City of Oak Harbor
City Council Meeting

Agenda for
February 2, 2010
6:00 p.m.

Oak Harbor City Council
Tuesday, February 2, 2010, 6:00 p.m.

Welcome to the Oak Harbor City Council Meeting

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

Thank you for participating in your City Government!

CALL TO ORDER

INVOCATION Grafton Robinson, Southern Baptist Church

ROLL CALL

MINUTES 1/19/2010 Regular Meeting, 1/21/2010 Special Meeting

NON-ACTION COUNCIL ITEMS:

1. Public Comments.

COUNCIL CONSIDERATION AND ACTION ON THE FOLLOWING MATTERS:

2. Consent Agenda:

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a. Agreement – Facilitator for City Council Retreat on February 27, 2010.

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b. Excused Absence – Councilmember Dudley's absence from the March 16, 2010 Council meeting.

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c. Excused Absence – Councilmember Campbell's absence from the April 6, 2010 Council meeting.

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d. Introduction – Ordinances, Stormwater Management, OHMC 12.30.

e. Approval of Accounts Payable Vouchers (Pay Bills).

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3. Public Hearing – Wallen Appeal.

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4. Public Hearing – Sub-Division Code Amendments.

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5. Resolution – Standing Committee Assignments.
6. City Administrator's Comments.
7. Councilmembers' Comments.
8. Standing Committee Reports.
9. Mayor's Comments.

ADJOURN

"Knowledge comes, but wisdom lingers."
~Alfred Lord Tennyson

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

Regular City Council Meeting
Tuesday, January 19, 2010, 6:00 p.m.
City Hall – Council Chambers

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

NATIONAL ANTHEM Oak Harbor High School Choir; Darren McCoy, Director

INVOCATION Father Mark Hickinbotham, St. Stephen's Anglican Church

ROLL CALL

Jim Slowik, Mayor
Seven Members of the Council,
- Rick Almberg
- James M. Campbell
- Scott Dudley
- Jim Palmer
- Beth Munns
- Danny Paggao, Mayor Pro Tem
- Bob Severns

Paul Schmidt, City Administrator
Margery Hite, City Attorney
Doug Merriman, Finance Director
Steve Powers, Development Services Director
Cac Kamak, Senior Planner
Cathy Rosen, Public Works Director
Eric Johnston, City Engineer
Arnie Peterschmidt, Project Engineer
Steve Bebee, Public Works Operations Manager
Rick Wallace, Chief of Police
Mark Soptich, Fire Chief
Mike McIntyre, Senior Services Director
Myrna Wilson, Human Resources Director
Renée Recker, Executive Assistant to the Mayor

MINUTES

MOTION: **Councilmember Munns moved to approve the 1/5/10 regular meeting minutes and the motion was seconded by Councilmember Campbell. Councilmembers Almberg, Campbell, Dudley, Palmer, Munns, and Paggao voted in favor of the motion. Councilmember Severns abstained from the vote. The motion carried.**

NON-ACTION COUNCIL ITEMS

Recognition of Myrna Wilson, Human Resources Director

City Administrator Paul Schmidt talked about Ms. Wilson's five years of service and her upcoming retirement at the end of January. Ms. Wilson's husband, Bill, was also at this evening's meeting and had spent many weekend volunteer hours helping Ms. Wilson re-organize the Human Resources office. Ms. Wilson talked about the challenges and rewards of working for Oak Harbor and thanked staff for their dedication and commitment to the City. Mayor Slowik presented an oak leaf recognition plaque and fleece pull-over and noted that Ms. Wilson leaves behind a legacy; you will be missed but never replaced.

American Planning Association (APA) Award
Development Services Director Steve Powers introduced members of the Windjammer Committee: Former City Council members Sheila Crider and Sue Karahalios, Former Mayor Patricia Cohen, current Planning staff Cac Kamak, Ethan Spoo, and Melissa Sartorius. Mayor Slowik also introduced Committee members Phil Sykes, Jill Schacht, Cathy Collantes, Kristi Jensen, K.C. Pohtilla, Ruth Culbertson, Chris Pantoleon, Chris Saxman, and Rob Sebo. Richard Hart, AICP and Co-Chair of the 2009 APA Planning Awards Committee talked about the process for choosing award recipients and recognition of Oak Harbor as an Honorable Mention Winner in the implementation category for Oak Harbor's Windjammer Waterfront/Downtown Redevelopment Program. Mayor Slowik also presented APA Certificates to Phil Sykes, Jill Johnson, and Jill Schacht.

Presentation – U.S. Census Bureau Information for 2010, LaVerne Lamoureux
Ms. Lamoureux, representing the Regional Office of the U.S. Census Bureau, presented a short video emphasizing the importance of completing census data. The data remains confidential and is not shared. $450 billion will be distributed to states predicated on census data. This data helps determine growth patterns and needs, and congressional and state representative lines. The last census was in 2000 and had a 66% participation level. Island County only had a 57% participation level which translates into lost funding opportunities. Washington State has added 750,000 new residents and everyone needs to be counted. Ms. Lamoureux also distributed census packets and business cards to Council Members.

Proclamation – Big Brothers, Big Sisters of Island County, Mentoring Appreciation Day
Councilmember Severns read the proclamation and presented it to Peggy Dyer, Executive Director of Big Brothers, Big Sisters. Ms. Dyer noted that January is National Mentoring Month and noted that BBBS is the national leader in mentoring. Oak Harbor BBBS has twelve years of success but cannot do this work alone. Support from the community is the key to BBBS success. Ms. Dyer introduced Board President Tamra Sipes, and Board members Cathy Jones, John Dyer, Patricia Cohen, Suzie Lazott, along with staff member Nichole Craig. Mayor Slowik thanked Peggy and John Dyer and the BBBS Board for their hard work.

Public Comments
Mayor Slowik talked about the cancelled public hearing for the subdivision code amendments and called for Pioneer Way comments at this time asking that comments be kept to two minutes or less.

Cathy Jones, 2715 Laurel Lane. Supports two-way. Reverse a bad decision and encourage economic development downtown. Many have decided to reduce or close their businesses if Pioneer becomes a one-way street. I am speaking as a shopper but I am also a downtown property and business owner. 70% of the Pioneer property owners agree with me. Terry LeDesky has another option and Kristi Jensen has

emailed the Council this plan. I am opposed to the one-way option and $8.5 million is an expensive mistake. This choice should be data-driven; what data are you using? Other cities are converting from one-way to two-way. We are losing business opportunities and Oak Harbor is not business-friendly; it is time to change the business climate. Do what is right and reconsider your decision. Don't turn this into another legal battle.

Terry LeDesky, 411 NW 3rd. Supports two-way. Kristi Jensen gave me the plans that the consultant had presented. I could not attend the ten open houses, but I am embarrassed by the plans that have been presented which are questionable. The one-way shows more open space than the two-way design. If I had designed these plans, you would have fired me.

Mayor Slowik asked Mr. LeDesky not to "finger-point."

Mr. LeDesky had overlaid a plan using Google Earth to show the context of the City. This overlay is attached to the minutes as Exhibit A. Mr. LeDesky felt that there were questionable motives for this project which do not cater to community trust. Reconsider what the facts are in looking at the presentations and handouts given to you by the community.

Jason McFadyen, 1471 SE 8th. Supports two-way. Mr. McFadyen spoke on behalf of the SE 8th residents who, in a door-to-door poll, unanimously did not want a one-way design for Pioneer. Drivers are already avoiding other streets and using SE 8th to reach the college and Seaplane Base. Reconsider the one-way decision so the SE 8th residents can have a quieter street.

Ashley Zapata, Naval Housing. Supports two-way. One-way will be a hassle to shoppers. I use the street to get to the base and to Wal-Mart. If you close the street, look at the impact on the little shops. Not a good idea, take the money and use it for something better.

Helen Chatfield-Weeks, 1415 SE 9th. Supports two-way. Speaking for parents of baseball players who will be running across the street (Bayshore Drive), consider the safety issues.

Scott Thomas,1398 SE 8th. Supports two-way. My home was built in 1936 by Rance Zylstra and 8th Street is being used as a runway. Barrington, the Maylors; these were men of great vision and they built the City to have it grow and planned Pioneer Way as a two-way street. Keeping Pioneer Way the way it is to benefit the community. Don't allow the developers to have their way.

Kristi Jensen, 1380 SE 8th and also representing Stan Stanley. Supports two-way. None of the previous eight studies done on downtown recommend a one-way option. Stan is also a consultant. He highly recommends a two-way street. Mr. Stanley's research is attached to these minutes as Exhibit B.

Patti Carter, 270 SE Barrington, C104. Supports two-way. Ms. Carter spoke as the president of Harbor Pride and referenced their letter supporting a two-way rather than one-way street. Ms. Carter acknowledged the need to replace sewer, sidewalks, and street but felt these could be fixed without using a one-way design.

Gloria Carothers, 2130 Stoney Beach Lane, owner of the Jewelry Gallery. Supports two-way. 2,050 people have now signed the downtown petition and have almost doubled the number opposed to the one-way design. If a decision was made in haste, it is alright to admit it was not the best decision. We would respect that if you are willing to rescind the vote. Ms. Carothers left the petition signature sheets with the City.
Coreen Lerch, 1175 Silver Lake Road. Supports one-way. Ms. Lerch had attended meetings to evaluate all of the information that the engineer and Perteet presented. She felt it was an excellent presentation and that choosing the one-way design was a great decision. We have to make changes to downtown. We have to make the repairs. We have been trying for the last forty years to do something with downtown. You made a decision based on an intelligent presentation. I do not think you should have to rescind or revote. Form a cohesive plan with property owners and the City. Oak Harbor, as a whole, has to come together regardless of a one-way or two-way street. We want downtown to flourish. We need a cohesive plan. Don't change your decision.
Bill Massey, 41 Midway, Suite 101. Mr. Massey spoke about one-way and two-way designs. I have been a property owner on Pioneer Way for over 30 years and have followed, with interest, the discussion and the schematics. I have noted that whether it is revitalization or new projects, small shop owners have left downtown because of the emphasis on traffic. Emphasize a design approach that is pedestrian-friendly and provides parking and supports a shopper-friendly attitude. It comes down to one-way or two-way and how merchants market their product. Some of the most successful districts have no vehicle traffic, a pedestrian mall, and parking on the perimeters. We need to be pedestrian-friendly, have adequate parking, and see merchants market their products. Parking is not adequate on the two-way design; I am impressed with the one-way configuration. My recommendations: with the one-way design, look to the planners and specifications for night construction which would lessen impact on the merchants; provide additional parking on Pioneer. You have a good plan, but look at opportunities for additional parking. If two-way becomes the design option, do not allow it to proceed with the current parking schematic.
Laura Hulse, Oak Harbor Motors. Supports two-way. Everyone I have spoken with opposes the one-way. Listen to them
Mel Vance, P.O. Box 2882. Supports two-way. Try a temporary one-way option before committing to it. I prefer two-way.
Steve Badger, 931 Walker Heights Way, and a business on Pioneer Way in the 300 block. Supports a delay. In these economic times, a hardship will be created. As a common sense approach, consider that this will do irreparable damage to a number of businesses. I believe then even in my location further west, the flow of traffic will have a negative impact on us. I would like to see more study done with a greater assessment of the economic impact on these businesses.
Frank Scelzi, P.O. Box 2249. Supports two-way. I see a lot of familiar faces who are for the two-way. Thanks for moving forward with the downtown's renovation and look at Mr. LeDesky's preparation on the two-way plan. Community members would like to work together on a two-way plan. There is overhwelming data on dollars lost with one-way designs and communities are switching back from one-way to two-way streets. I have asked for one fact: How will one-way benefit our community? Why was this rushed, why no planners and why no involvement with community members? Our

downtown community has united. The public is becoming more aware. Why would we willingly give up our source of income? Vote for our community's needs and wants. It is irresponsible to risk the livelihood of our citizens with incomplete plans and no impact study. Support your community and do the best thing for our businesses.

Amanda Coleman,1320 North Oak Harbor Street. Supports two-way. I own a dancewear apparel shop and will not rent on Pioneer if it becomes a one-way street. I am against it.
Martha Yant, Oak Harbor. Supports two-way. Integrity and honesty. Whatever you do, you will be remembered by these words. I urge you to look at your clientele and citizens. Do what is best for them.
Michael DeRosa, business owner in downtown. Supports two-way. I own a restaurant and beauty salon and I'm from New England, the land of one way streets. This would a terrible mistake with a future reversal.
Scott Wotring, Good Times Pizza on Pioneer Way. Supports two-way. We would have never opened a restaurant on a one-way street. I have lived and worked in two of the cities that have changed from one-way to two-way streets. We never open on a one-way.
Patricia Cohen, Former Oak Harbor Mayor, Scenic Heights Road. I am not here to comment on traffic movement, but rather to comment on the process. There is a perception that many industry tools were not called out. True that much of the data is not required, but nevertheless, I have learned that citizens have great expectations of their leadership and an appearance of openness and fairness. Success depends on working in partnership and this is dividing the community. Is there a plan to work with the downtown neighborhood to address their concerns?
Dave Hand, Bay City Bistro on Pioneer Way. Supports two-way. I feel that it is important to take in citizen contributions. I felt we were not involved when the waterline was put in. We told the City our hours and when we were closed, yet our doorway was roped off on a Wednesday. I don't want this to happen again. Take more input and work with us. Night construction would be preferred. I want revitalization but it needs to be done in a way that works with the community and what everyone wants. Making a one-way street out of a two-way street doesn't seem the way to bring in people. Pioneer needs to be a two-way street. I don't think traffic will divert to downtown and will, instead, divert around it.
Al Koetje, Former Oak Harbor Mayor, SE 10th. Supports two-way. Reconsider this decision. Oak Harbor will never be a pedestrian-oriented city. It is important to look toward Oak Harbor's future. We have a nice community with wonderful families and Navy neighbors. Reconsider and keep Pioneer Way a two-way street. It is a difficult decision, but give it consideration tonight.
Patricia Harden, 1689 W. Beach Road. Supports two-way. I am a former property owner on Pioneer Way and I have rented space to some of the people who have spoken tonight. Respect the people who have put their livelihoods on the line for their success and the success of Oak Harbor. Keep Pioneer a two-way street.
Ila Schmit, Island Upholstery on Fidalgo Avenue. Supports two-way. I have lived here since 1985 and have always been proud of being from Oak Harbor. Opening Island Upholstery was a huge step. My business has increased and has been a benefit

(referrals) to Pioneer Way businesses too. A two-way street is essential for the progress and benefit of businesses. I feel that a one-way street will become a bypass. It is difficult to bring people into downtown. Any kind of discouragement and customers go elsewhere. Two-way is in the best interest to businesses and customers.
Silvia Salgado, Sports Shop on Pioneer Way. Supports two-way. I still believe that two-way is the only way.
Sandy Willmett, 466 SE Neil Street. Supports two-way. On behalf of business owners, I would like to continue business service to our community.
Jill Schacht, 690 SE Pioneer Way, owner of Casual House and Foxpointe. Supports two-way. We have been in business for forty-seven years and have invested in buildings and businesses on a two-way street. We always assumed that this would be the best possible configuration for our businesses. It is important for the economic climate on Pioneer to keep it a two-way street.
Ron Apgar, owner of Paint Your World on Pioneer Way and President of the Downtown Merchants Association. Supports two-way. We have spoken to hundreds of customers and they all ask me, why a one-way street. We like the two-way street. One-way west is the wrong way. The engineers didn't think about it. People will bypass downtown.
Ryan Nowicki, Peacock Lane. Supports two-way. I am a business owner and would like the street to remain two-way.
Raymond Prokop, Pioneer Way business owner. Supports two-way. Going from a two-way to one-way will reduce traffic, but there has to be an overwhelming advantage to two-way.
Nancy Kitchell, 90 SE Pioneer Way, Key Bank. Supports two-way. I strongly support a two-way street.
Hillary Gardner-Carpenter, Assistant Manager of Whidbey Coffee on Pioneer Way. Supports two-way. No one wants the one-way. We are going to lose business; keep it a two-way street.
Lydia Sykes, Whidbey Wild Bird on Pioneer Way. Supports two-way. We are definitely for a two street.
Amy Jones 2766 Laurel Lane, owner of Amy's Touch on Pioneer Way. Support the two-way street.
Helen Pantoleon, owner of Zorba's and other properties on Pioneer Way. Supports two-way. Pioneer should remain two-way but with improvements.
Les Bense, 2068 Barque. Supports two-way. I keep hearing about pedestrian-friendly. This is Washington not California. We don't have pedestrians up here. Keep the two-way but improve it. Why are we going through this hassle?
Theresa Huffman, 890 Haslo, manages a shop on south side of Pioneer Way. Supports two-way. Keep the two-way, but we need more parking downtown. Make what we have even better.
Gerry Oliver, 947 NW Prow. Supports one-way. I have lived here for over twenty-eight years and I am for the one-way. It is frustrating to go downtown without more parking and I believe pedestrian-friendly is the right choice. You cannot see some of the businesses' signs if you are not on-foot. One-way would make Oak Harbor a better place.

Janet Schleifer, SW 6th. Supports two-way. I'm a shopper and walker. I don't shop on one-way streets. This is not a walking town for shopping. Pedestrian-friendly is silliness. One-way is the wrong way.
Jill Johnson, Executive Director, Greater Oak Harbor Chamber of Commerce. Supports two-way. The Chamber Board voted to lend its support to the downtown merchants group. There is no egg on anyone's face if you change your decision. The Chamber will stand behind the merchants and the City.
Cheryl Weildraayer, Ace Hardware. Supports two-way. Large businesses like Wal-Mart and Home Depot do traffic studies and would not have built on a one-way street. We do need to fix downtown, stick together as business owners, and make the town work. I am for a two-way street.
Kay Coolidge, owner of Popsie's on Pioneer Way. Supports one-way. I watch the cars go by too fast. If you slow them down, they wouldn't even use Pioneer Way. I love the pedestrian idea. Another speaker made comments about a two-way design but also knows the benefits of walkers on Pioneer. I would like to close the street to vehicular traffic and make it a walking street which would bring people into Oak Harbor. Sightseers go to Coupeville or La Conner. Make this stretch of street into a city center.
Linda Roberts, 4162 Balsam Place. Supports two-way. As a shopper, I can shop off island or shop the rock. If there is no parking on Pioneer Way, I will shop elsewhere. One-way takes away options of going each direction for parking. Keep it a two-way street.
Kelly Sweet, owner of Kelly Cab. Supports two-way. One-way gives no one an option and pushes people through downtown. Keep it two-way. You just need more parking.
Diane Sullivan, owner of Wind and Tide Bookstore. Supports two-way. Keep Pioneer a two-way street, reconsider and vote again.
Panda Brietz, 2814 Alpine Drive. Supports one-way. Originally I was for the two-way, but now I like the idea of the one-way street. We could make downtown a destination and create more space for sidewalks, sitting, and walking. I go to Coupeville and La Conner because I don't find ambiance in downtown Oak Harbor and I work downtown.
Louis Barrio (spelling), Supports two-way. I work downtown and support a two-way street.

With no other comments coming forth, Mayor Slowik closed this portion of the meeting at 7:35 p.m.

Other Pioneer Way documents left for City Council during this meeting are also attached to these minutes (Attachments C and D).

COUNCIL CONSIDERATION AND ACTION ON THE FOLLOWING MATTERS
Consent Agenda
A. Waterline Over-sizing Reimbursement – To Landed Gentry, Inc.
B. Wallen Appeal
C. Approval of Accounts Payable Vouchers

MOTION: **Councilmember Almberg moved to approve Consent Agenda Items A, B, and C with item C paying accounts payable check numbers 139966 – 140081 in the amount of $237,227.78, accounts payable check numbers 140082 – 140187 in the amount of $470,162.76, and payroll check numbers 93513 – 93521 in the amount of $89,190.00. The motion was seconded by Councilmember Severns and carried unanimously.**

Break

Mayor Slowik called for a ten-minute break at 7:40 p.m. and the meeting reconvened at 7:50 p.m.

Public Hearing – Shoreline Substantial Development Permit: Windjammer Park 42-inch Stormwater Outfall Project

City Attorney Margery Hite noted that this is a closed record review of the recommendations of the Planning Commission. The City Council is the final decision-maker for the City on this permit but rests its decision on the record created by the Planning Commission. The closed record hearing is quasi-judicial in nature. Ms. Hite asked each Council member to state, for the record, what ex parte contacts they have had, whether written or oral, concerning the matter to be decided which is a City project. Each Council Member stated they had no ex parte contacts regarding the 42-inch stormwater outfall project, with Mr. Almberg and Mr. Powers noting that this matter had been discussed in standing committees which are open public meetings. Ms. Hite continued to these appearance of fairness questions which were individually asked of each Council Member:

1. Do you have knowledge of having conducted business with either the proponents or opponents of this project?	Mr. Almberg	Mr. Campbell	Mr. Dudley	Ms. Munns	Mr. Paggao	Mr. Palmer	Mr. Severns
	No	No	No	No	No	No	No
2. Do you have either a pecuniary or a non-pecuniary interest in the outcome of this proceeding?	Mr. Almberg	Mr. Campbell	Mr. Dudley	Ms. Munns	Mr. Paggao	Mr. Palmer	Mr. Severns
	No	No	No	No	No	No	No
3. Do you know whether or not your employer has a financial interest in the land or area which will be impacted by the decision in this proceeding?	Mr. Almberg	Mr. Campbell	Mr. Dudley	Ms. Munns	Mr. Paggao	Mr. Palmer	Mr. Severns
	No	No	No	No	No	No	No

4. Do you live or own property within 300 feet of the area which will be impacted by the decision in this proceeding?	Mr. Almberg	Mr. Campbell	Mr. Dudley	Ms. Munns	Mr. Paggao	Mr. Palmer	Mr. Severns
	No	No	No	No	No	No	No
5. Do you have any special knowledge about the substance of the merits of this proceeding which would or could cause you to prejudge the outcome of this proceeding?	Mr. Almberg	Mr. Campbell	Mr. Dudley	Ms. Munns	Mr. Paggao	Mr. Palmer	Mr. Severns
	No	No	No	No	No	No	No
6. Is there any member of the audience who because of the "Appearance of Fairness" doctrine wishes to disqualify any member of the Council from hearing this matter? If so, please state the name of the Council Member and the reason or reasons why you believe that Council Member should be disqualified.							
No audience members came forward.							

Development Services Director Steve Powers continued the discussion. The proposed stormwater outfall project requires a Shoreline Substantial Development permit as it does not qualify for an exemption under Section 2.06 of the Shoreline Master Program. The project will further be reviewed by State Agencies and the US Corp of Engineers. Additional conditions and mitigation measures may be imposed on the project as the result of those reviews. Currently there are two stormwater outfalls, termed west and east outfall, located in the southwest portion of Windjammer Park. The outfalls provide stormwater drainage from the City's Dry Creek Basin to Oak Harbor Bay. The Dry Creek Basin constitutes the most developed portion of the drainage basins served by the City's stormwater system. It is characterized by highly developed residential and commercial areas with very little open drainage remaining. The existing west stormwater outfall is a 42-inch corrugated metal (steel) pipe that conveys runoff from an existing upland tide gate structure (in place to restrict salt water from flowing upstream during high tide or storm events) to its discharge point on the beach. This outfall is approximately 320 linear feet long from the tide gate. Its original length was 420 linear feet. Over the years the pipe has deteriorated to its current length. The existing east stormwater outfall is a 42-inch reinforced concrete pipe that also conveys runoff from upland sites of Oak Harbor. Its current length is approximately 185 linear feet and has remained the same since its original installation.

The City is proposing to replace the existing west stormwater outfall to address the deterioration of the pipe and its susceptibility to frequent blockage by seaweed and sand. The proposed project removes the existing deteriorated corrugated metal pipe from its existing location and replaces it with a new steel pipe aligning it with the existing east stormwater outfall. This new steel pipe will be extended approximately 70 feet further into the bay than it currently does at its existing location to minimize potential clogging in the future. The existing 42-inch reinforced concrete east stormwater outfall will remain in place. However, the proposed project extends it approximately 71 feet to be flush with the relocated and realigned west outfall. The two outfalls will be held in place by helical anchors which provide minimum environment impacts and are the most efficient and cost effective method of securing the outfalls. The use of the helical anchors will allow the removal of the rip rap and concrete blocks that are currently used to secure the outfalls. The outfall replacement and realignment construction will impact a section of the waterfront trail and the west parking lot. Therefore, as part of the project, the trail along the waterfront will be enhanced and extended along the shoreline. The parking lot will also be redeveloped and re-striped.

Mayor Slowik opened the public hearing at 8:15 p.m.

Duane Dillard, 2150 SW Dillard Lane. Mr. Dillard said that he had not provided comments from the mailings, but he did comment at the Planning Commission meeting. Mr. Dillard was glad to see the City trying to alleviate the flooding problems from stormwater run-off and asked if run-off would be untreated as it is moved into the wetlands and runs into the bay. Shouldn't runoff be sent through a series of bioswales? The Puget Sound Partnership defines stormwater run-off as one of the top three polluters in the Sound.
Mel Vance, P.O. Box 2882. Mr. Vance asked about the small campground at the SW corner of the project and if it would be reduced by the walking trail, how the parking area will be redeveloped, and if joining the two outfalls would make it difficult to monitor bacteria levels (which pipe would be eliciting the bacteria). Mr. Vance asked that the boat ramp be kept open as long as possible; keep it accessible for the public.

With no other public comments coming forth, Mayor Slowik closed the public hearing at 8:20 p.m.

Council Discussion
Discussion followed about the pipes' longevity (40 year service life) and length, and Mr. Dillard's questions about stormwater treatment. Project Engineer Arnie Peterschmidt and City Engineer Eric Johnston noted that this project does not treat stormwater and run-off will have to be addressed in other ways with stormwater being addressed before it is in the collection system; the goal is not to treat at the end of the pipeline but at its source. Stormwater quality is a major issue in Puget Sound and is being addressed through our NPDES permit. It would cost $70 million to build a stormwater treatment plant. Mr. Powers noted that the waterfront walkway will be re-routed, construction fencing will be used, parking will be addressed through low-impact development

standards, the boat ramp will be left in place with mitigation signage also directing potential users to go to the Marina, and there is a mitigation measure within the SEPA determination to keep the waterfront trail kayak campsite in place. Discussion continued about archeological finds which is also a mitigation measure in the SEPA determination. Staff does not anticipate that there will be a find, but there will be a second survey/additional scope of services survey of the new alignment for the west outfall's reconstruction. It was clarified that the two pipes will be aligned side-by-side to provide one location for ongoing maintenance. Sediment will still need to be cleared and this will minimize the City's work on the beach. Mr. Powers defined a bioswale (grass ditch), but with this volume, a bioswale could not be used at this location; stormwater will be addressed at its source point. Discussion followed about the upland sources of stormwater, if diversion will be close to private property, and that the City will be working with a landscape architect for screening per City codes. Design work is budgeted; the project itself will be tied to utilities. Fish and Wildlife has set the schedule for when this work can be done.

MOTION: **Councilmember Palmer moved to adopt the Findings of Fact and approve the Shoreline Substantial Development Permit for the Windjammer Park 42-inch Stormwater Outfall Project. The motion was seconded by Councilmember Dudley and carried unanimously.**

2% Hotel/Motel Tax Grant Program Awards for 2010

Finance Director Doug Merriman presented this agenda bill. The City of Oak Harbor sponsors an annual grant program funded by revenues from 2% lodging tax proceeds, known as the Lodging Tax Grant Program. Organizations are encouraged to apply for funding if they feel that their activity promotes tourism in a manner that attracts visitors to Oak Harbor from other localities. After receiving the appropriate 45-day notice from City Council on March 24, 2009, the Lodging Tax Advisory Committee advertised and called for applications for the City's Lodging Tax Grant Program on August 22, 2009. The Committee met on December 10, 2009 and reviewed the three applications received:

Oak Harbor Arts Commission – Driftwood Day	$ 4,090
Rotary Club of Oak Harbor – 25th Annual North Whidbey Car Show	$ 6,000
Greater Oak Harbor Chamber of Commerce – Tourism Promotion	$38,471
Total Requests:	$48,561

With only $15,000 available for the Grant Program, the Lodging Tax Advisory Committee made these recommendations:

Oak Harbor Arts Commission – Driftwood Day	$ 2,850
Rotary Club of Oak Harbor – 25th Annual North Whidbey Car Show	$ 5,500
Greater Oak Harbor Chamber of Commerce – Tourism Promotion	$ 6,650
Total Funded:	**$15,000**

Mayor Slowik called for public comments but there were none.

Council Discussion
Discussion followed about the variation in amounts awarded from year to year, and the reduction in the Island-wide marketing effort to $20,000 which will be reflected at the end of this month.

MOTION: **Councilmember Munns moved to award the 2010 Lodging Tax Grants as shown and authorize payment of funds. Councilmember Palmer seconded the motion and it carried unanimously.**

Assessment of the Pioneer Way Improvements Project
At the January 5, 2010 City Council meeting, Councilmember Dudley moved and Councilmember Campbell seconded a motion to place this matter on tonight's agenda in order to assess the prior City Council decision on the one-way issue for Pioneer Way. Mayor Slowik asked Councilmember Dudley to begin this discussion.

Councilmember Scott Dudley
I did not have the chance to voice an opinion on December 1, 2009 when the decision was made, and I wanted to assess what the business owners had said. Dr. Henninger, in public comment, had asked what our mission was for this project. Looking back at past minutes, we want to promote economic development and revitalization. If that is our intent, especially economic development, since then a large majority of business owners strongly oppose taking Pioneer Way and turning it into a one-way street.

If the project promotes economic development, then the Chamber would be in favor of it but tonight and at the last meeting, Jill Johnson noted that on December 8th the Chamber voted to support the Harborside Merchants in reconsideration of this plan. This evening we've also had a chance to recognize those who have worked so hard on the Windjammer Plan. It states that the project will include a traffic study and research to increase business in the core district. It also says that the success of any downtown redevelopment effort relies heavily on a commitment by the merchants and the property owners who must also invest in the program. Based on our December 1st decision, we are not involving them; we are spearheading it and doing it anyway. If one-way worked, they would support it. How can we dictate how and where the businesses will receive freight shipment? I attended the open house at the United Methodist Church and asked Perteet why all of the parking is on one side of the street with the one-way design. From a common sense standpoint, it is difficult to look over your left shoulder. Perteet (Mr. Monken) didn't' know and never thought about it. I asked for an example of where this is working and he had none. We have had information on vacancy rates in the commercial core space of downtowns. After changing to a one-way design, occupancy decreases. In the transportation element of our Comp Plan, the City of Oak Harbor street system will experience little impact as we approach 2013. It never calls for Pioneer Way to be a one-way street. We heard from Harbor Pride who recommends that the City look at the concerns of shop owners and what will benefit the community as a whole. Looking at November 17th's minutes for the caregivers resource center agenda report and spending of $18,000, it was asked what will happen to the City five years from now without a good business plan. Where is our business plan for this

project? What is our contingency plan? Can we weather the downturn in sales and property tax revenue? What will the cost to us be then? Where are the studies to support a one-way street? We need to acknowledge the business owners and listen to them. I wish I knew what our vision is for the downtown revitalization plan. It looks like more of an economic detriment than improvement. I wish I had an example of a city that has done what we are trying to do here. According to the APA (American Planning Association) many cities are switching back to two-way from one-way streets. Motorists drive faster on one-way streets. Take this evening's recommendations; we can do it and we can do it correctly and right. We are obligated to do this correctly rather than spend these funds on a great mistake.

MOTION: **Councilmember Dudley moved that the Oak Harbor City Council rescind its previous decision on December 1, 2009 which was to have the Mayor instruct staff to work with Perteet on a one-way design. The motion was seconded by Councilmember Campbell.**

Council Discussion

Councilmember Severns

I have heard a lot of testimony this evening and an aggressive move to go back to two-way. Looking at the math, I don't see clear new evidence. I do know that my conversations with property owners were not to push one-way or the other (two-way). I've heard that parking is essentially important. I don't think that this plan is reliable for parking. My decision was based on people feeling that there was a good reason for change. No two cities are alike and topography differs. I've lived here thirty-five years. When I first arrived, I couldn't find a place to stay, went to Anacortes, and was amazed at their wide street. I come from small towns - Chehalis, Ellensburg, Centralia – and they changed from two-way to one-way and are still one-way. My point is, some of what we have going on here is a fear of change. I did the homework. The night I made the motion to consider a third alternative, I thought what did I do? I cannot support continuation of parallel parking. I'm not convinced that we made a bad decision.

Councilmember Almberg

I concur that we did not make a bad decision. Seminars talk about effective councils; one vote is not more important than any other vote. When the decision is made, then it is one voice and the Council must successfully support the outcome of that vote. If we flip-flopped every time a special interest challenges a decision, we will lose the trust of community and staff; we will have a revolving door on every issue that we have. There must be refutable evidence to overturn. Disagreeing is not a compelling reason to overturn and it will marginalize the decision, the Council, and the process. Our Mayor took this to the community at ten open houses. There was opportunity then and at open public meetings to comment and when (comments) closed, we made a vote based on that information. Dredging this up now, what happens to our other discussions on upcoming votes if we are challenged? We will not make progress in this community. My background is weighted toward construction. I have spent more time reviewing this issue than any other. There are some things down there that will not allow you to do what you want to do. Our right-of-way is too narrow. Think about the nerf balls. You cannot pour 10 gallons of water into a 5 gallon bucket. We have buildings with different

floor level elevations. The south side buildings are lower in elevation. If you don't change the configuration of the sidewalks, we will continue to have non-conforming ramps in ten to twelve stores and we have to comply with the International Building Code. Non-conforming ramps would extend the curb line and the driving lane will not accommodate this. Up and down the street on both sides of the street, you have to include the physical properties. There is nothing safe about some of those ramps. They are not pedestrian-friendly when customers fall. The parking - why would you trade down on-street parking when only 13% would now be reduced down to 7%. 46% of parking spaces are restricted spaces behind the stores. This is not customer-friendly. There is no other way to do this but one-way. I have years in the development business and one of our projects included one-way streets, a cut through traffic, refacing of buildings, wide sidewalks, and we had the cooperation of the merchants (Lake Stevens), their Chamber, WSDOT, and that option was promoted from day one through the course of construction. Their sales went up. It was safe and easy to get into the businesses. We also reversed some of the two-way on side streets to one-way. The principles still apply here. We have a trainload of cars going east and west and people are not stopping when they travel east and west. On constructability of one-way vs. two-way: The one-way has slightly better opportunities to mitigate the activity on Pioneer with curbs moving inboard toward centerline. We can leave curbs and sidewalks in place while we are doing utilities which will be on the centerline side of the curb. Much can remain undisturbed until paving and the sidewalks can be taken out in sections. Doing two-way will cut out curbs and sidewalks to move them closer to the building and will disrupt the sidewalks. It was not just one item that made me vote one-way; it was an assemblage of all of the parts. There is nothing that I have heard to compel an overturn of this decision.

Councilmember Palmer

I'm not an engineer. I have a small business background, and I am a certified business and equipment appraiser. The confusion over 1/3, 1/3, 1/3 – leaving the street with parallel parking or going to angle parking. We talked about the third alternative and a motion was made by Councilmember Severns and I voted for it but it got voted down. I did a walk through (Pioneer) to measure the streets and there are some real narrow areas. With Mr. LeDesky's design, I question whether angle parking can be put in. The aerial doesn't look we can get to 113 standard stalls. The major issue for me is still parking. I am only aware of six businesses remaining since I moved my store in 1989. We have to do something different. I belong to the American Business Appraisers' Association and twice a year we meet in different cities. I have seen successes in all alternatives. How do you make a cookie cutter situation? Miami City, FL is somewhat like us; their Council did give in to two-way versus one-way, yet shops still deteriorated. Fayetteville, AK changed to one-way, was glad they made that choice, and still needed more parking. Ardmore, PA is half our size and their Council would not change from their two-way street design. Burlington, VT is larger than us and the whole main street is a pedestrian mall; shops are full and busy. Fargo, ND is larger than us at 90,000, the merchants were upset by a one-way design, but they like it now. I've mentioned larger city examples since Cincinnati was used as an example of two-way street design.

The two-way design is taking away rather than adding parking. The one-way design is a better choice for more parking. A pedestrian-friendly environment and parking is important to downtown. I stand by the one-way decision.

Mayor Pro Tem Paggao

I believe in the democratic process of our City government. I amended the motion for a two-way design and lost. The following day, I was ready to proceed with the one-way design. During the following weeks, we received more testimony. Each one of us voted on the facts presented by staff and based our decision on testimony; we are ready to move on. With Councilmember Dudley's motion, I am looking for a significant reason to rescind our decision. Is this life or death? This has happened only once in the past and that was with the Post Office Garry Oak and it meant the life or death of the oak. There was a second opinion from the arborist that the tree could be saved. Based on additional testimonies that we have received, is this a matter of life and death? The merchants have acquired more than 2,000 signatures from citizens and the majority of merchants are in favor of a two-way street. As stated in our Comprehensive Plan and Mr. Almberg's letter (dated 10/15/09 to fellow Council Members and attached to the 11/4/09 Council minutes) which said: The Comprehensive Plan was developed by the community, including Harbor Pride, "A Blueprint for Change," and approved by the Council for the implementation of "Oak Harbor's 2013 – A Vision for the Future." The goals and policies clearly state that "the City should maintain a pedestrian-oriented atmosphere in Old Town." And, "Within the district (CBD), pedestrian-oriented activities would be encouraged." The one-way will encourage a pedestrian atmosphere but there are other ways we can do that. It is in the Code for development to build mixed - use development there. I am going back to the question: would it be a matter of life and death for the downtown businesses?

Councilmember Campbell

I am conflicted. I am still a two-way person, and I haven heard anything tonight to change my mind. I spent twenty-five years in an engineering organization that accepted no mistakes. I have more faith in the engineering community fixing Pioneer. I don't understand the pitch on one-way and two-way. The comment was made that 4,000 cars go down Pioneer. Will one-way increase people downtown? How can you cut that car count in half and have more people down there? It doesn't work for me. We've all done Internet research and there are more positive things said about two-way than one-way. If we reduce the number of people downtown, it seems people drive faster on a one-way rather than two-way. It is hard to find the shops whose only signage is on the window. One-way increases speed and will make it worse. Early on, the Mayor and engineering staff did a good job of bringing information to the community through the open houses. I heard a lot of comments on problems with going one-way. All of the positives and negatives should have been included. What we got from the presentations and Perteet were the positives. The reason I seconded Councilmember Dudley's motion is I believe there is more evidence to be seen. Look at both positives and negatives. When the pitch went out to the town, people didn't come up with what they have come up with now. I'm still supporting two-way.

Councilmember Munns

When I voted, it was very tough. I could have gone either way; a 50/50 decision, good and bad on both ways. Change is scary. The biggest thing is, we've had a democratic

process. I'm not afraid to admit when I'm wrong. I don't know why the one-way people haven't shown up. The south side of the street wanted one-way because they don't have parking. Since we have made a decision through our democratic process, they are thankful that we made a decision. When I took this oath, I didn't want to make a decision just for me, but rather for the community as a whole. I did vote for two-way, but I have no evidence to rescind our decision. Overwhelmingly, I have had people say stop the back-stabbing and join together.

Mayor Slowik asked City Administrator Schmidt if he had comments. Mr. Schmidt felt this remains a Council decision. City Attorney Hite felt that this comports with Council's rules, especially rules 6 and 11.

Mayor Slowik called for a second round of Council comments.

Council Discussion Continued

Councilmember Dudley

Mr. Dudley quoted the Windjammer Plan sentences again. It does not seem like we are following the Plan. We do see cities that revert back to a two-way from a one-way. I don't believe that a significant majority of business owners and property owners are a special interest group or small minority. We've heard from two past mayors and we continue not to listen. I do look forward to redevelopment and improvement, but we also need to be out in front of costs to owners regarding underground utilities. It is life and death – absolutely. If given the chance, an engineer can improve the two-way plan, increase parking, and have business owners onboard and behind us. We owe it to the business community to do it correctly.

Mayor Slowik reiterated what former Mayor Cohen and former Mayor Koetje had said.

Councilmember Severns

Mayor Koetje also said that Oak Harbor will never be pedestrian-friendly. We are debating what does one-way bring to the community. What it potentially brings is more pedestrians that stop their cars, park their cars, and shop. I paid someone to do my own study for 1 ½ hours on December 19th, which was a heavy shopping day, to see how many people were driving westbound. 656 cars went through, 20 cars stopped, 34 cars turned up a side street, and 27 cars came from a side street. Only 20 cars stopped downtown. People can't park; seniors can't park (parallel). This traffic count is not doing you any good if only 20 cars out of 656 cars stop. What is seen in a one-way are pedestrians who will shop. There is a decrease in parking for the two-way design. I heard that there have been eight studies, and I asked for and read three of those studies. In 2001, that study included about 40 citizens. The studies say that business is crummy in downtown and people are calling it the low rent district. Leaving it two-way is not fixing anything.

Councilmember Almberg

The preponderance favors one-way. The dimensions aren't going away. If we change to two-way, it will be an engineering nightmare to mitigate the elevation differences. Don't lose your Council over this. We've accomplished a lot of things. In summary,

one-way provides safer customer access to stores, safer on-street parking, mitigates access to stores, allows for a traffic pattern to encourage customer access, and allows traffic to recirculate. If everyone is working together, this will be a successful endeavor for this community. We have had two-way traffic forever along with pass-through traffic. Downtown doesn't invite anyone from out of town or in town. Service, product, price, place, promotion; this is marketing 101. This project is not a revitalization project. It is an infrastructure improvement project. Only the merchants can improve marketing revitalization. This decision is going to be for 20 – 40 years. We have to start some place and this starts with utilities and an inviting atmosphere. It is up to the entrepreneurs and merchants to attract customers.

MOTION: **Councilmember Almberg moved to amend the original motion to allow the December 1, 2009 decision to stand without further discussion.**

City Attorney Hite noted that Council cannot amend a motion to rescind.
There was no second to the motion; the motion died.

Councilmember Palmer
I feel for the merchants and I have come from where they come from. I understand the fear. How many businesses can hang in their during the construction period? We need to do the best job we can to keep businesses alive during that time. On large streets, one-ways are usually going 40 mph. 19 mph is the average on Pioneer. The Internet takes business away from everyone. We have to make downtown unique and make people want to go down there. We need a good marketing plan. The fear of change is always there. I deal in forecasting and it cannot be guaranteed as accurate. There have been changes in Jill Schacht's properties and the Old Town Mall, but the majority of downtown looks the same. I do not see any reason to rescind the decision. Our street widths are set. Our focus has to be on getting through the construction period regardless of one-way or two-way. Uniqueness will bring new customers.
Councilmember Paggao
Let's go back to the main reason why we are doing this construction: revitalization and upgrades to infrastructure. In making the street one-way and looking back to the Comp Plan, nothing in the Plan says that we have to go one-way. It talks about increasing pedestrians in that area but we can do that in other ways. I think parking can be mitigated. The other problem mentioned was safety and it too can be mitigated. What Councilmember Dudley stated: in planning for this one-way street, there is no business plan, and there can be a financial impact to business owners. Are we taking their livelihood? Shouldn't we make a decision that represents the people we represent?
Councilmember Campbell
I have strayed away from one-way/two-way. It is not whether the City or business owners are doing their jobs. I will never vote strictly for a legacy or change for change's sake.

Councilmember Munns
The sidewalks are horrible. I've fallen and shattered my ankle. Walkers cannot roll on them. Crutches are difficult. You cannot walk with another person side-by-side on the south side.

Councilmember Munns called for the question.

Mayor Slowik stated that he would take a roll call vote on Councilmember Dudley's motion: Yes to rescind; no to keep the one-way decision.

Councilmember Paggao called for a point of order noting that Councilmember Munns had called for the question.

City Attorney Hite explained that the Ms. Munns' call for the question cuts off debate and requires a two-thirds vote. If there is no further discussion, then it is only a simple majority. Further discussion remained.

Vote to call for the question: Councilmembers Severns, Almberg, Palmer, and Munns voted to call for the question. Councilmembers Campbell, Paggao, and Dudley opposed. Could not call for the question so discussion continued.

Councilmember Dudley
Do we have we anything back from Perteet? Did the Mayor instruct Perteet to take a harder look at the two-way design and come up with a better two-way design?

Mayor Slowik responded that would occur only if the decision is rescinded.

Vote on Councilmember Dudley's motion with a second from Councilmember Campbell:

Vote of yes to rescind the December 1, 2009 Council decision: Councilmembers Campbell, Dudley, and Paggao.

Vote of no which will keep the December 1, 2009 Council decision: Councilmembers Almberg, Munns, Palmer, and Severns.

With a vote of 4 to 3, the December 1, 2009 one-way design decision for Pioneer Way stood and was not rescinded.

<u>MOTION</u>: Councilmember Dudley made a motion to hold a special meeting and public hearing regarding the impact of the one-way design decision. The motion died for lack of a second.

Mayor Slowik noted that staff can report back. Councilmember Munns added that, just like the waterline project, every inch of what the City is doing will be known. We cannot leave people in the dark and this is our promise to them. City Administrator Schmidt added that Council approved sequencing for this project and we have time for

mitigation. Councilmember Almberg added that it is customary in the design process to have these discussions.

MOTION: **Councilmember Almberg moved to have the Mayor direct staff to proceed with Perteet and engineering of the one-way design. This motion was not needed and died for lack of a second.**

City Administrator Comments
City Administrator Paul Schmidt talked about upcoming Oak Harbor meetings and the conference in Olympia that he, the Mayor, and Council will be attending. Mr. Schmidt also talked about wind damage at the Marina and the effect of high winds and tides at the Seaplane Base lagoon. Remedial action will be needed soon to prevent damage to wastewater system.

Councilmembers' Comments
Councilmembers gave their respective standing committee reports. Council Members talked about the Pioneer Way decision and that it was not made lightly. Need to pull together as community now; we are all a team. Council Severns noted that during his recent absence he got married, left the country (honeymoon), was sworn in as a newly-elected Council Member, attended the AWC elected officials workshop, and thanked Oak Harbor's citizens for the opportunity to serve as a Council Member. Councilmember Almberg talked about the high school open house and that he had chaired the high school campaign five years ago. We demonstrated a need, the community united behind a common purpose, and we have a great capital facility. The same can happen with Pioneer Way. Councilmember Dudley looked forward to attending the Olympia conference.

Mayor's Comments
Mayor Slowik complimented Jill Johnson on her great leadership and hard work and he encouraged the public to visit the high school and stadium. The high school represents the whole community and the voters; do not underestimate the voters' wisdom.

ADJOURN
With no other business coming before Council and with Council consensus, Mayor Slowik adjourned the meeting at 10:35 p.m.

_____
Connie T. Wheeler
City Clerk

Exhibit A

Pioneer Way Reconstruction

Two Way Circulation with 113 standard stalls + 7 ADA stalls

Terry LeDesky AIA

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Exhibit B

Mayor Jim Slowik

Oak Harbor City Council

The attached is a literature research project which I volunteered to do for several downtown businesses. My subject was The Impact of One and Two Way Streets on Adjacent Business.

In addition to a normal search I accessed the resources of The Main Street Project, The American Planning Association and the Institute of Traffic Engineers.

While certainly not all inclusive, I found 31 instances of:

- One way streets being converted to two way streets as a result of Downtown Revitalization.
- Recommendations against establishing a business on a one way street.
- Revisiting one way street systems established in the past.
- Results from communities which have changed one way streets to two way.

I found one reference recommending one way streets.

I believe this research is germane to the current issue of the traffic patterns on Pioneer way and recommend it prior to your making any final decision. Many of these references are lengthy so I have extracted sections of some of the articles which I believe represent the gist of the article. So that you can determine the impact of all of these articles for yourself and see the context of my extractions, I have included the URL for the every reference.

I apologize that I cannot come to the Council meeting to present my research and answer questions as I teach for Embry Riddle University every Tuesday night. I am emailing this report so that you can contact me with any questions or comments prior to the meeting.

Respectfully,

Stan Stanley

360-675-4294

stans@whidbey.net

The Impact of One and Two Way Streets on Adjacent Business.

by Stan Stanley

References supporting two way streets in Downtown retail corroders

The Worst Main Street Revitalization Ideas

http://www.urbanreviewstl.com/?p=7012

"Main streets across this country, from big cities to suburbs to small towns, have been abused by urban planners over the second half of the 20th Century trying to find the right formula to reverse the exit to the edge.

In big cities you had white flight and schools as explanations for flight but in many small towns these reasons didn't exist. They didn't have the mall on the edge of town drawing customers away from main street. They had only the single school district. However, many had Wal-Mart pulling customers out of the existing downtown's.

The "solutions" were almost universal from big city Central Business Districts to suburban areas to small towns. With some exceptions these all failed:

One-way traffic - charming main streets were turned into high speed roads to get through town. See Collinsville IL and many others..."

The Return of the Two-Way Street. Vancouver WA

http://www.governing.com/column/return-two-way-street

"Rather than wait for the $14 million more in state and federal money it was planning to spend on projects on and around Main Street, it opted for something much simpler. It painted yellow lines in the middle of the road, took down some signs and put up others, and installed some new traffic lights. In other words, it took a one-way street and opened it up to two-way traffic.

The merchants on Main Street had high hopes for this change. But none of them were prepared for what actually happened following the changeover on November 16, 2008. In the midst of a severe recession, Main Street in Vancouver seemed to come back to life almost overnight.

Within a few weeks, the entire business community was celebrating. "We have twice as many people going by as they did before," one of the employees at an antique store told a local reporter. The chairman of the Vancouver Downtown Association, Lee Coulthard, sounded more excited than almost anyone else. "It's like, wow," he exclaimed, "why did it take us so long to figure this out?"

A year later, the success of the project is even more apparent. Twice as many cars drive down Main Street every day, without traffic jams or serious congestion. The merchants are still happy. "One-way streets should not be allowed in prime downtown retail areas," says Rebecca Ocken, executive director of Vancouver's Downtown Association. "We've proven that."

Downtown East West Corridor Study. Redmond WA

http://www.redmond.gov/insidecityhall/documentlibrary/pdfs/Resolutions/RES1289.PDF

"WHEREAS, the city of Redmond has a vision to reclaim our downtown as an economically healthy, people-friendly place, enhanced by the movement of pedestrians, bikes, cars, and a diversity of businesses, and

WHEREAS, the Transportation Facility Plan identifies three critical projects in Downtown Redmond Which will support Implementation of the downtown vision:

- Redmond Way and Cleveland Street improvements including the conversion of the one-way couplet to two-way streets...

Designated by Washington State Department of Transportation (WSDOT) as State Routes 908 and 202, respectively, the existing couplet was created in 1986 to maximize traffic circulation through Downtown. However, recent studies show that a majority of traffic (62%) is destined for Downtown. Because the couplet is conducive to throughput traffic and not destination traffic it does not support a healthy retail environment and is not a pedestrian-friendly place. The one-way street system also creates driver confusion, with many visitors giving lost upon entering the downtown corridor. All these factors impede redevelopment and real estate Investment in business: that could contribute to thriving pedestrian environments along the corridor"

The Impact of Traffic Patterns on Corridor Retail
http://www.co.washington.or.us/LUT/PlanningProjects/Bethany/loader.cfm?csModule=security/getfile&pageid=146651
"Much has been written on the debate over one-way vs. two-way traffic and the inherent impacts. However, most of the information presented has been from the perspective of the traffic engineer, rather than from the perspective of the retailer. This report is an attempt to provide the perspectives of both... Among the studies discovered, most, if not all, indicated a negative relationship on "heavy streets" (defined as one-way with synchronized lights and comparatively high volumes) between both the awareness of one's surroundings and willingness to interact within those surroundings...
Arguments for two-way streets include: enhanced businesses perform better; a favorable pedestrian environment; increased storefront exposure; and, fewer service disruptions. Research has proven that businesses on two-way streets have a comparatively elevated tax base, command stronger commercial rents and net higher real estate values, versus businesses on one-way streets. This same research suggests that the improved pedestrian safety and comfort afforded by a two-way traffic environment encourages shoppers to patronize adjacent businesses by foot, creating economic synergy...
For those businesses highly dependent on passer-by traffic, two-way streets are essential...
Two-way streets tend to promote a sense of pedestrian dominance that contributes to the tax base, creates an environment that encourages urban residential development and contributes to a compact city form."

University of Georgia Small Business Development Center: Evaluating Potential Locations for Your Retail Business
http://www.sbdc.uga.edu/pdfs/cedwards04.pdf\
"Beware of One-Way Streets – Locating on a one-way street exposes your business to the traffic traveling in only one direction. In addition, it will be more difficult for your potential customers to access your location."

Bringing Back the Two-Way Street:
http://www.preservationnation.org/main-street/main-street-news/2002/06/bringing-back-the-two-way-street.html
"The conversion of streets from one-way to two-way traffic seems to be a growing trend across North America. In the United States and Canada, many cities and towns have already made the change or are in the process of considering such conversions. While the circumstances motivating such changes and the logistical issues involved vary from place to place, most of the communities contemplating the conversion process cite easier access, traffic calming, and support for local businesses as reasons to make the transformation."

Converting One-way Streets to Two-way
http://www.preservationnation.org/main-street/main-street-news/2002/06/converting-one-way-to-two-way.html
"Many factors combine to make main street economically successful. One important, but often overlooked, aspect is the traffic pattern. One-way streets are efficient but they are not customer friendly for people coming downtown to shop two or three times a month... When should a community consider converting a street or network of streets from one-way to two-way traffic? The most important consideration is whether it will help the revitalization effort. If the area affected by the conversion is a retail district that is experiencing a comeback, then a conversion may be warranted.... Perhaps the most important reason for changing the traffic flow of a downtown street is to improve the economic well-being of the commercial district. A survey of 25 towns and cities that have converted their main streets show that many have experienced significant reductions in vacant floor space after the conversion."

Smart Growth: Main Streets and Transportation Policies
http://www.preservationnation.org/main-street/main-street-news/2002/06/smart-growth.html
"Transportation policies have great impacts, both positive and negative, on the economic vitality and quality of main streets. Poorly planned by-passes can spawn edge-of-town sprawl that lures businesses away from downtown. One-way road pairings can lead to increased traffic speed, turning main streets into speedways. And bans on on-street parking can make it hard for local main street businesses to accommodate their customers. For those reasons, downtown revitalization leaders should pay close attention to local transportation plans."

Downtowns: A New Look for Their Transportation?
http://www.ite.org/membersonly/itejournal/pdf/Jha98a18.pdf
"Instead of "more access, more traffic capacity" which we heard in days gone by, we are hearing calls for improved internal circulation for pedestrians and a need for a more localized, focused transportation system... Lower traffic volumes, slower speeds, convenient but unobtrusive parking, more neighborhood "character" and aesthetic quality, and increased safety and security are all being demanded.... Where we frequently pursued one-way streets to increase roadway capacity under the travel patterns of the past, we are now realizing that we can do as well in downtowns with more two-way streets."

Converting One-Way Streets to Two-Way. Lexington KY
http://www.lexingtondda.com/collegetown/11UKBOOK-TRAFFIC.pdf
"The prevailing wisdom is that in a retail district, two-way streets enhance a neighborhood's environment, reduce speeds to levels that are more compatible with pedestrian traffic, and that a "busy" street can be an indicator of a healthy business environment... Often times one-way streets create an unnecessary struggle for retail districts. They make it difficult for motorist to stop at, or return to a business they have passed. As a result, in business districts, one-way streets can have a vacuous affect. Like the one-way motorist, retail vitality moves out of town quickly."

Downtown success is a two-way street. Lexington KY
http://tomeblen.bloginky.com/2009/02/28/downtown-success-is-a-two-way-street/
"Downtown Lexington's legacy from 20th century traffic engineering efficiency is its one-way street pairs... It didn't work. Worse yet, those one-way streets have hampered public and private efforts to reinvent and revitalize downtown Lexington ever since.
Here's the problem: Cars go faster on one-way streets, especially when lanes are wide. That makes traffic more dangerous, especially for pedestrians, and more noisy. One-way streets hurt business and confuse tourists."

Riverwalk, Art Crawls, Two-Way Traffic Revive Downtown Waukesha. WI
http://milwaukee.bizjournals.com/milwaukee/stories/2005/07/18/focus1.html
"Waukesha's downtown resembled a ghost town following the shopping mall boom of the 1960s and 1970s, according to local business and community leaders.
The proliferation of one-way streets only contributed to the unwelcoming vibes of the downtown business district.
Thanks to development initiatives over the past decade, Waukesha's central business district finally has become a destination of choice.... The bounce is evident in the record-low office and retail space vacancy rates....
Downtown business leaders cite a number of factors that they say have created an environment more conducive to conducting business in downtown Waukesha. These changes include the elimination of one-way streets, the start-up of community policing programs, the city's long-term development plan, the beautification of the Fox River corridor and an active artisan community."

Effects of Two-Way Traffic Flow on High and Maple Street in the City of Holyoke MA
http://www.pvpc.org/resources/transport/hlyke_traf.pdf
"Based on the results of the Pioneer Valley Regional Transportation Model, both High Street and Maple Street are capable of accommodating two-way traffic flow between Appleton and Lyman Streets. Two-way traffic flow could assist in reducing vehicle travel speeds through downtown Holyoke, encouraging pedestrian traffic, and in conjunction with ongoing redevelopment efforts make downtown more economically successful."

Additional References supporting two way streets in Downtown retail corroders

Main Street Program
MainStreet.org
Smart Growth: Main Streets and Transportation Policies
Main Street 101: Public Improvements Part I
Main Street 101: Public Improvements on Main Street, Part II

American Planning Association
American Planning Association
Street Design Guidelines for Healthy Neighborhoods

Other Studies/Articles
Dayton Street Conversion Project
twowaystreetstudy.pdf (application/pdf Object)
Evaluating Urban Downtown One-Way to Two-Way Street Conversion Using Multiple Resolution Simulation and Assignment Approach
Streetsblog Capitol Hill » Are Two-Way Streets the Way of the Future?
Going Both Ways: Are Indy's Downtown Merchants Punished by One-Way Streets? - Smaller Indiana
Let's Go KC » Yet another one-way street is being eliminated Downtown
Davenport considers more two-way streets
February_08.pdf (application/pdf Object)
ParkPlandMarket2way.pdf (application/pdf Object)
Streetfilms | Park Slope: One Way Is The Wrong Way
Downtown Development Authority - Two-Way Street Project
One Way? Wrong Way -- Courant.com
Traffic Flow Conversion Study Executive Summary.pdf (application/pdf Object)

References supporting one way streets

One-Way Streets Are Better Than Two-Way
http://www.i2i.org/articles/2-2005.pdf
"Planners also sometimes argue that two-way streets are better for businesses on those streets because it is easier for patrons to reach those businesses. But traffic flows on one-way streets can be significantly higher than on two-way streets...
Converting one-way streets to two-way traffic is one of the latest fads of urban planning. Such conversions will increase congestion, pollution, and traffic accidents, but planners ignore these problems and talk about how they will lead to more "vibrant" streets, whatever that means."

Exhibit C

SE Pioneer Way Improvements Parcel Use and Ownership

ID	Street Address	Use/Business	Owner
1	430 PIONEER WAY	Henderson's/Queen Ann Motel	PARAM JIT SINGH, HARMEET KAUR
2	490 PIONEER WAY	Rental House	PARAM JIT SINGH, HARMEET KAUR
3	520 PIONEER WAY	Lincare Inc.	PROSPERITY INVESTMENTS FLP
4	540 PIONEER WAY	YMCA	ARMED SERVICES YMCA THE USA
5	1281 ELY ST	Angie's Oriental Market	DONALD E BETTNER ANGELINA L BETTNER
6	ELY ST	China Harbor Parking	JAMES & DANA CHO
7	630 PIONEER WAY	China Harbor	JAMES & DANA CHO
8	650 PIONEER WAY	Harbor Lite	STANLEY / JOSEFA J GROSZEK
9	645 FIDALGO AVE	Creative Kitchen, 3 Apts	EIFUEL JOSE & KATHLEEN S COLLANTES BRAD
10	690 PIONEER WAY	Casual House	JOHN M ALLGIRE, TRUSTEE T MYRTLE ALLGIRE
11	720 PIONEER WAY	Brenda's Front Portch, Fox Pointe, Bayleaf	JOHN M ALLGIRE, TRUSTEE T MYRTLE ALLGIRE
12	740 PIONEER WAY	Law Offices	CHRISTON C / DEBORAH SKINNER
13	760 PIONEER WAY	Vacant Land	CHRISTON C SKINNER DEBORAH J SKINNER
14	780 PIONEER WAY	Candy Bouquet	CHRIS H PANTOLEON HELENE PANTOLEON
15	790 PIONEER WAY	Wind and Tides Books, Baby N Me	ED FAKKEMA FAKKEMA, K A & E R 1/2 INT
16	810 PIONEER WAY	Bay City Bistro	M OLD TOWN MALL LLC
17	FIDALGO AVE	Vacant Building	M OLD TOWN MALL LLC
18	830 PIONEER WAY	#102 Gary Oakes Gallery, #101 vacant, #10	M OLD TOWN MALL LLC
19	860 PIONEER WAY	#101Whidbey Wildbird,#102 Paint Your Hea	M OLD TOWN MALL LLC
20	1160 HATHAWAY ST	TOCGS	CLAUDE L JOHNSTON
21	1175 IRELAND ST	Queen Nails, Gifts, Credit Bureau of Island	TOM COCKRELL PR COCKRELL, YOUNGSMAN & RAE
22	910 PIONEER WAY	A-1 Computer	DANIEL D DILLARD.
23	930 PIONEER WAY	Jazzbones	ATLAS VENTURE CAPITAL LLC
24	940 PIONEER WAY	Oak Harbor Tavern	KELLY HOING BEEDLE CLIFFORD J BEEDLE
25	980 PIONEER WAY	Enterprise, Whidbey Coffee	COFFEE GROUND LLC

O= excluded

two way
one way
don't care

28

ID	Street Address	Use/Business	Owner
26	1008 PIONEER WAY	Vacant Land	JENSEN COMMERCIAL PROPERTIES LLC
27	PIONEER WAY	Vacant Land	ROBERT TULL c/o PATRICIA COHICK
28	1050 JENSEN ST	WAIF	PROSPERITY INVSTMT. F. L. PL
29		Parking	PROSPERITY INVSTMT. F. L. PL
30	1055 MIDWAY BLVD	Vacant Building	JESSE & BLOSSOM TORRES
31	415 PIONEER WAY	Koetje Agency	ALVIN B KOETJE ET AL
32	451 PIONEER WAY	Coldwell Banker	THE KING COMPANY
33	PIONEER WAY	Parking Lot	ROBERT J JORDANO LYNETTE A JORDANO
34	PIONEER WAY	Vacant Land	BEEKSMA, EDWARD C ET AL
35	601 PIONEER WAY	WMA Securities	EDWARD C BEEKSMA ET AL
36	656 BAYSHORE DR	Element, Dept of Licensing, Shady Lady Anti	THE SEBO FAMILY LLC C/O ROBERT C SEBO
37	705 PIONEER WAY	Valle Azul	JENSEN COMMERCIAL PROPERTIES LLC
38	726 BAYSHORE DR	Maurice's	MARCELLE ARONSON
39	1299 DOCK ST	Gifts, Polka Dot, M&L Loans	JOHN D DUNNING CHARLENE M DUNNING
40	1113 PIONEER WAY	Parking Lot	CITY OF OAK HARBOR
41	PIONEER WAY	Parking Lot	CITY OF OAK HARBOR
42	PIONEER WAY	Vacant Land	WHIDBEY HOLDINGS LLC
43	841 PIONEER WAY	Zorba's	CHRISTOPHER SAXMAN OAK HARBOR PROPERTIES INC
44	851 PIONEER WAY	Allure, Popsies	CHRISTOPHER SAXMAN OAK HARBOR PROPERTIES INC
45	861 PIONEER WAY	Mr. Music, Mrs. Nails, Apartment	FIR GROVE PARTNERSHIP
46		Stairs	CITY OF OAK HARBOR
47	890 BAYSHORE DR	CM Photos	CHANA SRITONG NATCHANOK SRITONG
48	885 PIONEER WAY	Sweet Rice Thai Cuisine	CHANA SRITONG NATCHANOK SRITONG
49	893 PIONEER WAY	Law Offices	TERRY SMITH
50	916 BAYSHORE DR	Mi Pueblo	GSS INC
51	PIONEER WAY	Vacant Land	MICHAEL J / ELIZABETH REEDY
52	945 PIONEER WAY	Vacant Land	GILBERT VILLAREAL SUZANNE VILLARREAL
53	BAYSHORE DR	Vacant Land	HJW PROPERTIES LLC

O = excluded

two way
one way
don't care

29

ID	Street Address	Use/Business	Owner
54	BAYSHORE DR	Parking Lot	GILBERT VILLARREAL
55	1091 PIONEER WAY	Vacant Buildings	GILBERT VILLARREAL

O = excluded

Two way
one way
don't care

30

/ = excluded

Two way

one way

don't care

B

January 18, 2010

Exhibit D

Dear Mr. Mayor and City Council Members:

One of the stated reasons for addressing the traffic flow on Pioneer Way was the need to replace the aging utility infrastructure serving the businesses on this street and the surrounding area in general because the existing pipes, etc., are old and need to be replaced. It is recognized that implementing the project will cause an inconvenient interruption for the retail businesses, resulting in an unknown loss of sales for each business along this corridor. Has it been researched and estimates devised as to approximately how much expense each entity will incur immediately or as a long term assessment as their share of the total cost and the cost to them to connect to the new system? If this information is available, have the business and building owners been given this information, so they can be better prepared for the improvement costs to be incurred in the near future?

If the information as to the impending range of cost estimates for the infrastructure improvement benefiting the businesses and buildings has not been available to these businesses and building-owners, then why is the project proceeding? I would think the town leaders would want to have the business and building owners as cooperative partners in this challenging, but necessary, improvement project.

As you all know over the past 20 years at least, there have been many studies ordered and paid for about how to improve the business environment downtown along Pioneer Way and the associated side streets. The goal was (and probably still is) to increase the attraction of this retail area and waterfront area so more local citizens and the variety of visitors to Oak Harbor would shop and dine locally. Has the current City Council surveyed the business owners along Pioneer Way to find out what they think about the infrastructure project, and how it could affect their business during the 6-12 months it may take to install the new pipes, etc.? If so, then how many are in favor and how many are against the improvements required? If not, then why not? Would it not be more prudent as a leader of the O.H. citizenry to make a best effort to do determine what the best course of action is after doing diligent, appropriate, thorough and verifiable research?

It is my understanding that the decision by the City Council to make Pioneer Way a one-way street versus a two-way street (as it is now) as part of the infrastructure replacement project, may be "a done deal." The above questions are even more important and relevant to the street controversy than the utility replacement. If there are any doubts as to the depth and breadth of the verifiable research appropriate to the street issue, then it is premature to proceed any further, and whatever decisions have been made should be thoroughly reviewed as to their appropriateness.

It was mentioned at a review of this project a few months ago "the one-way configuration will be permanent." Therefore, I believe it is incumbent on the City Council to make sure that if this is the best solution, then the studies, research, etc., used to arrive at this conclusion should be made available without hesitancy to prove this premise. If there is any doubt about the one-way solution, then the decision already made needs to be revisited for further research and consultation with affected business and building owners (who should be allowed some credibility because of their experience with the traffic flow in Pioneer Way) before continuing. It appears that those most affected by your decision are the ones not being considered.

Transparency and honesty are very important in this controversial project. The Mayor and the City Council owe it to the Citizens of Oak Harbor and Island County, primarily affected by the decision, to ensure that all the pieces of the complicated puzzle are analyzed as to their influence, before making a final decision.

It is my understanding that if the one-way traffic is implemented, there will be angle parking on the South side of the street facing eastward in the direction of the traffic-flow. As you have experienced it is easier to angle-park than parallel park. The challenge arises when backing out into traffic or oncoming traffic.

The oncoming car/s will probably be traveling at between 15-25 mph; could be even faster. I have not recently tried to practice an emergency stop while driving 25 mph by slamming on my brakes, then measuring the reaction time necessary to make the decision to stop, then measuring the skid marks to determine how long in time and distance traveled the process took.

I think each member making this decision as to the future traffic pattern of Pioneer Way should know how much time and distance it would take them to emergency stop when driving at 25 mph. Then they would better understand the danger of backing out into traffic without being able to determine whether a car is going to endanger them. I say this because it is easier to see the oncoming traffic in a parallel parking environment, especially with larger and taller cars or trucks in back and in front. It is highly probable there are more trucks and SUV vehicles in the North Whidbey area than there are small or regular size sedans.

It is also highly probable there will be one of these style vehicles parked alongside a smaller vehicle trying to back out of an angel-parking spot as proposed in the one-way traffic flow plan. If the rear of the smaller car has to extend into the flow of traffic for the driver to see well enough to determine whether it is safe to proceed, there is an inherent potential for an accident due to the possible inattention of the driver and speed of the oncoming vehicle. It is not automatic that the oncoming car will slow down, especially if there isn't time to do so, or if the vehicle backing out doesn't estimate the distance properly.

It should be seriously considered that most of the time when a driver is exiting a parallel parking spot, it is sufficient to just look in the rear-view mirror and side mirror to see if the traffic situation allows the vehicle to exit the space. This is not the case when a driver wants to exit an angle-parking spot. One is looking at the extension of the angle across the street, not down the street 100 feet or yards. Exiting the parking spot is even more precarious when a larger vehicle is blocking your ability to look through the windows of the adjoining the vehicle as one is trying to leave the parking spot.

Exiting angle parking can be dangerous. You may know someone who was hit by an oncoming vehicle in the rear quarter of their car or truck, and sustained neck injuries due to the accident. Neck injuries are not easily remedied and have a tendency to harass the victim for many years.

I believe most of the people in our town who will be intimidated by the angle-parking will be older citizens whose driving skills become less sharp as they grow older. These are the majority of the potential customers. They have larger disposable incomes and more time to enjoy using the downtown resources. They also like driving through town (slowly at times) to see what is happening.

A two-way traffic pattern has been proven over the past many decades to enhance and preserve the Pioneer Way business environment. If not, the business and building owners in the past would have promoted having the traffic pattern changed to improve the business environment. This has not happened then or now. Yes, there is room for improvement. However, changing to a one-way traffic pattern will not guarantee a better business environment, just an expensive change of the traffic pattern.

Sincerely,

David G. Cohick
Resident of Oak Harbor and North Whidbey Island for over 45 years.

Special City Council Meeting
Thursday, January 21, 2010, 6:00 p.m.

- **Presentation by Island County Commissioner Angie Homola**
  Island County Government and Financial Basics

IN ATTENDANCE

Jim Slowik, Mayor
Five Members of the Council,
Rick Almberg
James M. Campbell
Scott Dudley
Jim Palmer
Bob Severns
Councilmember Beth Munns and Mayor Pro Tem Danny Paggao did not attend.

Paul Schmidt, City Administrator
Mike McIntyre, Senior Services Director
Renée Recker, Executive Assistant to the Mayor

PRESENTATION

Commissioner Homola gave a PowerPoint presentation on Island County Government and Financial Basics which is attached to these minutes as Exhibit A.

Council Discussion

Discussion followed about the prior year's discretionary reserve, the tapped unreserved fund balance, use of banked capacity funds, the month's worth of funds amount kept on reserve, and absence of a cash flow graph.

Council Questions

- **Can staff be rotated to keep some offices open on Friday? Fridays can be heavy permit and transaction processing days. Is there a loss of revenue and interest which could be held over the weekend?**
  Commissioner Homola: It did not pencil out economically for the County to rotate staff and keep offices open on Friday. This was discussed with department heads and staff. Closing offices on Friday also allows staff to catch up on their workload since the number of staff members has been reduced.
- **The County's budget director is forecasting sales tax revenue to be up in 2010. What is the basis for this forecast?**
  Commissioner Homola: The forecast is based on what has been received, projecting beyond that figure, and seeing an increase in home sales.
- **What percentage of sales tax comes from Oak Harbor?**
  Commissioner Homola: Will need to get an answer (for Councilmember Palmer).

- **On slide 20 – Permit and fee adjustments – move toward full cost recovery. Have these fees been in the negative?**
  Commissioner Homola: The County wants to ensure that permit monies are being spent on the item being permitted. The present software for tracking this is inadequate and needs to be updated.
- **Where do we go from here (Ms. Homola's comments).**
  We need to project further forward that just the next year or two and probably project out for five years. We are stuck with the 1% property tax cap yet the cost of living increases, people move to Whidbey Island, and services need to continue. We still have rural status which is helpful.
- **Friday office closure is still concerning and seemingly Friday is the worst day of the five business days to be closed. Is this temporary?**
  Commissioner Homola: Our biggest challenge is to have enough money to function. A change in our medical benefits policy would save $740,000, but we also have to keep the unions in mind. I do not see a quick turnaround in Island County's budget challenges and we may need to go to the public to see their priorities.
- **Will cutbacks be revisited in the next few months?**
  Commissioner Homola: Cutbacks will be revisited quarterly. We will also continue to schedule our community public meetings.
- **How long does the fix sustain us?**
  Commissioner Homola: We have tapped our reserve funds and the banked capacity is zero. This will cover 2010, but hopefully, the economy and sales will improve and we can accomplish projections.
- **Will projections be done this quarter?**
  Commissioner Homola: Yes.
- **With mandated and essential services, what is the definition of essential?**
  Commissioner Homola: A good question; everything we do is mandated or essential. WSU Extension Services brings in an incredible wealth of volunteers. Meals on Wheels is not mandated but is essential. It is difficult to prioritize what is essential, what is mandated, or which department should be prioritized.
- **Is the $740,000 savings in health benefits attainable?**
  Commissioner Homola: It is difficult to say considering the various unions, but we want to move in that direction. The increase in health benefits cost was much higher than expected.
- **With the 2010 census coming up, will there be a redistricting process?**
  Commissioner Homola: That was recently accomplished and is good for ten more years.
- **What percentage of the County's general fund goes to law and justice?**
  Commissioner Homola: 57%.
- **What are inmate services?**
  Commissioner Homola: Volunteer inmates who are supervised and provide labor.
- **Are Island Transit and Island County Tourism junior taxing districts? If they are, could the County impose administrative costs on them?**
  Commissioner Homola: I am not sure; will need to check (for Mayor Slowik)
- **It was mentioned that South Whidbey Parks and Recreation are helping with some of the County's parks. How many County parks are there?**

Commissioner Homola: I need to check on that number. The County does have 56 beaches; 30 have contaminants.

- **Concerning cash flow, are real estate excise taxes collected weekly? Could the County provide a closing team on Fridays and charge a premium for Friday closings?**
  Commissioner Homola: I would need to get back to you (for Councilmember Almberg). We did look at the numbers between Fridays and other days, have had that discussion with planning, and found that most filings are on Monday and Tuesday. It is not realistic to think that we can cover all of the business week's hours. We have a reduced staff working 37 ½ hours a week. We have tried to consolidate to maximize productivity. Commissioners sit on many committees; I personally sit on fifteen different committees.
- **Could the County's charter be changed to accommodate five commissioners, and a professional administrator? The load could be better shared.**
  Commissioner Homola: It would be helpful to have an administrator, but we would need space for additional commissioners and personnel and funding to cover this.
- **Money brought in on Fridays could be banked; you are losing eight days of interest each month. You could be closed on Mondays instead of Fridays.**
  Commissioner Homola: It didn't play out to do that.
- **Is the mental health spending (the red bar on slide 16) for the last three years being re-evaluated?**
  Commissioner Homola: There is no cap or sunset on those taxes. It is money well spent; 1/10th of 1 percent.
- **Did you seek out help and advice?**
  Commissioner Homola: We had an open process and transition. With a $2 million shortfall, we've looked to our department heads and their flow charts and will look to the department heads again. We've cut most departments below the belt.

ADJOURN

With no other comments or questions coming forth, Mayor Slowik closed the meeting at 7:00 p.m. and thanked Commissioner Homola for her presentation.

_____

Connie T. Wheeler
City Clerk

Exhibit A

Island County Government and Financial Basics

By Commissioner Angie Homola January 2010

Island County Commissioners

Helen Price Johnson
District 1

Angie Homola
District 2

John Dean
District 3

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Responsibilities of Island County Commissioners…

- Commissioners are charged with overseeing county operations, financial and budgetary matters, and the adoption of laws that regulate county growth, health, safety and the welfare of its citizens.

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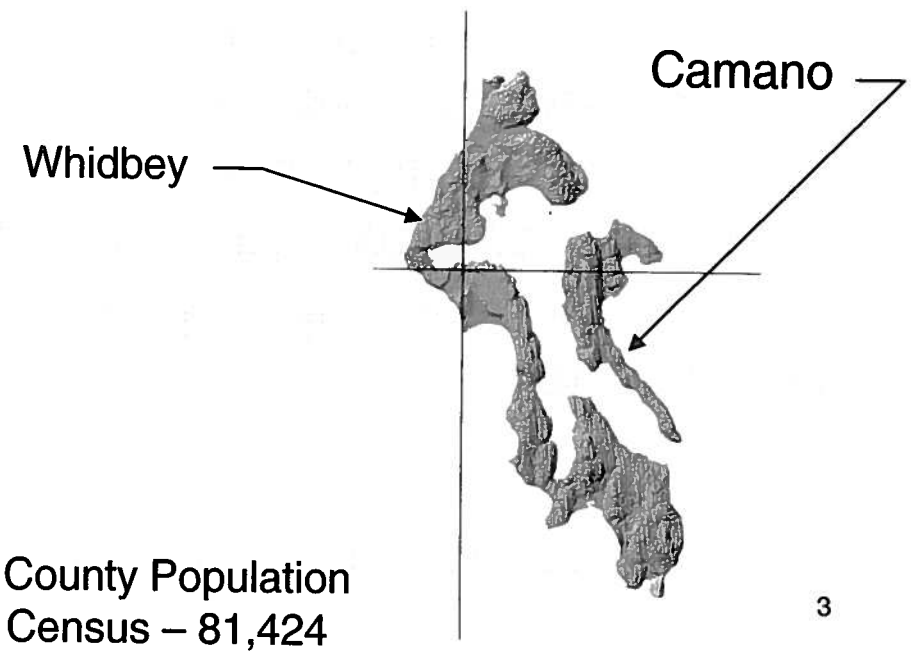
<u>Islands in Island County</u> :

Camano
Whidbey
Baby
Smith and Minor
Strawberry
Deception
Ben Ure



Island County Population
2009 Census – 81,424

Departments of Island County (number of Full Time Equivalents by dept.)

- Indicates Elected Official

- Assessor (16.70)
- Auditor (13.0)
- Budget/Clerk of the Board (1.25)
- Central Services (7.0)
- Commissioners and staff (8.05)
- Clerk (8.13)
- Civil Service (.29)
- Coroner (2)
- Sheriff (45)
  - Jail Administration (20)
- Dept of Emergency Mgmt. (1)
- District Court (13)
- General Services Admin (3.25)
- Health (38.96)
- Human Resources (1.75)
- Human Services (15.27)
- Juvenile Justice (26.70)
- Maintenance and Facilities (10.75)
- Planning (19.0)
- Prosecuting Attorney (17.47)
- Public Works (88.26)
  - Parks & Grounds Maint. (2.85)
  - Solid Waste (23.67)
- Superior Court (7.9)
- Treasurer (7.2)
- WSU Extension (7.5)

- Total FTEs: 405.95
- Down 50 FTEs from 2008

Island County Staffing…
who does the work…

- **Employees 429**
  - **Including temps and summer hires +/- 460**
- Elected Officials 13
- Non represented employees 104
- Represented employees 312

- Unions (6)

	Contract Expires
Guild Administration (5) - Sheriff	Dec 31 2007
Guild Corrections (19) - Sheriff	Dec 31 2007 (A)
Guild Road Deputies (37) - Sheriff	Dec 31 2008 (A)
1845 (161)	Dec 31 2009
1845 I (84)	Dec 31 2009
Teamsters - Prosecuting Attorneys (6)	Dec 31 2010

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County Government Mandates and Essential Services
…What people expect…

County Current Expense (aka: General Fund):

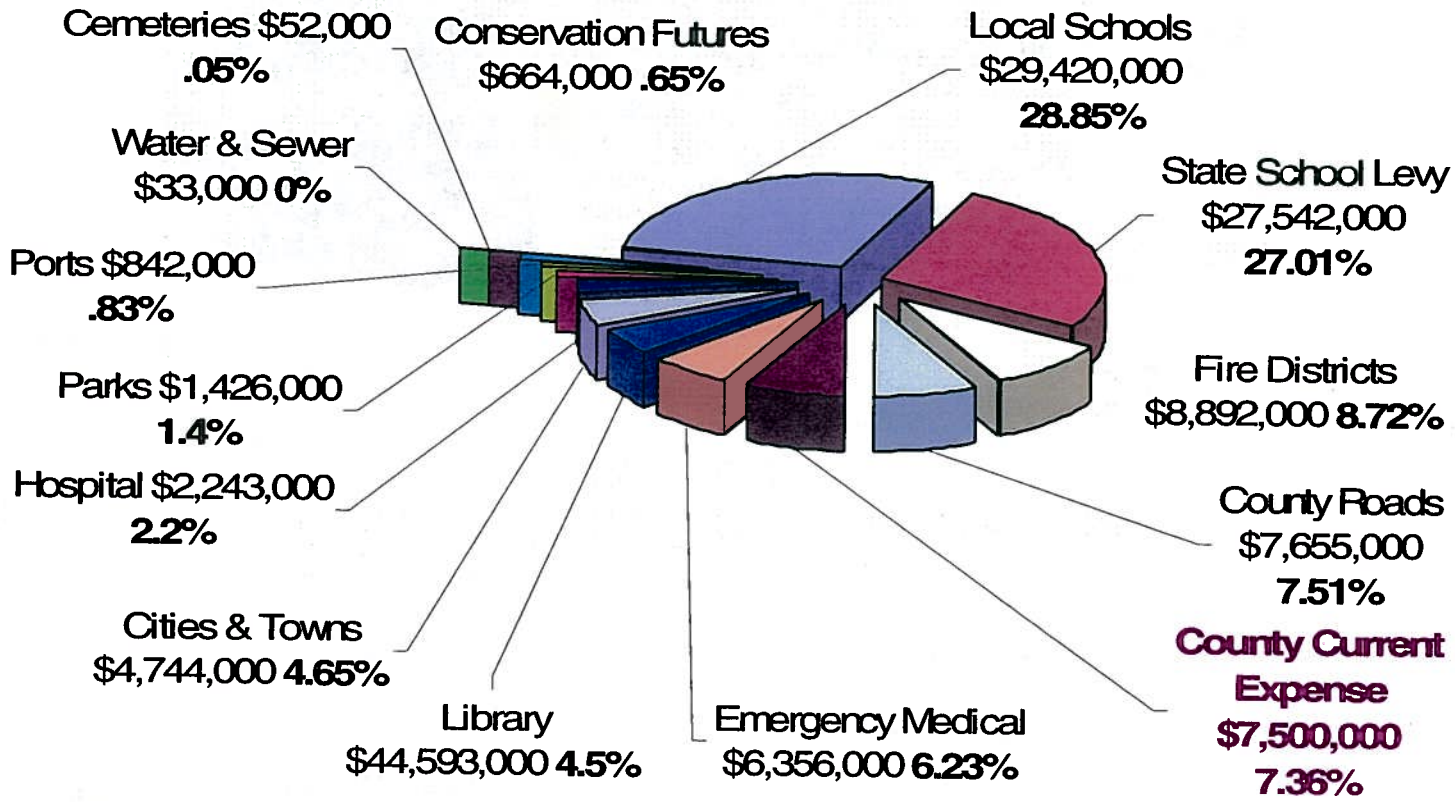
- Provide Law and Justice, Environmental and Public Health, Emergency Management, Coroner, Land Use, Shoreline and Natural Resource Planning, Sanitation, Elections, Licenses, Historic Preservation, Recreation, Transportation Infrastructure, Flood and Water Conveyance, Surface and Ground Water Protection, Aqua and Agriculture Protection, Animal Control, Maintenance of Public Facilities and Grounds.

Voter approved levies, junior taxing districts or designated funds from sales and property taxes:

- Education, libraries, fire and hospitals districts, diking and drainage districts, cemeteries, low income housing, economic development, education, and provisions for indigents, veterans, children and the elderly.

How Property Taxes are Divvied up

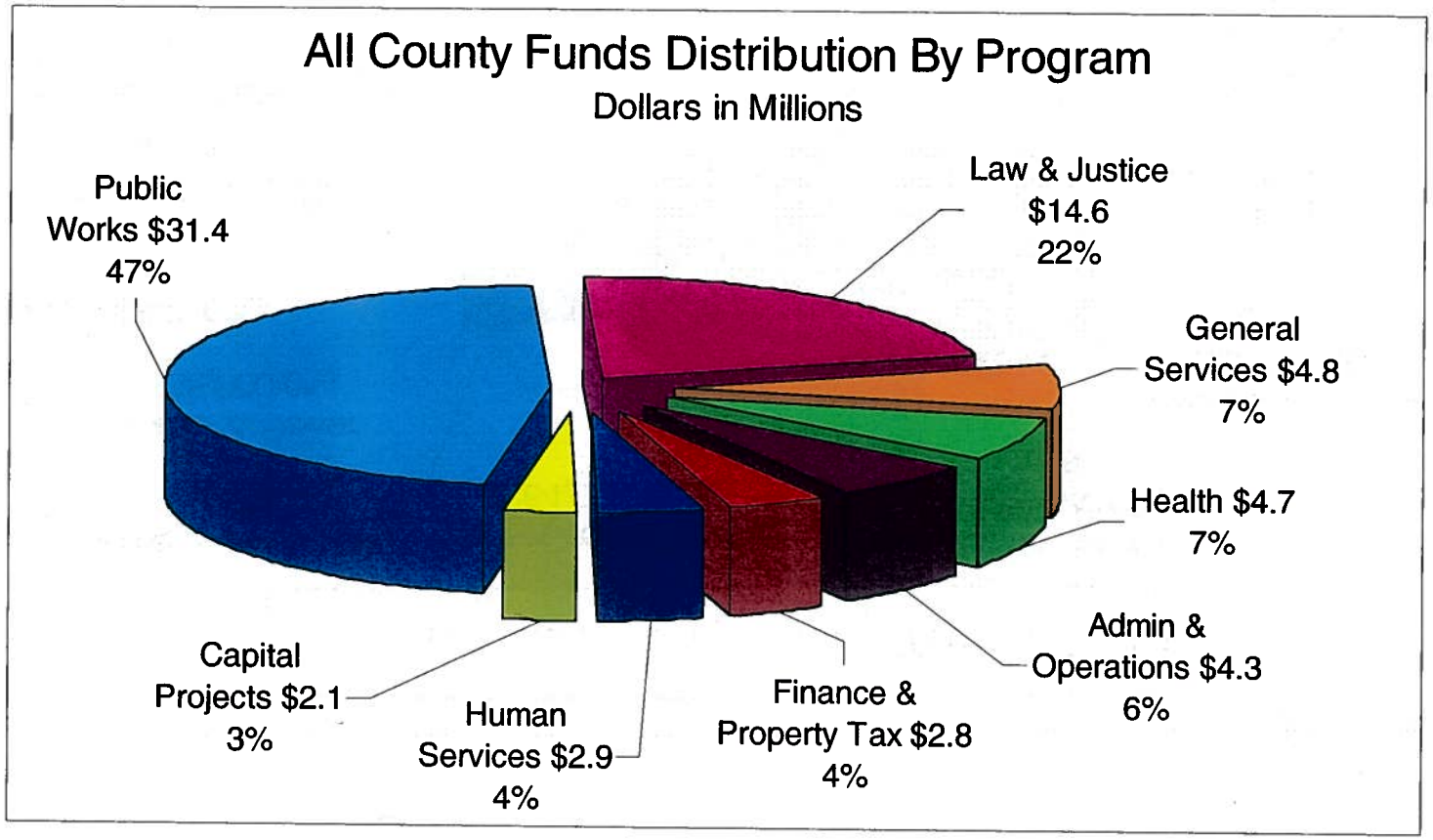
Island County Property Taxes 2009



2009 property tax sum of all parcels:	$101,961,000
2009 assessed value sum of all parcels:	$14,910,000,000

H3

Total County Budget



Total: 67.6 million dollars

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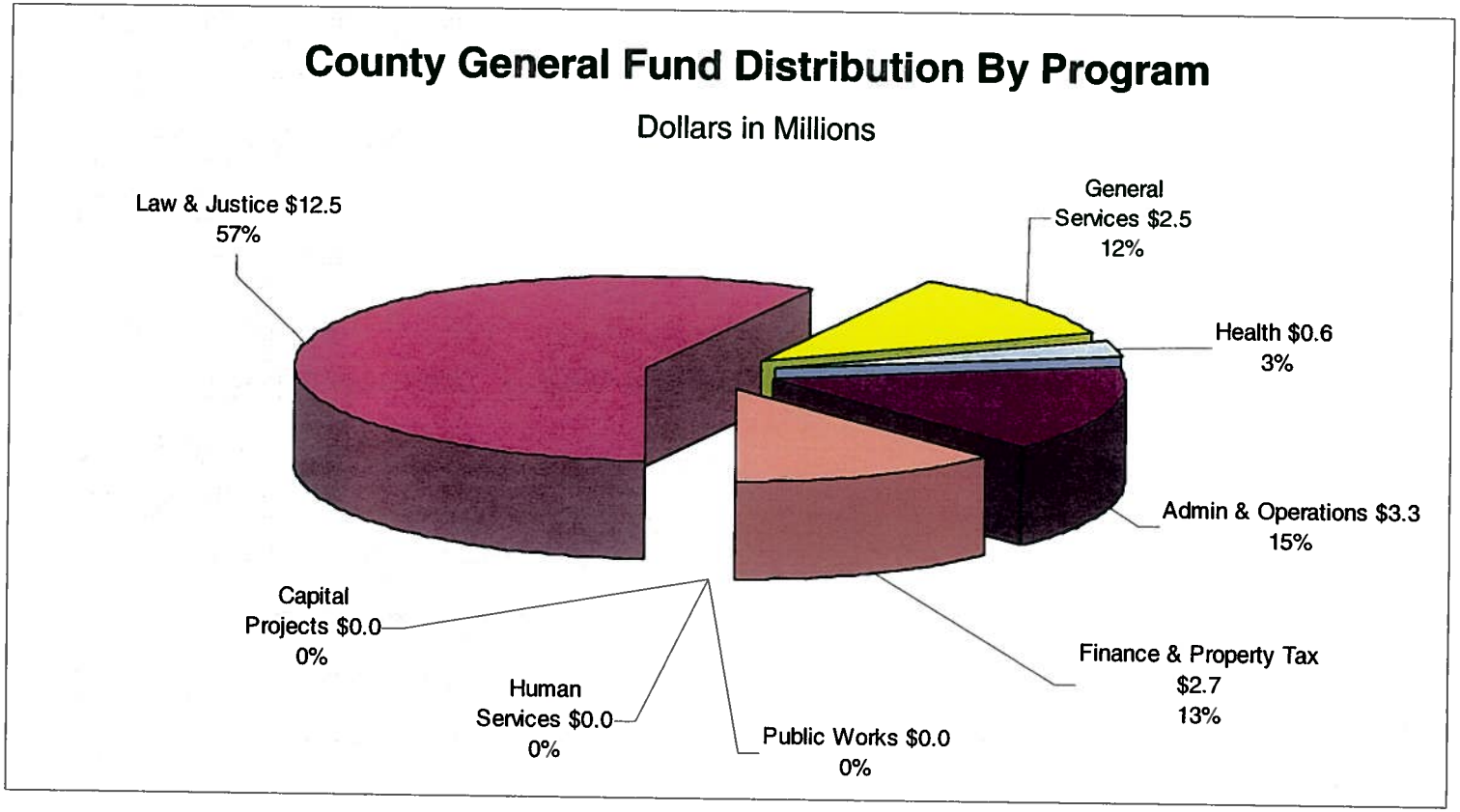
County General Fund by Program



Total: 21.6 million dollars

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Island County Current Expenses

- Departments and Courts
- Salaries Wages and Benefits
- Maintenance and Operations
- Equipment
- Transfers:
  - WSU Extension, Public Health, Human Services
- Medical Insurance
- Risk Pool Insurance
- Motor Pool
- ICOM 911 Service
- Senior Services
- Parks and Grounds Maintenance
- Animal Control Officer
- Animal Shelter Facilities

Contracts and Consultants Expenditures

- Mass mail/printing (Auditor, Assessor, Treasurer)
- Tech support, software and updates
- Autopsies – Coroner
- Union Liaison
- Court Room Security
- Public Defender
- Unemployment Claims
- Impaired Driving Panel
- Hearing Examiner
- Jail meals
- Jail Medical
- Treasurer fund fees, transfers and transport

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General Fund Expenditures

Annual Expenditures +/- :	$ 21.6 million
Monthly Expenditures +/- :	1.8 million
Prudent Contingency 3 months expenses +/- :	5.4 million
Actual Reserve Contingency **1 months expenses** (amount dedicated by ordinance) :	$ 2.2 million
Un-Reserved Fund Balance:	$ 880,000
Approved reduction for 2010	*-250,000*
Current Balance	$ 630,000

Prior to 2008 un-reserved fund balance approx. $5 million

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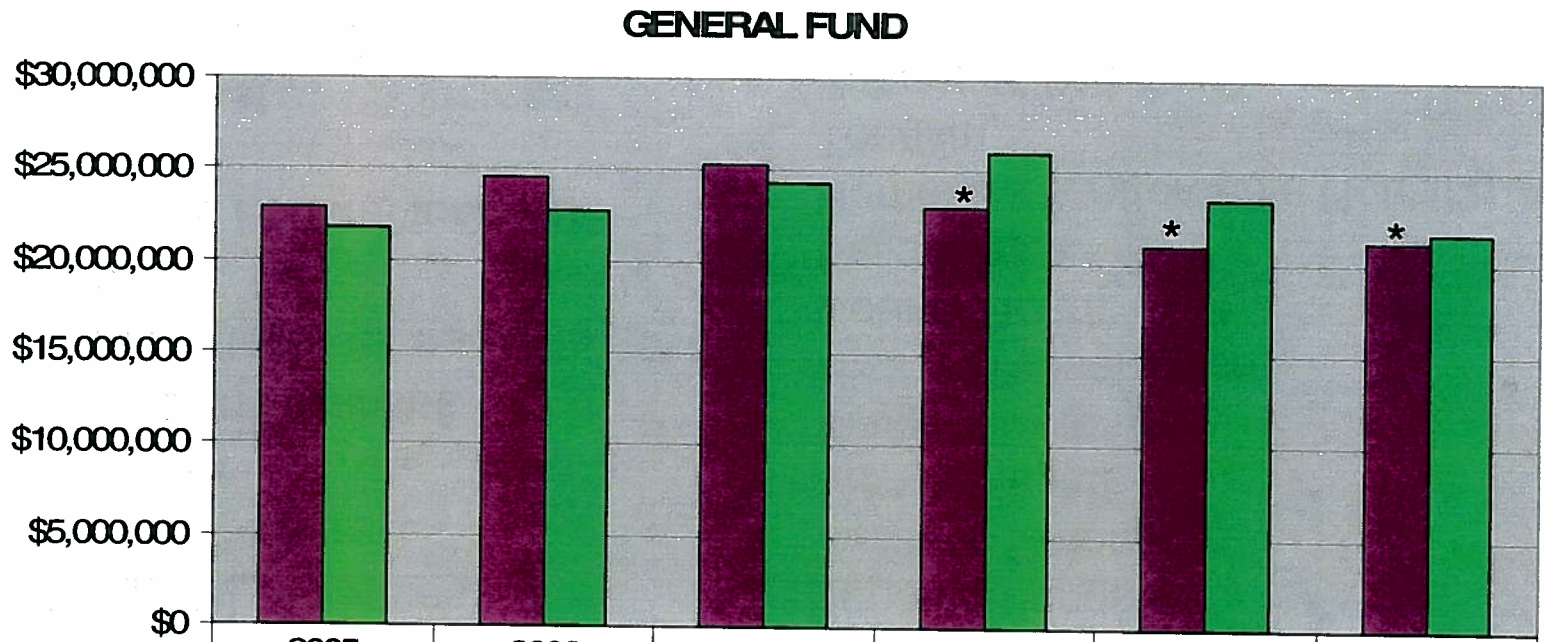
Island County Revenues and Expenditures



	2005	2006	2007	2008	2009	2010
Revenues	$22,904,951	$24,570,903	$25,328,727	$22,973,077	$20,886,656	$21,159,640
Expenditures	$21,795,192	$22,748,799	$24,260,956	$26,030,794	$23,435,261	$21,645,640

* Prior years discretionary reserves used to balance 2008, 2009 and 2010 budgets

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Island County Funding Sources

General Fund Revenues

- Property Taxes
- Sales Tax
- Permits and licenses
- Charges (fees) for services
- Fines
- State and Federal funds or grants
- Levy's – set at 1% increase on property tax per year max.

Designated Funds

- Juvenile Detention
- Mental Health
- Indigent Veterans
- Historic Preservation
- County Roads
- Solid Waste
- Homeless & Affordable Housing
- Tourism
- Enhanced 911

Miscellaneous Funding

- Grants
- Volunteer services
- Inmate services

Banked Capacity

Previously unused Property Tax Levy Capacity

- County Road 09

  $ 270,000 → $100,000 additional transfer to Sheriff's Budget for Traffic Safety (Total transfer $616,000)

- County Current Expense 09 (General Fund)

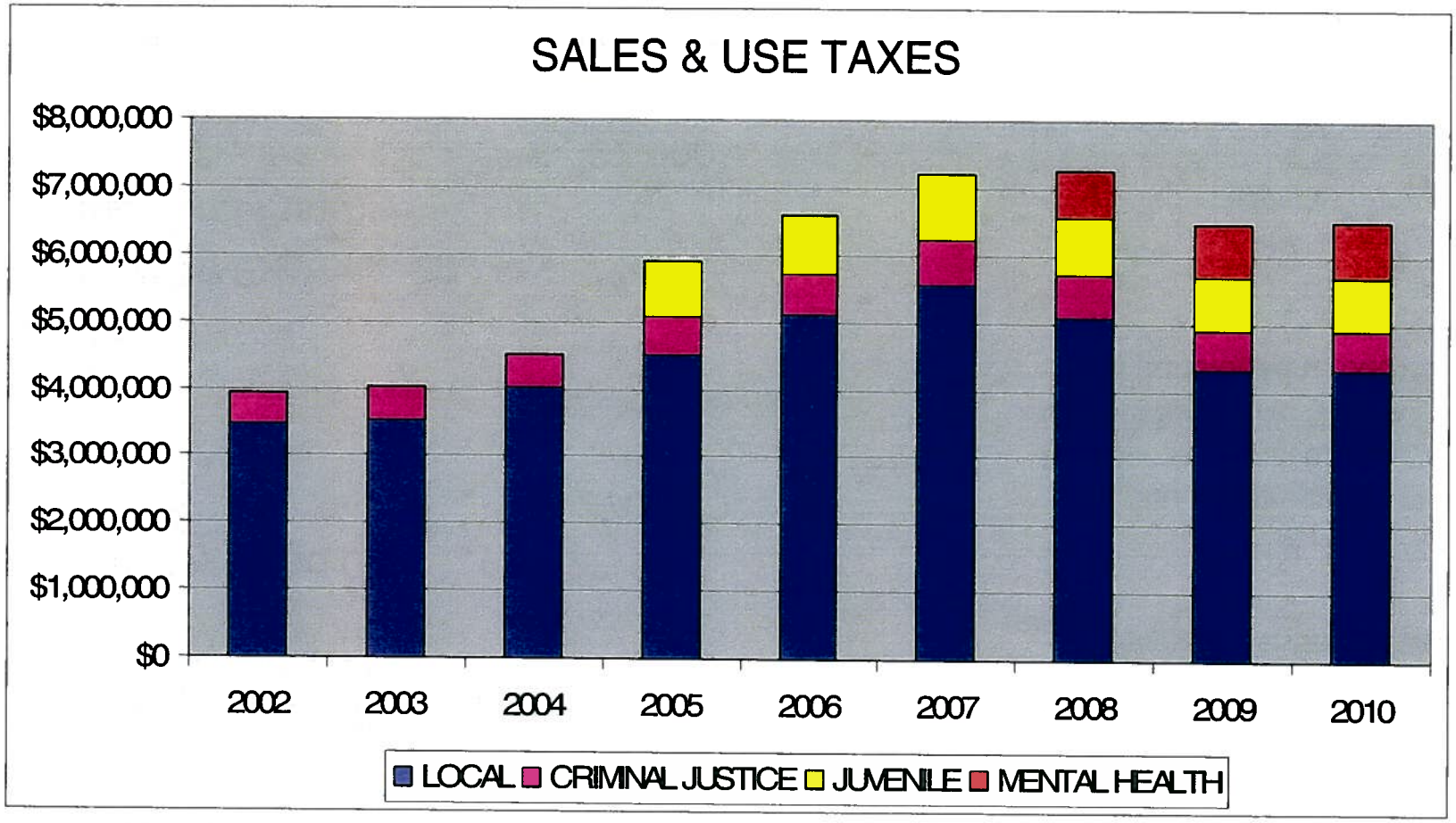
  $ 67,000

Total : $ 337,000

Full banked capacity levied to 2010 budget

Balance available for future years: $0

Revenue from Sales Tax 2002 - 2010



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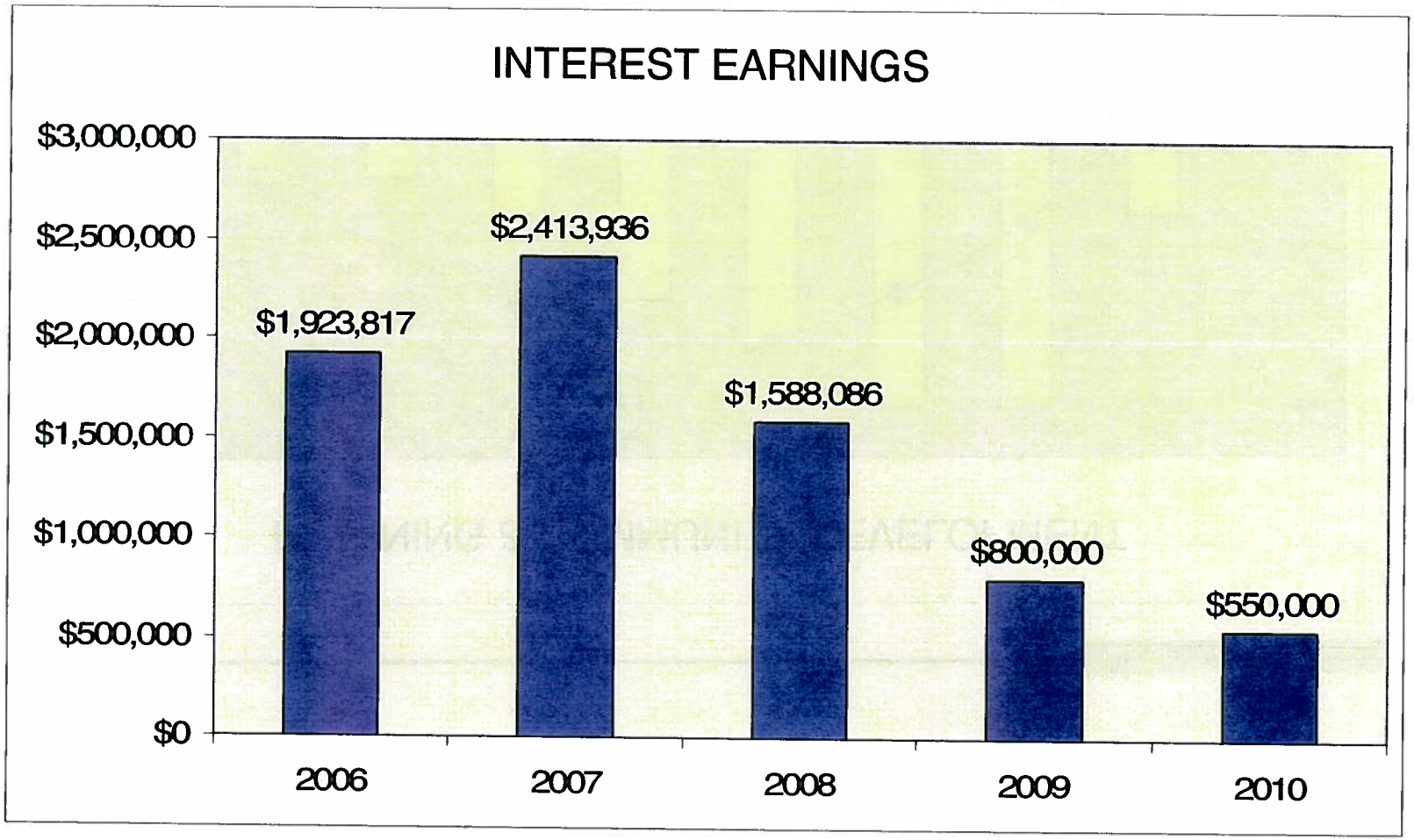
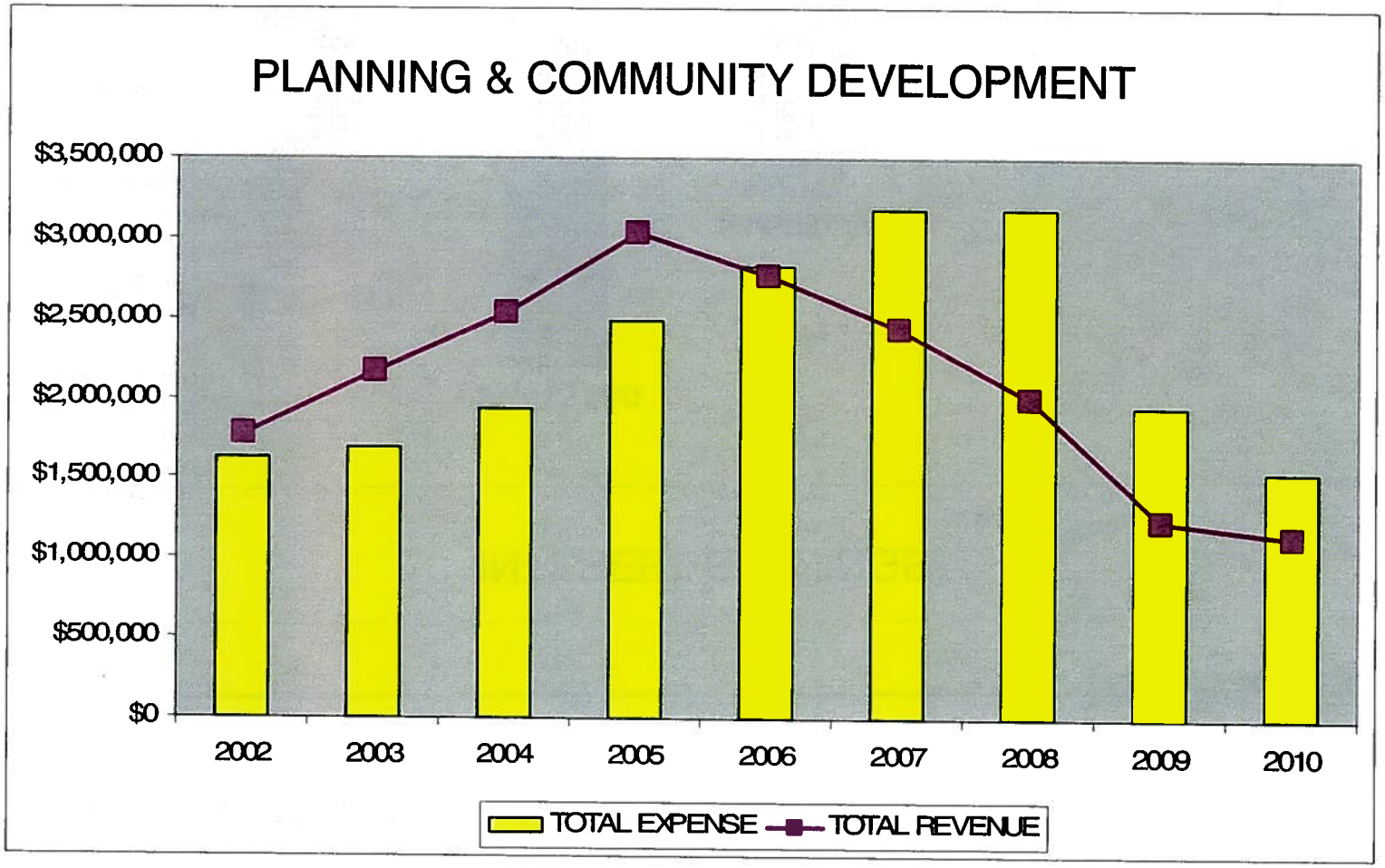
Revenue from Interest on Accounts 2006 - 2010

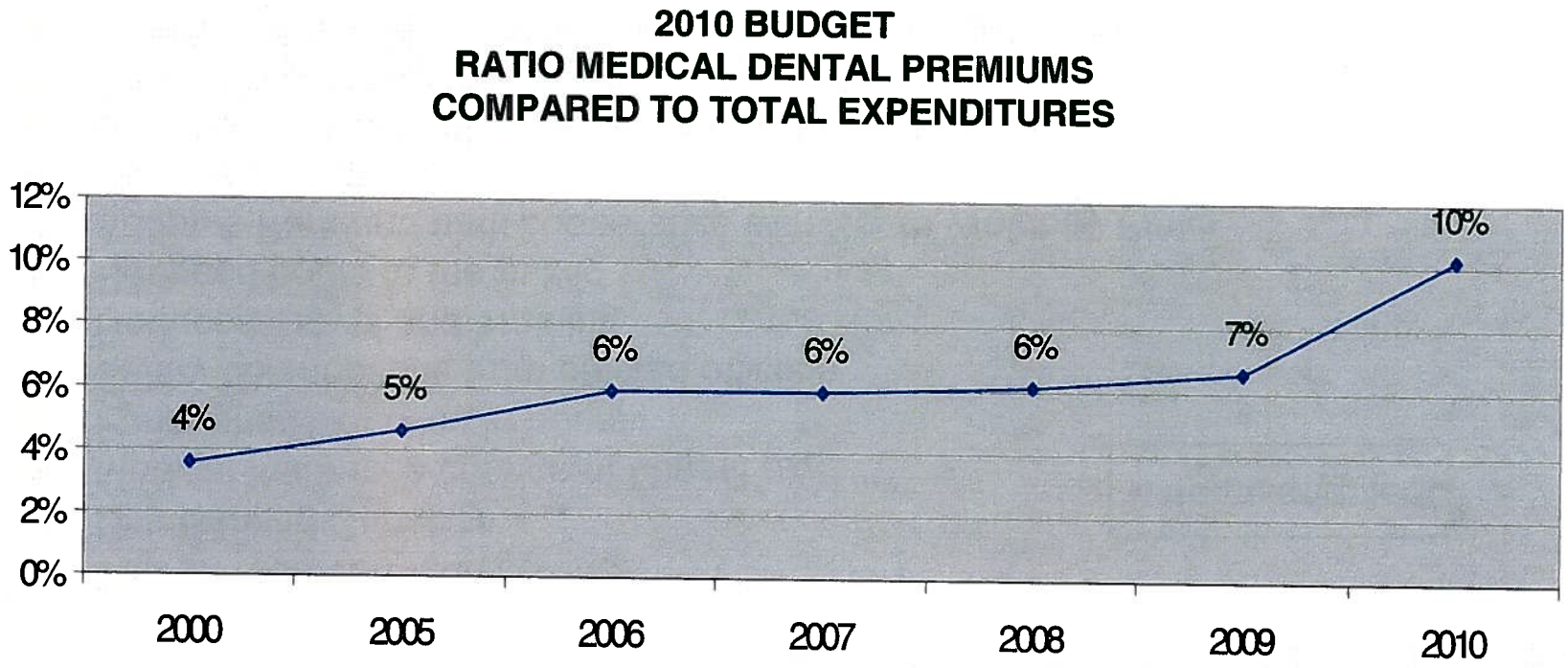


Revenue and Expenses from Planning Department Permits



54

Medical Insurance Expense to the General Fund



55

Proposals to Balance 2010 Budget
…and beyond

- Items adopted

- Tap un-reserved fund balance
- Use Banked Capacity
- Medical Insurance change of benefit plan
- Furloughs/Reduction in hours
- Salary contributions from elected officials
- Reduced Travel and Training
- Reduced hours to the public
- Adopt-A-Park and park cooperative with South Whidbey Parks
- Reduce Energy
- Consolidation of staff and closure of rental space
- Adopt 1% property tax levy increase
- Permit and fee adjustments – move toward full cost recovery
- Surplus assets (vehicles)
- Centralize purchasing
- Consolidate motor pool
- 3/10th of 1% Law and Justice sales tax increase (voter approved)
- ICOM – 911 tax increase (state legislators this session)
- Property Tax Levy lift above 1% (voter approved)

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City of Oak Harbor
City Council Agenda Bill

Bill No. 1

Date: February 2, 2010

Subject: **PUBLIC COMMENTS**

FROM: **Jim Slowik, Mayor**

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

SUMMARY STATEMENT

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

City of Oak Harbor
City Council Agenda Bill

Bill No. CA 2A

Date: February 2, 2010

Subject: Professional Services Agreement – Retreat Facilitator

FROM: Paul Schmidt, City Administrator

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

_____ Jim Slowik, Mayor
DV Doug Merriman, Finance Director
MH Margery Hite, City Attorney, approved as to form

PURPOSE

This agenda bill requests approval of a Professional Services Agreement with Kenbrio, Inc. to secure a facilitator for City Council's February 27, 2010 retreat. Kenbrio, Inc. is represented by Mr. David Mercier who facilitated our Retreat in 2008.

AUTHORITY

The authority to enter into agreements to improve governmental services is granted to the City of Oak Harbor under RCW 35A.11.020. This agreement is to provide facilitation to the City Council as they set direction for the coming biennium.

SUMMARY STATEMENT

The City Council Retreat is scheduled for Saturday, February 27, 2010. The tentative schedule is to begin at 9:00 a.m. and finish at approximately 3:00 p.m. The location for the day's activities will be at the Oak Harbor Yacht Club.

For this retreat, the agenda will be scoped primarily to set the stage for the upcoming 2011-2012 budget preparation process and to discuss future capital improvement projects. The agenda will also include a review of our accomplishments from the 2008 Retreat and a financial strategic plan presentation.

The cost for this service contract will be approximately $2,000 to $2,700, depending on incidental expenses.

We look forward to a successful retreat and a renewed sense of direction.

STANDING COMMITTEE REPORT

This item was included in the budget for 2010.

RECOMMENDED ACTION

Authorize the Mayor to enter into a professional services agreement with Kenbrio, Inc. to provide facilitator services for City Council's February 27, 2010 retreat.

ATTACHMENTS

1. Professional Services Agreement with Kenbrio, Inc.
2. Proposed Retreat Agenda

CITY ATTORNEY'S COMMENTS

The retreat will be a special meeting under the Open Public Meetings Act, and open to the public.

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, is made and entered into in duplicate this 2nd day of February, 2010, by and between the CITY OF OAK HARBOR, a Washington municipal corporation, hereinafter referred to as the "CITY" and KENBRIO, INC., hereinafter referred to as the "SERVICE PROVIDER."

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

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

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

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

1. Scope of Services.

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

2. Term.

   The Project shall begin on February 27, 2010, and shall be completed no later than March 31, 2010, unless sooner terminated according to the provisions herein.

3. Compensation and Method of Payment.

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

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

   3.3 The CITY shall pay the SERVICE PROVIDER for work performed under this Agreement as follows:
   a. An hourly rate of $125 plus reimbursement of expenses associated with fulfilling the services. It is estimated and agreed that facilitation service fees will be approximately $1,800 to $2,000.

b. Allowable expenses shall include:

- Transportation to and from the retreat location.
- Hotel and meals for the day prior to and day of the retreat.
- Any materials provided by the SERVICE PROVIDER for the retreat

Expenses shall not exceed $700.

4. Reports and Inspections.

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

4.2 The SERVICE PROVIDER shall at any time during normal business hours and as often as the CITY or State Auditor may deem necessary, make available for examination all of its records and data with respect to all matters covered, directly or indirectly, by this Agreement and shall permit the CITY or its designated authorized representative to audit and inspect other data relating to all matters covered by this Agreement. The CITY shall receive a copy of all audit reports made by the agency or firm as to the SERVICE PROVIDER'S activities. The CITY may, at its discretion, conduct an audit at its expense, using its own or outside auditors, of the SERVICE PROVIDER'S activities that relate, directly or indirectly, to this Agreement.

5. Independent Contractor Relationship.

5.1 The parties intend that an independent contractor relationship will be created by this Agreement. The CITY is interested primarily in the results to be achieved; subject to paragraphs herein, the implementation of services will lie solely with the discretion of the SERVICE PROVIDER. No agent, employee, servant or representative of the SERVICE PROVIDER shall be deemed to be an employee, agent, servant or representative of the CITY for any purpose, and the employees of the SERVICE PROVIDER are not entitled to any of the benefits the CITY provides for its employees. The SERVICE PROVIDER will be solely and entirely responsible for its acts and for the acts of its agents, employees, servants, subcontractors or representatives during the performance of this Agreement.

5.2 In the performance of the services herein contemplated, the SERVICE PROVIDER is an independent contractor with the authority to control and direct the performance of the details of the work, however, the results of the work contemplated herein must meet the approval of the CITY and shall be subject to the CITY'S general rights of inspection and review to secure the satisfactory completion thereof.

6. Service Provider Employees/agents.

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

7. Hold Harmless/Indemnification.

7.1 SERVICE PROVIDER shall defend, indemnify and hold the CITY, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the SERVICE PROVIDER in performance of this Agreement, except for injuries and damages caused by the sole negligence of the CITY.

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

7.3 No liability shall attach to the CITY by reason of entering into this Agreement except as expressly provided herein.

8. Insurance. N/A

8.1 Minimum Scope of Insurance. N/A

8.2 Minimum Amounts of Insurance. N/A

8.3 Other Insurance Provisions. N/A

8.4 Acceptability of Insurers. N/A

8.5 Verification of Coverage. N/A

9. Treatment of Assets.

Title to all property furnished by the CITY shall remain in the name of the CITY and the CITY shall become the owner of the work product and other documents, if any, prepared by the SERVICE PROVIDER pursuant to this Agreement.

10. Compliance with Laws.

10.1 The SERVICE PROVIDER, in the performance of this Agreement, shall comply with all applicable federal, state or local laws and ordinances, including regulations for licensing, certification and operation of facilities, programs and accreditation, and licensing of individuals, and any other standards or criteria as described in this Agreement to assure quality of services.

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

11. Nondiscrimination.

11.1 The CITY is an equal opportunity employer.

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

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

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

12. Assignment/subcontracting.

12.1 The SERVICE PROVIDER shall not assign its performance under this Agreement or any portion of this Agreement without the written consent of the CITY, and it is further agreed that said consent must be sought in writing by the SERVICE PROVIDER not less than thirty (30) days prior to the date of any proposed assignment. The CITY reserves the right to reject without cause any such assignment.

12.2 Any work or services assigned hereunder shall be subject to each provision of this Agreement and proper bidding procedures where applicable as set forth in local, state and/or federal statutes, ordinances and guidelines.

12.3 Any technical/professional service subcontract not listed in this Agreement, must have express advance approval by the CITY.

13. Changes.

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

14. Maintenance and Inspection of Records.

14.1 The SERVICE PROVIDER shall maintain books, records and documents, which sufficiently and properly reflect all direct and indirect costs related to the performance of this Agreement and shall maintain such accounting procedures and practices as may be necessary to assure proper accounting of all funds paid pursuant to this Agreement. These records shall be subject at all reasonable times to inspection, review, or audit, by the CITY, its authorized representative, the State Auditor, or other governmental officials authorized by law to monitor this Agreement.

14.2 The SERVICE PROVIDER shall retain all books, records, documents and other material relevant to this Agreement, for six (6) years after its expiration. The SERVICE PROVIDER agrees that the CITY or its designee shall have full access and right to examine any of said materials at all reasonable times during said period.

15. Other Provisions.

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

16. Termination.

16.1 Termination for Convenience. The CITY may terminate this Agreement, in whole or in part, at any time, by giving thirty (30) days' written notice to the SERVICE PROVIDER. Upon such termination for convenience, the CITY shall pay the SERVICE PROVIDER for all services provided under this Agreement through the date of termination.

16.2 Termination for Cause. If the SERVICE PROVIDER fails to perform in the manner called for in this Agreement, or if the SERVICE PROVIDER fails to comply with any other provisions of the Agreement and fails to correct such noncompliance within five (5) days' written notice thereof, the CITY may terminate this Agreement for cause. Termination shall be effected by serving a notice of termination on the SERVICE PROVIDER setting forth the manner in which the SERVICE PROVIDER is in default. The SERVICE PROVIDER will only be paid for services performed in accordance with the manner of performance set forth in this Agreement through the date of termination.

17. Notice.

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

18. Attorneys Fees and Costs.

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

19. Jurisdiction and Venue.

19.1 This Agreement has been and shall be construed as having been made and delivered within the State of Washington, and it is agreed by each party hereto that this Agreement shall be governed by laws of the State of Washington, both as to interpretation and performance.

19.2 Any action of law, suit in equity, or judicial proceeding for the enforcement of this Agreement or any provisions thereof shall be instituted and maintained only in any of the courts of competent jurisdiction in Island County, Washington.

20. Severability.

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

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

21. Entire Agreement.

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

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

CITY:

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

_____
Jim Slowik, Mayor

Attest:

_____
Connie Wheeler, City Clerk

SERVICE PROVIDER:

KENBRIO, INC.
1921 SE 39th Avenue
Portland, OR 97214

_____
David Mercier

CITY OF
Oak Harbor
WHIDBEY ISLAND, WASHINGTON

Exhibit "A"
Scope of Work
2010 City Council Retreat

This Scope of Work generally describes the facilitation services to be provided by Kenbrio Inc. for the City of Oak Harbor 2010 City Council Retreat, scheduled for February 27, 2010.

1. Kenbrio, Inc. will generally provide assistance in retreat planning, training instruction, monitoring of group dynamics, participant mentoring, consensus checking (not making), illustration of gaps in logic, asking provocative questions intended to stimulate discussion, and keeping the group on schedule; as well as performing any post-retreat follow up as may be requested.
2. Kenbrio, Inc. will facilitate a discussion with participants to review the 2008 City Council Retreat process. That discussion should include:
    - A review of the notes from 2008 Retreat
    - A review of changes the past 24 months
    - A review of the action plan and deliverables
3. Kenbrio, Inc. will facilitate a discussion on the new community conditions as they now exist.
4. Kenbrio, Inc. will facilitate a "brainstorming session" to help identify leading issues.
5. Kenbrio, Inc. will then facilitate a discussion on setting goals for the next two year period.
6. Kenbrio, Inc. will then facilitate a discussion on establishing a new action plan formulated from the goal setting discussion.

CITY OF
Oak Harbor
WHIDBEY ISLAND, WASHINGTON

Exhibit "A"
Scope of Work
2010 City Council Retreat
(continued)

7. Kenbrio, Inc. will facilitate a discussion for review of City meeting rules.
8. Kenbrio, Inc. may assist in a discussion facilitated by the City Finance Director regarding financial forecasting and providing a strategic financial plan for the next six years.

The City of Oak Harbor will provide the following services to assist Kenbrio with the Retreat:

1. The City will provide staff for minute-taking that documents the discussion. Staff will be assigned to serve as the scribe who, under the guidance of Kenbrio, Inc., captures on a large pad of paper the comments, issues and points of consensus raised in discussion by the participants.
2. The City will have available visual aid equipment as needed and/or any other sundry materials for purposes of discussion facilitation.

CITY OF
Oak Harbor
WHIDBEY ISLAND, WASHINGTON

City Council Retreat

❖ ❖ ❖

Saturday, February 27, 2010
Oak Harbor Yacht Club
1301 SE Catalina Drive
Oak Harbor, WA 98277

❖ ❖ ❖

AGENDA

8:15am	Begin to Arrive at Main Floor of the Yacht Club for Continental Breakfast and Preparation
9:00am	Opening Comments & Introductions – City Administrator Paul Schmidt
9:05am	Facilitator David Mercier to initiate a "refresher discussion" on 2008 Retreat.
10:00am	Brainstorming Session – Facilitator David Mercier
11:00am	Goal Setting – Facilitator David Mercier
12:45pm	Lunch – Served on premises
1:15pm	Goal Setting (continued) – Facilitator David Mercier
1:30pm	Review Council Rules – Facilitator David Mercier
2:00pm	Strategic Financial Plan – Finance Director Merriman
3:00pm	Adjourn

City of Oak Harbor
City Council Agenda Bill

Bill No. CA 2B
Date: February 2, 2010
Subject: Excused Absence Request
Councilmember Scott Dudley

FROM: Jim Slowik
Mayor

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

PURPOSE

The purpose of this agenda bill is to present and approve Councilmember Scott Dudley's excused absence request for the March 16, 2010 City Council meeting.

AUTHORITY

Per RCW 35A.12.060: *...A council position shall become vacant if the councilmember fails to attend three consecutive regular meetings of the council without being excused by the council.*

SUMMARY STATEMENT

Councilmember Dudley has submitted an excused absence request since he will not be able to attend the March 16, 2010 City Council meeting.

STANDING COMMITTEE REPORT

N/A

RECOMMENDED ACTION

Approve Councilmember Scott Dudley's excused absence from the March 16, 2010 City Council meeting.

ATTACHMENTS

None

MAYOR'S COMMENTS

City of Oak Harbor
City Council Agenda Bill

Bill No. d/A 2c
Date: February 2, 2010
Subject: Excused Absence Request
Councilmember Jim Campbell

FROM: Jim Slowik
Mayor

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

PURPOSE

The purpose of this agenda bill is to present and approve Councilmember Jim Campbell's excused absence request for the April 6, 2010 City Council meeting.

AUTHORITY

Per RCW 35A.12.060: *...A council position shall become vacant if the councilmember fails to attend three consecutive regular meetings of the council without being excused by the council.*

SUMMARY STATEMENT

Councilmember Campbell has submitted an excused absence request since he will not be able to attend the April 6, 2010 City Council meeting.

STANDING COMMITTEE REPORT

N/A

RECOMMENDED ACTION

Approve Councilmember Jim Campbell's excused absence from the April 6, 2010 City Council meeting.

ATTACHMENTS

None

MAYOR'S COMMENTS

City of Oak Harbor
City Council Agenda Bill

Bill No. CA 2D
Date: February 2, 2010
Subject: Ordinance Introduction-Stormwater Management OHMC 12.30

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

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

PURPOSE

This agenda bill introduces two ordinances amending Title 12 of the Oak Harbor municipal code related to stormwater management in the City of Oak Harbor. The proposed code changes are required by the National Pollutant Discharge Elimination System (NPDES) Phase II Municipal Stormwater permit issued to the City of Oak Harbor by the Washington State Department of Ecology.

AUTHORITY

The City Council is granted authority under RCW 35A.11.020 to adopt and enforce ordinances of all kinds relating to and regulating its local or municipal affairs and appropriate to the good government of the City.

SUMMARY STATEMENT

In February of 2007 the City of Oak Harbor was formally issued an NPDES Phase II municipal stormwater permit by the Washington State Department of Ecology (DOE). The DOE is required to issue the NPDES stormwater permits under the terms of the Washington State Water Pollution Control Law and the Federal Water Pollution Control Act (the Clean Water Act). The NPDES permit requires the City of Oak Harbor to undertake a significant number of operational changes as well as policy and code changes in order to reduce or eliminate sources of pollution through the City stormwater drainage system. The regulations proposed will increase the City of Oak Harbor's effort to control prevent and cleanup up pollution of surface waters inside City limits.

It is important to note that the NPDES permit is issued to the City as the governmental jurisdiction but that much of the content of the NPDES is directed towards the actions of private parties, businesses, developers and property owners with the City acting as the policing agent for the protection of water resources. The requirements for these changes are mandated by the

NPDES permit with the intent being to minimize the damaging effects of storm water. These and other changes to the City storm water regulations are more stringent than similar regulations imposed by other jurisdictions in Island County.

The proposed amendments to OHMC 12.30 address the required changes to development regulations for stormwater.

OHMC 12.30 Stormwater Management

In October of 2008 the City Council adopted revisions to OHMC 12.30, formally adopting the Department of Ecology 2005 Stormwater Management Manual for Western Washington (SWMMM) as the standard for stormwater runoff related to development and redevelopment projects. Adoption of the manual and the revisions to OHMC 12.30 were necessary to clarify the use of most current version of the Ecology stormwater manual as the standard in the City of Oak Harbor.

The requirements of the NPDES Phase II permit related to development regulations vary slightly from the requirements of the 2005 SWMMM. The proposed amendment to OHMC 12.30 will bring the City's stormwater regulations into conformance with the requirements of the NPDES Permit.

Attached to this agenda bill is a legislative draft of the ordinance showing the proposed changes to OHMC 12.30. Deletions are shown as strikeout text with additions being indicated with underline text.

The majority of the changes include definitions of terms, clarification on submittal requirements and limitations on construction related erosion control activities. There are two areas of worthy of attention. The first relates to the economic impacts while the second relates to treatment thresholds.

The proposed amendments, as required by the NPDES permit, broaden the section on allowable exceptions (see OHMC 12.30.580) to the minimum requirements to include consideration of the economic effects of compliance with the code requirements compared to the regulations in existence prior to imposition of the NPDES permit.

There area two areas of the permit that do not apply to the City of Oak Harbor. The NPDES permit mandates that minimum requirement #6- Runoff Treatment, OHMC 12.30.540, include treatment thresholds for oils, phosphorous, enhanced treatment and basic treatment. The proposed amendments to OHMC 12.30 include the thresholds for oil and basic treatment but do not include the phosphorous or enhanced treatment requirements.

The language of the permit for phosphorous control is limited to municipalities with a local lake management plan or a DOE imposed waste load allocation. As the City of Oak Harbor does not have a phosphorous control requirement, is not subject to a DOE waste load allocation and is not listed under section 305(b) or section 319(a) of the Clean Water Act, a phosphorous treatment threshold is not warranted at this time.

The threshold language of the permit for enhanced treatment is directed towards the reduction of dissolved metals for project sites discharging to fish-bearing streams. There are currently no streams within the jurisdiction of the City Oak Harbor classified as fish bearing streams. Therefore, the inclusion of the Enhanced treatment threshold is not warranted at this time.

Should a phosphorous control or and enhanced treatment threshold become necessary a modification to the code would be required.

This agenda bill is for introduction of the ordinance with a date for a public hearing set for the regular City Council meeting on February 16, 2010.

STANDING COMMITTEE REPORT

The recommended changes will be presented to the Public Works Standing Committee on February 4, 2010.

RECOMMENDED ACTION

A motion setting February 16, 2010 for a public hearing to consider the ordinances.

ATTACHMENTS

Draft ordinance.

MAYOR'S COMMENTS

L:\LGLA\WORK\RES-ORD2010\Stormwater 12.30 AB Intro.doc

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF OAK HARBOR AMENDING CHAPTER 12.30 OF THE OAK HARBOR MUNICIPAL CODE ENTITLED "STORMWATER MANAGEMENT"

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

Section One. Oak Harbor Municipal Code Chapter 12.30 entitled "Stormwater Management" is hereby amended to read as follows:

Chapter 12.30
~~STORM WATER~~STORMWATER MANAGEMENT

Sections:

Subchapter 12.30.000 – Preliminary Provision
12.30.010 Findings of fact.
12.30.020 Need.
12.30.030 Purpose.
12.30.040 Definitions.

Subchapter 12.30.100 – General Provisions
12.30.110 Abrogation and greater restrictions.
12.30.120 Interpretation.
12.30.130 Applicability.

Subchapter 12.30.200 – Regulated Activities and Allowed Activities
12.30.210 Regulated activities.
12.30.220 Exemptions.

Subchapter 12.30.300 – General Requirements
12.30.310 ~~Storm Water~~Stormwater Management Manual for ~~the Puget Sound Basin~~Western Washington adopted.
12.30.320 ~~Storm water~~Stormwater best management practices (BMPs).
12.30.330 Illicit discharges.

Subchapter 12.30.500 – Minimum Requirements
12.30.510 New development.
12.30.515 Redevelopment.
12.30.520 Minimum Requirement #1 – Preparation of ~~storm water~~stormwater site plans.
12.30.525 Minimum Requirement #2 – Construction ~~storm water~~Stormwater ~~p~~Pollution ~~p~~Prevention (SWPP).
12.30.527 Minimum Requirement #3 – Source control of pollution.
12.30.530 Minimum Requirement #4 – Preservation of natural drainage systems and outfalls.
12.30.535 Minimum Requirement #5 – On-site ~~storm water~~stormwater management.
12.30.540 Minimum Requirement #6 – Runoff treatment.

12.30.545 Minimum Requirement #7 – Flow control.
12.30.550 Minimum Requirement #8 – Wetlands protection.
12.30.555 Minimum Requirement #9 – Basin/watershed planning.
12.30.560 Minimum Requirement #10 – Operation and maintenance.
12.30.565 Minimum Requirement #11 – Financial liability.
12.30.570 Minimum Requirement #12 – Off-site analysis and mitigation.
12.30.575 Adjustments.
12.30.580 Exceptions and variances.

Subchapter 12.30.600 – Administration
12.30.610 Director.
12.30.620 Review and approval.
12.30.625 Review process.
~~12.30.630 Enforcement authority.~~
12.30.640 Inspection.

Subchapter 12.30.700 – Enforcement
12.30.710 General.
12.30.720 Stop work order.
12.30.730 ~~Civil penalty~~Penalties.
12.30.740 ~~Penalties due~~Enforcement.

Subchapter 12.30.000 – Preliminary Provision

12.30.010 Findings of fact. The city council of the city of Oak Harbor hereby finds that:

(1) ~~Storm water~~Stormwater pollution is a problem associated with land utilization and development and the common occurrence of potential pollutants such as pesticides, fertilizers, petroleum products, pet wastes and numerous others.

Land utilization and development is also known to increase both the volume and duration of peak flows resulting in erosion, scouring, and deposition of sediment.

(2) An expanding population and increased development of land may lead to possible consequences of water quality degradation through discharge of nutrients, metals, oil and grease, toxic materials, and other detrimental substances; drainage and storm and surface water runoff problems; and safety hazards posed by water runoff on streets and highways.

(3) In the future, such problems and dangers associated with ~~storm water~~stormwater runoff will be reduced or avoided if existing properties and future developers, both private and public, provide for ~~storm water~~stormwater quality and quantity controls.

(4) ~~Storm water~~Stormwater quality and quantity controls can be achieved when land is developed or redeveloped by implementing appropriate best management practices (BMPs).

(5) Best management practices can be expected to perform as intended only when properly designed, constructed and maintained.

(6) The Federal Clean Water Act and rules established by the Environmental Protection Agency require the Washington State Department of Ecology to issue permits to owners of municipal separate storm sewer systems (MS4).

(7) As an owner of a ~~municipal separate storm sewer system (~~MS4~~)~~, the city of Oak Harbor is subject to the requirements of the NPDES Phase II municipal stormwater permit issued by the Department of Ecology.

12.30.020 Need. The city finds that this chapter is necessary in order to:

(1) Minimize or eliminate water quality degradation;

(2) Prevent erosion and sedimentation in creeks, streams, ponds, lakes and other water bodies;

(3) Protect property owners adjacent to existing and developing lands from increased runoff rates which could cause erosion of abutting property;

(4) Preserve and enhance the suitability of waters for contact recreation, fishing, and other beneficial uses;

(5) Preserve and enhance the aesthetic quality of the water;

(6) Promote sound development policies which respect and preserve city surface water, ground water and sediment;

(7) Ensure the safety of city roads and rights-of-way;

(8) Decrease ~~storm water~~stormwater-related damage to public and private property from existing and future runoff;

(9) Protect the health, safety and welfare of the inhabitants of Oak Harbor~~.~~; and

(10) Comply with the requirements and minimum standards contained in the NPDES Phase II municipal stormwater permit for control of ~~storm water~~stormwater for review and permitting of all development, and related activities, inside city limits.

12.30.030 Purpose. The provisions of this chapter are intended to guide and advise all who conduct new development or redevelopment within the city. The provisions of this chapter establish the minimum level of compliance which must be met to permit a property to be developed or redeveloped within the city. This chapter is an exercise of the police power for the general public and not for protection of specific individuals.

Specifically, it is the purpose of this chapter to:

(1) Minimize water quality degradation and sedimentation in streams, ponds, lakes, wetlands and other water bodies;

(2) Minimize the impact of increased runoff, erosion and sedimentation caused by land development and maintenance practices;

(3) Maintain and protect ground water resources;

(4) Minimize adverse impacts of alterations on ground and surface water quantities, locations and flow patterns;

(5) Decrease potential landslide, flood and erosion damage to public and private property;

(6) Promote site planning and construction practices that are consistent with natural topographical, vegetational and hydrological conditions;

(7) Maintain and protect the city ~~storm water~~stormwater management infrastructure and those downstream; provided nothing herein shall be construed as providing a right to any individual, class or group of individuals;

(8) Provide a means of regulating clearing and grading of private and public land while minimizing water quality impacts in order to protect public health and safety; and

(9) Provide minimum development regulations and construction procedures which will preserve, replace or enhance, to the maximum extent practicable, existing vegetation to preserve and enhance the natural qualities of wetlands and water bodies and promote enhancement of critical lands.

12.30.040 Definitions. For the purpose of this chapter, the following definitions shall apply:

(1) "American Public Works Association" or "APWA" means the adopted edition of the Washington State Chapter of the American Public Works Association.

(2) "Approval" means the proposed work or completed work conforms to this chapter in the opinion of the director.

(3) "Arterial" means a road or street primarily for through traffic. A major arterial connects an Interstate Highway to cities and counties. A minor arterial connects major arterials to collectors. A collector connects an arterial to a neighborhood. A collector is not an arterial. A local access road connects individual homes to a collector.

(4) "As-graded" means the extent of surface conditions on completion of grading.

(5) "Basin plan" means a plan and all implementing regulations and procedures including, but not limited to, land use management adopted by ordinance for managing surface and ~~storm water~~ stormwater management facilities and features within individual subbasins.

(6) "Bedrock" means the more or less solid rock in place either on or beneath the surface of the earth. It may be soft, medium, or hard and have a smooth or irregular surface.

(7) "Bench" means a relatively level step excavated into earth material on which fill is to be placed.

(8) "Best management practice" or "BMP" means physical, structural, and/or managerial practices that, when used singly or in combination, prevent or reduce pollution of water. BMPs are listed and described in the Manual.

(9) "Civil engineer" means a professional engineer licensed in the state of Washington in civil engineering who is experienced and knowledgeable in the practice of civil engineering.

(10) "Civil engineering" means the application of the knowledge of the forces of nature, principles of mechanics and the properties of materials to the evaluation, design and construction of civil works for the beneficial uses of mankind.

(11) "Certified Erosion and Sediment Control Lead (CESCL)" means an individual who has current certification through an approved erosion and sediment control training program that meets the minimum training standards established by the Washington State Department of Ecology (see BMP C160 in the Stormwater Management Manual for Western Washington (2005)). A CESCL is knowledgeable in the principles and practices of erosion and sediment control. The CESCL must have the skills to assess site conditions and construction activities that could impact the quality of stormwater and the effectiveness of erosion and sediment control measures used to control the quality of stormwater discharges.

(~~11~~12) "Clearing" means the destruction and removal of vegetation by manual, mechanical, or chemical methods.

(~~12~~13) "Commercial agriculture" means those activities conducted on lands defined in RCW 84.34.020(2), and activities involved in the production of crops or livestock for wholesale trade. An activity ceases to be considered commercial agriculture when the area on which it is conducted is proposed for conversion to a nonagricultural use or has lain idle for more than five years, unless the idle land is registered in a federal or state soils conservation program, or unless the activity is maintenance of irrigation ditches, laterals, canals, or drainage ditches related to an existing and ongoing agricultural activity.

(~~13~~14) "Compaction" means densification of a fill by mechanical means.

(~~14~~15) "Critical areas" means, at a minimum, areas which include wetlands, areas with a critical recharging effect on aquifers used for potable water, fish and wildlife habitat conservation areas, frequently flooded areas, geologically hazardous areas, including unstable slopes, and associated areas and ecosystems.

(~~15~~16) "Design storm" means a prescribed hyetograph and total precipitation amount (for a specific duration recurrence frequency) used to estimate runoff for a hypothetical storm of interest or concern for the purposes of analyzing existing drainage, designing new drainage facilities or assessing other impacts of a proposed project on the flow of surface water. (A hyetograph is a graph of percentages of total precipitation for a series of time steps representing the total time during which the precipitation occurs.)

(~~16~~17) "Detention" means the release of ~~storm water~~stormwater runoff from the site at a slower rate than it is collected by the ~~storm water~~stormwater facility system, the difference being held in temporary storage.

(~~17~~18) "Detention facility" means an above or below ground facility, such as a pond or tank, that temporarily stores ~~storm water~~stormwater runoff and subsequently releases it at a slower rate than it is collected by the drainage facility system. There is little or no infiltration of stored ~~storm water~~stormwater.

(~~18~~19) "Drainage basin" means a geographic and hydrologic subunit of a water shed.

(~~19~~20) "Earth material" means any rock, natural soil or fill and/or any combination thereof.

(~~20~~21) "Ecology" means the Washington State Department of Ecology.

(~~21~~22) "Effective Impervious surface" means those impervious surfaces that are connected via sheet flow or discrete conveyance to a drainage system. Impervious surfaces on residential development sites are considered ineffective if the runoff is dispersed through at least one hundred feet of native vegetation.

(~~22~~23) "Engineering geologist" means a geologist experienced and knowledgeable in engineering geology.

(~~23~~24) "Engineering geology" means the application of geologic knowledge and principles in the investigation and evaluation of naturally occurring rock and soil for use in the design of civil works.

(~~24~~25) "Erosion" means the wearing away of the land surface by running water, wind, ice, or other geological agents, including such processes as gravitational creep. Detachment and movement of soil or rock fragments by water, wind, ice, or gravity.

(~~25~~26) "Excavation" means the mechanical removal of earth material.

(~~26~~27)"Existing site conditions" means:

(a) For developed sites with ~~storm water~~stormwater facilities that have been constructed to meet the standards in the minimum requirements of this chapter, existing site conditions shall mean the existing conditions on the site.

(b) For developed sites that do not have ~~storm water~~stormwater facilities that meet the minimum requirements, existing site conditions shall mean the conditions that existed prior to local government adoption of a ~~storm water~~stormwater management program. If in question, the existing site conditions shall be documented by aerial photograph records, or other appropriate means.

~~(c) For all sites in water quality sensitive areas as identified under Minimum Requirement #7, Water Quality Sensitive Areas , existing site conditions shall mean undisturbed forest, for the purpose of calculating runoff characteristics.~~

~~(d) For all undeveloped sites outside of water quality sensitive areas, existing site conditions shall mean the existing conditions on the site.~~

(~~27~~28) "Experimental BMP" means a BMP that has not been tested and evaluated by the Department of Ecology in collaboration with local governments and technical experts.

(~~28~~29) "Fill" means a deposit of earth material placed by artificial means.

(~~29~~30) "Forest practice" means any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber~~,~~ including, but not limited to:

(a) Road and trail construction;

(b) Harvesting, final and intermediate;

(c) Precommercial thinning;

(d) Reforestation;

(e) Fertilization;

(f) Prevention and suppression of diseases and insects;

(g) Salvage of trees;

(h) Brush control.

(~~30~~31) "Frequently flooded areas" means the 100-year flood plain designations of the Federal Emergency Management Agency and the National Flood Insurance Program.

(32) "Full stabilization" means concrete or asphalt paving; quarry spalls used as ditch lining; or the use of rolled erosion products, a bonded fiber matrix product, or vegetative cover in a manner that will fully prevent soil erosion.

(~~31~~33) "Geologically hazardous areas" means areas that because of their susceptibility to erosion, sliding, earthquake or other geological events are not suited to the siting of commercial, residential or industrial development consistent with public health or safety concerns.

(~~32~~34) "Grade" means the slope of a road, channel, or natural ground. The finished surface of a canal bed, road bed, top of embankment, or bottom of excavation; any surface prepared for the support of construction such as paving or the laying of a conduit.

(a) "Existing grade" means the grade prior to grading.

(b) "Rough grade" means the stage at which the grade approximately conforms to the approved plan.

(c) "Finish grade" means the final grade of the site which conforms to the approved plan.

(~~33~~35) "Gradient terrace" means an earth embankment or a ridge-and-channel constructed with suitable spacing and an acceptable grade to reduce erosion damage by intercepting surface runoff and conducting it to a stable outlet at a stable nonerosive velocity.

(~~34~~36) (To) "grade" means to finish the surface of a canal bed, road bed, top of embankment or bottom of excavation.

(~~35~~37) "Ground water" means water in a saturated zone or stratum beneath the surface of land or a surface water body.

(~~36~~38) "Highway" means a main public road connecting towns and cities.

(~~37~~39) "Hydroperiod" means the seasonable occurrence of flooding and/or soil saturation; it encompasses depth, frequency, duration, and seasonal pattern of inundation.

(~~38~~40) "Impervious surface" means a hard surface area that either prevents or retards the entry of water into the soil mantle as under natural conditions prior to development. A hard surface area which causes water to run off the surface in greater quantities or at an increased rate of flow from the flow present under natural conditions prior to development. Common impervious surfaces include, but are not limited to, roof tops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and oiled, macadam or other surfaces which similarly impede the natural infiltration of stormwater. Open, uncovered retention/detention facilities shall not be considered as impervious surfaces for the purposes of determining whether the thresholds for application of minimum requirements

are exceeded. Open, un-covered retention/detention facilities shall be considered impervious surfaces for purposes of runoff modeling.

(~~39~~41) "Illicit discharge" means all non-~~storm water~~stormwater discharges to ~~storm water~~stormwater drainage systems that cause or contribute to a violation of state water quality, sediment quality or ground water quality standards, including but not limited to sanitary sewer connections, industrial process water, interior floor drains, car washing and greywater systems.

(~~40~~42) "Interflow" means that portion of rainfall that infiltrates into the soil and moves laterally through the upper soil horizons until intercepted by a stream channel or until it returns to the surface, for example, in a wetland, spring or seep.

(~~41~~43) "Land disturbing activity" means any activity that results in movement of earth, or a change in the existing soil cover (both vegetative and non-vegetative) and/or the existing soil topography. Land disturbing activities include, but are not limited to, ~~demolition, construction,~~ clearing, grading, filling and excavation. Compaction that is associated with stabilization of structures and road construction shall also be considered a land disturbing activity. Vegetation maintenance practices are not considered land disturbing activity.

(~~42~~44) "Large parcel erosion and sediment control plan" or "large parcel ESC plan" means a plan to implement BMPs to control pollution generated during land disturbing activity.

(~~43~~45) "Low Impact Development" means a stormwater management and land development strategy applied at the parcel and subdivision scale that emphasizes conservation and use of on-site natural features integrated with engineered, small-scale hydrologic controls to more closely mimic pre-development hydrologic functions.

(~~44~~46) "Maintenance" ~~means activities or repairs conducted on currently serviceable structures, facilities, and equipment that involves no expansion or use beyond that previously existing and results in no significant adverse hydrologic impact. It includes those usual activities taken to prevent a decline, lapse, or cessation in the use of structures and systems.~~means activities or repairs conducted on currently serviceable structures, facilities, and equipment that involves no expansion or use beyond that previously existing and results in no significant adverse hydrologic impact. It includes those usual activities taken to prevent a decline, lapse, or cessation in the use of structures and systems. Those usual activities may include replacement of dysfunctional facilities, including cases where environmental permits require replacing an existing structure with a different type structure, as long as the functioning characteristics of the original structure are not changed.

(~~45~~47) "Mitigation" means, in the following order of preference:

(a) Avoiding the impact altogether by not taking a certain action or part of an action;

(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;

(c) Rectifying the impact by repairing, rehabilitating or restoring the affected environment;

(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; and

(e) Compensation for the impact by replacing, enhancing, or providing substitute resources or environments.

(~~46~~48) "Native vegetation" means vegetation comprised of plant species, other than noxious weeds, that are indigenous to the coastal region of the Pacific Northwest and which reasonably could have been expected to naturally occur on the site. Examples include trees such as Douglas Fir, western hemlock, western red cedar, alder, big-leaf maple, and vine maple; shrubs such as willow, elderberry, salmonberry, and salal; and herbaceous plants such as sword fern, foam flower, and fireweed.

(~~47~~49) "Natural location" means the location of those channels, swales, and other non-manmade conveyance systems as defined by the first documented topographic contours existing for the subject property, either from maps or photographs, or such other means as appropriate.

(~~48~~50) "New development" means the following activities: land disturbing activities, structural development, including construction, installation or expansion of a building or other structure; creation of impervious surfaces; Class IV general forest practices that are conversions from timber land to other uses; and subdivision and short subdivision of land and binding site plans as defined in RCW 58.17.020. All other forest practices and commercial agriculture are not considered new development.

(~~49~~51) "Permanent ~~storm water~~stormwater quality control (PSQC) plan" means a plan which includes permanent BMPs for the control of pollution from ~~storm water~~stormwater runoff after construction and/or land disturbing activity has been completed. For small sites, this requirement is met by implementing a small parcel erosion and sediment control plan. Guidance on preparing a PSQC plan is contained in the Manual.

(~~50~~52) "Person" means any individual, partnership, corporation, association, organization, cooperative, public or municipal corporation, agency of the state, or local government unit, however designated.

(~~51~~53) "Pollution" means contamination or other alteration of the physical, chemical, or biological properties of waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive or other substance into any waters of the state as will or is likely to create a

nuisance or render such waters harmful, detrimental or injurious to the public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

(~~52~~54) "Pollution-generating impervious surface (PGIS)"means those impervious surfaces considered to be a significant source of pollutants in stormwater runoff. Such surfaces include those which are subject to: vehicular use; industrial activities (as further defined in the glossary); or storage of erodible or leachable materials, wastes, or chemicals, and which receive direct rainfall or the run-on or blow-in of rainfall. Erodible or leachable materials, wastes, or chemicals are those substances which, when exposed to rainfall, measurably alter the physical or chemical characteristics of the rainfall runoff. Examples include erodible soils that are stockpiled, uncovered process wastes, manure, fertilizers, oily substances, ashes, kiln dust, and garbage dumpster leakage. Metal roofs are also considered to be PGIS unless they are coated with an inert, non-leachable material (e.g., baked-on enamel coating).

A surface, whether paved or not, shall be considered subject to vehicular use if it is regularly used by motor vehicles. The following are considered regularly-used surfaces: roads, unvegetated road shoulders, bike lanes within the traveled lane of a roadway, driveways, parking lots, unfenced fire lanes, vehicular equipment storage yards, and airport runways.

The following are not considered regularly-used surfaces: paved bicycle pathways separated from and not subject to drainage from roads for motor vehicles, fenced fire lanes, and infrequently used maintenance access roads.

(55) "Pollution-generating pervious surfaces (PGPS)" means any non-impervious surface subject to use of pesticides and fertilizers or loss of soil. Typical PGPS include lawns, landscaped areas, golf courses, parks, cemeteries, and sports fields.

(56) "Pre-developed condition" means the native vegetation and soils that existed at a site prior to the influence of Euro-American settlement. The pre-developed condition shall be assumed to be a forested land cover unless reasonable, historic information is provided that indicates the site was prairie prior to settlement.

(57) "Project site" means that portion of a property, properties, or right-of-way subject to land disturbing activities, new impervious surfaces, or replaced impervious surfaces.

(~~53~~58) "Redevelopment" means, on an already substantially developed (i.e., has thirty-five percent (35%) or more of existing impervious surface coverage) site, the creation or addition of impervious surfaces, structural development including construction, installation or expansion of a building or other structure, and/or replacement of impervious surface that is not part of a routine maintenance activity, and land disturbing activities associated with structural or impervious redevelopment.

(~~54~~59) "Regional retention/detention system" means a ~~storm water~~stormwater quantity control structure designed to correct existing excess surface water runoff problems of a basin or subbasin. The area downstream has been previously identified as having existing or predicated significant and regional flooding and/or erosion problems. This term is also used when a detention facility is used to detain ~~storm water~~stormwater runoff from a number of different businesses, developments or areas within a catchment.

(~~55~~60) "Replaced impervious surface" means for structures, the removal and replacement of any exterior impervious surfaces or foundation. For other impervious surfaces, the removal down to bare soil or base course and replacement.

(~~56~~61) "Retention/detention facility (R/D)" means a type of drainage facility designed either to hold water for a considerable length of time and then release it by evaporation, plant transpiration, and/or infiltration into the ground; or to hold surface and ~~storm water~~stormwater runoff for a short period of time and then release it to the surface and ~~storm water~~stormwater management system.

(~~57~~62) "Site" means the area defined by the legal boundaries of a parcel or parcels of land that is (are) subject to new development or redevelopment. For road projects, the length of the project site and the right-of-way boundaries define the site.

(~~58~~63) "Slope" means the degree of deviation of a surface from the horizontal, measured as a numerical ratio, percent, or in degrees. Expressed as a ratio, the first number is the horizontal distance (run) and the second is the vertical distance (rise), as 2:1. A 2:1 slope is a 50 percent slope. Expressed in degrees, the slope is the angle from the horizontal plane, with a 90-degree slope being vertical (maximum) and 45 degrees being a 1:1 or 100 percent slope.

(~~59~~64) "Small parcel erosion and sediment control plan" or "small parcel ESC plan" means a plan for small sites to implement temporary BMPs to control pollution generated during the construction phase only, primarily erosion and sediment. Guidance for preparing a small parcel ESC plan is contained in the Manual.

(~~60~~65) "Soil" means the unconsolidated mineral and organic material on the immediate surface of the earth that serves as a natural medium for the growth of land plants.

(~~61~~66) "Source control BMP" means a structure or operation that is intended to prevent pollutants from coming into contact with stormwater through physical separation of areas or careful management of activities that are sources of pollutants. This manual separates source control BMPs into two types. Structural Source Control BMPs are physical, structural, or mechanical devices, or facilities that are intended to prevent pollutants from entering stormwater. Operational BMPs are non-structural practices that prevent or reduce pollutants from entering stormwater.

(~~62~~67) "~~Storm water~~Stormwater" means that portion of precipitation that does not naturally percolate into the ground or evaporate, but flows via overland flow, interflow, channels or pipes into a defined surface water channel, or a constructed infiltration facility.

(~~63~~68) "~~Storm water~~Stormwater drainage system" means constructed and natural features which function together as a system to collect, convey, channel, hold, inhibit, retain, detain, infiltrate, divert, treat or filter ~~storm water~~stormwater.

(~~64~~69) "~~Storm water~~Stormwater facility" means a constructed component of a ~~storm water~~stormwater drainage system, designed or constructed to perform a particular function, or multiple functions. ~~Storm water~~Stormwater facilities include, but are not limited to, pipes, swales, ditches, culverts, street gutters, detention basins, retention basins, constructed wetlands, infiltration devices, catch basins, oil/water separators, sediment basins and modular pavement.

(~~65~~70) "~~Storm Water~~Stormwater Management Manual" or "Manual" means the Washington State Department of Ecology 2005 Stormwater Management Manual for Western Washington-.

(~~66~~71) "~~Storm water~~Stormwater site plan" means a plan which includes an erosion and sediment control (ESC) plan and/or a permanent ~~storm water~~stormwater quality control plan (PSQCP). For small sites, this plan is the equivalent of a small parcel erosion and sediment control plan. Guidance on preparing a ~~storm water~~stormwater site plan is contained in the Manual.

(~~67~~72) "Threshold Discharge Area" means an onsite area draining to a single natural discharge location or multiple natural discharge locations that combine within one-quarter mile downstream (as determined by the shortest flowpath).

(~~68~~73) "Toe of slope" means a point or line of slope in an excavation or cut where the lower surface changes to horizontal or meets the existing ground slope.

(~~69~~74) "Top of slope" means a point or line on the upper surface of a slope where it changes to horizontal or meets the original surface.

(~~70~~75) "Treatment BMP" means a BMP that is intended to remove pollutants from ~~storm water~~stormwater. A few examples of treatment BMPs are detention ponds, oil/water separators, biofiltration swales and constructed wetlands.

(~~71~~76) "Unstable slopes" means those sloping areas of land which have in the past exhibited, are currently exhibiting, or will likely in the future exhibit mass movement of earth.

(~~72~~77) "Water body" means surface waters including rivers, streams, lakes, marine waters, estuaries, and wetlands.

(~~73~~78) "Watershed" means a geographic region within which water drains into a particular river, stream, or body of water as identified and numbered by the state of Washington Water Resource Inventory Areas (WRIAs) as defined in Chapter 173-500 WAC.

(~~74~~79) "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adopted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from non-wetland sites including, but not limited to, ~~This includes wetlands created, restored or enhanced as part of a mitigation procedure. This does not include constructed wetlands or the following surface waters of the state intentionally constructed from sites that are not wetlands:~~ irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, ~~agricultural detention facilities,~~ farm ponds, and landscape amenities or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from non-wetland areas to mitigate the conversion of wetlands.

(~~75~~80) "Vegetation" means all organic plant life growing on the surface of the earth.

Subchapter 12.30.100 – General Provisions

12.30.110 Abrogation and greater restrictions. It is not intended that this chapter repeal, abrogate, or impair any existing regulations, easements, covenants, or deed restrictions. However, where this chapter imposes greater restrictions, the provisions of this chapter shall prevail.

12.30.120 Interpretation. The provisions of this chapter shall be held to be minimum requirements in their interpretation and application and shall be liberally construed to serve the purposes of this chapter.

12.30.130 Applicability.

(1) When any provision of any other chapter of the city conflicts with this chapter, that which provides more environmental protection shall apply unless specifically provided otherwise in this chapter.

(2) The director is authorized to adopt written procedures for the purpose of carrying out the provisions of this chapter. Prior to fulfilling the requirements of this chapter, the city shall not grant any approval or permission to conduct a regulated activity including, but not limited to, the following: building permit, commercial or residential; binding site plan; conditional use permit; franchise right-of-way construction permit; grading and clearing permit; master plan development; planned unit development; right-of-way permit; shoreline substantial development permit; shoreline variance; shoreline conditional use permit; unclassified use permit; variance; zone reclassification; subdivision; short

subdivision; special use permit; utility and other use permit; zone reclassification; or any subsequently adopted permit or required approval not expressly exempted by this chapter.

(3) Regulated activities shall be conducted only after the director approves a ~~storm water~~stormwater site plan as required by this chapter.

Subchapter 12.30.200 – Regulated Activities and Allowed Activities

12.30.210 Regulated activities. Consistent with the minimum requirements contained in this chapter, the director shall approve or disapprove the following activities, unless exempted in OHMC 12.30.220:

(1) New Development.

(a) Land disturbing activities;

(b) Structural development, including construction, installation or expansion of a building or other structure;

(c) Creation or replacement of impervious surfaces;

(d) Class IV general forest practices that are conversions from timber land to other uses;

(e) Subdivision, short subdivision and binding site plans, as defined in RCW 58.17.020.

(2) Redevelopment. On an already developed site, the creation or addition of impervious surfaces, structural development including construction, installation or expansion of a building or other structure, land disturbing activity, and/or replacement of impervious surface that is not part of a routine maintenance activity, and land disturbing activities associated with structural or impervious redevelopment.

12.30.220 Exemptions.

(1) ~~Road maintenance, c~~Commercial agriculture, and forest practices regulated under WAC Title 222, except for Class IV general forest practices that are conversions from timber land to other uses, are exempt from the provisions of this chapter.

(2) Road Maintenance activities, including pothole and square cut patching, overlaying existing asphalt or concrete pavements with asphalt or concrete without expanding the area of coverage, shoulder grading, reshaping/regarding drainage systems, crack sealing, resurfacing with in-kind material (including bituminous surface treatments over existing asphalt) without expanding the road prism and vegetation managements are exempt from the provisions of this chapter.

(3) Development undertaken by the Washington State Department of Transportation in state highway rights-of-way is regulated by Chapter 173-270 WAC, the Puget Sound Highway Runoff Program.

(4) Underground utility projects that replace the ground surface with in-kind material or materials with similar runoff characteristics are exempt from the provisions of this chapter except for Minimum Requirement #2, Construction Stormwater Pollution Prevention.

All other new development and redevelopment is subject to the minimum requirements of this chapter.

Subchapter 12.30.300 – General Requirements

12.30.310 ~~Storm Water~~Stormwater Management Manual for Western Washington adopted. The 2005 Stormwater Manual for Western Washington issued by the Washington State Department of Ecology is hereby adopted by reference and is hereinafter referred to as "the ~~m~~Manual", a copy of which is filed with the city clerk. The director shall maintain a copy of the ~~m~~Manual in his/her office.

12.30.320 ~~Storm water~~Stormwater best management practices (BMPs).

(1) General. BMPs shall be used to control pollution from ~~storm water~~stormwater. BMPs shall be used to comply with the standards in this chapter. BMPs are in the ~~m~~Manual; provided, that if there is a conflict with the Oak Harbor ~~storm water~~stormwater plan, the provision with the greatest environmental protection shall apply.

(2) Experimental BMPs. In those instances where appropriate BMPs are not in the ~~m~~Manual, experimental BMPs should be considered. Experimental BMPs are encouraged as a means of solving problems in a manner not addressed by the ~~m~~Manual in an effort to improve ~~storm water~~stormwater quality technology. Experimental BMPs must be approved in accordance with the approval process outlined in the ~~m~~Manual.

12.30.330 Illicit discharges. Illicit discharges to storm water drainage systems are prohibited.

Subchapter 12.30.500 – Minimum Requirements

12.30.510 New development.

(1) All new development shall be required to comply with Minimum Requirement #2.

(2) The following new development shall comply with Minimum Requirements #1 through #5 for the new and replaced impervious surfaces and the land disturbed:

(a) Creates or adds 2,000 square feet, or greater, of new, replaced, or new plus replaced impervious surface area; or

(b) Has land disturbing activity of 7,000 square feet or greater.

(3) The following new development shall comply with Minimum Requirements #1 through #10 for the new impervious surfaces and the converted pervious surfaces:

(a) Creates or adds 5,000 square feet, or more, of new impervious surface area; or

(b) Converts three-quarters of an acre, or more, of native vegetation to lawn or landscaped areas; or

(c) Converts two and one-half acres, or more, of native vegetation to pasture.

12.30.515 Redevelopment.

(1) All redevelopment shall be required to comply with Minimum Requirement #2. In addition, all redevelopment that exceeds certain thresholds shall be required to comply with additional minimum requirements as follows.

(2) The following redevelopment shall comply with Minimum Requirements #1 through #5 for the new and replaced impervious surfaces and the land disturbed:

(a) The new, replaced, or total of new plus replaced impervious surfaces is 2,000 square feet or more~~,~~; or

(b) Seven thousand square feet or more of land disturbing activities.

(3) The following redevelopment shall comply with Minimum Requirements #1 through #12 for the new impervious surfaces and converted pervious areas:

(a) Adds 5,000 square feet or more of new impervious surfaces; or

(b) Converts three-quarters of an acre, or more, of native vegetation to lawn or landscaped areas; or

(c) Converts two and one-half acres, or more, of native vegetation to pasture.

(4) If the runoff from the new impervious surfaces and converted pervious surfaces is not separated from runoff from other surfaces on the project site, the ~~storm water~~ stormwater treatment facilities must be sized for the entire flow that is directed to them.

(5) The director may allow the minimum requirements to be met for an equivalent (flow and pollution characteristics) area within the same site. For public roads' projects, the equivalent area does not have to be within the project limits, but must drain to the same receiving water.

(6) For road-related projects, runoff from the replaced and new impervious surfaces (including pavement, shoulders, curbs, and sidewalks) shall meet all the minimum requirements if the new impervious surfaces total 5,000 square feet or more and total 50% ~~percent~~ or more of the existing impervious surfaces within the project limits. The project limits shall be defined by the length of the project and the width of the right–of-way.

(7) Other types of redevelopment projects shall comply with all the minimum requirements for the new and replaced impervious surfaces if the total of new plus replaced impervious surfaces is 5,000 square feet or more, and the valuation of proposed improvements – including interior improvements – exceeds 50% ~~percent~~ of the assessed value of the existing site improvements.

~~(8) A local government may exempt or institute a stop-loss provision for redevelopment projects from compliance with minimum requirements for treatment, flow control, and wetlands protection as applied to the replaced impervious surfaces if the local government has adopted a plan and a schedule that fulfills those requirements in regional facilities.~~

12.30.520 Minimum Requirement #1 – Preparation of ~~storm water~~stormwater site plans. All projects meeting the thresholds in OHMC 12.30.510 and 12.30.515 shall prepare and submit a ~~Storm water~~stormwater ~~S~~site ~~P~~plan for review. ~~Storm water~~Stormwater ~~S~~site ~~P~~plans shall be prepared in accordance with Volume I, Chapter 3, of the ~~m~~Manual.

12.30.525 Minimum Requirement #2 – Construction ~~Storm water~~Stormwater Pollution Prevention (SWPP). All new development and redevelopment projects are responsible for preventing erosion and discharge of sediment and other pollutants into receiving waters. All new development and redevelopment shall comply with Construction SWPP Elements #1 through #12 below.

Projects in which the new, replaced, or new plus replaced impervious surfaces total 2,000 square feet or more, or disturb 7,000 square feet or more of land must prepare a construction ~~storm water~~stormwater pollution prevention plan (SWPPP) as part of the ~~Storm water~~stormwater ~~S~~site ~~P~~plan. The SWPPP shall include a narrative and drawings. All BMPs shall be clearly referenced in the narrative and marked on the drawings. The SWPPP narrative shall include documentation to explain and justify the pollution prevention decisions made for the project. Sediment and erosion control BMPs shall be consistent with the BMPs contained in Chapters 3 and 4 of Volume II of the Manual, and/or other equivalent BMPs contained in technical manuals approved by Ecology. Each of the 12 elements must be considered and included in the construction SWPPP unless site conditions render the element unnecessary and the exemption from that element is clearly justified in the narrative of the SWPPP.

Projects that add or replace less than 2,000 square feet of impervious surface or disturb less than 7,000 square feet of land are not required to prepare a construction SWPPP, but must consider all of the 12 elements of construction ~~storm water~~stormwater pollution prevention and develop controls for all elements that pertain to the project site.

(1) *Element #1*: Mark Clearing Limits.

(a) Prior to beginning land disturbing activities, including clearing and grading, all clearing limits, sensitive areas and their buffers, and trees that are to be preserved within the construction area shall be clearly marked, both in the field and on the plans, to prevent damage and off-site impacts.

(b) Plastic, metal, or stake wire fence may be used to mark the clearing limits.

(c) The duff layer, native top soil, and natural vegetation shall be retained in an undisturbed state to the maximum extent practicable. If it is not practicable to retain the duff layer in place, it should be stockpiled on-site, covered to prevent erosion, and replaced immediately upon completion of the ground disturbing activities.

(2) *Element #2:* Establish Construction Access.

(a) Construction vehicle access and exit shall be limited to one route, if possible, or two for linear projects such as roadways where more than one access is necessary for large equipment maneuvering.

(b) Access points shall be stabilized with a pad of quarry spalls or crushed rock prior to traffic leaving the construction site to minimize the tracking of sediment onto public roads.

(c) Wheel wash or tire baths should be located on-site~~, if applicable~~ if the stabilized construction entrance is not effective in preventing sediment from being tracked onto public roads.

(d) If sediment is tracked off-site, public roads shall be cleaned thoroughly at the end of each day, or more frequently during wet weather, if necessary, to prevent sediment from entering waters of the state. Sediment shall be removed from roads by shoveling or pickup sweeping and shall be transported to a controlled sediment disposal area. Street washing will be allowed only after sediment is removed in this manner.

(e) Street wash wastewater shall be controlled by pumping back on-site, or otherwise be prevented from discharging into systems tributary to state surface waters.

(3) *Element #3*: Control Flow Rates.

(a) Properties and waterways downstream from development sites shall be protected from erosion due to increases in the volume, velocity, and peak flow rate of ~~storm water~~stormwater runoff from the project site, as required by local plan approval authority.

(b) Downstream analysis is necessary if changes in flows could impair or alter conveyance systems, stream banks, bed sediment or aquatic habitat.

(c) Where necessary to comply with Minimum Requirement #7, ~~storm water~~ stormwater retention/detention facilities shall be constructed as one of the first steps in grading. Detention facilities shall be functional prior to construction of site improvements (e.g. impervious surfaces).

(d) The director may require pond designs that provide additional or different ~~storm water~~ stormwater flow control if necessary to address local conditions or to protect properties and waterways downstream from erosion due to increases in the volume, velocity, and peak flow rate of ~~storm water~~ stormwater runoff from the project site.

(e) If permanent infiltration ponds are used for flow control during construction, these facilities should be protected from siltation during the construction phase.

(4) *Element #4*: Install Sediment Controls.

(a) Prior to leaving a construction site, or prior to discharge to an infiltration facility, ~~storm water~~ stormwater runoff from disturbed areas shall pass through a sediment pond or other appropriate sediment removal BMP. Runoff from fully stabilized areas may be discharged without a sediment removal BMP, but must meet the flow control performance standard of Element #3. ~~"Full stabilization" means concrete or asphalt paving; quarry spalls used as ditch lining; or the use of rolled erosion products, a bonded fiber matrix product, or vegetative cover in a manner that will fully prevent soil erosion.~~ The director shall inspect and approve areas stabilized by means other than pavement or quarry spalls.

(b) Sediment ponds, vegetated buffer strips, sediment barriers or filters, dikes, and other BMPs intended to trap sediment on-site shall be constructed as one of the first steps in grading. These BMPs shall be functional before other land disturbing activities take place.

(c) Earthen structures such as dams, dikes, and diversions shall be seeded and mulched according to the timing indicated in Element #5.

(d) BMPs intended to trap sediment on-site must be located in a manner to avoid interference with the movement of juvenile salmonids attempting to enter off-channel areas or drainages, often during nonstorm events, in response to rain event changes in stream elevation or wetted area.

(5) *Element #5:* Stabilize Soils.

(a) All exposed and unworked soils shall be stabilized by application of effective BMPs that protect the soil from the erosive forces of raindrop impact and flowing water, and wind erosion.

(b) From October 1st through April 30th, no soils shall remain exposed and unworked for more than two days. From May 1st to September 30th, no soils shall remain exposed and unworked for more than seven days. This condition applies to all soils on-site, whether at final grade or not. These time limits may be adjusted by the local permitting authority if it can be shown that the average time between storm events justifies a different standard.

(c) Soils shall be stabilized at the end of the shift before a holiday or weekend if needed based on the weather forecast.

(d) Applicable practices include, but are not limited to, temporary and permanent seeding, sodding, mulching, plastic covering, soil application of polyacrylamide (PAM), the early application of gravel base on areas to be paved, and dust control.

(e) Soil stabilization measures selected should be appropriate for the time of year, site conditions, estimated duration of use, and potential water quality impacts that stabilization agents may have on downstream waters or ground water.

(f) Soil stockpiles must be stabilized from erosion, protected with sediment trapping measures, and when possible, be located away from storm drain inlets, waterways and drainage channels.

(g) Linear construction activities, including right-of-way and easement clearing, roadway development, pipelines, and trenching for utilities, shall be conducted to meet the soil stabilization requirement. Contractors shall install the bedding materials, roadbeds, structures, pipelines, or utilities and restabilize the disturbed soils so that:

(i) From October 1st through April 30th, no soils shall remain exposed and unworked for more than two days; and

(ii) From May 1st to September 30th, no soils shall remain exposed and unworked for more than seven days.

(6) *Element #6:* Protect Slopes.

(a) Cut and fill slopes shall be designed and constructed in a manner that will minimize erosion.

(b) Consider soil type and its potential for erosion.

(c) Reduce slope runoff velocities by reducing the continuous length of slope with terracing and diversions, reduce slope steepness, and roughen slope surface.

(d) Off-site ~~storm water~~ stormwater (run-on) shall be diverted away from slopes and disturbed areas with interceptor dikes and/or swales. Off-site ~~storm water~~ stormwater should be managed separately from ~~storm water~~ stormwater generated on the site.

(e) At the top of slopes, collect drainage in pipe slope drains or protected channels to prevent erosion. Temporary pipe slope drains shall handle the peak flow from a 10-year, 24-hour event assuming a Type 1A rainfall distribution to the developed condition.. Alternatively, the 10-year and 25-year, one-hour flow rates indicated by an approved continuous runoff model, increased by a factor of 1.6, may be used. The hydrologic analysis shall use the existing land cover condition for predicting flow rates from tributary areas outside the project limits. For tributary areas on the project site, the analysis shall use the temporary or permanent project land cover condition, whichever will produce the highest flow rates. If using the Western Washington Hydrology model to predict flows, bare soil areas should be modeled as "landscaped area".

(f) Provide drainage to remove ground water intersecting the slope surface of exposed soil areas.

(g) Excavated material shall be placed on the uphill side of trenches, consistent with safety and space considerations.

(h) Check dams shall be placed at regular intervals within channels that are cut down a slope.

(i) Stabilize soils on slopes, as specified in Element #5.

(7) *Element #7:* Protect Drain Inlets.

(a) All storm drain inlets made operable during construction shall be protected so that ~~storm water~~ stormwater runoff shall not enter the conveyance system without first being filtered or treated to remove sediment.

(b) All approach roads shall be kept clean. ~~All sediment and street wash water shall not be allowed to enter storm drains without prior and adequate treatment unless treatment is provided before the storm drain discharges to waters of the state.~~

(c) Inlets should be inspected weekly at a minimum and daily during storm events. Inlet protection devices should be cleaned or removed and replaced when sediment has filled one-third of the available storage (unless a different standard is specified by the product manufacturer).

(8) *Element #8:* Stabilize Channels and Outlets.

(a) All temporary on-site conveyance channels shall be designed, constructed and stabilized to prevent erosion from the expected peak 10-minute velocity of flow from a Type 1A, 10-year, 24-hour frequency storm for the developed condition. Alternatively, the 10-year, one-hour flow rate indicated by an approved continuous runoff model, increased by a factor of 1.6, may be used.

(b) Stabilization, including armoring material, adequate to prevent erosion of outlets, adjacent stream banks, slopes and downstream reaches shall be provided at the outlets of all conveyance systems.

(9) *Element #9:* Control Pollutants.

(a) All pollutants, including waste materials and demolition debris, that occur on-site shall be handled and disposed of in a manner that does not cause contamination of ~~storm water~~stormwater. Woody debris may be chopped and spread on-site.

(b) Cover, containment, and protection from vandalism shall be provided for all chemicals, liquid products, petroleum products, and non-inert wastes present on the site (see Chapter 173-304 WAC for the definition of inert waste). On-site fueling tanks shall include secondary containment.

(c) Maintenance and repair of heavy equipment and vehicles involving oil changes, hydraulic system drain down, solvent and de-greasing cleaning operations, fuel tank drain down and removal, and other activities which may result in discharge or spillage of pollutants to the ground or into ~~storm water~~ stormwater runoff must be conducted using spill prevention measures, such as drip pans. Contaminated surfaces shall be cleaned immediately following any discharge or spill incident. Emergency repairs may be performed on-site using temporary plastic placed beneath and, if raining, over the vehicle.

(d) Wheel wash or tire bath wastewater, shall be discharged to a separate on-site treatment system or to the sanitary sewer.

(e) Application of agricultural chemicals, including fertilizers and pesticides, shall be conducted in a manner and at application rates that will not result in loss of chemical to ~~storm water~~ stormwater runoff. Manufacturers' recommendations for application rates and procedures shall be followed.

(f) BMPs shall be used to prevent or treat contamination of ~~storm water~~ stormwater runoff by pH modifying sources. These sources include, but are not limited to, bulk cement, cement kiln dust, fly ash, new concrete washing and curing waters, waste streams generated from concrete grinding and sawing, exposed aggregate processes, and concrete pumping and mixer washout waters. Stormwater

discharges shall not cause or contribute to a violation of the water quality standard for pH in the receiving water.

(g) Construction sites with significant concrete work shall adjust the pH of ~~storm water~~ stormwater if necessary to prevent violations of water quality standards. Construction site operators shall obtain written approval from Ecology prior to using chemical treatment, other than CO_2 or dry ice, to adjust pH.

(10) *Element #10:* Control De-Watering.

(a) Foundation, vault, and trench de-watering water, which has similar characteristics to ~~storm water~~ stormwater runoff at the site, shall be discharged into a controlled conveyance system prior to discharge to a sediment trap or sediment pond. Channels must be stabilized, as specified in Element #8.

(b) Clean, non-turbid de-watering water, such as well-point ground water, can be discharged to systems tributary to state surface waters, as specified in Element #8, provided the de-watering flow does not cause erosion or flooding of receiving waters. These clean waters should not be routed through a ~~storm water~~ stormwater sediment pond.

(c) Highly turbid or otherwise contaminated de-watering water, such as from construction equipment operation, clamshell digging, concrete tremie pour, or work inside a cofferdam, shall be handled separately from ~~storm water~~ stormwater.

(d) Other disposal options, depending on site constraints, may include: (i) infiltration, (ii) transport off-site in a vehicle, such as a vacuum flush truck, for legal disposal in a manner that does not pollute state waters, (iii) Ecology-approved on-site chemical treatment or other suitable treatment technologies, (iv) sanitary sewer discharge with local sewer district approval, if there is no other option, or (v) use of a sedimentation bag with outfall to a ditch or swale for small volumes of localized de-watering.

(11) *Element #11:* Maintain BMPs.

(a) All temporary and permanent erosion and sediment control BMPs shall be maintained and repaired as needed to assure continued performance of their intended function. All maintenance and repair shall be conducted in accordance with BMP specifications.

(b) All temporary erosion and sediment control BMPs shall be removed within 30 days after final site stabilization is achieved or after the temporary BMPs are no longer needed. Trapped sediment shall be removed or stabilized on-site. Disturbed soil areas resulting from removal of BMPs or vegetation shall be permanently stabilized.

(12) *Element #12:* Manage the Project.

(a) Phasing of Construction. Development projects shall be phased where feasible in order to prevent soil erosion and, to the maximum extent practicable, the transport of sediment from the site during construction. Revegetation of exposed areas and maintenance of that vegetation shall be an integral part of the clearing activities for any phase.

(b) For construction sites one acre or larger that discharge stormwater to surface waters of the state, a CESCL specialist shall be identified in the Construction SWPPP and shall be on-site or on-call at all times. Certification may be obtained through an approved training program that meets the erosion and sediment control training standards established by Ecology.

(c) Whenever inspection and/or monitoring reveals that the BMPs identified in the construction SWPPP are inadequate, due to the actual discharge of or potential to discharge a significant amount of any pollutant, appropriate BMPs or design changes shall be implemented as soon as possible.

(d) The construction SWPPP shall be retained on-site or within reasonable access to the site.

(e) The SWPPP shall be modified whenever there is a significant change in the design, construction, operation, or maintenance at the construction site that has, or could have, a significant effect on the discharge of pollutants to waters of the state.

(f) The SWPPP shall be modified, if during inspections or investigations conducted by the owner/operator, or the director, it is determined that the SWPPP is ineffective in eliminating or significantly minimizing pollutants in stormwater discharges from the site. The SWPPP shall be modified as necessary to include additional or modified BMPs designed to correct problems identified. Revisions to the SWPPP shall be completed within seven calendar days following the inspection.

(13)

~~(b)~~ Clearing and grading activities for developments shall be permitted only if conducted pursuant to an approved site development plan (e.g., subdivision approval) that establishes permitted areas of clearing, grading, cutting, and filling. When establishing these permitted clearing and grading areas, consideration should be given to minimizing removal of existing trees and minimizing disturbance/compaction of native soils except as needed for building purposes. These permitted clearing and grading areas and any other areas required to

preserve critical or sensitive areas, buffers, native growth protection easements, or tree retention areas, shall be delineated on the site plans and the development site.

(14)

~~(e)~~ Seasonal Work Limitations. From October 1st through April 30th, clearing, grading, and other soil disturbing activities shall only be permitted if shown to the satisfaction of the director that silt-laden runoff will be prevented from leaving the site through a combination of the following:

(a)

~~(i)~~ Site conditions including existing vegetative coverage, slope, soil type and proximity to receiving waters; and

(b)

~~(ii)~~ Limitations on activities and the extent of disturbed areas; and

(c)

~~(iii)~~ Proposed erosion and sediment control measures.

(15)

~~(13)~~ Based on the information provided and/or local weather conditions, the director may expand or restrict the seasonal limitation on-site disturbance. The director shall take enforcement action, such as a notice of violation, administrative order, penalty, or stop-work order, under the following circumstances:

(a) If, during the course of any construction activity or soil disturbance during the seasonal limitation period, sediment leaves the construction site causing a violation of the surface water quality standard; or

(b) If clearing and grading limits or erosion and sediment control measures shown in the approved plan are not maintained.

(~~14~~16) The following activities are exempt from the seasonal clearing and grading limitations:

(a) Routine maintenance and necessary repair of erosion and sediment control BMPs;

(b) Routine maintenance of public facilities or existing utility structures that do not expose the soil or result in the removal of the vegetative cover to soil; and

(c) Activities where there is 100% ~~percent~~ infiltration of surface water runoff within the site in approved and installed erosion and sediment control facilities.

(~~15~~17) (a) Coordination with Utilities and Other Contractors. The primary project proponent shall evaluate, with input from utilities and other contractors, the ~~storm water~~ stormwater management requirements for the entire project, including the utilities, when preparing the construction SWPPP.

(b) Inspection and Monitoring. All BMPs shall be inspected, maintained, and repaired as needed to assure continued performance of their intended function. Site inspections shall be conducted by a person who is knowledgeable in the principles and practices of erosion and sediment control. The person must have the skills to (i) assess the site conditions and construction activities that could impact the quality of ~~storm water~~ stormwater, and (ii) assess the effectiveness of erosion and sediment control measures used to control the quality of ~~storm water~~ stormwater discharges.

~~(16) For construction sites one acre or larger that discharge storm water to surface waters of the state, a certified erosion and sediment control specialist shall be identified in the Construction SWPPP and shall be on-site or on-call at all times. Certification may be obtained through an approved training program that meets the erosion and sediment control training standards established by Ecology.~~

~~(17) Whenever inspection and/or monitoring reveals that the BMPs identified in the construction SWPPP are inadequate, due to the actual discharge of or potential to discharge a significant amount of any pollutant, appropriate BMPs or design changes shall be implemented as soon as possible.~~

~~(18) The construction SWPPP shall be retained on-site or within reasonable access to the site.~~

~~(19) The SWPPP shall be modified whenever there is a significant change in the design, construction, operation, or maintenance at the construction site that has, or could have, a significant effect on the discharge of pollutants to waters of the state.~~

~~(20) The SWPPP shall be modified, if during inspections or investigations conducted by the owner/operator, or the director, it is determined that the SWPPP is ineffective in eliminating or significantly minimizing pollutants in storm water discharges from the site. The SWPPP shall be modified as necessary to include additional or modified BMPs designed to correct problems identified. Revisions to the SWPPP shall be completed within seven calendar days following the inspection.~~

12.30.527 Minimum Requirement #3 – Source control of pollution. All known, available and reasonable source control BMPs shall be applied to all projects. Source control BMPs shall be selected, designed, and maintained according to the ~~m~~Manual.

~~An adopted and implemented basin plan (Minimum Requirement #9) may be used to develop source control requirements that are tailored to a specific basin; however, in all circumstances source control BMPs shall be required for all sites.~~

12.30.530 Minimum Requirement #4 – Preservation of natural drainage systems and outfalls. Natural drainage patterns shall be maintained, and discharges from the project site shall occur at the natural location, to the maximum extent practicable. The manner by which runoff is discharged from the project site must not cause a significant adverse impact to downstream receiving waters and down gradient properties. All outfalls require energy dissipation.

12.30.535 Minimum Requirement #5 – On-site ~~storm water~~ stormwater management. Projects shall employ on-site ~~storm water~~ stormwater management BMPs to infiltrate, disperse, and retain ~~storm water~~stormwater runoff on-site to the maximum extent feasible without causing flooding or erosion impacts. Roof downspout control BMPs, functionally equivalent to those described in ~~Chapter 3 of Volume III of~~ the ~~m~~Manual, and dispersion and soil quality BMPs, functionally equivalent to those in Chapter 5 of Volume V of the ~~m~~Manual, shall be required to reduce the hydrologic disruption of developed sites. Use of low impact development practices and BMPs is encouraged and is consistent with the Manual.

12.30.540 Minimum Requirement #6 – Runoff treatment.

(1) The following require construction of ~~storm water~~ stormwater treatment facilities:

(a) Projects in which the total of effective, pollution-generating impervious surface (PGIS) is 5,000 square feet or more in a threshold discharge area of the project; or

(b) Projects in which the total of pollution-generating pervious surfaces (PGPS) is three-quarters of an acre or more in a threshold discharge area, and from which there is a surface discharge in a natural or manmade conveyance system from the site.

(2) Treatment-Type Thresholds.

(a) Oil Control: Treatment to achieve Oil Control applies to projects that have "high-use sites". High-use sites are those that typically generate high concentrations of oil due to high traffic turnover or the frequent transfer of oil. High-use sites include:

(i) An area of a commercial or industrial site subject to an expected average daily traffic (ADT) count equal to or greater than 100 vehicles per 1,000 square feet of gross building area;

(ii) An area of a commercial or industrial site subject to petroleum storage and transfer in excess of 1,500 gallons per year, not including routinely delivered heating oil;

(iii) An area of a commercial or industrial site subject to parking, storage or maintenance of 25 or more vehicles that are over 10 tons gross weight (trucks, buses, trains, heavy equipment, etc.);

(iv) A road intersection with a measured ADT count of 25,000 vehicles or more on the main roadway and 15,000 vehicles or more on any intersecting roadway, excluding projects proposing primarily pedestrian or bicycle use improvements.

(b) Basic Treatment: Basic Treatment generally applies to:

(i) Project sites that discharge to the ground, UNLESS:

(A) The soil suitability criteria for infiltration treatment are met; (see Chapter 3 of Volume III of the Manual for soil suitability criteria; or

(B) The project uses infiltration strictly for flow control - not treatment - and the discharge is within ¼ mile of the phosphorus sensitive lake (use a Phosphorus Treatment facility), or within ¼ mile of a fish-bearing stream, or a lake (use an Enhanced Treatment facility).

(ii) Residential projects not otherwise needing phosphorus control as designated by USEPA, Ecology, or by the City of Oak Harbor; and

(iii) Project sites discharging directly to salt waters, river segments, and lakes listed in Appendix I-C of the Manual; and

(iv) Project sites that drain to streams that are not fish-bearing, or to waters not tributary to fish-bearing streams; and

(v) Landscaped areas of industrial, commercial, and multi-family project sites, and parking lots of industrial and commercial project sites that do not involve pollution-generating sources (e.g., industrial activities, customer parking, storage of erodible or leachable material, wastes or chemicals) other than parking of employees' private vehicles. For developments with a mix of land use types, the Basic Treatment requirement shall apply when the runoff from the areas subject to the Basic Treatment requirement comprise 50% or more of the total runoff within a threshold discharge area.

(~~2~~3) Treatment Facility Sizing. Water Quality Design Storm Volume: The volume of runoff predicted from a 24-hour storm with a six-month return frequency (a.k.a., six- month, 24-hour storm). Wetpool facilities are sized based upon the volume of runoff predicted through use of the Natural Resource Conservation Service curve number equations in ~~Chapter 2 of Volume III of~~ the ~~m~~Manual, for the six-month, 24-hour storm. Alternatively, the 91st percentile, 24-hour runoff volume indicated by an approved continuous runoff model may be used.

(~~3~~4) Water Quality Design Flow Rate.

(a) Preceding Detention Facilities or When Detention Facilities Are Not Required: The flow rate at or below which 91% ~~percent~~ of the runoff volume, as estimated by an approved continuous runoff model, will be treated. Design criteria for treatment facilities are assigned to achieve the applicable performance goal at the water quality design flow rate (e.g., 80% ~~percent~~ TSS removal).

(b) Downstream of Detention Facilities: The full two-year release rate from the detention facility.

Alternative methods can be used if they identify volumes and flow rates that are at least equivalent.

That portion of any development project in which the above PGIS or PGPS thresholds are not exceeded in a threshold discharge area shall apply on-site ~~storm water~~ stormwater management BMPs in accordance with Minimum Requirement #5.

(~~4~~5) Treatment Facility Selection, Design, and Maintenance.

(a) ~~Storm water~~ Stormwater treatment facilities shall be:

(i) Selected in accordance with the process identified in ~~Chapter 4 of Volume I of~~ the ~~m~~Manual;

(ii) Designed in accordance with the design criteria in ~~Volume V of~~ the ~~m~~Manual or the Low Impact Development Technical Guidance Manual for Puget Sound; and

(iii) Maintained in accordance with the maintenance schedule in ~~Volume V of~~ the ~~m~~Manual or the Low Impact Development Technical Guidance Manual for Puget Sound.

(~~5~~6) Additional Requirements. Direct discharge of untreated ~~storm water~~ stormwater from pollution-generating impervious surfaces to ground water is prohibited, except for the discharge achieved by infiltration or dispersion of runoff from residential sites through use of on-site ~~stormwater~~stormwater management BMPs.

12.30.545 Minimum Requirement #7 – Flow control.

(1) Applicability. Projects shall provide flow control to reduce the impacts of ~~storm water~~ stormwater runoff from impervious surfaces and land cover conversions. The requirements of this section apply to projects that discharge ~~storm water~~ stormwater directly, or indirectly through a conveyance system, into a fresh water, except for projects

that discharge to a water in the ~~m~~Manual, Appendix I-E - Flow Control-Exempt Receiving Waters, in accordance with the following restrictions:

(a) Direct discharge to the exempt receiving water does not result in the diversion of drainage from any perennial stream classified as Types 1, 2, 3, or 4 in the State of Washington Interim Water Typing System, or Types "S", "F", or "Np" in the Permanent Water Typing System, or from any Category I, II, or III wetland; and

(b) Flow-splitting devices or drainage BMPs are applied to route natural runoff volumes from the project site to any downstream Type 5 stream or Category IV wetland:

(i) Design of flow-splitting devices or drainage BMPs will be based on continuous hydrologic modeling analysis. The design will assure that flows delivered to Type 5 stream reaches will approximate, but in no case exceed, durations ranging from 50% ~~percent~~ of the two-year to the 50-year peak flow;

(ii) Flow-splitting devices or drainage BMPs that deliver flow to Category IV wetlands will also be designed using continuous hydrologic modeling to preserve pre-project wetland hydrologic conditions unless specifically waived or exempted by regulatory agencies with permitting jurisdiction; and

(c) The project site must be drained by a conveyance system that is comprised entirely of manmade conveyance elements (e.g., pipes, ditches, outfall protection, etc.) and extends to the ordinary high water line of the exempt receiving water; and

(d) The conveyance system between the project site and the exempt receiving water shall have sufficient hydraulic capacity to convey discharges from future build-out conditions (under current zoning) of the site, and the existing condition from non-project areas from which runoff is or will be collected; and

(e) Any erodible elements of the manmade conveyance system must be adequately stabilized to prevent erosion under the conditions noted above.

(2) If the discharge is to a stream that leads to a wetland, or to a wetland that has an outflow to a stream, both this requirement and Minimum Requirement #8 apply.

(3) Thresholds. The following require construction of flow control facilities and/or land use management BMPs that will achieve the standard requirement for western Washington:

(a) Projects in which the total of effective impervious surfaces is 10,000 square feet or more in a threshold discharge area; or

(b) Projects that convert three-quarters of an acre or more of native vegetation to lawn or landscape, or convert two and one-half acres or more of native vegetation to pasture in a threshold discharge area, and from which there is a surface discharge in a natural or manmade conveyance system from the site; or

(c) Projects that through a combination of effective impervious surfaces and converted pervious surfaces cause a 0.1 cubic feet per second increase in the 100-year flow frequency from a threshold discharge area as estimated using the Western Washington Hydrology Model or other approved model.

(4) That portion of any development project in which the above thresholds are not exceeded in a threshold discharge area shall apply on-site ~~storm water~~ stormwater management BMPs in accordance with Minimum Requirement #5.

(5) Standard Requirement. ~~Storm water~~ Stormwater discharges shall match developed discharge durations to pre-developed durations for the range of pre-developed discharge rates from 50% ~~percent~~ of the two-year peak flow up to the full 50-year peak flow. The pre-developed condition to be matched shall be a forested land cover unless:

(a) Reasonable, historic information is provided that indicates the site was prairie prior to settlement (modeled as "pasture" in the Western Washington Hydrology Model); or

(b) The drainage area of the immediate stream and all subsequent downstream basins have had at least 40% ~~percent~~ total impervious area since 1985. In this case, the pre-developed condition to be matched shall be the existing land cover condition. Where basin-specific studies determine a stream channel to be unstable, even though the above criterion is met, the pre-developed condition assumption shall be the "historic" land cover condition, or a land cover condition commensurate with achieving a target flow regime identified by an approved basin study.

This standard requirement is waived for sites that will reliably infiltrate all the runoff from impervious surfaces and converted pervious surfaces.

(5) Engineering Analysis Modeling Requirement. ~~Storm water~~Stormwater runoff volumes and rates shall be determined using the Department of Ecology Western Washington Hydrology Model as required by the ~~m~~Manual or an equivalent continuous runoff model approved for use by the director. A discrete runoff model, such as the Santa Barbara Urban Hydrograph, may be authorized for use by the director when all of the runoff is conveyed to an exempt water body without affecting an wetland, classified stream or other critical area.

12.30.550 Minimum Requirement #8 – Wetlands protection.

(1) Applicability. The requirements below apply only to projects whose ~~storm water~~ stormwater discharges into a wetland, either directly or indirectly through a conveyance system. These requirements must be met in addition to meeting Minimum Requirement #6, Runoff treatment.

(2) Thresholds. The thresholds identified in Minimum Requirement #6, Runoff treatment, and Minimum Requirement #7, Flow control, shall also be applied for discharges to wetlands.

(3) Standard Requirement. Discharges to wetlands shall maintain the hydrologic conditions, hydrophytic vegetation, and substrate characteristics necessary to support existing and designated uses. The hydrologic analysis shall use the existing land cover condition to determine the existing hydrologic conditions unless directed otherwise by a regulatory agency with jurisdiction. A wetland can be considered for hydrologic modification and/or ~~storm water~~ stormwater treatment in accordance with guide of the ~~m~~Manual.

(4) Additional Requirements. The standard requirement does not excuse any discharge from the obligation to apply whatever technology is necessary to comply with state water quality standards, Chapter 173-201A WAC, or state ground water standards, Chapter 173-200 WAC. Additional treatment requirements to meet those standards may be required by federal, state, or local governments. ~~Storm water~~Stormwater treatment and flow control facilities shall not be built within a natural vegetated buffer, except for:

(a) Necessary conveyance systems as approved by the local government; or

(b) As allowed in wetlands approved for hydrologic modification and/or treatment in accordance with Guidesheet 1B.

An adopted and implemented basin plan (Minimum Requirement #9), or a total maximum daily load (TMDL, also known as a water clean-up plan) may be used to develop requirements for wetlands that are tailored to a specific basin.

12.30.555 Minimum Requirement #9 – Basin/watershed planning.

(1) Projects may be subject to equivalent or more stringent minimum requirements for erosion control, source control, treatment, and operation and maintenance, and alternative requirements for flow control and wetlands hydrologic control as identified in basin/watershed plans. ~~Basin/watershed plans shall evaluate and include, as necessary, retrofitting urban storm water BMPs into existing development and/or redevelopment in order to achieve watershed-wide pollutant reduction and flow control goals that are consistent with requirements of the Federal Clean Water Act. Standards developed from basin plans shall not modify any of the above minimum requirements until the basin plan is formally adopted and implemented by the local governments within the basin.~~Basin planning may be used to support alternative treatment, flow control, and/or wetland

protection requirements to those contained in this Chapter, the Manual or the requirements of the City of Oak Harbor NPDES Phase II stormwater permit. Basin planning may also be used to demonstrate an equivalent level of treatment, flow control, and/or wetland protection through the construction and use of regional stormwater facilities.

(2) In order for a basin plan to serve as a means of modifying the minimum requirements, the following conditions must be met:

(a) The plan must be formally adopted by all jurisdictions with responsibilities under the plan; and

(b) All ordinances or regulations called for by the plan must be in effect; and

(c) The basin plan must be reviewed and approved by Ecology.

12.30.560 Minimum Requirement #10 – Operation and maintenance. An operation and maintenance manual consistent with the provisions in ~~Volume V of~~ the ~~m~~Manual shall be provided for all proposed ~~storm water~~ stormwater facilities and BMPs. The party (or parties) responsible for maintenance and operation shall be identified. At private facilities, a copy of the ~~m~~Manual shall be retained on-site or within reasonable access to the site, and shall be transferred with the property to the new owner. A record or log of all maintenance activities shall be kept and be available for inspection by the city. Operation and maintenance of all public private ~~storm water~~ stormwater facilities shall be in accordance with Chapter 12.20 OHMC.

12.30.565 Minimum Requirement #11 – Financial liability. Performance bonding in the amount of 112% ~~percent~~ of the cost to construct, or other performance surety acceptable to the director, may be required by the director for projects to ensure compliance with these standards. When required by the director, performance sureties shall be posted prior to issuance of the development permit.

12.30.570 Minimum Requirement #12 – Off-site analysis and mitigation. Development projects that discharge ~~storm water~~ stormwater off-site shall submit an off-site analysis report that assesses the potential off-site water quality, erosion, slope stability, and drainage impacts associated with the project and that proposes appropriate mitigation of those impacts. An initial qualitative analysis shall extend downstream for the entire flow path from the project site to the receiving water or up to one mile, whichever is less. If a receiving water is within one-quarter mile, the analysis shall extend within the receiving water to one-quarter mile from the project site. The analysis shall extend one-quarter mile beyond any improvements proposed as mitigation. The analysis must extend upstream to a point where any backwater effects created by the project cease. Upon review of the qualitative analysis, the local director may require that a quantitative analysis be performed.

The existing or potential impacts to be evaluated and mitigated shall include: conveyance system capacity problems, localized flooding and upland erosion impacts, including landslide hazards.

12.30.575 Adjustments. An adjustment to the minimum requirements is a minor modification meeting the purpose and intent of the requirements, but does not lift or waive any specific requirement. Adjustments to the minimum requirements may be granted prior to permit approval and construction. The director may grant an adjustment; provided, that a written finding of fact is prepared that addresses the following:

(1) The adjustment provides substantially equivalent environmental protection.

(2) The objectives of safety, function, environmental protection and facility maintenance, based upon sound engineering, are met.

12.30.580 Exceptions and Variances.

(1) An exception or variance to the minimum requirements either lifts or waives any of the minimum requirements whether in whole or in part. Exceptions or variances to Minimum Requirements #1 through #12 may be granted by the director prior to permit approval and construction. An exception or variance may be granted following legal public notice of an application for an exemption, legal public notice of the director's decision and the director's written finding of fact that documents the following:

(~~1~~a) The exception provides equivalent environmental protection is not injurious to other properties in the vicinity, and is in the overriding public interest; and that the objectives of safety, function, environmental protection and facility maintenance, based upon sound engineering, are ~~fully~~ met;

(~~2~~b) That there are special physical circumstances or conditions affecting the property such that the strict application of these provisions would deprive the applicant of ~~all~~ reasonable use of the parcel of land in question~~, and every effort to find creative ways to meet the intent of the minimum standards has been made~~;

~~(3) That the granting of the exception will not be detrimental to the public health and welfare, nor injurious to other properties in the vicinity and/or downstream, and to the quality of waters of the state; and~~

(~~4~~c) The exception is the least possible exception that could be granted to comply with the intent of the minimum requirements.

(2) The director is further authorized to grant an exception or variance to the minimum requirements if strict application imposes a severe and unexpected economic hardship.

(3) In determining the economic hardship, the director shall consider the following:

(a) The current (pre-project) use of the site; and

(b) How the application of the minimum requirement(s) restricts the proposed use of the site compared to the stormwater regulations in effect prior to 2007; and

(c) The possible remaining uses of the site if the exception were not granted; and

(d) The uses of the site that would have been allowed prior to 2007; and

(e) A comparison of the estimated amount and percentage of value loss as a result of the minimum requirements versus the estimated amount and percentage of value loss as a result of requirements that existed prior to 2007; and

(f) The feasibility for the owner to alter the project to apply the minimum requirements.

(4) The director is authorized to establish application procedures and requirements for consideration of all requests for exceptions or variance to the minimum requirements of this section. Application for an exception to these requirements shall be made on forms provided by the director. In all cases the burden of demonstrating through analysis and supporting documentation that an exception or variance is justified rests with the applicant.

Subchapter 12.30.600 – Administration

12.30.610 Director. The director or his/her designee shall administer this chapter. The director shall have the authority to develop and implement administrative procedures to administer and enforce this chapter. The city engineer or designee is hereby assigned the duty of director under this chapter.

12.30.620 Review and approval. The director may approve, conditionally approve or deny an application for activities regulated by this chapter.

12.30.625 Review process. Reviews under this chapter are considered Type I as defined in Chapter 18.20 OHMC.

~~**12.30.630 Enforcement authority.** The director shall enforce this chapter.~~

12.30.640 Inspection. All activities regulated by this chapter, except those exempt in OHMC 12.30.220, shall be inspected by the director. The director shall inspect projects at various stages of the work requiring approval to determine that adequate control is being exercised. Stages of work requiring inspection include, but are not limited to, preconstruction; installation of BMPs; land disturbing activities; installation of utilities, landscaping, retaining walls and completion of project. When required by the director, special inspection and/or testing shall be performed.

Subchapter 12.30.700 – Enforcement

12.30.710 General. Enforcement action shall be in accordance with this chapter whenever a person has violated any provision of this chapter. The choice of enforcement action and the severity of any penalty shall be based on the nature of the violation, the damage or risk to the

public or to public resources, and/or the degree of bad faith of the person subject to the enforcement action.

12.30.720 Stop work order. The director shall have the authority to serve a person a stop work order if an action is being undertaken in violation of this chapter.

(1) Content of Order. The order shall contain:

(a) A description of the specific nature, extent, and time of violation and the damage or potential damage; and

(b) A notice that the violation or the potential violation shall cease and desist, and, in appropriate cases, the specific corrective action to be taken within a given time. ~~A civil penalty under OHMC 12.30.730 below may be issued with the order.~~

(2) Notice. A stop work order shall be imposed by a notice in writing, either by certified mail with return receipt requested, or by personal service, to the person incurring the same.

(3) Effective Date. The stop work order issued under this section shall become effective immediately upon receipt by the person to whom the order is directed.

(4) Compliance. Failure to comply with the terms of a stop work order shall result in enforcement actions including, but not limited to, the issuance of a notice of civil ~~penalty.~~infraction pursuant to Ch. 1.28 OHMC and/or a criminal citation or complaint in accordance with CrRLJ 2.1, as applicable.

12.30.730 ~~**Civil penalty.** A person who fails to comply with the requirements of this chapter, who fails to conform to the terms of an approval or order issued, who undertakes new development without first obtaining city approval, or who fails to comply with a stop work order issued under these regulations shall be subject to a civil penalty.~~

~~(1) Amount of Penalty. The penalty shall not be less than One Hundred Dollars ($100.00) or exceed Two Hundred Fifty Dollars ($250.00) for each violation. Each day of continued violation or repeated violation shall constitute a separate violation.~~

~~(2) Aiding or Abetting. Any person who, through an act of commission or omission, aids or abets in the violation shall be considered to have committed a violation for the purposes of the civil penalty.~~

~~(3) Notice of Penalty. A civil penalty shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the same from the city. The notice shall describe the violation, approximate the date(s) of violation, and shall order the acts constituting the violation to cease and desist, and, in appropriate cases, require necessary corrective action within a specific time.~~

~~(4) Application for Remission or Mitigation. Any person incurring a penalty may apply in writing within 10 days of receipt of the penalty to the city for remission or mitigation of such penalty. Upon receipt of the application, the city supervisoradministrator may remit or mitigate the penalty only upon a demonstration of extraordinary circumstances, such as the presence of information or factors not considered in setting the original penalty. The decision may be appealed to the city council within 10 days of the decision.~~

~~(5) Appeal of Civil Penalty. Persons incurring a penalty imposed by the director may appeal to the city supervisoradministrator, in writing, within 10 days of the receipt of the penalty. The city supervisoradministrator's decision may be appealed to the city council within 10 days of the decision.~~**Penalties.**

(1) The failure to comply with the provisions of this chapter is a civil offense, classified as a Class 1 infraction pursuant to Ch. 1.28 OHMC. Each day of violation shall be a separate offense. This is an absolute liability offense. No mental element as defined in law is required for proof of violation.

(2) The knowing or intentional failure or refusal to comply with a stop work order under the provisions of this chapter is a misdemeanor which shall be punishable by the maximum penalty established by RCW 9.92.030 as now or hereafter amended.

(3) An intentional or repeated violation of this chapter by the person responsible shall be a misdemeanor.

12.30.740 ~~**Penalties due.** Penalties imposed under this section shall become due and payable 30 days after receiving it unless application for remission or mitigation is made or an appeal is filed. Whenever an application for remission or mitigation is made, penalties shall become due and payable 30 days after receipt of the decision regarding the remission or mitigation. Whenever an appeal of a penalty is filed, the penalty shall become due and payable after all review proceedings and a final decision have been issued confirming all or part of the penalty. If the amount of a penalty owed the city is not paid within the time specified, the city may take actions necessary to recover such penalty.~~**Enforcement.**

(1) Provisions of this chapter will be enforced for the benefit of the health, safety and welfare of the general public, and not for the benefit of any particular person or class of persons.

(2) Civil Infraction Procedures Applicable. If a civil offense is filed against any person, the civil infraction procedures of Ch. 1.28 OHMC shall be followed.

(3) Criminal Prosecution. A criminal complaint may be brought by the City Attorney or a citation may be issued by a duly commissioned law enforcement officer for violation of the misdemeanor provisions of this chapter, in accordance with CrRLJ 2.1.

(4) Nothing in this section shall limit the authority of the City to take any action, including emergency actions, civil infractions, criminal prosecutions or any other enforcement action, to enforce the provisions of this chapter.

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

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

PASSED by the City Council and approved by its Mayor this_____ day of _____, 2010.

THE CITY OF OAK HARBOR

_____
Mayor

Attest:

_____
City Clerk

Approved as to Form:

_____
City Attorney

Published: _____

City of Oak Harbor
City Council Agenda Bill

Agenda Bill No. 3
Date: February 2, 2010
Subject: Wallen Appeal

FROM: Douglas Merriman, Finance Director

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

SUMMARY STATEMENT:

On June 19, 2009, the City Finance Director made a code interpretation decision in favor of the owner of an apartment building, Mr. Darrell Wallen, finding he had been overcharged on the water and sewer utility bill for his apartment building. This decision of the Finance Director refunded to Mr. Wallen payments that he made for a laundry room for a two-year period. Mr. Wallen was dissatisfied with the Finance Director's decision and appealed to the City Administrator. The City Administrator authorized a refund of over-payments for an additional year, based on the three-year statute of limitations in state law. Mr. Wallen appealed that decision as well. A hearing was held before Oak Harbor Hearing Examiner Michael Bobbink on November 6, 2009. After hearing testimony and argument from both the City and Mr. Wallen, Mr. Bobbink rendered a written decision on December 17, 2009. See Attachment "A". The Hearing Examiner upheld the decision of the City Administrator. Pursuant to Oak Harbor Municipal Code, the decision of the Hearing Examiner is reviewed by the City Council which makes the ultimate decision.

The purpose of this agenda bill is to provide the City Council with information on the matter for their consideration. This appeal will be heard as a quasi-judicial hearing in which Mr. Wallen may present his argument against the Hearing Examiner's decision. The Finance Director and the City Administrator will present the City's case.

AUTHORITY:

The Finance Director has initial authority to repay utility over-billings. OHMC 3.95.160. Under OHMC 1.24.010(3), an appeal from a department head's decision is to the City Administrator. Appeal of the City Administrator's decision is to the city council or to the hearing examiner appointed by the city council. In this case, the Hearing Examiner conducted the hearing so the

City Council will review the Hearing Examiner's report and proposed decision ("Findings of Fact, Conclusions of Law, and Decision" dated December 17, 2009).

APPLICABLE PROCEDURE:

OHMC 1.24.120(5) provides:

> (5) Disposition by the Reviewing Agency [City Council]. The reviewing agency may adopt or reject the proposed decision in its entirety or may modify the proposed decision.
>
> (6) Proposed Decision Not Adopted. If the proposed decision is not adopted as provided in subsection (5) of this section, the reviewing agency may decide the case upon the entire record before it, with or without taking additional evidence, or may refer the case to the same or another hearing examiner to take additional evidence. If the case is reassigned to a hearing examiner, he shall prepare a report and proposed decision as provided in subsection (2) of this section after any additional evidence is submitted. Consideration of such proposed decision by the reviewing agency shall comply with the provisions of this section.
>
> (7) Form of Decision. The decision shall be in writing and shall contain findings of fact, a determination of the issues presented, and the requirements to be complied with...

BACKGROUND:

Mr. Wallen's appeal raises three issues:

1. Does the term units "available for occupancy" in Ch. 13.32 OHMC mean "when the property owner determines that the units are available"?
2. What is the statute of limitations for claims of over-billing for City utility charges?
3. Is a utility customer entitled under the City Code to interest of 8% per annum on amounts over-billed?

The City's brief on these issues is attached as Attachment "B" to the Agenda Bill. Mr. Wallen submitted no written brief but his arguments are summarized in the report of the Hearing Examiner, Attachment "A" to this Agenda Bill. The record for review by the City Council is attached to the Hearing Examiner's report and proposed decision (Exhibits 1-17).

STANDING COMMITTEE REVIEW:

There was no standing committee review of this matter since the City Council will decide the appeal in a quasi-judicial capacity.

RECOMMENDED ACTION:

Hold a quasi-judicial hearing, review the Hearing Examiner's report and proposed decision for public hearing, and adopt the Hearing Examiner's decision in its entirety.

ATTACHMENTS:

Attachment "A": Hearing Examiner's Proposed Decision ("Findings of Fact, Conclusions of Law and Decision" dated December 17, 2009).
Attachment "B": Respondent's [City's] Brief.

MAYOR'S COMMENTS:

received
12/18/09 ctw
RECEIVED
DEC 18 2009
OH City Attys Office

CITY OF OAK HARBOR
HEARING EXAMINER

RE:	Administrative Appeal Application for	)	APL2009-000
		)	
		)	FINDINGS OF FACT,
	Darrell Wallen	)	CONCLUSIONS OF LAW,
	Appellant	)	AND DECISION

SUMMARY OF APPEAL AND DECISION

Appeal: This matter comes before the Hearing Examiner on the Appeal of Darrell Wallen. Mr. Wallen has appealed a Determination by the City Administrator of the City of Oak Harbor setting a refund amount for the Appellant for overcharges for water service at an apartment building owned by the Appellant and located at 260 NE 7th Avenue, Oak Harbor, Washington.

Decision: The Decision of the City Administrator to refund overpayments for the three year period from July 2006 to July 2009 is upheld.

FINDINGS OF FACT

INTRODUCTION

The following Findings of Fact and Conclusions of Law are based upon consideration of the exhibits admitted herein and evidence presented at the public hearing.

I.

Hearing Date: November 6, 2009

Parties of Record:

Darrell Wallen
PO Box 308
Coupeville, Washington 98239

Edward Johnson
144 NE Ernst
Oak Harbor, Washington

ATTACHMENT "A"

Douglas Merriman, Finance Director
City of Oak Harbor

David Anderson, Building Official
City of Oak Harbor

Margery Hite, City Attorney
City of Oak Harbor

Exhibits:

1 Letter dated October 16, 2009, from City of Oak Harbor re: Wallen Appeal of Utility Billing Decision, setting hearing date

2 Letter dated October 19, 2009 Margery Hite, City Attorney to Michael Bobbink and Darrell Wallen re: Wallen Appeal

3 Notice of Appearance, dated October 19, 2009 from Margery Hite

4 Notice of Appearance, dated October 26, 2009 from Darrell Wallen

5 Certificate of Mailing Record of the City, dated October 28, 2009

6 Certificate of Mailing Respondent's Brief, dated October 29, 2009

7 Vicinity Site Map

8 Oak Harbor Municipal Code, Chapter 13.32, Rate Charges

9 Oak Harbor Municipal Code, Chapter 3.95, Utility Billing and Collection Procedures

10 Oak Harbor Municipal Code, Chapter 1.24, Appeals

11 USPS, Certified Mail Delivered Status, dated June 23, 2009; Notice Left, dated June 20, 2009

12 City of Oak Harbor Accounts Payable Invoice Copy, dated June 19, 2009, to Darrell Wallen

13 Record of the City, submitted October 27, 2009
- 13-1 Finance Director's Summary
- 13-2 Calculated Credit Unpaid
- 13-3 Note to File, dated June 19, 2009
- 13-4 Letter dated June 16, 2009 from Darrell Wallen to Doug Merriman re: Phone Call
- 13-5 Letter dated July 10, 2009, from Darrell Wallen to Doug Merriman re: Adjustments
- 13-6 Letter dated May 1, 2009 from Darrell Wallen to Edward Johnson re: Units available for occupancy

13-7 Letter dated September 22, 2009 from Paul Schmidt to Darrell Wallen re: Utility Billings, with attached Exhibit A, email dated Sept 4, 2009 from David Anderson to Paul Schmidt
13-8 Letter dated October 2, 2009 from Darrell Wallen to Paul Schmidt re: Utility Billings
13-9 Letter dated October 5, 2009 from Darrell Wallen to Connie Wheeler, City Clerk re: Appeal (2 copies, one with highlighting)
13-10 Application for Utility Service, dated April 1, 2002

14 Respondent's Brief, dated October 29, 2009

15 Respondent's Supplemental Submission, dated December 1, 2009, with attachments
15-1 Letter dated November 18, 2009 from Darrell Wallen to Mayor Slowik re: Ronda Haines
15-2 Computer generated water billing information, handwritten date 6/20/04
15-3 Computer generated water billing information, handwritten date 9/20/04
15-4 Letter dated November 13, 2009 from Darrell Wallen to Ronda Haines
15-5 Certificate of Mailing, dated December 1, 2009

16 Certificate of Mailing Respondent's Supplemental Authority, dated November 6, 2009

17 Respondent's Supplemental Authority, dated November 6, 2009

II.

The Appellant, Darrell Wallen, is the owner of a 16-unit apartment complex located at 260 NE 7th Avenue, Oak Harbor, Washington. The complex was completed, a Certificate of Occupancy was issued, and the Appellant started renting units in 2002.

Water utility charges under Oak Harbor Ordinances include a base per unit charge. Originally Mr. Wallen was charged for 16-units, the number of apartments in the complex.

In July 2004, based on a decision by a City employee, the City started charging for a 17th unit. The addition of a 17th billing unit was based on the existence of a laundry room servicing those renters in the complex who wished to use it.

III

In May 2009, the Appellant contacted the Finance Department and raised issues about the appropriateness of billing the laundry room as a 17th unit.

After a review of Mr. Wallen's complaint by the Finance Director, and further review by the City Administrator, the City Administrator concluded that it was inappropriate to bill the laundry room as a 17th unit, based on the City Administrator's interpretation of applicable Oak Harbor Ordinances. Originally the Finance Director had issued a Decision limiting the refund to two years based on an interpretation of a City Ordinance. After a further review, the City Administrator

increased the amount to cover three years of the overbilling, which resulted from the billing of the laundry room as the 17th unit, based on the State Statute of Limitations.

The Finance Director sent Mr. Wallen a Certified Letter and a check in the amount of $3,892.43 for the overbilling for a period of three years. The actual period of overbilling started on July 20, 2004. No credit was given to Mr. Wallen from July 2004 through May 2006, based on the City's determination that the overpayments were subject to a three year Statute of Limitations.

The amount of overpayments not made because of the Statute of Limitation determination is $1,178.14 (See page 2 of the Finance Director's Summary, Exhibit 13-1of Exhibit 13, Record of the City in the Hearing Examiner's file).

IV.

Mr. Wallen appealed the Final Decision of the City Administrator limiting the overbilled amounts to three years. The Appeal was set before the Oak Harbor Hearing Examiner, the City submitted a record of the proceedings and a brief prepared on behalf of the City by the City Attorney, and the matter was set for hearing on November 6, 2009. A hearing was held on that date and testimony was taken by the Hearing Examiner from the following persons:

Darrell Wallen, Appellant, 368 Marine Drive, Coupeville, Washington
Edward Johnson, 144 NE Ernst, Oak Harbor, Washington
Douglas Merriman, Finance Director for the City of Oak Harbor
David Anderson, Building Official for the City of Oak Harbor

At the close of the hearing, the record was left open for additional submittals, including a submission by the Appellant dealing with the legal issues raised by the Appeal. Thereafter the City submitted Respondent Supplemental Authority on November 6, 2009, and Respondents Supplemental Submission on December 1, 2009.

Respondents Supplemental Submission included a letter from the Appellant which contained a statement stating the Appellant's decision not to submit a legal brief because of the cost involved.

V.

The Decision by the City of Oak Harbor, concluding that the laundry room could not be billed as an additional unit, is based on OHMC 13.32.025, which provides for a monthly ready to service charge, based on ".... the number of units available for occupancy ....". Ultimately, the City decided that a laundry room does not meet the definition of a unit available for occupancy and agreed that Mr. Wallen had been overcharged.

During the Appellant's discussions with the City Administrator, the Appellant suggested that, for unstated reasons, a number of his 16 apartment units were not "units available for occupancy" at this time and asserted that his monthly water utility billing could be adjusted based on the property

owner's determination of how many family units were available for occupancy at any given time.

Mr. Wallen directed his property manager to withhold utility payments based on Mr. Wallen's determination that certain units within his apartment complex were not available for occupancy.

The City Administrator's response was that the determination of what units are available for occupancy is based on the Certificate of Occupancy issued by the Building Official.

On October 5, 2009, Mr. Wallen sent a letter to the City Clerk, appealing the Administrator's interpretation of "available for occupancy." This letter included Mr. Wallen's assertion ["I say some units are not available for occupancy for one reason or another."] and stated that he could withhold utility payments when he determined units were not available for occupancy. At no place in the written record or during the hearing does the Appellant state his reasons for his determination that certain units were not "available for occupancy."

VI.

Any Conclusion of Law which is deemed a Finding of Fact is hereby adopted as such. Based on the foregoing Findings of Fact, now are entered the following

CONCLUSIONS OF LAW

I.

The Appellant appealed the Determination of the City Administrator to limit the amounts repaid for water utility overbilling to a period of three years based on a Washington State Statute of Limitations, RCW 4.16.080 (3).

The Hearing Examiner concludes that the applicable Statute of Limitations for Mr. Wallen's claim is three years. The claim is not based on a written contract as that term is used for Statute of Limitations purposes.

The question then becomes one of determining factually the point at which the Statute of Limitations started to run. Generally, the Statue of Limitations' period starts when a claimant has discovered, or in the exercise of due diligence should have discovered, the facts that give rise to the claim. A determination of when a Party has discovered, or should have discovered, facts sufficient to let a claimant know it has suffered a principle injury or damage is a question of fact. In this situation, the Hearing Examiner is the fact finder and must determine the appropriate date on which the period of the Statute of Limitations started to run.

The Appellant has the burden of proving by a preponderance of the evidence the material fact establishing the date on which the Statute of Limitations began to run on the overbillings.

In this case, the increased billings for the "17th unit" started in July 2004. Since the Appellant has not established an adequate factual basis on which to find the Statute of Limitations started to run at a date other than the date the overbilling started, the Hearing Examiner concludes that the three year Statute of Limitations' period started to run in the first month where the Appellant was overbilled.

It is possible that the Appellant could have established a factual basis for concluding that the Statute of Limitations began to toll on a later date. However, the Appellant has not established a factual or legal basis to support such a finding.

The City appropriately limited the refund to a three year period based on the Statute of Limitations.

II.

The Appellant claims that the City should pay the Appellant interest at the rate of eight percent [8%] per year for the overbilling. This argument appears based on the Appellant's understanding of OHMC 3.95.160, which reads at follows:

> 3.95.160 Over or under billing.
>
> (1) Over Billing. If the finance director, upon investigation or otherwise, finds that the fee for utility charges paid by a utility customer or property owner is more than the amount required of the utility customer or property owner which made the over payment, he or she shall return the amount overpaid by a warrant or check upon the utility fund or funds receiving the over payment.
>
> (2) Under Billing. If the finance director finds that the fee or utility charges billed to a utility customer or property owner is less than required, the finance director shall send a statement to the utility customer or property owner owing the balance due, and the utility customer or property owner shall, within 30 days, pay the amount shown thereon. Amounts outstanding after the 30 days shall be charged interest at the rate of eight percent per annum, prorated monthly, until paid.
>
> (3) No increase in billing or reduction of a billing for utility charges due may be made by the finance director for more than two years after the over billing or under billing:
>
> (a) Against a utility customer or property owner who has not properly signed up for utility services as required by this chapter and/or OHMC Titles 12, 13, 14, and 15;
>
> (b) Upon a showing of fraud or theft of services;
>
> (c) Upon a showing of misrepresentation of a material fact by a utility customer or property owner whose property received the utility services; or
>
> (d) Where a utility customer or property owner has executed a written waiver of such limitation.

Paragraph 2 of this section allows the City to claim interest on under billings only if the under billings are not paid within thirty days of the date the City sends a statement to the customer who has been under billed. This section does not allow the City to start collecting interest on under billed utility charges until thirty days after the charges are billed.

If the same rule were applied to over billings, then the City should be required to pay interest at the rate of eight percent per annum starting thirty days after the amount due the customer from the over billing has been established.

The Hearing Examiner reads this section to not allow interest to over billed customers or to the City on under billings where repayment is made in a timely manner after a bill or claim is submitted. The City should not be required to pay interest on the over billings since the City submitted to the Appellant the amount due at each stage of the City's review when it was determined the Appellant was entitled to repayment for over billings.

III.

The Appellant argues that he does not have to pay the monthly "ready to service charge" where the Appellant has determined that specific units are not "available for occupancy," as that term is used in OHMC 13.32. Based on this, the Appellant directed his property manager to withhold utility payments on nine different apartments owned by the Appellant, based on the Appellant's determination that they were not available for occupancy [Letter from the Appellant to Edward Johnson, dated May 1, 2009].

The Appellant claims that the unavailability is not due to the fact that the units are vacant and not rented. However the Appellant has not established any other basis for his determination that these units are "unavailable for occupancy."

The City has taken the position that buildings or units are "available for occupancy" at the time the City issues an Occupancy Permit for the building or unit.

The utility payments in question here are based on a set "monthly ready to serve charge," plus a charge for actual usage. The set "monthly ready to serve charge" is, as pointed out by the City, a fee based on making water service available and not a fee based on water usage. The City has made water and sewer service available to all of the Appellant's apartment units.

The Hearing Examiner concurs with the City's reading of the Ordinance regarding the "monthly ready to serve charge" and concurs with the City that the number of units charged this fee is equal to the number of units for which an Occupancy Permit has been granted to a property owner.

IV.

The Hearing Examiner should enter a Decision which upholds the City's Determination that the Appellant is due, without interest, the over billed utility payments for a period of three years from

the date the Appellant brought the claimed over billing to the attention of the City. Additionally, the Hearing Examiner should enter a Decision confirming that the appropriate billing for the units of apartments includes the monthly "ready to serve charge" for all of the units which the Building Official has granted an Occupancy Permit.

V.

Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such. Based on the foregoing Findings of Fact and Conclusions of Law, now is entered the following

DECISION

The Decision of the City of Oak Harbor Administrator, dated September 22, 2009, is upheld. The Appeal is denied. The Appellant is entitled to overbilled charges for a three year period, going three years from the date the Appellant brought his claim to the attention of the City. The Appellant is not entitled to interest on the over charges since they were paid as soon as it was determined over billing had taken place and payment for the over billing was due. The term "Units Available for Occupancy" as that term is used in OHMC 13.32.025, when applied to apartment buildings, is applicable to the number of residential units within the Appellant's apartment buildings which have received a Certificate of Occupancy from the Building Official.

DATED this 17th day of December 2009.

Michael Bobbink

Michael Bobbink, Hearing Examiner

CITY OF
Oak Harbor
WHIDBEY ISLAND, WASHINGTON

EXHIBIT
#1

October 16, 2009

Michael Bobbink
City of Oak Harbor Hearing Examiner
528 Clark Road
Bellingham, WA 98225

Re: Wallen Appeal of Utility Billing Decision

Dear Mr. Bobbink:

Following up on your conversation with Kathy Gifford regarding an appeal date for Mr. Wallen, it's my understanding that you will be able to hear the appeal on:

Friday, November 6, 2009 at 10:00 a.m.
Oak Harbor City Hall – Council Chambers
865 SE Barrington Drive
Oak Harbor, WA 98277

Mr. Wallen has also been sent a notification letter regarding the November 6th appeal date.

Sincerely,

Connie T. Wheeler
City Clerk

CW
cc: P. Schmidt

125

EXHIBIT
#2

LAW DEPARTMENT

City of Oak Harbor
865 SE Barrington Drive
Oak Harbor, Washington 98277
(360)279-4540
(360)279-4549 fax

Margery Hite
City Attorney
Bill Hawkins
Law and Justice Coordinator/Prosecutor

Kim Perrine
Legal Administrative Assistant
Marianne Ledgerwood
Paralegal

October 19, 2009

Michael Bobbink, Hearing Examiner
528 Clark Road
Bellingham, WA 98225

Darrell Wallen
P O Box 308
Coupeville, WA 98239

Re: Wallen Appeal

Dear Mr. Bobbink and Mr. Wallen:

I am writing on behalf of the City of Oak Harbor to propose procedures to be followed in this appeal. Enclosed also please find a notice of appearance on behalf of the City. This appeal arises under 1.24.010(2) of the Oak Harbor Municipal Code, an appeal of the decision of the City Administrator. A hearing date of November 6, 2009 at 10:00 a.m. has been set to meet the requirement for a hearing within 60 days of receipt of the appeal. To ensure that all parties understand the procedures to be followed in this appeal, which is not a land use appeal under Title 18 OHMC, the City proposes the following schedule for submissions preceding the hearing:

1. **October 22, 2009 - Deadline for Filing Statement of Appeal** – The City has received a letter requesting an appeal but has not received an appeal in the form required by OHMC 1.24.020. The formal written appeal shall be filed with the Hearing Examiner and the City Clerk no later than **4:00 p.m. on October 22, 2009.** Failure to file a notice in the form required by that date shall constitute a basis for dismissal of the appeal. OHMC 1.24.050.

2. **October 27, 2009 – Deadline for City Submission of Record of Prior Decision.** Upon analogy with the Staff Report requirement of Rule 14 of the City of Oak Harbor Hearing Examiner Rules of Procedure, the City shall submit its record of the underlying decision ten days prior to the hearing date – **due October 27, 2009**.

3. **October 30, 2009 - Pre-Hearing Briefs Due** – The issues in this case are primarily code interpretation and legal issues. If either side intends to submit a brief on these issues, the City proposes that it be due by the Friday preceding the hearing date to allow the other side an opportunity to prepare for argument. The abbreviated schedule does not allow time for the Appellant to submit its brief first with a responsive brief to follow from the City.

The City further proposes that the City of Oak Harbor Hearing Examiner Rules of Procedure governing procedure during the hearing and the form of the decision shall apply to this appeal except where they conflict with the procedures established in OHMC 1.24.110 and 1.24.120.

I look forward to the Hearing Examiner's response and direction on the procedures to be followed in this appeal.

Very truly yours,

Margery Hite
City Attorney

Enc: Notice of Appearance

Cc: Mayor Jim Slowik
Paul Schmidt, City Administrator
Doug Merriman, Finance Director
Connie Wheeler, City Clerk

L:\LGLA\WORK\CIV2009\Wallen appeal -letter to HE.doc

EXHIBIT
#3

BEFORE THE HEARING EXAMINER OF THE CITY OF OAK HARBOR

DARRELL WALLEN, Appellant, vs. CITY OF OAK HARBOR, Respondent.	IN THE APPEAL OF FINAL DECISION OF THE CITY ADMINISTRATOR/MAYOR DATED SEPTEMBER 22, 2009 NOTICE OF APPEARANCE

To: Darrell Wallen, Appellant:

Please take notice that the undersigned attorney hereby appears for Respondent, City of Oak Harbor.

Dated this 19th day of October, 2009.

Margery Hite
City Attorney
WSBA #8450
865 SE Barrington Drive
Oak Harbor, WA.
98277
(360)279-4540

City of Oak Harbor Law Department
865 SE Barrington Drive
Oak Harbor, Washington 98277
(360) 279-4540

received
10/27/09

BEFORE THE HEARING EXAMINER OF THE CITY OF OAK HARBOR

EXHIBIT
#4

DARRELL WALLEN,
Appellant,

Vs,

In the Appeal of Final Decision
Of the Administrator/Mayor Dated
September 22, 2009

NOTICE OF APPEARANCE

CITY OF OAK HARBOR,

Respondent,

To: The City of Oak Harbor

Please take notice that I the undersigned, Darrell Wallen hear by appears for Appellant,

Dated this 26th day of October, 2009.

Darrell Wallen Appellant
P.O. Box 308
Coupeville, WA. 98239
(206) 818-8819

EXHIBIT
#5

BEFORE THE HEARING EXAMINER OF THE CITY OF OAK HARBOR

In re the Decision of the City Administrator DARRELL WALLEN, Appellant, v. CITY OF OAK HARBOR, Respondent.	CERTIFICATE OF MAILING RECORD OF THE CITY

I, Kim Perrine, certify under penalty of perjury under the laws of the State of Washington, that the following is true and correct:

That on the 27th day of October, 2009, I deposited in the U.S. mail, postage prepaid, addressed to:

Michael Bobbink
528 Clark Road
Bellingham, WA 98225

Darrell Wallen
P O Box 308
Coupeville, WA 98239

copies of the Record of the City. The original was filed with the City Clerk.

That on the same day, I scanned the Record of the City and emailed it to the following email addresses: mbobbink@comcast.net and dwbeach@comcast.net.

City of Oak Harbor Law Department
865 SE Barrington Drive
Oak Harbor, Washington 98277
(360) 279-4540

Executed this 28th day of October, 2009, in Oak Harbor, Washington.

K Perrine

Kim Perrine

L:\LGLA\WORK\CIV2009\Wallen - Cert of Mailing City Record.doc

City of Oak Harbor Law Department
865 SE Barrington Drive
Oak Harbor, Washington 98277
(360) 279-4540

EXHIBIT
#6

BEFORE THE HEARING EXAMINER OF THE CITY OF OAK HARBOR

In re the Decision of the City Administrator DARRELL WALLEN, Appellant, v. CITY OF OAK HARBOR, Respondent.	CERTIFICATE OF MAILING RESPONDENT'S BRIEF

I, Kim Perrine, certify under penalty of perjury under the laws of the State of Washington, that the following is true and correct:

That on the 29th day of October, 2009, I deposited in the U.S. mail, postage prepaid, addressed to:

Michael Bobbink 528 Clark Road Bellingham, WA 98225	Darrell Wallen P O Box 308 Coupeville, WA 98239

copies of the Respondent's Brief. The original was filed with the City Clerk.

That on the same day, I scanned the Respondent's Brief and emailed it to the following email addresses: mbobbink@comcast.net and dwbeach@comcast.net.

City of Oak Harbor Law Department
865 SE Barrington Drive
Oak Harbor, Washington 98277
(360) 279-4540

Executed this 29th day of October, 2009, in Oak Harbor, Washington.

K Perrine

Kim Perrine

L:\LGLA\WORK\CIV2009\Wallen - Cert of Mailing Respondents Brief.doc

City of Oak Harbor Law Department
865 SE Barrington Drive
Oak Harbor, Washington 98277
(360) 279-4540

BUILDING "A"

UNIT SIZE	VARIES
PORCH	68 SQFT. X3 = 544
STAIRS	211 SQFT. X 2 = 422
NO. OF UNITS	8
FIRST FLOOR	3,620 SQFT
(1-TYPE A , 3 TYPE B)	
SECOND FLOOR	3,620SQFT.
TOTAL SQFT	7,240SQFT

BUILDING "B"

UNIT SIZE	VARIES
PORCH	68 SQFT. X3 = 544
STAIRS	211 SQFT. X 2 = 422
NO. OF UNITS	8
FIRST FLOOR	3,620 SQFT
(1-TYPE A , 3 TYPE B)	
SECOND FLOOR	3620SQFT.
TOTAL SQFT	7,240SQFT

Vicinity Map NO SCALE

SEE SITE PLAN SHT 1.2

Project Information

SITE ADDRESS:
270 NE 7TH AVE
OAKHARBOR, WA
TAX NO. R33338-275-1090

OWNER:
DARRELL WALLEN
PO BOX 12835
MILLCREEK, WA 98082-0835
206.818.8815
425.742.0197FAX
CONTACT: TODD

ARCHITECT:
BORSETH ARCHITECTS
624 BEACH AVE
MARYSVILLE, WA 98270
425.353.1034
360.659.7261 FAX
CONTACT: TODD

CIVIL ENGINEER
SCHAEFER & BRATTON ENGINEERS
PO BOX 601
COUPVILLE, WA 98239
360.678.4340
360.678.7251
CONTACT: JOHN SCHAEFER

CONTRACTOR:
OWNER

Symbol Legend

NORTH/SOUTH GRID
EAST/WEST GRID
DETAIL SECTION ELEVATION
SHEET NUMBER
BUILDING SECTION
SHEET NUMBER
WALL SECTION
SHEET NUMBER
INTERIOR ELEVATION
SHEET NUMBER
ROOM NUMBER
DOOR NUMBER
WINDOW NUMBER
DATUM POINT
MATCH LINE
PARTITION/WALL TYPE
REVISION

Abbreviations

	Centerline
	Diameter or Round
	Panel or Member
ACOUS.	Acoustical
ADJ.	Adjustable
ALUM.	Aluminum
APPROX.	Approximate
ARCH.	Architect
BLDG.	Building
BLK.	Block
BLKG.	Blocking
BM.	Beam
BOT.	Bottom
C.T.	Ceramic Tile
C.O.	Capped Drain
CLG.	Ceiling
CER.	Ceramic
C.I.P.	Cast in Place
CLR.	Clear
COL.	Column
CONC.	Concrete
COND.	Condition
CONN.	Connection
CONT.	Continuous
CORR.	Corridor
CTR.	Center
CTRK.	Counterwork
DBL.	Double
D.F.	Drinking Fountain
DIA.	Diameter
DIM.	Dimension
DISP.	Disposer
DN.	Down
D.O.	Door Opening
DR.	Door
DRWG.	Drawing
DS.	Downspout
DWR.	Drawer
EQ.	Earthquake Joint
E.	East
EA.	Each
ELEV.	Elevation
ELECT.	Electrical
ELEV.	Elevator, Elevation
EQ.	Equal
EXISTG., EXIST.	Existing
EXT.	Exterior
F.A.	Fire Alarm
F.D.	Floor
FIN.	Finish
FL.	Floor
FLASH.	Flashing
FLUOR.	Fluorescent
F.O.C.	Face of Concrete
F.O.S.	
F.O.F.	Face of Finish
F.O.S.	Face of Studs
FT.	Foot, or Feet
FURR.	Furring
GALV.	Galvanized
G.B.	Grab Bar
GL.	Glass
GYP.	Gypsum
GYP.BD.	Gypsum Wallboard
H.B.	Hose Bibb
HC.	Handicap
HDWD.	Hardwood
HDWE.	Hardware
HM.	Hollow Metal
HORIZ.	Horizontal
HR.	Hour
HGT.	Height
I.D.	Inside Diameter (Dim.)
INSUL.	Insulation
INT.	Interior
JAN.	Janitor
JST.	Joist
LAM.	Laminate
LAV.	Lavatory
LT.	Light
LT.	Light
MAX.	Maximum
MECH.	Mechanical
MET. MTL.	Metal
MIN.	Minimum
MIR.	Mirror
MISC.	Miscellaneous
M.O.	Masonry Opening
MUL.	Mullion
N.	North
N.I.C.	Not In Contract
NO. #	Number
NOM.	Nominal
N.T.S.	Not to Scale
O.C.	On Center
OFF.	Office
OPNG.	Opening
OPP.	Opposite
O.S.	Overflow Scupper
PL.	Plate
P.LAM.	Plastic Laminate
PLAS.	Plaster
PLYWD., PW.	Plywood
PR.	Pair
PT.	Point
P.T.D.	Paper Towel Dispenser
P.T.R.	Paper Towel Receptacle
QT.	Quarry Tile
R.	Riser
RAD.	Radius
R.D.	Roof Drain
REF.	Reference
REFR.	Refrigerator
REINF.	Reinforced
REQ'D.	Required
RESIL.	Resilient
RET.	Retaining
RM.	Room
R.O.	Rough Opening
S.	South
S.C.	Solid Core
S.C.D.	Seat Cover Dispenser
SCHED.	Schedule
S.D.	Soap Dispenser
SECT.	Section
SH.	Shelf
SHT.	Sheet
SIM.	Similar
S.N.D.	Sanitary Napkin Dispenser
SPEC.	Specification
ST. STL.	Stainless Steel
STD.	Standard
STL.	Steel
STOR.	Storage
STRUCT.	Structural
SUSP.	Suspended
SYM.	Symmetrical
S.C.G.	Stainless Steel Corner Guards
T.B.	Towel Bar
TEL.	Telephone
TEMP.	Temporary
THK.	Thick
T.P.D.	Toilet Paper Dispenser
T.R.	Top of Rail
TYP.	Typical
UNF.	Unfinished
U.O.N.	Unless Otherwise Noted
UR.	Urinal
VERT.	Vertical
VEST.	Vestibule
W.	West
W/	With
W.C.	Water Closet
WD.	Wood
W.G.	Wire Glass
W/O	Without
W.P.	Waterproof
WSCT.	Wainscot
WT.	Weight

General Notes

1. ALL WORK SHALL COMPLY WITH ALL APPLICABLE LOCAL AND STATE CODES AND ORDINANCES.
2. THE CONTRACTOR SHALL VERIFY ALL EXISTING CONDITIONS AT THE SITE BEFORE PROCEEDING WITH WORK, AND SHALL NOTIFY ARCHITECT IMMEDIATELY OF ANY UNCERTAINTIES OR DISCREPANCIES.
3. THE CONTRACTOR SHALL VERIFY THE LOCATION OF ALL UTILITIES AT THE SITE, PROTECT THEM FROM DAMAGE, AND REPORT ANY DISCREPANCIES TO THE ARCHITECT PRIOR TO CONSTRUCTION.
4. THE CONTRACTOR SHALL PROVIDE ALL SHORING, BRACING, AND BARRICADING NECESSARY TO ENSURE THE STRUCTURAL STABILITY OF THE BUILDING AND THE HEALTH AND SAFETY OF THE PUBLIC AND ALL WHO ENTER THE BUILDING DURING CONSTRUCTION.
5. THE CONTRACTOR SHALL PROVIDE TEMPORARY FACILITIES AS REQUIRED BY CODE.
6. THE CONTRACTOR SHALL VERIFY ALL DIMENSIONS ON THE DRAWINGS. DRAWINGS SHALL NOT BE SCALED.
7. DIMENSIONS SHALL BE FROM STRUCTURAL GRID LINE, FACE OF CONCRETE, CENTERLINE OF STUD, OR FACE OF ROUGH FRAMING, UNLESS NOTED OTHERWISE.
8. ALL MECHANICAL AND ELECTRICAL WORK SHALL BE BIDDER DESIGNED & UNDER SEPERATE PERMIT AND SHALL COMPLY WITH APPLICABLE LOCAL CODES.
9. THE CONTRACTOR SHALL COMPLETELY FAMILIARIZE HIMSELF WITH THE MECHANICAL AND ELECTRICAL PLANS AND SHALL PROVIDE ALL NECESSARY SHAFTS, OPENINGS, BASES, AND STRUCTURAL SUPPORT FOR DUCTS, CONDUITS, AND EQUIPMENT. MECHANICAL AND ELECTRICAL PORTIONS OF THE WORK SHALL BE BIDDER DESIGNED BY THE SUB-CONTRACTOR.
10. NO CHANGE IN THE SCOPE OR INTENT OF THE WORK SHALL OCCUR WITHOUT WRITTEN APPROVAL FROM BORSETH ARCHITECTS
11. GENERAL CONTRACTOR SHALL NOT ALLOW ANY DEBRIS TO ACCUMULATE IN STRUCTURE OR ON SITE. HAUL AWAY FROM SITE AND DISPOSE OF AT CONTRACTOR EXPENSE.
12. GENERAL CONTRACTOR SHALL PROTECT FROM DAMAGE THOSE PORTIONS OF THE BUILDING NOT IN CONTRACT. ALLOW NO LEAKS IN EXISTING STRUCTURE. CONTROL SMOKE AND DUST TO PROTECT AREAS OF THE BUILDING NOT IN CONTRACT.
13. CONTRACTOR SHALL COORDINATE MATERIAL DELIVERIES, SUB-CONTRACTOR'S TRAFFIC & RELATED ACTIVITIES.

Code Information

1997 UBC
1997 UFC
1997 UPC
80MPH/EXPOSURE B
SEISMIC ZONE 3
1997 WSEC
BUILDING TYPE V-N FULLY NON-SPRINKLED
NOISE ZONE "A" OHMC 17.30
SEE SITE PLAN FOR SITE CALCS

APPROVED AS NOTED
Building or Mobil Inspection
Cross Connection Control
Date 8-23-01

Drawing Index

C1	CIVILS UNDER SEPERATE PERMIT
A0	COVER SHEET
A1.2	SITE PLAN AREA CALCS
A1.4	SITE STANDARD AND DETAILS
A2.0	FOUNDATION PLAN AND DETAILS
A2.8	COMPLETE BUILDING PLAN A&B, DETAILS
A2.9	UNIT PLANS, INTERIOR ELEVATION, NOTES
A3.0	UNIT PLANS AND NOTES
A3.1	LOWER FRAMING PLAN
A3.3	UPPER FRAMING PLAN
A3.4	ROOF FRAMING AND ROOF PLAN
A4.0	ELEVATIONS
A6.0	STAIR DETAILS AND NOTES
A7.0	UNIT SEPERATION AND EXT. WALL SECT.
L1.0	LANDSCAPE PLAN SEE SHT 1.2

Borseth B~A Architects
DESIGN BUILD
ARCHITECTURE
INTERIOR DESIGN

Job Number
Checked By
8-23-99 Date
Drawn By

Revision
PERMIT SET 6.29.99
RESUBMITTED 08.14.01

Sheet Content
COVER SHEET

revised 9.1.99

REGISTERED ARCHITECT
STATE OF WASHINGTON
BORSETH

NEW APARTMENT
270 NE 7TH AVENUE
OAK HARBOR, WA 98277

RECEIVED
AUG 17 2001
CITY OF OAK HARBOR

Job Title

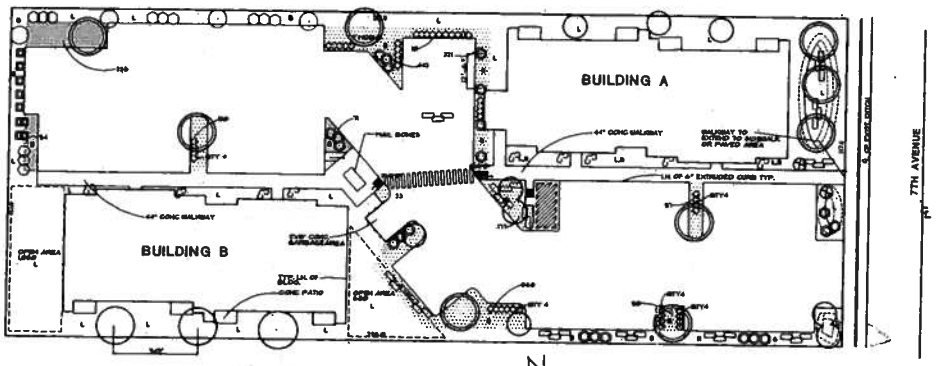
Sheet No.
A0
of _____ sheets

134

EXHIBIT
Exhibit #7

PLANT SCHEDULE

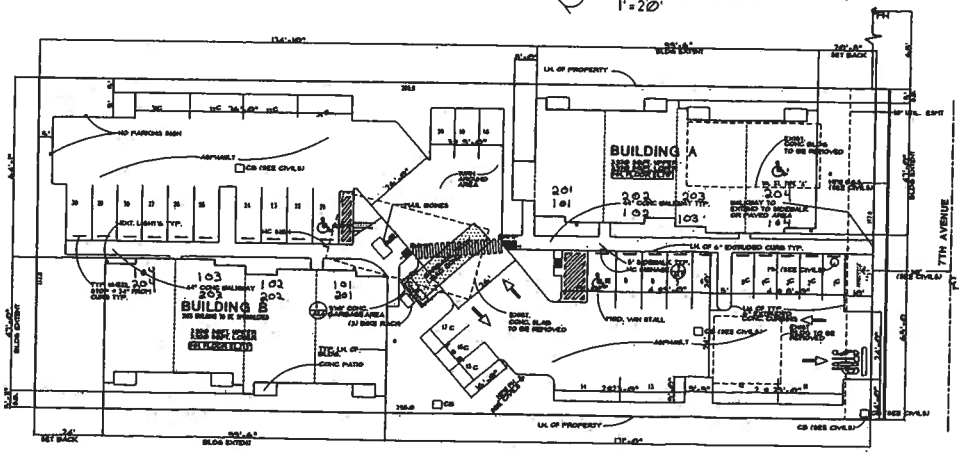
SYMBOL		
	TREES	
	Betula pendula / European white birch	10-12' ht.
	Fraxinus oxycarpa 'Raywood' / Raywood ash	2" cal typ. verify @ frontage
	Pinus nigra / Austrian pine	6-8' ht.
	SHRUBS	
	Photinia fraseri / Fraseri photinia	5 gal. cont.
	Pinus mugo / Mugo pine	18-24" ht
	Euonymus alata 'Compacta' / Dwarf winged euonymus	5 gal cont. 18" min ht.
	Viburnum Davidii / Davids viburnum	18-24" spread
	Prunus laurocerasus / otto luken laurel	18-24" cont. @18"o.c.
	GROUND COVER	
L	Lawn	Lawn
	Medium bark	Medium bark
	Black mulch	Black mulch



N

Landscape Plan

1'=20'

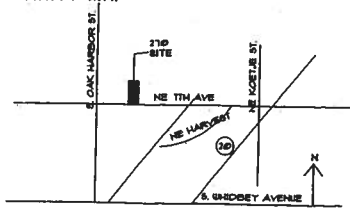


N

Site Plan

1'=20'

VICINITY MAP



PROJECT INFORMATION

TAX # 13336-275-1050
SITE ADDRESS: 270 NE 7TH AVE, OAK HARBOR

WATER PURVEYOR	CITY OF OAKHARBOR
SEWER PURVEYOR	CITY OF OAKHARBOR
ELECTRICITY	PSE
TELEPHONE	VERIZON
GARBAGE	CITY OF OAKHARBOR
CABLE	AT&T

SCOPE:

THE PROJECT CONSIST OF TWO, EIGHT UNIT APARTMENT BUILDINGS EACH CONSISTING OF TWO FLOOR ON A 34,000 SQFT. SITE (.78 ACRE) FRONTING SEVENTH AVENUE. THE SITE AND ELVATION APPEARS TO BE CONSISTENT WITH THE SURROUNDING STRUCTURES.

CONSTRUCTION TYPE:

TWO STORY WOOD FRAMED STRUCTURE USING CONVENTIONAL CONCRETE FOOTING AND FOUNDATION METHODS
TYPE V-N CONTRUCTION, EXPOSURE "B", SEISMIC III

SITE INFORMATION LOT 1

ZONING	R3/ 22 DU/AC
	» NOISE ZONE "A" AS (OHMC 17.30)
SITE AREA	34,915 SQFT./43,560 SQFT. =1 AC =.75 AC
DENSITY	34,915/ DU=22 DU/AC = .75(22) = 17.43 ALLOWED
UNITS ALLOWED	17
UNITS PROPOSED	16 W/ 2 H.C. ADAPTABLE

IMPERVIOUS SURFACE

BUILDING B	3,920SQ. FT.	11.3%
BUILDING A	3,920SQ. FT.	11.3%
PARKING	14,557 SQ.FT.	42%
SIDEWALKS	1,366 SQFT	3.8%
TOTAL IMPERVIOUS	23,763 / 34,915 SQFT. PROVIDED	68.0%

PARKING CALCULATION

16 UNITS ÷ 2 SPACES = 34 SPACES (REQUIRED)

SPACES PROVIDED	34 (THREE BEDROOMS W/ 2 VISITOR)	
CONVENTIONAL	23	9" X 20'
COMPACT	11	8' X 16'
H.C.	2	SEE PLAN
VISITOR	2	

P. LANDSCAPE ALLOWED 14,557*15% MIN. = 2,184SQ. FT.
P. LANDSCAPE PROVIDED 2,205 SQFT. 15%

PROJECT NOTES

1. ALL BUILDINGS, WALKWAY'S AND SPACES TO MEET ADA, ANSI , USAC AND UBC REQUIREMENTS
2. ALL COMPACT SPACES SHALL BE CLEARLY MARKED BY PAINTING THE WORD "COMPACT" ON THE PARKING SPACE
3. ALL LOWER FLOOR UNIT TO BE W/A ST. TYPE "B" EXCEPT AS SHOWN WITH H.C. SYMBOL WHICH NOTES ONE TYPE "A"
4. EXTERIOR LIGHTING SHALL BE BLDG MOUNTED SQUARE HALOGEN W/ PHOTAIC LENS PER OHMC19.44.130
5. ALL CIVIL DETAILS ARE FOR REFERENCE ONLY REFER TO TO CIVIL ENGINEER OF RECORD FOR ACCURATE SCOPE AND DESIGN

LEGAL DESCRIPTION

THAT PORTION OF THE WILLIAM ELLSBORA DONATION LAND CLAIM AND OF THE G.W.L. ALLEN DONATION LAND CLAIM DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE SOUTH BOUNDARY OF THE G.W.L. ALLEN DONATION LAND CLAIM, SECTION 15, TOWNSHIP 73 NORTH RANGE 1 EAST OF THE WILLAMETTE MERIDIAN, WHICH IS SOUTH 09 DEG. 27'30" EAST A DISTANCE OF 458.30 FEET FROM THE SOUTHWEST CORNER OF SAID CLAIM
THENCE NORTH 0 DEG35'50" EAST A DISTANCE OF 118.48 FEET TO THE SOUTHWEST BOUNDARY OF A TRACT SOLD TO M.KIDWELL BY CONTRACT RECORDED UNDER AUDITORS FILE NO. 7812 RECORD OF ISLAND COUNTY WASHINGTON.
THENCE SOUTH 89 DEG 23'30" EAST A DISTANCE OF 226.95 FEET TO THE SOUTHWEST CORNER OF SAID KIDWELL TRACT AND THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION.
THENCE SOUTH 0 DEG 36'50" WEST A DISTANCE OF 299.00 FEET TO THE NORTH BOUNDARY OF 900 AVENUE WEST, NOW KNOWN AS NE. 7TH AVENUE.
THENCE NORTH 89 DEG. 31' WEST A DISTANCE OF 86.35 FEET ALONG THE NORTH BOUNDARY OF 900 AVENUE KNOWN AS NE. 7TH AVENUE
THENCE NORTH 0 DEG36'50" EAST TO THE SOUTH LINE OF SAID KIDWELL TRACT.
THENCE SOUTH 89 DEG.23'30" EAST A DISTANCE OF 86.35 FEET TO THE TRUE POINT OF BEGINNING.
SITUATED IN ISLAND COUNTY, WASHINGTON

Borseth B~A Architects
DESIGN BUILD ARCHITECTURE INTERIOR DESIGN

Checked By
Date
Drawn By
Revision
01.30.01
SITE REVIEW 2 05.11.01
SITE REVIEW 2 06.04.01
S.R. RESUB 06.20.01
RESUBMITAL 08.13.01

Sheet Content
SITE PLAN
LANDSCAPE PLAN
PLANT SCHEDULE
PROJECT INFO

NEW APARTMENT
270 NE 7TH AVENUE
Oak Harbour
Washington

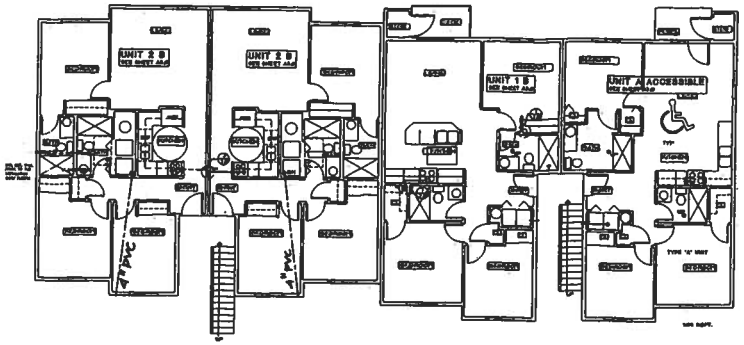
Job Title

Sheet No.
A1.2
of ____ sheets

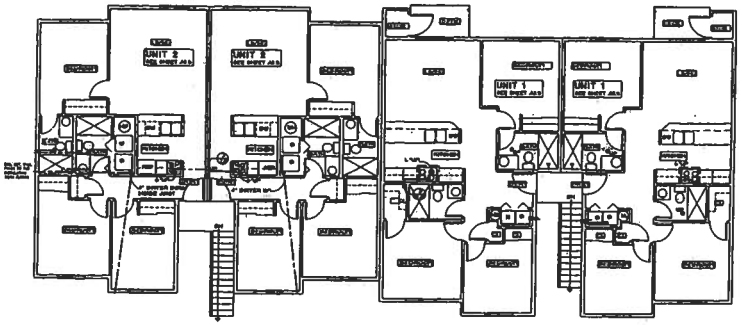
CONTRACTOR LOOKI

DUE TO THE HIGH LEVEL OF AIR TRAFFIC AT OUR SITE THE CITY OF OAKHARBOUR HAS SPECIFIC REQUIREMENTS REGARDING THE DESIGN OF EXTERIOR WALLS, VENTILATION, DOOI AND GLAZING. ALLTHOUGH WE HAVE MADE EVERY ATTEMT TO COMPLY WITH OHMC 17.30 IT WOULD BE BENIFICAL TO COORDINAT THE EXACT TYPE OF PRODUCTS THEY APPROVE.

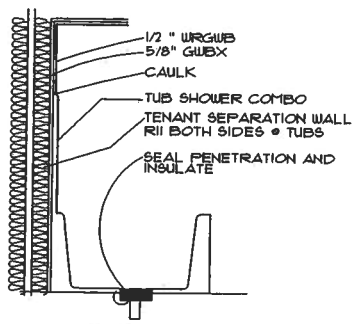
1) VENTILATION SHALL BE INSTALLED THAT WILL PROVIDE MINIMUM AIR CIRCULATION REQUIRMENT THAT MEET CODE AS DESRBIBED ON DRAWING THE INLET AND DISCHARGE OPENING SHALL BE FITTED WITH A SHEET METAL TRANSFER DUCT OF AT LEAST 20 GA MTL AND SHALL BE LINED WITH (1) ONE INCH THICK FIBERGLASS COATING FROM EXTERIOR SURFACE EXTENDING 5 LINEAL FEET WITH ONE 90 DEGREE BEND (VERIFY W/ THE BUILDING DEPARTMENT PRIOR TO INSTALATION TO COORDINATE COMPLIANCE WITH OHMC 17.30.175
2) VENT LESS THAN 5' IN LENGTH SHALL BE FULLY INSULATED AND HAVE ONE 90 DEGREE BEND INSTALLED PRIOR TO REACHING THE EXTERIOR.
EXTERIOR WINDOWS
3) ALL EXTERIOR WINDOWS SHALL BE RATED STC33 OR BETTER AND CONFORM TO OHMC 17.30.150 IT IS REQUIRED THAT THE CONTRACT VFERIFY IN WRITING TO THE BUILDING DEPARTMEN THE EXACT SPECIFICATION FROM THE WINDOW SUPPLIER PRIOR TC ORDERING SAID WINDOWS.
4) ALL EXTERIOR DOORS SHALL HAVE A STC RATING OF 33 VERII PRIOR TO ORDERING.



Lower Floor
BUILDING A&B
1/8" = 1'-0"



Upper Floor
BUILDING A&B
1/8" = 1'-0"



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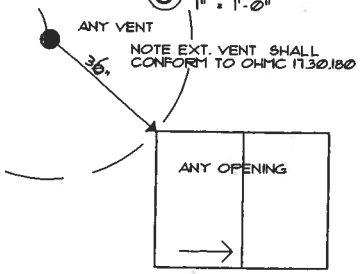

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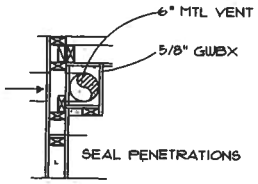

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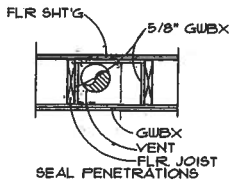

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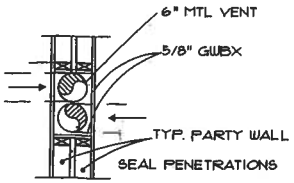

3 DETAIL @ VENT
1" = 1'-0"

136

Borseth
B~A
Architects
DESIGN BUILD
ARCHITECTURE
INTERIOR DESIGN

Revision
08.12.01
PERMIT SET

Sheet Content
BLDG "A" & "B" UNIT PLAN
OHMC 17.30 COMPLIANCE

NEW APARTMENT
270 NE 7TH AVENUE
Oak Harbour
Washington

Sheet No.
A2.8
of ____ sheets

Exhibit B

EXHIBIT #8

Chapter 13.32

RATES AND CHARGES*

Sections:

13.32.010 Connection charge.
13.32.025 Water rate – Inside the city limits and state park facilities.
13.32.030 Billing and collection procedures.
13.32.060 Monthly rate – Naval Air Station.
13.32.075 Water rate – Premises beyond city limits – Commencing March 20, 1998.
13.32.083 Monthly rate – Master meter connections (water utility district charges) – Commencing March 20, 1998.
13.32.085 Construction.
13.32.115 Occupancy permit.

*Prior legislation: Ords. 403, 495, 515, 522, 570, 622, 721, 803, 812 and 941.

13.32.010 Connection charge.

(1) For property within the city limits of Oak Harbor, a connection charge, based on the cost estimated by the water superintendent, or his or her designee, will be paid in advance of service installation. Upon completion of the connection, the actual cost will be determined and if this amount is greater than the original estimate, the applicant will be billed for the balance. If the actual cost is less than estimated, the overpayment will be refunded to the applicant. The actual cost of an installation shall include all labor, equipment and material, plus a 15 percent charge for overhead.

(2) For water connections outside the city limits of Oak Harbor, a surcharge of 50 percent will be added to the charges specified above for the extra costs involved in working beyond the normal service area. (Ord. 973 § 1, 1994).

13.32.025 Water rate – Inside the city limits and state park facilities.

(1) Standard Charge. The standard charge for water supplied by the city for residential, commercial and industrial customers inside the city limits and state park facilities shall consist of a customer charge, also termed a "monthly ready to serve charge," based on the meter size together with the rate for the quantity of water used and a monthly charge for sprinkler systems, if any.

When water is being supplied to an existing multifamily premises (i.e., two or more separate premises being served by one service and meter), the monthly ready to serve charge shall be based on either the existing meter size, or based on a 5/8-inch meter size times the number of units available for occupancy, whichever is the greater charge.

When more than one service supplies a premises, the consumption of water for each meter shall be computed separately.

(2) Monthly Ready to Serve Charge. The monthly ready to serve charge shall be in accordance with the following schedule for residential, commercial and commercial/industrial large volume users:

Ready to Serve Charge Inside City:

Meter (in inches)	Rate
5/8 – 3/4	$18.75
1	$27.22
1-1/2	$38.22
2	$54.27
3	$92.51
4	$152.82
6	$234.18
8	$285.28
10	$354.75
12	$434.81

(3) Consumption Rates and Billing Methods. The schedule of rates for water used inside the city limits shall be as set out in the following subsections:

(a) Residential Service. The monthly residential consumption rates for each metered user of water from the water system are as follows:

(i) For the first five CCF of water consumption per month: $7.29.

(ii) For each CCF of water consumption over the first five CCF: $3.46.

One bill for each water meter shall be dated and sent to each property owner, or his or her designee, at such times as are prescribed by this chapter.

(b) Multifamily Residential. The monthly multifamily residential rate is as follows:

(i) For the first quantity consumed (five CCF) times the number of units available for occupancy, at the rate of $7.29 per five CCF.

(ii) For any amounts not charged in the first class, at the rate of $3.46 per 100 cubic feet.

One bill for each water meter shall be dated and sent to each property owner, or his or her designee, at such times as are prescribed by this chapter.

(b) If the premises lies within the corporate limits of the city of Oak Harbor, the owner may elect to have the main installed by making payment to the city of the main assessment as provided in OHMC 13.28.030(2); provided, however, that the availability of this option is contingent upon whether or not, in the opinion of a majority of the city council, sufficient money is available in the current water department budget to provide the necessary funds for the extension. Upon payment of the assessments designated in this section, the city will undertake to have the main installed. There will be no reimbursement to the original applicant for subsequent connection to the main.

(c) If the premises lies within the water service area of the city of Oak Harbor, the owner may also petition to have the main installed by the formation of a local improvement district as prescribed by state law and the ordinances of the city.

(d) If adequate money is available in the water department fund, the city shall pay the material cost difference in cases where the comprehensive water plan calls for a main size larger than eight inches. (Ord. 438 § 10, 1976; Ord. 403 § 23, 1975).

13.28.030 Special charge – Property not previously assessed or costs unpaid.

For owners of property not previously assessed or not having contributed their proportionate share of construction costs for the water main, a special construction charge will be paid as follows:

(1) If the property in question abuts a main covered by a "late-comer's agreement" as provided for in OHMC 13.28.020(2)(a), the special construction charge will be as provided in said agreement.

(2) If a standard main does not exist across the frontage of the premises requesting a service connection, the superintendent may prepare an estimate of the cost to install the required standard main to serve said premises. Payment of this estimate will exempt the property for which such payment was made from a subsequent local improvement district assessment for the installation of a standard main.

(3) If the property in question is not covered by a "late-comer's agreement" then the special connection charge will be computed as follows:

(a) The number of units of property frontage to be served by the water main, determined in the manner prescribed in RCW 35.44.030 and 35.44.040 for determining assessable units of frontage or by such other method or combination of methods of computing assessments which may be deemed to more fairly reflect the special benefits to the property being assessed as authorized by RCW 35.44.047, shall be multiplied by the local improvement assessment per unit of frontage or developer extension construction costs for the water main involved.

(b) If construction costs are not available for the specific water line for which the connection is being requested, the city engineer is authorized to compute and establish the average local improvement assessment cost paid by property owners or average costs for developer extensions for water mains completed and accepted by the city during that year, which average assessment or developer extension cost shall be used by him in computing the special connection charge imposed by OHMC 13.28.010. (Ord. 599 § 1, 1981; Ord. 403 § 24, 1975).

13.28.040 Specifications for standard water mains.

(1) Standard water mains shall not be less than six-inch diameter pipe. Pipes of smaller size may be used when the city supervisor determines that maximum fire rating could be maintained and the line in question cannot be extended.

(2) All pipe shall be designed to withstand a minimum internal water pressure of 150 pounds per square inch and shall conform to the latest adopted standards of the American Water Works Association. All design standards, quality standards and pipe sizes shall conform to the latest Fire Underwriters Standards and requirements.

(3) Water mains shall be asbestos cement, cast iron, ductile iron or approved equivalent material. (Ord. 403 § 25, 1975).

(c) Multifamily Residential – Separate Meters. For multifamily residential structures having a water meter for each unit occupied or designated to be occupied by a single tenant or family, the monthly consumption rate per meter for water furnished shall be as set out in subsection (3)(a) of this section, Residential Service.

One bill for each water meter shall be dated and sent to each property owner, or his or her designee, at such times as are prescribed by this chapter.

(d) Commercial and Industrial – General Service.

For first two CCF of water consumption, or part thereof	$1.81
For the next three CCF of water consumption	$7.45 per CCF
For the next 20 CCF of water consumption	$3.82 per CCF
For each CCF of water consumption in excess of 25 CCF	$1.99 per CCF

Each business entity shall pay a separate billing based on the monthly ready for service charge. The words "business entity" as used in this subsection mean each individual, corporation, association, partnership or other entity having a separate tax number as issued by the state of Washington pursuant to RCW 82.32.030.

One bill for each water meter shall be dated and sent out to the property owner, or his or her designee, at such times as prescribed by this chapter.

(e) Commercial and Industrial – Large Volume Service. Customers may qualify for this rate based on an established consumption history greater than 100,000 CCF annually.

For first two CCF of water consumption, or part thereof	$1.81
For the next three CCF of water consumption	$7.45 per CCF
For the next 20 CCF of water consumption	$3.82 per CCF
For each CCF of water consumption in excess of 25 CCF	$1.99 per CCF

One bill for each water meter shall be dated and sent out to the property owner, or his or her designee, at such times as prescribed by this chapter.

(f) State Park.

For each CCF of water consumption	$2.74

(4) For customers which have a fire sprinkler system, there shall be an additional monthly charge of $17.59 per month. (Ord. 1529 § 1, 2008; Ord. 1492 § 1, 2007; Ord. 1452 § 1, 2006; Ord. 1418 § 1, 2005; Ord. 1306 § 1, 2002; Ord. 1292 § 1, 2001; Ord. 1258 § 1, 2001; Ord. 1240 § 1, 2000; Ord. 1228 § 1, 2000; Ord. 1201 § 1, 1999; Ord. 1192 § 1, 1999; Ord. 1130 § 1, 1998).

13.32.030 Billing and collection procedures.

Billing and collection procedures for the utility shall be as provided in this title and OHMC Title 3 and under state law as now in effect or hereafter amended. (Ord. 1348 § 21, 2003).

13.32.060 Monthly rate – Naval Air Station.

(1) The charge for water consumed by the Naval Air Station shall be determined as follows:

(a) The rate per 100 cubic feet shall be determined by dividing the total monthly volume in 100 cubic foot increments purchased from the city of Anacortes into the total cost for this amount of water, less any reserve charges. The Naval Air Station's bill shall be determined by multiplying the station's use in 100 cubic-foot increments by the average cost as above determined.

(b) For water reserved but not used, the Naval Air Station will be billed for their share at the same rate that the city pays Anacortes.

(2) As part of the cost, in addition to the above charges, the Naval Air Station will pay the costs of the city for all applicable business and occupational taxes on the above water service and will also pay such other amounts as provided in a contract between the city and the Navy pursuant to maintenance of the 24-inch water line between Sharp's Corner and the Naval Air Station. Billings will be made monthly for water consumed the previous month and will be payable within 30 days. (Ord. 973 § 1, 1994).

13.32.075 Water rate – Premises beyond city limits – Commencing March 20, 1998.

(1) Commencing March 20, 1998, the standard charge for water supplied by the city for residential, commercial and commercial/industrial large volume outside of the city limits shall consist of a customer charge, also termed a "monthly ready to

serve charge," based on the meter size together with the rate for the quantity of water used.

(2) The monthly ready to serve charge commencing March 20, 1998, shall be one and one-half times the rate charged for the similar water service under OHMC 13.32.025.

(3) The schedule of rates for water used outside the city limits commencing March 20, 1998, shall be shall be one and one-half times the rate for a similar water service within the city limits for the quantity of water used. (Ord. 1130 § 2, 1998).

13.32.083 Monthly rate – Master meter connections (water utility district charges) – Commencing March 20, 1998.

(1) Commencing March 20, 1998, the monthly ready to serve charge for master meter connections (water service connections to water districts) shall be as set out in OHMC 13.32.025. Payments on the ready to serve charge shall be applied to the water consumption charges.

(2) All water used will be charged at one and one-half times the rate for in-city commercial/industrial large volume customers for equivalent water usage. (Ord. 1130 § 3, 1998).

13.32.085 Construction.

During the construction of any building and before water is installed as herein provided in this title, as amended, the contractor so constructing such building may be permitted to use the city water supply by making application therefor pursuant to OHMC 3.95.040 and paying the charges prescribed by OHMC 13.32.025. (Ord. 1130 § 6, 1998; Ord. 973 § 1, 1994).

13.32.115 Occupancy permit.

No water shall be turned on for service in any premises for which an occupancy permit has not been obtained, in advance, from the city building department; provided, that water may be turned on for construction work in unfinished buildings, subject to the provisions of OHMC 13.32.085. (Ord. 973 § 1, 1994).

Exhibit C

EXHIBIT #9

Chapter 3.95

UTILITY BILLING AND COLLECTION PROCEDURES

Sections:

3.95.010 Policy and scope.
3.95.020 Definitions.
3.95.030 Promulgation of rules.
3.95.040 Application – Account initiation fee.
3.95.050 Liability for account transfer to another account.
3.95.060 Payments applied.
3.95.070 Charges – Due date.
3.95.080 Delinquency.
3.95.090 Due process hearings.
3.95.100 Water cut-offs – Lien enforcement.
3.95.110 Disconnect water service – Charge – Unpaid – Payment requisite for reconnect.
3.95.120 Turning water on – Charges.
3.95.130 Utility connection charges – Waiver for low-income persons.
3.95.140 Security deposits for service and late fees.
3.95.150 Collection agency.
3.95.160 Over or under billing.
3.95.170 NSF check – Fee for collection.

3.95.010 Policy and scope.

(1) The policy of the city is standardized utility billing and collection practice to simplify customer and administrative response to the process involved.

(2) This chapter shall apply to the water, storm water, sewer and solid waste utilities. (Ord. 1348 § 2, 2003).

3.95.020 Definitions.

(1) "Utility" refers to any of the city of Oak Harbor utilities which include storm water utility (rates and regulations which are codified under OHMC Title 12), sewer utility (rates and regulations which are codified in OHMC Title 14), water utility (rates and regulations which are codified under OHMC Title 13) and the solid waste utility (rates and regulations which are codified in OHMC Title 15).

(2) "Finance director" means the chief financial officer of the city of Oak Harbor.

(3) "Lien" is the lien for utilities authorized by state law. For the water utility, the lien statutes are RCW 35.21.290 and 35.21.300. For the solid waste utility, the lien statutes are RCW 35.21.140 and 35.21.150. For the storm water utility and sewer utility, the lien statutes are RCW 35.67.200 through 35.67.290. (Ord. 1348 § 3, 2003).

3.95.030 Promulgation of rules.

The finance director shall have the power to issue rules and regulations not inconsistent with the terms of this chapter in regard to the payment, collection, and remittance of the water charges, the service and general operation of the utility. A copy of such rules and regulations shall be on file and available for public examination at the utility office. Failure to comply with the rules and regulations is a violation of this title. (Ord. 1348 § 4, 2003; Ord. 438 § 2, 1976; Ord. 403 § 2, 1975. Formerly 13.08.010).

3.95.040 Application – Account initiation fee.

Application to have utility accounts initiated shall be made in writing on forms directed by the finance director during normal working hours, and shall contain an agreement by the applicant to abide by and accept all of the provisions of this chapter (as amended) as conditions governing the use of the city's water system. An account initiation fee of $25.00 shall be paid in advance by each applicant for utility service before the utility service is provided. The account initiation fee shall be nonrefundable. The account initiation fee shall only apply to new accounts and not existing accounts or transferring accounts within the city limits of Oak Harbor. All service charges shall be a lien against the property served even though the service shall be contracted for by a tenant. The property owner shall be as responsible as if he had contracted for the service; provided, the property owner's responsibility will be limited by the terms and conditions under which a lien may be filed against the property unless the property owner has contracted for the service and authorized a broader lien. (Ord. 1348 § 5, 2003; Ord. 1306 § 2, 2002; Ord. 1292 § 2, 2001; Ord. 1240 § 1, 2000; Ord. 1228 § 2, 2000; Ord. 1201 § 2, 1999; Ord. 1192 § 2, 1999; Ord. 973 § 1, 1994. Formerly 13.32.090).

3.95.050 Liability for account transfer to another account.

(1) Additional Persons May Be Required to Be Responsible for Accounts. In addition to the person or address billed for service as shown in municipal records, the city may require any other person or address for whom or for whose benefit services are provided, or against whom enforcement action is taken under the authority of this chapter, to be responsible for payment for any municipal services, jointly and severally. With respect to any

premises served or involved in an enforcement action, such persons include the respective premises' owner and occupant.

(2) Transfer of Payment Responsibility of Accounts. To obtain payment from any person determined responsible by the department for municipal utility service charges, the city reserves the right to transfer a payment obligation from one customer or account to another, or hold charges for payment on one or more accounts, jointly and severally, until full payment is received. (Ord. 1348 § 6, 2003; Ord. 1269 § 7, 2001; Ord. 1034 § 1, 1996; Ord. 955 § 1, 1993; Ord. 808 § 1, 1988. Formerly 15.04.070).

3.95.060 Payments applied.

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

(1) Outstanding late charges;
(2) Solid waste charges;
(3) Storm water utility charges;
(4) Sanitary sewer charges;
(5) Water charges. (Ord. 1348 § 7, 2003; Ord. 1130 § 7, 1998; Ord. 973 § 1, 1994. Formerly 13.32.093).

3.95.070 Charges – Due date.

Utility service charges shall be billed monthly or bimonthly for services provided during the previous billing period. For the purpose of billing, the city is divided into two billing areas divided by Oak Harbor Street. Billing will continue on a two-month cycle. Bills shall be due upon billing and payable not later than the eighteenth of the following calendar month after issue, and thereafter shall become delinquent and sewer, storm water and solid waste utility charges shall bear interest at the rate of eight percent per annum, prorated monthly, and water utility charges shall bear interest at the rate of one percent per month. (Ord. 1348 § 8, 2003; Ord. 1192 § 3, 1999; Ord. 973 § 1, 1994. Formerly 13.32.100).

3.95.080 Delinquency.

If the account is not paid when due, the city shall assess a $15.00 delinquency payment and give notice that the utility account is delinquent.

In addition, the notice shall:

(1) Set a date for water turn-off not more than 21 days after giving of notice; and

(2) Advise that an additional charge of $10.00 will be added to the bill if water cut-off or meter removal is implemented as a charge for cutting off the water and/or meter removal; and

(3) Payment must be received by 4:30 p.m. on the date prior to cut-off in order to prevent cut-off and imposition of additional charges. (Ord. 1348 § 9, 2003; Ord. 1172 § 1, 1999; Ord. 973 § 1, 1994. Formerly 13.32.110).

3.95.090 Due process hearings.

Procedures for protest of billing or utility cut-off shall be set by the finance director. (Ord. 1348 § 10, 2003; Ord. 973 § 1, 1994. Formerly 13.32.130).

3.95.100 Water cut-offs – Lien enforcement.

(1) Sewer and Storm Water Lien. As an alternative method to enforce the lien for nonpayment of sewer or storm water services or both, the city may cut off water service and refuse to provide water service to premises which were furnished water after the charges have become delinquent and unpaid; provided, that unless the lien is filed with the Island County auditor, the lien shall not be for more than six months' service.

(2) Water Lien. As a means of enforcement, the lien for water services supplied by the city may cut off and refuse to supply water to the premises which were furnished with the water services after the charges have become delinquent and unpaid; provided, that the lien may not be for more than four months of water services.

(3) The fee charged for turning off water shall be $10.00 and shall be assessed by 4:30 p.m. the day before the water is turned off. See OHMC 3.95.080, Delinquency. (Ord. 1348 § 11, 2003).

3.95.110 Disconnect water service – Charge – Unpaid – Payment requisite for reconnect.

If the service has been disconnected because the water, sewer or storm water bill has not been paid, the water service shall not be turned on until the charges under the applicable lien or liens have been paid. (Ord. 1348 § 12, 2003; Ord. 973 § 1, 1994. Formerly 13.32.120).

3.95.120 Turning water on – Charges.

No water from the city water supply shall be turned on for service into any premises by any person except the supervisor of the water department or his/her designee. A fee of $15.00 shall be charged for turning water on for service. This charge shall not be assessed when turning water on for purposes of account initiation pursuant to OHMC 3.95.040. The charge for turning on the water after 4:30 p.m. on any work day or on weekends shall be $75.00 except for emergency

responses. (Ord. 1348 § 13, 2003; Ord. 973 § 1, 1994. Formerly 13.32.095).

3.95.130 Utility connection charges – Waiver for low-income persons.

The finance director may waive connection charges for properties purchased by low-income persons from organizations exempt from tax under Section 501(c)(3) of the federal Internal Revenue Code as amended prior to July 23, 1995. Waivers of connection charges for the same class of utility service must be uniformly applied to all qualified property. Nothing in this section authorizes the impairment of a contract. (Ord. 1348 § 14, 2003).

3.95.140 Security deposits for service and late fees.

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

(2) Solid Waste Only Billing. Where premises are not served by city water or sewer service, the customer is required to tender a deposit to the utility department equal to four months of the estimated cost of the service to be provided as determined by the utility department.

(3) Front Load Dumpster Security. The solid waste utility shall collect advance payment for container placement and up to four months of charges for rental. The city finance director may accept satisfactory securities or surety bond in lieu of cash payment. Such payment or security may be applied toward the payment of service charges whenever the same shall become due. The solid waste utility reserves the right to require additional advance payment for subsequent service that may be requested by the customer.

(4) When a utility deposit required under this section remains unpaid for more than 30 days after giving notice of the same, the city may terminate utility service for the utility requiring deposit including turning off water so long as notice and availability of hearing is provided as per this chapter. (Ord. 1348 § 15, 2003; Ord. 1269 § 5, 2001; Ord. 1034 § 1, 1996; Ord. 808 § 1, 1988. Formerly 15.04.050).

3.95.150 Collection agency.

(1) The city may refer unpaid accounts for collection to a collection agency approved by the city council for which there is a contract.

(2) Accounts referred to collection shall be only after written notice has been given to the account holder at his/her last known address by certified mail, return receipt requested, and by regular mail, postage prepaid 30 days in advance of the referral to collection. (Ord. 1348 § 16, 2003).

3.95.160 Over or under billing.

(1) Over Billing. If the finance director, upon investigation or otherwise, finds that the fee for utility charges paid by a utility customer or property owner is more than the amount required of the utility customer or property owner which made the over payment, he or she shall return the amount overpaid by a warrant or check upon the utility fund or funds receiving the over payment.

(2) Under Billing. If the finance director finds that the fee or utility charges billed to a utility customer or property owner is less than required, the finance director shall send a statement to the utility customer or property owner owing the balance due, and the utility customer or property owner shall, within 30 days, pay the amount shown thereon. Amounts outstanding after the 30 days shall be charged interest at the rate of eight percent per annum, prorated monthly, until paid.

(3) No increase in billing or reduction of a billing for utility charges due may be made by the finance director for more than two years after the over billing or under billing:

(a) Against a utility customer or property owner who has not properly signed up for utility services as required by this chapter and/or OHMC Titles 12, 13, 14 and 15;

(b) Upon a showing of fraud or theft of services;

(c) Upon a showing of misrepresentation of a material fact by a utility customer or property owner whose property received the utility services; or

(d) Where a utility customer or property owner has executed a written waiver of such limitation. (Ord. 1348 § 17, 2003).

3.95.170 NSF check – Fee for collection.

The fee charged for a nonsufficient fund check (NSF check) shall be $40.00, or the amount of the NSF check, whichever is less. (Ord. 1348 § 18, 2003).

Exhibit D

EXHIBIT #10

Chapter 1.24

APPEALS

Sections:

1.24.010 Purpose and designation of appellate bodies.
1.24.020 Form of appeal.
1.24.030 Processing of appeal.
1.24.040 Scheduling and noticing appeal for hearing.
1.24.050 Effect of failure to appeal.
1.24.060 Scope of hearing on appeal.
1.24.070 Staying of order under appeal.
1.24.080 Procedures for conduct of hearing appeals.
1.24.090 Notice of hearing.
1.24.110 Conduct of hearing.
1.24.120 Method and form of decision.
1.24.130 Enforcement of the order.

1.24.010 Purpose and designation of appellate bodies.

(1) This chapter may be referenced by other ordinances of the city to provide appeal procedures as determined by such ordinance or adopted in part or whole by appellate bodies of the city if they so determine that they are appropriate for their use.

(2) When not otherwise provided by the Oak Harbor Municipal Code, authorized appeals from orders or notices required to be issued by the mayor or the city administrator shall lie before the city council or a hearing examiner appointed by the city council.

(3) When not otherwise provided by the Oak Harbor Municipal Code, authorized appeals from decisions of a department head or the designee of the mayor or the city administrator shall be to the city administrator or a person appointed by the city administrator.

(4) When not otherwise provided by the Oak Harbor Municipal Code, authorized appeals from decisions by an employee within a department or a due process hearing within a department purview shall be to the department head or a person appointed by the department head.

(5) This chapter shall not apply to OHMC Title 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 or 21. (Ord. 1496 § 1, 2007; Ord. 681, 1984).

1.24.020 Form of appeal.

Unless otherwise specified, any person entitled to an appeal of a decision made by an official, agency or department of the city may appeal from the notice and order or any action complained of by filing at the office of the clerk a written appeal containing:

(1) A title in the words: "Appeal of _____," and giving the names of all appellants participating in the appeal;

(2) A caption reading: "Appeal of _____," and giving the names of all appellants participating in the appeal;

(3) A brief statement setting forth the legal interest of each of the appellants in the matter in the notice and order and/or part thereof;

(4) A brief statement in ordinary and concise language of that specific order or action protested, together with any material facts claimed to support the contentions of the appellant;

(5) A brief statement in ordinary and concise language of the relief sought and the reasons why it is claimed the protested order or action would be reversed, modified or otherwise set aside;

(6) The signatures of all parties named as appellants and their official mailing addresses;

(7) The verification (by declaration under penalty of perjury) of at least one appellant as to the truth of the matters stated in the appeal.

The appeal shall be filed within 10 days from the date of service of such order or action. (Ord. 681 § 1, 1984).

1.24.030 Processing of appeal.

Upon receipt of any appeal filed pursuant to this section, the city clerk shall transmit the notice to the applicable reviewing agency and a copy to the city attorney. (Ord. 681 § 2, 1984).

1.24.040 Scheduling and noticing appeal for hearing.

As soon as practicable after receiving the written appeal, the clerk or secretary of the reviewing agency shall fix a date, time, and place for hearing of the appeal. Such date shall not be less than 10 days nor more than 60 days from the date the appeal was filed with the city clerk. Written notice of the time and place of the hearing shall be given at least 10 days prior to the date of the hearing to each appellant by the secretary or clerk of the reviewing agency by causing a copy of such notice to be delivered to the appellant personally or by mailing a copy thereof, postage prepaid, addressed to the appellant at his address shown on the appeal. (Ord. 681 § 3, 1984).

1.24.050 Effect of failure to appeal.

Failure of any person to file an appeal in accordance with the provisions of this chapter shall constitute a waiver of his right to an administrative

hearing and adjudication of the notice and order or to any portion thereof. (Ord. 681 § 4, 1984).

1.24.060 Scope of hearing on appeal.

Only those matters or issues specifically raised by the appellant shall be considered in the hearing of the appeal. (Ord. 681 § 5, 1984).

1.24.070 Staying of order under appeal.

(1) Upon application by an aggrieved party, enforcement of any notice and order issued subject

EXHIBIT #11

UNITED STATES POSTAL SERVICE

Track & Confirm

Search Results

Label/Receipt Number: **7006 0100 0000 0631 3021**
Service(s): **Certified Mail™**
Status: **Delivered**

Your item was delivered at 10:32 AM on June 23, 2009 in COUPEVILLE, WA 98239.

Track & Confirm
Enter Label/Receipt Number.
Go >

Detailed Results:

- **Delivered, June 23, 2009, 10:32 am, COUPEVILLE, WA 98239**
- **Notice Left, June 20, 2009, 8:35 am, COUPEVILLE, WA 98239**

Notification Options

Track & Confirm by email

Get current event information or updates for your item sent to you or others by email. Go >

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SENDER: *COMPLETE THIS SECTION*

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Darrell Wallen
PO Box 308
Coupeville, WA 98239

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) Cindy Wallen C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

COUPEVILLE WA 98239 JUN 23 2009 USPS

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☒ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

2. Article Number *(Transfer from service label)* 7006 0100 0000 0631 3021

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

EXHIBIT #12

CITY OF OAK HARBOR

ACCOUNTS PAYABLE CHECK

Check No. 137566

INVOICE NUMBER	DATE	P.O. NUMBER	DESCRIPTION	DISCOUNT	AMOUNT
Ref000167101	06/19/2009		UB Refund Cst #00121302	0.00	884.63
Ref000167102	06/19/2009		UB Refund Cst #00121598	0.00	1,049.58
Ref000167103	06/19/2009		UB Refund Cst #00122359	0.00	212.99
Ref000167104	06/19/2009		UB Refund Cst #00122359	0.00	212.99
Ref000167105	06/19/2009		UB Refund Cst #00122359	0.00	212.99
Ref000167106	06/19/2009		UB Refund Cst #00122359	0.00	212.92
					2,786.10

PLEASE DETACH BEFORE DEPOSITING

CITY OF Oak Harbor
WHIDBEY ISLAND, WASHINGTON

CITY OF OAK HARBOR
ACCOUNTS PAYABLE
865 SE BARRINGTON DRIVE
OAK HARBOR, WA 98277
(360) 279-4500

OAK HARBOR BRANCH
U.S. BANK OF WASHINGTON, N.A.
OAK HARBOR, WASHINGTON

19-10
1250

CHECK NO. 137566

VENDOR NUMBER	DATE	WARRANT NUMBER	WARRANT AMOUNT
0004931	06/19/2009	137566	2,786.10

COPY

COPY

PAY Two Thousand Seven Hundred Eighty Six Dollars and Ten Cents

TO THE ORDER OF

WALLEN, DARRELL
PO BOX 308
COUPEVILLE, WA 98239

⑈0137566⑈ ⑆125000105⑆ 153503399716⑈

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EXHIBIT
#13

BEFORE THE HEARING EXAMINER OF THE CITY OF OAK HARBOR

In re the Decision of the City Administrator DARRELL WALLEN, Appellant, v. CITY OF OAK HARBOR, Respondent.	RECORD OF THE CITY

The City's Record of its decision is attached with Exhibits.

Respectfully submitted this 27th day of October, 2009.

CITY OF OAK HARBOR

By Margery Hite
Margery Hite, Attorney for Respondent
WSBA #8450

L:\LGLA\WORK\CIV2009\Wallen - Record of the City.doc

City of Oak Harbor Law Department
865 SE Barrington Drive
Oak Harbor, Washington 98277
(360) 279-4540

EXHIBIT
#13-1

FINANCE DIRECTOR'S SUMMARY

Finance Department: Chronology of meetings with Mr. Wallen

1) In late May of 2009, I received a request from Mr. Darrell Wallen to meet for the purpose of discussing his utility bill with the City of Oak Harbor. I met with Mr. Wallen and a Mr. Jim Brittian, who accompanied Mr. Wallen, in my office. During this meeting Mr. Wallen raised the following issues:

   a. Is it appropriate for the City to charge a per unit charge for water and sewer for a laundry room in a multi-residential apartment complex located at the "7th Avenue Apartments", and;

   b. How is the storm drain charge assessed for multi-residential apartments and are the calculations being correctly applied to Mr. Wallen's property.

We talked in great detail about these issues. Based on Mr. Wallen's inquiry, I assured him I would look into these issues and would review his account history and contact him with the results of my review.

2) Mr. Wallen is an owner of an apartment building at 260 NE 7th Avenue. Based upon the heavy use of water in a laundry room, beginning in July of 2004, the water charge for the apartment building was based on seventeen units being "available for occupancy". See Exhibit 2.

3) After my review of Mr. Wallen's water account, I determined that the laundry room should not have been included as a unit "available for occupancy" since it was not an approved unit under the building permit.

4) In computing a refund to Mr. Wallen, I initiated review of the Oak Harbor Municipal Code (OHMC) regarding billing requirements for multi-residential apartment units, and a discussion with the City Attorney regarding the OHMC two year rule for the Finance Director giving refunds to customers and other options under State law. I concluded that the City Code only allows me to refund over-billed amounts for the past two years. I computed this corrected amount and determined that Mr. Wallen should receive a refund for two years' billing of the laundry rooms. For two years, the amount due to Mr. Wallen was $2,786.10 . See Exhibit 3.

5) Approximately June 3, 2009: I called and left an update message with Mr. Wallen.

6) June 8, 2009: I called and talked with Mr. Wallen to give him an update on review process.

7) Received June 16, 2009 letter from Mr. Wallen. See Exhibit 4.

EXHIBIT 1

8) June 19, 2009: Sent letter to Mr. Wallen outlining results of my review of his account. I mailed the letter certified return receipt along with check number 137566 in the amount of $2,786.10. See Exhibit 3.

9) June 24, 2009: Received return receipt from the US Postal Service that the letter and enclosed check had been received and signed for on June 23, 2009. See Exhibit 3.

10) July 10, 2009: Received letter from Mr. Wallen asking when he could pick up his check, which he had already signed for and accepted. See Exhibit 5.

11) Received copy of Darrell Wallen Letter to Edward Johnson instructing Island Brokers Real Property Management to withhold payment on accounts. Noted that letter is erroneously dated 5/1/2009. See Exhibit 6.

12) Received no further correspondence with Mr. Wallen.

13) On October 5, 2009, I received a copy of the City Administrator's Decision, dated September 22, 2009. See Exhibit 7. That letter directed me to refund an additional year's payment, for a total of three years, to Mr. Wallen. On October 19, 2009, I sent Mr. Wallen letter certified return receipt along with check number 138866 in the amount of $1,106.33.

14) Mr. Wallen has been refunded the overpayments he made on his water bill from July 2006 to July 2009. Attached to this summary is the amount that was overpaid from July 20, 2004 through May 20, 2006 for which no credit has been made because it is outside the three-year statute of limitations. The total unpaid credit for those four years is $1,178.14. See Exhibit 2.

15) Exhibit 8 is a copy of a letter dated October 2, 2009 from Mr. Wallen to the City Administrator Paul Schmidt.

16) Exhibit 9 is a copy of Mr. Wallen's letter Appeal of final decision of the City Administrator and Mayor" dated October 5, 2009.

17) Exhibit 10 is Mr. Wallen's application for utility service for the apartment building at 260 NE 7th Avenue.

EXHIBIT #13-2

EXHIBIT 2

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Calculated Credit Unpaid

15-126000-01
7th Avenue Apartments
260 NE 7th Ave

	5/20/2006	3/20/2006	1/20/2006	11/20/2005	9/20/2005	7/20/2005	5/20/2005	3/20/2005	1/20/2005	11/20/2004	9/20/2004	7/20/2004	
Consumption CCF	158	91	121	140	176	181	142	111	139	150	134	138	1st mo
Billed @ 17 Units													
Meter	479.06	461.04	461.04	461.04	461.04	461.04	461.04	461.04	461.04	461.04	461.04	461.04	
Cons	186.32	179.18	179.18	179.18	194.18	206.68	179.18	179.18	179.18	179.18	179.18	179.18	
Sewer	1,030.20	999.20	999.20	999.20	999.20	999.20	999.20	999.20	999.20	999.20	999.20	999.20	
	1,695.58	1,639.42	1,639.42	1,639.42	1,654.42	1,666.92	1,639.42	1,639.42	1,639.42	1,639.42	1,639.42	1,639.42	
Corrected @ 16 Units													
Meter	450.88	433.92	433.92	433.92	433.92	433.92	433.92	433.92	433.92	433.92	433.92	433.92	
Cons	175.36	168.64	168.64	168.64	208.64	221.14	168.64	168.64	168.64	168.64	168.64	168.64	
Sewer	970.02	934.24	934.24	934.24	934.24	934.24	934.24	934.24	934.24	934.24	934.24	934.24	
	1,596.26	1,536.80	1,536.80	1,536.80	1,576.80	1,589.30	1,536.80	1,536.80	1,536.80	1,536.80	1,536.80	1,536.80	
Credit/Adjustment													**Total**
Meter	(28.18)	(27.12)	(27.12)	(27.12)	(27.12)	(27.12)	(27.12)	(27.12)	(27.12)	(27.12)	(27.12)	(27.12)	(326.50)
Cons	(10.96)	(10.54)	(10.54)	(10.54)	14.46	14.46	(10.54)	(10.54)	(10.54)	(10.54)	(10.54)	(10.54)	(76.90)
Sewer	(60.18)	(64.96)	(64.96)	(64.96)	(64.96)	(64.96)	(64.96)	(64.96)	(64.96)	(64.96)	(64.96)	(64.96)	(774.74)
	(99.32)	(102.62)	(102.62)	(102.62)	(77.62)	(77.62)	(102.62)	(102.62)	(102.62)	(102.62)	(102.62)	(102.62)	(1,178.14)

7/20/04 is the first bill that included the additional unit for the laundry room.

Note to File:

- Letter to Mr. Wallen outlining findings of review with legal support.
- Basis for refund regarding laundry room pertains to uncertainty that a laundry room is considered "occupied" as defined in the Oak Harbor Municipal Code. Wording may refer to occupancy relative to being a unit for rent for a residence. Could be possible that occupancy is relative to a permit status of number of units available for use by tenants – not necessarily for residential living.

June 19, 2009

Mr. Darrell Wallen
P.O. Box 308
Coupeville, WA 98239

RE: Adjustments to Utility Accounts.

Dear Mr. Wallen,

Thank you for you inquiry into your utility accounts with the City of Oak Harbor. Per our discussions, I have inquired into the following issues:

1) Should the laundry room at the 7th Avenue Apartments be charged as an additional unit for water and sewer?

Source: Oak Harbor Municipal Code 13.32.025 (3)b:

(b)Multifamily Residential. The monthly multifamily residential rate is as follows:
(i) For the first quantity consumed (five CCF) times the number of units available for occupancy, at the rate of $7.29 per five CCF.

(ii) For any amounts not charged in the first class, at the rate of $3.46 per 100 cubic feet.

One bill for each water meter shall be dated and sent to each property owner, or his or her designee, at such times as are prescribed by this chapter.

Finding: paragraph b(i) above states that the minimum charge is applied to the "number of units available for occupancy." While the term occupancy may apply to more than an apartment or condominium used for living quarters (community center, large laundry facilities, etc.) the laundry facility at the 7th Avenue Apartments is provided as a convenience to tenants, and is small enough in nature for consideration of removal as a billable unit. Accordingly, the laundry unit will be removed bringing the total billable units for water and sewer to 16. The total water and sewer credit from this adjustment results in an account credit of $1,360.68. (See attachments).

2) Would the City consider re-measuring the impervious surface measurements for the 7th Avenue Apartments, the Foxwood Apartments, and the Sand Pebble Apartments?

EXHIBIT #13-3

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EXHIBIT 2

Yes. I initiated a request for an "Impervious Surface Measurement Calculation Record" to be performed on all of these parcels. These measurements are performed by the City Engineers Department, and include actual field measurements and aerial photo comparisons in order to calculate the appropriate impervious surface. I have included copies of the request forms, and the engineer's calculation notes for each property.

During our meeting, we discussed the differences seen in the amount paid by each apartment for Storm Drain services. While water and sewer charges are based on a per unit calculation, storm drain charges are based on a different method. This method is outlined in the Oak Harbor Municipal Code 12.40.030 Drainage Service Charges – Schedule – Exemptions under paragraph (3)b-c as follows:

OHMC 12.40.030(3)b-c:

(3) Drainage service charge rate categories shall be as follows:

(b)All other properties shall pay a rate based on the amount of impervious surface area to be calculated by multiplying the rate for single-family residential properties by a quotient derived from dividing the total number of square feet of impervious surface area by 2,500 (the impervious surface area equivalent of a single-family residence). The quotient shall be rounded to the nearest tenth. For condominiums and townhouses, the drainage service charge shall be determined for the entire parcel and then divided evenly among the owners. Land use code, site visits, and other information shall be used to estimate the measurement of impervious area.

(c)The rate categories and the corresponding annual drainage service charges are as follows:

Single-family residential $9.14 per month per parcel

Churches and charitable organizations $2.28 per month per 2,500 square feet of impervious area

Schools $6.85 per month per 2,500 square feet of impervious area

Properties other than single-family residences, schools, churches and charitable organizations $9.14 per month per 2,500 square feet of impervious area

Using this method, the calculated impervious surface of properties designated as multi-residential pay based on the total impervious surface assigned to the account, divided by 2,500 square feet, times $9.14. There is no application of the number of units utilized in this calculation.

Finding: The re-measurement of the impervious surfaces for the 3 properties resulted in the following adjustments:

	Previous	Adjusted	Difference	Charge (Credit)
7th Avenue Apartments	21,178	25,082	3,904	$311.10
Foxwood Apartments	10,082	7,410	(2,672)	($851.89)
Sand Pebble Apartments	25,200	14,097	(11,103)	($884.63)
Total Account Adjustment				($1,425.42)

3) For what period of time is the City allowed to go back to correct and over or under billing?

In reviewing your account, I investigated the period of time that the Finance office is allowed to correct over or under billings on utility accounts by reviewing the Oak Harbor Municipal Code, and by reviewing the Revised Code of Washington (RCW) with the Office of the City Attorney. The Oak Harbor Municipal Code includes the following cite:

3.95.160 Over or under billing.

(1) Over Billing. If the finance director, upon investigation or otherwise, finds that the fee for utility charges paid by a utility customer or property owner is more than the amount required of the utility customer or property owner which made the over payment, he or she shall return the amount overpaid by a warrant or check upon the utility fund or funds receiving the over payment.

(2) Under Billing. If the finance director finds that the fee or utility charges billed to a utility customer or property owner is less than required, the finance director shall send a statement to the utility customer or property owner owing the balance due, and the utility customer or property owner shall, within 30 days, pay the amount shown thereon. Amounts outstanding after the 30 days shall be charged interest at the rate of eight percent per annum, prorated monthly, until paid.

(3) No increase in billing or reduction of a billing for utility charges due may be made by the finance director for more than two years after the over billing or under billing:

The only exceptions to this are:

(a) Against a utility customer or property owner who has not properly signed up for utility services as required by this chapter and/or OHMC Titles 12, 13, 14 and 15;

(b) Upon a showing of fraud or theft of services;

(c) Upon a showing of misrepresentation of a material fact by a utility customer or property owner whose property received the utility services; or

(d) Where a utility customer or property owner has executed a written waiver of such limitation.

This portion of the code is driven by state law as it pertains to statute of limitation requirements. The State of Washington establishes the statute of limitations under RCW 4.16.130 Action for relief not otherwise provided for:

RCW 4.16.130: An action for relief not hereinbefore provided for, shall be commenced within two years after the cause of action shall have accrued.

I inquired into the possibility of extended the period of time for more than the statutory two year period. The result is that the statute of limitations confines claims to the two-year period with any claims falling retroactively outside of this period of time being considered an invalidated claim. The City is limited by state law to paying only valid claims. Absent any documented evidence that you may have initiated your claim for refund prior to your discussions with me I am, unfortunately, only allowed to review your account back to the beginning of the statutorily allowed two year period. Please let me know if you have any previous correspondence or other documents where you have previously inquired about the 17th unit.

Summary: The total adjustment to your accounts for these changes results in a total credit to you in the amount of $2,786.10. I have attached summary sheets showing the credits/charges for each apartment complex, including the individual calculation sheets used in determining your credit. Please review these sheets, and contact me should you have any questions.

Should you have any questions regarding the measurements of impervious surface utilized in the calculation of your storm drainage fees, please contact the office of the City Engineer at (360) 279-4522.

Thank you again for expressing your concern regarding your utility billing.

Sincerely,

Doug Merriman
Finance Director

Enclosures

CC: Mayor Jim Slowik.
City Administrator Paul Schmidt.
Public Works Superintendent Cathy Rosen.
Customer correspondence file.

Darrell Wallen
P.O. Box 308
Coupeville, WA. 98239

~~Dated 6/16/09~~

Doug Merriman, CPA
Finance Director
City of Oak Harbor
865 SE. Barrington Drive
Oak Harbor, WA. 98277

Re: Phone call Monday 6/15/09 2:30 PM

Dear Mr. Merriman

After pondering our last phone call Monday where you were trying to keep me up to date as to what you were doing.
You mentioned that you had talked it over with someone at the city about the water, sewer charges for the laundry room that ~~Ronda Hai~~nes told me the reason for the charge was a laundry room that has one washer and one dryer and the city has rules, laws and ordinances that allowed you to charge me for a extra unit.
You said that the laundry room dose not qualify as extra unit so you were going to refund me two years of over charges as a solution for my loss.

So what you are saying is out of seven years of over charging me your only going to give me back two years worth and keep the rest for yourself because why? Because maybe I didn't catch the over charges soon enough you only have to refund a fraction of the money? Does that seem fair to you Mr. Merriman?
If you can't look back in your records and find when the fraud began I know I can and I will.
Further more Mr. Merriman I want all the money you took from me and I want interest from the day you first started to fraud me.

As for the storm-water over charges it's been two week's since you told me you were having some one work on that.

EXHIBIT
#13-4
EXHIBIT 4

You mentioned in the last phone call again they would have it figured out soon.

I still have all the rain fall calculations for each project the area in question as to how much rain I need to pay the city for, from now to the 100 year storm and thanks to your city engineer Ryan Goodman he required the answer from two methods of calculation which cost me an additional $3'000.00 to find no difference in the calculation's.
I guess what I'm saying is I have paid for my education on the subject.

So Mr. Merriman if it's possible I would like to be present when they do what ever there going to for the storm water.

In closing Mr. Merriman I feel the city has not been treating me fairly in these matters and I would like them to be more honest in their actions.

① Mr Goodman : City Engineer in the 1990s

Sincerely

Darrell Wallen

cc. Jim Brittian

Darrell Wallen
P.O. Box 308
Coupeville, WA. 98239

7/10/09

Doug Merriman CPA
Finance Director City of Oak Harbor
865 S.E. Barrington Drive
Oak Harbor, WA. 98277

RE: Adjustments to Utility bill

Dear Mr. Merriman
Congratulation Mr. Merriman, I guess you win, after reading your letter dated June 18th you showed me you couldn't fight city hall and expect to break even.

So Mr. Merriman when can I come buy and pick up my check?

Sincerely

Darrell Wallen
Victim of GSP

EXHIBIT
#13-5
EXHIBIT 5

Darrell Wallen
P.O. Box 308
Coupeville, WA. 98239

Dated 5/1/09

Edward Johnson
Island Brokers Realty Property Management
520 E. Whidbey Avenue # 103
Oak Harbor, WA. 98277

RE: Units available for occupancy

Dear Mr. Johnson

As of 5/01/09 there are 6 units in Wallenford Apts. Are not available for Occupancy for one or more reasons and will not be available until further notice.
Units. A 102, A 202, B102, B201, B202, B104. 15-126000-01
According Oak Harbor City Municipal Code 13.32.025 the city is only to charge for units that are available for occupancy.
So Mr. Johnson the water and sewer bill should be lowered accordingly.

Meter Ready Charges –5/8" Ready to Serve Charge 10 units X $37.50= $375.00.
Water Consumption Charge- 1.5" Res. or Multi Res. Wtr. Cons $14.58 X 10 Units = $145.80
Sewer- Multi Res-Sewer $65.75 X 10 Units = $657.50

Sandpebble Apartments
As of 5/01/09 there are 2 units not available for Occupancy. 15-245000-01
Units #205 and #106.

Meter Ready Charges-5/8" Ready to Serve Charge 10 units X $37.50= $375.00
Water Consumption Charge –1.5" Res or Multi Res Wtr Cons $14.58 X 10 Units =$145.80
Sewer-Multi- Res. 10 X $65.94 = $659.45

EXHIBIT
#13-6

EXHIBIT 6

Foxwood Apartments
As of 5/01/09 there is one unit not available for Occupancy.
Unit C-3
Water Meter Charges-5/8" Ready to Serve Charge 3units X $37.50=$112.50
Water Consumption Charge-1" Residential or Multi Res 3 units X $14.58=$43.74
Sewer- Mulit Residential 3 units X $67.23= $201.05

Mr. Johnson You have my Permission to forward this letter to the City if you want. However I do want you hold back the monies from the Cities bill as required.

Thanks for your help in this matter

Sincerely

Darrell Wallen

CITY OF OAK HARBOR · 865 SE BARRINGTON DRIVE OAK HARBOR, WA 98277 ·
PH: 360-279-4530 · www.oakharbor.org

15-126000-01	07/20/2009	08/18/2009	3,532.73	3,843.83	3,595.91	3,284.81

Amount Enclosed: 2580.53

for 10 units - 2580.53

7TH AVE APARTMENTS
c/o: ISLAND BROKERS
144 NE ERNST ST, STE B
OAK HARBOR, WA 98277

CITY OF OAK HARBOR · 865 SE BARRINGTON DRIVE OAK HARBOR, WA 98277 ·
PH: 360-279-4530 · www.oakharbor.org

12-245000-01	07/20/2009	08/18/2009	2,256.08	2,256.08	2,174.90	2,174.90

Amount Enclosed: 1940.14

For 10 units - 1940.14

SANDPEBBLE APARTMENTS
c/o: ISLAND BROKERS
144 NE ERNST ST, STE B
OAK HARBOR, WA 98277

ISLAND BROKERS REALTY
TRUST ACCOUNT
520 E WHIDBEY AVE #103 360-679-1591
OAK HARBOR, WA 98277

WHIDBEY ISLAND BANK
675 NE Midway Blvd.
Oak Harbor, WA 98277

98-555/1251

010645

C6010JV 10645

August 7, 2009

City Of Oak Harbor

$*******4,520.67

PAY Four Thousand Five Hundred Twenty and 67/100 Dollars

TO THE ORDER OF
City Of Oak Harbor
865 SE Barrington Dr
Oak Harbor, WA 98277

NOT VALID AFTER 90 DAYS

RE: Multiple Invoices

⑈010645⑈ ⑆125105550⑆4987⑈005065⑈

SLAND BROKERS REALTY
RUST ACCOUNT

010645

Reference	Description	Amoun
15-126000-01	260 NE 7th Ave Water Bill	$2,580.53
12-245000-01	455 SE Barrington Dr. Water Bill	$1,940.14

CITY OF
Oak Harbor
WHIDBEY ISLAND, WASHINGTON

~~September 22, 2009~~

Mr. Darrell Wallen
Real Property Development & Construction
P O Box 308
Coupeville, WA 98239

RE: Utility Billings

Dear Mr. Wallen:

As follow up to the meeting conducted on ~~September 1, 2009~~, I offer the following information.

In the meeting you stated your position regarding the interpretation of Oak Harbor Municipal Code Section 13.32.025 was that it provides that "units available for occupancy" can be liberally construed as a month to month condition of actual occupancy use by tenants. Given that interpretation, you argue the monthly or bi-monthly City water utility billing could be adjusted based on an owner's or property manager's report of how many multi-family units were actually in use for any given month.

In review of your interpretation, the City also relies on OHMC Section 13.32.025(1), (Exhibit B) which states:

> **13.32.025 ~~Water rate~~ – Inside the city limits and state park facilities.**
>
> When water is being supplied to an existing multifamily premises (i.e., two or more separate premises being served by one service and meter), the monthly ready to serve charge shall be based on either the existing meter size, or based on a 5/8-inch meter size times the number of units available for occupancy, whichever is the greater charge.
>
> When more than one service supplies a premises, the consumption of water for each meter shall be computed separately.

I have asked City of Oak Harbor Building Official David Anderson to review the occupancy permit status of your properties in question (see Exhibit A). That information indicates there are four separate apartment structures at the subject property located at 1225 N Oak Harbor Street here in Oak Harbor. Subsequently, the City's utility billing process will bill for each unit on a "monthly ready to serve" based upon the occupancy permit approvals of four units per each

EXHIBIT
#13-7
EXHIBIT 7

structure. Therefore, the monthly service fees are still owed for those units which are subject to valid occupancy permits.

We also consider that you appealed the Finance Director's decision concerning the refund period for over-payments of your past utility accounts when you met with me on September 1, 2009. In the course of our legal review of your appeal, we determined that RCW 4.16.080(3) would likely apply to your claim for a refund. That statute grants you a three (3) year period to seek recovery upon the discovery of the erroneously charged utility services and would allow the City to refund the overpayments you made for the past three year period. While City Finance Director Merriman did correctly apply Oak Harbor Municipal Code Section 3.95.160(3), (Exhibit C) limiting the rebate to you to two years, that Code limitation applies to his authority only. Upon your appeal, we are of the opinion there is authority for the City to rely upon RCW 4.16.080(3) and grant to you an additional year of rebate, for a total of three years. The City Finance Department will submit to you the additional rebate under separate letter.

This is the final decision of the City Administrator and Mayor which may be appealed to the hearing examiner pursuant to OHMC 1.24.010(2), (Exhibit E). To exercise this right to appeal, you must file an appeal in the form provided in OHMC 1.24.020 with the City Clerk (Connie Wheeler). The City Code provides that the appeal must be filed within ten (10) days of the date of service of the notice of the decision. Since this notice is being served upon you by mail, you will have fifteen (15) business days from the date of this letter in which to file your appeal with the City Clerk. Chapter 1.24 of the Oak Harbor Municipal Code is included with this letter for your reference.

If you should have any further questions please don't hesitate to contact me directly.

Sincerely,

Paul Schmidt
City Administrator

Cc: Mayor Slowik
Finance Director Douglas Merriman

Exhibit A

Paul Schmidt

From: David Anderson
Sent: Friday, September 04, 2009 5:03 PM
To: Paul Schmidt
Subject: Wallenford Apartments

Paul,

I have reviewed the building permit files for the following 4-unit apartment structures located at 1225 N Oak Harbor St.
The buildings were built in 2005. All have received final occupancy approvals and certificates of occupancies.

Bldg B 1225 N Oak Harbor St	Cert of Occ issued 4/22/2005
Bldg C 1225 N Oak Harbor St	Cert of Occ issued 4/22/2005
Bldg D 1225 N Oak Harbor St	Cert of Occ issued 4/22/2005
Bldg E 1225 N Oak Harbor St	Cert of Occ issued 1/19/2005

It is my interpretation that when final occupancy has been approved and the Cert of Occ has been issued the structures are ready and available for occupancy.

David W. Anderson, CBO
Building Official
Development Services
865 SE Barrington Dr
Oak Harbor, WA 98277
danderson@oakharbor.org
(360) 279-4517

10/2/09 KC

Darrell Wallen
P.O. Box 308
Coupeville, WA. 98239

Dated 10/02.09

Paul Schmidt
City Administrator
865 S.E. Barrington Dr.

RE: Utility Billings

Dear Mr. Schmidt

You are loosely and liberally misunderstanding the letter I wrote to my management company with regards to units available for rent.
I clearly stated certain units are not available for occupancy for specific reasons that would make the units uninhabitable for tenants or not available for occupancy until I have made them available for occupancy.
There was never any indication that this was to be a month to month of tenants occupancy.
If you would check our vacancy and our occupied units you would find that we are still paying for water and sewer were not using in some vacant units available for occupancy.
So I would think my interpretation should stand.
This has nothing to do with build permits or how many city officials say this or that it is either RIGHT OR WRONG is how I see it.
Dose "units available for occupancy `` mean what it says or dose it mean what you want it to say?

As for the over-payments I liked hearing your going to return some more of the money you took from me, but from our last meeting in September we had a deal that you and the Mayor were going to help me get all my money back.
So now your saying you changed your mind? And the deals off?
What should I think about that?

Sincerely,

Darrell Wallen

EXHIBIT
#13-8
EXHIBIT 8

Foxwood Apartments
As of 5/01/09 there is one unit not available for Occupancy.
Unit C-3
Water Meter Charges-5/8" Ready to Serve Charge 3units X $37.50=$112.50
Water Consumption Charge-1" Residential or Multi Res 3 units X $14.58=$43.74
Sewer- Mulit Residential 3 units X $67.23= $201.05

Mr. Johnson You have my Permission to forward this letter to the City if you want. However I do want you hold back the monies from the Cities bill as required.

Thanks for your help in this matter

Sincerely

Darrell Wallen

Received
10/6/09
12:26
pm

Darrell Wallen
P.O. Box 308
Coupeville, WA. 98239

October 5, 2009

City of Oak Harbor
City Clerk, Connie Wheeler
865 S.E. Barrington Drive
Oak Harbor, WA. 98239

RE: Appeal of final decision of the City Administrator and Mayor

Dear Mrs. Connie Wheeler
This is my letter of appeal of the decision made by the City Administrator and Mayor to not allow me to deduct water and sewer fees from my water and sewer bills for units not available for occupancy citing a Certificate of Occupancy from the Building official as a reason when in fact the building may be available for occupancy but your charging by the unit not the building and the Code Section 13.32.025 specifies units available for occupancy. I say some units are not available for occupancy for one reason or another.
Further more I would like to appeal the decision made by the City Administrator and the Mayor to only allow the City Finance Director to only return moneys me for over billing for three years when the over billing as been going on for eight years and under their own admission they had been over billing in the first five years by not including enough usage and billing information on their billing statements.
Also in Code Section 3.95.160 there are no allowances for customer who has been misled and over charge when the City is allowed 8% per annum prorated monthly until paid and I get two years paid back with a sorry.
My relief sought is $5,000.00

Sincerely

Darrell Wallen

EXHIBIT
#13-9

167

EXHIBIT 9

Received
10/6/09
12:26
pm

Darrell Wallen
P.O. Box 308
Coupeville, WA. 98239

October 5, 2009

City of Oak Harbor
City Clerk, Connie Wheeler
865 S.E. Barrington Drive
Oak Harbor, WA. 98239

RE: Appeal of final decision of the City Administrator and Mayor

Dear Mrs. Connie Wheeler
~~This is my letter of appeal of the decision made by the City Administrator and Mayor to not allow me to deduct water and sewer fees from my water and sewer bills for units not available for occupancy citing a Certificate of Occupancy from the Building official as a reason when in fact the building may be available for occupancy but your charging by the unit not the building and the Code Section 13.32.025 specifies units available for~~ occupancy. I say some units are not available for occupancy for one reason or another.
Further more I would like to appeal the decision made by the City Administrator and the Mayor to only allow the City Finance Director to only return moneys me for over billing for three years when the over billing as been going on for eight years and under their own admission they had been over billing in the first five years by not including enough usage and billing information on their billing statements.
Also in Code Section 3.95.160 there are no allowances for customer who has been misled and over charge when the City is allowed 8% per annum prorated monthly until paid and I get two years paid back with a sorry.
My relief sought is $5,000.00

Sincerely

Darrell Wallen

EXHIBIT 9

Application for Utility Service

Account # 126C
Effective Date
Svc. Order
Amt. Pd/Date

DARRELL WALLEN 7th AVE APTS.
Billing Name

260 NE 7th AVE
Service Location

PO Box 12835 Mill Creek, WA. 98082-0835
Mailing Address

425-742-0197 206 818-8819
Home Phone Work Phone

DARRELL WALLEN
Name of property owner or rental agency

PO BOX 12835 Mill Creek WA 98082-0835
Owner/rental agency address

206 818-8819 425-742 0197
Owner/rental agency phone

Darrell Wallen
Signature of applicant

___20 gal. trash can
___35 gal. trash can
___65 gal. trash can
___95 gal. trash can

Office Use Only
Read
Deact SD s/o #
Acct. #

City of Oak Harbor

City of Oak Harbor
865 SE Barrington Drive
Oak Harbor, WA 98277
360-279-4530/ Fax 360-279-4507

Churchill & Associates
Property Management Company

P.O. Box 1696
Address

Oak Harbor — WA — 98277
City — State — Zip

Janet — (360) 675-0715 — Janet@oakharbor.com
Contact Name — Phone — E-mail

260 NE 7th Avenue (16 Units) — ☐ Add ☒ Remove
Property Address

Darrell Wallen
Owner Name

P.O. Box 308
Owner Address

Coupeville — WA — 98239
City — State — Zip

(360)678-5092 — (206)818-8819
Home Phone — Work Phone — Cell Phone

0012159

EXHIBIT
#13-10

169

EXHIBIT 10

[redacted]

ase ensure all faucets are off in or around the home so that
t flooded. The City of Oak Harbor will not be held liable for

due dates. I realize that if I don't receive a bill in the mail, I
ive my bill and when it will be due. I also understand that the
ayments must be received in our office no later than 4:30 P.M.
.

Trash must fit in roll cart with lid closed to avoid extra charges.

I have read and understand the above information.

Applicant Signature _____ Date 4/1/02

Applicant Social Security Number [redacted] 3204

Applicant Drivers License Number WALLEDB505XP

Foxwood Apartments
As of 5/01/09 there is one unit not available for Occupancy.
Unit C-3
Water Meter Charges-5/8" Ready to Serve Charge 3units X $37.50=$112.50
Water Consumption Charge-1" Residential or Multi Res 3 units X $14.58=$43.74
Sewer- Mulit Residential 3 units X $67.23= $201.05

Mr. Johnson You have my Permission to forward this letter to the City if you want. However I do want you hold back the monies from the Cities bill as required.

Thanks for your help in this matter

Sincerely

Darrell Wallen

EXHIBIT
#14

BEFORE THE HEARING EXAMINER OF THE CITY OF OAK HARBOR

In re the Decision of the City Administrator DARRELL WALLEN, Appellant, v. CITY OF OAK HARBOR, Respondent.	RESPONDENT'S BRIEF

This matter comes before the Hearing Examiner on appeal from the decision of the City Administrator with respect to a billing dispute between the Appellant and the Respondent City. This Brief is intended to set out the factual and legal reasons for the City's position.

I. STATEMENT OF ISSUES

The following ~~issues~~ are based on Mr. Wallen's Letter of Appeal, dated October 5, 2009:

1. Does the term units "available for occupancy" in Ch.13.32 OHMC mean "when the property owner determines that the units are available"?
2. What is the statute of limitations for claims of over-billing for City utility charges?
3. Is a utility customer entitled under the City Code to interest of 8% per annum on amounts over-billed?

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Oak Harbor, Washington 98277
(360) 279-4540

Mr. Wallen's Letter of Appeal is found in Exhibit 9 of the City's Record.

II. BACKGROUND

On June 19, 2009, the City Finance Director made a code interpretation decision in favor of the Respondent, Mr. Wallen, on his water and sewer utility bill. See Exhibit 3 of the City's Record. Mr. Wallen is an owner of a multi-family residential building. According to the Oak Harbor Municipal Code, the rate for utility service is based upon the number of units in a multi-family building or complex which are "units available for occupancy". A laundry facility provided for tenants in the 7th Avenue Apartments, owned by Mr. Wallen, had been billed as a unit available for occupancy since September 20, 2004. In his letter, Mr. Merriman determined that this was not appropriate and made an adjustment to the total water and sewer account for that building. Exhibit 3.

However, Mr. Merriman was limited by the City Code to granting an adjustment for no more than two years:

> "Over Billing. If the finance director, upon investigation or otherwise, finds that the fee for utility charges paid by a utility customer or property owner is more than the amount required of the utility customer or property owner, he or she shall return the amount overpaid by a warrant or check upon the utility fund or funds receiving the overpayment."

OHMC 3.95.160(1).

> *"No increase in billing or reduction of a billing for utility charges due may be made by the finance director for more than two years after the over billing or under billing..."*

OHMC 3.95.160(3) (in pertinent part) (emphasis added).

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Therefore, Mr. Merriman refunded Mr. Wallen for the two-year period preceding the code interpretation in Mr. Wallen's favor. Exhibit 3.

Mr. Wallen was dissatisfied with this response and demanded a refund for the entire 5-year period[1]. He also argued that he was entitled to further refunds for residential units that were not occupied in a given month or bimonthly period, when he determined that the units are not ready to be rented. Exhibit 8. His argument is that the term "available for occupancy" is dependent upon his determination that they were available to be rented. The City Administrator disagreed, finding that "units available for occupancy" were those for which occupancy permits had been approved. Exhibit 7.

However, the City Administrator found that the applicable statute of limitations for errors in utility billings under state law is three years. Exhibit 7. Therefore, he refunded an additional year's billings for the laundry rooms.

Mr. Wallen was dissatisfied with this outcome. Exhibit 8. On October 5, he filed his "Letter of Appeal" (Exhibit 9) and this appeal was scheduled for November 6, 2009.[2]

III. LEGAL ARGUMENT

Issue No. 1: Does the term "available for occupancy" as used in Ch. 13.32 OHMC mean "when the owner determines that the units are available"?

---

[1] See Exhibit 4. Mr. Wallen erroneously claimed that the over-billing was for a seven-year period. The billing included the laundry room from July 2004-June 2009, a five-year period. See Exhibit 2.

[2] Mr. Wallen was provided with a copy of Ch. 1.24 OHMC which spells out the procedures for an appeal. The letter of appeal he filed does not meet the requirements of OHMC 1.24.020 and the City sought a directive from the Hearing Examiner that he file a correct written appeal. In the absence of a complete written appeal, the City has had to make certain assumptions. Further, the City does not waive its right to seek dismissal pursuant to OHMC 1.24.050.

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Applicable Code Provisions:

> Standard Charge. The standard charge for water supplied by the city for residential, commercial and industrial customers inside the city limits and state park facilities shall consist of a customer charge, also termed a "monthly ready to serve charge", based on the meter size together with the rate for the quantity of water used and a monthly charge for sprinkler systems, if any.
>
> When water is being supplied to an existing multifamily premises (i. two or more separate premises being served by one service and meter), the monthly ready to serve charge shall be based on either the existing meter size, or based on a 5/8-inch meter size times the number of units available for occupancy, whichever is the greater charge.
>
> When more than one service supplies a premises, the consumption of water for each meter shall be computed separately.

OHMC 13.32.025(1).

. . .

> Multifamily Residential. The monthly multifamily residential rate is as follows:
>
> (i) For the first quantity consumed (five CCF) times the number of units available for occupancy, at the rate of $7.29 per five CCF.
>
> (ii) For any amounts not charged in the first class, at the rate of $3.46 per 100 cubic feet.
>
> One bill for each water meter shall be dated and sent to each property owner, or his or her designee, at such times as are prescribed by this chapter.

OHMC 13.32.025(3)(b).

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Argument:

The City Administrator determined that "available for occupancy" refers to units that have final occupancy approvals and certificates of occupancy under the building code. Exhibit 7. Mr. Wallen owns a building located at 260 NE 7th Avenue, Oak Harbor, WA. The City Building Official, David W. Anderson, concluded that when final occupancy has been approved and the certificate of occupancy has been issued, the structures are ready and "available for occupancy." Exhibit A to Exhibit 7.

The term "available for occupancy" is not defined in Title 13, the title of the municipal code which deals with water service. However, it is not a term that stands alone in the code. The customer charge itself is a "monthly ready to serve charge" plus a charge for actual usage. The ready to serve charge is computed based upon units available for occupancy. The actual use charge is based upon the amount of water used at the unit. Unlike the use charge, the ready to serve charge is not dependent upon the fact or amount of water usage but upon the availability of City water service to the unit. Read together, the ordinance terms clearly intend to provide a charge for the availability of service, not just to units actually using water.[3]

Deference is normally accorded to the interpretation of an ambiguous code by "those officials charged with its enforcement." *Meridian Minerals Co. v. King County,* 61 Wn.App. 195, 810 P.31 (1991). While no deference is due if the code provision is unambiguous, *Hoberg v. City of Bellevue,* 76 Wn.App. 357, 884 P.2d 1339(1994), courts general accord deference to an agency's interpretation of an ambiguous ordinance. *Citizens to Preserve*

[3] Ready to serve charges are commonplace in water service. See WAC 480-110-245 and 480-110-255.

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Oak Harbor, Washington 98277
(360) 279-4540

Pioneer Park v. City of Mercer Island, 106 Wn.App. 461, 24 P.3d 1079 (2001 – Div. I). To the extent that there is any ambiguity in the language, it must be resolved in favor of the City's interpretation.

In this case, the ordinance clearly establishes a service charge for making water service available to units which are available for occupancy. It would not make sense to have such a charge if it were dependent upon the property owner's decision whether to rent a unit or for there to be actual use of water. That would make the ready-to-serve charge the same thing as the use charge, and there would be no reason for language providing for a ready-to-serve charge. Adopting Mr. Wallen's interpretation would require the Hearing Examiner to disregard those portions of the ordinance which describe a ready-to-serve charge. However, it is a basic principle of statutory construction that all of the language used in the statute must be given effect, with no portion rendered meaningless or superfluous. See, e.g., *Hartson Partnership v. Goodwin,* 99 Wn.App. 227, 991 P.2d 1211 (2000 – Div. I). The ready-to-serve charge applies to units "available for use" when those units have been legally determined to be ready and available for occupancy through the building permit process, regardless of whether the owner of those units wishes to rent them or not.

Issue No. 2: What is the statute of limitations for claims of over-billing for City utility charges?

The City is precluded from paying a claim for which it is not legally responsible because such a claim would be a gift of public funds. *Washington State Constitution, Article VIII, Section 7.* Therefore, the City may not pay a claim which extends beyond the applicable statute of limitations.

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The applicable City Code provisions actually limit recovery for over-billed amounts to two years. OHMC 3.95.160(3). The City Administrator gave Mr. Wallen the benefit of the applicable state statute of limitations and repaid amounts over-billed for a three-year period. Exhibit 7.

The applicable statute of limitations for bringing an action under state law in contract would depend upon whether the contract was oral or written. Action on an oral contract, or partly oral contract, must be brought in three years. RCW 4.16.080(3) provides:

> The following actions shall be commenced ~~within three years:~~
>
> (3) Except as provided in RCW 4.16.040(2) [an action upon an account receivable], an action upon a contract or liability, express or implied, which is ~~not in writing~~, and ~~does not arise out of any written instrument~~.

The statute of limitations on a written contract is six years. RCW 4.16.040(1). However, to be a written contract, the written agreement must contain all the essential elements of a contract: subject matter; parties; terms and conditions; and price or consideration. *Browning v. Howerton,* 92 Wn.App. 644, 966 P.2d 367 (Div. II, 1998). If resort to extrinsic evidence – outside the contract itself – is required, then the contract is partly oral and falls within the statute of limitations for oral contracts. *Browning v. Howerton,* 92 Wn.App. at 649.

In the case of the City's utility service, a portion of the agreement with a customer is written. See Exhibit 10. However, it does not include all the necessary terms and conditions, or even the price. To interpret the contract resort must be made to extrinsic evidence,

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Oak Harbor, Washington 98277
(360) 279-4540

including the municipal code. This makes the claim subject to the three-year statute of limitations.

Issue No. 3: Is a utility customer entitled under the City Code to ~~interest of 8%~~ per annum on amounts over-billed?

Mr. Wallen appears to argue that OHMC 3.95.160 should be read to entitle him to 8% interest on the amount he was over-billed. OHMC 3.95.160 provides:

> (1) Over Billing. If the finance director, upon investigation or otherwise, finds that the fee for utility charges paid by a utility customer or property owner is more than the amount required of the utility customer or property owner which made the over payment, he or she shall return the amount overpaid by a warrant or check upon the utility fund or funds receiving the over payment.
>
> (2) Under Billing. If the finance director finds that the fee or utility charges billed to a utility customer or property owner is less than required, the finance director shall send a statement to the utility customer or property owner owing the balance due, and the utility customer or property owner shall, within 30 days, pay the amount shown thereon. *Amounts shown outstanding after the 30 days shall be charged interest at the rate of eight percent per annum, prorated monthly, until paid.*

OHMC 3.95.160(1) and (2) (emphasis added).

However, Mr. Wallen is mistaken in his reading of OHMC 3.95.160(2). The code provision does not entitle the City to recover interest on underpaid accounts for the period of the under-billing. It only provides that if those accounts are still not paid 30 days after notice that under-paid amounts are due, interest will begin to run. OHMC 3.95.160(2). Under the Code, the City is not entitled to recover interest on the under-billings themselves[4]. As for

[4] Mr. Wallen has not made a claim for statutory interest and such claim is beyond the scope of the Hearing Examiner's review here since it is outside the City Code and the claims addressed by the City Administrator.

City of Oak Harbor Law Department
865 SE Barrington Drive
Oak Harbor, Washington 98277
(360) 279-4540

over-billings, the Oak Harbor Municipal Code does not create an interest-bearing repayment requirement for over-billings. OHMC 3.95.160(1).

Both situations are essentially treated the same way. Here, there is no question that the City acted in bad faith. The City acted expeditiously to refund Mr. Wallen those amounts which were first, within the Finance Director's authority, and second, giving him the benefit of the statutory statute of limitations, within the three-year statute of limitations applicable to his action. His claim for interest under the city code is not well-founded.

IV. CONCLUSION

For the reasons stated, the City requests the Hearing Examiner to find:

1. That the City has properly interpreted OHMC 13.32.025(1) and .025(3)(b) in determining the applicable utility charges for the apartment building at 260 NE 7th Avenue.

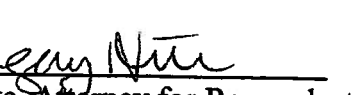
2. That the City has refunded the Appellant all utility over-billing payments due to him.

3. That the Appellant is owed no interest under the City Code.

The City further requests the Hearing Examiner to affirm the decision of the City Administrator and deny the Appellant's appeal.

Respectfully submitted this 29th day of October, 2009.

CITY OF OAK HARBOR

By 
Margery Hite, Attorney for Respondent
WSBA #8450

L:\LGLA\WORK\CIV2009\Wallen - Respondents Brief #3.doc

City of Oak Harbor Law Department
865 SE Barrington Drive
Oak Harbor, Washington 98277
(360) 279-4540

EXHIBIT
#15

BEFORE THE HEARING EXAMINER OF THE CITY OF OAK HARBOR

In re the Decision of the City Administrator DARRELL WALLEN, Appellant, v. CITY OF OAK HARBOR, Respondent.	RESPONDENT'S SUPPLEMENTAL SUBMISSION

COMES NOW the Respondent, City of Oak Harbor, and states as follows:

Respondent received no brief from the Appellant by the deadline of November 30, 2009, established by the Hearing Examiner. Respondent City did receive a letter from the Appellant concerning a city employee and suggesting that he had elected not to hire legal counsel to file a brief. A copy of this letter is attached.

The City would appreciate the opportunity to brief any legal questions the Hearing Examiner may feel are relevant to the issues in this case which were not raised in earlier briefing.

Respectfully submitted this 1st day of December, 2009.

Margery Hite, WSBA #8450
Oak Harbor City Attorney

L:\LGLA\WORK\CIV2009\Wallen supplemental submission.doc

City of Oak Harbor Law Department
865 SE Barrington Drive
Oak Harbor, Washington 98277
(360) 279-4540

11-18-09 RR

COPY

Darrell Wallen
P.O. Box 308
Coupeville, WA. 98239

Dated 11/18/09

Mayor Slowik
City of Oak Harbor
865 SE Barrington Drive
Oak Harbor, WA. 98277

RE: Ronda Haines

Dear Mr. Mayor

Enclosed you'll find a letter I wrote to your water utility person who with help from the faulty billing system in place at the City, instigated the entire over billing of my 260 NE 7th Ave, Apartments.
As you can tell from my letter I believe Ronda Haines deliberately with complete knowledge and malice set forth to over charge me for that 17th Unit.
She knew the laundry room was on that building from the start, she inspected it when I built it.
There was no mistake involved, I believe she intentionally tried and succeeded for a great while fraudulently over bill my water fees.

Mr. Mayor I would greatly like to hear your feelings on this issue.

Sincerely

Darrell Wallen

182

EXHIBIT
#15-1

File Edit Record Navigate Form Format Grid Tab Help

Jump 1

Main Customers History Fees Utility Inventory and Routes Events Pre-billing Liens Service Orders Consumption User-Defined Fields

LB acct # 15-126000-01 Service location 260 NE 7TH AVE OAK HARBOR WA 98277 Balance 0.00

Name 7TH AVE APARTMENTS Status

Filter Sort Order

6/20/04

Doc Date	Transaction Type	Document #	Source	On Account	Amount	Running Balance
05/20/2004	M Memo		PER RHONDA ILLEGAL LAUNDRY ADDED 1 UNIT. EFF 5/20B. JA			
Username:	Reason:					
05/20/2004	B 80	000000139469		0.00	2,587.57	2,587.57
Service meter	Fee 009	5/8" Ready to Serve Charge	Days in billing cycle		433.92	
Service water	Fee 009	5/8" Res Water Cons	Days in billing cycle		168.64	
Service sewer	Fee 004	Multi Res - Sewer	Days in billing cycle		934.24	
Service garbag	Fee 003	3 Yd Dumpster	Days in billing cycle		969.29	
Service storm	Fee 001	Storm Drain	Days in billing cycle		81.48	
		Days in reading period	64	Total consumption	119	
04/22/2004	M Memo		15MIN CLEAN-UP TIME ON 4-22-04 @ 26.50. JA			
Username:	Reason:					
04/14/2004	R Receipt	000000138859		0.00	2,569.80	0.00
03/20/2004	B 80	000000139468		0.00	2,569.80	2,569.80
Service meter	Fee 009	5/8" Ready to Serve Charge	Days in billing cycle		433.92	
Service water	Fee 009	5/8" Res Water Cons	Days in billing cycle		168.64	
Service sewer	Fee 004	Multi Res - Sewer	Days in billing cycle		934.24	
Service garbag	Fee 003	3 Yd Dumpster	Days in billing cycle		951.52	
Service storm	Fee 001	Storm Drain	Days in billing cycle		81.48	
		Days in reading period	53	Total consumption	105	

0 • *

Per unit fee 27 • 12 *
units 16 • =
Water 433 • 92 * 1

copy

EXHIBIT

183

#15-2

09/20/04
17 units

File Edit Record Navigate Form Format Grid Tab Help

Jump 1

Main | Customers | History | Fees | Utility Inventory and Routes | Events | Pre-billing | Liens | Service Orders | Consumption | User-Defined Fields

UB acct # 15-126000-01
Name 7TH AVE APARTMENTS
Service location 260 NE 7TH AVE OAK HARBOR WA 98277
Balance 0.00
Status a

Filter | Sort Order

Doc Date	Transaction Type		Document #	Source	On Account	Amount	Running Balance
09/20/2004	B	Bill	000000136881		0.00	2,656.69	2,656.69
Service meter	Fee 009	5/8" Ready to Serve Charge		Days in billing cycle		461.04	
Service water	Fee 009	5/8" Res Water Cons		Days in billing cycle		179.18	
Service sewer	Fee 004	Multi Res - Sewer		Days in billing cycle		992.20	
Service garbag	Fee 003	3 Yd Dumpster		Days in billing cycle		942.79	
Service storm	Fee 001	Storm Drain		Days in billing cycle		81.48	
			Days in reading period 61	Total consumption		134	

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Jump 1

Main | Customers | History | Fees | Utility Inventory and Routes | Events | Pre-billing | Liens | Service Orders | Consumption | User-Defined Fields

UB acct # 15-126000-01
Name 7TH AVE APARTMENTS
Service location 260 NE 7TH AVE OAK HARBOR WA 98277
Balance 0.00
Status a

Filter | Sort Order

Doc Date	Transaction Type		Document #	Source	On Account	Amount	Running Balance
09/10/2004	M	Memo		1YD EXTRA GARB 9/6			
Username:		Reason:					
08/13/2004	M	Memo		1YD EXTRA GARB 8/13 17.77			
Username:		Reason:					
08/12/2004	R	Receipt	000000139504		0.00	2,647.65	0.00
08/05/2004	M	Memo		1YD EXTRA GARB 8/4 17.77			
Username:		Reason:					
07/20/2004	B	Bill	000000137612		0.00	2,647.65	2,647.65
Service meter	Fee 009	5/8" Ready to Serve Charge		Days in billing cycle		461.04	
Service water	Fee 009	5/8" Res Water Cons		Days in billing cycle		179.18	
Service sewer	Fee 004	Multi Res - Sewer		Days in billing cycle		992.20	
Service garbag	Fee 003	3 Yd Dumpster		Days in billing cycle		933.75	
Service storm	Fee 001	Storm Drain		Days in billing cycle		81.48	
			Days in reading period 64	Total consumption		138	
03/15/2004	R	Receipt	000000138248		0.00	2,587.67	0.00

0 • *

Per unit fee 27 • 12x
units
water 461 • 04* (2)

Copy

EXHIBIT
#15-3

Darrell Wallen
P.O. Box 308
Coupeville, WA. 98239

Dated November 13,2009

Ronda Haines Water Utility Department
City of Oak Harbor
865 SE Barrington Drive
Oak Harbor, WA. 98277

RE: Illegal Laundry

Dear Miss Haines

I received a copy of a ledger from the City of Oak Harbor Legal Department last week and it appears you instigated this whole 17th unit overcharge your self.
I have to say I was surprised for you to call my 6`X12` room with one washer and one dryer Illegal when you know it has been there since I built those buildings in 2002.
You inspected all the water hookups and even praised me about how I was installing water meters on each Unit. You thought it was a good idea and would help in conserving water. You and your building department inspected the laundry room also; I think the permits were on the walls of the laundry room.
Of course a week later you came back to the site and informed me I wasn't allowed to charge my tenants for water sighting some state law that I'm not allowed to profit from water sales and my newly installed water meters was a waste of time and money.
So when I built our next group of apartments we didn't bother with water meters.

Then in 2004 two years later you decide that my laundry room was Illegal and start charging me for an extra unit with out any written or verbal notice.

So in March or April 2009 this year I'm in City Hall talking about the over charges for a 17th Unit and you made me think, that was the first you heard about it than asked me if there was a laundry room on site, I said yes then you directed me to Mr. Merriman because the City has laws and they were just following the laws and you insisted I should be happy and smile about it. You have to remember that day.

I made an appointment with Mr. Merriman, had a great meeting he explained many things about how the system works and he agreed I shouldn't have been charged for a 17th Unit, then he went to work trying not to pay me back and to charge me more for other things.
Now we've been at this eight-month long legal battle because of you're over zealous attempt to use your power to over charge more than you all ready are.

EXHIBIT
#15-4

Ronda I have many hours with letters, meetings with the Mayor, City administrator and thousands of dollars invested into this issue and I'm sure the City has a great deal of time and money as well.
We even had a hearing with the Hearing Examiner Michael Bobbink the City Attorney Margery Hite and City staff.
In the Hearing not much was discovered except the Examiner thought I should have some Legal representation to argue some points of the City Code that were written incorrectly and make some type of an appeal but the reality is the money the city owes me is less than what it would cost for the Attorney.

So lets see that big smile Ronda you stuck it to me and got away with it.
You should be proud of yourself and with any luck Mayor Slowik, Paul Schmidt, Doug Merriman and City Attorney Margery Hite will put you in for Certificate of Merit for a job well done.

You know Ronda I would have been happy if the City gave me what they spent trying not to pay me back for the money they took because of you.

Now you know why I'm not smiling and you can feel warm in the fact I know you are just a Self-serving, Disingenuous, GSP, person working for the City of Oak Harbor.

Copy

Sincerely

Darrell Wallen
Victim of GSP

BEFORE THE HEARING EXAMINER OF THE CITY OF OAK HARBOR

In re the Decision of the City Administrator DARRELL WALLEN, Appellant, v. CITY OF OAK HARBOR, Respondent.	CERTIFICATE OF MAILING RESPONDENT'S SUPPLEMENTAL SUBMISSION

I, Kim Perrine, certify under penalty of perjury under the laws of the State of Washington, that the following is true and correct:

That on the 1st day of December, 2009, I deposited in the U.S. mail, postage prepaid, addressed to:

Michael Bobbink 528 Clark Road Bellingham, WA 98225	Darrell Wallen P O Box 308 Coupeville, WA 98239

copies of the Respondent's Supplemental Submission. The original was filed with the City Clerk.

That on the same day, I scanned the Respondent's Supplemental Submission and emailed it to the following email addresses: mbobbink@comcast.net and dwbeach@comcast.net.

Executed this 1st day of December, 2009, in Oak Harbor, Washington.

K Perrine

Kim Perrine

L:\LGLA\WORK\CIV2009\Wallen - Cert of Mailing Resp Supp Sub.doc

City of Oak Harbor Law Department
865 SE Barrington Drive
Oak Harbor, Washington 98277
(360) 279-4540

EXHIBIT

15-5

BEFORE THE HEARING EXAMINER OF THE CITY OF OAK HARBOR

In re the Decision of the City Administrator DARRELL WALLEN, Appellant, v. CITY OF OAK HARBOR, Respondent.	CERTIFICATE OF MAILING RESPONDENT'S SUPPLEMENTAL AUTHORITY EXHIBIT #16

I, Kim Perrine, certify under penalty of perjury under the laws of the State of Washington, that the following is true and correct:

That on the 6th day of November, 2009, I deposited in the U.S. mail, postage prepaid, addressed to:

Michael Bobbink
528 Clark Road
Bellingham, WA 98225

Darrell Wallen
P O Box 308
Coupeville, WA 98239

copies of the Respondent's Supplemental Authority. The original was filed with the City Clerk.

That on the same day, I scanned the Respondent's Supplemental Authority and emailed it to the following email addresses: mbobbink@comcast.net and dwbeach@comcast.net.

City of Oak Harbor Law Department
865 SE Barrington Drive
Oak Harbor, Washington 98277
(360) 279-4540

Executed this 6th day of November, 2009, in Oak Harbor, Washington.

K Perrine

Kim Perrine

L:\LGLA\WORK\CIV2009\Wallen - Cert of Mailing Resp Supp Auth.doc

City of Oak Harbor Law Department
865 SE Barrington Drive
Oak Harbor, Washington 98277
(360) 279-4540

BEFORE THE HEARING EXAMINER OF THE CITY OF OAK HARBOR

In re the Decision of the City Administrator DARRELL WALLEN, Appellant, v. CITY OF OAK HARBOR, Respondent.	)	RESPONDENT'S SUPPLEMENTAL AUTHORITY

In response to the Hearing Examiner's request, attached is the unpublished decision of *City of Snohomish v. Seattle-Snohomish Mill Co., Inc.*, No. 51639-6-I (an unpublished decision of Division I of the Court of Appeals, 2003) and the published authority upon which it relies for the proposition that "a statute or ordinance will not constitute a contract in writing for statute of limitations purposes, except where it is apparent that the statute or ordinance was intended as a complete contract." *Noah v. State by Gardner,* 112 Wn.2d 841, 774 P.2d 516 (1989).

Respectfully submitted this 6th day of November, 2009.

CITY OF OAK HARBOR

By _____
Margery Hite, Attorney for Respondent
WSBA #8450

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City of Oak Harbor Law Department
865 SE Barrington Drive
Oak Harbor, Washington 98277
(360) 279-4540

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EXHIBIT
#17

UNPUBLISHED OPINION, SEE RCWA 2.06.040

Court of Appeals of Washington,
Division 1.
CITY OF SNONOMISH, Respondent,
v.
SEATTLE-SNOHOMISH MILL CO., INC., a Washington corporation, Appellant.

No. 51639-6-I.
Sept. 8, 2003.

Appeal from Superior Court of Snohomish County.
P. Stephen Dijulio, Attorney at Law, Jeffery Allen Richard, Foster, Pepper & Shefelman PLLC, Seattle, WA, for Appellant.

John W. Schedler, Attorney at Law, Snohomish, WA, Jeffrey Charles Wishko, Attorney at Law, Everett, WA, for Respondent.

~~Unpublished~~ Opinion

COLEMAN, J.

*1 The ~~City of~~ Snohomish ~~undercharged~~ the Seattle-Snohomish Mill for water service ~~from 1990-98, then sued to collect the difference in 2002~~. The trial court granted summary judgment to the Mill because the statute of limitations had expired. On appeal, the City argues that its cause of action did not accrue until 2001, when it sent the Mill a bill for the undercharges. In the alternative, the City argues that under the 'discovery rule,' the statute of limitations did not begin to run until a year after the City installed a new meter, since that was the earliest the City had a reasonable basis for calculating the amount the Mill owed. We ~~affirm because the latest possible date the City learned all the facts giving rise to this claim was three and a half years before it filed this lawsuit~~. Therefore, the trial court correctly concluded as a matter of law that the City failed to comply with the ~~three-year statute of limitations~~.

FACTS

The City sells water to the Mill, which operates outside city limits in Snohomish County. In 1990, the City first raised with the Mill the City's concern that the City's metering was insufficient to account for all of the Mill's water usage. The City's public works director **wrote** to the Mill's president concerning the need to install a new meter. The City's code provides that customers are responsible for the cost of installing meters for existing, unmetered uses. The code also allows the City to install meters itself and bill customers for them in installments. The Mill claimed it could not afford to install the new meter because of its financial situation. During that same time, the City also demanded that the Mill install devices to prevent backflow and bring the Mill's system into compliance with health codes.

Over the next several years, the City continued to demand that the Mill install the meter and upgrade its system to comply with health codes. In 1994, the Mill's president sent a letter to the City informing it that the Mill had installed some of the required backflow protection, but he remained concerned about the cost of installing the master meter. He stated that he hoped to be in a financial position to install the meter in July of that year. The Mill, however, did not install the meter that year, and the City did not elect to install the meter itself.

In 1996, city treasurer Brad Nelson conducted a revenue audit and concluded that the City was underbilling the Mill for its water use. Nelson suggested that the City pursue collection of the undercharges, but the city engineer believed the City was properly metering the Mill, so the City did not pursue the matter further.

In 1998, the City conducted a pressure test on water lines near the Mill. According to Nelson's declaration, that test made it 'abundantly clear' that the Mill was indeed using more water than it was paying for.

Finally, in September 1998, the City installed the master meter. Readings from the new meter confirmed that the City had underbilled the Mill for its water use. A month later, the City conducted a fixture count at the Mill. During that count, inspectors found a six-inch water service line connected directly to a nonmetered fire hydrant. According to City officials, the size and service demand of this connection was so significant that it constrained the City's ability to provide service and fire flows to other City water consumers down line of the Mill.

*2 On September 20, 1999, city manager Bill McDonald reported to the Snohomish City Council that the meter results for the Mill's water consumption before and after the master meter's installation showed a difference in excess of $7,000 per two-month billing cycle. Based on this information, McDonald recommended that the City attempt to collect the amount the Mill owed for uncharged water usage.

On December 11, 2001, the City mailed the Mill its first bill for the undercharges. It sent a revised bill for a higher amount on March 15, 2002. Two weeks later, on March 28, 2002, the City filed this lawsuit.

ANALYSIS

The City argues that the trial court erred in deciding on summary judgment that the statute of limitations barred this claim. We disagree. The City was on notice of this claim as early as 1990 and at the latest by October 1998. The City therefore failed to comply with the statute of limitations when it filed this lawsuit in 2002.

Generally, the statute of limitations begins to run from the time an action accrues. A cause of action accrues when a party has a right to apply to a court for relief. *U.S. Oil & Refining Co. v. State Dep't of Ecology*, 96 Wn.2d 85, 91, 633 P.2d 1329 (1981). 'In general terms, the right to apply to a court for relief requires each element of the action be susceptible of proof.' *Haslund v. City of Seattle*, 86 Wn.2d 607, 619, 547 P.2d 1221 (1976). That point generally occurs when the party has sustained an appreciable injury. *Mayer v. City of Seattle*, 102 Wn.App. 66, 76, 10 P.3d 408 (2000).

Further, under the 'discovery rule,' the statute of limitations does not begin to run until the date the plaintiff discovered, or in the exercise of due diligence should have discovered, the facts giving rise to all the elements of the cause of action. *Janicki Logging & Constr. Co. v. Schwabe, Williamson & Wyatt, P.C.*, 109 Wn.App. 655, 659, 37 P.3d 309 (2001), review denied, 146 Wn.2d 1019 (2002). Thus, discovery usually occurs when the party knows it has suffered a compensable injury or damage at the hands of the defendant. But the party need not know the full amount of the damage before the statute of limitations begins to run; rather, a party is charged with knowledge of the damage on the date the party knows or should know that some appreciable damage has occurred. See *Janicki*, 109 Wn.App. at 660; *McLeod v. N.W. Alloys, Inc.*, 90 Wn.App. 30, 36, 969 P.2d 1066, review denied, 136 Wn.2d 1010 (1998) (citing *Gazija v. Nicholas Jerns Co.*, 86 Wn.2d 215, 219, 543 P.2d 338 (1975)). The question of when a party discovered or should have discovered facts for purposes of the discovery rule is a question of fact for the jury unless the facts are susceptible of only one reasonable conclusion. *Giraud v. Quincy Farm & Chem.*, 102 Wn.App. 443, 450, 6 P.3d 104 (2000).

I. Accrual at Date of Billing

The City first argues that its cause of action did not accrue until it billed the Mill for the undercharges because 'there is no cause of action on a debt until it becomes payable.' *Graves v. Cascade Natural Gas Corp.*, 51 Wn.2d 233, 238, 316 P.2d 1096 (1957). But the City's reliance on Graves is misplaced. In Graves, the plaintiffs had charged the defendant for legal services on a per diem basis but billed the defendant monthly. When the plaintiffs sued to collect, they argued that the statute of limitations did not begin to run until all the services were completed. The defendant argued that the statute of limitations for each day's work began to run on the day the work was performed. The court rejected both arguments, holding that the limitations period began to run at the end of each month when the bill for services became due. *Graves*, 51 Wn.2d at 238.

*3 If this were a suit to recover the amount stated in monthly water bills, Graves would be directly on point, and the City's cause of action would accrue when each bill became due. But this is not a

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claim for unpaid bills; it is a claim for unbilled undercharges. In Graves, the cause of action accrued at the same time the bills became due because that was the first point when the plaintiffs had a right to collect the debt. Here, however, the City's right to collect the undercharges arose at the end of each billing cycle between 1990 and 1998, not when the City finally billed the Mill for the undercharges in 2001. Thus, under the discovery rule, the date the City's cause of action accrued is the date the City knew or should have known it had undercharged the Mill, not the date that the City decided to send the Mill a backbill.

The City would have us read Graves to mean that a utility seeking to collect for unbilled undercharges can unilaterally extend the statute of limitations until it prepares a bill for the uncharged amount, even though it knew much earlier that it had suffered a compensable injury. Under such a rule, there would be no limit to how long parties could extend the limitations period for an unbilled debt. Nothing in Graves suggests that the court intended such a consequence.

The City argues that the policy against rate discrimination prohibits the Mill from using the City's delay in billing as a defense.[FN1] For this argument, the City relies on this court's opinion in *Housing Authority of King County v. Northeast Lake Wash. Sewer & Water Dist.*, 56 Wn.App. 589, 784 P.2d 1284, 789 P.2d 103 (1990). In that case, we held that equitable defenses were unavailable against a water district seeking to collect undercharges, even though the undercharges resulted from the district's negligent billing. We reasoned that applying equitable defenses in this context would result in an unlawful preference in favor of the defendant, by preventing the district from exercising its statutory duty to collect undercharges. *Housing Auth.*, 56 Wn.App. at 594-95. The City argues that Housing Authority and Graves, read together, compel the conclusion that a cause of action for unbilled undercharges does not accrue until after the utility has prepared and presented a bill for the undercharges and the bill has become due. The City reasons that otherwise, the statute of limitations will prevent it from exercising its statutory duty to collect undercharges and will result in rate discrimination to the same extent as allowing equitable defenses.

FN1. In its opening brief, the City appeared to argue that the policy against rate discrimination prohibits the application of any statute of limitations to its attempts to collect for unbilled water usage. At oral argument, counsel for the City clarified that the City does not make any such contention on appeal. We note, however, that this argument, which the City advanced before the trial court, is unpersuasive for the same reasons stated in the text of this analysis the statute of limitations is not an equitable defense, but a separate and distinct legislative policy that must be given equal weight.

But this argument ignores a vital distinction between court-created equitable defenses and legislatively mandated statutes of limitations. Equitable defenses are not available in this context because courts must not use their powers of equity to interfere with the proper exercise of governmental duties or contravene the statutorily defined public policy against utility rate discrimination. *Housing Auth.*, 56 Wn.App. at 593 (citing *Finch v. Matthews*, 74 Wn.2d 161, 169-71, 443 P.2d 833 (1968) and *Federal Way Disposal Co. v. City of Tacoma*, 11 Wn.App. 894, 896 n. 2, 527 P.2d 1387 (1974)). The statute of limitations, on the other hand, is not an equitable defense. Rather, it is a legislatively imposed limitation on actions that represents a separate and distinct public policy, namely, that "it is better for the public that some rights be lost than that stale litigation be permitted." *Golden Eagle Mining Co. v. Imperator-Quilp Co.*, 93 Wn. 692, 696, 161 P. 848 (1916) (quoting *Thomas v. Richter*, 88 Wn. 451, 456, 153 P. 333 (1915)).[FN2] Thus, although we held in Housing Authority that the City's negligence in undercharging is not itself a valid defense, such negligence, once discovered, is not remedied within the applicable statute of limitations; the countervailing legislative policy against stale claims is implicated and must be given equal weight.

FN2. Municipalities that act in a proprietary capacity by selling water service are subject to statute of limitations defenses. See *City of Algona v. City of Pacific*, 35 Wn.App. 517, 520, 667 P.2d 1124 (1983) (reaching same conclusion with regard to sewer service). The City does not dispute that it acted in a proprietary capacity in this case.

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*4 We therefore hold that public utilities are subject to the same rules regarding accrual and discovery as other plaintiffs. A utility's cause of action for undercharges accrues when it has a right to collect the undercharges and has discovered all the facts giving rise to its claim. In this case, the City had the right to collect the undercharges at the end of each billing period between 1990 and 1998 long before it issued its 2001 backbill. Accordingly, the dispositive question is when the City knew or should have known all the facts supporting its claim against the Mill.

II. The Discovery Rule

The City argues that even if its cause of action accrued before the 2001 backbill, it complied with the statute of limitations because it did not 'discover' this claim until it had enough data to accurately bill the Mill for the undercharges. This argument also fails, however, because the latest possible point at which the City knew the facts supporting this claim was three and a half years before the City filed this lawsuit. The City therefore failed, as a matter of law, to comply with the three-year statute of limitations. FN3

FN3. For the first time on appeal, the City argues that this claim is subject to the six-year statute of limitations applicable to **written contracts** because the municipal rate **ordinance** and the Mill's utility bills contain all the elements of a **contract**. This court does not generally consider arguments made for the first time on appeal. RAP 2.5(a); *Wilson v. Steinbach*, 98 Wn.2d 434, 440, 656 P.2d 1030 (1982). Although the City mentioned the six-year statute of limitations in its motion for reconsideration, it made no argument on the point because it relied on its arguments that its cause of action accrued in 1999 or 2001. That passing reference to the six-year limitations period was insufficient to put the trial court on notice of the novel arguments the City now raises on appeal. The City has therefore waived this argument for appeal. In addition, we note that it is highly unlikely that the six-year statute of limitations could apply to a claim for utility undercharges. Certainly, the City's rate **ordinance** itself does not comprise a **written contract** for statute of limitations purposes. See *Noah v. State by Gardner*, 112 Wn.2d 841, 846, 774 P.2d 516 (1989) ('A statute or **ordinance** will not constitute a **contract** in **writing** for statute of limitations purposes, except where it is apparent that the statute or **ordinance** was intended as a complete **contract**.'). And even assuming, for the sake of argument, that such an **ordinance** could be combined with other **writings** to form a **written** agreement for statute of limitations purposes, the utility bills the City asserts were a part of the **written** agreement did not exist until 2001. Thus, they cannot logically combine with the City's rate **ordinances** to form a single **written** agreement, unless we were to accept the City's untenable assertion that this cause of action did not accrue until it sent the Mill a bill for the undercharges. Because we have rejected that argument, the City's attempt to construct a **written** agreement by combining the rate **ordinance** with the 2001 billing statement must also fail.

The Mill argues that the City was on notice of its claim as early as 1990, when the City first raised the concern that it was improperly metering the Mill's water usage. The City, on the other hand, argues that the statute of limitations did not begin to run until September 1999 because the City did not have the means to quantify the Mill's overuse of water until it compiled a year's worth of data from the master meter it installed in 1998. FN4

FN4. For the first time in its reply brief, the City also argues that we should equitably toll the statute of limitations due to the Mill's assurances that it would install the meter itself. 'An issue raised and argued for the first time in a reply brief is raised too late.' *Axess Int'l, Ltd. v. Intercargo Ins. Co.*, 107 Wn.App. 713, 719, 30 P.3d 1 (2001). And at any rate, equitable tolling would not help the City in this case, because even where equitable tolling applies, the statute of limitations only tolls until the plaintiff learns, or through due diligence should have learned, the facts the plaintiff has concealed. *Finkelstein v. Sec. Prop., Inc.*, 76 Wn.App. 740, 888 P.2d 161 (1995). Thus, assuming, for the sake of argument, that the Mill engaged in the type of conduct that would justify equitable

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tolling, any period of equitable tolling ended once the City discovered the Mill was taking water.

In addition, the City argues that if we are unwilling to reach that conclusion as a matter of law, we should still reverse the trial court's order granting summary judgment because questions of fact remain regarding when the City first discovered or should have discovered all the facts supporting its claim. See *Mayer*, 102 Wn.App. at 76(noting due diligence normally a question of fact).

But while questions of fact might exist as to whether the City acted with due diligence between 1990 and 1998, there is no genuine dispute that the City knew by October 1998 that it had undercharged the Mill for water service. According to the City's own evidence, a pressure test the City conducted in 1998 made it 'abundantly clear' that the Mill was using more water than it was paying for. And the City was certainly on notice that it had undercharged the Mill in October 1998, when it caught the Mill taking water from an unmetered fire hydrant. The City filed this action three and a half years later, in March 2002. The trial court, therefore, properly concluded as a matter of law that the statute of limitations had expired. The City argues that the statute of limitations should not begin to run until the date the City had a reasonable factual basis for calculating the Mill's uncharged water usage. The City asserts that the date of that 'discovery' was September 20, 1999, when the city manager reported the estimated amount of the undercharges to the city council. But the discovery rule only delays accrual until the plaintiff knows it has been injured, not until the plaintiff is able to calculate the full extent of the injury. Although the damage must be 'appreciable,' that does not mean it must be fully appreciated. *Mayer*, 102 Wn.App. at 76; *McLeod*, 90 Wn.App. at 36. Rather, 'Notice the plaintiff has notice of facts sufficient to prompt a person of average prudence to inquire into the presence of an injury, he or she is deemed to have notice of all facts that reasonable inquiry would disclose.' *Mayer*, 102 Wn.App. at 76. The limitation period chosen by the legislature therefore represents the reasonable amount of time deemed sufficient to inquire fully into a matter and file suit once a party discovers that it has been wronged and by whom. The date of discovery is not when that inquiry ends; it is the point at which inquiry should begin.

***5** Here, assuming the latest possible date of discovery of October 1998, the City had three years to conduct its inquiry and file this lawsuit. It simply failed to do so. Therefore, the trial court properly granted the Mill's motion for summary judgment.

III. UTILITY LIEN STATUTE

In dismissing this case, the trial court also relied on the utility lien statute, RCW 35.21.290, which provides that a municipality has a lien against a property for unpaid utility bills, 'but not for any charges more than four months past due{.}' This 'lien' may be enforced 'only by cutting off the service until the delinquent and unpaid charges are paid{.}' RCW 35.21.300. The trial court concluded that under this statute, 'The City is clearly limited to a 4 month period seeking back charges.' Although the trial court reached the right result under the statute of limitations, we take this opportunity to clarify that the lien statute does not limit the period for which a customer can be held responsible for past utility charges; it merely limits the scope of the lien available against the property and, thus, the amount a customer must pay to avoid having his or her utilities turned off. Other methods of collection are subject to the statute of limitations, but are not limited by the lien provisions of RCW 35.21 .290 or similar local **ordinances**.

CONCLUSION

The three-year statute of limitations begins to run on a claim for unbilled utility undercharges when the utility knows or should know that it has undercharged the customer. In this case, the City knew by October 1998, at the latest, that it had undercharged the Mill. The trial court therefore correctly concluded, as a matter of law, that the statute of limitations barred the City's claim. Therefore, we affirm.

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Supreme Court of Washington,
En Banc.
Harold E. NOAH and Esther Noah, husband and wife, and Harold Sherrodd and Anne Sherrodd, husband and wife, and Elwin Allen and Roberta Allen, husband and wife, Appellants,
v.
The STATE of Washington, by its Governor, Booth GARDNER, Respondent.

No. 55538-9.
June 22, 1989.

Members of state employee retirement system brought action alleging breach of their state employee pension rights. The Superior Court, Spokane County, Marcus M. Kelly, J., dismissed action on statute of limitations grounds, and appeal was taken. The Supreme Court, Brachtenbach, J., held that public employees retirement system statute was not "**contract** in **writing**" within meaning of six-year statute of limitations.

Affirmed.

West Headnotes

[1] KeyCite Citing References for this Headnote

360 States
360II Government and Officers
360k56 Compensation of Officers, Agents and Employees
360k64.1 Retirement and Incidental Benefits
360k64.1(7) k. Judicial Remedies. Most Cited Cases

Public employees retirement system statute was not "contract in writing" within meaning of six-year statute of limitations, where statute was not complete as to public retirees' pension rights. West's RCWA 4.16.040(1), 41.40.005 et seq.

[2] KeyCite Citing References for this Headnote

241 Limitation of Actions
241I Statutes of Limitation
241I(B) Limitations Applicable to Particular Actions
241k23 **Written Contracts**
241k24 In General
241k24(2) k. What Constitutes **Written Contract** in General. Most Cited Cases

Statute or **ordinance** will not constitute "**contract** in **writing**" for statute of limitations purposes except where it appears that statute or **ordinance** was intended as complete **contract**. West's RCWA 4.16.040(1).

****516 *842*** Stanley E. Perdue, Spokane, for appellants.

Kenneth Eikenberry, Atty. Gen., Jean M. Wilkinson, Asst. Atty. Gen., Olympia, for respondent.

BRACHTENBACH, Justice.

At issue is which statute of limitations applies to plaintiffs' claims for alleged breach of their state employee pension rights. Plaintiffs contend that the 6-year statute, RCW 4.16.040(1), controls; the trial court dismissed the action as barred by the 3-year statute of limitations, RCW 4.16.080. We affirm.

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Plaintiffs were employees of the State Department of Transportation, and were members of Plan I of the Public Employees' Retirement System (PERS I). PERS I applies to state employees who established retirement system membership prior to October 1, 1977.

Generally, retirement benefits for a state employee are calculated by multiplying the length of creditable service by the employee's "average final compensation." Under PERS I, it was the practice of some agencies, including plaintiffs' agency, to include within "final average compensation" payment for accumulated unused vacation pay. This practice resulted in a higher compensation base, and therefore higher retirement benefits, than would result without use of the accrued vacation pay.

The practice of using accrued vacation pay in calculating "average final compensation" resulted from administrative interpretation; it is not specifically authorized by statute. Not all agencies or departments employ this method of crediting accrued, unused benefits. For a discussion of the practice, see *Washington Ass'n of Cy. Officials v. Washington Pub. Employees' Retirement Sys. Bd.*, 89 Wash.2d 729, 575 P.2d 230 (1978).

The "breach" claimed by plaintiffs is enactment of Substitute Senate Bill 5007 (SSB 5007), which the Legislature ***843** passed in 1982. SSB 5007 would have eliminated the practice of using accrued vacation pay as part of the compensation base for calculating retirement benefits. The act was to be effective July 1, 1982. Laws of 1982, 1st Ex.Sess., ch. 51, § 5. However, on June ****517** 24, 1982, the Thurston County Superior Court held the act unconstitutional. This court affirmed. *Washington Fed'n of State Employees Coun. 28 v. State*, 98 Wash.2d 677, 658 P.2d 634 (1983).

Plaintiffs allege that enactment of SSB 5007 forced them either (1) to retire prior to the effective date of SSB 5007, July 1, 1982, thus including accumulated vacation pay to increase potential retirement benefits, or (2) to continue to work and accumulate additional benefits but lose the advantage of using accrued, unused vacation pay. The three plaintiff-retirees retired effective May 31, 1982, June 1, 1982, and July 1, 1982. This action was commenced March 2, 1988.

Because of the delay of more than 5 years in bringing this suit, plaintiffs are barred if the 3-year statute of limitations applies. For plaintiffs' claims to be timely, they must satisfy the conditions of the 6-year statute, RCW 4.16.040(1), *i.e.*, the claims must be "upon a ***contract** in **writing***, or liability express or implied arising out of a ***written** agreement.*" (Italics ours.)

[1] Clearly, there is no **written** agreement between plaintiffs and the State; plaintiffs did allege an oral employment agreement, but concede that an action based upon an oral **contract** would be barred. Therefore, plaintiffs must exclusively rely on the theory that the public employees' retirement system statute, RCW 41.40, is a "**contract** in **writing**" within the meaning of the 6-year statute of limitations.

Under very limited circumstances a statute may be treated as a **contract**: when the statutory language and the circumstances establish a legislative intent to create rights **contractual** in nature which are enforceable against the State. *Washington Fed'n of State Employees Coun. 28 v. State*, 101 Wash.2d 536, 539, 682 P.2d 869 (1984). If a statute is subject to full legislative control by future amendments ***844** and repeals, the statute declares policy to be pursued until the Legislature ordains otherwise, in contrast to creating contractual or vested rights. *Washington Fed'n of State Employees*, 101 Wash.2d at 539-40, 682 P.2d 869.

In *Bakenhus v. Seattle*, 48 Wash.2d 695, 698, 296 P.2d 536 (1956), this court said that a pension granted to a public employee is deferred compensation for services rendered. The public employee's services are rendered upon the promise made to him when he enters employment, and the employer's obligation is based upon this promise. *Bakenhus*, at 700, 296 P.2d 536. The court held that

the employee who accepts a job to which a pension plan is applicable contracts for a substantial pension and is entitled to receive the same when he has fulfilled the prescribed conditions. His

pension rights may be modified prior to retirement, but only for the purpose of keeping the pension system flexible and maintaining its integrity.

Bakenhus, at 701, 296 P.2d 536. The contract theory of public pensions in *Bakenhus* has been consistently followed since the opinion was handed down. *See, e.g.*, *Bradford v. Data Processing Joint Bd.*, 106 Wash.2d 368, 722 P.2d 95 (1986); *Horowitz v. Department of Retirement Sys.*, 96 Wash.2d 468, 635 P.2d 1078 (1981); *Eagan v. Spellman*, 90 Wash.2d 248, 581 P.2d 1038 (1978); *Tembruell v. Seattle*, 64 Wash.2d 503, 392 P.2d 453 (1964); *Eisenbacher v. Tacoma*, 53 Wash.2d 280, 333 P.2d 642 (1958).

However, the fact that state employees' pension rights have some characteristics of a contract does not make the statute a contract. It is true that under *Bakenhus* and its progeny the pension statutes are, at the least, contractual in nature-they are not subject to full legislative control. But this court in *Bakenhus* never held that a public retirement statute in and of itself constitutes a complete contract. In fact, there is no statutory analysis in *Bakenhus*. Further, as the court recognized in *Bakenhus*, the contract analysis might

845** not be flawless in a purely legalistic sense, [but it] gives effect to the reasonable expectations of the employee and at the same time allows the legislature the freedom necessary to improve the pension*518** system and adapt it to changing economic conditions.

Bakenhus, at 701, 296 P.2d 536.

Bakenhus established a **contract** concept or analogy in the various municipal pension systems. It does not follow ... that all of the principles of **contract** law can be applied to the so-called **contract** for a pension.

Dailey v. Seattle, 54 Wash.2d 733, 738, 344 P.2d 718 (1959).

A **contract** in **writing** must contain all the essential elements of the **contract**. *Ingalls v. Angell*, 76 Wash. 692, 695-96, 137 P. 309 (1913); *Moran v. Stowell*, 45 Wash.App. 70, 73-74, 724 P.2d 396, *review denied*, 107 Wash.2d 1014 (1986). RCW 41.40 is not a **contract** in **writing** because it is not complete as to a public retiree's pension rights. For example, administrative interpretation of the effect upon retirement benefits of accrued vacation pay is at the heart of plaintiffs' claim. The right of certain PERS I employees to use accrued vacation pay in calculating retirement benefits is not found in the statute.

In addition, in *Tembruell v. Seattle*, 64 Wash.2d 503, 506, 392 P.2d 453 (1964), the court followed the *Bakenhus* reasoning that a public pension is a form of deferred compensation for services rendered, and explained that the rights in and to the public pension "commence to vest with the first day of employment or service, and continue to vest with each day's service thereafter." FN1 *Tembruell* was approved in this regard in ***846** *Crabtree v. Department of Retirement Sys.*, 101 Wash.2d 552, 556-57, 681 P.2d 245 (1984). RCW 41.40, however, does not contain any provision that a public employee's rights to a pension vest contractually as of the first day of employment. Instead, this contractual term has been implied by this court.

FN1. While RCW 41.40 discusses "vesting" in the context of providing that a member's right to a benefit becomes effective under certain conditions, for example 5 years of service after which time the right is not forfeited by separation from service, "vesting" as used in *Tembruell* refers to the contractual right to a pension substantially in accord with the statutes as they existed when the employee begins service. *See* *Kraus v. Board of Trustees*, 72 Ill.App.3d 833, 28 Ill.Dec. 691, 694, 390 N.E.2d 1281, 1284 (1979).

[2] ☑ Another reason compels our holding that RCW 41.40 is not a **contract** in **writing**. A statute or **ordinance** will not constitute a **contract** in **writing** for statute of limitations purposes, except where it is apparent that the statute or **ordinance** was intended as a complete **contract**. 51

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Am.Jur.2d *Limitations of Actions* § 98, at 672 (1970); Annot., *What Constitutes a **Contract** in **Writing** Within Statute of Limitations*, 3 A.L.R.2d 809, § 36 (1949). There is simply no indication in RCW 41.40 or elsewhere that the Legislature intended RCW 41.40 to be a complete **contract** in **writing**.

We hold that RCW 41.40 is not a **contract** in **writing**, and the 6-year statute of limitations applicable to **contracts** in **writing**, RCW 4.16.040(1), does not apply to plaintiffs' claims that their public pension rights were breached by enactment of SSB 5007. Our decision accords with that in *Martin v. Spokane*, 55 Wash.2d 52, 345 P.2d 1113 (1959), where a police officer's claim that *Bakenhus* required that his pension be calculated under the police pension fund act in force when he began work was subject to the 3-year statute of limitations. *Martin*, 55 Wash.2d at 56, 345 P.2d 1113 (citing *State ex rel. Bradford v. King Cy.*, 197 Wash. 393, 85 P.2d 670 (1938), where the court held that 3-year statute of limitations applied to claim for salary as fixed by budget).

The trial court correctly dismissed this case as time-barred.

CALLON, C.J., and UTTER, DOLLIVER, DURHAM, DORE, ANDERSEN, PEARSON and SMITH, JJ., concur.

BEFORE THE HEARING EXAMINER OF THE CITY OF OAK HARBOR

In re the Decision of the City Administrator DARRELL WALLEN, Appellant, v. CITY OF OAK HARBOR, Respondent.	RESPONDENT'S BRIEF

This matter comes before the Hearing Examiner on appeal from the decision of the City Administrator with respect to a billing dispute between the Appellant and the Respondent City. This Brief is intended to set out the factual and legal reasons for the City's position.

I. STATEMENT OF ISSUES

The following issues are based on Mr. Wallen's Letter of Appeal, dated October 5, 2009:

1. Does the term units "available for occupancy" in Ch.13.32 OHMC mean "when the property owner determines that the units are available"?
2. What is the statute of limitations for claims of over-billing for City utility charges?
3. Is a utility customer entitled under the City Code to interest of 8% per annum on amounts over-billed?

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ATTACHMENT "B"

Mr. Wallen's Letter of Appeal is found in Exhibit 9 of the City's Record.

II. BACKGROUND

On June 19, 2009, the City Finance Director made a code interpretation decision in favor of the Respondent, Mr. Wallen, on his water and sewer utility bill. See Exhibit 3 of the City's Record. Mr. Wallen is an owner of a multi-family residential building. According to the Oak Harbor Municipal Code, the rate for utility service is based upon the number of units in a multi-family building or complex which are "units available for occupancy". A laundry facility provided for tenants in the 7th Avenue Apartments, owned by Mr. Wallen, had been billed as a unit available for occupancy since September 20, 2004. In his letter, Mr. Merriman determined that this was not appropriate and made an adjustment to the total water and sewer account for that building. Exhibit 3.

However, Mr. Merriman was limited by the City Code to granting an adjustment for no more than two years:

> "Over Billing. If the finance director, upon investigation or otherwise, finds that the fee for utility charges paid by a utility customer or property owner is more than the amount required of the utility customer or property owner, he or she shall return the amount overpaid by a warrant or check upon the utility fund or funds receiving the overpayment."

OHMC 3.95.160(1).

> *"No increase in billing or reduction of a billing for utility charges due may be made by the finance director for more than two years after the over billing or under billing..."*

OHMC 3.95.160(3) (in pertinent part) (emphasis added).

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Therefore, Mr. Merriman refunded Mr. Wallen for the two-year period preceding the code interpretation in Mr. Wallen's favor. Exhibit 3.

Mr. Wallen was dissatisfied with this response and demanded a refund for the entire 5-year period[1]. He also argued that he was entitled to further refunds for residential units that were not occupied in a given month or bimonthly period, when he determined that the units are not ready to be rented. Exhibit 8. His argument is that the term "available for occupancy" is dependent upon his determination that they were available to be rented. The City Administrator disagreed, finding that "units available for occupancy" were those for which occupancy permits had been approved. Exhibit 7.

However, the City Administrator found that the applicable statute of limitations for errors in utility billings under state law is three years. Exhibit 7. Therefore, he refunded an additional year's billings for the laundry rooms.

Mr. Wallen was dissatisfied with this outcome. Exhibit 8. On October 5, he filed his "Letter of Appeal" (Exhibit 9) and this appeal was scheduled for November 6, 2009.[2]

III. LEGAL ARGUMENT

Issue No. 1: Does the term "available for occupancy" as used in Ch. 13.32 OHMC mean "when the owner determines that the units are available"?

---

[1] See Exhibit 4. Mr. Wallen erroneously claimed that the over-billing was for a seven-year period. The billing included the laundry room from July 2004-June 2009, a five-year period. See Exhibit 2.

[2] Mr. Wallen was provided with a copy of Ch. 1.24 OHMC which spells out the procedures for an appeal. The letter of appeal he filed does not meet the requirements of OHMC 1.24.020 and the City sought a directive from the Hearing Examiner that he file a correct written appeal. In the absence of a complete written appeal, the City has had to make certain assumptions. Further, the City does not waive its right to seek dismissal pursuant to OHMC 1.24.050.

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Applicable Code Provisions:

> Standard Charge. The standard charge for water supplied by the city for residential, commercial and industrial customers inside the city limits and state park facilities shall consist of a customer charge, also termed a "monthly ready to serve charge", based on the meter size together with the rate for the quantity of water used and a monthly charge for sprinkler systems, if any.
>
> When water is being supplied to an existing multifamily premises (i. two or more separate premises being served by one service and meter), the monthly ready to serve charge shall be based on either the existing meter size, or based on a 5/8-inch meter size times the number of units available for occupancy, whichever is the greater charge.
>
> When more than one service supplies a premises, the consumption of water for each meter shall be computed separately.

OHMC 13.32.025(1).

. . .

> Multifamily Residential. The monthly multifamily residential rate is as follows:
>
> (i) For the first quantity consumed (five CCF) times the number of units available for occupancy, at the rate of $7.29 per five CCF.
>
> (ii) For any amounts not charged in the first class, at the rate of $3.46 per 100 cubic feet.
>
> One bill for each water meter shall be dated and sent to each property owner, or his or her designee, at such times as are prescribed by this chapter.

OHMC 13.32.025(3)(b).

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Argument:

The City Administrator determined that "available for occupancy" refers to units that have final occupancy approvals and certificates of occupancy under the building code. Exhibit 7. Mr. Wallen owns a building located at 260 NE 7th Avenue, Oak Harbor, WA. The City Building Official, David W. Anderson, concluded that when final occupancy has been approved and the certificate of occupancy has been issued, the structures are ready and "available for occupancy." Exhibit A to Exhibit 7.

The term "available for occupancy" is not defined in Title 13, the title of the municipal code which deals with water service. However, it is not a term that stands alone in the code. The customer charge itself is a "monthly ready to serve charge" plus a charge for actual usage. The ready to serve charge is computed based upon units available for occupancy. The actual use charge is based upon the amount of water used at the unit. Unlike the use charge, the ready to serve charge is not dependent upon the fact or amount of water usage but upon the availability of City water service to the unit. Read together, the ordinance terms clearly intend to provide a charge for the availability of service, not just to units actually using water.[3]

Deference is normally accorded to the interpretation of an ambiguous code by "those officials charged with its enforcement." *Meridian Minerals Co. v. King County,* 61 Wn.App. 195, 810 P.31 (1991). While no deference is due if the code provision is unambiguous, *Hoberg v. City of Bellevue,* 76 Wn.App. 357, 884 P.2d 1339(1994), courts general accord deference to an agency's interpretation of an ambiguous ordinance. *Citizens to Preserve*

[3] Ready to serve charges are commonplace in water service. See WAC 480-110-245 and 480-110-255.

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Pioneer Park v. City of Mercer Island, 106 Wn.App. 461, 24 P.3d 1079 (2001 – Div. I). To the extent that there is any ambiguity in the language, it must be resolved in favor of the City's interpretation.

In this case, the ordinance clearly establishes a service charge for making water service available to units which are available for occupancy. It would not make sense to have such a charge if it were dependent upon the property owner's decision whether to rent a unit or for there to be actual use of water. That would make the ready-to-serve charge the same thing as the use charge, and there would be no reason for language providing for a ready-to-serve charge. Adopting Mr. Wallen's interpretation would require the Hearing Examiner to disregard those portions of the ordinance which describe a ready-to-serve charge. However, it is a basic principle of statutory construction that all of the language used in the statute must be given effect, with no portion rendered meaningless or superfluous. See, e.g., *Hartson Partnership v. Goodwin,* 99 Wn.App. 227, 991 P.2d 1211 (2000 – Div. I). The ready-to-serve charge applies to units "available for use" when those units have been legally determined to be ready and available for occupancy through the building permit process, regardless of whether the owner of those units wishes to rent them or not.

Issue No. 2: What is the statute of limitations for claims of over-billing for City utility charges?

The City is precluded from paying a claim for which it is not legally responsible because such a claim would be a gift of public funds. *Washington State Constitution, Article VIII, Section 7.* Therefore, the City may not pay a claim which extends beyond the applicable statute of limitations.

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The applicable City Code provisions actually limit recovery for over-billed amounts to two years. OHMC 3.95.160(3). The City Administrator gave Mr. Wallen the benefit of the applicable state statute of limitations and repaid amounts over-billed for a three-year period. Exhibit 7.

The applicable statute of limitations for bringing an action under state law in contract would depend upon whether the contract was oral or written. Action on an oral contract, or partly oral contract, must be brought in three years. RCW 4.16.080(3) provides:

The following actions shall be commenced within three years:

> (3) Except as provided in RCW 4.16.040(2) [an action upon an account receivable], an action upon a contract or liability, express or implied, which is not in writing, and does not arise out of any written instrument.

The statute of limitations on a written contract is six years. RCW 4.16.040(1). However, to be a written contract, the written agreement must contain all the essential elements of a contract: subject matter; parties; terms and conditions; and price or consideration. *Browning v. Howerton,* 92 Wn.App. 644, 966 P.2d 367 (Div. II, 1998). If resort to extrinsic evidence – outside the contract itself – is required, then the contract is partly oral and falls within the statute of limitations for oral contracts. *Browning v. Howerton,* 92 Wn.App. at 649.

In the case of the City's utility service, a portion of the agreement with a customer is written. See Exhibit 10. However, it does not include all the necessary terms and conditions, or even the price. To interpret the contract resort must be made to extrinsic evidence,

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including the municipal code. This makes the claim subject to the three-year statute of limitations.

Issue No. 3: Is a utility customer entitled under the City Code to interest of 8% per annum on amounts over-billed?

Mr. Wallen appears to argue that OHMC 3.95.160 should be read to entitle him to 8% interest on the amount he was over-billed. OHMC 3.95.160 provides:

> (1) Over Billing. If the finance director, upon investigation or otherwise, finds that the fee for utility charges paid by a utility customer or property owner is more than the amount required of the utility customer or property owner which made the over payment, he or she shall return the amount overpaid by a warrant or check upon the utility fund or funds receiving the over payment.
>
> (2) Under Billing. If the finance director finds that the fee or utility charges billed to a utility customer or property owner is less than required, the finance director shall send a statement to the utility customer or property owner owing the balance due, and the utility customer or property owner shall, within 30 days, pay the amount shown thereon. *Amounts shown outstanding after the 30 days shall be charged interest at the rate of eight percent per annum, prorated monthly, until paid.*

OHMC 3.95.160(1) and (2) (emphasis added).

However, Mr. Wallen is mistaken in his reading of OHMC 3.95.160(2). The code provision does not entitle the City to recover interest on underpaid accounts for the period of the under-billing. It only provides that if those accounts are still not paid 30 days after notice that under-paid amounts are due, interest will begin to run. OHMC 3.95.160(2). Under the Code, the City is not entitled to recover interest on the under-billings themselves[4]. As for

[4] Mr. Wallen has not made a claim for statutory interest and such claim is beyond the scope of the Hearing Examiner's review here since it is outside the City Code and the claims addressed by the City Administrator.

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over-billings, the Oak Harbor Municipal Code does not create an interest-bearing repayment requirement for over-billings. OHMC 3.95.160(1).

Both situations are essentially treated the same way. Here, there is no question that the City acted in bad faith. The City acted expeditiously to refund Mr. Wallen those amounts which were first, within the Finance Director's authority, and second, giving him the benefit of the statutory statute of limitations, within the three-year statute of limitations applicable to his action. His claim for interest under the city code is not well-founded.

IV. CONCLUSION

For the reasons stated, the City requests the Hearing Examiner to find:

1. That the City has properly interpreted OHMC 13.32.025(1) and .025(3)(b) in determining the applicable utility charges for the apartment building at 260 NE 7th Avenue.

2. That the City has refunded the Appellant all utility over-billing payments due to him.

3. That the Appellant is owed no interest under the City Code.

The City further requests the Hearing Examiner to affirm the decision of the City Administrator and deny the Appellant's appeal.

Respectfully submitted this 29th day of October, 2009.

CITY OF OAK HARBOR

By _____
Margery Hite, Attorney for Respondent
WSBA #8450

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City of Oak Harbor
City Council Agenda Bill

Bill No. 4
Date: February 2, 2010
Subject: Subdivision Code Update Project

FROM: Steve Powers, Development Services Director PCP

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

PURPOSE

This agenda bill presents amendments to the Oak Harbor Municipal Code (OHMC) Chapter 19.31 (Planned Residential Developments) and Title 21 (Subdivisions). The purpose of the code amendments is to make the neighborhoods approved under these regulations more sustainable and livable, as well as make the code itself more readable.

AUTHORITY

Amendments to land use codes are Review Process V Decisions per Chapter 18.20. Under this process, the Planning Commission is required to form a recommendation on code amendments. Final approval authority rests with City Council. Additionally, RCW 36.70.A.040 gives the city "legislative body" the authority to adopt development regulations.

BACKGROUND

More than two years ago, the City applied for and received a planning grant from the Washington State Department of Commerce to update its subdivision regulations. The grant application stated that the purpose of the code update project was to "improve livability, reduce environmental impacts and make the code itself more readable." Since then, staff has worked with project stakeholders and the Planning Commission to craft code language that meets these three project goals. Following is a bulleted list of major milestones for the project:

- **Last Quarter 2007.** The City applied for and received a planning grant from the Department of Commerce.
- **First Quarter 2008.** After entering into a contract with the Department of Commerce, the project begins with an existing conditions analysis, examining the characteristics (lot size, number of dead ends, block and street patterns) of 50 different subdivisions within the City.
- **First through Third Quarter 2008.** Staff sought community input through a variety of outreach methods including "roundtables," "coffeehouse discussions," Planning Commission meetings, and an internet blog. In total, there were 50 separate opportunities for the public to learn about and give feedback on the project including two articles in the

Whidbey News Times. See Public Involvement Summary (Attachment 1).

- **First and Second Quarter 2009.** Staff worked with Planning Commission in eight separate work sessions to form concepts prior to drafting code language.
- **July 2009.** Staff presented a first draft of Chapter 19.31 and Title 21 to the Planning Commission in a public hearing.
- **August 2009.** Planning Commission closed the public hearing from July and made a recommendation of approval on the draft code amendments to City Council.
- **September and October 2009.** Staff discussed the draft code with the Public Works and Governmental Services Standing Committees in publicly noticed meetings.
- **October 2009.** Planning Commission recommends approval of the Subdivision Design Manual (a companion document to code).

The February 2, 2010 Council meeting will be the first time the full Council will have the opportunity to hear about the Subdivision Code Update project and consider the draft language for Chapter 19.31 (Planned Residential Developments) and Title 21 (Subdivisions). The State environmental review and associated public comment period has been completed under SEPA (State Environmental Policy Act). A Determination of Non-significance was issued on October 2, 2009. The Department of Commerce completed their 60-day review of the draft code on November 2, 2009.

DISCUSSION

At the heart of the draft code are eleven basic "concepts." If adopted, these new code concepts will affect how the City's planned residential developments and subdivisions look and function, with an emphasis on walkable neighborhoods and sustainable design. The code amendments pertain primarily to residential subdivisions and planned residential developments (PRDs), but not exclusively. These concepts are summarized below:

1. **New narrow streets.** The proposed code will implement a new standard narrow street section. The new narrow street section is expected to reduce stormwater runoff, as well as maintenance costs to the City and construction costs to applicants.
2. **Grid street pattern**. The draft code requires that streets in new subdivisions assume a grid or modified grid pattern making neighborhoods more connected and pedestrian-friendly.
3. **Pedestrian/bike connections.** The draft code requires pedestrian connections in the middle of long blocks (more than 800 feet long) and to all adjacent land uses. The pedestrian connections will make neighborhoods more "walkable" and "bikable," especially for children, seniors and those without access to a car.
4. **Street trees.** The draft code requires that street trees be placed along both sides of all residential streets aesthetically enhancing the streetscape, creating a more comfortable pedestrian atmosphere and offering the environmental benefits of improved air and stormwater quality.

5. **Limit on dead-ends.** The draft code limits (not prohibits) dead-ends. Fewer dead-ends mean more connections for all travel modes, which is especially important for pedestrians and bikes.
6. **Limit on block length.** As part of creating walkable neighborhoods, the new code will set an 800-foot block length limit.
7. **Private streets.** The new code will allow lots in short subdivisions (nine lots or less) to take access from private streets and shared drives. This provision will promote more efficient lot arrangements especially in infill situations where public streets are currently required.
8. **Corridor buffers.** New standards for landscape buffers along minor arterials will require planting plans in an effort to promote a more consistent appearance and reduce wind throw.
9. **Stormwater pond design.** New code requirements will discourage fencing around ponds, limit the use of plain, smooth, unfinished concrete as a pond material, and require ten feet of landscaping around ponds. These changes are expected to result in better looking ponds while preserving pond functionality and safety.
10. **Better active open spaces.** The draft PRD requirements mandate that these spaces have a minimum street frontage, regulate the size of these spaces, and require that the space have certain amenities (activity center, trash cans, benches, lighting) all in an effort to make these spaces an amenity to neighborhoods rather than "leftover space."
11. **Alternating front setbacks in PRDs.** The new PRD code will require that buildings have alternating front setbacks or, as an alternative, garages which do not project beyond the front entrances. These changes will focus attention on quality urban streetscapes and help mitigate monotonous residential design.

The code concepts, when implemented, are expected to further the project goals of sustainability and livability. In addition, the code concepts use the Comprehensive Plan goals and policies as a foundation. The attached "Project Goals Chart" shows how the individual concepts relate to the project goals of sustainability and livability and the relevant Comprehensive Plan goals and policies (Attachment 2).

The project goal of readability is different than the other two goals in that it addresses the clarity of the code itself, rather than the physical results of development. The readability goal has been addressed by reorganizing the code in a more logical way, eliminating wordiness and redundancies and re-labeling sections of the code. Additionally, staff has created a "Subdivision Design Manual" which illustrates the concepts and ideas discussed in the code. The Subdivision Design Manual is a companion document to the code, but is not part of the code. Its purpose is to illustrate concepts and thereby enhance readability of the code. Staff suggests that the Manual be adopted by separate resolution. The proposed "Subdivision Design Manual" is attached to this agenda bill (Attachment 3).

PLANNING COMMISSION REVIEW

Planning Commission conducted hearings in July and August and recommended approval of the

draft code on August 25, 2009. The Planning Commission staff report from the August hearing is attached to this agenda bill (Attachment 4). The recommended draft codes for Chapter 19.31, Planned Residential Developments, and Title 21, Subdivisions, are attached as Attachments 5 and 6, respectively. At their October 27, 2009 meeting the Planning Commission reviewed the Subdivision Design Manual and recommended its approval to the City Council.

STANDING COMMITTEE REPORTS

The draft code was presented to the Public Works Standing Committee on September 3 and October 1, 2009 and to the Governmental Services Standing Committee on September 14 and October 12, 2009. Comments at those meetings focused on maintenance responsibilities for street trees, stormwater pond safety, and density bonuses for provision of affordable housing.

RECOMMENDED ACTION

•Open public hearing and accept public comment
•Continue the public hearing on amendments to Chapter 19.31 (Planned Residential Developments) and Title 21 (Subdivisions) of the Oak Harbor Municipal Code to February 16, 2010.

ATTACHMENTS

The following documents are attached to this agenda bill:

1. Public Involvement Summary
2. Project Goals Chart
3. Subdivision Design Manual
4. Material for August 25, 2009 Planning Commission Meeting
5. Draft ordinance with amendments to Chapter 19.31, Planned Residential Developments
6. Draft ordinance with amendments to Title 21, Subdivisions
7. Resolution

MAYOR'S COMMENTS

Subdivision Code Update Project- Public Involvement Summary		
Event	***Date***	***Open to the Public?***
Online Blog	Ongoing	Yes
Online Survey	Oct. 08 - Jan 09	Yes
Parks Board Meeting	Monday, March 10, 2008	Yes
Roundtable - Real Estate Professionals	Wednesday, April 09, 2008	Yes
Roundtable for Sunrise Rotary Group	Wednesday, May 07, 2008	Yes
Rountable for Developers	Wednesday, May 14, 2008	Yes
Newspaper Article - WNT	Wednesday, April 09, 2008	
Newspaper Article - WNT	Wednesday, May 14, 2008	purchasers
Planning Commission	Tuesday, April 22, 2008	Yes
Planning Commission	Tuesday, May 27, 2008	Yes
Planning Commission	Tuesday, June 24, 2008	Yes
Planning Commission	Tuesday, January 27, 2009	Yes
Planning Commission	Tuesday, February 24, 2009	Yes
Planning Commission	Tuesday, March 24, 2009	Yes
Planning Commission	Tuesday, April 28, 2009	Yes
Planning Commission	Tuesday, May 26, 2009	Yes
Planning Commission	Tuesday, June 23, 2009	Yes
Planning Commission	Tuesday, July 28, 2009	Yes, with public hearing
Planning Commission	Tuesday, August 25, 2009	Yes, with public hearing
Gov't Services Standing Committee	Monday, July 14, 2008	Yes
Gov't Services Standing Committee	Monday, September 14, 2009	Yes
Gov't Services Standing Committee	Monday, October 12, 2009	Yes
Public Works Standing Committee	Thursday, September 03, 2009	Yes
Public Works Standing Committee	Thursday, October 01, 2009	Yes
Coffee House Discussions	Monday, July 28, 2008	Yes
Coffee House Discussions	Wednesday, July 30, 2008	Yes
Coffee House Discussions	Thursday, July 31, 2008	Yes
Coffee House Discussions	Monday, August 04, 2008	Yes
Coffee House Discussions	Wednesday, August 06, 2008	Yes
Coffee House Discussions	Thursday, August 07, 2008	Yes
Coffee House Discussions	Monday, August 11, 2008	Yes
Coffee House Discussions	Wednesday, August 13, 2008	Yes
Coffee House Discussions	Thursday, August 14, 2008	Yes
Coffee House Discussions	Monday, August 18, 2008	Yes
Coffee House Discussions	Wednesday, August 20, 2008	Yes
Coffee House Discussions	Thursday, August 21, 2008	Yes
Coffee House Discussions	Monday, August 25, 2008	Yes
Coffee House Discussions	Wednesday, August 27, 2008	Yes
Coffee House Discussions	Thursday, August 28, 2008	Yes
Coffee House Discussions	Monday, September 01, 2008	Yes
Coffee House Discussions	Wednesday, September 03, 2008	Yes
Coffee House Discussions	Thursday, September 04, 2008	Yes
Coffee House Discussions	Monday, September 08, 2008	Yes
Coffee House Discussions	Wednesday, September 10, 2008	Yes
Coffee House Discussions	Thursday, September 11, 2008	Yes
Coffee House Discussions	Monday, September 15, 2008	Yes
Coffee House Discussions	Wednesday, September 17, 2008	Yes
Coffee House Discussions	Thursday, September 18, 2008	Yes
Stakeholder Invite Letter	Wednesday, March 12, 2008	250 interested stakeholders
Stakeholder Invite Letter	Friday, May 08, 2009	50 interested stakeholders

ATTACHMENT 1

Project Goals Chart

Sustainability

Open Space Goal 1

Preserve open space. *Concepts: 1 & 10*

Utility Policy 5b

Sustainable development. *Concepts: 1,2,3,4,5,6,7*

Both

Land Use Goal 3

Protect and manage the urban forest *Concepts: 4,8,9*

Trans. Goal 3 & 4

Encourage viable transportation alternatives and bicycle use. *Concepts: 1,2,3,4,5,6*

Trans. Policy 5b

Uninterrupted routes for children, seniors, disabled. *Concepts: 1,2,3,4,5,6,7*

Trans. Policy 5e

Draft regs for pedestrian-friendly atmosphere *Concepts: 1,2,3,4,5,6,7,8,10,11*

Urban Design Policy 1e

Tree planting along arterials. *Concept: 8*

Livability

Land Use Goal 4

Preserve character thru quality design. *Concepts: all*

Trans. Policy 5c

Safe intersections for all modes. *Concepts:1,3,5,6*

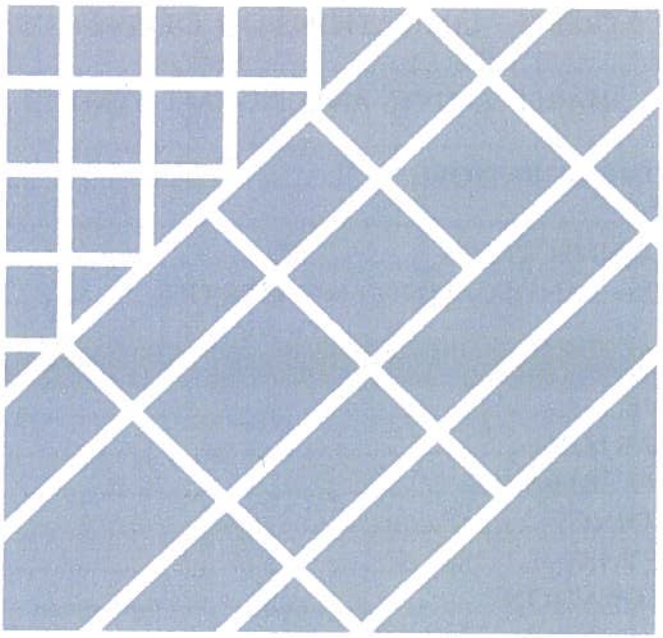
Land Use Policy 19e

Adequate parks, playgrounds & open spaces *Concepts: 3,9,10*

ATTACHMENT 2

CITY OF OAK HARBOR

SUBDIVISION DESIGN MANUAL



NOVEMBER, 2009

CITY OF Oak Harbor
WHIDBEY ISLAND, WASHINGTON

865 SE BARRINGTON DRIVE · OAK HARBOR · WASHINGTON

ATTACHMENT 3

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CITY OF Oak Harbor
WHIDBEY ISLAND WASHINGTON

Introduction

What is the Subdivision Design Manual?

Since Oak Harbor was incorporated in 1889, the growth and evolution of the city has been influenced by the way land has been subdivided and developed. The community's streets and block patterns; open spaces and parks; sidewalks and trails; have all resulted to a great extent from incremental changes through the subdivision of land.

In 2009, the City updated Chapter 19.31 and Title 21 of the Oak Harbor Municipal Code dealing with Planned Residential Developments (PRDs) and Subdivisions. The three principle goals of the code updates were: 1)to make residential developments more sustainable, 2) to improve the community's livability; and 3) to develop regulations that were easy to understand and administer. The design standards embodied in the code update achieve the first two goals through regulations that address such aspects of subdivision layout as block length, pedestrian connections, and open space design. By presenting these regulations with specificity in the Code, and providing the illustrations, photographs, and descriptions in this Subdivision Design Manual, the third goal is met.

THE SUBDIVISION DESIGN MANUAL IS A VISUAL AND GRAPHIC EXPLANATION OF THE CODE

Purpose of the Design Manual

The Subdivision Design Manual is a visual and graphic explanation of the code. It's purpose is to illustrate not regulate.

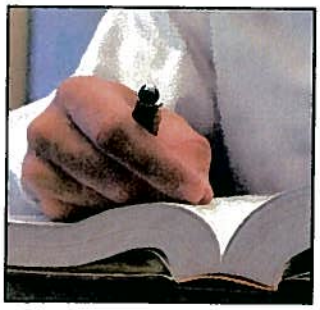
SUSTAINABILITY

THE ABILITY OF NEW SUBDIVISION DEVELOPMENT TO MAINTAIN THE ENVIRONMENTAL FUNCTIONS PRESENT ON A PARTICULAR PIECE OF LAND.

LIVABILITY

THE ABILITY OF NEW SUBDIVISIONS TO DEVELOP IN SUCH A WAY THAT THEY ARE CONTEXTUALLY SENSITIVE TO THE EXISTING PATTERNS OF THE BUILT ENVIRONMENT AND FACILITATE HEALTHY LIFESTYLES, ACTIVITIES, AND USES.

READABILITY



THE FORMATTING OF THE SUBDIVISION REGULATIONS , AS PRESENTED IN THE MUNCIPAL CODE AND SUBDIVISION DESIGN MANUAL, IN SUCH A WAY THAT THEY ARE EASILY UNDERSTOOD BY THE COMMUNITY, CITY STAFF, COUNCIL, PLANNING COMMISSION AND APPLICANTS ALIKE.

Introduction Cont'd...

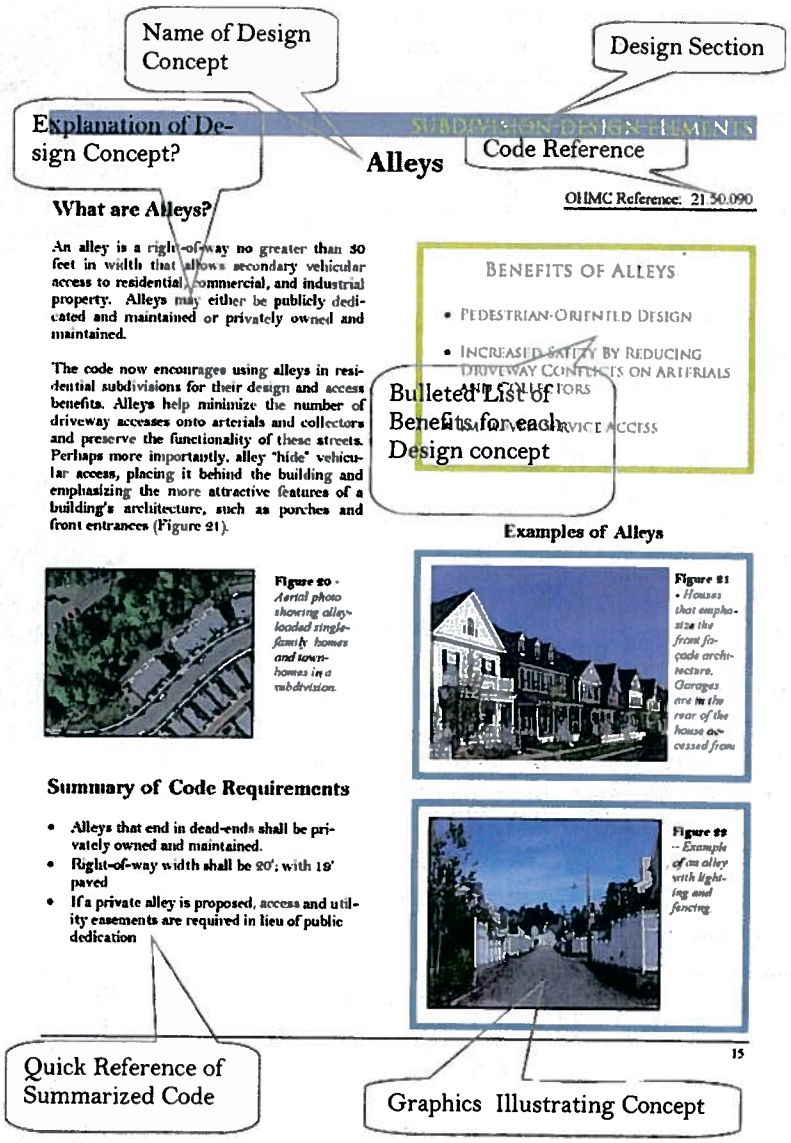
The Subdivision Design Manual is a guide for applicants and the community which illustrates the design concepts embodied in the code.

The Subdivision Design Manual is the beginning of a conversation about high quality design in residential subdivisions and PRDs in Oak Harbor. Because this document does not hold regulatory authority, nor is a policy statement of the City, it may be updated administratively by City staff as refinements are identified through the review of subdivisions or through conversations with applicants and the community. For the complete code requirements or language please refer to the Oak Harbor Municipal Code. In the case of a conflict between this document and the Oak Harbor Municipal Code, the code shall prevail.

How to use this document

This document is divided into two basic parts: the first part is "Subdivisions" which illustrates the design concepts pertaining to residential subdivisions and the second is "PRDs" which illustrates the design regulations in the PRD code. Within each of these parts, the Subdivision Design Manual is organized by design concept (streets, street trees, pedestrian connections etc.). Because the design requirements for subdivisions in Title 21 of the code also apply to PRDs, applicants for a PRD will want to be aware of the subdivision design concepts illustrated herein. For this reason, the design manual discusses the subdivision design elements first, even though the PRD chapter of the code (19.31) occurs before Title 21 (Subdivisions).

Design Concept Page Example



Introduction Cont'd...

Within the document , each design concept has its own section with a title, explanation, summary of requirements, and graphics illustrating these concepts.

- **What is *Design Concept X*?** This section defines the particular design concept and describes what that concept is intended to do. For instance, if the design concept is narrow streets, then this section will describe what narrow streets are and what narrow streets are intended to do.

- **Summary of Code Requirements.** This section provides a bulleted list of code requirements for quick reference for readers. A complete list of requirements is contained in the code itself.

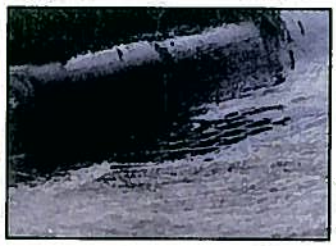
- **Benefits of *Design Concept X*.** This section names a few of the community benefits of the particular design concept in question and helps answer the question "why is design concept X a 'good' idea?"

- **Examples of *Design Concept X*.** This section is the graphic illustrations of each design concept and the code requirements associated with each design concept. Also shown in this section are examples of less-than-desirable design so that applicants and the community can understand what the design concept is and is not intended to look like.

CONCEPT

In this example, the design concept is narrow streets. Narrow streets reduce or eliminate on-street parking in favor of adding in landscape strips, increasing sidewalk widths or adding bike lanes.

BENEFITS



One benefit of narrow streets is they are intended to reduce the amount of pavement thereby further reducing the amount of stormwater pollution and also the public infrastructure and funds needed to treat it.

EXAMPLES

Narrow streets allow more amenities within the right-of-way such as room for sidewalks and landscape strips. This picture shows sidewalks and landscaping along the street.

SUBDIVISION DESIGN ELEMENTS

2009

CITY OF OAK HARBOR

Local Residential Streets - Narrow Section

OHMC Reference: Table 21.50-1

What is a Narrow Street Section?

A narrow street is one that is 28 feet in width measuring from face-of-curb to face-of-curb. Wide streets are 36 feet in width measuring from face-of-curb to face-of-curb. The code now offers a choice in residential street design, between a narrow street or a wide street.

The options for a narrow street section are either on-street parking on one side or two 4' bike lanes and no parking. The options for a wide street allow for parking on both sides or parking on one side and 4' bike lanes on both sides. Applicants may also propose designs which vary from the standard sections through an "Adjustment" process (See *Alternative Street Design*).

More often than not, there is an excess of on-street parking in residential subdivisions. Some of the excess parking can be made better use of in the form of landscape strips or wider sidewalks. The intent of providing a narrow street design is to reduce stormwater impacts, and lower costs to the City and applicants.

Benefits of Narrow Streets

- Increased Sustainability, Through Reduced Stormwater Runoff
- Greater Design Flexibility for Applicants
- Reduction in Hard Surface Maintenance Costs

Summary of Code Requirements

Table 21.50 - 1 requires the following essential elements for a narrow street:

- Two 10' travel lanes and either an 8' parking lane or two 4' bike lanes for a total of 28' from face-of-curb to face-of-curb width (Figure 1)
- 5' wide sidewalk and 5' wide landscape strip on each side of the street (Figure 1)
- 50' right-of-way width

Example of Narrow Streets

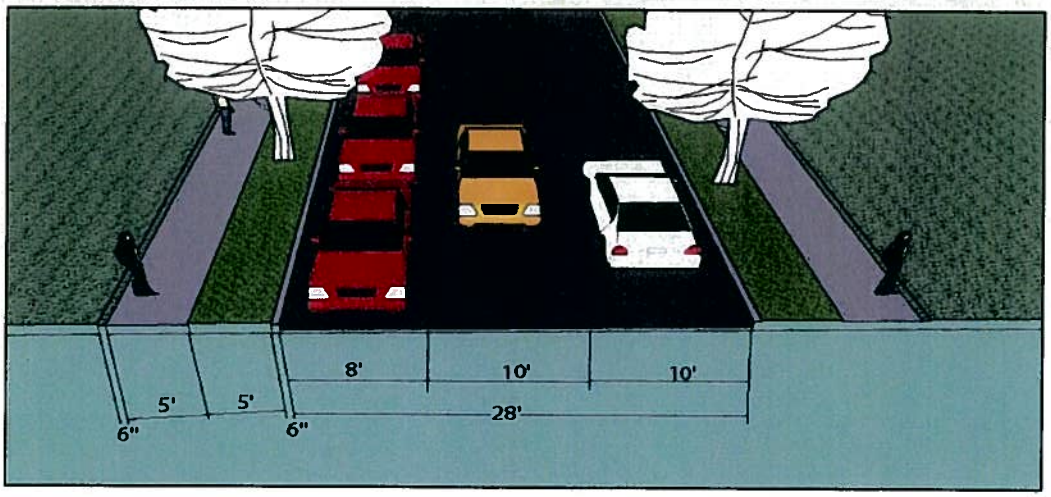


Figure 1 - *Rendering showing a narrow street section with two 10' travel lanes and one 8' lane of on-street parking. Landscape strips and sidewalks are on both sides of the street.*

Local Residential Streets - Wide Section

OHMC Reference: Table 21.50-1

What is a Wide Street Section?

A wide street is one that is 36 feet in width measuring from face-of-curb to face-of-curb. Narrow streets are 28 feet in width measuring from face-of-curb to face-of-curb. The code now offers a choice in residential street design, between a narrow street or a wide street.

The design options for a wide street allow for parking on both sides or parking on one side and 4' bike lanes on both sides. Applicants may also propose designs which vary from the standard sections through an "Adjustment" process (See *Alternative Street Designs*).

The intent behind providing a wide street is to offer a choice in residential street design. Wide street sections allow more on-street parking to be made available to residents and visitors.

Benefits of Wide Streets

- On-Street Parking on Both Sides of the Street
- Potential For On-Street Vehicle Parking and Bike Lanes Within The Same Street Section

Summary of Code Requirements

Table 21.50 - 1 requires the following essential elements for wide streets:

- Two 10' travel lanes and either two 8' parking lanes or an 8' parking lane on one side and 4' bike lanes on both sides for a total of 36' from face-of-curb to face-of-curb width (Figure 2)
- 5' wide sidewalk/path and 5' wide landscape strip on each side of the street (Figure 2)
- 60' right-of-way width (Figure 2)

Example of Wide Streets

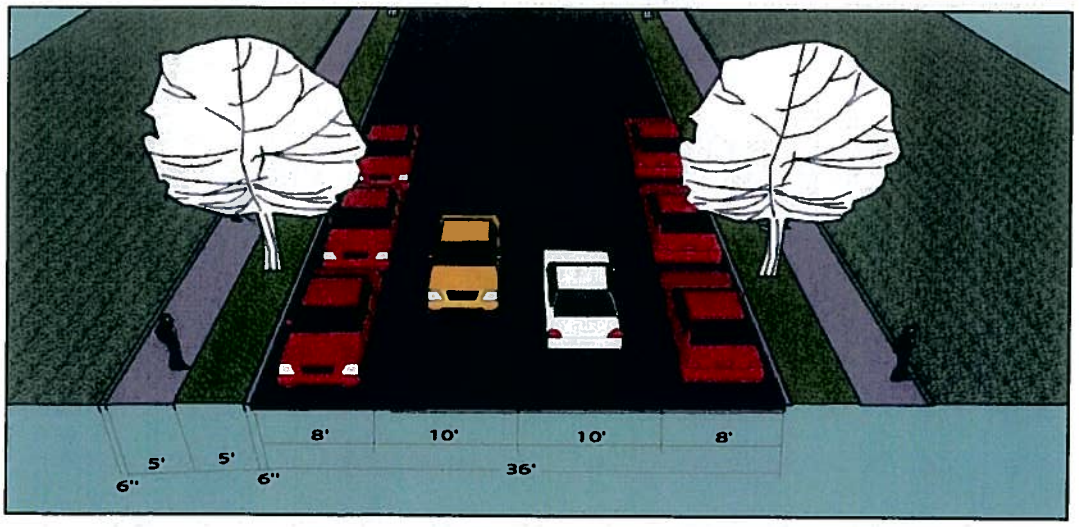


Figure 2 - *Wide street section with two 10' travel lanes and two 8' lanes of on-street parking. Landscape strips and sidewalks measuring 5' each on both sides of the street.*

Alternative Street Design

OHMC Reference: 21.60.060 - 21.60.090

What is Alternative Street Design?

The City of Oak Harbor recognizes that there are ways to design a street different from the code specified standard while continuing to meet circulation and urban design objectives. Therefore, the City has created a process for reviewing alternative street designs for Local Residential streets which do not meet the narrow or wide standard specified in Table 21.50-1. The review of alternative designs may be through an adjustment (processed administratively) or a waiver (processed in a Planning Commission public hearing, with the final decision made by City Council).

Adjustments are for alternative street designs which have all of the essential street elements, but vary from the prescribed placement or dimension of the elements. Essential elements are pedestrian facilities on both sides of a street, adequate parking, a landscaping element, and two travel lanes.

The intent is to foster those proposed designs that will provide an equal or better street design for vehicles and pedestrians without compromising safety or functionality. If the proposed design does not include one or more of the essential elements it cannot be reviewed administratively and must be a formal wavier to be reviewed by the Planning Commission and City Council under a Type IV review process.

Summary of Code Requirements

- Applicants may request to vary from the standard design listed in Table 21.50-1 for a Local Residential street section.
- Requests may be reviewed administratively through an adjustment application or,
- Requests that do not contain one or more of the essential elements shall fall under a Type IV wavier process reviewed by Planning Commission.
- Requests to vary must be made at the time of Preliminary Plat or PRD review.

Benefits of Alternative Street Design

- Flexibility in design while meeting safety & functionality standards
- Street design which complements neighborhood aesthetics

Examples of Alternative Street Designs

Source: www.pedbikeimages.org Dan Burden

Figure 3 - *An example of a street design requiring an adjustment because it has all essential elements but uses a center landscape strip.*

Figure 4 - *An example of a street requiring a waiver because it does not have two of the essential elements; landscaping strips and two 10' wide travel lanes. It is a one-way street instead with landscaping outside of the ROW.*

Alternative Parking Designs

OHMC Reference: 21.60.070(1)(a)(ii)

What is an Alternative Parking Design?

An alternative parking design is public parking which is located off-street in residential subdivisions. Parking may be provided in the form of head-in parking, diagonal parking, parking courts, or parking in side alleys.

Providing sufficient parking to meet the needs and activities of the residents and visitors of a subdivision is essential. These designs provide applicants the flexibility to locate required public parking in off-street locations. Alternative parking designs are necessary when on-street parking is eliminated due to narrower street sections, narrow lots or a combination of the two.

Alternative parking design is considered an "Adjustment" request per OHMC 21.60.070 which is a Type II review process and would usually be part of a request for an alternative street design which eliminates or reduces on-street parking.

Summary of Code Requirements

- 1 public parking space per 2 residential units must be provided.
- Parking spaces must meet size and access specifications of OHMC 19.44.110.
- Public parking spaces must be interspersed throughout the subdivision.
- Public parking spaces must be within convenient walking distance to all units.

Benefits of Alternative Parking Designs

- Flexibility in the Placement of Parking, Creating Better Designed Neighborhoods
- Proximity to all Residential Units
- Emphasis on Efficient Parking Arrangements

Examples of Alternative Parking Designs

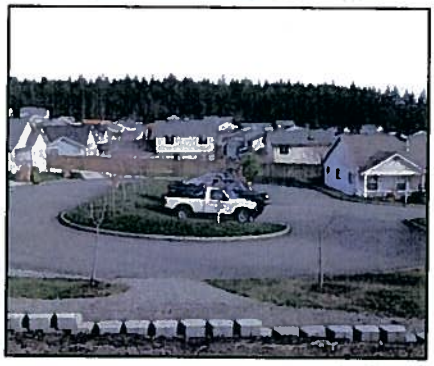


Figure 5 - *Parking court at the end of a cul-de-sac that provides approximately 8 off-street parking spaces.*

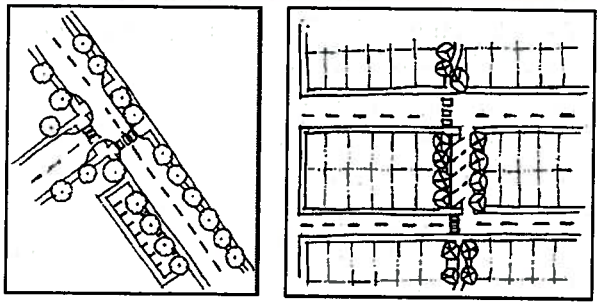


Figure 6 - *Examples of alternative public parking designs. A parking court is illustrated on the left and parking in side alleys on the right.*

Local Residential Streets - Grid or Modified Grid

OHMC Reference: 21.60.100

What is a Grid or Modified Grid Street Pattern?

Code section 21.60.100 requires that residential streets assume a grid or modified grid pattern. A street pattern that is a grid means that blocks are rectilinear in shape and all intersections are four-way. A modified grid is a grid system that also contains rectilinear blocks but intersections can be either three-way or four-way stops (Figure 7). A grid or modified grid street pattern must be used for subdivisions or short subdivisions.

The grid (or modified grid) pattern increases the number of connections and, therefore, route options for all travel modes, which is especially important for pedestrians and bicycles. Grid street patterns encourage walking and bicycling and reduce reliance on automobiles resulting in less environmental impacts as compared to curvilinear street patterns (Figure 8).

Summary of Code Requirements

- A grid or modified grid pattern must be used for all local residential streets (Figure 7).
- Blocks shall be rectilinear.
- A curvilinear street pattern (Figure 8) may only be used when the site contains the following factors per 21.60.100:
  a. Steep topography or critical areas are present on-site.
  b. Improvements on adjacent properties inhibit a connection.

Benefits of a Grid or Modified Grid Street Pattern

- Greater Connectivity
- Walkability / Bikability
- Efficiency in Land Use

Examples of Grid Street Patterns

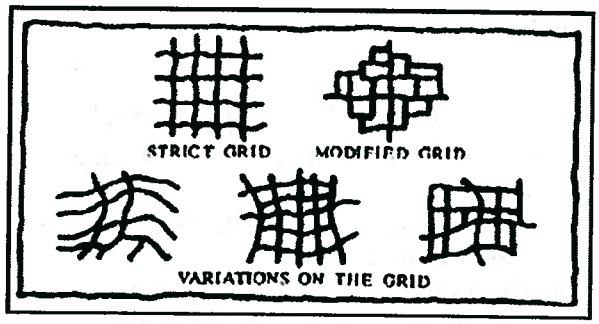
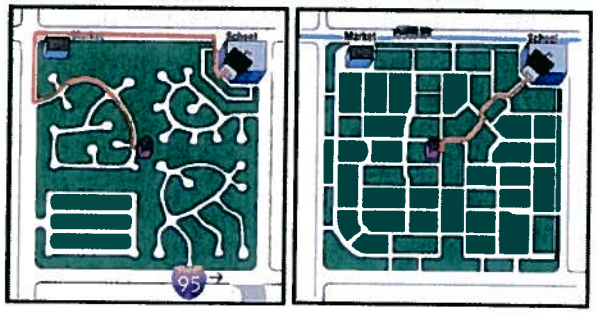


Figure 7 - *Strict grid, modified grid and variations on the grid are all acceptable street layout alternatives in the code.*



Curvilinear **Grid/Modified Grid**

Figure 8 - *Example of the difference in connectivity between a grid and a curvilinear street pattern. Connectivity is especially important for bicycles and pedestrians.*

Local Residential Streets – Limitations on Dead-Ends

OHMC Reference: 21.60.110

What are the Limitations for Dead-End Streets?

By its nature, a dead-end street does not connect with adjacent development. Cul-de-sacs, are the most common type of dead-ends in residential subdivisions. The code limits the number of dead-ends to exceptional circumstances of steep topography, critical areas, and existing development.

By reducing the number of dead-end streets in subdivisions, more route options can be offered to vehicles, pedestrians, and bicycles thereby reducing trip length and encouraging walking and biking. Walking and biking have positive effects on the environment and personal health. The resulting subdivisions, therefore, are not "islands unto themselves," but are connected to adjacent uses.

Summary of Code Requirements

- Dead-ends are restricted to the following instances:
  a. Steep topography or critical areas present on-site.
  a. Dead-end is no longer than 400'.
  b. An alternative turn-around design is approved by the City Engineer and Fire Department.
  c. A pedestrian/bike connection has been provided at the end of the dead-end.
  d. Dead-ends may be allowed when they are temporary and a future connection is planned.

Benefits of Limits On Dead-End Streets

- Greater Connectivity
- Reduces Congestion On Collectors and Arterials
- Walkability/Bikability

Examples of Dead-End Streets and Dead End Alternative Designs

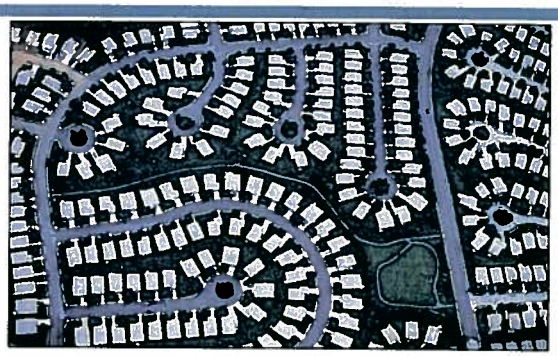


Figure 9 - *Subdivision with extensive dead end design that prohibits connections and accessibility across land uses.*

Figure 10 - *This graphic of the street system in Oak Harbor shows the prevalence of dead-end streets denoted by a red dot.*

Local Residential Streets – Limitations on Dead-Ends

OHMC Reference: 21.60.110

Examples of Dead-End Streets and Dead End Alternative Designs

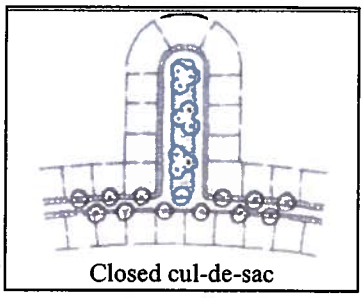


Figure 11- *Example of a closed cul-de-sac with a landscape strip in the center.*

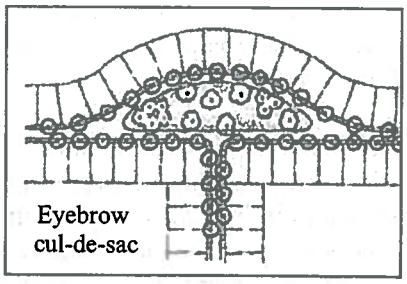


Figure 12- *Example of an eyebrow cul-de-sac that provides a landscape island and sufficient access to all lots.*

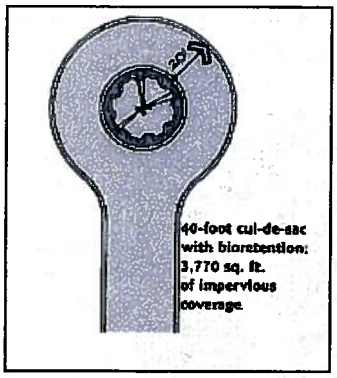


Figure 13– *Cul-de-sac with a landscape island that also doubles as a bioretention facility.*

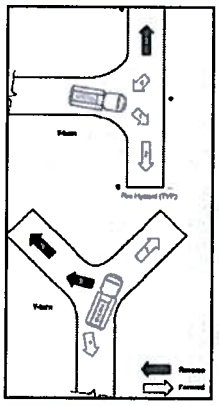


Figure 14- *Examples of a "Y" turnaround and a "T" turnaround.*

Source: Occupational Safety and Health Administration, Fire Service Features of Buildings and Fire Protection Systems, 3256 –2006.

Alleys

OHMC Reference: 21.50.090

What are Alleys?

An alley is a right-of-way that allows secondary vehicular access to residential, commercial, and industrial property. Alleys may either be publicly dedicated and maintained or privately owned and maintained.

The code now encourages using alleys in residential subdivisions for their design and access benefits. Alleys help minimize the number of driveway accesses onto arterials and collectors and preserve the functionality of these streets. Perhaps more importantly, alleys "hide" vehicular access, placing it behind the building and emphasizing the more attractive features of a building's architecture, such as porches and front entrances (Figure 16).

Benefits of Alleys

- Pedestrian-Oriented Design
- Increased Safety By Reducing Driveway Conflicts on Arterials and Collectors
- Improved Service Access

Figure 15 - *Aerial photo showing alley-loaded single-family homes and town-homes in a subdivision.*

Summary of Code Requirements

- Alleys that end in dead-ends shall be privately owned and maintained.
- Right-of-way width shall be a minimum of 20'; with 19' paved.
- If a private alley is proposed, access and utility easements are required in lieu of public dedication.

Examples of Alleys

Figure 16 *Houses that emphasize the front façade architecture. Garages are in the rear of the house accessed from an alley.*

Figure 17 *Example of an alley with lighting and fencing.*

Access Easements - Shared Drives and Private Streets

OHMC Reference: 21.60.120
21.60.130

What are Shared Drives & Private Streets?

A shared drive is a privately owned right-of-way for vehicular access for a maximum of four residential units. A private street is also a privately owned right-of-way, but it allows vehicular access for up to nine residential units. The code allows for access to residential lots in a short subdivision by way of a shared drive or private street when full street improvements are not needed to serve the development.

The purpose of the new provisions is to optimize the opportunity for efficient and compatible use of infill parcels where full public street improvements are not needed to serve the development (Figure 18).

Summary of Code Requirements

- Only allowed through short subdivision and when public streets are not necessary.
- Must meet the design requirements in Table 21.60 - 1.
  a. Shared Drives - minimum of 16' for 2 units or 20' for 3 or 4 units.
  b. Private Streets - minimum of 20', 5' side walk on one side, maximum length of 400', turn-around required if more than 150' in length.
- The total number of units served by a private street must not exceed nine. No more than 4 units may be served by a shared drive.

Benefits of Shared Drives and Private Streets

- Encourages Efficient Infill Development
- Reduced Maintenance Costs for the City

Examples of Shared Drives and Private Streets

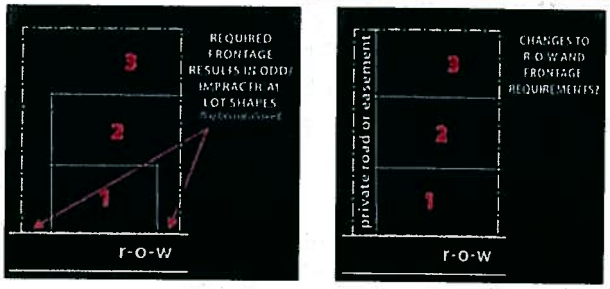


Figure 18 - *The above graphics illustrate how access by private streets or shared drive (right) can create better lot arrangements than requiring access from public right-of-way (left).*

Lot Dimensions

OHMC Reference: 21.50.100

Minimum Lot Dimensions

Section 21.50.100 sets minimum size and shape requirements for lots in order to create well-ordered and efficient subdivisions and avoid highly irregular lot sizes and shapes (Figure 21). Orderly lots promote efficient deliver of public services such as water, sewer, and roads.

Summary of Code Requirements

- Minimum lot width of 60' at the building line (Figure 19).
- Depth of the lot should not be more than 3x the width of the lot (Figure 19).
- Lots must meet the minimum dimensional requirements for the zoning district they are located in.
- All lots shall have 30' of frontage onto a public or private street (Figure 19).
- Side lot lines should be at right angles to street lines or radial to curved streets.
- Side and rear lot lines shall be straight, not curved.
- All lot corners that intersect public right-of-way shall have a minimum radius of 15'.

Benefits of Lot Arrangement

- Avoid Irregular Lot Sizes and Shapes
- Promotes More Uniform Property Value
- Orderly and Efficient Delivery of Public Infrastructure

Examples of Lot Requirements

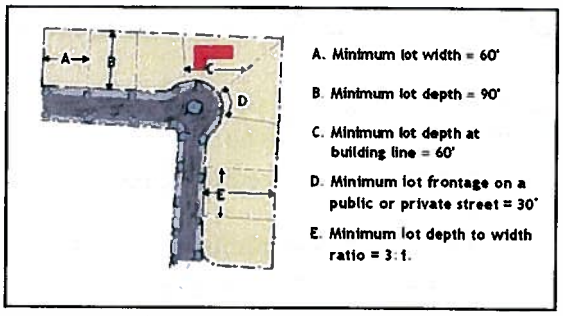


Figure 19 – *Graphic depicting 30' minimum frontage, 60' at bldg line, and minimum lot depth and width requirements.*

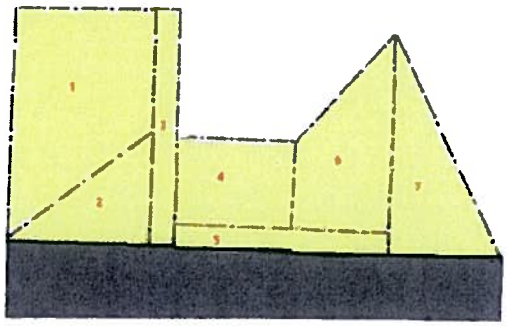


Figure 20 *Graphic depicting irregular shaped and sized lots.*

1. Lot has no street frontage, creating access and utility service difficulties
2. Acute angles make much of this lot unbuildable
3. Lot is too narrow to be buildable
4. Lot is land-locked, creating utility and access difficulties
5. Lot is not deep enough to be buildable
6. Lot is land-locked, creating utility and access difficulties
7. Acute angles make much of this lot unbuildable

Block Size & Configuration

OHMC Reference: 21.60.040
21.60.050

What is a Block?

A block is a group of lots, tracts, or parcels surrounded on at least three sides by public rights-of-way or easements for pedestrian travel (Figure 22). Block length is defined as being the perimeter distance around a block, divided by two. Block length in the code is limited to 800'. All blocks over 800' require mid-block pedestrian/bike connections.

Suburban development over time has resulted in some subdivisions containing very long blocks (Figure 23). When these are connected with other large blocks in adjacent developments they create "super blocks" (Figure 21). Both long blocks and super blocks tend to be an impediment to pedestrians and bicycles, making it less likely that someone will walk or bike to their destination. Setting a maximum block length helps to promote walkable/bikeable neighborhoods. In the example below (Figure 21), the distance between the blue dots, or the red dots is short, but the walking distance is very long due to the oddly shaped blocks.

Figure 21 - *Example of super blocks which create navigational challenges for pedestrians and bikes. Because of these oddly shaped blocks, the traditional measurement of a block (intersection-to-intersection, in green) is inadequate whereas the walking distance in yellow is very long. The new definition (perimeter distance divided by two) takes into account walking distance.*

Summary of Code Requirements

- Blocks shall be deep enough to provide two tiers of lots unless otherwise exempt per OHMC 21.60.040.
- Blocks shall be a maximum of 800' in length.
- Blocks may be up to 1000' in length provided they have a mid-block connection and exceptional circumstances (topography, critical areas, adjacent development.).

Benefits of Regulations for Block Size and Shape

- Improved opportunities for active transportation options, which help improve community health.
- Subdivisions consistent with the community's historic development patterns.
- Encourages green forms of transportation

Examples of Blocks

Figure 22 - *The outline shows a block as defined in the code being surrounded on at least 3 sides by public rights-of-way.*

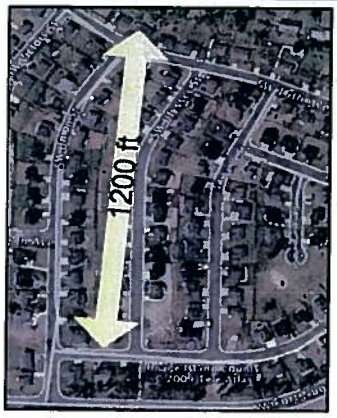


Figure 23 – *Example of a long block that doesn't provide easements or pedestrian access to break up the length of the block. Such a long block inhibits connectivity and discourages walking.*

Corridor Buffers

OHMC Reference: 21.60.180 - 21.60.200

What is a Corridor Buffer?

The code requires a corridor buffer of at least 25' in width along all Minor Arterial roads abutting residential subdivisions (Figure 24). A corridor buffer is a dedicated tract that may incorporate either natural vegetation, applicant proposed vegetation, or both. The purpose of the corridor buffer is to minimize the impact of the roads on adjacent residential uses, encourage tree preservation and planting, and to create visually attractive corridors along these roadways. The combination of required trees and supplemental plantings should create a continuous screen that is sufficient to buffer residences from the adjacent roadway.

In cases where windthrow after clearing may affect existing trees, hazardous trees must be removed (Figure 26) and new trees planted to achieve a density of 1 tree per 400 sq. ft. (Figure 26).

Figure 25 - *Example of a landscape buffer containing a mix of understory and overstory vegetation.*

Summary of Code Requirements

- Corridor buffers are not required in short subdivisions.
- Corridor buffers shall be designated as a separate tract on the face of the plat and maintenance responsibilities are assigned to homeowner's associations.
- Buffers shall contain overstory, understory, and groundcover vegetation, with a tree density of 1 tree per 400 sq. ft.
- Natural vegetation not prone to wind throw or blow down may be retained in conjunction with OHMC 21.60.190(1).
- Buffers shall contain 100% groundcover.

Benefits of Corridor Buffers

- Separates and Screens Residential Properties From Adjacent Roads
- A Way to Preserve Existing Trees
- Aesthetically Enhances Road Corridors

Examples of Corridor Buffers

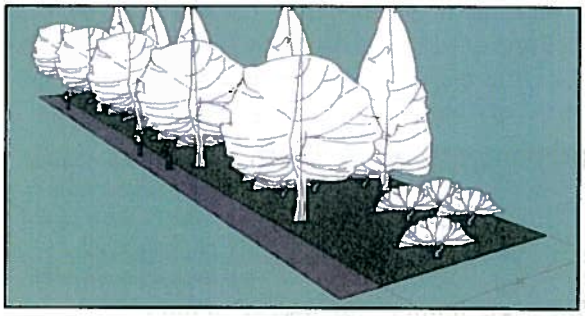


Figure 25 - *Rendering illustrating what a 25' corridor buffer may look like at maturity. Buffers should be designed to include shrubs that provide understory and screening.*

Figure 26 - *Photo of an undesireable corridor buffer.*

P32

Pedestrian / Bike Connections

OHMC Reference: 21.60.210 - 21.60.240

What is a Pedestrian/Bike Connection?

A pedestrian/bike connection is a through fare intended for pedestrian and bicycle travel connecting adjacent or public uses, recreational or open space, and activity centers.

The code requires pedestrian/bike connections in the middle of blocks over 800' in length, if a trail or connection is shown on the Comprehensive Plan that affects the subject site, and to all adjacent uses. Mid-block connections that cross more than one block and intersect streets must meet the specific design and safety features of the code (Figure 31).

The pedestrian/bike connections will lead to more route options for these modes, making it more likely that people will choose to walk and bike either for recreational purposes or for work trips. The prevalence of walking/biking facilities has a direct connection to people's physical activity and health. The standard designs of these facilities will ensure a high level of design and consistency across facilities promoting walking and biking.

Summary of Code Requirements

When Connections are Required

- If a pedestrian/bike connection or trail is shown on the Comprehensive Plan.
- If it is necessary to provide a non-circuitous access to a park, open space, activity center, or adjacent subdivision.
- Required for blocks that are over 800' long; also called "mid-block" connections.
- To all adjacent uses at no greater than 800' intervals.

Summary of Code Requirements

Design

- The code requires that the standard design of the pedestrian/bike connection be a 10' wide path, with 5' wide landscape strips on either side and 6' high fencing (Figure 27).

BENEFITS OF PEDESTRIAN/BIKE CONNECTIONS

- ADDITIONAL ROUTE OPTIONS
- CONNECTS ADJACENT USES
- PROVIDES ACCESS FOR SCHOOL-AGED AND POPULATIONS WITHOUT CARS.

Examples of Pedestrian/Bike Connections

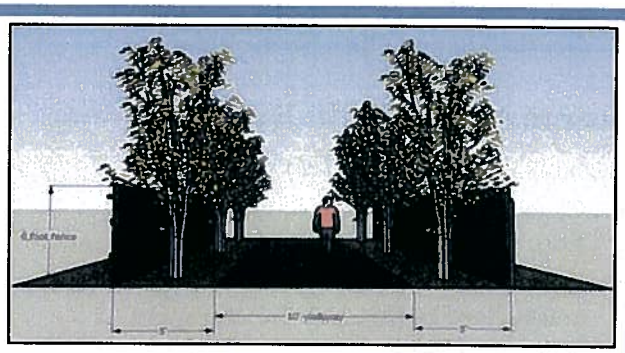


Figure 27 - *Rendering showing the standard design of a pedestrian/bike connection. The design incorporates a 10' walkway, 5' landscaping on either side, and fencing.*

Figure 28 - *Example of homes fronting on a pedestrian connection..*

Pedestrian / Bike Connections Cont'd...

OHMC Reference: 21.60.210 - 21.60.240

Summary of Code Requirements

Design Cont'd...

- Connections shall be within a 20' wide easement.
- Residential lots are encouraged to front on pedestrian connections (Figure 28)
- The connection shall be either concrete or asphalt and a minimum width of 10'.
- A landscape strip of 5' shall be provided on either side with 100% ground cover and deciduous trees planted at 30' intervals. There shall be no less than 2 trees on each side of the connection.
- Fencing limited to 6' in height is required along the edge of all residential lots adjacent to a connection.
- All connections must be publicly accessible by way of easement or public dedication.
- All trails shall be designed per the Parks, Recreation and Open Space Plan.

Figure 29 *Picture of single-family houses adjacent to a mid-block pedestrian / bicycle connection.*

Summary of Code Requirements

Safety

- Clear visibility for the length of the connection. Must be able to see from end-to-end.
- Downward directed lighting along the path and bollard lighting at the entrances.
- Signage at entrances.
- A 10' taper at the intersections of the connections and streets for clear vision.

Mid-block connections

- Adequate site distance for stopping must be provided.
- Signage warning of a crossing.
- Crosswalk delineation (Figure 31).
- Staggered bollards at all intersections of crossings and rights-of-way.

Figure 30 *Example of fencing and landscaping alongside the connection to buffer residences from pathway users.*

Summary of Code Requirements

Maintenance

- Connections shall be maintained by HOA's.
- Responsibility and maintenance designation must be on the face of the plat.

Figure 31 *Mid-block safety features in this graphic include a center refuge island and different crosswalk materials*

Stormwater Pond Landscaping & Design

OHMC Reference: 21.50.250 - 21.60.250

What is a Stormwater Pond?

Stormwater ponds have important functions our community including flood protection for property and pollutant removal to protect our waterways. These ponds and their associated infrastructure, which can include above ground swales, have the potential to take up large tracts of land and negatively impact the visual quality of our neighborhoods. To manage these potential impacts, design regulations have been adopted to require specific landscape treatments that make these facilities more visually appealing while also maintaining their important functions.

Stormwater ponds should look attractive, rather than functional. To do this, the code requires that ponds be landscaped and regulated to the types of material used for the pond. Stormwater ponds can be improved by locating them near open space and using natural materials to incorporate them as much as possible as an amenity of the neighborhood.

Summary of Code Requirements

- Shall be located near open space where possible to create the visual effect of larger open spaces.
- Pond materials shall utilize natural materials such as brick, stone, gabions, and architectural blocks.
- All masonry in contact with the pond water must be designed to withstand spalling.
- Stormwater ponds shall be designed with shallow internal slopes (3:1 or flatter) whenever feasible.
- A perimeter landscape area of a minimum of 10' in width is required around all stormwater ponds.
- Vegetation shall provide 100% groundcover within 2 years.
- A mix of evergreen and deciduous trees with a planting density of 1 tree per 250 sq. ft.
- The pond area and surrounding landscape shall be placed in a tract to be owned and maintained by the homeowners association.

Benefits of Stormwater Pond Landscaping & Design

- Improved aesthetics of stormwater facilities
- Limit the need for safety fencing around stormwater ponds
- Opportunities to integrate stormwater ponds into the open space and trails system within the community.

Examples of Stormwater Ponds

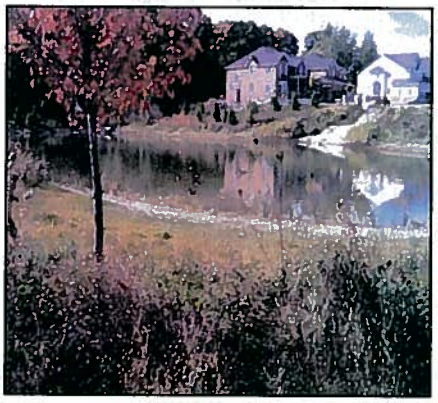


Figure 32 - *Photo illustrating a stormwater pond of high quality design because it looks like a natural feature, includes landscaping, and is an amenity to the neighborhood.*

Figure 33 - *Example of a stormwater pond that is poorly designed as it is lacking aesthetic appeal.*

Stormwater Pond Landscaping & Design

OHMC Reference: 21.50.250 - 21.60.250

Summary of Code Requirements Cont'd...

- A landscape plan shall be submitted for the pond.
- To avoid the use of plain, smooth concrete, architectural detail, fractured finishes, exposed aggregate or cast-in patterns or textures shall be used.

Figure 34 *Pond using plain, smooth concrete blocks, rather than attractive material. Landscaping is also sparse around the perimeter.*

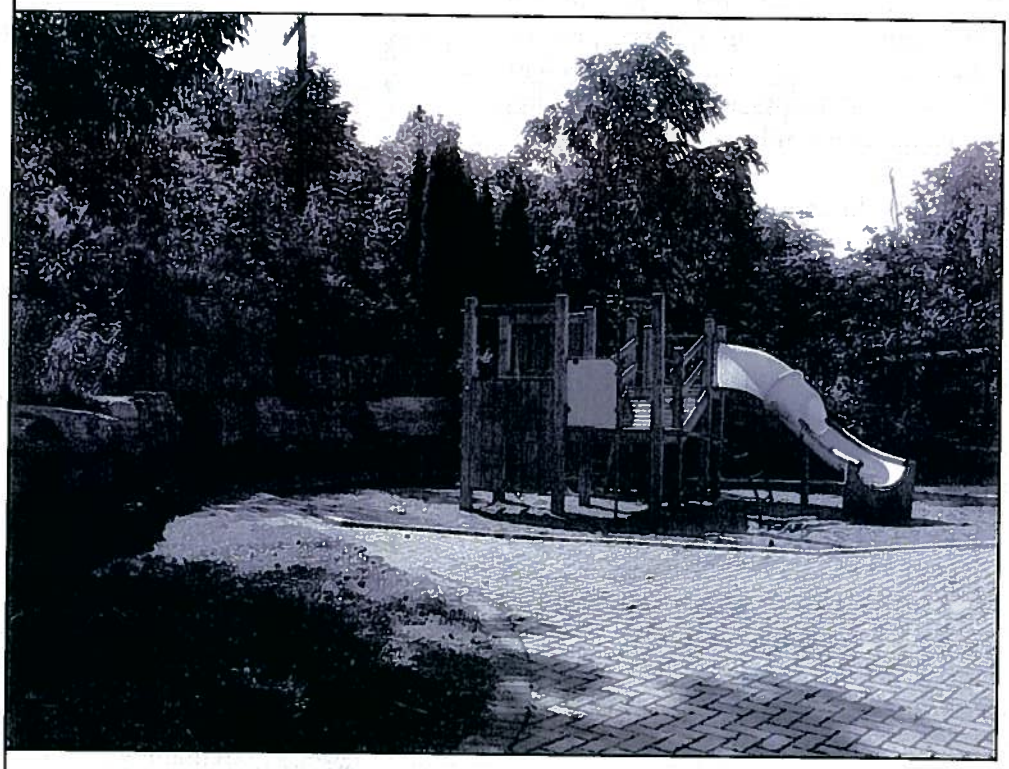
Figure 35 *Landscaped perimeter around pond with mix of groundcover plants and shrubs.*

Figure 36 *Fencing that is designed to allow visual access to the pond.*

Figure 37 *Example of an exposed aggregate wall. This is illustrative of materials that may be used in pond design.*

Figure 38 *Example of a pond that is made into a neighborhood amenity and includes a trail.*

PRD DESIGN ELEMENTS



Open Space - Active

OHMC Reference: 19.31.120

What is Active Open Space?

Planned residential developments (PRD) are required to have 10% of the gross site area devoted to open space. This open space is divided between "passive" open space and "active" open space. Half of all common open space must be active open space. Active open space provides opportunities for physical activity for residents of a PRD in contrast to passive open space that preserves natural areas and scenic amenities.

The code intends that active open space be visible, useable, and accessible to residents of PRDs. Staff analysis done in 2008 shows that some open spaces in Oak Harbor lack these qualities. In response to this, the code now requires that more amenities be provided within active open space in the form of an activity center, benches, lighting, and trash receptacles.

Summary of Code Requirements

- 50% of all open space shall be active.
- An activity center (play structures, tennis courts, basketball courts, etc.) must be provided (Figure 39).
- Must be accessible via a pedestrian connection. (Figure 39).
- Pedestrian-oriented lighting (Figure 39).
- Minimum size of 5,000 sq. ft. (Figures 43 and 45).
- Minimum width of 50' and depth of 90' (Figure 43).
- Minimum street frontage of 40'.
- Seating (Figure 41).
- Signage.
- Trash receptacle(s) (Figure 44).

Benefits of Active Open Spaces

- Recreational opportunities
- Promotes healthy lifestyles
- High Quality neighborhood design

Examples of Active Open Space Design

Active open space providing several of the code elements such as lighting, pedestrian connections, and a play structure.

Figure 39

Active open space with several play structures and covered seating provided for pedestrians.

Figure 40

Open Space - Active Cont'd...

OHMC Reference: 19.31.120

Figure 41
Seating provided in an open space for people to rest, read, or watch the activity around them.

Figure 42
Up to 50% of stormwater ponds may count as open space within a PRD, provided it meets the requirements of 19.31.120(8).

Figure 43
Active open space that is highly visible and accessible, because it has street frontage and a pedestrian connection.

Figure 44
Trash receptacle in open space that is of high quality design.

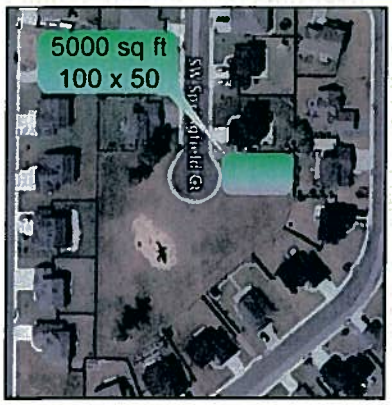


Figure 45
Example of minimum open space size in comparison to residential lot dimensions.

Non-Dominant Garages

OHMC Reference: 19.31.190(3)(a-c)

What are Non-Dominant Garages?

PRD's allow applicants the flexibility to vary from zoning standards. Applicants commonly request smaller lots and reduced setbacks in PRDs. On these lots, garages can become the focal point of the subdivision, leading to poor urban design and auto-dominated, rather than people-centric, design. The PRD criteria in 19.31.190 therefore, emphasize the front entrances of residential buildings, which are more attractive than the garage. This regulation is meant to refocus the residential streetscape on quality design and pedestrian-scaled architecture.

Benefits of Non-Dominant Garages

- Improved, pedestrian-oriented streetscape.
- Sense of place
- More eyes on the street, helping promote safety

Summary of Code Requirements

If smaller lot sizes or decreased setbacks are proposed from what is required by the underlying zoning, buildings on these lots must meet requirements (a) to (c) below or requirement (d), or requirement (e):

(a) **Garage walls facing the street must be no closer than the wall containing the main entrance, or to the edge of a covered porch or deck if provided.**

(b) **A garage facing the street must not be more than one-half of the façade length.**

(c) The main entrance must be prominent, easily visible and directly accessible from the street frontage.

(d) No two adjacent buildings on the same side of the street may have the same front setback. Setbacks must alternate from building to building. Minimum front setback variation must be two feet or greater.

(e) Residential buildings are accessed from an alley at the rear of the lots.

Examples of Garage Architecture

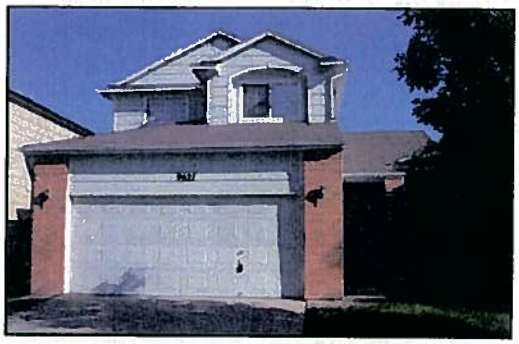


Figure 46 - *Example of projecting garage.*

Figure 47 - *Example of non-dominant garage architecture.*

Alternating Front Setbacks

OHMC Reference: 19.31.190(3)(d)

Why Vary the Setbacks?

On residential street frontages where houses have the same front setback; unbroken "strings" of houses can occur (Figure 50). The monotonous look of residential streetscapes can be reduced by varying the setback of homes. The problem is especially exacerbated in small lot developments, as is typical in PRDs.

Summary of Code Requirements

If smaller lot sizes or decreased setbacks are proposed from what is required by the underlying zoning as part of a PRD, buildings on these lots must meet requirements (a) to (c) below or requirement (d), or requirement (e):

(a) Garage walls facing the street must be no closer than the wall containing the main entrance, or to the edge of a covered porch or deck if provided.

(b) A garage facing the street must not be more than one-half of the façade length.

(c) The main entrance must be prominent, easily visible and directly accessible from the street frontage.

(d) No two adjacent buildings on the same side of the street may have the same front setback. Setbacks must alternate from building to building. Minimum front setback variation must be two feet or greater.

(e) Residential buildings are accessed from an alley at the rear of the lots.

Benefits of Alternating Building Setbacks

- Creates an individual feel to each home on the block
- Mitigates the monotonous, unbroken string of houses
- Improves the aesthetic quality of streetscapes

Examples of Alternating Building Setbacks

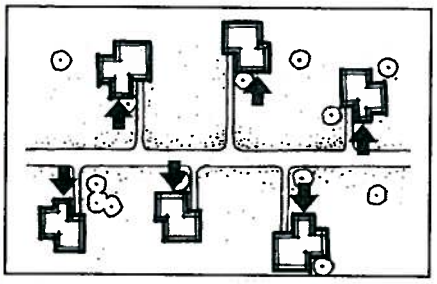


Figure 48 *Neighborhood with varying front setbacks giving the residence and street more visual interest.*

Figure 49 *Neighborhood where all of the houses are set back at the same distance and lacks visual interest and character.*

Alley Loaded Buildings

OHMC Reference: 19.31.190(3)(e)
19.31.190(7)(c)

What is the benefit of a Side or Rear Loaded Garage?

In cases where a smaller lot size than that of the underlying zone is used via the PRD process, an alley or rear garage may be required. Residences which can be accessed by a garage on the side or rear of the building are preferred to those that contain a garage on the front because it enhances the pedestrian streetscape and tucks the garage into a space that is less prominent. As lot sizes decrease, the dominance of garages becomes more pronounced.

Alleys also bring safety value in that they eliminate traffic conflicts when people back out of their driveways onto public roads and sidewalks.

BENEFITS OF ALLEY LOADED BUILDINGS

- REDUCES TRAFFIC CONFLICTS CREATED FROM BACKING OUT OF DRIVEWAYS ONTO PUBLIC STREETS
- PRODUCES A HIGHER QUALITY STREETSCAPE WHICH EMPHASIZES PEDESTRIAN-ORIENTED DESIGN

Summary of Code Requirements

If smaller lot sizes and dimensions or decreased setbacks are proposed from what is required by the underlying zoning, buildings on these lots must meet requirements (a) to (c) (see previous page)or requirement (d)(see previous page), or requirement (e):

(a) Garage walls facing the street must be no closer than the wall containing the main entrance, or to the edge of a covered porch or deck if provided.
(b) A garage facing the street must not be more than one-half of the façade length.
(c) The main entrance must be prominent, easily visible and directly accessible from the street frontage.
(d) No two adjacent buildings on the same side of the street may have the same front setback. Setbacks must alternate from building to building. Minimum front setback variation must be two feet or greater.
(e) **Residential buildings are accessed from an alley at the rear of the lots.**

Examples of Alley Loaded Buildings

Figure 50
Garages at the rear of buildings accessed by an alley.

Figure 51 - *Garages are hidden on alley-loaded homes.*

Enhanced Design

OHMC Reference: 19.31.190(7)

What is Enhanced Design?

PRD's are required to meet either the criteria for enhanced design (summarized below in code requirements) or the criteria for optional site design elements per 19.31.190(8). Enhanced design is building design with articulation and visual distinction. It can occur through a variety of methods ranging from changing and varying the materials used on the exterior to de-emphasizing garages on residences.

Enhanced design works in conjunction with alternating setbacks, non-dominating garages, and alley loaded buildings to create visually interesting residential design. Collectively, they address the problem of monotonous neighborhood designs that are built without any distinguishing characteristics.

Summary of Code Requirements

Enhanced design is met through the following:

- A variety of exterior building materials such as brick, stucco, stone, and wood used as primary siding or as accent materials on front facades (Figure 52) or;
- Building articulation (offsetting walls, inclusion of windows, changes in material types) on side and rear walls of buildings (Figure 54).
- Side or rear loaded garages.
- Other applicant proposed building design elements.

Benefits of Superior Architecture

- Encourages Quality Neighborhood Design
- Helps create a sense of place for residents
- Promotes pedestrian oriented design

Examples of Superior Architecture

Figure 52

Example of houses displaying superior architecture, through use of different materials and colors.

Figure 53

Example of architecture with no distinguishing features (at left) and architecture using different exterior building materials, changes in color, and offsetting building walls (at right).

Figure 54

Critical Area Integration

OHMC Reference: 19.31.130
19.31.190(2), 19.31.190(8)(e)

How do you integrate a critical area into a PRD?

A critical area is an ecologically sensitive area that provides a variety of valuable and beneficial biological and physical functions that benefit the city and its residents. "Critical areas" include any of the following areas or ecosystems: critical aquifer recharge areas, fish and wildlife habitat conservation areas, geologically hazardous areas, garry oak trees, and wetlands.

When a critical area is located on a development site, it is often overlooked as a potential asset to the development and is instead regarded as a burden that development often tries to build around. The intent behind the code is to approach preserving critical areas with a different frame of mind and utilize them as an asset of the subdivision by making them a feature, rather than an after-thought.

Summary of Code Requirements

- Critical areas shall be preserved and incorporated into the open space of the PRD.
- Preserved natural areas, such as wetlands, streams, and woodlands may count as passive open space.
- *Optional Criteria:* The project will not only preserve, but enhance or rehabilitate the functions and values of a critical area of the site, such as significant woodlands, wildlife habitats, streams or wetlands, subject to the recommendations in an approved critical areas report.

Benefits of Critical Area Integration

- Provides important habitat and biological functions for natural systems
- Offers environmental educational opportunities for adults, children, and groups
- Makes environmental feature part of the neighborhood , not an af-

Examples of Critical Area Integration

Figure 54 - *Example of critical area that is integrated rather than shoved in a corner.*

Figure 55 - *Example of critical area with an adjacent pedestrian trail.*

CITY OF OAK HARBOR SUBDIVISION CODE UPDATE

MATERIAL FOR
AUGUST 25, 2009
PLANNING COMMISSION MEETING

-AUGUST 18, 2009

245

ATTACHMENT 4

Purpose

The purpose of the August meeting of the Planning Commission is to:

- ☑ **Summarize changes to the draft code since the July Planing Commission meeting.** There have been very few substantive changes to the code since the July Planning Commission meeting. However, staff did reorganize the code sections in a way that we believe makes more sense.
- ☑ **Prepare Planning Commission for recommendation to Council.** Staff will summarize how the project has met the three original goals of sustainability, livability and readability set up at the beginning of the project. This discussion will prepare Planning Commission to make a recommendation to Council.
- ☑ **Conduct a public hearing.** Staff recommends that Planning Commission continue the public hearing from last month, accept any comments and close the public hearing.
- ☑ **Make recommendation of approval.** Provided Planning Commission is comfortable with the draft code, staff recommend Planning Commission forward a recommenation of approval to the City Council.

Summarize changes to the draft code since the July Planning Commission meeting.

To give Planning Commission as much time as possible to be comfortable with the draft code so that they can form a recommendation to Council, staff are providing a copy of the draft a week in advance of the August 25 Planning Commission meeting. This draft code takes into consideration all comments made by the public, staff and the Planning Commission over the last few months. As was the case for the July draft, the changes generally fall into three categories: (1) substantive, (2) organizational, and (3) grammatical. We describe the substantive changes here and give a very brief summary of the organizational changes.

Substantive Changes to the Code - Chapter 19.31 and Title 21.

- **Chapter 19.31.** No substantive changes were made to this chapter.
- ***Purpose statements for chapters 21.20,, 21.40, 21.50 and 21.60.*** Purpose statements were added for preliminary plats, final plats, general design standards, residential design standards and short subdivisions chapters of Title 21. These chapters did not previously have purpose statements.
- ***Landscape plan required for preliminary plat approval, see sections 21.20.030.*** Added landscape plans to the list of required plans needed for preliminary plat approval.
- ***Fencing discouraged around stormwater ponds, see section 21.60.250.*** Per the comments received from Planning Commission in July, staff have changed the language in Title 21 to discourage fencing around stormwater ponds.

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- ***Concrete as material for stormponds, see section 21.60.250.*** Further defined what type of concrete is allowed as a building material for storm ponds to ensure that the City receives high-quality, visually attractive material finishes.

Organizational changes.
Both chapter 19.31 and Title 21 were significantly reorganized in the most recent draft attached. The changes only involved the ordering or combining of sections, but do not affect how the substance of the draft code.

- ***Chapter 19.31.*** The sections in this chapter were signifcantly reorganized from what was released at the June 23 Planning Commission meeting. The draft code attached as Exhibit A shows these changes. In short, the reorganization follows this pattern:
    - General provisions (purpose, applicability, how flexibility works in PRDs).
    - Uses (Allowed and Secondary Uses)
    - Development Standards (density, design of open spaces, PRD perimeter design).
    - Process (review criteria, approval process, modifications, termination, extensions, etc.)
- ***Title 21.*** As with chapter 19.31, Title 21 was also signifcantly reorganized. The main organization changes involved dividing what was previously called the "Design Standards" chapter into two chapters: (1) "General Design Standards" and (2) "Residential Design Standards." This division makes sense, because not all of the design standards apply to commercial and industrial subdivisions; staff wanted to be sure that division was made as clear as possible. The block length limit of 800 feet, for instance, does not make sense for industrial developments, so this standard was put into the new "Residential Design Standards" section.

Prepare Planning Commission for recommendation to Council.

The three goals established early on for the changes to the subdivision and PRD codes were:

- **Sustainability.** Changes which improve the environmental impacts of subdivision development.
- **Livability.** Changes meant to better the quality of life in subdivisions, defined as improving the way new subdivisions integrate land uses, functions and aesthetics.
- **Readability.** Changing the way regulations are described in the code.

From these three goals came the Ten Areas of Concern which staff and Planning Commission formed in early 2008. The Ten Areas of Concern are included in Exhibit B, for reference. The Ten Areas of Concern were used by staff to create "code concepts," which are ideas about the design elements within subdivisions (streets, pedestrian connections, open spaces, stormwater ponds, etc.). The code concepts were presented to Planning Commission from February through May of

2009 and for review and feedback. In turn, the code concepts became code language in June, July and August of this year.

This part of the staff report discusses how the new code achieves the three goals originally set up for the project with the intent of making Planning Commission comfortable with forming a recommendation to City Council. We measure and describe how these goals were achieved by giving the "expected results" of the draft code provisions and then giving "test results." "Expected results" are what improvements we can expect to see from the draft code based on professional literature and our judgment as practicing planners. "Test results" are the impacts we measured by redesigning a selection of existing subdivisions / PRDs in Oak Harbor to conform to the draft code standards. The test results are documented in the cumulative impacts analysis (Exhibit C) and provide useful information on how the draft code is achieving the original goals established for the project.

Below, we describe each of the three original goals for the project and the code concepts which address these goals. First, we list the "expected results" of each code concept and then the "test results" as seen through the cumulative impacts analysis.

<u>Goal: Sustainability</u>

In the context of this project, sustainability refers to environmental sustainability. Will the new code lessen impacts to the natural environment?

How the Goal is Addressed by the Draft Code
Sustainability is addressed multiple ways in the draft code:

- **New street sections .** The new standard street sections offer applicants a choice between a "narrow street" with on-street parking on one side and a "wide street" with parking on both sides.
    - **Expected results.** The new "narrow" street section is expected to be the dominate street type used by applicants and will reduce the total amount of pavement in new subdivisions, potentially leading to cost savings for applicants (as compared with the existing street section) and lessen environmental impacts (especially stormwater impacts) associated with excessive amounts of pavement.
    - **Test results.** The cumulative impacts analysis projects that the draft code will reduce the average square feet of pavement by approximately eight percent (8%) in the subdivisions / PRDs we examined. That reduction in pavement should confer the environmental benefits listed above.

- **Grid street pattern.** The draft code will require that streets in new subdivisions assume a grid or modified grid pattern.
    - **Expected results.** The grid street pattern is expected to increase the number of connections and, therefore, route options for all travel modes, but especially for pedestrians and bicycles. According to the professional planning literature, grid street patterns encourage walking and bicycling and reduce reliance on automobiles resulting in less environmental impacts as compared to curvilinear streets.

- **Test results.** The cumulative impacts analysis shows that the average linear feet of street in new subdivisions will increase by about 16 percent by implementing a grid pattern. Since more streets means more route options, which makes it more likely that people will walk and bike to their destination, we can expect to see more trips taken by these "clean" modes of transportation.

- **Pedestrian / bike connections.** The draft code requires pedestrian connections at mid-block locations where blocks are over 800 feet long AND to all land uses adjacent to subdivisions.
  - **Expected results.** Staff expect that the new requirements for pedestrian connections, like the grid street pattern, will lead to more route options for pedestrians and bicycles, making it more likely that people will choose to use these travel modes, both of which are clean forms of transportation.
  - **Test results.** The cumulative impacts analysis in Exhibit C shows that the average number of pedestrian connections to adjacent uses will double on average under the draft code. The professional planning literature documents that there is a greater likelihood that people will walk or bike to their destination if safe and attractive facilities are made available to them.

- **Street trees.** The draft code will now require that street trees be placed along both sides of all Local Residential streets.
  - **Expected results.** Since street trees will be required along all Local Residential streets, we can expect that there will be an increase in the number of street trees typically provided in subdivisions. Street trees are not currently required. We expect to see an increase in all of the environmental benefits associated with more street trees such as, reduced heat island effects, reduced stormwater runoff, and improved air quality.
  - **Test results.** The cumulative impacts analysis shows there to be a dramatic increase in the average number of street trees provided in subdivisions under the draft code. These street trees would be required for every 30 feet of planter strip. The analysis also shows that these tree would remove an additional 364,000 pounds of CO2 from the air each year in Oak Harbor if the six developments we looked at had been developed under the draft code.

- **Dead-end streets.** The new code requirements will limit the number of dead-ends to exceptional circumstances of steep topography, critical areas, and existing development.
  - **Expected results.** We would expect that these new regulations will reduce the number of dead-ends streets, offering pedestrians, vehicles and bicycles more route options, thereby reducing trip length and encouraging walking and biking all of which have positive environmental effects.

- **Test results.** The cumulative impacts analysis shows that the average number of dead-ends with no pedestrian connections at the end of them in existing subdivisions is about 3.5. The cumulative impacts analysis projects that the number of these dead-ends will be reduced to 0.5 per subdivision under the draft code, likely resulting in increased numbers of pedestrian and bicycle trips.

- **Block length.** The new code will set an 800-foot block length limit. Blocks of 1,000 feet are allowed with mid-block pedestrian / bicycle connections.
  - **Expected results.** We would expect that setting a block length limit will prohibit the development of very long blocks. Long blocks have been shown in professional planning literature to be an impediment to pedestrian and bicycles, making it less likely that someone will walk or bike to their destination; setting a maximum block length is expected to promote walkable / bikeable neighborhoods.
  - **Test results.** The cumulative impacts analysis shows that maximum block lengths in Oak Harbor average 3,400 feet. This is because some existing blocks on the exterior of subdivisions connect with large blocks in adjacent developments, creating "super blocks." Exhibit D shows this more clearly. The existing blocks are denoted by a yellow line. If these subdivisions had been developed under the draft code rather than the existing code, the longest blocks would be somewhere in the range of 1,600 feet - still very long, but a dramatic improvement.

Goal: Livability

Livability emphasizes quality of life issues for residents within subdivisions. Measures of livability include the amount of open space, the quality of that open space, number of pedestrian and bike connections. There is much overlap in terms of how this goal is measured and how sustainability is measured because improvements in the natural environment are also improvements in livability. Thus, many of the code concepts are repeated here, but with a slightly different bent. Here we emphasize how the draft code can be expected to affect livability apart from positive environmental impacts.

How the goal is addressed by the draft code

Livability is also addressed with multiple approaches in the code. These are some of the key indicators we measured:

- **Grid street pattern.** The draft code will require that streets in new subdivisions assume a grid or modified grid pattern.
  - **Expected results.** The grid street pattern is expected to increase the number of connections and, therefore, route options for pedestrians, vehicles and bicycles (but especially walking and biking) Walking and biking promotes physical health and therefore the quality of life (livability) of subdivisions. The additional connections also give cars additional route options.

- **Test results.** The cumulative impacts analysis shows that the average linear feet of street in new subdivisions will increase by about 16 percent with a grid pattern, implying that there will be more route options for all travel modes.

- **Pedestrian / bike connections.** The draft code requires pedestrian connections at mid-block locations where blocks are over 800 feet long and to all adjacent uses.
  - **Expected results.** Staff expect that the new requirements for pedestrian connections, like the grid street pattern, will lead to more route options for all travel modes, making it more likely that people will choose to walk and bike, either for recreational purposes or for work trips. As previously mentioned, the prevalence of walking / biking facilities has a direct connection to people's physical activity and health.
  - **Test results.** The cumulative impacts analysis in Exhibit C shows that the average number of pedestrian / bike connections to adjacent uses will double on average under the draft code from two to four. More pedestrian / bike connections means greater mobility for people who use these modes of transportation along with the positive health benefits that go along with more physical activity.

- **Standard designs for pedestrian / bike connections.** The draft code will implement standard designs for pedestrian bike connections, which will be a 10-foot wide path, with 5-foot wide landscape strips on either side.
  - **Expected results.** The standard designs will ensure a high level of design and consistency in design of these facilties, promoting walking and biking. Well-designed pedestrian / bike facilities can also be an aesthetic improvement for neighborhoods.
  - **Test results.** The cumulative impacts analysis does not directly address the design of pedestrian facilities, only the provision of them.

- **Street trees.** The draft code will now require that street trees be placed along both sides of all Local Residential streets
  - **Expected results.** Street trees are expected to bring a number of positive livability benefits, other than the environmental benefits previously mentioned, including an enhanced pedestrian experience and improved aesthetics for streets. The professional planning literature identifies other benefits such as increased property values, and reduced noise pollution.
  - **Test results.** The cumulative impacts analysis shows there to be a dramatic increase in the number of street trees that would be provided in subdivisions, from an average of 79 per subdivision to an average of 345. The positive benefits listed above could be expected to happen with an increase in street trees.

- **Dead-end streets.** The new code requirements will limit the number of dead-ends to exceptional circumstances of steep topography, critical areas, and existing development.
    - **Expected results.** We would expect that these new regulations will reduce the number of dead-ends streets, offering pedestrians, vehicles and bicycles more route options, further promoting walking and biking as forms of transportation. Some level of health benefits to people from increased walking and biking can be expected to go along with limits on dead-ends.
    - **Test results.** The cumulative impacts analysis shows that the average number of dead-ends with no pedestrian connections at the end of them in existing subdivisions is about 3.5. The cumulative impacts analysis projects that the number of these dead-ends will be reduced to 0.5 per subdivision on average promoting connectivity for all modes, but most significantly affecting walking and biking.

- **Block length.** The draft code will set an 800-foot block length limit. Blocks of up to 1,000 feet are allowed with mid-block pedestrian / bicycle connections.
    - **Expected results.** We would expect that setting a block length limit will prohibit the development of very long blocks. Long blocks have been shown in professional planning literature to reduce the chances that someone walks or bikes to their destination; setting a maximum block length is expected to promote walkable / bikeable neighborhoods.
    - **Test results.** The cumulative impacts analysis shows that the block length maximum of 3,400 feet in Oak Harbor would be reduced to 1,600 feet under the draft standards.

- **Access easements.** The draft code will allow lots within short plats to take access from and front onto shared drives and private streets.
    - **Expected results.** Currently, lots must take access from public streets. Shared drives and private streets allow more efficient lot arrangements, which can promote more aesthetic and compatible infill developments.
    - **Test results.** The cumulative impact analysis does not measure the results of access easements. However, many jurisdictions use access easements and have found that they confer benefits as stated above.

- **Landscape buffers.** The draft code requires landscape buffers along all minor arterials along the boundary of residential developments. The existing code already requires these buffers, but the draft provisions will require specific planting requirements to address wind throw of trees and aesthetics of these areas.
    - **Expected results.** Having a definitive landscape requirement for these buffers will help them look more orderly and aesthetically

appealing. The tree density requirements are expected to help prevent wind throw.
    - **Test results.** The cumulative impacts analysis did not look at the impacts to landscape buffers from the new requirements.

- **Stormwater pond aesthetics.** New code requirements will discourage fencing around ponds, limit the use of plain, smooth, unfinished concrete as a pond material, and require a 10-foot wide landscaped ring around ponds.
    - **Expected results.** The new requirements are expected to make stormwater ponds more visually appealing.
    - **Test results.** The cumulative impacts analysis did not look at the aesthetic impacts to stormwater ponds. However, many jurisdictions regulate the appearance of these ponds with success.

- **Active open space design in PRDs.** The draft PRD requirements would mandate that these spaces have a minimum street frontage, regulate the size of these spaces, and requiring that the space have certain amenities (activity center, trash cans, benches, lighting).
    - **Expected results.** The draft requirements are expected to make active open spaces in PRDs more visible, useable and accessible.
    - **Test results.** The cumulative impact analysis looked at two PRDs, Island Place and Crosby Commons. In each of these cases, the open space provided in these developments would not meet the draft requirements of this code. If developed under the new code, open space in these PRDs would require more amenities, in the form of an activity center, benches, lighting and trash cans.

- **Alternating setbacks in PRDs.** The new PRD code will require that lots with reduced setbacks and / or lots with reduced size from what is allowed in the zone mitigate these impacts with alternating front setbacks and garages which do not project beyond the front entrances.
    - **Expected results.** On smaller lots or lots with reduced setbacks, garages can become the focal point of the building. The new PRD regulations will emphasize the front entrance of residential buildings, which is more attractive than the garage. Alternating setbacks will address the architectural uniformity often seen along residential street frontages where houses have the same front setback resulting in unbroken "strings" of houses. This standard is intended to give the appearance of architectural variation to the residential streetscape.
    - **Test results.** The cumulative impacts analysis shows building footprints on the Island Place and Crosby Commons designs. The alternating front setbacks can be seen on these layouts.

<u>Goal: Readability</u>
Ultimately, the readability of the code will be judged by its users, staff, applicants, Planning Commission and City Council over the years to come. Staff have taken several measures to improve the readability of the code.

- **Organization.** The primary external users of the code will be applicants

and their consultants. With this in mind, staff have reorganized chapter 19.31 and Title 21 to be more user-friendly to these readers.

- **New section titles.** Many of the section titles in the existing code are confusing. Staff have paid close attention to the code titles to make them easier to understand and meaningful to code users.
- **Eliminate wordiness and redundancies.** Large sections of the existing subdivision and PRD codes either duplicate or conflict with other parts of the Oak Harbor Municipal Code. Staff have reviewed the draft code multiple times with an eye toward eliminating these redundancies and conflicts, as well as making sentences easier to understand.
- **Subdivision Design Manual.** Staff are in the process of creating a subdivision design manual which will provide graphics and illustrations of concepts in the draft code. The subdivision design manual will be a supplement to the draft code, not an additional layer of regulation.

Exhibit E of this staff report also includes a table which gives a synopsis of the public involvement efforts for the project, as evidence that the concepts, and regulations contained in the draft code were crafted in consideration of public input. Public input was an integral part of the project and helped staff focus on what were the most important outcomes of the code update project for the community. The table in Exhibit E summarizes all of the public involvement opportunities that have happened over the course of the project.

Conduct Public Hearing

Staff recommends that Planning Commission continue the public hearing from July 28, 2009 hearing and, after comments have been accepted from the public, close the public hearing.

Make Recommendation of Approval

Based on the information summarized in this staff report, contained in the attached exhibits, as well as previous meetings with Planning Commission and public involvement efforts, staff are suggesting that Planning Commission form a recommendation to approve the draft code as now contained in Exhibit A and forward this recommendation to the City Council for its consideration.

ORDINANCE NO. _____

AN ORDINANCE REPEALING CHAPTER 19.31 OF THE OAK HARBOR MUNICIPAL CODE ENTITLED "PLANNED RESIDENTIAL DEVELOPMENTS" AND ADOPTING A NEW CHAPTER 19.31 "PLANNED RESIDENTIAL DEVELOPMENTS" TO ESTABLISH NEW REVIEW CRITERIA AND DESIGN STANDARDS INTENDED TO MITIGATE IMPACTS FROM REDUCED LOT SIZES AND / OR SETBACKS, REQUIRE THAT OPEN SPACE BE VISIBLE, USEABLE AND ACCESSIBLE AND SIMPLIFY THE DEVELOPMENT REVIEW PROCESS.

WHEREAS, the City of Oak Harbor acknowledges that its Comprehensive Plan land use goals 2, 4, 11, 19; land use policies 2(a), 2(b), 11(d), 14(c), 19(c), 19(e); urban design goals 4 and 5; urban design policy 4(a); transportation policy 5(c); open space goal 1; open space polices 1(d) and 1(i); housing policy 1(g), utilities policies 5(b) and 5(d) direct it to: encourage planned residential development with performance based standards, consider view corridors when planning for development, preserve community character through quality design, encourage private and public preservation of undeveloped open space, encourage a sense of community through development of a spectrum of housing types, allow neighborhood scale services that are compatible with residential areas, create a balanced community that mixes residential and non-residential uses, encourage the retention of open space in new development, provide adequate parks, playgrounds and other open spaces, design intersections that have adequate safety for pedestrians and bicyclists, allow provisions in development regulations for inclusionary affordable housing and density bonus performance standards, continue to support energy efficiency by encouraging low impact sustainable development through site designs and;

WHEREAS, the City recognizes that there is a high probability of negative effects to human health over long periods of time resulting from inadequate pedestrian and bicycle infrastructure and that provision of a higher-level of pedestrian and bike facilities will promote better physical health for the citizens of Oak Harbor and,

WHEREAS, City of Oak Harbor staff conducted public involvement efforts to relay information and receive input on the proposed code updates including eleven (11), publicly-noticed planning commission Meetings from April 22, 2008 to August 25, 2009 to discuss these code updates and,

WHEREAS, City of Oak Harbor staff conducted a series of "Roundtable Meetings" with local stakeholders including real estate industry representatives and the Oak Harbor Rotary Club on April 9, 2008, May 7, 2008, and May 14, 2008 and;

WHEREAS City of Oak Harbor staff briefed the Oak Harbor Parks Board at a publicly-noticed meeting on March 10, 2008 and;

WHEREAS City of Oak Harbor staff established an internet blog site which provided on-going information about the code updates and invited public input, including an online

survey questionnaire throughout the project and;

WHEREAS City of Oak Harbor staff briefed the Oak Harbor Public Works Standing Committee on the project at a publicly-noticed meetings on September 3, 2009 and October 1, 2009 and,

WHEREAS City of Oak Harbor staff briefed the Oak Harbor Governmental Services Standing Committee on the project at publicly-noticed meetings on July 14, 2008, September 14, 2009, and October 12, 2009 and,

WHEREAS City of Oak Harbor staff invited the public to a total of twenty-four (24) separate "Coffee House Discussions" at a local coffee shop from July 14, 2008 to September 18, 2008 and,

WHEREAS City of Oak Harbor staff sent a letter to a list of two hundred-fifty (250) stakeholders on March 12, 2008 inviting them to participate in the code update process and,

WHEREAS City of Oak Harbor staff sent a letter to a list of fifty (50) interested stakeholders on May 8, 2009 inviting them to participate in the code update process.

NOW, THEREFORE

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

Section One. Oak Harbor Municipal Code Chapter 19.31 entitled "Planned Residential Developments" last amended by Ordinance 1221 in 2000 is hereby repealed in its entirety.

Section Two. A new Chapter 19.31 of the Oak Harbor Municipal Code is hereby adopted to contain the following chapters:

Chapter 19.31
PLANNED RESIDENTIAL DEVELOPMENTS

Sections:

19.31.010 Purpose and intent.
19.31.020 Applicability of PRD standards.
19.31.030 Definitions.
19.31.040 Permissive variations in requirements.
19.31.050 General sale of lots.
19.31.060 Planned residential development conformity.
19.31.070 Permitted uses in PRDs.
19.31.080 Secondary use limitations.
19.31.090 Density.

19.31.100 Open space – general requirements.
19.31.110 Open space – active areas.
19.31.120 Open space –passive areas.
19.31.130 Dedication and maintenance of common facilities.
19.31.140 PRD Perimeter.
19.31.150 Application required.
19.31.160 Combined applications.
19.31.170 PRD review criteria.
19.31.180 PRD development plan.
19.31.190 PRD development plan – Phased developments.
19.31.200 Preliminary development plan – Staff recommendation.
19.31.210 PRD development plan – Planning commission review.
19.31.220 PRD development plan – Planning commission recommendation.
19.31.230 PRD development plan – Council decision.
19.31.240 Mitigation agreement.
19.31.250 Compliance with approved PRD development plan.
19.31.260 Mapping.
19.31.270 Revocation.
19.31.280 Modifications.
19.31.290 Termination of a PRD.
19.31.300 Extension of time for construction.
19.31.310 Limitation on resubmission.
19.31.320 Judicial Review.

19.31.010 Purpose and intent.

The Planned Residential Development ("PRD") regulations offer applicants regulatory flexibility in return for higher quality site and architectural design with the intent of encouraging the design of more complete and substainable neighborhood environments consistent with Oak Harbor's Comprehensive Plan. The PRD regulations allow and promote design flexibility, pedestrian-oriented development, interconnectivity among uses, sensitivity to the natural environment and natural features, and the coordination of development with adequacy of public facilities.

19.31.020 Applicability of PRD Standards.

(1) An application for PRD may be submitted for any residentially zoned (R1, R2, R3 and/or R4) parcel(s) of land within Oak Harbor. The decision of whether to submit the PRD is the applicant's choice.

(2) The director may determine that a PRD may be submitted for a subdivision or short subdivision of land, if the proposed development can not meet the standards in OHMC Titles 19 and/or 21 OHMC.

19.31.030 Definitions.

Words used in the present tense shall include the future tense; the future tense shall include the present tense. The singular shall include the plural, the plural shall include the singular. The words "may" and "should" are permissive; "shall" is mandatory.

(1) "Secondary use" means a non-residential use located within a PRD.

(2) "Town center" means a consolidated area within a PRD which contains secondary uses (commercial, office, and / or mixed-uses), primarily intended to serve the residents of the PRD.

(3) "Gross area" means the total area contained within the boundaries of a proposed PRD.

19.31.040 Permissive variations in requirements.

(1) In considering a proposed planned residential development project, the approval thereof may involve variation in the regulations, requirements and standards of the zone in which the project is located including the general design standards and residential design standards of OHMC Title 21 OHMC. Variations from the standards and requirements of this Chapter (19.31) are not permitted.

(2) The applicant shall bear the burden of supporting any change in requirements by demonstrating compliance with the review criteria contained in section 19.31.170 of this chapter.

(3) The city may increase any requirement necessary to make the project conform to the purpose and intent of this code, provided that a connection has been made between the impact of the development and the required mitigation.

(4) Other than the specific standards which are requested to be varied from, PRD applications shall otherwise comply with all relevant standards of the Oak Harbor Municipal Code , including those in Title 19 (Zoning) and Title 21 (Subdivisions).

19.31.050 Sale of lots.

Lots in a platted PRD may be sold to separate owners and according to the separate lots as shown in the plat filed and approved in connection therewith. No sale shall be permitted which subdivides a lot in such a manner as will create a new lot line, except as provided in Title 21 OHMC.

19.31.060 Planned residential development conformity.

As of the date of adoption of this chapter, all existing, legally established planned residential developments (PRDs), shall be deemed conforming uses under this chapter.

19.31.070 Permitted uses in PRDs.

The following uses are permitted by right in PRDs.

(1) Those uses permitted as of right in the underlying zone;

(2) As a secondary use, and subject to the limitations of the Oak Harbor Municipal Code;

- (a) Grocery stores;
- (b) Drug stores;
- (c) Salons / barber shops;
- (d) Restaurants
- (e) Uses generally considered accessory to the primary residential use of the PRD, such as club houses, parking areas, open spaces, utilities and public facilities.
- (f) Motor vehicle or boat storage for residents of the PRD;
- (g) Conditional uses as provided in the underlying zoning;
- (h) Home occupations as provided in the underlying zoning; and,
- (i) Other, unlisted, similar or related uses, provided the planning commission makes a recommendation and the city council determines that:
  - (i) The use does not conflict with the intent of this chapter or policies of the comprehensive plan;
  - (ii) The use is appropriate to the size and scale of the residential development and primarily serves the residents of the PRD. Secondary uses which have a regional or city-wide customer base are not appropriate for PRDs.

(iii) Traffic impacts from the proposed secondary use will not have a negative impact on surrounding residential neighborhoods in terms of quantity of traffic and circulation patterns.

19.31.080 Secondary use limitations.

To ensure they are compatible with primary residential uses, secondary uses shall conform to this section in addition to the standards in 19.31.070. Secondary uses are also subject to site plan review procedures contained in Chapter 19.48 OHMC and shall be integrated in the PRD application as it was recommended by the planning commission and approved by the city council and are subject to the following additional standards:

(1) The gross floor area of all proposed secondary uses shall not exceed ten percent (10%) of the gross floor area of the development;

(2) All secondary uses shall be architecturally compatible with residential uses in the PRD in terms of mass, scale, height, and exterior materials.

(3) Secondary uses shall be located in a "town center" apart from the residential uses, but easily accessible to the residential uses.

(4) Building permits or occupancy permits for such uses shall not be issued until one-half (1/2) of the total project is completed unless otherwise approved by the city council.

19.31.090 Density.

Density in a PRD is regulated by the density standards of the underlying zone. Density bonuses may be permitted under the provisions laid out in this section:

(1) Increases in density as defined for each of the following may be permitted, up to a maximum of thirty percent (30%) over that permitted in the underlying zone. Bonus densities are intended to provide the incentive to encourage the development of affordable housing, provide additional public amenities or preserve valuable natural or cultural resources and features. The satisfaction of any of the bonus density criteria specified is considered to be in the public interest and worthy of a bonus density:

(a) Additional open space – one percent (1%) increase in density for each one percent (1%) increase in open space over the minimum required under 19.31.100 OHMC. Open space design must conform to the requirements of 19.31.110 and 19.31.120 OHMC.

(b) Provision of qualified affordable housing units as defined in 19.08.695, or lots dedicated for use in affordable housing projects. For every two (2) units of affordable housing, applicants are allowed one (1) additional unit of market-rate housing. For purposes of density bonuses pursuant to this section, the total of market-rate and affordable units may not exceed thirty percent (30%) of the density otherwise allowed in the zone. The continued affordability of the units must be secured through registration of restrictive covenants on title, or other permanent measure.

(c) The following example is offered to show how the density bonus for affordable housing is calculated.

(i) A project which is five (5) acres in size and is zoned R1 (maximum of six (6) units per gross acre) is allowed a total of thirty (30) units under the R1 zone;

(ii) This same project proposes that six (6) of the thirty (30) units are affordable units with the remainder twenty-four (24) being market rate units;

(iii) Density bonus for affordable housing = number of affordable units

divided by two (2) or, six (6) affordable units / (2) = three (3) additional market-rate units.

(iv) Total units allowed with density bonus = Maximum density allowed by zone (thirty (30) units) + density bonus (three (3) additional market-rate units) = thirty-three (33) units.

(c) Preservation of a scenic vista corridor within and off the site – up to ten percent (10%) increase;

(d) Public access to common open space, or natural waterbodies – up to twenty percent (20%) increase;

(e) Use of Low Impact Development techniques. The density bonus shall be proportional to the ratio of total stormwater runoff from the site which is treated by LID techniques, up to a maximum of twenty percent (20%).

(2) Density increase may be granted if the applicant satisfactorily demonstrates the following standards have been met:

(a) All applicable PRD and subdivision design standards have been met, exempting those that have been modified through the PRD process;

(b) Building design and site layout with the proposed density increase does not significantly change the characteristics of the neighborhood streetscapes from what would be the case if the bonus was not granted.

(3) For any PRD located in more than one (1) zone, the residential density allowed shall be determined by totaling the number of dwelling units allowed within each of the separate zones according to the density regulations of that zone.

(a) The total residential density shall apply to the entire area of the proposal.

(b) For any PRD located in more than one (1) zone, the permitted percentage of coverage by buildings and structures allowed shall be determined by calculating the percentage of coverage allowed upon the area for each separate zone and averaging it across the entire project.

19.31.100 Open space – General requirements.

Common open space shall be provided for use as recreational, park or environmental amenity for the collective enjoyment by occupants of the PRD project, and designed as follows:

(1) Common open space shall comprise at least ten percent (10%) of the gross area of the PRD;

(2) Common open space shall not include public or private streets, driveways, buffers, screens, perimeter landscaping, parking areas or the required or provided yards for buildings or structures.

(3) Common open space shall meet the requirements of sections 19.31.110 and 19.31.120 OHMC.

19.31.110 Open space – Active areas.

The following standards apply to the provision and design of active open spaces in PRDs:

(1) A minimum of fifty percent (50%) of all required open space in a PRD shall be "active" open space. Active open space provides opportunities for physical activity to residents of the PRD. Active open space must meet the following requirements:

(a) Be a minimum of five thousand (5,000) square feet in size to be counted toward the minimum ten percent (10%) common open space requirement;

(i) The space must also have a minimum width of fifty feet (50') and depth of ninety feet (90').

(ii) Have a minimum of forty feet (40') of frontage on a public street.

(2) Shall contain such accessory or complementary structures and improvements as are necessary and appropriate for the benefit and enjoyment of residents of the project and shall include at a minimum:
   (a) Pedestrian-oriented lighting;
   (b) Seating;
   (c) Signage indicating what the operational hours and rules for the use of the open space;
   (d) Trash can(s); and
   (e) An activity center such as children's play structure, tennis court(s), basketball court(s), walking / bicycling path(s) or a trail-head kiosk at the entrance of a trail system. There are other types of activity centers other than those listed here which can be proposed by applicants. All proposed activity centers shall provide exercise opportunities for residents of the PRD. Unimproved, grass fields do not count as activity centers.

(3) Active open spaces must be visible and accessible to users and not hidden behind residential lots.

(4) Active open spaces must have pedestrian connections to both sides of a residential block on which they are located.

(5) All active open spaces shall be privately-owned and maintained by the homeowners association in accordance with the requirements of 19.31.130 OHMC.

(6) Trails can count as active open space provided they meet minimum design requirements specified in the Parks, Recreation and Open Space Plan.

(7) Fifty percent (50%) of stormwater ponds may count as open space within the PRD. However, no more than twenty-five percent (25%) of the required ten percent (10%) common open space in a PRD may be stormwater pond. Ponds which are counted toward open space requirements must meet a high level of design and be an amenity to residents and must have all of the following characteristics:
   (a) Be a "wet-pond" not a "dry-pond."
   (b) Be surrounded by a trail or be located adjacent to another active open space.
   (c) Children's play structures may not be located closer than one hundred fifty (150) feet to a stormwater pond.
   (d) The pond must be curvilinear in shape not rectangular.
   (e) Only thirty percent (30%) of the circumference of the pond may contain berming.
   (f) The inside slope of the pond shall be three to one (3:1) or flatter.
   (g) Gravel and asphalt shall not be used for pond access.
   (h) No fencing shall be provided around the pond.
   (i) The applicant shall place appropriate signage near the pond which says that "This pond is for stormwater detention and/or treatment purposes. Swimming or fishing or other recreational activities are prohibited."

19.31.120 Open space – Passive areas.

Passive open space is "non-active" open space which preserves natural areas and provides scenic amenities to a PRD. Passive open space shall meet the following minimum requirements:

(1) Passive open space may be no more than fifty percent (50%) of the total required open space in PRDs.

(2) Preserved natural areas, such as wetlands, streams, and woodlands may count as passive open space.

(3) Passive open space may include open fields and landscaped areas which are held in common by the homeowner's association, but which do not contain any other improvements.

(4) Passive open spaces shall be maintained in conformance with section 19.31.130.

19.31.130 Dedication and maintenance of common facilities.
Whenever private open space, including private parks or playgrounds are to be provided, the city council shall require that an association of owners or tenants of the PRD be organized under the laws of the state of Washington, which shall adopt such articles of incorporation and bylaws and adopt, impose and record such declaration of covenants and restrictions on such open space and/or common areas that are acceptable to the City.

Said association shall be formed and continued for the purpose of maintaining such open space. Such an association, if required, may undertake other functions. It shall be created in such a manner that owners of property shall automatically be members and shall be subject to assessments levied to adequately maintain said open space for the purposes intended. The period of existence of such association shall be not less than twenty (20) years and it shall continue thereafter and until the members terminate it. Provisions shall be made by the association for the maintenance or disposition of such open space upon any termination of the arrangement hereinabove provided for. If the association of homeowners subsequently disbands, the property owners within the boundaries of the originally approved PRD are responsible for maintenance of all common facilities.

19.31.140 PRD Perimeter.
The perimeter of the PRD shall be designed so as to minimize architectural or land use incompatibility of the PRD on adjacent properties and, conversely, to minimize undesirable impact of adjacent land use and development characteristics on the PRD. A building setback of twenty (20) feet shall apply to all exterior boundary lines of the project.

19.31.150 Application required.
An application for approval of a proposed PRD shall be made to the Director upon forms furnished by the city. Application shall be made by the owner or owners of the parcel or parcels intended to be developed as a unit or their duly authorized agent or agents. Authorization from all owners within the PRD project boundaries is required.

19.31.160 Combined applications.
The approval of a subdivision shall be required of all projects which involve or contemplate the subdivision of land in a PRD and the procedures set forth in OHMC Title 21 shall be followed concurrently.

19.31.170 PRD review criteria.
The city (staff, planning commission and city council) shall base its review of the proposed PRD upon the following criteria:

(1) Aside from the specific regulations, requirements or standards proposed to be varied, the project otherwise meets the requirements of the Oak Harbor Municipal Code;

(2) Critical areas should be preserved and incorporated into the open space of the PRD. Buffer averaging and buffer enhancements shall qualify as preservation if such is recommended in an approved critical areas report;

(3) If smaller lot sizes and dimensions or decreased setbacks are proposed from what is required by the underlying zoning, buildings on these lots must meet requirements (a) to

(c) below or requirement (d), or requirement (e):

(a) Garage walls facing the street must be no closer than the wall containing the main entrance, or to the edge of a covered porch or deck if provided.

(b) A garage door wall which faces the street must not be more than one-half (1/2) of the façade width.

(c) The main entrance must be prominent, easily visible and directly accessible from the street frontage.

(d) No two (2) adjacent buildings on the same side of the street may have the same front setback. Setbacks must alternate from building to building. Minimum front setback variation must be two feet (2') or greater.

(e) Residential buildings are accessed from an alley at the rear of the lots.

(4) If non-residential uses are included in the PRD, such uses shall be easily accessible to pedestrians meaning that primary building entrances are oriented to the street and setback no more than ten feet (10') from the property line or a six-foot (6') wide pedestrian path is included connecting the nearest public sidewalk to the primary entrance of the secondary use.

(5) Ten percent (10%) common open space is provided which complies with sections 19.31.110 through 19.31.130 OHMC.

(6) The PRD shall comply with all of the following adopted standards:

(a) The requirements of Title 21 Subdivisions. Variations from the requirements in Title 21 may be requested and reviewed as part of the PRD application. Other than the specific standards being varied from PRDs must meet all applicable standards of Title 21, including the general design standards (Chapter 21.50) and the residential design standards (Chapter 21.60).

(b) The standards and requirements of Chapter 19.31 Planned Residential Developments. If there is a conflict between the standards of this chapter and the standards in Title 21, the standards in this chapter shall take precedence.

(c) The Oak Harbor Comprehensive Plan policies.

(d) The Design Guidelines and Regulations, if applicable.

(e) All other standards adopted by the City of Oak Harbor, including engineering details and drawings.

(7) Applicants must meet either subsection (a) or (b) below:

(a) Enhanced design which includes one (1) or more of the following on each building within the development:

(i) A variety of exterior building materials such as brick, stucco, stone, and wood used as primary siding or as accent materials on front facades or,

(ii) Building articulation (offsetting walls, inclusion of windows, changes in material types) on side and rear walls of buildings or,

(iii) Side or rear loaded garages or,

(iv) Other applicant proposed building design enhancements.

(b) Optional site design elements which includes one (1) or more of the following:

(i) Low impact development stormwater techniques are employed on the site.

(ii) Ten percent (10%) or more of units within the development are "qualified affordable housing" as defined by 19.08.695.

(iii) Inclusion of a mix of residential and non-residential uses within the development.

(iv) Fifteen percent (15%) or more of the gross area is open space.

(v) The project will not only preserve, but enhance or rehabilitate the functions and values of a critical area of the site, such as significant woodlands, wildlife habitats, streams or wetlands, subject to the

recommendations in an approved critical areas report.

19.31.180 PRD development plan – Filing requirements.

The applicant shall file with the director a PRD Development Plan. If an application for subdivision is submitted concurrently, the plat document required as part of subdivision shall be a separate plan sheet from the PRD Development Plan and shall include the requirements in Title 21. The PRD Development Plan shall including the following:

(1) A legal description of the site and plot plan indicating location of all existing and proposed adjacent streets, private rights-of-way and easements;

(2) Ten (10) copies of the proposed site plan and/or drawings. Additional copies of the application may be required at the time the PRD Development Plan is routed to planning commission or city council for review. The PRD Development Plan shall include the following information:

- (a) Individual trees over twelve inches (12") in trunk diameter measured four feet (4') above the base of the trunk in areas to be developed or otherwise disturbed;
- (b) Proposed finished grades of the property with all drainage features;
- (c) Location of all proposed structures together with the usage to be contained therein and approximate location of all entrances thereto and heights, and gross floor area thereof;
- (d) Code required side, rear and front building setbacks;
- (e) The building envelope for each lot, which is the portion of the lot excluding the building setbacks.
- (f) Location and nature of vehicular, pedestrian and bicycle circulation features within the site and adjacent streets and alleys;
- (g) The extent, location, arrangement, and proposed improvements of all off-street parking and loading facilities;
- (h) The extent, location, arrangement and proposed improvements of all open space, landscaping, fences and walls;
- (i) Architectural elevation drawings of all building types (single-family, multifamily, rowhouses, etc.) and all subtypes (single-family – model 1, single-family model 2, etc.) and sketches demonstrating the planning and character of the proposed development;
- (j) Number of units proposed by type;
- (k) Proposed lot, tract and easement boundaries;
- (l) Open space calculations for all areas which are proposed to meet the ten percent common (10%) open space requirement. Calculations shall be divided between active and passive open space. Open spaces which are proposed to be included in the open space calculations must be denoted on the plan;
- (m) Density calculations for the property including any bonuses requested by the applicant; and
- (n) All other calculations or information as applicable based on the PRD review criteria.

(3) Proposed conditions, covenants and restrictions including continuous maintenance provisions for the project; and

(4) A text describing conditions or features which cannot be adequately displayed on maps or drawings.

19.31.190 PRD development plan – Phased developments.

Development of the project may be phased, in which case each complete phase may be processed separately. A map showing all property owned or controlled by the proponent which is

contiguous to the development site or which is within the area determined by the director to be relevant for comprehensive planning and environmental assessment purposes, together with a conceptual plan of said properties, shall be submitted with the application for the first phase. The conceptual plan shall conform to the purposes of this title and shall be used by the city to review all phases of the development.

19.31.200 PRD development plan – Staff recommendation.
After receiving the PRD Development Plan, the director shall route the same to all appropriate city departments, and each department shall submit comments and recommendations to the director. After receiving such information from the city departments, the director shall present recommendations and conclusions before the planning commission at the public hearing for the PRD Development Plan.

19.31.210 PRD development plan – Planning commission review.
(1) The PRD Development Plan shall be considered at a public hearing before the planning commission.
(2) Upon receipt of the PRD Development Plan, the planning commission shall examine such plan and determine whether it conforms to all applicable criteria and standards.
(3) In the event the planning commission determines that the development plan does not conform to these criteria and standards, they may require such changes in the proposed project or impose such conditions of approval as are, in its judgment, necessary to ensure conformity.
(4) The planning commission shall review the project to determine if it is consistent with the criteria in section 19.31.170 OHMC.

19.31.220 PRD development plan – Planning commission recommendation.
Planning commission shall recommend approval as submitted, approval with conditions or denial. The recommendation of the planning commission shall be forwarded to the city council for consideration at the earliest possible date at a regularly scheduled meeting of the council.

19.31.230 PRD development plan – Council decision.
The council shall hold a closed-record meeting to consider the application. Council shall make one (1) of the following decisions: approval as submitted, approval with conditions or denial. Council decisions on PRD permits shall be final unless appealed to the Island County Superior Court in accordance with RCW 36.70C.

19.31.240 Mitigation agreement.
The applicant shall provide for methods to mitigate development impacts as set forth in Title 20 OHMC. Any fees voluntarily proposed or required as mitigation to such development impacts shall be made prior to the issuance of any development permits.

19.31.250 Compliance with approved PRD development plan.
(1) All lots or other divisions of a subdivided PRD shall remain subject to compliance with the PRD Development Plan regardless of the fact of subdivision under Title 21 OHMC or subsequent conveyance of such individual lots or divisions, unless a minor or major modification has been approved.
(2) The building official shall only issue building permits and certificates of occupancy for buildings and structures which conform with the approved PRD Development Plan for

the PRD and with all other applicable city ordinances, regulations, rezone, annexation and development agreements.

(3) The construction and development of all the open spaces and recreation facilities of each project phase must be completed or bonded before any certificate of occupancy will be issued for a unit or building within that phase.

19.31.260 Mapping.

Whenever a PRD permit has been granted, the boundary of the PRD shall be indicated on the zoning map of the city of Oak Harbor as "subdistrict PRD."

19.31.270 Revocation.

In the event of a failure to comply with the approved plan or any prescribed condition of approval, including failure to comply with the phased development schedule, city council may, after notice and hearing, revoke the PRD permit.

19.31.280 Modifications.

Requests for modifications of a previously approved PRD Development Plans shall be made in writing and shall be submitted to the development services department in the manner and form prescribed by the director. Minor modifications may be approved by the director.

(1) Modifications shall be deemed minor if the proposal does not change any of the following:

(a) Land use;

(b) Density, number of dwelling units or lots;

(c) General location or number of access points;

(d) The general design characteristics (location, size, elements contained within) of open space areas. In no case shall the amount of open space be less than ten percent (10%) of the gross site area. However, the director shall not approve less open space under a minor modification if such open space has been provided for density bonuses in accordance with 19.31.090 OHMC.

(e) The amount of required or conditionally approved parking;

(f) The general height of structures. However height of one (1) structure may be modified through a minor modification, provided the height does not exceed 35 feet.

(g) The total lineal feet and dimensions of pedestrian/bicycle facilities by more than ten percent (10%). Locations of pedestrian/bicycle facilities may be considered a minor modification.

(2) Major modifications are any changes to the approved PRD Development Plan which do not qualify as minor changes as defined in this section. Major modifications to the PRD Development Plan shall be reviewed by the planning commission under the same process as outlined under OHMC 19.31.200 through 19.31.230.

19.31.290 Termination of a PRD.

(1) Construction shall be started within five (5) years following city council approval of the PRD Development Plan. If a preliminary plat has been reviewed and approved concurrently with the PRD Development Plan, then the two (2) documents shall terminate at the same time and all permits and approvals issued pursuant to such authorization shall expire and be null and void; termination for a concurrently approved PRD Development Plan and associated preliminary plat shall be five (5) years from the

date of city council approval. If construction has been commenced but the work has been abandoned for a period of one (1) year or more, and if no extension of time has been granted as provided in 19.31.300 OHMC, the authorization granted for the PRD project shall terminate and all permits and approvals issued pursuant to such authorization shall expire and be null and void.

19.31.300 Extension of time for construction.

(1) For good cause shown, the city council, in its discretion, may grant an extension of time for a maximum of one (1) year for commencement or continuation of construction subsequent to approval of the preliminary plat which accompanies the PRD Development Plan.

(2) Application for extension must be made in writing to the City at least sixty (60) days prior to the termination of the approved PRD plan.

19.31.310 Limitation on resubmission.

Whenever an application for a PRD permit has been denied, no application using the same area or any portion thereof shall be filed by the same applicant within one (1) year after the date of denial unless there is a change to the PRD Development Plan which more closely meets the provisions of the Oak Harbor Municipal Code.

19.31.320 Judicial review.

Any legal action to review a decision of the city council or planning commission under this title shall be filed in Island County superior court within twenty-one (21) days of the decision, notwithstanding the effective date of any ordinance passed or proposed to effectuate said decision.

ORDINANCE NO. _____

AN ORDINANCE REPEALING TITLE 21 OF THE OAK HARBOR MUNICIPAL CODE AND ADOPTING A NEW TITLE 21 ENTITLED "SUBDIVISIONS" REGULATING THE DEVELOPMENT OF SUBDIVISIONS TO CREATE MORE PEDESTRIAN-FRIENDLY NEIGHBORHOODS, PERMIT NARRROW STREET SECTIONS, REQUIRE STREET TREES AND REQUIRE LANDSCAPING AROUND STORMWATER PONDS WITHIN NEW RESIDENTIAL SUBDIVISIONS FOR THE PURPOSES OF ADDRESSING THE ECOLOGICAL AND AESTHETIC IMPACTS OF THESE DEVELOPMENTS.

WHEREAS, the City of Oak Harbor acknowledges that its Comprehensive Plan in land use goals 3, and 4; land use policies 1(a), 3(b), 11(a), and 16(e;) urban design policies 1(e) and 2(c); transportation goals 3, 4 and 5; transportation policies 1(i), 5(a), 5(b), 5(c), and 5(e); and environmental policy 5(d) direct the city to create a pedestrian-friendly atmosphere, protect and manage the urban forest, preserve community character through high quality design, create a mix of housing types within the price range of young families and seniors, provide safe and convenient trails for walking and bicycling, give priority to tree planting and retention for buffers along arterial streets, encourage greater bicycle use, require retention and planting of trees with new development and substantial redevelopment projects and,

WHEREAS, the City recognizes that there is a high probability of negative effects to human health over long periods of time resulting from inadequate pedestrian and bicycle infrastructure and that provision of a higher-level of pedestrian and bike facilities will promote better physical health for the citizens of Oak Harbor and;

WHEREAS, City of Oak Harbor staff conducted public involvement efforts to relay information and receive input on the proposed code updates including eleven (11) publicly-noticed planning commission Meetings from April 22, 2008 to August 25, 2009 and;

WHEREAS, City of Oak Harbor staff conducted a series of "Roundtable Meetings" with local stakeholders including real estate industry representatives and the Oak Harbor Rotary Club on April 9, 2008, May 7, 2008, and May 14, 2008 and;

WHEREAS City of Oak Harbor staff briefed the Oak Harbor Parks Board at a publicly-noticed meeting on March 10, 2008 and;

WHEREAS City of Oak Harbor staff established an internet blog site which provided on-going information about the code updates and invited public input, including an online survey questionnaire throughout the code update project and;

WHEREAS City of Oak Harbor staff briefed the Oak Harbor Public Works Standing Committee on the project at publicly-noticed meetings on September 3, 2009 and October 1, 2009 and;

WHEREAS City of Oak Harbor staff briefed the Oak Harbor Governmental Services Standing Committee on the project at publicly-noticed meetings on July 14, 2008, September 14, 2009, and October 12, 2009 and;

WHEREAS City of Oak Harbor staff invited the public to twenty-four (24) separate "Coffee House Discussions" at a local coffee shop from July 14, 2008 to September 18, 2008 to discuss

the subdivision code update project and;

WHEREAS City of Oak Harbor staff sent a letter to a list of two hundred fifty (250) stakeholders on March 12, 2008 inviting them to participate in the code update process and;

WHEREAS City of Oak Harbor staff sent a letter to a list of fifty (50) interested stakeholders on May 8, 2009 inviting them to participate in the code update process.

NOW, THEREFORE

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

Section One. Oak Harbor Municipal Code Title 21 entitled "Subdivisions" last amended by Ordinances 1317 in 2002 and by 1284 in 2001 is hereby repealed in its entirety.

Section Two. A new Title 21 of the Oak Harbor Municipal Code is hereby adopted to contain the following chapters:

Title 21
SUBDIVISIONS

Chapters:

21.10	**General Provisions**
21.20	**Preliminary Plats**
21.30	**Construction Plans**
21.40	**Final Plats**
21.50	**General Design Standards**
21.60	**Residential Design Standards**
21.70	**Short Subdivisions**
21.80	**Binding Site Plans**
21.90	**Penalty**

Section Three. A new Chapter 21.10 of the Oak Harbor Municipal Code entitled "General Provisions" is hereby adopted to read as follows:

Chapter 21.10
GENERAL PROVISIONS

Sections:

21.10.010 Purpose.
21.10.020 Applicability.
21.10.030 Administration.
21.10.040 City standards.
21.10.050 Consent to access.
21.10.060 Monuments.
21.10.070 Definitions.

21.10.010 Purpose.

This title shall be known as the "Subdivision Ordinance of the City of Oak Harbor, Washington." The purpose of this title is to regulate the subdivision of land and to promote the public health, safety and general welfare in accordance with the standards established by the state in Chapter 58.17 RCW as now or hereafter amended and the city and to:

(1) Provide for the expeditious review and approval of proposed land divisions which comply with this title, the Oak Harbor zoning ordinance, other city plans, policies and land use controls, and Chapter 58.17 RCW;
(2) Promote safe and convenient traffic circulation;
(3) Facilitate adequate provision for water, sewerage, drainage, parks and recreational areas, sites for schools and school grounds, and other public requirements;
(4) Provide for proper ingress and egress;
(5) Adequately provide for the housing and commercial needs of the citizens of the state and city;
(6) Require uniform monumenting of land divisions and conveyance by accurate legal description;
(7) Provide for convenient and safe pedestrian and bicycle movement;
(8) Promote the integration of new residential neighborhoods with developed areas of the community;
(9) Encourage environmentally sound Low Impact Development techniques to manage stormwater;
(10) Facilitate development that is aesthetically appealing and appropriate for the community; and
(11) Implement the goals, objectives and policies of the Oak Harbor Comprehensive Plan.

21.10.020 Applicability.

(1) The provisions of this title shall apply to all division of land within the corporate limits of the City of Oak Harbor except as expressly stated in this title.
(2) Division of land into nine (9) or less lots shall be in compliance with the regulations and standards governing "short subdivision" set out in Chapter 21.70 of this title unless the binding site plan procedures of Chapter 21.80 are being followed. Division of land into ten (10) or more lots shall comply with regulations and standards pertaining to "Subdivisions" contained herein and must follow the preliminary and final procedures hereafter set forth or, if applicable, binding site plan processes.
(3) Sale of land is prohibited unless it is a duly platted parcel of land or lot or is a tract of

record prior to September 16, 1980, or is a parcel of land approved under the short subdivision provisions.

(4) The provisions of the subdivision ordinance shall not apply to:

(a) Cemeteries and other burial plats while used for that purpose;

(b) Divisions of land into lots or tracts each of which is one hundred twenty-eighth (1/128th) of a section of land or larger, or five (5) acres or larger if the land is not capable of description as a fraction of a section of land;

(c) Divisions made by testamentary provisions, or the laws of descent;

(d) Divisions of land into lots or tracts classified for industrial or commercial use when the city council has approved a binding site plan for the use of the land in accordance with Chapter 21.80 of this title;

(e) A division for the purpose of lease when no residential structure other than mobile homes or travel trailers are permitted to be placed upon the land when the city council has approved a binding site plan for the use of the land in accordance with Chapter 21.80 of this title;

(f) A division made for the purpose of alteration by adjusting boundary lines between platted or unplatted lots or both, which does not create any additional lot, tract, parcel, site, or division nor create any lot, tract, parcel, site, or division which contains insufficient area and dimension to meet minimum lot size requirements for width and area as specified in the underlying zoning;

(g) Divisions of land into lots or tracts if:

(i) Such division is the result of subjecting a portion of a parcel or tract of land to either Chapters 64.32 or 64.34 RCW subsequent to the recording of a binding site plan for all such land;

(ii) The improvements constructed or to be constructed thereon are required by the provisions of the binding site plan to be included in one (1) or more condominiums or owned by an association or other legal entity in which the owners of units therein or their owners' associations have a membership or other legal or beneficial interest;

(iii) The city council has approved the binding site plan for all such land;

(iv) Such approved binding site plan is recorded in Island County;

(h) A division for the purpose of leasing land for facilities providing personal wireless services, as defined in Chapter 58.17.040 RCW, while used for that purpose.

(i) A division of land into lots or tracts of less than three (3) acres that is recorded in accordance with Chapter 58.09 RCW and is used or to be used for the purpose of establishing a site for construction and operation of consumer-owned or investor-owned electric utility facilities as defined in Chapter 58.17 RCW. This subsection does not exempt a division of land from the zoning and permitting laws and regulations of the Oak Harbor Municipal Code. Furthermore, this subsection only applies to electric utility facilities that will be placed into service to meet the electrical needs of a utility's existing and new customers.

(5) Land which the city council may find to be unsuitable or inappropriate for subdivision due to flooding, inadequate drainage, excessive slope, rock formations, high ground water, or other features likely to be harmful to the safety and general health and welfare of the future residents shall not be subdivided unless adequate corrective methods are provided and approved by city council.

21.10.030 Administration.

The director of development services, referred to in this title as "director" is delegated and assigned the administrative and coordinating responsibilities contained in this title pursuant to

Chapter 58.17 RCW. All applications for land division approval under this title shall be submitted to the development services department. In cases where an environmental impact statement is required under the provisions of the State Environmental Policy Act (SEPA – Chapter 43.21C RCW), the department shall not be considered to be in receipt of an application, for the purpose of complying with time limitations established by this title, until the date of issuance of a final environmental impact statement.

21.10.040 City standards.

In addition to compliance with this title, all subdivisions shall adhere to all applicable adopted City standards and regulations including, but not limited to, the Comprehensive Plan, the Sewer Comprehensive Plan, the Water System Plan, and the Comprehensive Stormwater Drainage Plan, and the street and utility standards of the city which are on file with the city clerk.

21.10.050 Consent to access.

Persons applying for land division or lot line adjustment approval under this title shall permit free access to the land subject to the application to all agencies considering the proposal for the period of time extending from the time of application to the time of final action.

21.10.060 Monuments.

Concrete monuments shall be set at controlling corners of the subdivision, at all points where the street lines intersect the exterior boundaries of the subdivision, at controlling corners and points of curvature in each street, and at all street intersections. All surveys shall be of third order accuracy. The use of state plane coordinates is required.

All other lot corners shall be marked with a permanent suitable metal marker not less than three-eighths inch (3/8th) in diameter and eighteen inches (18") long and driven flush with the finished grade.

21.10.070 Definitions.

Words used in the present tense shall include the future tense; the future tense shall include the present tense. The singular shall include the plural; the plural shall include the singular. The words "may" and "should" are permissive; "shall" is mandatory.

(1) "Alley" means a public or private right-of-way, a minimum of twenty (20) feet in width, which affords a secondary access to abutting property.

(2) "Block" means a group of lots, tracts, or parcels surrounded by public rights-of-way or easements for pedestrian/bike travel.

(3) "Block length" means the perimeter distance around a block, divided by two (2).

(4) "Binding site plan" means a drawing to a scale specified by Chapter 21.80 OHMC which:

- (a) Identifies and shows the areas and locations of all streets, roads, improvements, utilities, open spaces, and any other matters specified by local regulations;
- (b) Contains inscriptions or attachments setting forth such appropriate limitations and conditions for the use of the land as are established by the city; and
- (c) Contains provisions requiring development to be in conformity with the site plan.

(5) "Building" means any structure used or intended for supporting or sheltering a continuous use.

(6) "Building setback line" means a line parallel to the front property line in front of which no structure shall be erected. The location of such line shall be determined from the regulations of the zoning ordinance of the city.

(7) "City" means the city of Oak Harbor.

(8) "City engineer" means the duly appointed engineer for the city.

(9) "City finance director" means the duly appointed treasurer and finance director for the city.

(10) "Comprehensive plan" means the coordinated land use policy statement of the City adopted pursuant to 36.70A.030(4) RCW.

(11) "Controlling corner" means all angle points of the perimeter of a subdivision or separate divisions of a subdivision.

(12) "Council" means the city council of the city.

(13) "County assessor" means the duly elected county assessor for the county.

(14) "County auditor" means the duly elected county auditor for the county.

(15) "County engineer" means the duly appointed county engineer for the county.

(16) "County treasurer" means the duly elected county treasurer for the county.

(17) "Dedication" means the deliberate appropriation of land by an owner for any general and public use, reserving to him/her no other rights than such as are compatible with the full exercise and enjoyment of the public uses to which the property has been devoted. The intention to dedicate shall be evidenced by the owner by the presentment for filing of a final or short plat showing the dedication thereon and the acceptance by the public shall be evidenced by the approval of such plat for filing by the City.

(18) "Director" means the duly appointed director of development services for the city.

(19) "Engineer" means a registered professional engineer licensed to practice engineering in the State of Washington.

(20) "Grid street pattern" means a street layout characterized by rectangular blocks and four-way intersections with streets meeting at right angles. This street pattern is also characterized by no or very few dead-ends.

(21) "Modified grid street pattern" means a street layout characterized by rectangular blocks. This street pattern is distinguished from a grid street pattern by a mix of three-way and four-way intersections with streets meeting at right angles.

(22) "Health department" means the county department of health.

(23) "Low impact development" or "LID" means a stormwater management strategy that emphasizes conservation and use of existing natural site features integrated with distributed, small-scale stormwater controls to more closely mimic natural hydrologic patterns in residential, commercial, and industrial settings.

(24) "Lot" means a fractional part of subdivided land having fixed boundaries being of sufficient area and dimension to meet minimum zoning requirements for width and area. The term shall include "plots" and "parcels."

(a) "Corner lot" means a lot which abuts on two (2) or more intersecting streets;

(b) "Interior lot" means a lot which has frontage on one (1) street only;

(c) "Through lot" means a lot other than a corner lot abutting more than one (1) street.

(25) "Metes and bounds" means a description of real property which starts at a known point of beginning and describes the bearings and distances of the lines forming the boundaries of the property, and is completed when the description returns to the point of beginning.

(26) "Mid-block connection" is a thoroughfare connecting two (2) sides of a residential block, usually located near the middle of said block and intended for pedestrian and bicycle use.

(27) "Monument" means an object used to permanently mark a surveyed location. The size, shape and design of the monument is to be in accordance with standards specified by the city engineer.

(28) "Open space" means a portion of land excluding building sites and parking areas which is designated and maintained as an area for leisure, recreation and other activities normally carried on outdoors. Open space may include greenbelt and recreational areas.

(29) "Pavement width" means the actual paved surface measured from edge to edge of streets or alley road surface.

(30) "Pipe stem lots," also called a "panhandle" lot, is defined as a parcel of land which resembles a rectangle with a lot taken out of a corner or corners leaving the remainder with considerably less width on the front lot line than the width at the rear of the parcel.

(31) "Planning commission," also referred to as "the commission," means the appointed planning commission of the city.

(32) "Plat" means a map or representation of a subdivision, showing thereon the division of a tract or parcel of land into lots, blocks, streets and alleys or other divisions and dedications.

(a) "Preliminary plat" means a neat and accurately scaled drawing of a proposed subdivision showing the general layout of streets and alleys, lots, blocks, and other elements , which shall furnish a basis for the approval or disapproval of the subdivision. (b) "Final plat" means the final drawing of the subdivision and dedication prepared for recording with the county auditor and containing all elements and requirements in Chapter 58.17 RCW and the Oak Harbor Municipal Code.

(c) "Redivision" means a map or representation of a subdivision showing thereon the division of a tract or parcel of platted land into two (2) or more lots, blocks, streets, and alleys or other divisions and dedications.

(d) "Short plat" means the map or representation of a short subdivision.

(33) "Plat certificate" means a title report by a title insurance company certifying the ownership, deed restrictions, covenants, etc., of the land being subdivided.

(34) "Right-of-way" or "R/W" means a strip of land deeded or dedicated to the city for street, utility and/or drainage purposes.

(35) "Short Subdivision" means the division or redivision of land into nine (9) or less lots, tracts, parcels, or divisions for the purpose of sale or lease.

(36) "Street" means a dedicated and accepted public right-of-way for vehicular traffic. The word "street" includes the words "road, drive, boulevard or way."

(a) "Arterial street" means an existing or proposed roadway designated as a "Principal" or "Minor" arterial within the Transportation Element of the Comprehensive Plan.

(b) "Collector street" means an existing or proposed roadway designated as a "Collector" or "Collector, Industrial" in the Transportation Element of the Comprehensive Plan.

(c) "Cul-de-sac" means a turnaround at the termination of a dead-end street designed in such a manner as to provide for the safe and convenient reversal of traffic movement.

(d) "Dead-end street" means a local street whose continuation is not required by the city for access to adjoining properties. For the purposes of this title, "eyebrow" or "crescent" turn-arounds are not considered to be dead-ends.

(e) "Local or minor access street" means a street providing vehicular access to abutting properties.

(f) "Private street" means a privately owned right-of-way which provides access for up to nine (9) residential units and meets the requirements of this title.

(g) "Shared drive" means a privately owned right-of-way for vehicular access for a maximum of four (4) residential units and meets the requirements of this title.

(37) "Street and utility standards of the city" shall consist of the requirements contained in the standard drawings and documents as specified by the city engineer which are on file with the city clerk.

(38) "Subdivider" means any person, firm or corporation who subdivides or develops any land deemed to be a subdivision.

(39) "Subdivision" means the division or redivision of land into ten (10) or more lots, tracts,

parcels, sites or divisions for the purpose of sale or lease and includes all resubdivision of land.

(40) "Surveyor" means a registered professional land surveyor licensed to practice surveying in the State of Washington.

(41) "Tract" is a non-buildable unit of land created by a subdivision, short subdivision, deed, or other instrument recorded with the appropriate county recorder. Tracts are usually held in common by the owners of an organization, such as a home owner's association, for common benefit and are not required to meet minimum lot size and dimensional requirements of the applicable zone.

Section Four. A new Chapter 21.20 of the Oak Harbor Municipal Code entitled "Preliminary Plats" is hereby adopted to read as follows:

Chapter 21.20
PRELIMINARY PLATS

Sections:

21.20.010 Purpose and Applicability.
21.20.020 Process for preliminary plat.
21.20.030 Application and submission requirements.
21.20.040 Prints, application and fee submittal.
21.20.050 Review procedures.
21.20.060 Dedications.
21.20.070 Planning commission public hearing.
21.20.080 City council decision.
21.20.090 Effect of approval.

21.20.010 Purpose and Applicability.

The purposes of a preliminary plat (preliminary subdivision) application is to:

(1) Accept public comment on the proposed plat application in accordance with the public participation goals and policies of the comprehensive plan and;

(2) Review the proposed division of land for conformance with the comprehensive plan, zoning standards contained in Title 19 OHMC and design standards of this title including, but not limited to, lot size, setbacks and density prior to submittal of detailed construction plans and drawings under the provisions of Chapter 21.30 OHMC.

A preliminary plat shall be required when division of land into ten (10) or more lots, tracts, or parcels is proposed for which a binding site plan process is not being followed.

21.20.020 Application and submission requirements.

(1) The preliminary plat shall be prepared, stamped and signed by a licensed land surveyor.

(2) The preparer shall, by placing his or her signature and seal upon the face of the plat, certify that all information is portrayed accurately and that the proposed subdivision complies with the standards and requirements of this title, the Oak Harbor zoning ordinance, and any other applicable land use and development controls.

(3) The preliminary plat must be prepared in accordance with the following minimum requirements:

- (a) The preliminary plat shall be reproducible;
- (b) All geographic information portrayed by the preliminary plat shall be accurate, legible, and drawn to an engineering (decimal) scale;
- (c) The horizontal scale of a preliminary plat shall be one hundred (100) feet or fewer to the inch, except that the vicinity sketch and typical street cross sections may be drawn to any other appropriate scale; and
- (d) A preliminary plat shall be twenty-four (24) inches by thirty-six (36) inches in size, and if more than one (1) sheet is needed, each sheet shall be numbered consecutively and an index sheet showing the entire property and orienting the other sheets, at any appropriate scale, shall be provided.

(4) The preliminary plat must include the following information:

- (a) Name of proposed plat;
- (b) Name, address and phone number of the subdivider (owner) and the name, address and phone number and seal of the surveyor preparing the plat;

(c) An accurate and complete legal description of the area being platted;
(d) All parcels of land intended to be dedicated or temporarily reserved for public use and the conditions attached thereto shall be accurately indicated;
(e) The lines and names of all streets and other public ways, pedestrian/bike connections, parks, playgrounds and easements intended to be dedicated for public use and/or common areas granted for use of inhabitants of the subdivision;
(f) There shall be a vicinity sketch at a scale of not more than eight hundred (800) feet to the inch showing the proposed plat in relation to surrounding land. All platted or public rights-of-way for a distance of at least a quarter mile shall be shown, and additional area shall be illustrated, if necessary, to show connecting streets or arterials;
(g) Monuments found and established during the preliminary survey;
(h) Names and addresses of all land owners contiguous to the proposed plat;
(i) Present zoning classification on and adjacent to the proposed plat;
(j) Date, scale, north arrow and lot lines; and
(k) All mapped information shall be prepared in a neat and legible manner.

(5) On a separate sheet of paper from the preliminary plat map, a site plan showing the following:
(a) Name of plat;
(b) Topography of the area with a maximum five-foot (5')contour intervals;
(c) City datum shall be used;
(d) Location of all utilities and sizing of existing and proposed public utilities, including but not limited to fire hydrants, water, sewer, storm drains, electricity, gas, telephone and cablevision lines, mail boxes; and
(e) Existing structures and natural features and all proposed and existing improvements within and adjoining the proposed subdivision as required by the design standards contained in Chapters 21.50 and 21.60 OHMC.

(6) A landscape plan showing all of the following:
(a) All buffers, screening, tree retention areas, fences and hedges required by Chapter 19.46 OHMC;
(b) Landscaping around stormwater ponds as required by this title;
(c) Any landscaping required in the public right-of-way or pedestrian/bicycle connections, including location, type and spacing of street trees; and
(d) Locations of light fixtures in pedestrian/bike connections and along all streets;

(7) An environmental checklist and review fee shall be required in accordance with city ordinance upon the submittal of a preliminary plat;

(8) A copy of any deed restrictions or protective covenants existing or proposed; and

(9) Any additional materials, supporting documentation, and fees necessary to fulfill the requirements of other applicable municipal standards defined in the Oak Harbor Municipal Code.

21.20.030 Prints, application and fee submittal.

The preliminary plat application number of prints and applicable fees shall be as set forth on forms provided by the development services department.

21.20.040 Review procedures.

(1) Preliminary subdivision approval shall be a Type IV review process as outlined in OHMC Chapter 18.20.

(2) Upon receipt of the proposed preliminary plat application and determination of "fully completed" status, the director shall distribute it to each of the following for their review

and comments as applicable:

(a) City administrator or such other person as designated by the mayor;
(b) City engineer;
(c) Fire chief;
(d) Police chief;
(e) Public works superintendent;
(f) City park board;
(g) Island County planning department;
(h) Oak Harbor school district;
(i) Post office;
(j) Public and private utilities (such as power and natural gas), telephone, cable TV, telecommunications providers holding franchises in Oak Harbor; and
(k) Other agencies designated by the mayor.

(3) For purposes of this section, the term "fully completed," as used in RCW 58.17.033, is the same as Technically Complete" as defined and referenced in OHMC 18.20.350.

(4) The director shall prepare and give notice of the time, location and purpose of the hearing to the following agencies, if applicable:

(a) Department of Transportation if the preliminary plat is adjacent to the right-of-way of a state highway or within two (2) miles of the boundary of a state or municipal airport; and
(b) The county if the preliminary plat abuts the city limits.

21.20.050 Dedications.

(1) Dedication of land to any public body, provision of public improvements to serve the subdivision, and/or impact fees imposed in conformity with RCW 82.02.050 through 82.02.090 may be required as a condition of subdivision approval. Dedications shall be clearly shown on the final plat. No dedication, provision of public improvements, or impact fees imposed under RCW 82.02.050 through 82.02.090 shall be allowed that constitutes an unconstitutional taking of private property. The city shall not, as a condition to the approval of any subdivision, require a release from damages to be procured from other property owners.

(2) If the preliminary plat includes a dedication of a public park with an area of less than two (2) acres and the donor has designated that the park be named in honor of a deceased individual of good character, the city shall adopt the designated name.

21.20.060 Planning commission public hearing.

(1) Notice shall be provided of a public hearing before the planning commission.

(a) The director shall set a public hearing before the planning commission on the preliminary plat application.
(b) The director shall publish notice of the hearing not less than fifteen (15) days prior to the hearing date in a newspaper of general circulation in the area where the real property which is proposed to be subdivided is located.
(c) The director shall also give special notice of the hearing to landowners of adjacent real property located within three hundred (300) feet of any portion of the boundary of the proposed subdivision. If the owner of the real property which is proposed to be subdivided owns another parcel or parcels of real property which lie adjacent to the real property proposed to be subdivided, special notice shall also be given to landowners of real property any portion of the boundaries of which are adjacent to real property owned by the owner of the real property

proposed to be subdivided.

(d) All hearing notices shall include a description of the location of the proposed subdivision. The description may be in the form of either a vicinity location sketch or a written description other than a legal description.

(2) The planning commission shall consider the preliminary plat application and make a recommendation to the city council whether to approve or disapprove the proposed subdivision.

(a) The public hearing shall be an open record hearing where testimony and evidence shall be taken subject to the rules of procedure of the planning commission.

(b) The applicant shall be given an opportunity to testify and produce evidence in support of the preliminary plat application.

(c) Members of the public shall also be allowed to testify and to produce evidence.

(d) The planning commission shall review the application to determine whether the proposed subdivision conforms to the city's comprehensive plan, zoning code, and other planning documents adopted by the city council.

(e) The planning commission shall enter written finding of fact and conclusions concerning the proposed subdivision and include them in the recommendations to the city council.

(f) The recommendations of the planning commission shall be transmitted to the city council within fourteen (14) days of action by the planning commission.

21.20.070 City council decision.

(1) The preliminary plat application shall be placed on the agenda for the next regular city council meeting not less than one (1) week after the city council's receipt of the planning commission recommendations.

(2) Consideration of the application by the city council shall be a closed record proceeding. The city council shall make its determination whether to approve or disapprove the application based on the record created before the planning commission and the planning commission's recommendations.

(3) The city council shall inquire into the public use and interest proposed to be served by the establishment of the subdivision and dedication(s). It shall make written findings:

(a) Whether appropriate provisions have been made for, but not limited to, the public health, safety and general welfare, for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and schoolgrounds, and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who walk to and from school.

(b) Whether the public use and interest will be served by the platting of the subdivision and dedication(s).

(c) The city council may approve or disapprove the application by resolution, which shall include the written findings required in paragraph (3) of this section. The city council may condition approval of the preliminary plat upon actions to meet the requirements of paragraph (3) of this section. The city council may not require a release from damages to be procured from other property owners as a condition of preliminary plat approval.

(d) The city council decision shall be made within ninety (90) days of the date of the director's determination that the application is fully completed, excluding those excepted time periods specified in RCW 58.17.140, unless the applicant consents in writing to an extension of the time period for decision.

21.20.080 Effect of approval.

(1) Approval of the preliminary plat by the city council shall constitute approval for the applicant to develop construction plans and specifications for facilities and improvements, as required, in strict conformance with the approved preliminary plat, street and utility standards adopted by the city, and any special conditions required by the council.

(2) Permission shall not be granted for installation of required improvements until all construction plans and specifications have been approved in writing by the city engineer.

(3) Time for performance. Except as provided for in 21.40.020, construction shall be completed within five (5) years of the date of the city council resolution approving the preliminary plat or the preliminary plat approval shall terminate and all permits and approvals issued pursuant to such authorization shall expire and be null and void. If construction has been commenced but the work has been abandoned for a period of one (1) year or more, and if no extension of time has been granted as provided in 21.40.020 OHMC, the authorization granted for the preliminary plat shall terminate and all permits and approvals issued pursuant to such authorization shall expire and be null and void.

Section Five. A new Chapter 21.30 of the Oak Harbor Municipal Code entitled "Construction Plans" is hereby adopted to read as follows:

Chapter 21.30
CONSTRUCTION PLANS

Sections:

21.30.010 Purpose and Applicability.
21.30.020 Construction plans – Engineering Review.

21.30.010 Purpose and Applicability.

The purpose of construction plans is to document that the specific construction details for all public and private improvements such as, but not limited to streets, sewer, water, storm sewer, pedestrian/bike connections, landscape strips, and sidewalks, required as part of preliminary plat or short subdivision approval, and ensure that they will be built according to City standards.

Construction plans are required of all projects which seek to divide land and create parcels, tracts, or lots through the subdivision or short subdivision process.

21.30.020 Construction plans – Engineering Review.

(1) Following approval of the preliminary plat or short subdivision by the city council, if the subdivider wishes to proceed with the subdivision, he or she shall submit to the city engineer the applicable plan and other review fees as set out in this title and the city's fee schedule, and three (3) complete sets of construction plans and specifications (sheet size twenty-four (24) inches by thirty-six (36) inches) prepared by an engineer registered in the State of Washington showing all improvements as required by the city council in granting the preliminary plat. Such plans must be submitted and approved by the city engineer prior to beginning any grading work on the site.

(2) All construction plans and specifications shall be in conformance with the city street and utility standards. The city engineer shall approve, conditionally approve, or disapprove the submitted plans according to the timelines established in Chapter 18.20 OHMC. The subdivider shall indicate, either on the plans or by separate document, the engineer retained to provide certification of all improvements. Approval shall expire five (5) years from the date of initial preliminary plat approval.

(3) After the city engineer has approved the construction plans and specifications, the subdivider may then proceed as follows:

(a) Prior to the submission of a final plat for approval, all streets, alleys, sidewalks, pedestrian/bike connections, landscaping, storm drainage, utilities, monumentation, street lights, trees, and any other improvements specified in this title shall be installed and completed by the subdivider to the satisfaction of the city engineer and in conformance with this chapter;

(b) The subdivider's engineer shall provide "as-built" drawings of all city-maintained streets and utility improvements related to the subdivision. As-built drawings shall be submitted to and approved by the city engineer prior to acceptance of public improvements;

(c) A performance bond in the amount of one hundred-twelve percent (112%) of the cost to construct required and uninstalled improvements may be posted in lieu of the complete installation of improvements, provided that such bond is recommended by the city engineer. All deferred improvements shall be completed within two (2) years from the date a bond has been accepted or the

city will use securities to complete. The performance bond shall specify exactly what improvements are included, accompanied by a time schedule for completion. In lieu of the performance bond, the developer may provide for other security approved by the city council at the next regularly scheduled council meeting following the city engineer's approval of construction plans;

(d) The subdivider shall promptly proceed with the completion of the guaranteed improvements. If, in the opinion of the city engineer, the subdivider has not proceeded toward the prompt completion of the bonded improvements, he may cause the bond or other security to be updated with new estimates of cost on all incomplete improvements and all increased cost estimates shall be passed on to the bond or other security. If these increased costs are not accepted by the security, then the city shall foreclose on the bond or other security. In any event, all bonded improvements must be completed within the period specified in the bond, or the bond shall be forfeited and the city will undertake the installation and completion of all improvements with the bond;

(e) Water, sanitary sewer and storm sewer connections to private property will not be allowed until preliminary approval of all public utility installations has been made by the city engineer. Prior to the acceptance of public improvements, the subdivider shall submit to the city engineer a permanent reproducible mylar of the original construction drawings, said mylar corrected to indicate all as-built information together with a certification by the developer's engineer certifying the accuracy of said as-built information, and conformance of the installation with the approved plans/specifications and all city requirements. In addition to the mylar, one (1) electronic copy and two (2) sets of prints shall be provided;

(f) Before acceptance of the improvements by the city council of the city of Oak Harbor, a maintenance bond or other security acceptable to the city shall be posted by the developer jointly obligating the developer, or some other party acceptable to the city, and a security, acceptable to the city guaranteeing these improvements from any defects caused by faulty workmanship, materials or design or combination thereof for a period of two (2) years from the date of written acceptance of the improvements. The amount of bond or other security requested shall be determined by the city engineer, but in no event shall the amount be less than ten percent (10%) of the cost of the improvements; and

(g) The city engineer shall be responsible for approving all engineering drawings, the final inspection and acceptance of all subdivision improvements. A reasonable fee to cover the cost to the city of inspecting and reviewing the construction plans shall be billed to the developer. The fee shall be the cost to the city per hour of employee time spent inspecting and reviewing construction plans. This fee shall be paid in full prior to formal acceptance of the improvements by the city council.

Section Six. A new Chapter 21.40 of the Oak Harbor Municipal Code entitled "Final Plats" is hereby adopted to read as follows:

Chapter 21.40
FINAL PLATS

Sections:

21.40.010 Purpose and Applicability.
21.40.020 Timeline for submittal of final plat and extensions for completion of improvements.
21.40.030 Application requirements.
21.40.040 Prescribed form.
21.40.050 Review and approval process.
21.40.060 Filing – Copies.

21.40.010 Purpose and Applicability.

Final plats are final drawings of the subdivision and dedication prepared for filing with the county auditor in accordance with Chapter 58.17 RCW and county and city ordinances. Final plats are required for any land division which uses the subdivision process to create lots, parcels or tracts. Final plats are not required to be submitted for binding site plans.

21.40.020 Timeline for submittal of final plat and extensions for completion of improvements.

(1) Final plat approval is a Type IV review process, in accordance with Chapter 18.20 of the OHMC.

(2) An application for final plat approval shall be submitted to the director within five (5) years of the preliminary plat approval and when either:

(a) The subdivider has completed and has received approval of the construction and installation of all improvements; or

(b) The subdivider has submitted an approved performance bond in lieu thereof.

(3) The city council may grant a time extension for completion of the requirements for preliminary plat for a maximum of one (1) year. Said extension shall be conditioned upon:

(a) The plat meeting all subdivision requirements which are in effect at the time the extension is granted; and

(b) Upon a showing that the applicant has attempted in good faith to submit the final plat within the five (5)-year period.

21.40.030 Application requirements.

(1) The application for the final plat shall include all of the following:

(a) A reasonable application processing fee in accordance with RCW 82.02.020 to cover the cost of processing the application as set out in the City's Comprehensive Permit Fee List;

(b) The final plat map meeting the requirements of 58.17 RCW, including certifications, dedications and title reports. Every plat containing a dedication filed for record must be accompanied by a title report confirming that the title of the lands as described and shown on said plat is in the name of the owners signing the certificate or instrument of dedication.

(c) A recordable survey and surveyor's signature meeting the requirements of Chapter 58.09 RCW and RCW 58.17.250.

(d) The subdivider's engineer shall provide cost information for construction and installation of all improvements including but not limited to the following:

(i) Water Mains and Appurtenances. Total cost by size and number of feet and the cost of any other associated improvement by item, including water services;

(ii) Storm Drains. Total cost by size and number of feet;

(iii) Sanitary Sewer. Total cost by size and number of feet;

(iv) Streets. Total cost by size and number of feet;

(v) Pedestrian/bike connections. Total cost by size and number of feet;

(vi) Landscaping, including street trees. Total cost;

(vii) Other on or off-site improvements as required.

(2) The application and number of prints as set forth on the application of the final plat shall be submitted to the director along with the original signed by the owner and registered land surveyor.

21.40.040 Prescribed form.

The final plat shall be submitted to the director in the form and manner prescribed in this section. The prescribed form described in this section also applies to short subdivision maps.

(1) Form.

(a) The final plat, containing all the information specified in this chapter, shall be prepared in a neat and legible manner in permanent drawing ink or equivalent on mylar film or better. Applicant shall also submit an electronic copy to the city of the approved final plat. All documents, maps, survey calculations and notes shall contain the name of the subdivision, the name(s) of the subdivider(s), and the name of the registered land surveyor responsible to the subdivider(s) and;

(b) The plat map shall be eighteen inches (18") by twenty-four inches (24") with a one-half-inch (1/2") border on the top, bottom, and right hand margins and a two-and-one-half-inch (2 ½") border on the left hand or binding margin.

(2) Specific Requirements. The final plat shall clearly show the following information:

(a) The lines and names of all streets and other public ways, pedestrian/bike connections, parks, playgrounds and easements intended to be dedicated for public use and/or common areas granted for use of inhabitants of the subdivision;

(b) The lines and names of all existing or platted streets or other public ways, pedestrian/bike connections, parks, playgrounds and easements adjacent to the subdivision, including municipal boundaries, township lines, and section lines;

(c) The lengths and bearings of all straight lines, curve radii, curve delta, arcs and semitangents (where appropriate) of all curves;

(d) All bearings and dimensions along the lines of each lot together with any other data necessary for the location of any lot lines in the field. All bearings shall be referenced to the Washington Coordinate Systems, North Zone;

(e) All easements and associated restrictions and maintenance provisions;

(f) Building setbacks;

(g) Tracts or areas set aside for environmental protection, tree retention, community open space, common access or any other restricted use with associated restrictions and maintenance provisions clearly defined;

(h) The area of all lots and tracts expressed in square feet;

(i) Suitable primary control points, approved by the city engineer, on descriptions and ties to such control points, to which all dimensions, angles, bearings and similar data given on the plat shall be referred;

(j) The location of all permanent monuments;

(k) The names of all subdivisions immediately adjacent thereto;

(l) The date, north arrow, scale, datum plane, and date of survey;

(m) The boundary of the tract with the courses and distances marked thereon as determined by a field survey made by a registered land surveyor of the state;

(n) A vicinity sketch map of approximately 800 feet to the inch;

(o) Street names; and

(p) The stamp and signature of a surveyor licensed in the State of Washington.

(3) All linear dimensions shall be given in feet and decimals of a foot to the nearest hundredth (1/100th).

(4) The scale of the final plat will be one-hundred (100) feet to the inch, or as approved by the director.

(5) If the plat constitutes a replat, the lots, blocks, streets, etc., of the original plat shall be shown by dotted lines in their proper positions relative to the new arrangement of the plat, the new plat being clearly shown in solid lines so as to avoid ambiguity.

(6) Document Forms. All final plats shall contain the elements listed in Chapter 58.17.160 RCW. In addition, the final plat shall contain the legal description of the subdivision and easement provision, a dedication, acknowledgments, and other statements, in substantially the form as follows:

(a) Easements (Sample Utility Easement)

An easement is reserved for and granted to (the names of all the utilities, public and private, serving the area) and their respective successors and assigns under and upon the exterior ten (10) feet of front boundary lines of all lots and tracts, in which to install, lay, construct, renew, operate, maintain and remove utility systems, lines, fixtures and appurtenances attached thereto, for the purpose of providing utility services to the subdivision and other property, together with the right to enter upon the lots and tracts at all times for the purposes stated, with the understanding that any grantee shall be responsible for all unnecessary damage it causes to any real property owner in the subdivision by exercise of rights and privileges herein granted.

(b) Dedication (By Individuals).

Know All Men by these Presents that we, the undersigned owners in the fee simple or contract purchaser and mortgage holder of the land hereby platted, hereby declare this plat and dedicate to the use of the public forever all streets and avenues shown thereon and use thereof for all public purposes not inconsistent with the use thereof for public highway purposes; also the right to make all necessary slopes for cuts and fills upon the lots and blocks shown on this plat in the original reasonable grading of the streets and avenues shown hereon. This subdivision has been made with our free consent and in accordance with our desires.

IN WITNESS WHEREOF we have hereunto set our hands and seals this ____ day of _____, ___.

_____ _____

_____ _____

(c) Dedication (By Corporation).

Know All Men by these Presents that the _____, Inc., a state corporation, owner in the fee simple or contract purchaser and mortgage holder of the land hereby platted, declares this plat and dedicates to the use of the public forever, the streets and avenues shown hereon and the use thereof for all public purposes consistent with the use thereof for public highway purposes together with the right to make all necessary slopes for cuts and fills upon the lots and blocks shown hereon in the original reasonable grading of all such streets and avenues shown hereon. This subdivision has been made with our free consent and in accordance with our desires.

IN WITNESS WHEREOF, the said corporation has caused its corporate name to be

hereunto subscribed and its corporate seal to be hereunto affixed this ____ day of _____, ___.

_____, Inc.

By_____

By_____

(d) Acknowledgment (By Individuals).

State of _____, County of _____, I certify that I know or have satisfactory evidence that _____ signed this instrument and acknowledged it to be (his/her) free and voluntary act for the uses and purposes mentioned in the instrument.

WITNESS my hand and official seal the day and year first above written.

Notary Public in and for the State of _____

residing at_____

My Appointment Expires_____

(e) Acknowledgment (By Corporations).

State of ____, County of _____. I certify that I know or have satisfactory evidence that _____ signed this instrument, on oath stating that (he/she) was authorized to execute the instrument and acknowledged it as the _____ (type of authority, e.g., officer, trustee, etc.) of _____ (name of party on behalf of whom instrument was executed) to be the free and voluntary act of such party for the uses and purposes mentioned in this instrument.

IN WITNESS WHEREOF I have set my hand and affixed by official seal the day and year above written.

Notary Public in and for the State of _____

residing at_____

My Appointment Expires_____

(f) Surveyor's Certificate.

I hereby certify that the plat of _____ is based upon a complete and actual survey and subdivision of Section ___, Township ___, Range ____ East W.M.; that the courses and distances are shown correctly thereon; that the monuments have been set and the lot and block corners staked correctly on the ground; and that I have fully complied with the provisions of the statutes and platting regulations. _____

Certificate No._____

Expiration _____

Date _____

(g) City engineer Approval.

I hereby certify that this final plat is consistent with all applicable city improvement standards and requirements in force on the date of preliminary plat approval, examined and approved this ____ day of _____, 20___.

_____

City engineer

(h) City Council Approval.

Approved by the Council of the City of Oak Harbor, Washington this _____ day of _____, ___.

Attest:

_____ _____

Clerk Mayor

(i) City Finance Director Approval.

I hereby certify that all taxes and delinquent assessments for which the property may be liable as of the date of certification have been duly paid, satisfied or discharged.

This day of _____, ____.

_____

City Finance Director

(j) County Treasurer Approval.

This is to certify that all taxes heretofore levied and which have become a lien upon the lands herein described, have been fully paid and discharged, according to the records of my office, up to and including the year of _____.

(k) County Auditor.

Filed for at the request of _____, this ___ day of _____, 20___, and recorded in Volume ___ of Plats, page(s) ____, Records of Island County, Washington.

_____

County Auditor

(l) The final plat shall be accompanied by a computer check of the boundaries, street centerlines, lots, blocks and lot areas.

(m) All documents submitted under this section shall contain the name of the subdivision and the name and address of the subdivider.

(7) Waivers of claims of damages for damages to adjacent land pursuant to RCW 58.17.165 may be required where the City accepts a street or avenue as part of final plat approval.

21.40.050 Review and approval process.

(1) The director shall forward the final plat application to the city council if;

(a) The application is in order; and,

(b) Improvements are constructed in a satisfactory manner and approved by the city engineer or a bond or other security acceptable to the city engineer has been satisfactorily posted for deferred improvements.

(2) The recommendations of the director regarding the final plat shall be forwarded to the mayor for placement upon city council agenda.

(3) After receipt of the recommendation on any final plat, the city council shall consider the final plat at a public meeting.

21.40.060 Filing – Copies.

(1) If approved, the subdivider shall file the final plat with the county auditor within 30 working days after approval by the city council. If the final plat has not been recorded within the above specified timeframe, the city resolution adopting the final plat will automatically become null and void.

(2) The subdivider shall furnish the director with one (1) permanent reproducible copy, mylar or better quality, of the final plat including all recording data and covenants. Paper and electronic copies shall be supplied within five (5) days of the approval.

Section Seven. A new Chapter 21.50 of the Oak Harbor Municipal Code entitled entitled "General Design Standards" is hereby adopted to read as follows:

Chapter 21.50
GENERAL DESIGN STANDARDS

Sections:

21.50.010 Purpose.
21.50.020 Applicability.
21.50.030 Relationship to other plans required by this title.
21.50.040 Waiver of requirements – Procedure.
21.50.050 General improvement standards.
21.50.060 Streets – Access requirements.
21.50.070 Streets – Required improvements.
21.50.080 Streets – Relationship to adjoining development.
21.50.090 Alleys.
21.50.100 Lot Dimensions.

21.50.010. Purpose.

The design standards in this chapter implement the goals and policies of the Oak Harbor Comprehensive Plan for the division of land within city boundaries into lots, tracts, and parcels, as well as set requirements for the design and provision of public infrastructure needed to serve land divisions.

21.50.020. Applicability.

The general design standards in this chapter apply to all divisions of land within the City of Oak Harbor, including binding site plans, short subdivisions, and subdivisions.

21.50.030 Relationship to other plans required by this title.

All improvements required by this chapter for land divisions must be shown on the preliminary plat site plan, short subdivision map, or the binding site plan map, as applicable.

21.50.040 Waiver of requirements - Procedure.

(1) Any subdivider can make application for a waiver from one (1) or more of the design standards contained in this chapter provided the request is received concurrently with the proposed subdivision, short subdivision, binding site plan or dedication. In addition, the waiver process described in this section may be used to vary from the residential design standards in Chapter 21.60. A waiver shall be granted only upon a finding that strict compliance with the provisions for subdivision, short subdivision, binding site plan or dedication would cause unusual and unnecessary hardship on the subdivider due to the following:
   (a) Because of the size of the tract to be subdivided; or,
   (b) Its topography; or,
   (c) The condition or nature of adjoining areas; or,
   (d) The existence of unusual physical conditions.

(2) No waiver shall be granted which allows a subdivision, short subdivision or binding site plan, which is not in the public interest as identified in RCW 58.17.010 et seq.

(3) Subdivision waivers are a Type IV review process, as described in Chapter 18.20 of the OHMC and shall accompany and be processed with the preliminary plat, short subdivision, binding site plan or boundary line adjustment application.

(4) Such conditions may be required which may achieve, insofar as practicable, the objectives of the requirements for which a waiver is authorized.

(5) Application for an Adjustment or Waiver from the Local Residential Street designs contained in Table 21.50 -1 shall be processed in accordance with the provisions of section 21.60.070 and 21.60.080 OHMC, not the provisions of this section.

21.50.050 General improvement standards.

The standards of this section shall apply generally throughout the city of Oak Harbor.

(1) A water distribution system, including fire hydrants, shall provide domestic water service and fire protection to each lot. Said system shall conform to the city's comprehensive water plan, established policy and state requirements. Fire hydrant type and location shall be subject to the review and approval of the fire chief or his designee. Water mains and distribution systems shall be installed as shown on construction plans approved by the city engineer pursuant to Chapter 21.30 OHMC

(2) Sewer mains shall be installed as shown on drawings approved by the city engineer and shall conform to the city's comprehensive sewer plan. When required, sewer mains, manholes, lift stations and force mains shall be installed in all subdivisions prior to any water service being connected to any improvements. Service connections shall be provided to each lot.

(3) Drainage:

(a) All drainage in and through the subdivision shall be the responsibility of the subdivider.

(b) The subdivider may divert or enclose the natural drainage in his subdivision after providing a drainage system approved by the city engineer. The subdivider shall bear all costs associated with diverting or enclosing natural drainage and such alterations shall comply with Title 20 OHMC.

(c) All drainage within street rights-of-way must be contained in underground pipes and culverts except where permitted in gutters, or where Low Impact Development ("LID") stormwater management facilities are approved by the city;

(d) Where required, the subdivider shall design and install storm drain detention or infiltration systems.

(e) Alternate drainage structures, facilities and conveyances, such as LID techniques, may be acceptable where soil conditions permit, subject to approval by the city engineer.

(f) For maintenance purposes, all storm water detention or treatment facilities shall be placed in a tract, unless located within a public right-of-way.

(4) Streets:

(a) Paved streets, sidewalks, landscape strips and concrete curbs and gutters shall be required on all dedicated street rights-of-way in all subdivisions, unless an alternative design has been approved in accordance with section 21.60.070 and 21.60.080. LID alternatives such as permeable surfacing and on-site stormwater management facilities are encouraged where site and soil conditions make these feasible alternatives. All improvements shall be constructed in conformance with city street and utility standards and, when applicable, the "LID Technical Manual for Puget Sound" (Puget Sound Action Team, January, 2005 edition).

(b) The improvements shall be made from intersection to intersection, intersection to subdivision boundary, or from subdivision boundary to subdivision boundary.

(c) All streets, roads and alleys shall be graded to their full width so that pavement and sidewalks can be constructed on the same plane. Before grading is started, the entire right-of-way area shall be cleared of all stumps, roots, brush and other

objectionable materials, and all trees not intended for preservation.

(d) On streets where a proposed subdivision adjoins an existing subdivision or existing street dedication and the existing subdivision or existing street dedication does not meet city standards, the subdivider shall, as a minimum, be responsible for installing paved streets, sidewalks, curbs, gutters, landscape strips, street trees, monuments, sanitary and storm sewers, street lights, water mains, and street name signs on both sides of all streets within the subdivision and on one (1) side on streets around the perimeter of the proposed subdivision. Any partial street improvements required on the perimeter of a subdivision shall be designed to allow for two-way vehicular traffic where reasonably necessary as a direct result of the creation of the subdivision.

(5) Alleys shall be constructed to the standards indicated in Table 21.50 – 1.

(6) Sidewalks:

(a) Sidewalks shall be installed on both sides of all streets, along dead-end streets and around cul-de-sacs. No physical obstructions such as poles, fire hydrants, utility boxes, utility vaults, or mailboxes shall be constructed in the sidewalk or overhang the sidewalk from zero to eight (8) feet above grade. Sidewalks shall be a minimum of five (5) feet wide and four (4) inches thick. Where rolled curb has been approved by the city engineer, all sidewalks adjacent will be a minimum thickness of six (6) inches.

(b) All sidewalks shall be completed prior to an occupancy permit being granted for any new building.

(7) Other Utilities:

(a) Street light standards and fixtures shall be provided to supply adequate lighting for the safety and convenience of the public.

(b) Franchise utilities shall be installed to provide electricity, natural gas, telephone, television/internet cable, and other services to the platted area. Said utilities shall be restricted to underground installation.

(c) All utilities (water, sewer, and electrical, and if available, gas, TV cable, and internet cable) shall be installed to the property line prior to acceptance of the public improvements.

(8) The subdivider shall install street name signs and traffic control signs and/or improvements and devices other than traffic signals to the satisfaction of the city engineer. The city may install such signs and devices at the expense of the subdivider.

(9) All utilities except water, sewer and storm sewer will be installed behind the sidewalk.

21.50.060 Streets - Access requirements.

(1) Each lot in a subdivision or short subdivision must have access to a public street or road. This requirement does not apply to lots created through a binding site plan. Alternatively, access may be by private access easement within a residential short subdivision in accordance with the requirements of sections 21.60.120 – through 21.60.140 of this title. In the case of lots intended for use by single-family residences, no more than one (1) driveway access is permitted for each lot, except as authorized by the city engineer.

(2) Whenever a proposed lot created through land divisions abuts two (2) or more streets of a different functional classification, access to the lot must be from the street with the lowest functional classification. Provided, that access may be from the street with the highest functional classification if it is determined by the city engineer that access from the street with the lower functional classification is impractical or impossible due to:

(a) Existing site conditions;

(b) Existing structures; and/or

(c) Topography or critical areas constraints of the site.

21.50.070 Streets - Required Improvements.

(1) Table 21.50 – 1 gives the minimum required dimensional standards for each functional street type listed in the Transportation Element of the Oak Harbor Comprehensive Plan. All public rights-of-way proposed within subdivisions, short subdivisions or binding site plans must conform to the requirements in Table 21.50 – 1, unless an alternative Local Residential Street design has been approved in accordance with section 21.60.070 or 21.60.080.

Table 21.50 – 1. Required Street Improvements

Street Type	Right-of-way width *	Face of curb to-face of curb width	Sidewalk width each side	Landscape strip width each side	Bike lane width each side
Principal Arterial, 4-lane	97 - 105 feet	52 feet without bike lanes, 60 feet with bike lanes. Landscaped median is 12 feet.	8 feet	12 feet	4 feet.
Minor Arterial, 2-lane	80 feet	47 feet, with 11 foot center turn-lane	5 feet	10.5 feet	5 feet
Minor Arterial, Industrial (enterprise area)	60 feet	38 feet	none	6 feet (bioswale)	4 feet
Collector w/ bike lanes	66 feet	48 feet	5 feet	3 feet	5 feet
Collector, Industrial	50 feet	26 feet	none	6 feet (bioswale)	4 feet, one side
Local, Residential - Narrow	50 ft	28 feet with one parking lane. Or 28 feet including two 4-foot bike lanes and no parking	5 feet	5 feet	4 feet, optional
Local Residential, Wide	60 feet	36 feet parking on both sides. Or 36 feet with parking on one side and 4-foot bike	5 feet	5 feet	4 feet, optional.

		lanes on both sides.			
Alley	20	19 feet.***	none		none

* All street types include a 6-inch strip at the outside edge of the physical improvements, but within the right-of-way, with the exception of the "Minor Arterial, Industrial" which has a 1-foot strip on the outside edge of right-of-way and the "Collector, Industrial" which has a 4 foot strip on the outside edge of right-of-way
** All streets include 6-inch curbs not shown in the dimensions above, with the exception of alleys which do not have curbs.
***16-foot width pavement sections may be approved on alleys with permission from the city engineer.

(2) Where landscape strips are required on Local Residential streets within the public right-of-way, they are to be maintained by the property owner whose property is adjacent to the landscape strip. Such landscape strips shall contain one hundred percent (100%) groundcover in the form of drought-tolerant grass or turf.

(3) Intersection spacing of less than one hundred twenty five feet (125') is not allowed.

(4) For land division of commercial or industrial property, dead-end streets may be permitted where the proposed dead-end street will not adversely affect the traffic flow and circulation within the area. Dead-end streets shall terminate in a turnaround approved by the city engineer. The maximum allowable length is for dead-end streets is four hundred feet (400'), measured from the center of intersection to the dead-end terminus. Requirements for dead-end streets in residential subdivisions or short subdivisions are contained in OHMC section 21.60.110.

(5) All public roads shall also meet the requirements Title 11 OHMC.

21.50.080 Streets - Relationship to adjoining development.

The standards in this section address pedestrian, vehicular and bicycle traffic flow on a site as it relates to surrounding sites. These provisions create continuous, multimodal connections across properties and developments of different ownership. In so doing, these standards facilitate the efficient and safe movement of pedestrians, bicycles and vehicles, giving each mode multiple route choices from origins to destinations.

(1) Streets, sidewalks, pedestrian or bike paths, shall be linked within and between neighborhoods to create a continuous and interconnected network of roads and pathways;

(2) Local Streets, Arterials and Collectors shall be extended to the boundary of the development, unless an exceptional circumstance of topography, critical areas or existing development prohibits the extension. Provided, that if an adjacent property has a reasonable likelihood of redeveloping in the future, the director may require a street stub. Streets that end within a subdivision which will be extended in the future must be designed at least 200 feet beyond the limits of the subdivision and shall be shown on the preliminary plat document.

(3) The location of all Principal Arterials, Minor Arterials, and Collectors must conform to the Transportation Element of the Oak Harbor Comprehensive Plan;

(4) All streets dedicated shall be full-width except along the boundary lines of the plat. Half-width streets may be permitted along the boundaries of a development upon approval of a final plat and in compliance with 21.50.050(4) OHMC where reasonably necessary as a direct result of the creation of the subdivision. MAY NEED TO BE REVISED PENDING MARGERY'S COMMENTS.

(5) The number of intersecting streets with Principal or Minor arterials shall be held to a minimum.

(6) Increased right-of-way requirements: the city engineer may require that street widths be increased from the minimum width in Table 21.50 - 1 to provide for traffic movement, to reduce or eliminate traffic congestion and for safety reasons.

21.50.090 Alleys.

Alleys provide secondary access to an abutting property. Alleys may be considered as a design solution to provide vehicular or service access to residential, commercial and industrial properties according to the following provisions:

(1) When alleys are proposed, they may be publicly dedicated and maintained or privately owned and maintained. All alleys which are dead-ends and do not provide a through connection to the other side of the block shall be privately owned and maintained.

(2) The dimensions of alleys must conform to Table 21.50 – 1.

(3) Alleys may be required by the city engineer as a design solution to serve residential properties which front on Arterials and Collectors and to minimize the number of driveway accesses on these streets. Alleys may also be required by the city engineer in commercial and industrial areas.

(4) Where private alleys are proposed, access and utility easements for residential areas may be permitted in lieu of public dedication. All utility easements shall contain access provisions for purpose of public utility maintenance.

21.50.100 Lot Dimensions.

The following requirements address the size and shape of lots created as part of subdivisions or short subdivisions and are intended to create a well-ordered and efficient arrangement of lots.

(1) Every lot shall have a minimum width of sixty feet (60') at the building line. All lots which do not have a width of sixty feet (60') at the setback line as referenced under the applicable zoning ordinance shall indicate on the face of the final plat the location of said building line.

(2) The size, shape, and orientation of lots shall meet the minimum area and width requirements of the applicable zoning classification and shall be appropriate for the type of development and use contemplated.

(4) Generally, the depth of the lot should not be more than three (3) times the width of the lot.

(5) All lots shall have a minimum frontage of thirty feet (30') on a public street unless access from a shared drive or private street has been approved in accordance with the requirements of 21.60.120 through 21.60.140.

(6) Insofar as practical, side lot lines shall be at right angles to street lines or radial to curved street lines, and no more than twenty (20) degrees from perpendicular to the front property line with which it intersects.

(7) Side and rear lot lines shall be straight, or composed of straight line elements.

(8) All lot corners in subdivisions and short subdivisions at intersections of dedicated public rights-of-way shall have a minimum radius of fifteen feet (15').

Section Eight. A new Chapter 21.60 of the Oak Harbor Municipal Code entitled "Residential Design" is hereby adopted to read as follows:

Chapter 21.60
RESIDENTIAL DESIGN STANDARDS

Sections:

21.60.010 Purpose.
21.60.020 Applicability.
21.60.030 Relationship to other plans required by this title.
21.60.040 Blocks – Configuration.
21.60.050 Blocks – Size.
21.60.060 Local residential streets - Alternative designs.
21.60.070 Local residential streets – Adjustment application for alternative designs.
21.60.080 Local residential streets – Waiver application for alternative designs.
21.60.090 Local residential streets - Submittal requirements for alternative street designs.
21.60.100 Local residential streets – Layout.
21.60.110 Local residential streets - Limitations on dead-ends.
21.60.120 Access easements – When allowed.
21.60.130 Access easements – Design.
21.60.140 Access easements - Utility services.
21.60.150 Street trees – Requirement.
21.60.160 Street trees – Species.
21.60.170 Street trees – Maintenance and protection.
21.60.180 Landscape buffer – Requirement.
21.60.190 Landscape buffer – Design.
21.60.200 Landscape buffer – Maintenance and protection.
21.60.210 Pedestrian/bike connections – When required.
21.60.220 Pedestrian/bike connections – Design.
21.60.230 Pedestrian/bike connections – Safety.
21.60.240 Pedestrian/bike connections – Maintenance and Protection.
21.60.250 Stormwater ponds –Location and design.
21.60.260 Stormwater ponds – Required landscaping.

21.60.010 Purpose.

The following design criteria address the street, block and lot layout, landscaping and aesthetic design of residential subdivisions and short subdivisions and are intended to create attractive and safe neighborhoods and networks for pedestrians, bikes and vehicular travel within Oak Harbor. The criteria promote "walkable" neighborhoods which contribute to the efficient and comfortable movement of pedestrians, within Oak Harbor, and a reduction in the growth of vehicle trips, in accordance with the comprehensive plan policies.

21.60.020 Applicability.

The design standards contained in this chapter shall apply to all residential subdivisions or short subdivisions of land within the City of Oak Harbor, unless stated otherwise and are in addition to the general design standards of OHMC Chapter 21.50. These standards do not apply to the division of land for commercial or industrial use.

21.60.030 Relationship to other plans required by this title.

All improvements required by this chapter for land divisions must be shown on the preliminary plat site plan, or short subdivision map, as applicable.

21.60.040 Blocks – Configuration.

(1) Blocks shall be deep enough to allow two (2) tiers of lots, except where:
- (a) There is an abutting Principal or Minor Arterial defined in the Transportation Element of the Comprehensive Plan;
- (b) The location and extent of environmental constraints prevents a two-tiered lot arrangement;
- (c) Unusual shape or small size of the lot prevents a two-tiered lot arrangement;
- (d) A single-tiered lot arrangement may be permitted on the boundary of a residential subdivision or short subdivision bordering existing non-residential development.
- (e) Prior to approval of a single-tier lot configuration based on exceptions (a), (b) or (c), the proponent has demonstrated to the city that a different layout or provision of an alley system is not feasible.

21.60.050 Blocks – Size.

(1) Blocks shall be a maximum of eight hundred (800) feet in length, as defined in 21.10,

(2) Blocks may be up to a maximum of one thousand feet (1,000') in length provided:
- (a) The applicant has demonstrated, through written materials, drawings, and illustrations, submitted as part of the plat application, that an exceptional circumstance exists. Exceptional circumstances are steep topography (exceeding 10%), a critical area designated in the comprehensive plan or delineated in a critical areas report; and
- (b) An alternative block pattern is proposed which achieves the purpose of this chapter; and,
- (c) A mid-block pedestrian/bike connection conforming to the design standards of this chapter are provided for all blocks over eight hundred feet (800') in length.

21.60.060 Local residential streets - Alternative designs.

(1) The following process for reviewing alternative street designs applies to Local Residential streets only. The City has a two-tiered process for reviewing alternative Local Residential street designs which do not meet the requirements in Table 21.50 - 1:
- (a) In the first tier, applicants for residential subdivisions may request to vary from the standard designs in Table 21.50-1 for Local Residential streets. Such requests must continue to provide all of the essential elements listed in 21.60.070. These types of alterations are reviewed administratively through an "Adjustment" application under a Review Process II.
- (b) In the second tier, applicants may propose unique Local Residential street designs which eliminate one (1) or more of the essential elements found in 21.60.070 under a Review Process IV which shall be reviewed by planning commission at the time the preliminary plat is reviewed.

21.60.070 Local residential streets - Adjustment application for alternative designs.

(1) The director may at the request of an applicant, allow adjustments under a Type II Review process to the Local Residential Street sections specified in Table 21.50 - 1 "Required Street Improvement Standards" in residential subdivisions. If an adjustment is requested, it must meet both provisions (a) and (b) below.
- (a) All of the "essential elements" continue to be provided in the street design.

Essential elements are:

(i) Pedestrian facilities must be provided on both sides of the street. Pedestrian facilities must be a minimum of five (5) feet in width, but need to be either concrete (pervious or impervious) or hard-packed gravel. However, hard-packed gravel surfaces may only be provided adjacent to critical areas, and shall not be provided adjacent to residential lots.

(ii) Adequate public parking is provided. In place of on-street parallel parking lanes, applicants for residential subdivisions may provide public parking in the form of head-in parking, diagonal parking, parking courts, or parking in side alleys. A minimum of one (1) public parking space per two (2) residential units in the subdivision must be provided, whether or not parking is provided in on-street parallel spots, or an alternative design (parking courts, parking alleys, etc.) or a combination. Public parking spaces must meet the parking space size and access requirements specified in 19.44.110 OHMC, with the exception of on-street parallel spaces which shall be eight feet (8') in width by twenty feet (20') in length. The public parking spaces must be interspersed throughout the subdivision or short subdivision and within convenient walking distance to all units.

(iii) A landscaping element which has a total dimension of ten (10) feet in width. The landscape element may be one (1) or more landscape strips located within the street section. No single landscape strip may be less than three (3) feet in width. Low Impact Development (LID) bio-retention and stormwater treatment facilities qualify as landscaping elements as long as they are located within the public right-of-way.

(iv) Two (2), minimum ten (10) foot wide travel lanes.

(b) A narrative is provided which describes how the proposed design will meet all of the following:

(i) How the proposed street section will provide an equal or better street design for vehicles and pedestrians.

(ii) The proposed design will not compromise vehicle or pedestrian safety,

(iii) Public utilities, such as storm, sewer and water can continue to be provided, as necessary to serve the development.

(iv) All comprehensive plan designated vehicular and pedestrian connections will continue to be provided.

21.60.080 Local residential streets – Waiver application for alternative designs.

(1) Applicants for residential subdivisions or short subdivisions may also propose alternative Local Residential Street designs which do not contain all of the essential elements listed in section 21.60.070 above. The waiver will be reviewed by the planning commission under a Type IV review as specified in OHMC 18.20.260 and must be reviewed concurrently with the preliminary plat application.

(2) If an applicant is proposing to eliminate one (1) or more essential elements listed in 21.60.070 through the waiver process, all of the criteria for Adjustment contained 21.60.070(1)(b) must be met. In addition, applicants must meet criteria (a), (b), and (c) below and also meet either criteria (d) or criteria (e).

(a) There are unique site conditions (topography, critical areas or size and / or shape of the site) not common to other residential sites, which necessitate street designs that do not have all of the essential elements listed in 21.60.070(1)(a),

(b) Essential elements which have been eliminated from the street design are

unnecessary either from a functional (pedestrian or automobile movement) or safety standpoint,

(c) Essential elements are not being eliminated solely for applicant convenience and,

(d) The applicant proposes to offset the loss of the essential element by replacing it with another element (i.e. bike lanes in place of landscaping) within the street section or

(e) The unique site conditions limit the applicant's ability to provide either the essential elements listed in 21.60.070 OHMC or any replacement elements referenced in (d) above.

21.60.090 Local residential streets – Submittal requirements for alternative street designs.

(1) Requests for alternative Local Residential Street designs, either under the Adjustment or Waiver processes must be received from the applicant at the time of preliminary plat submittal and must contain the following:

(a) Section drawings prepared by an engineer certified in the State of Washington that clearly illustrates the proposed street improvements.

(b) Written rationale for requesting to vary from the Local Residential Street improvements which meets all of the criteria in 21.60.070(1)(b) (if Adjustment or Waiver is pursued) and the criteria in 21.60.080(2) (if Waiver is pursued).

21.60.100 Local residential streets – Layout.

(1) The street pattern utilized for short subdivisions and subdivisions shall be a grid or modified grid, with four or three-way intersections designed at right angles. Blocks shall be rectilinear. The grid or modified grid street pattern may be adjusted to a curvilinear street pattern where the following factors are present on site:

(a) Infeasible due to steep topography (exceeding 10 percent) or presence of critical areas designated in the comprehensive plan; or delineated in a critical areas report in accordance with the requirements of Title 20 OHMC of this code, and/or

(b) Substantial improvements exist on adjacent properties which inhibit a grid or modified grid pattern and/or

(c) In lieu of the requirement for a grid or modified grid street pattern, alley access is an acceptable street pattern, in accordance with the requirements of 21.50.090.

21.60.110 Local residential streets – Limitations on dead-ends.

Dead-end streets may only be permitted in residential subdivisions or short subdivisions by the city engineer where, due to demonstrable physical constraints, no future connection to a larger street pattern is physically possible.

(1) Dead-end streets shall only be allowed where:

(a) There exists an exceptional circumstance of steep topography (exceeding 10 percent), a critical area identified in the Comprehensive Plan or delineated in a critical areas report, or existing development which prohibits a stub street or connection to the adjacent property;

(b) The street length for the dead-end as measured from the intersection to the terminus is no longer than 400 feet;

(c) The design of the dead-end turn-around has been approved by the city engineer and the Fire Department. Oak Harbor encourages alternative dead-end designs which reduce stormwater impacts and use less space. Dead-end designs shall meet minimum turning radius requirements for appropriate design vehicles.

(d) A pedestrian/bike connection has been provided for connectivity or future connectivity at the terminus of the dead-end constructed to the standards in 21.60.210 through 21.60.240; or

(e) A temporary turn-around may be approved when connections to adjacent properties cannot be extended at the time of development, but will be provided in the future and such temporary turn-around is required for emergency vehicles.

21.60.120 Access Easements – When allowed.

(1) The City may, at the request of the applicant and as permitted by the Oak Harbor zoning code, allow access to residential lots created through a short subdivision by alternative means in the form of shared drives and private streets. The purpose of the provisions in sections 21.60.120 through 21.60.140 is to optimize the opportunity for efficient and compatible use of land and infrastructure within city limits and where full public street improvements are not needed to serve the development. Alternative access may be provided when the applicant demonstrates that all of the following criteria have been met as part of the short subdivision application:

(a) Public utilities can be accommodated in the access easement or other easements on the site;

(b) The access easement will not compromise, pedestrian, bicyclist, or vehicular safety and will provide for efficient traffic movement within the short subdivision and connecting to the surrounding circulation system;

(c) A public street is not necessary to provide access to a future developable area.

(d) A site contains steep topography (exceeding 10 percent) or a critical area(s), and the use of an access easement would reduce impacts to those areas. If a site contains steep topography or critical areas, criteria (a) through (c) must continue to be met; and

(e) The access easement must conform to the requirements of the Transportation Element of the Comprehensive Plan, OHMC section 21.60.130, and all other relevant street and utility standards as adopted by the city which are on file with the city clerk.

21.60.130 Access Easements – Design.

(1) Shared drives and private streets shall, at a minimum, be constructed to the following standards:

Table 21.60 – 1 Access Easement Dimensions

Feature	Shared Drives	Private Streets
Pavement width	Minimum 16 feet for up to 2 units, or 20 feet for 3 or more units.	Minimum 20 feet
Sidewalk	N/A	5 feet, one side only
On- street parking	N/A	Optional. If provided, parallel parking must be 8 feet wide. The public parking requirements from OHMC 21.60.070 must be met.
Maximum length	150 feet	400 feet
Turnaround required?	N/A	Yes, if more than 150 feet in length, or as required by the city engineer.

(2) Shared drives may be created which access a total of four (4) residential units in any combination of single-family detached units and / or duplex units.
   (a) Shared drives may be connected to private streets as long as the total number of units served by the private street does not exceed nine (9).
(3) Private streets may be created which access a total of nine (9) residential units in any combination of single-family detached units and / or duplex units.
   (a) Where a private street intersects a public street, signage shall be placed at the entrance to the private street indicating that the street is private and is not maintained by the City of Oak Harbor.
(4) All land divisions with more than nine (9) residential units accessing the same street must provide public streets that meet the configurations described in Table 21.50 – 1.

21.60.140 Access Easements – Utility services.

A maximum of two (2) lots can be served by private utility side services within an easement, unless the city engineer determines that a public utility main is necessary for adequate area service. Three (3) or more lots served within an easement will require public utilities.

21.60.150 Street Trees – Requirement.

Street trees shall be required along both sides of Local Residential Streets. The purpose of street trees is to improve the visual quality of streets, improve the pedestrian environment, and provide the environmental benefits of improved air quality, reduced stormwater impacts, and reduced heat-island effects associated with large paved areas.

21.60.160 Street Trees – Species

The following standards shall apply to the installation of street trees on any Local Residential Street containing landscape strips within a subdivision or short subdivision
(1) Street trees of a species specified in 21.60 - 2, shall be planted in the designated landscape strip within the public right-of-way, with a maximum spacing of thirty feet (30') along frontage for all divisions of land and on both sides of any public street. Landscape strip minimum dimensions are contained in Table 21.60 – 2;
(2) At the time of planting, all street trees shall be a species listed in Table 21.60 - 2 "Street Tree Species" or as otherwise approved by the director.
(3) The following table identifies tree species acceptable to the City of Oak Harbor.

Table 21.60 – 2. Street Tree Species

Species	Characteristics
Armstrong Maple	Common deciduous landscape tree. Fast growing, typically 40 feet with brilliant fall color. May be appropriate in a native setting.
Red Sunset Maple	Common deciduous landscape tree. Fast growing, typically to 40 feet with brilliant fall color. May be appropriate in a native setting.
Paper Bark Maple *Acer Griseum*	Small, compact tree appropriate as a street tree.
Japanese Hornbeam *Carpinus Japonica*	Deciduous tree, mid-size, compact tree recommended for street tree use.
Lavelle Hawthorne *Crataegus Lavelle*	Appropriate for street tree use.
Little Leaf Linden *Tilia Cordata*	Small deciduous tree reaching height of 30 feet. Tolerant of urban conditions.

Autumn Brilliance Serviceberry *Amelanchier Arborea*	Slow growing, small compact tree.

21.60.170 Street Trees – Maintenance and protection.

To protect their function, define management responsibilities, and protect the health of the street trees, the following language shall be placed on face of the plat:

> Street trees planted in the designated landscape strip along the frontage of all lots, in accordance with the approved landscape plan associated with the residential plat of _____, shall be maintained by the property owners of lots directly adjacent to the location of the street trees. The replacement of street trees for those that have died is the responsibility of the adjacent property owners. The location and tree species for replacement street trees must be in conformance with the approved landscape plan for the plat or as approved by the director and shall not obstruct the travel lane or parking stalls at full maturity. If property owners do not maintain street trees, the City of Oak Harbor may choose to maintain these trees and invoice the adjacent property owner for the cost of the work.

21.60.180 Landscape buffer – Requirement.

A landscaped buffer shall be required along all Minor Arterial roads for a width of at least twenty-five feet (25') abutting all standard residential subdivisions. The purpose of the landscape buffer is to minimize the impact of the roads on adjacent residential uses, encourage tree preservation and planting, and to create visually attractive corridors along these roadways. The landscape buffer shall be established as a separate tract on the face of the plat. The provisions in this section and 21.60.190 and 21.60.200 OHMC do not apply to short subdivisions.

21.60.190 Landscape buffer - Design.

The landscape buffer may incorporate either natural vegetation, applicant proposed vegetation or a combination of both. The purpose of the following requirements is to provide a "complete" buffer which contains overstory, understory and groundcover vegetation.

(1) The Landscape Buffer shall include the following landscaping:

- (a) Trees planted thirty feet (30') on center along the entire length of the edge closest to the arterial road, and no closer than ten feet (10') from this edge of the buffer to avoid conflicts with the required utility easement.
- (b) Shrubs and bushes to provide ninety percent (90%) cover of the buffer area within two (2) years; drought-tolerant, low-maintenance varieties are required.
- (c) Sufficient shrubs and bushes to provide a continuous four-foot (4') high visual screen of the arterial road from within the land division. The plantings must not restrict site distance at intersections.
- (d) In addition to the street trees identified in (a), throughout the entire buffer area a mix of deciduous and coniferous trees, of a species determined suitable by the City of Oak Harbor, shall be provided at a planting density of at least one (1) tree for every four hundred (400) square feet of the buffer area.
- (e) All required plantings in the buffer shall avoid conflicts with public utilities and the species shall be selected to avoid root damage to sidewalks, streets and curbing.

(2) Those areas of the landscape buffer where suitable natural vegetation of understory and ground cover and healthy stands of trees not prone to wind throw or blow down after adjacent areas have been cleared, may be retained as substitute for the required landscaping in (1) provided:

(a) Trees are planted as in accordance with (1)(a);
(b) Evergreen ground cover is present in accordance with (1)(b);
(c) Screening is present in accordance with (1)(c); and,
(d) The minimum number of trees are present in accordance with (1)(d).
(e) Trees which pose a safety hazard from wind-throw, as determined by an arborist, must be removed.

21.60.200 Landscape buffer – Maintenance and protection.

To protect their function, define management responsibilities, and protect the health of the landscape buffers, the following language shall be placed on face of the plat:

(1) Tract(s) _____, are set aside as landscape buffers. No vehicular access to the adjacent roadway is permitted through the tract(s) to protect vegetation and planting areas for their environmental and aesthetic value to the community; and

(2) Maintenance of Tract(s) _____ shall be the responsibility of the home owners association and not the City of Oak Harbor. If the association disbands, maintenance responsibility for Tract(s) defaults to the individual lot owners within the boundaries of the originally approved residential subdivision. If the landscape buffer is not maintained, the City of Oak Harbor may choose to impose a fee structure or invoice the property owners within the boundaries of the originally approved residential plat to maintain landscape buffers.

(3) All vegetation shall be maintained to preserve the health of the buffer plantings and to maintain the landscaping in a manner that conforms to the original landscape and maintenance plans associated with the residential plat approval, including replacement of dead or diseased plantings.

(4) Trees deemed to be a hazard by a professional arborist certified in the State of Washington may be removed, subject to approval by the City of Oak Harbor. Removed trees must be replaced. The city reserves the right to exempt the requirement for an Arborist's assessment if the tree is obviously a hazard, diseased, or dead.

(5) No dumping of vegetation or debris is allowed in buffer tract(s).

(6) No structures are allowed in buffer tract(s).

21.60.210 Pedestrian/bike connections – When required.

Pedestrian/bike connections shall be integrated into the design of subdivisions to enhance the connectivity throughout the plat. They should generally be placed in locations shown in the Comprehensive Plan. The applicant shall install pedestrian/bike connections in subdivisions and short subdivisions in any of the following circumstances:

(1) Sidewalks shall be provided along both sides of public streets in accordance with Table 21.50 - 1, unless an adjustment or waiver is requested in accordance with code section 21.60.070 or 21.60.080 OHMC.

(2) If the pedestrian/bike connection is necessary to provide non-circuitous pedestrian and/or bike access to a park, open space, or activity center within or adjacent to the subdivision;

(3) Mid-block pedestrian/bike connections for blocks that are over eight hundred feet (800') long;

(4) Pedestrian/bike connections shall be provided to all adjacent uses at no greater than eight hundred-foot (800') intervals. The location of these connections must be coordinated between property owners. Specific connections to adjacent uses may be waived if:

(a) The applicant has exhibited through written materials, drawings, and illustrations, submitted as part of the plat application, that this is impractical or unsafe due to:

(i) Existence of an exceptional circumstance. Exceptional circumstances are steep topography (exceeding 10 percent), critical areas designated in the

comprehensive plan or delineated in a critical areas report or existing development.

(ii) The land use characteristics of the adjacent use or potential use as determined by the Comprehensive Plan Land Use Designation; or

(b) An alternative connection to a bordering street can provide a non-circuitous route to the adjacent use; and

(c) An easement or dedication for future connection is provided to properties which have a reasonable likelihood of redeveloping as determined by the director.

21.60.220 Pedestrian/bike connections – Design.

This section provides the minimum design requirements for pedestrian/bike connections which are required by section 21.60.210. Sidewalks do not need to meet the standards specified in this section. Pedestrian/bike connections which meet the design standards in this section and the safety standards in 21.60.230 may be counted as active open space in planned residential developments.

(1) Pedestrian/bike connections shall be built to the following standards:

(a) Be constructed within an easement twenty feet (20') wide,

(b) The pedestrian/bike connection itself shall be either concrete or asphalt (pervious or impervious) and be a minimum of ten feet (10') wide;

(c) Hard-packed gravel may be used for walkway surface in areas adjacent to critical areas designated in the comprehensive plan or delineated through a critical areas report;

(d) A landscape strip of five (5) feet shall be provided on either side with one hundred percent (100%) ground cover and deciduous trees planted at a maximum thirty-foot (30') intervals with no less than two (2) trees on each side of the pedestrian bike connection. Ground cover shall be low-maintenance, drought tolerant varieties. Bark mulch and wood chips are not allowed in landscaped areas adjacent to the pedestrian/bike connection;

(2) Fencing along pedestrian connections shall comply with Chapter 19.46 OHMC and shall not be constructed of chain link, plastic, or vinyl strips.

(3) Lots should front on the pedestrian/bike connection, where possible, to provide visual access and safety of these facilities. The sides of lots may be located along pedestrian/bike connections, however, this is a less preferable option, since fencing is required to separate the pedestrian/bike connection from areas on private lots such as side and rear yards. If lots front on pedestrian/bike connections, secondary access to these lots may be provided from an alley.

(4) All pedestrian/bike connections required by this code must be publicly accessible either by way of easement or through public dedication:

(a) The city may choose not to accept dedication of pedestrian/bike connections at its discretion; and

(b) All pedestrian/bike connections must be designed to city standards contained in sections 21.60.220 and 21.60.230.

(5) Continuous pedestrian/bike connections shall be provided by aligning with street ends, other pedestrian/bike facilities, and connecting destinations or trails.

(6) All trails proposed as part of subdivisions or short subdivisions shall be designed in accordance with the Parks, Recreation and Open Space Plan.

21.60.230 Pedestrian/bike connections - Safety.

The following safety requirements apply to all pedestrian/bike connections in subdivisions and short subdivisions with the exception of sidewalks:

(1) Visibility.

(a) Users shall have clear vision from one (1) end to of the connection to the other;

(b) Plantings shall provide clear visibility from the ground up to thirty inches (30") above grade;

(c) In natural or critical areas with existing vegetation, sight lines for pedestrian and bike safety may vary if:

(i) The protection required of the critical area by other OHMC or other applicable regulations prohibits the pedestrian/bike connection design from meeting this requirement

(3) The entire length of the pedestrian/bike connection must be well lit. Bollard lighting must be used with number of lights and spacing of light fixtures shown on the preliminary plat landscape plan.

(4) Bollard lighting is required at pedestrian/bike connection entrances;

(5) Signage directing users to the pedestrian/bike connection and appropriate use is required at all entrances;

(6) The intersections of pedestrian/bike connections with arterial streets shall provide a ten foot by ten foot (10' x 10') visibility triangle to promote clear vision into the pedestrian/bike connection.

(7) Mid-block connections which cross more than one (1) residential block and intersect streets, must meet the following safety requirements:

(a) Adequate site distance for vehicles to see pedestrians and bikes and come to a complete stop;

(b) Signage from both directions, warning motorists of the pedestrian/bike crossing;

(c) At a minimum, painted striping must be provided to delineate the crosswalk. Applicants are encouraged to use crossing designs which include different materials, such as pavers or pavement patterns, or rumble strips to warn motorists of the crossing. Raised crosswalks may also be provided.

(d) Staggered bollards at all intersections of mid-block crossings and the public right-of-way must be provided. If safety measures cannot be provided to ensure adequate pedestrian/bike safety, the mid-block crossing may be required at a different location or the city engineer may require additional design features to ensure safety of the facility.

21.60.240 Pedestrian/bike connections – Maintenance and protection.

(1) Pedestrian/bike connections and trails shall be maintained by an association of home owners. If the pedestrian/bike connection is part of the city-wide trail system, the city will maintain the connection.

(2) Language detailing the purpose, maintenance responsibilities of the home owners' association, and design standards for these facilities must be placed on the face of the plat.

(3) If these facilities are not adequately maintained to allow safe pedestrian and bicycle passage and/or landscaping is overgrown or in a state of decline, the City may choose to maintain the facility and bill the homeowner's association for the cost.

21.60.250 Stormwater ponds - Location and design.

Stormwater ponds shall be located and designed with consideration to aesthetics and to incorporate the facility as an amenity to the subdivision or short subdivision with features such as landscaping and natural building materials. The provisions in this section apply to all subdivisions and short subdivisions proposed within Oak Harbor. The following design requirements shall apply to the location and design of stormwater ponds.

(1) To create the visual effect of larger open space areas, stormwater facilities shall be located near open spaces, unless site conditions or topography do not allow.

(2) Structural materials utilized within stormwater pond design must have regard for natural aesthetic principles defined as follows:

(a) All structural elements of ponds shall utilize stone or other natural material that have decorative finishes. Acceptable pond materials are brick, natural stone, gabions and architectural blocks. Concrete is an acceptable material, subject to the standards of (b) below.

(b) Use of concrete in stormwater ponds shall be limited to the following finish types:

(i) Relief or architectural detail

(ii) Fractured finish

(iii) Exposed aggregate

(iv) Cast in patterns or textures

In addition, when concrete is used as a pond material, it shall be screened by planting to reduce the visual impact of these facilities.

(c) The use of Ecology block and synthetic stone veneers in pond construction is prohibited.

(d) All masonry in contact with pond water must be designed to withstand spalling. Pourous pond materials shall be placed above the wet zone.

(3) To limit the need for safety fencing resulting from steep slopes, stormwater facilities shall be designed with shallow internal slopes (recommend 3:1 or flatter), whenever feasible. If safety fencing is required it must:

(a) Be decorative or ornamental in nature. Gray, galvanized, chain-link fencing, chain-link fencing with slats or wood-plank fencing is not permitted. Vinyl clad chain-link fencing of green, brown or black color is acceptable if screened by plantings;

(b) For safety reasons, fencing must not completely limit visibility to the pond; and

(c) Ponds shall be designed such that safety fencing is not required on more than two (2) sides of the pond or fifty percent (50%) of the circumference, whichever is less.

21.60.260 Stormwater pond - Landscaping.

Landscaping shall be required for all stormwater ponds within subdivisions and short plats. The purpose of the landscaping is to improve visual quality. The following standards shall apply to the landscaping for stormwater ponds:

(1) A landscape plan that meets the standards of this section and the DOE (Department of Ecology) Stormwater Manual shall be designed by a Landscape Architect certified in the State of Washington and submitted as part of the preliminary plat or the preliminary application.

(2) A perimeter landscape area, a minimum ten (10) feet wide, is required adjacent to all stormwater ponds and shall be placed in a tract owned and maintained by an association of homeowners. This area shall be delineated on the face of the plat and associated landscape plan. The perimeter landscape area shall include:

(a) Evergreen ground cover, shrubs and bushes, to provide one hundred percent (100%) cover of the perimeter area within two (2) years. Native species and low-maintenance varieties are preferred;

(b) A mix of evergreen and deciduous trees to provide visual interest with a planting density of at least one (1) tree for every two hundred-fifty (250) square feet of landscape perimeter.

(c) Existing vegetation may be used to fulfill the landscaping requirements.

However, all trees which pose a safety hazard and are subject to wind-throw must be removed.

(d) Trails or pedestrian paths are allowed near the pond, provided that the side slopes of the pond are 3:1 or flatter or safety fencing is provided around the pond. If a trail or pedestrian path is included around the stormwater facility, the area outside the trail or pedestrian path, but within the 10-foot landscape area must have one hundred percent groundcover within two (2) years.

(3) All landscaping for stormwater ponds shall be placed in a tract and maintained according to industry standards by a homeowner's association.

(4) Any landscaping provided shall be above the freeboard water level.

Section Nine. A new Chapter 21.70 of the Oak Harbor Municipal Code entitled "Short Subdivisions" is hereby adopted to read as follows:

Chapter 21.70
SHORT SUBDIVISIONS

Sections:

21.70.010 Purpose and Applicability
21.70.020 Administration.
21.70.030 Exemptions.
21.70.040 Procedure.
21.70.050 Additional application requirements.
21.70.060 Design standards and required improvements.
21.70.070 Resubdivision.
21.70.080 Boundary line adjustment.
21.70.090 Filing of short plat and/or boundary line adjustment.

21.70.010 Purpose and Applicability

The purpose of the provisions in this chapter is to regulate the subdivision of land into nine (9) or less lots for residential, commercial or industrial use. General provisions of this title, including Chapters 21.10, 21.50, 21.60 OHMC, shall apply to land division hereunder.

21.70.020 Administration.

The director or designee is authorized and directed to administer the provisions of this chapter and shall be granted the authority to approve or disapprove proposed short subdivisions in accordance with this chapter.

21.70.030 Exemptions.

The provisions of this chapter shall not apply to categories of land exempted under 58.17.040 RCW, as now or hereafter amended.

21.70.040 Procedure.

(1) Short subdivisions shall be processed under a Type II review process, in accordance with OHMC 18.20.

(2) All applications for short subdivisions shall be submitted to the director and the fee, as established in OHMC 3.64.500, shall be paid by the applicant prior to processing.

(3) Inquiry shall be made into the public use and interest proposed to be served by the establishment of the short subdivision. The director shall make written findings and shall determine:

- (a) If appropriate provisions are made for, but not limited to, the public health, safety, and general welfare, for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, pedestrian/bike connections, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and schoolgrounds; and
- (b) Consider all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who walk to and from school; and
- (c) Ensure that the proposed design meets the general design standards and the residential design standards (if applicable) of Title 21 OHMC; and
- (d) Consider the characteristics of the proposal and its conformance to the policies of the Oak Harbor Comprehensive Plan; and

(f) Whether the public interest will be served by the subdivision and dedication.

(4) A proposed short subdivision shall be approved if the director makes written findings that each of the items in (3) have been met.

21.70.050 Application requirements.

The application for short subdivisions shall include the following:

(1) Five (5) copies of an application for short subdivision shall be filed with the director. The application shall contain the following information:
   - (a) Date, address and telephone number of the subdivider;
   - (b) Legal description of the property to be subdivided;
   - (c) The location of the nearest public street and utilities;
   - (d) A statement, under oath, that the tract has not been subdivided within the last five (5) years except by an approved subdivision; and
   - (e) A title certificate for the property issued by a title insurance company.

(2) A registered land surveyor shall stake the corners of each lot on the ground and prepare a map of the property drawn in ink upon one (1) or more sheets of mylar.
   - (a) The map shall be to scale not less than 100 feet to the inch, and north shall be indicated;
   - (b) The boundary lines of the tract to be short platted and the interior lot lines, and relationship to adjacent properties;
   - (c) Length and bearing of the boundary lines and lot lines. The map shall be referenced to the state plan coordinate system;
   - (d) Location of monuments or evidence used as ties to establish the boundaries;
   - (e) Location and dimensions of all easements and/or streets within or adjoining the short plat, and applicable city or county file numbers;
   - (f) A certification by the land surveyor stating that all requirements of this title have been complied with; and
   - (g) Certificates as required by city and county.

(3) In addition to the items listed in subsections (1) and (2) above, the short subdivision map shall including all of the requirements listed in section 21.40.040 OHMC for final plats, as to prescribed form.

21.70.060 Design standards and required improvements.

(1) The short subdivision shall meet the following design standards and have the required improvements:
   - (a) Short subdivisions shall be consistent with the General Design Standards and the Residential Design Standards contained in Chapters 21.50 and 21.60 OHMC.
   - (b) Short subdivisions shall be in accordance with the Oak Harbor development regulations and comprehensive plan in effect at the time of application.

(2) As a condition to approving the plat, the director may require the subdivider to install, or bond to install, the following improvements. Such condition must appear on the face of the approved short plat document. The director may allow the improvements to be installed at a later date, but they must be installed before any building can be issued a certificate of occupancy:
   - (a) City water, storm sewer;
   - (b) Roadway, curb, gutter and sidewalk; and
   - (c) All required improvements shall conform to the applicable provisions of this title.

21.70.070 Resubdivision.

Land contained within a short subdivision may not be further divided in any manner within a

period of five (5) years from date of approval without filing a final plat, except that when the short plat contains fewer than four (4) parcels, nothing in this section shall prevent the owner who filed the short plat from filing an alteration within the five (5)-year period to create up to a total of four (4) lots within the original short plat boundaries.

21.70.080 Boundary line adjustment.

The adjustment of boundary lines may be approved by the director if an application is filed along with the information required by OHMC 21.70.060(1) and (2), and where no new lot is created thereby or where no lot is reduced in size below the minimum square footage and street frontage required, by the applicable zoning control and the subdivision ordinance.

21.70.090 Filing of short plat and/or boundary line adjustment.

The subdivider shall file the approved short plat and/or boundary line adjustment and shall furnish the city with one (1) permanent reproducible copy, mylar or better quality, of the short plat or boundary line adjustment including all recording data within thirty (30) days after approval by the director or the approval shall be deemed null and void.

Section Ten. Chapter 21.80 of the Oak Harbor Municipal Code is hereby readopted to read as follows:

Chapter 21.80
BINDING SITE PLANS

Sections:

21.80.005 **Title.**
21.80.010 **Binding site plans allowed.**
21.80.020 **Division of property.**
21.80.025 **Condominium binding site plan.**
21.80.030 **Effect.**
21.80.040 **Application.**
21.80.050 **Procedure upon application.**
21.80.060 **Requirements for a binding site plan map.**
21.80.070 **Certifications required.**
21.80.080 **Title report.**
21.80.090 **Survey required.**
21.80.100 **Approval procedure.**
21.80.110 **Recording requirements.**
21.80.120 **Development requirements.**
21.80.130 **Standards for review of commercial binding site plan.**
21.80.140 **Standards for binding site plans for condominium developments regulated by Chapter 64.32 RCW.**
21.80.150 **Performance guarantee requirements.**
21.80.160 **Warranty requirements for acceptance of final improvements.**
21.80.170 **Survey required.**
21.80.180 **Dedication – Warranty deed.**
21.80.200 **Modification.**
21.80.300 **Appeals to the hearing examiner.**
21.80.400 **Enforcement.**

21.80.005 Title.

This chapter shall be entitled "Binding Site Plans."

21.80.010 Binding site plans allowed.

It is provided that, as an alternative to subdivision or short subdivision requirements under this title, divisions of land may be completed by binding site plans for classes of property specified in OHMC 21.80.020(1) through (4).

21.80.020 Division of property.

Division of property by binding site plans may only be used for the following:

(1) Divisions of land into lots classified for industrial or commercial use;

(2) A division for the purpose of lease when no residential structure other than mobile homes or travel trailers are permitted to be placed upon the land so long as the site plan complies with all applicable mobile home park regulations and the zoning code;

(3) A division made for the purpose of alteration by adjusting boundary lines, between platted or unplatted lots or both, which does not create any additional lot, tract, parcel, site, or division nor create any lot which contains insufficient area and dimension to meet minimum requirements for width and area for a building site; and

(4) A division of land subject to Chapter 64.32 RCW as now in effect or hereafter amended

so long as the site plan complies with the standards for condominium division under OHMC 21.80.140.

21.80.025 Condominium binding site plan.

Divisions of land into lots or tracts if:

(1) A binding site plan may be used to divide property without proceeding through division by subdivision or short subdivision when the land or a portion of it is subject to either Chapter 64.32 or 64.34 RCW when the following conditions are met:

(a) The improvements constructed or to be constructed thereon are required by the provisions of the binding site plan to be included in one (1) or more condominiums or owned by an association or other legal entity in which the owners of units therein or their owners' associations have a membership or other legal or beneficial interest;

(b) The city has approved a binding site plan for all such land;

(c) Such approved binding site plan is recorded in the county or counties in which such land is located; and

(d) The binding site plan contains thereon the following statement:

All development and use of the land described herein shall be in accordance with this binding site plan, as it may be amended with the approval of the city, town, or county having jurisdiction over the development of such land, and in accordance with such other governmental permits, approvals, regulations, requirements, and restrictions that may be imposed upon such land and the development and use thereof. Upon completion, the improvements on the land shall be included in one (1) or more condominiums or owned by an association or other legal entity in which the owners of units therein or their owners' associations have a membership or other legal or beneficial interest. This binding site plan shall be binding upon all now or hereafter having any interest in the land described herein.

(2) The binding site plan may, but need not, depict or describe the boundaries of the lots or tracts resulting from subjecting a portion of the land to either Chapter 64.32 or 64.34 RCW.

(3) The binding site plan for condominiums shall be deemed approved if:

(a) Done in connection with the final approval of a subdivision plan or planned unit development with respect to all of such lands;

(b) Done in connection with the issuance of a building permit or final certificate of occupancy.

21.80.030 Effect.

Upon approval and recording of a binding site plan, any and all sale or leases of lots within the property covered by the site plan shall be in accordance with the binding site plan. Such lot lines as are shown on the binding site plan shall be lot lines for setback purposes under the zoning code in effect at the time the issue of setbacks is to be determined.

21.80.040 Application.

An applicant for site plan approval under Chapter 19.48 OHMC may at the time of application for site plan review also request that the site plan be processed as a binding site plan to allow the division of property into separate tracts, lots or parcels.

21.80.050 Procedure upon application.

At the same time or after obtaining site plan approval, the applicant shall submit a preliminary binding site map meeting the requirements of this chapter and the standards for development as set out in Chapter 21.50 OHMC.

21.80.060 Requirements for a binding site plan map.

The applicant shall submit two (2) exact duplicate binding site plan maps meeting the following requirements. The final binding site plan shall be drawn on mylar drafting film having dimensions of 18 inches by 24 inches and must include the following:

(1) The name of the binding site plan;
(2) Legal description of the entire parcel;
(3) The date, scale and north arrow;
(4) Boundary lines, right-of-way for streets, easements and property lines of lots and other sites with accurate bearings, dimensions or angles and arcs, and of all curve data;
(5) Names and right-of-way widths of all streets within the parcel and immediately adjacent to the parcel. Street names shall be consistent with the names of existing adjacent streets;
(6) Number of each lot and each block;
(7) Reference to covenants, joint use, access easements, or other agreements either to be filed separately or on the binding site plan must be referenced on the binding site plan;
(8) Zoning setback lines and building envelope sites where applicable;
(9) Location, dimensions and purpose of any easements, noting if the easements are private or public;
(10) Location and description of monuments and all lot corners set and found;
(11) Datum elevations and primary control points approved by the engineering department. Descriptions and ties to all control points shall be shown with dimensions, angles, and bearings;
(12) A dedicatory statement acknowledging public and private dedications and grants;
(13) Parking areas, general circulation, and landscaping area where applicable;
(14) Proposed use and location of building with dimensions where applicable;
(15) Loading areas where applicable;
(16) Utilities; and
(17) Other restriction and requirements as deemed necessary by the city.

21.80.070 Certifications required.

(1) A certificate is required giving a full and correct description of all lands divided as they appear on the binding site plan, including a statement that the division has been made with the free consent and in accordance with the desires of the owners. If the binding site plan is subject to a dedication, the certificate or a separate written instrument shall also contain the dedication of all streets and other areas to the public, to an individual or individuals, religious society or societies or to any corporation, public or private as shown on the binding site plan and a waiver of all claims for damages against any governmental authority which may be occasioned to the adjacent land by the established construction, drainage and maintenance of the road. The certificate or instrument of dedication shall be signed and acknowledged before a notary public by all parties having any ownership interest in the land divided and recorded as part of the final binding site plan.

(2) A certification by a licensed surveyor is required, licensed in the state, that the binding site plan survey is accurate and conforms to the provisions of these regulations and state law.

21.80.080 Title report.

All binding site plans shall be accompanied by a title company certification (current within 30 days from filing of the binding site plan) confirming that the title of the lands as described and shown on the binding site plan are in the name of the owner(s) signing the binding site plan.

21.80.090 Survey required.

A survey must be performed for every binding site plan by or under the supervision of a state of Washington registered land surveyor.

21.80.100 Approval procedure.

(1) Binding site plan approval shall be a Type II review process.

(2) As part of or after site plan review as provided under OHMC Title 19, applicants for final binding site plan approval shall file the required documents meeting all the requirements of this chapter with the development services department.

(3) The director shall review the final binding site plan and circulate it to other city departments to determine whether the requirements of this chapter and preliminary approval have been met.

(4) If the director and city engineer determine that the requirements are met, they shall approve and sign the binding site plan.

(5) If either the director or the city engineer determine that the requirements have not been met, the final binding site plan shall be returned to the applicant for modification, correction, or other action as may be required for approval.

(6) If the conditions have been met, the director and city engineer shall inscribe and execute their written approval on the face of the binding site plan.

21.80.110 Recording requirements.

(1) When the city finds that the binding site plan proposed for final approval meets all the conditions of final approval, then the applicant shall take both original mylar binding site plan maps to the Island County auditor. One (1) of the originals of said binding site plan shall be recorded with the Island County auditor. The other will be stamped by the auditor and forthwith returned to Oak Harbor. In addition, the applicant will furnish the city with one (1) paper copy of the mylar recorded by the auditor. In addition, one (1) paper copy shall be furnished by the applicant to the Island County assessor.

(2) The applicant must provide the city with proof of proper filing and recording before the binding site plan becomes valid. This proof shall include a certification by the applicant and the surveyor certifying that the binding site plan has not been altered between the time it was approved for recordation and the time of actual recordation by the Island County auditor.

21.80.120 Development requirements.

All development must be in conformance with the recorded binding site plan.

21.80.130 Standards for review of commercial binding site plan.

The following standards shall apply to commercial binding site plans:

(1) Division lines between lots in commercial binding site plans shall be considered lot lines under Oak Harbor zoning code.

(2) Each such tract or lot created by such binding site plan shall have one (1) designated front lot line and one (1) rear lot line including those which have no street frontage.

(3) All tracts, parcels and lots created by a binding site plan shall be burdened by an approved maintenance agreement maintaining access to the various lots, tracts and parcels and for the cost of maintaining landscaping and other common areas.

(4) When any lot, tract or parcel is created without 30 feet of street frontage, easements shall be given to the city allowing access for police, fire, public and private utilities along the access roads to each tract, lot or parcel.

(5) If the city elects, the city shall be granted a power to maintain the access easements and

file liens on the property for collection of the costs incurred in maintaining such way. The power to maintain such access ways shall impose no duty on the city to maintain the access way.

(6) The binding site plan shall contain a provision that the owner's failure to keep the fire access lanes open and maintained may subject the property to being abated as a nuisance and the city may terminate occupancy of such properties until the access easement ways are adequately maintained.

(7) Freestanding signage may be off of the tract, parcel or lot where the business is located as long as sign requirements are met within the area encompassed by the binding site plan.

(8) Sufficient parking for each use must be located on the lot where the use is located or joint parking agreements must be recorded by the owners for the area of the binding site plan. Prior to building permit approval, parking agreements will be reviewed by the director.

(9) Landscaping requirements will be met for each phase of the binding site plan. Landscaping requirements may be met for an area of one (1) or more lots as long as a joint maintenance agreement is recorded or included in declaration of covenants.

21.80.140 Standards for binding site plans for condominium developments regulated by Chapter 64.32 RCW.

Development standards for condominiums including residential units or structures shall meet either the standards set out in subsection (1) or (2) of this section:

(1) All lots and development shall meet the minimum requirements of this title as now in effect or hereafter amended. Phase or lot lines shall be used as lot lines for setback purposes under the zoning code.

(2) Condominiums may be developed in phases where ownership of the property is unitary but all structures may not be completed at the same time or differing lenders finance separate structures or areas of the property. The following conditions shall apply to phased condominiums:

(a) All areas not within the building envelope are subject to joint use and are burdened by a joint obligation to maintain any and all access ways. The city shall have no obligation to maintain such access ways.

(b) The city of Oak Harbor shall have an easement for access along and over access ways and parking areas to allow police, building, fire and utility department personnel to inspect and observe such property, buildings and activities on the property as well as for providing emergency and law enforcement services and easements for utilities over and under such access ways.

(c) Reciprocal easements for parking shall be provided to all tenants and owners.

(d) The developer has submitted a binding schedule for completion of all phases.

(e) Phase lines must be treated as lot lines for setback purposes under the zoning code unless the property owner will place a covenant on the binding site plan that the setback area for built phases, contained in all unbuilt phases, shall become common areas and owned by the owners of existing units in the built portions of the condominium upon the expiration of the completion schedule described in subsection (2) of this section.

(f) All public improvements are guaranteed by bond or other security satisfactory to the city engineer or his designee.

(g) All built phases in a condominium binding site plan shall have joint and several obligation to maintain landscaping through covenants or easements or both to assure that the responsibility is shared among the various owners.

21.80.150 Performance guarantee requirements.

(1) In lieu of completing the required public improvements prior to approval of the binding site plan, the applicant may request final approval, subject to the approval of a suitable guarantee. The guarantee must be in a form acceptable to the city and in an amount commensurate with improvements to be completed. The amount of the guarantee is established at 100 percent of the cost of the city having to construct the improvements plus 20 percent for contingency. The guarantee amount will require yearly review by the city and the applicant will be required to revise the guarantee amount to reflect current inflation rate. Based on the revised amount, the applicant will resubmit suitable guarantee to the city. Also, the guarantee will be restricted as far as the amount of permissible time in which the improvements must be completed. If not a regular surety bond from an acceptable state approved surety, the guarantee must be in a form acceptable to the city attorney.

(2) Guarantee funds will not be released by the city unless approval has been received from all applicable departments that are responsible for acceptance and/or maintenance of such improvements. Partial releases will not be allowed.

(3) All improvements begun by the applicant must be completed. Once the applicant has begun making improvements, the applicant shall not be eligible for submitting a guarantee to the city to cover the incomplete improvements.

(4) Public improvements must be in place at time of certificate of occupancy or acceptable assurances for completion with a temporary certificate of occupancy.

21.80.160 Warranty requirements for acceptance of final improvements.

At the time of final acceptance of the improvements, the applicant shall provide to the city a one-(1) year warranty guarantee at 10 percent of the established final cost of the public and/or off-site improvements which must be acceptable to the city.

21.80.170 Survey required.

(1) The survey required must be conducted by or under the supervision of a Washington State registered land surveyor. The surveyor shall certify on the binding site plan that it is a true and correct representation of the lands actually surveyed and the survey was done in accordance with city and state law.

(2) In all binding site plans, lot corner survey pins must be set before final approval can be granted.

(3) In all binding site plans, perimeter monuments must be set before final approval can be granted.

(4) In all binding site plans, control monuments must be set before final acceptance of public improvements. Performance guarantees must include the installation of all control monuments. Control monuments must be installed in accordance with city design and construction standards.

(5) In all binding site plans, where final approval is to be granted by the acceptance of a performance guarantee, lot corner and perimeter monuments must be set. The performance guarantee must include the resetting of any monument that has been lost during construction of public improvements.

21.80.180 Dedication – Warranty deed.

Any dedication, donation or grant as shown on a binding site plan shall be considered a statutory warranty deed to the grantee for the use intended.

21.80.200 Modification.

(1) Any applicant can request and make application to the city requesting a modification of

up to five percent (5%) from a requirement of OHMC 21.80.130 or 21.80.140 or OHMC Title 19.

(2) Such request for modification shall be considered by the director as an administrative decision.

(3) The modification shall not be granted by the director until the following facts have been established:

(a) There are exceptional circumstances of conditions such as: locations of existing structures, lot configuration, topographic or unique physical features that apply to the subject property which prohibit the applicant from meeting the standards of this chapter;

(b) The authorization of the modification or variation will not be detrimental to the public welfare or injurious to property in the vicinity or zone in which the property is located;

(c) A hardship would be incurred by the applicant if he/she complied with the strict application of the regulations;

(d) Landscaping requirements are not thereby reduced.

21.80.300 Appeals to the hearing examiner.

(1) An appeal of the decision relating to the binding site plan shall be made to the hearing examiner.

(2) The written appeal shall include a detailed explanation stating the reason for the appeal. The decision of the hearing examiner shall be the final action.

21.80.400 Enforcement.

The auditor shall refuse to accept for recording any binding site plan which does not bear the verification of approval as defined by this chapter. The city attorney is authorized to prosecute violation of this chapter and to commence actions to restrain and enjoin a violation of this chapter and compel compliance with the provisions of this chapter. The costs of such action shall be taxed against the violator.

Section Eleven. Chapter 21.90 of the Oak Harbor Municipal Code is hereby readopted to read as follows:

Chapter 21.90
PENALTY
Sections:

21.90.010 Violation – Nuisance declared.
21.90.020 Penalty.
21.90.030 Provisions not exclusive.

21.90.010 Violation – Nuisance declared.

Any violation of the provisions of this chapter constitutes a public nuisance which the city can abate by an action in Island County superior court. The cost of such action shall be taxed against the violator.

21.90.020 Penalty.

(1) Any knowing or intentional violation of this provision of the title shall be a gross misdemeanor punishable by a fine of up to $5,000 or a jail sentence of one (1) year in jail or both such fine and jail time.

(2) Any other violation of this title shall be a civil infraction with a maximum penalty of $250.00.

21.90.030 Provisions not exclusive.

Penalty and enforcement provisions in this chapter are not exclusive and the city may pursue any remedy or relief authorized by law or equity.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF OAK HARBOR ADOPTING A SUBDIVISION DESIGN MANUAL.

WHEREAS, the Oak Harbor City Council conducted public hearings on February 2, and February 16, 2010 and adopted revised subdivision and planned residential development codes; and

WHEREAS, on the same dates the City Council was presented a Subdivision Design Manual which is a visual and graphic representation of the new codes; and

WHEREAS, the approval of this manual will provide staff a guide to be used with applicants and the community to illustrate the design concepts embodied in the code; and

WHEREAS, the City Council recognizes that from time to time minor revisions to this manual will be necessary and the Director of Development Services is authorized to make minor revisions to this manual from time to time as he deems appropriate;

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of Oak Harbor that the Subdivision Design Manual attached hereto as Exhibit A is hereby adopted.

PASSED by the City Council this 16th day of February 2010.

THE CITY OF OAK HARBOR

_____
Jim Slowik
Mayor

Attest:

_____
City Clerk

Approved as to form:

_____
Margery Hite
City Attorney

ATTACHMENT 7

City of Oak Harbor
City Council Agenda Bill

Bill No. _____

Date: February 2, 2010

Subject: Standing Committee Resolution

FROM: Paul Schmidt, City Administrator

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

PURPOSE

This agenda bill requests adoption of Resolution 10-03 to establish standing committee membership from January 2010 through December 2011.

AUTHORITY

RCW 35A.11.020 provides that legislative bodies of each non-charter code city shall have power to organize and regulate its internal affairs.

SUMMARY STATEMENT

For 2010 through 2011, Mayor Slowik has recommended the standing committee structure and membership (see Exhibit "A" attached to the resolution) to continue in similar fashion as 2008 – 2009. As this is only a recommendation, City Council may make any changes it deems necessary.

STANDING COMMITTEE REPORT

N/A

RECOMMENDED ACTION

Adopt Resolution 10-03 which establishes standing committee membership from January 2010 through December 2011.

ATTACHMENTS

Resolution 10-03.

MAYOR'S COMMENTS

RESOLUTION NO. 10-03

A RESOLUTION BY THE CITY OF OAK HARBOR ADOPTING CITY COUNCIL STANDING COMMITTEE MEMBERSHIP FOR 2010 AND 2011

WHEREAS, the Oak Harbor City Council addresses many different municipal subject issues covering a wide and varied gamut of topics; and

WHEREAS, it is the duty of the Oak Harbor City Council to deliberate and make informed decisions on the many different municipal subject issues that come forward in the course of conducting the City's business; and

WHEREAS, the Oak Harbor City Council wishes to conduct the business of the City in an efficient and effective manner by dividing the study and information gathering tasks equally among all sitting City Council members; and

WHEREAS, the Oak Harbor City Council has determined that all the City's municipal subject issues can be assigned to four general areas of interest which can act as standing committees to which individual City Council members can be assigned to gather and study pertinent information; and

WHEREAS, Mayor Slowik has recommended certain Oak Harbor City Council members sit on certain standing committees for a two year term beginning January 2010 and ending December 2011 represented by Exhibit "A" and attached hereto;

NOW THEREFORE BE IT RESOLVED, by the City Council of the City of Oak Harbor, Washington, that the attached Exhibit "A" is hereby adopted as the Standing Committee membership for 2010 – 2011.

PASSED by the City Council this _____ day of _____, 2010.

CITY OF OAK HARBOR

_____
Jim Slowik, Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

Exhibit "A"

Standing Committee Membership for 2010 -2011

Public Works	Meets the First Thursday of the month, 7:00 a.m., at Public Works
Chair: *Danny Paggao* Members: Rick Almberg Scott Dudley	
Governmental Services	Meets the Second Tuesday of the month, 8:00 a.m., at City Hall
Chair: *Jim Campbell* Members: Rick Almberg Jim Palmer	
Finance	Meets the second Wednesday of the month, 3:30 p.m., at City Hall
Chair: *Jim Palmer* Members: Bob Severns Beth Munns	
Public Safety	Meets the third Thursday of the month, at 7:00 a.m., at the Fire Department
Chair: *Bob Severns* Members: Scott Dudley Beth Munns	