not part of a multiple-building complex.
- (d) Each occupant in a multiple-building complex in the business districts, which is composed of single- and/or multiple-occupancy buildings, shall be permitted the primary signs described in subsections (2) through (5) of this section and the incidental signs described in subsection (6) of this section except that no more than one freestanding sign is permitted per multiple-building complex, unless the building faces on more than one street. (See subsection (4) of this section.)
- (e) Each enterprise shall display and maintain on-premises street address number identification. (See subsection (6) of this section.)
- (f) A multiple-building complex encompassing at least five acres may display one complex identification sign along with each right-of-way which provides direct access to the complex. Each sign may not exceed 75 square feet in surface area and 25 feet in height. Each sign is subject to the sight distance requirements of the zoning ordinance.

(2) Setback Limitations – Freestanding Signs. Except as otherwise provided in this section, the size of any freestanding sign shall not exceed the following limits, based on the setback of the sign from the front property line:

- Minimum Setback: 5 feet from front property line
- Maximum Area: 100 square feet (per side)

(a) Sign Height – Freestanding Signs. Except as otherwise provided in this section, the height of any freestanding sign shall not exceed the following limits, based on the sign setback of the sign:

Maximum Height: 25 feet

A minimum height of eight feet from grade to the bottom of the sign is required, for signs greater than 48 square feet, to ensure adequate sight lines for signs closer than 10 feet to the front property line.

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

Relevant Surface Area of Facade as Determined Pursuant to OHMC 19.36.020(40) (sq. ft.)	Maximum Sign Surface Area for That Facade
Below 100	25 percent of facade
100 – 199	26 sq. ft. + 11 percent of facade area over 100 sq. ft.
200 – 499	38 sq. ft. + 12 percent of facade area over 200 sq. ft.
500 – 999	75 sq. ft. + 11 percent of facade area over 500 sq. ft.
1,000 – 1,499	131 sq. ft. + 7.5 percent of facade area over 1,000 sq. ft.
1,500 – 2,999	169 sq. ft. + 2.5 percent of facade area over 1,500 sq. ft.
Over 3,000	206 sq. ft. + 1.5 percent of facade area over 3,000 sq. ft. to a maximum of 300 sq. ft.

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

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

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

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

- (c) **Sign Height – Building-Mounted Signs.** The height of any building-mounted sign shall not extend above the highest exterior wall of the building to which the sign relates.
- (3) **Number of Primary Signs.** The permissible number of signs for each occupant is dependent upon the surface area of the largest single facade of the building that is under his control. The permitted number of signs is as follows (not including incidental signs):

Surface Area of Largest Facade	Maximum Number of Signs
Less than 999 sq. ft.	3
1,000 – 2,999	4
3,000 and over	5

Buildings or occupants with more than 3,000 square feet on any face, with several clearly differentiated departments, each with separate exterior entrances, are permitted one sign for each different department with a separate exterior entrance, in addition to the five allotted.

- (4) **Buildings on More Than One Street.** Buildings facing on more than one street are entitled to a bonus in primary signage, depending on whether the building is on two

intersecting streets or whether it extends through a block so as to face on two different parallel streets, as defined in subsections (4)(a) and (4)(b) of this section.

- (a) Buildings on Intersecting Streets. When a building is located on intersecting streets, two freestanding signs are permitted if they are located on two different streets and are separated more than 100 feet measured in a straight line between signs. Otherwise, only one freestanding sign is permitted and must meet the setback limitation under subsection (2) of this section.
 - (b) Buildings Facing on Two Parallel Streets. Single-occupancy buildings that extend through a block to face on two parallel streets with customer entrances on each street are permitted the sign area allowed under subsections (2)(a) and (2)(b) of this section, and the sign number under subsection (3) of this section for each end of the building facing on a street; provided, however, that no more than one freestanding sign is permitted per building unless such signs are located on two different streets and are separated more than 100 feet measured in a straight line between the signs. No more than two freestanding signs are permitted in such case.
- (5) Types and Placement of Primary Signs. The permissible types of primary signs, their placement and other limitations are as follows:
- (a) Freestanding Signs.
 - (i) Freestanding signs shall be wholly located within the center two-thirds of the frontage of the property on the street or 15 feet from the adjacent property line, whichever provides the longer distance from the closest part of the sign to the adjacent property line; provided, however, that a freestanding sign may be located within five feet of the property line with the written consent of the title holder of the adjacent property. If such consent is obtained, the consenting party or his successors or assigns may not place a freestanding sign on his property within 20 feet of the first freestanding sign.
 - (ii) A freestanding sign located five feet from the property line shall be wholly behind the five-foot setback, and a freestanding sign located at the building line shall be wholly behind the building line.
 - (iii) Any freestanding sign must be integrated. That is, all elements of the sign must be incorporated in a single design. Auxiliary projections or attachments not a part of a single design are prohibited.
 - (b) Building-Mounted Signs.
 - (i) Any building-mounted sign shall not project more than five feet from the face of the building to which the sign is attached. Any structural supports shall be an integral part of the design or concealed from view.
 - (ii) Any building-mounted signs shall be limited in content and message to identifying the building and the name of the firm, or the major enterprise, and principal product and/or service information.
 - (iii) Special projection signs are permitted within the CBD and are allowed in addition to permitted signage. Special projection signs are

limited to one per business and shall be attached to the building. The bottom of the sign shall be at least seven feet above the sidewalk.

- (c) Roof Signs.
 - (i) All such signs must be manufactured in such a way that they appear as an architectural blade or penthouse and are finished in such a manner that the visual appearance from all sides is such that they appear to be a part of the building itself.
 - (ii) All roof signs shall be installed or erected in such a manner that there shall be no visible angle-iron support structure.
- (d) Canopy Signs.
 - (i) All such signs shall be manufactured in such a way that they appear as an architectural blade or penthouse and are finished in such a manner that the visual appearance from all sides is such that they appear to be part of the building itself.
 - (ii) All canopy signs shall be installed or erected in such a manner that there shall be no visible angle-iron support structure.
- (e) Monument Signs. Monument signs shall not exceed eight feet in height measured from the finished grade to top of the sign and not exceed 32 square feet in area. Monument signs shall be located within the center two-thirds of street frontage. Signs may be located up to the front property line when there is no sight visibility obstruction from driveways or intersections caused by placement of the sign.
- (f) Pylon Signs.
 - (i) Pylon signs shall not exceed 10 feet in height measured from the finished grade to top of the sign and not exceed 48 square feet in area. Pylon signs shall be located within the center two-thirds of street frontage. Signs may be located up to the property line when there is no sight visibility obstruction from driveways or intersections caused by placement of the sign.
 - (ii) If a pylon sign is used instead of a pole sign an additional 15 percent of wall signage area over that than otherwise permitted shall be allowed. The additional square footage may be used on any facade that permits wall signage.
- (g) Electronic Message Center Signs. Stationary electronic message center signs and other changeable copy signs may be incorporated in the permanent signage for a business or development in the ~~C-3, C-4 and C-5~~ C-3, C-4, and C-5, zoning districts. Said signs shall meet the following standards:
 - (i) Electronic message center signs ~~The sign~~ shall follow the standards established in subsections (2) through (5) of this section above except where further modified by the specific provisions in this subsection entitled "Electronic Message Center Signs."
 - (ii) Only one such sign shall be used in a development ~~and it shall not exceed 50 percent of the sign area for that sign;~~

- (iii) Size. Electronic message center signs shall be included in the maximum sign area allowed for the business or development under 19.36.030(2 and 3); However, in no case shall an electronic message center sign exceed 100 square feet in size. Additionally, electronic message center signs can comprise 100 percent of a building mounted primary sign, no more than 75 percent of a monument primary sign, and no more than 50 percent of a pole or pylon primary sign.
- ~~(iii) The electronic message center sign shall be included in the maximum number of signs or sign area allowed for the business or development;~~
- ~~(iv) Freestanding electronic message center signs shall be constructed~~The sign shall be constructed as an integral part of a permanent sign constructed on site, except as permitted under subsection (5)(g)(~~xviii~~) of this section. “Integral” shall be considered to be incorporated into the framework and architectural design of the permanent sign;
- (v) Electronic message center signs may be used only to advertise activities or goods or services available on the property on which the sign is located, or to present public service information;
- ~~(vi) No segmented message shall last longer than 12 seconds~~
- (vi) Animation and video. Animation and video are permitted on electronic message center signs. Animation and video must be steady and avoid shaking, trembling, quavering, or quaking effects. Animation and video cannot portray action or movement at speeds faster than what occurs in real life. Displays shall not appear to flash, undulate, or pulse, or portray explosions, fireworks, flashes of light, or blinking or chasing lights.
- (vii) Duration. The entirety of a message, text, graphic, image or video, including message segments, must remain on-screen for a minimum of two seconds. There is no maximum duration for messages, text, graphics, images, or video.
- (viii) Transitions. Instantaneous transitions of colors, graphics, text, or images are prohibited. When the sign is transitioning between colors, graphics, images, or text the transition must occur within one second and no less than 0.5 seconds. This provision shall not be interpreted to prohibit video.
- (vix) Scrolling or moving text is prohibited.
- (vix) Color. Color may be used in electronic message center signs. However, white backgrounds are prohibited.
- ~~(viix) Only those changing electronic message signs utilizing monochrome colors such as white, red or amber shall be permitted. No RGB (red-green-blue) technologies or other multicolored display shall be permitted in an electronic message center sign in a manner that~~

- ~~would create a video board. This subsection does not prohibit the use of color in a sign that is not a video board;~~
- ~~(viii)(i) No changing electronic message center may contain the use of animation, video or flashing as defined in this chapter;~~
- ~~(ix) Changing electronic message signs shall maintain a 2-1-2 transition frequency. "2-1-2" means a message display time of a minimum of two seconds, a transition time between messages of a maximum of one second, followed by a message display time of a minimum of two seconds with all segments of the total message to be displayed within 10 seconds. Displays which scroll onto the signboard must hold for a minimum of two seconds including scrolling. Frame effects may be used for the purpose of transition~~
- ~~;(xi) Orientation. Freestanding electronic message center signs must be directed away from adjacent residentially zoned or open space zoned properties including properties across a public right-of-way. No electronic message center sign may be located closer than 100 feet from residentially zoned or open space zoned properties as measured from the sign location to the nearest property line of the residential or open space zoned property.~~
- ~~(x) Electronic message center signs shall come equipped with automatic dimming technology which automatically adjusts brightness because of ambient light conditions;~~
- ~~(xii)(xi) Brightness/Illuminance.~~

Option A

or

Option B

or

Option C

- ~~The owners of electronic message center signs shall include a signed letter accompanying their permit application, certifying that they will not tamper with the manufacturer preset automatic brightness levels on such signs;~~
- ~~(xiii) For locations adjacent to a residential use or district electronic displays shall be turned off between the hours of 10:00 p.m. and 6:00 a.m.;~~
Hours of operation. Electronic message center sign displays must be turned off between the hours of 11:00 p.m. and 6:00 a.m. when located 100 feet from a residentially zoned property.
- ~~(xiv) Angle. Electronic message center signs shall be mounted perpendicular to the ground.~~

(xv). Malfunction. If the electronic message center sign malfunctions so as to affect the normal function and display of the sign, the sign is required to be turned off until function has been restored.

(xviii) A single, portable (nonstationary) electronic message center sign may be located in the window of a business subject to the provisions of subsection (5)(g) of this section. The portable sign shall comply with the provisions of subsections (5)(g)(v) through (ixvi) of this section.

(xvii). Non-conforming electronic message centers must be brought into conformance with brightness and hours of operation standards within one year of the adoption of this code.

- (6) Incidental Signs. “Incidental signs” means signs less than four square feet in surface area, of a noncommercial nature, intended primarily for the convenience of the public. Included are signs designed to guide or direct pedestrian or vehicular traffic to an area, place or convenience; designating restrooms, address numbers, hours of operation, entrances to a building, directions, help wanted, public telephone, etc. Also included in this group of signs are those designed to guide or direct pedestrians or vehicular traffic to an area or place on the premises of a business, building or development by means of a directory designating names and addresses only.
- (7) Directional Signs. Directional signs to give the traveling public specific information as to gas, food or lodging available on a crossroad with the state highway may be erected in accordance with RCW 47.42.046 and 47.42.047.
- (8) Gasoline Price Signs. Gasoline price signs shall be located greater than five feet from the property line and must be permanently anchored. Such signs may be freestanding, may be attached to marquees or canopy columns, or may be reader boards. The sign area shall not exceed 20 square feet, and no more than one such sign for each street frontage is permitted. Gasoline price signs shall not be included in determining the number of primary signs, nor in determining the permissible number of freestanding signs.
- (9) Window Signs. The total surface area of all window signs excluding lighted signs shall not exceed 50 percent of the window area. Such signs shall not be included in determining the number of primary signs, nor in determining the permissible sign area for each facade. Window signs do not require permits.
- (10) Signs for Nonconforming Buildings or Uses. There remain in the city some buildings which were built prior to enactment of Oak Harbor’s present zoning ordinance. Generally, under the city zoning ordinances, these legal nonconforming buildings or uses are allowed to remain unless they are altered or improved. As few of these nonconforming buildings are located behind the building line as determined by ordinances currently in effect, almost no signing would be possible under the foregoing sign code provisions. Therefore, this section provides for a partial relaxation of the standard sign requirements for signs on legal nonconforming buildings, only so long as the buildings or uses remain legally nonconforming under provisions of the Oak Harbor zoning code.

- (11) Permitted Signs on Legally Nonconforming Buildings. All provisions of the sign code for business district signs apply to signs on nonconforming buildings or uses with the following exceptions:
 - (a) Building-mounted signs may project over the building line, but shall not approach a street closer than five feet. Such signs may extend five feet from the face of the building to which attached and shall have a maximum clearance over sidewalk below of eight feet, six inches.
 - (b) Legally nonconforming buildings are allowed the same sign area as other buildings zoned as commercial districts, as per this section.

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

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

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

- Minimum Setback: 5 feet from front property line
- Maximum Area: 35 square feet (per side)

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

Maximum Height: 15 feet

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

Relevant Surface Area of Facade as Determined Pursuant to OHMC 19.36.020(40) (sq. ft.)	Maximum Sign Surface Area for That Facade
Below 100	20 percent of the sign area
100 – 199	21 sq. ft. + 9 percent of facade area over 100 sq. ft.
200 – 499	30 sq. ft. + 10 percent of facade area over 200 sq. ft.
500 – 999	60 sq. ft. + 9 percent of facade area over 500 sq. ft.
Over 1,000	105 sq. ft. maximum

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

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

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

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

- (c) **Sign Height – Building-Mounted Signs.** No building-mounted sign in the RO or C-1 district, regardless of type, shall exceed a height of 20 feet above grade, or above the height of the building to which it is attached, whichever is less.
- (d) **Limitation.** Any freestanding or building-mounted sign located in these districts shall be limited in content and message to identify the building and the name of the firm, or the major enterprise, and the principal service or product of the business without references to prices or the characteristics of the product or services offered.

- (3) Number of Signs. In the RO and C-1 districts no more than two primary signs are permitted for buildings facing on one street, only one of which may be freestanding. Buildings or building complexes on street corner locations may have two freestanding signs only if they are located on two different streets and are separated more than 100 feet, measured in a straight line between the signs. Buildings or building complexes which extend a block to face on two parallel streets are permitted two primary signs on each street, only one of which may be freestanding for each street.

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

- (4) Types and Placement. Within RO and C-1 districts the permissible types of signs, their placement and other limitations are as follows:
 - (a) Freestanding Signs. Requirements are identical to OHMC 19.36.030(5)(a), except that advertising shall not be permitted.
 - (b) Building-Mounted Signs. Requirements are identical to OHMC 19.36.030(5)(b), except that advertising shall not be permitted.
 - (c) Electronic Message Center Signs. These signs are allowed only in the C-1 district. Requirements are identical to OHMC 19.36.030(5)(g)_

Option A

or

Option B

or

Option C

- (d) Incidental Signs. In addition to the permitted primary signs, each building or complex of buildings is permitted the incidental signs as described and limited in OHMC 19.36.030(6).
- (e) Street Address Identification. Each building or complex of buildings shall display and maintain on-premises street address number identification.
- (f) Signs or portions of signs indicating premises for rent (e.g., "Apartment for Rent," "Apartment Available," "Vacancy," "Now Renting," "Free Rent," etc.) shall not exceed a surface area of six square feet and many remain up until the premises are sold or rented.

- (g) The illumination of any sign in the RO and C-1 districts shall be shaded, shielded, directed or reduced so that it is not visible from a public street or adjoining residential property.
- (h) Legal nonconforming signs same as OHMC 19.36.030(10) and (11).
- (i) Monument signs shall not exceed six feet in height measured from the finished grade to top of the sign and not exceed 32 square feet in area. Monument signs shall be located within the center two-thirds of street frontage. Signs may be located up to the property line when there is no sight visibility obstruction from driveways or intersections caused by placement of the sign.

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

Section Three. Section 19.36.050 of the Oak Harbor Municipal Code last amended by Ordinance 1553 section 4 in 2009 is hereby amended to read as follows:

19.36.050 Industrial, planned industrial park and planned business park district signs – I, PIP, and PBP zones.

Permissible signs and their limitation in the industrial district (Zone I) shall be identical to those in the commercial districts CBD, CBD-1, CBD-2, C-3, C-4 and C-5 (OHMC 19.36.030). Electronic message center signs are permitted in the I, PIP, and PBP zones and shall meet the requirements of 19.36.030 for business district signs except as follows:

Option A

or

Option B

or

Option C

Section Four. Section 19.36.060 of the Oak Harbor Municipal Code last amended by Ordinance 1640 section 2 in 2009 is hereby amended to read as follows:

19.36.060 Multifamily residential district and public facilities district signs – Zones R-2, R-3, R-4 and PF.

Requirements for signs in multifamily residential districts and public facilities districts shall be identical to those for the R-O residential office district and the C-1 neighborhood commercial district zones as set forth in OHMC 19.36.040.

- (1) ~~Exceptions for signs in the PF zone. In the public facilities zoning district, a single freestanding or building-mounted changing general electronic reader board is allowed with the following restrictions:~~
 - ~~(a) Freestanding signs are limited to 35 square feet in sign area, no more than 15 feet in height and must be set back five feet from the property line;~~
 - ~~(b) Wall-mounted signs are limited to 35 square feet in sign area and no more than 20 feet in height;~~
 - ~~(c) Lettering shall not be more than 12 inches in height;~~
 - ~~(d) The electronic message shall be limited to those allowed on noncommercial signs as defined in OHMC 19.36.020(25) and shall not change more frequently than every four seconds;~~
 - ~~(e) The sign's lights shall be limited to a warm-toned, off-white color or other similar color as approved by the development services director;~~
 - ~~(f) An electronic reader board counts as one of the allowed primary signs; and~~
 - ~~(g) For locations adjacent to a residential use or district, electronic displays shall be turned off between the hours of 10:00 p.m. and 6:00 a.m. Electronic message center signs in the PF zone are allowed and shall meet the requirements of 19.36.030 for business district signs except that brightness must:~~

Option A

or

Option B

or

Option C

Section Five. Section 19.36.070 of the Oak Harbor Municipal Code last amended by Ordinance 1640 section 2 in 2009 is hereby amended to read as follows:

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

- (1) General. Two categories of sign uses are covered by this section:
 - (a) Existing, Legal Nonconforming Commercial Uses. The provisions herein for signs for commercial uses apply only to legal nonconforming uses which have been approved under applicable zoning ordinances prior to the enactment of this code.
 - (b) Noncommercial uses such as schools, churches, fire stations and house number identification.
- (2) Signs for Existing Legal Nonconforming Uses. No more than one primary sign is permitted for each use in this category so long as the building remains legally nonconforming under the provisions of this title as follows:
 - (a) Such sign may be either freestanding or building-mounted.

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

maintenance or removal of these signs must be determined prior to their construction. (Ord. 1553 § 5, 2009; Ord. 1307 § 8, 2002; Ord. 1221 § 1, 2000. Formerly 19.36.060).

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

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

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

CITY OF OAK HARBOR

SCOTT DUDLEY, MAYOR

Attest:

Approved as to Form:

Valerie J. Loffler, City Clerk

Grant K. Weed, Interim City Attorney

Introduction:

Adopted:

Published:

Summary of EMC Regulations in Washington and the Northwest

Sign Feature	Jefferson County	SeaTac	Monroe	Moscow, ID	Burlington	Federal Way	Everett	Shoreline	Anacortes	Bellingham
Brightness Standard	0.3 to 0.8 footcandles above ambient depending on the zone. Must use autodim.	500 nits (night) - 8,000 nits (day).	0.3 to 0.8 footcandles above ambient depending on the zone. Must use autodim.	500 nits (night) - 8,000 nits (day). In addition, no more than 0.3 footcandles above ambient. Must use autodim.	1,000 nits (night) - 8,000 nits (day)	N/A	non-numeric: "shall be of such a light intensity to not cause any disruption of surrounding residential uses."	None	None	N/A
Video/Animation?	Yes, provided that sign is 35 feet from another sign using electronic display	No	Yes, provided that sign is 35 feet from another sign using electronic display	No	No	No	No	No	None	Animated signs allowed, but only for theaters
Duration	Minimum 8 seconds for text/2 second duration for video	1.5 seconds minimum	Minimum 8 seconds for text/2 second duration for video	Once every 8 seconds	Minimum of 2 seconds	N/A	Minimum 2 seconds for text	N/A	Once every 20 seconds	N/A
Other	Permit must be renewed each year.	Issue non-conforming sign permits for existing signs	Permit must be renewed each year.	Non-conforming signs must comply to the extent feasible						

2915 4th Ave South

Seattle WA 98134

t. 206.325.9711

f. 206.329.9532

800.354.3864

www.lightingdesignlab.com

August 23, 2013

Ethan Spoo
Economic Development Coordinator/Senior Planner
City of Oak Harbor
865 SE Barrington Dr.
Oak Harbor, WA 98277

In re: Recommended Night-time Brightness Levels for On-premise Electronic Message Centers (EMC's)

Dear Mr. Spoo,

I have reviewed the ISA document you provided me, (**Recommended Night-time Brightness Levels for On-Premise Electronic Message Centers**), dated April 2011, by Dr. Ian Lewin. First let me assure you that Dr. Lewin is eminently qualified to produce such a set of recommendations. For the IES, (Illuminating Engineering Society, see description at bottom of document), which is the recognized authority of the lighting industry, he has chaired, or has been an advisory member of several Sub-Committees dealing with exterior lighting standards.

Two of these committees have produced documents your office should own as part of your technical library. The first is Lighting Measurement-52-03, titled; **IES Guide for Photometric Measurements of Roadway Sign Installations**.

The second is, Technical Memorandum-11-00, titled; **Light Trespass: Research, Results and Recommendations**. Both can be purchased through the IES website: ies.org

Further, the methodologies used for both measuring and for regulating brightness levels described in the ISA document are based in sound industry practices derived from the documents mentioned above. Even as the technologies continue to evolve and change, inevitably leading to more and more usage of LED's, the methods of applying the recommended standards will not. I firmly believe this document will serve you well in developing policy for Oak Harbor and its environs.

Yours truly,

Jeff Robbins
Commercial Lighting Specialist

ABOUT THE ILLUMINATING ENGINEERING SOCIETY OF NORTH AMERICA

IES is the oldest and largest educational and scientific society in North America devoted to lighting. Since 1906, the IES has sought to improve the lighted environment by bringing together those with lighting knowledge and by translating that knowledge into actions that benefit the public. A broad variety of programs, including publications, conferences and seminars, have been established to accomplish this mission. IES publishes and distributes the finest lighting literature authored by committees with the most experienced minds in industry and academia today. For more information about IES, go to <http://www.ies.org>.

The Lighting Design Lab is sponsored by: *Seattle City Light · Northwest Energy Efficiency Alliance · Puget Sound Energy
Bonneville Power Administration · Snohomish County PUD · Tacoma Power · Idaho Power · Better Bricks
Energy Trust of Oregon · BC Hydro · WSU Extension Energy Program · South Seattle Community College*

Recommended
*Night-time
Brightness Levels*
for On-Premise
Electronic Message
Centers (EMC's)

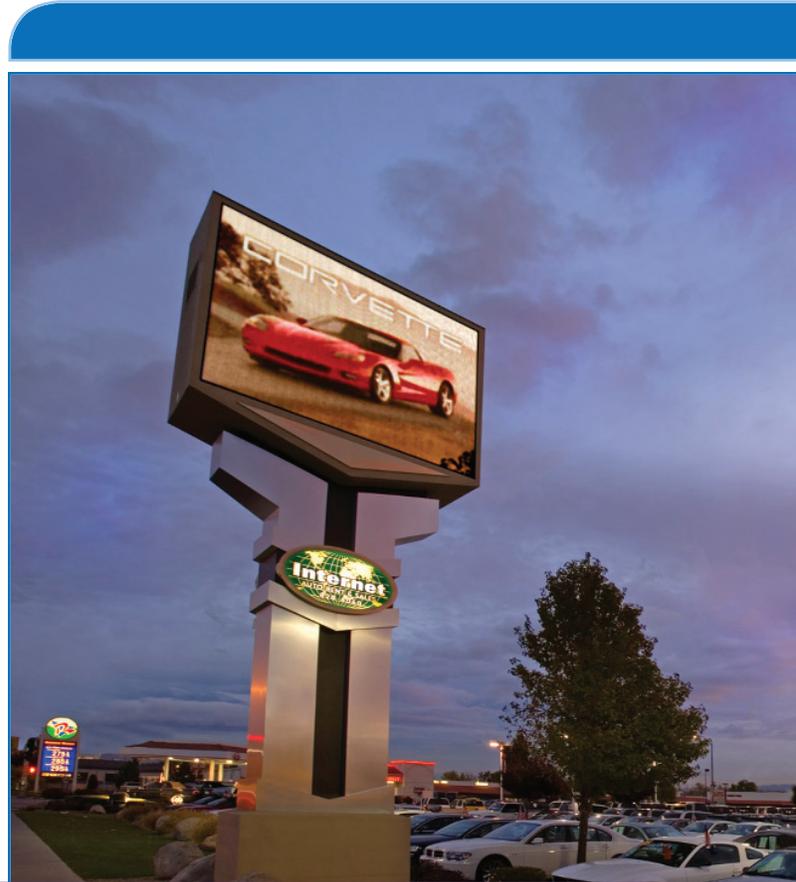


Table of Contents

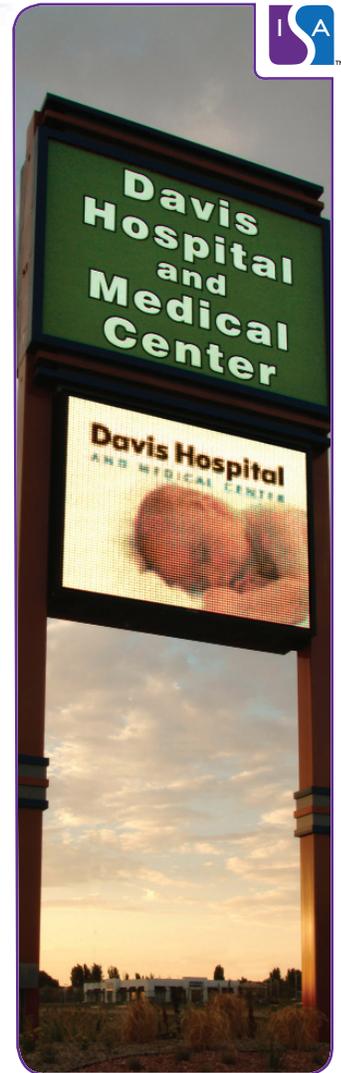


INTRODUCTION2

EXECUTIVE
SUMMARY4

RECOMMENDED
LANGUAGE6

SIX STEPS:
EMC BRIGHTNESS LEVELS7



Introduction



Electronic Message Centers (EMC's)



One of the more interesting types of signage that is becoming increasingly popular is on-premise **electronic message centers**, or EMCs. You may have heard EMCs being referred to as changeable message displays or digital signs.

EMCs are *not* digital billboards, which advertise a good or service that is located away from where the sign is located. Rather, EMCs are digital signs that are located *on the premises* of the business, and that advertise goods and services that are provided at the location.



Digital billboard/off-premise sign advertising an automobile business away from where the sign is located



Electronic Message Center (EMC)/on-premise sign advertising an automobile business that is located at the place of business

There is often confusion regarding on and off-premise digital signs. However, EMCs and digital billboards have very distinct capabilities and purposes, each targets a specific audience and each has traditionally been treated under separate legal and regulatory regimes. For the purposes of this publication, *we are focusing solely and exclusively on EMCs.*

EMCs that are too bright at night can be offensive and ineffective. EMC brightness at night is an issue where sign users, the sign industry, and the planning community have a common goal: ensuring that EMCs are appropriately legible. We know the messages that these signs convey can be rendered unattractive and perhaps even unreadable if they are programmed too bright.



That's why many sign companies recommend to their customers that in order for these signs to be most effective, their brightness be set at such a level to be visible, readable and conspicuous.

Introduction

In 2008, the International Sign Association (ISA) retained Dr. Ian Lewin of Lighting Sciences to help the industry develop scientifically-researched, understandable recommendations for EMC brightness. Dr. Lewin is a past chair of the Illuminating Engineering Society of North America (IES), and is greatly respected within the lighting field. His work for ISA was conducted with the input of experts within the sign industry. Dr. Lewin's full report can be found at www.signs.org.

As a result of this research, the recommended night-time brightness level for on premise EMCs is 0.3 foot candles above ambient light conditions when measured at an appropriate distance. This is a lighting level that works in theory and in practice.

The research and the recommendations contained in this report pertain only to EMCs, not traditionally internally illuminated signs, such as these channel letter and neon signs below. EMC's use a different lighting technology than most of these types of signs, and as such the scientific approach differs.



You can rest assured that the information contained in this publication is relevant, appropriate and workable for determining night-time EMC brightness levels.

We have provided six short steps to help guide the process and recommended statutory language. If you need further assistance, feel free to contact ISA at (703) 836-4012 to answer any of your EMC brightness questions.

EMCs and digital billboards have very distinct capabilities and purposes, each targets a specific audience and each has traditionally been treated under separate legal and regulatory regimes.

Executive Summary

ISA Electronic Message Display Brightness Recommendations



This summary has been developed to assist stakeholders concerned with development of brightness standards for large-format, electronic displays used for on-premise sign applications. This summary comprises:

- 1) *an overview of the importance of ensuring appropriate brightness,*
- 2) *technology utilized to ensure appropriate brightness,*
- 3) *recommended brightness standards, and*
- 4) *brightness measurement methodology.*

1. Overview of the importance of ensuring appropriate night-time brightness.

Electronic displays that are too bright at night can be offensive and ineffective. There are significant advantages to ensuring that an electronic display is not overly bright. These advantages include:

- » Conservation of energy
- » Increased life expectancy of the electronic display components
- » Building goodwill with the community
- » Ensuring the legibility of the display

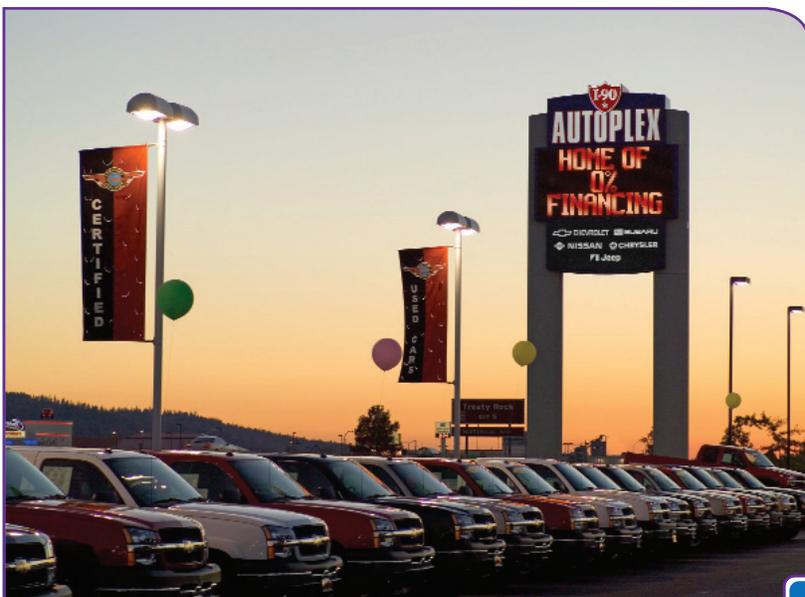
It is in the best interest of all stakeholders to ensure that electronic displays are sufficiently bright to ensure clear legibility, while at the same time avoiding a display that is overly bright.

2. Technology utilized to ensure appropriate brightness.

Most electronic displays are designed to produce sufficient brightness to ensure clear legibility during daylight hours. However, daytime brightness settings are usually inappropriate for night-time viewing. The following general methods are used to dim an electronic display for appropriate night-time viewing:

1. **Manual Dimming.** Using this method, the sign operator dims the display in response to changing ambient light conditions.
2. **Scheduled Dimming.** Sunset-sunrise tables allow an electronic display to be programmed to dim at the same time that the sun sets and rises. This method is generally acceptable, but is more effective when used as a backup to automatic dimming controls capability, such as photocell technology.
3. **Photocell Technology.** An electronic display that utilizes photocell technology can automatically dim as light conditions change. A photocell sensor alerts the display to adjust brightness according to ambient light conditions.

Most electronic displays are designed to produce sufficient brightness to ensure clear legibility during daylight hours. However, daytime brightness settings are usually inappropriate for night-time viewing.



ISA Electronic Message Display Brightness Recommendations

3. Recommended brightness standards.

ISA commissioned Dr. Ian Lewin of Lighting Sciences, Inc. to develop brightness criteria for on-premise electronic displays. Dr. Lewin is a leading lighting expert with over thirty years experience in the lighting industry.

Dr. Lewin recommended the development of brightness criteria based on the Illuminating Engineering Society's (IES) well-established standards pertaining to light trespass, IES Publication TM-11-00. The theory of light trespass is based on the concept of determining the amount of light that can spill over (or "trespass") into an adjacent area without being offensive.

As a result of his research, Dr. Lewin recommended two different brightness settings based on whether the EMC was located in an area of high or low ambient light. After field testing and utilizing Dr. Lewin's recommendations, it was determined that using the more conservative recommendation is appropriate in areas of both low and high ambient light. In order to simplify Dr. Lewin's recommendations, and to take a more reasonable approach to ensure that EMC's are sufficiently visible but not overly bright, it is recommended that EMC's not exceed 0.3 footcandles over ambient lighting conditions when measured at the recommended distance, based on the EMC size.

...it is recommended that EMC's not exceed 0.3 footcandles over ambient lighting conditions when measured at the recommended distance, based on the EMC size.

4. Brightness measurement methodology.

There are two generally accepted measures of brightness in the sign industry; illuminance and luminance. Illuminance, the preferred method, is a measure of the amount of light intercepting an object at a given distance from a light source and is measured in footcandles or its metric equivalent, lux. Illuminance can be measured with a footcandle meter (also know as a luxmeter), which are relatively inexpensive (\$100-1000) and commonly available. The footcandle meter should be accurate to two decimal points for accurate measurements. The second method, luminance, is an absolute measure of the amount of brightness that is being emitted from a light source and is usually measured in candelas per square meter, also known as "nits." Luminance can be measured by use of a "nit gun", which are expensive (~\$3,000) and difficult to procure. The preferred method of measurement is illuminance using a footcandle meter because a measure of luminance fails to account for ambient light conditions.



Recommended Legislative Language



“

1. **Electronic Message Center (EMC) Criteria:** The night-time illumination of an EMC shall conform with the criteria set forth in this section.
 - A. **EMC Illumination Measurement Criteria:** The illuminance of an EMC shall be measured with an illuminance meter set to measure footcandles accurate to at least two decimals. Illuminance shall be measured with the EMC off, and again with the EMC displaying a white image for a full color-capable EMC, or a solid message for a single-color EMC. All measurements shall be taken perpendicular to the face of the EMC at the distance determined by the total square footage of the EMC as set forth in the accompanying Sign Area Versus Measurement Distance table.
 - B. **EMC Illumination Limits:** The difference between the off and solid-message measurements using the EMC Measurement Criteria shall not exceed 0.3 footcandles at night.
 - C. **Dimming Capabilities:** All permitted EMCs shall be equipped with a sensor or other device that automatically determines the ambient illumination and programmed to automatically dim according to ambient light conditions, or that can be adjusted to comply with the 0.3 footcandle measurements.
 - D. **Definition of EMC:** A sign that utilizes computer-generated messages or some other electronic means of changing copy. These signs include displays using incandescent lamps, LEDs, LCDs or a flipper matrix.

”

SIGN AREA VERSUS MEASUREMENT DISTANCE

AREA OF SIGN sq. ft.	MEASUREMENT Distance (ft.)
10	32
15	39
20	45
25	50
30	55
35	59
40	63
45	67
50	71
55	74
60	77
65	81
70	84
75	87
80	89
85	92
90	95
95	97
100	100
110	105
120	110
130	114
140	118
150	122
160	126
170	130
180	134
190	138
200	141
220	148
240	155
260	161
280	167
300	173

* For signs with an area in square feet other than those specifically listed in the table (i.e., 12 sq ft, 400 sq ft, etc), the measurement distance may be calculated with the following formula: Measurement Distance = $\sqrt{\text{Area of Sign Sq. Ft.} \times 100}$

Six STEPS: EMC Brightness Levels

How to Measure the Brightness of an Electronic Message Center (EMC)

STEP 1

OBTAIN AN ILLUMINANCE METER.

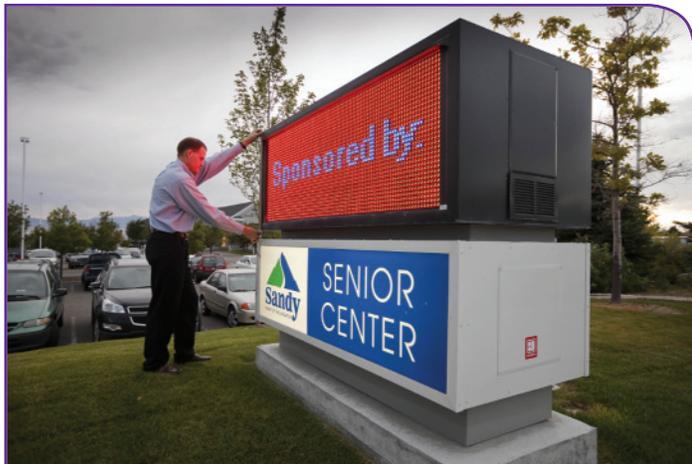
Purchase or otherwise procure an illuminance meter. Most city/county traffic departments have an illuminance meter, which are also referred to as lux or footcandle meters (lux is the metric measure of illuminance; footcandles is the English measure of illuminance). The illuminance meter must have the ability to provide a reading up to two decimal places and must be set to read footcandles. It is preferred to have an illuminance meter with a screw-mount that allows the sensor to be mounted on a tripod. A tripod ensures that the highly sensitive sensor is held perfectly still; otherwise it may be difficult to obtain an accurate reading.

If you do not have an illuminance meter, the Konica Minolta T-10 is a high quality illuminance meter that works well. However, other less expensive illuminance meters may also provide adequate results. The International Sign Association has no affiliation with Konica Minolta.

STEP 2

DETERMINE SQUARE FOOTAGE.

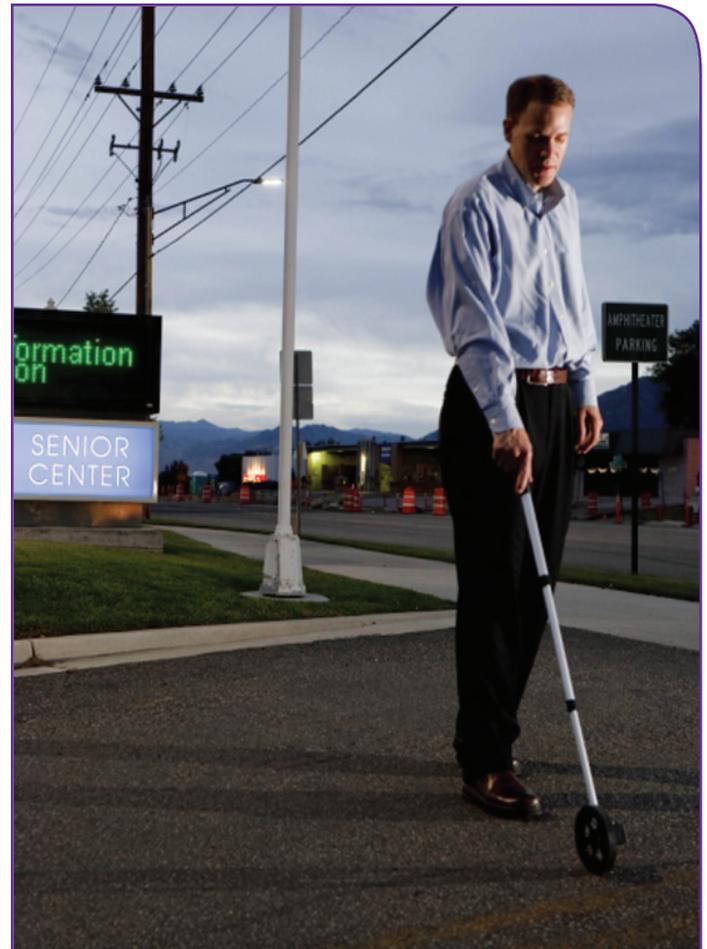
Determine the square footage of the face of the electronic message sign (EMC) by multiplying the height and width of the EMC. This information may be available in a permit application, or can be determined by physically measuring the height and width of the EMC. Do not include the sign face square footage attributable to any additional static signs associated with the EMC (if applicable).



STEP 3

DETERMINE THE MEASUREMENT DISTANCE.

Using the total square footage found in Step 2, look up the measurement distance in the table provided in the Recommended Legislative Language on page 6, to determine the distance to measure the brightness of the EMC. The distance should be measured perpendicular to the EMC sign face. The use of a measuring wheel is the most convenient way to measure the distance.



How to Measure the Brightness of an Electronic Message Center

STEP 4

PREPARE THE DISPLAY FOR TESTING.

Ensure that the EMC is programmed to alternate between a solid white (or in the case of a monochrome display – the solid color of the display) message and a blank message. You may wish to have a requirement that the sign owner cooperate with testing by programming the EMC for testing upon written notice.

STEP 5

USE AN ILLUMINANCE METER TO MEASURE THE BRIGHTNESS OF THE EMC.

Mount the sensor of your illuminance meter to a tripod and orient the sensor directly towards the face of the EMC at the measurement distance determined in Step 2.



STEP 5 [CONTINUED]

Ensure that the illuminance meter is set to measure footcandles up to two decimal places. As the display alternates between a solid white message and an “off” message, note the range of values on the illuminance meter. If the difference between the readings is less than 0.3 footcandles, then the brightness of the display is in compliance. If not, the display will need to be adjusted to a lower brightness level using the manufacturer’s recommended procedures.



STEP 6

ENSURE THAT THE DISPLAY CAN ADJUST TO DIFFERENT AMBIENT CONDITIONS.

Inspect the sign to ensure that it incorporates a photocell or other technology to ensure that the display can adjust according to ambient lighting conditions.

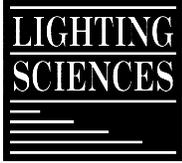
As the display alternates between a solid white message and an “off” message, note the range of values on the illuminance meter. If the difference between the readings is less than 0.3 footcandles, then the brightness of the display is in compliance.



1001 N. FAIRFAX STREET, SUITE 301
ALEXANDRIA, VA 22314
703.836.4012 PH
703.836.8353 FAX
WWW.SIGNS.ORG



RECOMMENDED NIGHT-TIME BRIGHTNESS LEVELS FOR ON-PREMISE ELECTRONIC MESSAGE CENTERS



Lighting Sciences Inc.
7826 East Evans Road
Scottsdale, Arizona 85260 U.S.A.
Tel: 480-991-9260 Fax: 480-991-0375
www.lightingsciences.com

Revised April 5, 2010

Report to: International Sign Association

Subject: Electronic Message Center Sign Luminance

Executive Summary

Work has been carried out to develop recommendations for the maximum luminance (brightness) of digital signs operating at night.

The Illuminating Engineering Society of North America (IESNA) publishes guidelines for outdoor lighting, some of which provide suggested limits on the amount of light that a light source operating at night can produce when measured at the eyes of a viewer. These recommended limits change depending on the “environmental lighting zone,” for example higher footcandles at the eye are allowed in urban areas where there is much electric light, versus suburban areas that are darker.

A sample digital sign has been evaluated for its light output characteristics in a light measurement laboratory. From these tests, the light level produced by the sign at the location of a viewer a certain distance away can be calculated. A table has been developed giving the maximum sign luminance that can be produced in the various environmental lighting zones such that the light level at the viewer’s eyes does not exceed the applicable limit per the IESNA recommendations

The recommendations have been developed for a sign area of 100 sq. ft. when viewed from a distance of 100 ft. The rationale for this choice is provided in the report. It has also been assumed that the sign is producing an all-white display, representing the brightest case. Signs of other sizes are addressed.

Using the methodology developed, an all-white sign is recommended to operate at a maximum luminance of 323 nits in an area of low ambient brightness, or 861 nits in an area of medium ambient brightness. This represents 4.6% and 12.3% respectively of the output of the typical sign that was measured.

Methods of measuring sign light output are addressed in the report, and an appendix describes the lighting units and relationships involved.

1. Background

Commercial signs employ a considerable variety of light source types. Various forms of lamps that are in use include fluorescent, neon, incandescent and High Intensity Discharge (mercury, metal halide or High Pressure Sodium) types. New signs may use LED's, or Light Emitting Diodes. Conventional signs have a fixed message: The lamps illuminate lettering or other display forms that usually do not have the ability to change what is displayed. In cases where a changing display is provided, this is usually achieved by simple on/off switching or dimming of certain parts of the sign.

Digital signs are a relative new form of signage where the sign face consists of a multitude of closely spaced dots of light, or picture elements (usually abbreviated to "pixels.") The pixels are red, blue and green, or monochrome/grayscale. In a manner equivalent to a television screen, by switching on the various color pixels in desired patterns and brightnesses, virtually any message can be created as a colored picture on the sign face. Such signs are driven by a computer with the on/off and brightness of each pixel at any moment controlled electronically by the computer program. Such devices are therefore frequently referred to as "Electronic Messaging Center" signs, (EMC).

A great advantage of EMC signs versus conventional signs is that sign messages, once programmed, can be changed as desired. Multiple messages can be provided with ease.

A further feature of EMC signs is that sign luminance, or brightness, can be controlled and varied. A high brightness normally is necessary during daytime hours to provide acceptable legibility. However, the same luminance used at night may be excessively bright, but controls provided in the computer software and associated electronics allow the brightness to be reduced to an acceptable level for nighttime usage. This can be assisted by the use of an auxiliary photocell on or near the sign, which detects the level of ambient light and feeds the measurement to the computer so that automated nighttime dimming is provided.

A significant question is "What level of sign brightness is acceptable at night?" A sign with too high a brightness level may be found objectionable by the public. A sign not bright enough may not provide satisfactory sign attention or legibility. Further, the nighttime brightness level that may be considered satisfactory in one area of a city may be unsuitable in a different area, depending on the ambient light or "competition" from other signage.

This report addresses these concerns and provides recommendations for sign light levels suitable for use at night. It does not cover factors related to changing images and sign message movement. Issues that may be related to motorists and their attention have not been investigated and use of the proposals in this study should be based on that understanding.

2. Sign Testing

As part of the evaluation of digital sign performance, a sample sign was obtained from Young Electric Sign Co., (YESCO. This was a Prism electronic display with a 20 mm pixel spacing driven by a suitable controller and computer. The sign was tested for its light output characteristics at the laboratories of Lighting Sciences Inc. Standard testing procedures were used in accordance with publication LM-35-02 (Reference 1), where the sign was placed on a goniophotometer, Lighting Sciences' model 6440, in a suitably equipped photometric dark room. The range of measurement angles was $\pm 90^\circ$ vertical and $\pm 90^\circ$ horizontal. Test distance was 8 meters. Test data collected was in terms of luminous intensity distribution, from which all other lighting quantities can be calculated for any desired distance. A range of tests was run with the sign producing an all white display (6800 K), and all red, all blue and all green displays. Sign brightness versus the dimmer settings was evaluated. Measurements were conducted for a complete range of angles of view.

Reports on the complete performance characteristics of the sign were produced. These were used in this project to assist in producing the recommendations developed later in this report. Appendix C provides a test report in industry standard format per LM-35-02, Reference 1, along with the measured dimmer settings. Appendix D provides the raw intensity data in industry standard IES format per publication IESNA LM-63-2002, Reference 2. (Electronic version available by contacting author.)

3. Lighting Quantities

Some basic knowledge of the quantities used to measure light is needed to understand how sign specifications can be developed. These are briefly summarized below; a more detailed coverage is provided in Appendix A.

Luminance. This is a measure of the brightness of the sign face. The units are "nits." Sign brightness can be measured by aiming a special meter, called a "nit gun," at the sign face from a viewer's location.

Illuminance, measured in footcandles. This is the amount of light that is intercepted by an object that is a distance away from the sign. That is, the lighted sign face illuminates objects that are away from it, and the lighting level produced by the sign on a particular object is measured in footcandles. For example, persons viewing the sign from a particular location will have a certain footcandle level falling on their eyes due to the light rays emitted by the sign.

A footcandle meter placed at the viewer's eye location will measure the received illuminance.

The footcandle level at the viewer's eye will be dependent on several factors:

The luminance or brightness of the sign

The distance from the sign to the viewer. Higher footcandles are produced at locations close to the sign.

The area of the sign. A 4x4 ft. sign will produce four times the footcandle level of a 2x2 ft. sign, all other factors being equal.

The angle at which a sign is viewed will influence the luminance that will be seen, and also will affect the footcandle level it produces at a given location. For simplicity, this report assumes that signs are being viewed from a direction perpendicular to the face of the sign. (This is the condition that shows the highest sign face luminance. This is true for all off-axis angles of view, whether vertical or horizontal or any oblique angle; sign output is maximum along the perpendicular to the face - see Appendix C.)

Appendix A provides formulas that relate sign luminance (brightness), sign area, viewer distance, and illuminance (footcandles) produced at a viewer's eyes.

Figure 1 and 2 illustrate the measurement of sign brightness, and footcandles at a distant location.

4. Avoiding Potential Problems

Outdoor lighting at night will usually create benefits, but if not well designed, can produce problems. The purpose of developing guidelines for digital sign lighting is to provide the benefits of digital imaging while ensuring that potential problems are avoided.

Environmental Lighting Zones

The goals of signage of any type are for the signs to be conspicuous, visible and legible. To achieve this, the brightness of the sign needs to be appropriate for the area in which it is used. A dimly lighted sign in a high ambient brightness urban area likely will not meet its purpose, yet may be perfectly acceptable in a low ambient brightness rural area. The brightness of a sign, therefore, needs to be attuned to the area where it is being used, and in particular to the general lighting levels that are prevalent. Some cities are now assigning Environmental Lighting Zones, where the cities are divided in accordance with the general ambient lighting levels that are in use. It will be useful to take this zoning into account when developing and assigning sign brightness recommendations or limitations. This is addressed in more detail below.

Glare

In cases of excessive brightness of outdoor lighting fixtures, glare can be created. For example, if an EMC is run at night at brightness levels that are typical and appropriate for daytime use, the result at night can be glary. Sign brightness limits must set the sign brightness level low enough such that the sign cannot create glare.

Light Trespass

Light trespass can be created at night when a lighting device illuminates areas where such lighting is not required or desired. A lighted sign should provide a legible message to viewers and, avoid excessive sign brightness.

If sign brightness is controlled to levels that ensure that light trespass onto neighboring areas is limited to an acceptably low level, glare from the sign should not be an issue. Therefore, by developing sign brightness recommendations based on accepted industry standards, as described below, both light trespass and glare will be effectively eliminated. By using sign brightness levels that are sufficient but not too high, the necessary conspicuity, visibility and message legibility can be achieved. These are the principles of the sign brightness recommendations developed in this report.

“Light trespass” is a term used in the outdoor lighting industry to describe light that falls outside of an area that is primarily intended to be lighted. For example, if a pole-mounted lighting system for a shopping center parking lot causes undesirable light to spill over into an adjacent residential neighborhood, this would be considered to be light trespass. High levels of light trespass, as well as being wasteful of energy, may have an appearance that is objectionable. The Illuminating Engineering Society of North America (IESNA), the “Lighting Authority,” has addressed such issues. Publication TM-11-00 (Reference 3) of the IESNA provides a table of limits of light trespass for various environmental lighting zones. These zones range from “no ambient electric light” (dark rural areas) to “high ambient electric light” (typically high use urban areas.) The limits are expressed in terms of the illuminance in footcandles that the light source in question can produce at a person’s eyes, measured above the ambient lighting that is produced by all other sources of light. The limitation values were determined from an extensive human factors research project (Reference 4) into the levels of light trespass that may or may not be considered objectionable in the various zones. Application of the limits keeps light trespass to a low level that is unlikely to be considered objectionable to most persons.

Digital signs are not the form of lighting that TM-11-00 was developed to address. In fact, digital signs are specifically intended to be seen over a wide area, much of which may be remote from the sign itself. Nevertheless, the principles of TM-11-00, in terms of the calculation method and the limits it provides, give a methodology that forms a useful method of specifying sign luminance (brightness) limits.

Numerous calculations have been performed to evaluate sign luminance in terms of the TM-11-00 procedures. The calculations involve determining the illuminance in footcandles (fc) at the location of the eyes of a viewer. (Referred to as “eye illuminance.”) TM-11-00 provides different eye illuminance limits depending on the lighting zone, LZ1 to LZ4, (referred to in TM-11-00 as E1 through E4), ranging from low ambient electric light to high ambient electric light. See table 1. (There is also LZ0 which has recently been added, for areas of extreme environmental sensitivity. The latest description of each type of ambient electric light zone is included in Appendix B.)

Zone	Light Produced by Sign, above Ambient	Eye Illuminance Limit (fc)
LZ1	Low ambient electric light	0.1
LZ2	Moderate ambient electric light	0.3
LZ3	Moderately high ambient electric light	0.8
LZ4	High ambient electric light	1.5

For example, if a sign is located in an area of moderate ambient light, zone LZ2, the eye illuminance limit is 0.3 footcandles. That is, at a chosen viewer location, the sign should not produce more than 0.3 fc at the viewer's eyes. This can be easily checked: The eye illuminance at the chosen point is measured using a footcandle meter with the sign off, and remeasured with the sign on at whatever dimming setting is being evaluated. Measurement of an all-white display will provide the worst-case conditions. i.e. If an all-white sign meets this condition, all other displays also will comply. The increase caused by switching on the sign should not exceed 0.3 fc.

Providing that a method is available to calculate the sign luminance that will generate a certain illuminance at the eye of a viewer, it can be determined what sign luminance is allowable while not exceeding the eye illuminance limits of TM-11-00. The setting for the signs dimming control then can be easily found. The formula relating sign luminance and eye illuminance (footcandles at the eye) is developed in Appendix A, and is discussed in the next section.

5. Determining the Maximum Allowable Sign Luminance.

Sign luminance (which refers to the *average* luminance or brightness of the sign) is expressed in candelas per square meter, cd/sq.m., otherwise termed "nits." The illuminance produced at the eye, considered as landing on a vertical plane at the eye, is designated E_v and is measured in footcandles. (See Appendix A)

To determine the maximum sign average luminance, L , that can be allowed so as to meet a given illuminance limit at the viewer's eye, E_v , the following must be known:

- Area of sign = S sq. ft.
- Distance from sign center to observation point = D feet (as measured from a plan view. Differences in height of the sign and viewer normally can be disregarded, as can lateral angle effects from the sign face.)

Using equation A5 from Appendix A:

$$\text{Allowable maximum sign luminance, } L = \frac{10.76 D^2 E_v}{S} \quad \text{cd./sq.m. (nits)}$$

----- 1

For example, to determine whether a sign meets a particular limit for the IESNA publication TM-11-00, the following steps are taken:

1. Select the applicable lighting zone from table 1 above.
2. Find the applicable eye illuminance limit from table 1. For example, if zone LZ2 is assumed, this will be 0.3 fc.
3. Determine the sign size. Assume for example a sign having an area of 100 sq. ft. (see discussion below).
4. Assume a distance to the viewer. Use 100 ft. (See discussion below).

These values are entered into formula 1 above.

$$\begin{aligned} \text{Allowable maximum sign average luminance} &= \frac{10.76 \cdot 100^2 \cdot 0.3}{100} \\ &= 323 \text{ cd/sq.m. (nits)} \end{aligned}$$

From this example calculation, it is determined that a 100 sq. ft. sign having a luminance of 323 nits will meet the IESNA recommended limit for a lighting zone LZ2 for a viewer located 100 ft. from the sign. Any sign having a luminance lower than 323 nits, of course, similarly would meet the IESNA limitation.

6. Variables to Be Considered: Viewer Distance

6.1 Viewer Distance

The distance from the sign to the viewer, D in the above formula, has a significant effect on the calculated allowable maximum sign luminance. Signs are typically viewed over a range of distances, and so the choice of the value of D will be somewhat arbitrary.

It is proposed to use a standard distance of 100 feet to develop sign luminance recommendations through the above form of calculation. The rationale for this recommendation is as follows:

- Choosing a reasonable but small distance such as 100 ft. protects against overly bright signs. If a large distance were to be used, the calculated allowable sign luminance limits would be high, and could be considered too bright by some viewers who may be located at a smaller distance.
- Based on an average sign size of 100 sq. ft. as in the above calculation, the luminance limit would be set at 323 nits. *By experience and through field evaluation, luminance levels of this order have been found to produce highly acceptable legibility, conspicuity and visibility, while avoiding over-brightness.* (Reference: Field evaluation studies carried out by Lighting Sciences Inc. and the International Sign Association).

In summary, standardizing on a viewer distance of 100 ft. for the calculations can be expected to satisfy the needs of both the sign operators and the general public, which is the goal of this research.

6.2 Sign Size

Digital signs are used in a variety of different sizes, ranging from small sizes of about 24 sq. ft up to large highway signs of 250 sq. ft. (Even larger sizes as may be used as digital billboards are not considered in this report.)

It is impractical to develop a different sign luminance specification for every different possible size of sign. It is proposed to use a 100 sq. ft. sign as a standard in the above form of calculation for practicality and simplicity.

Signs smaller than 100 sq. ft. will even more easily meet the IESNA recommendations presented above, thus meeting the desired goals. Larger sizes of sign will typically be used on highways where the distance to the viewer is greater than the proposed standard distance of 100 ft., and because of this will likely meet the IESNA limitations at typical viewer distances.

Not only is it logical to use a moderate sign size of 100 sq. ft., but as shown by the illustrative calculation provided above, calculations yield a sign luminance limit that has been found practical and desirable in field evaluations.

Field evaluation of signs of different sizes is addressed later.

6.3 Lighting Zones

The above example calculation is based on lighting zone LZ2 per IESNA specifications and indicates a luminance limit of 323 nits. Other lighting zones have different limits per the IESNA table, and equivalent calculations for these zones provide the following luminance limits:

Table 2 100 sq. ft. Sign at a Distance of 100 Feet Sign Luminance Limits		
Zone	Eye Illuminance Limit (fc) per IESNA	Sign Luminance Limit (Nits)*
LZ1	0.1	108
LZ2	0.3	323
LZ3	0.8	861
LZ4	1.5	1615

*Based on the proposed standard conditions of viewing a 100 sq. ft. sign at a distance of 100 ft. Section 7 addresses signs of sizes other than 100 sq. ft.

It can be seen from Table 2 that sign brightness can be increased considerably when the sign is in an area of moderately high or high ambient light while still meeting the IESNA criteria. It is cautioned that the level of 1615 nits for an LZ4 area is likely to be considerably higher than is desirable to provide optimum legibility.

It is proposed that the following luminance limits should be adopted as follows:

Areas of low ambient electric light: 108 nits (0.1 fc at 100 ft. for a 10 x 10 ft. sign)
 Areas of moderate ambient electric light 323 nits (0.3 fc at 100 ft. for a 10 x 10 ft. sign)
 Areas of moderately high and high electric light: 861 nits (0.8 fc at 100 ft. for a 10 x 10 ft. sign)

Before adoption of these values, Lighting Sciences Inc. advises that field evaluations of EMC signs should be conducted to verify that such levels produce the desired attention-gathering legibility and public acceptance.

7. Sign Sizes Other than 100 Sq. Ft.

The above illustrates the relationship between the recommended maximum sign luminance (nits) and the footcandle level the sign will produce, for a chosen standard sign size of 100 sq. ft. at a distance of 100 ft. For signs of different sizes, a different distance can be chosen to evaluate whether or not the sign meets the recommended luminance limits. Table 3 provides the measurement distance for a range of sign sizes.

Table 3 can be used for limits applicable to any Lighting Zone.

Table 3	
Sign Area Versus Measurement Distance	
Area of Sign sq. ft.	Measurement Distance (ft.)
10	32
15	39
20	45
25	50
30	55
35	59
40	63
45	67
50	71
55	74
60	77
65	81
70	84
75	87
80	89
85	92
90	95
95	97
100	100
110	105
120	110
130	114
140	118
150	122
160	126
170	130
180	134
190	138
200	141
220	148
240	155
260	161
280	167
300	173

8. Sign Dimming Settings for Nighttime Use

Laboratory evaluations for signs used in this study showed that, when operated at 100% manufacturer recommended luminance for a 6800 K white display, the sign will produce around 7000 nits. (Note: Different signs will vary in their maximum luminance output.) The following formula can be used to determine the dimming setting to be used for any desired luminance:

$$\text{Dimming setting \%} = \frac{\text{Required Luminance}}{\text{Luminance at 100\% Setting}} \times 100$$

For the above referenced sign, to meet the luminance limits developed in Table 2 for lighting zones LZ1, LZ2 and LZ3/LZ4, dimming settings as given in table 4 should be used. Note that different signs will require different dimming settings based on their specific maximum luminance output; such dimming settings can be calculated from the above formula.

Dimming Settings Based on Case Study		
Lighting Zone	Sign Illuminance Limit (Nits)	Dimming Setting*
LZ1	108	1.5%
LZ2	323	4.6%
LZ3 or LZ4	861	12.3%

* For a sign having a maximum luminance of 7000 nits. This is an example only.

9. Non-white EMCs

If the digital image will never be totally white, higher % dimming settings can be used while still meeting the luminance limit. The actual measured luminance values for the sample sign for a 100% luminance setting for different colors are:

White, 6800K	7000 cd/sq.m.
Red	1500 cd/sq.m.
Green	5100 cd/sq.m.
Blue	700 cd/sq.m.

For a normal image that includes multiple colors, the average luminance for a 100% setting will depend on the proportion of colors in the mix. Software and instrumentation is available to analyze sign luminance when the sign is being programmed.

For example, if a sign is completely green rather than white, the dimmer setting can be increased by a factor of $7000/5100 = 1.37$ while still meeting the maximum luminance limitation.

10. Adoption of the Method

This method uses the established and recommended procedures of IESNA to develop sign luminance limits. The limits of TM-11-00 (Reference 3) were established through research conducted by Lighting Sciences Inc. under a contract from the Lighting Research Office of EPRI (Electrical Producers' Research Institute). Reference 4) The basis of TM-11-00 was subsequently provided to IESNA to form the publication. Field use of the values for various forms of outdoor lighting confirm that the values are realistic and prevent undue annoyance to a majority of viewers, and thus appear to have formed a satisfactory basis for specifying such lighting limits.

The values provided in table 4 of this report are recommended by Lighting Sciences Inc. for evaluation by the International Sign Association.

11. Post-Evaluation

After a sign is installed, there will be cases where it is desired to evaluate the sign luminance to ensure that it does not exceed the specified value. This procedure is extremely simple and requires only a footcandle meter.

The sign luminance specification is based on ensuring that a certain footcandle level created by the sign is not exceeded at a chosen distance. Thus all that is needed to check compliance is the measurement of the footcandle level at that distance with the sign on and off. The footcandle meter is held at a height of 5 ft. (which is approximately eye height) and faces directly towards the sign. The applicable distance given in table 3. When conducting this check, the meter should be at a location perpendicular to the sign center (as seen in plan view) as this angle has the highest luminance.

If the area is LZ2, for example, and the sign size happens to be the standard size of 100 sq. ft., the difference in footcandle readings taken at a distance of 100 ft. should be 0.3 fc or less. This value is 0.8 fc for LZ3 and LZ4 zones if the Table 4 limits are being used. For sign sizes other than 100 sq. ft., measurements are made at the distance given in table 3.

Checks should be made using an all white image displayed by the sign in order to evaluate the worst case condition.

12. Summary of Proposed Method

Specification based on the light trespass limits adopted by IESNA in publication TM-11-00 appears to provide a manageable and technically viable method. This has been used to develop

the sign luminance limits and dimming settings provided in table 4, which are suggested for field evaluation by ISA members.

Because the sign luminance values have been derived from IESNA publication TM-11-00, which in turn is based on an extensive human factors research project, adoption of such values should satisfy the requirement that most persons will not find these sign luminance values to be objectionable. Field evaluation has indicated that such levels will provide conspicuity, visibility and legibility.

Ian Lewin Ph.D., FIES, L.C.
Revised April 5, 2010

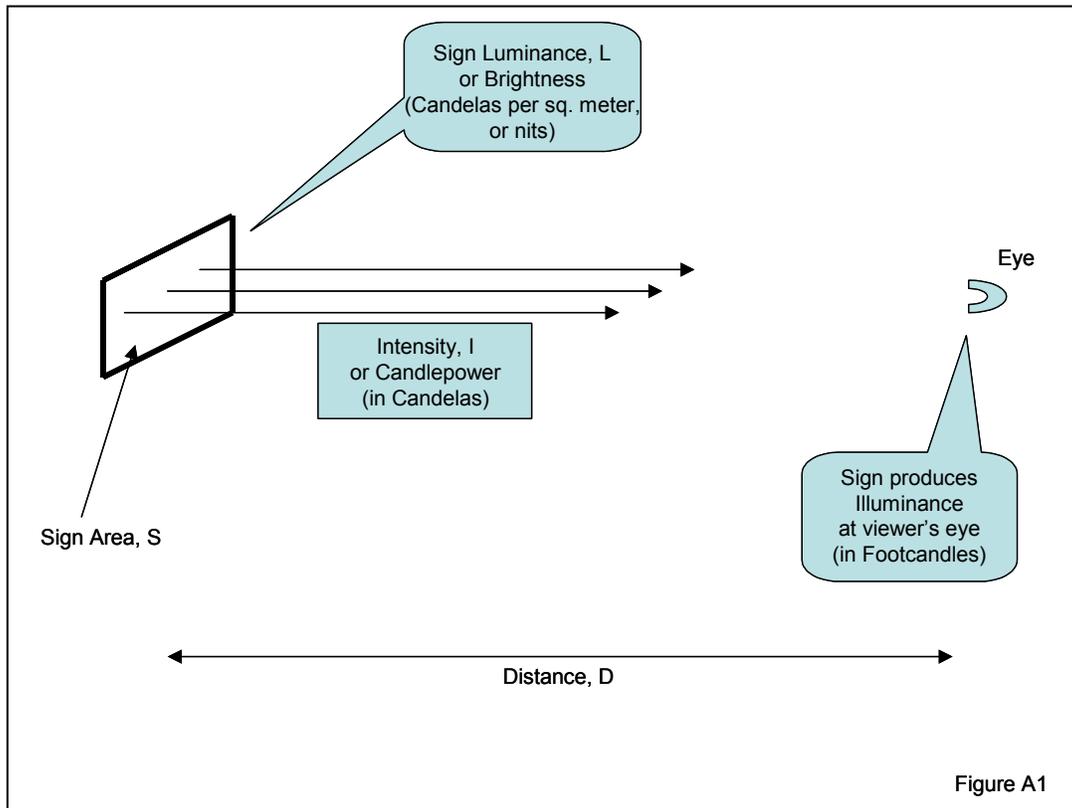
References

1. *IESNA Approved Method for Photometric Testing of Floodlights Using High Intensity Discharge or Incandescent Filament Lamps*. Publication LM-35-02, Illuminating Engineering Society of North America, New York, 2002
2. *IESNA Standard File Format for the Electronic Transfer of Photometric Data and Related Information*. Publication LM-63-03, Illuminating Engineering Society of North America, New York 2002.
3. *Light Trespass : Research, Results and Recommendations*. Publication TM-11-00. The Illuminating Engineering Society of North America. New York, NY. December 2000.
4. *Light Trespass Research*. EPRI Report No. TR-114914, March 2000. Lighting Research Office of the Electric Power Research Institute. EPRI Customer Service Assistance Center, Palo Alto, California. (1-800-313-3774).

Appendix A

Lighting Units and Terms

Several terms are useful in describing the light characteristics of digital signs. See figure A1.



Candlepower. This is the intensity, I, of light produced by the sign in a particular direction, and it is measured in “candelas.” For example, a sign of a certain size will emit a certain intensity of light in a direction perpendicular to its face. The intensities emitted in other directions will be less than that in the perpendicular direction. If the sign displays a white image, this intensity will be higher than if the sign face is any other color.

Candlepower does not change significantly with distance, providing the atmosphere is clear; the intensity continues as the light rays move in a straight line until they strike a surface.

Luminance, L, often called “brightness,” relates to the overall appearance of the sign. It is the candlepower emitted per unit area, and is expressed in units of “candelas per square meter,” or cd/sq.m. Say a sign that has an area of 2 square meters produces 400 candelas when viewed

from a direction perpendicular to its face, then its luminance is $400/2$, equal to 200 cd/sq.m. The term “nit” is also used. Such a sign is said to have a brightness of 200 nits.

The formula relating the sign size, luminance (or brightness) and the candlepower it projects is:

Candlepower (in candelas) = Luminance (in candelas/sq.m. or nits) x sign area (in square meters)

or $I = L \times S$ _____ A1.

(L is in nits, S is in sq.m.)

Illuminance, E. This is a measure of the amount of light that is intercepted by an object that is illuminated by the sign. Illuminance is measured in “footcandles,” and is dependent on the distance from the sign, as well as the candlepower the sign produces. If a viewer is looking at the sign, the illuminance at the viewer’s eye, E_v , can be found using the “Inverse Square Law,” which states

$$\text{Illuminance (in footcandles)} = \frac{\text{Candlepower (in candelas)}}{\text{Distance}^2 \text{ (in feet)}}$$

or $E_v = \frac{I}{D^2}$ _____ A2.

The value of I from equation 1 can be substituted into equation 2 to give

$$E_v = \frac{L \times S}{D^2}$$
 _____ A3.

Equation 3 is very useful because it relates sign size (S), sign luminance (or brightness) (L), and gives the footcandles (E_v) that will be produced by the sign at a distance, D feet. It can be rewritten:

$$L = \frac{D^2 E_v}{S}$$
 _____ A4.

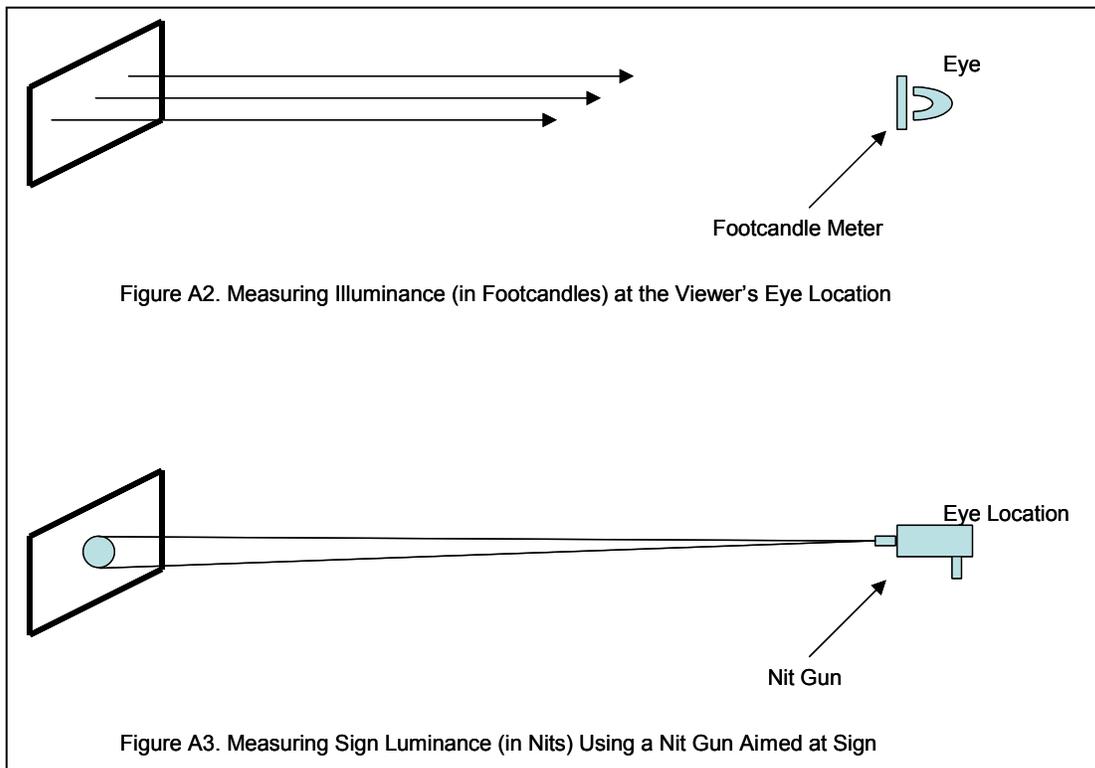
L is in nits, E_v is in footcandles,
D is in feet, S is in sq. meters

Otherwise, if the area of the sign, S, is in square feet, the equation becomes

$$L = \frac{10.76 D^2 E_v}{S} \quad \text{_____ A5.}$$

L is in nits, E_v is in footcandles,
D is in feet, S is in sq. feet

The illuminance, E, can be measured easily with a relatively inexpensive footcandle meter at a measured distance D feet from the sign. Figure A2. The area of the sign, S, presumably is known. Inserting these values of E, D and S into equation 5 allows the luminance, L in nits, to be calculated.



L, the sign brightness, can also be measured with a “nit gun”, which is a luminance meter that can be pointed at the sign. Figure A3. However such devices are more expensive and less readily available than a footcandle meter.

Because of the simple relationship as given in equation 5, sign luminance specifications can be written in terms of footcandle limitations at a certain distance. For compliance checking, if the footcandle value produced by the sign and measured at a prescribed distance is at or below a specified level, then it will be known that the sign luminance meets the desired limitation.

Appendix B

Description of the Lighting Environmental Zones (from IESNA*)

LZ0: No ambient lighting

Areas where the natural environment will be seriously and adversely affected by lighting. Impacts include disturbing the biological cycles of flora and fauna and/or detracting from human enjoyment and appreciation of the natural environment. Human activity is subordinate in importance to nature. The vision of human residents and users is adapted to the total darkness, and they expect to see little or no lighting. When not needed, lighting should be extinguished.

LZ1: Low ambient lighting

Areas where lighting might adversely affect flora and fauna or disturb the character of the area. The vision of human residents and users is adapted to low light levels. Lighting may be used for safety and convenience but it is not necessarily uniform or continuous. After curfew, most lighting should be extinguished or reduced as activity levels decline.

LZ2: Moderate ambient lighting

Areas of human activity where the vision of human residents and users is adapted to moderate light levels. Lighting may typically be used for safety and convenience but it is not necessarily uniform or continuous. After curfew, lighting may be extinguished or reduced as activity levels decline.

LZ3: Moderately high ambient lighting

Areas of human activity where the vision of human residents and users is adapted to moderately high light levels. Lighting is generally desired for safety, security and/or convenience and it is often uniform and/or continuous. After curfew, lighting may be extinguished or reduced in most areas as activity levels decline.

LZ4: High ambient lighting

Areas of human activity where the vision of human residents and users is adapted to high light levels. Lighting is generally considered necessary for safety, security and/or convenience and it is mostly uniform and/or continuous. After curfew, lighting may be extinguished or reduced in some areas as activity levels decline.

*Descriptions current as of April 2010. Expected to be adopted as final by IESNA.

Appendix C

Photometric Test Report on
YESCO 20mm Prism Electronic Display



Lighting Sciences

Lighting Sciences Inc.
7826 E. Evans Road
Scottsdale, Arizona 85260 USA
Tel: 480-991-9260 • Fax: 480-991-0375

CERTIFIED TEST REPORT NO. LSI 21628F

YESCO - LED 12.6" X 12.6" DIGITAL SIGN
RED GREEN BLUE LED ARRAYS AT 20mm SPACING
OPERATING IN WHITE MODE AT 6800K

FLOODLIGHT SUMMARY

FIELD ANGLE (BASED ON 10% OF MAX. CP.)	149.2H X 72.5V
BEAM ANGLE (BASED ON 50% OF MAX. CP.)	103.0H X 43.8V
IESNA & NEMA TYPE	7H X 5V
MAX. INTENSITY (CANDLEPOWER)	710 Candela
MAX. CP. VERT. ANGLE	0.0 Degrees
MAX. CP. HORIZ. ANGLE	0.0 Degrees
FIELD LUMENS	769 Lms.
FIELD EFFICIENCY	96.1 Percent
BEAM LUMENS	572 Lms.
BEAM EFFICIENCY	71.4 Percent
TOTAL LUMENS	800 Lms.
SPILL LIGHT LUMENS	31.1 Lms.

DATE: Oct 29 2008

FIELD ANGLE IS DEFINED BY 10 PERCENT OF MAX. INTENSITY (CANDLEPOWER)
BEAM ANGLE IS DEFINED BY 50 PERCENT OF MAX. INTENSITY (CANDLEPOWER)

LABORATORY RESULTS MAY NOT BE REPRESENTATIVE OF FIELD PERFORMANCE
BALLAST FACTORS HAVE NOT BEEN APPLIED

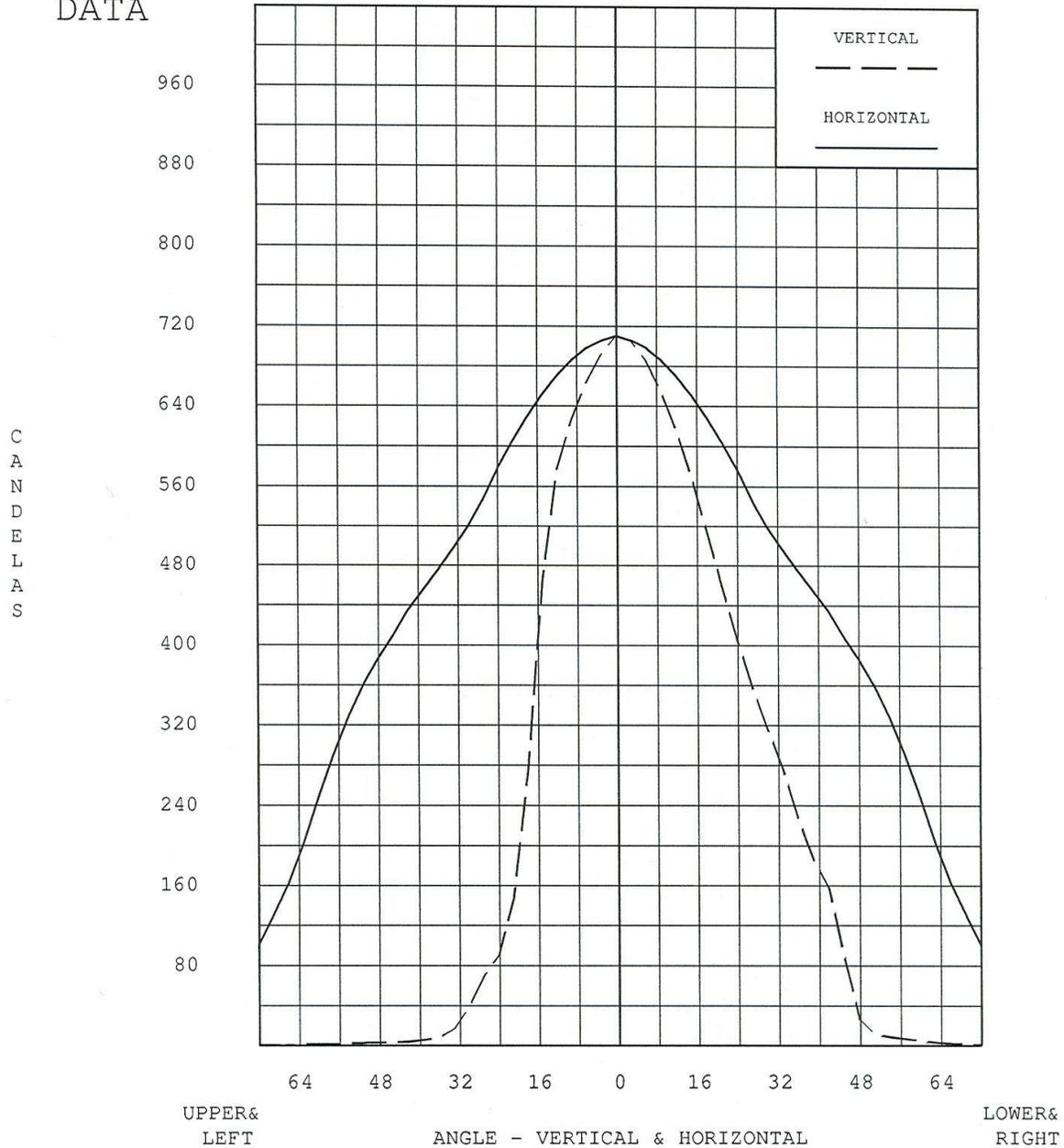
TESTED AND COMPUTED IN ACCORDANCE WITH IESNA LM-35-02
TEST DISTANCE IS 8 METERS (26 FEET) OR MORE

CERTIFIED TEST REPORT NO.21628F

YESCO - LED 12.6" X 12.6" DIGITAL SIGN
 RED GREEN BLUE LED ARRAYS AT 20mm SPACING
 OPERATING IN WHITE MODE AT 6800K

FLOODLIGHT
 DATA

CANDLEPOWER THROUGH ORIGIN



TEST No. 21628F
STANDARD TABLE OF CANDELAS AND LUMENS

ANGULAR DATA IS SHOWN WITH THE POLAR AXIS HORIZONTAL.

LUMINOUS INTENSITY IN CANDELAS AT CENTERS OF ZONES.
LUMINOUS FLUX IN LUMENS IN ZONES.

***** MULTIPLY CANDELAS BY 1 *****
LUMEN RATING: 801 Lms.

RIGHT HAND COLUMN SHOWS LUMEN TOTAL FOR ONE SIDE ONLY, 0 TO 90 Degrees

Table with columns for VERT ANG. (0.0 to -37.5) and HORIZONTAL ANGLE - DEGREES (1.0 to 90.0). The table contains numerical data for luminous intensity and flux across various angles.

LIGHTING SCIENCES, INC.
 7826 E. EVANS RD.
 SCOTTSDALE, AZ, USA 85260

CERTIFIED TEST REPORT NO. LSI 21628F

YESCO - LED 12.6" X 12.6" DIGITAL SIGN
 RED GREEN BLUE LED ARRAYS AT 20mm SPACING
 OPERATING IN WHITE MODE AT 6800K

INTENSITY (CANDLEPOWER)
 CANDELAS

VERTICAL TRACE				HORIZONTAL TRACE			
ANGLE	CANDLEPOWER	ANGLE	CANDLEPOWER	ANGLE	CANDLEPOWER	ANGLE	CANDLEPOWER
90.0	0.	0.0	710.	90.0	0.	0.0	710.
85.0	0.	-1.0	709.	85.0	4.	-1.0	709.
75.0	0.	-3.0	705.	75.0	66.	-3.0	706.
65.0	0.	-5.0	694.	65.0	174.	-5.0	702.
55.0	2.	-7.0	676.	55.0	317.	-7.0	694.
47.5	3.	-9.0	654.	47.5	390.	-9.0	686.
42.5	3.	-11.0	629.	42.5	431.	-11.0	675.
37.5	6.	-13.0	600.	37.5	464.	-13.0	663.
33.0	17.	-15.0	569.	33.0	496.	-15.0	650.
29.0	50.	-17.0	533.	29.0	527.	-17.0	636.
25.5	78.	-19.5	486.	25.5	562.	-19.5	616.
22.5	106.	-22.5	431.	22.5	591.	-22.5	591.
19.5	200.	-25.5	380.	19.5	616.	-25.5	562.
17.0	332.	-29.0	329.	17.0	636.	-29.0	527.
15.0	463.	-33.0	276.	15.0	650.	-33.0	496.
13.0	546.	-37.5	201.	13.0	663.	-37.5	464.
11.0	595.	-42.5	153.	11.0	675.	-42.5	431.
9.0	627.	-47.5	29.	9.0	686.	-47.5	390.
7.0	652.	-55.0	8.	7.0	694.	-55.0	317.
5.0	675.	-65.0	2.	5.0	702.	-65.0	174.
3.0	692.	-75.0	0.	3.0	706.	-75.0	66.
1.0	705.	-85.0	0.	1.0	709.	-85.0	4.
0.0	710.	-90.0	0.	0.0	710.	-90.0	0.

- UPPER - - LOWER - - RIGHT - - LEFT -

POLAR AXIS HORIZONTAL

Evaluation of Sign Dimming Controller
YESCO 20 mm Prism Sign

Dimmer Setting %	Measured Light Output %
100	100.0
90	91.6
80	82.1
70	72.5
60	62.8
50	52.7
40	42.7
30	32.4
20	22.0
10	11.3

Appendix D

Photometric Data in IESNA Standard Format

IESNA:LM-63-2002
 [TEST] 21628F
 [TESTLAB] LIGHTING SCIENCES, INC.
 [ISSUE DATE] 10/29/2008
 [MANUFACTURER] YESCO - LED 12.6" X 12.6" DIGITAL SIGN
 [LUMINAIRE] RED GREEN BLUE LED ARRAYS AT 20mm SPACING
 [OTHER] OPERATING IN WHITE MODE AT 6800K
 TILT=NONE

1
 801
 1
 37
 37
 1
 1
 0
 0
 0
 1
 1
 0
 0 2.5 5 7.5 10 12.5 15 17.5 20 22.5 25 27.5 30 32.5 35 37.5 40 42.5 45
 47.5 50 52.5 55 57.5 60 62.5 65 67.5 70 72.5 75 77.5 80 82.5 85 87.5
 90

0	5	10	15	20	25	30	35	40	45	50	55	60	65	70	75	80	85	90	95	100	105	110				
115	120	125	130	135	140	145	150	155	160	165	170	175	180													
710.2				696.0				674.6					646.4				613.3			566.5			462.7	299.6	174.9	105.6
80.5				67.1				38.9					19.1				9.0			6.0			5.1	3.4	2.9	2.7
2.5				2.2				1.9					1.5				1.1			0.6			0.3	0.0	0.0	0.0
0.0				0.0				0.0					0.0				0.0			0.0			0.0	0.0	0.0	0.0
710.2				700.5				682.8					657.1				626.1			585.4			507.8	360.7	220.1	130.1
88.0				73.2				50.2					26.7				12.6			7.4			5.6	4.2	3.2	2.8
2.7				2.4				2.1					1.7				1.2			0.8			0.4	0.1	0.0	0.0
0.0				0.0				0.0					0.0				0.0			0.0			0.0	0.0	0.0	0.0
710.2				701.0				683.1					657.7				627.0			586.7			511.2	365.6	223.7	132.6
89.1				73.9				52.9					28.2				13.5			7.7			5.7	4.3	3.2	2.9
2.7				2.5				2.1					1.7				1.3			0.9			0.5	0.1	0.0	0.0
0.0				0.0				0.0					0.0				0.0			0.0			0.0	0.0	0.0	0.0
710.2				701.4				683.9					658.9				628.8			590.0			521.3	383.8	239.8	142.9
93.0				76.2				57.8					32.2				15.7			8.4			5.9	4.5	3.3	2.9
2.7				2.5				2.2					1.8				1.3			1.0			0.5	0.1	0.0	0.0
0.0				0.0				0.0					0.0				0.0			0.0			0.0	0.0	0.0	0.0
710.2				701.1				683.9					659.5				629.8			592.8			532.0	402.3	257.4	155.8
98.8				78.9				63.2					37.5				18.5			9.5			6.2	4.9	3.5	2.9
2.8				2.5				2.2					1.8				1.3			1.0			0.5	0.2	0.1	0.0
0.0				0.0				0.0					0.0				0.0			0.0			0.0	0.0	0.0	0.0
710.2				702.0				685.6					662.2				633.8			598.8			547.1	435.5	289.6	178.2
109.7				82.8				69.4					46.2				23.9			12.0			6.9	5.4	4.0	3.1
2.8				2.5				2.2					1.9				1.5			1.0			0.5	0.2	0.1	0.0
0.0				0.0				0.0					0.0				0.0			0.0			0.0	0.0	0.0	0.0
710.2				702.5				686.7					664.1				636.8			604.2			559.3	466.2	326.2	206.8
126.2				88.7				74.6					56.4				31.7			16.1			8.4	5.8	4.6	3.3
2.8				2.4				2.2					1.9				1.5			1.2			0.6	0.2	0.1	0.0
0.0				0.0				0.0					0.0				0.0			0.0			0.0	0.0	0.0	0.0
710.2				702.5				687.5					666.0				640.1			609.3			570.8	500.1	376.4	248.9
155.2				101.9				79.4					66.8				45.0			23.9			11.9	6.9	5.1	4.0
2.9				2.5				2.2					2.0				1.7			1.2			0.8	0.4	0.1	0.0
0.0				0.0				0.0					0.0				0.0			0.0			0.0	0.0	0.0	0.0
710.2				703.3				688.8					668.8				644.4			615.2			581.5	530.7	433.7	304.5
196.9				125.2				87.6					73.7				59.5			36.5			19.0	9.8	6.0	4.7
3.5				2.7				2.3					2.0				1.8			1.4			0.9	0.5	0.1	0.0
0.0				0.0				0.0					0.0				0.0			0.0			0.0	0.0	0.0	0.0
710.2				703.3				689.7					671.0				648.0			620.8			590.5	551.3	486.0	373.8
255.6				166.9				109.2					81.7				69.5			54.2			32.7	17.3	8.9	5.6
4.3				3.2				2.4					2.2				1.9			1.6			1.1	0.7	0.4	0.1
0.0				0.0				0.0					0.0				0.0			0.0			0.0	0.0	0.0	0.0
710.2				704.2				691.8					674.5				652.7			627.1			599.0	566.0	522.8	447.5
336.0				230.6				152.2					101.8				77.1			66.8			53.0	32.5	17.2	8.9
5.4				4.2				3.1					2.3				2.1			1.8			1.4	1.1	0.6	0.2
0.0				0.0				0.0					0.0				0.0			0.0			0.0	0.0	0.0	0.0
710.2				704.8				693.6					677.7				657.7			633.6			607.2	577.5	544.0	500.4
427.4				322.8				223.9					149.9				100.9			76.5			65.4	53.5	35.0	19.4
10.1				5.8				4.2					3.2				2.4			2.0			1.8	1.4	1.0	0.5
0.2				0.0				0.0					0.0				0.0			0.0			0.0	0.0	0.0	0.0
710.2				705.1				695.1					680.7				662.4			640.2			615.5	588.0	558.6	526.8
488.0				425.5				332.8					237.1				162.0			110.9			78.8	63.8	54.9	41.4
25.3				13.6				7.1					4.6				3.5			2.6			2.2	1.9	1.6	1.1
0.6				0.1				0.0					0.0				0.0			0.0			0.0	0.0	0.0	0.0
710.2				705.7				696.5					683.4				666.5			646.0			623.2	597.6	570.3	542.2
512.0				476.0				429.4					363.4				279.2			198.1			134.5	91.9	67.5	56.0
47.7				34.9				21.2					11.4				6.0			4.1			3.2	2.7	2.3	2.0
1.4				0.7				0.2					0.0				0.0			0.0			0.0	0.0	0.0	0.0
710.2				706.7				698.5					686.5				671.5			652.7			631.8	608.4	582.8	556.4
528.2				496.4				465.5					436.5				401.7			349.5			278.5	200.7	135.8	91.5
64.3				50.8				42.8					32.6				20.8			11.1			6.1	4.1	3.5	3.0
2.7				1.9				0.8					0.2				0.0			0.0			0.0	0.0	0.0	0.0
710.2				706.5				699.2					688.2				674.3			657.2			638.2	616.5	592.9	568.4

541.7	511.0	483.8	460.2	437.5	414.0	389.5	359.0	310.9	246.9
177.9	117.1	74.9	51.1	39.0	30.5	21.5	12.9	7.2	4.6
3.9	3.4	2.3	0.9	0.1	0.0	0.0			
710.2	707.2	700.7	690.8	677.8	661.9	644.1	623.9	602.1	579.3
553.9	524.8	500.7	479.4	458.8	438.5	418.8	399.5	373.9	350.9
327.0	296.8	255.8	202.8	142.6	86.9	48.9	30.2	20.6	14.1
8.4	5.2	3.6	2.2	0.9	0.0	0.0			
710.2	708.2	702.2	693.0	680.8	665.7	648.9	629.8	609.0	587.2
562.1	534.4	512.2	492.9	474.0	455.5	437.9	420.2	396.5	376.8
356.0	331.4	302.9	271.5	237.9	200.2	166.0	135.9	103.0	68.5
37.5	17.8	7.4	3.3	1.1	0.0	0.0			
710.2	706.8	701.5	692.8	681.2	666.7	650.4	632.2	612.4	591.3
567.2	540.2	518.5	499.8	481.8	464.2	448.0	431.3	409.0	390.4
370.0	345.5	316.6	283.8	248.7	209.5	173.7	145.5	120.6	95.1
66.3	43.2	27.2	12.6	3.6	0.5	0.0			
710.2	708.5	703.3	694.7	683.0	668.8	652.2	633.7	613.4	591.8
566.8	539.5	517.3	498.5	479.7	461.5	444.5	427.4	405.0	386.2
365.4	340.9	312.6	280.4	246.2	208.9	174.4	147.7	124.1	99.9
73.6	51.9	35.4	21.2	7.9	0.9	0.0			
710.2	708.5	703.4	694.7	682.6	667.5	650.2	630.8	609.8	587.2
561.8	533.1	509.5	489.1	469.2	450.0	431.4	412.8	389.5	368.3
345.9	321.0	292.9	262.9	232.2	199.6	168.4	143.8	121.8	98.6
74.8	52.8	30.4	9.0	1.5	0.0	0.0			
710.2	708.6	703.2	693.8	681.1	665.2	646.6	625.8	603.1	579.0
552.6	522.6	496.6	474.3	452.7	431.1	410.2	390.0	365.3	341.0
316.4	290.0	262.5	234.5	206.4	178.0	150.5	126.8	102.8	78.2
51.4	17.6	5.6	1.8	0.3	0.0	0.0			
710.2	709.2	703.2	692.8	678.8	661.3	641.2	618.6	594.2	568.5
541.6	510.5	481.1	456.4	432.8	409.0	385.9	363.0	337.7	309.3
282.3	255.2	228.4	202.5	177.6	152.2	121.7	96.4	73.2	31.3
8.8	4.9	2.0	0.5	0.0	0.0	0.0			
710.2	708.8	702.4	690.9	675.4	656.3	634.6	610.3	584.4	557.5
529.5	498.0	465.6	437.9	411.9	385.8	360.0	334.1	308.3	278.1
250.3	223.6	198.1	172.0	140.1	115.9	94.4	51.3	13.4	6.5
4.2	2.1	0.8	0.1	0.0	0.0	0.0			
710.2	708.4	700.8	688.6	671.6	650.7	627.1	600.7	572.8	544.0
514.2	482.5	447.8	416.6	388.0	360.8	333.1	305.6	278.6	249.9
221.1	193.1	159.1	131.6	112.5	82.3	30.9	9.4	5.5	3.8
2.0	1.0	0.2	0.0	0.0	0.0	0.0			
710.2	708.8	700.7	686.4	667.5	644.4	619.0	591.1	561.7	531.2
499.9	467.5	432.5	397.0	365.9	337.2	308.7	280.2	252.8	225.5
190.1	153.5	129.6	109.8	67.6	21.4	7.6	5.2	3.7	2.2
1.2	0.4	0.1	0.0	0.0	0.0	0.0			
710.2	708.2	698.8	683.0	662.3	638.0	611.1	581.0	549.7	517.0
483.2	449.2	414.1	377.2	343.1	313.4	284.8	256.2	227.5	189.5
155.6	131.8	109.4	58.9	17.8	7.4	5.4	3.8	2.5	1.4
0.6	0.2	0.0	0.0	0.0	0.0	0.0			
710.2	707.8	697.6	680.4	658.5	632.6	603.8	571.8	538.0	502.6
466.3	430.5	395.5	360.4	325.0	293.1	264.2	234.1	193.9	161.1
138.9	114.2	58.4	18.8	7.7	5.6	4.2	2.8	1.8	0.9
0.4	0.1	0.0	0.0	0.0	0.0	0.0			
710.2	707.9	696.3	677.4	654.1	626.5	595.7	561.9	525.4	487.4
448.8	411.8	376.5	342.6	309.7	277.2	245.0	202.9	167.9	145.1
121.7	66.0	21.0	8.9	6.2	4.9	3.4	2.2	1.2	0.7
0.1	0.0	0.0	0.0	0.0	0.0	0.0			
710.2	706.6	694.0	674.1	649.2	620.3	587.8	551.7	513.0	473.0
433.2	395.5	360.1	326.5	295.1	263.9	221.5	179.9	154.1	131.8
83.1	29.4	11.1	7.0	5.7	4.2	2.8	1.8	1.1	0.5
0.1	0.0	0.0	0.0	0.0	0.0	0.0			
710.2	706.5	693.2	672.0	645.8	615.3	581.0	542.1	500.9	459.2
418.2	380.2	344.9	311.9	281.2	245.1	200.1	169.9	146.1	107.9
42.5	15.7	8.1	6.6	5.1	3.6	2.4	1.5	0.8	0.4
0.1	0.0	0.0	0.0	0.0	0.0	0.0			
710.2	705.8	691.4	669.0	641.8	610.0	573.9	532.8	489.8	446.8
405.5	367.5	332.5	300.0	268.2	225.0	186.6	161.9	137.1	76.7
25.9	11.3	7.6	6.2	4.7	3.2	2.1	1.3	0.8	0.3
0.1	0.0	0.0	0.0	0.0	0.0	0.0			
710.2	705.1	690.3	667.1	638.9	605.8	567.5	524.7	480.4	436.7
395.2	357.5	322.9	290.9	255.3	210.2	178.4	155.2	119.0	49.4
17.6	9.4	7.4	5.9	4.2	3.0	1.9	1.2	0.7	0.2
0.1	0.0	0.0	0.0	0.0	0.0	0.0			
710.2	704.4	688.6	664.6	635.5	601.2	561.9	517.9	472.2	428.1
386.8	349.2	315.0	283.1	242.8	200.3	172.5	148.6	95.6	34.0
13.6	8.6	7.1	5.7	4.0	2.7	1.8	1.2	0.6	0.2
0.0	0.0	0.0	0.0	0.0	0.0	0.0			
710.2	704.1	688.0	663.4	633.9	598.5	558.0	513.4	467.3	422.8
381.2	343.9	310.0	277.5	234.1	195.1	169.2	142.5	78.0	27.1
11.9	8.3	7.1	5.5	3.9	2.6	1.8	1.2	0.6	0.1
0.0	0.0	0.0	0.0	0.0	0.0	0.0			
710.2	702.6	686.0	661.2	631.0	595.1	554.1	508.6	461.7	417.2
376.0	339.1	306.0	272.7	228.3	192.1	167.4	137.0	67.4	23.7
11.0	8.1	6.9	5.3	3.7	2.5	1.7	1.0	0.5	0.1
0.0	0.0	0.0	0.0	0.0	0.0	0.0			
710.2	707.7	694.3	671.2	642.5	608.4	568.7	524.1	476.8	430.9
387.9	349.6	315.3	284.1	242.8	200.8	174.7	152.7	87.6	29.1
12.6	8.7	7.5	6.0	4.2	2.9	1.9	1.3	0.8	0.3
0.0	0.0	0.0	0.0	0.0	0.0	0.0			

COMPLIANCE WITH REVIEW CRITERIA

Zoning code text amendments are subject to the criteria in OHMC 19.80. Here, staff provide a brief written analysis of these criteria for Planning Commission discussion.

OHMC 19.80.020 REVIEW CRITERIA

1. The amendment must be consistent with the Oak Harbor comprehensive plan.

Response: *The Oak Harbor Comprehensive Plan contains many goals and policies. The most pertinent goals and policies pertaining to electronic message center signs are: Land Use Goal 1; Land Use policies 1(d and e); Urban Design policies 2f and 5c; and Economic Development Goal 3. A further response is provided to each of the pertinent goals and policies below.*

- a) *Land Use Goal 1: "To respect the "small town" heritage of Oak Harbor while enhancing the unique character of its neighborhoods and districts with development that is fitting with the City's future as a regional center."*

Further Response: *Oak Harbor's downtown is its historic center and focus of its small town heritage. The downtown continues to maintain a historic feel in its building architecture. Downtown commercial retail properties have narrow lot widths as compared with those along the highway. Lots which have commercial/retail land uses on them in downtown are typically much narrower than commercial properties elsewhere in the City. In addition, commercial buildings are located near front property lines. Buildings reflect architecture from the early to mid-1900s. For these reasons, electronic message center signs are incompatible with the small town heritage of downtown and the draft code proposes language which prohibits electronic message center signs in the Central Business District. This prohibition will respect Oak Harbor's small town heritage.*

Oak Harbor is a growing community which is the largest commercial center on Whidbey Island. Electronic message center signs are an advertising medium for Oak Harbor businesses which will likely be an important type of signage for businesses outside of downtown in the future. The draft code proposes restrictions on the size, brightness, hours of operation, distance from sensitive land uses, and color which will help make electronic message center signs compatible with their context.

- b) *Land Use 1.d: "Business-related signs, both temporary and permanent, should serve the needs of the business owner and public to identify business locations but should not proliferate in a manner whereby the sum of all signs detracts from a positive aesthetic experience of the City's commercial areas."*

Further response: *Electronic message center signs can be an important medium for advertising and identifying businesses. The overall quantity of signs allowed for a property/business is not proposed to be changed with the draft code. Electronic message center signs will be considered to be one more alternative sign type from which business/property owners can choose, but the overall amount of signage allowed for a given property will not increase with this proposal. In addition, staff are proposing restrictions on the size, brightness, hours of operation, distance from sensitive land uses, and color to help control aesthetic impacts of electronic message center signs in all areas where they would be allowed.*

- c) *Land Use 1.e: "Signage standards should promote design sensitivity to the context in which signs are placed and scaled to both the mass of the building and the location of the sign on the lot."*

Further response: *As with all other types of commercial signs, the quantity and size of electronic message center signs is primarily controlled by the size of the building façade as outlined in OHMC 19.36.030(2): larger building facades are permitted larger and more signs. The size of electronic message center signs is further controlled by the proposed code language limiting building mounted electronic message center signs to 100 square feet in area, EMC pole signs to 50 square feet, EMC monument signs to 24 square feet, and EMC pylon signs to 24 square feet. In addition, no more than one EMC is allowed per property. Thus, EMC signs are scaled to the mass of the building. Moreover,*

the EMC sign code places contextual limitations on brightness whereby the sign cannot exceed a brightness of 0.3 footcandles above ambient night-time light levels and signs must maintain a minimum distance of 100 feet from residential or open space zoned areas.

- d) Urban Design 2.f: "Consideration should be given to revising the sign ordinance in order to encourage signage more in keeping with the unique character of Oak Harbor."

Further response: The proposed code will constitute a revision to the sign ordinance. It will be Planning Commission's discretion as to whether EMCs are "in keeping with the unique character of Oak Harbor."

- e) Urban Design 5.c: "Free standing business signs should be consistent with the speed limit of roadways, and the character of land use districts."

Further response: The speed limit on SR-20 is 35-40 miles per hour and 30 miles per hour along Midway. The posted speed along Goldie Road is 35 miles per hour. Together these three streets constitute the vast majority of areas where EMCs could be placed if the proposed ordinance is adopted. The proposed EMCs ordinance contains provisions prohibiting scrolling or moving text, thereby helping to ensure that digital signs are readable from the adjacent roadway.

- f) Economic Development Goal 3: "Increase Oak Harbor's market share of retail sales to reduce the economic leakage off island."

Further response: Signs have been posited to contribute positively to the financial performance of retail businesses according to a study conducted by the University of San Diego between 1995 and 1997, which was sponsored by the sign industry¹. "On average, one additional sign installed on a site would result in an increase in annual sales in dollars of 4.75 percent at the site"² To the degree that EMCs help Oak Harbor businesses advertise and get additional attention from potential patrons, they are likely to contribute positively to the businesses' financial performance.

2. The amendment must substantially promote the public health, safety and welfare.

Response: As previously mentioned, studies have indicated that signs can contribute positively to the economic welfare of the community. Aside from the studies pertaining to traffic safety which are inconclusive, there is no information that staff is aware of that EMCs negatively affect public health.

The topic of safety is more difficult to address. Several studies have been conducted; their results taken as a whole are inconclusive. The majority of studies regarding EMCs with digital capabilities address digital billboards along highways, rather than on-site EMCs with digital capabilities and therefore may not be on partly applicable to this discussion. However, there are a few studies which have applicable findings for on-site EMCs with digital capabilities including a 2004 study by the University of Toronto which found that drivers make twice as many glances at video signs than they do at static signs. In addition, video signs and scrolling text signs received the longest average maximum glance duration³. The only study which deals specifically with onsite EMCs with digital capabilities which staff is aware of found that there is no significant relationship between these signs and automobile accidents and was

¹ Ellis, Seth R. and Robert Johnson. 1997. "Research on Signage Performance." In *The Economic Value of On-Premise Signage*. Malibu, Calif. And Alexandria, Va.: California Electric Sign Association and the International Sign Association.

² Morris, Mayra; Henshaw, Mark L; Mace, Douglas and; Weinstein, Alan. "The Economic Context of Signs." In *Context Sensitive Signage Design*. American Planning Association, page 84.

³ University of Toronto, 2004. "Observed Driver Glance Behavior at Roadside Advertising Signs. Beijer & Smiley.

sponsored by the sign industry.⁴ Therefore, the information available to staff indicates that there are inconclusive studies with regard to the safety impacts of EMCs with digital capabilities.

⁴ Texas A&M University. December, 2012. "Statistical Analysis of the Relationship between On-Premise Digital Signage and Traffic Safety."

Amendments to
OHMC 5.22 Nightclubs

Public Hearing

**City of Oak Harbor
Planning Commission Memo**

Date: September 24, 2013

Subject: Amendments to OHMC 5.22
Nightclubs

FROM: Cac Kamak, AICP
Senior Planner

PURPOSE

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

BACKGROUND

The Planning Commission was introduced to this issue on April 24, 2012 (Attachment 2). The Commission discussed the issue and received public input at the meeting. Speaking to this issue were several members of the public that represented residences adjacent to nightclub licensed establishments, nightclub licensed establishment owners and nightclub patrons. The public comments provided at the meeting outlined the key issues related to the impacts of nightclubs. These comments are summarized in the June 26, 2012 report to Planning Commission (Attachment 3)¹.

It was evident from the public input gathered that the scale of nightclubs and the number of people that they can accommodate have a direct nexus to the negative impacts on adjacent properties. Therefore, at its July 24, 2012 meeting, the Planning Commission discussed various methodologies to determine how to address the impacts. The Planning Commission determined that occupancy limit was an effective methodology in limiting the size of business that can apply for a nightclub license based on the zoning district.

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

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

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

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

DISCUSSION

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

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

RECOMMENDATIONS

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

Attachments

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

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

ORDINANCE NO. XXXX

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

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

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

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

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

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

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

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

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

5.22.030 Issuance restrictions.

No license shall be issued to:

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

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

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

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

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

5.22.035 Application restrictions.

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

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

5.22.040 Filing of application.

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

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

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

5.22.045 License conditions.

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

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

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

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

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

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

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

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

5.22.065 Violation of license conditions.

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

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

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

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

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

5.22.070 Revocation of license.

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

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

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

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

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

5.22.080 License – Compliance required.

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

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

5.22.090 Revision of license conditions.

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

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

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

5.22.100 Appeal to court.

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

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

Section Four. Effective Date. This Ordinance shall be in full force and effect five days after publishing.

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

CITY OF OAK HARBOR

SCOTT DUDLEY, MAYOR

Attest:

Approved as to Form:

Valerie J. Loffler, City Clerk

Grant K. Weed, Interim City Attorney

Introduction:

Adopted:

Published:

**City of Oak Harbor
Planning Commission Memo**

Date: April 13, 2012

Subject: Restricting size of Nightclubs
by zoning districts

FROM: Cac Kamak, AICP
Senior Planner

PURPOSE

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

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

BACKGROUND

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

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

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

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

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

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

DISCUSSION

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

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

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

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

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

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

RECOMMENDATIONS

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

Attachments:

Exhibit A – OHMC 6.56 Public Nuisance Noise

Exhibit B – OHMC 5.22 Nightclubs

Exhibit C- OHMC 19.20 Article VIII CBD Central Business District

**Chapter 6.56
PUBLIC NUISANCE NOISES**

Sections:

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

6.56.010 Findings and declaration of necessity.

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

6.56.020 Unnecessary noise prohibited.

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

6.56.030 Specific noises prohibited.

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

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

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

and who are voluntary listeners thereto;

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

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

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

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

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

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

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

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

(2) Noise Permit and Parade Permit as Exceptions.

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

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

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

(3) Additional Remedies – Injunction and Summary Abatement.

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

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

6.56.040 Further relief under the law.

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

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

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

City Website: <http://www.oakharbor.org/>
(<http://www.oakharbor.org/>)
City Telephone: (360) 279-4539
Code Publishing Company
(<http://www.codepublishing.com/>)

**Chapter 5.22
NIGHTCLUBS**

Sections:

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

5.22.010 Definitions.

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

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

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

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

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

5.22.020 License required.

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

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

5.22.030 Issuance restrictions.

No license shall be issued to:

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

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

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

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

5.22.040 Filing of application.

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

5.22.045 License conditions.

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

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

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

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

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

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

5.22.050 Annual license fee.

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

5.22.060 Proration of license fee.

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

5.22.065 Violation of license conditions.

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

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

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

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

5.22.070 Revocation of license.

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

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

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

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

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

5.22.080 License – Compliance required.

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

5.22.090 Revision of license conditions.

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

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

5.22.100 Appeal to court.

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

Article VIII. CBD – Central Business District

19.20.300 Purpose and intent.

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

19.20.305 Principal permitted uses.

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

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

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

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

(57) Upholstery shop;

(58) Variety store (R);

(59) Visitor information center;

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

19.20.310 Accessory permitted uses.

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

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

19.20.315 Conditional uses permitted.

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

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

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

(9) Public utility and communications facility;

(10) Transit terminals;

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

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

19.20.320 Density provisions.

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

(1) Allowable density:

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

(2) Minimum lot area, no limitation;

(3) Minimum lot width, no limitation;

(4) Minimum lot depth, no limitation;

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

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

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

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

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

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

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

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

(9) Maximum lot coverage, no limitation;

(10) Parking.

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

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

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

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

(11) Design Standards.

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

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

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

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

19.20.325 Conditions governing permitted uses.

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

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

19.20.330 Site plan and design review required.

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

Minutes

**Planning Commission
April 24, 2012**

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

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

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

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

NIGHTCLUB ORDINANCE – Public Meeting

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

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

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

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

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

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

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

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

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

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

Mr. Fakkema opened the meeting for public comment.

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

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

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

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

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

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

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

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

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

Ms. Beedle suggested:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. Fakkema closed the public meeting.

SIGN CODE – Public Hearing

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

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

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

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

SHORELINE MASTER PROGRAM (SMP) – Public Meeting

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

**City of Oak Harbor
Planning Commission Memo**

Date: June 26, 2012

Subject: Restricting size of Nightclubs
by zoning districts

FROM: Cac Kamak, AICP
Senior Planner

PURPOSE

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

DISCUSSION

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

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

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

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

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

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

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

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

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

CONCLUSIONS

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

Minutes

**Planning Commission
July 24, 2012**

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

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

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

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

Planning Commission took a 5 minute break.

NIGHTCLUB ORDINANCE – Public Meeting

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. Neil asked for public comment.

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

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

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

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

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

Planning Commission Discussion

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

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

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

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

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

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

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

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

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

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

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

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

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

ADJOURN: 10:30 p.m.

**City of Oak Harbor
Planning Commission Memo**

Date: September 25, 2012

Subject: Restricting size of nightclubs by zoning districts

FROM: Cac Kamak, AICP
Senior Planner

PURPOSE

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

BACKGROUND

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

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

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

DISCUSSION

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

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

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

Therefore, the zoning districts that would permit them are:

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

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

So what should the limits be for uses in the various zoning districts that can obtain a nightclub license? There is no known study or published information on this topic since it is not a common practice to regulate licenses by occupancy limits¹. Therefore there is no formula or guideline to indicate best case scenarios. However, the city can look at the current conditions and use that as a basis for regulations. The table below provides the occupancy limits of the uses that currently hold a nightclub license. It is clear that the Elements has a considerably larger occupancy limit than the other businesses and that large capacity seems to be the nexus to the impacts that adjacent property owners indicated in the many public input opportunities provided at the Planning Commission and City Council meetings.

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

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

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

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

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

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

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

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

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

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

Non-conformities

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

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

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

CONCLUSIONS

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

Minutes

**Planning Commission
September 25, 2012**

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

Planning Commission Discussion

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

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

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

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

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

Mr. Fakkema returned for the remainder of the meeting.

NIGHTCLUB ORDINANCE – Public Meeting

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

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

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

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

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

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

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

Mr. Fakkema asked for public input.

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

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

Planning Commission Discussion

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SHORELINE MASTER PROGRAM (SMP) UPDATE – Public Meeting

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

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

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

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

Economic Development Strategy

Public Hearing

Memo

To: Members of the Planning Commission
Cc: Steve Powers, Development Services Director
From: Ethan Spoo, Senior Planner
Date: 8/27/13
Re: Economic Development Strategy and Action Plan – Public Meeting

PURPOSE

This memorandum continues the discussion of the draft Economic Development Strategy and Action Plan (EDSAP) and recommends that Planning Commission open a public hearing, accept comment, close the hearing, and make a recommendation to the City Council on the EDSAP (Attachment 1).

DISCUSSION

INFORMATION ON ECONOMIC DEVELOPMENT COMMITTEE

During the August meeting, Planning Commission inquired about the makeup of the Economic Development Ad Hoc Committee. The following table shows the persons who make up that committee and whom had input on the EDSAP.

Member Name	Capacity
Bob Severns	City Council
Patty Cohen	Citizen/former mayor
Cathy Reed	Executive Director O.H. Chamber of Commerce
Ron Nelson	Executive Director Island County Economic Development Council
Mick Donahue	Executive Vice President, Skagit Valley College
Jennifer Meyer	NASWI Community Liaison
Dee Boothe	President, Technical Services, Inc.
Courtney Richmond	WorkSource Whidbey
Ron Apgar	Paint Your World
David Fikse	Owner Gerald's Jewelry and Planning Commissioner
Dwight Galbraith	Owner Whidbey Cleaners

Stan Stanley	Consultant
Ed Wilkins	Citizen
Sandi Peterson	Citizen/Planning Commissioner
Christine Cribb	Business Owner/Oak Harbor School Board Member

FURTHER EXPLANATION OF DEMOGRAPHIC INFORMATION

Planning Commission had questions about the findings and conclusions of the Economic Profile and Needs Assessment mentioned in the August Planning Commission report. Primarily, those questions centered on the finding that Oak Harbor has a lower than average income than other communities its size and the wisdom in pursuing tourism jobs.

Income

Attachment 2 is excerpt pages from the Economic Profile and Needs Assessment on the topic of income and wages. What that information shows is that Oak Harbor has a lower income than other cities in Washington in its population category (see Table 2 of Attachment 2). The information also shows that Oak Harbor has a greater share of households in the lower income categories, and fewer households at the higher income categories (see Table 8 of Attachment 2). The information in tables 2 and 8 come from the American Community Survey, which is a survey performed by the US Census Bureau every two years of a sample of households in Oak Harbor. Finally, the information in Table 9, which comes from the Quarterly Census of Employment and Wages also shows that there are more civilian sector jobs in Oak Harbor which fall in the lower income categories than in Island County or the State of Washington as a whole.

What is not included in the American Community Survey are housing and other types of monetary allowances provided by the US Navy to military personnel. Thus, it is possible that the information underrepresents the actual incomes of Oak Harbor households. However, it is important to understand that this information is key in attracting new businesses, especially retail establishments to the City, and the US Navy allowances may also not be considered by these businesses in their location decisions. For that reason, available income information sends an important, and possibly inaccurate signal, to businesses looking to locate to Oak Harbor. It is critical that the City understand this information and potentially distribute better information to new businesses so that they don't make location decisions based on artificially low income information.

Questions also arose as to why the Navy's allowances were not included in the income information presented in the Economic Profile and Needs Assessment. When staff prepared this Economic Profile and Needs Assessment, we explored available sources of income information. The available sources of information are the American Community Survey and the Quarterly Census of Employment and Wages. Unfortunately, because those are pre-packaged datasets, they do not include Navy allowances. In addition, there are no sets of information available which staff is aware of that take into account Navy allowances as part of the household income or wages reported. However, for Planning Commission informational purposes, it may helpful to know that there are five types of allowances that service members receive. The following table shows the different types of allowances and the amounts service members are eligible for.

Type of Allowance	Amount received per month
Basic for Housing	\$831-\$1,923 depending on rank
Basic for Subsistence	\$242.60-\$352.27
Cost of Living	\$0 for Oak Harbor zip code in 2013
Clothing	\$327.60 - \$630 depending on gender and level (basic, standard, special)
Family Separation	\$230

Tourism

Goal 4 of the EDSAP is “Welcome Tourists to Oak Harbor.” This goal and associated actions are aimed at increasing Oak Harbor’s appeal to tourists. The reasoning for this goal comes from the Economic Profile and Needs Assessment which shows that Oak Harbor receives \$3.35 per capita annually in lodging taxes – far less than the \$9.80 per capita statewide average. Additionally, other communities on Whidbey Island receive more: Coupeville receives approximately \$10.00 per capita and Langley approximately \$40.00 per capita. As a city, and especially as an island community, the lodging tax receipt information indicates Oak Harbor is underperforming in terms of attracting tourists.

Tourism is the single largest industry in the world and will likely maintain that status for the foreseeable future. It is true that tourism related jobs are low-paying. However, Oak Harbor is not a tourist-oriented town. If it is, the tourists are not staying overnight, as shown by our lodging tax receipts. Thus, Oak Harbor does not seem to be in danger of having an economy that is overly concentrated in tourism. The Economic Development Ad Hoc Committee felt that Oak Harbor could improve to be at least an “average” tourist community.

Staff is looking for Planning Commission’s input as to whether Goal 4 (Tourism) should remain as drafted, be edited or if Planning Commission is in favor of replacing this goal with another goal.

CHANGES TO DOCUMENT

Staff did not make any changes to the document this month. As a reminder, Planning Commission comments made last month reflected questions/concern about the following issues in the strategy and action plan:

- **Tourism** Concern was expressed that tourism-related jobs are low-paying and the City should be seeking to attract higher-paying jobs
- **Moorage near downtown.** Concern was expressed about the feasibility/viability of having a dock near downtown.
- **Amphitheater.** Concern expressed about the proximity of residential uses to the park and noise concerns associated with events at the amphitheater.
- **Additional studies.** Concern expressed about the number of strategy actions calling for additional studies to be conducted and the City’s ability to follow through on recommendations of these studies.

RECOMMENDATION

Staff recommends that Planning Commission approve the Economic Development Strategy and Action Plan with the understanding that staff will fine tune the purpose, background, and conclusions section of the document.

ATTACHMENTS

Attachment 1: Economic Development Strategy and Action Plan

Attachment 2: Excerpt pages from the Economic Profile and Needs Assessment

Economic Development Strategy and Action Plan: September, 2013



This page left intentionally blank

Acknowledgements

Oak Harbor City Council: Danny Paggao, Rick Almberg, James Campbell, Beth Munns, Tara Hizon, Bob Severns, Joel Servatius

Planning Commission: Keith Fakkema, Bruce Freeman, Sandi Peterson, Anna Schlect, Kristi Jensen, Greg Wassinger, Dave Fikse

Economic Development Ad Hoc Committee: Bob Severns City Council • Patty Cohen, Former Mayor • Cathy Reed, Executive Director Oak Harbor Chamber of Commerce • Ron Nelson, Executive Director Island County Economic Development Council • Mick Donahue, Executive Vice President • Jennifer Meyer, NASWI Community Liason • Dee Boothe, President Technical Services Inc. • Courtney Richmond, WorkSource Whidbey • Ron Apgar, Paint Your World • David Fikse, Gerald's Jewelry and Planning Commission • Dwight Galbraith, Whidbey Cleaners • Stan Stanley, consultant; Ed Wilkins, citizen • Sandi Peterson, Planning Commission • Christine Cribb, citizen

Focus Group Participants: Jason Trit, Flyer's Restaurant • David Wilson, Woody's Carwash • Jennifer Meyers, NASWI • Scott Smith, NASWI • Mike Welding, NASWI • Todd Krantz, Whidbey Island Bank • Abdul Sharif, Technical Services, Inc. • Lance Gibbon, Oak Harbor School District • Calvin Hewitt, Habitat for Humanity

City of Oak Harbor Staff: Ethan Spoo, Economic Development Coordinator

Cover Photo: Oak Harbor looking Northeast toward Mt. Baker

Contents

Acknowledgements..... i

Purpose 1

Background 1

 Economic Profile and Needs Assessment 1

 Focus Groups..... 2

Strategy and Action Plan..... 2

 Goals 2

 Table 1: Draft Strategy & Action Plan 3

Conclusion..... 6

Purpose

In the early to mid-1990s, Oak Harbor was faced with the prospect that Naval Air Station Whidbey Island (NASWI) would close as part of the federal Base Realignment and Closure Commission's recommendations. As a result of that process, Oak Harbor and its County partners produced the *North Whidbey Diversification Action Plan* in an effort to attract businesses to North Whidbey, and especially Oak Harbor, that were not dependent on the Navy.

Now, the City of Oak Harbor is faced with an entirely different prospect than it was in the 1990s: the Navy has announced that it will be relocating between four and seven new squadrons for the P-8A aircraft to NASWI. These new squadron personnel and their families will have a large impact on Oak Harbor's economy. Oak Harbor needs a new economic development strategy moving forward to capitalize on the squadron relocation, as well as address long-standing strengths and weaknesses in its economy.

This document is meant to fulfill the need for a new economic strategy given the new reality that Oak Harbor faces. The document is meant to be easy to read while still capturing the most important actions Oak Harbor can take to promote job and income growth in the next 3-5 years. The Economic Development Strategy and Action Plan (EDSAP) has been created taking into account the staff resources and time that it will take to implement this plan.

Background

Economic Profile and Needs Assessment

The Economic Development Ad Hoc Committee convened in early 2012. Beginning in January 2013, at the recommendation and guidance of staff, this committee began discussions on the Draft Economic Development Strategy and Action Plan (EDSAP). As part of the background research for the Draft EDSAP, staff prepared the "Economic Profile and Needs Assessment" and presented the findings to Planning Commission at the March, 2013 and to City Council in May, 2013 meeting. The Economic Profile and Needs Assessment forms the foundation of the EDSAP and is the basis of the strategies and policies in it. It is important to have a factual basis for the EDSAP moving forward as the evidence for the actions the plan recommends. Among the key trends of the Economic Profile and Needs Assessment are:

- **Slow population growth.** Oak Harbor's population growth has slowed dramatically over the last two decades from an annual rate of eight percent prior to 1990 to a rate between just above one percent thereafter. However, looking to the future Oak Harbor's population is expected to grow again dramatically as new squadron personnel and their families move to the area.
- **Young demographic.** Oak Harbor has a young demographic with strong representation of people in their 20s and 30s, but also has a fast growing population of senior citizens.
- **Housing affordability.** Oak Harbor has a housing affordability problem for civilian sector workers whose median wages are often too low to leave budget for non-housing related expenses (food, clothes, transportation, etc.).
- **High unemployment.** Oak Harbor's unemployment rate is higher than average and was the highest in the state for a city its size in 2010 at 11.1 percent. Oak Harbor's unemployment rate has been persistently high over the last decade in which NASWI was reducing military

personnel. The high unemployment could be due to the reduced personnel at NASWI, as well as the ongoing dynamic of veterans who recently left service and are looking for work.

- **Low incomes.** As previously mentioned, Oak Harbor's incomes are quite low, not considering Navy allowances for housing. Oak Harbor's median household income is approximately \$50,000 per year compared with incomes of \$70,000 for other cities its size across the state.
- **High per capita sales.** Possibly due to Navy allowances for housing and other living expenses, Oak Harbor residents likely have higher disposable incomes than their household income would imply and giving them more leeway to spend at local businesses.

Following the completion of the Economic Profile and Needs Assessment, the Economic Development Committee conducted several months of discussions on the EDSAP. The Committee worked diligently to create a document that is based on implementable projects that Oak Harbor can accomplish over the next 3-5 years with existing staff resources. For that reason, this EDSAP is primarily a list of projects, rather than a narrative style plan.

Focus Groups

In addition to the Economic Profile and Needs Assessment and the work the ad hoc committee completed, staff conducted four focus groups to obtain additional input on Oak Harbor's economy and potential obstacles to economic growth. The four focus groups conducted were: (1) US Navy (2) Small Businesses (3) Large Businesses and (4) Public Non-profit Institutions. Notes from the focus group sessions, as well as a summary of shared themes of those focus groups are included as Attachment 3. The focus groups were conducted in June and July of 2013.

Strategy and Action Plan

The Draft EDSAP is organized into four goals with actions listed under each goal. Each action is organized into those actions which require no additional funding or staffing and actions which require additional funding or staffing. There are a total of 31 different actions, 12 of which will require additional funding or staffing to accomplish and 19 which can be accomplished with existing funding and staffing levels.

Goals

The 31 actions are organized under four broad goals which are:

1. Retain and Grow Existing Businesses
2. Foster a Business-friendly Culture at the City
3. Redevelop to Catalyze Job Growth
4. Welcome Tourists to Oak Harbor

These four goals were chosen as the most important to promote economic development in Oak Harbor over the next 3-5 years. Retaining and growing existing businesses was chosen because research has shown that 60-80 percent of all job growth comes from existing businesses. In the past, economic development in cities across the US has focused heavily on recruiting new businesses. While recruiting new businesses is still important and attracts much attention, research is showing that helping existing businesses thrive is more productive and cost effective.

Fostering a business-friendly culture at the City was chosen because the committee perceived that improvements were needed to reach out to new and existing businesses to make them feel welcome

and cared for. In addition, the committee wanted to see that business interests were continually represented and taken into consideration in City decision making.

Goal 3 refers to the City’s efforts to create new redevelopment which will catalyze development on adjacent properties and create high quality buildings in which businesses can locate. For many years, downtown has been the focus of efforts to attract new development. The Draft EDSAP affirms that redevelopment is an important activity for the City to undertake to revitalize Oak Harbor’s business districts. Redevelopment might be accomplished by selling city-owned land to a developer who would meet City goals for design of a property.

Goal 4 focuses on tourism and attracting tourists to Oak Harbor. Tourism can be a controversial economic development focus because tourist-oriented jobs such as restaurants, tours, etc. usually pay low wages. However, the committee chose this goal because the Economic Profile and Needs Assessment showed that Oak Harbor lags far behind other communities for its lodging tax revenues meaning that Oak Harbor has work to do just to be seen as an “average” tourist destination.

The following table is the heart of the EDSAP and includes the goals and actions agreed to by the Economic Development Ad Hoc Committee.

Table 1: Draft Strategy & Action Plan

Goal/Action	Schedule	Funding
Goal 1: Retain and grow existing businesses		
Actions – No Additional Funding or Staffing		
1. Annual Business Survey and Reporting. Nurture open communication lines with existing businesses to anticipate their expansion or relocation needs. To do so, the City will implement a business survey to ascertain how the City can help existing businesses remain successful or avoid closing. The City will also have a business visitation program, as well as contact businesses which closed or left the City. The City will issue annual reports for survey and business visitation efforts.	Q1 2014 & annually thereafter	Nominal
2. Coordinate with the Chamber on researching “shop local” campaigns and report on the findings.	End of 2014	N/A
3. Seek grants/money to build the knowledge of existing business owners/operators to help them succeed and grow.	Ongoing	N/A
a. Actively promote free entrepreneurship training available to businesses through the Island EDC.	Ongoing	N/A
b. Spread the word about Skagit Valley College business classes and secure possible funding to send business owners to these classes. These classes would work in tandem with training classes offered by the Chamber.	Ongoing	N/A
4. Assist merchants in creating a mainstreet program for downtown Oak Harbor allowing a portion of B&O taxes to be used locally. Part of this effort should be to explore the feasibility of creating a historic district downtown.	End of 2014	N/A
Additional Funding and Staffing		
5. Explore creating a business incubator in coordination with Island EDC, Skagit Valley College, and the high school. Such incubator could be a light	End of 2014	Unknown

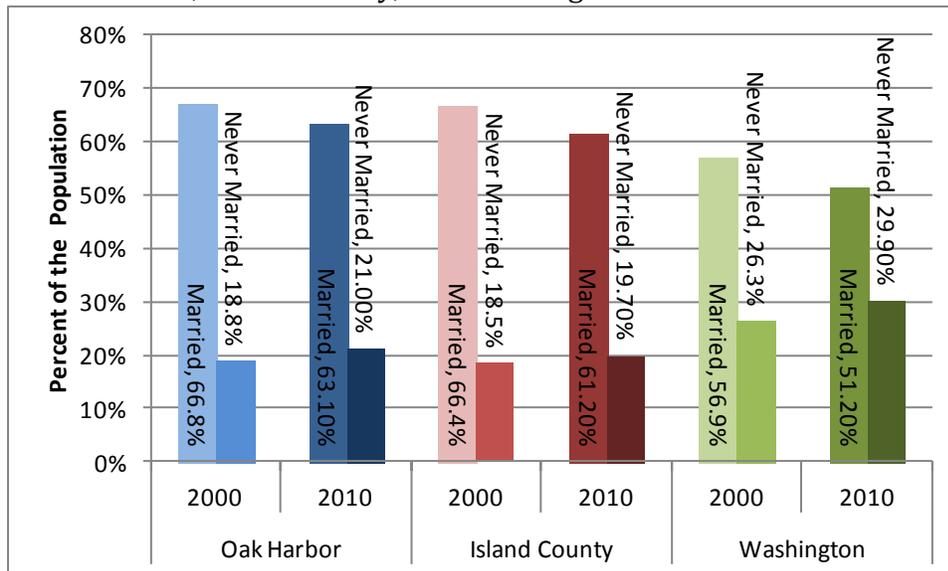
manufacturing/industrial incubator in the Goldie Road corridor and could work in conjunction with the high school vocational program.		
6. "Business Leadership Breakfast." Organize events in which the Mayor and Council can meet with business owners on a quarterly basis. These events may be hosted by different businesses in Oak Harbor.	Q1 2014	\$1,000 per event
Goal 2: Foster a business-friendly culture at the City		
No Additional Funding or Staffing		
7. Develop "welcome packages" for those considering opening a business in Oak Harbor. The packages should be tailored to retail, office, and industrial sectors and would provide information on the steps required to open their doors. The packages will include information on the economic impact of the Navy and information on WorkSource. The City should also develop recruitment/marketing packages with basic demographic/workforce information for Oak Harbor that can be used to attract new businesses. In addition, the City should contact new businesses, with the assistance of designated ambassadors, and establish relationships.	End of 2013	Nominal
8. Actively maintain business owner membership on boards and commissions.	Ongoing	N/A
9. Actively engage with the Chamber of Commerce and maintain constructive relationships with its leadership	Ongoing	N/A
10. Research financial incentives for new and existing businesses such as reducing/waiving/abating fees and taxes, tax increment financing, industrial revenue development bonds, and storefront improvement grants.	End of 2014	N/A
11. Create a business impact section in the City agenda bill.	End of 2014	N/A
12. Research target industries to attract to the City to determine which are most likely to succeed in Oak Harbor and fit the community's long-term vision.	End of 2014	N/A
13. Make a stronger link between the City's Capital Improvement Plan and the budget with realistic reflections of cost and time to complete projects to reduce guesswork and risk for developers.	End of 2015	N/A
14. Revise the list of permitted/conditional uses for the Central Business District code to streamline permitting and align uses with community policies.	End of 2016	N/A
15. Explore issuing planned action SEPA's to reduce regulatory barriers	N/A	N/A
Additional Funding or Staffing		
16. Complete a buildable lands analysis to ensure that there is an adequate supply of residential, commercial, and industrial land in the City and incorporate the findings from this study into the Comprehensive Plan.	End of 2014	\$10,000-\$15,000
17. Excellent customer service should be the hallmark of the business-friendly atmosphere at the City. Customer service training for employees should be regular and reoccurring.	Ongoing	\$10,000-\$20,000
18. Revise the "business" portion of the City website to include tools for new and expanding businesses, including possible financial incentives.	End of 2014	\$10,000
19. Consider developing a streamlined development review process and implementing it, including a "fast response" review team for the review of	End of 2016	Unknown

new business and job-generating uses.		
20. Complete a cultural resources management plan to more accurately quantify risk of encountering resources and to inform developers/builders about their responsibilities.	End of 2016	Unknown
21. Explore partnerships with nonprofit and private organizations to create a community center focused on, but not exclusively for, youth. A new senior center may be a component of the overall community center complex.	End of 2017	Unknown
22. Gauge parking supply and demand in downtown for now and the future. Explore feasibility of a public garage downtown which will help facilitate redevelopment of this area. Adequate parking is a precursor to investment in new retail and office space in downtown.	End of 2015	N/A
Goal 3: Redevelop to Catalyze Job Growth		
No Additional Funding or Staffing		
23. Explore selling land to a developer to create a catalyst development in downtown or elsewhere. The developer would need to meet City objectives for development of the land. The catalyst development might include a new City library.	End of 2015	N/A
Addition Funding and Staffing		
24. Determine the feasibility of overnight moorage pier/dock near downtown/Flintstone Park.	End of 2015	\$20,000
25. Explore creating a port district.	End of 2016	Unknown
Goal 4: Welcome Tourists to Oak Harbor		
No Additional Funding or Staffing		
26. The City, in coordination with the Chamber and Island County Tourism, needs to explore what it can do to increase tourism, including creating tourist attraction(s) and a regular schedule of events.	End of 2014	N/A
27. Explore better transportation options to and from the Marina, including pursuing grants for city bicycles and/or trolley.	End of 2014	N/A
28. Explore options for funding restrooms for downtown.	End of 2015	N/A
Additional Funding or Staffing		
29. Commission a study to explore ways that it can create a more tourist-oriented atmosphere in the City including an arch/gateway for downtown and updated design regulations for downtown.	End of 2016	\$15,000
30. Study the feasibility of constructing an amphitheater near the waterfront as envisioned by the Waterfront Redevelopment, Branding, and Marketing Program as well as other improvements envisioned by that plan such as vendors. The Windmill is a potential location for a vendor.	End of 2014	\$15,000
31. Market the City to tourists using the Whidbey Island Scenic Byway and the Cascade Scenic Loop, including capitalizing on visitors to Deception Pass Bridge possible transportation to and from the bridge. The City should work in coordination with the merchants to develop a "hot list" of things to do in Oak Harbor for tourists.	End of 2014	Unknown

Conclusion

Oak Harbor has significant economic opportunities and challenges ahead. Opportunities include the arrival of the new squadrons, its quality of life, youthful demographic, growing population of seniors, and high per capita sales. Challenges the City faces are high civilian unemployment, low incomes, and housing affordability. To be successful at economic development and encourage diverse, private-sector growth, Oak Harbor needs not to lose sight of these challenges and opportunities. Since other cities in the region are strategically positioning themselves to compete for new jobs and residents, Oak Harbor needs to remain competitive by embracing its own economic plan for the future. Economic development is a lofty, but achievable goal if Oak Harbor applies appropriate resources to the issue, tackles its problems head-on, and internally cooperates to meet its economic development needs. If it chooses, Oak Harbor can be a standout on economic development in Washington State.

Figure 3. Percent of the Population Married and Never Married in the Years 2000 and 2010 in Oak Harbor, Island County, and Washington



Source: American Community Survey 3-year estimates for 2009–2011.

Both Oak Harbor and Island County have a higher proportion of the population, which are married than does Washington State. This might be a surprise to some who have viewed Oak Harbor as having more unmarried males and females in their 20s and 30s due to the military influence. In fact, the opposite is true. However, like the Country at large, Oak Harbor's marriage rates are falling having decreased by 4 percent over the last decade.

Implications for Economic Development

While Oak Harbor's population is much younger than average as earlier discussed, it also has a larger proportion of married people and this is especially true of people in their 20s and 30s. Fully 58 percent of people aged 20-34 are married in Oak Harbor compared to 47 percent in the County and 32 percent in Washington State.

Married couples have different market needs than do unmarried couples. Married couples share housing, may be looking to settle down, have lower taxes, and perhaps most importantly, often have children. As borne out by the discussion on age, Oak Harbor has a higher than average population of 0-9 year olds which puts special demands on City infrastructure such as parks. The City should relay this information to new and expanding businesses to help them better understand their market.

Looking at the above information, it is probable that Oak Harbor has many young, married couples with one of the spouses in the US Navy. Since US Navy jobs can be transitory, the spouse who is not employed by the US Navy might need living-wage work while stationed in Oak Harbor, but have a hard time finding such work. As a result, the non-military spouse may not work or would settle for low-paying, service sector jobs.

These facts have several implications for economic development in Oak Harbor. First, Oak Harbor may want to look at developing a cutting edge code which encourages neighborhood-based employment so that US Navy spouses can work from home. Flexible live/work housing units might facilitate work for these spouses. Secondly, Oak Harbor should closely consider the work needs of these spouses by

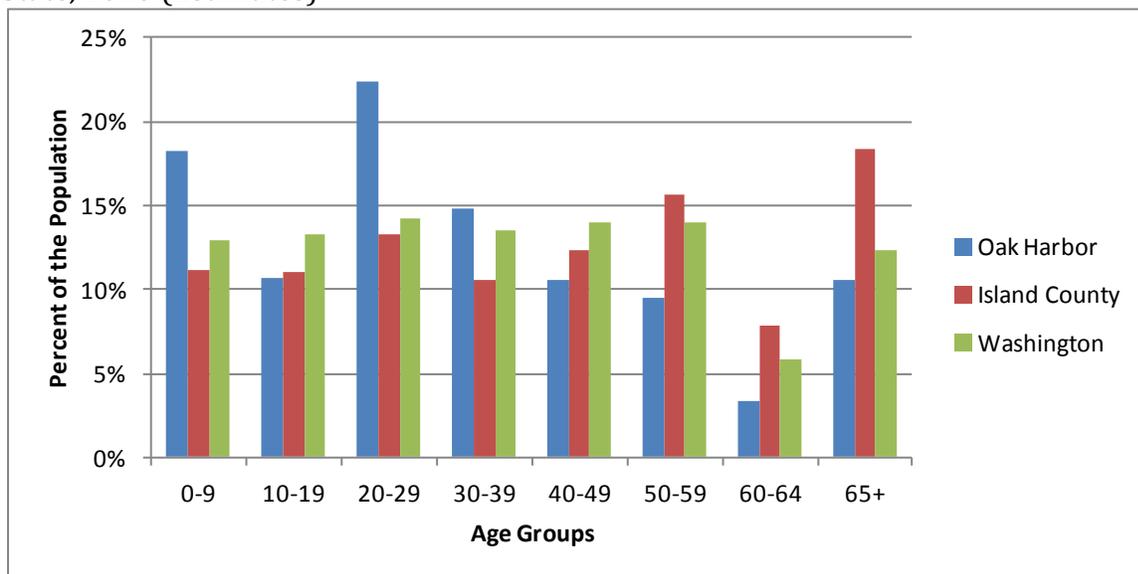
examining their level of education and experience in cooperation with the US Navy. It could then focus on attracting an employer or expanding an existing employer utilizing these skill sets. For example, if it was discovered that many military spouses are trained as nurses or could become nurses with some training, Oak Harbor might focus on attracting health care focused businesses. Given the growing population of seniors, there could be a strategic opportunity for nurse training and work in Oak Harbor.

Opportunity: The Oak Harbor business community has an opportunity to focus on the consumer needs of married couples. Married couples have different consumer preferences than do single people, including for cars, houses, clothing, and if they have children, for children’s items.

US Navy spouses are likely looking for work in their fields. Oak Harbor may have a built-in workforce for new businesses if it can ascertain the training and desired occupations of the spouses.

Age of the Population Analysis

Figure 4. Age Distribution of the Population for Oak Harbor, Island County, and Washington State, 2010 (Estimates)



Source: American Community Survey 3-Year Estimates for 2009-2011

Not surprisingly, Oak Harbor has a younger population than does Island County or the State. Over 50 percent of Oak Harbor’s population is below the age of 30, as compared with Island County (35 percent) or Washington State (40 percent). Oak Harbor has especially high proportions of children aged 0-9 and people in their 20s. These are not surprising findings given the presence of NASWI. On the other end of the age spectrum, Oak Harbor has fewer persons in their late working years (50 – 64) and senior citizens (65+). However, people age 65 and above are Oak Harbor’s fastest growing demographic having grown 13 percent since 2000.

Implications for Economic Development

In a State which already has a younger than average population than the nation, Oak Harbor’s young demographic is remarkable. Population age has multiple implications for economic development and

though its housing costs are lower means Oak Harbor resident’s incomes are much lower than average. The affordability issue has broad implications for economic development.

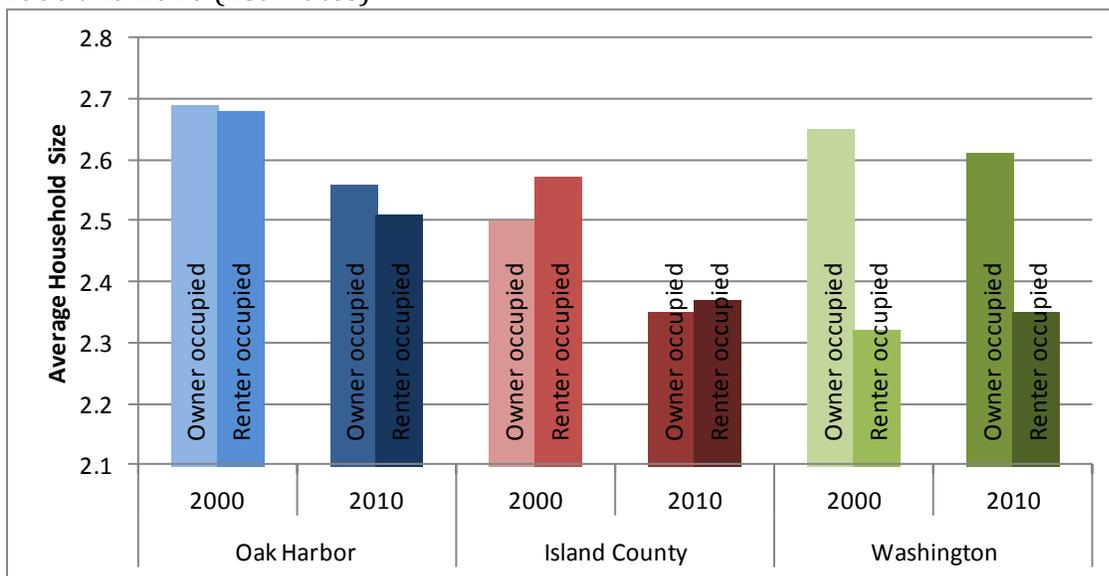
On one hand, housing is less expensive in Oak Harbor than in the County or the State, so that is an impetus for new residents and businesses to move to Oak Harbor. On the other hand, it is not affordable to own a house in Oak Harbor for existing residents. As new residents come to Oak Harbor, they will likely drive up the average cost of housing, making Oak Harbor even less affordable for existing residents and workers. People who already live in Oak Harbor may have to move elsewhere to find affordable housing and would be highly likely to leave the Island.

Since it is unaffordable to own a house in Oak Harbor, but remains affordable to rent, the City may need to explore what it can do to supply different ownership opportunities such as duplexes, condos, or townhouses which cost less than single-family and can be owned. Rezoning some land for these uses might help address this situation.

Weakness: Oak Harbor has an affordability problem for existing residents, which threatens to undermine economic growth because residents and employees will choose to move elsewhere. Because we know that housing prices are lower in Oak Harbor than Island County or the State, Oak Harbor’s housing affordability problem is almost entirely related to the low income of its residents. Nevertheless, Oak Harbor should explore strategies to maintain an adequate supply of housing and to reduce the effects of housing price inflation that come from constrained supply.

Household Size Analysis

Figure 18. Average Household Size in Oak Harbor, Island County, and Washington State in 2000 and 2010 (Estimates)



Source: 2000 US Census and American Community Survey 2009-2011, 3-year estimates.

Household sizes are dropping across the nation and the state as fewer people get married, have kids, and divorce rates increase. Oak Harbor’s household size dropped about six percent over the decade, versus seven percent in the County and just one percent in the State. Smaller household sizes likely

mean that demand is increasing for smaller units. As evidence of this, there is a nationwide trend toward smaller housing near downtowns located close to services and amenities.

Implications for Economic Development

Smaller household sizes mean that Oak Harbor's housing stock will need to change and adapt in the future to accommodate this trend. Oak Harbor should remove barriers to building multifamily housing in existing neighborhoods.

Opportunity: The decreasing household sizes represent an opportunity for the City to explore rezoning land which encourages different types of residential units such as condos, townhouses, and apartments which are tastefully integrated into existing and new neighborhoods.

Threat: The decreasing housing size could mean that Oak Harbor's housing stock, which is heavily slanted toward single-family units, becomes outdated and too large for smaller household sizes. Thus, the City should proactively track the supply of land zoned for all types of housing to make sure that it has enough land to meet future needs.

2016 Comprehensive Plan

Update

Public Meeting

CITY OF OAK HARBOR

TO: PLANNING COMMISSION
FROM: CAC KAMAK, SENIOR PLANNER
SUBJECT: 2016 COMPREHENSIVE PLAN UPDATE – COUNTY/CITY
DATE: 9/18/2013
CC: STEVE POWERS, DEVELOPMENT SERVICES DIRECTOR

2016 Comprehensive Plan Update – Checklist

The Department of Commerce has provided a checklist that cities can use to determine if their current comprehensive plan meets the requirements of the Growth Management Act (GMA) and other legislation that have been adopted in recent years. City staff has reviewed Oak Harbor’s Comprehensive Plan against this checklist. The checklist is attached to this memo and includes comments related to the requirements.

The checklist provided by the State is formatted with four columns. Column one lists the requirements that the plan must meet. Column two indicates whether the current plan meets that requirement. Column three indicates whether an update is required or whether further research is required to determine that. Check marks have been placed to indicate whether requirements are met or need to be addressed. The last column has notes by staff indicating locations of existing goals and policies that help meet the requirement and other comments if an update is necessary to meet the requirement.

A summary of the potential updates that need to be done for each of the elements is provided below.

Land Use Element

- Update the Future Land Use map to reflect the approved UGA boundaries. These will reflect the County’s decision on the 2005 UGA expansions. The City’s work with the County may lead to other potential amendments if deemed necessary for the 2016 update.
- Demographics and population statistics need to be updated. The population projection must be consistent throughout the Plan, so other elements such as Housing may need to be updated to reflect the most recent projections.

- Population densities and building intensities – acreage of each land use designation, the acreage in each implementing zone, the approximate densities that are assumed, and how it meets the twenty year population projection
- Research on the latest Best Available Science (BAS) needs to be done to determine if the current regulations on critical areas need to be updated.

Housing Element

- Update the statistics on housing that includes an inventory and analysis of existing and projected housing needs for the 20 year population projection.
- Identify sufficient land for housing – government assisted housing, housing for low income families, manufactured housing, group homes, and foster care facilities. – Inclusion in the zoning districts
- Adequate provisions for existing and projected housing needs for all economic segments –
- Policy regarding regulations of manufactured homes may need to be revised

Capital Facilities Plan Element

- Projects need to be identified for impact fees allocation. This can be done by identifying projects that are growth and non-growth related.

Transportation Element

- The Transportation Plan was adopted in 2007 and was intended to be a six year plan to identify improvements. However, it was also a long term plan with forecasts to 2035. The Plan needs to be updated. The Transportation Plan, in goals and policies, meets most requirements needed for the update, however, LOS analysis, financing plan, etc need to be updated.
- Since land use and transportation are closely linked, an update to the transportation plan could consider various land use scenarios and assessments in the long term planning for improvements and level of service.

Consistency

- Consistency is a primary goal for the County Wide Planning Policies (CWPP). The city is working with the county to maintain consistency in policies that impact both jurisdictions.

It can be generally noted from the extensive list of requirements that are in the attached checklist provided by the State that the current plan addresses most of the requirements and may not need to be amended. However, the amendments that do need to be done are fairly significant.

The attached checklist covers only the updates that are required for the Comprehensive Plan. Staff is currently reviewing the Development Regulations that need to be updated. Information on that will be provided at the next meeting.



Periodic Update Checklist for Cities – Updated June 2013

Covers laws through 2012

This checklist is intended to help cities that are fully planning under the Growth Management Act (GMA) to conduct the “periodic review and update” of comprehensive plans and development regulations required by [RCW 36.70A.130\(4\)](#). Cities can use the checklist to identify components of their comprehensive plan and development regulations that may need to be updated to reflect the latest local conditions or to comply with changes to the GMA since their last update.

This checklist includes components of the comprehensive plan and development regulations that are specifically required by the GMA. **Statutory requirements adopted since 2003 are emphasized in highlighted text** to help identify new components of the GMA that may not have been addressed in annual updates or other amendments outside of the required periodic update process. Cities within the Puget Sound Regional Council boundaries may want to use this checklist in tandem with [PSRC checklists](#). A separate checklist is available for counties. Expanded checklists (one for [Comprehensive Plans](#), one for [Development Regulations](#)) are also available, which include a more comprehensive list of related good ideas and things to consider.

How to fill out the checklist

With the most recent version of your comprehensive plan and development regulations in hand, fill out each item in the checklist. Select the check box or type in the fields, answering the following questions:

Is this item addressed in your current plan or regulations? If YES, fill in the form with citation(s) to where in the plan or code the item is addressed. We recommend using citations rather than page numbers because they stay the same regardless of how the document is printed. If you have questions about the requirement, follow the hyperlinks to the relevant statutory provision or rules. If you still have questions, visit the [Commerce web page](#) or [contact a Commerce planner](#) assigned to your region.

Is amendment needed to meet current statute? Check YES to indicate a change to your plan or regulations will be needed. Check NO to indicate that the GMA requirement has already been met. Local updates may not be needed if the statute hasn’t changed since your previous update, if your city has kept current with required inventories, or if there haven’t been many changes in local circumstances. Check “Further Review Needed” if you are unsure whether the requirement has already been met or if the city is considering a review, but hasn’t yet decided.

Is your city considering optional amendments? Use this field to note areas where your city may elect to work on or amend sections of your plan or development regulations that are not required by the GMA.

How to use the completed checklist

Commerce strongly encourages you to use the completed checklist to develop a [detailed work plan](#) (see Appendix B) for your periodic update. The checklist can be used to inform the contents of a city council resolution that defines what actions will be taken as part of the GMA periodic update.

	Addressed in current plan or regs? If yes, where?	Changes needed to meet current statute?	Is city considering optional amend-ments?
--	---	---	---

I. Required Comprehensive Plan Elements and Components

1. A Land Use Element that is consistent with countywide planning policies (CWPPs) and RCW 36.70A.070(1) .			
a. A future land use map showing city limits and urban growth area (UGA) boundaries. RCW 36.70A.070(1) and RCW 36.70A.110(6) WAC 365-196-400(2)(d) , WAC 365-196-405(2)(i)(ii)	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes Location(s)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Further review needed	Oak Harbors' Comprehensive Plan has a future land use map. Changes may need to be done to remove areas that were not approved as part of the 2005 update. There may also be amendments based on the 2016 update.
b. Consideration of urban planning approaches that increase physical activity. RCW 36.70A.070(1) , Amended in 2005 WAC 365-196-405 (2)(j)	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes Location(s)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Further review needed	The Comprehensive Plan has several goals and policies that encourage physical activity. Urban Planning approaches are: <ul style="list-style-type: none"> • Design for people • Interconnected Streets • Infill Development • Mixed Use centers • Create a network • Amenities for pedestrians • Safe routes These approaches are addressed in various sections of the Plan. LU Goal 6, LU Goal 16 e, UD Goal 4, TE Goal 2, TE Goal 3, TE Goal 4
c. A consistent population projection throughout the plan which should be consistent with the Office of Financial Management forecast for the county or the county's sub-county allocation of that forecast. RCW 43.62.035 , WAC 365-196-405(f)	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes Location(s)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Further review needed	The 2005 Comprehensive Plan Update adopted a 20 year projection of 30,419 (Pg 75). This population will need to be updated for 2036. The population projection impacts the Land Use and the Housing elements in the current plan.
d. Estimates of population densities and building intensities based on future land uses. RCW 36.70A.070(1) ; WAC 365-196-405(2)(i)	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes Location(s)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Further review needed	The Comp Plan currently has housing densities (Pg 74) but does not have population densities. However, all housing related statistics need to be updated. Population density for land uses need to be done by comparing census tracts and land uses using GIS. Building intensities calculations will also need to be done and require spatial analysis tools such as GIS. Building intensities for future land uses are determined by a land capacity analysis. These will have to be done for the City and

	Addressed in current plan or regs? If yes, where?	Changes needed to meet current statute?	Is city considering optional amend-ments?
			the UGA.
e. Provisions for protection of the quality and quantity of groundwater used for public water supplies. RCW 36.70A.070(1)	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes Location(s)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Further review needed	Goal 13 of the Environmental Element addresses the protection of Critical Aquifer Recharge areas. Pg 139.
f. Identification of lands useful for public purposes such as utility corridors, transportation corridors, landfills, sewage treatment facilities, stormwater management facilities, recreation, schools, and other public uses. RCW 36.70A.150 and WAC 365-196-340	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes Location(s)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Further review needed	The Comprehensive Wastewater Plan, incorporated by reference, identifies the need for a new treatment facility. There are other facilities identified in the transportation, parks and recreation element.
g. Identification of open space corridors within and between urban growth areas , including lands useful for recreation, wildlife habitat, trails, and connection of critical areas. RCW 36.70A.160 and WAC 365-196-335	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes Location(s)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Further review needed	The PRO Element includes a greenbelt and trail system around the City connecting drainage ways, wetlands, natural features, state parks etc.
h. <i>If there is an airport within or adjacent to the city: policies, land use designations (and zoning) to discourage the siting of incompatible uses adjacent to general aviation airports.</i> [RCW 36.70A.510, RCW 36.70.547 , New in 1996] <i>Note: The plan (and associated regulations) must be filed with the Aviation Division of WSDOT. WAC 365-196-455</i>	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes Location(s)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Further review needed	This requirement does not apply to Oak Harbor since it is in related to “general” aviation as opposed to military. However, there are land use policies to discourage incompatible land uses and codes for noise abatement construction techniques. LU 9
i. <i>If there is a Military Base within or adjacent to the jurisdiction employing 100 or more personnel: policies, land use designations, (and consistent zoning) to discourage the siting of incompatible uses adjacent to military bases.</i> RCW 36.70A.530(3) , New in 2004. See WAC 365-196-475	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes Location(s)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Further review needed	An entire section is dedicated to NAS Whidbey (Pg 176) to address policies related to the base in Oak Harbor.
j. Where applicable, a review of drainage, flooding, and stormwater run-off in the area and nearby jurisdictions and provide guidance for corrective actions to mitigate or cleanse those discharges that pollute waters of the state. RCW 36.70A.70(1) and WAC 365-196-405(2)(c) <i>Note: RCW 90.56.010(26) defines waters of the state.</i>	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes Location(s)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Further review needed	The City’s Comprehensive Stormwater Drainage Plan is adopted by reference in the Comprehensive Plan. The Stormwater plan reviews the drainage and flooding. The Environmental Element of the Comprehensive Plan has goals to address the water quality. EE Goal 3 pg 130. The City also has a NPDES permit that regulates the discharge of pollutants into waters of the United States.
k. Policies to designate and protect critical areas including wetlands, fish and wildlife habitat protection areas, frequently flooded areas, critical aquifer recharge areas, and geologically hazardous areas. In developing these policies, the city must have included the best available science (BAS) to protect the functions and values of critical	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes Location(s)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Further review needed	Environmental Element has Goal 7 (Pg 135) that addresses “Best Available Science”. BAS was used in the 2005 update to the critical areas. Staff is still researching to

	Addressed in current plan or regs? If yes, where?	Changes needed to meet current statute?	Is city considering optional amend-ments?
<p>areas, and give “special consideration” to conservation or protection measures necessary to preserve or enhance anadromous fisheries. RCW 36.70A.030(5), RCW 36.70A.172, BAS added in 1995. See WAC 365-195-900 through -925, WAC 365-190-080</p> <p><i>Note:</i> A voluntary stewardship program was created in 2011 as an alternative for protecting critical areas in areas used for agricultural activities. Counties had the opportunity to opt into this voluntary program before January 22, 2012. See requirements of the voluntary stewardship program.</p> <p>RCW 36.70A.700 through .904.</p>			determine if there is an update to the BAS from the state that may require changes to the current regulations
<p>1. <i>If forest or agricultural lands of long-term commercial significance are designated inside city: a program authorizing Transfer (or Purchase) of Development Rights.</i> RCW 36.70A.060(4), Amended in 2005</p>	<input type="checkbox"/> <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes Location(s)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Further review needed	Not Applicable since there are no lands designated for forest or agricultural uses.
<p>2. A Housing Element to ensure the vitality and character of established residential neighborhoods and is consistent with relevant CWPPs, and RCW 36.70A.070(2).</p>			
<p>a. Goals, policies, and objectives for the preservation, improvement, and development of housing. RCW 36.70A.070(2)(b) and WAC 365-196-410(2)(a)</p>	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes Location(s)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Further review needed	Goal 4 (Pg 80) in the housing element.
<p>b. An inventory and analysis of existing and projected housing needs over the planning period. RCW 36.70A.070(2)(a) and WAC 365-196-410(2)(b) and (c)</p>	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes Location(s)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Further review needed	There are statistics in the Housing Element but they need to be updated. Housing needs will have to be recalculated based on 20 year projections and growth allocations,
<p>c. Identification of sufficient land for housing, including but not limited to, government-assisted housing, housing for low-income families, manufactured housing, multifamily housing, group homes, and foster care facilities. RCW 36.70A.070(2)(c)</p>	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes Location(s)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Further review needed	Pg 75 indicates that 170 acres were added to the UGA. Existing analysis will need to be reviewed and updated. Existing language does not identify lands for gov-assisted housing, low-income families, group homes etc.
<p>d. Adequate provisions for existing and projected housing needs for all economic segments of the community. RCW 36.70A.070(2)(d) and WAC 365-196-410</p>	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes Location(s)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input checked="" type="checkbox"/> Further review needed	WAC 365-196-410 lists a lot of requirements that are not specifically addressed in the City's Housing Element
<p>e. <i>If enacting or expanding an affordable housing program under RCW 36.70A.540: identification of land use designations within a geographic area where increased residential development will assist in achieving local growth management and housing policies.</i> RCW 36.70A.540, New in 2006. WAC 365-196-870</p>	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes Location(s)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Further review needed	Since the city does not have an affordable housing program this is not applicable.
<p>f. Policies so that manufactured housing is not regulated differently than site built housing. RCW 35.21.684, 35.63.160, 35A.21.312, and 36.01.225, Amended in 2004</p>	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes Location(s)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Further review	Existing policy in the HE 1i may need to be revised.

	Addressed in current plan or regs? If yes, where?	Changes needed to meet current statute?	Is city considering optional amend-ments?	
		needed		
g.	<i>If the city has a population of over 20,000: provisions for accessory dwelling units (ADUs) to be allowed in single-family residential areas.</i> RCW 36.70A.400, RCW 43.63A.215(3)	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes Location(s)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Further review needed	HE Goal 1n addresses ADUs.
3. A Capital Facilities Plan (CFP) Element to serve as a check on the practicality of achieving other elements of the plan, covering all capital facilities planned, provided, and paid for by public entities including local government and special districts, etc.; including water systems, sanitary sewer systems, storm water facilities, schools, parks and recreational facilities, police and fire protection facilities. Capital expenditures from Park and Recreation elements, if separate, should be included in the CFP Element. The CFP Element must be consistent with CWPPs, and RCW 36.70A.070(3), and include:				
a.	Policies or procedures to ensure capital budget decisions are in conformity with the comprehensive plan. RCW 36.70A.120	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes Location(s)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Further review needed	The CFP elements goals 1 and 2 have adequate policies and procedures.
b.	An inventory of existing capital facilities owned by public entities. RCW 36.70A.070(3)(a) and WAC 365-196-415(2)(a)	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes Location(s)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Further review needed	The Capital Improvements Plan (CIP) has a inventory of the Capital Facilities (Pg 13-19) owned by public entities.
c.	A forecast of needed capital facilities. RCW 36.70A.070(3)(b) and WAC 365-196-415 (b) <i>Note:</i> The forecast of future need should be based on projected population and adopted levels of service (LOS) over the planning period.	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes Location(s) Adopted LOS: Future needs:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input checked="" type="checkbox"/> Further review needed	The CIP has a forecast of needed capital facilities. The population projections have to be updated with this review process. A review of needs based on the new projection will also need to be done.
d.	Proposed locations and capacities of expanded or new capital facilities. RCW 36.70A.070(3)(c) and WAC 365-196-415 (3)(C)	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes Location(s)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Further review needed	The CIP has a list of new capital facilities for the various enterprise funds and a list of non-enterprise funded.
e.	A six-year plan (at least) identifying sources of public money to finance planned capital facilities. RCW 36.70A.070(3)(d) and RCW 36.70A.120 WAC 365-196-415	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes Location(s)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input checked="" type="checkbox"/> Further review needed	The CIP identifies sources of public money for a six year period but does not have a direct link to the planned CIP projects for the same six years. This needs to be reviewed and changed with the update.
f.	A policy or procedure to reassess the Land Use Element if probable funding falls short of meeting existing needs. RCW 36.70A.070(3)(e) WAC 365-196-415(2)(d)	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes Location(s)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Further review needed	There is no current policy to reassess the land use element if funding falls short of existing needs.
g.	<i>If impact fees are collected: identification of public facilities on</i>	<input type="checkbox"/> No	<input type="checkbox"/> Yes	The CIP has a table that identifies

	Addressed in current plan or regs? If yes, where?	Changes needed to meet current statute?	Is city considering optional amend-ments?
which money is to be spent. RCW 82.02.050(4) WAC 365-196-850	<input type="checkbox"/> Yes Location(s)	<input type="checkbox"/> No <input type="checkbox"/> Further review needed	the impact fees collected and a projection over the six year period (Table 6.3 of CIP). However, there are no specific projects identified for the expenditure of these funds.
4. A Utilities Element which is consistent with relevant CWPPs and RCW 36.70A.070(4) and includes:			
a. The general location, proposed location and capacity of all existing and proposed utilities. RCW 36.70A.070(4) WAC 365-196-420	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes Location(s)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Further review needed	Though the city's utility plans have the general location and capacities, a comprehensive approach to its location, proposed locations and capacity is not in the Comprehensive Plan.
5. A Transportation Element which is consistent with relevant CWPPs and RCW 36.70A.070(6) and includes:			
a. An inventory of air, water, and ground transportation facilities and services, including transit alignments, state-owned transportation facilities, and general aviation airports. RCW 36.70A.070(6)(a)(iii)(A) and WAC 365-196-430(2)(c) .	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes Location(s)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Further review needed	The Transportation Plan which is an element of the comprehensive plan includes an inventory of the facilities (Chapter 3).
b. Adopted levels of service (LOS) standards for all arterials, transit routes and highways. RCW 36.70A.070(6)(a)(iii)(B) , New in 1997. WAC 365-196-430	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes Location(s)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Further review needed	The Transportation Plan lists the LOS standards for all streets and highways within Oak Harbor. The Plan was adopted in 2007 and was intended to be a six year plan. Therefore the Plan will need to be updated.
c. Identification of specific actions to bring locally-owned transportation facilities and services to established LOS. RCW 36.70A.070(6)(a)(iii)(D) , Amended in 2005. WAC 365-196-430	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes Location(s)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Further review needed	The Transportation Plan identifies two projects that were below the adopted LOS standards and only one was within the city limits. Funding and schedule needs to be identified in the plan to bring them up to established LOS.
d. A forecast of traffic for at least 10 years , including land use assumptions used in estimating travel. RCW 36.70A.070(6)(a)(i) , RCW 36.70A.070(6)(a)(iii)(E) WAC 365-196-430(2)(f) .	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes Location(s)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Further review needed	The Transportation Plan includes a six year projection and a 2035 projection.
e. A projection of state and local system needs to meet current and future demand. RCW 36.70A.070(6)(a)(iii)(F) WAC 365-196-430(2)(f)	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes Location(s)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Further review needed	The 2007 plan has a list of projects based on travel forecast to 2013 and will therefore need to be updated.
f. A pedestrian and bicycle component. RCW 36.70A.070(6)(a)(vii) , Amended 2005 WAC 365-196-430(2)(j)	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes Location(s)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Further review needed	Goal 3 of the TP addresses pedestrians and bicycles. The Recommended Plan section (Pg 69) discusses the facilities further.

	Addressed in current plan or regs? If yes, where?	Changes needed to meet current statute?	Is city considering optional amend-ments?
g. A description of any existing and planned transportation demand management (TDM) strategies , such as HOV lanes or subsidy programs, parking policies, etc. RCW 36.70A.070(6)(a)(vi) WAC 365-196-430(2)(i)	<input type="checkbox"/> ✓No <input type="checkbox"/> Yes Location(s)	<input type="checkbox"/> Yes <input type="checkbox"/> ✓No <input type="checkbox"/> Further review needed	None identified in the plan.
h. An analysis of future funding capability to judge needs against probable funding resources. RCW 36.70A.070(6)(a)(iv)(A) WAC 365.196-430(2)(k)(iv)	<input type="checkbox"/> No <input type="checkbox"/> ✓Yes Location(s)	<input type="checkbox"/> ✓Yes <input type="checkbox"/> No <input type="checkbox"/> Further review needed	Section 8 of the current plan has a financial assessment. Since the Plan was intended to cover only a 6 year period it will need to be updated.
i. A multiyear financing plan based on needs identified in the comprehensive plan, the appropriate parts of which serve as the basis for the 6-year street, road or transit program. RCW 36.70A.070(6)(a)(iv)(B) and RCW 35.77.010 WAC 365-196-430(2)(k)(ii)	<input type="checkbox"/> No <input type="checkbox"/> ✓Yes Location(s)	<input type="checkbox"/> ✓Yes <input type="checkbox"/> No <input type="checkbox"/> Further review needed	Needs to be updated
j. <i>If</i> probable funding falls short of meeting identified needs: a discussion of how additional funds will be raised, or how land use assumptions will be reassessed to ensure that LOS standards will be met. RCW 36.70A.070(6)(a)(iv)(C) ; WAC 365-196-430(2)(l)(ii)	<input type="checkbox"/> No <input type="checkbox"/> ✓Yes Location(s)	<input type="checkbox"/> ✓Yes <input type="checkbox"/> No <input type="checkbox"/> Further review needed	The current plan assumed sufficient levels of funding. However, policies to consider a reassessment of land uses should be included in the plan.
k. A description of intergovernmental coordination efforts , including an assessment of the impacts of the transportation plan and land use assumptions on the transportation systems of adjacent jurisdictions and how it is consistent with the regional transportation plan. RCW 36.70A.070(6)(a)(v) ; WAC 365-196-430(2)(a)(iv)	<input type="checkbox"/> No <input type="checkbox"/> ✓Yes Location(s)	<input type="checkbox"/> Yes <input type="checkbox"/> ✓No <input type="checkbox"/> Further review needed	The current plan identifies Island County's trails plan, ferry services and Air Service (Kenmore – currently not operational). Goal 6 of the Plan addresses coordination with State and Regional governments.
6. Provisions for siting essential public facilities (EPFs) , consistent with CWPPs and RCW 36.70A.200 . This section can be included in the Capital Facilities Element, Land Use Element, or in its own element. Sometimes the identification and siting process for EPFs is part of the CWPPs.			
a. A process or criteria for identifying and siting essential public facilities (EPFs) . [RCW 36.70A.200 , Amended in 1997 and 2001] Notes: EPFs are defined in RCW 71.09.020(14) . Cities should consider OFM's list of EPFs that are required or likely to be built within the next six years. Regional Transit Authority facilities are included in the list of essential public facilities RCW 36.70A.200, amended 2010. WAC 365-196-550(d)	<input type="checkbox"/> No <input type="checkbox"/> ✓Yes Location(s)	<input type="checkbox"/> Yes <input type="checkbox"/> ✓No <input type="checkbox"/> Further review needed	Goal 17 of the LU element addresses a process for siting essential public facilities (Pg 37). OHMC 19.38 has regulations specifically addressing Essential Public Facilities.
b. Policies or procedures that ensure the comprehensive plan does not preclude the siting of EPFs . RCW 36.70A.200(5) Note: If the EPF siting process is in the CWPPs, this policy may be contained in the comprehensive plan as well. WAC 365-196-550(3)	<input type="checkbox"/> No <input type="checkbox"/> ✓Yes Location(s)	<input type="checkbox"/> Yes <input type="checkbox"/> ✓No <input type="checkbox"/> Further review needed	Same as above. The policies do not preclude the siting of EPFs.
7. Consistency is required by the GMA.			
a. All plan elements must be consistent with relevant county-wide planning policies (CWPPs) and, where applicable, Multicounty Planning Policies (MPPs), and the GMA .	<input type="checkbox"/> No <input type="checkbox"/> ✓Yes Location(s)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> ✓Further	This is in progress currently and will have to be coordinated with discussions at the county

	Addressed in current plan or regs? If yes, where?	Changes needed to meet current statute?	Is city considering optional amend-ments?
RCW 36.70A.100 and 210 WAC 365-196-400(2)(c), 305 and 520		review needed	regarding the CWPP.
b. All plan elements must be consistent with each other . RCW 36.70A.070 (preamble). WAC 365-197-400(2)(f)	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes Location(s)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Further review needed	This needs to be reviewed and monitored.
c. The plan must be coordinated with the plans of adjacent jurisdictions . RCW 36.70A.100 WAC 365-196-520	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes Location(s)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Further review needed	This is in progress currently and will have to be coordinated with discussions at the county regarding the CWPP.
8. Shoreline Provisions			
Comprehensive plan acknowledges that for shorelines of the state, the goals and policies of the shoreline management act as set forth in RCW 90.58.020 are added as one of the goals of this chapter as set forth in RCW 36.70A.020 without creating an order of priority among the fourteen goals. The goals and policies of the shoreline master program approved under RCW 90.58 shall be considered an element of the comprehensive plan. RCW 36.70A.480, WAC 365-196-580	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes Location(s)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Further review needed	After DOE approval, the new SMP goals and policies will either be added as an element or the SMP can be adopted by reference into the Comprehensive Plan.
9. Public participation, plan amendments and monitoring. Note: House Bill 2834, passed in 2012, eliminates the requirement for cities planning under the GMA to report every 5 years on its progress in implementing its comprehensive plans.			
a. A process to ensure public participation in the comprehensive planning process. RCW 36.70A.020(11), .035, and .140; WAC 365-196-600(3) The process should address annual amendments (if the jurisdiction allows for them) [RCW 36.70A.130(2), Amended in 2006], emergency amendments [RCW 36.70A.130(2)(b)], and may include a specialized periodic update process. Plan amendment processes may be coordinated among cities within a county [RCW 36.70A.130(2)(a)] and should be well publicized.	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes Location(s)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Further review needed	The Comprehensive Plan itself does not have a specific element or dedicated goal on public participation. However it is noted within several elements within the plan to include public participation. However, the Municipal Code has an entire chapter 18.15 dedicated to Comprehensive Plan Amendments and updates that includes public participation.
b. A process to assure that proposed regulatory or administrative actions do not result in an unconstitutional taking of private property . See <i>Attorney General's Advisory Memorandum: Avoiding Unconstitutional Takings of Private Property</i> for guidance. RCW 36.70A.370	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes Location(s)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Further review needed	Goal 18 in the LU element addresses this requirement. There are also processes for variance, waivers, and amendments that provide relief.