



City of Oak Harbor

City Council Meeting

September 6, 2011

at

6:00 p.m.

Use Caution!

Schools are back in session!

Oak Harbor City Council
REGULAR MEETING
Tuesday, September 6, 2011, 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 Pastor Ron Eerkes – Grace Community Church

ROLL CALL

MINUTES 7/27/11 Workshop, 8/3/11 Regular Meeting, 8/16/11 Special Meeting

NON-ACTION COUNCIL ITEMS:

1. Proclamation – Tenth Anniversary of 9/11 and National Day of Service and Remembrance September 11, 2011.
2. Employee Recognitions – Jim Boer – 20 Years of Service and Robert Wallin, 25 Years of Service.
3. Verbal Report on SE Pioneer Way Project – Larry Cort.
4. Public Comments.

COUNCIL CONSIDERATION AND ACTION ON THE FOLLOWING MATTERS:

5. Consent Agenda:

Page 41

- a. Noise Permit – Navy Region NW Fire & Emergency Services.

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- b. Noise Permit – NASWI – Fleet and Family Readiness.

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- c. Noise Permit – Event Planning Committee for Mayor Jim Slowik.

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- d. Noise Permit – Oak Harbor High School Homecoming Parade.

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- e. Bid Award – Marina Security Gates.

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- f. Park Board Alternate – Eric Lindberg.

Page 58

- g. Excused Absence Request – Jim Campbell from the 9/20/11 Council Meeting.
- h. Approval of Accounts Payable Vouchers (Pay Bills)

Page 59

6. Element Nightclub – Discussion of Uniformed Security, Hours of Operation – (requested at 6/28/11 and 8/3/11 Meetings).

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7. WAIF Discussion – (Continued from the 8/3/11 Meeting).

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8. Final Consideration – Island Disposal Franchise Ordinance, Goldie Road Annexation

9. City Administrator's Comments

10. Council Members' Comments.

- Standing Committee Reports

11. Mayor's Comments.

ADJOURN

If you have a disability and are in need of assistance, please contact the City Clerk at (360) 2794539 at least two days before the meeting.

*"Tomorrow is a new day; you shall begin it serenely and with too high a spirit to be encumbered with your old nonsense."
- Ralph Waldo Emerson*

**City Council Meeting Workshop
Oak Harbor Facilities Plan
Wednesday, July 27, 2011, 6:00 p.m.
City Hall – Council Chambers**

CALL TO ORDER

Mayor Slowik called the meeting to order at 6:10 p.m.

ROLL CALL

Mayor Jim Slowik
Six Members of the Council,
Rick Almberg
Beth Munns
Jim Campbell
Danny Paggao, Mayor Pro Tem
Bob Severns
Jim Palmer

Paul Schmidt, City Administrator
Cathy Rosen, Public Works Director
Eric Johnston, City Engineer
Renée Recker, Executive Assistant to the Mayor

Scott Dudley was absent and formally excused.

PRESENTATION

City Engineer Eric Johnston introduced Brian Matson, Carollo Engineers, Inc., who presented a PowerPoint presentation, which is attached to these minutes as Exhibit A, and led this presentation and discussion with these points:

- Project Schedule Update
- Brief Review of Proposed Alternatives
- Alternative Refinement and Evaluation Summary
- Proposed Final Alternatives and Sites
- Summary/Next Steps

He talked about the updated planning and preliminary engineering schedule, the need to narrow 5 sites and 2 processes down to 3 sites and 1 process, targeting the fall for another Council workshop and the end of the year for a site choice. This pushes the schedule out by four months, but this was a conscious schedule extension to allow for additional public input. The project's end date is still set at 2017.

Mr. Matson reviewed the two treatment processes under consideration:

1. Membrane Bioreactor (MBR)
2. Activated Sludge (AS)

The second component is site choice and Mr. Matson reviewed the sites and their advantages and challenges (as detailed in each slide of the attachment):

1. Windjammer Park
2. Marina/Seaplane Base
3. Old City Shops
4. Beachview Farm
5. Crescent Harbor

Of these five, Beachview Farm and Crescent Harbor are the furthest distance out.

The three outfall locations:

1. Oak Harbor
2. Crescent Harbor
3. West Beach

Mr. Matson talked about the mitigation needs at each location with Oak Harbor needing the least mitigation due to limited shellfish impact.

Council Discussion

Council Members had received letters from community members who object to the Old City Shops location. The letters implied that airborne particulates would emanate from the plant and be detrimental to health. Mr. Matson had also read the letters noting that their primary concern was with airborne aerosol. He clarified that the facility's air would be scrubbed and the facility fully enclosed. These are valid concerns and illustrate the need to make people aware of the technology and answer these concerns to the community's satisfaction. Discussion continued about the Old City Shops site being limited to MBR with Mr. Matson responding that it could also support AS but a smaller facility (MBR) would be a better fit for a neighborhood. Discussion followed about the Beachview property and, from the website survey, the number of concerns from residents in that vicinity, the Crescent Harbor site (better site with regard to the community), and a return to perceived health impacts and scientific/documentated evidence to refute that belief. Mr. Matson noted that it is an issue of perception but there are specialists who can track pollutant levels and antidotal information is also available. Discussion returned to the Old City Shops, the distance (400 meters) from the neighborhood, and mention in the letters of two studies – one from Cornell University, the second from the Environmental Protection Agency. Mr. Matson noted that the Cornell University study addressed treatment plant operators and was not focused on adjacency. The EPA study showed no demonstrable health hazards outside of 400 meters. Mr. Matson emphasized that the key is understanding the public's concern and then alleviating those concerns. Council asked if these studies made any reference to MBR or AS and Mr. Matson clarified that neither study refer to MBR and the EPA study predates the MBR process. These older studies refer to turbulent water which is exposed to the atmosphere; an open surface. The Edmonds wastewater treatment facility uses an AS process but it is enclosed. An AS plant can be designed to fit well into a residential area. It is important to make the public aware of the facilities which have been operating for years.

Alternatives have been developed and evaluated based on how they meet a range of specific objectives in four categories: Technical, Social, Environmental, and Financial. Mr. Matson talked about each of these steps which have been taken to refine alternatives:

1. Technical analysis at each site:
 - Field wetlands investigation.
 - Cultural “paper survey.”
 - Geotechnical “paper survey.”
 - Confirmation of land use, zoning, and acquisition complexity.
2. Met with Department of Ecology and Department of Health to discuss outfall options.
3. Refined conveyance/pumping assumptions and layouts for each alternative.

Each of these discussion points are highlighted in the attached PowerPoint slides:

- Wetlands limit most of the sites.
- There is a cultural resources risk at all sites.
- Geotechnical issues are confirmed at 2 sites.
 - Windjammer Park and the Marina/Seaplane Base have low areas with poor fill material which is susceptible to liquefaction during an earthquake. Poor soils would affect costs (an increase). Site borings have not been done yet, but there is good existing data from a geotechnical standpoint.
- Each site has a zoning/land use complexity.
 - The only site that does not bring the others’ complexity is Windjammer Park but there are community issues associated with this site.

Mr. Matson talked about the costs and risks associated with the outfall locations as detailed in the summary of discussion with DOE/DOH slide. The suggested choice is the Oak Harbor outfall which offers adequate mixing with highest effluent quality and no impact on shellfish harvesting. Council noted that, as mentioned during a standing committee meeting, impact mitigation can cost between \$1 million and \$10 million. Mr. Matson was asked what the potential mitigation costs would be for Crescent Harbor but could not give an exact figure at this time. With regard to Crescent Harbor, he talked about survey tracks, closure zone and lost resource in the closure zone, and action required by a third party or the Department of Natural Resources. Even extending the depth to an area without shellfish is still less expensive than mitigation. In comparison to pumping to Oak Harbor Bay, extending the Crescent Harbor outfall would be costly. Mayor Slowik had spoken with the Mayor of Gig Harbor and that community’s outfall extension cost \$6.5 million. Discussion followed about the Old City Shop site and if the acquisition of private property involved vacant or occupied land. Rather than impose eminent domain, most cities try to negotiate with a willing seller. Land to the west is vacant; land to the east is occupied by several different uses.

With regard to refinements to pipe alignments:

- Most sites require costly improvements to existing pipes for the Navy Crescent Capehart flow.
- All sites will require infrastructure (pump station or WWTP) at Windjammer Park.
- The Windjammer Park site has the lowest conveyance impact (cost).
- The Beachview Farm site has the highest conveyance impact (cost).

Council talked about the need to still have a lift station in Windjammer Park regardless of where the plant is located and Mr. Matson noted that the existing structure could still be used but not the mechanical equipment inside the structure. Mr. Matson showed examples of attractive pump station designs and likened the use of the existing structure to remodeling an older home: the remodel can become more costly. The assumption has been that a new station would be constructed at that location along with new conveyance piping. The design would be refined to meet the alternative choice. Council discussion continued about preliminary cost estimates and Mr. Matson noted that can come forward in the fall once site alternatives have been narrowed.

Mr. Matson presented the summary and sources of public input:

- Initial phone survey.
- Input received through email and website posting.
- Public Forums 1 and 2.
- Online survey completed in April.
- Written correspondence received by the City and forwarded to the project team.

Public input will be meshed with the technical work. Protecting health and the environment was the most important response, so while cost is important, the majority of the public favor features best provided by MBR technology. The bar graph slide showed the response to costs as being the least important.

Other trends from the public feedback:

- There is very little support for Windjammer Park.
- The community has expressed health concerns, particularly associated with the Old City Shops site.

Concerns must be addressed by redefining WWTPs (fully-enclosed facility, complete air capture and scrubbing, design for a high level of public interaction).

Based on this feedback, Mr. Matson returned to the MBR process as appropriate for evaluating the remaining sites.

Council asked about an additional survey once the public is more educated regarding the site choices. Mr. Matson responded that Carollo Engineers has a robust and flexible public process which is built into this project. Based on public response, site choice, tours, presentations, and what Council would want, all of these are elements to involve the community. Council Members' tours of Edmonds, Vancouver (WA), and Blaine facilities were very positive and allowed Council to see what WWTPs can look like in a community.

The last component is financial.

Cost refinements: Mr. Matson illustrated the pie chart slide which is a conceptual level analysis developed for three major components. The footnotes to this slide call out the industry standard: Expected accuracy is -50% to +30%; and estimated construction cost ranges: \$85 million to \$100 million in 2011 dollars.

Council discussion followed about the inclusion of the dismantling process at Windjammer Park, putting more money up front to save future funding; expand through the plan and do not retrofit – plan for the vision. Mr. Matson noted that there are break points and that level can be achieved once a site and treatment process is defined. Discussion continued regarding the utility rate study – a graduated rate study, and the City's bonding capacity. How does the \$85 to \$100 million compare to the rate study and bonding capacity. Mr. Matson noted that it is too early to know at this point in the analysis, but there will be shift to how this is implemented when a site choice is established. Mr. Matson talked about the financial comparison of alternatives (sites) slide based on the MBR process. The difference in costs, low to high, is \$8 million. Lowest is Windjammer Park; highest is Beachview Farm. Council talked about the difference in percentages between the pie chart slide and this bar graph slide. Mr. Matson noted that the pie chart was intended to show a range of costs and does not add up to percentage differences in each alternative.

Summary and Recommendations:

- MBR recommended as the basis for alternatives section.
- All 5 sites remain technically viable.
 - There are challenges at each site; the technical team recommends narrowing to 3 sites.
- The preferred outfall location remains in Oak Harbor.

Mr. Matson noted that this evening's presentation was meant to summarize the team's work to date. Environmentally, there is no clear differentiator between sites, but all of the sites have challenges. Sites proposed by the technical team for further evaluation: Windjammer Park, Old City Shops, and Crescent Harbor. Mr. Matson noted that this is the technical analysis but the team wants the opportunity to garner more public input. Council asked if Carollo Engineers could provide a video for Channel 10 that would help educate the public as well as the Council. Mr. Matson felt that could be provided and this was a very good suggestion. Since City Council Members had visited Blaine, Edmonds, and Vancouver WWTP sites, Council felt it would be helpful for the public to see these sites, as well.

Council asked why Crescent Harbor and Beachview Farm would be ruled out. Mr. Matson noted that this is purely cost-driven and also impacted by how close the outfall would be to an existing or proposed plant. There is no impact on shellfish harvesting in Oak Harbor Bay and there are viable shellfish tracts in the other outfall locations for Crescent Harbor and Beachview Farm where mitigation would be large and costly. Council asked if \$6.5 million would be considered high or low for an outfall and mitigation. Mr. Matson noted that a comparable was done and cost more than \$6.5 million to lessen shellfish impact. Council asked about the influence of tidal flush and Mr. Matson noted that there is a benefit from a dilution standpoint which is part of this study. The mixing model shows dilution at the sites.

Mr. Matson reviewed the upcoming schedule:

- August 24, 2011, Public Forum No. 3
- September 20, 2011 City Council Meeting
- Final site alternative selection is anticipated in late 2011, early 2012.

Council discussion followed about the difficulties with property acquisition at the Crescent Harbor site, the March Council delegation to Washington D.C., and conversations with our representatives and top Navy leadership. Mayor Slowik noted that the Navy will wait until the City has determined a single site. The City knows that all of the other sites would have to be eliminated before selecting the Seaplane Base.

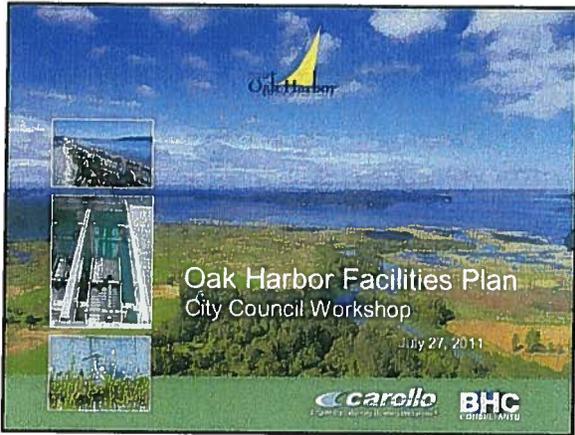
Mayor Slowik asked if, with three possible sites, could a fourth or fifth site be added in the future. Mr. Matson noted that there is always a temptation to look at another alternative, and Carollo Engineers wants to provide Council with the best information available and could entertain additional sites. He emphasized that Carollo wants to define the scope of project and expanding consideration would bring additional costs associated with more sites rather than narrowing the site selection.

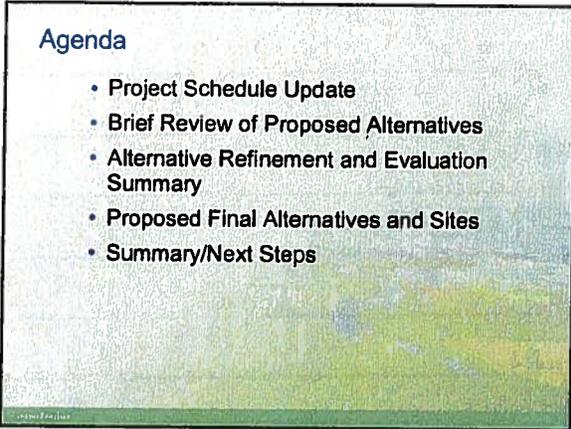
Council thanked Mr. Matson and Mr. Johnston for their hard work and this presentation.

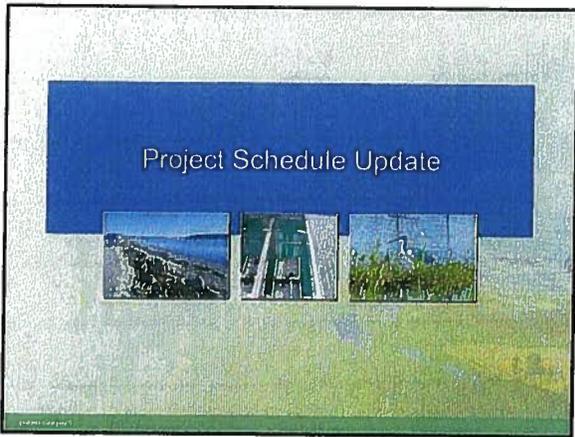
ADJOURN

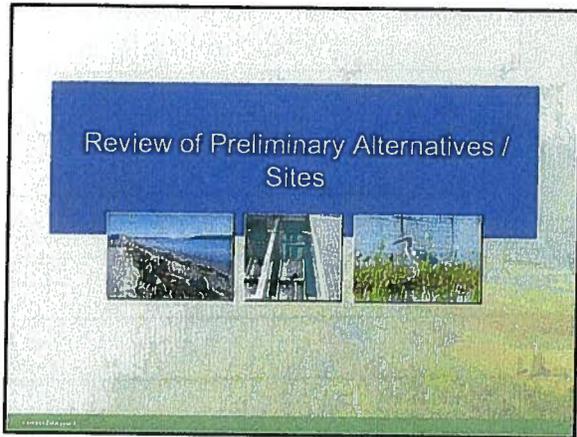
With no other discussion coming forward at the workshop, the meeting adjourned at 7:30 p.m.

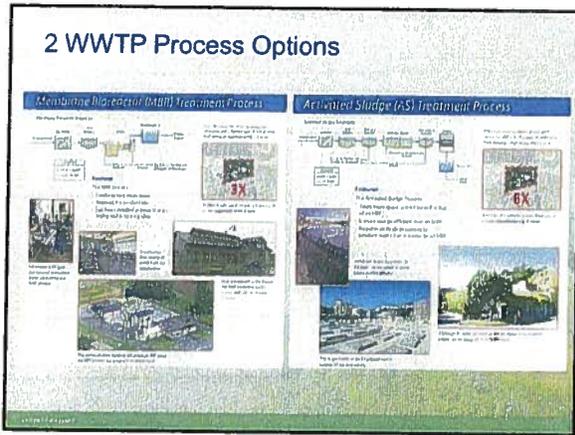
Connie T. Wheeler
City Clerk

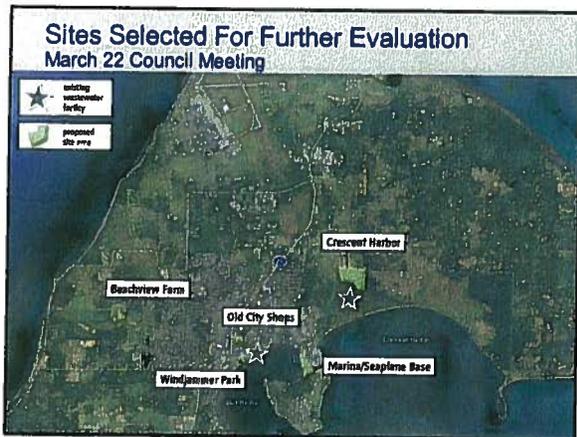


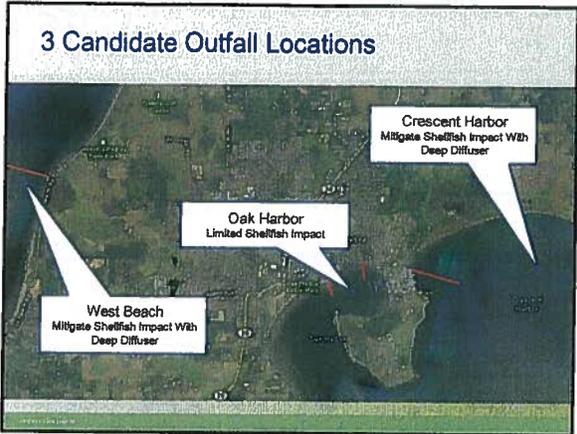












Windjammer Park Site

MBR with discharge to Oak Harbor outfall

Advantages

- Most efficient use of conveyance piping/pumping

Challenges

- Facilities located in/near Windjammer Park

Metric	Windjammer Park Site	Marina / Seaplane Base Site
1	1.0	1.0
2	1.0	1.0
3	1.0	1.0
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7	1.0	1.0
8	1.0	1.0
9	1.0	1.0
10	1.0	1.0
11	1.0	1.0
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99	1.0	1.0
100	1.0	1.0

Marina / Seaplane Base Site

MBR / AS with discharge to Oak Harbor outfall

Advantages

- Avoids facilities in/near Windjammer Park

Challenges

- More conveyance piping/pumping relative to other sites
- Impacts to Marina and US Navy Property
- Land acquisition and permitting

Metric	Marina / Seaplane Base Site	Windjammer Park Site
1	1.0	1.0
2	1.0	1.0
3	1.0	1.0
4	1.0	1.0
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Old City Shops Site

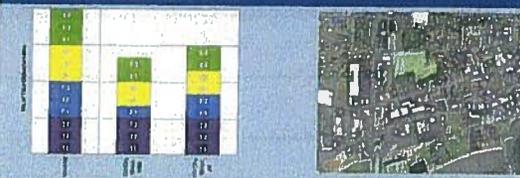
MBR / AS with discharge to Oak Harbor outfall

Advantages

- Avoids facilities in/near Windjammer Park
- Relatively efficient use of conveyance piping/pumping

Challenges

- Places facilities in neighborhood area



The bar chart shows 'Days of Discharge' for three scenarios. Scenario 1 has 11 days in blue, 11 in yellow, and 11 in green. Scenario 2 has 11 in blue, 11 in yellow, and 11 in green. Scenario 3 has 11 in blue, 11 in yellow, and 11 in green. The aerial map shows a residential neighborhood with a green highlighted area.

Beachview Farm Site

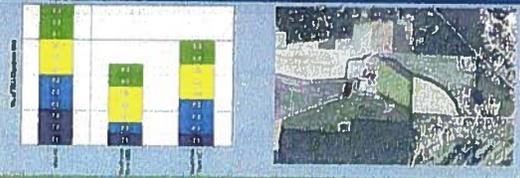
MBR / AS with discharge to Oak Harbor outfall

Advantages

- Avoids facilities in parks/neighborhood areas
- Opportunity for beneficial reuse of effluent

Challenges

- More conveyance piping/pumping relative to other sites
- Land acquisition and permitting



The bar chart shows 'Days of Discharge' for three scenarios. Scenario 1 has 11 days in blue, 11 in yellow, and 11 in green. Scenario 2 has 11 in blue, 11 in yellow, and 11 in green. Scenario 3 has 11 in blue, 11 in yellow, and 11 in green. The aerial map shows a rural area with a green highlighted area.

Crescent Harbor Site

MBR / AS with discharge to Oak Harbor outfall

Advantages

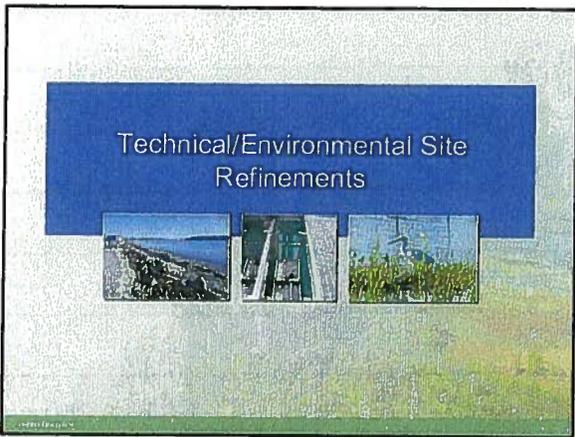
- Avoids facilities in parks/neighborhood areas

Challenges

- More conveyance piping/pumping relative to other sites
- Land acquisition and permitting



The bar chart shows 'Days of Discharge' for three scenarios. Scenario 1 has 11 days in blue, 11 in yellow, and 11 in green. Scenario 2 has 11 in blue, 11 in yellow, and 11 in green. Scenario 3 has 11 in blue, 11 in yellow, and 11 in green. The aerial map shows a rural area with a green highlighted area.



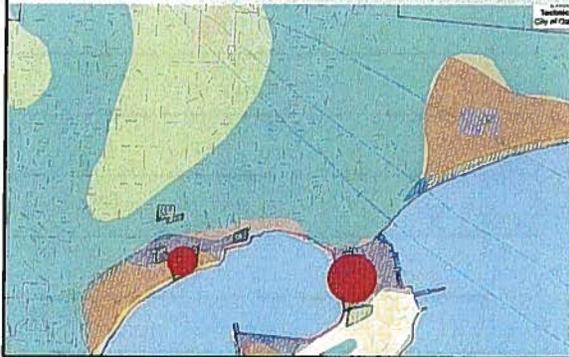
- ### Steps Taken to Refine Alternatives
- Completed technical analysis at each site
 - Field wetlands investigation
 - Cultural "paper survey"
 - Geotechnical "paper survey"
 - Confirmation of land use, zoning, and acquisition complexity
 - Met with DOE/DOH to discuss outfall options
 - Refined of conveyance/pumping assumptions and layouts for each alternative



Cultural Resources Risk at All Sites

- Particular concern at Windjammer, Crescent Harbor, Marina/Seaplane Base sites
- Additional field investigation is recommended once the sites have been narrowed

Geotechnical Issues Confirmed at 2 Sites



Zoning/Land Use & Acquisition Complexity

- Beachview Farm Site
 - Property outside of UGA; annexation of "Island" area and change in Island County Zoning
- Marina/Seaplane Base Site
 - Current Marina must remain so per deed; acquisition or lease from US Navy
- Crescent Harbor Site
 - Acquisition or lease from US Navy
- Old City Shops Site
 - Acquisition of private property

Summary of Discussion with DOE/DOH
April 13 Meeting

- **Oak Harbor Outfall**
 - Adequate mixing with highest effluent quality
 - No impact on shel fish harvesting
- **Crescent Harbor/West Beach Outfalls**
 - Better mixing
 - Potential impact on shellfish harvesting
 - Mitigating this impact is very expensive
- Meeting confirmed original assumptions regarding cost/risk of outfall locations

Proposed Outfall Location

West Beach
Mitigate Shellfish Impact With Deep Diffuser

Oak Harbor
Limited Shellfish Impact

Crescent Harbor
Mitigate Shellfish Impact With Deep Diffuser

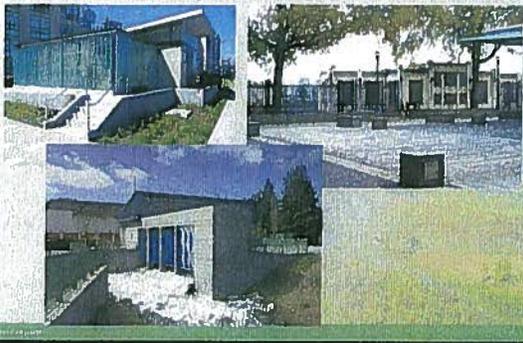
Conveyance Piping/Pumping Refinements

The first image shows a large pipe structure near a body of water. The second image shows a vertical pipe structure with a pump. The third image shows a horizontal pipe structure with a pump.

Refinements to Pipe Alignments

- Most sites require costly improvements to existing pipes for Navy Crescent Capehart flow
 - Fewer improvements required for Crescent Harbor site
- All sites will require infrastructure (pump station or WWTP) at Windjammer Park
- Windjammer Park site has lowest conveyance impact (cost)
- Beachview Farm site has highest conveyance impact (cost)
 - Piping effluent to West Beach very costly due to geographic, environmental constraints

Pump station at Windjammer Park Photos of similar facilities in public view



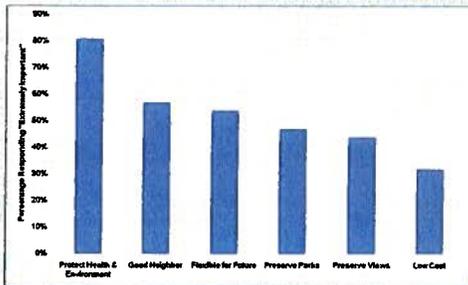
Summary of Public Input



Sources of Public Input

- Initial phone survey
- Input received through email and website posting
- Public Forums 1 and 2
- On-line survey completed in April
 - Survey ran for over 6 weeks
 - 109 respondents provided input
- Written correspondence (letters) received by City and forwarded to project team

While cost is important, majority of public favor features best provided by MBR technology



Other trends are clearly apparent from feedback

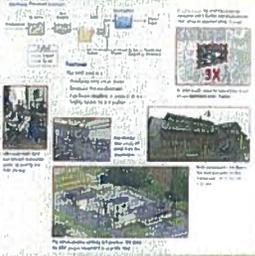
- Very little support for Windjammer Park
- Community has expressed health concerns, particularly associated with Old City Shops



- Valid concerns must be addressed
- Starts by redefining "WWTP"
 - Fully-enclosed facility
 - Complete air capture/scrubbing
 - Designed for high level of public interaction

Based on feedback, MBR process option is appropriate for evaluating remaining sites

Membrane Bioreactor (MBR) Treatment Process



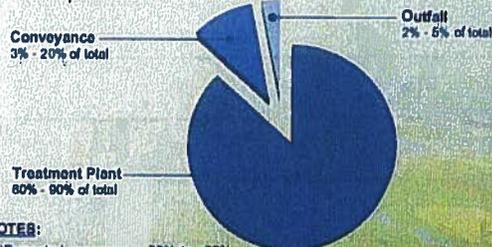
- Best water quality
- Most flexibility to meet future NPDES permit limits
- Least impact on surrounding area
- Smallest footprint
 - Only viable option at several sites
- A common comparison to illustrate site tradeoffs
- Process decision may be revisited once a pending final site selection

Cost Refinements

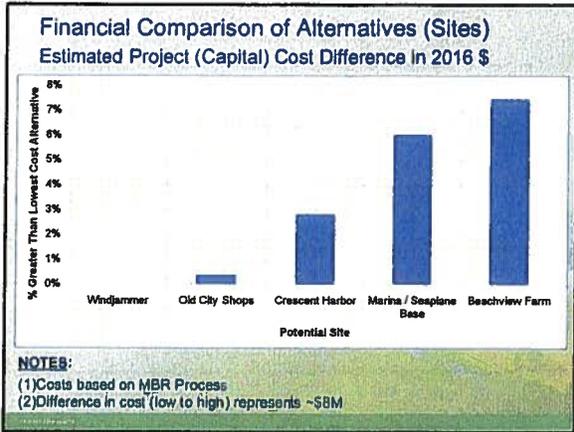


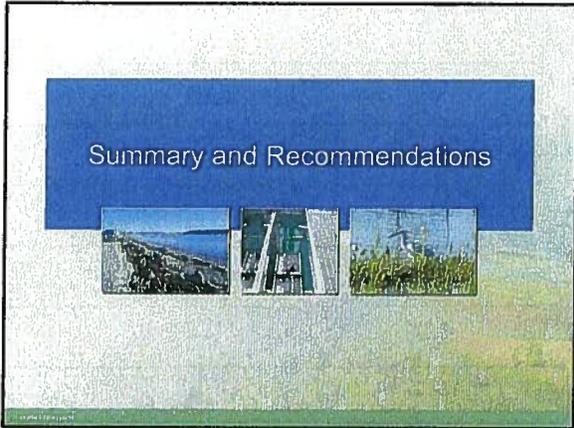
Financial analysis refined, used to compare relative cost of alternatives

- "Conceptual level"⁽¹⁾ costs developed for 3 major components:

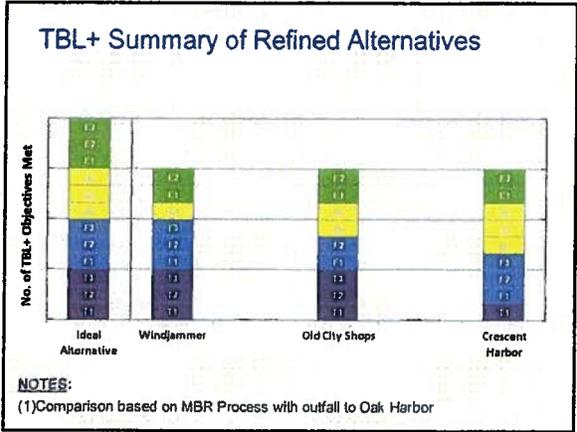


NOTES:
 (1) Expected accuracy -50% to +30%
 (2) Estimated Construction Cost ranges from \$85 to \$100 million in 2011 \$

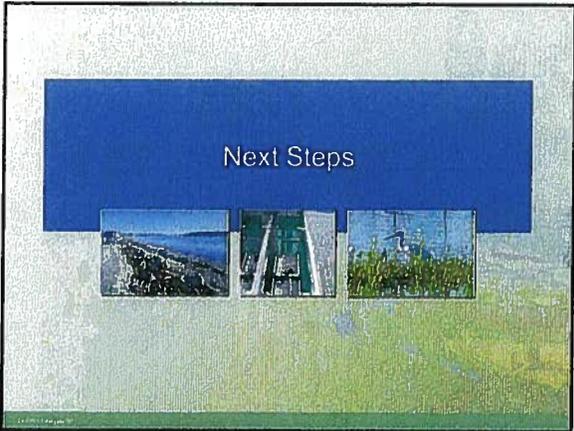




- ### Summary and Recommendations
- MBR recommended as basis for alternatives selection
 - Consistent with feedback received to-date
 - Appropriate for all sites (does not limit selection)
 - All 5 sites remain "technically viable"
 - Challenges exist at all sites
 - Technical team recommends narrowing to 3 sites
 - Preferred outfall location remains in Oak Harbor







Upcoming Schedule

- **August 24 Public Forum No. 3**
 - Summarize refinements
 - Collect additional feedback
- **September 20 City Council Meeting**
 - Seeking resolution to proceed with alternatives on three (or fewer) sites
- **Final site/alternative selection anticipated in late 2011 / early 2012**
 - Maintain flexibility in public process between August and December

Questions?



**City Council Meeting
Wednesday, August 3, 2011, 6:00 p.m.
City Hall – Council Chambers**

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

INVOCATION Councilmember Jim Campbell

ROLL CALL

Mayor Jim Slowik
Five Members of the Council,
Jim Campbell
Beth Munns
Danny Paggao, Mayor Pro Tem
Jim Palmer
Bob Severns

Paul Schmidt, City Administrator
Margery Hite, City Attorney
Doug Merriman, Finance Director
Cathy Rosen, Public Works Director
Larry Cort, Project Manager
Rick Wallace, Chief of Police
Mike McIntyre, Senior Services Director
Renée Recker, Executive Assistant to the Mayor

Scott Dudley and Rick Almberg were absent and formally excused from the meeting.

MINUTES

MOTION: Councilmember Munns moved to approve the 7/12/11 meeting minutes. The motion was seconded by Councilmember Severns. Councilmembers Campbell, Munns, Paggao, and Severns voted in favor of the motion. Councilmember Palmer abstained from the vote since he was absent from the 7/12/11 meeting. The motion carried.

NON-ACTION ITEMS

Video Presentation – Navy’s Centennial

In celebration of the Navy’s 100 hundred years of Naval aviation, the City prepared a 17-minute video highlighting historical Naval events, the history of NASWI and its prominent relationship with Oak Harbor, and interviews with Mayor Jim Slowik, past Mayor Al Koetje, past NASWI Base Commander and Oak Harbor Harbormaster Dave Williams, and Wallie Funk, past co-owner, manager, editor, and publisher of the *Anacortes American*, the *Whidbey News-Times*, and the *South Whidbey Record*. Mayor Slowik thanked Renée Recker and Jim Riney who produced this professional and moving film.

Public Comments

Shane Hoffmire, 50 SW 8th Avenue, Oak Harbor. I am asked what I am here to accomplish. We are dissatisfied with our elected leaders in Oak Harbor. It is implied that it is unreasonable to expect accountability from elected officials. The only tool we have left is shame. The majority of us may not be the loudest voice, but we are here, and our voice will be heard in the upcoming election. In the words of Abraham Lincoln: You can fool some of the people all of the time, and all of the people some of the time, but you can not fool all of the people all of the time.

Richard Everett, 651 SE Bayshore Drive, Oak Harbor. As an ex-Naval aviator, thank you for the centennial film. The festivities in our park last night, National Night Out, were a great success. To my main points: We expected feedback from Chief Wallace regarding alternative policing at Element Nightclub. Please see if we can bring some closure to this issue. There were wild events at Element this weekend. I have the distinct impression that we have very little power over what is happening in this City. Government's regulation of citizens and businesses seems to be in favor of the businesses. We see so little progress and need to resolve this. We are willing to work, and would like to see some venue dig into this; we need to get together and resolve it. There were trespassers on our property this weekend, but no one takes statements when we make complaints. We have drunks on our property but there are no citations. We seem to have no recourse. We, as citizens, have no rights to make citizen complaints and are told the police have to observe an incident. The response time to Element takes longer than what is happening at Element. The problem has disappeared once they respond. Traffic is somewhat out of control with the Pioneer Way project's traffic reorganization. Please add additional crosswalks on Bayshore Drive; crosswalks do carry the force of law.

Steve Boughner, 651 SE Bayshore Drive, Oak Harbor. Mr. Boughner noted that he had talked about Element Nightclub during the 2/14/11 Council meeting. Things have gotten worse there. Mr. Boughner thanked Mr. Everett for his comments on crosswalks and distributed a letter of concern, on behalf of his mother, to Mayor and Council Members. It is not attached since Mr. Boughner's mother wished to remain anonymous.

Billie Cook, 651 SE Bayshore Drive, Oak Harbor. I live across from Element and the previous comments are exactly right. I was awakened at 12:50 a.m., called 911, called again at 2:00 a.m., but the noise did not ebb until after 2:30 a.m. Ms. Cook asked this question which was also distributed to the Mayor and Council: Does the Council have the power and authority to revoke a conditional use permit? Ms. Cook also brought a self-addressed and stamped envelope in case her question could be answered in writing.

Paul Brewer, 225 NE Ernst, Oak Harbor. I pass by an empty business on Mallard's Lane which used to be an indoor soccer field. Element Nightclub could move there and that would solve the problem. That is the only way to resolve this; take a look, it is the responsible thing to do.

With no other comments coming forth, Mayor Slowik closed this portion of the meeting at 6:35 p.m.

COUNCIL CONSIDERATION AND ACTION ON THE FOLLOWING MATTERS

Consent Agenda

- A. Noise Permit – Habitat for Humanity
- B. Noise Permit – Lighthouse Christian Center
- C. Noise Permit – DK Party
- D. Jail Services Contract – For Provision of Occasional Oak Harbor City Jail Services for the City of Burlington
- E. Approval of Accounts Payable Vouchers (Pay Bills)

MOTION: Councilmember Palmer moved to approve the complete consent agenda with Consent Agenda Item E paying Accounts Payable check numbers 146575 – 146729 in the amount of \$1,217,290.15, Accounts Payable check numbers 146730 – 146731 in the amount of \$2,948.98, Accounts Payable check numbers 146732 – 146900 in the amount of \$735,126.22, Payroll Check numbers 94860 – 94871 in the amount of \$414,042.02, and Payroll Check numbers 94872 – 94900 in the amount of \$605,472.02, and Payroll Check numbers 94901 – 94932 in the amount of \$54,638.90. The motion was seconded by Councilmember Campbell and carried unanimously.

Pioneer Way Update

Project Manager Larry Cort presented this update which has changed daily since the agenda bill was prepared. This evening's information was current as of an hour prior to the Council meeting.

Archeology

The City received archeological excavation permit no. 1 on July 28, 2011 which will establish two sampling protocols with shallow test pits at one meter intervals for the primary discovery area. For the balance of the site, west of Ireland and east of Ilwaco, test probes will be performed, no deeper than needed for excavation, in all locations where additional underground work is required (tree wells, light poles, utility service connection trenches, irrigation service trenches and curbs). That work is underway. In the last two days of work, Northwest Archaeological Associates (NWAA) has completed the testing from City Beach Street to Dock Street and will move across Dock Street tomorrow toward Phase 2. Inside the recovery area, NWAA is sifting through the spoils piles - two major piles – and a quarter to a third of the work was sifted today. People have asked about watching that effort, but out of respect to the Tribes, the State and City have honored their request to enclose this area and keep it as private as possible. City officials and members of six consulting tribes will meet later this month to discuss a burial plan. A draft cultural resource management plan will be in place by July of 2012. This will be an effective tool for future projects with respect to resources and predictability.

How long is the work going to take?

The best estimate from the archeological consultant is three to four weeks. Archeological excavation permit no. 2 covers the Pit Road site, with comments due by noon tomorrow. This is no surprise since all of the issues were discussed at the joint State and Tribal meeting last week. Until the final form of the permit is issued, the City is unsure of how much time it will take. All of the archeological work is being coordinated through Northwest Archeological Associates who are now a division of SWCA Environmental Consultants.

Construction

With receipt of permit no. 1 last Thursday, the City is meeting with Strider Construction so they may gear up toward continuation of their work. A short-term schedule and an anticipated new completion date are expected shortly. Dr. Cort, Project Engineer Joe Stowell and Strider's foreman met with the project lead for the archeological work to discuss and view where the test pits will be sited (green markers). Today, the first Strider crew returned and is working on the cap for the retaining wall across from Whidbey Coffee. A larger Strider contingent will be onsite next Monday and will initially work on Phase 1's gap areas. Lakeside Industries will make patches next week to alleviate tripping hazards for people. That crew will then move to Phase 2 for sidewalk preparation between Dock and Ireland Streets. The merchants, City, and community are anxious to see sidewalks in those two blocks and these measures should increase foot traffic to these businesses. Phase 1 will begin to see topsoil in the planting islands and other amenities such as pots. Once Strider's schedule is firmed up, Council and the community will be notified.

Costs

First Category: Expect an increase in Strider's contract, the Fakkema and Kingma surveying contract, and KBA's construction management contract. These increases cannot be determined at this point. If contract amounts increase above Council's initial authorization, the contracts will be re-presented to City Council. Additional contracts will be drafted for the archeological work (NWAA as part of SWCA) regarding permits 1 and 2, agreements with Tribal authorities, and an agreement for security services.

Other Associated Costs: Fencing for security at both the Pioneer Way and Pit Road sites, and access control at the Pit Road site. The City's Public Works staff did the initial level of work at Pioneer Way.

Spreadsheets: The spreadsheets included with this evening's agenda bill have changed. The three rows toward the bottom of the upper table for July Running Costs and Estimated Expenditures (Archeological Investigation, Archeological Monitoring, and Site Security) may total \$250,000. Dr. Cort also focused on the lower table which showed funding sources and individual amounts totaling \$7,745,000.

Outreach

Extended outreach as reauthorized by Council, has continued with staff (Larry Cort, Rhonda Severns, Joe Stowell and others) working closely with the downtown community. Ad proofs have been provided to downtown merchants and advertisement frequency has lessened since the project's delay. Dr. Cort emphasized that staff is downtown as servants of the community and he encouraged citizens to contact the Pioneer Way office staff with questions/concerns. Dr. Cort's email: lcort@oakharbor.org

Mayor Slowik called for public comments.

Paul Brewer, 225 NE Ernst, Oak Harbor. What is the total cost of the project's delay and when will it be made available to the public? What are all of the costs and where are we going to get the money?

Shane Hoffmire, 50 SW 8th Avenue, Oak Harbor. Where are we with the struggling businesses, and are there pending lawsuits against the City from the businesses? Has anyone been injured?

There were no other comments.

Council Discussion

Councilmember Severns asked if there are lawsuits. Mr. Schmidt responded that a claim has been filed, but not a lawsuit. With regard to Mr. Brewer's comments and as noted in Dr. Cort's presentation, the City does not have total costs yet. Pit Road site costs will depend on the State's permit which is still forthcoming. Dr. Cort noted that security needs should lessen in three weeks as long as there is no further disturbance of the site. Mr. Severns noted that there is positive feedback downtown and everyone is pleased that the project can begin again. Councilmember Palmer asked if anyone has been injured. Mr. Schmidt talked about a fall but our insurance pool, WCIA, did not find the City negligent. Mr. Palmer noted that walking the gravel areas of this project is not uncomfortable. Mr. Palmer asked Finance Director Merriman about initial project costs (\$8.3 million) which was lowered to \$7.7 million when project bids came in less than projected. The agenda bill's spreadsheet showed Contract/Budget costs at \$6,872,303 with approximately \$900,000 that the City does not want to spend but is viable for this project. In response to Councilmember Paggao, discussion continued about the project's completion date, and when determined, if Council can be notified and estimated costs included at that point. Dr. Cort noted that this information will be readily available, but the completion date and costs may be sequentially presented since costs will be reviewed once the date is set. In response to continued Council discussion, it was noted that a committee is being formed to consider a site for reburial of the remains, another site may require State permitting, and that this is still in the preliminary stages of discussion and study of what properties would be available. Council will receive a future report. The 8/30/11 meeting with the Tribal council will include this discussion. Councilmember Campbell asked about funding and where funds are coming from to pay staff who are onsite right now, particularly how contracted consulting staff are being paid without Council authorization of an agreement and if

Council approval is coming after-the-fact. Mr. Merriman noting that funding is still within the engineer's estimate. The onsite archeologist's agreement is within the Mayor's authority to approve a contract (within \$30,000). Other agreements are being worked on for Council's approval which may require a special meeting of the Council. Councilmember Campbell also asked about the investigation of what happened on this project and Mayor Slowik noted that it will be reported to Council when it is prepared. Councilmember Munns was glad to hear that this project is still within budget and thanked Dr. Cort for his emailed report briefings along with thanks to the entire Pioneer Way staff. Mayor Slowik also expressed his thanks to Larry Cort, Rhonda Severns, Paul Schmidt, Doug Merriman, and Margery Hite.

Break

Mayor Slowik called for a break at 7:15 p.m. and the meeting reconvened at 7:25 p.m.

Bid Award – SR-20 and SW Erie Street Culvert Design Project

Public Works Director Cathy Rosen presented this agenda bill awarding a contract for construction of the SR-20 and SW Erie Street Culvert Design Project to C. Johnson Construction in the amount of \$31,738.00. The proposed construction project will divert flow from one storm drain system to another to reduce flooding at the intersection of SR-20 and Pioneer Way. The proposed project will construct two storm drain manholes connected by 24-inch storm drain pipe at the intersection of SR-20 and SW Erie Street. Work will be performed at night and in cooperation with the ongoing SR-20 paving project. The project is needed to help alleviate recurrent flooding that occurs near the intersection of SR-20 and SE Pioneer Way. Consistent with the Comprehensive Storm Water Plan, portions of storm water flows from the west side of Oak Harbor can be diverted towards the Freund Marsh area for release to Oak Harbor Bay through the existing tide gate structure. Doing so will reduce the amount of storm water discharged through the 42-inch outfall in Windjammer Park thereby reducing the flooding potential. While additional study and engineering is needed to determine the volume that can be diverted, construction of this short section of drainage pipe will allow for future diversions without having to work within the SR-20 roadway being paved this year. The design includes flexibility for public works staff to alter, adjust, or shut off diversion of flows as may be needed pending further engineering study of the Freund Marsh area for additional storm water conveyance and treatment.

There were no public comments.

Council Discussion

Discussion followed about the single bid even though bidding had been widely advertised (it is a small, nighttime project), and that this project comes forward now in order to work on this section before the State overlay.

MOTION: Councilmember Severns moved to authorize the Mayor to sign a contract with C. Johnson Construction, Inc., in the amount of \$31,738.00 plus all applicable taxes and authorize the City Engineer to administratively approve changes to the construction contract totaling not more than \$5,000. The motion was seconded by Councilmember Munns and carried unanimously.

WAIF Discussion – (Continued from the 7/12/11 Meeting)

Since this topic had been brought forward by Councilmember Dudley (not at this evening's meeting) and then continued during the 7/12/11 meeting due to that meeting's length, Council decided to bring this discussion back when Mr. Dudley would be present.

MOTION: Councilmember Campbell moved to continue this item to the next Council meeting (September 6, 2011). The motion was seconded by Councilmember Palmer and carried unanimously.

City Administrator's Comments

City Administrator Paul Schmidt talked about upcoming meetings including the 8/24/11 Community Forum on the Waste Water Facility Plan at the Elk's Club, 6:00 p.m., and those meetings which have been cancelled (8/4/11 Public Works Standing Committee, 8/17/11 Workshop on Pavement Preservation). Mr. Schmidt also talked about a potential special Council meeting to approve upcoming Pioneer Way agreements, and will contact Council Members once a date has been set (August).

Council Members' Comments

Council Members gave their respective standing committee reports with note that the Finance Standing Committee's date has been changed from August 10th to August 9th at 3:30 p.m. and will be noticed as a special meeting. Councilmember Palmer talked about public comments this evening and specifically, Ms. Cook's verbal and written question about Element Nightclub. City Attorney Hite will provide a written opinion, and Mayor Slowik asked that uniformed security and operation hours at Element be brought forward on the September 6, 2011 Council agenda. Mr. Schmidt will take the request for additional crosswalks on Bayshore Drive under advisement. This subject will need to come before the Public Works Standing Committee first. Mayor Slowik, with regard to public safety, also mentioned the channel 10 broadcast on this subject (OHPD and OHFD). Councilmember Severns talked about the Chalk Art contest (8/14/11) that will be held on Pioneer Way in conjunction with the Fidalgo Avenue Block Party and Pig Roast. Councilmember Munns talked about the Association of Washington Cities preparations for the legislature and she will participate in a two-hour conference call on Friday, 8/5/11, to discuss proposed changes in the law, changes in health care, and what the cities/AWC will lobby for support. Ms. Munns also suggested that Oak Harbor should begin organizing what to present to our representatives.

Mayor's Comments

Mayor Slowik talked about seeing all three legislators on Friday during the NASWI Base BBQ associated with the centennial celebration. He will be setting up meetings with the State representatives. Mayor Slowik had also talked with Senator Haugen while attending Mayor Conard's wedding. Mayor Slowik thanked Police Chief Wallace and Officer Cedric Niiro for the excellent National Night Out evening. This event grows each year and has been celebrated for the past twenty-eight years. Thanks to all who help make it a success each year.

ADJOURN

With no other business coming before the Council, the meeting adjourned at 7:45 p.m.

Connie T. Wheeler
City Clerk

**City Council Special Meeting
Tuesday, August 16, 2011, 6:00 p.m.
City Hall – Council Chambers**

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

ROLL CALL

Mayor Jim Slowik

Six Members of the Council,

Rick Almberg

Jim Campbell

Scott Dudley

Beth Munns

Danny Paggao, Mayor Pro Tem

Jim Palmer

Paul Schmidt, City Administrator

Margery Hite, City Attorney

Doug Merriman, Finance Director

Steve Powers, Development Services Director

Cathy Rosen, Public Works Director

Eric Johnston, City Engineer

Larry Cort, Project Manager

Renée Recker, Executive Assistant to the Mayor

Bob Severns was absent and formally excused from this special meeting.

Archeological Contract – Professional Services Agreement with Northwest Archeological Associates/SWCA

Pioneer Way Project Manager Larry Cort presented this agenda bill and professional services agreement with Northwest Archeological Associates/SWCA for archeological services to be performed as requested by the Washington State Department of Archeology and Historic Preservation (DAHP) per Permit No. 2011-33, issued to the City on July 28, 2011.

State law requires that a qualified archaeologist be either the applicant or a co-applicant on any permit application for archaeological excavation. Northwest Archaeological Associates/SWCA prepared the Excavation Permit for Pioneer Way and Permit No. 2011-33 was issued by DAHP on July 28, 2011. The scope of the permit covers testing, site delineation, recovery of four partially *in situ* burials, and screening of piles for human remains, grave goods and artifacts. The proposed contract is inclusive of this general scope of work and the specific requirements of Permit No. 2011-33. Dr. Cort noted that this agreement could not be fully written until the permit had been issued since the scope of work is so closely linked to the archeological permit. Dr. Cort noted the eight services to be performed as listed in the scope of services:

1. Project Management
2. Historic Research
3. Field Services
4. Plan Development
5. Training and Monitoring of Construction Personnel
6. Consultation and Coordination with Tribes
7. Reports and Recordkeeping
8. Extra Services (if necessary)

The scope of services has specific task references which relate to the project permit. Compensation and method of payment is on a time and materials basis with total compensation established at a not-to-exceed amount of \$140,000.

Mayor Slowik called for public comments.

Larry Eaton, 429 SW Dyer Street, Oak Harbor. Mr. Eaton said he was dismayed that, given the circumstance and breadth of this evening's meeting, there was not a larger audience. Saturday's paper did not have a display ad. When did the Mayor know about the contract and was there enough time to advertise in the Whidbey News Times.

Mel Vance, P.O. Box 2882, Oak Harbor. Mr. Vance felt it was odd that the City was signing a contract with those who developed their own scope of work and discouraged this practice in the future.

Paul Brewer, 225 NE Ernst, Oak Harbor. Mr. Brewer agreed with Mr. Eaton's comments and asked why this meeting was not advertised in Saturday's paper. Mr. Brewer also felt the inclusion of a noise permit on this evening's agenda was inappropriate since it was not an emergency and asked why this meeting had not been scheduled on Thursday so an advertisement could have been included in Wednesday's newspaper.

Council Discussion

Councilmember Dudley talked about the timing for this evening's meeting and the work already being done by NWAA/SWCA since June 17th, and asked if this agenda item could have been heard in Council's September 6, 2011 rather than in a special meeting. Dr. Cort noted that NWAA/SWCA has been working steadily over the last two weeks, the City has not yet received an invoice from them, and the work needs to continue without interruption. Mayor Slowik asked City Administrator Schmidt to talk about the circumstances leading to this evening's special meeting. Mr. Schmidt noted that the City did not want to exceed the original \$30,000 (amount available through the Mayor's authority), and that this agreement needed to be brought before Council as soon as possible since there is only one regular Council meeting in August (August 3, 2011) and this work must continue as Dr. Cort stated. The terms of the agreement came from the DAHP requirements and matched what the contractor could do for us in order to bring this agreement forward prior to Council's September 6th meeting. With regard to an emergency (Mr. Brewer's comments), this is a special meeting and was correctly noticed in the appropriate 24-hour period. Inclusion of the noise permit was a courtesy since Click Music's event preceded Council's September 6th meeting. Dr. Cort will also continue his full Pioneer Way reports at the September 6th Council meeting. Councilmember Dudley asked if the timeframe will suffice and if future agreements are anticipated. Mr. Schmidt noted that this agreement covers only Pioneer Way and a future agreement will come forward for the Pit Road site. The timing issue for the Pit Road site is less crucial than the continued work on Pioneer Way. The City did not want to impact the Pioneer Way project any further by waiting for the September 6th Council meeting. Mr. Dudley felt the City could have done a better job of notifying the public.

Councilmember AlMBERG felt there is more interest in this evening's special meeting and agenda because this is an election year. Where was the interest in big ticket items that have been on Council's agenda with three weeks notice to the public. They (audience members) show up when running for office. Mr. AlMBERG asked Dr. Cort what the difference is between NWAA and SWCA. SWCA is now the parent company of NWAA and NWAA is the Seattle office for SWCA. Mr. AlMBERG asked Dr. Cort to address Mr. Vance's comments about the scope of work's preparation. Dr. Cort explained the protocol of DAHP's requirement that a qualified archeologist must be either the applicant or a co-applicant on any permit application for excavation. Since the City does not have an archeologist on staff, the City asked NWAA to prepare the application in order to expedite the application. DAHP also had two pages of modifications. The City could not know what the scope of work would be until the permit was issued.

Break for Technical Repair

Mayor Slowik called for a short break at 6:18 p.m. in order to repair the podium's microphone and the meeting reconvened at 6:20 p.m.

Councilmember AlMBERG asked about three line items on the matrix (Schedule and Deliverables, Exhibit B to the agreement) which show TBD in these lines as detailed in ten field tech line items. Will these unnamed positions be filled by interns, grad students, or qualified archeologists. Dr. Cort responded that SWCA personnel have to meet a qualification level to work as a field tech. Since SWCA is a national firm, archeologists can be pulled from other areas of the country to fill these positions and have simply not been named yet. Mr. AlMBERG asked about the number of field techs (10) and if that helps expedite this project and impact on downtown – 10 field techs in one clock hour rather than 1 field tech in 10 hours of work. Dr. Cort talked about how the archeological team is dispersed: team members are in the enclosed area, out on the street where pit testing is being done, and a third group monitors and examines excavation work for any new archeological resources. Mr. AlMBERG asked if a timeframe can be determined yet, and Dr. Cort noted that there are a number of variables in that question as work moves forward between Dock and Ireland and then Ireland and Midway and it is too tenuous to make that prediction right now. The timeline shows archeological work should be completed in the next two weeks, but the permit says if additional remains are found in the test pits, the Tribes and State will reconvene. Additional remains have been found in six of those test pits. Mr. AlMBERG added that it has been forty days from first discovery to restarting this project which is a quick resolution. City representatives went to the Tribes with respect and that had a lot to do with this solution in such a short period of time.

Councilmember Palmer agreed with Mr. AlMBERG's remarks about campaigning on camera and added that, in the fourteen months of attending Council meetings prior to his election, he did not do campaign from the podium. Mr. Palmer felt it made sense to have the archeologist who worked to prepare the permit application also help define the agreement's scope of work. Mr. Palmer asked about the 15% markup on the schedule and deliverables sheet (it is an administrative markup on expenses). Mr. Palmer's closing statement concerned the newspaper's continuing focus on one-way versus two-

way and that the discovery of remains would have occurred regardless of the street direction.

Councilmember Paggao asked about the term of the agreement from August 1, 2011 through December 31, 2012 and if the work that the archeologist has done since June 17th would become part of this larger agreement. Dr. Cort noted that it would be included in this not-to-exceed \$140,000 agreement. Mr. Paggao asked about the appropriation amount at \$150,000 while the agreement calls for \$140,000. It was noted that the \$10,000 difference could be approved under the Mayor's authority if the \$140,000 was exceeded.

Councilmember Campbell asked if that would have to come back before Council and Dr. Cort noted that the additional \$10,000 falls under the Mayor's authority but should be included in Council's action this evening. Mr. Schmidt also noted that including mention of this \$10,000 and Mayor's authority for this amount would be at Council's discretion. Council could keep the recommended action as stated this evening, authorize the additional \$10,000 this evening, or leave the amount at \$140,000 and have any amount beyond it returned to Council for approval. Mr. Campbell also stated that, if you are running for office, you have a right to talk and address Council during these meetings.

Councilmember Munns asked Dr. Cort to describe the 15% markup at Council's next meeting and Ms. Munns liked the longevity of the scope of services. Ms. Munns complimented NWAA/SWCA and noted that they were working on Sunday to speed up the work without disturbing people when they are downtown during the week.

Councilmember AlMBERG, with regard to Councilmember Paggao's question about the term of the agreement, asked why it was dated out to December 31, 2012 and if that was correct. Dr. Cort noted that the City must also establish a draft cultural management plan by next June as a condition of the permit, and NWAA/SWCA will be working on some of this language for the City.

MOTION: Councilmember AlMBERG moved to authorize the Mayor to enter into a professional services agreement with Northwest Archaeological Associates/SWCA Environmental Consultants to perform archaeology services as requested by the Washington State Department of Archaeology and Historic Preservation per Permit No. 2011-33 issued to the City of Oak Harbor on July 28, 2011. The motion was seconded by Councilmember Palmer.

Council Discussion

Councilmember Dudley asked Finance Director Merriman about the source of funding. Mr. Merriman responded that funds will come from three utility fund accounts and an arterial street fund. General funds will not be used. Councilmember Munns noted that the \$150,000 could be addressed this evening rather than the suggested \$140,000. Ms. Munns did not want to impede work for approval of an additional \$10,000 but would

want to know about the expenses if \$140,000 is exceeded. Mayor Slowik talked about an additional motion, Councilmember Campbell asked about a friendly amendment to the motion, and City Attorney Hite clarified that Council could use either method.

(FRIENDLY) AMENDMENT TO THE

MOTION: Councilmember Campbell made an amendment to the original motion to increase the agreement to a not-to-exceed amount of \$150,000. The motion was seconded by Councilmember Munns.

Council Discussion

Councilmember Dudley asked about possible delays and if a situation is anticipated where the work would be held up. Mayor Slowik asked Mr. Schmidt to address this concern. There is always a timing issue, but it is just speculation; anything over the original \$140,000, even if only a \$1,000 would have to be approved.

VOTE ON THE AMENDMENT:

Councilmembers Almberg, Campbell, Dudley, Munns, and Paggao voted in favor of the amendment. Councilmember Palmer opposed. The amending motion carried.

VOTE ON THE ORIGINAL

MOTION: The original motion carried unanimously.

Mayor Slowik thanked Larry Cort for his presentation and expressed his appreciation for Dr. Cort's hard work on this project.

Pioneer Way Site Security Contract – Security Services Northwest

Public Works Director Cathy Rosen presented this agenda bill and service agreement with Security Services Northwest, Inc., to provide site security services on SE Pioneer Way between Ireland Street and Ilwaco Street, specifically inside and in the immediate vicinity of the enclosed archaeological investigation site between the hours of 5:00 p.m. and 8:00 a.m. Monday-Sunday and between 8:00 a.m. and 5:00 p.m. on Saturday and Sunday. The security services provided by this agreement began June 29, 2011 and should be completed no later than September 15, 2011. The proposed hourly rate for these services is \$45.00/hour with a not-to-exceed limit of \$50,000.00. The emergency procurement method to secure these services is being used to engage services immediately as further delays would create greater cost impacts to the City with the Pioneer Way General Contractor, with the State Department of Archaeological and Historic Preservation, and with the Tribes. The initial contract for security services was projected to be for less than \$30,000. However, the discovery of remains has required the City to extend the duration of the contract, which will soon result in the cost exceeding that amount, requiring approval of Council.

Mayor Slowik called for public comments.

Larry Eaton 429 SW Dyer, Oak Harbor. I am dismayed that you allowed a Council Member to impugn our character. I thank Mr. Campbell for supporting our right to speak. I do not like the direction of Council and administration.

Paul Brewer, 225 NE Ernst, Oak Harbor. I agree with Mr. Eaton's comments. I stayed away from meetings to give this Mayor and Council a chance to excel. It has been a failure. I do not know that the dig will be done by September 15th and the funds to cover it – there are remains at a different site, too. Why is this coming forward as a special meeting? This is not an emergency.

Mel Vance, P.O. Box 2882, Oak Harbor. The security contract is a regrettable necessity. Most of the candidates are here because they are running for office and use the dais for political purposes; I apologize for doing so.

Martha Yount, 364 NE Ronhaar Street, Oak Harbor. Thank you with respect to the Native American people and our Council for working as well as they could to resolve this situation.

Mayor Slowik talked about freedom of speech and that everyone has a right to their opinions: I think we are respecting that right in the way we are conducting this meeting. That is freedom of speech and that is the process. We will always respect the public's freedom to speak out.

Council Discussion

Councilmember Munns thanked Sandra Place for her notes in the agenda bill, Councilmember Campbell asked why it is necessary to have security (the permit requires it) and the 24-hour coverage was clarified, and Councilmember Paggao complimented Ms. Rosen and the Public Works staff who have already put many hours into site coverage. Mr. Palmer also noted the necessity of this service and thanked Public Works and Ms. Rosen. Councilmember Dudley asked why this did not come before Council during their July and August meetings since this company began working on July 29th. Ms. Rosen responded that the City had hoped to stay within the Mayor's \$30,000 authority, but now the not-to-exceed amount is \$50,000 which brings the contract before Council this evening.

MOTION: Councilmember Munns moved to approve the contract with Security Services Northwest, Inc., for site security for the Pioneer Way archaeological site in an amount not to exceed \$50,000.00 and authorize the Mayor to sign the agreement. The motion was seconded by Councilmember Palmer and carried unanimously.

Mayor Slowik also thanked Ms. Rosen and the Public Works staff for the numerous hours they have put in at this site.

Noise Permit – Click Music

City Administrator Schmidt noted that this item was included in this evening's agenda since their event would occur before the September 6th Council meeting and this was done as courtesy to Click Music. It would not set a precedent. Mayor Slowik added that Click Music had called with concern that they had missed the deadline for August's single Council meeting and Mayor Slowik told them we would try to add their permit application to this evening's meeting.

MOTION: Councilmember Campbell moved to approve the request for amplified sound by granting the noise permit to Click Music. The motion was seconded by Councilmember Palmer and carried unanimously.

ADJOURN

With no other business coming before the Council, Mayor Slowik adjourned the meeting at 7:00 p.m.

Connie T. Wheeler
City Clerk

City of Oak Harbor

OFFICE OF THE MAYOR
JIM SLOWIK
MAYOR



PROCLAMATION IN RECOGNITION OF THE

10TH ANNIVERSARY OF 9/11 AND

NATIONAL DAY OF SERVICE AND REMEMBRANCE

SEPTEMBER 11, 2011

WHEREAS, On September 11, 2001, the peace of our nation was shattered by the terrorist attacks that killed nearly 3,000 people at the World Trade Center towers in New York City, at the United States Pentagon in Washington DC and in the fields of Shanksville, Pennsylvania; and

WHEREAS, many brave people heroically, tirelessly and courageously participated in an extraordinary difficult and dangerous rescue and recovery effort, in some cases voluntarily putting their own well-being at risk; and

WHEREAS, in 2001, Congress designated September 11 of each year as Patriot Day and in 2009 requested the observance of September 11 as National Day of Service and Remembrance; and

WHEREAS, September 11, 2011 will be the 10th anniversary of the 9/11 attacks; and

WHEREAS, on Sunday, September 11, at 10am Pacific time, rather than a moment of silence, police and fire departments across this nation will commemorate the 10th Anniversary of 9/11 with the sounding of police and firefighter sirens and bells to show national unity and solidarity .

NOW, THEREFORE, WE, Jim Slowik, Mayor, and Councilmembers of the City of Oak Harbor do hereby recognize **September 11, 2011** as the **10th Anniversary of 9/11 and National Day of Service and Remembrance** and urge all citizens and organizations to consider joining in this observance and to engage in activities of tribute, solemn remembrance and charitable service.

Signed this 6th day of September, 2011



Jim Slowik, Mayor

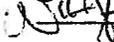
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**City of Oak Harbor
City Council Agenda Bill**

Bill No. 2
Date: September 6, 2011
Subject: Employee Recognition – Jim
Boer and Robert Wallin

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

To recognize City employees for 10 years of service or more.

AUTHORITY

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

SUMMARY STATEMENT

The Mayor and City Council will recognize the following employees for their years of service with the City:

- Jim Boer of the Public Works Department for 20 years.
- Robert Wallin of the Oak Harbor Fire Department for 25 years.

STANDING COMMITTEE REPORT

None

RECOMMENDED ACTION

Congratulate Mr. Boer for his 20 years of service and Mr. Wallin for his 25 years of service.

ATTACHMENTS

None

MAYOR'S COMMENTS

None

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

Bill No. 4

Date: SEPTEMBER 6, 2011

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**

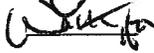
Agenda Bill No. d/A 5A

Date: September 6, 2011

Subject: Noise Permit – Navy Region NW Fire & Emergency

FROM: Paul Schmidt, City Administrator 

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

PURPOSE:

The purpose of this agenda bill is to forward to City Council for review and approval a Noise Permit request received from Navy Region NW Fire & Emergency Services for amplified sound associated with a 9/11 Memorial Ceremony scheduled for September 11, 2011 at Windjammer Park.

AUTHORIZATION:

Oak Harbor Municipal Code (OHMC) 5.50.040(3)(g) provisions relating to Special Events, requires compliance with noise ordinance regulations and laws. OHMC 6.56.030(2)(a) requires Council approval for a noise permit for sound amplification. As this event will include amplified sound, Council approval is required.

The City Council may grant a Noise Permit to deviate from the provisions of OHMC 6.56.030 if it is determined the activity and associated noise: 1) is not undertaken in disregard of the rights of others, or 2) is temporary, or 3) the activity creating the noise constitutes a program of a temporary nature for the benefit of the entire municipality or for the benefit of a charitable purpose.

SUMMARY STATEMENT:

Navy Region NW Fire & Emergency Services submitted a Noise Permit request for amplified sound associated with a 9/11 Memorial Ceremony scheduled for September 11, 2011. The amplified sound will consist of a sound system for announcements.

The Application was reviewed by Fire, Police, and Public Works Departments. A condition of approval for the Noise Permit will be to face the speakers away from the campground area.

STANDING COMMITTEE REVIEW:

Not required.



RECOMMENDED ACTION:

Approve the request for amplified sound by granting the noise permit.

ATTACHMENTS:

Noise Permit.

MAYOR'S COMMENTS:

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CITY OF OAK HARBOR

NOISE PERMIT

Name: Navy Region NW Fire & Emergency Services

Location of Event: Windjammer Park and surrounding area

Date of Event: September 11, 2011

Hours of Operation: 1:00 p.m. – 3:00 p.m.

Permitted Noise: Sound system for announcements

Approval Conditions: Face speakers away from campground area

Date of City Council Approval:

Issued this day of September, 2011.

Karen Crouch, Special Events Coordinator

This Noise Permit is limited to the date and time specified.

Please post this notice on site

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

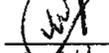
Agenda Bill No. JA 5B

Date: September 6, 2011

Subject: Noise Permit – NASWI – Fleet and
Family Readiness

FROM: Paul Schmidt, City Administrator 

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:


Jim Slowik, Mayor

Doug Merriman, Finance Director

Margery Hite, City Attorney, as to form

PURPOSE:

The purpose of this agenda bill is to forward to City Council for review and approval a Noise Permit request received from NAS Whidbey Island Fleet & Family Readiness for amplified sound associated with a 5K Fun Run scheduled for September 10, 2011 at Windjammer Park.

AUTHORIZATION:

Oak Harbor Municipal Code (OHMC) 5.50.040(3)(g) provisions relating to Special Events, requires compliance with noise ordinance regulations and laws. OHMC 6.56.030(2)(a) requires Council approval for a noise permit for sound amplification. As this event will include amplified sound, Council approval is required.

The City Council may grant a Noise Permit to deviate from the provisions of OHMC 6.56.030 if it is determined the activity and associated noise: 1) is not undertaken in disregard of the rights of others, or 2) is temporary, or 3) the activity creating the noise constitutes a program of a temporary nature for the benefit of the entire municipality or for the benefit of a charitable purpose.

SUMMARY STATEMENT:

NAS Whidbey Island Fleet & Family Readiness submitted a Noise Permit request for amplified sound associated with a 5K Fun run scheduled for September 10, 2011. The amplified sound will consist of a sound system for announcements and music.

The Application was reviewed by Fire, Police, and Public Works Departments. A condition of approval for the Noise Permit will be to face the speakers away from the campground area.

STANDING COMMITTEE REVIEW:

Not required.

RECOMMENDED ACTION:

Approve the request for amplified sound by granting the noise permit.

ATTACHMENTS:

Noise Permit.

MAYOR'S COMMENTS:

CITY OF OAK HARBOR

NOISE PERMIT

Name of Organization: NASWI - Fleet and Family Readiness

Location of Event: Windjammer Park

Date of Event: September 10, 2011

Hours of Operation: 9:30 a.m. – 11:00 a.m.

Permitted Noise: Amplified sound system for
announcements and music

Approval Conditions: Face speakers away from campground
area.

Date of City Council
Approval:

Issued this day of , 2011.

Karen Crouch, Special Events Coordinator

This Noise Permit is limited to the date and time specified.

Please post this notice on site

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

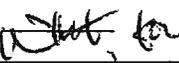
Agenda Bill No. NA 5c

Date: September 6, 2011

Subject: Noise Permit – Event Planning
Committee for Mayor Jim Slowik

FROM: Paul Schmidt, City Administrator 

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

PURPOSE:

The purpose of this agenda bill is to forward to City Council for review and approval a Noise Permit request received from the Event Planning Committee for Mayor Jim Slowik for amplified sound associated with a Lunch with the Mayor event scheduled for September 18, 2011.

AUTHORIZATION:

Oak Harbor Municipal Code (OHMC) 5.50.040(3)(g) provisions relating to Special Events, requires compliance with noise ordinance regulations and laws. OHMC 6.56.030(2)(a) requires Council approval for a noise permit for sound amplification. As this event will include amplified sound, Council approval is required.

The City Council may grant a Noise Permit to deviate from the provisions of OHMC 6.56.030 if it is determined the activity and associated noise: 1) is not undertaken in disregard of the rights of others, or 2) is temporary, or 3) the activity creating the noise constitutes a program of a temporary nature for the benefit of the entire municipality or for the benefit of a charitable purpose.

SUMMARY STATEMENT:

The Event Planning Committee for Mayor Jim Slowik has submitted a Noise Permit request for amplified sound associated with a Lunch with the Mayor event scheduled for September 18, 2011. The amplified sound will consist of a sound system for live music.

The Application was reviewed by Fire, Police, and Public Works Departments.

STANDING COMMITTEE REVIEW:

Not required.

RECOMMENDED ACTION:

Approve the request for amplified sound by granting the noise permit.

ATTACHMENTS:

Noise Permit.

MAYOR'S COMMENTS:

CITY OF OAK HARBOR

NOISE PERMIT

Name of Organization: Event Planning Committee for Mayor
Jim Slowik

Location of Event: Go-Realty Parking Lot
740 SE Pioneer Way

Date of Event: September 18, 2011

Hours of Operation: Noon –3:00 p.m.

Permitted Noise: Amplified sound system for a DJ and
speaking

Approval Conditions: None

Date of City Council
Approval:

Issued this day of , 2011.

Karen Crouch, Special Events Coordinator

This Noise Permit is limited to the date and time specified.

Please post this notice on site

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

Agenda Bill No. d/A 5D

Date: September 6, 2011

Subject: Noise Permit – Oak Harbor High School –
Homecoming Parade

FROM: Paul Schmidt, City Administrator 

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:



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

PURPOSE:

The purpose of this agenda bill is to forward to City Council for review and approval a Noise Permit request received from Oak Harbor High School for amplified sound associated with a Homecoming Parade event scheduled for October 20, 2011.

AUTHORIZATION:

Oak Harbor Municipal Code (OHMC) 5.50.040(3)(g) provisions relating to Special Events, requires compliance with noise ordinance regulations and laws. OHMC 6.56.030(2)(a) requires Council approval for a noise permit for sound amplification. As this event will include amplified sound, Council approval is required.

The City Council may grant a Noise Permit to deviate from the provisions of OHMC 6.56.030 if it is determined the activity and associated noise: 1) is not undertaken in disregard of the rights of others, or 2) is temporary, or 3) the activity creating the noise constitutes a program of a temporary nature for the benefit of the entire municipality or for the benefit of a charitable purpose.

SUMMARY STATEMENT:

Oak Harbor High School has submitted a Noise Permit request for amplified sound associated with a Homecoming Parade event scheduled for October 20, 2011. The amplified sound will consist of stereos to play music on the route and amplified sound associated with a sound system for announcements during the pep rally.

The Application was reviewed by Fire, Police, and Public Works Departments.

STANDING COMMITTEE REVIEW:

Not required.

RECOMMENDED ACTION:

Approve the request for amplified sound by granting the noise permit.

ATTACHMENTS:

Noise Permit.

MAYOR'S COMMENTS:

CITY OF OAK HARBOR

NOISE PERMIT

Name of Organization: Oak Harbor High School

Location of Event: Parade Route – Pioneer Way between City Beach Street and Dock Street and Bayshore Drive between Dock Street and Midway Boulevard

Date of Event: October 20, 2011

Hours of Operation: 5:30 p.m. – 7:00 p.m.

Permitted Noise: Amplified sound system for announcements and music and hand carried stereos along parade route

Approval Conditions: None

Date of City Council Approval:

Issued this day of , 2011.

Karen Crouch, Special Events Coordinator

This Noise Permit is limited to the date and time specified.

Please post this notice on site

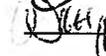
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**City of Oak Harbor
City Council Agenda Bill**

Bill No. NA 5e
Date: September 6, 2011
Subject: Bid Award-Marina Security Gate System

FROM: Cathy Rosen, Public Works Director

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

PURPOSE

This agenda bill recommends awarding a contract for the purchase and installation of a security gate system to Gateway Controls, Inc. in the amount of \$37,865.65.

AUTHORITY

OHMC 2.320.040 Competitive bidding - Materials, supplies and equipment requires that the City staff solicit competitive bids for any purchase of material, supplies and equipment where the cost thereof exceeds \$30,000 except under certain specific circumstances. This code section is applicable to the purchase and installation of equipment as is intended by this contract. The intended work is not a construction project where the bidding process is regulated by OHMC 2.330 and applicable RCW.

SUMMARY STATEMENT

On May 3, 2011, City Council authorized staff to solicit bids for a security gate system for the Marina.

The Oak Harbor Marina is a public marina in which private boats reside. It has been a challenge for staff to keep the two uses separate due to lack of security methods. The marina consists of a main walkway, docks A – F and S dock which is near the fuel dock. Currently, everyone coming to the marina by land or by water has access to all docks and boats. There are no security measures in place other than an antiquated gate card reader system at the main gate that does not collect any information necessary to track those that have come and gone from the marina.

The marina office would be able to program and track the individual cards allowing only marina

customers with boats on the individual docks access. The addition of the new gates and card readers would help the marina staff manage the public and private challenges by restricting the public from going down docks A – E, but still allow access to the main walkway and F dock.

The bid was advertised in the Daily Journal of Commerce and Whidbey New Times.

Amount of the Bids: Staff received and opened three sealed bids on June 17, 2011.

The bid totals are tabulated below:

Vendor	Unit Price	Estimated Sales Tax	Grand Total
Gateway Controls	\$ 34,835.00	\$ 3,030.65	\$ 37,865.65
Topper Industries	\$ 57,039.00	\$ 4,962.39	\$ 62,001.39
Protection Technologies	\$ 78,962.58	\$ 6,869.74	\$ 85,832.32

Staff reviewed the bid prices and is knowledgeable of the qualifications and experience of the low bidder.

It is recommended that the bid award in the amount of \$34,835.00 plus applicable sales tax (estimated at \$3,030.65) and be awarded to Gateway Controls, Inc. who is the lowest responsible bidder.

Funding: The funding for the security gate system has been budgeted in Marina 410 fund in the amount of \$45,000.00. 

STANDING COMMITTEE REPORT

The Public Works Standing Committee reviewed this item at their meeting on July 7, 2011.

RECOMMENDED ACTION

Award the bid for the purchase of a security gate system to Gateway Controls, Inc. in the amount of \$34,835.00 plus applicable sales tax.

ATTACHMENTS

None.

MAYOR'S COMMENT

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

Bill No. CJA 5F
Date: September 6, 2011
Subject: Appointment – Park Board
Alternate – Eric Lindberg

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 recommend the appointment of Eric Lindberg as the Alternate on the Park Board.

AUTHORITY

The Park Board is a five-member board appointed for a three-year term in accordance with OHMC 2.30.010. Board members are appointed by the Mayor, and confirmed by the City Council.

2.65.010 Temporary board and commission members.

(1) The mayor shall have authority to appoint one or more alternates or temporary members to any of the boards, commissions, and committees of the city to serve in the absence of any regular member who is absent from such board, commission or committee or for other reasons is unable to attend or when a vacancy on the board as occurred; provided, that when an alternate or temporary member is scheduled to serve for more than six months, and the ordinance establishing such board requires council approval or mayoral nominations that the appointment will be submitted to council for approval at least within two months of appointment. If approval is not given, the alternate or temporary appointment shall not continue as a member except to complete any quasi-judicial hearings he or she is participating in. In no event may a term for an alternate be longer than three years.

(2) The power of appointment under this section shall apply to planning commission, board of adjustment, board of appeals, civil service commission, personnel advisory board, library board, community police advisory board, marina committee and any other board, commission or committee of the city except committees made up exclusively of councilmembers.

SUMMARY STATEMENT

If appointed, Mr. Lindberg's term would expire September 2014. Mayor Slowik recommends that Mr. Lindberg be appointed as the Alternate on the Park Board for a three-year term.

RECOMMENDED ACTION

Approve the recommendation to appoint Mr. Lindberg as the Alternate on the Park Board for a three-year term.

ATTACHMENTS

Mr. Lindberg's biography.

MAYOR'S COMMENTS

Biography Form

Recommended Board Appointment for: Eric Lindberg

Name: Eric Lindberg Date: 8-16-11

Address: 898 S.W. Fleet St.

City, State, Zip: Oak Harbor, Wa 98297

Telephone Number: (360) 675-4873 Email Address: enb.lindberg@comcast.net

Mailing Address (if different from above): _____

Resident of Oak Harbor/Whidbey Island for: 49 yrs. years/months

Occupation and Place of Employment (if retired, reference previous occupation):

High School teacher (Oak Harbor) and High School Track Coach

Local Group or Civic Affiliations: Rotary, Wash state Coaches Association, EIKS, & Oak Harbor Lutheran

Special Interests: teaching Coaching Skills and Organization. Working with Young People One-on-one.

Other General Comments: I want to be active in the Community

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

Bill No.
Date:
Subject:

CA 54
September 6, 2011
Excused Absence Request
Councilmember Jim Campbell

FROM: Jim Slowik
Mayor

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

PS Paul Schmidt, City Administrator
DM Doug Merriman, Finance Director
JH 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 September 20, 2011 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 for the September 20, 2011 City Council meetings.

STANDING COMMITTEE REPORT

N/A

RECOMMENDED ACTION

Approve Councilmember Campbell's excused absence for the September 20, 2011 City Council meeting.

ATTACHMENTS

None

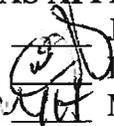
MAYOR'S COMMENTS

City of Oak Harbor City Council Agenda Bill

Bill No. 6
Date: September 6, 2011
Subject: Public Hearing – Element
Nightclub, Quasi Judicial
License Revision Hearing

FROM: Paul Schmidt
City Administrator

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:


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

PURPOSE

This agenda bill was requested by City Council through discussion during the June 28, 2011 and August 3, 2011 City Council meetings for presentation at the September 6, 2011 City Council Meeting.

AUTHORITY

5.22.045

License conditions.

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

5.22.090

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

In the event that such investigative report is filed, the license holder shall be sent a copy of the complaint and/or report and provided at least 10 days' notice of a hearing to determine whether the conditions of the license shall be modified. At a public hearing before the city council, the license holder shall have the opportunity to respond to the investigative report, and to present any evidence in opposition to a modification of conditions. The city council shall base any change in conditions on the license upon noise, traffic or other similar public

City of Oak Harbor City Council Agenda Bill

health and safety impacts. In no event shall the expressive content of any music, singing or dancing be the basis for denial of a nightclub license or any conditions placed thereon. The decision of the city council, after a public hearing on the proposed change in conditions, shall be final.

FUNDING

Budget Amount: \$ N/A

Funds Required: \$ N/A

Appropriation Requested: \$ N/A

Appropriation Source: \$ N/A

SUMMARY STATEMENT

The Police Chief was directed to respond to issues regarding uniformed security at the Element Nightclub and bring this forward on the September 6, 2011 City Council agenda. This has been noticed as a quasi-judicial hearing as license conditions are considered for revision. The nightclub license holder has received the required ten (10) days notice of this hearing and has the right to respond to the investigative report and/or oppose a change in conditions.

STANDING COMMITTEE REPORT

This item was discussed at the August 18, 2011 Public Safety Standing Committee Meeting.

RECOMMENDED ACTION

Conduct a public hearing.

ATTACHMENTS

Attachment A – Excerpt from the 6/28/11 City Council Minutes

Attachment B – Excerpt from 8/3/2011 City Council Minutes

Attachment C – Original Conditions of Approval for Element's Nightclub License

Attachment D – March 9, 2010 Letter to Element with change in security personnel hours (Condition 5b) and investigative report frequency (Condition 8)

Excerpt from 6/28/2011 City Council Minutes

Public Hearing – Element Nightclub Quarterly Review

City Attorney Margery Hite noted that this is quasi-judicial procedure since it is a license revision hearing. Prior to the staff presentation of a quasi-judicial matter, Councilmembers shall each determine whether the appearance of fairness doctrine requires that the Councilmember recuse himself or herself from sitting on the quasi-judicial matter. As a non-land use quasi-judicial matter, City Attorney Hite asked each Councilmember to identify:

1. If they stand to gain or lose any financial benefit as a result of the outcome of the hearing.

Councilmember Severns is on the board of Whidbey Island Bank but does not know if the bank has any interest in Element Nightclub.

Councilmembers AlMBERG, Dudley, Campbell, Munns, Paggao, Palmer, and Severns each answered no (with the above statement from Mr. Severns).

2. If they have any personal, family or other connection to any party such that their ability to be impartial might be called into question.

Councilmembers AlMBERG, Dudley, Campbell, Munns, Paggao, Palmer and Severns each answered no.

3. If there is any reason why they could not be fair and impartial in deciding this matter.

Councilmembers AlMBERG, Dudley, Campbell, Munns, Paggao, Palmer and Severns each answered that they could be fair and impartial.

The parties and the public then had the opportunity to object to any Councilmember sitting on this matter based on the appearance of fairness doctrine. **There were no objections.**

Ex parte contacts are contacts about the quasi-judicial matter occurring outside of the open public hearing at which it is decided. Every Councilmember shall disclose any ex parte contact(s) he or she had and describe them on the record prior to the quasi-judicial hearing. Unless the Councilmember feels that the ex parte contact(s) have affected his or her ability to be fair, the fact that the Councilmember has had ex parte contacts shall not disqualify a Councilmember provided that the Councilmember discloses those contacts on the record prior to the quasi-judicial hearing. In any case in which a Councilmember has disclosed ex parte contacts, any party to the quasi-judicial hearing shall be allowed to rebut the substance of the ex parte contact(s) either prior to or during the quasi-judicial hearing.

Ms. Hite then asked each Councilmember about ex parte contacts.

Councilmember Dudley – I talked to a condominium resident walking in this evening. I did the talking and mentioned that it is concerning. I am concerned about the impact of Element on homeowners across the street. We, as a City have an obligation to maintain a quality of life, and Element is impacting their quality of life and their property value. This does not affect my ability to be fair.

Councilmember Severns – No contacts.

Councilmember AlMBERG – No contacts.

Councilmember Palmer – Yes, from one person across the street who gave a suggestion to me, and I stated I would not do their suggestion which was a general proposal on how to deal with noise and stronger rules; a general conversation to control noise and insure safety of people near a nightclub. Nothing new was brought forward. This does not affect my ability to be fair.

Councilmember Paggao – No contacts.

Councilmember Campbell – I had a conversation this evening about dampening the noise. This does not affect my ability to be fair.

Councilmember Munns – No contacts.

Ms. Hite noted that anyone can respond or rebut these comments during the course of this presentation.

Police Chief Wallace gave the informational presentation and statistics regarding activities at Element Nightclub during March, April and May of 2011. This report included information on all calls for police service to that business but paid specific attention to the calls for service that may pertain to the conditions of the Element Nightclub license as set by the Council. Chief Wallace's recommendation is to maintain the existing license conditions, as they are sufficient to mitigate the noise, traffic and public health and safety impacts associated with the Element Nightclub. Mike Kummerfeldt, Element Nightclub Owner, had sent a letter to Mayor and Council which is attached to these minutes as Exhibit F.

Mayor Slowik opened the public hearing at 9:25 p.m.

Kathy Harbour, 651 SE Bayshore Drive, Oak Harbor. Ms. Harbour thanked Chief Wallace for meeting with the condominium owners, but thought there would be more to this evening's report than the statistical report. What has been done to solve the problem? Maybe it should be seen through the eyes of more than law enforcement. My neighbor's younger daughter was visiting and also was bothered by the noise. On 11/20/2007, Chief Wallace stated that residents may be affected by loud noise and noise from the patrons leaving the parking lot. Not enough is done with the noise ordinance. I think we should be citing those causing these problems. If Element went away, I never want to see another nightclub in that building space. Change the type of business that would go in that building. You need a feather in your cap after tonight's meeting. Get started on doing something.

Billie Cook, 651 SE Bayshore Drive, Oak Harbor. I have spoken to you before about mitigating the ongoing noise. We do not have animosity towards Mr. Kummerfeldt or his clients; we just want to live in peace and quiet in our homes. His profitable business operates at our expense. I feel sure he would like this issue to go away and he is doing his best to mitigate, but we are truly being disturbed by noise, mostly from the parking lot, and when alcohol sales cease at 2:00 a.m. in the morning. We have had condominium renters move away due to the noise. We are concerned about our falling property values. Since my 2007 purchase, I have sustained a 36% decrease in property value and I attribute it to the nightclub. We are anxious about the threatened violence so close to our homes. There have been two incidents with firearms related to the club. Mike takes no responsibility for contributing to these incidents. I thank the staff and Council members for meeting with us and for your interest, courtesy, and time. My primary concern is that this situation is going to continue indefinitely. Take some definitive action tonight to permanently mitigate the noise and violence at the nightclub.

Richard Everett, 651 SE Bayshore Drive, Oak Harbor. I am a retired naval officer and I want to talk about two of the residents who face Bayshore Drive. One refuses to live in his home and cannot get the rest necessary to improve his health. Another resident has had major surgery and their health is not good because of sleep disruption. There is noise in the parking lot every night that they are open. I have no complaints about the business; I don't hear them during the evening. But between 1:30 a.m. and 2:30 a.m., it turns into a zoo. My thanks to Chief Wallace, but I disagree that he cannot

Lo?

do anything about it. Councilmember Dudley came down and listened to the noise. In the summer, when you open the windows for ventilation, it is impossible. In discussion with Chief Wallace, what level of noise is objectionable? When the police are called, they stay in their patrol cars, do not go into the parking lot, and do not enforce noise violations. Chief Wallace felt it would be more problematic to have an officer go into the crowd. It is hard to believe that we are not going to enforce some reasonable regulation on noise. Chief Wallace said he wants to maintain his present course.

Gray Giordan, 651 SE Bayshore, Oak Harbor. Thanks for trying to help us with this problem. You referred this matter to staff during the last report. Since then, we have come together and signed petitions asking the City to enforce the codes. The petitions are attached to the minutes as Exhibit G. A conditional use permit was granted with conditions based on the ordinance and periodic review of the effectiveness of these conditions. Chief Wallace is a good guy; he set up a meeting with us, and the Element owner to mediate this problem. Mr. Kummerfeldt did not show up. We have to use white noise machines and we are being charged for Mr. Kummerfeldt's success. Mr. Giordan distributed a photographic handout showing smoking by security staff outside of the club in violation of the 25-foot distance from the entry. It is attached to these minutes as Exhibit H. We come to you because there hasn't been a solution. A provision of the license conditions is that: *The city council also reserves to itself the power to revise the conditions of the nightclub license upon information received indicating that the existing conditions are not sufficient to mitigate the noise, traffic and public health and safety impacts associated with the nightclub business location. A revision proceeding shall be initiated by an investigative report by the chief of police, fire chief, building official or other city official.* Tighten up the laws. I would like to see Mr. Kummerfeldt feel that you have an effect on his business. Until I had surgery six months ago, I used to sleep well, but now, no, and that is attributable to the noise even with a white noise machine.

Faye Konapik, 651 SE Bayshore Drive. I live directly across from Element. My bedroom faces the club and my sleep is disturbed. How do you measure disturbance of the peace? It is hard to get back to sleep once awakened. I see nightclub clients that worry me. There are impaired drivers. I am concerned about the safety of the patrons.

Mel Vance, P.O. 2882, Oak Harbor. This parking lot is not exclusive to the Element Nightclub. Some of the problems are caused by the clientele from Seven West. Is it reasonable for someone to live in a business district and then complain about the noise? I have more noise in my residential district for longer periods of time than I've experienced from Element. The planes are noisy; I cannot expect them to move. The noise I hear is not rising to the level of a noise complaint and security does what it legally can do to mitigate safety. To be fearful of gun shot, there was a shooting close to my house years ago. Just because you live near a nightclub, does not mean you are in more danger. You can be in danger in a residentially-zoned neighborhood, too. I believe the Element Nightclub is doing what they can to be a good neighbor. A business at closing time will have loud patrons being loud and slamming car doors. I don't know what else can be done.

With no other comments coming forth, Mayor Slowik closed the public hearing at 10:00 p.m.

Council Discussion

Discussion followed regarding other nightclubs and if they have the same type of noise (Chief Wallace responded that Element has the most customers now since Lava Lounge closed and there are more people coming in and out of the club), the number of security personnel (the club usually has more than required on Friday and Saturday nights) and what constitutes a violation of the noise ordinance (need to see the specific person; cannot cite the crowd of 50 to 100 people who do not exit at the same time). Chief Wallace noted that what the officers are reporting is that, in most of the cases, it is not an individual yelling and screaming – the security staff handles that fairly well. Officers express their frustration at the fact that they cannot cite one person for the entire crowd. It's the noise in the parking lot from 1:30 a.m. to 2:30 a.m. My problem is that it is not a single individual. We cannot hold the nightclub responsible for conversation in the parking lot. If the nightclub was causing the noise, if it was the music, or the club itself, they can be cited. I have to defend the officers – they are not standing there doing nothing and I have talked to the officers about our expectations. I am quickly coming to the conclusion that the police cannot regulate this type of noise. We can only pursue an individual committing a specific crime. A more aggressive ordinance may not be constitutional. We would like to solve this, but I am not sure what the solution is. Discussion continued about the type of business (the City cannot simply say we do not like your business) with City Attorney Hite noting that is a different kind of remedy. The noise ordinance was made as strong as possible. The City cannot ask a legal business to leave. Mr. Kummerfeldt has done everything the City has asked. Discussion followed regarding Mr. Kummerfeldt's letter, signage about smoking, security and crowd noise, and that the nightclub is located in a commercial business district and is a permitted use in that zoning. Council noted that, in spite of Councilmember Dudley being mentioned, other Councilmembers have been to Element to observe noise inside and outside of the nightclub.

Councilmember Palmer asked about using a surplus patrol vehicle to sit at the club as a "ghost car" which would become a visible deterrent.

Councilmember Almborg noted that, when people buy property they buy with the intent of quiet enjoyment of their property. Complaints against Element are lopsided to complaints against the condominiums. Spokane's HoopFest has thousands of people on the street, a law enforcement presence, and a portable jail (it was noted that this is an annual event; not ongoing in impact). Discussion continued regarding an ordinance that would require a set number of uniformed officers at the club's expense, the use of off-duty officers, and Chief Wallace's concern that OHPD does not have enough officers to accomplish this. Chief Wallace would have to create a regulation that the only officers who could volunteer do not have to work the next day. The logistics are not there: $\frac{1}{4}$ of the officers are on-duty, $\frac{1}{4}$ just got off work, and $\frac{1}{2}$ of the PD officers are off. Discussion followed about the use of other law enforcement agency personnel, the nightclub's responsibility for officer use, and the constitutionality of not letting the club open if there are not enough officers on the premises. Other complications are officers wearing an OHPD uniform but acting as an off-duty officer, and making the use of officers a requirement if officers are not available. Chief Wallace could research available resources; but officers cannot be compelled to do this and there is an overtime issue. If an off-duty officer makes an arrest, then it is on the City's time, there is court time, and Chief Wallace had concerns. Continuing discussion noted that it is the time the noise occurs and not the number of security personnel, not to wait another three

months for suggested solutions, with Chief Wallace adding that it is not uncommon to hire outside security staff rather than use the club's staff as security personnel. Councilmember Dudley asked to add an additional ex parte contact: A Comcast employee in his home noticed he was running for mayor and said we should be doing something to improve Element. He had a relative living rent-free who gave up the condominium because of the noise and impact on his child and family. Mr. Dudley continued that, he did not think that prolonging this is workable; I encourage us to all go down and experience the noise. What we are allowing to go on is detrimental to their lifestyle and property values. Councilmember Dudley agreed with Councilmember Almberg about using uniformed officers to mitigate the noise issue in the parking lot. Mr. Dudley asked if the club's business hours could be regulated and City Attorney Hite responded that it would have to be researched.

Councilmember Campbell expressed concern that if this is imposed on Element it would have to be imposed on all nightclubs in town. Councilmembers Munns and Paggao also felt corrective steps need to be taken, but within legal boundaries and rules.

Mayor Slowik asked Chief Wallace to work with the Law Department and return to Council with a report by the end of summer.

Excerpt from the August 3, 2011 City Council Meeting re: Element Nightclub

FROM GENERAL PUBLIC COMMENTS

Richard Everett, 651 SE Bayshore Drive, Oak Harbor. As an ex-Naval aviator, thank you for the centennial film. The festivities in our park last night, National Night Out, were a great success. To my main points: We expected feedback from Chief Wallace regarding alternative policing at Element Nightclub. Please see if we can bring some closure to this issue. There were wild events at Element this weekend. I have the distinct impression that we have very little power over what is happening in this City. Government's regulation of citizens and businesses seems to be in favor of the businesses. We see so little progress and need to resolve this. We are willing to work, and would like to see some venue dig into this; we need to get together and resolve it. There were trespassers on our property this weekend, but no one takes statements when we make complaints. We have drunks on our property but there are no citations. We seem to have no recourse. We, as citizens, have no rights to make citizen complaints and are told the police have to observe an incident. The response time to Element takes longer than what is happening at Element. The problem has disappeared once they respond. Traffic is somewhat out of control with the Pioneer Way project's traffic reorganization. Please add additional crosswalks on Bayshore Drive; crosswalks do carry the force of law.

Steve Boughner, 651 SE Bayshore Drive, Oak Harbor. Mr. Boughner noted that he had talked about Element Nightclub during the 2/14/11 Council meeting. Things have gotten worse there. Mr. Boughner thanked Mr. Everett for his comments on crosswalks and distributed a letter of concern, on behalf of his mother, to Mayor and Council Members. It is not attached since Mr. Boughner's mother wished to remain anonymous.

Billie Cook, 651 SE Bayshore Drive, Oak Harbor. I live across from Element and the previous comments are exactly right. I was awakened at 12:50 a.m., called 911, called again at 2:00 a.m., but the noise did not ebb until after 2:30 a.m. Ms. Cook asked this question which was also distributed to the Mayor and Council: *Does the Council have the power and authority to revoke a conditional use permit?* Ms. Cook also brought a self-addressed and stamped envelope in case her question could be answered in writing.

Paul Brewer, 225 NE Ernst, Oak Harbor. I pass by an empty business on Mallard's Lane which used to be an indoor soccer field. Element Nightclub could move there and that would solve the problem. That is the only way to resolve this; take a look, it is the responsible thing to do.

FROM COUNCILMEMBERS' COMMENTS (at the end of the meeting)

Councilmember Palmer talked about public comments this evening and specifically, Ms. Cook's verbal and written question about Element Nightclub. City Attorney Hite will provide a written opinion, and Mayor Slowik asked that uniformed security and operation hours at Element be brought forward on the September 6, 2011 Council agenda. Mr. Schmidt will take the request for additional crosswalks on Bayshore Drive under advisement. This subject will need to come before the Public Works Standing Committee first.

**Element
Nightclub License**

Conditions of Approval

1. Adhere to all laws, regulations, ordinances and zoning conditions of the State of Washington and the City of Oak Harbor applicable to the nightclub business located at 656 SE Bayshore Drive, Suite 1, Oak Harbor, Washington.
2. With the exception of ingress and egress to and from the building, ensure that doors and windows remain closed at all times while any type of music or entertainment is playing.
3. Fully shield all new and/or existing site and building mounted lighting so that light is directed downward and stays on-site.
4. Ensure that the parking lot, sidewalk and the adjacent city park are kept clean of litter, daily by 6:00 a.m.
5. Provide designated and visible security personnel and security measures sufficient to reduce the potential for illegal activity, noise violations or any other public health and safety violation as described in the Oak Harbor Municipal Code, inside and outside the business to include the parking lot and adjacent properties. This will include:
 - a. A minimum of four designated and visible security personnel within the building, while open for business as a nightclub.
 - b. On Friday and Saturday nights, a minimum of four designated and visible security personnel will be in the parking lot between 0115 and 0400. Security shall monitor the parking lot during business hours to prevent or report to police, as appropriate, any potentially illegal activity occurring in the parking lot or visible in adjacent properties.
 - c. The license-holder shall implement and enforce a ban policy, that will ban patrons from the club, for a three month period, who:
 - (1) Engage in activities in the business and/or parking lot which either result in arrest or would constitute probable cause for arrest.
 - (2) Create noise violations in the business and parking lot.
 - (3) Loiter in the parking lot for more than ten minutes.
 - (4) Engage in illegal activity immediately adjacent to the business property, after leaving the club.
 - d. The license-holder will provide the Oak Harbor Police Department with a copy of the list of banned patrons on a weekly basis.
 - e. The license-holder shall implement and enforce a policy which requires club employees to call the police, as soon as possible, when they witness potentially criminal activity in the business, in the parking lot, and adjacent to the club property.
6. Provide Oak Harbor Police Department monthly with a list of current security employees.
7. On a monthly basis, provide OHPD with the current hours of operation for each of the three different types of businesses at this location: nightclub, card room and sports bar.

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8. Meet with the Chief of Police, or his designee, on a three-month basis, to review the efficacy of the conditions of this license in meeting the goals of the Nightclubs Ordinance, Ch. 5.22 OHMC. The Chief of Police shall submit an investigative report as a result of the quarterly review to the City Council to report upon the efficacy of the conditions of this license in preventing or mitigating the noise, traffic and public health and safety impacts of the nightclub. This investigative report shall lead to a City Council public hearing pursuant to OHMC 5.22.090.
9. The license-holder acknowledges that the Chief of Police or other city official may, pursuant to OHMC 5.22.090, submit an investigative report to the City Council at any time if, in that official's opinion, the license conditions have not been sufficient to mitigate the noise, traffic and public health and safety impacts of the nightclub. In the event that such report is submitted to the City Council, the license-holder may be subject to new or additional conditions as provided in OHMC 5.22.090.

Any violation of the above conditions, according to the Chief of Police of Oak Harbor, shall subject the license-holder to the penalties of Oak Harbor Municipal Code 5.22.065 and may subject the license-holder to license revocation per Oak Harbor Municipal Code Section 5.22.070.



March 9, 2010

Mike Kummerfeldt
Element Nightclub
656 S.E. Bayshore Drive, Suite 1
Oak Harbor, WA 98277

RE: Nightclub License
Element

Dear Mr. Kummerfeldt:

During their March 2, 2010 business meeting, the City Council made these changes to conditions 5b and 8 of your nightclub license:

- 5b. On Friday and Saturday nights, a minimum of four designated and visible security personnel will be in the parking lot between 0115 and ~~0400~~ 0230. Security shall monitor the parking lot during business hours to prevent or report to police, as appropriate, any potentially illegal activity occurring in the parking lot or visible in adjacent properties. **Council's motion also noted that your staff will handle security after 0230 as needed, until the 0400 closing.**
8. Meet with the Chief of Police, or his designee, ~~on a three-month basis, annually~~ to review the efficacy of the conditions of this license in meeting the goals of the Nightclubs Ordinance, Ch. 5.22 OHMC. The Chief of Police shall submit an investigative report as a result of the ~~quarterly~~ annual review to the City Council, **beginning with 2011**, to report upon the efficacy of the conditions of this license in preventing or mitigating the noise, traffic and public health and safety impacts of the nightclub. This investigative report shall lead to a City Council public hearing pursuant to OHMC 5.22.090.

Should you have any questions, please feel free to contact Chief Wallace at 279-4600.

Sincerely,

Connie Wheeler
City Clerk

CW

cc: R. Wallace

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

Bill No. 7
Date: September 6, 2011
Subject: WAIF Contract

FROM: Paul Schmidt
City Administrator

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

PURPOSE

This agenda bill was requested by City Council through a motion and second during the June 28, 2011 City Council meeting for presentation at the July 12, 2011 meeting. Due to the length of July 12th's meeting, it was continued to the August 3, 2011 Council meeting. Since Councilmember Dudley was absent and formally excused from the August 3, 2011 meeting, this agenda bill was then continued to the September 6, 2011 City Council Meeting.

AUTHORITY

OHMC 1.04.020(3)

Public Notice for full council agenda – Introduction of action.

(3) Matters introduced by a councilmember which are seconded by another councilmember and not on the agenda shall be set over to another full council meeting for consideration and action, if any. Every councilmember-initiated agenda item shall be stated by the initiating councilmember for the agenda in the form of a proposed action item such as council discussion, a motion, resolution or ordinance. As an exception to the provision of this subsection, the following matters after motion and second may be considered and acted upon during the same meeting they are introduced:

- (a) Matters declared an emergency;
- (b) Directions to staff to prepare documents or reports or both for consideration; or
- (c) Scheduling of meetings. (Ord. 1578 § 4, 2010; Ord. 1115 § 1, 1997; Ord. 1031 § 1, 1996; Ord. 817 § 1, 1988).

FUNDING

Budget Amount: \$ N/A

Funds Required: \$ N/A

Appropriation Requested: \$ N/A

Appropriation Source: \$ N/A

Agenda Bill – WAIF Discussion

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City of Oak Harbor City Council Agenda Bill

SUMMARY STATEMENT

From the June 28, 2011 City Council meeting, Councilmember Dudley made a motion to have the WAIF (Whidbey Animal Improvement Foundation) come back to City Council on the July 12, 2011 agenda. The motion was seconded by Councilmember Campbell. This agenda item was subsequently continued from the July 12, 2011 meeting to the August 3, 2011 Council meeting, and then again to the September 6, 2011 Council meeting.

For information purposes, the December 7, 2010 agenda bill titled 2011 Animal Services Contract – Whidbey Animal Improvement Foundation (WAIF) and subsequent contract have been attached along with five letters as noted below.

STANDING COMMITTEE REPORT

N/A

RECOMMENDED ACTION

N/A

ATTACHMENTS

Exhibit A – December 7, 2010 agenda bill titled 2011 Animal Services Contract – Whidbey Animal Improvement Foundation (WAIF)

Exhibit B – 2011 WAIF contract.

Exhibit C – 1/27/11 Letter from Capt. Johnston, Commanding Officer, NASWI, to Mayor Slowik

Exhibit D – 5/5/11 Letter from Mayor Slowik to Michael Nanney, Forest City Military Communities Northwest

Exhibit E – 7/11/11 Letter from Stephen Paysee, Executive Director, WAIF, to Mayor Slowik

Exhibit F – 7/12/11 Letter from Mayor Slowik to Capt. Johnston, Commanding Officer, NASWI

Exhibit G – 8/12/11 Letter from Mayor Slowik to Capt. Johnston, Commanding Officer, NASWI

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

Bill No. _____
Date: December 7, 2010
Subject: 2011 Animal Services Contract –
Whidbey Animal Improvement
Foundation (WAIF)

**FROM: Rick Wallace
Chief of Police**

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 is a proposed contract between the City of Oak Harbor and the Whidbey Animal Improvement Foundation (WAIF) for the purpose of providing animal shelter services for the City of Oak Harbor.

AUTHORITY

The City has authority to provide animal control services as part of its police powers to protect public health, safety and welfare. RCW 35A.11.020

Unless otherwise authorized or directed by law, ordinance or council resolution (for example, responding to an emergency), all contracts over \$30,000 require council approval. OHMC 2.390.010

SUMMARY STATEMENT

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

The City shall pay to the Contractor monthly payments of Seven Thousand and Eighty Three Dollars, and Thirty Three Cents (\$7,083.33) for services under the contract after the month for which the services are rendered.

Additionally, the City shall pay \$30.00 per call-out for after hours (before 8:00 a.m. and after 5:00 p.m. or on holidays) for service requests deemed necessary by the Oak Harbor Police Department, upon proper billing by Contractor within thirty (30) days of service. The City shall verify that the Contractor has provided the services required under this agreement in a form acceptable to the City.

The City of Oak Harbor and Whidbey Animal Improvement Foundation (WAIF) originally came to the terms of this agreement in 2005 following a request for proposal and contract bidding process. The agreement has continued in one year increments since then.

STANDING COMMITTEE REPORT

The Public Safety Standing Committee reviewed this agenda item on November 18, 2010.

RECOMMENDED ACTION

Approve and authorize the Mayor to sign this contract on behalf of the City of Oak Harbor.

ATTACHMENTS

Proposed 2011 WAIF Contract

MAYOR'S COMMENTS

**ANIMAL SHELTER SERVICES CONTRACT
WHIDBEY ANIMALS' IMPROVEMENT FOUNDATION
AND CITY OF OAK HARBOR**

THIS CONTRACT is between the CITY OF OAK HARBOR, a Washington State Municipal Corporation, hereinafter referred to as "City" and Whidbey Animals' Improvement Foundation (WAIF), hereinafter referred to as "Contractor," jointly referred to as the "Parties."

WHEREAS, the City is authorized by law to assert control of animals within the City limits under its police powers; and

WHEREAS, the City animal control authority is exercised by the Oak Harbor Police Department; and

WHEREAS, the City regulations for control of animals within the city limits are set out in Title 7 of the Oak Harbor Municipal Code; and

WHEREAS, the City requires an animal control holding facility for cats and dogs impounded pursuant to Ch. 7.20 OHMC; confined pursuant to veterinary quarantine; and for cats and dogs abandoned pursuant to Ch. 7.04 OHMC; and

WHEREAS, cats and dogs unclaimed at the expiration of the periods for impoundment, veterinary quarantine and abandonment under City ordinances require appropriate management of their disposition for adoption, foster care, shelter or euthanasia so that they do not return to the city without appropriate ownership and care; and

WHEREAS, Contractor has a program which it exercises in its discretion to appropriately manage the disposition of unclaimed cats and dogs to meet the City's objectives in controlling animals within its city limits; and

WHEREAS, the City has selected the Contractor based upon Contractor's experience, expertise and qualifications to humanely and appropriately dispose of unclaimed cats and dogs at the expiration of the holding periods set forth in City ordinance; and

WHEREAS, the Contractor has agreed to manage the disposition of unclaimed cats and dogs surrendered to the Contractor by the City at the expiration of the holding periods established by City ordinances in return for a flat annual fee; and

WHEREAS, the City's ownership and supervision of the unclaimed dogs and cats shall cease upon surrender to the Contractor except for those animal control functions applicable under City code.

NOW, THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. **PURPOSE:** The City and the Contractor enter into this Contract for the Contractor to provide holding facility services to the animal control authorities of the City of Oak Harbor and to take custody and control of such dogs and cats as are unclaimed after the expiration of applicable holding periods under city ordinances.

2. **SERVICES:**

A. **Contractor Holding Facility Services:** The Contractor shall provide animal control holding facility services for all dogs and cats subject to the City's jurisdiction that are impounded, abandoned or quarantined in accordance with city ordinances or state law. For the purpose of this Contract, "dogs" and "cats" are defined as domestic cats, domestic cat hybrids, domestic dogs and domestic dog hybrids only.

For purposes of this Contract, "animal control authority of the City" shall mean City law enforcement officers, including the City's appointed animal control officer (ACO). The services provided in this Section are material to the City and failure to perform shall constitute a material default. Such services shall include the following:

- (1) Quarantine animals, in accordance with municipal ordinances and state law.
- (2) Have available the services of a local veterinarian for emergency medical attention for any injured, sick, or diseased dogs and cats placed at the holding facility by City law enforcement officers, animal control officers or authorized NAS Whidbey personnel.
- (3) Provide proper food, water, housing and humane care for all animals under its control at the animal control holding facility.
- (4) Maintain sanitation and cleaning protocols to minimize disease transmission.
- (5) Provide basic medical care, including vaccinations, de-worming and flea treatment, if needed, to dogs and cats introduced into the animal control holding facility.
- (6) Provide exercise for dogs and cats kept at the holding facility.
- (7) Provide sufficient, competent and trained staff to assume the responsibilities of this Contract.
- (8) Provide monthly reports to the Chief of Police regarding holding facility activities including number of incoming dogs and cats and the authorized agency utilizing the holding facility for that dog or cat.

- (9) Make space and access available for after-hours drop offs of animals as defined herein by animal control authorities of the City and designated NAS Whidbey personnel.
- (10) Provide the name and address of every owner claiming an animal to the City.
- (11) Contractor, along with designated employees and volunteers, shall undergo a criminal background check prior to beginning work at the facility, if required by the Navy regulations for admission onto the Naval Base facility.

B. Contractor Unclaimed Animal Services: Contractor shall also provide animal disposition services for unclaimed animals at the end of the applicable holding period under City ordinance. The City has reviewed the Contractor's qualifications with respect to animal placement and has chosen Contractor to provide animal disposition services based upon those qualifications. Contractor shall place the animal for adoption, foster care or shelter, or euthanize the animal as the Contractor in its sole discretion shall deem appropriate. Contractor shall provide the City with a monthly report of the status of all unclaimed animals released to the Contractor pursuant to this Contract, including the date and nature of disposition.

C. Contractor Use of the Animal Control Holding Facility: The City has been granted authority to operate an animal control holding facility on NASWI-SPB, subject to regulation, control and ownership by the United States. Contractor agrees to operate and maintain the holding facility in a neat, clean and sanitary condition, and in compliance with all applicable governmental laws, rules and regulations. Contractor will not permit any condition to exist which might constitute a nuisance. The City and the Navy, through its authorized agents and representatives, shall have the right to enter upon and inspect the facility during regular business hours, without prior notice, for the purpose of inspecting the shelter facility for compliance with this Contract. The Contractor shall obtain City approval from the Chief of Police or his designee before making improvements to the Navy-owned facility. Contractor accepts property "as is." All City-approved improvements must comply with the bidding and public works laws applicable to the City.

No tenancy in favor of Contractor in the premises is created by this Contract. The City and Navy allow use of the animal holding facility by the Contractor solely for the purpose of its obligations to operate a holding facility pursuant to this Contract. Contractor may not use the facility upon termination of this Contract. Upon termination of this Contract, Contractor will remove all animals Contractor has accepted into the holding facility and remove all of its property. The City may dispose of any animal or Contractor's property left behind upon termination, as the City deems appropriate. Expenses which the City incurs for such disposition are chargeable to Contractor, and the City may deduct such funds from any payment due the Contractor.

Any improvement to the premises and fixtures left behind by Contractor becomes the property of the City without extra payment by the City. Contractor shall provide janitorial service to the holding facility. Contractor shall be responsible for any damage to the premises Contractor causes, normal wear and tear excepted. Contractor may not use the premises for any purpose except the holding facility authorized by this Contract.

D. Costs: Contractor shall be responsible for all costs of providing services to dogs and cats brought to the holding facility pursuant to this Contract. Such costs shall include all costs of care of such animals, including, but not limited to, food, cleaning supplies, veterinary care and grooming. City will pay the utility bills for heat, electricity, water and sewer provided to the holding facility. Contractor will pay for telephone service. Contractor shall maintain the grounds at the holding facility in a clean and neat appearance. Due to the access difficulties with garbage service, the Contractor will ensure that solid waste is packaged in a manner that will allow for timely disposal by the Animal Control Officer (ACO).

E. Medical Costs for Sick/Injured Animals Picked Up By Animal Control: Contractor shall be responsible for providing veterinary care to any and all dogs or cats impounded or quarantined by City or Navy personnel authorized to utilize the animal control holding facility under this Contract. In the event that such authorized personnel assume custody of a dog or cat in need of immediate veterinary attention, the personnel will first attempt to contact the Shelter Manager before obtaining veterinary treatment if possible. If unable to contact the Shelter Manager, the authorized personnel will next attempt to make contact with the Lead Animal Care Technician. If unable to contact either party, the authorized personnel may obtain emergency treatment to relieve the immediate pain/suffering of the animal at a cost of no more than Two Hundred Dollars (\$200.00), and will notify Contractor of action taken.

F. Holding Facility Procedures:

- (1) Licensed Stray Animals: If the dog or cat placed in the holding facility is licensed by the City of Oak Harbor, the Contractor shall use owner information from the City or other sources to attempt to give notice to the owner by way of personal contact, telephone or mail that the animal is being held at the shelter. If the owner is notified via telephone, this notice, including the time and name of the person contacted shall be noted in records kept by Contractor and provided to the City monthly. The animal shall be held for a minimum period as outlined by City ordinance unless written instructions to the contrary are provided by the animal control authority requesting Contractor to hold the animal pending legal action. If not claimed during the applicable holding period, an animal shall be subject to disposition pursuant to Contractor's program for placing and/or disposing of unclaimed dogs and cats.

- (2) **Unlicensed Stray Animals:** If the dog or cat placed in the holding facility is not licensed by the City of Oak Harbor, the animal shall be held for the period of time applicable under City ordinance. If not claimed during the applicable holding period, an animal immediately becomes the property of Contractor. Disposition of the animal is then at Contractor's sole discretion.
- (3) **Severely Injured or Diseased Animals:** Severely injured or diseased animals placed at the holding facility shall be subject to veterinary examination. In the event that a state-licensed veterinarian determines that the injured or diseased animal will require veterinary services in excess of Five Hundred Dollars (\$500.00) in value, the Contractor may follow the recommendations of the veterinarian for euthanasia of the animal. Contractor shall provide a copy of the veterinarian's written recommendation(s) to the City as part of its monthly report.
- (4) **Reclaimed Animals:** Impounded animals will be released to owners or custodians upon proof of ownership, and payment of applicable fees and fines established pursuant to Title 7 of the Oak Harbor Municipal Code. Any individual representing him or herself as custodian of the impounded animal should provide written authorization for release from the owner or other sufficient evidence of authority to assume control of the animal on behalf of the owner.
- (5) **Dangerous Animals:** Animals that have bitten people, or are suspected of having bitten people, shall be kept a minimum of ten (10) days from date of bite, for observation. The holding facility will house such animals in the absence of other available alternatives such as owner's home or a veterinary board facility. The animal's owner, if known, shall be responsible for payment of the applicable fees and costs.
- (6) **Waiver of Fees:** The Contractor agrees to release any animal without payment of impound fees and other charges, when ordered in writing by the Chief of Police.
- (7) **Citizen Complaints:** All citizen complaints regarding animals shall be referred to the Oak Harbor ACO upon receipt.

3. **CITY RETAINED AUTHORITY:**

- A. **Licensing:** All licensing fees shall be established by the City.
- B. **Animal Control:** The City retains authority to enforce animal control laws and regulations.

C. **Independent Fees:** The City retains authority to establish impound fees for animals impounded pursuant to City ordinances. The Contractor may recommend changes in City fees.

4. **HOURS OF OPERATION:** The Contractor shall submit to the City, as Attachment A to this Contract, a schedule of its operating hours which shall include:

A. Days and hours when the office and holding facility are open to the public (a minimum of three (3) hours per day Monday through Friday for reclaiming of animals as required by the Memorandum of Understanding between the Navy and the City of Oak Harbor).

B. A location where animals can be delivered by ACO, NAS personnel and Oak Harbor Police Department personnel 24-hours per day.

C. Days the office and holding facility will be closed for City observed holidays.

All changes to the schedule must receive approval of the Chief of Police or his designee prior to becoming effective.

5. **TREATMENT OF PUBLIC:** Contractor shall treat the public fairly and courteously in carrying out services required under this Contract.

6. **NAVY MOU:** The City currently has an agreement with the Navy, authorizing use of their facility on the Seaplane Base located in Oak Harbor. In exchange, the Contractor is responsible for hours of operation as stated in the MOU. A copy of the current Memorandum of Understanding with the U.S. Navy is attached to this document as Attachment B. Should those facilities become unavailable, either party to this Contract may terminate this Contract within thirty (30) days after they become unavailable. The Navy may restrict access to the base and/or this facility as it deems appropriate and the Contractor's use of the facility is subject to such restriction. Restrictions may include, but are not limited to, delay and access requirement of security clearance for employee. The City is not responsible for damages or costs incurred by reason of Navy actions.

7. **COMPENSATION:**

A. The City shall pay to Contractor monthly payments of Seven Thousand and Eighty Three Dollars, and Thirty-three Cents (\$7,083.33) for services under the Contract after the month for which the services are rendered.

B. Additionally, City shall pay Thirty Dollars (\$30.00) per call-out for after hours (before 8 a.m. and after 5 p.m. or on Holidays) for service requests deemed necessary by Oak Harbor Police Department, upon proper billing by Contractor within thirty (30) days of service. City shall verify that the Contractor has provided the services required under this Contract in a form acceptable to the City.

- C. City shall pay utility costs for the holding facility, as long as the Contractor is not in default of this Contract.
 - D. City shall be responsible for replacement of equipment purchased by the City due to normal wear and tear. Contractor will be responsible for notifying the City of replacement needs of City equipment in a timely manner to allow for inclusion in the annual City budget.
 - E. The City shall retain all fines or penalties arising out of the issuance of citations for violation of the City's animal control ordinance, as now enacted or hereafter adopted.
8. **CONTRACT TERM:** This Contract shall begin on January 1, 2011 and end on December 31, 2011. Either party may terminate this Contract earlier by sixty (60) days written notice, with or without cause. The City reserves the right to immediately terminate this Contract without hearing or notice in the event of material default by the Contractor.
9. **HOLD HARMLESS/INDEMNIFICATION:**
- A. Contractor shall defend, indemnify and hold harmless the City, its officers, officials, employees and volunteers 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 Contractor in performance of this Contract, except for injuries and damages caused by the sole negligence of the City. No liability shall attach to the City by reason of entering into this Contract except as expressly provided herein.
 - B. An animal shall become the responsibility of Contractor at the point that the animal is placed or released into the holding facility. Contractor shall hold the City harmless under the terms of this section for all claims arising out of the detention and custody of the animal. Accordingly, Contractor shall be held harmless by the City under the terms of this Contract for claims arising out of the detention of the animal or arising out of any situation occurring prior to the time that Contractor assumes ownership for the animal(s).
10. **THE PARTIES REPRESENTATIVES AND NOTICES:** The Chief of Police shall be responsible for administration of this Contract. All reports, recommendations, and other correspondence will be directed to the Chief. The Contractor's Executive Director shall act as the Contractor's liaison with the City.

All notices to the City shall be mailed or personally delivered to the City of Oak Harbor Police Chief at his/her address:

860 SE Barrington Drive
Oak Harbor, WA 98277

All notices to the Contractor shall be mailed or personally delivered to its Executive Director at:

PO Box 1108
Coupeville, WA 98239

Either party may change its address by providing written notice by certified mail, return receipt requested.

11. **TAXES:** Contractor will be responsible for payment of taxes applicable to its operations, including, but not limited to, business and occupation tax, sales tax, excise tax, income tax, employer's social security tax, employer's industrial insurance premium, employer's unemployment compensation premium. Contractor will be solely responsible to collect and transmit to the correct government office any employee taxes, assessments, or contributions which an employer is required to collect from employees and transmit including, but not limited to, social security and income tax withholding.
12. **INSURANCE:** The Contractor shall provide insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, or employees.

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

- a. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
- b. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors, volunteers and personal injury and advertising injury. The City shall be named as an insured under the Contractor's Commercial General Liability insurance policy with respect to the work performed for the City.
- c. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
- d. Professional Liability Insurance appropriate to the Contractor's profession.

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

- a. **Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of One Million Dollars (\$1,000,000) per accident.**
- b. **Commercial General Liability insurance shall be written with limits no less than One Million Dollars (\$1,000,000) each occurrence, Two Million Dollars (\$2,000,000) general aggregate.**
- c. **Professional Liability insurance shall be written with limits no less than One Million Dollars (\$1,000,000) per claim and One Million Dollars (\$1,000,000) policy aggregate limit.**

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

- a. **The Contractor's insurance coverage shall be primary insurance with respect to the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Contractor's insurance and shall not contribute with it.**
- b. **The Contractor's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the CITY.**

Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

Verification of Coverage. Contractor shall furnish the City with original certificates and a copy of the amendatory endorsements including, but not necessarily limited to, the additional insured endorsement, evidencing the insurance requirements of the Contractor before commencement of the work.

13. **RECORDS: Along with records specified in Section 2.B., the Contractor shall maintain accurate and complete records of all animals brought to the shelter in the performance of this Contract. The records shall contain the following information:**
 - A. **Description of the animal, including its breed, color, size, sex, disposition, where and how the animal was obtained and the animal's owner, if known.**
 - B. **Record of any citizen complaints regarding animals which have been referred to the ACO.**

- C. All dangerous or potentially dangerous animals received by Contractor.
- D. Date, time, location, reason and manner in which the animal was obtained.
- E. Length of time the animal was placed in the animal shelter facility.

14. **FINANCIAL RECORDS AND AUDITS:** The Contractor shall maintain books, records and documents, which sufficiently and properly reflect all direct and indirect costs related to the performance of this Contract and shall maintain such accounting procedures and practices as may be necessary to assure proper accounting of all funds paid pursuant to this Contract. 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 Contract.

The Contractor shall retain all books, records, documents and other material relevant to this Contract, for six (6) years after its expiration. The Contractor 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. **NONDISCRIMINATION:**

- A. The City is an equal opportunity employer.
- B. **Nondiscrimination in Employment.** In the performance of this Contract, the Contractor 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 Contractor 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 Contractor shall take such action with respect to this Contract as may be required to ensure full compliance with local, state and federal laws prohibiting discrimination in employment.

- C. **Nondiscrimination in Services.** The Contractor will not discriminate against any recipient of any services or benefits provided for in this Contract 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.
- D. If any assignment and/or subcontracting has been authorized by the City, said assignment or subcontract shall include appropriate safeguards against discrimination. The Contractor shall take such action as may be required to ensure full compliance with the provisions in the immediately preceding paragraphs herein.
16. **AMENDMENTS:** This Contract may be amended at any time by mutual written agreement between the parties.
17. **OAK HARBOR MUNICIPAL CODE CHANGES:** The City Council reserves the right to amend, add or delete Title 7 of the Oak Harbor Municipal Code or other provisions of the Oak Harbor Municipal Code concerning animal control or care of animals at any time on its motion. The City Council also reserves the right to pass such general rules and regulations as it may deem necessary for the operation of the shelter and/or disposal area; **provided**, further, that changes in rules, regulations, ordinances and Title 7 which result in additional work or change indirectly compensation, do not have to be undertaken by the Contractor unless mutually agreed to. It is further provided that changes in ordinances of the City or Title 7 of the Oak Harbor Municipal Code which cause additional work or change directly or indirectly compensation levels for the Contractor, that these occurrences shall be the basis for the re-evaluation of compensation levels under this Contract. Such changes shall be to reasonably compensate the Contractor and must be consistent with the principles and levels of compensation set out in this Contract.
18. **INDEPENDENT CONTRACTOR:** All activities performed by the Contractor, employees, volunteers or representatives are, for all purposes under this Contract performed as an independent contractor and shall not be deemed to be an employee or agent or representative of the City, and none of them shall be entitled to any benefits to which City employees are entitled including, but not limited to, overtime, retirement benefits, unemployment insurance, worker's compensation benefits, injury leave or other leave benefits. Contractor will pay all taxes as are connected with this operation including, but not limited to, employee taxes (such as industrial insurance and FICA) and federal, state and local taxes (such as income, excise and sales taxes). Contractor shall file a federal tax return showing expenses and any profits of the enterprise and shall maintain an account with the Washington State Department of Labor and Industries.

Contractor acknowledges that it is an independent contractor and that it is not a City of Oak Harbor agency or the agent of a City of Oak Harbor officer and agrees not to represent itself as such. All volunteers and any paid staff are volunteers and staff of Contractor and not of

the City of Oak Harbor. Any uniforms or insignia used by Contractor shall not use the words "Oak Harbor."

19. **ASSIGNABILITY:** The Contractor will use its best efforts, skill and independent judgment in providing high quality shelter service for the City. Contractor may not assign this Contract or any part of it to any other person or firm. The Contractor may hire employees; provided, the Contractor recognizes that it's right to use employees of its choice is necessarily limited by the Navy's needs and authority to control access to NASWI-SPB. The Contractor is responsible for supervision of any employees or volunteers.
20. **THIRD PARTY BENEFICIARIES:** This Contract is for the purpose of providing animal shelter services for the City of Oak Harbor and is for the general benefit of Oak Harbor and should not be construed as creating a right or benefit for any particular person or class of persons not a party to this Contract.
21. **NO WAIVER:** Any failure or delay by City or Contractor in strictly enforcing the terms of this Contract shall not operate to waive or be deemed a waiver of the rights of the City or Contractor to require compliance that is full and to the letter of the Contract, or to thereafter require performance by City or Contractor in strict accordance with the terms of this Contract.

EXECUTED, this 18th day of December, 2010 for the WHIDBEY ANIMALS' IMPROVEMENT FOUNDATION.



President of the Whidbey Animals' Improvement Foundation



Executive Director of the Whidbey Animals' Improvement Foundation

EXECUTED, this the 10th day of December, 2010 for the CITY OF OAK HARBOR.



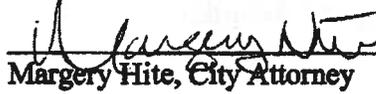
Jim Slowik, Mayor

ATTEST:



Connie Wheeler, City Clerk

APPROVED AS TO FORM:



Margery Hite, City Attorney

DEPARTMENTAL APPROVAL:



Richard W. Wallace, Chief of Police

ATTACHMENT "A"

**ANIMAL SHELTER SERVICES CONTRACT
WHIDBEY ANIMALS' IMPROVEMENT FOUNDATION AND CITY OF OAK HARBOR**

Whidbey Animals' Improvement Foundation Operating Schedule

Open to Public for Viewing and Adoption
Wednesday through Sunday – 12 to 4 p.m.

Open for Redemption and Surrender of Animals
Monday through Sunday – 9am to 4pm

Animals being delivered to City can be left in the outside kennel which can be seen to the left of building when facing front of facility.

Holiday Closures

Shelter will be closed on the following holidays:

New Year's Eve
New Year's Day
Easter
Memorial Day
Fourth of July
Labor Day
Thanksgiving Day
Christmas Eve
Christmas Day

All changes to the schedule must receive approval of the Chief of Police or his designee prior to becoming effective.

ATTACHMENT "B"

**ANIMAL SHELTER SERVICES CONTRACT
WHIDBEY ANIMAL IMPROVEMENT FOUNDATION AND CITY OF OAK HARBOR**

The following is the text of the Navy MOU:

**U.S. NAVY LICENSE FOR NONFEDERAL USE OF REAL PROPERTY
LICENSE NUMBER N4425596RP00T31 (series)
WITH THE CITY OF OAK HARBOR, WASHINGTON**

**OPERATING MEMORANDUM OF UNDERSTANDING FOR THE
USE OF NAVY FACILITIES FOR AN ANIMAL SHELTER**

1. The City of Oak Harbor ("City") use of Navy facilities for an animal shelter, pursuant to License Number N4425596RP00T31, shall be subject to the following conditions:
 - a. Routine inspection of the premises by authorized naval personnel shall be performed on a not-to-interfere basis.
 - b. The building and surrounding area shall be maintained in a clean and orderly manner at all times.
 - c. City animal control shall be limited to the following areas of Naval Air Station (NAS), Whidbey Island:
 - (1) All areas of the NAS Whidbey Island Seaplane Base;
 - (2) Mayor Point Housing;
 - (3) Victory Housing
 - (4) Saratoga Heights Housing;
 - (5) Rockhill Terrace Housing;
 - (6) Crescent Harbor Housing; and
 - (7) Whidbey ApartmentsAll other areas on the naval reservation will be controlled by NAS Whidbey Island Security.
 - d. Animals taken by NAS Whidbey Island Security will be turned over to the City attendant, who will keep them for 5 days prior to disposal. Return of animals so taken will not include the impound fee, but all other fees are applicable.

- e. The animal shelter facility shall be open for recovery of pets during the hours of 1:00 p.m. to 3:00 p.m., Monday through Friday.
 - f. City residents will be allowed entry to the Seaplane Base to recover pets.
 - g. The City animal shelter attendant shall double-bag all dead animals, and shall transport said animals to the transfer station on board the NAS Whidbey Island Ault Field Base for disposal. The City will assure compliance with applicable sanitary requirements.
2. The Navy will provide necessary utility services and will bill the City for these services on the basis of engineering estimates. Reimbursement by the City shall be due upon receipt of bills.
 3. The terms of this Memorandum of Understanding may be modified by mutual agreement.
 4. This Memorandum of Understanding shall remain in effect throughout the existence of License Number N4425596RP00T31 and any successor licenses for the use of Building 297 on board NAS Whidbey Island.
 5. This Memorandum of Understanding supersedes all previously executed memoranda of understanding concerning the City's use of Navy facilities for an animal shelter.

For Naval Air Station, Whidbey Island

For the City of Oak Harbor

_____/s/_____
 Name Gerral David, Captain, U.S. Navy
 Title: Commanding Officer

_____/s/_____
 Name: Jim Slowik
 Title: Mayor

Date: _____

Date: _____



DEPARTMENT OF THE NAVY

NAVAL AIR STATION WHIDBEY ISLAND
3730 NORTH CHARLES PORTER AVENUE
OAK HARBOR, WASHINGTON 98278-5000

IN REPLY REFER TO
11010
Ser N46/ 0132
27 Jan 11

The Honorable Jim Slowik
Mayor, City of Oak Harbor
865 SE Barrington Drive
Oak Harbor, WA 98277

Dear Mayor Slowik:

As discussed between our staffs, our intent is to renew the current license for the joint Seaplane Base (SPB) animal shelter until December 2012. At that time, it is anticipated that the new Coupeville Whidbey Animal Improvement Foundation facility and a city holding facility will be available to support city and, potentially, Navy sheltering requirements.

Although the current partnership provides significant value to both parties, the current SPB facility is inadequate and obtaining a permanent lease at the Assistant Secretary of the Navy level is problematic. Continuance of this license beyond the December 2012 date is not viable; we have gone well beyond the five-year regulatory limitation.

In addition to the two-year license extension, we will discuss animal control services options which are currently provided by the city as part of the Navy facility license. The Navy values the partnership we have with the city in regard to stray animal control, and we would like to continue exploring options to keep costs down for both agencies while meeting the needs of our communities.

Should you have any questions, please contact Commander Michael Dysart at (360) 257-3348 regarding the facility license and Mr. Scott Smith (360) 257-2962 regarding animal control service integration.

Sincerely,


G. J. JOHNSTON
Captain, U.S. Navy
Commanding Officer

Copy to: Chief of Police, Mr. Rick Wallace, City of Oak Harbor
CO NAVFAC NW
NAS Whidbey Island Public Affairs Officer

City of Oak Harbor

OFFICE OF THE MAYOR
JIM SLOWIK
MAYOR



865 S.E. BARRINGTON DRIVE
OAK HARBOR, WASHINGTON 98277
(360) 279-4500
FAX (360) 279-4507

Exhibit D

May 5, 2011

Michael Nanney
Senior Project Executive
Forest City Military Communities Northwest
19578 10th Avenue NE
Poulsbo, WA 98370

Dear Mr. Nanney:

For over twenty-five years, the City of Oak Harbor and Naval Air Station Whidbey Island (NASWI) have partnered in the control and sheltering of animals and pets on the Seaplane Base. In short, NASWI allowed the City of Oak Harbor, through a lease arrangement with the Whidbey Animal Improvement Foundation (WAIF), to use a facility located on the Seaplane Base as an animal shelter at no direct cost to the City. In return, the City of Oak Harbor performed animal control services on the Seaplane Base at no charge to NASWI.

The City of Oak Harbor has been notified by NASWI that the facility used by the City and WAIF these past years as an animal shelter will no longer be available as of January 1, 2013 (see enclosed Exhibit A) with no replacement facility offered.

As the private housing partner with NASWI on the Seaplane Base, I consider it prudent for you to be aware of this situation and the possible ramifications. I would like to meet with you to discuss the future viability of animal control on the Seaplane Base. I will contact your office, and if you agree, we can decide on a date and time.

Thank you for your consideration.

Sincerely,

Jim Slowik
Mayor

WAIF Whidbey Animals' Improvement Foundation

Exhibit E

7-11-11 RR

July 11, 2011

The Honorable Jim Slowik
Mayor, City of Oak Harbor
865 SE Barrington Drive
Oak Harbor, WA 98277

Dear Mayor Slowik:

As discussed at our meeting, Whidbey Animals' Improvement Foundation welcomes the opportunity to provide you with information we have gathered per your request and to participate with the City of Oak Harbor and the Department of Navy in finding the best possible method to resolve the need for the care and sheltering of animals in Oak Harbor.

As we discussed, WAIF is in the midst of our Capital Campaign to build a new animal Shelter in Coupeville to serve the needs of our community. We believe this is an opportune time to review and consider how we can collectively gather our resources to best serve the needs of the City of Oak Harbor, Island County and the Department of Navy in the sheltering of the animals.

Although WAIF does not keep statistics specifically directed towards how many animals that we care for come directly from navy personnel, we are able to provide from our documents a very close number of the animals based on a list of "Base Housing." In addition we also know there are many Navy Personnel who do not reside in base housing and reside both in the City of Oak Harbor as well throughout Whidbey Island.

The below numbers are only those from Base Housing and our best effort to provide for those Animals served for the City of Oak Harbor and do not include any estimate for those who live within rural Whidbey Island.

You will note we have only gone back two plus years in our records and hope this will help in this process.



Stephen Paysse
Executive Director
Whidbey Animals' Improvement Foundation

cc: City Council

P.O. Box 1108 Coupeville, WA 98239
360-678-5816 Fax: 360-279-0424
www.waifanimals.org

Our Mission: To create a community in which animals are treated with compassion and respect and where no companion animal goes unwanted.

92

Oak Harbor Shelter

Below information contains: ACO Impounds, Owner Surrenders, Redeemed and Adopted animals

<u>Total Animals Incoming & Outgoing (Dogs & Cats)</u>	2009 1,324	2010 1,287	2011 (June 1 st) 419
<u>Navy Housing Only Dogs & Cats</u>	303	208	118
Balance	1,021	1,079	301
Total Assuming 50% of remaining animals	814	748	269

The above information is based on reviewing all intakes, return and adoption documents and verifying personal information based on provided base housing street addresses.

It does not include any Naval personnel who do not live in base housing. Whidbey Animals' Improvement Foundation does not ask for or maintain information that supplies that information. Based on our best estimates from our staff, shelter manager and the Oak Harbor Animal Control Officer we believe that of the balance of animals served a minimum of 50% of that total are related to Naval personnel.

In addition to the above we would like to share a few stories WAIF has experienced with animals that belonged to Naval Personnel.

There was a Great Dane that was left with another naval person. When they were deployed the dog was left locked up and abandoned by the caregiver in an apartment. He was left with a bag of dog food. The dog was eventually found emaciated, dehydrated and had resorted to eating the walls.

WAIF had also found a cat that had been left in a bathroom when the sailor went on deployment. He was left with a food feeder and a big bowl of water. The owner had also left a sweater on the cat that had embedded into its skin. When WAIF took this cat to the veterinarian for care the cat's skin literally peeled off from infection.

One last story, of which there are many, there were 5 cats and a dog that had been abandoned in an apartment by another sailor who had departed on deployment. They were left with one opened bag of dog food and a bowl of water. Water and food had run out. The dog and cats were dehydrated, underweight and malnourished.

City of Oak Harbor

OFFICE OF THE MAYOR
JIM SLOWIK
MAYOR



865 S.E. BARRINGTON DRIVE
OAK HARBOR, WASHINGTON 98277
(360) 279-4500
FAX (360) 279-4507

Exhibit F

July 12, 2011

CAPT Jay Johnston
Commanding Officer
Naval Air Station Whidbey Island
3730 N. Charles Porter Avenue
Oak Harbor, WA 98278

Dear CAPT Johnston:

I am writing in response to your letter dated January 27, 2011 regarding the animal shelter facility located on the Seaplane Base. Thank you for the two-year lease extension; however, the news that the facility will no longer be available beyond December 2012 is most distressing. The City and NASWI have been partners in animal control for over twenty-five years.

For the past six years, the City has contracted with Whidbey Animal Improvement Foundation (WAIF) to operate the animal shelter and maintain the program. Based on their best estimates, WAIF believes that a minimum of 50% of the total animals served are related to Navy personnel. These are not just stray and surrendered animals, but animals abandoned in apartments and homes by their owners due to deployment or re-assignment.

WAIF estimates that the cost of processing animals from Base Housing is from \$32,000 to \$35,000 annually. With no tax revenue from Base Housing and a very tight City Budget, underwriting these possible additional costs will be most problematic. In consideration of all of the above, an animal shelter on the Seaplane Base was, and is, a good solution.

As you indicated, I look forward to our discussion on animal control service options. Simply closing the shelter and walking away will only make the animal control problem worse. We too value our 70 year old partnership and hope that a viable solution can be found for all parties, including the animals served.

Sincerely,

Jim Slowik
Mayor

City of Oak Harbor

OFFICE OF THE MAYOR
JIM SLOWIK
MAYOR



865 S.E. BARRINGTON DRIVE
OAK HARBOR, WASHINGTON 98277
(360) 279-4500
FAX (360) 279-4507

Exhibit G

August 12, 2011

CAPT Jay Johnston
Commanding Officer
Naval Air Station Whidbey Island
3730 N. Charles Porter Ave.
Oak Harbor, WA 98278-5000

Dear Captain Johnston:

As discussed in our meeting on August 8, 2011, the City of Oak Harbor requests the extension of the license for the joint Seaplane Base animal shelter to December 31, 2013.

Thank you for your consideration.

Sincerely,

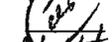
Jim Slowik
Mayor

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

Bill No. 8
Date: September 6, 2011
Subject: 2011 Solid Waste Franchise
(Goldie Road/Wallin)

FROM: Cathy Rosen, Public Works Director

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

PURPOSE:

This ordinance provides a solid waste franchise to Island Disposal for areas annexed under Ordinance No. 1603.

AUTHORITY:

Pursuant to RCW 35A.14.900, the City is required to award a franchise for a term of not less than seven (7) years to a garbage disposal firm which had been operating pursuant to permit or franchise in territory that was annexed by the City. Further, such a firm may have a cause of action for "measurable damages" for cancellation of the prior franchise through annexation. Island Disposal was operating a solid waste disposal firm pursuant to Washington UTC certificate in the annexation area at the time of the annexation and is, therefore, entitled to a franchise from the City.

SUMMARY STATEMENT:

This ordinance was introduced at the June 28, 2011 City Council meeting. It grants the franchise required by RCW 35A.14.900. The franchise covers territory annexed under Ordinance No. 1603.

The franchise also provides an additional three-year term (total of 10 years). This term is an agreed settlement of any claim for "measurable damages" that Island Disposal otherwise might have.

STANDING COMMITTEE REVIEW:

The Public Works Standing Committee reviewed the Solid Waste Franchise at the September 1, 2011 meeting.

RECOMMENDED ACTION:

Adopt the ordinance granting a franchise for solid waste disposal services to Island Disposal for a period of ten (10) years in the recently annexed portion of the City described in Ordinance No. 1603 (Goldie Road/Wallin).

ATTACHMENTS:

Ordinance

MAYOR'S COMMENTS:

Return to:

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

GRANTOR: City of Oak Harbor

GRANTEE: Island Disposal

LEGAL DESCRIPTIONS:

- Being a portion of Section 26, Township 33 North, Range 1 East, Willamette Meridian, Island County, Washington, described as follows: (See Exhibit "A" for complete legal description)

PARCEL NUMBERS: R13326-363-3630

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF OAK HARBOR PROVIDING A SOLID WASTE FRANCHISE TO ISLAND DISPOSAL FOR THE AREA ANNEXED UNDER ORDINANCE NO. 1603

WHEREAS, Island Disposal (hereafter referred to as "Grantee") holds a permit from the State of Washington Utilities and Transportation Commission ("WUTC") to collect solid waste in unincorporated areas within Island County; and

WHEREAS, Ordinance No. 1603 annexed certain land subject to the Grantee's franchise from the WUTC into the City of Oak Harbor; and

WHEREAS, RCW 35.13.280 provides that a solid waste collection franchise in unincorporated areas is canceled for that area upon annexation of the area to a city; and

WHEREAS, RCW 35.13.280 requires the annexing city to grant at least a seven (7) year franchise to a business whose franchise was extinguished by annexation or to purchase or condemn the original franchise rights;

Island Disposal Solid Waste Franchise
Ordinance (Goldie Rd) - 1
8/19/2011 10:24 AM

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

Section One. A franchise to provide solid waste disposal services to certain areas within the city limits of the city of Oak Harbor is hereby granted to Island Disposal on the following terms and conditions:

- (1) Franchise area. This franchise applies to the area annexed into the city through the adoption of Ordinance No. 1603, described in Exhibit "A" hereto attached.
- (2) Nature of the franchise. Grantee shall hereby have an exclusive right during the term of the franchise granted by this ordinance to collect and haul for hire over the streets and alleys of the city all solid waste collected from private customers located within the corporate limits of the city in the franchise area described in paragraph (1) above.

"Solid waste", as used herein, shall be interpreted to mean and include all solid waste, animal and vegetable matter, rubbish, trash, debris, ashes, tin cans, and other waste materials generally, including articles ordinarily and customarily hauled away and dumped.

- (3) Duration of the franchise. The franchise shall become effective five (5) days after publication of this ordinance and shall continue for ten (10) years from its effective date. Thereafter, the franchise shall terminate unless extended by written agreement approved by City Council.
- (4) Acceptance of franchise. Acceptance of this franchise shall constitute Grantee's agreement that the ten (10) year franchise period provided herein constitutes full and fair compensation to Grantee for any damages that Grantee may have suffered as a result of the annexation of territory pursuant to Ordinance No. 1603.
- (5) Utility tax. The Grantee shall pay utility taxes imposed on solid waste utility services by the City of Oak Harbor for all solid waste utility services provided by the franchise within the city of Oak Harbor and all areas listed in this franchise ordinance in which a franchise is granted or extended or both granted and extended.

It is further provided that such taxes shall apply to this franchise upon its effective date.

- (6) Collection rates. Grantee's collection rates inside the city shall be at the same levels as those filed with and approved by the WUTC for regulated Island County service by Grantee or its successor; provided, nothing in this section shall be construed as preventing Grantee from increasing the collection rates approved by the WUTC to

account for the cost of any utility taxes or increases in utility taxes imposed by the City on solid waste services.

Grantee will provide notice to the City of applications for changes in rates or charges made to WUTC which affects rates in the franchise area. Grantee will further notify the City if WUTC ceases to regulate rates for Grantee in Island County.

It is further provided, that if the WUTC ceases regulating rates for Grantee in Island County, then the Grantee's rates for solid waste collection services in the franchise area shall be the same as those rates established by the City for customers of the City solid waste utility; provided, that the Grantee shall have the right to request a public hearing within thirty (30) days of notice of the application of City rates to the franchise area to establish a different rate structure for the franchise area. After public hearing on the Grantee's proposed rates, the City shall establish such rates as are reasonable based on the charges last approved by the WUTC to cover the cost of service and to allow for sufficient profit in the provision of solid waste collection service.

At the time of enactment of this franchise, the City requires mandatory accounts within all franchise areas. Grantee will cooperate in providing information in this regard unless and until the franchise expires or the City amends its requirements for mandatory accounts.

- (7) Frequency of collections. Grantee shall offer regular collections of solid waste throughout the business areas assigned to the Grantee and shall offer once a week collection in all residential districts assigned to the Grantee in accordance with the franchise issued by the WUTC; provided, that the City may modify this clause as to frequency of collections or solid waste and may prescribe the hours during which collections will be made, and Grantee shall comply with all such regulations so adopted and prescribed.
- (8) Service required. Grantee shall furnish collection service to any person or organization, public or private, within the franchise area within thirty (30) days of receipt of a written request for such service.

Grantee shall not, however, be required to furnish service to any household, dwelling, business establishment or other building requiring service unless the owner thereof shall furnish an opening to his yard or grounds from the alley or street where solid waste is customarily collected, and Grantee shall not be required to service any household, dwelling, business establishment or other building, where a private road must be used to obtain access thereto unless such private road is more than twenty (20) feet in width. The Grantee shall notify the City of addresses and locations of any household, dwelling, business establishment or other building in the area which it is

not providing service under this provision with the reason why it is not providing service.

- (9) Customer list. Grantee will advise City of lists of customers on a regular basis to be established by the City so that the City may use such information to assure universal collection of solid waste service for the City of Oak Harbor.
- (10) Yard Waste Services. The City may provide yard waste collection services in the annexation areas.
- (11) Reserved regulations. The City reserves the right to impose additional regulations upon Grantee in its discretion for purposes of health, welfare and safety.

Section Two. Notice of Tax on Utility Business. This ordinance shall establish written notice to Island Disposal that the rate for solid waste utilities is presently set at six and one-quarter percent (6.25%) on the gross income derived from doing business in Oak Harbor. This rate is subject to change by Oak Harbor ordinance.

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

Section Four. Effective Date. This Ordinance shall be in full force and effect five (5) days after publication as required by law.

PASSED by the City Council and approved by its Mayor this _____ day of _____, 2011.

THE CITY OF OAK HARBOR

Mayor

Attest:

City Clerk

