City of Oak Harbor
City Council Meeting

Agenda for
June 2, 2009
7:00 p.m.

June 14th is Flag Day

Oak Harbor City Council
7:00 p.m.
Tuesday, June 2, 2009

Welcome to the Oak Harbor City Council Meeting

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

Thank you for participating in your City Government!

CALL TO ORDER

PLEDGE OF ALLEGIANCE

INVOCATION **Ben Norris - Church of the Nazarene**

ROLL CALL

MINUTES

NON-ACTION COUNCIL ITEMS:

1. Introduction of New Employees – Neil Ketchum, Oak Harbor Marina.
2. Employee Recognition – Ron Hofkamp – Oak Harbor Police Department – 20 Years.
3. Public Comments.

COUNCIL CONSIDERATION AND ACTION ON THE FOLLOWING MATTERS:

4. Consent Agenda:

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a. Planning Commission Re-appointment – Keith Fakkema.

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b. Planning Commission Re-appointment – Kristi Jensen.

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c. Noise Permit – Christ the King Community Church.

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d. Noise Permit – Clear Ahead Marine Productions – Race Week.

e. Pay Bills.

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5. Public Hearing – Final ordinance for proposed changes to Chapter 19.25 Oak Harbor Municipal Code pertaining to Manufactured Home Developments (continued from5/5/09 Council meeting).

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6. Annual Report – Greater Oak Harbor Chamber of Commerce.

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7. Tourism Services Agreement - Greater Oak Harbor Chamber of Commerce

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8. Marina Aquatic Lands Lease – With Washington State Department of Natural Resources.

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9. Scenic Estates Preliminary Plat Request for Extension.

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10. Right-of-Way Acquisition – Oak Harbor Street Project.
11. City Administrator's Comments.
12. Councilmembers' Comments.
    - Standing Committee Reports
13. Mayor's Comments.

ADJOURN

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

"The journey is the reward." - Lao-Tzu

Regular City Council Meeting
Tuesday, May 19, 2009, 7:00 p.m.
City Hall Council Chambers

CALL TO ORDER Mayor Pro Tem Danny Paggao called the meeting to order at 7:00 p.m.

INVOCATION Brian Bursma, First Reformed Church

ROLL CALL

Mayor Pro Tem Danny Paggao
And Members of the Council,
- Rick Almberg
- James M. Campbell
- Eric Gerber
- Jim Palmer
- Beth Munns
- Bob Severns

Margery Hite, City Attorney
Cathy Rosen, Public Works Director
Eric Johnston, City Engineer
Rich Tyhuis, Public Works Supervisor
Rick Wallace, Chief of Police
Mike McIntyre, Senior Services Director
Renée Recker, Executive Assistant to the Mayor

Mayor Jim Slowik, City Administrator Paul Schmidt, Finance Director Doug Merriman, and Development Services Director Steve Powers were absent.

Mayor Pro Tem Paggao welcomed back Councilmember Gerber and Councilmember Campbell.

MINUTES

MOTION: **COUNCILMEMBER MUNNS MOVED TO APPROVE THE MINUTES OF THE 5/5/09 REGULAR COUNCIL MEETING. THE MOTION WAS SECONDED BY COUNCILMEMBER PALMER. COUNCILMEMBERS ALMBERG, MUNNS, PALMER, AND SEVERNS VOTED IN FAVOR OF APPROVAL. COUNCILMEMBER CAMPBELL AND COUNCILMEMBER GERBER ABSTAINED FROM THE VOTE. THE MOTION CARRIED.**

NON-ACTION COUNCIL ITEMS

Introduction of New Employees – none this evening.

Proclamation – National Military Appreciation Days

Councilmember Campbell read this proclamation and presented it to Commander Peter Mehl, NASWI. Mr. Campbell spoke in appreciation of what the Armed Forces have done both past and present. Commander Mehl accepted the proclamation on behalf of Capt. Gerral David, NASWI Commanding Officer, and the 10,000 personnel of NASWI noting that they are happy and proud to be part of the community and it is an honor for us to serve. May 1st through June 14th are designated as National Military Appreciation Days since VE Day, Military Spouse Day, Loyalty Day, Armed Forces Day/Week, National Day of Prayer, Memorial Day, Navy Day, Army Day, and Flag Day all occur in the months of May and June.

Public Comments

Helen Chatfield Weeks, 1415 SE 9th. Ms. Chatfield-Weeks spoke on behalf of the Neil Tower Preservation Association and thanked the City's Parks Manager, Hank Nydam for his help in moving display cases from Casual House to the Neil Tower Museum. Ms. Chatfield-Weeks also noted that Rick Castellano, Executive Director of the Island County Historical Society and Museum, expressed his appreciation to Casual House since the County Museum received half of the display cases. Island County's Historical Society and Museum would like to connect Neil Tower to the County's Historical Museum program and Ms. Chatfield-Weeks will bring this forward at the next Oak Harbor Park Board meeting.

With no other public comments coming forth, Mayor Pro Tem Paggao closed this portion of the meeting at 7:12 p.m.

CONSENT AGENDA

a. Professional Services Agreement – How It Works, City's Website.
b. Memorandum of Understanding – State of Washington Unified Certification Program.
c. Noise Permit – Home Connection.
d. ~~Noise Permit – VAQ 129.~~ This noise permit application was withdrawn at the applicant's request.
e. Memorandum of Agreement – Northwest Workforce Council.
f. Pay Bills.

MOTION: **COUNCILMEMBER PALMER MOVED TO WITHDRAW CONSENT AGENDA ITEM A FOR DISCUSSION AND APPROVE CONSENT AGENDA ITEMS B, C, E, AND F WITH ITEM F PAYING ACCOUNTS PAYABLE CHECK NUMBERS 137064 – 137085 IN THE AMOUNT OF $3,174.83; ACCOUNTS PAYABLE CHECK NUMBERS 137086 – 137087 AND 137089 – 137254 IN THE AMOUNT OF $452,332.25; ACCOUNTS PAYABLE CHECK NUMBER 137088 IN THE AMOUNT OF $2,161.87; AND PAYROLL CHECK NUMBERS 92908 – 92915 IN THE AMOUNT OF $88,890.00. THE MOTION WAS SECONDED BY COUNCILMEMBER CAMPBELL AND CARRIED UNANIMOUSLY.**

Consent Agenda Item A – Professional Services Agreement with How it Works

Eric Johnston, City Engineer speaking on behalf of Rob Voight who created blogs for the City's website, talked about the need to bring the City's website up to current standards, the use of project blogs in the City's website, and changes in technology which will make the site more user-friendly and effective. Connie Wheeler, City Clerk talked about the Website Development Team's review of numerous municipal/public agency sites along with website providers, and noted that How It Works is a local business who created the present site and can continue to provide needed updates. Funding for the website development/update project is budgeted in the 2009/2010 budget for a maximum amount of $35,000. The proposed agreement with How It Works is for a not-to-exceed amount of $15,500 and authorization up to an additional $5,000 for possible amendments to the agreement.

MOTION: **COUNCILMEMBER PALMER MOVED TO AUTHORIZE THE MAYOR TO SIGN THE PROPOSED PROFESSIONAL SERVICES AGREEMENT WITH "HOW IT WORKS" FOR THE NOT-TO-EXCEED AMOUNT OF $15,500, AND TO AUTHORIZE UP TO AN ADDITIONAL $5,000 FOR POSSIBLE AMENDMENTS TO THE PROFESSIONAL SERVICES AGREEMENT TO INCLUDE ADDITIONAL WORK TASKS SUCH AS VIDEO SYSTEM HOSTING/ADMINISTRATION. THE MOTION WAS SECONDED BY COUNCILMEMBER MUNNS AND CARRIED UNANIMOUSLY.**

Public Hearing – Bayshore Drive Local Improvement District (LID) Final Assessment Roll and Ordinance

Mayor Pro Tem Paggao talked about the purpose of this agenda item which is to provide a public hearing in consideration of the final assessments on properties specially benefited by the Bayshore Drive Local Improvement District (LID). The property owners whose property is benefited by this LID are: David H. and Wendy L. Wilson, and Carl Freund, Trustee of Winifred L. Freund IRR Trust. If there are no objections to the amounts or cost of the final assessment roll, City Council can then pass the Bayshore LID ordinance confirming the final assessment roll. RCW 35.43.140 requires City Council to conduct a public hearing to address any objections to the proposed final assessment roll for an LID, and after addressing any objections to the assessment roll to confirm the roll by ordinance. In addition to the public hearing, this is also a quasi-judicial process and Mayor Pro Tem Paggao explained this process beginning with Ex Parte contacts.

Ex Parte Contacts

During the pendency of any quasi-judicial proceeding, no member of a decision-making body may engage in Ex Parte communications with opponents or proponents with respect to the proposal which is the subject of the proceeding unless that person:

- Places on the record the substance of any written or oral Ex Parte communication concerning the decision of the action; and
- Provides that a public announcement of the content of the communication and of the parties' rights to rebut the substance of the communication shall be made at each hearing where action is considered or taken on the subject to which the communication related. This prohibition does not preclude a member of a decision-making body from seeking in a public hearing specific information or data from such parties relative to the decision if both the request and the results are a part of the record. Nor does such prohibition preclude correspondence between a citizen and his or her elected official if any such correspondence is made a part of the record when it pertains to the subject matter of a quasi-judicial proceeding.

Appearance of Fairness

Mayor Pro Tem Paggao asked the following questions of each Council Member regarding a possible conflict of interest concerning the Bayshore Drive LID.

1. Do you have knowledge of having conducted business with either the proponents or opponents of this project?	Mr. Almberg	Mr. Campbell	Mr. Gerber	Ms. Munns	Mr. Palmer	Mr. Severns
	No	No	No	No	No	Chicago Title has conducted business with Mr. Freund in the past.
2. Do you have either a pecuniary or a non-pecuniary interest in the outcome of this proceeding?	Mr. Almberg	Mr. Campbell	Mr. Gerber	Ms. Munns	Mr. Palmer	Mr. Severns
	No	No	No	No	No	No
3. Do you know whether or not your employer has a financial interest in the land or area which will be impacted by the decision in this proceeding?	Mr. Almberg	Mr. Campbell	Mr. Gerber	Ms. Munns	Mr. Palmer	Mr. Severns
	No	No	No	No	No	No
4. Do you live or own property within 300 feet of the area which will be impacted by the decision in this proceeding?	Mr. Almberg	Mr. Campbell	Mr. Gerber	Ms. Munns	Mr. Palmer	Mr. Severns
	No	No	No	No	No	No
5. Do you have any special knowledge about the substance of the merits of this proceeding which would or could cause you to prejudge the outcome of this proceeding?	Mr. Almberg	Mr. Campbell	Mr. Gerber	Ms. Munns	Mr. Palmer	Mr. Severns
	No	No	No	No	No	No
6. Do you believe that you cannot sit and hear this matter fairly and impartially, both as to the respective positions of the proponents and the opponents in this proceeding?	Mr. Almberg	Mr. Campbell	Mr. Gerber	Ms. Munns	Mr. Palmer	Mr. Severns
	I can hear this fairly.	I can hear this fairly.	I can hear this fairly.	I can hear this fairly.	I can hear this fairly.	I can hear this fairly.
7. Is there any member of the audience who because of the "Appearance of Fairness Doctrine" wishes to disqualify any member of the Council from hearing this matter? If so, please state the name of the Council Member and the reason or reasons why you believe that Council Member should be disqualified.						
No audience members came forward.						

City Attorney Hite asked that Council be queried concerning Ex Parte contacts. All Council Members answered that they did not have any oral or written Ex Parte communication concerning the decision of this action. Mayor Pro Tem Paggao also chose to vote in case of a tie among Council when the motion is presented.

Cathy Rosen, Public Works Director presented the agenda bill and noted that both proponents were present. In accordance to RCW 35.44.090, owners of the affected properties of the Bayshore Drive LID have been duly notified of the assessment roll and of the time and location of this public hearing. Preliminary construction cost estimates for completion of the Bayshore Drive improvements were set at $592,220.79 in July of 2008, but the final costs certified by the City Engineer are now at $460,122.97. The City contribution shall be $304,233.99 and the LID assessments to the other properties will be $155,888.98.

Mayor Pro Tem Paggao opened the public hearing at 7:32 p.m. The affected property owners were invited to speak first.

David Wilson, 1551 Beeksma Way. Mr. Wilson had no objections.
Carl Freund, 2498 SW Freund Street. Mr. Freund had no objections and is pleased with the project. Its completion was on-time and under-budget.

With no other public comments coming forth, Mayor Pro Tem Paggao closed the public hearing at 7:35 p.m.

MOTION: **COUNCILMEMBER ALMBERG MOVED TO APPROVE THE CONFIRMING ORDINANCE FOR FIXING THE FINAL ROLL ASSESSMENT FOR BAYSHORE LOCAL IMPROVEMENT DISTRICT NO. 2007-1. THE MOTION WAS SECONDED BY COUNCILMEMBER PALMER AND CARRIED UNANIMOUSLY.**

Resolution – Recognizing the City's Wellness Committee
The Association of Washington Cities annually recognizes those participating cities that meet and exceed AWC wellness goals and objectives with a Well City Award. The City of Oak Harbor's Wellness Committee has been selected to receive the 2009 Well City Award which is the fourth year in a row for such recognition. Dina Nichols and Janet Sabalausky were in attendance representing the Wellness Committee. Ms. Nichols thanked the Mayor and Council for their support along with City staff who make the wellness program possible and help the committee earn these awards.

MOTION: **COUNCILMEMBER MUNNS MOVED TO APPROVE RESOLUTION NUMBER 09-12 EXPRESSING APPRECIATION AND RECOGNIZING THE CITY OF OAK HARBOR'S WELLNESS COMMITTEE FOR THEIR DEDICATION AND HARD WORK. THE MOTION WAS SECONDED BY COUNCILMEMBER SEVERNS AND CARRIED UNANIMOUSLY.**

AWC Voting Delegates
The City of Oak Harbor, as a member in good standing with the Association of Washington Cities (AWC), may select three voting delegates for the 2009 annual AWC business meeting. Council members made recommendations for these three delegates.

MOTION: **COUNCILMEMBER CAMPBELL MOVED TO SELECT THESE THREE NOMINATED COUNCIL MEMBERS AS AWC VOTING DELEGATES: BETH MUNNS, JIM CAMPBELL, AND JIM PALMER. THE MOTION WAS SECONDED BY COUNCILMEMBER ALMBERG AND CARRIED UNANIMOUSLY.**

Bid Award – Police Department / ICOM Roof

Cathy Rosen, Public Works Director presented this agenda bill which asked for authorization to award the bid for the Police Department and ICOM building re-roof to the lowest responsible bidder. The Police Department and ICOM building consist of approximately 22,000 square feet of roof top that has gone through additions and remodels over the years. The existing roof is a hot mopped tar flat roof that was installed in 1989. For the past several years, there have been leaks in the roof that staff has had to patch. The leaks have become more frequent and damage has occurred to the carpet, furniture, electrical system, electronic equipment and the ceiling tiles. The City is proposing to install a membrane roofing system that is made of PVC. It will be heat-fused at the seams, the roof ridges will be replaced, and it will be attached mechanically to the existing roof. This same system has been utilized on the City Hall roof with good results. The budget estimate for this project was determined to not exceed $130,000.00. Staff received and opened nine (9) sealed bids on May 1, 2009, reviewed the bid prices, and checked the qualifications, experience, and references of the low bidder. It was recommended that a contract in the amount of $99,066.76 be awarded to Hytech Roofing, who is the lowest responsible bidder. As a small works roster project a bid bond was not required, however a performance bond is required prior to execution of the contract. Funds are available in the General Fund reserve to cover the bid amount and an additional 10% for contingency.

Council Discussion

Council asked about adding the contingency to the motion, the quality of work since the bids run the gamut of high to low, and if the roof carried a guarantee (yes, 15-year guarantee).

MOTION: **COUNCILMEMBER CAMPBELL MOVED TO AWARD THE BID AND AUTHORIZE THE MAYOR TO SIGN A CONTRACT WITH HYTECH ROOFING IN THE AMOUNT OF $99,066.76, ALONG WITH AN ADDITIONAL10% FOR CONTINGENCY, UPON APPROVAL AND SIGNATURE OF THE CITY ATTORNEY ON THE CONTRACT AWARDED. THE MOTION WAS SECONDED BY COUNCILMEMBER ALMBERG AND CARRIED UNANIMOUSLY.**

Contract Completion – ENG 06-03, SE Jensen Street and SE Pasek Street Waterline Replacements

Eric Johnston, City Engineer presented this agenda bill requesting acceptance of this contract as complete and authorizing contract closeout including the standard 45-day claims and lien period and final payment. At their December 16, 2008 regular business meeting, City Council awarded a contract to C. Johnson Construction, Inc. of Oak Harbor in the amount of $433,636.33, including sales tax, to construct the SE Pasek and SE Jensen Streets Waterline Replacement Project. Pursuant to RCW 39.04 and OHMC 2.330, an invitation for bids was made, public notice was given by publication, and the bids received were publicly opened and evaluated in accordance with the bid specifications. In addition, Council authorized funds in the amount of $43,000.00 as a contingency for contract changes.

City staff has inspected the finalized product and found that the work has been satisfactorily completed and is in compliance with the terms of the contract. After completing the work, making minor adjustments for unknown conditions, and tabulating the final quantities, the final contract amount, including sales tax, is $386,584.56.

MOTION: **COUNCILMEMBER MUNNS MOVED TO ACCEPT CONTRACT ENG 06-03 WITH C. JOHNSON CONSTRUCTION, INC. IN THE AMOUNT OF $386,584.56 AS COMPLETE UNDER OHMC 2.330.010, IN ORDER TO AUTHORIZE CONTRACT CLOSEOUT INCLUDING THE STANDARD 45-DAY CLAIMS AND LIEN PERIOD AND FINAL PAYMENTS. THE MOTION WAS SECONDED BY COUNCILMEMBER CAMPBELL AND CARRIED UNANIMOUSLY.**

City Administrator's Comments
In Mr. Schmidt's absence, Mayor Pro Tem Paggao talked about the upcoming standing committee meetings and also welcomed the high school classes attending this evening's meeting.

Councilmembers' Comments
Council Members gave reports on their respective standing committee meetings, and also talked about the upcoming DNR lease and letter to Senator Mary Margaret Haugen. Councilmember Palmer talked about his attendance at an emergency meeting of the Island County Transit Board and the financial difficulties facing Island Transit which may come before the voters as a ballot measure to increase sales tax by 3/10ths of a percent. Discussion also followed about the loss of the Public Works Trust Fund. Ms. Munns talked about the awe-inspiring experience of attending the Atlantis space shuttle launch and Commander Greg Johnson as pilot of the shuttle. Ms. Munns hopes Commander Johnson can do a presentation to Oak Harbor.

Mayor Pro Tem Comments
Mayor Pro Tem Paggao talked about Penny Holland's paintings and mixed-media artwork currently on display at City Hall.

ADJOURN
With no other business coming before the City Council, **Councilmember Severns moved to adjourn. The motion was seconded by Councilmember Campbell and carried unanimously.** The meeting adjourned at 8:10 p.m.

_____
Connie T. Wheeler
City Clerk

City of Oak Harbor
City Council Agenda Bill

Bill No. 2

Date: **June 2, 2009**

Subject: **Employee Recognition**

FROM: **Jim Slowik**
Mayor

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:
PS Paul Schmidt, City Administrator
____ Doug Merriman, Finance Director
MH Margery Hite, City Attorney, as to form

SUMMARY STATEMENT

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

- Officer Ron Hofkamp / OHPD – 20 years

City of Oak Harbor
City Council Agenda Bill

Bill No. 3

Date: JUNE 2, 2009

Subject: **PUBLIC COMMENTS**

FROM: **Jim Slowik, Mayor**

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

- Budgeted Item: Yes No N/A
- Budget Adjustment Required: Yes No N/A
- Funds Available for Appropriation: Yes No N/A
- Budget Strategy Approved: Yes No N/A

Margery Hite, City Attorney

SUMMARY STATEMENT

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

City of Oak Harbor
City Council Agenda Bill

Bill No. CA 4A
Date: June 2, 2009
Subject: Planning Commission Re-appointment – Keith Fakkema

FROM: Jim Slowik
Mayor

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

PURPOSE

The purpose of this agenda bill is to recommend the re-appointment of Keith Fakkema to the Oak Harbor Planning Commission.

AUTHORITY

Per Oak Harbor Municipal Code **Chapter 18.04 Planning Commission:**

18.04.010 Membership
The city planning commission shall consist of seven members, appointed by the mayor, subject to approval of the city council.

18.04.020 Terms of office.
The term of office of the seven members appointed by the mayor shall be three years.

SUMMARY STATEMENT

Mr. Fakkema's first term on the Planning Commission began November 2005. He has been serving his new term since November 2008. The Council is asked to approve his appointment from November 2008 through November 2011.

STANDING COMMITTEE REPORT

N/A

RECOMMENDED ACTION

Approve the re-appointment of Keith Fakkema to the Oak Harbor Planning Commission for a three-year term.

ATTACHMENTS

None.

MAYOR'S COMMENTS

City of Oak Harbor
City Council Agenda Bill

Bill No. CA 4B
Date: June 2, 2009
Subject: Planning Commission Re-appointment – Kristi Jensen

FROM: Jim Slowik
Mayor

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

PURPOSE

The purpose of this agenda bill is to recommend the re-appointment of Kristi Jensen to the Oak Harbor Planning Commission.

AUTHORITY

Per Oak Harbor Municipal Code **Chapter 18.04 Planning Commission:**

18.04.010 Membership
The city planning commission shall consist of seven members, appointed by the mayor, subject to approval of the city council.

18.04.020 Terms of office.
The term of office of the seven members appointed by the mayor shall be three years.

SUMMARY STATEMENT

Ms. Jensen has served on the Planning Commission since 2006. Ms. Jensen has confirmed that she will serve another term if re-appointed. If re-appointed, her term will expire in June 2012.

STANDING COMMITTEE REPORT

N/A

RECOMMENDED ACTION

Approve the re-appointment of Kristi Jensen to the Oak Harbor Planning Commission for a three-year term.

ATTACHMENTS

None.

MAYOR'S COMMENTS

City of Oak Harbor
City Council Agenda Bill

Agenda Bill No. 2/A 4a
Date: June 2, 2009
Subject: Noise Permit – Christ the King Community Church

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 Christ the King Community Church for amplified sound associated with an outdoor worship service.

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) will not disregard 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:

Christ the King Community Church has submitted a Noise Permit request for amplified sound associated with an outdoor worship service scheduled for July 5, 2009 from 11:00 a.m. to 2:00 p.m. The amplified sound will consist of a PA system and speakers associated with the Church's normal worship band which consists of two vocalists, guitars and percussion/drums. The music will last approximately twenty minutes, followed by a thirty minute sermon (also amplified).

The Application was reviewed by Fire, Police, and Public Works Departments. No conditions of approval were requested.

STANDING COMMITTEE REVIEW:

Not required.

RECOMMENDED ACTION:

Grant a noise permit for amplified sound to the Christ the King Community Church.

ATTACHMENTS:

Special Event Permit/Noise Permit Application.
Noise Permit.

MAYOR'S COMMENTS:

CITY OF Oak Harbor
WHIDBEY ISLAND, WASHINGTON

receive
4/29/09
5/14/09

SPECIAL EVENT PERMIT/NOISE PERMIT

APPLICATION INFORMATION:
Please check the event type:

- ☐ **Athletic Event**
- ☐ **Carnival**
- ☐ **Car Show**
- ☐ **City Facility Reservation**
- ☐ **Marina Event**
- X ☒ **Noise Permit**
- ☐ **Parade**
- x ☒ **Park Event**
- ☐ **Other**

Name of Applicant/Organization: **Christ the King Community Church**

Person in Charge: **Don Jaques** Address:

Phone Number: Daytime: Work: Email:

Additional Authorized Individuals:
Phone Number: Daytime: Email: n

Emergency Contact:

Phone Number: Daytime:

Type of Activity Planned (describe event): **An outdoor worship service, including amplified music and a sermon. Following the service we will have a picnic/potluck and games in the park. We plan to use the Yacht Club's outdoor areas as well.**

Is this an event involving political or religious activity intended primarily for the communication or expression of ideas? (Please circle) **YES**

Will Participants Pay a Fee or Make a Donation? (Please circle) **NO**

Will City Services/Street Closures/Equipment be required? If so, please describe: _**NO**

Date(s) of Proposed Event: **Sunday July 5, 2009**
Hours of Operation: **11:00am-2:00pm**

Set-up Date/Time: **9:00am Sunday July 5.**

Dismantling Date/Time: **2:00pm Sunday July 5**

Number of Staff/Volunteers: **10**

Estimated Number of Participants: **150**
LOCATION/SHEET TO BE USED (describe area to be used, attach map/route plan): Catalina Park and outdoor area of OH Yacht Club.

Special Considerations – Will there be:

Amplified sound indoors? _____ outdoors?__YES
(***May require a noise permit, which is granted by the City Council****)

Alcohol? (Please circle) **NO**

Animals? (Please circle) **NO** number _____ species _____

Booths/Commercial Vendors: (Please circle) **NO**

Cooking/Food Service: (Please circle) **YES** We'll be grilling and having a potluck.

Fire/Fireworks/Pyrotechnics: (Please circle) **NO**

Mechanical Rides: (Please circle) **NO**

Portable Restrooms: (Please circle) **NO**

Signs: (Please circle) **YES** We would like to use a few wooden A-board signs to direct people to the service/potluck.

Stage: (Please circle) **Possibly a small one.**

Other special considerations: _____
_____

List any special signs/barricades/cones requested to be supplied by City. _____
_____
_____
_____

***NOISE PERMIT INFORMATION**

Oak Harbor Municipal Code Section 6.56.030 contains provisions which restrict or prohibit certain unnecessary noises, such as sound systems, loudspeakers and amplified music on any street or public place of the City.

The City Council may grant a Noise Permit to deviate from the provisions of OHMC 6.56.030 under the following circumstances if it is determined the activity and associated noise will: 1) not disregard 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.

To obtain a Noise Permit, please provide the activities you wish to carry out and the noise requirements of your event. We would like to do an outdoor church service in Catalina Park. Our normal worship band includes a couple of vocalists, a couple of guitars and percussion/drums. The volume will be controlled and moderate. Music will last 20 minutes or so, followed by a 30 minute sermon (also amplified). During the potluck/picnic we would like to play background music.

A copy of OHMC Section 6.56.030 may be obtained upon request.

****

Public Relation: Please state what efforts, if any, have occurred, or you intend to make, to notify residents or businesses that will likely be affected by your event. Please attach any letters of support. If permit is granted it will be the responsibility of event organizers to alert those likely to be impacted. (i.e. street closures, no parking zones, noise, etc.)

I do not believe our event will affect any businesses since we are planning on renting the OH Yacht Club.

ATTACH COPIES OF BROCHURES, POSTERS, FLYERS, OR MAILINGS ADVERTISING THIS EVENT

INSURANCE – The City does not maintain insurance that will respond to claims against the applicant arising out of the use of facilities by the applicant, its members, or those attending the event. Depending on the type of event you are planning, and the activity and risk level of your group, you may be required to obtain bodily injury and property damages liability insurance in accordance with City policy, name the City as an **additional insured** on the policy, and be responsible for obtaining said insurance. After reviewing this application, the City will determine whether you must obtain liability insurance.

HOLD HARMLESS – Applicant/Permittee/User shall defend, indemnify and hold harmless the City of Oak Harbor, its agents, employees and officials, while acting within the scope of their duties, from all causes of action, demands and claims, including the cost of their defense, arising in favor of the organization, the organization's employees or third parties on account of personal injuries, bodily injuries, death, or damage to property arising out of the acts or omissions of the organization, its employees or representatives, concessionaires of the event or any other person or entity, except for liability caused due to the sole negligence of the City.

Date: **4/28/09**
Signature of Applicant: _____
Organization/Title: **Associate Pastor, Christ the King Community Church**

(FOR OFFICIAL USE ONLY)

APPROVED BY: _____Parks & Recreation Dept. _____Police Dept.
_____Planning Dept. _____Public Works Dept.
_____Fire Dept. _____Mayor/Designee

Permit Detained for the Following Reasons:_____
_____
_____
_____

Recommend Approval Under the Following Conditions_____
_____
_____
_____

CITY OF OAK HARBOR

NOISE PERMIT

Name of Organization:	Christ the King Community Church
Location of Event:	Catalina Park and outdoor area of Oak Harbor Yacht Club
Date of Event:	July 5, 2009
Hours of Operation:	10:30 a.m. to 2:30 p.m.
Permitted Noise:	Amplification system for church band – vocalists, guitars and percussion/drums
Approval Conditions:	None
Date of City Council Approval:	

Issued this day of , 2009

_____

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. N/A 4D
Date: June 2, 2009
Subject: Noise Permit – Clear Ahead Marine Productions – Race Week

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 Clear Ahead Marine Productions for amplified sound associated with Race Week.

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) will not disregard 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:

Clear Ahead Marine Productions has submitted a Noise Permit request for amplified sound associated with Race Week, which is scheduled for July 12th – 17th, 2009. The amplified sound will consist of a sound system for a band which will be performing each night from 6:00 p.m. – 9:00 p.m. during the event.

The Application was reviewed by Fire, Police, and Public Works Departments. No conditions of approval were requested for the noise permit.

STANDING COMMITTEE REVIEW:

Not required.

4/17/09

CITY OF Oak Harbor
WHIDBEY ISLAND WASHINGTON

SPECIAL EVENT PERMIT
Activity Routing Form

APPLICATION INFORMATION:
Please check the event type:

- ☐ **City Facility Reservation**
- ☐ **Car Show**
- ☐ **Parade**
- ☐ **Athletic Event**
- ☐ **Temporary Use Permit**
- ☐ **Peddlers Permit**
- ☒ **Marina Event**
- ☐ **Carnival**
- ☐ **Park Event**
- ☐ **Other**

Name of Applicant/Organization: ___Clear Ahead Marine Productions

Person in Charge: __ ___Address:__

Phone Number: Daytime: Work: _ _Email

Additional Authorized Individuals:_____

Phone Number: Daytime: _____ Work: _____Email: _____

Emergency Contact: ___

Phone Number: Daytime: Work: _Email:

Type of Activity Planned (describe event): Whidbey Island Race Week 2009. A Sailboat Regatta that is in its 27th year at Oak Harbor.

Is this an event involving political or religious activity intended primarily for the communication or expression of ideas? (Please circle) YES (NO)

Will Participants Pay a Fee or Make a Donation? (Please circle) (YES) NO

Will City Services/Street Closures/Equipment be required? If so, please describe: _____
The police department will be needed in the evening parties and for security at night.

Date(s) of Proposed Event:_____July 12th-17th, 2009_____

Hours of Operation: ___Sailing during the day, Party in the evening_____

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Set-up Date/Time: _____July 10th 10 am_____

Dismantling Date/Time: _____July 18th_____

Number of Staff/Volunteers: _____50_____

Estimated Number of Participants: _____1000_____

LOCATION/SHEET TO BE USED (describe area to be used, attach map/route plan): __Oak Harbor Marina and Yacht Club._____

Special Considerations – Will there be:

Amplified sound indoors? _No_____ outdoors?_____Yes_____6-9pm_____
(May require a noise permit, which is granted by the City Council)

Alcohol? (Please circle) YES NO

Animals? (Please circle) YES NO number _____ species _____

Booths/Commercial Vendors: (Please circle) YES NO

Cooking/Food Service: (Please circle) YES NO

Fire/Fireworks/Pyrotechnics: (Please circle) YES NO

Mechanical Rides: (Please circle) YES NO (If yes, requires additional permit)

Portable Restrooms: (Please circle) YES NO How Many ? 9 Some restrooms must meet ADA requirements.

Signs: (Please circle) YES NO

Stage: (Please circle) YES NO

Other special considerations: _____

List any special signs/barricades/cones requested to be supplied by City. EXTRA GARBAGE COLLECTION

****

Public Relation: Please state what efforts, if any, have occurred, or you intend to make, to notify residents or businesses that will likely be affected by your event. Please attach any letters of support. If permit is granted it will be the responsibility of event organizers to alert those likely to be impacted. (i.e. street closures, no parking zones, noise, etc.) _____

_____

_____

ATTACH COPIES OF BROCHURES, POSTERS, FLYERS, OR MAILINGS ADVERTISING THIS EVENT

INSURANCE – The City does not maintain insurance that will respond to claims against the applicant arising out of the use of facilities by the applicant, its members, or those attending the event. Depending on the type of event you are planning, and the activity and risk level of your group, you may be required to obtain bodily injury and property damages liability insurance in accordance with City policy, name the City as an **additional insured** on the policy, and be responsible for obtaining said insurance. After reviewing this application, the City will determine whether you must obtain liability insurance.

HOLD HARMLESS – Applicant/Permittee/User shall defend, indemnify and hold harmless the City of Oak Harbor, its agents, employees and officials, while acting within the scope of their duties, from all causes of action, demands and claims, including the cost of their defense, arising in favor of the organization, the organization's employees or third parties on account of personal injuries, bodily injuries, death, or damage to property arising out of the acts or omissions of the organization, its employees or representatives, concessionaires of the event or any other person or entity, except for liability caused due to the sole negligence of the City.

Date: _____2/15/2009_____
Signature of Applicant: _____
Organization/Title:_____Owner_____

(FOR OFFICIAL USE ONLY)

APPROVED BY:

_____Parks & Recreation Dept.
_____Planning Dept.
_____Fire Dept.
_____Police Dept.
_____Public Works Dept.
_____Mayor/Designee

Permit Detained for the Following Reasons:_____

_____

_____

_____

Recommend Approval Under the Following Conditions_____

_____

_____

_____

RECOMMENDED ACTION:

Grant a noise permit for amplified sound to Clear Ahead Marine Productions.

ATTACHMENTS:

Special Event Permit/Noise Permit Application.
Noise Permit.

MAYOR'S COMMENTS:

CITY OF OAK HARBOR

NOISE PERMIT

Name of Organization:	Clear Ahead Marine Productions Whidbey Island Race Week
Location of Event:	Oak Harbor Yacht Club and Catalina Park
Dates of Event:	July 12th - 17th, 2009
Hours of Operation:	6:00 p.m. – 9:00 p.m.
Permitted Noise:	Amplified sound system associated with live band.
Approval Conditions:	None
Date of City Council Approval:	

Issued this day of , 2009

Karen Crouch, Special Events Coordinator

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

Please post this notice on site

24

City of Oak Harbor
City Council Agenda Bill

Bill No. 5
Date: June 2, 2009
Subject: Manufactured Home Park Code Amendments – Final Adoption

FROM: Steve Powers RSP
Director of Development Services

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

PURPOSE
This agenda bill presents final amendments to Oak Harbor Municipal Code Chapters 19.08, 19.20 and 19.25 as they relate to manufactured home parks and subdivisions.

AUTHORITY
The authority to establish land use controls is provided by RCW 36.70A.040. RCW 35A.21.312 provides that the City may not discriminate against consumers' choices in the place or use of a manufactured home and that for the purposes of siting such homes the City must regulate them the same as a site built home.

SUMMARY STATEMENT
Provision of affordable housing is an important goal of the Growth Management Act. This goal is reflected in the goals and policies of the Housing Element of the City's Comprehensive Plan. In addition to helping meet the needs of residents, an adequate supply of affordable housing can help the City achieve its economic development and land use objectives.

The City Council adopted interim regulations on April 21, 2009 intended to correct discrepancies in the existing code, help the City meet our Growth Management Act responsibility to provide opportunities for affordable housing and facilitate the construction of the City's proposed affordable housing project. The interim regulations permit manufactured home parks in all residential zones within the City (R-1, R-2, R-3, and R-4). Based on comments at the April 21 City Council public hearing and at the April 28 and May 26 Planning Commission public hearings, staff has prepared a final ordinance for Council consideration. The final ordinance differs from the interim ordinance in several notable ways:

- **Manufactured home parks not allowed in R-1.** The final ordinance allows manufactured home *subdivisions* in R-1, but not manufactured home *parks*. The park concept includes common parking, circulation and landscape areas. A manufactured home subdivision would look more like traditional residential developments already allowed in the R-1 with lots fronting on public streets and parking primarily on private

lots. Common open space similar to that found in planned residential developments will be required in a manufactured home subdivision.

- **Defines when density bonuses apply in the R-1 zoning district.** The base density in the R-1 zoning district is 3-6 dwelling units per acre. A density bonus of up to two (2) additional dwelling units per acre is proposed for certain manufactured home subdivisions. Density bonuses are only available to projects which meet all of the following conditions: (1) are affordable to households with incomes of 80 percent or less of the area median family income known as "qualified affordable housing", (2) apply public funding to offset construction or operating expenditures, and (3) the land is owned by a public or non-profit entity. The density bonus provides an incentive for development of publicly-funded affordable housing and optimizes tax-payer investments in these projects by narrowly defining when density bonuses are available. Public or non-profit entity ownership of the land provides a mechanism for long-term property and facility maintenance.

- **Makes clear that manufactured housing can include attached or detached structures.** The definition of "manufactured home" in the interim ordinance did not include attached housing products, such as townhouses, rowhouses, and other multifamily structures. Recognizing current market trends, the new definition in the final ordinance attached to this agenda bill adds attached housing types to the definition of "manufactured home."

The final ordinance continues to accomplish many of the same objectives as the interim ordinance, such as:

- Provides opportunities for manufactured homes in all residential districts in the form of subdivisions in the R-1 and R-2 districts and in the form of parks in the R-2, R-3 and R-4 districts.
- Defining what constitutes a 'qualified affordable housing project.'
- Clarifying and simplifying the plan submittal and approval process.
- Establishing consistency between the different sections of the Municipal Code that pertain to manufactured homes.

Schedule

The City was granted a 10-day expedited review from the Department of Community Trade and Economic Development (CTED) for the manufactured home park ordinance. Since the City has met its Growth Management Act (GMA) notice and review responsibilities, City Council approval of the final ordinance is the last step in the adoption process.

Other, minor amendments are necessary in Title 16, Manufactured Homes, and in Chapter 18.20, Permit Processing. These will come forward to the City Council at a later date.

STANDING COMMITTEE REPORT

The interim regulations were presented to the Governmental Services Standing Committee on April 13, 2009. The revisions noted in this agenda bill have not been presented separately to the Governmental Services Standing Committee.

PLANNING COMMISSION REPORT

This item was presented to the Planning Commission on April 28 and May 26, 2009. Staff will brief Council and answer questions regarding the discussion at the Planning Commission hearings at the June 2, 2009 Council meeting.

RECOMMENDED ACTION

- Conclude the public hearing; and
- Provide an additional opportunity for testimony on the revisions as well as on the entire ordinance; and
- Adopt an ordinance making final the interim ordinance adopted on May 5, 2009 referenced as Ordinance Number 1552. The ordinance will make final the revised Title 19 "Zoning" amending various sections related to manufacture home parks and subdivisions.

ATTACHMENTS

Draft, Final Ordinance

MAYOR'S COMMENTS

ORDINANCE NO.

AN ORDINANCE MAKING FINAL THE INTERIM ORDINANCE ADOPTED ON MAY 5, 2009 AND REFERENCED AS NUMBER 1552. THIS ORDINANCE REPEALS~~ING~~ TITLE 19 "ZONING" OF THE OAK HARBOR MUNICIPAL CODE AND ADOPTS~~ING~~ CHAPTERS OF TITLE 19 BY SECTION AND WITH AMENDMENTS TO SECTIONS 19.08.555, 19.08.560, 19.08.~~690~~565~~,~~, ~~1~~19.~~20~~08.~~100~~695, 19.20.10~~50~~, ~~-~~19.20.105, 19.20.~~110~~125, 19.20.130, ~~19.20.120, 19.20.125, 19.20.130, 19.20.145, 19.20.150, 19.20.180, 19.20.185, 19.20.215,~~ 19.20.850, 19.20.860, 19.20.870, 19.20.880, 19.20.890, 19.20.900, 19.20.905, 19.20.910, 19.20.920, 19.20.930, 19.25.010, 19.25.020, 19.25.030, 19.25.040, 19.25.050, 19.25.060, 19.25.065, 19.25.070, ~~19.25.080,~~ 19.25.090, 19.25.100, 19.25.110, 19.25.120, ~~19.25.130, 19.25.140,~~ 19.25.150, 19.25.160, ~~19.25.170,~~ 19.25.180, 19.25.190, ~~19.25.190,~~ 19.25.200, 19.25.210, 19.25.220, 19.25.230, AND 19.25.240 OF THE OAK HARBOR MUNICIPAL CODE TO ALLOW MANUFACTURED HOME SUBDIVISIONS IN R-1 AND R-2 RESIDENTIAL ZONES AND MANUFACTURED HOME PARKS IN ~~ALL~~ R-2, R-3 AND R-4 RESIDENTIAL ZONES AND PROVIDE DENSITY BONUSES TO "QUALIFIED AFFORDABLE HOUSING PROJECTS,"

WHEREAS, the City of Oak Harbor acknowledges that the provision of an adequate supply of affordable housing within the City boundaries is an important housing goal in the City's Comprehensive Plan and,

WHEREAS, the City of Oak Harbor recognizes that manufactured homes make up a crucial component of the City's affordable housing stock and,

WHEREAS, the City's existing municipal code restricts development of manufactured home parks to the R-3 and R-4 (multifamily residential / medium-high and high density residential) zones and,

WHEREAS, the City of Oak Harbor understands that compatibility of manufactured homes with surrounding land uses is of critical importance and that placement of these homes in park settings promotes greater compatibility

WHEREAS, having reviewed the proposed amendment to the manufactured home park code and associated sections, a form of development regulation, for consistency with its Comprehensive Plan as required by RCW 36.70A.040(4); and

WHEREAS, also having reviewed the proposed amendment for consistency with the text amendment criteria identified in OHMC 19.80, namely consistency with the Oak Harbor Comprehensive Plan and substantial promotion of the public health, safety and welfare; and

WHEREAS, being satisfied that the proposed amendment is consistent with the above requirements; and

WHEREAS, Ordinance 1221 § 1 adopted Title 19 of the Oak Harbor Municipal Code in its entirety and must therefore be set out in full to amend any of its provisions;

NOW, THEREFORE

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

Section One. Oak Harbor Municipal Code Title 19 entitled "Zoning" last amended by Ord. 1405 in 2004 is hereby repealed in its entirety.

Section Two. Title 19 of the Oak Harbor Municipal Code is hereby re-adopted to contain the following chapters:

Title 19
ZONING

Chapters:

19.04 Title, Purpose, Standards and Relationship
19.08 Definitions
19.12 Establishment of Districts
19.16 District Boundaries
19.18 Nonconforming Uses and Structures
19.20 Zoning Districts
19.25 Manufactured Home Parks and Subdivisions
19.26 Relationship to the Oak Harbor Comprehensive Plan
19.28 Limitations of Uses
19.29 Wireless Communications Facilities
19.31 Planned Residential Developments
19.34 Home Occupations
19.35 Temporary Use Permits
19.36 Sign Code
19.38 Essential Public Facilities
19.42 Accessory Dwelling Units
19.44 Parking
19.46 Landscaping and Screening
19.47 Land Clearing
19.48 Site Plan Review Procedures
19.50 Aviation Environs Overlay Zone
19.56 Shoreline Management
19.60 Administration
19.66 Variances
19.67 Conditional Uses
19.75 Map Amendments and Contract Rezones
19.80 Text Amendments
19.85 Procedure for Amendments to the Zoning Code
19.90 Assurances

19.100 Penalties, Nuisances and Enforcement
19.110 Judicial Review

Section Three. Oak Harbor Municipal Code Chapter 19.04 is hereby re-adopted to read as follows:

Chapter 19.04
TITLE, PURPOSE, STANDARDS AND RELATIONSHIP

Sections:

19.04.010 Title.
19.04.020 Purpose.
19.04.030 Standards.
19.04.040 Relationship between comprehensive plan policies and zoning classification.

19.04.010 Title.

This title shall be known as the comprehensive zoning ordinance of the city of Oak Harbor.

This title shall consist of the text hereof and the map or maps entitled "City of Oak Harbor, Washington Zoning Map," part of the comprehensive zoning ordinance. If any conflict between the map or maps and this title should arise, the text of this title shall prevail.

19.04.020 Purpose.

(1) The text and zoning map in this title constitute the comprehensive zoning ordinance and regulations for the incorporated area of the city of Oak Harbor and are adopted to protect and promote the public health, safety, morals and welfare and to protect the economic and social advantages which result from an orderly planned use of land resources. Such regulations are designed to achieve the following objectives:

(a) To promote the achievement of the comprehensive plan for the city of Oak Harbor;

(b) To advance the position of the city of Oak Harbor as a regional center of commerce, recreation and culture;

(c) To provide for desirable, appropriately located living areas in a variety of dwelling types, and at a suitable range of population densities, with adequate provision for useful open space;

(d) To protect residential, commercial, industrial and civic areas from the intrusions of incompatible uses and to provide opportunities for establishments to create efficient operations in mutually beneficial relationships to each other and to share their services;

(e) To insure preservation of adequate space for commercial, industrial and other activities necessary for a healthy economy;

(f) To promote safe, fast and efficient movement of people and goods without sacrifice to the quality of Oak Harbor's environment, and to provide adequate off-street parking;

(g) To achieve excellence and originality of design in all future developments and to preserve the natural beauty of Oak Harbor's setting;

(h) To stabilize expectations regarding future development of Oak Harbor, thereby providing a basis for wise decisions with respect to such

development;

(i) To preserve and enhance the quality of Oak Harbor's environment.

(2) Since the public health, safety and general welfare is superior to the interests and pecuniary gains of the individual, the intent of this title may limit the use of property and prevent its most profitable gain. If some reasonable use of property is allowed by this title, the effect is not confiscatory and is a proper exercise of police power.

19.04.030 Standards.

The standards established by this title are determined to be the minimum requirements essential for its purpose and intent.

19.04.040 Relationship between comprehensive plan policies and zoning classification.

It is the intent of this title to provide a direct relationship between the provisions of this zoning code, its administration and enforcement, and the adopted Oak Harbor comprehensive plan. This relationship is established by the adoption of development regulations which implement the comprehensive plan. All development, uses and activities governed by this title shall be in conformance with the policies of the Oak Harbor comprehensive plan.

Section Four. Oak Harbor Municipal Code Chapter 19.08 is hereby re-adopted and amended to read as follows:

Chapter 19.08
DEFINITIONS

Sections:

19.08.005 Definitions.
19.08.010 Accessory dwelling unit.
19.08.015 Accessory use.
19.08.020 Alley.
19.08.025 Alteration.
19.08.030 Assisted living facility.
19.08.035 Auto convenience market.
19.08.040 Automatic teller machine.
19.08.045 Automobile service station including self-service.
19.08.050 Aviation environs.
19.08.055 Banner.
19.08.060 Basement.
19.08.065 Berm.
19.08.070 Binding site plan.
19.08.075 Hearing examiner.
19.08.078 Building code.
19.08.079 Fire code.
19.08.080 Brew pub.
19.08.085 Buffer.
19.08.090 Buildable area.
19.08.095 Building.
19.08.100 Building, accessory.
19.08.105 Building area.
19.08.110 Building, detached.
19.08.115 Building height.
19.08.120 Building line.
19.08.125 Building, multiple-occupancy.
19.08.130 Building, office.
19.08.135 Building, quasi-public.
19.08.140 Building, single-occupancy.
19.08.145 Building site.
19.08.150 Canopy.
19.08.155 Carport.
19.08.160 Certificate of occupancy.
19.08.165 Child day care center.
19.08.170 Church.
19.08.175 City.
19.08.180 City staff.
19.08.185 Club.
19.08.190 Coffee kiosk.

19.08.195 Commercial use.
19.08.200 Commercial vehicle.
19.08.205 Conditional use.
19.08.210 Condominium.
19.08.215 Court.
19.08.220 Covered moorage building area.
19.08.225 Currency exchange.
19.08.230 Data processing facility.
19.08.235 Day-night average sound level (Ldn).
19.08.240 Deciduous.
19.08.245 Density.
19.08.250 Design review board.
19.08.252 Director of development services.
19.08.255 Dock.
19.08.260 Dwelling, multifamily.
19.08.265 Dwelling, single-family.
19.08.270 Dwelling unit.
19.08.275 Electrical distribution substation.
19.08.280 Essential public facility.
19.08.285 Essential use.
19.08.290 Evergreen.
19.08.295 Extended stay motel.
19.08.300 Factory-built structure.
19.08.305 Family.
19.08.310 Floor area.
19.08.315 Fraternity, sorority or student cooperative.
19.08.320 Garage, commercial.
19.08.325 Gated community.
19.08.330 General promotions.
19.08.335 Grade (adjacent ground elevation).
19.08.340 Grand openings and anniversaries.
19.08.345 Greenbelt.
19.08.350 Ground cover.
19.08.355 Health club.
19.08.360 Home, family child day care.
19.08.365 Home, foster.
19.08.370 Home, group.
19.08.375 Home improvement center.
19.08.380 Home occupation.
19.08.385 Hospital.
19.08.390 Hospital, animal.
19.08.395 Hotel.
19.08.400 House, apartment.
19.08.405 House, boarding, lodging or rooming.
19.08.410 House, guest.
19.08.415 Institution, educational.

19.08.420 Junkyard.
19.08.425 Kennel, commercial.
19.08.430 Kitchen.
19.08.435 Land clearing.
19.08.440 Landscape perimeter.
19.08.445 Landscape policy manual.
19.08.450 Landscape setback.
19.08.455 Landscaping.
19.08.460 Ldn contour.
19.08.465 Lot.
19.08.470 Lot area.
19.08.475 Lot, corner.
19.08.480 Lot coverage.
19.08.485 Lot depth.
19.08.490 Lot, developed single-family residential.
19.08.495 Lot, interior.
19.08.500 Lot, irregular shaped.
19.08.505 Lot line.
19.08.510 Lot line, front.
19.08.515 Lot line, rear.
19.08.520 Lot line, side.
19.08.525 Lot, partially developed single-family residential.
19.08.530 Lot, through.
19.08.535 Lot, undeveloped.
19.08.540 Lot width.
19.08.545 Marquee.
19.08.550 Mixed use.
19.08.555 ~~Mobile~~ Manufactured home.
19.08.560 ~~Mobile~~ Manufactured home park.
19.08.565 Manufactured home subdivision.
19.08.57~~065~~0 Moorage.
19.08.57~~570~~5 Motel.
19.08.58~~075~~0 Multiple-occupancy complex.
19.08.58~~50~~5 Neighborhood convenience store.
19.08.59~~085~~0 Noise zone map.
19.08.59~~590~~5 Nonconforming structure.
19.08.600~~595~~ Nonconforming use.
19.08.605~~600~~ Nonconforming use, land.
19.08.610~~05~~ Occupant.
19.08.615~~10~~ Opaque.
19.08.620~~15~~ Open space.
19.08.625~~20~~ Parapet.
19.08.630~~25~~ Parking, employee.
19.08.635~~30~~ Parking, off-street.
19.08.640~~35~~ Parking space.
19.08.645~~40~~ Penthouse.

19.08.65~~045~~ Permit, conditional use.
19.08.65~~550~~ Permit, land clearing.
19.08.66~~055~~ Permit, minor clearing.
19.08.66~~560~~ Permit, temporary use.
19.08.67~~065~~ Permitted use.
19.08.67~~570~~ Primary use.
19.08.68~~075~~ Professional office.
19.08.68~~580~~ Property line.
19.08.69~~085~~ Public utility.
19.08.69~~590~~ Qualified Affordable Housing
19.08.~~690~~700~~695~~ Recreation facilities.
19.08.~~695~~7050 Recreational vehicle.
19.08.~~700~~7100~~5~~ Reside.
19.08.~~705~~7150 School, commercial.
19.08.~~710~~7201~~5~~ Schools – Elementary, junior or senior high, including public, private and parochial.
19.08.~~715~~7250 Screen.
19.08.~~720~~7302~~5~~ Secondary use, incidental or accessory.
19.08.~~725~~7350 Setback and yard requirements.
19.08.~~730~~7403~~5~~ Shelter station.
19.08.~~735~~7450 Shopping center.
19.08.~~740~~7504~~5~~ Shrub.
19.08.~~745~~7557~~50~~ Sign.
19.08.~~750~~7607~~55~~ Sign, abandoned.
19.08.~~755~~7657~~60~~ Sign, area or surface area.
19.08.~~760~~7707~~65~~ Sign, billboard.
19.08.~~765~~7757~~70~~ Sign, building-mounted.
19.08.~~770~~7807~~5~~ Sign, canopy.
19.08.~~775~~7857~~80~~ Sign, construction.
19.08.~~780~~7908~~5~~ Sign, freestanding.
19.08.~~785~~7959~~0~~ Sign, grade.
19.08.~~790~~8007~~95~~ Sign, height.
19.08.~~795~~8058~~00~~ Sign, incidental.
19.08.~~800~~8108~~05~~ Sign, low-profile.
19.08.~~805~~8150 Sign, noncommercial public service.
19.08.~~810~~8201~~5~~ Sign, political.
19.08.~~815~~8258~~20~~ Sign or signs, primary.
19.08.~~820~~8308~~25~~ Sign, projection.
19.08.~~825~~8358~~30~~ Sign, reader board.
19.08.~~830~~8408~~35~~ Sign, roof.
19.08.~~835~~8458~~40~~ Signs, subdivision.
19.08.~~840~~8508~~45~~ Signs, temporary and special.
19.08.~~845~~8558~~50~~ Sign, window.
19.08.~~850~~8608~~55~~ Skilled nursing facility.
19.08.~~855~~8658~~60~~ Solid planting.
19.08.~~860~~8708~~65~~ Sorority.

19.08.~~865~~875~~870~~ Story.
19.08.~~870~~880~~875~~ Street.
19.08.~~875~~885~~880~~ Structure.
19.08.~~880~~890~~85~~ Structural alteration.
19.08.~~885~~895~~890~~ Surface area or facade.
19.08.~~890~~900~~895~~ Temporary.
19.08.~~895~~896 Tree.
19.08.~~896~~897 Tree cluster, grove or stand.
19.08.~~897~~898 Tree root zone.
19.08.~~898~~899 Understory.
19.08.900 Tree, ornamental.
19.08.905 Tree, shade.
19.08.910 Tree, significant.
19.08.915 Upholstery shop.
19.08.920 Use.
19.08.925 Use district.
19.08.930 Used car lot.
19.08.935 Uses, prohibited.
19.08.940 Variance.
19.08.945 Vehicular surface area.
19.08.950 Video rental store.
19.08.955 Waste, hazardous.
19.08.960 Waste, hazardous – Off-site treatment and storage facility.
19.08.965 Waste, hazardous – On-site treatment and storage facility.
19.08.970 Waste, hazardous – Storage of.
19.08.975 Waste, hazardous – Treatment of.
19.08.980 Way open to public.
19.08.985 Wireless communications facility, macro.
19.08.990 Wireless communications facility, micro.
19.08.995 Wireless communications facility, mini.
19.08.1000 Wireless communications facility, monopole.
19.08.1005 Xeriscape.
19.08.1010 Yard.
19.08.1015 Yard, front.
19.08.1020 Yard, rear.
19.08.1025 Yard, service.
19.08.1030 Yard, side.

19.08.005 Definitions.

As used in this title, words in the present tense include the future, words in singular number include the plural, and words in the plural number include the singular, the word "person" may be taken for persons, association, firm, partnership or corporation, the word "structure" includes buildings, the word "occupied" includes designed or intended to be used and the word "shall" is always mandatory and not merely directive. The following words and phrases unless the context of this title otherwise requires shall have the meaning set forth in this chapter.

19.08.010 Accessory dwelling unit.
"Accessory dwelling unit" means a habitable living unit added to, created within or detached from a single-family dwelling that provides basic requirements for living, sleeping, eating, cooking and sanitation.

19.08.015 Accessory use.
"Accessory use" means a use incidental and subordinate to the principal use and located on the same lot or in the same building as the principal use.

19.08.020 Alley.
"Alley" means a passageway open to public travel which affords generally a secondary means of vehicular access to abutting lots and is not intended for general traffic circulation.

19.08.025 Alteration.
"Alteration" means a change or rearrangement of the structural parts of existing facilities, or an enlargement by extending the sides or increasing the height or depth, or the moving from one location to another. In buildings for business, commercial, industrial or similar uses the installation or rearrangement of partitions affecting more than one-third of a single floor area shall be considered an alteration.

19.08.030 Assisted living facility.*
"Assisted living facility" means a facility that provides, on a regular basis, personal care, including dressing and eating and health-related care and services, to individuals who require such assistance but who do not require the degree of care and treatment that a hospital or skilled nursing facility provides.

* Ordinance 1221 presents this section as 19.08.415. This section and subsequent sections through 19.08.415 have been editorially renumbered to maintain alphabetization.

19.08.035 Auto convenience market.
"Auto convenience market" means a place where gasoline, motor oil, lubricants, or other minor accessories are retailed directly to the public on the premises in combination with the retailing of items typically found in a convenience market or supermarket.

19.08.040 Automatic teller machine.
"Automatic teller machine" means an automated device that performs banking or financial functions at a location remote from the controlling financial institution.

19.08.045 Automobile service station including self-service.
"Automobile service station including self-service" means any building, land area or other premises or portion thereof used or intended to be used for the retail dispensing or sales of vehicular fuels and including as accessory use the sale and installation of lubricants, tires, batteries and similar accessories.

19.08.050 Aviation environs.
"Aviation environs" means the geographic area that is affected by the Whidbey Island Naval Air Station at Ault Field air traffic operations and defined on the basis of those areas immediately affected by the 60 Ldn and greater noise exposure area from the Air

Installation Compatible Use Zones Study for NAS Whidbey Island Ault Field. This area is represented on the Oak Harbor noise zone map and designated aviation environs overlay zone (AE).

19.08.055 Banner.
"Banner" means a flexible material (i.e., cloth, paper, vinyl, etc.) on which a sign is painted or printed.

19.08.060 Basement.
"Basement" means a space having one-half or more of its floor to ceiling height above the average level of the adjoining ground and with the floor to ceiling height of not less than 7.5 feet.

19.08.065 Berm.
"Berm" means an earthen mound designed to provide visual interest, screen undesirable views, and/or decrease noise.

19.08.070 Binding site plan.
"Binding site plan" means a drawing to a scale specified by local ordinance which:
(1) Identifies and shows the areas and locations of all streets, roads, improvements, utilities, open spaces, and any other matters specified by local regulations;
(2) Contains inscriptions or attachments setting forth such appropriate limitations and conditions for the use of the land as are established by the local government body having authority to approve the site plan; and
(3) Contains provisions making any development be in conformation with the site plan.

19.08.075 Hearing examiner.
"Hearing examiner" means a quasi-judicial hearing officer empowered to hear appeals from orders or determinations made by an administrative official charged with the enforcement of this title and to vary or modify certain provisions of this title relating to the use, construction or alteration of buildings or structures or the use of land, so that the spirit of this title is observed, public safety and welfare secured and substantial justice done.

19.08.078 Building code.
"Building code" means the International Building Code as now in effect or as hereafter amended, added to or otherwise changed and all sections of OHMC Title 17 which provides for a building code for Oak Harbor as it is now in effect or as hereafter amended, added to or otherwise changed.

19.08.079 Fire code.
"Fire code" means the International Fire Code as now in effect or as hereafter amended, added to or otherwise changed and all sections of OHMC Title 8 which provides for a fire code for Oak Harbor as it is now in effect or as hereafter amended, added to or otherwise changed.

19.08.080 Brew pub.
"Brew pub" means an establishment which contains a full-service standard restaurant and

alcoholic beverages. This establishment also contains a minibrewery as an accessory use; provided, that sales of the minibrewery products are less than 50 percent of total sales. This minibrewery shall be for the brewing of handcrafted, natural beer intended for retail consumption on the premises and on any premises that has a license as a standard full-service restaurant owned and operated in its entirety by the same corporate ownership and management as the brew pub.

19.08.085 Buffer.
"Buffer" means a combination of physical space and vertical elements, such as plants, berms, fences or walls, the purpose of which is to separate and screen land uses from each other.

19.08.090 Buildable area.
"Buildable area" means that portion of the building site that remains after the required yards and open spaces have been excluded.

19.08.095 Building.
"Building" means any structure having a roof, but excluding all forms of vehicles even though immobilized. When a use is required to be within a building, or where special authority granted pursuant to this title requires that a use shall be within an entirely enclosed building, then the term "building" means one so designed and constructed that all exterior walls of the structure shall be solid from the ground to the roof line, and shall contain no openings except for windows and doors which are designed so that they may be closed.

19.08.100 Building, accessory.
"Accessory building" means a subordinate building the use of which is incidental and customary to that of the principal building and which is located on the same lot including a private garage. If any accessory building is attached to the principal building by a common wall or roof, such accessory building shall be considered a part of the principal building.

19.08.105 Building area.
"Building area" means the total ground coverage of a building or structure which provides shelter measured from the outside of its external walls or supporting members or from a point four feet in from the outside edge of a cantilevered roof, whichever covers the greatest area.

19.08.110 Building, detached.
"Detached building" means a building surrounded on all sides by open space.

19.08.115 Building height.
"Building height" means the vertical distance from the average natural grade level to the highest point of the coping of a flat roof or the deck line of a mansard roof or to the average height of the highest gable of a pitched or hipped roof. Average natural grade shall be defined as the average elevation of the highest corners and the lowest corners of the lot or parcel.

19.08.120 Building line.

"Building line" means the line of that face, corner or part of a building nearest the property line, excluding eaves up to three feet.

19.08.125 Building, multiple-occupancy.
"Multiple-occupancy building" means a single structure housing more than one type of retail business office or commercial venture.

19.08.130 Building, office.
"Office building" means an office building in the commercial and residential-office land use districts as defined by this title.

19.08.135 Building, quasi-public.
"Quasi-public building" means a structure occupied by an activity essentially public in nature, supported by public funds under private ownership or contract and nonprofit in character.

19.08.140 Building, single-occupancy.
"Single-occupancy building" means a commercial building or structure with one major enterprise, generally under one ownership. A building is classified as single occupancy only if it has:
(1) One occupant;
(2) No wall in common with another building;
(3) No part of its roof in common with another building. (

19.08.145 Building site.
"Building site" means a parcel of land occupied or intended to be occupied by a main building and its accessory buildings together with all yards and open spaces required by this title.

19.08.150 Canopy.
"Canopy" means a freestanding structure affording protection from the elements to persons or property thereunder.

19.08.155 Carport.
"Carport" means a roofed structure providing space for the parking or storage of motor vehicles and enclosed on not more than two sides.

19.08.160 Certificate of occupancy.
"Certificate of occupancy" means a permit to occupy a premises issued by the building official after inspection has verified compliance with the requirements and provisions of this title and applicable building codes.

19.08.165 Child day care center.
"Child day care center" means a facility providing regularly scheduled care for a group of children one month of age through 12 years of age for periods less than 24 hours; except, a program meeting the definition of a family child day care home shall not be licensed as a day care center without meeting the requirements of WAC 388-150-020(5)(a).

19.08.170 Church.
"Church" means an establishment, the principal purpose of which is religious worship

and for which the principal building or other structure contains the sanctuary or principal place of worship and which includes related accessory uses in the principal building or in other separate structures.

19.08.175 City.
"City" shall mean the city of Oak Harbor.

19.08.180 City staff.
"City staff" shall mean the department(s) directed by the mayor to implement this title.

19.08.185 Club.
"Club" means an incorporated or unincorporated association of persons organized for a social, fraternal, athletic, educational, literary or charitable purpose. Property occupied by a club shall be deemed to be semiprivate in character and shall be subject to the regulations governing public buildings and places, excluding groups organized primarily to render a service which is normally considered a business.

19.08.190 Coffee kiosk.
"Coffee kiosk" means a retail food business in a freestanding building that sells coffee, or other beverages, and premade bakery goods from a drive-through window to customers seated in their automobiles for consumption off the premises and that provides no indoor or outdoor seating.

19.08.195 Commercial use.
"Commercial use" means an activity with goods, merchandise or services for sale or involving a rental fee.

19.08.200 Commercial vehicle.
"Commercial vehicle" means a motor vehicle used for purposes other than a family car, such as a taxi, delivery or service vehicle.

19.08.205 Conditional use.
"Conditional use" means a use which, because of special requirements, unusual character, size or shape, infrequent occurrence or possible detrimental effect on surrounding property and for other similar reasons, may be allowed in certain zones only after review by the hearing examiner and the granting of a conditional use permit imposing such performance standards as will make the use compatible with other permitted uses in the same vicinity or zone.

19.08.210 Condominium.
"Condominium" means the ownership of single units or apartments in a building containing two or more units or two or more buildings each containing one or more units with common areas and facilities as provided in Chapter 64.32 RCW. The term "condominium" refers to the ownership arrangement, not the land use. The unit may be any permitted type.

19.08.215 Court.
"Court" means an open, unoccupied space other than a yard, on the same lot with a building or buildings and which is bounded on two or more sides by such building or buildings including the open space in a house, court or apartment, providing access to the

units thereof.

19.08.220 Covered moorage building area.
"Covered moorage building area" means the area of water lying directly beneath that portion of a structure covered by a roof.

19.08.225 Currency exchange.
"Currency exchange" means any person, except a bank, trust company, savings bank, savings and loan association, credit union or industrial loan and thrift company, engaged in the business of cashing checks, drafts, money orders or traveler's checks for a fee. This term does not include a person who provides these services incidental to the person's primary business if the charge for cashing a check or draft does not exceed $1.00 or one percent of the value of the check or draft, whichever is greater.

19.08.230 Data processing facility.
"Data processing facility" means an establishment primarily involved in the compiling, storage and maintenance of documents, records and other types of information in digital form utilizing a mainframe computer. This term does not include general business offices, computer-related sales establishments and business or personal services.

19.08.235 Day-night average sound level (Ldn).
"Day-night average sound level (Ldn)" means a cumulative aircraft noise index that estimates the exposure to aircraft noise at a certain geographic point and relates the estimated exposure to an expected community response.

19.08.240 Deciduous.
"Deciduous" means a plant with foliage that is shed annually.

19.08.245 Density.
"Density" means the number of dwelling units divided by the gross acre.

19.08.250 Design review board.
"Design review board" means a committee, appointed by the city council, consisting of at least one design professional, to advise the planning department concerning the design of projects.

19.08.252 Director of development services.
The zoning code shall be administered by the "director of development services." The director of development services or his or her designee shall carry out the duties and responsibilities assigned to the "planning director" or "director of planning and community development" under this title.

19.08.255 Dock.
"Dock" means a basin for moorage of boats, including a basin formed between the extension of two piers or the area between a bank or quay and a pier. Docking facilities may include wharves, moorage or docks or any place or structure connected with the shore or upon shore lands providing for the securing of a boat or vessel.

19.08.260 Dwelling, multifamily.
"Multifamily dwelling" means a building designed to house two or more families living

independently of each other and having one yard in common.

19.08.265 Dwelling, single-family.
"Single-family dwelling" means a detached building designed for and occupied exclusively by one family and the household employees of that family.

19.08.270 Dwelling unit.
"Dwelling unit" means a building or portion thereof providing complete housekeeping facilities for one family. The term "dwelling" does not include motel, tourist court, rooming house, or tourist home.

19.08.275 Electrical distribution substation.
"Electrical distribution substation" means an assembly of equipment designed to receive energy from a high voltage distribution supply system, to convert it to a form suitable for local distribution and distribute the energy to feeders through switching equipment designed to protect the service from the effects of faults.

19.08.280 Essential public facility.
"Essential public facility" means a facility, conveyance, or site whose services are provided by a governmental agency, a private or nonprofit organization under contract to or with substantial funding from government agencies, or a private organization subject to public service obligations, which is necessary to adequately provide a public service and which is typically hard to site.

19.08.285 Essential use.
"Essential use" means that use for the preservation or promotion of which the use district was created, and to which all other permitted uses are subordinate.

19.08.290 Evergreen.
"Evergreen" means a plant with foliage that persists and remains green year-round.

19.08.295 Extended stay motel.
"Extended stay motel" shall mean and include any building containing six or more guest rooms intended or designed to be used, or which are used, rented or hired out to be occupied or which are occupied for sleeping purposes for guests and contain kitchen facilities for food preparation, including, but not limited to, such facilities as refrigerators, stoves and ovens.

19.08.300 Factory-built structure.
"Factory-built structure" means a structure that is designed for occupation or use, or is occupied or used by persons, and that complies with the building code, including factory-built housing and commercial structures. It also includes structures built under federal code declared to be equivalent to the building code.

19.08.305 Family.
"Family" means one or more persons related by blood, marriage, adoption or a group of not more than five persons (excluding servants) not related by blood or marriage, living together as a single housekeeping unit in a dwelling unit.

19.08.310 Floor area.

"Floor area" means the sum of the gross horizontal areas of the floors of a building or buildings, measured from the exterior faces of exterior walls and from the centerline of division walls. Floor area shall include: basement space, elevator shafts and stairwells at each floor, mechanical equipment rooms or attic spaces with headroom of seven feet six inches or more, penthouse floors, interior balconies and mezzanines, and enclosed porches. Floor area shall not include: accessory water tanks and cooling towers, mechanical equipment or attic spaces with headroom of less than seven feet six inches, exterior steps or stairs, terraces, breezeways and open spaces.

19.08.315 Fraternity, sorority or student cooperative.
"Fraternity, sorority or student cooperative" means a building occupied by and maintained exclusively for students affiliated with an academic or professional college or university, or other recognized institution of higher learning and regulated by such institution.

19.08.320 Garage, commercial.
"Commercial garage" means a building or portion thereof designed and used for the storage, repair or servicing of motor vehicles or boats as a business.

19.08.325 Gated community.
"Gated community" means a residential area that restricts access to normally public spaces.

19.08.330 General promotions.
"General promotions" means events which occur on a regular basis in retail business for the purpose of boosting sales, attracting new business, selling of certain items (i.e., year end, seasonal sales, civic events, etc.).

19.08.335 Grade (adjacent ground elevation).
"Grade (adjacent ground elevation)" means the lowest point of elevation of the finished surface of the ground, paving or sidewalk within the area between the building and the property line, or when the property line is more than five feet from the building, between the building and a line five feet from the building.

19.08.340 Grand openings and anniversaries.
"Grand openings and anniversaries" means events that are held on a "once per year" basis for the purpose of advertising grand openings, ownership changes, or anniversaries.

19.08.345 Greenbelt.
"Greenbelt" shall mean dense coniferous plantings, or climbing varieties of nondeciduous vines on permanently installed aluminum mesh fencing, or architectural fencing of such design and material that retains its attractiveness with nominal maintenance.

19.08.350 Ground cover.
"Ground cover" shall mean small plants such as salal, ivy, ferns, mosses, grasses or other types of vegetation which normally cover the ground and shall include trees less than six inches in diameter measured at three feet above the ground level.

19.08.355 Health club.
"Health club" means a commercial establishment within a wholly enclosed building

designed for the systematic care, development and rehabilitation of the physique and providing facilities for racquetball, handball, exercise rooms, sauna and/or related facilities.

19.08.360 Home, family child day care.
"Family child day care home" means a family child day care home, licensed by the state, located in the family abode of the person or persons under whose direct care and supervision the child is placed, for the care of eight or fewer children, including children who reside at the home, for periods less than 24 hours.

19.08.365 Home, foster.
"Foster home" means a foster home licensed by the state which regularly provides care on a 24-hour basis to one or more but not more than six foster children under the age of 18 years or to not more than three expectant mothers or to one or two adult disabled persons in the family dwelling of the person or persons under whose direct care and supervision the child, expectant mother or adult disabled person is placed.

19.08.370 Home, group.
"Group home" means a group home licensed by the state which regularly provides care on a 24-hour basis to six or more but not more than 10 children (including minor children of the staff residing on the premises) under the age of 18 years, or disabled adults, in the family dwelling of the person or persons under whose direct care and supervision the children or adults are placed, or other suitable facility.

19.08.375 Home improvement center.
"Home improvement center" means a facility of more than 30,000 square feet of gross floor area, engaged in the retail sale of various basic hardware lines, such as tools, builders' hardware, paint and glass, housewares and household appliances, garden supplies and cutlery.

19.08.380 Home occupation.
"Home occupation" means an accessory use of the dwelling unit involving the manufacture, provision or sale of goods and/or services which is carried on by members of the family residing on the premises plus no more than one nonresident assistant or employee; provided, that additional nonresident assistants or employees may be permitted but shall require a conditional use permit. Garage sales and home parties are not defined as home occupations.

19.08.385 Hospital.
"Hospital" means an institution providing primary health services and medical or surgical care to persons, primarily inpatients, suffering from illness, disease, injury, deformity and other abnormal physical or mental conditions and including, as an integral part of the institution, related facilities, such as laboratories, outpatient facilities, training facilities, medical offices and staff residences.

19.08.390 Hospital, animal.
"Animal hospital" means a building or premises for the medical or surgical treatment of animals or pets, including dog, cat and veterinary hospitals, including the boarding of hospitalized animals, but excluding the boarding of animals not subjected to medical or

surgical treatment.

19.08.395 Hotel.
"Hotel" means any building or portion thereof containing five or more rooms that are rented, or hired out to be occupied or which are occupied for sleeping purposes for compensation whether the compensation be paid directly or indirectly. A central kitchen and dining room and accessory shops and services catering to the general public can be provided. Not included are institutions housing persons under legal restraint or requiring medical attention or care.

19.08.400 House, apartment.
"Apartment house" means the building or portion of a building arranged or designed to be occupied as three or more separate dwelling units.

19.08.405 House, boarding, lodging or rooming.
"Boarding, lodging or rooming house" means any building or portion thereof having only one kitchen and used for the purpose of providing lodging with or without meals for compensation for no more than four persons other than the family of the operator occupying such dwelling.

19.08.410 House, guest.
"Guest house" means a detached structure, being an accessory to a one-family dwelling with not more than two bedrooms, having no kitchen facilities, and which shall be used and/or designed for use primarily by guests and/or servants for sleeping quarters only.

19.08.415 Institution, educational.
"Educational institution" means a college, junior college or university supported by public or private funds, tuitions, contributions or endowments, giving advanced academic instructions as approved by the State Board of Education or by a recognized accrediting agency, excluding preschool, elementary and junior and senior high schools and trade and commercial schools, including fraternity and sorority houses.

19.08.420 Junkyard.
"Junkyard" means a lot, land or structure, or part thereof, used for the collecting, storage and sale of waste paper, rags, scrap metal or discarded material, or for the collecting, dismantling, storage, salvaging or sale of parts of machinery or vehicles not in running condition.

19.08.425 Kennel, commercial.
"Commercial kennel" means any lot or building in which four or more dogs and/or cats, at least four months of age, are kept commercially for board or propagation or treatment. No animals, livestock or poultry of any kind shall be kept, raised or bred on a lot except that dogs, cats or other household pets may be kept, provided they are not kept, bred, or maintained for any commercial purposes. Four dogs, cats or other household pets kept in one place or on one lot, over four months of age, would be considered being kept for commercial purposes.

19.08.430 Kitchen.
"Kitchen" means any room used or intended or designed to be used for cooking and/or

preparation of food.

19.08.435 Land clearing.
"Land clearing" shall mean the destruction and removal of vegetation by manual, mechanical, or chemical methods, from any undeveloped or partially developed lot or public lands.

19.08.440 Landscape perimeter.
"Landscape perimeter" means an unobstructed planting area which runs parallel to the rear yard and side yard property lines.

19.08.445 Landscape policy manual.
"Landscape policy manual" means a booklet prepared by the city of Oak Harbor which clarifies the purpose of Chapter 19.46 OHMC by providing examples and illustrations to augment this title.

19.08.450 Landscape setback.
"Landscape setback" means a minimum required landscaped width adjacent to a property line, common to a public street or private right-of-way.

19.08.455 Landscaping.
"Landscaping" means any combination of living plants, such as trees, shrubs, vines, ground covers, flowers or grass; natural features such as rock, stone, bark chips or shavings; and structural features, including but not limited to, fountains, reflecting pools, outdoor art work, screen walls, fences, or benches.

19.08.460 Ldn contour.
"Ldn contour" means a line linking together a series of points of equal cumulative noise exposure based on the Ldn metric.

19.08.465 Lot.
"Lot" means a single tract of land no matter how legally described, whether by metes and bounds and/or by lot or lots and block designation as in a recorded plat, which at the time of applying for a building permit is designated by its owner or developer as the tract to be used, developed or built upon as a unit of land and assigned to the particular use for which the building permit is being secured and having frontage on or access to a public street.

19.08.470 Lot area.
"Lot area" means the total horizontal area within the boundary lines of a lot.

19.08.475 Lot, corner.
"Corner lot" means a lot at the junction of and having frontage on two or more intersecting streets.

19.08.480 Lot coverage.
"Lot coverage" means the portion of a lot that is occupied by the principal and accessory buildings, including all projections except eaves, expressed as a percentage of the total lot area.

19.08.485 Lot depth.
"Lot depth" means the mean dimension of the lot from the front street line to the rear line.

19.08.490 Lot, developed single-family residential.
"Developed single-family residential lot" shall mean a platted lot upon which a single-family, habitable dwelling exists, where there are no remaining stands of trees nor significant ground cover.

19.08.495 Lot, interior.
"Interior lot" means a lot fronting on one street.

19.08.500 Lot, irregular shaped.
"Irregular shaped lot" means a lot having an interior angle of 45 degrees or less.

19.08.505 Lot line.
"Lot line" means the property line bounding a lot.

19.08.510 Lot line, front.
"Front lot line" means, in the case of an interior lot, the lot line separating the lot from the street other than an alley, and in the case of a corner lot, it may be either frontage.

19.08.515 Lot line, rear.
"Rear lot line" means a lot line which is opposite and most distant from the front lot line, and in the case of a triangular or irregular shaped lot, a line 10 feet in length within the lot parallel to and at the maximum distance from the front lot line.

19.08.520 Lot line, side.
"Side lot line" means any lot line not a front or rear lot line.

19.08.525 Lot, partially developed single-family residential.
"Partially developed single-family residential lot" shall mean a lot or parcel of land upon which a single-family dwelling is located, which contains existing stands of trees or substantial ground cover. This may include phased developments or conversions to urban use.

19.08.530 Lot, through.
"Through lot" means a lot fronting on two streets that do not intersect on the parcel's lot lines.

19.08.535 Lot, undeveloped.
"Undeveloped lot" shall mean a lot or parcel of land upon which no habitable single-family dwelling exists.

19.08.540 Lot width.
"Lot width" means the dimension of a lot line at the street, or in an irregularly shaped lot, the dimension across the lot at the building line, or in a corner lot, the narrow dimension of the lot at a street or building line.

19.08.545 Marquee.

"Marquee" means a covering structure projecting horizontally from and attached to a building, affording protection from the elements to persons or property thereunder.

19.08.550 Mixed use.
"Mixed use" means properties on which various uses such as office, commercial, institutional and residential are combined in a single building or on a single site in an integrated development project with significant functional interrelationships and a coherent physical design. A "single use" may include contiguous properties.

19.08.555 Manufactured Home
A" manufactured home" shall mean a factory-built dwelling unit which can be transported in one or more sections and is built according to the Department of Housing and Urban Development Manufactured Home Construction and Safety Standards Act, and as defined by WAC 296-150M-0020. Manufactured homes can be either detached and used as a single-family residence or attached to other housing units in multifamily arrangements. A manufactured home shall also meet the provisions of OHMC 16.04.020, including but not limited to, the requirement that it be set upon a permanent foundation.

19.08.560 Manufactured~~Mobile~~ Home Park.
"Manufactured~~Mobile~~ home park" means any property used for the accommodation of inhabited manufactured~~mobile~~ homes on a tenancy, lease or ownership basis which contains shared parking for residents or visitors, shared access drives for vehicle circulation and shared open spaces.

19.08.565 Manufactured Home Subdivision
A "Manufactured home subdivision" is a land division (either short plat or long plat) with manufactured homes placed on the lots. Manufactured home subdivisions have lots which take access from public or private streets, rather than common access drives.

19.08.570~~565~~ Moorage.
"Moorage" means a place to tie up or anchor a boat or vessel.

19.08.575~~570~~ Motel.
"Motel" means a building or buildings, detached or in connected units or designed as a single structure, the units of which are used as individual sleeping or dwelling units, having their own private toilet facilities and may or may not have their own kitchen facilities, and are designed primarily for the accommodation of transient automobile travelers. Accommodations for trailers are not included. This term includes tourist court, motor lodge, auto court, cabin court, motor inn and similar names.

19.08.580~~575~~ Multiple-occupancy complex.
"Multiple-occupancy complex" means a group of structures housing more than one type of retail business, office or commercial venture and generally under one ownership and control.

19.08.585~~580~~ Neighborhood convenience store.
"Neighborhood convenience store" means an establishment primarily engaged in the provision of frequently or recurrently needed goods for household consumption, such as

prepackaged food and beverages, and limited household supplies and hardware. This term does not include fuel pumps or the selling of fuel for motor vehicles. Typical uses include neighborhood markets and country stores.

19.08.590~~585~~ Noise zone map.
"Noise zone map" means a map prepared by the city of Oak Harbor and adopted as an aviation environs (AE) overlay zone, which serves as a geographic interpolation of Aviation Noise Contours as established by the NAS Whidbey Island AICUZ study program. When a property falls within more than one noise zone, the more restrictive noise zone requirements shall apply for the entire property.

19.08.595~~590~~ Nonconforming structure.
"Nonconforming structure" means a structure which was lawfully constructed at the time this title became effective, but which structure, because of the passage of this title, does not conform to the standards of the district in which the structure exists.

19.08.600~~595~~ Nonconforming use.
"Nonconforming use" means a use which lawfully occupied a building or land at the time this title became effective, but which use, because of the passage of this title, does not conform to the use regulations of the district in which the use exists.

19.08.605~~600~~ Nonconforming use, land.
"Nonconforming land use" means the use of land which was a lawful use at the time this title became effective but which use, because of the passage of this title does not conform to the regulations of the district in which the use exists.

19.08.610~~605~~ Occupant.
"Occupant" means the person, firm or corporation that occupies the land or building.

19.08.615~~610~~ Opaque.
"Opaque," for the purposes of this title, means visually impenetrable.

19.08.620~~615~~ Open space.
"Open space" means any part of a lot unobstructed from the ground upward.

19.08.625~~620~~ Parapet.
"Parapet" means that portion of a building wall which extends above the roof of the building.

19.08.630~~625~~ Parking, employee.
"Employee parking" shall mean those parking facilities required for the use of employees.

19.08.635~~630~~ Parking, off-street.
"Off-street parking" means parking facilities for motor vehicles on other than a public street or alley.

19.08.640~~635~~ Parking space.
"Parking space" means a space within or without a building, exclusive of driveways, used to temporarily park a motor vehicle and having access to a public street or alley.

19.08.645~~640~~ Penthouse.
"Penthouse" means a structure on top of a building roof such as houses an elevator shaft, mechanical equipment or similar form.

19.08.650~~645~~ Permit, conditional use.
"Conditional use permit" means documented evidence of authority granted by the hearing examiner to locate a conditional use at a particular location.

19.08.655~~650~~ Permit, land clearing.
"Land clearing permit" shall mean a permit obtained from the city which allows the clearing of trees and/or ground cover.

19.08.660~~655~~ Permit, minor clearing.
"Minor clearing permit" shall mean a permit obtained from the city which allows the removal of trees and/or ground cover, when the total trees and ground cover removed will not exceed five percent of the trees and ground cover on the lot.

19.08.665~~660~~ Permit, temporary use.
"Temporary use permit" is a mechanism by which the city may permit a use, or multiple uses, to locate within the city on a short-term basis and by which the city may allow seasonal or transient uses not otherwise permitted.

19.08.670~~665~~ Permitted use.
"Permitted use" means any use authorized or permitted alone or in conjunction with another use in a specified district and subject to the limitations of the regulations of such use district.

19.08.675~~670~~ Primary use.
"Primary use" means the principal or predominant use to which the property is or may be devoted, and to which all other uses on the premises are accessory.

19.08.680~~675~~ Professional office.
"Professional office" means an office maintained and used as a place of business conducted by persons engaged in the healing arts for human beings, such as doctors and dentists (but wherein no overnight care for patients is given) and by engineers, attorneys, architects, accountants and other similar professions.

19.08.685~~680~~ Property line.
"Property line" means the line denoting the limits of legal ownership of property.

19.08.690~~685~~ Public utility.
"Public utility" means a public service corporation performing some public service and subject to special governmental regulations, or a governmental agency performing similar public services, the services by either of which are paid for directly by the recipients thereof. Such services shall include, but are not limited to, water supply, electric power, gas and transportation of persons and freight.

19.08.695 Qualified Affordable Housing
Qualified affordable housing is housing which is affordable within the meaning of RCW 43.185A.010(1) for lease, rent or purchase to households with incomes at or below 80%

of the area median family income.

19.08.~~690~~700~~695~~ Recreation facilities.
"Recreation facilities" means facilities such as boat or yacht clubs, swimming pools, athletic clubs, golf and country clubs, for the use of the general public and operated by the municipal corporation.

19.08.~~695~~705~~700~~ Recreational vehicle.
"Recreational vehicle" means a vehicular-type unit primarily designed for recreational camping, travel or seasonal use which has its own motive power or is mounted on or towed by another vehicle. The basic entities are: travel trailer, folding camping trailer, park trailer, truck camper, motor home and multi-use vehicles.

19.08.~~700~~710~~705~~ Reside.
"Reside" means to have one's home, to dwell permanently or for a considerable time, and to have a settled abode for a time. Out-of-town residents who are visiting and staying with local residents on a temporary basis as guests shall not be considered to be residing thereat.

19.08.~~705~~715~~710~~ School, commercial.
"Commercial school" means a building where instruction is given to pupils in arts, crafts, or trades, and operated as a commercial enterprise as distinguished from schools endowed and/or supported by taxation.

19.08.~~710~~720~~715~~ Schools – Elementary, junior or senior high, including public, private and parochial.
"Elementary, junior or senior high school, including public, private and parochial" means an institution of learning which offers instruction in the several branches of learning and study required to be taught in the public schools by the Washington State Board of Education.

19.08.~~715~~725~~720~~ Screen.
"Screen" means a method of reducing the impact of noise and unsightly visual intrusions with less offensive or more harmonious elements, such as plants, berms, fences, walls, or any appropriate combination thereof.

19.08.~~720~~730~~25~~ Secondary use, incidental or accessory.
"Incidental or accessory secondary use" means a minor or secondary use for which a lot, structure or building is designed or employed in conjunction with but subordinate to its primary use.

19.08.~~725~~735~~730~~ Setback and yard requirements.
"Setback and yard requirements" are the distances that buildings or uses must be removed from their lot lines. Setbacks shall be measured, where applicable, from proposed or actual public or private street right-of-way lines.

19.08.~~730~~740~~735~~ Shelter station.
"Shelter station" means a shelter for the protection from the elements for the waiting customer of a transportation system.

19.08.~~735~~~~745~~~~740~~ Shopping center.
"Shopping center" means a group of retail and other commercial establishments that is planned, owned and managed as a single property. On-site parking is provided. The center's size and orientation are generally determined by the market characteristics of the trade area served by the center. The two main configurations of shopping centers are malls and open-air strip centers.

19.08.~~740~~~~750~~~~745~~ Shrub.
"Shrub" means a woody plant, smaller than a tree, consisting of several small stems from the ground or small branches near the ground; may be deciduous or evergreen.

19.08.~~745~~~~755~~~~750~~ Sign.
"Sign" means any letters, figures, design, symbol, trademark or device intended to attract attention to any activity, service, place, subject, person, firm, corporation, public performance, article, machine or merchandise whatsoever. Sources of light used primarily to illuminate a sign, or a building, or ground surrounding the building, shall not be considered signs themselves; provided however, that sources of light used primarily to attract attention to the sign itself or as a decorative feature of the display shall be considered as part of the sign. Lighted canopies, with the exception of the signed portion, shall not be considered signs themselves. Excluded from the definition are official traffic signs or signals, sheriff's notices, court notices or official public notices and the flag of a government or noncommercial institution, and signs not visible from the street or sidewalk.

19.08.~~750~~~~760~~~~755~~ Sign, abandoned.
"Abandoned sign" means a sign which no longer identifies or advertises a bona fide business, lessor, service, owner, product, or activity, and/or for which no legal owner can be found.

19.08.~~755~~~~765~~~~760~~ Sign, area or surface area.
"Area or surface area of sign" means the greatest area of a sign, on which copy is to be placed, enclosed within not more than three circles, rectangles or squares, or any combination of these forms which produces the smallest area. Sign structure, architectural embellishments, framework and decorative features which contain no written or advertising copy and are not internally lighted shall not be included.

19.08.~~760~~~~770~~~~765~~ Sign, billboard.
"Billboard sign" means an outdoor advertising sign containing a message, commercial or otherwise, unrelated to any use or activity on the property on which the sign is located, but not including directional signs as defined herein.

19.08.~~765~~~~775~~~~770~~ Sign, building-mounted.
"Building-mounted sign" means a single or multiple-faced sign attached to the face of a building or marquee.

19.08.~~770~~~~780~~~~775~~ Sign, canopy.
"Canopy sign" means any sign erected upon, against or directly above a canopy.

19.08.~~775~~~~785~~~~780~~ Sign, construction.

"Construction sign" means an information sign which identifies the architect, engineers, contractors and other individuals, or firms involved with the construction of a building, or announcing the character of the building or enterprise, which is erected during the building construction period.

19.08.~~780~~~~790~~~~785~~ Sign, freestanding.
"Freestanding sign" means a single or multiple-faced sign supported from the ground by one or more columns, uprights or braces.

19.08.~~785~~~~795~~~~790~~ Sign, grade.
"Grade (sign)" means the elevation or level of the street closest to the sign to which reference is made, as measured at the street's centerline, or the relative ground level in the immediate vicinity of the sign.

19.08.~~790~~~~800~~~~795~~ Sign, height.
"Height of sign" means the vertical distance from the grade to the highest point of a sign or any vertical projection thereof, including its supporting columns, or the vertical distance from the relative ground level within five feet of the sign.

19.08.~~795~~~~805~~~~800~~ Sign, incidental.
"Incidental sign" means a single or double-face sign not exceeding two square feet in surface area of a noncommercial nature, intended primarily for the convenience of the public. Included are signs designating rest rooms, address numbers, hours of operation, public telephone, etc. Also included are signs designed to guide pedestrian or vehicular traffic to an area or place on the premises of a business, building or development, as well as building directories with the letters not to exceed four inches in height.

19.08.~~800~~~~810~~~~805~~ Sign, low-profile.
"Low-profile sign" means a freestanding sign not exceeding six feet in height measured from the finished grade to the top of the sign and not exceeding 32 square feet in area.

19.08.~~805~~~~815~~~~810~~ Sign, noncommercial public service.
"Noncommercial public service sign" means noncommercial signs devoted to religious, charitable, cultural, governmental or educational messages, including, but not limited to the advertising of events sponsored by a governmental agency, a school, church, civic or fraternal organization or other organizations engaged in activities for profit.

19.08.~~810~~~~820~~~~815~~ Sign, political.
"Political sign" means signs advertising a candidate or candidates for public elective office, or a political party, or signs urging a particular vote on a public issue decided by ballot.

19.08.~~815~~~~825~~~~820~~ Sign or signs, primary.
"Primary sign or signs" means all signs, including freestanding signs, of a user which are not exempt or which do not come within the category of incidental signs. The term "primary sign" is intended to include virtually all signs of a commercial nature.

19.08.~~820~~~~830~~~~825~~ Sign, projection.
"Projection sign" means a projecting sign with no exposed legs or braces, designed to look as though it could have been part of the building structure rather than something

suspended from the building.

19.08.~~825~~835~~830~~ Sign, reader board.
"Reader board sign" means a sign or part of a sign on which the letters are readily replaceable such that the copy can be changed from time to time at will.

19.08.~~830~~840~~835~~ Sign, roof.
"Roof sign" means any sign erected upon, against or directly above a roof or on top of or above the parapet of a building, including a sign affixed to any structure erected upon a roof, including a structure housing building equipment.

19.08.~~835~~845~~840~~ Signs, subdivision.
"Subdivision signs" means signs used to identify a land development which is to be or was accomplished at essentially one time.

19.08.~~840~~850~~845~~ Signs, temporary and special.
"Temporary and special signs" means signs of a temporary or special nature and are limited to construction signs, grand opening displays, real estate signs, open house signs, residential land subdivision signs and subdivision directional signs.

19.08.~~845~~855~~850~~ Sign, window.
"Window sign" means all signs located inside and affixed to or within three feet of windows of a building, whether temporary or permanent, except lighted signs of a commercial advertisement nature which may be viewed from the exterior of the building. The term does not include merchandise located within three feet of a window. Lighted window signs shall be included in determining the number of primary signs and in determining the permissible sign area for each facade. Does not include incidental signs.

19.08.~~850~~860~~855~~ Skilled nursing facility.*
"Skilled nursing facility" means an institution or a distinct part of an institution that is licensed to provide health care under medical supervision for 24 or more consecutive hours to two or more patients who are not related to the governing authority or its members by marriage, blood or adoption.

* Ordinance 1221 presents this section as 19.08.465. This section and previous sections, starting at OHMC 19.08.465, have been editorially renumbered to maintain alphabetization.

19.08.~~855~~865~~860~~ Solid planting.
"Solid planting" means a planting of evergreen trees and shrubs which will prevent a through and unobscured penetration of sight or light.

19.08.~~860~~870~~865~~ Sorority.
See OHMC 19.08.315, Fraternity, sorority or student cooperative.

19.08.~~865~~875~~870~~ Story.
"Story" means that portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that portion of the building included between the upper surface of the topmost floor and the ceiling or roof above. If the finished floor level directly above a basement, cellar or

unused underfloor space is more than six feet above grade (which is the lowest point of elevation of the finished surface of the ground, paving or sidewalk within the area between the building and the property line, or when the property line is more than five feet from the building, between the building and a line five feet from the building) for more than 50 percent of the total perimeter or is more than 12 feet above grade, as defined in this section, at any point, such basement, cellar or unused underfloor space shall be considered as a story.

19.08.~~870~~880875 Street.
"Street" means an officially approved public thoroughfare or right-of-way dedicated, deeded or condemned, which has been officially approved by a governmental agency for use as such, other than an alley, which affords the principal means of access to abutting property, including avenue, place, way, drive, lane, boulevard, highway, road and any other thoroughfare, except as excluded in this code. The word "street" shall include all arterial highways, freeways, traffic collector streets and local streets.

19.08.~~875~~885880 Structure.
"Structure" means a combination of materials constructed and erected permanently on the ground or attached to something having a permanent location on the ground. Not included are residential fences less than six feet in height, retaining walls, rockeries and similar improvements of a minor character less than three feet in height.

19.08.~~880~~890885 Structural alteration.
"Structural alteration" means any change in load or stress of the loaded or stressed members of a building or structure.

19.08.~~885~~895890 Surface area or facade.
"Surface area or facade" means the area of that front, side or back elevation, including doors and windows, but excluding any roof area and structures or elevators or air conditioning equipment thereon; provided, that in the case of a roof sign, the surface area or facade shall be the area of that front, side or back immediately beneath the roof, including doors and windows, but excluding the roof area and structures for elevators or air conditioning thereon.

19.08.~~890~~895895 Temporary.
"Temporary" means not having or requiring permanent attachment to the ground, or involving structures which have no required permanent attachment to the ground.

19.08.~~895~~896 Tree.
"Tree" shall mean any living woody plant characterized by one main stem or trunk and many branches, and having a diameter of six inches or more measured at three feet above the ground level.

19.08.~~896~~897 Tree cluster, grove or stand.
"Tree cluster, grove or stand" means a group of four or more trees of any species or size, where the leaves and outermost branches touch.

19.08.~~897~~898 Tree root zone.
"Tree root zone" means a circle described by the outermost branches of a tree projected

to the ground, also known as dripline.

19.08.~~898~~899 Understory.
"Understory" means trees, shrubs or groundcover growing beneath and shaded by a tree.

19.08.900 Tree, ornamental.
"Ornamental tree" means a tree planted primarily for its ornamental value or for screening purposes; tends to be smaller at maturity than a shade tree.

19.08.905 Tree, shade.
"Shade tree" means a deciduous tree, rarely an evergreen, planted primarily for its high crown of foliage or overhead canopy.

19.08.910 Tree, significant.
"Significant tree" means a healthy evergreen or deciduous tree, 12 inches or more in diameter, measured four feet above existing grade. Alder trees of any diameter are not considered a significant tree.

19.08.915 Upholstery shop.
"Upholstery shop" means a business specializing in the recovering of furniture and automobile interiors including springs and padding, and also may include the retail sale of fabric, padding, upholstery tools and other materials used in the upholstery trade.

19.08.920 Use.
"Use" means the purpose land or buildings or structures now serve or for which they are occupied, maintained, arranged, designed or intended.

19.08.925 Use district.
"Use district" means a portion or portions of Oak Harbor designated on official zoning maps as one or more of the categories listed and described in this title.

19.08.930 Used car lot.
"Used car lot" means any place outside a building where two or more automobiles are offered for sale or are displayed.

19.08.935 Uses, prohibited.
A "prohibited use" is any use which is not listed in one of the following categories:
(1) Permitted use for the zone;
(2) A lawfully granted conditional use;
(3) A lawfully granted variance;
(4) A lawfully existing nonconforming use;
(5) A lawfully permitted home occupation.

19.08.940 Variance.
"Variance" means the means by which an adjustment is made in the application of the specific regulations of this title to a particular piece of property, which property, because of special circumstances applicable to it, is deprived of privileges commonly enjoyed by other properties in the same zone or vicinity and which adjustment remedies disparity in privileges. A variance is a form of special exception.

19.08.945 Vehicular surface area.
"Vehicular surface area" means an open area where motor vehicles are either stored or driven, including private driveways and private streets, parking lots, rental lots, rental depots, but it does not include parking buildings, underground parking areas, or areas which are used exclusively as loading areas and service areas.

19.08.950 Video rental store.
"Video rental store" means an establishment primarily engaged in the retail rental or lease of video tapes, films, CD-ROMs, laser discs, electronic games, cassettes or other electronic media. Sales of film, video tapes, laser discs, CD-ROMs and electronic merchandise associated with VCRs, video cameras and electronic games are permitted accessory uses.

19.08.955 Waste, hazardous.
"Hazardous waste" means all dangerous and extremely hazardous waste as defined in RCW 70.105.010(15), except for moderate risk waste as defined in RCW 70.105.010(17).

19.08.960 Waste, hazardous – Off-site treatment and storage facility.
"Hazardous waste off-site treatment and storage facility" means treatment and storage facilities which treat and store hazardous wastes generated on properties other than those on which the off-site facilities are located.

19.08.965 Waste, hazardous – On-site treatment and storage facility.
"Hazardous waste on-site treatment and storage facility" means treatment and storage facilities which treat and store hazardous wastes generated on the same property.

19.08.970 Waste, hazardous – Storage of.
"Storage of hazardous waste" means the holding of hazardous waste for temporary periods as regulated by the state dangerous waste regulations, Chapter 173-303 WAC.

19.08.975 Waste, hazardous – Treatment of.
"Treatment of hazardous waste" means the physical, chemical or biological processing of hazardous waste for the purpose of rendering these wastes nondangerous or less dangerous, safer for transport, amenable for energy or material resource recovery, amenable for storage or reduced in volume as regulated by the state dangerous waste regulations, Chapter 173-303 WAC.

19.08.980 Way open to public.
"Way open to public" means any paved or unpaved area on private property open to the general public for driving or parking.

19.08.985 Wireless communications facility, macro.
"Macro wireless communications facility" means an attached wireless communications facility which consists of antennas equal to or less than 15 feet in height or a parabolic antenna up to one meter (39.37 inches) in diameter and with an area not more than 75 square feet in the aggregate as viewed from any one point.

19.08.990 Wireless communications facility, micro.
"Micro wireless communications facility" means an attached wireless communications

facility which consists of antennas equal to or less than four feet in height (except omni-directional antennas which may be up to six feet in height) and with an area of not more than 580 square inches in the aggregate (e.g., one-foot diameter parabola or two-foot by one-and-one-half-foot panel) as viewed from any one point. The permitted antenna height includes the wireless communications facility support structure.

19.08.995 Wireless communications facility, mini.
"Mini wireless communications facility" means an attached wireless communications facility which consists of antennas equal to or less than 10 feet in height or a parabolic antenna up to one meter (39.37 inches) in diameter and with an area not more than 50 square feet in the aggregate as viewed from any one point.

19.08.1000 Wireless communications facility, monopole.
"Monopole wireless communications facility" means a wireless communications facility which consists of a wireless communications support structure, erected to support wireless communications antennas and connecting appurtenances.

19.08.1005 Xeriscape.
"Xeriscape" means a landscaping method which conserves water through the use of drought-tolerant plants and planting techniques.

19.08.1010 Yard.
"Yard" means an open space in front, rear or side on the same lot with a building or proposed building.

19.08.1015 Yard, front.
"Front yard" means an open space extending from 30 inches above the general ground level at the principal street line to the building line and including the full width of the lot to its side lines.

19.08.1020 Yard, rear.
"Rear yard" means an open space extending from 30 inches above the general ground level at the rear lot line to the main building line and including the full width of the lot to its side lines.

19.08.1025 Yard, service.
"Service yard" means an open area, usually paved, with access to a street or alley, to allow vehicular access to a building or use for purposes of loading or unloading equipment, freight, livestock or people.

19.08.1030 Yard, side.
"Side yard" means an open space extending from 30 inches above the general ground level at the front yard to the rear yard and from the main building line to the side lot line.

Section Five. Oak Harbor Municipal Code Chapter 19.12 last is hereby re-adopted to read as follows:

Chapter 19.12
ESTABLISHMENT OF DISTRICTS

Sections:

19.12.010 Establishment and designation of use districts.

19.12.010 Establishment and designation of use districts.

In order to classify, regulate, restrict and segregate the uses of land and building, to regulate and restrict the height and size of buildings, to regulate the area of yards and other open spaces about buildings, and to regulate the density of population, classes of use districts are established. The following table identifies the zoning districts which implement the land use designations from the comprehensive plan.

Comprehensive Plan		Zoning District	
PRE	Planned residential estate	PRE	Planned residential estate
R-LD	Low density residential	R-1	Single-family residential
R-MD	Medium density residential	R-2	Limited multiple-family residential
R-MHD	Medium-high density residential	R-3	Multiple-family residential
R-HD	High density residential	R-4	Multiple-family residential
RO	Residential office	RO	Residential office
NC	Neighborhood commercial	C-1	Neighborhood commercial
CC	Community commercial	C-3	Community commercial
CBD	Central business district	CBD	Central business district
AIC	Auto/industrial commercial	C-4	Highway service commercial
HCC	Highway corridor commercial	C-5	Highway corridor commercial
PBP	Planned business park	PBP	Planned business park
PIP	Planned industrial park	PIP	Planned industrial park
I	Industrial	I	Industrial
PF	Public facilities	PF	Public facilities
ORA	Open space, recreation and agriculture	OS	Open space, recreation and agriculture

Section Six. Oak Harbor Municipal Code Chapter 19.16 is hereby re-adopted to read as follows:

Chapter 19.16
DISTRICT BOUNDARIES

Sections:

19.16.010 Official zoning map.
19.16.020 Boundary interpretation.
19.16.030 Application of regulations.

19.16.010 Official zoning map.

The locations and boundaries of the zoning districts shall be as shown on the map accompanying this title and made a part of this title, entitled, "Official Zoning Map – Oak Harbor, Washington." The official zoning map and all the notations, references and amendments thereto and other information shown thereon are made a part of this title, just as if such information set forth on the map were fully described and set out herein. The official zoning map, attested by the signature of the mayor and the city clerk, with the seal of the municipality affixed, shall be kept on file in the office of the planning director, and shall be available for inspection by the public.

19.16.020 Boundary interpretation.

Where uncertainty exists as to boundaries of any district shown on said map, the following rules shall apply:

(1) Unless otherwise specified or shown on the zoning map, district boundaries are lot lines or the centerlines of streets, alleys, and other rights-of-way. Where boundaries are other than lot lines or centerlines of streets, alleys, and other rights-of-way, they shall be determined by dimensions shown on the zoning map giving distances measured from street or other rights-of-way or lot lines, or if no dimensions are shown, by scaling distances on the zoning map. Where actual streets or other features on the ground vary from those shown on the zoning map, interpretations or adjustments shall be made by the planning director.

(2) In subdivided property or where a district boundary divides a lot, the location of such boundary, unless the same is indicated by dimensions, shall be determined by use of the scale appearing on the map. Where a district boundary line, as appearing on the official zoning map, divides a lot in single ownership, which is of record at the time of this enactment, the district requirement shall apply for the whole thereof; provided, that such extension shall not include any part of such lot more than 35 feet beyond the district boundary line.

(3) Where any street, road, or alley is hereafter officially vacated or abandoned, the regulations applicable to each parcel of abutting property shall apply to that portion of such street, road, or alley added to the property by virtue of such vacation or abandonment.

19.16.030 Application of regulations.

(1) Except as hereinafter provided, no building shall be erected, reconstructed, or structurally altered, nor shall any building or land be used, except in compliance with all the district regulations established by this title for the district in which the

building or land is located.

(2) The minimum yards or other open spaces required by this title, including those provisions regulating intensity of use, for each and every building hereafter erected or structurally altered shall not be encroached upon or considered as meeting the yard or open space requirements or the intensity of use provisions for any other building. In the event of any such unlawful encroachment or reduction, such building shall be deemed to be in violation of the provisions of this title and the certificate of occupancy for such building thereupon shall be null and void.

(3) Where a lot is formed from part of a lot already occupied by a building, such separation shall be affected in such a manner as not to impair any of the requirements of this title with respect to the existing building, and all yards and other open spaces in connection therewith, and no permit shall be issued for the erection of a new building on the new lot thus created unless it complies with the provisions of this title.

Section Seven. Oak Harbor Municipal Code Chapter19.18 is hereby re-adopted to read as follows:

Chapter 19.18
NONCONFORMING USES AND STRUCTURES

Sections:

19.18.010 Purpose.
19.18.020 Review process.
19.18.030 Nonconforming uses.
19.18.040 Nonconforming buildings or structures.

19.18.010 Purpose.

The purpose of this chapter is to provide standards for nonconforming uses and structures, or those structures and uses which, for whatever reason, do not meet the current standards of this title.

19.18.020 Review process.

Any application originating from the requirements of this chapter shall be considered a review process II.

19.18.030 Nonconforming uses.

A nonconforming use is a use of land or buildings which was lawfully established at the time the use was commenced but which no longer conforms to the use regulations for the zoning district in which the use is located.

(1) Continuation of Nonconforming Use. A nonconforming use may be continued subject to the following:

(a) A nonconforming use that ceases occupancy or, in the case of a business, active use, at a location for a continuous period of one year shall not thereafter be permitted to continue at said location. Any subsequent use at said location must conform to the use regulations for the zoning district in which it is located.

(b) A nonconforming use that occupies a building or structure that has been damaged in excess of 50 percent of its real valuation exclusive of foundations shall not be permitted to reoccupy the building or structure. Any subsequent use at that location must conform to the use regulations for the zoning district in which it is located.

(2) Change of Use. A nonconforming use may be changed to a use which is in the same category of uses or to a use which is permitted under a more restrictive zoning classification. However, once a nonconforming use is changed to a more restrictive zoning classification, the original nonconforming use cannot be recommenced.

(3) Change of Tenancy or Ownership. Changes of tenancy, ownership or management of nonconforming uses are permitted provided the change does not involve a modification in the character of the nonconforming use.

(4) Expansion of Use. Under application to the city, the floor area occupied by a nonconforming use may be expanded only in accordance with the following

standards:

(a) A nonconforming use may be expanded one time only to occupy up to an additional 50 percent of the existing floor area occupied by the nonconforming use. Beyond this one-time-only expansion, minor expansions of up to five percent of the existing floor area occupied by the nonconforming use may also be permitted, but no more than once per calendar year. In either case, such expansions must otherwise meet the requirements of the zoning district in which the nonconforming use is located.

(b) A nonconforming use of buildings or land shall not be expanded to occupy additional parcels of land or additional lot area created by boundary line adjustment or lot combination.

(c) A residential use that is nonconforming with respect to permitted density only may be enlarged consistent with the regulations of the zoning district in which the use is located, so long as no additional housing units are created.

(d) A nonconforming use may be expanded as required to comply with federal, state or local regulations. In such cases, the owner shall provide documentation demonstrating the requirement and submit a site plan in accordance with Chapter 19.48 OHMC.

19.18.040 Nonconforming buildings or structures.

A nonconforming building or structure is a building or structure which was lawfully constructed at the time the building or structure was approved but which no longer conforms to the regulations for the zoning district in which the building or structure is located.

(1) Continuation of Nonconforming Building or Structure. A nonconforming building or structure may continue to exist subject to the following:

(a) A nonconforming building or structure that has been damaged or partially destroyed for whatever reason, to an extent not exceeding 50 percent of its real valuation exclusive of foundations, may be restored to the prior level of nonconformity. The restoration work shall be commenced within one year of the partial destruction.

(b) A nonconforming building or structure that has been damaged in excess of 50 percent of its real valuation exclusive of foundations shall not be reconstructed except to conform with all regulations of the zoning district in which the building or structure is located. It shall be treated as a new building.

(2) Maintenance of Nonconforming Building or Structure. A nonconforming building or structure may be repaired and maintained to the limits identified in subsection (1) of this section so long as the repair does not increase the degree of nonconformity of the building or structure.

(3) Additions to Nonconforming Buildings or Structures. A building or structure that is nonconforming with respect to the dimensional requirements of the district in which it is located may be added onto such that the addition extends, but does not increase, the degree of nonconformity in the dimensional requirement. Such additions must otherwise meet the requirements of the zoning district in which the nonconforming use is located.

Section Eight. Oak Harbor Municipal Code Chapter 19.20 is hereby re-adopted and amended to read as follows:

Chapter 19.20
ZONING DISTRICTS

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Article I. PRE – Planned Residential Estate

19.20.005 Purpose and intent.

The planned residential estate (PRE) district is intended to provide existing rural uses in the areas of the expanded urban growth area which, because of surrounding land uses, noise impacts from the Naval Air Station, environmentally sensitive area, and existing land use patterns, are better planned for preservation of low density uses under a master planned concept.

19.20.010 Principal permitted uses.

In a PRE district, the following are principal permitted buildings and uses:

(1) One single-family detached dwelling structure on each lot.

(2) Development under a planned residential development as per Chapter 19.31 OHMC.

19.20.015 Accessory permitted uses.

In a PRE district, the following are accessory permitted uses:

(1) Accessory uses and structures incidental to any permitted residential uses, such as servants' quarters, garages, greenhouses, or workshops; provided, that none shall be rented or occupied for gain;

(2) All radio, television and microwave receiving antennas, whether variously described as a wire, dish, tower antenna, or otherwise, located within the setback lines of the lot;

(3) Home occupations as regulated in Chapter 19.34 OHMC.

19.20.020 Conditional uses permitted.

The following principal uses and their accessory uses may be permitted in a PRE district when approved in conformance with Chapter 19.67 OHMC:

(1) All radio, television and microwave receiving antennas, whether variously described as a wire, dish, tower antenna, or otherwise, located outside of the setback lines of the lot. The permit may be granted only when:

(a) Reception cannot be obtained when located within the setback lines;

(b) The location in a setback yard does not block the view of Oak Harbor Bay proposed from other property;

(c) The antenna does not cause a danger to adjacent properties.

19.20.025 Density provisions.

Specific densities shall be determined by the planning commission based on the criteria established under the provisions of Chapter 19.48 OHMC.

(1) Minimum density, zero DU/AC; maximum density, three DU/AC.

(2) Minimum front yard, 30 feet; or as established by the master plan.

(3) Minimum side yard setbacks are 10 feet; or as established by the master plan.

(4) Minimum side yard along the flanking street of a corner lot, 20 feet; or as established by the master plan.

(5) Minimum rear yard, 30 feet; or as established by the master plan.

(6) Maximum building height, 35 feet; or as established by the master plan.

(7) Maximum lot coverage, 35 percent of lot area; or less as established by the master plan.

(8) Minimum lot size, 15,000 square feet; or as established by the master plan.

(9) Development as a planned residential development may occur subject to Chapter 19.31 OHMC.

19.20.030 Relation to aviation environs overlay zone.

Property located in an aviation environs overlay zone, as governed in Chapter 19.50 OHMC, shall meet the requirements for noise attenuation in Chapter 17.30 OHMC and the comprehensive plan land use element.

19.20.035 Combined applications.

(1) The preliminary master plan and the final master plan may be combined and together processed through review as a final development plan.

(2) The application may be filed by either of the following:

(a) The Oak Harbor planning department for all or any portion of the district; or

(b) The owner, or owners in a joint application, of more than 10 acres.

(3) A concurrent subdivision application, meeting the requirements of OHMC Titles 21 and 22, may be processed concurrently with the planned residential estate application.

(4) The applicant may file a concurrent rezone application, meeting the requirements where such application is consistent with the Oak Harbor comprehensive plan, which shall proceed concurrently with the planned residential estate application.

(5) In case of conflict between time limits set forth in this title and in other provisions of the Oak Harbor Municipal Code or applicable state law, those provisions requiring public notice to be given the furthest in advance of the pending action shall prevail over conflicting provisions specifying that notice shall be given within a shorter time prior to the action; likewise, any conflict in provisions requiring a specific action on the part of the city, or any body thereof, within a specific time period shall be resolved in favor of those provisions requiring action within the lesser period of time.

19.20.040 Preapplication meeting.

Prior to formal submittal of the application by any owner or owners, the applicant(s) may present to the planning department a master plan, which shall contain in a rough and approximate manner, all of the information required for the application under OHMC 19.20.050. Upon submittal, the planning department shall schedule a meeting with representatives of applicable city departments. The planning director may also invite, because of the nature, size and scope of the development, others outside of the city to participate in the preapplication meeting. The purpose of the meeting is to enable the applicant to obtain the advice of city staff as to the intent, standards and provisions of this code with regard to the proposed plan. Information presented for and at the preapplication meeting shall not be a part of the public record as no applications are submitted for formal review.

19.20.045 Application requirements.

An application by an owner or owners for approval of a proposed planned residential estate shall be made to the planning director upon forms furnished by the city. Application shall be made by the owner or owners of the parcel or parcels intended to be developed as a unit or their duly authorized agent or agents. The ownership of all parcels to be included must be represented in the application.

19.20.050 Master plan – Filing requirements.

Any owner or owners filing an application shall file with the planning director a master plan, including the following:

(1) A legal description of the site and plot plan indicating location of all existing and proposed adjacent streets, private rights-of-way and easements;

(2) Twenty copies of the proposed site plan and/or drawings, which include the following information:

(a) Topographic contours at a minimum interval of 10 feet;

(b) The general location of all areas proposed for buildings and structures;

(c) Location and nature of vehicular and pedestrian circulation features within the site and adjacent streets and alleys;

(d) The extent, location, arrangement and proposed improvements of all open space, and common areas;

(e) Location, nature and dimension (where applicable) of all utilities including fire protection facilities;

(3) A text describing any conditions or features which cannot be adequately displayed on maps or drawings.

19.20.055 Master plan – Staff recommendation.

After receiving the master plan, the planning director shall route the same to all appropriate city departments, and each department shall submit to the planning director comments and recommendations. After receiving such information from the city departments, the planning director shall present recommendations and conclusions before the planning commission at the public hearing on the master plan.

19.20.060 Master plan – Public hearing.

The master plan shall be considered at a public hearing before the planning commission after notice given in the manner required by Chapter 18.20 OHMC.

19.20.065 Master plan – Planning commission review.

Following the public hearing, the planning commission may approve as proposed, approve with changes or disapprove the application and the accompanying master plan. The commission's action shall be based on the following criteria:

(1) The proposal meets the requirements of this title;

(2) The densities permitted shall be based on:

(a) Potential impacts to and from surrounding land uses, such as noise impacts from the Naval Air Station;

(b) The presence of environmentally sensitive areas; and/or

(c) Existing land use pattern;

(3) The proposal shall not be detrimental to existing or potential surrounding land uses as defined by the Oak Harbor comprehensive plan.

19.20.070 Master plan – Council review.

If and when the commission approves said application or if approval is granted by decree of commission action, the city council shall be informed of such action and shall indicate its concurrence or disapproval. The determination of the council shall become final 10 days after the date of decision unless directed otherwise or appealed to the city council in accordance with OHMC 19.20.580.

19.20.075 Modifications to the plan.

Requests for modifications of the master plan shall be made in writing and shall be submitted to the planning department in the manner and form prescribed by the planning director.

(1) Modifications shall be deemed minor if the proposal does not change any of the following:

(a) Land uses;

(b) General location or number of access points, or general circulation patterns; and

(c) The amount of open space.

(2) Examples of minor modifications include but are not limited to lot line adjustments, minor changes in setbacks and building height (10 percent or less)

and the location of open space.

(3) Minor modifications may be approved by the planning director.

(4) Major modifications are those which, as determined by the planning director, substantially change the basic intent of the master plan or change to overall density greater than 10 percent. Major changes to master plans shall be reviewed by the planning commission and city council under the same process as outlined under OHMC 19.20.540 and 19.20.550.

19.20.080 Adherence to approved plan.

(1) The building official shall only issue building permits for buildings and structures which conform with the approved master plan and with all other applicable city ordinances, regulations, applicable rezone, annexation or development agreements.

(2) No building permit shall be issued on a lot where there is a current violation of the zoning code or a misuse of public easements to the property.

19.20.085 Subdivision requirements.

The approval of a subdivision shall be required of all projects which involve or contemplate the subdivision of land and the procedures set forth in the Oak Harbor subdivision ordinance, codified in OHMC Titles 21 and 22, shall be followed concurrently herewith. The approved final master plan shall be a binding site plan under RCW 58.17.040 (5), so that a lease of land shall be exempt from the subdivision ordinance if the lease conforms to the final master plan.

19.20.090 Lots subject to final master plan.

All lots or other divisions of a subdivided planned residential estates development shall remain subject to compliance with the final master plan regardless of compliance with OHMC Titles 21 and 22, or subsequent conveyance of such individual lots.

19.20.095 Judicial review.

Any legal action to review a decision of the city council or planning commission under this title shall be filed in Island County superior court within 30 days of the decision, notwithstanding the effective date of any ordinance passed or proposed to effectuate said decision.

Article II. R-1 – Single-Family Residential

19.20.100 Purpose and intent.

The R-1 single-family residential district is intended for low density, urban, single-family residential uses, while providing sufficient density to allow the city to effectively provide needed urban services. Manufactured home subdivisions are also allowed in this zone. The densities for this district range between a minimum of three units per gross acre and a maximum of six units per gross acre.

19.20.105 Principal permitted uses.

In an R-1 district, the following are principal permitted uses:

(1) One single-family detached dwelling structure on each lot;

(2) Development under a planned residential development as per Chapter 19.31 OHMC.

(3) Manufactured home subdivisions as defined by 19.08.565 and in compliance with Chapter 19.25 OHMC.

19.20.110 Accessory permitted uses.

In an R-1 district, the following are accessory permitted uses:

(1) Accessory uses and structures incidental to any permitted residential uses, such as servants' quarters, garages, greenhouses, or workshops, and barns; provided, that none shall be rented or occupied for gain;

(2) All radio, television and microwave receiving antennas, whether variously described as a wire, dish, tower antenna, or otherwise, located within the setback lines of the lot.

19.20.115 Conditional uses permitted.

The following principal uses and their accessory uses may be permitted in an R-1 district when authorized by the hearing examiner:

(1) All radio, television and microwave receiving antennas, whether variously described as a wire, dish, tower antenna, or otherwise, located outside of the setback lines of the lot when:
   - (a) Reception cannot be obtained when located within the setback lines;
   - (b) The location in a setback yard does not block the view of Oak Harbor Bay proposed from other property;
   - (c) The antenna does not cause a danger to adjacent properties;
   - (d) The antenna installation complies with all other zoning and building provisions of this code.

(2) Assisted living facility.

(3) Cemetery, mausoleum, or crematorium, but only in connection therewith.

(4) Churches and associated rectories, convents or other similar structures.

(5) Community center building.

(6) Excavations, other than simple foundation.

(7) Garages, for storage only of automobiles as an accessory to a public or quasi-public institution.

(8) Golf course, including club house, but not an independent pitch-and-putt course, golf driving range or miniature golf.

(9) Government buildings for administrative or protective services, government storage yards, treatment plants, well sites, pump stations and sanitary landfills.

(10) Group home.

(11) Home occupations as regulated in Chapter 19.34 OHMC.

(12) Hospital.

(13) Landfills, reclamation to improve steep, low or otherwise unusable land.

(14) Mortuaries.

(15) Nursery and landscape material, including greenhouses.

(16) Private club, lodge, social or recreation building or community assembly hall (except those having a chief activity carried on for monetary gain); provided, that the buildings used for such purpose may require additional front, rear or side yard setback from an adjoining lot in any residential district beyond the established requirements in the parent zoning district.

(17) Private nursery school, foster home, kindergarten, or child day care center, not

qualifying as a home occupation, on a legal lot, provided there is established in connection therewith an outdoor play area having a minimum area of 1,000 square feet plus an additional 50 square feet for each child in excess of eight.

(18) Private park or recreational area operated by a nonprofit community organization or association as a neighborhood playground, or local community recreational area, operated for the benefit of and exclusive use of members and their invited guests. Applications for a conditional use under this section shall state the specific use or uses to which the proposed neighborhood playground or local community recreational area shall be put. Conditional uses granted under this section shall be limited to one or more of the specific use or uses requested. Any use or uses in addition to or different from those specifically permitted by the hearing examiner hereunder shall require the separate approval of the hearing examiner. Included within the generality of the phrase "neighborhood playground, or local community recreational areas," but not limited thereto, are swimming pools, community beaches and tennis courts, together with appurtenances thereto.

(19) Public school.

(20) Public or private college.

(21) Public, private or parochial school and supporting dormitory facilities.

(22) Public or semi-public building serving as a library, museum or other similar purpose.

(23) Public transportation shelter stations.

(24) Public utility and communications facility, such as a branch telephone exchange, static transformer, booster station, or pumping station, provided there shall be no service or storage buildings or yards in connection therewith.

(25) Radio and television broadcasting stations and towers.

(26) Rapid transit terminals.

(27) Skilled nursing facility. (Ord. 1405 § 7, 2004; Ord. 1221 § 1, 2000).

19.20.120 Density provisions.

For single-family dwelling structures, in an R-1 district, the following density provisions apply:

(1) Minimum density, three DU/AC; maximum density, six DU/AC;

(2) Minimum lot area, 7,200 square feet;

(3) Minimum lot width, 60 feet;

(4) Minimum lot depth, 90 feet;

(5) Minimum front yard, 20 feet;

(6) Minimum side yard setbacks are 12 feet and five feet, however, minimum side yard along the flanking street of a corner lot, 15 feet;

(7) Minimum rear yard, 20 feet;

(8) Maximum building height, 35 feet;

(9) Maximum lot coverage, 35 percent of lot area;

(10) A single-story accessory building containing less than 600 square feet of floor area may be constructed within five feet of either sideline or rear property line provided there is six feet of unencumbered space between the principal structure and the accessory building. Accessory buildings shall not have a metal finish except when the finish is listed by the manufacturer or approved by the building department as a nonglare finish. The maximum floor area of an accessory

structure shall not exceed 50 percent of the floor area of the primary structure;

(11) Development as a planned residential development may occur subject to Chapter 19.31 OHMC. (Ord. 1221 § 1, 2000).

Article III. R-2 – Limited

Multiple-Family Residential

19.20.125 Purpose and intent.

The R-2 limited multiple-family residential district is intended for medium density residential housing. Manufactured home subdivisions and parks are allowed in this zone. The densities for this district range between a minimum density of three units per gross acre and a maximum density of 12 units per gross acre. The R-2 districts are intended only for those areas having safe and convenient access to improved collector or arterial streets and adequate public services.

19.20.130 Principal permitted uses.

In an R-2 district, the following are principal permitted buildings and uses:

(1) Principal use permitted in an R-1 district;

(2) Duplexes, two-family dwelling structures;

(3) Multifamily dwellings;

(4) Development under a planned residential development as per Chapter 19.31 OHMC.

(5) Manufactured home subdivisions and parks in compliance with Chapter 19.25 OHMC.

19.20.135 Accessory permitted uses.

In an R-2 district, the following are accessory permitted uses:

(1) Accessory uses and structures incidental to any permitted residential uses, such as servants' quarters, garages, greenhouses, or workshops; provided, that none shall be rented or occupied for gain;

(2) Television satellite dish reflectors, ground-mounted within required building setback lines.

19.20.140 Conditional uses permitted.

The following principal uses and their accessory uses may be permitted in an R-2 district when authorized by the hearing examiner:

(1) Any conditional use permitted in an R-1 district;

(2) Bed and breakfast inns subject to the following conditions:

- (a) There shall be no more than four guest rooms,
- (b) Service of meals shall be to registered guests only,
- (c) There shall be a full-time manager domiciled on the premises,
- (d) Parking of guest vehicles shall be accommodated on the same site with the main building,
- (e) Only one on-premises sign not exceeding four square feet in area shall be permitted. Maximum height of pole signs shall be 42 inches;

(3) Bed and breakfast rooms subject to the following conditions:

(a) A resident family is domiciled within the structure,
(b) No more than 50 percent of the existing bedrooms are devoted to bed and breakfast,
(c) Parking of guest vehicles shall be accommodated on the premises,
(d) Only one on-premises sign not more than four square feet in area shall be permitted. Maximum height of pole signs shall be 42 inches,
(e) No commercial dining or other hospitality facilities are maintained for the entertainment of guests,
(f) The use of the building as a dwelling is the predominate use.

19.20.145 Density provisions.

In an R-2 district, the following density provisions apply:

(1) Minimum density, three DU/AC; maximum density, 12 DU/AC;
(2) Minimum lot area: 6,000 square feet;
(3) Minimum lot width, 60 feet;
(4) Minimum lot depth, 90 feet;
(5) Minimum front yard setback, 20 feet; see also subsection (6) of this section;
(6) Minimum side yard setbacks are 20 feet, five feet on one side for duplexes and multiple-family dwellings while single-family detached dwelling structures must provide minimum 12 feet and five feet side yard setbacks. For both single-family and multiple-family dwellings, side yard along the flanking street of a corner lot is 15 feet (see also subsection (7) of this section);
(7) Minimum rear yard setbacks where distinguishable from side yards and where required for a platted lot shall not be less than 25 feet for duplexes and multiple-family dwellings, while for single-family detached dwelling structures they shall not be less than 20 feet. In addition to the above, any building of more than two stories in height must provide a minimum of two feet additional front, side and rear yard setback for each additional story;
(8) Maximum building height, 35 feet;
(9) Maximum lot coverage by buildings, 45 percent. A minimum of 20 percent of lot is to be kept free of impervious surfacing;
(10) A single-story accessory building containing less than 600 square feet of floor area may be constructed within five feet of either sideline or rear property line; provided, there is six feet of unencumbered space between the principal structure and the accessory building. Accessory buildings shall not have a metal finish except when the finish is listed by the manufacturer or approved by the building department as a nonglare finish. The maximum floor area of an accessory structure shall not exceed 50 percent of the floor area of the primary structure;
(11) Development may occur as a planned residential development subject to Chapter 19.31 OHMC.

~~(13) Qualified affordable housing projects are eligible for a density bonus pursuant to OHMC 19.25.040(1)(f).~~

19.20.150 Landscaping requirements.

Except for single-family dwellings and duplexes, landscaping and buffers shall be constructed and maintained in accordance with the provisions of Chapter 19.46 OHMC.

19.20.155 Site plan review required.
Site plan review shall be required as defined in Chapter 19.48 OHMC.

Article IV. R-3 – Multiple-Family Residential

19.20.160 Purpose and intent.
The R-3 multiple-family residential district is intended to provide for and protect areas for medium to high density multiple-family residential development. The densities for this district range between a minimum density of six units per gross acre and a maximum density of 16 units per gross acre. The R-3 districts are intended only for those areas adjacent to arterials or collector streets, without generation of additional traffic upon residential streets, and with adequate public services.

19.20.165 Principal permitted uses.
In an R-3 district, the following are principal permitted buildings and uses:
(1) Principal uses permitted in an R-2 district, except single-family uses;
(2) Manufactured home park; subject to the provisions of Chapter 19.25 OHMC;
(3) Multifamily dwellings;
(4) Development under a planned residential development as per Chapter 19.31 OHMC.

19.20.170 Accessory permitted uses.
In an R-3 district, the following are accessory permitted uses:
(1) Accessory uses and structures incidental to any permitted residential uses, such as servants' quarters, garages, greenhouses, or workshops; provided, that none shall be rented or occupied for gain;
(2) Television satellite dish reflectors, ground-mounted within required building setback lines.

19.20.175 Conditional uses permitted.
The following principal uses and their accessory uses may be permitted in an R-3 district when authorized by the hearing examiner:
(1) Any conditional use permitted in an R-2 district;
(2) Assembly hall;
(3) Gymnasium or stadium in connection with public or private schools certified by the State of Washington Board of Education.

19.20.180 Density provisions.
In an R-3 district, the following density provisions apply:
(1) Minimum density, six DU/AC; maximum, 16 DU/AC;
(2) Minimum lot area: 6,000 square feet*;
(3) Minimum lot width, 60 feet;
(4) Minimum lot depth, 90 feet;
(5) Minimum front yard setback, 20 feet; see subsection (7) of this section;
(6) Minimum side yard setbacks are 20 feet, five feet on one side. Minimum side yard along flanking street of a corner lot is 15 feet; see subsection (7) of this section;

(7) Minimum rear yard setbacks, where distinguishable from side yards and where required for a platted lot, shall not be less than 25 feet. In addition to the above, any building of more than two stories in height must provide a minimum of two feet additional front, side and rear yard setback for each additional story;

(8) Maximum building height, 35 feet;

(9) Maximum lot coverage by buildings, 45 percent. A minimum of 20 percent of lot area is to be kept free of impervious surfacing;

(10) A single-story accessory building containing less than 600 square feet of floor area may be constructed within five feet of either sideline or rear property line provided there is six feet of unencumbered space between the principal structure and the accessory building. Accessory buildings shall not have a metal finish except when the finish is listed by the manufacturer or approved by the building department as a nonglare finish. The maximum floor area of an accessory structure shall not exceed 50 percent of the floor area of the primary structure;

(11) Development as a planned residential development may occur subject to Chapter 19.31 OHMC.

* Code reviser's note: Ord. 1245, Section 1 provides, "Reductions to density standards under OHMC 19.20.180(2) concerning R-3 zoning which came into effect on August 18, 2000 as provided by Ordinance No. 1221 shall continue in effect; provided, however, that projects with plans densities which meet the previous density standards for R-3 property may be permitted so long as a completed application for development is made by June 1, 2001."

19.20.185 Landscaping requirements.

Landscaping and buffers shall be constructed and maintained in accordance with the provisions of Chapter 19.46 OHMC.

19.20.190 Site plan review required.

Site plan review shall be required as defined in Chapter 19.48 OHMC.

Article V. R-4 – Multiple-Family Residential

19.20.195 Purpose and intent.

The R-4 multiple-family residential district is intended to provide for and protect areas for high density multiple-family residential development for persons who desire to live in an apartment environment. The densities for this district range between a minimum of 12 units per gross acre and a maximum density of 22 units per gross acre. The R-4 district shall be considered only for those areas adjacent to arterials or collector streets. Safe and convenient streets must be available or developed to the district without generation of additional traffic upon residential streets.

19.20.200 Principal permitted uses.

In an R-4 district, the following are principal permitted buildings and uses:

(1) Principal uses permitted in an R-3 district;

(2) Multifamily dwellings;

(3) Development under a planned residential development as per Chapter 19.31 OHMC.

19.20.205 Accessory permitted uses.

In an R-4 district, the following are accessory permitted uses:

(1) Accessory uses and structures incidental to any permitted residential uses, such as servants' quarters, garages, greenhouses, or workshops; provided, that none shall be rented or occupied for gain;

(2) Television satellite dish reflectors, ground-mounted within required building setback lines.

19.20.210 Conditional uses permitted.

The following principal uses and their accessory uses may be permitted in an R-4 district when authorized by the hearing examiner:

(1) Any conditional use permitted in an R-3 district;

(2) Roller rink;

(3) Dance and music school.

19.20.215 Density provisions.

In an R-4 district, the following density provisions apply:

(1) Minimum density, 12 DU/AC; maximum density, 22 DU/AC;

(2) Minimum lot area: 6,000 square feet;

(3) Minimum lot width, 72 feet;

(4) Minimum lot depth, 90 feet;

(5) Minimum front yard setback, 20 feet; see subsection (7) of this section;

(6) Minimum side yard setbacks are 20 feet, five feet on one side. Minimum side yard along the flanking street of a corner lot is 15 feet;

(7) Minimum rear yard setbacks where distinguishable from side yards and where required for a platted lot shall not be less than 25 feet. In addition to the above, any building of more than two stories in height must provide a minimum of two feet additional front, side and rear yard for each additional story;

(8) Maximum building height, 35 feet;

(9) Maximum lot coverage by buildings, 45 percent. A minimum of 20 percent of lot area is to be kept free of impervious surfacing;

(10) A single-story accessory building containing less than 600 square feet of floor area may be constructed within five feet of either sideline or rear property line provided there is six feet of unencumbered space between the principal structure and the accessory building. Accessory buildings shall not have a metal finish except when the finish is listed by the manufacturer or approved by the building department as a nonglare finish. The maximum area of an accessory structure shall not exceed 50 percent of the floor area of the primary structure;

(11) Development may occur as a planned residential development subject to Chapter 19.31 OHMC.

19.20.220 Landscaping requirements.

Landscaping and buffers shall be constructed and maintained in accordance with the provisions of Chapter 19.46 OHMC.

19.20.225 Site plan review required.

Site plan review shall be required as defined in Chapter 19.48 OHMC.

Article VI. RO – Residential Office

19.20.230 Purpose and intent.

It is the purpose of the RO residential office district to provide for areas appropriate for professional and administrative offices. It is intended that such districts shall buffer residential districts and the development standards are such that office uses should be compatible with residential districts. (Ord. 1221 § 1, 2000).

19.20.235 Principal permitted uses.

In an RO district, the following are principal permitted uses:

(1) Offices for the following:
- (a) Accountants;
- (b) Attorneys;
- (c) Physicians, osteopaths, dentists, optometrists, opticians, chiropractors and others licensed by the state of Washington to practice the healing arts;
- (d) Engineers, architects, surveyors, planners and those engaged in the practice of drafting or graphics;
- (e) Insurance brokers;
- (f) Lumber brokers;
- (g) Real estate sales;
- (h) Stockbrokers;
- (i) Software developers;
- (j) Offices similar to the above but not specifically listed; subject to approval by the planning director;

(2) Principal uses permitted outright in an R-4 district;

(3) Other uses as defined by the planning director to be similar to those identified above and having equal or less impact on the purposes of this section. (Ord. 1221 § 1, 2000).

19.20.240 Accessory permitted uses.

(1) Accessory uses and structures incidental to any permitted residential uses, such as servants' quarters, garages, greenhouses, or workshops; provided, that none shall be rented or occupied for gain;

(2) Gardening and horticultural activities and related structures for noncommercial purposes;

(3) Television satellite dish reflectors, ground-mounted within required building setback lines. (Ord. 1221 § 1, 2000).

19.20.245 Conditional uses permitted.

The following principal uses and their accessory uses may be permitted in an RO district when authorized by the hearing examiner:

(1) Any conditional uses permitted in an R-4 district;

(2) Restaurants, excluding drive-up windows; provided, that any area devoted to a bar must be less than 20 percent of the restaurant seating area.

19.20.250 Density provisions.

In an RO district, the following density provisions apply:

(1) Minimum lot area, 7,200 square feet;

(2) Minimum lot width, 72 feet;
(3) Minimum lot depth, 90 feet;
(4) Minimum front yard, 20 feet; see subsection (6) of this section;
(5) Minimum side yard setbacks are 12 feet and five feet on one side, except on corner lots abutting a public street, then 20 feet;
(6) Minimum rear yard, 20 feet except when abutting a public street, then 35 feet. In addition to the above, any building of more than two stories in height must provide a minimum of two feet additional front, side and rear yard setback for each additional story;
(7) Maximum building height, 35 feet;
(8) Maximum lot coverage by building, 45 percent. A minimum of 20 percent of lot area is to be kept free of impervious surfacing;
(9) A single-story accessory building containing less than 600 square feet of floor area may be constructed within five feet of either sideline or rear property line, provided there is six feet of unencumbered space between the principal structure and the accessory building. Accessory buildings shall not have a metal finish except when the finish is listed by the manufacturer or approved by the building department as a nonglare finish. The maximum floor area of an accessory structure shall not exceed 50 percent of the floor area of the primary structure.

19.20.255 Landscaping requirements.

(1) All nonresidential development shall be in accordance with the provisions of the Oak Harbor design guidelines.
(2) Landscaping and buffers shall be constructed and maintained in accordance with the provisions of Chapter 19.46 OHMC.

19.20.260 Site plan and design review required.

Site plan and design review shall be required as defined in Chapter 19.48 OHMC.

Article VII. C-1 – Neighborhood Commercial

19.20.265 Purpose and intent.

The C-1 neighborhood commercial district is intended to provide for limited commercial facilities serving residents of the surrounding residential district.

19.20.270 Principal permitted uses.

In a C-1 district, the following are principal permitted uses:

(1) Principal uses permitted in an RO district;
(2) Artist's studios and supplies;
(3) Auto convenience market;
(4) Bakery, retail only;
(5) Barber shop or beauty shop;
(6) Book and stationery store;
(7) Clothing store;
(8) Confectionery;
(9) Dairy products, retail only;
(10) Delicatessen;
(11) Dress and millinery shop;

(12) Drug store, including fountain;
(13) Dry cleaners;
(14) Florist shop;
(15) Garden supplies and horticultural nursery, not including greenhouses;
(16) Grocery store;
(17) Hardware store;
(18) Health club;
(19) Laundry, self-service;
(20) Library;
(21) Office supply and equipment store;
(22) Photographic studio and supplies;
(23) Private nursery school, child day care center or kindergarten, provided there is established in connection therewith an outdoor play area having a minimum area of 1,000 square feet plus an additional 50 square feet for each child in excess of eight;
(24) Radio and television sales and service;
(25) Restaurant, including sidewalk cafes;
(26) Service station;
(27) Single-family residential uses when located on the second floor above a permitted use;
(28) Shoe repair shop;
(29) Variety store;
(30) Other uses as defined by the planning director to be similar to those identified above and having equal or less impact on the purposes of this section.

19.20.275 Accessory permitted uses.

In a C-1 district, following are accessory uses permitted outright:

(1) A use customarily incidental and subordinate to a principal use permitted outright;
(2) On-site hazardous waste treatment and storage facilities as an accessory use to any activity generating hazardous waste and lawfully allowed in this zone; provided, that such facilities meet the state siting criteria adopted pursuant to the requirements of RCW 70.105.210;
(3) Television satellite dish reflectors, roof-mounted and within building setback lines not to exceed 35-foot height limitations;
(4) Outdoor storage as an accessory use is not permitted.

19.20.280 Conditional uses permitted.

The following principal uses and their accessory uses may be permitted in a C-1 district when authorized by the hearing examiner:

(1) Church;
(2) Excavations, other than simple foundation;
(3) Garages, for storage only of automobiles as an accessory to a public or quasi-public institution;
(4) Governmental buildings for administrative or protective service, government storage yards, treatment plants, well sites, pump stations and sanitary landfills;
(5) Landfill, reclamation to improve steep, low or otherwise unusable land;
(6) Nursery and landscape material including greenhouses;

(7) Public transportation shelter stations;
(8) Public utility and communications facility, such as a branch telephone exchange, static transformer, booster station, pumping station; provided there shall be no service or storage building or yards in connection therewith, including microwave relay stations;
(9) Rapid transit terminals;
(10) Roller rink;
(11) Swimming pools or beaches, public or private.

19.20.285 Density provisions.

In a C-1 district, the following density provisions apply:
(1) Multifamily dwelling structures shall conform to the requirements of the R-4 district;
(2) Other uses shall conform to the following standards:
  (a) Minimum lot area, 5,000 square feet,
  (b) Minimum lot width, 50 feet,
  (c) Minimum lot depth, 90 feet,
  (d) Minimum front yard, 15 feet,
  (e) Minimum side yard, 10 feet each side,
  (f) Minimum side yard along flanking street of corner lot, 15 feet,
  (g) Minimum rear yard, 20 feet,
  (h) Minimum rear yard abutting a public street, 15 feet,
  (i) Maximum building height, 35 feet,
  (j) Maximum lot coverage, 60 percent of lot area.

19.20.290 Conditions governing permitted uses.

Uses permitted in a C-1 district, except conditional uses and dwellings, shall be subject to the following conditions:
(1) All business, service, repair, processing, storage, or merchandise display shall be conducted within a wholly enclosed building except for the following:
  (a) Off-street parking or loading;
  (b) Drive-in windows, but not including food or drink service;
  (c) Food and drink service in connection with a delicatessen or confectionery;
  (d) Sale of plant materials in connection with a florist shop;
(2) Items produced or wares and merchandise handled shall be limited to those sold at retail on the premises;
(3) The use shall not be objectionable because of odor, dust, smoke, cinders, exhaust fumes, noise, vibration, disturbance to television or radio reception or because of unsightly structure, facilities or use of land;
(4) Design shall be in accordance with the provisions of the design guidelines;
(5) Landscaping and buffers shall be constructed and maintained in accordance with the provisions of Chapter 19.46 OHMC.

19.20.295 Site plan and design review required.

(1) Site plan and design review shall be required as defined in Chapter 19.48 OHMC.
(2) The planning director, under site plan review, may impose the following conditions before a building permit will be issued for the proposed development:
  (a) Limit or prohibit openings to structures on sides within 50 feet of a

residential district if the openings will cause glare, excessive traffic, noise or other adverse effects on adjacent residential areas;

(b) Access shall be limited to streets designated as collector or arterial streets in the comprehensive plan;

(c) Require additional setbacks and landscaping or screening abutting a residential district if necessary to minimize the detrimental effects of commercial activity such as glare and noise.

Article VIII. CBD – Central Business District

19.20.300 Purpose and intent.

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

19.20.305 Principal permitted uses.

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

(1) Antique shop (R);
(2) Artist's studios and supplies (R);
(3) Bakery, retail only (R);
(4) Bank;
(5) Barber and beauty shops;
(6) Bars (R);
(7) Bicycle shop (R);
(8) Billiards and pool hall (R);
(9) Blueprinting;
(10) Bookstore (R);
(11) Brew pub (R);
(12) Camera and supply shop (R);
(13) Clothes and apparel shop (R);
(14) Cocktail lounge (R);
(15) Coffee house (R);
(16) Confectionery store (R);
(17) Conference center;
(18) Data processing facility;
(19) Delicatessen (R);
(20) Department store (R);

(21) Dry cleaners;
(22) Furniture shop (R);
(23) Florist shop (R);
(24) Gift shop (R);
(25) Grocery store, neighborhood, provided gross floor area shall not exceed 12,000 square feet (R);
(26) Hardware store (R);
(27) Hobby shop (R);
(28) Hotel and motel;
(29) Ice cream shop (R);
(30) Interior decorator studio (R);
(31) Jewelry store (R);
(32) Leather goods store (R);
(33) Music store (R);
(34) Offices;
(35) Office supply and equipment store (R);
(36) Pet shop (R);
(37) Pharmacy and drug store (R);
(38) Photographic film processing and associated retail sales (R);
(39) Photographic studio and supplies;
(40) Photocopying;
(41) Post office;
(42) Printing shop;
(43) Residential uses, provided:
    (a) In the CBD district: mixed use sites with multiple street frontages may locate dwelling units on the ground level on any street frontages other than Pioneer Way;
    (b) In subdistricts CBD-1 or CBD-2: dwelling units may be the primary use of the site;
(44) Restaurant, including sidewalk cafe (R);
(45) Schools for the fine arts;
(46) Shoe repair shop (R);
(47) Shoe store (R);
(48) Sporting goods shop (R);
(49) Tailor shop (R);
(50) Tavern (R);
(51) Taxi service;
(52) Theater;
(53) Tobacco shop (R);
(54) Toy store (R);
(55) Travel agencies;
(56) Trophy shop (R);
(57) Upholstery shop;
(58) Variety store (R);
(59) Visitor information center;
(60) Other uses similar to those identified above and having equal or less impact on the

purposes of this section.

19.20.310 Accessory permitted uses.

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

(1) A use customarily incidental and subordinate to a principal use permitted outright;

(2) On-site hazardous waste treatment and storage facilities as an accessory use to any activity generating hazardous waste and lawfully allowed in this zone; provided, that such facilities meet the state siting criteria adopted pursuant to the requirements of RCW 70.105.210;

(3) Television satellite dish reflectors, roof-mounted and within building setback lines not to exceed the height limitations and other standards as set out in OHMC 19.20.320; provided said height limitation may be increased when such height is permitted per OHMC 19.28.040 and 19.28.050.

19.20.315 Conditional uses permitted.

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

(1) Coffee kiosk;

(2) Dancehall;

(3) Governmental buildings for administrative or protective services;

(4) Health club;

(5) Land reclamation with water dependent marine development;

(6) Parking lots or garages not in conjunction with permitted uses;

(7) Places of entertainment and amusement, if conducted within a wholly enclosed building;

(8) Private nursery school, kindergarten, or child day care center not qualifying as a home occupation on a legal lot; provided there is established in connection therewith an outdoor play area having a minimum area of 1,000 square feet plus an additional 50 square feet for each child in excess of eight;

(9) Public utility and communications facility;

(10) Transit terminals;

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

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

19.20.320 Density provisions.

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

(1) Allowable density:

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

(2) Minimum lot area, no limitation;

(3) Minimum lot width, no limitation;

(4) Minimum lot depth, no limitation;

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

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

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

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

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

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

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

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

(9) Maximum lot coverage, no limitation;

(10) Parking.

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

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

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

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

(11) Design Standards.

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

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

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

(i) Ground-floor, nonretail development shall not comprise more than 50 percent of the lineal street frontage of the lot;

(ii) Window areas for nonresidential portions of a building's facades shall not be less than 40 percent or greater than 60 percent of the total facade area;

(iii) Conformance with the above standards shall be determined by using the design guideline applicability standards established under OHMC 19.48.040;

(d) Residential development in subdistrict CBD-1 or CBD-2 shall be under a planned residential development per Chapter 19.31 OHMC;

(e) Nonresidential development with building heights greater than 45 feet, as approved by the design review board, shall provide a minimum of 450 square feet of pedestrian-oriented space (as defined in the Oak Harbor commercial and industrial design guidelines) plus an additional 25 square feet for each vertical foot of building height above 45 feet;

(f) All buildings in the CBD greater than three stories must set back upper stories by at least 10 feet.

19.20.325 Conditions governing permitted uses.

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

(1) All business, service, repair, storage, or merchandise display shall be conducted within a wholly enclosed building, except for the following:

(a) Off-street parking and loading;

(b) Food and drink service in connection with cafes, restaurants or other eating establishment.

(2) The use of property must not result in the creation of offensive odors or offensive or harmful quantities of dust, smoke, exhaust fumes, noise or vibration.

(3) Landscaping and buffers shall be constructed and maintained in accordance with the provisions of Chapter 19.46 OHMC. (Ord. 1221 § 1, 2000).

19.20.330 Site plan and design review required.

Site plan and design review shall be required as per Chapter 19.48 OHMC.

Article IX. C-3 – Community Commercial

19.20.335 Purpose and intent.

The C-3 community commercial district is intended to provide for those types of retail, wholesale, transportation, and service uses which, because of traffic and other requirements, depend upon particular locations to serve the needs of the community and its trading area. Generally, the permitted uses require large sites and access from either major or minor arterials.

19.20.340 Principal permitted uses.

In a C-3 district, the following are principal uses permitted outright:

(1) Any principal use permitted in a C-1 and CBD district, provided dwelling units are:
   (a) Above and secondary to essential or primary floor uses;
   (b) Ground level access is independent of the business uses from an inside lobby, elevators, and/or corridors, and an enclosed interior court, or other separate access provisions;

(2) Amusement enterprise including bowling alley, roller or ice rink, dancehall, shooting gallery, and trampoline;

(3) Animal hospital when located not closer than 200 feet from a residential zoning district, provided all animals are housed in a completely enclosed building;

(4) Assembly hall;

(5) Automobile or truck service station;

(6) Automobile repair of all kinds, including body and fender work, provided there shall be no wrecking, junking, dismantling, or salvaging operations;

(7) Automobiles sales and service;

(8) Bakery;

(9) Book publishing and binding;

(10) Carwash;

(11) Contractor's plants and storage yards;

(12) Currency exchange;

(13) Extended stay motel;

(14) Feed and seed store, retail or wholesale;

(15) Film processing plant;

(16) Grocery store;

(17) Laboratory for experimental or research work or testing;

(18) Laundry and dry cleaning, dyeing, or rug cleaning plant;

(19) Nursery and landscape material including greenhouses;

(20) Offices;

(21) Plumbing shop;

(22) Places of entertainment;

(23) Recycling of glass and metal cans when conducted within a wholly enclosed building, including scrap paper or rag storage;

(24) Shopping centers;

(25) Sign shop, but not manufacture or assembly of electrically illuminated signs;

(26) Supermarket;

(27) Taxidermist;

(28) Upholstery shop;

(29) Veterinary clinic (hospital) (see animal hospital);

(30) Other uses of similar character, but not including a specific listed industrial use permitted in an I industrial district, subject to approval by the city council;

(31) Other uses as defined by the planning director to be similar to those identified above and having equal or less impact on the purposes of this section.

19.20.345 Accessory permitted uses.

In a C-3 district, the following are accessory uses permitted outright:

(1) A use customarily incidental and subordinate to a principal use permitted outright;

(2) On-site hazardous waste treatment and storage facilities as an accessory use to any activity generating hazardous waste and lawfully allowed in this zone; provided, that such facilities meet the state siting criteria adopted pursuant to the requirements of RCW 70.105.210;

(3) Television satellite dish reflectors, roof-mounted and within building setback lines not to exceed 35-foot height limitations.

19.20.350 Conditional uses permitted.

The following principal uses and their accessory uses may be permitted in a C-3 district when authorized by the hearing examiner:

(1) Conditional uses permitted in a C-1 and CBD district;

(2) Drive-in theater;

(3) Fuel oil distribution, retail and wholesale, provided incidental storage is maintained underground;

(4) Fuel yard;

(5) Go-kart tracks;

(6) Gymnasium;

(7) Lumber yard, retail or wholesale, including building supplies, hardware, and related items;

(8) Mobile home and trailer sales lot;

(9) Mortuary;

(10) Outdoor use, activity or storage only in conjunction with a permitted use. A solid sight-obscuring fence or other appropriate screening approved by the planning director is required around the outside edges of the area devoted to the outdoor use, activity or storage. The height of outdoor storage abutting public streets or residential zones shall not be higher than the height of the screen device approved by the planning director. Outdoor use, activity or storage areas located adjacent to C-3 property may be located in the required interior side and rear setback yards. All outdoor use, activity or storage areas located adjacent to residential zones must meet required setbacks for the primary use. No outdoor use, activity or storage shall be permitted in the front yard setback;

(11) Produce stand;

(12) Schools for drop-out and at-risk students;

(13) Stadium;

(14) Truck terminal;

(15) Wholesale warehouse or storage establishments, but only occupying a completely enclosed building.

19.20.355 Density provisions.

In a C-3 district, the following provisions apply:

(1) Minimum lot area, no limitation;

(2) Minimum lot width, no limitation;

(3) Minimum lot depth, no limitation;

(4) Minimum front yard, 35 feet. The building setback may be reduced to 15 feet if the entire setback area from property line to building is landscaped where reduction occurs;

(5) Minimum side yard, no limitation, except when abutting a residentially zoned

property, then 30 feet each. For corner lots, the side yard abutting a public street shall be the same as the front setback;

(6) Minimum rear yard, no limitation, except when abutting a public street, then it shall be the same as the front setback;

(7) Maximum building height, 35 feet;

(8) Maximum lot coverage, no limitation.

19.20.360 Conditions governing permitted uses.

All principal uses permitted outright in a C-3 district shall meet the following requirements:

(1) With the exception of sales lots, outside storage or equipment yard, or yards containing outside industrial operation in connection with a use permitted outright or a conditional use in a C-3 district abutting, adjoining, or located across a street from a residential zoning district, or located along a street designated by the comprehensive plan as a state highway, or a major or secondary arterial, shall be enclosed by a fence. The fence shall be sight-obscuring, obstructing the storage from view on the sides of the property abutting, adjoining, or facing a residential district. The fence shall be of such material and design as will not detract from adjacent residences and shall be built according to plans submitted by the owner or his authorized agent and approved by the planning director. In no case shall the fence be required to have a height in excess of 10 feet;

(2) Automobile, mobile home or trailer sales lots shall be drained and surfaced with crushed rock except in those portions of the lot maintained as landscape areas;

(3) The use of property shall not be objectionable because of odor, dust, smoke, cinders, exhaust fumes, noise, or vibration, or because of unsightly structures, facilities or open storage;

(4) Design shall be in accordance with the provisions of the Oak Harbor design guidelines;

(5) Landscaping and buffers shall be constructed and maintained in accordance with the provisions of Chapter 19.46 OHMC.

19.20.365 Site plan and design review required.

Site plan and design review shall be required as defined in Chapter 19.48 OHMC.

19.20.368 Relation to aviation environs overlay zone.*

Property located in an aviation environs overlay zone, as governed in Chapter 19.50 OHMC, shall meet the requirements for noise attenuation in Chapter 17.30 OHMC and the comprehensive plan land use element.

* Code reviser's note: Ord. 1221 added this section as OHMC 19.20.370. It has been editorially renumbered to avoid duplication of section numbers.

Article X. C-4 – Highway Service Commercial

19.20.370 Purpose and intent.

The C-4 highway service commercial district is intended to permit the establishment of facilities oriented toward uses dependent upon highway location. The district is primarily intended to allow for the concentration of automobile and other motor vehicle sales centers. Other commercial and limited industrial activities are also permitted. The uses

permitted by this district are compatible with the NAS Whidbey AICUZ Study. Access to the highway is controlled so as to minimize conflicts and maximize traffic efficiencies.

19.20.375 Principal permitted uses.

The following uses are permitted outright in the C-4 district:

(1) Automobile and truck service stations;
(2) Automobile sales and service;
(3) Boat sales and boat repair;
(4) Car washes;
(5) Coffee kiosks;
(6) Contractor offices and related storage;
(7) Drive-in banks;
(8) Equipment rental;
(9) Farm and garden supplies, plant nurseries;
(10) Furniture manufacturing;
(11) Furniture sales;
(12) Mobile and modular home sales;
(13) Printing and publishing;
(14) Professional and scientific instrument manufacturing;
(15) Real estate sales;
(16) Recreational vehicle sales;
(17) Restaurants;
(18) Retail or wholesale building supplies and hardware;
(19) Self-storage facilities.

19.20.380 Accessory permitted uses.

The following uses are permitted as accessory uses to a permitted use in the C-4 district:

(1) A use customarily incidental and subordinate to a principal use permitted outright;
(2) On-site hazardous waste treatment and storage facilities as an accessory use to any activity generating hazardous waste and lawfully allowed in this zone; provided, that such facilities meet the state siting criteria adopted pursuant to the requirements of RCW 70.105.210;
(3) Television satellite dish reflectors, roof-mounted and within building setback lines not to exceed 35-foot height limitations.

19.20.385 Prohibited uses.

No building, structure or premises, or a portion thereof, established after the effective date of the ordinance codified in this chapter shall be used for human habitation, permanent, transient or temporary, except as quarters for a caretaker, guard or other person whose permanent residency on the premises is required for operational safety or protective purposes.

19.20.390 Conditional uses permitted.

The following principal uses and their accessory uses may be permitted in a C-4 district when authorized by the hearing examiner:

(1) Amateur radio tower and antenna;
(2) Government buildings for administrative or protective services;
(3) Government storage yards, treatment plants, well sites, pump stations;

(4) Public transportation shelter stations;
(5) Public utility and communications facility;
(6) Radio and television broadcasting stations and towers;
(7) Crematorium or mortuary, but only if adjacent to or across the street from a cemetery.

19.20.395 Density provisions.

In a C-4 district, the following density provisions apply:

(1) Minimum Lot Size. There is no minimum lot size for this district; provided, that no residence for a caretaker, guard or other person whose permanent residency on the premises is required for operational safety or protective purposes shall be erected, maintained or enlarged on a lot which is less than 6,000 square feet;
(2) There is no minimum lot depth;
(3) There is no minimum lot width;
(4) Front setback shall be 35 feet;
(5) There is no side setback except as follows:
    (a) Along side lot lines abutting residentially zoned property there shall be a 10-foot setback,
    (b) For corner lots the side setback shall be 15 feet, except that the city council may approve a variable setback of not less than the established building line of the adjoining property after consideration at a public meeting or public hearing;
(6) There is no minimum rear setback except where abutting a street. In the case of a lot where the rear lot line abuts a street, the rear setback shall be 15 feet;
(7) Maximum building height, 35 feet;
(8) Maximum lot coverage, no limitation.

19.20.400 Conditions governing permitted uses.

All principal uses permitted outright in a C-4 district shall meet the following requirements:

(1) Design shall be in accordance with the provisions of the design guidelines;
(2) Landscaping and buffers shall be constructed and maintained in accordance with the provisions of Chapter 19.46 OHMC;
(3) Access to SR 20 is limited to a circulation plan approved under Chapter 19.48 OHMC. Access to individual parcels may be permitted through adjacent parking lots;
(4) Automobile and boat sales lots shall be drained and paved or surfaced with crushed rock except in those portions of the lot maintained as landscaped areas;
(5) The use of property shall not be objectionable because of odor, dust, smoke, cinders, exhaust fumes, noise or vibration, or because of unsightly structures, facilities or open storage;
(6) Outdoor Use, Activity or Storage Only in Conjunction with a Permitted Use. A solid sight-obscuring fence or other appropriate screening approved by the planning department is required around the outside edges of the area devoted to the outdoor use, activity or storage. The height of outdoor storage abutting public streets or residential zones shall not be higher than the height of the screen device approved by the planning department. Outdoor use, activity or storage areas

located adjacent to C-4 property may be located in the required interior side and rear setback yards. All outdoor use, activity or storage areas located adjacent to residential zones must meet required setbacks for the primary use. No outdoor use, activity or storage shall be permitted in the front yard setback;

(7) Towers, antennas or other objects exceeding 200 feet above the ground or that penetrate the 100:1 angle slope criteria established in Federal Aviation Regulation (FAR) Part 44 (Sections 77.13(a)(1) and 77.13(a)(2)(I), respectively) shall be reviewed for compatibility with airport operations. No tower, antenna or other object shall constitute a hazard to air navigation, interfere with the safe operation of aircraft or deny the existing operational capability of Ault Field.

19.20.405 Site plan and design review required.

Site plan and design review shall be required as defined in Chapter 19.48 OHMC.

19.20.408 Relation to aviation environs overlay zone.*

Property located in an aviation environs overlay zone shall meet the requirements for land use compatibility in Chapter 19.50 OHMC, noise attenuation in Chapter 17.30 OHMC and the comprehensive plan land use element.

* Code reviser's note: Ord. 1221 added this section as OHMC 19.20.410. It has been editorially renumbered to avoid duplication of section numbers.

Article XI. C-5 – Highway Corridor Commercial

19.20.410 Purpose and intent.

The C-5 highway corridor commercial district is intended to provide for those types of uses which, because of traffic and other requirements, are regional in impact and may be located in the highway corridor. It is intended to provide a means of allowing these uses along the highway corridor but with limited access to SR 20.

19.20.415 Principal permitted uses.

Principal uses permitted outright in a C-5 district are:

(1) Any principal use permitted in a C-1 and CBD district, provided dwelling units are:
   - (a) Above and secondary to essential or primary floor uses,
   - (b) Ground level access is independent of the business uses from an inside lobby, elevators, and/or corridors, and an enclosed interior court, or other separate access provisions;

(2) Animal hospital when located not closer than 200 feet from a residential district, provided all animals are housed in a completely enclosed building;

(3) Assembly hall;

(4) Automobile service station;

(5) Bakery;

(6) Dry cleaning or laundry establishment, pickup and delivery only;

(7) Feed and seed store, retail or wholesale;

(8) Grocery store;

(9) Gymnasium and sports center;

(10) Movie theater;

(11) Nursery and landscape material including greenhouses;

(12) Offices;
(13) Places of entertainment;
(14) Plumbing shop;
(15) Shopping centers:
(16) Supermarket;
(17) Veterinary clinic (hospital);
(18) Other uses as defined by the planning director to be similar to those identified above and having equal or less impact on the purposes of this section.

19.20.420 Accessory permitted uses.

Accessory uses permitted outright in a C-5 district are:

(1) A use customarily incidental and subordinate to a principal use permitted outright;
(2) On-site hazardous waste treatment and storage facilities as an accessory use to any activity generating hazardous waste and lawfully allowed in this zone; provided, that such facilities meet the state siting criteria adopted pursuant to the requirements of RCW 70.105.210;
(3) Television satellite dish reflectors, roof-mounted and within building setback lines not to exceed 35-foot height limitations.

19.20.425 Conditional uses permitted.

The following principal uses and their accessory uses may be permitted in a C-5 district when authorized by the hearing examiner:

(1) Conditional uses permitted in a C-1 and CBD district;
(2) Home improvement center;
(3) Retail or wholesale building supplies, hardware and related items;
(4) Produce stand. (

19.20.430 Density provisions.

Density provisions in a C-5 district are as follows:

(1) Minimum lot area, no limitation;
(2) Minimum lot width, no limitation;
(3) Minimum lot depth, no limitation;
(4) Minimum front yard, 50 feet from any adjoining public street right-of-way. The building setback may be reduced to 30 feet if the entire setback area from property line to building is landscaped where reduction occurs;
(5) Minimum side yard, 30 feet. For corner lots, the side yard abutting a public street shall be the same as front setback;
(6) Minimum rear yard, 50 feet, except when abutting a public street it shall be the same as front setback;
(7) Maximum building height, 35 feet;
(8) Maximum lot coverage, no limitation.

19.20.435 Conditions governing permitted uses.

All principal uses permitted outright in a C-5 district shall meet the following conditions:

(1) Design shall be in accordance with the provisions of the design guidelines;
(2) Landscaping and buffers shall be constructed and maintained in accordance with the provisions of Chapter 19.46 OHMC;
(3) The use of property shall not be objectionable because of odor, dust, smoke,

cinders, exhaust fumes, noise, or vibration, or because of unsightly structures, facilities or open storage;

(4) Access to SR 20 highway is limited to an approved circulation plan. Access to individual parcels may be permitted through adjacent parking lots.

19.20.440 Site plan and design review required.

Site plan and design review shall be required as defined in Chapter 19.48 OHMC.

Article XII. PBP – Planned Business Park

19.20.445 Purpose and intent.

The purpose and intent of the planned business park (PBP) district is to:

(1) Allow the development of larger-scaled master planned developments related to businesses;

(2) Preserve or create environmental amenities superior to those generally found in conventional developments;

(3) Encourage comprehensive planning of large business park sites in order to create a park-like environment;

(4) Preserve to the greatest possible extent the natural characteristics of the land, including topography, significant natural vegetation, waterways, views, etc.;

(5) Establish development standards which provide compatibility with surrounding residential, commercial or other developments and offer protection from blight;

(6) Provide for maximum efficiency in the layout of streets, utility networks, open space, landscaping requirements and other public improvements;

(7) Provide a guide for developers, city officials and the planning commission in meeting the purpose and provisions of this section.

19.20.450 Principal permitted uses.

Primary uses permitted in the planned business park district provide a broad range of activities including research, light assembly and light manufacturing. Specific primary types of uses allowable include:

(1) Assembly, manufacture, packaging, compounding or treatment of articles or merchandise from the following previously prepared materials: cloth, glass, lacquer, leather, paper, plastics, precious or semi-precious metals or stones, wood (excluding sawmills, lumber mills and planing mills), paint, clay, sand, rubber;

(2) Printing, publishing and book binding;

(3) Manufacturing, processing and packaging of food, pharmaceuticals, toiletries, cosmetics, optical goods, scientific instruments and equipment, and precision instruments and equipment;

(4) Scientific research, testing and experimental development laboratories;

(5) Corporate headquarters, regional headquarters and administrative offices of commercial, industrial, financial, charitable or governmental institutions;

(6) Uses similar to, or related to, or compatible with those listed or described in this chapter, are permitted upon a finding by the planning director that a proposed use does not conflict with the intent of this section or the policies of the Oak Harbor comprehensive plan. The criteria for such finding of similarity, relationship or compatibility shall include, but is not limited to the following:

(a) The proposed use will not unreasonably adversely impact surrounding

uses;

(b) The development standards for permitted uses can be met by the proposed use;

(c) Impacts, such as traffic, noise and air quality will not be significantly different than those generated by permitted uses.

19.20.455 Accessory permitted uses.

Accessory uses complement but do not conflict with the primary use. Specific secondary types of uses allowable include:

(1) Warehousing and distribution facilities and the storage of goods or products clearly subordinate to, and an integral part of, the primary permitted uses;

(2) Engineering, development, administrative or executive offices which are part of a primary use;

(3) Retail development may be permitted where it can be demonstrated that the business park will be clearly and primarily benefited by the convenience of such retail facilities. The total square footage devoted to retail development shall not exceed 15 percent per phase of the developable floor area of the business park district in which it is located or district cumulative total. The total square footage of a single retail use may not exceed 7,500 square feet and the total square footage of all retail uses may not exceed 25 percent of a building's gross floor area. Signs for retail uses shall be visible only within the business park area and attached to the building wall. Retail uses include:

(a) Support retail, such as food and drug stores, banks and office supplies;

(b) Personal services such as barber and beauty shops, dry cleaning, laundry;

(c) Business services, such as printing and copying, photo processing, postal/mail, word processing, travel agencies;

(d) Food services, such as delicatessens, restaurants (except drive-through windows), brew pubs;

(e) Recreation facilities, except mechanical or electronic games centers, theaters (live and movie) and games of skill such as bowling;

(4) Day care centers;

(5) Showrooms and galleries;

(6) Hotels and conference centers; and

(7) Caretaker's quarters.

19.20.460 Prohibited uses.

(1) All uses or activities which would require extraordinary equipment, devices or technology for the control of odors, dust, fumes, smoke, noise or other wastes and/or byproducts which, if uncontrolled, would contaminate the environment to a degree unacceptable by contemporary community standards; or which would exceed the acceptable limits established by competent and recognized public and quasi-public agencies for the protection of industrial and/or environmental health. Such uses include, but are not limited to the following:

(a) Manufacturing involving outdoor storage;

(b) Manufacture or storage of explosives;

(c) Stockyards, dairies, slaughterhouses, rendering plants, canneries, breweries, wineries and other agricultural industries;

(d) Petroleum refineries;
(e) Bulk fuel storage, unless stored in tanks and accessory to a permitted use occurring on the same lot;
(f) Truck parking, repair and maintenance unless accessory to a permitted use located on the same lot;
(g) Cement manufacturing;
(h) Blast furnaces;
(i) Smelting;
(j) Drop forge industries;
(k) Fertilizer manufacture;
(l) Sanitary landfills;
(m) Waste to energy facilities;
(n) Solid waste transfer stations;
(o) Sewage treatment plants;
(p) Lumber, pulp or paper mills;
(q) Cargo container storage;
(r) Asphalt or concrete batch plant;

(2) Single-family or multifamily residences.

19.20.465 Site requirements.

In a PBP district, the following minimum site requirements shall apply:

(1) Minimum site acreage for the development of a new planned business park district: 20 acres;
(2) Minimum area for an existing lot or for a lot within a planned business park plat district: 2.5 acres unless, as provided in a binding site plan, it may be less;
(3) Minimum lot width: 100 feet;
(4) Minimum lot depth: 200 feet;
(5) Minimum area for a subdivision plat is 10 acres which must be coordinated with the surrounding properties such as circulation, access, pedestrian and bike paths.

19.20.470 Building heights.

Permitted building height is determined by the distance the building is separated from any residential zone, or from any area designated in the Oak Harbor comprehensive plan for residential uses, as follows:

(1) Less than 100 feet: 35 feet in height;
(2) One hundred one feet and above: 50 feet in height;
(3) Two hundred feet and above: 65 feet in height.

19.20.475 Building coverage.

The maximum building coverage shall not exceed 40 percent of the total lot area.

19.20.480 Building setbacks.

In a PBP district, all buildings and structures, except for fencing, shall meet the following minimum setback requirements:

(1) Front yard: 30 feet. In cases where no parking or service occurs between the face of the building and the street, the front yard may be reduced to 15 feet;
(2) Interior side yards: 15 feet or zero as established by master plan;
(3) Corner lot abutting a street: 30 feet. In cases where no parking or service occurs

between the face of the building and the street, the side yard may be reduced to 20 feet;

(4) Rear yard: 15 feet or zero as established by master plan;

(5) When abutting any residential zoned property or any area planned for residential uses under the Oak Harbor comprehensive plan, the minimum setback shall be 50 feet.

19.20.485 Loading areas.

(1) Truck loading and maneuvering areas shall not be located within the required building setback areas.

(2) Truck loading and unloading shall not be permitted on streets.

(3) Truck loading and unloading areas, parking and maneuvering areas shall be screened by a sight-obscuring fence eight feet in height, except when stored materials cannot be seen from any public roadway or from surrounding properties.

19.20.490 Off-street parking.

(1) The total required off-street parking facilities shall be in accordance with Chapter 19.44 OHMC.

(2) Parking lots shall be landscaped in accordance with Chapter 19.46 OHMC.

19.20.495 Building design.

(1) Buildings and structures should be designed in accordance with the Oak Harbor commercial and industrial design guidelines.

(2) Buildings shall be sited so as not to project or reflect natural or artificial light or glare into residential zoned areas or areas planned for residential uses under the Oak Harbor comprehensive plan.

(3) Mechanical equipment located on the roof, facade, or external portion of a building shall be architecturally screened by including the equipment in the building or site design so as not to be visible from adjacent properties or public streets.

(4) Equipment or vents which generate noise or air emissions shall be located on the opposite side of the building from adjoining residentially zoned properties.

19.20.500 Landscaping requirements.

(1) The following requirements are in addition to the requirements contained in Chapter 19.46 OHMC:

(a) A minimum of 10 percent of the site will be retained as open space and/or common recreation area in addition to the minimum landscaping requirements and setbacks;

(b) Existing natural vegetation and significant stands of trees should be retained in accordance with Chapter 19.46 OHMC.

(2) Additional landscaping may be required in order to protect surrounding uses and to meet the intent and purpose of this section and the Oak Harbor comprehensive plan.

19.20.505 Environmental performance standards.

It shall be the responsibility of the operator and/or the proprietor of any permitted use to provide such reasonable evidence and technical data as the planning director may require

to demonstrate that the use or activity is or will be in compliance with this title and all federal, state and city requirements, codes and standards. Failure of the planning director to require such information shall not be construed as relieving the operator and/or proprietor from compliance with this title and all state, federal and city requirements, codes and standards.

19.20.510 Relation to aviation environs overlay zone.
Property located in an aviation environs overlay zone, as governed in Chapter 19.50 OHMC, shall meet the requirements for noise attenuation in Chapter 17.30 OHMC and the comprehensive plan land use element.

19.20.515 Preapplication meeting.
Prior to formal submittal of the application, the applicant shall present to the planning department a preliminary site plan, which shall contain in a rough and approximate manner, all of the information required for the application under OHMC 19.20.530. Upon submittal, the planning department shall schedule a meeting with representatives of applicable city departments. The planning director may also invite, because of the nature, size and scope of the development, others outside of the city to participate in the preapplication meeting. The purpose of the meeting is to enable the applicant to obtain the advice of city staff as to the intent, standards and provisions of this code with regard to the proposed plan. Information presented for and at the preapplication meeting shall not be a part of the public record as no applications are submitted for formal review.

19.20.520 Application requirements.
An application for approval of a proposed planned business park shall be made to the planning director upon forms furnished by the city. Application shall be made by the owner or owners of the parcel or parcels intended to be developed as a unit or their duly authorized agent or agents. The ownership of all parcels to be included must be represented in the application.

19.20.525 General standards and requirements – Professional design.

(1) The applicant for all proposed planned business park developments shall certify that registered professional personnel will plan, guide and inspect the development and shall list the personnel by name, address and profession on the application. The planning director may direct the applicant, because of the nature, size and scope of the development, to utilize any or all of the following professions:
   (a) An architect licensed by the state of Washington;
   (b) A landscape architect licensed by the state of Washington;
   (c) An urban planner holding a full membership in the American Institute of Certified Planners;
   (d) A registered civil engineer licensed by the state of Washington.

(2) One of the professional persons chosen shall be designated by the applicant as the applicant's representative in conferring with the planning commission and/or the city staff regarding the master plan and the execution thereof.

(3) The selection of the professional coordinator of the design team will not limit the owner or the developer in consulting with the planning staff or the planning commission.

19.20.530 Preliminary master plan – Filing requirements.
The applicant shall file with the planning director a preliminary master plan, including the following:

(1) A legal description of the site and plot plan indicating location of all existing and proposed adjacent streets, private rights-of-way and easements;

(2) The proposed site plan and drawings shall include the following information:

(a) Topographic contours at a minimum interval of five feet;

(b) Individual trees over 12 inches in trunk diameter measured four feet above the base of the trunk in areas to be developed or otherwise disturbed;

(c) Existing and approximate proposed finished grades of the property with conceptual planning level, all drainage features;

(d) Conceptual planning level, location of all proposed structures together with the usage to be contained therein and approximate location of all entrances thereto and heights, and gross floor area thereof;

(e) Conceptual planning level location and nature of vehicular and pedestrian circulation features within the site and adjacent streets and alleys;

(f) The extent, location, arrangement, and proposed improvements of all off-street parking and loading facilities;

(g) The extent, location, arrangement and proposed improvements with conceptual planning level of all open space, landscaping, fences and walls;

(h) Architectural drawings, sketches and typical layouts demonstrating the planning and character of the proposed development;

(3) Proposed conditions, covenants and restrictions, including continuous maintenance provisions for the project;

(4) A text describing conditions or features which cannot be adequately displayed on maps or drawings; and

(5) Proposed phasing.

19.20.535 Preliminary master plan – Staff recommendation.
After receiving the preliminary master plan, the planning director shall route the same to all appropriate city departments, and each department shall submit to the planning director comments and recommendations. After receiving such information from the city departments, the planning director shall present recommendations and conclusions before the planning commission at the public hearing upon the preliminary master plan.

19.20.540 Preliminary master plan – Public hearing.
The preliminary master plan shall be considered at a public hearing before the planning commission after notice given in the manner required in Chapter 18.20 OHMC.

19.20.545 Preliminary master plan – Planning commission review.
Following the public hearing, the planning commission may approve as proposed, approve with changes or disapprove the application and the accompanying master plan. The commission's action shall be based on the following criteria:

(1) The proposal meets the requirements of this title;

(2) The perimeter of the project shall be compatible with the land use of adjoining properties. Compatibility includes, but is not limited to, size, scale, mass and architectural design;

(3) The proposal shall not be unreasonably detrimental to existing uses or potential

surrounding land uses as defined by the Oak Harbor comprehensive plan.

19.20.550 Preliminary master plan – Council review.
If the commission approves said application, the city council shall be informed of such action and shall indicate its concurrence or disapproval. The determination of the council shall become final 10 days after the date of decision unless directed otherwise or appealed to the city council in accordance with OHMC 19.20.580.

19.20.555 Final master plans – Filing requirements.
Within one year after the approval or modified approval of the preliminary master plan, the applicant shall file with the planning director a final plan for the entire development or, when submission in stages has been authorized, for the first phase of development. The final plan shall conform in all major respects with the approved preliminary master plan. The final plan shall include all information included in the preliminary plan plus the following:
(1) The location of water, sewer and drainage facilities;
(2) Detailed building and landscaping plans and elevations;
(3) The character and location of signs;
(4) Plans for street improvements;
(5) Grading or earth moving plans; and
(6) Common lighting for streets, parking and common areas.
The final plan shall be sufficiently detailed to indicate fully the ultimate operation and appearance of the development. Fully drafted, properly executed legal documents are required by the planning commission for dedication or reservation of public facilities.

19.20.560 Final master plan – Staff recommendation.
After receiving the final master plan, the planning director shall route the same to all appropriate city departments, and each department shall submit to the planning director comments regarding the conformance of the final development to the preliminary master plan approval. After receiving such information from the city departments, the planning director shall present recommendations and conclusions to the planning commission.

19.20.565 Final master plan – Planning commission approval.
Upon receipt of the final master plan, the planning commission shall examine such plan and determine whether it conforms to all applicable criteria and standards and whether it conforms in all substantial respects to the previously approved planned business park permit. In the event the planning commission determines that the final master plan does not conform to the previously approved permit, they may require such changes in the proposed development or impose such conditions of approval as are, in its judgment, necessary to ensure conformity to the previous approval.

If the commission does grant final approval, the decision of the commission shall become final 10 days after the date of the final action unless appealed to the city council in accordance with OHMC 19.20.580; provided, that if all other requirements of this title have been met, the permit shall not be granted until the proper drafting, executing and recording (all at applicant's expense) of all documents necessary to fulfill the requirements of this title.

19.20.570 Modifications to the plan.

Requests for modifications of preliminary or final master plans shall be made in writing and shall be submitted to the planning department in the manner and form prescribed by the planning director.

(1) Modifications up to 10 percent shall be deemed minor if the proposal does not change any of the following:
   - (a) Land use;
   - (b) Floor area ratio;
   - (c) General location or number of access points;
   - (d) The amount of open space;
   - (e) The amount of parking;
   - (f) The total square footage of structures;
   - (g) The amount and location of outdoor storage;
   - (h) The general height and character of the structures; and
   - (i) As described in the master plan provide for a percentage of change for modification.

(2) Examples of minor modifications include but are not limited to lot line adjustments, minor relocations of buildings or landscaped areas, minor changes in phasing and timing, minor changes in building design, minor changes to outdoor storage and truck loading area and minor changes in elevations of buildings.

(3) Minor modifications may be approved by the planning director.

(4) Major modifications are those which, as determined by the planning director, substantially change the basic design, floor area ratios, open space or other similar requirements or provisions. Major modifications to the master plans shall be reviewed by the planning commission and city council under the same process as outlined under OHMC 19.20.545 and 19.20.550.

19.20.575 Phased development.

Development of the project may be phased, in which case the preliminary master plan must indicate all phases and indicate how each phase shall relate to other phases. The information appearing in the preliminary master plan shall include how common open space areas, common parking areas, landscaping and buffer areas relate to the development and timing of each phase of development. Each phase may be processed separately as a final master plan review. The binding site plan process may be used if the property is to be subdivided.

19.20.580 Appeals to council.

(1) Within 10 days after the date of decision by the planning commission on an application of approval of a preliminary or final master plan in accordance with OHMC 19.20.545 or 19.20.565 such approval may be appealed to the city council by the applicant, the permit holder or any other interested party. Such appeal shall be made on a form prescribed by the commission and shall be filed within the prescribed time with the office of the city clerk and must be accompanied by a filing fee of $100.00. The appeal shall state specifically wherein it is claimed there was an error or abuse of discretion by the commission or wherein its decision is not supported by the evidence in the record or where ample consideration of good planning principles have not been made.

(2) Upon receipt of such appeal, together with the filing fee, the city council shall set the time for consideration thereof. The city clerk shall notify the chairman of the planning commission of the receipt of said appeal and of the time set for consideration thereof and the city clerk shall, not less than five days prior to the date set for the hearing on the appeal, give written notice to the appellant and to any known adverse parties or to their representatives of the time and place of the hearing.

(3) In considering the appeal, the city council shall determine whether the proposal conforms to the applicable criteria and standards of the preliminary approval based on the criteria set forth in OHMC 19.20.545 and may refer the matter back to the planning commission for further information or reconsideration or approve or disapprove the proposed development or require such changes therein or impose such reasonable conditions of approval as are, in its judgment, necessary to insure conformity to said preliminary approval. The decision of the city council shall be final.

19.20.585 Adherence to approved plan.

The building official shall issue building permits only for buildings and structures which conform with the approved final master plan for the planned business park and with all other applicable city ordinances, regulations, rezone, annexation or development agreements. The building official shall issue a certificate of occupancy only for completed buildings or structures which conform to the requirements of the approved final master plans and all other applicable city ordinances, regulations, rezone, annexation or development agreements.

19.20.590 Lots subject to final master plan.

All lots or other divisions of a subdivided planned business park shall remain subject to compliance with the final master plan regardless of compliance with OHMC Titles 21 and 22, or subsequent conveyance of such individual lots.

19.20.595 Judicial review.

Any legal action to review a decision of the city council or planning commission under this title shall be filed in Island County superior court within 21 days of the decision, notwithstanding the effective date of any ordinance passed or proposed to effectuate said decision.

Article XIII. PIP – Planned Industrial Park

19.20.600 Purpose and intent.

The purpose and intent of the PIP planned industrial park district is to:

(1) Encourage comprehensive planning of large industrial sites in order to create a park-like environment;

(2) Preserve or create environmental amenities superior to those generally found in conventional industrial developments;

(3) Preserve to the greatest possible extent the natural characteristics of the land, including topography, a portion of significant natural vegetation, waterways, views, etc.;

(4) Establish development standards which provide compatibility with surrounding

residential, commercial or other developments and offer protection from industrial blight;

(5) Provide for maximum efficiency in the layout of streets, utility networks, open space, landscaping requirements and other public improvements;

(6) Provide a guide for developers and city officials in meeting the purpose and provisions of this section.

19.20.605 Principal permitted uses.

Primary uses permitted in the PIP district provide a broad range of activities including research, light assembly and light manufacturing. Specific primary types of uses allowable include:

(1) Assembly, manufacture, packaging, compounding or treatment of articles or merchandise from the following previously prepared materials: cloth, glass, lacquer, leather, paper, plastics, precious or semi-precious metals or stones, wood (excluding sawmills, lumber mills and planing mills), paint, clay, sand, rubber;

(2) Printing, publishing and book binding;

(3) Manufacturing, processing and packaging of food, pharmaceuticals, toiletries, cosmetics, optical goods, scientific instruments and equipment, and precision instruments and equipment;

(4) Scientific research, testing and experimental development laboratories;

(5) Corporate headquarters, regional headquarters and administrative offices of commercial, industrial, financial, charitable or governmental institutions;

(6) Upholstery shop;

(7) Auto repair of all kinds, including body and fender work, provided there shall be no wrecking, junking, dismantling, or salvaging operations;

(8) Feed and seed store, retail or wholesale;

(9) Marine craft, equipment and supply sales, and repair and service of small craft;

(10) Nursery and landscape material including greenhouses;

(11) Plumbing shop;

(12) Sign shop;

(13) Lumber yard, retail or wholesale, including building supplies, hardware, and related items;

(14) Mini-storage facilities;

(15) Vocational and technical schools;

(16) Private club, lodge, convent, social or recreational building or community assembly hall (except those having a chief activity carried on for monetary gain);

(17) Training facilities, including but not limited to music, dance, martial arts, photography, health clubs;

(18) Warehousing and distribution centers;

(19) Automobile sales and service;

(20) Uses similar to, or related to, or compatible with those listed or described in this section, are permitted upon a finding by the planning director that a proposed use does not conflict with the intent of this section or the policies of the Oak Harbor comprehensive plan. The criteria for such finding of similarity, relationship or compatibility shall include, but not limited to the following:

(a) The proposed use will not significantly impact surrounding uses,

(b) The development standards for permitted uses can be met by the proposed

use,

(c) Impacts, such as traffic, noise and air quality will not be significantly different than those generated by permitted uses.

19.20.610 Accessory permitted uses.

Accessory uses complement but do not conflict with the primary use. Specific accessory types of uses allowable include:

(1) Warehousing and distribution facilities and the storage of goods or products clearly subordinate to, and an integral part of, the primary permitted uses;

(2) Engineering, development, administrative or executive offices which are part of a primary use;

(3) Retail development may be permitted where it can be demonstrated that the industrial park will be clearly and primarily benefited by the convenience of such retail facilities. The total square footage devoted to retail development shall not exceed 10 percent of the developable floor area of the PIP district in which it is located. The total square footage of a single retail use may not exceed 5,000 square feet and the total square footage of all retail uses may not exceed 25 percent of a building's gross floor area. Signs for retail uses shall be visible only within the planned industrial park area and attached to the building wall. Retail uses include:

(a) Support retail, such as food and drug stores, banks and office supplies;

(b) Personal services such as barber and beauty shops, dry cleaning, laundry;

(c) Business services, such as printing and copying, photo processing, postal/mail, word processing, travel agencies;

(d) Food services, such as delicatessens, restaurants (except drive-ins);

(e) Recreation facilities, except mechanical or electronic games centers, theaters (live and movie) and games of skill, such as bowling;

(f) Day care centers;

(g) Showrooms and galleries; and

(h) Caretakers quarters.

19.20.615 Conditional uses permitted.

The following principal uses and their accessory uses may be permitted in a PIP district when authorized by the board of adjustment under Chapter 19.67 OHMC:

(1) Fuel yards;

(2) Concrete and asphalt batch plants for a defined temporary period of time;

(3) Fuel oil distribution, retail and wholesale, provided incidental storage is maintained underground;

(4) Dog kennels;

(5) Equipment rental businesses;

(6) Excavations, other than simple foundation;

(7) Public transportation transfer stations;

(8) Public utility and communications facility, such as a branch telephone exchange, static transformer, booster station, pumping station; and

(9) Small businesses specializing in the production of chemical products, fertilizers, rodenticide, insecticide, and pesticide, but not including ammonia and explosives, may be permitted where it meets the following criteria:

(a) The business will meet the environmental performance standards in OHMC 19.20.660;

(b) There shall be no outside storage of chemicals, ingredients, products or byproducts.

19.20.620 Prohibited uses.

(1) All uses or activities which would require extraordinary equipment, devices or technology for the control of odors, dust, fumes, smoke, noise or other wastes and/or byproducts which, if uncontrolled, would contaminate the environment to a degree unacceptable by contemporary community standards; or which would exceed the acceptable limits established by competent and recognized public and quasi-public agencies for the protection of industrial and/or environmental health. Such uses include, but are not limited to the following:

(a) Manufacture or storage of explosives;

(b) Stockyards, dairies, slaughterhouses, rendering plants, canneries, breweries, wineries and other agricultural industries;

(c) Petroleum refineries;

(d) Cement manufacturing;

(e) Blast furnaces;

(f) Smelting;

(g) Drop forge industries;

(h) Sanitary landfills;

(i) Waste to energy facilities;

(j) Sewage treatment plants;

(k) Lumber, pulp or paper mills.

(2) Single-family or multifamily residences.

19.20.625 Density provisions.

(1) In a PIP district, the following minimum site requirements shall apply:

(a) Minimum site area for the development of a new planned industrial park plat: five acres;

(b) Minimum lot area: 20,000 square feet, except where there is a binding site plan;

(c) Minimum lot width: 100 feet;

(d) Minimum lot depth: 100 feet.

(2) The maximum building coverage shall not exceed 40 percent of the total lot area.

(3) All buildings and structures, except for fencing, shall meet the following minimum setback requirements:

(a) Front yard: 30 feet. In cases where no parking or service occurs between the face of the building and the street, the front yard may be reduced to 20 feet;

(b) Interior side yards: 15 feet;

(c) Corner lot abutting a street: 30 feet. In cases where no parking or service occurs between the face of the building and the street, the side yard may be reduced to 15 feet;

(d) Rear yard: 15 feet;

(e) When abutting any residential-zoned property or any area planned for

residential uses under the Oak Harbor comprehensive plan, the minimum setback shall be 50 feet;

(f) Parking is allowed in setbacks.

19.20.630 Building heights.

Permitted building height is determined by the distance the building is separated from any residential zone, or from any area designated in the Oak Harbor comprehensive plan for residential uses, as follows:

(1) Less than 100 feet: 35 feet in height;

(2) One hundred one feet and above: 50 feet in height plus 10 feet for mechanical equipment;

(3) Two hundred feet and above: 65 feet in height plus 10 feet for mechanical equipment.

19.20.635 Outdoor storage.

(1) Outdoor storage shall not be allowed within the required building setback areas.

(2) All outdoor storage areas shall not be visible from public rights-of-way or private streets.

(3) All outdoor storage areas shall be screened from public view through landscaping, walls, and/or fencing.

(4) In no event shall materials be stacked or stored higher or to exceed the height of the screening wall or fence: eight feet maximum.

19.20.640 Loading areas.

(1) Truck loading and maneuvering areas shall not be located within the required building setback areas.

(2) Truck loading and unloading shall not be permitted on streets.

(3) Truck loading and unloading areas, parking and maneuvering areas shall be designed in accordance with the provisions of the Oak Harbor design guidelines and shall be buffered and screened in accordance with the provisions of Chapter 19.46 OHMC.

19.20.645 Off-street parking.

(1) The total required off-street parking facilities shall be in accordance with Chapter 19.44 OHMC.

(2) Parking lots shall be landscaped in accordance with Chapter 19.46 OHMC.

19.20.650 Building design.

(1) Buildings and structures should be designed in accordance with the Oak Harbor commercial and industrial design guidelines.

(2) Buildings shall be sited so as not to project or reflect natural or artificial light or glare into residential zoned areas or areas planned for residential uses under the Oak Harbor comprehensive plan.

(3) Mechanical equipment located on the roof, facade, or external portion of a building shall be architecturally screened or mitigated by including the equipment in the building or site design so as not to be visible from public streets.

(4) Equipment or vents which generate noise or air emissions shall be located on the opposite side of the building from adjoining residentially zoned properties.

(5) Buildings within the aviation environs overlay zone shall be built to the standards of OHMC Title 17.

19.20.655 Landscaping requirements.
Landscaping and screening shall be in conformance with the requirements contained in Chapter 19.46 OHMC.

19.20.660 Environmental performance standards.
It shall be the responsibility of the operator and/or proprietor of any permitted use to provide such reasonable evidence and technical data as the planning director may require to demonstrate that the use or activity is or will be in compliance with this title, the Oak Harbor comprehensive plan and all federal, state and city requirements, codes and standards. Failure of the planning director to require such information shall not be construed as relieving the operator and/or proprietor from compliance with this title, the Oak Harbor comprehensive plan, and all federal, state and city requirements, codes and standards.

19.20.665 Relation to aviation environs overlay zone.
Property located in an aviation environs overlay zone, as governed in Chapter 19.50 OHMC shall meet the requirements for noise attenuation in Chapter 17.30 OHMC and the comprehensive plan land use element.

19.20.670 Preapplication meeting.
Prior to formal submittal of any application, the applicant may present to the planning department a preliminary site plan, which shall contain in a rough and approximate manner, all of the information required for the application under OHMC 19.20.680. Upon submittal, the planning department shall schedule a meeting with representatives of applicable city departments. The planning director may also invite, because of the nature, size and scope of the development, others outside of the city to participate in the preapplication meeting. The purpose of the meeting is to enable the applicant to obtain the advice of city staff as to the intent, standards and provisions of this code with regard to the proposed plan. Information presented for and at the preapplication meeting shall not be a part of the public record as no applications are submitted for formal review.

19.20.675 Application requirements.
Site plan review shall be required for any building permit or change in use, as defined in OHMC 19.48.030. Site plan review is not required for regular maintenance activities, or emergency actions to protect the public health, safety or welfare.
For parcels containing between five acres and 20 acres, the site plan review requirements of OHMC 19.20.685 shall apply.

For parcels containing more than 20 acres, the review requirements of OHMC 19.20.690 and 19.20.695 shall apply.

An application for site plan approval of a proposed planned industrial park shall be made to the planning director upon forms furnished by the city. Application shall be made by the owner or owners of the parcel or parcels intended to be developed as a unit or their duly authorized agent or agents. The ownership of all parcels to be included must be

represented in the application.

19.20.680 Site plan review – Filing requirements.
For all parcels five acres and over, the applicant shall file with the planning director a site plan, including the following:

(1) A legal description of the site and plot plan indicating location of all existing and proposed adjacent streets, private rights-of-way and easements;

(2) The proposed site plan and drawings for design review shall include the following information:

- (a) Topographic contours at a minimum interval of 10 feet;
- (b) Approximate proposed finished grades of the property with all drainage features;
- (c) Location of all proposed building areas;
- (d) Location and nature of vehicular and pedestrian circulation features within the site and adjacent streets and alleys;
- (e) The extent, location, arrangement, and proposed improvements of all off-street parking and loading facilities;
- (f) The extent, location, arrangement and proposed improvements of all open space and common areas; and
- (g) Proposed future lots.

19.20.685 Site plan review (parcels five to 20 acres) – Staff approval.
After receiving the site plan, the planning director shall route the same to all appropriate city departments, and each department shall submit to the planning director comments and recommendations. After receiving such information from the city departments, the planning director may approve as proposed, approve with changes or disapprove the application and the accompanying site plan. The director's action shall be based on the following criteria:

(1) The proposal meets the requirements of this title;

(2) The perimeter of the project shall be compatible with the land use of adjoining properties. Compatibility includes, but is not limited to, size, scale and mass and architectural design;

(3) The proposal shall not be detrimental to existing or potential surrounding land uses as defined by the Oak Harbor comprehensive plan.

19.20.690 Site plan review (over 20 acres) – Staff recommendation.
For parcels over 20 acres in size, the planning director shall route the application to all appropriate city departments, and each department shall submit to the planning director comments and recommendations. After receiving such information from the city departments, the planning director shall present recommendations and conclusions to the planning commission.

19.20.695 Site plan review (over 20 acres) – Planning commission approval.
After receiving such information from the city departments, the planning commission may approve as proposed, approve with changes or disapprove the application and the accompanying site plan. The planning commission's action shall be based on the following criteria:

(1) The proposal meets the requirements of this title;

(2) The perimeter of the project shall be compatible with the land use of adjoining properties. Compatibility includes, but is not limited to, size, scale and mass and architectural design;

(3) The proposal shall not be detrimental to existing or potential surrounding land uses as defined by the Oak Harbor comprehensive plan.

If the commission does grant final approval, the decision of the commission shall become final 10 days after the date of the final action unless appealed to the city council in accordance with OHMC 19.20.705; provided, that if all other requirements of this title have been met, the permit shall not be granted until the proper drafting, executing and recording (all at applicant's expense) of all documents necessary to fulfill the requirements of this title.

19.20.700 Modifications to the plan.

Requests for modifications of preliminary or final site plans shall be made in writing and shall be submitted to the planning department in the manner and form prescribed by the planning director.

(1) Modifications up to 10 percent shall be deemed minor if the proposal does not change any of the following:
   - (a) Land use;
   - (b) General location or number of access points;
   - (c) The amount of open space;
   - (d) The amount of parking;
   - (e) General height of the structure;
   - (f) Total square footage of structures; and
   - (g) Amount and location of outdoor storage.

(2) Examples of minor modifications include but are not limited to lot line adjustments, minor relocations of landscaped areas and buffers, minor changes to outdoor storage and truck loading area and minor changes in circulation patterns.

(3) Minor modifications may be approved by the planning director.

(4) Major modifications are those on lots greater than 20 acres in size and which, as determined by the planning director, substantially change the basic design, floor area ratios, open space or other similar requirements or provisions. Major adjustments to the master plans shall be reviewed by the planning commission under the same process as outlined under this chapter.

19.20.705 Appeals to council.

(1) Within 10 days after the date of decision by the planning commission on an application of approval of a site plan in accordance with OHMC 19.20.695 such approval or revocation shall be taken to the city council by the applicant, the permit holder or any other interested party. Such appeal shall be made on a form prescribed by the commission and shall be filed within the prescribed time with the office of the city clerk and must be accompanied by a filing fee of $100.00. The appeal shall state specifically wherein it is claimed there was an error or abuse of discretion by the commission or wherein its decision is not supported by the evidence in the record or where ample consideration of good planning principles have not been made.

(2) Upon receipt of such appeal, together with the filing fee, the city council shall set

the time for consideration thereof. The city clerk shall notify the chairman of the planning commission of the receipt of said appeal and of the time set for consideration thereof and the city clerk shall, not less than five days prior to the date set for the hearing on the appeal, give written notice to the appellant and to any known adverse parties or to their representatives of the time and place of the hearing.

(3) In considering the appeal, the city council shall determine whether the proposal conforms to the applicable criteria and standards of approval based on the criteria set forth in OHMC 19.20.695 and may refer the matter back to the planning commission for further information or reconsideration or approve or disapprove the proposed development or require such changes therein or impose such reasonable conditions of approval as are, in its judgment, necessary to insure conformity to said preliminary approval. The decision of the city council shall be final.

19.20.710 Adherence to approved plan.

The building official shall issue building permits only for buildings and structures which conform with the approved final master plan for the planned industrial park and with all other applicable city ordinances, regulations, rezone, annexation or development agreements. The building official shall issue a certificate of occupancy only for completed buildings or structures which conform to the requirements of the approved final master plans and all other applicable city ordinances, regulations, rezone, annexation or development agreements.

19.20.715 Lots subject to final site plan.

All lots or other divisions of a subdivided planned industrial park shall remain subject to compliance with the site plan regardless of compliance with OHMC Titles 21 or 22, or subsequent conveyance of such individual lots.

19.20.720 Judicial review.

Any legal action to review a decision of the city council or planning commission under this title shall be filed in Island County superior court within 21 days of the decision, notwithstanding the effective date of any ordinance passed or proposed to effectuate said decision.

Article XIV. I – Industrial

19.20.725 Purpose and intent.

The I industrial district is intended to accommodate certain industrial structures and uses having physical and operational characteristics which might adversely affect the adjoining residential and commercial uses. Regulations are designed to permit those industrial uses which can be operated in a relatively clean, quiet and safe manner compatible with adjoining land uses.

19.20.730 Principal permitted uses.

In an I district, the following are principal permitted buildings and uses:

(1) Principal uses permitted in a C-3 district except those as specifically prohibited in OHMC 19.20.620;

(2) Automobile sales and service;

(3) Bedding, carpet and pillow manufacture, cleaning and renovating;
(4) Bottling and processing of nonalcoholic beverages, the production of which is devoid of fumes, noxious odors, or waste products;
(5) Cold storage plants;
(6) Food and drug processing;
(7) Manufacture and assembly of light and small items made from previously prepared materials and includes operations which do not create noise, smoke, odor, vibration or other objectionable nuisances to the extent that they are detrimental to surrounding uses;
(8) Public utilities;
(9) Welding and machine shop;
(10) Other uses of similar character, subject to approval by the city council.

19.20.735 Principal uses permitted – Location limited.
The following principal uses are permitted outright if located 200 feet or more from the boundary of any residential zoning district:
(1) Assembly, manufacture, rebuilding, compounding, processing, preparation, or treatment of such articles or products as batteries, bottles, mattresses, furniture, tools, hardware, and paper products, but not the manufacture of paper itself;
(2) Canning, processing and freezing of fruit and vegetables;
(3) Electroplating;
(4) Machine, welding, or metalworking shop, but not including punch presses, drop hammers, or other noise and vibration producing equipment;
(5) Tire retreading;
(6) Woodworking shop.

19.20.740 Accessory permitted uses.
In an I district, the following are accessory uses permitted outright:
(1) A use customarily incidental and subordinate to a principal use permitted outright;
(2) On-site hazardous waste treatment and storage facilities as an accessory use to any activity generating hazardous waste and lawfully allowed in this zone; provided, that such facilities meet the state siting criteria adopted pursuant to the requirements of RCW 70.105.210.

19.20.745 Prohibited uses.
No building, structure or premises or a portion thereof, established after the effective date of this chapter, shall be used for human habitation, permanent, transient or temporary except as quarters for a caretaker, guard or other person whose permanent residency on the premises is required for operational safety or protective purposes.

19.20.750 Conditional uses permitted.
The following principal uses and their accessory uses may be permitted in an I district when authorized by the hearing examiner:
(1) Any conditional use permitted in a C-3 district;
(2) Cement and asphalt plants;
(3) Manufacture or processing of such nondurable goods as chemical and allied products, petroleum products, fertilizers, but excluding explosives and ammonia;
(4) Metal fabrication and boiler or tank works;

(5) Mixing plants for concrete or paving material;
(6) Off-site hazardous waste treatment and storage facilities; provided, that such facilities meet the state siting criteria adopted pursuant to the requirements of RCW 70.105.210;
(7) Oxygen manufacture and/or storage;
(8) Produce stand;
(9) Rodenticide, insecticide and pesticide mixing plants;
(10) Wrecking yard.

19.20.755 Density provisions.
In an I district, the following density provisions apply:
(1) Minimum lot area, no limitation;
(2) Minimum lot width, no limitation;
(3) Minimum lot depth, no limitation;
(4) Minimum front yard, 35 feet;
(5) Minimum side yard, no limitation, except when abutting a residentially zoned property, then 10 feet each. For corner lots, a side yard abutting a public street shall be 35 feet except that the city council may approve a variable setback of not less than 20 feet or the established building line on adjoining property, whichever is greater, after consideration at a public meeting or public hearing;
(6) Minimum rear yard, no limitation except when abutting a public street, then 35 feet;
(7) Maximum building height, 35 feet;
(8) Maximum lot coverage, no limitation.

19.20.760 Conditions governing permitted uses.
(1) Design shall be in accordance with the provisions of the Oak Harbor design guidelines.
(2) Landscaping and buffers shall be constructed and maintained in accordance with the provisions of Chapter 19.46 OHMC.

19.20.765 Site plan and design review required.
Site plan and design review shall be required as defined in Chapter 19.48 OHMC.

19.20.768 Relation to aviation environs overlay zone.*
Property located in an aviation environs overlay zone, as governed in Chapter 19.50 OHMC, shall meet the requirements for noise attenuation in Chapter 17.30 OHMC and the comprehensive plan land use element.

* Code reviser's note: Ord. 1221 added this section as OHMC 19.20.770. It has been editorially renumbered to avoid duplication of section numbers.

Article XV. PF – Public Facilities

19.20.770 Purpose and intent.
The PF public facilities district is intended to accommodate public facilities and institutional land uses, including but not limited to public parks, schools, churches, governmental offices, public works yards, utility structures, hospitals, and other similar public and quasi-public uses. The zone was established to aid the city in planning for

public facilities, while preventing conflicts between incompatible land uses.

19.20.775 Principal permitted uses.

In a PF district, the following are principal permitted buildings and uses:

(1) Public parks and recreational facilities, including but not limited to, regional parks, city parks and play fields, public golf courses, historic landmarks, indoor recreation centers, swimming pools and marinas;

(2) Government facilities, including but not limited to, administrative offices, postal stations, police stations, fire stations, parking lots, public water wells, storm drainage facilities, water and sewer pump stations, and family health/resource centers;

(3) Community services, including but not limited to, libraries, museums, community centers and senior centers and adult day care;

(4) Churches and other religious institutions;

(5) Public and private schools providing education at the preschool level or higher, excluding commercial trade schools;

(6) Public utilities, except as regulated in OHMC 19.20.785;

(7) Quarters for a caretaker, guard or the person whose permanent residency on the premises is required for operational safety or protective purposes;

(8) Landfill reclamation to improve steep, low or otherwise unusable land.

19.20.780 Accessory permitted uses.

(1) A use customarily incidental and subordinate to a principal use permitted outright.

(2) On-site hazardous waste treatment and storage facilities as an accessory use to any activity generating hazardous waste and lawfully allowed in this zone; provided, that such facilities meet the state siting criteria adopted pursuant to the requirements of RCW 70.105.210.

(3) Parking areas operated in conjunction with permitted uses.

19.20.785 Conditional uses permitted.

The following principal uses and their accessory uses may be permitted in a PF district when authorized by the board hearing examiner in conformance with Chapter 19.67 OHMC:

(1) Electric substations, treatment plants, public works yards, public telecommunications towers, and other similar uses. Distribution or collection line rights-of-way and easements are exempt from the requirements of the PF district;

(2) Private lodges and clubs, fraternal organizations, and commercial establishments when ancillary to a permitted use;

(3) Child day care when ancillary to a permitted use.

19.20.790 Prohibited uses.

The following uses are expressly prohibited by this chapter:

(1) Permanent, transient and temporary dwelling units, except as allowed under OHMC 19.20.775(7);

(2) Private lodges and clubs, fraternal organizations, private golf courses, and other similar clubs, except as allowed under OHMC 19.20.785;

(3) Private radio, television and communications stations.

19.20.792 Manufactured home structures.
A manufactured home (mobile home) is authorized to be placed within this district for a temporary time period, not to exceed five years, to serve nonresidential uses as provided for in permitted and conditional use code sections (OHMC 19.20.775 and 19.20.785). A two-year extension may be approved by separate application. Development is subject to all other provisions of this code the same as on-site construction. Manufactured homes shall not be authorized for use predominantly as storage. Manufactured homes shall not be permitted in a public facilities district where the public facility zone is adjacent to central business district zones. All applications for manufactured home structures, including time extensions, must be approved by the planning commission.

19.20.795 Density provisions.
(1) Minimum lot area: No limitation.
(2) Minimum lot width: No limitation.
(3) Minimum lot depth: No limitation.
(4) Minimum front yard: 35 feet.
(5) Minimum side yard: No limitation, except when buildings abut a residentially zoned property, then 12 feet each side. For corner lots, a side yard abutting a public street shall be 35 feet.
(6) Minimum rear yard: No limitation except:
  (a) When abutting a public street, then 35 feet;
  (b) When abutting a residential zone, then 12 feet.
(7) Maximum building height: 35 feet. For manufactured home structures: single story of 25 feet.
(8) Maximum lot coverage: No limitation.
(9) Exemptions. Public parking lots are exempt from the density provisions of the PF zone; provided, that other provisions of this title shall apply.

19.20.800 Landscaping requirements.
(1) Design shall be in accordance with the provisions of the Oak Harbor design guidelines.
(2) Landscaping and buffers shall be constructed and maintained in accordance with the provisions of Chapter 19.46 OHMC.

19.20.805 Site plan and design review required.
Site plan and design review shall be required as defined in Chapter 19.48 OHMC.

Article XVI. OS – Open Space,

Recreation and Agriculture

19.20.810 Purpose and intent.
The OS open space, recreation and agriculture district is intended to allow the retention of natural, rural character, open space areas within the city of Oak Harbor, and to allow for annexation of lands to the city without forcing immediate development, and generally conserve the land, water and other natural resources of the city. Further, the OS district is intended to help prevent development of special community resources such as golf courses, wetlands, forest land and farming areas having scenic and other environmental value. Except for special circumstances, it is anticipated that this district will be used only

for land brought into the city by annexation or for which special tax considerations are already provided by Island County.

19.20.815 Principal permitted uses.

In the OS district, the following are principal permitted buildings and uses:

(1) Agriculture land;

(2) Forest land;

(3) Outdoor recreation lands such as golf courses, shooting ranges left in natural vegetative state;

(4) Wetlands and wildlife habitat dedicated to open space.

19.20.820 Accessory permitted uses.

In the OS district the following are accessory permitted uses:

(1) For an agricultural use, a set of farm buildings including a single-family residence. Nothing herein shall be construed as authorizing the keeping of domestic livestock beyond what is otherwise authorized by ordinance.

(2) For forest land, a storage building in which to store items needed for tree management.

(3) For recreation land, such as a golf course, storage buildings, signs, club house and caretaker's residence.

(4) Single-family residence otherwise permitted by law.

19.20.825 Conditional uses permitted.

The following principal uses and their accessory uses may be permitted in an OS district when authorized by the hearing examiner:

(1) Private club or lodge on tracts or lots of more than four acres. More than 60 percent of the area must not be hard surfaced (paved) in building or both building and hard surfaced area. Areas not hard surfaced must be in natural vegetation;

(2) Campground on tracts or lots of more than two acres. More than 80 percent of the area must not be hard surfaced (paved) or in buildings or both such buildings and hard surfaced areas. Areas not hard surfaced in a building must be in natural vegetation;

(3) Radio or television tower where 80 percent of the area must not be hard surfaced (paved) or in buildings or both such buildings and hard surfaced areas. Areas not hard surfaced in a building must be in natural vegetation.

19.20.830 Density provisions.

In an OS district, the following density provisions apply:

(1) Setbacks for any structure shall be 25 feet from any property line;

(2) One dwelling unit per five acres, where residential use is permitted.

19.20.835 Conditions governing permitted uses.

(1) As a condition to continued designation as "open space," for any use other than agricultural and residential, the owner shall enter into an agreement with the city allowing public or semi-public access under mutually agreed terms and conditions.

(2) Any hard surface parking or roads must be accessory to a permitted use.

19.20.840 Site plan and design review required.

Site plan and design review shall be required as defined in Chapter 19.48 OHMC.

~~Article XVII. M-H – Manufactured Home Overlay~~

~~19.20.850 Purpose and intent.~~

~~The purpose of the manufactured home overlay zone is to provide for the accommodation of manufactured homes on platted lots in R-3 zones in manufactured home subdivisions to allow manufactured home owners the option either of land ownership or leasing space within manufactured home parks, and to bring home ownership within the means of a large proportion of Oak Harbor citizens.~~

~~19.20.860 Principal uses permitted outright.~~

~~The M-H manufactured home overlay zone is a residential zone and may be combined with an R-3 zone. The following principal uses and no others are permitted outright in an M-H overlay zone:~~

~~(1) Permitted uses in the underlying R-3 zone subject to the restrictions of said zone;~~

~~(2) One manufactured home dwelling unit structure on each lot.~~

~~19.20.870 Conditional uses permitted.~~

~~Conditional uses permitted by the hearing examiner shall be as permitted in the underlying R-3 zone.~~

~~19.20.880 Accessory uses permitted outright.~~

~~An accessory use shall be permitted outright in the manufactured home overlay zone when such use is authorized by the Oak Harbor Municipal Code in the underlying R-3 zone.~~

~~19.20.890 Density provisions.~~

~~The following minimum standards apply to manufactured homes on individually platted lots in R-3 overlay zones:~~

~~(1) Minimum lot area, 6,000 square feet;~~

~~(2) Minimum lot width, 60 feet;~~

~~(3) Minimum lot depth, 90 feet;~~

~~(4) Minimum front yard, 20 feet;~~

~~(5) Minimum side yard, five feet;~~

~~(6) Minimum side yard along the flanking street of corner lot, 15 feet;~~

~~(7) Minimum rear yard, 10 feet;~~

~~(8) Maximum lot coverage, 35 percent of the lot area;~~

~~(9) The limitations of use set out in OHMC 19.28.010 through 19.28.020 shall apply to a manufactured home overlay zone where those provisions specifically apply to the underlying R-3 zone.~~

~~19.20.900 Minimum standards for manufactured homes.~~

~~A manufactured home in an R-3, M-H zone shall comply with the National Code developed by the Department of Housing and Urban Development enforced since June 1976.~~

~~19.20.905 Installation.~~

~~Manufactured homes placed in an M-H overlay zone shall have the following improvements:~~

~~(1) The wheel hubs and axles shall be removed and the manufactured home placed on a permanent foundation in accordance with the standards and specifications of the planning department for such permanent foundation;~~

~~(2) The tongue of the manufactured home shall be removed;~~

~~(3) All utility services shall be underground.~~

~~19.20.910 Off-street parking.~~

~~Each manufactured home lot shall provide paved off-street parking area for two automobiles and not less than 400 square feet in area. If such area is not provided for in a covered garage, such area shall be so located that it later may be covered by a garage structure and meet the setback requirements of OHMC 19.20.890.~~

~~19.20.920 Application.~~

~~Application for a manufactured home overlay M-H zone designation shall be made pursuant to Chapter 19.31 OHMC.~~

~~19.20.930 Minimum size manufactured home overlay zone.~~

~~A manufactured home overlay zone shall be a minimum of five acres.~~

Section Nine. Oak Harbor Municipal Code Chapter 19.25 is hereby re-adopted and amended to read as follows:

Chapter 19.25
MANUFACTURED HOME PARKS AND SUBDIVISIONS

Sections:

19.25.010 Purpose and intent.
19.25.020 General standards and requirements – Location.
~~**19.25.030 General standards and requirements – Manufactured home standards.**~~
19.25.030 General standards and requirements – Open space.
19.25.040 General standards and requirements – Density.
19.25.050 General standards and requirements – Allowed uses.
19.25.~~07~~60 General standards and requirements – Site requirements.
19.25.065 Permissive lot and setback variations for qualified affordable housing projects.
19.25.~~08~~70 General standards and requirements – Landscaping, buffering, ~~and~~ screening, and storage.~~.~~
19.25.~~09~~80 General standards and requirements – Utilities and other services.
19.25.90~~100~~ General standards and requirements – Permissive variations in requirements.
~~**19.25.110 General standards and requirements – Distance between buildings.**~~
19.25.100~~120~~ ~~Combined applications.~~ Application Process and Phasing
19.25.110~~30~~ Manufactured Home Development Plan Required ~~Application requirements.~~
~~**19.25.140 Phased development.**~~
19.25.120~~50~~ ~~Dedication and m~~Maintenance of facilities.
19.25.130~~60~~ Mapping.
19.25.140~~70~~ Limitation on resubmission.
19.25.150~~80~~ Adherence to approved plan.
19.25.160~~90~~ Revocation.
~~**19.25.200 Subdivision requirements.**~~
19.25.170~~210~~ Sale of lots.
19.25.180~~220~~ Lots subject to final development plan.
19.25.190~~230~~ Termination of manufactured home park.
19.25.200~~240~~ Extension of time for construction.

19.25.010 Purpose and intent.

The purpose of this section ~~the manufactured home park zone~~ is to provide for the accommodation of manufactured homes parks and subdivisions in planned developments in order to:

(1) Provide more affordable housing with the option of either land ownership or leasing space in a quality environment;

(2) Allow the flexibility of design in placement of buildings, open spaces, circulation facilities and off-street parking areas and to more efficiently utilize potentials of

sites characterized by special features of geography, topography, size and shape;

(3) Preserve property values on surrounding parcels of land.~~.~~

19.25.020 General standards and requirements – Location.

(1) Manufactured home parks may be established in the R-2, R-3 and R-4 residential districts and manufactured home subdivisions in the R-1 and R-2 districts ~~the R-3 residential district~~ on parcels of land which are suitable for and of sufficient size to be planned and developed in a manner consistent with the purposes and objectives of this chapter. ~~The site shall include not less than three acres of contiguous land.~~

(2) Except as authorized under Title 16 of the Oak Harbor Municipal Code, ~~elsewhere under this code~~, all manufactured homes must be located in a manufactured home ~~development or~~ park or subdivision as defined in 19.08.560 and 19.08.565 and approved in accordance with the provisions of this chapter.

~~**19.25.030 General standards and requirements – Manufactured home standards.**~~

~~(1) All designated manufactured homes must be installed in accordance with this code. The areas between the sides of all permanent mobile homes and the ground shall be covered with skirting of a noncombustible material. The skirt shall be removable.~~

~~(2) All designated manufactured homes must be constructed in conformance with state and federal requirements for manufactured homes and meet or exceed the Washington State Energy Code.~~

19.25.03~~040~~ General standards and requirements – Open space.

The proposal shall provide open space as follows:

(1) Common open space shall comprise at least 10 percent of the gross area of the manufactured home park or subdivision, and shall be used as a recreational, park or environmental amenity for collective enjoyment by occupants of the development. Common open space shall not include public or private streets, driveways, parking areas, or the required yards for buildings or structures. However, a portion (maximum of 25%) of the 10% percent open space requirement may be perimeter setback areas as required by OHMC section 19.25.08~~0~~070 (1). ~~or the required yards for buildings or structures;~~

(2) Common open space may not be computed to include any existing submerged lands;

(3) At least 50 percent of the common open space area must be usable for active or passive recreation.

19.25.04~~050~~ General standards and requirements – Density.

In addition to, or as a greater requirement of the regulations normally found in the underlying ~~R-3~~ zoning district, the following regulations shall govern the development of manufactured home parks and subdivisions:

(1) Increases in density over that permitted in the underlying zone are permitted as follows:

(a) Provisions for open space which is arranged as to be an integrated part of the project and meets the requirements of OHMC 19.25.0340: 10 percent increase;

(b) Preservation of a natural feature such as, but not limited to, a wetland, stream corridor, unique geological feature, substantial overstory vegetation, etc.: 10 percent increase;

(c) Unique landscaping, architectural design and site planning: 10 percent increase;

(d) Additional open space: one percent increase in density for each one percent increase in open space over the minimum required under OHMC 19.25.0340;

(e) The total allowable maximum density increase shall not exceed 20 percent.

(f) A Mmanufactured home subdivisions, as defined in 19.08.565, are is permitted a maximum of two additional (2) dwelling units per gross acre in the R-1 zone provided that:
(i) all units within the manufactured home subdivision must meet the definition of "qualified affordable housing" as defined in 19.08.690-695.
(ii) public funds from a local, county, state or federal source are used for construction or operating costs associated with the project
(iii) either a public or non-profit agency (as defined by the United States Internal Revenue Code) owns the land on which the manufactured home park subdivision is developed and operated.
(iv) if the density bonuses of two (2) dwelling units per gross acre is granted as specified in this section, no other density bonuses discussed in subsections (a) through (e) of this section or any other section of the OHMC may be granted to the manufactured home subdivisions.

19.25.0506 General standards and requirements – Allowed uses.

(1) Manufactured home used for dwelling purposes;

(2) Buildings and structures necessary for the operation and maintenance of the manufactured home park or subdivision, or providing customary accessory uses of manufactured home parks or subdivision, including laundry facilities, park office and equipment storage buildings;

(3) Buildings and structures necessary for the operation of a public utility, subject to the requirements of OHMC 19.25.0890;

(4) Community recreation facilities, for residents of the manufactured home park or subdivision and their guests, including swimming pools;

(5) Residences for the use of a manager and/or caretaker responsible for maintaining or operating the manufactured home park or subdivision which may be either a conventional one-family dwelling or a manufactured home;

(6) Home occupations subject to the requirements of Chapter 19.34 OHMC.

19.25.06~~70~~ General standards and requirements – Site requirements.

(1) The minimum size and setback requirements which apply to manufactured home parks are as follows:

(a) For an individual space designed to accommodate a manufactured home not exceeding 14 feet in width:

(i) Area: 3,000 square feet,

(ii) Width: 40 feet,

(iii) Depth: 70 feet,

(iv) Front yard setback: 20 feet from a public right-of-way, 10 feet from a private street;

(b) For an individual space designed to accommodate a manufactured home exceeding 14 feet in width:

(i) Area: 4,500 square feet,

(ii) Width: 50 feet,

(iii) Depth: 90 feet,

(iv) Front yard setback: 20 feet from a public right-of-way, 10 feet from a private street;

(2) No manufactured home site within a park shall be located closer than 15 feet from any other manufactured home unit or permanent park building. An attached accessory building shall be considered part of the manufactured home for separation purposes. If not attached to the manufactured home, an accessory structure shall not be located closer than five feet from such manufactured home, except as results from the application of section 19.25.065 OHMC.~~.~~

(3) The cumulative occupied area of the manufactured home and its accessory buildings on a manufactured home site within a park shall not exceed two-thirds of the respective lot area, except as results from the application of section 19.25.065 OHMC~~.~~

(4) Interior streets, driveways and other access ways within a manufactured home park shall be constructed and maintained by the owner and/or developer of the park in accordance with the standards provided by the city engineer. Interior park access ways shall not be dedicated as a public right-of-way unless otherwise approved or required by the ~~planning commission~~ city council.

(a) Interior park streets shall observe the following minimums:

(i) One-way traffic streets: 20~~18~~ feet in width;

(ii) Two-way traffic streets: 24~~8~~ feet in width;

(iii) Cul-de-sac streets and streets designed to have one end permanently closed must have a minimum turning radius of 50 feet, or otherwise be adequately designed to permit ease of turning.

(b) Parking Requirements.

(i) A minimum of two off-street parking spaces shall be provided adjacent to, or conveniently near, each manufactured home lot;

(ii) A minimum of one parking space shall be provided per each eight manufactured home lots to accommodate guest parking and may be distributed throughout the manufactured home park.

(5~~4~~) A common walkway system shall be provided and maintained in manufactured

home parks between locations where pedestrian traffic is expected to be concentrated and might interfere with automobile traffic. Such common walks shall be constructed in accordance with standards provided by the city engineer.

(6~~5~~) Adequate street lighting shall be provided to illuminate streets, driveways, walkways and buildings in manufactured home parks for the safe movement of pedestrians and vehicles and for the safe nighttime use of such facilities. Street lighting shall be designed to not create glare on adjoining properties. Installation of all street lighting shall be in accordance with the approved site plan.

(7) Manufactured home subdivisions are subject to density, lot dimension, lot area, and setback standards of the underlying zone except where modified by 19.25.050 and by 19.25.065.

19.25.065 Permissible lot and setback variations for qualified affordable housing projects.

(1~~6~~) There shall be no minimum lot or space size or setbacks for manufactured home park projects meeting the definition of qualified affordable housing in 19.08.690 and which use public funds for capital construction costs or to artificially suppress rents. An applicant who uses the flexibility in lot sizes afforded by this provision must submit documentation showing that the proposed project will be affordable to households with 80 percent of the area median family income or less and that public funds (tax credits, grants, etc.) will be used in the construction or operation of the project.

19.25.07~~08~~0 General standards and requirements – Landscaping, buffering, ~~and~~ screening, and storage.~~.~~

(1) The requirements for front yards for the zone in which the manufactured home park or subdivision is located shall apply to all exterior boundary lines of the site, in the form of a perimeter setback, and shall be landscaped in accordance with the standards of Chapter 19.46 OHMC. ~~Sides of manufactured home parks which abut other properties shall be enclosed with a permanently maintained natural or artificial barrier, 20 feet in width, in accordance with the standards of Chapter 19.46 OHMC.~~

~~(2) Sides of manufactured home parks which abut public rights of way shall be buffered with a perimeter landscape strip not less than 15 feet wide. Such landscape strip shall be planted or installed in accordance with the standards of Chapter 19.46 OHMC.~~

~~(3) The planning commission may waive all or part of the perimeter landscaping requirements if, due to the nature of the existing topography or other existing conditions, it is unnecessary to require a wall, fence or screen.~~

(4) No manufactured home in a park setting ~~lot~~ shall be occupied unless or until adequate storage areas and facilities for bulk storage of boats, campers, trailers, and other similar items are properly installed or developed. A maximum of 15 percent of the gross site area may be used for said storage.

19.25.08~~09~~0 General standards and requirements – Utilities and other services.

(1) All utilities shall be underground.

(2) The construction and maintenance of all water, sewer, electrical, communications and miscellaneous (gas, television cable, etc.) service lines shall be under the supervision of the department or utility agency having jurisdiction in accordance with all applicable state and local codes, policies and regulations.

(3) The location of all underground utility and service lines shall be indicated by an aboveground sign (or signs) identifying the proximity of the lines to the manufactured home stand to facilitate service connection and to avoid damage to such underground services by the use of ground anchors, installation of skirting, etc.

(4) Solid waste collection stands shall be provided for all waste containers. Solid waste collection stands, whether individual or grouped, shall be screened from view with appropriate landscaping and/or screening as required under Chapter 19.46 OHMC and the approved landscaping plans.

19.25.090~~100~~ General standards and requirements – Permissive variations in requirements.

In considering a proposed manufactured home park or subdivision project, the approval thereof may involve modifications of up to fifty percent (50%) in the regulations, requirements and standards of the zone in which the project is located and the subdivision ordinance so as to appropriately apply such regulations, requirements and standards to the project site. Unless otherwise provided by this chapter, the density and perimeter setbacks shall not be subject to variation under this section.

~~**19.25.100110 General standards and requirements – Distance between buildings.**~~
~~The planning commission may set minimum distances between structures greater than those required by this chapter to assure adequate sunlight and open space; provided, that minimum distances required by the building code and fire code shall be met.~~
~~the building code and fire code shall be met.~~

19.25.100 Application process and phasing.

All applicants for manufactured home parks or subdivisions shall submit a "manufactured home development plan" which shall be reviewed under a Review Process IV as described in 18.20.260 and shall contain the elements listed in 19.25.120.

The approval of a subdivision shall be required of all projects which involve or contemplate the subdivision of land and the procedures set forth in the Oak Harbor subdivision ordinance, codified in OHMC Title 21. The manufactured home development plan and subdivision application may be reviewed concurrently.

Development of the project may be phased, in which case each complete phase may be processed separately. The Director may require a phasing plan showing infrastructure and other improvements necessary to support all phases of a project.

19.25.110~~120~~ Manufactured home development plan required ~~Combined applications~~.

(1) A manufactured home development plan is required for all proposals submitted

under the provisions of Chapter 19.25. The development plan shall contain the following information:

All applicants for manufactured home parks or subdivisions are required to submit a manufactured home development plan containing the following information:

(a) Topographic contours at a minimum interval of five feet,

(b) Existing individual trees over 12 inches in trunk diameter measured four feet above the base,

(c) Existing and proposed finished grades of the property with all drainage features,

(d) Location of all proposed structures together with the usage to be contained therein and approximate location of all entrances thereto and heights, and gross floor area thereof (building envelopes for manufactured homes),

(e) Location and nature of vehicular and pedestrian circulation features within the site and adjacent streets and alleys,

(f) The extent, location, arrangement and proposed improvements of all open space, landscaping, fences and walls,

(h) Location, nature and dimension (where applicable) of water, sewer, and storm sewer utilities including fire protection facilities,

(i) Number of units proposed

~~The preliminary development plan and the final development plan may be combined and together, processed through review as a final development plan.~~

~~(2) The applicant may file a concurrent subdivision application, meeting the requirements of OHMC Title 21, which shall be processed concurrently with the manufactured home park application.~~

~~(3) In case of conflict between time limits set forth in this title and in other provisions of the Oak Harbor Municipal Code or applicable state law, those provisions requiring public notice to be given the furthest in advance of the pending action shall prevail over conflicting provisions specifying that notice shall be given within a shorter time prior to the action; likewise, any conflict in provisions requiring a specific action on the part of the city, or any body thereof, within a specific time period shall be resolved in favor of those provisions requiring action within the lesser period of time.~~

~~19.25.130 Application requirements.~~

~~An application for approval of a proposed manufactured home park shall be made to the planning director upon forms furnished by the city in accordance with the provisions of Chapter 19.48 OHMC.~~

~~19.25.140 Phased development.~~

~~Development of the project may be phased, in which case each complete phase may be processed separately through both preliminary development plan review and final development plan review. A map shall be submitted showing all property owned or~~

~~controlled by the developer which is contiguous to the development site, or which is within the area determined by the planning director to be relevant for comprehensive planning and environmental assessment purposes, together with a conceptual plan of said properties submitted with the application for the first phase. The conceptual plan shall conform to the purposes of this chapter and shall be used by the city to review all phases of the development.~~

19.25.12~~50~~ ~~Dedication and m~~Maintenance of facilities.

Applicants for a manufactured home park or subdivision project are required to make provision for the maintenance of common areas such as (but not limited to) parks, playgrounds, landscaping, vehicular parking areas, and club houses through an association of owners or tenants organized as a nonprofit corporation under the laws of the state of Washington, or another similar mechanism. ~~The planning commission may require that portions of the tract or tracts under consideration be conveyed and/or dedicated for the following uses:~~

~~(1) Whenever private outdoor living areas, including parks or playgrounds, are to be provided, the planning commission shall require the at an association of owners or tenants organized as a nonprofit corporation under the laws of the state of Washington. which shall adopt such articles of incorporation and bylaws and adopt, impose and record such declaration of covenants and restrictions on such outdoor living areas and/or common areas that are acceptable to the planning commission.~~

~~Said association shall be formed and continued for the purpose of maintaining such outdoor living area. Such an association, if required, may undertake other functions. It shall be created in such a manner that owners of property shall automatically be members and shall be subject to assessments levied to adequately maintain said outdoor living area for the purposes intended. The period of existence of such association shall be not less than 20 years and it shall continue thereafter and until the members terminate it. Provisions shall be made by the association for the disposition of such outdoor living area upon any termination of the arrangement hereinabove provided for.~~

~~(2) The planning commission may require that the rights of way designated by city code be dedicated or deeded to the city. Such other streets necessary to the proper development of adjacent properties may also be required.~~

~~(3) Easements to the city required for the orderly extension, maintenance, repair or replacement of public utilities may be required as a condition precedent to the issuance of a manufactured home park permit.~~

19.25.13~~060~~ Mapping.

Whenever a manufactured home park permit has been granted and so long as the permit is in effect, the boundary of the manufactured home park shall be indicated on the zoning map of the city of Oak Harbor as overlay district "MHP."

19.25.14~~070~~ Limitation on resubmission.

Whenever an application for a manufactured home park permit has been denied, no application for the same area or any portion thereof shall be filed by the same applicant

within one year after the date of denial.

19.25.150~~80~~ Adherence to approved plan.
The building official shall issue building permits only for buildings and structures which conform with the approved ~~final~~ development plan for the manufactured home project~~park~~ and with all other applicable city ordinances, regulations, and rezone, annexation and development agreements. The building official shall issue a certificate of occupancy only for completed buildings or structures which conform to the requirements of the approved ~~final~~ development plans and all other applicable city ordinances and regulations. The construction and development of all the open spaces and public and recreation facilities of each project phase must be completed or bonded before any certificate of occupancy will be issued.

19.25.160~~90~~ Revocation.
In the event of a failure to comply with the approved plan or any prescribed condition of approval, including failure to comply with the stage development schedule, the ~~planning commission~~ city council may, ~~after notice and hearing~~, revoke the manufactured home ~~park~~ development plan. ~~permit.~~ The revocation process shall follow the review process IV procedures, with the planning commission conducting the public hearing and the decision by the city council. ~~The determination of the planning commission shall become final 25 days after the date of decision unless appealed to the city council.~~ Decisions of the city council shall be final and subject only to review by the Island County superior court pursuant to Chapter 36.70C RCW.

~~**19.25.200 Subdivision requirements.**~~
~~The approval of a subdivision shall be required of all projects which involve or contemplate the subdivision of land and the procedures set forth in the Oak Harbor subdivision ordinance, codified in OHMC Title 21, shall be followed concurrently herewith. The approved final development plan shall be a binding site plan under RCW 58.17.040 (5). If a manufactured home park is divided it shall be through a binding site plan.~~

19.25.170~~210~~ Sale of lots.
Lots in a platted manufactured home park may be sold to separate owners and according to the separate lots as shown in the plat filed and approved in connection therewith. No sale shall be permitted which subdivides a lot in such a manner as will create a new lot line, except as provided in this chapter.

19.25.180~~220~~ Lots subject to approved, final development plan.
All lots or other divisions of a subdivided manufactured home project ~~park~~ shall remain subject to compliance with the manufactured home ~~final~~ development plan regardless of the fact of subdivision in compliance with OHMC Title 21, or subsequent conveyance of such individual lots or divisions.

19.25.190~~230~~ Termination of manufactured home ~~park~~ development plan.
If the construction has not been started within two years from the date of approval of a

manufactured home ~~final~~ development plan, or if construction has been commenced but the work has been abandoned for a period of one year or more, and if no extension of time has been granted as provided in OHMC 19.25.2140, the authorization granted for the manufactured home ~~park~~ project shall terminate and all permits and approvals issued pursuant to such authorization shall expire and be null and void.

~~The time period of commencing or continuing construction shall not include periods of time during which commencement of construction or continuation of construction was reasonably halted or reasonably delayed due to the filing of a pendency of legal action challenging an approval granted by the city pursuant to this chapter; provided, that in all cases, when more than two years have elapsed subsequent to the date of approval of the final development plan, whether due to pendency of litigation, city-approved extensions of time for development, or otherwise, the permittee shall be required to comply with all current building, construction, subdivision and other applicable standards of the city; provided further, that a change in zoning classification enacted subsequent to approval of the final development plan shall not affect the project.~~

19.25.200~~240~~ Extension of time for construction.
For good cause shown, the Director~~city council~~, in his or her~~its~~ discretion, may grant an extension of time for commencement or continuation of construction subsequent to approval of the manufactured home ~~final~~ development plan.

Section Ten. Oak Harbor Municipal Code Chapter 19.26 is hereby re-adopted to read as follows:

Chapter 19.26
RELATIONSHIP TO THE OAK HARBOR COMPREHENSIVE PLAN

Sections:

19.26.010 Intent.

19.26.020 Comprehensive plan relationship.

19.26.010 Intent.

It is the intent of this chapter to provide a direct relationship between the provisions of this zoning code, its administration and enforcement, and the adopted Oak Harbor comprehensive plan.

19.26.020 Comprehensive plan relationship.

The following identifies the relationship between each zoning classification and the applicable policies within the comprehensive plan. All development, uses and activities governed by this title shall be in conformance with the policies of the Oak Harbor comprehensive plan.

Policy	Description	PRE	R-1	R-2	R-3	R-4	RO	C-1	C-3	CBD	C-4	C-5	PBP	PIP	I	PF	OS	PRD	MHP
1a-H	Provide land use policies and zoning regulations which allow for a variety of housing types and residential lifestyles.																		
1a-LU	Develop, preserve and enhance a pedestrian-oriented character in Old Town.																		
1b-LU	Preserve and enhance the streetscape with more sidewalks, landscaping and buffers to the highway.						1	1	1		1	1							
1c-H	Encourage alternative housing types from the standard single-family including apartments, condominiums, small lot, zero lot line, attached patio, townhouse, and manufactured housing.																		
1c-LU	Encourage future commercial development, in coordination to prevent strip or patchwork development to decrease auto-oriented shopping.																		
1d-LU	Update standards to control signage.						1	1	1	1	1	1	1	1	1	1			
1d-UDE	Plans for development on sites which contain significant forest areas or a portion thereof shall include a forestry report to evaluate trees for retention.	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
1e-H	Disperse subsidized units throughout the community to diversify neighborhoods and ensure best use of public transportation.																		
1e-LU	Support the "Harbor Watch" Plan for Downtown and Waterfront redevelopment to improve the appearance of downtown Oak Harbor.																		
1e-UDE	Priorities for tree retention and replanting should be given to buffers along arterial streets, riparian areas and ridge lines as well as between different land uses and groupings of trees within developments and on rear lot lines.	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
1i-H	Plan for development and preservation of manufactured home communities.																		
1n-H	Consider adopting development regulations which allow accessory units to address housing needs while providing safeguards for established neighborhoods.	1	1															1	
2a-H	Provide development regulations which allow for the needs of the elderly, disabled, and infirm.	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1		1	1

2a-LU	Encourage planned unit development (PUDs) with performance based standards.																		
2b-x	Encourage tree retention in new development, where feasible.	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1		1
2c-LU	Consider view corridors when planning for development.									1									
2c-UDE	Pedestrian facilities should be maintained and enhanced, as consistent with the Transportation Element, to promote a pedestrian-friendly character.	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
2d-LU	Require compatible tree planting with all new development.	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
2d-UDE	Consideration should be given to recognizing and visually expressing separate commercial and residential districts in an effort to promote a sense of community.																		
3a-UDE	Strongly discourage design standards which locate large parking lots at corners of arterial intersections.						1	1	1	1	1	1	1	1	1	1			
3b-UDE	Establish design standards which promote a trend for buildings, rather than parking lots, to dominate street fronts for commercial uses.						1	1	1	1	1	1	1	1	1	1			
3c-UDE	Implement stricter landscaping requirements for parking areas located between the street and the building, such as vegetation buffers.				1	1	1	1	1	1	1	1	1	1	1	1		1	1
3d-UDE	Incorporate wooded, open, and other natural areas into development designs to promote the area's natural setting.	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
3e-UDE	Adopt maintenance standards for new landscaping in developments along major corridors.	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
3f-UDE	Apply strict requirements for vegetative buffers screening property lines of commercial uses adjacent to single and multiple-family residentially zoned properties.							1	1	1	1	1	1	1	1	1			
3g-UDE	Develop mandatory architectural and site design guidelines and performance standards with which all new retail development must comply.							1	1	1	1	1							
4a-LU	Support, through incentives, the upgrading of Oak Harbor's downtown and enhancement of its identity.																		
4b-LU	Enhance and protect the waterfront as an asset to future economic development, as outlined in the "Harbor Watch Downtown Redevelopment Plan."																		
4b-U	Mitigate impacts on environmentally sensitive areas, as required by the Environmental Element and Environmentally Sensitive Areas Ordinance.	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
4b-UDE	Landscape buffers shall be required along major arterials, retaining existing vegetation where possible.	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
4c-UDE	Freestanding business signs should be consistent with the speed limit of roadways, and the character of land use districts.						1	1	1	1	1	1	1	1	1	1		1	1
4d-UDE	Developments along Oak Harbor's waterfront should enhance the area's natural and physical aesthetics.		1			1				1									
4e-T	Bike racks should be provided in both commercial and public uses.				1	1	1	1	1	1	1	1	1	1		1			
5a-UDE	The historic character of Old Town should be encouraged through the establishment of design guidelines and a design review process.									1									
5b-UDE	Building heights should be coordinated in the Old Town vicinity to enhance the area's view of the harbor.																		
5f-U	Require preservation and/or replanting of landscaping in developments to support energy conservation goals.	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1		1	1
6a-LU	Require residential development to occur outside of high aircraft noise level areas (above 70 Ldn).	1	1	1	1	1	1	1		1								1	1

6a-UDE	Mitigate the visual and traffic impacts of industrial uses on adjacent properties and street corridors.												1	1	1				
6b-LU	Residential development shall be encouraged to locate outside of moderate aircraft noise areas (60 to 70 Ldn), allowing for residential development where a demonstrated need exists and compliance is met with policy 6.e.	1	1	1	1	1	1			1								1	1
6b-UDE	Require design standards for all development. These development standards could include: retaining wooded buffers to screen adjacent nonindustrial uses; protecting sensitive natural areas; buffering service areas, loading docks and storage yards.	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1		1	1
6c-LU	Ensure that land use and population densities in Accident Potential Zones remain low to conserve the highest degree of public heath, safety, and welfare.	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1		1	1
6d-LU	Ensure that no new land use proposals, structures or objects interfere with the safe operation of aircraft or deny the existing operational capability of Ault Field. Land use proposals, structures, or objects that may create an obstruction to air navigation will be reviewed for compatibility with airport operations. Hazards to air navigation will not be permitted.	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1		1	1
6e-LU	Ensure that new structures built for human occupancy in designated noise impacted areas, as identified in the aviation environs section of the city code, are constructed to a noise level reducing standard that is appropriate for the outdoor noise levels that will be experienced by the inhabitants. In addition to indoor noise level reducing construction design standards, outdoor noise level reducing measures should be considered in site planning, building location and alignment, and site design.	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1		1	1
6f-LU	Ensure the disclosure of potential noise and accident potential impacts on prospective buyers, renters, or lessees of property or structures they intend to purchase, rent, lease, or otherwise occupy.	1	1	1	1	1	1	1										1	1
5b-T	Provide an uninterrupted system of sidewalks, pathways, and crosswalks, prioritizing streets used frequently by school children, senior citizens, and handicapped people, and streets in heavily congested areas.			1	1	1	1	1	1	1	1	1	1	1	1	1		1	1
8c-LU	Create a mix of housing types within the price range of young families.																		
8f-LU	Establish and preserve residential districts that consolidate residential activities into uniform neighborhood types.																		
8h-LU	Require the planting of Garry Oak trees in new neighborhoods that have compatible soils and surroundings.	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1		1	1
9b-LU	Promote master planning of large contiguously owned properties to provide a variety of sizes of sites for industrial and business park development.																		
9c-LU	Encourage the assembly of small properties in order to provide planned parcels large enough for industrial development.																		
9e-LU	Encourage industrial activities to incorporate landscaping, decorative fencing, native vegetation and architectural sensitivity to design, color and materials into the facilities in order to ensure that such industries are attractive and complementary to the community.												1	1	1				
9f-LU	Industrial development shall be compatible with the sensitive island environment.												1	1	1				
9h-LU	Encourage through zoning, light manufacturing and business park uses along Goldie Road and along the northern section of Oak Harbor Road.																		

9i-LU	Larger vacant parcels should be planned for new high quality research and business parks.																		
12e-LU	Preparation of master plans shall be a condition of granting the PF zone classification.																		
12j-LU	Provide adequate parking, circulation and landscape buffers to ensure that public uses do not have a significant adverse impact on residential areas.															1			
13f-LU	Consider establishing an "Open Space" zone district as a means of conserving park lands and parcels containing critical resource areas.																		
14d-LU	The city should establish design criteria for public facilities to promote neighborhood and jurisdictional compatibility.																		
14e-LU	The city should establish a public use category to site facilities that may not otherwise be permitted.																		
14f-LU	Essential public facilities that are county-wide or statewide in nature must meet existing state law and regulations requiring specific siting and permitting requirements.	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
10a-LU	Require business parks, which cluster uses into a master planned campus-type development, to include interior landscaping and site design controls.													1					
10c-LU	Encourage business parks to provide coordinated landscaped buffers around the perimeter of the park.													1					
11b-LU	Promote the development of clustered commercial facilities which will accommodate high traffic generating uses. Large single sites are preferred over ad hoc strip commercialization.							1	1	1	1	1							
11c-LU	Allow neighborhood services which are compatible with residential areas.																		
11d-LU	Include consideration of architectural quality and good site planning in the design of commercial developments.						1	1	1	1	1	1	1						
11f-LU	Retain and enhance the character of historic commercial districts.																		
11g-LU	Promote commercial infill development.																		
12d-LU	Encourage the preparation of master plans for large-scale public and quasi-public campuses.															1			
2e-U	The city shall prepare and address a landscape ordinance for inclusion with development regulations.		1	1	1	1	1	1	1	1	1	1	1	1	1	1		1	1
9d-LU	Develop regulatory guidelines and standards for light industrial research and office uses.												1	1					
1c-UDE	A new landscaping ordinance shall be prepared which includes replacement of trees lost through land development.		1	1	1	1	1	1	1	1	1	1	1	1	1	1		1	1
2g-H	Update codes to state and national standards for group homes and family day care facilities.		1	1	1	1				1									
1f-T	New developments should provide adequate on- and off-street parking for the traffic they generate. Consolidated parking facilities should be encouraged. Maintain a pedestrian-oriented atmosphere in Old Town. Preservation of natural vegetation in the construction and repair of streets should be encouraged, particularly regarding the city's trademark Garry Oak trees in transportation rights-of-way. Protect and/or mitigate environmentally sensitive areas and resource lands when planning for future streets.	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
1a-E	Preserve and protect critical areas by regulating development within and adjacent to them.	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
6e-E	Require planting or retention of trees and shrubs with new development and substantial redevelopment projects.			1	1	1	1	1	1	1	1	1	1	1	1	1		1	1

6g-B	The city shall require developers to submit and receive city approval of erosion control and limits- of-clearing plans, as applicable, prior to release of Forest Practices Permits and land clearing. Adopt a land clearing and grading ordinance to prevent indiscriminate removal or destruction of trees and ground cover on undeveloped and partially developed property.	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
2e-CF	Promote high quality design and site planning in the construction of capital facilities.	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1		1	1
8d-GS	The city should provide timely and effective public notification of land use actions.	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
9a-GS	The city should combine review and notification procedures for multiple permits, whenever possible, to eliminate unnecessary delay in review of development applications.	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
9b-GS	The city should consider streamlining procedures under the State Environmental Policy Act and Shoreline Management Act, as such programs may be developed by the State of Washington.	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
9c-OS	The city shall process development applications within the legal time frames established by state law.	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1

1 indicates that other sections of this title respond to the identified Oak Harbor comprehensive plan policies. These include: Chapter 19.34 OHMC, Home Occupations; Chapter 19.36 OHMC, Sign Code; Chapter 19.38 OHMC, Essential Public Facilities; Chapter 19.42 OHMC, Accessory Dwelling Units; Chapter 19.44 OHMC, Parking; Chapter 19.46 OHMC, Landscape and Screening; Chapter 19.47 OHMC, Land Clearing; Chapter 19.48 OHMC, Site Plan Review Procedures; and Chapter 19.50 OHMC, Aviation Environs Overlay Zone. OHMC Title 18, Planning, and OHMC Title 20, Environment, also respond to these policies.

Section Eleven. Oak Harbor Municipal Code Chapter 19.28 is hereby re-adopted to read as follows:

Chapter 19.28
LIMITATIONS OF USES

Sections:

19.28.010 Limitations of uses.
19.28.020 Roof equipment.
19.28.030 Height limits – Exceptions.
19.28.040 Height limits – Roof structures.
19.28.050 Height limits – Flagpoles.
19.28.060 Conditional use permits for height limitation structures.

19.28.010 Limitations of uses.

Those permitted uses located in the several districts shall be subject to the following limitations:

(1) All sites in a commercially classified district or designated for commercial uses in the Oak Harbor comprehensive plan having a common boundary with a residentially classified property or property designated for residential uses in the Oak Harbor comprehensive plan shall erect and maintain a view-obscuring fence and/or screen buffer in conformance with Chapter 19.46 OHMC;

(2) All sites in an industrially classified district or designated for industrial uses in the Oak Harbor comprehensive plan having a common boundary with any residentially classified property or property designated for residential uses in the Oak Harbor comprehensive plan shall erect and maintain a view-obscuring fence and/or screen buffer in conformance with Chapter 19.46 OHMC;

(3) All permitted uses established after the effective date of this title or enlargements amounting to an increase of 20 percent in gross floor area of a use established prior to the effective date of this title shall provide off-street parking and loading areas for each use and enlargement in accordance with the provisions of Chapter 19.44 OHMC;

(4) Where lighted signs and illuminated areas are permitted, such illuminating devices shall be shaded and directed so as not to be visible from any residentially classified property or property designated for residential uses in the Oak Harbor comprehensive plan;

(5) Industrial uses shall be subject to the following conditions:

(a) In all industrial districts, the noise emanating from the premises used for industrial activities shall be muffled so as to not become objectionable due to intermittent beat, frequency or shrillness, and where an industrial district adjoins a residential district the noise loudness measured at the boundary line shall not exceed 40 decibels between the hours of 9:00 p.m. and 7:00 a.m. and 60 decibels at other hours,

(b) Industrial and exterior lighting shall not be used in such a manner that produces glare on public highways and neighboring property. Arc welding, acetylene torch cutting or similar processes shall be performed so as not to be seen from any point beyond the outside of the property,

(c) In terms of fire and safety hazards, the storage and handling of

inflammable liquids, liquefied petroleum gases and explosives shall comply with rules and regulations falling under the jurisdiction of the city fire chief, the laws of the state and other local ordinances. Bulk storage of inflammable liquids below ground shall be permitted, and the tank shall be located not closer to the property line than the greatest dimension (diameter, length, or height) of the tank,

(d) Provisions must be made for necessary shielding or other preventive measures against the interferences occasioned by mechanical, electrical, and nuclear equipment, uses or processes with electrical apparatus in nearby buildings or land uses,

(e) Liquid and solid wastes, storage of animal or vegetable waste which attract insects or rodents or otherwise create a health hazard shall be prohibited. No waste products shall be exposed to view from eye level from any property line in an industrial district.

19.28.020 Roof equipment.

All roof equipment used for heating, cooling or hood ventilation shall have a sight-obscuring screen in accordance with the Oak Harbor design guidelines.

19.28.030 Height limits – Exceptions.

Buildings and structures shall not exceed the height limitations as specified for the use district in which they are located unless specifically excepted as set out in OHMC 19.28.040 and 19.28.050.

19.28.040 Height limits – Roof structures.

Roof structures for the housing of elevators, stairways, tanks, ventilating fans and similar equipment to operate and maintain buildings; fire and parapet walls; skylights; towers, chimneys, smokestacks, wireless masts, television antennas, steeples and similar structures may be erected above the height limits prescribed in this title so long as the following conditions are met:

(1) Such portion of building or structure above the prescribed height limit shall not be allowed or used for the purpose of providing additional floor space;

(2) Structures specified in this section may not extend more than 10 feet above the height limit of the district, whether it is attached or freestanding, unless approved as a conditional use by the hearing examiner;

(3) Freestanding structures exceeding the height limit must be more than 10 feet from the nearest property line or point thereon;

(4) No sign is affixed to the structures above the height limit for the district.

19.28.050 Height limits – Flagpoles.

(1) There is no height limitation for flagpoles in commercial and industrial districts. Flagpoles must be placed at least 10 feet from the nearest lot line. Lighting of flagpoles is allowed in commercial and industrial districts subject to the following conditions:

(a) The flagpole is located at least 50 feet away from the nearest point of a residential district;

(b) Lighting shall be toward the flagpole, and not create safety hazards for aircraft and automobile traffic.

(2) In residential and residential/office districts, flagpoles shall not exceed 35 feet. Lighting shall be toward the flagpole and not create a nuisance to adjacent property owners.

(3) There is no height limitation for flagpoles permitted under conditional uses and in manufactured home parks. Flagpoles must be located at least 10 feet from a property line. Lighting of flagpoles is allowed subject to the following conditions:

(a) The flagpole is located at least 50 feet away from the nearest point of a residential district;

(b) Lighting shall be toward the flagpole, and not create safety hazards for aircraft and automobile traffic.

(4) Along with all other structures, building permits shall be required for flagpoles prior to construction. In addition, the planning director may require installation of flagpoles in excess of 50 feet to be designed and certified by a registered professional engineer. The city engineer may waive the 10-foot setback when the flagpole is designed so that the subsoil lateral support is essentially on the property where the flagpole is located. The standards of the building code, now in effect or as hereafter amended, shall apply to flagpoles.

19.28.060 Conditional use permits for height limitation structures.

(1) Conditional use permits for buildings or structures enumerated in OHMC 19.28.040 and exceeding 10 feet above the height limitation of the district may be granted so long as the following conditions are met:

(a) It is reasonably necessary for the use of the property;

(b) It is located more than 30 feet from the nearest property line or point thereon;

(c) It can be demonstrated to be safe;

(d) It does not materially impair the view of surrounding properties;

(e) It does not materially increase fire or other safety risks for the property or surrounding area;

(f) It complies with OHMC 19.28.040(1), (3) and (4).

(2) The hearing examiner may require reasonable conditions to be met for granting a conditional use permit to exceed the height limitations, including but not limited to specifying the location, design, lighting, construction and use.

Section Twelve. Oak Harbor Municipal Code Chapter 19.29 is hereby re-adopted to read as follows:

Chapter 19.29
WIRELESS COMMUNICATIONS FACILITIES

Sections:

19.29.010 Purpose.
19.29.020 Development standards for micro facilities.
19.29.030 Development standards for mini facilities.
19.29.040 Development standards for macro facilities.
19.29.050 Development standards for monopole I.
19.29.060 Development standards for monopole II.
19.29.070 Additional permit criteria for monopole I and monopole II.
19.29.080 Exemption.
19.29.090 Obsolescence.

19.29.010 Purpose.

In addition to the general purposes of the comprehensive plan and this title, this chapter is included in order to provide for a wide range of locations and options for wireless communications providers while minimizing the unsightly characteristics associated with wireless communications facilities and to encourage creative approaches in locating wireless communications facilities which will blend in with the surroundings of such facilities.

19.29.020 Development standards for micro facilities.

(1) Micro facilities are permitted in all zones.

(2) A micro facility shall be located on existing buildings, poles or other existing support structures. A micro facility may locate on buildings and structures; provided, that the interior wall or ceiling immediately adjacent to the facility is not designated residential space.

(3) Antennas equal to or less than four feet in height (except omni-directional antennas which can be up to six feet in height) and with an area of not more than 580 square inches in the aggregate (e.g., one-foot diameter parabola or two-foot by one and one-half-foot panel as viewed from any one point) are exempt from the height limitation of the zone in which they are located. Structures which are nonconforming with respect to height may be used for the placement of omni-directional antennas providing they do not extend more than six feet above the existing structure. Placement of an antenna on a nonconforming structure shall not be considered to be an expansion of the nonconforming structure.

(4) The micro facility shall be exempt from design review if the antenna and related components are the same color as the existing building, pole or support structure on which it is proposed to be located.

(5) The shelter or cabinet used to house radio electronic equipment shall be contained wholly within a building or structure, or otherwise appropriately concealed, camouflaged or located underground.

(6) In single-family residential (PRE, R-1 and R-2) zones, micro facilities for a specific wireless provider shall be separated by a distance equal to or greater than

1,320 linear feet from other micro facilities of the same wireless provider.

19.29.030 Development standards for mini facilities.

(1) Mini facilities are permitted in all zones except single-family residential (PRE, R-1 and R-2) zones.

(2) The mini facility may be located on buildings and structures; provided, that the immediate interior wall or ceiling adjacent to the facility is not a designated residential space.

(3) The mini facility shall be exempt from design review if the antenna and related components are the same color as the existing building, pole or support structure on which it is proposed to be located.

(4) The shelter or cabinet used to house radio electronic equipment shall be contained wholly within a building or structure, or otherwise appropriately concealed, camouflaged or located underground.

(5) Mini facilities shall comply with the height limitation specified for all zones except as follows: Omni-directional antennas may exceed the height limitation by 10 feet or, in the case of nonconforming structures, the antennas may extend 10 feet above the existing structure. Panel antennas may exceed the height limitation if affixed to the side of an existing nonconforming building and they blend in architecturally with the building. Placement of an antenna on a nonconforming structure shall not be considered to be an expansion of the nonconforming structure.

19.29.040 Development standards for macro facilities.

(1) Macro facilities are permitted in all zones except single-family residential (PRE, R-1 and R-2) zones.

(2) Macro facilities may be located on buildings and structures; provided, that the immediate interior wall or ceiling adjacent to the facility is not a designated residential space.

(3) The macro facility shall be exempt from design review if the antenna and related components are the same color as the existing building, pole or support structure on which it is proposed to be located.

(4) The shelter or cabinet used to house radio electronic equipment shall be contained wholly within a building or structure, or otherwise appropriately concealed, camouflaged or located underground.

(5) Macro facilities shall comply with the height limitation specified for all zones, except as follows: Omni-directional antennas may exceed the height limitation by 15 feet, or, in the case of nonconforming structures, the antennas may extend 15 feet above the existing structure. Panel antennas may exceed the height limitation if affixed to the side of an existing building and architecturally blends in with the building. Placement of an antenna on a nonconforming structure shall not be considered to be an expansion of the nonconforming structure.

19.29.050 Development standards for monopole I.

(1) Monopole I facilities are only permitted in the industrial (I) zone.

(2) Monopole I facilities are permitted in community commercial (C-3), highway service commercial (C-4), highway corridor commercial (C-5), planned business park (PBP), planned industrial park (PIP), and public facilities (PF) zones with a

conditional use permit.

(3) Monopole I facilities are not permitted in residential (PRE, R-1, R-2, R-3 and R-4), residential office (RO), neighborhood commercial (C-1) or central business district (CBD) zones, except when expressly provided for in this chapter.

(4) Antennas equal to or less than 15 feet in height or up to four inches in diameter may be a component of a monopole I facility. Antennas which extend above the wireless communications support structure shall not be calculated as part of the height of the monopole I wireless communications support structure. For example, the maximum height for a monopole I shall be 60 feet and the maximum height of antennas which may be installed on the support structure could be 15 feet, making the maximum permitted height of the support structure and antennas 75 feet (60 feet plus 15 feet).

(5) Co-location on an existing support structure shall be permitted. Macro facilities are the largest wireless communications facilities allowed on monopole I.

(6) The shelter or cabinet used to house radio electronics equipment and the associated cabling connecting the equipment shelter or cabinet to the monopole I facilities shall be concealed, camouflaged or placed underground. Monopole I facilities shall be subject to review by the planning commission using the procedures and review criteria specified in Chapter 19.48 OHMC and this chapter.

(7) Monopole I facilities shall be landscaped in conformance with Chapter 19.46 OHMC.

(8) Monopole I facilities adjacent to a single-family zone shall be set back a distance equal to the height of the wireless communications support structure from the nearest single-family lot line.

19.29.060 Development standards for monopole II.

(1) Monopole II facilities are only permitted in the industrial (I) zone; provided the wireless communications support structure shall be designed to accommodate two or more wireless communications facilities.

(2) Monopole II facilities are permitted in highway service commercial (C-4), planned business park (PBP), planned industrial park (PIP), and public facilities (PF) zones with a conditional use permit.

(3) Monopole II facilities are not permitted in residential (PRE, R-1, R-2, R-3 and R-4), residential office (RO), neighborhood commercial (C-1) or central business district (CBD) zones, except when expressly provided for in this chapter.

(4) Monopole II facilities which exceed 60 feet in height or are located within 300 feet of a residential zone shall require a conditional use permit.

(5) Co-location of wireless communications facilities on an existing support structure shall be permitted.

(6) Macro facilities are the largest permitted wireless communications facilities allowed on a monopole II facility. Antennas which extend above the monopole II wireless communications support structure shall not be calculated as part of the height of the wireless communications support structure. For example, the maximum height for a monopole II facility shall be 150 feet and the maximum height of antennas which may be installed on the support structure could be 15 feet, making the maximum permitted height of the support structure and antennas

165 feet (150 feet plus 15 feet).

(7) The shelter or cabinet used to house radio electronics equipment and the associated cabling connecting the equipment shelter or cabinet to the monopole I facilities shall be concealed, camouflaged or placed underground. Monopole I facilities shall be subject to review by the planning commission using the procedures and review criteria specified in Chapter 19.48 OHMC and this chapter.

(8) Monopole II facilities shall be landscaped in conformance with Chapter 19.46 OHMC.

(9) Monopole II facilities adjacent to a single-family zone shall be set back a distance equal to the height of the wireless communications support structure from the nearest single-family lot line.

(10) Monopole II facilities shall be separated from each other by a distance equal or greater than 1,320 feet.

19.29.070 Additional permit criteria for monopole I and monopole II.

In addition to the permit criteria specified in Chapters 19.48 and 19.67 OHMC, the following specific criteria shall be met before a site plan review or conditional use permit can be granted:

(1) Antennas may not extend more than 15 feet above their supporting structure, monopole, building or other structure.

(2) Site location and development shall preserve the pre-existing character of the surrounding buildings and land uses and the zone district to the extent consistent with the function of the communications equipment. Wireless communications towers shall be integrated through location and design to blend in with the existing characteristics of the site to the extent practical. Existing on-site vegetation shall be preserved or improved, and disturbance of the existing topography shall be minimized, unless such disturbance would result in less visual impact of the site to the surrounding area.

(3) Accessory equipment facilities used to house wireless communications equipment should be located within buildings or placed underground when possible. When they cannot be located in buildings, equipment shelters or cabinets shall be screened and landscaped in conformance with Chapter 19.46 OHMC.

(4) No equipment shall be operated so as to produce noise in levels above 45 dB as measured from the nearest property line on which the attached wireless communications facility is located.

(5) In any proceeding regarding the issuance of site plan review or a conditional use permit under the terms of this chapter, federal law prohibits consideration of environmental effects of radio frequency emissions to the extent that the proposed facilities comply with the Federal Communications Commission regulations concerning such emission.

(6) Towers, antennas or other objects that penetrate the 100:1 angle slope criteria established in Federal Aviation Regulation (FAR) Part 44 (§§ 77.13(a)(1) and 77.13(a)(2)(I), respectively) shall be reviewed for compatibility with airport operations. No tower, antenna or other object shall constitute a hazard to air navigation, interfere with the safe operation of aircraft or deny the existing operational capability of Ault Field.

19.29.080 Exemption.

The following are exempt from the requirement of a conditional use permit, and shall be considered a permitted use in all zones where wireless and attached wireless communications facilities are permitted: Minor modifications of existing wireless communications facilities and attached wireless communications facilities, whether emergency or routine, so long as there is little or no change in the visual appearance. Minor modifications are those modifications, including the addition of antennas, to conforming wireless and attached wireless communications facilities that meet the performance standards set forth in this chapter.

19.29.090 Obsolescence.

A wireless communications facility or attached wireless communications facility shall be removed by the facility owner within six months of the date it ceases to be operational or if the facility falls into disrepair.

Section Thirteen. Oak Harbor Municipal Code Chapter 19.31 is hereby re-adopted to read as follows:

Chapter 19.31
PLANNED RESIDENTIAL DEVELOPMENTS

Sections:

19.31.010 Purpose and intent.
19.31.020 General standards and requirements – Open space.
19.31.030 General standards and requirements – Density.
19.31.040 General standards and requirements – Parcel size.
19.31.050 General standards and requirements – Mandatory application of standards.
19.31.060 General standards and requirements – Uses permitted.
19.31.070 General standards and requirements – Access to development.
19.31.080 General standards and requirements – Permissive variations in requirements.
19.31.090 General standards and requirements – Yards.
19.31.100 General standards and requirements – Distance between buildings.
19.31.110 General standards and requirements – Building height.
19.31.120 General standards and requirements – Professional design.
19.31.130 General standards and requirements – Multiple zones.
19.31.140 General standards and requirements – Off-street parking.
19.31.150 General standards and requirements – Common walls.
19.31.160 Combined applications.
19.31.170 Preapplication meeting.
19.31.180 Application requirements.
19.31.190 Preliminary development plan – Filing requirements.
19.31.200 Preliminary development plan – Staff recommendation.
19.31.210 Preliminary development plan – Public hearing.
19.31.220 Preliminary development plan – Planning commission review.
19.31.230 Preliminary development plan – Council review.
19.31.240 Final development plan – Filing requirements.
19.31.250 Final development plan – Staff recommendation.
19.31.260 Final development plan – Planning commission approval.
19.31.270 Appeal to council.
19.31.280 Modifications to the plan.
19.31.290 Phased development.
19.31.300 Distribution of facilities.
19.31.310 Dedication and maintenance of facilities.
19.31.320 Mapping.
19.31.330 Limitation on resubmission.
19.31.340 Adherence to approved plan.
19.31.350 Revocation.
19.31.360 Mitigation agreement.
19.31.370 Subdivision requirements.
19.31.380 Sale of lots.

19.31.390 Lots subject to final development plan.
19.31.400 Termination of planned residential development.
19.31.410 Extension of time for construction.
19.31.420 Judicial review.
19.31.430 Planned unit development conformity.

19.31.010 Purpose and intent.

The purpose and intent of the planned residential development (PRD) is to create a process to promote diversity and creativity in site design, and to protect and enhance natural and community features. The intent of the process is to encourage unique developments which may combine a variety of residential densities to create open space, protect natural vegetation, watercourses, wetlands, historic buildings and places, and provide community recreation. By using flexibility in the application of development standards, this process will promote developments that will provide more efficient street and utility systems, and compatible architectural and landscape designs.

19.31.020 General standards and requirements – Open space.

The proposal shall provide open space as follows:

(1) Common open space shall comprise at least 10 percent of the gross area of the PRD, and shall be used as a recreational, park or environmental amenity for collective enjoyment by occupants of the development. Common open space shall not include public or private streets, driveways, detention ponds, buffers, screens, perimeter landscaping, parking areas or the required or provided yards for buildings or structures;

(2) Common open space may not be computed to include any existing submerged lands;

(3) At least five percent of the gross developable area, excluding wetlands, must be usable for active or passive recreation.

19.31.030 General standards and requirements – Density.

In addition to or as a greater requirement to the regulations normally found in the underlying zoning district, the following regulations shall govern:

(1) Increases in density over that permitted in the underlying zone are allowed at the discretion of the planning commission as follows:

(a) Provisions for open space which is arranged as to be an integrated part of the project and meets the requirements of OHMC 19.31.020 – 10 percent increase,

(b) Preservation of a natural feature such as, but not limited to, a wetland, stream corridor, unique geological feature, substantial overstory vegetation, etc. – 10 percent increase,

(c) Unique landscaping, architectural design and site planning – 10 percent increase,

(d) Additional open space – one percent increase in density for each one percent increase in open space over the minimum required under OHMC 19.31.020,

(e) Preservation of scenic vista corridor(s) within and off the site – 10 percent increase,

(f) Retention of significant trees in excess of 25 percent, as defined in OHMC

19.46.045, Tree retention – 10 percent increase.

(2) The total allowable maximum density increase shall not exceed 30 percent.

19.31.040 General standards and requirements – Parcel size.

No PRD application shall be made for an area of less than two acres unless the city makes the following findings:

(1) An unusual physical or topographical feature of importance exists on the site or in the neighborhood which can be conserved and still leave the applicant equivalent use of the land by the use of a PRD;

(2) The property or its neighborhood has a historical or visual character of importance to the community that will be protected by the use of a PRD;

(3) The property adjacent to or across the street from property which has been developed or redeveloped under a PRD, and a PRD will contribute to the maintenance of the amenities and values of the neighboring PRD.

19.31.050 General standards and requirements – Mandatory application of standards.

This chapter shall apply to any residential development proposal encompassing more than 20 acres. Development proposals encompassing five acres or more which have 20 percent or more of such lands covered in sensitive or forested lands on the woodlands map, shall be developed under the requirements of this chapter.

In the event that a property owner can present information that a PRD is not in the best interest of the neighborhood and the comprehensive plan policies can be met, the planning commission may waive this requirement when it is determined in the best interest of the community. Examples include hazardous situations for tree removal or buffer instability.

19.31.060 General standards and requirements – Uses permitted.

Notwithstanding any other provision of this section, accessory incidental, and other nonresidential uses may be specifically and selectively authorized as to exact type and size to be integrated into a PRD; provided, that such accessory incidental uses shall be designed to serve only as a convenience to the inhabitants of the PRD. Building permits or occupancy permits for such uses shall not be issued until one-half of the total project is completed unless otherwise approved by the planning commission. The access for such uses shall be functionally connected to at least one minor arterial or collector street.

19.31.070 General standards and requirements – Access to development.

The streets connecting with any PRD must be of sufficient size and character to accommodate the traffic to be produced by the project without significantly altering the character of existing residential neighborhoods. Evaluation of the proposal pursuant to this section shall include consideration of the following criteria:

(1) The increase in traffic which will be generated by the development;

(2) The present width and condition of streets to be affected;

(3) Presence or absence of improved sidewalks;

(4) Anticipated effect upon availability of parking; and

(5) Existence of a particular conflict between vehicular and pedestrian traffic.

19.31.080 General standards and requirements – Permissive variations in requirements.

In considering a proposed planned residential development project, the approval thereof may involve modifications in the regulations, requirements and standards of the zone in which the project is located and the subdivision ordinance so as to appropriately apply such regulations, requirements and standards to the larger site.

In modifying such regulations and requirements as they may apply to a PRD project, the limitations set forth in this chapter shall apply. The applicant shall bear the burden of supporting any change in requirements. The city may increase any requirement necessary to make the project conform to the purpose and intent of this code.

19.31.090 General standards and requirements – Yards.

The requirements for front yards for the zone in which the PRD is located shall apply to all exterior boundary lines of the site.

19.31.100 General standards and requirements – Distance between buildings.

The planning commission shall set minimum distances between structures to assure adequate sunlight and open space; provided, that minimum distances required by the building code and fire code shall be met.

19.31.110 General standards and requirements – Building height.

Building height shall be governed by the requirements of the underlying zone.

19.31.120 General standards and requirements – Professional design.

The applicant for all proposed planned residential developments shall certify that registered professional personnel will plan, guide and inspect the development and shall list the personnel by name, address and profession on the application. The planning director may direct the applicant, because of the nature, size and scope of the development, to utilize any or all of the following professions:

(1) An architect licensed by the state of Washington;
(2) A landscape architect licensed by the state of Washington;
(3) An urban planner holding a full membership in the American Institute of Certified Planners;
(4) A registered civil engineer licensed by the state of Washington; and/or
(5) A registered land surveyor licensed by the state of Washington.

One of the professional persons chosen shall be designated by the applicant as the applicant's representative in conferring with the planning commission and/or the city staff regarding the development plans and the execution thereof.

The selection of the professional coordinator of the design team will not limit the owner or the developer in consulting with the planning staff or the planning commission.

19.31.130 General standards and requirements – Multiple zones.

For any planned residential development located in more than one zone, the total number of dwelling units allowed may be determined by totaling the number of dwelling units allowed to be located on each portion of the planned residential development area located in each separate zone according to the regulations of that zone. The number of units arrived at by this method may be located anywhere within the PRD, subject to the normal

development plan approval process set forth in this chapter.
For any planned residential development located in more than one zone, the permitted percentage of coverage by buildings and structures may be determined by calculating the percentage of coverage allowed upon each portion of the PRD located in a separate zone, pursuant to the regulation applicable to that zone, and calculating the average of said percentages.

19.31.140 General standards and requirements – Off-street parking.
The total required off-street parking facilities shall meet the requirements of Chapter 19.44 OHMC.

19.31.150 General standards and requirements – Common walls.
In planned residential development projects receiving final approval, where units will have common walls, the building department may issue building permits for construction of those units prior to approval of final lot lines.

19.31.160 Combined applications.

(1) The preliminary planned residential development plan and the final planned residential development plan may be combined and together processed through review as a final planned residential development plan.

(2) The applicant may file a concurrent subdivision application with the final planned residential development application, meeting the requirements of OHMC Titles 21 and 22, which shall be processed concurrently with the final planned residential development application.

(3) The applicant may file a concurrent rezone application with the preliminary planned residential development application, meeting the requirements where such application is consistent with the Oak Harbor comprehensive plan, which shall proceed concurrently with the preliminary planned residential development application.

(4) In case of conflict between time limits set forth in this chapter and in other provisions of the Oak Harbor Municipal code or applicable state law, those provisions requiring public notice to be given the furthest in advance of the pending action shall prevail over conflicting provisions specifying that notice shall be given within a shorter time prior to the action.

19.31.170 Preapplication meeting.
Prior to formal submittal of the application, the applicant shall present to the planning department a preliminary site plan, which shall contain in a rough and approximate manner, all of the information required for the application under OHMC 19.31.190. Upon submittal, the planning department shall schedule a meeting with representatives of applicable city departments. The planning director may also invite, because of the nature, size and scope of the development, other interested agencies or public utilities to participate in the preapplication meeting. The purpose of the meeting is to enable the applicant to obtain the advice of city staff as to the intent, standards and provisions of this code with regard to the proposed plan. Information presented for and at the preapplication meeting shall not be part of the public record as no applications are submitted for formal review.

19.31.180 Application requirements.
An application for approval of a proposed planned residential development shall be made to the planning director upon forms furnished by the city. Application shall be made by the owner or owners of the parcel or parcels intended to be developed as a unit or their duly authorized agent or agents. The ownership of all parcels to be included must be represented in the application.

19.31.190 Preliminary development plan – Filing requirements.
The applicant shall file with the planning director a preliminary development plan, including the following:

(1) A legal description of the site and plot plan indicating location of all existing and proposed adjacent streets, private rights-of-way and easements;

(2) Twenty copies of the proposed site plan and/or drawings, which include the following information:

- (a) Topographic contours at a minimum interval of five feet,
- (b) Individual trees over 12 inches in trunk diameter measured four feet above the base of the trunk in areas to be developed or otherwise disturbed,
- (c) Existing and proposed finished grades of the property with all drainage features,
- (d) Location of all proposed structures together with the usage to be contained therein and approximate location of all entrances thereto and heights, and gross floor area thereof (building envelope on single-family),
- (e) Location and nature of vehicular and pedestrian circulation features within the site and adjacent streets and alleys,
- (f) The extent, location, arrangement, and proposed improvements of all off-street parking and loading facilities,
- (g) The extent, location, arrangement and proposed improvements of all open space, landscaping, fences and walls,
- (h) Location, nature and dimension (where applicable) of water, sewer, and storm sewer utilities including fire protection facilities,
- (i) Architectural drawings and sketches demonstrating the planning and character of the proposed development; narrative statement for single-family in lieu of sketches,
- (j) Number of units proposed;

(3) Proposed conditions, covenants and restrictions, including continuous maintenance provisions for the project;

(4) A text describing conditions or features which cannot be adequately displayed on maps or drawings.

19.31.200 Preliminary development plan – Staff recommendation.
After receiving the preliminary development plan, the planning director shall route the same to all appropriate city departments, and each department shall submit to the planning director comments and recommendations. After receiving such information from the city departments, the planning director shall present recommendations and conclusions before the planning commission at the public hearing upon the preliminary development plan.

19.31.210 Preliminary development plan – Public hearing.

The preliminary development plan shall be considered at a public hearing before the planning commission. Notice of such public hearing by publication in the official newspaper of the city of Oak Harbor shall be given by the planning commission at least 10 days prior to the date of hearing.

19.31.220 Preliminary development plan – Planning commission review.

Following the public hearing, the planning commission may approve as proposed, approve with changes or disapprove the application and the accompanying development plan. The commission's action shall be based on the following criteria:

(1) The proposal meets the requirements of this title;

(2) The perimeter of the project shall be compatible with the land use of adjoining properties. Compatibility includes, but is not limited to, size, scale, mass and architectural design;

(3) The proposal shall not be detrimental to existing or potential surrounding land uses as defined by the Oak Harbor comprehensive plan;

(4) The applicant is providing two or more of the following benefits to the city as part of the proposal:

(a) The applicant is providing public facilities that could not be required by the city for development of the subject property without a planned residential development;

(b) The proposal will preserve, enhance or rehabilitate natural features of the subject property such as significant woodlands, wildlife habitats or streams that the city could not require the applicant to preserve, enhance or rehabilitate through development of the subject property without a planned residential development;

(c) The design of the proposed planned residential development is superior in one or more of the following ways to the design that would result from development of the subject property without a planned residential development:

(i) Increased provision of open space or recreational facilities;

(ii) Superior circulation patterns or location or screening of parking facilities;

(iii) Superior landscaping, buffering, or screening in or around the proposed planned residential development;

(iv) Superior architectural design, placement, relationship or orientation of structure; and/or

(v) Minimum use of impervious surfacing materials;

(5) Any planned residential development which is proposed as special needs housing shall be reviewed for its proximity to existing or planned services (i.e., shopping centers, medical centers, churches, parks, entertainment, senior centers, public transit, etc.).

19.31.230 Preliminary development plan – Council review.

The planning commission decision shall be forwarded to the city council for concurrence or disapproval. The determination of the city council shall become final 10 days after the date of decision, unless directed otherwise or appealed to the city council in accordance with OHMC 19.31.270.

19.31.240 Final development plan – Filing requirements.
Within one year after the approval or modified approval of the preliminary development plan, the applicant shall file with the planning director a final plan for the entire development or when submission in stages has been authorized pursuant to OHMC 19.31.290 for the first unit of development. The final development plan shall conform in all major respects with the approved preliminary development plan. Binding site plans or final plats for land subdivision purposes will be reviewed for consistency with the final development plan. The final development plan shall include all information included in the preliminary plan plus the following:
(1) The location of water, sewer and drainage facilities;
(2) Detailed building and landscaping plans and elevations;
(3) The character and location of signs;
(4) Plans for street improvements; and
(5) Grading or earth moving plans.
The final development plan shall be sufficiently detailed to indicate fully the ultimate operation and appearance of the development. Fully drafted, properly executed legal documents required by the planning commission for dedication or reservation of public facilities and/or for the creation of a nonprofit homeowners' association shall also be submitted.

19.31.250 Final development plan – Staff recommendation.
After receiving the final development plan, the planning director shall route the same to all appropriate city departments, and each department shall submit to the planning director comments regarding the conformance of the final development to the preliminary development plan approval. After receiving such information from the city departments, the planning director shall present recommendations and conclusions to the planning commission.

19.31.260 Final development plan – Planning commission approval.
Upon receipt of the final development plan, the planning commission shall examine such plan and determine whether it conforms to all applicable criteria and standards and whether it conforms in all substantial respects to the previously approved planned residential development permit. In the event the planning commission determines that the final development plan does not conform to the previously approved permit, they may require such changes in the proposed development or impose such conditions of approval as are, in its judgment, necessary to ensure conformity to the previous approval.
If the commission does grant final approval, the decision of the commission shall become final 10 days after the date of the final action unless appealed to the city council in accordance with OHMC 19.31.270; provided, that if all other requirements of this title have been met, the permit shall not be granted until the completion of the formation of a nonprofit association and the proper drafting, executing and recording (all at applicant's expense) of all documents necessary to fulfill the requirements of this title.

19.31.270 Appeal to council.
(1) Within 10 days after the date of decision by the planning commission on an application of approval of a preliminary development plan or on revocation of any such plan in accordance with OHMC 19.31.350, such approval or revocation shall be taken to the city council by the applicant, the permit holder or any other

interested party. Such appeal shall be made on a form prescribed by the planning department and shall be filed within the prescribed time with the office of the city clerk and must be accompanied by a filing fee of $100.00. The appeal shall state specifically wherein it is claimed there was an error or abuse of discretion by the commission or wherein its decision is not supported by the evidence in the record, based on the criteria set forth in OHMC 19.31.010 through 19.31.220.

(2) Upon receipt of such appeal, together with the filing fee, the city council shall set the time for consideration thereof. The city clerk shall notify the planning director of the receipt of said appeal and of the time set for consideration thereof. The planning director shall give written notice to the appellant and to any known adverse parties or to their representatives of the time and place of the hearing not less than five days prior to the date set for the hearing of the appeal.

(3) In considering the appeal, the city council may refer the matter back to the planning commission for further information or reconsideration or approve or disapprove the proposed development or require such changes therein or impose such reasonable conditions of approval as are, in its judgment, necessary to insure conformity to said criteria and standards. The decision of the city council shall be final.

19.31.280 Modifications to the plan.

Requests for modifications of preliminary or final development plans shall be made in writing and shall be submitted to the planning department in the manner and form prescribed by the planning director.

(1) Modifications shall be deemed minor if the proposal does not change any of the following:
   - (a) Land use;
   - (b) Density, number of dwelling units or lots;
   - (c) General location or number of access points;
   - (d) The amount of open space;
   - (e) The amount of parking;
   - (f) The total square footage of structures; and
   - (g) The general height of structures.

Examples of minor modifications include but are not limited to lot line adjustments, minor relocations of buildings or landscaped areas, minor changes in phasing and timing, minor changes in building design, and minor changes in elevations of buildings.

Minor modifications may be approved by the planning director.

(2) Major modifications are those which, as determined by the planning director, substantially change the basic design, density, open space or other similar requirements or provisions. Major adjustments to the development plans shall be reviewed by the planning commission under the same process as outlined under OHMC 19.31.220 and 19.31.230.

19.31.290 Phased development.

Development of the project may be phased, in which case each complete phase may be processed separately through both preliminary development plan review and final development plan review. A map showing all property owned or controlled by the developer which is contiguous to the development site or which is within the area

determined by the planning director to be relevant for comprehensive planning and environmental assessment purposes, together with a conceptual plan of said properties, shall be submitted with the application for the first phase. The conceptual plan shall conform to the purposes of this title and shall be used by the city to review all phases of the development.

19.31.300 Distribution of facilities.

Individual buildings, accessory buildings, off-street parking and building facilities, open space and landscaping and screening may be located without reference to lot lines except as established under OHMC 19.31.100, except that required parking spaces serving residential uses shall be located within 200 feet of the building containing the living units served.

19.31.310 Dedication and maintenance of facilities.

The planning commission may require that portions of the tract or tracts under consideration be conveyed and/or dedicated for the following uses:

(1) Whenever private open space, including parks or playgrounds, are to be provided, the planning commission shall require that an association of owners or tenants be organized as a nonprofit corporation under the laws of the state of Washington, which shall adopt such articles of incorporation and bylaws and adopt, impose and record such declaration of covenants and restrictions on such open space and/or common areas that are acceptable to the planning commission.

Said association shall be formed and continued for the purpose of maintaining such open space. Such an association, if required, may undertake other functions. It shall be created in such a manner that owners of property shall automatically be members and shall be subject to assessments levied to adequately maintain said open space for the purposes intended. The period of existence of such association shall be not less than 20 years and it shall continue thereafter and until the members terminate it. Provisions shall be made by the association for the disposition of such open space upon any termination of the arrangement hereinabove provided for;

(2) The planning commission may require that the rights-of-way designated by city code be dedicated or deeded to the city. Such other streets necessary to the proper development of adjacent properties may also be required;

(3) Easements to the city required for the orderly extension, maintenance, repair or replacement of public utilities may be required as a condition precedent to the issuance of a planned residential development permit.

19.31.320 Mapping.

Whenever a planned residential development permit has been granted and so long as the permit is in effect, the boundary of the planned residential development shall be indicated on the zoning map of the city of Oak Harbor as subdistrict PRD.

19.31.330 Limitation on resubmission.

Whenever an application for a planned residential development permit has been denied, no application using the same area or any portion thereof shall be filed by the same applicant within one year after the date of denial unless there is a substantial change in the plan.

19.31.340 Adherence to approved plan.
The building official shall only issue building permits for buildings and structures which conform with the approved final development plan for the planned residential development and with all other applicable city ordinances, regulations, rezone, annexation and development agreements. The building official shall issue a certificate of occupancy only for completed buildings or structures which conform to the requirements of the approved final development plans and all other applicable city ordinances and regulations. The construction and development of all the open spaces and public and recreation facilities of each project phase must be completed or bonded before any certificate of occupancy will be issued.

19.31.350 Revocation.
In the event of a failure to comply with the approved plan or any prescribed condition of approval, including failure to comply with the phased development schedule, the planning commission may, after notice and hearing, revoke the planned residential development permit. The determination of the planning commission shall become final 30 days after the date of decision unless appealed to the city council.

19.31.360 Mitigation agreement.
The applicant shall provide for methods to mitigate development impacts as set forth in OHMC Title 20. Any fees voluntarily proposed or required as mitigation to such development impacts shall be made prior to the issuance of any development permits.

19.31.370 Subdivision requirements.
The approval of a subdivision shall be required of all projects which involve or contemplate the subdivision of land and the procedures set forth in OHMC Titles 21 and 22 shall be followed concurrently herewith. The approved final development plan shall be a binding site plan under RCW 58.17.040(5), so that a lease of land not involving a residential structure shall be exempt from the subdivision ordinance if the lease conforms to the final development plan.

19.31.380 Sale of lots.
Lots in a platted planned residential development may be sold to separate owners and according to the separate lots as shown in the plat filed and approved in connection therewith. No sale shall be permitted which subdivides a lot in such a manner as will create a new lot line, except as provided in OHMC Titles 21 and 22.

19.31.390 Lots subject to final development plan.
All lots or other divisions of a subdivided planned residential development shall remain subject to compliance with the final development plan regardless of the fact of subdivision in compliance with OHMC Titles 21 and 22, or subsequent conveyance of such individual lots or divisions.

19.31.400 Termination of planned residential development.
If the construction has not been started within two years from the date of approval of a final development plan, or if construction has been commenced but the work has been abandoned for a period of one year or more, and if no extension of time has been granted as provided in OHMC 19.31.410, the authorization granted for the planned residential development project shall terminate and all permits and approvals issued pursuant to such

authorization shall expire and be null and void.
The time period of commencing or continuing construction shall not include periods of time during which commencement of construction or continuation of construction was reasonably halted or reasonably delayed due to the filing of a pendency of legal action challenging an approval granted by the city pursuant to this title; provided, that in all cases, when more than two years have elapsed subsequent to the date of approval of the final development plan, whether due to pendency of litigation, city-approved extensions of time for development, or otherwise, the permittee shall be required to comply with all current building, construction, subdivision and other applicable standards of the city; provided, further, that a change in zoning classification enacted subsequent to approval of the final development plan shall not affect the project.

19.31.410 Extension of time for construction.
For good cause shown, the city council, in its discretion, may grant an extension of time for commencement or continuation of construction subsequent to approval of the final development plan.

19.31.420 Judicial review.
Any legal action to review a decision of the city council or planning commission under this title shall be filed in Island County superior court within 21 days of the decision, notwithstanding the effective date of any ordinance passed or proposed to effectuate said decision.

19.31.430 Planned unit development conformity.
As of the date of adoption of this chapter, all existing, legally established planned unit developments (PUD), shall be deemed conforming uses under this chapter.

Section Fourteen. Oak Harbor Municipal Code Chapter 19.34 is hereby re-adopted to read as follows:

Chapter 19.34
HOME OCCUPATIONS

Sections:

19.34.010 Purpose.
19.34.020 Criteria.
19.34.030 Nonconforming home occupations.

19.34.010 Purpose.

It is the purpose of this chapter to:

(1) Protect residential areas from potential adverse impact of activities defined as home occupations;

(2) Permit residents of the community a broad choice in the use of their homes as a place of livelihood and the production or supplementing of personal/family income;

(3) Establish criteria and development standards for the use of residential structures or dwelling units for home occupations.

19.34.020 Criteria.

All home occupations shall meet the following criteria:

(1) Such home occupations shall be conducted in such a manner as not to give any outward appearance nor manifest any characteristics of a business in the ordinary meaning of the term that would infringe upon the right of neighboring residents to enjoy a peaceful occupancy of their homes and shall not infringe upon or change the intent of the residential zone;

(2) The activity is conducted in a manner that will not alter the normal residential character of the premises and in no way be a nuisance to adjoining residences. This means there should be no outside storage or window display and no noise, dust, odors, noxious fumes or vibrations emanating from the premises which would exceed that normally produced by a single residence. Mechanical or electronic equipment which is incidental to the home occupation may be used provided it will not create visible or audible interference in radio or television receivers or cause fluctuations in the line voltage off the premises;

(3) The home occupation does not generate greater traffic volumes than would normally be expected in a residential neighborhood. This means that delivery of materials or commodities to and from the premises by commercial vehicle shall not normally exceed two per week. Only one commercial vehicle owned by the practitioner and related to the occupation may be parked on street near the premises at any time;

(4) Any materials used in conducting the business shall be stored entirely within the residence or in an accessory building;

(5) The home occupation does not increase water or sewer use so that combined total use for the dwelling and home occupation is significantly more than the average for residences in the neighborhood;

(6) The home occupation shall be conducted only by members of the family residing

in the dwelling plus no more than one nonresident assistant or employee; provided, that additional nonresident assistants may be permitted but shall require a conditional use permit. Persons in building trades or similar fields using their homes or apartments as an office for business activities carried on off the premises may have other employees provided they are not employed on the premises and they do not routinely visit the residence during the normal course of business;

(7) A family child day care home as defined herein may have up to eight children at any one time including the children living in the dwelling. The care of additional children shall require a conditional use permit;

(8) If the home occupation is a type in which classes are held or instruction given, there shall be no more than four students or pupils at any one time. The planning director may approve up to six students if he finds that the additional students will not generate additional automobile traffic. More than six students shall require a conditional use permit; provided, that this requirement shall not be construed to prohibit occasional exceptions (for example, recitals) which are in no way a nuisance to adjoining residences. All classes with four or more students shall be scheduled at least 30 minutes apart to mitigate traffic congestion;

(9) The total number of home occupations conducted within a dwelling unit shall not be regulated. However, the cumulative impact of all home occupations conducted within the dwelling unit shall not be greater than for one home occupation;

(10) Home occupations shall comply with all other local, state or federal regulations pertinent to the activity pursued and the requirements or permission granted or implied by this chapter shall not be construed as an exemption of such regulations.

19.34.030 Nonconforming home occupations.

(1) A nonconforming home occupation is one which was lawfully established and maintained prior to the effective date of this chapter or in the amendment thereto but is no longer allowed because of the application of this chapter or in the amendment thereto.

(2) Any nonconforming home occupation shall be discontinued or comply with all provisions of this chapter within one year after the home occupation first became nonconforming.

Section Fifteen. Oak Harbor Municipal Code Chapter 19.35 is hereby re-adopted to read as follows:

Chapter 19.35
TEMPORARY USE PERMITS

Sections:

19.35.010 Purpose.
19.35.020 Applicability.
19.35.030 Criteria for granting a temporary use permit.
19.35.035 Seasonal product display.
19.35.040 Frequency and duration of the temporary use.
19.35.050 Application and procedures for temporary use permits.

19.35.010 Purpose.

(1) This chapter is intended to permit certain inherently temporary uses, such as community festivals, fresh vegetable stands and temporary promotions by permanent businesses.

(2) The proposed temporary use must be compatible in terms of location, access, traffic, noise, nuisance, dust control and hours of operation with existing land uses in the immediate vicinity.

19.35.020 Applicability.

This chapter applies to each application for a temporary use permit whether located on private property or on the public right-of-way. Mobile food sales and caterers which locate for a short period of time of two hours or less, and carwashes and food sales which are operated as nonprofit community fund raisers are exempt.

19.35.030 Criteria for granting a temporary use permit.

(1) The temporary use will not be materially detrimental to the public health, safety, or welfare, nor injurious to property or improvements in the immediate vicinity of the temporary use.

(2) The temporary use is compatible with the purpose and intent of this title and the specific land use district in which it will be located.

(3) The temporary use is compatible in intensity and appearance with existing land uses in the immediate vicinity of the temporary use.

(4) Access is provided such that on-street parking for the temporary use is not required.

(5) The temporary use has adequate off-street parking but does not use off-street parking or loading areas which are necessary for the permanent uses to continue normal operation.

(6) Hours of operation of the temporary use shall be specified.

(7) The temporary use will not cause noise, light or glare which adversely impacts surrounding uses.

(8) The temporary use shall not be on public right-of-way unless the applicant first obtains approval for the use from the city engineer.

(9) The temporary use must conform to setbacks of zone where it is located.

(10) No temporary use shall utilize any handicap parking stalls.

(11) Seasonal product display requests shall not utilize more than five percent of the total parking for said business. Total parking for those businesses located in shopping centers with common parking lots shall be calculated using current parking standards per Chapter 19.44 OHMC.

19.35.035 Seasonal product display.

Seasonal product displays shall be all products associated with lawn care, landscaping, patio furniture, and children's outside play equipment which are displayed outdoors for the purposes of promoting retail sales of said items. The city may grant a temporary use permit for businesses selling these products to utilize a portion of their parking lot area for display.

19.35.040 Frequency and duration of the temporary use.

(1) The city may grant a temporary use permit to the same property owner for up to 60 consecutive or nonconsecutive days in every 180-day period. The temporary use permit shall specify a date by which the use shall be terminated. The planning director may establish a shorter time frame.

(2) As part of the temporary use permit, the city shall establish a time within which the use and all physical evidence of the use must be removed by the applicant. If the temporary use and all physical evidence of the use are not removed within the time specified, it will constitute a violation of this title. Further, the city is authorized to abate the temporary use in accordance with OHMC 19.100.010.

(3) A temporary use permit for seasonal displays in parking lots shall only be issued for the period between March 1st and September 30th of each year. The permit shall be renewed each year and fees paid as established in Chapter 3.64 OHMC.

(4) With the exception of Fourth of July fireworks sales, no additional temporary use permits shall be granted for businesses which have approved seasonal temporary use permits.

19.35.050 Application and procedures for temporary use permits.

(1) The applicant shall provide the following information to the planning director:

(a) A completed application on the form provided by the city, along with all information requested in that form;

(b) An irrevocable, signed and notarized statement granting the city permission to summarily abate the temporary use and all physical evidence of that use if it is not removed by the applicant within the period specified in the permits, and agreeing to reimburse the city for any expenses incurred by the city in abating the temporary use.

(2) Who May Apply. The property owner may apply for a temporary use permit on private property. Any person may apply for a temporary use permit on public right-of-way.

(3) The planning director may consult with other city departments as appropriate in the evaluation of an application for a temporary use permit.

(4) The planning director may establish performance standards as part of the approval of each temporary use permit based on the characteristics of the use and the features of the proposed location.

(5) The decision may be appealed to the city planning commission.

Section Sixteen. Oak Harbor Municipal Code Chapter 19.36 is hereby re-adopted to read as follows:

Chapter 19.36
SIGN CODE

Sections:

19.36.010 General provisions.
19.36.020 Definitions.
19.36.030 Business district signs – Zones CBD, CBD-1, CBD-2, C-3, C-4 and C-5.
19.36.040 Residential/office district and neighborhood commercial district signs – RO and C-1 zones.
19.36.050 Industrial, planned industrial park and planned business park district signs – I, PIP, and PBP zones.
19.36.060 Multifamily residential district and public facilities district signs – Zones R-2, R-3, R-4 and PF.
19.36.070 Single-family residential signs – R-1 zones.
19.36.080 Temporary and special signs.
19.36.090 Street right-of-way signs.
19.36.100 Exempt signs or displays.
19.36.110 Requirements applicable to all signs.
19.36.120 Prohibited signs.
19.36.130 Permits and fees.
19.36.140 Administration, enforcement and sign removal.
19.36.150 Nonconforming signs.
19.36.160 Hearing examiner jurisdiction and power.
19.36.170 Conflicting provisions.

19.36.010 General provisions.

(1) Title. This chapter shall be known as the Oak Harbor sign code, may be cited as such, and will be referred to herein as "this code."

(2) Purpose and Scope. The purpose of this code is to protect the health, safety, property and welfare of the citizens of the city of Oak Harbor (hereafter "city"), by establishing standards for the design, placement, size and maintenance of all exterior signs and sign structures in the city. Furthermore, it is the purpose of the regulations, standards and criteria of this code to permit and encourage the design of signs which are responsive to the needs of the public in locating a business establishment by identification, address and product and/or services information.

(3) It is recognized that the businessman's right to identify his business contributes to the economic well-being of the community. However, it is felt that this right can be exercised in such a way as to bring great benefit to the public without affecting the welfare of the businessman. The responsible regulation of signs may, in fact, improve business opportunity as a result of the increased attractiveness of the city's environment.

19.36.020 Definitions.

(1) "Abandoned sign" means a sign which no longer identifies or advertises a bona fide business, lessor, service, owner, product, or activity, and/or for which no

legal owner can be found.

(2) "Area or surface area of sign" means the greatest area of a sign, on which copy or artwork can be placed and not just the portion of which is covered by letters or symbols, enclosed within not more than three circles, rectangles or squares, or any combination of these forms which produces the smallest area. Sign structure, architectural embellishments, framework and decorative features which contain no written or advertising copy and are not internally lighted shall not be included.

(3) "Architectural blade" means a projecting sign with no exposed legs or braces, designed to look as though it could have been part of the building structure rather than something suspended from the building.

(4) "Banner" means a flexible material (i.e., cloth, paper, vinyl, etc.) on which a sign is painted or printed.

(5) "Billboard" means outdoor advertising signs containing a message, commercial or otherwise, unrelated to any use or activity on the property on which the sign is located, but not including directional signs as defined herein.

(6) "Building line" means a line established by ordinance defining the limits of buildings in relation to streets. A building line in some instances may coincide with the property line. "Building line" is sometimes referred to as "required setback line."

(7) "Building-mounted sign" means a single or multiple-faced sign attached to the face of a building or marquee.

(8) "Canopy" means a freestanding structure affording protection from the elements to persons or property thereunder.

(9) "Canopy sign" means any sign erected upon, against or directly above a canopy.

(10) "Construction sign" means an information sign which identifies the architect, engineers, contractors and other individuals, or firms involved with the construction of a building, or announcing the character of the building or enterprise, which is erected during the building construction period.

(11) "Freestanding sign" means a single or multiple-faced sign supported from the ground by one or more columns, uprights or braces. Freestanding signs include monument, pylon and pole signs.

(12) "General promotions" means events which occur on a regular basis in retail business for the purpose of boosting sales, attracting new business, selling of certain items (i.e., year end, seasonal sales, civic events, etc.).

(13) "Grade" means the elevation or level of the street closest to the sign to which reference is made, as measured at the street's centerline, or the relative ground level in the immediate vicinity of the sign.

(14) "Grand openings and anniversaries" means events that are held on a "once per year" basis for the purpose of advertising grand openings, ownership changes, or anniversaries.

(15) "Height" or "height of sign" means the vertical distance from the grade to the highest point of a sign or any vertical projection thereof, including its supporting columns, or the vertical distance from the relative ground level in the immediate vicinity of the sign.

(16) "Incidental sign" means a single or double-faced sign not exceeding four square feet in surface area of a noncommercial nature, intended primarily for the

convenience of the public. Included are signs designating restrooms, address numbers, hours of operation, public telephone, etc. Also included are signs designed to guide pedestrian or vehicular traffic to an area or place on the premises of a business, building or development. Also included are building directories with the letters not to exceed four inches in height. (See OHMC 19.36.100.)

(17) "Marquee" means a covering structure projecting horizontally from and attached to a building, affording protection from the elements to persons or property thereunder.

(18) "Monument sign" means a primary freestanding sign, generally mounted on a solid base. Monument signs shall not contain or include reader boards.

(19) "Multiple-occupancy building" means a single structure housing more than one type of retail business office or commercial venture.

(20) "Multiple-occupancy complex" means a group of structures housing more than one type of retail business, office or commercial venture and generally under one ownership and control.

(21) "Noncommercial public service sign" means noncommercial signs devoted to religious, charitable, cultural, governmental or educational messages, including, but not limited to the advertising of events sponsored by a governmental agency, a school, church, civic or fraternal organization or other organizations engaged in activities for profit.

(22) "Occupant" means the person, firm or corporation that occupies the land or building.

(23) "Office building" means an office building in the commercial and residential-office land use districts as defined by the Oak Harbor zoning ordinance.

(24) "Parapet" means that portion of a building wall which extends above the roof of the building.

(25) "Penthouse" means a structure on top of a building roof such as houses an elevator shaft or similar form.

(26) "Pole sign" means a primary freestanding sign where the sign is supported by a pole or other similar structural element that is substantially narrower than the width of the sign.

(27) "Political sign" means signs advertising a candidate or candidates for public elective office, or a political party, or signs urging a particular vote on a public issue decided by ballot.

(28) "Primary sign or signs" means all signs, including freestanding signs, of a user which are not exempt (see OHMC 19.36.100), or which do not come within the category incidental signs (see OHMC 19.36.030 and subsection (16) of this section). The term "primary sign" is intended to include virtually all signs of a commercial nature.

(29) "Property line" means the line denoting the limits of legal ownership of property.

(30) "Pylon sign" means a primary freestanding sign other than a pole sign with the appearance of a solid base. The base of a pylon sign shall be distinctive in appearance from the sign area.

(31) "Reader board" means a sign or part of a sign on which the letters are readily replaceable such that the copy can be changed from time to time at will.

(32) "Roof sign" means any sign erected upon, against or directly above a roof or on top of or above the parapet of a building, including a sign affixed to any structure erected upon a roof, including a structure housing building equipment.

(33) "Sign" means any letters, figures, design, symbol, trademark or device intended to attract attention to any activity, service, place, subject, person, firm, corporation, public performance, article, machine or merchandise whatsoever. Sources of light used primarily to illuminate a sign, or a building, or ground surrounding the building, shall not be considered signs themselves; provided however, that sources of light used primarily to attract attention to the light itself or as a decorative feature of the display shall be considered as part of the sign. Lighted canopies, with the exception of the signed portion, shall not be considered signs themselves. Excluded from the definition are official traffic signs or signals, sheriff's notices, court notices or official public notices and the flag of a government or noncommercial institution, and signs not visible from the street or sidewalk (see OHMC 19.36.100 for more detailed treatment of exempt signs), and religious symbols.

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

(a) It has only one occupant;

(b) It has no wall in common with another building;

(c) No part of its roof in common with another building.

(35) Special Signs. See "temporary and special signs."

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

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

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

(39) Surface Area. See "area or surface area of sign."

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

(41) Temporary and Special Signs. Different types of temporary and special signs included in this category are limited to construction signs, grand opening displays, real estate signs, open house signs, residential land subdivision signs and subdivision directional signs (see OHMC 19.36.080).

(42) "Way open to public" means any paved or unpaved area on private property open to the general public for driving or parking.

(43) "Window sign" means all signs located inside and affixed to or within three feet of windows of a building, whether temporary or permanent, except lighted signs of a commercial advertisement nature which may be viewed from the exterior of the building. The term does not include merchandise located within three feet of a

window. Lighted window signs shall be included in determining the number of primary signs and in determining the permissible sign area for each facade. Does not include incidental signs. (See OHMC 19.36.030.)

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

(1) General.

(a) In general, this city takes the view that signs should be scaled to the building to which the sign is related. Accordingly, in the following sections will be found regulations on the area, number and height of signs, which are a function of the size of the building to which the sign is related.

(b) Any single-occupancy building in the business district shall be permitted the primary signs described in subsections (2) through (6) of this section. No more than one freestanding sign is permitted per single-occupancy building unless the building faces on more than one street (see subsection (4) of this section), and is not a part of a multiple-building complex.

(c) Each occupant in a multiple-occupancy building in the business district shall be permitted the primary signs described in subsections (2) through (5) of this section and the incidental signs described in subsection (6) except that no more than one freestanding sign is permitted per multiple-occupancy building unless the building faces more than one street (see subsection (4) of this section), and is not part of a multiple-building complex.

(d) Each occupant in a multiple-building complex in the business districts, which is composed of single and/or multiple-occupancy buildings, shall be permitted the primary signs described in subsections (2) through (5) of this section and the incidental signs described in subsection (6) except that no more than one freestanding sign is permitted per multiple building complex, unless the building faces on more than one street. (See subsection (4) of this section.)

(e) Each enterprise shall display and maintain on-premises street address number identification. (See subsection (6) of this section.)

(f) A multiple-building complex encompassing at least five acres may display one complex identification sign along with each right-of-way which provides direct access to the complex. Each sign may not exceed 75 square feet in surface area and 25 feet in height. Each sign is subject to the sight distance requirements of the zoning ordinance.

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

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

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

limits, based on the sign setback of the sign:

Maximum Height: 25 feet

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

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

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

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

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

(i) The applicant files with the city a written statement signed by the tenant or user permitted to utilize that sign area under this code permitting the applicant to utilize the unused sign surface area;

(ii) The display of a sign on that facade by the nondependent sign user will not create a significant adverse impact on dependent sign users of that facade;

(iii) The display of the nondependent sign is necessary to reasonably identify the use, and the provisions of this code do not provide the use with adequate sign display options.

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

exceeded.

(c) Sign Height – Building-Mounted Signs. The height of any building-mounted sign shall not extend above the highest exterior wall of the building to which the sign relates.

(3) Number of Primary Signs. The permissible number of signs for each occupant is dependent upon the surface area of the largest single facade of the building that is under his control. The permitted number of signs is as follows (not including incidental signs):

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

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

(4) Buildings on More Than One Street. Buildings facing on more than one street are entitled to a bonus in primary signage, depending on whether the building is on two intersecting streets or whether it extends through a block so as to face on two different parallel streets, as defined in subsections (4)(a) and (4)(b) following.

(a) Buildings on Intersecting Streets. When a building is located on intersecting streets, two freestanding signs are permitted if they are located on two different streets and are separated more than 100 feet measured in a straight line between signs. Otherwise, only one freestanding sign is permitted and must meet the setback limitation under subsection (2) of this section.

(b) Buildings Facing on Two Parallel Streets. Single occupancy buildings that extend through a block to face on two parallel streets with customer entrances on each street are permitted the sign area allowed under subsections (2)(a) and (2)(b) of this section, and the sign number under subsection (3) for each end of the building facing on a street; provided, however, that no more than one freestanding sign is permitted per building unless such signs are located on two different streets and are separated more than 100 feet measured in a straight line between the signs. No more than two freestanding signs are permitted in such case.

(5) Types and Placement of Primary Signs. The permissible types of primary signs, their placement and other limitations are as follows:

(a) Freestanding Signs.

(i) Freestanding signs shall be wholly located within the center two-thirds of the frontage of the property on the street or 15 feet from the adjacent property line, whichever provides the longer distance from the closest part of the sign to the adjacent property line; provided, however, that a freestanding sign may be located within

five feet of the property line with the written consent of the title holder of the adjacent property. If such consent is obtained, the consenting party or his successors or assigns may not place a freestanding sign on his property within 20 feet of the first freestanding sign.

(ii) A freestanding sign located five feet from the property line shall be wholly behind the five-foot setback, and a freestanding sign located at the building line shall be wholly behind the building line.

(iii) Any freestanding sign must be "integrated." That is, all elements of the sign must be incorporated in a single design. Auxiliary projections or attachments not a part of a single design are prohibited.

(b) Building-Mounted Signs.

(i) Any building-mounted sign shall not project more than five feet from the face of the building to which the sign is attached. Any structural supports shall be an integral part of the design or concealed from view.

(ii) Any building-mounted signs shall be limited in content and message to identifying the building and the name of the firm, or the major enterprise, and principal product and/or service information.

(iii) Special projection signs are permitted within the CBD and are allowed in addition to permitted signage. Special projection signs are limited to one per business and shall be attached to the building. The bottom of the sign shall be at least seven feet above the sidewalk.

(c) Roof Signs.

(i) All such signs must be manufactured in such a way that they appear as an architectural blade or penthouse and are finished in such a manner that the visual appearance from all sides is such that they appear to be a part of the building itself.

(ii) All roof signs shall be installed or erected in such a manner that there shall be no visible angle-iron support structure.

(d) Canopy Signs.

(i) All such signs shall be manufactured in such a way that they appear as an architectural blade or penthouse and are finished in such a manner that the visual appearance from all sides is such that they appear to be part of the building itself.

(ii) All canopy signs shall be installed or erected in such a manner that there shall be no visible angle-iron support structure.

(e) Monument Signs. Monument signs shall not exceed eight feet in height measured from the finished grade to top of the sign and not exceed 32 square feet in area. Monument signs shall be located within the center two-thirds of street frontage. Signs may be located up to the front property line when there is no sight visibility obstruction from driveways or

intersections caused by placement of the sign.

(f) Pylon Signs.

(i) Pylon signs shall not exceed 10 feet in height measured from the finished grade to top of the sign and not exceed 48 square feet in area. Pylon signs shall be located within the center two-thirds of street frontage. Signs may be located up to the property line when there is no sight visibility obstruction from driveways or intersections caused by placement of the sign.

(ii) If a pylon sign is used instead of a pole sign an additional 15 percent of wall signage area over that than otherwise permitted shall be allowed. The additional square footage may be used on any facade that permits wall signage.

(6) Incidental Signs. Incidental signs means signs less than four square feet in surface area, of a noncommercial nature, intended primarily for the convenience of the public. Included are signs designed to guide or direct pedestrian or vehicular traffic to an area, place or convenience; designating restrooms, address numbers, hours of operation, entrances to a building, directions, help wanted, public telephone, etc. Also included in this group of signs are those designed to guide or direct pedestrians or vehicular traffic to an area or place on the premises of a business, building or development by means of a directory designating names and addresses only.

(7) Directional Signs. Directional signs to give the traveling public specific information as to gas, food or lodging available on a crossroad with the state highway may be erected in accordance with RCW 47.42.046 and 47.42.047.

(8) Gasoline Price Signs. Gasoline price signs shall be located greater than five feet from the property line and must be permanently anchored. Such signs may be freestanding, may be attached to marquees or canopy columns, or may be reader boards. The sign area shall not exceed 20 square feet, and no more than one such sign for each street frontage is permitted. Gasoline price signs shall not be included in determining the number of primary signs, nor in determining the permissible number of freestanding signs.

(9) Window Signs. The total surface area of all window signs excluding lighted signs shall not exceed 50 percent of the window area, whichever is greater. Such signs shall not be included in determining the number of primary signs, nor in determining the permissible sign area for each facade. Window signs do not require permits.

(10) Signs for Nonconforming Buildings or Uses. There remain in the city some buildings which were built prior to enactment of Oak Harbor's present zoning ordinance. Generally, under the city zoning ordinances, these legal nonconforming buildings or uses are allowed to remain unless they are altered or improved. As few of these nonconforming buildings are located behind the building line as determined by ordinances currently in effect almost no signing would be possible under the foregoing sign code provisions. Therefore, this section provides for a partial relaxation of the standard sign requirements for signs on legal nonconforming buildings, only so long as the buildings or uses remain legally nonconforming under provisions of the Oak Harbor zoning code.

(11) Permitted Signs on Legally Nonconforming Buildings. All provisions of the sign code for business district signs apply to signs on nonconforming buildings or uses with the following exceptions:

(a) Building-mounted signs may project over the building line, but shall not approach a street closer than five feet. Such signs may extend five feet from the face of the building to which attached and shall have a maximum clearance over sidewalk below of eight feet, six inches.

(b) Legally nonconforming buildings are allowed the same sign area as other buildings zoned as commercial districts, as per this section.

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

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

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

Minimum Setback: 5 feet from front property line

Maximum Area: 35 square feet (per side)

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

Maximum Height: 15 feet

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

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

	facade area over 500 sq. ft.
Over 1,000	105 sq. ft. maximum

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

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

(i) The applicant files with the city a written statement signed by the tenant or user permitted to utilize that sign area under this code permitting the applicant to utilize the unused sign surface area;

(ii) The display of a sign on that facade by the nondependent sign user will not create a significant adverse impact on dependent sign users of that facade;

(iii) The display of the nondependent sign is necessary to reasonably identify the use, and the provisions of this code do not provide the use with adequate sign display options.

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

(c) Sign Height – Building-Mounted Signs. No building-mounted sign in the RO or C-1 district, regardless of type, shall exceed a height of 20 feet above grade, or above the height of the building to which it is attached, whichever is less.

(d) Limitation. Any freestanding or building-mounted sign located in these districts shall be limited in content and message to identify the building and the name of the firm, or the major enterprise, and the principal service or product of the business without references to prices or the characteristics of the product or services offered.

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

Buildings or building complexes which extend a block to face on two parallel streets are permitted two primary signs on each street, only one of which may be freestanding for each street.

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

(4) Types and Placement. Within RO and C-1 districts the permissible types of signs, their placement and other limitations are as follows:

(a) Freestanding Signs. Requirements are identical to OHMC 19.36.030(5)(a), except that advertising shall not be permitted.

(b) Building-Mounted Signs. Requirements are identical to OHMC 19.36.030(5)(b), except that advertising shall not be permitted.

(c) Incidental Signs. In addition to the permitted primary signs, each building or complex of buildings is permitted the incidental signs as described and limited in OHMC 19.36.030(6).

(d) Street Address Identification. Each building or complex of buildings shall display and maintain on-premises street address number identification.

(e) Signs or portions of signs indicating premises for rent (e.g., "Apartment for Rent," "Apartment Available," "Vacancy," "Now Renting," "Free Rent," etc.) shall not exceed a surface area of six square feet and many remain up until the premises are sold or rented.

(f) The illumination of any sign in the RO and C-1 districts shall be shaded, shielded, directed or reduced so that it is not visible from a public street or adjoining residential property.

(g) Legal nonconforming signs same as 19.36.030(10) and (11).

(h) Monument signs shall not exceed six feet in height measured from the finished grade to top of the sign and not exceed 32 square feet in area. Monument signs shall be located within the center two-thirds of street frontage. Signs may be located up to the property line when there is no sight visibility obstruction from driveways or intersections caused by placement of the sign.

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

Permissible signs and their limitation in the industrial district (Zone I), shall be identical to those in the commercial districts CBD, CBD-1, CBD-2, C-3, C-4 and C-5 (OHMC 19.36.030).

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

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

(1) Exceptions. In the public facilities zoning district, a single freestanding or wall mounted changing general electronic reader board is allowed with the following restrictions:

(a) Freestanding signs are limited to 35 square feet in sign area, no more than 15 feet in height and must be set back five feet from the property line;

(b) Wall mounted signs are limited to 35 square feet in sign area and no more than 20 feet in height;

(c) Lettering shall not be more than 12 inches in height;

(d) The electronic message shall be limited to those allowed on noncommercial signs as defined in OHMC 19.36.020(21) and shall not change more frequently than every four seconds;

(e) The sign's lights shall be limited to a warm-toned, off-white color or other similar color as approved by the development services director;

(f) An electronic reader board counts as one of the allowed primary signs; and

(g) The hours of operation for reader board signs shall be limited to be from 6:00 a.m. to 10:00 p.m., Sunday through Thursday, and to be from 6:00

a.m. to 12:00 midnight on Fridays and Saturdays.

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

(1) General. Two categories of sign uses are covered by this section:

(a) Existing, Legal Nonconforming Commercial Uses. The provisions herein for signs for commercial uses apply only to legal nonconforming uses which have been approved under applicable zoning ordinances prior to the enactment of this code.

(b) Noncommercial uses such as schools, churches, fire stations and house number identification.

(2) Signs for Existing Legal Nonconforming Uses. No more than one primary sign is permitted for each use in this category so long as the building remains legally nonconforming under provisions of OHMC Title 19 as follows:

(a) Such sign may be either freestanding or building-mounted.

(b) If freestanding, the sign shall conform to the requirements of OHMC 19.36.030(5)(a) in regard to placement and OHMC 19.36.040(2)(a) in regard to size and height.

(c) A building-mounted sign shall conform to the requirements of OHMC 19.36.030(5)(b); provided, however, that no sign shall exceed 20 square feet in surface area.

(3) Signs for Noncommercial Uses.

(a) On-premises signs for churches, schools, golf courses, fire stations, police stations, noncommercial use or public service, or other similar noncommercial uses:

(i) Signs shall be unobtrusive, in keeping with the character of the neighborhood and constructed of quality materials, as approved in advance by the administrator of this code. No building-mounted signs shall exceed 20 feet in height and 50 square feet in surface area and no freestanding sign located between the building line and the property line shall exceed five feet in height and 25 square feet in surface area. A freestanding sign located at the building line or behind it shall not exceed 15 feet in height or 35 square feet in area. No more than one freestanding sign and one building-mounted sign is permitted from the above uses per street frontage.

(ii) Off-premises signs for nonconforming uses may be approved by the site plan review committee subject to the following conditions:

(A) The sign is to identify current events or activities;

(B) The sign or message is for a temporary period of time sufficient to inform the public of the event or activity with a maximum of two weeks;

(C) The sign shall not be located on street right-of-way except when a part of a permanent subdivision or neighborhood designation sign (see subsection (3)(d) below);

(D) The sign shall not exceed 15 square feet in area nor five feet in height;

(E) Not more than two such signs shall be permitted.

(b) Illumination. Illumination from or upon any signs in single-family

residential districts shall be shaded, shielded, directed or reduced so that the light intensity or brightness does not affect the enjoyment of residential property in the vicinity in any substantial way.

(c) House Numbers. All houses in the single-family residential district shall display house numbers visible from the street and letters or numbers shall be a minimum of five inches in height.

(d) Permanent Subdivision or Neighborhood Designation Signs. Signs shall be unobtrusive, in keeping with the character of the neighborhood, and constructed of quality materials, as approved in advance by the administrator of this code. Signs shall not exceed five feet in height and 25 square feet in surface area, and shall be located between the building line and property line unless a location of excess city right-of-way is approved by the superintendent of public works. Responsibility for the future maintenance or removal of these signs must be determined prior to their construction.

19.36.080 Temporary and special signs.

Temporary and special signs or displays are nonpermanent in nature and are intended for use only for a short period of time. The category includes any banner, pennant or advertising display constructed of canvas, fabric, wood, plastic or other semi-durable material, with or without frame. Permissible signs, with applicable limitations, are as follows:

(1) Construction Signs.

(a) These signs identify the architects, engineers, contractors or other individuals or firms involved with the construction of a building and announce the character of the building, or the purpose for which the building is intended. Such signs may be displayed only after a building permit is obtained and during the period of construction on the construction site. Only one such sign (which may be double faced) is permitted per construction project for each public street upon which the project fronts.

(b) In all zones other than single-family residential zones, no construction sign shall exceed 32 square feet in surface area or 10 feet in height, nor be located closer than 10 feet from the property line or closer than 30 feet from the property line of the abutting owner. Further, such signs must be removed by the date of first occupancy of the premises, or one year after placement of the sign, whichever first occurs.

(c) In single-family residential zones, no construction sign shall exceed eight square feet in surface area, or be located closer than 10 feet from the property line of the abutting owner. Such signs shall be removed by the date of first occupancy of the premises or six months after first placement of the sign, whichever first occurs.

(2) General Promotions.

(a) General promotions are those events which occur on a regular basis in retail businesses for the purpose of boosting sales, attracting new business, selling of certain items (i.e., year end, etc.), seasonal sales and the like.

(b) Allowed temporary signage for these types of events consists of posters in

windows, posters under motor vehicle hoods, glass painting, small balloons of less than 12 inches in diameter and a maximum of one banner per street frontage placed on the exterior of the building on the space that the particular business occupies. The size of the banners will be limited to a maximum of four feet in height and a maximum length of either 50 percent of the length of the side of the building on which the banner is located or 30 feet. Businesses with a facade of less than 24 feet in length may have banners of up to 12 feet in length. Each separate business is permitted to have one banner on the building.

(c) No clusters of flags or pennants, ribbons, streamers, shimmering discs, spinners, twirlers, or propellers, strings of lights, moving, flashing, rotating or blinking lights, chasing or scintillating lights, flares, or large balloons, bubble machines and similar devices of a carnival nature, or containing elements creating sound or smell may be used for these types of promotions with the exception of Christmas when flashing Christmas type lights will be allowed.

(d) The duration of these promotions will be 30 days maximum (except banners) and no permit will be required. Banners have no time restrictions but shall be placed solely on the building for which the banner is advertising. In the event that the banner becomes dilapidated or otherwise ruined it must be removed or replaced. Such promotions are permitted only in districts where the enterprise so advertised is allowed under district zoning regulations. Banners shall be allowed in addition to primary signage and shall not be used as primary signs. When no primary sign is installed the duration of a banner shall be no more than 30 days.

(3) Light Pole Banners.

(a) Businesses may have light pole banners on 100 percent of the total number of poles located in privately owned parking lots.

(b) Size of banners shall be limited to three feet by seven feet free flying or two feet by six feet when attached by brackets.

(c) There shall be at least eight feet of clearance between the bottom of the banner and the ground. No banner shall extend over a public sidewalk or street.

(d) There is no time limit for light pole banners. However, when the banners become dilapidated or otherwise ruined they must be removed or replaced.

(e) No other signage of any type shall be permitted on light poles where light pole banners are displayed.

(4) Grand Openings and Anniversaries.

(a) Businesses may have one grand opening or anniversary promotion per year. One additional such promotion may be held if the business changes ownership or management, should this occur less than one year after a particular grand opening or anniversary promotion.

(b) In addition to those items allowed in general promotions (above) the business may also use flags, pennants, ribbons, streamers, various types of balloons (including large "hot air" types), and strings of lights.

(c) These promotions will be no more than 30 days in length.

(5) Grandfathered Commercial Promotions Signage. No existing temporary or special signage will be grandfathered. Businesses will have 60 days from the date of enactment of the ordinance codified in this chapter in which to comply.

(6) Real Estate Signs. All exterior real estate signs must be of wood or plastic or other durable material. The permitted signs, with applicable limits, are as follows:

(a) Residential "For Sale" or "For Rent" Signs. Signs advertising residential property "For Sale" or "For Rent" shall be limited to one single or double-faced sign per street frontage. Sign to be installed 30 days prior to becoming available or during a vacancy only. The sign may not exceed four square feet in surface area, and must be placed wholly on the property for sale or rent. The "For Sale" or "For Rent" sign may remain up until the property is sold or rented.

(b) Residential Directions "Open House" Signs. Signs advertising "Open House" and the directions to a residence for sale shall be limited to one single or double-faced on-premises for sale and three single or double-faced off-premises signs. However, if a realtor has more than one house open for inspection in a single development or subdivision, off-premises signs are limited to four for the entire development or subdivision. Such signs are permitted only during daylight hours and when the realtor or seller or an agent is in attendance at the property for sale. No such sign shall exceed four square feet in surface area. The sign may be placed along the periphery of a public right-of-way.

(c) Residential Condominiums, Condominium Conversions, Apartments, Mobile Home Parks and New Subdivisions.

(i) Temporary Real Estate Signs. Temporary signs, posters and banners may be used for the grand opening and ongoing promotion of new residential projects having five or more units. These signs and banners may be used in a particular project for a period not exceeding one year after the date of issuance of the final occupancy permit for that project or at such time as the project is 90 percent occupied, whichever occurs first, or in the case of subdivision and mobile home parks, one year after final plat approval. In the event that the project consists of more than one phase, as in a "phased" condominium project, the signs and banners promoting one phase must be removed prior to installing the signs and banners for the next phase. A time extension may be granted for up to one year in length by the building official where 90 percent occupancy has not been obtained. Justification for the extension includes:

(A) Certification of vacant units; and

(B) Statement of reason for lack of occupancy.

(ii) Allowable Number and Sizes of Signs.

(A) One banner of not more than 30 feet in length and four feet in height advertising the project for sale or rent;

(B) Banners or signs of not more than 18 square feet each on each model unit with a maximum of three of these types allowed per project or phase;

(C) "A-frame" and other signs used internally within the

project as needed for the purpose of directing traffic to model units or open house functions;

(D) One sign per road frontage of not more than 32 square feet per side advertising the project for rent or sale. These signs may be installed only after the construction sign has been removed.

(d) Undeveloped Commercial or Industrial Property "For Sale or Rent" Signs. Signs advertising undeveloped commercial or industrial property "For Sale or Rent" shall be limited to one single or double-faced sign per street frontage. Signs may be displayed while the property is actually for sale or rent. The sign may not exceed 16 square feet in surface area. If freestanding, the sign may not exceed five feet in height, and shall be located more than 15 feet from any abutting interior property line and wholly on the property for sale or rent.

(e) Developed Commercial or Industrial Property "For Sale or Rent" Signs. Signs advertising developed commercial or industrial property "For Sale or Rent" shall be limited to one single or double-faced sign per street frontage. Signs may be displayed while the building is actually for rent or sale. The sign may not exceed 16 feet in surface area. If freestanding, the sign may not exceed five feet in height and shall be located more than 15 feet from any abutting side or rear property line, and wholly on the property for sale or rent.

(f) Residential Land Subdivision Signs. Signs advertising residential subdivisions shall be limited to one single or double-faced sign not exceeding a total of 32 square feet in surface area placed at a right angle to the street, or two signs not exceeding a total of 32 square feet in surface area facing the street, which shall be at least 200 feet apart. No sign shall project beyond the building line. Such signs must be placed more than 30 feet from the abutting owner's property line and may not exceed a height of 12 feet. Such signs shall be removed by the end of one year or when 75 percent of the houses in the subdivision are sold or occupied, whichever first occurs. Permanent subdivision or neighborhood designation signs shall be approved by the administrator of this code as set forth in OHMC 19.36.070.

(g) Subdivision Directional Signs Designating New Development. Signs advertising the direction to a subdivision shall be furnished and placed only by the developer or residents of the subdivision, but at locations designated by the city. Signs shall be of the dimensions 12 inches by 36 inches, shall bear only the name of the subdivision and a directional arrow (no name or realtor permitted), and be limited in number to four. The city will designate placement of the signs at street intersections a maximum of one mile from the nearest subdivision entrance. The signs shall be maintained by the developer and removed at the end of one year or when 75 percent of the subdivision is occupied, whichever first occurs, unless a variance is granted by the hearing examiner.

(h) Undeveloped Multifamily Property "For Sale" Signs. Permissible signs

and their limitations for undeveloped multifamily zoned property shall be identical to those for undeveloped commercial and industrial property "For Sale" signs as set forth in subsection (6)(d) of this section.

(i) Undeveloped Single-Family Acreage "For Sale" Signs. Permissible signs and their limitations for undeveloped, unsubdivided single-family property which may be legally divided into four or more single lots shall be identical to those for undeveloped commercial and industrial property "For Sale" signs as set forth in subsection (6)(d) of this section.

(7) Political Headquarters Signs.

(a) Party Headquarters. On-premises political signs are permitted on the premises of political headquarters located in the business districts (OHMC 19.36.030), on office buildings in the residential/office and neighborhood commercial districts (OHMC 19.36.040), and in the industrial district (OHMC 19.36.050), so long as the signs meet the requirements of those districts.

(b) Headquarters for Candidate or Ballot Issue. On-premises political signs are permitted on the premises of the headquarters of a candidate for public elective office (whether partisan or nonpartisan) or on the headquarters of persons supporting or opposing a public issue decided by ballot, when such headquarters are located in the commercial districts (OHMC 19.36.030), on office buildings in the residential/office and neighborhood commercial districts (OHMC 19.36.040), and in the industrial district (OHMC 19.36.050), so long as the signs meet the requirements of those districts and so long as the signs remain for a period no longer than six months. Such signs shall be removed within seven days after the general election.

(8) Political Signs on Private Property Not a Headquarters.

(a) Signs, posters or bills promoting or publicizing candidates for public office or issues that are to be voted upon in a general or special election may be displayed on private property. Such signs, posters or bills shall be permitted only for a period of 60 days preceding the election and for a period of seven days following such election; provided, that signs, posters or bills promoting successful candidates in a primary election may remain displayed on private property until seven days following the immediately subsequent general election.

(b) Sign Dimension and Location. Political signs shall not exceed 32 square feet in surface area per side or 10 feet in height, or be located closer than five feet from the property line or closer than 15 feet from the property line of an abutting owner. Signs must be located so as not to restrict sight distances on approaches to intersections. A-frame type political signs are not permitted. Political signs located along SR-20 within the city limits of Oak Harbor must be located on private property. Signs installed within the SR-20 right-of-way will be removed by the city or State Highway Department personnel.

(c) Removal of Signs Following Election. Any such sign, poster or bill shall be removed within seven days following an election. It shall be the

responsibility of the above campaign officer or responsible official to have the signs, posters or bills removed.

(d) Political Signs Not Allowed on Public Property. It is unlawful for any person to paste, paint, affix or fasten on any utility pole or on the sidewalk, roadway, or on any public building or structure any such sign, poster, bill or other advertising device when such facilities are located on public property or within public easements.

(e) Public Notices Unaffected. Nothing in this section shall be construed to prohibit the placement of public notices required by law.

(f) The display of any political sign in violation of this section, or any portion thereof, shall be presumed to have been done at the direction and request of the campaign officer or responsible official.

(g) No permit is required for placement of political signs.

(9) Community Events and Fundraisers. Celebrations such as Holland Happening, the Fourth of July, and similar events scheduled for the benefit of the general community may install temporary directional signing, provided such signs are removed within two days following the event.

(10) Civic Organizations. Civic organizations shall be allowed to have two A-frame signs per event or sale. This sign is in addition to directional signs that may be necessary. The sign shall be no larger than the allowed maximum for a business and subject to all requirements of A-frames for businesses. The sign shall be placed solely on the property for which the activity will be conducted and written permission must be obtained from the property owner or their designee. A civic organization sign shall be in addition to any other A-frame signs existing on site at time of application.

(11) Portable A-Frame Signs.

(a) Portable A-frame signs for the purpose of this code also includes sandwich board signs.

(b) Portable A-frame signs are allowed in all districts throughout the city except the CBD.

(c) Each business is permitted to have one portable A-frame sign no larger than 36 inches by 48 inches. The portable A-frame sign shall be included in the total allowable signage for said business.

(d) The portable A-frame sign shall be placed solely on the property of the business for which the sign advertises during normal business hours and removed at the close of business, and located no further than four feet from the building line. No two portable A-frames shall be closer than 20 feet from one another. No direct or indirect lighting of any kind shall be permitted.

(e) A-frame signs shall be constructed to be sturdy and withstand all types of weather conditions. No more than two-thirds of the total A-frame sign area may be reader board or changeable copy. All artistic embellishments and lettering shall have the appearance of professionalism.

(12) No temporary vehicular mounted sign shall be placed in such a manner as to subvert the intentions of this chapter.

19.36.090 Street right-of-way signs.

(1) General. Signs for the purpose of identification only, which contain no advertising, may be located upon the street right-of-way only where view-obstructing acoustical protective devices such as acoustical walls, berms or solid fences have been legally installed with city approval at property line thereby making building-mounted or conforming freestanding signs ineffective. Such signing may not exceed the maximum square footage for signs permitted in the applicable district.

(2) Design and Materials. Street right-of-way signs shall be in keeping with the character of the zoning district in which they are located and shall be constructed of quality materials. The proposed design and materials to be utilized in the construction of any such sign shall be approved in advance of the issuance of any sign permit by the administrator of this code.

(3) Types of Signs Permitted. Only signs identifying the use being maintained or operated upon the immediately abutting property and incidental signs indicating the appropriate entrance to and exit therefrom are permitted upon the public right-of-way under this section; provided, that vacancy signs no larger than three square feet in surface area may be installed as an addition to the identification sign.

(4) Sign Location. Signs permitted upon the street right-of-way shall not be installed or placed on the top of acoustical protective devices, nor shall such signs be installed upon or attached to acoustical protective devices constructed by the city.

(5) Sign Dimensions. Street right-of-way signs shall have a maximum height of five feet measured from the street grade only, a maximum surface area of 15 square feet.

(6) Sign Illumination. Street right-of-way sign illumination shall be from a source other than the sign itself.

(7) Permit Requirements. Street right-of-way signs are subject to all general requirements of this code; provided, that no such sign may be erected without a permit regardless of the size of the sign; and provided further, that any application for a street right-of-way sign permit is subject to the approval of the superintendent of public works.

19.36.100 Exempt signs or displays.

The following signs or displays are exempted from coverage under this code:

(1) Traffic or pedestrian control signs or signals, or signs indicating scenic or historic points of interest, which are erected by or on the order of a public officer in the performance of his public duty;

(2) Regulatory, informational, identification or directional signs installed by or at the direction of, a government entity;

(3) Signs required by law;

(4) Official public notices, official court notices or official sheriff's notices;

(5) The flag of a government or noncommercial institutions such as schools;

(6) Exterior signs or displays not visible from streets or ways open to the public;

(7) Signs in the interior of a building more than three feet from the closest window or not facing a window;

(8) Plaques, tablets or inscriptions indicating the name of a building, its date of erection, or other commemorative information, which are an integral part of the building structure or are attached flat to the face of the building, which are

nonilluminated, and which do not exceed three square feet in surface area;

(9) "No Trespassing," "No Dumping," "No Parking," "Private," and other informational warning signs, which shall not exceed three square feet in surface area;

(10) Reasonable seasonal decorations within the appropriate public holiday season. However, such displays shall be removed promptly at the end of the public holiday season;

(11) Sculptures, fountains, mosaics and design features which do not incorporate advertising or identification;

(12) Existing theater marquees (freestanding and/or building-mounted);

(13) Nonflashing, low-lumen building outline and window accent lighting may be installed by businesses in the CBD, CBD-1, CBD-2, C-3, C-4 and C-5 business and commercial districts. Permit and plan review is required.

19.36.110 Requirements applicable to all signs.

(1) Structural Requirements. The structure and erection of signs within the city shall be governed by the building code, most recent adopted edition (or any superseding edition adopted by the city).

(2) Electrical Requirements. Electrical requirements for signs shall be regulated under state law, promulgated by the National Fire Protection Association.

(3) Sign Illumination. Illumination from or upon any sign shall be shaded, shielded, directed or reduced so as to avoid undue brightness, glare, or reflection of light on private or public property in the surrounding area, and so as to avoid unreasonable distracting of pedestrians or motorists. "Undue brightness" is illumination in excess of that which is reasonably necessary to make the sign reasonably visible to the average person on an adjacent street.

(4) Sign Maintenance. All signs, including signs heretofore installed, shall be constantly maintained in a state of security, safety and repair. If any sign is found not to be so maintained or is insecurely fastened or otherwise dangerous it shall be the duty of the owner and/or occupant of the premises on which the sign is fastened to repair or remove the sign within five days after receiving notice from the sign code administrator. The premises surrounding a freestanding sign shall be free and clear of rubbish and the landscaping area free of weeds.

(5) Sign Obstructing View or Passage. No sign shall be located so as to physically obstruct any door, window or exit from a building. No sign shall be located so as to be hazardous to a motorist's ingress and egress from parking areas of any way open to the public or which obstructs the view in any direction at the intersection of a street or with an alley or driveway. This includes the parking of a vehicle, trailer, or device in such a manner to constitute a sign.

(6) Landscaping for Freestanding Signs. All primary freestanding signs shall include as part of their design, landscaping about their base to prevent automobiles from hitting the sign-supporting structure and to improve the overall appearance of the installation. If the required landscaping is not completed within 60 days after completion of the sign installation, the sign shall be in violation of this chapter. The code administrator, for reasons of weather, good planting practices, or unforeseeable construction delay may grant a reasonable extension of the time period specified in this subsection.

(7) Sign Inspection. All sign users shall permit the periodic inspection of their signs by the city upon city request.

(8) Conflicting Provisions. Whenever two provisions of this code overlap or conflict with regard to the size or placement of a sign, the more restrictive provision shall apply.

(9) Building Line. In any area of the city where the applicable building line is located more than 65 feet from the centerline of the city street on which it faces, the building line shall, for purposes of limiting size or placement of signs under this code, be deemed to begin 65 feet from the centerline of the street and to run parallel thereto.

(10) Painted Signs – Mounting. Painted signs may be painted on plywood or other backing material, so that the sign can be physically removed from the building or be painted on the building wall itself; provided, that the copy is surrounded by an appropriate border so that the sign can be distinguished from the building wall.

(11) Abandoned Signs. Signs identifying, or window signs advertising, activities, products, businesses or services which have been discontinued for more than 60 days on the premises upon which the signs are located must be removed by the building owner except sign structures in good condition may remain; provided the advertising copy is removed.

19.36.120 Prohibited signs.

The following signs or displays are prohibited, except as indicated. Prohibited signs are subject to removal by the city at the owner's or user's expense. (See OHMC 19.36.140.)

(1) Window signs containing material unrelated to the merchandise for sale or service performed by the person or business on whose premises or property the sign is located (except real estate "Open House" and subdivision directional signs as governed by OHMC 19.36.080(6)(b) and (6)(f)); provided, however, on-premises signs may call the attention of the public to public holidays or community events, the time and temperature;

(2) Signs which purport to be, or are an imitation of, or resemble an official traffic sign or signal, or which bear the words "Stop," "Caution," "Danger," "Warning," or similar words;

(3) Signs which, by reason of their size, location, movement, content, coloring or manner of illumination may be confused with or construed as a traffic control sign, signal or device, or the light of an emergency or radio equipment vehicle; or which obstruct the visibility of any traffic or street sign or signal device;

(4) Signs which rotate or have a part or parts which move or revolve, or electronically or electrically controlled changing message center signs, except that movement of the hands of a clock or digital changes indicating time and temperature or national market indices which do not advertise a specific company or commodity are permitted;

(5) Signs or displays of banners, clusters of flags, posters, pennants, ribbons, shimmering discs, streamers, strings of lights, spinners, twirlers or propellers, flashing, rotating or blinking lights, chasing or scintillating lights, flares, balloons, bubble machines and similar devices of a carnival nature, or containing elements creating sound or smell. Exception: Certain of these devices are permitted on a limited basis as seasonal decorations under OHMC 19.36.100(10) or for grand

openings of new business under OHMC 19.36.080(4) and (6);

(6) Animated signs which flash or simulate motion with an electronic or manufactured source of supply or contain wind activated motion;

(7) Signs attached to trees, utility poles, street lights, or any public property without permission of the government agency owning the same;

(8) Billboards;

(9) Portable signs, which for the purpose of this code means a sign which has no permanent attachment to a building or the ground, including mobile signs, but not including real estate open house signs, light pole banners or A-frame signs permitted under OHMC 19.36.080, and political signs, provided such political signs must meet the requirements of OHMC 19.36.080, where applicable;

(10) Roof-mounted statues, figures or objects used to attract attention to a particular business;

(11) Signs for which a permit has been granted under conditions with which the permittee does not comply;

(12) Signs for which a permit has been granted and subsequently revoked for cause by the administrator of this code;

(13) Signs erected, altered or relocated without a permit issued by the city or any other governmental agency which requires a permit by law;

(14) Search lights and beacons;

(15) Illuminated outdoor vending machines;

(16) Signs placed on vehicles or trailers which are parked or located for the primary purpose of display and block traffic sight visibility. (This does not apply to signs or lettering on buses, taxis, or vehicles operating during the normal course of business);

(17) Signs not properly maintained, showing neglect, or in a dilapidated or hazardous condition so as to violate the purpose, intent and objective of this chapter shall be required to be repaired or removed.

19.36.130 Permits and fees.

(1) Permit Requirements. All signs more than six square feet in surface area as governed by this code and all lighted signs must have a permit issued by the city, excluding nonlighted window signs in C-1 zones.

(2) Permit Applications. Applications for permits shall contain the name and address of the owner and user of the sign, the name and address of the owner of the property on which the sign is to be located, the location of the sign structure, drawings or photographs showing the design and dimensions of the sign and details of its proposed placement, and such other pertinent information as the administrator of this code may require to ensure compliance with this code and other applicable ordinances. Permit applications shall be available for inspection by the public upon request.

(3) Expiration of Permits. A sign permit shall become null and void if the work for which the permit was issued has not been completed within one year of its issuance. Permits for temporary or special signs (OHMC 19.36.080) shall expire a maximum of 12 months from the date of the sign installation. Such permits are not subject to renewal.

(4) Permit Exceptions. No new permit shall be required:

(a) For repainting, cleaning or other normal maintenance or repair of a sign or sign structure for which a permit has previously been issued, so long as the sign structure or content is not modified in any way;

(b) For the changing of the advertising copy or message on an approved reader board or theater marquee, during the period of amortization.

(5) Notice of Permit Denial – Reasons. When a sign permit is denied by the administrator, he shall give written notice of the denial to the applicant, together with a brief written statement of the reasons for the denial.

(6) Sign Permit Appeals.

(a) Appeal from Denial of Permit. Appeal may be taken to the hearing examiner from the administrator's denial of a sign permit for reasons other than failure to meet the requirements of the Uniform Sign Code, or the National Electrical Code (OHMC 19.36.160(1) and (2)). Appeal procedure is set forth in OHMC 19.36.160(3). Appeal from a denial of a sign permit on grounds of noncompliance with the Uniform Sign Code, the building code or the National Electrical Code shall be taken to the hearing examiner and shall be governed by the procedures of OHMC 19.36.160(3).

(b) Appeal from Failure of Administrator to Act on Permit Application Within 30 Days. The administrator's failure to either formally grant or deny a sign application within 30 days of the date an application meeting the requirements of subsection (2) of this section is filed shall be grounds for appeal to the hearing examiner under terms of OHMC 19.36.160.

(7) Fees. The applicant shall submit the applicable fees at the time of application.

Permit Application	Fee
Sign permit:	
under 25 sq. ft.	$25.00
26 sq. ft. and over	$50.00

(8) Permit Fee. Sign permit fees shall be determined by value of the sign and a fee shall be charged as set forth in OHMC 17.04.030, Table No. 1-A.

19.36.140 Administration, enforcement and sign removal.

(1) Code Administrator. The administrator of this code is the building official or his/her designee. The administrator is authorized and directed to enforce and carry out all provisions of this code, both in letter and spirit, with vigilance and with all due speed. To that end, the administrator is authorized to formulate procedures consistent with the purposes of this code. The administrator is further empowered to delegate the duties and powers granted to and imposed upon him under this code. As used in this code, "administrator of this code" or "administrator" includes his authorized representative.

(2) Inspection by Administrator. The administrator is empowered to enter or inspect any building, structure or premises in the city, upon which, or in connection with which a sign, as defined by this code, is located, for the purpose of inspection of the sign, its structural and electrical connections, and to ensure compliance with the provisions of this code. Such inspections shall be carried out during business

hours, unless an emergency exists.

(3) Code Violations and Enforcement. The remedies provided in this section for violations of or failure to comply with provisions of this code, whether civil, criminal, or for sign removal, shall be cumulative and shall be in addition to any other remedy provided by law. Any sign which is not in compliance with all provisions of this code is an unlawful sign.

(a) Civil Remedies. The violation of or failure to comply with any of the provisions of this code, or the erection, use or display of any sign not in compliance with all of the provisions of this code is declared to be unlawful.

(i) Injunction and Abatement. The city, through its authorized agents, may initiate injunction or abatement proceedings or other appropriate action in the courts against any person who violates or fails to comply with any provision of this code, or against the erector, owner or user of an unlawful sign is located, to prevent, enjoin, abate or terminate violations of the foregoing, furnish the hearing examiner with a brief written statement of the reasons for the failure.

(ii) When a sign is erected which does not conform to the provisions of the sign code, no additional signage will be permitted on the premises until such sign is removed or brought into compliance.

(b) Statement in Support of Administrator's Position. Upon any appeal, the administrator may, in his discretion, furnish the hearing examiner with a written statement of his position on the appeal and may therein reply to the position of the appellant. Such statements must be filed with the board at least 10 days in advance of the hearing on the appeal.

(c) Administrator's Appearance at the Hearing. The administrator or his representative shall attend and state his position at any appeal or variance hearing.

19.36.150 Nonconforming signs.

(1) General. To ease the economic impact of this code on businessmen with substantial investment in signs in existence on the date of adoption of the ordinance codified in this code, this section provides for continued use of a nonconforming sign in its existing state for 25 years from August, 1986. During this period, it is expected that the sign may be amortized on federal income taxes; however, whether it may be so amortized shall not affect the application of this section. Similar treatment is accorded signs in areas annexed to the city after the code's enactment.

(2) Nonconforming Signs.

(a) Notification of Nonconformity or Illegality. The sign code administrator shall, as soon as practicable, survey the city for signs which do not conform to the requirements of this code. Upon determination that a sign is nonconforming or illegal, the administrator shall use reasonable efforts to so notify, either personally or in writing, the sign user or owner of the sign and where practicable the owner of the property on which the sign is located of the following; provided, that the business licensee of the business with which the sign is associated shall be presumed to be the sign

user under this code:

(i) The sign's nonconformity or illegality;

(ii) Whether the sign may be eligible for a nonconforming sign permit.

If the identity of the sign user, owner of the sign, or owner of the property on which the sign is located cannot be determined after reasonable inquiry, the notice may be affixed in a conspicuous place on the sign or on the business premises with which the sign is associated.

(b) Signs Eligible for Nonconforming Sign Permit. With the exceptions herein provided, any on-premises primary sign located within the city limits on the date of adoption of the ordinance codified in this code, or located in areas annexed to the city thereafter, which does not conform with the provisions of this code, is eligible for characterization as a nonconforming sign provided it meets the following requirements:

(i) The sign was covered by a sign permit on the date of adoption of the ordinance codified in this code, if one was required under applicable law; or

(ii) If no sign permit is required under applicable law for the sign in question; the sign was in all respects in compliance with applicable law on the date of adoption of the ordinance codified in this code.

(iii) Exceptions: No temporary or special signs, as defined by OHMC 19.36.080, prohibited signs, as defined by OHMC 19.36.120, or incidental signs, as defined by OHMC 19.36.030(6), shall be eligible for characterization as nonconforming signs.

(c) Permit for Nonconforming Signs. A nonconforming sign permit is required for each nonconforming sign designated under subsection (2)(b) of this section. The permit shall be obtained by the sign user or the sign owner, or the owner of the property upon which the sign is located within 60 days of notification by the city (under subsection (2)(a) of this section) that the sign is nonconforming.

Applications for a nonconforming sign permit shall contain the name and address of the sign user, the sign owner, and the owner of the property upon which the sign is located and such other pertinent information as the administrator may require to ensure compliance with the code, including proof of the date of installation of the sign.

A nonconforming sign for which no permit has been issued within the 60-day period shall within six months be brought into compliance with the code or be removed. Failure to comply shall subject the sign user, owner or owner of the property on which the sign is located to the remedies and penalties of OHMC 19.36.150(3).

(d) Loss of Nonconforming Status.

(i) A freestanding, nonconforming sign shall immediately lose its nonconforming designation if:

(A) The sign is altered in any way, which tends to or makes the sign less in compliance with the requirements of this code than it was before the alteration; or

(B) The sign is relocated to a position making it less in compliance with the requirements of this code; or

(C) The sign is replaced.

(ii) A building-mounted, nonconforming sign shall immediately lose its nonconforming designation if:

(A) The sign is altered in any way which tends to or makes the sign less in compliance with the requirements of this code than it was before the alteration; or

(B) The sign is relocated to a position making it less in compliance with the requirements of this code; or

(C) The sign is replaced.

(e) On the happening of any one of (A), (B) or (C) of subsection (2)(d)(i) or (2)(d)(ii) of this section, any permit or designation for what had been designated as a nonconforming sign shall become void, the administrator shall notify the sign user, sign owner or owner of the property upon which the sign is located of cancellation of the permit or designation and the sign shall immediately be brought into compliance with this code and a new permit secured therefor, or shall be removed.

(3) Illegal Signs. An illegal sign is any sign which does not comply with the requirements of this code within the city limits as they now or hereafter exist and which is not eligible for characterization as nonconforming under this section. The city may immediately remove an illegal sign, at owner's expense, located on city property or right-of-way. The city may immediately remove an illegal sign located on private property no less than 10 days following the mailing of notice to the property owner or person in charge of the premises that the sign is illegal and must be removed.

(4) Amortization Period for Nonconforming Signs. Those signs which have been approved either through a sign permit or through the building permit/site plan review process, or have been in existence since before such permit processes were in effect, or have been issued a nonconforming sign permit, shall be permitted to remain for 25 years after adoption of the ordinance codified in this chapter.

(5) Nonconforming Sign Maintenance and Repair. Nothing in this section shall relieve the owner or user of a nonconforming sign or owner of the property on which the nonconforming sign is located from the provisions of this code regarding safety, maintenance and repair of signs, contained in OHMC 19.36.110, and from the provisions on prohibited signs, contained in OHMC 19.36.120; provided, however, that any repainting, cleaning, and other normal maintenance or repair of the sign or sign structure shall not modify the sign structure in any way which makes it less in compliance with the requirements of this code or the sign will lose its nonconforming status. (See subsection (2)(e) of this section.)

19.36.160 Hearing examiner jurisdiction and power.

(1) The hearing examiner shall have the power and duty to:

(a) Hear and decide appeals by a sign permit applicant from the decision of the administrator of this code denying or failing to grant a sign permit within 30 days of application;

(b) Grant a variance from the requirements of this code as part of the disposition of an appeal from action of the code administrator denying or failing to grant a sign permit (see subsection (2)(b) of this section);

(c) Hear and decide appeals by a sign owner, user or owner of the property on

which a sign is located from characterization of a sign as nonconforming or illegal under OHMC 19.36.150;

(d) Hear appeals from denial of a sign permit on grounds of noncompliance with requirements of the Uniform Sign Code, building code, or National Electrical Code, required under OHMC 19.36.130(1) and (2).

(2) Criteria for Hearing Examiner Decision.

(a) Appeals Without Petition for Variance. In appeals to the hearing examiner from decision of the code administrator denying a sign permit in connection with which no petition of variance has been filed, the hearing examiner's scope of review shall be limited to determining whether or not the code administrator's decision is in accordance with the requirements of this code and accordingly affirm or reverse such decision. If the code administrator's decision is reversed, the hearing officer shall direct the administrator to issue the permit in accordance with its decision. In appeals from failure of the administrator to grant a permit within 30 days of application, the hearing officer shall determine whether the sign and the application meet the requirements of this code. If so, the hearing officer shall direct the administrator to issue the permit. If not, the hearing officer shall deny the permit.

(b) Appeals with Petition for Variance. In appeals from decisions of the code administrator denying or refusing to grant a sign permit in connection with which the appealing party or any other interested party has filed a petition for variance, the hearing officer shall have the power and duty described in subsection (1) of this section and, in addition, shall have the power to hear, decide and grant or deny the requested variance from the provisions or requirements of this code. The hearing officer may grant a variance no greater than 15 percent (rounded to the nearest foot or square foot as applicable) from the provisions or requirements of this code only where practical difficulties exist rendering compliance with the provisions of this code impractical, and such compliance would create unnecessary hardships to the user or owner of the sign or signs. The hearing officer may grant a variance in harmony with the general purpose and intent of this code by varying the application of rules, regulations or provisions so long as the spirit and benefits of this code will be preserved; provided, however, no variance may be granted from the number of signs authorized by this code. The hearing officer shall not vary any of the rules, regulations or provisions of this code unless the hearing officer, upon due and diligent investigation and after public hearing, shall make specific findings that all of the following conditions exist in such cases:

(i) The variance will not constitute a grant of special privilege inconsistent with the limitation upon signage and uses of other properties in the vicinity and zone in which the property, on behalf of which the application was filed, is located;

(ii) Such variance is necessary because of special circumstances relating to the size, shape, topography, location or surroundings of the subject property, to provide it with signage use rights and privileges permitted to other

properties in the vicinity and in the zone in which the subject property is located;

(iii) The granting of such variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and in the zone in which the subject property is situated; and

(iv) Owing to the special circumstances found under subsection (2)(b)(ii) of this section, a strict enforcement of the rules, regulations or provisions of this code will result in unnecessary hardship to the sign user or owner or property owner applying for the variance, and such special circumstances are not the result of the voluntary action of the applicant or its agents.

In granting a variance, the hearing officer may attach thereto such conditions regarding the location, character and other features of the proposed sign as it may deem necessary to carry out the spirit and purpose of this code of moderating the size, number and obtrusive placement of signs and reduction of clutter in the public interest.

(3) Perfection of Appeal.

(a) An appeal with or without petition for variance may be considered by the hearing examiner only if:

(i) Written notice of appeal, with or without petition for variance, is filed with the planning department:

(A) Within 10 days of decision of the code administrator denying a sign permit; or

(B) Within 40 days of the submission of a sign permit application which the administrator has neither granted nor denied within 30 days; or

(C) Within 60 days of the administrator's characterization of the sign as nonconforming or illegal, which period shall begin to run with the mailing of notice of such characterization to the sign user or the sign owner, or the owner of the property on which the sign is located; or the posting of such notice on the sign or the associated business premises.

(ii) The notice of appeal is accompanied by a fee as required by OHMC 19.36.130(7).

(iii) The hearing examiner shall, on their own initiative or on the motion of any interested party, dismiss an appeal for failure of the appellant to meet any of the requirements of subsection (3)(a) of this section or for failure of the appellant to otherwise diligently prosecute the appeal, or if the hearing officer finds the appellant has made any knowingly false or misleading statement or representation in his sign application or appeal.

19.36.170 Conflicting provisions.

If any provision of this code is found to be in conflict with any provision of any zoning, building, fire, safety or health ordinance or code of the city, the provision which establishes the higher standard shall prevail.

Section Seventeen. Oak Harbor Municipal Code Chapter 19.38 is hereby re-adopted to read as follows:

Chapter 19.38
ESSENTIAL PUBLIC FACILITIES

Sections:

19.38.010 Purpose.
19.38.020 Determination of applicability.
19.38.030 Essential public facilities review process.
19.38.040 Criteria for approval.

19.38.010 Purpose.

The purpose of this chapter is to provide a process to site necessary public uses that may otherwise be difficult to site. This process involves the community and identifies and minimizes adverse impacts. Essential public facilities are defined in Chapter 19.08 OHMC, Definitions. Examples include hospitals, jails, prisons, airports, solid waste transfer stations, highways and stormwater treatment plants. The planning director shall determine whether a proposed facility shall be reviewed according to the essential public facility review process instead of the review process indicated under the applicable zoning classification.

19.38.020 Determination of applicability.

(1) Essential public facilities may be reviewed through the essential public facility review process. An applicant may make a written request or the planning director may require a proposal to be reviewed through Oak Harbor's essential public facilities review process. An applicant may use this process if the facility meets the definition of an essential public facility. If the facility is on the list of qualifying facilities prepared by the Washington State Office of Financial Management, it automatically meets the definition.

(2) The planning director shall make a determination that a facility be reviewed through Oak Harbor's essential public facilities review process based on the following criteria:

- (a) The facility is a type difficult to site because of one of the following:
  - (i) The facility needs a type of site of which there are few sites available,
  - (ii) The facility can locate only near another public facility,
  - (iii) The facility has or is generally perceived by the public to have significant adverse impacts that make it difficult to site, or
  - (iv) The facility is of a type that has been difficult to site in the past;
- (b) It is likely this facility will be difficult to site;
- (c) There is need for the facility and Oak Harbor is in the facility service area.

19.38.030 Essential public facilities review process.

(1) Facilities to be reviewed under the requirements of Chapter 19.48 OHMC.

(2) An applicant may have one or more alternative sites considered at the same time during this process.

(3) The planning director has the authority to require the consideration of sites outside the city of Oak Harbor. Alternative sites shall cover the service area of the proposed essential facility.

(4) A more amplified public involvement process may be required by the planning director than that required under Chapter 19.48 OHMC in order to include those residents living within the service area of the proposal.

(5) The costs of such an amplified public involvement program may be charged to the applicant.

(6) The planning director may require a multi-jurisdictional review process if the facility serves a regional, countywide, statewide, or national need.

(7) An analysis of the facility's impact on city finances shall be undertaken. Mitigation of adverse financial impact shall be required.

19.38.040 Criteria for approval.

The following criteria shall be used to make a determination on the application:

(1) Whether there is a public need for the facility;

(2) The impact of the facility on the surrounding uses and environment, the city and the region.

Section Eighteen. Oak Harbor Municipal Code Chapter 19.42 is hereby re-adopted to read as follows:

Chapter 19.42
ACCESSORY DWELLING UNITS

Sections:

19.42.010 Purpose and intent.
19.42.020 Permit required.
19.42.030 Standards and criteria.
19.42.040 Basis for denial.
19.42.050 Application process.
19.42.060 Permit conditions.
19.42.070 Nonconforming units.

19.42.010 Purpose and intent.

The purpose of an accessory dwelling unit is to:

(1) Add affordable units to existing housing and make housing units available to moderate-income people who might otherwise have difficulty finding homes within the city;

(2) Develop housing units in single-family neighborhoods that are appropriate for people at a variety of stages in the life cycle;

(3) Provide homeowners with a means of obtaining, through tenants in either the accessory dwelling unit or the principal residence, rental income, companionship, or security;

(4) Protect neighborhood stability, property values, and the single-family residential appearance of the neighborhood by ensuring that accessory dwelling units are installed under the conditions of this title.

19.42.020 Permit required.

An accessory dwelling unit requires a permit approved by the director.

19.42.030 Standards and criteria.

Accessory dwelling units shall meet the following criteria:

(1) The design and size of the accessory dwelling unit shall conform to all applicable standards in the building, plumbing, electrical, mechanical, fire, health, and any other applicable codes. When there are practical difficulties involved in carrying out the provisions of this title, the director or his designee may recommend modifications that will meet the intent of these codes. Such modifications shall be processed as a variance under this title.

(2) Any additions to an existing building shall not exceed the allowable lot coverage or encroach into required setbacks. The director shall not have the power to vary this provision.

(3) An accessory dwelling unit may be attached or detached from the principal unit.

(4) Only one accessory dwelling unit may be created per residence.

(5) The property owner, which shall include title holders and contract purchasers, must occupy either the principal unit or the accessory dwelling unit as their

(2) The subject site ceases to maintain three or more off-street parking spaces;
(3) The applicant ceases to own and reside in either the primary residence or the accessory dwelling unit.

19.42.070 Nonconforming units.

An owner of an accessory dwelling unit existing prior to the date of adoption of this chapter shall register with the director within one year from the date of adoption of this chapter. The director shall have the authority to waive certain standards in order to accommodate existing accessory dwelling units and may require reasonable conditions to cause the existing accessory dwelling unit to meet the purpose and intent of this title.

permanent residence, but not both, for more than six months out of each year, and at no time receive rent for the owner-occupied unit.

(6) An accessory dwelling unit may be either in a new or an existing residence.

(7) The primary unit, together with the accessory dwelling, may not occupy more than 40 percent of the total site area and must be designed so that, to the degree reasonably feasible, they will appear as one primary residence.

(8) The primary entrance to the accessory dwelling unit shall be located in such a manner as to be unobtrusive from the same view of the building which encompasses the entrance to the principal unit.

(9) One additional off-street parking space, in addition to that required by the underlying zone, shall be provided or as many spaces as deemed necessary to accommodate the actual number of vehicles used by the occupants of both the primary dwelling and the accessory dwelling unit.

(10) In order to encourage the development of housing units for people with disabilities, the director or his designee may allow reasonable deviation from the stated requirements to install features that facilitate accessibility. Such facilities shall be in conformance with the applicable codes.

(11) Manufactured homes, except zones where these structures are allowed, recreational vehicles or temporary housing shall not be utilized as an accessory dwelling unit.

19.42.040 Basis for denial.

The director may deny any permit where it will create an adverse visual impact on the neighborhood or public services, or result in the overall density of the residential area to exceed that established in the Oak Harbor comprehensive plan.

19.42.050 Application process.

Any person desiring approval of an accessory dwelling unit shall submit an application containing all of the information required by Chapter 19.48 OHMC, as determined as appropriate by the director, as well as the following information:

(1) Proof that the single-family property upon which the accessory dwelling unit is proposed to be located is owned and occupied by the applicant;

(2) A covenant, in a form acceptable to the city attorney, and suitable for recording with the Island County auditor, providing notice to future owners of the subject site that the existence of the accessory dwelling unit is predicated on the occupancy of the accessory dwelling unit or the primary dwelling. The covenant shall also require any owner of the property to notify a prospective buyer of the limitations of this chapter and to provide for the removal of improvements added to convert the premises to an accessory dwelling unit and the restoration of the site to a single-family dwelling in the event than any condition of approval is violated.

19.42.060 Permit conditions.

In addition to any conditions imposed by the director, an approved conditional use permit for an accessory dwelling unit shall state and is expressly subject to the condition that such a permit shall expire automatically whenever:

(1) The accessory dwelling unit is substantially altered and is thus no longer in conformance with the plans and drawings reviewed and approved;

Section Nineteen. Oak Harbor Municipal Code Chapter 19.44 is hereby re-adopted to read as follows:

Chapter 19.44
PARKING

Sections:

19.44.010 Purpose and intent.
19.44.020 General requirements.
19.44.030 Bicycle parking.
19.44.040 Location.
19.44.050 Expansion, enlargement and occupancy.
19.44.060 Mixed occupancies.
19.44.070 Uses not specified.
19.44.080 Joint use.
19.44.090 Conditions required for joint use.
19.44.100 Table of minimum standards.
19.44.110 Parking space size and access requirements.
19.44.120 Car and van pool parking.
19.44.130 Plans.
19.44.140 Loading areas.

19.44.010 Purpose and intent.

Provisions of this chapter are of general application to several of the districts described in Chapter 19.20 OHMC, except as noted in the CBD central business district. It is the intent of this chapter to set down provisions for off-street parking and loading areas to prevent congestion in the streets, promote and protect property values and to provide for the health, safety and welfare of the citizenry.

19.44.020 General requirements.

Parking areas, public or private, are permitted as accessory uses, operating in conjunction with permitted uses, unless otherwise permitted by this title. Each off-street parking space shall have a net area of not less than 180 square feet, exclusive of driveways or aisles, and shall be of usable shape and condition. To determine on a gross area basis, 270 square feet shall be allowed per vehicle. If the required parking space for a one-family or two-family dwelling is not provided in a covered garage, then such space shall be not less than 180 square feet. The circulation pattern of all off-street parking areas excepting driveways serving single-family or two-family dwellings shall not have as a part of the pattern any parking or parking maneuvers on a public sidewalk, highway, road, street or alley.

19.44.030 Bicycle parking.

Bicycle racks shall be provided for all nonresidential and multifamily uses. Such racks shall provide space for a minimum of one bicycle for each 10 parking spaces required to a maximum of 10 bicycle spaces.

19.44.040 Location.

Off-street parking facilities shall be located and operated in conjunction with the permitted use as hereinafter specified; where a distance is specified, such distance shall

be the walking distance measured from the nearest point of the parking facility to the nearest point of the building that such facility is required to serve:

(1) For one-family and two-family dwellings, on the same lot with the building they are required to serve;

(2) For multiple dwellings, not more than 100 feet;

(3) For hospitals, skilled nursing facilities, assisted living facilities, rooming houses and boarding houses, fraternity and sorority houses, not more than 300 feet;

(4) For uses other than those specified above, not more than 500 feet;

(5) Parking lots for passenger automobiles only shall be allowed when such parking lots are for the purpose of providing the off-street parking required by this title and are located and improved in accordance with this chapter, except that when any such parking lot is to serve a use first permitted in a less restrictive zone than the zone in which the parking lot is to be located, such parking lot may be allowed only by a variance granted by the hearing examiner after a public hearing and the finding that such parking lot will not be unduly detrimental to surrounding properties; provided, that additional landscaping or fencing as directed by the hearing examiner to visually screen parked cars from all residential properties in the vicinity shall be provided as conditions precedent to the granting of such variance; and provided, that at least 40 lineal feet of the boundary of such parking lot adjoins a less restrictive zone or is separated therefrom only by the width of an alley or street. Such parking lots shall not extend beyond said less restrictive zone more than 150 feet into the more restrictive zone in which the parking lot is to be located. No such parking lots shall be allowed for the purpose of serving nonconforming uses.

19.44.050 Expansion, enlargement and occupancy.

All new or substantially altered uses or structures shall be provided with special purpose off-street parking facilities as required by this chapter. No application for a building permit or change of occupancy for a new or substantially altered structure or improvement shall be approved unless there is included with such improvement or use, a plot plan showing the required special off-street parking as required in this chapter. Wherever any building is enlarged in height or in ground coverage, off-street parking shall be provided for said expansion or enlargement in accordance with the requirements of the schedule; provided, however, that no parking space need be provided in the case of enlargement or expansion where the number of parking spaces required for such expansion or enlargement is less than 10 percent of the parking spaces specified in the schedule for the building.

19.44.060 Mixed occupancies.

In the case of mixed uses, the total requirements for the various uses shall be computed separately. Off-street parking facilities for one use shall not be considered as specified for joint use.

19.44.070 Uses not specified.

In the case of uses not specifically mentioned in sections below, the requirements for off-street parking facilities shall be determined by the planning director. Such determination shall be based upon the requirements for the most comparable use listed.

19.44.080 Joint use.

The director, upon application, may authorize the joint use of parking facilities for the following uses or activities under conditions specified:

(1) Up to 50 percent of the parking facilities required by this chapter for primarily nighttime uses such as theaters, bowling alleys, bars, restaurants and related uses may be supplied by certain other types of buildings or uses herein referred to as daytime uses such as banks, offices, retail and personal service shops, clothing, food, furniture, manufacturing or wholesale and related uses;

(2) Up to 50 percent of the parking facilities required by this chapter for primarily daytime uses may be supplied by primarily nighttime uses;

(3) Up to 100 percent of the parking facilities required by this chapter for a church, or for an auditorium incidental to a public or parochial school, may be supplied by the off-street parking facilities provided by uses primarily of a daytime nature.

19.44.090 Conditions required for joint use.

The building or use for which application is being made to utilize the off-street parking facilities provided by another building or use shall be located within 500 feet of such parking facilities in addition to which:

(1) The applicant shall show that there is no substantial conflict in the principal operating hours of the two buildings or uses for which joint use of off-street parking facilities is proposed;

(2) The applicant shall present a properly drawn legal instrument to be recorded with the Island County auditor, executed by the parties concerned for joint use of off-street parking facilities and approved as to form and manner of execution by the city attorney, to the hearing examiner upon application, such instrument to be filed with the building official upon approval of the hearing officer.

19.44.100 Table of minimum standards.

Use	Required Parking
Residential, single-family	Two per dwelling
Residential, duplex	Two per dwelling
Residential, multiple	One and one-half per dwelling unit
Three or more bedroom dwelling unit	Two per three or more bedroom dwelling unit. In addition, multifamily projects with eight or more units shall provide one visitor parking space for each eight units.
Banks	One per 400 square feet of gross floor area, plus employee parking
Bowling alleys	Four per alley, plus employee parking
Churches, auditoriums and similar enclosed places of assembly	One per four seats and/or one per 30 square feet of assembly space without fixed seats
Skilled nursing facilities	One per five beds, plus owner and employee parking
College	One space per 200 square feet of class room space
Assisted living facilities	Minimum of 0.8 spaces per unit, with a maximum of one and one-half spaces per unit
Food and beverage places with sales and consumption on premises	One per three seats, plus one space for every two employees on the largest shift

Furniture, appliance, hardware, clothing and shoe stores, personal service stores such as beauty parlors, barbershops and physical fitness centers	One per 600 square feet gross floor area, plus employee parking
Gasoline stations	15 spaces, including pump and service area
Hospital	One per two beds, excluding bassinets
Hotels, motor hotels	One per sleeping room, plus owner and employee parking
Libraries and museums	One per 200 square feet gross floor area, plus employee parking
Manufacturing uses, research testing and processing, assembling, all industries	One per each two employees on maximum shift and not less than one per each 800 square feet gross floor area
Mortuaries	One per 100 square feet of gross floor area used for assembly or one per five seats, plus employee parking
Motels	One per unit, plus owner and employee parking
Motor vehicle, machinery, plumbing, heating, ventilating, building supplies stores and services	One per 1,000 square feet floor area, plus employee parking
Offices, medical and dental (including optometrists)	One per 200 gross square feet of floor area, plus employee parking
Offices not providing customer services	One per each employee
Offices of opticians, chiropractors and others licensed by the state of Washington to practice the healing arts	One per 400 square feet of gross floor area, plus employee parking
Offices, business and professional (other than medical and dental) with on-site customer service	One per 400 square feet of gross floor area, plus employee parking
Rooming houses, similar uses	One per dwelling unit
Schools, elementary and junior high	One per each employee and faculty member, plus 15 visitor parking
Schools, high	One per each 10 students, plus one per each employee and faculty member, plus 15 visitor parking
Shopping centers with over 30,000 square feet of gross floor area	Four and one-half spaces per 1,000 square feet gross floor area, but not to exceed five spaces per 1,000 square feet of gross floor area
Stadiums, sport arenas and similar open assemblies	One per four seats and/or one each 30 square feet of assembly space without fixed seats
Theaters	One per four seats, plus employee parking
Warehouses, storage and wholesale business	One per each employee, plus two additional spaces
Other retail	One per 300 square feet gross floor area, plus employee parking

19.44.110 Parking space size and access requirements.

(1) Standard Parking Spaces. All standard parking spaces shall meet the minimum criteria outlined in the table and figure below.

(2) Compact Parking Spaces. Up to 40 percent of required parking spaces may be

provided as compact spaces. The aisle widths required for standard spaces shall be applied to compact spaces. Parking space width, parking space depth and row width shall be as shown in the following table. The minimum parking space depth shall be 16 feet and the minimum parking space width shall be eight feet. Compact parking spaces shall be clearly marked by painting the word "compact" on the parking space(s).

Required Parking Dimensions					
Parking Angle	Ë Stall Width	Ë Stall Depth	Ë Row Depth	Aisle WidthË (One Way)	Aisle WidthË (Two Way)
0°	Standard: 9□Ë Compact: 8□	Standard: 23□Ë Compact: 19□	Standard: 9□Ë Compact: 8□	10□	18□
30°	Standard: 9□Ë Compact: 8□	Standard: 20□Ë Compact: 16□	Standard: 18□Ë Compact: 15□	12□	20□
40°	Standard: 9□Ë Compact: 8□	Standard: 20□Ë Compact: 16□	Standard: 20□Ë Compact: 16□	12□	20□
45°	Standard: 9□Ë Compact: 8□	Standard: 20□Ë Compact: 16□	Standard: 21□Ë Compact: 17□	12□	20□
50°	Standard: 9□Ë Compact: 8□	Standard: 20□Ë Compact: 16□	Standard: 20□Ë Compact: 16□	15□	20□
60°	Standard: 9□Ë Compact: 8□	Standard: 20□Ë Compact: 16□	Standard: 20□Ë Compact: 16□	17□	20□
70°	Standard: 9□Ë Compact: 8□	Standard: 20□Ë Compact: 16□	Standard: 20□Ë Compact: 16□	20□	20□
80°	Standard: 9□Ë Compact: 8□	Standard: 20□Ë Compact: 16□	Standard: 20□Ë Compact: 16□	24□	24□
90°	Standard: 9□Ë Compact: 8□	Standard: 20□Ë Compact: 16□	Standard: 20□Ë Compact: 16□	24□	24□

PARKING PLAN LAYOUT

19.44.120 Car and van pool parking.

Any nonresidential development which shall provide priority spacing for car pools and van pools shall be allowed to reduce the total amount of required parking by 1.15 spaces for each priority car pool and van pool space provided.

19.44.130 Plans.

The plan of the proposed parking area shall be submitted to the city engineer at the time of the application for the building for which the parking area is required. The plan shall clearly indicate the proposed development, including location, size, shape, design, curb cuts, lighting, landscaping, construction details and other features and appurtenances required. The illustrations provided at the end of this chapter shall serve as a guide and illustrate the minimum requirements for parking stall configurations.

A legal description of the property is required and a parking area designated and recorded.

(1) Parking areas shall be designed in conformance with the Oak Harbor design guidelines.

(2) All traffic-control devices such as parking strips designating car stalls, directional arrow or signs, bull rails, curbs, and other developments, shall be installed and maintained as shown on the approved plans. Hard surfaced parking areas shall use paint or similar devices to delineate car stalls and directional arrows. All driveways, off-street parking areas and public off-street parking areas shall be hard surfaced with a minimum of two inches of asphalt concrete.

(3) Minimum dimensions of off-street parking areas shall be not less than stated in this chapter.

(4) Screen all parking lots from view of adjoining residential district or use through use of sight obscuring fences, earth berms or landscaped planting strips, to a height of not less than six feet.

(5) At least 10 percent of every parking lot shall be landscaped. In all cases, landscaping shall be distributed throughout the parking area. For computation of required landscape area, allow 30 square feet per parking space. The landscaping shall consist of deciduous or coniferous plant material and may include turf, shrubs and flowers.

(6) Lighting of areas provided for off-street parking shall be so arranged to not constitute a nuisance or hazard to passing traffic and where said lots share a common boundary with any "R" classified property, the illuminating devices shall be so shaded and directed to play their light away from "R" classified property.

(7) Maintenance of all areas provided for off-street parking shall include removal and replacement of dead and dying trees, grass and shrubs, removal of trash and weeds, and repair of traffic control devices, signs, light standards, fences, walls, surfacing material, curbs and railings.

19.44.140 Loading areas.

Each off-street loading space shall measure not less than 30 feet by 12 feet and shall have an unobstructed height of 14 feet six inches and shall be made permanently available for such purposes, and shall be hard surfaced, improved and maintained as required by this chapter. Required loading spaces shall be in conformance with the following table:

Department stores, freight terminals, industrial or manufacturing establishments, retail or wholesale stores or storage warehouses or any similar use which has, or intends to have 10,000 square feet or more, shall provide truck loading or unloading berths:

Square feet of aggregate gross floor area	Required number of berths
10,000 to 15,999	1

16,000 to 39,999	2
40,000 to 65,000	3
each additional 16,000	1 additional

Auditoriums, convention or exhibit halls, sports arenas, hotels, office buildings, restaurants or similar uses which have, or intend to have an aggregate gross floor area of 40,000 square feet or more, shall provide truck loading or unloading berths:

Square feet of aggregate gross floor area	Required number of berths
40,000 to 59,999	1
60,000 to 160,000	2
each additional 60,000	1 additional

Area of Parking Lot = 5,504 Sq. Ft.

Section Twenty. Oak Harbor Municipal Code Chapter 19.46 is hereby re-adopted to read as follows:

Chapter 19.46
LANDSCAPING AND SCREENING

Sections:

19.46.010 Purpose.
19.46.020 Applicability.
19.46.030 General landscaping requirements.
19.46.035 North Whidbey Enterprise Area landscape requirements.
19.46.040 General landscaping standards.
19.46.045 Tree retention.
19.46.050 Fences and hedges.
19.46.060 Phased projects.
19.46.070 Conflicts.
19.46.080 Maintenance standards.
19.46.090 Timing of landscaping completion.
19.46.100 Landscape plans required.
19.46.110 Administrative relief and alternative compliance.
19.46.120 Enforcement of chapter.

19.46.010 Purpose.

The purpose of this chapter is to provide uniform standards for the development and maintenance of the landscaping of private property and public rights-of-way. The purpose of landscaping is to improve the livability of residential neighborhoods, enhance the customer attraction of commercial areas, increase property values, improve the compatibility of adjacent uses, provide visual separation and physical buffers between incompatible adjacent land uses, provide visual relief from the expanse of parking lots, screen undesirable views, contribute to the image and appeal of the overall community, and mitigate air and noise pollution. It is the intent of these requirements to encourage the retention of existing vegetation including significant trees to the extent feasible and to require replacement if significant existing trees are removed; to reduce erosion and storm water runoff; to preserve and promote urban wildlife habitats; to enhance the streetscapes along the city's public rights-of-way with an emphasis on trees; to define and separate vehicular and pedestrian traffic areas; to screen the appearance of parking areas from public rights-of-way and adjacent properties; and to make the city a more aesthetically pleasing place to live, shop and work.

19.46.020 Applicability.

The provisions of this chapter shall apply to any of the following:

(1) All new public and private developments, multifamily housing larger than a duplex, and long plats;

(2) Any additions to existing structures that exceed 30 percent of the gross floor area, or are in excess of 1,000 square feet;

(3) Any expansion of a mobile home park in which the number of new mobile home lots exceeds 10 percent of the number of existing mobile home lots;

(4) Provisions required by Chapter 19.48 OHMC;

(5) Situations where this chapter imposes a requirement for buffering or screening between two uses, one of which is existing and the other new. The responsibility for satisfying this requirement rests entirely on the new use;

(6) Single-family dwellings, duplexes, and current approved site plans shall be exempt;

(7) Any preexisting vehicular surface area which expands in excess of 25 percent shall provide the landscaping required in OHMC 19.46.030. No expenditure made for removing existing asphalt, constructing planting areas, installing irrigation systems, and adding dirt and plant materials which is required in order to comply with these requirements shall be required to exceed four percent of the total assessed real property value of the subject property on which the improvements are being made.

19.46.030 General landscaping requirements.

(1) Required minimum landscape setbacks apply to all zoning districts, except those projects specifically excluded in OHMC 19.46.020 above.

(a) Minimum width of landscape setback, as identified with the city's street classification plan:

(i) Large shopping centers in excess of five acres adjacent to principal arterial streets: 20 feet;

(ii) Any multifamily and nonresidential use constructed on a designated scenic transportation route: 20 feet;

(iii) All other uses adjacent to a principal arterial: 12 feet;

(iv) Adjacent to a minor arterial or collector arterial: 10 feet;

(v) Adjacent to all other streets: eight feet;

(vi) Where roadway right-of-way expansion is proposed the setback will begin at the anticipated new edge of the road.

(b) Minimum Number of Trees in Landscaped Setbacks. There shall be four trees for every 100 linear feet of frontage of property adjacent to all street classifications. Guidelines for the specific types and locations of trees and other landscape materials in landscape setbacks are contained within the landscape policy manual.

(c) Design Standards.

(i) Some of the required landscape setback trees may be clustered in the setback. Parking lot screening may be included in the landscape setback width. The required landscaped setback trees may be permitted to be partially or totally located in the adjacent public right-of-way area, if:

(A) All of the required trees cannot be placed in the landscaped setback;

(B) There are no conflicts with utility easements;

(C) In the case of the state highway, the city engineer and State Highway Engineer approve;

(D) It shall be the responsibility of the adjacent property owner to care for landscaped rights-of-way;

(E) Where undeveloped adjacent right-of-way occurs, it shall be landscaped.

The required landscaped setback trees may be located in the adjacent public right-of-way area if these trees cannot be placed in the landscaped setback area due to the existing development of the site. However, such trees are required only to the extent that: (1) the city engineer and State Highway Engineer approve the trees in the case of a state highway; and (2) no conflicts exist within utility easements.

(ii) Opaque walls and fences which obstruct view shall be located outside (building side) of the setback to maintain a landscaped appearance along the street.

(iii) Administrative relief of the requirements of this section may be requested in accordance with OHMC 19.46.110.

(2) Required Minimum Landscape Perimeters. Planting areas within side and rear yards that are not occupied by structures shall be as follows:

(a) Minimum Width of Perimeter. Five feet for the length of the property line, unless otherwise specified under screening requirements of this chapter;

(b) Exemptions. Perimeter of industrial site or commercial yard that is not substantially visible from the right-of-way or located where screening is not required, shall be exempt;

(c) Planting Requirements.

(i) A minimum of four trees shall be planted for every 100 linear feet, or fraction thereof, of perimeter planting area;

(ii) Shrubs and ground cover plantings shall be in quantities and spacing that will provide for 80 percent ground coverage within three years;

(iii) When abutting properties with different land use classifications occurs, the screening requirements under OHMC 19.46.030(3) and (4) shall supersede the requirements of this subsection;

(d) Connecting Driveways. When connecting joint driveways, or shared parking lots are provided between sites, the minimum area requirements may be reduced by the area occupied by the driveway that would otherwise be landscaped under the requirements of this subsection.

(3) Required Minimum Landscape Buffers.

(a) Buffers between (1) adjacent nonresidential and residential uses; and (2) adjacent nonresidential uses and single-family residential zones:

(i) Design Standards. The buffer shall be a minimum of 12 feet wide and shall be located on the property line adjacent to any single-family residential community. Said buffer shall generally consist of a mix of predominately evergreen plantings including trees, shrubs, and ground covers. Evergreen trees shall be a minimum height of four feet at time of planting. Planting shall be chosen and spaced so as to grow together within four years of their planting in a manner that is sufficient to obscure sight through the barrier. The entire planting strip shall be landscaped; however, those plantings used to achieve the sight-obscuring screen shall cover at least six feet of the width of the strip.

(b) Buffers between adjacent multifamily residential and single-family residential zones:

(i) Design Standards. The buffer shall be a minimum of 10 feet wide and shall be located on the property line adjacent to the single-family residential community.

(c) Buffers between nonresidential and residential uses separated by a nonarterial street, public alley or private street:

(i) Design Standards. The buffer shall be a minimum of 12 feet in depth. The minimum number of trees in the buffer shall be two trees for every 20 linear feet of buffer. The trees will consist of a mix of evergreen and deciduous. Depending upon the nonresidential use, evergreens may be increased to help obscure sight between the two uses. An opaque structure with a maximum height of six feet may be optional along the common property line. If a fence is constructed, planting shall still occur as stated above. The buffer may be reduced to 10 feet if an opaque structure is erected.

(d) Buffers between an industrial classified district and a residential classified district:

(i) Design Standards. All sites in an industrial district having a common boundary with a residential district shall be planted and maintained along such common boundary with a view-obscuring coniferous greenbelt of shrubs, trees and native vegetation not less than six feet in height nor less than 10 feet in width, for screening purposes and controlling access.

(4) Fences and Screening. When applicable, the requirements of this section shall supersede the requirements of other sections of this chapter as well as those sections of Chapter 19.40 OHMC.

(a) Purpose. The requirements of this subsection are intended to reduce visual impacts and incompatible characteristics of:

(i) Abutting properties with different land use classifications;

(ii) Service areas and facilities, including loading and storage areas;

(iii) Parking areas located in front of buildings;

(iv) Any other use or area as required under this section, or determined to be necessary by the planning director (or designee).

The fence or landscaping screen shall be sight obscuring, obstructing storage areas from view on the sides of the property abutting, adjoining, or facing a residential district. The fence shall be of such material and design as will not detract from adjacent residences and shall be built according to plans submitted by the owner or his/her authorized agent and approved by the planning director (or designee).

(b) Landscaping. Screen planting shall consist of evergreen trees planted a maximum of 15 feet on center, or hedges with dense evergreen foliage, in combination with deciduous trees and hedges for seasonal color and texture. Ground cover shall be planted at a density to form an effective barrier to cover 85 percent of the ground surface within two years.

(i) On a corner lot there may be placed and maintained:

(A) A fence or screen not more than three feet in height; provided, that it is not sight obstructing (50 percent of the

area of the fence or screen is open) along a public or private street;

(B) A six-foot-high open wire fence along the property line facing the side street; provided, that it does not come closer to the street right-of-way on the front of the lot than the required building setback;

(C) A four-foot-high solid fence or hedge parallel to the property line facing the side street; provided, it is 10 feet back from the side street; and provided, that it does not come closer to the street on the front of the lot than the rear of the building.

(ii) In commercial zones, no fence or hedge may be placed on the front yard setback except where required to screen the property from the adjacent lot, then the screen shall extend to the street right-of-way.

(c) Minimum Width.

(i) Landscape Screening. If screening is to be achieved through the use of plant materials only, the screening area shall be a minimum of 10 feet in width. If other materials, such as fencing, walls or berms are used in conjunction with the landscaping, the width may be reduced, as described in subsections (4)(c)(ii) to (iv) of this section.

(ii) Earth Berm Alternative. If an earth berm is incorporated into the screening plan, medium size shrubs and/or evergreen trees shall be spaced a maximum of four and one-half feet on center and the width of the screening area may be reduced to eight feet.

(iii) Fence Alternative. If a fence option is selected, maximum spacing of medium sized shrubs shall be six feet on center, and the width of the screening area may be reduced to seven feet. The fence shall be constructed of exterior weather resistant wood, or applicable alternative. One alternative may be a cyclone fence; however, such a fence shall include slats, and if the fence is next to right-of-way, landscaping shall be planted between the fence and the right-of-way. Plantings must obscure 75 percent of a cyclone fence within four years.

(iv) Wall Alternative. If a wall at least five feet high is to be used for screening, the planting requirements shall be as specified under subsection (1) of this section, and the screening width may be reduced to five feet. Screen walls shall be constructed with masonry, block, rockery or textured concrete, subject to design approval by the planning director.

(d) Uses Requiring Screening. The planning director may require screening to protect adjacent properties from negative impacts of any permitted or conditional use in a zoning district.

Except as otherwise required by the planning director, screening shall be required in the following instances:

(i) Developments located in districts listed on the left side of the chart,

below, shall provide screening when they adjoin districts specified on the right side of the chart.

District to be Developed	District to be Screened
Multifamily residential	Single-family residential
Semi-public	All residential
Commercial/business	All residential
Industrial	All residential/commercial

(ii) Churches, community centers, and other similar conditional uses shall provide perimeter screening when adjoining a residential district.

(e) Fence and screen height limits in the various zones are as follows:

Residential Zones:	Front yard	3 feet maximum
	Side yard	6 feet maximum
	Rear yard	6 feet maximum
Commercial Zones:	Front yard	0 feet maximum
	Side yard	6 feet maximum
	Rear yard	6 feet maximum
Industrial Zones:	Front yard	8 feet maximum
	Side yard	8 feet maximum
	Rear yard	8 feet maximum

(5) Minimum Parking Lot Requirements.

(a) Required Trees.

(i) One tree of a type suitable for parking lots shall be provided for every 10 open (not in a garage) vehicular parking spaces in parking lots with 10 or more spaces;

(ii) The tree types and minimum planter sizes shall be consistent with the landscape policy manual. Trees chosen shall be appropriate to a parking lot location;

(iii) The required trees may be clustered but shall be located to divide and break up expanses of paving and long rows of parking spaces and to create a canopy effect in the parking lot. In order to be considered within the parking lot, the trees must be located in planters that are bounded on at least three sides of parking lot paving. This means only trees in landscaped "islands" or "fingers" can count toward the parking lot tree requirement;

(iv) Planters shall be of sufficient size and design to accommodate the growth of the trees and to prevent damage to the trees by vehicles;

(v) The number of species required shall vary according to the overall number of trees required to be planted. The species shall be planted in proportion to the required mix. The species mix shall not apply to areas of vegetation required to be preserved by law nor those located in areas designated as natural. The number of species to be planted are indicated below.

Required # of trees	Maximum # of species
6 – 10	2
11 – 15	3
16 +	4

(b) Required Landscape Area. At least 15 percent of every parking lot shall be landscaped. In all cases, with the exception of vehicular display lots, landscaping shall be distributed throughout the parking area. Landscaping located in required setbacks or buffers may not be used to meet this requirement. The landscaping shall consist of deciduous and/or coniferous material and may include turf, shrubs, and flowers.

(c) Required Screening.

(i) Open parking spaces (except those in single-family residential projects in any zone district) shall be screened from the view of adjacent properties and streets to mature minimum height of 30 inches by the use of berms and/or plantings;

(ii) A minimum of two-thirds of the affected street frontage or property boundary, not counting intersecting driveways, must have the required screen;

(iii) The required screening may be a component of the required landscape setback;

(iv) Structures such as decorative walls or fences may be approved through an administrative relief request if the planning director (or other designee) finds that:

(A) The structures avoid a blank and monotonous appearance by such measures as architectural articulation and the planting of vines, shrubs or trees; or

(B) The total use of the berms and/or plantings is not physically feasible; or

(C) The structures attractively complement the use of berms and/or plantings;

(v) The maximum spacing of plants to achieve an acceptable screen and the maximum acceptable grades for screening areas, such as sodded berms and planting beds, shall be consistent with the landscaping policy manual;

(vi) Guidelines for the specific types and location of trees, shrubs and other landscape materials in parking lots are contained within the landscape policy manual as approved by city council or thereafter amended.

(6) In addition to the requirements and standards of this chapter, the landscape guidelines in the design guidelines shall apply.

19.46.035 North Whidbey Enterprise Area landscape requirements.

(1) The standards contained in this section apply to the North Whidbey Enterprise Area as identified in Exhibit C of the Urban Growth Area Interlocal Agreement

between Island County and the city of Oak Harbor, a copy of which is on file with the city clerk and available for public inspection.

(2) Significant Tree Retention. Significant tree retention in the I, PIP, C-4 and nonresidential development, short subdivision and subdivision in the PRE zones shall meet the following standards:

(a) Applicants should retain 15 percent of the significant trees found on the property except for those trees found in the building footprints, access roads, parking areas and utility line trenches. Applicants should give attention to the following:

(i) Preservation of significant trees along the perimeter of the property; and

(ii) Preservation of significant trees near or adjacent to critical areas; and

(iii) Preservation of significant trees which create a distinctive skyline feature; and

(iv) Preservation of Garry Oak trees; and

(v) Trees that may constitute a safety hazard should be removed; and

(vi) Special attention shall be given to preservation of significant trees on properties identified in the 2001 Oak Harbor Comprehensive Plan, Environmental Element, Woodland Map.

(b) An inventory of significant trees shall be submitted with all applications for subdivision, short subdivision or site plan review.

(3) Landscaping, screening and buffering in the I and PIP zones shall meet the following standards:

(a) Open storage, trash or recycling areas shall be screened by fencing and/or landscaping;

(b) Landscaping including street trees spaced no further than 20 feet on center shall be required in all front yards and the abutting public road; and

(c) Buffers between industrial zones and adjacent residential properties shall be planted along the common boundary. The planting should include coniferous shrubs, trees and native vegetation. Fencing may be incorporated to help ensure an effective visual buffer.

(4) Landscape for I, PIP and C-4 lands abutting Goldie Road and Oak Harbor Road shall meet the following standards:

(a) A 20-foot landscape setback shall be established; and

(b) The area between the property line and drainage swale shall be planted with low profile foliage; and

(c) The landscape area shall be planted with a mixture of native evergreen trees containing a variety of species, colors and textures for a year-around green attractive appearance; and

(d) If the landscape buffer setback does not have existing significant vegetation, the buffer will be planted with native evergreen trees. If deciduous trees are desired they may be planted at a rate of two evergreen to one deciduous tree; and

(e) Maximum spacing of the trees shall be 10 feet on center or equivalent grouping as determined by site and existing conditions; and

(f) Roadway and intersection requirements shall prevail if a conflict arises with the landscape standards listed herein.

19.46.040 General landscaping standards.

(1) Landscape Materials.

(a) Landscape materials shall be defined as evergreen or deciduous trees, shrubs, and ground cover plants, perennial or annual flowers, and lawn. River rock, fountains, ponds, bark, rockeries, ornamental or decorative walkways (provided both sides abut landscaping) may be included, where, in the opinion of the planning director, additional ornamental features may be considered as part of the landscape materials, subject to the administrative relief process.

(b) Suggested plant material suited to the unique soils, geology, and weather patterns of Oak Harbor are contained in the landscape policy manual at the city planning department.

(c) Planting shall occur based on species tolerance to the environment in which it will be placed.

(d) No artificial lawn or plants will be permitted in landscaped areas.

(2) Erosion Control Plan. The city may require temporary erosion and sediment control measures as part of the landscape plan for the development. Erosion or sediment control plan shall be reviewed prior to or in conjunction with a plat or site plan.

(3) Drainage Detention/Retention Ponds. If a proposed detention pond has a slope ratio of 3:1 or greater, where fencing around the pond will be required, a fencing and landscaping plan shall be submitted to the planning department. Submittal of the proposed fencing and landscaping plan shall occur in conjunction with short plat, preliminary plat, or site plan review applications, depending on the project type.

(4) Land Clearing Plan. Clearing of landscaping is required to be in accordance with the provisions of Chapter 19.47 OHMC.

(5) Pollution Control. It shall be the responsibility of the property owner to ensure that storm runoff from landscaped areas does not contain excessive amounts of fertilizer, insecticides, and herbicides that may be harmful to aquatic life, and to take measures to prevent runoff water impacts as required by the Department of Ecology and Wildlife and as specified in the Puget Sound Water Quality Manual. One measure to reduce the use of chemicals is the use of native plants in landscape areas.

(6) Safety Features/Utilities. Installation of landscape materials shall not obstruct access to fire connections, post indicator valves (PIVs) and hydrants, standpipes, sprinkler connections, utility vaults, pedestals, and other public and private utility facilities. Appropriate species of plants for areas affected by overhead utility lines can be found in the plant list. Landscaping shall not obstruct fire apparatus access roads.

(7) Irrigation and Watering. An underground irrigation system is required which is adequate to provide watering needs for plant materials. Small preexisting sites may receive special consideration through the administrative relief process. Also, administrative relief from the irrigation requirement may be requested for planting

areas which contain only drought tolerant vegetation.

(8) Visibility Triangle. Along street frontages, within 30 feet of an alley or unsignalized street intersection, or within 25 feet of a driveway, no shrub shall be higher than 30 inches from street gutter grade and no tree shall have branches or foliage below eight feet above street level.

At signalized intersections the conditions of this section shall not be necessary, but it shall be required that only deciduous trees be located at signalized intersections. Under no circumstances shall landscaping interfere with sight distance visibility.

(9) Where practical, landscaping shall be designed to not block solar gain or solar access by surrounding properties.

(10) Special Landscaping Districts. The area of the CBD central business district, for the purpose of this chapter, will be considered a special landscaping district. This area is substantially developed on zero setbacks from the right-of-way, making it impractical to meet the full extent of the requirements of this chapter. Businesses located in this district shall meet parking lot landscaping standards as shown in OHMC 19.46.030(5) and shall participate in a street tree planting program in the street right-of-way adjacent to the parcel frontage.

(11) Xeriscape Process. Xeriscape is a process by which sound horticultural, landscaping, and efficient water-using principles come together. The style of the xeriscapes can be quite variable. Drought resistant landscaping, such as a contemporary design or a Spanish garden, could qualify as xeriscape when constructed to meet the following six principles:

(a) Good Design. Based on careful selection of low-water-use plants or drought tolerant plants;

(b) Soil Improvement. Improvements including the addition of manure, compost, or other organic materials which can be amended into the soil;

(c) Use of Mulch. Beauty bark or other organic substance to beautify the landscape and help maintain moisture in the soil;

(d) Limited Lawn Areas. Minimizing grass areas results in minimal lawn maintenance;

(e) Efficient Water Use. Water between 12:00 midnight and 6:00 a.m. to help prevent fungus growth, and lower the evaporation rate of water;

(f) Good Maintenance. Maintain the landscape to reflect a weed and trash free environment.

(12) Landscaping for Freestanding Signs. All primary freestanding signs shall include, as part of their design, landscaping about their base to prevent automobiles from hitting the sign supporting structure and to improve the overall appearance of the installation. If the required landscaping is not completed within 60 days after completion of sign installation, the sign is in violation of this chapter.

19.46.045 Tree retention.

(1) The purpose and intent of this section is to reduce the aesthetic and environmental impacts of site development while promoting reasonable use of land and to implement the city's comprehensive plan by:

(a) Avoiding the removal of significant trees and stands of trees in order to maintain ecological functions and maintain Oak Harbor's urban environment;

(b) Providing measures to protect trees from construction impacts and ensure their survival; and

(c) Providing flexibility in order to retain stands of trees of ecological or aesthetic importance, or to allow for revegetation when trees cannot be retained.

(2) All development proposals and land clearing applications shall retain at least 15 percent of the significant trees, as defined in Chapter 19.08 OHMC.

(a) Trees shall be retained within stands or clustered. Narrow strips and single unprotected significant trees shall be avoided. Improvements shall be designed to give priority to protection of trees with the following characteristics:

(i) Healthy significant trees over 50 feet in height;

(ii) Significant trees that form a continuous canopy or grove of trees;

(iii) Significant trees on steep slopes or adjacent to existing open space, parkland, wetlands, water courses and conservancy areas; and

(iv) Significant trees which provide a distinctive feature, such as a skyline, corridors along arterial and collector streets, or provide a land use buffer along the perimeter of the proposed development.

(b) All areas where vegetation is retained shall be designated as a native growth protection area, conservation easement, deed restriction or other means of deed conveyance.

(3) Exceptions.

(a) The minimum significant tree percentage may be reduced on sites with special circumstances and where revegetation is proposed. Special circumstances include, but are not limited to:

(i) The retention of significant trees precludes reasonable development of the property.

(ii) Physical limitations such as existing lot size, soils or topography.

(iii) Deteriorated health of trees.

(iv) Potentially hazardous trees.

(v) Trees subject to blowdown after construction.

(b) The minimum significant tree percentage may be reduced for preliminary plat applications that demonstrate special circumstances and propose revegetation:

(i) With approval from the planning commission a revegetation plan shall give consideration to revegetation and its proximity to existing vegetation, steep slopes, open space, parkland, wetlands, water courses, conservancy areas, arterial and collector streets, effectiveness as a land use buffer, enhancement of existing stands of native vegetation or other similar conditions.

(ii) The revegetation plan may combine the use of native species and nonnative species.

(iii) The revegetation plan shall provide for a two to one tree replacement ratio.

(iv) Replacement trees shall be a minimum two and one-half-inch caliper for deciduous trees or a minimum of six feet in height from

existing grade for conifers and comply with the requirements of subsection (5) of this section.

(c) The minimum significant tree percentage may be reduced for short plat, development and land clearing applications that demonstrate special circumstances and propose revegetation:

(i) With approval from the director a revegetation plan shall give consideration to revegetation and its proximity to existing vegetation, steep slopes, open space, parkland, wetlands, water courses, conservancy areas, arterial and collector streets, effectiveness as a land use buffer, enhancement of existing stands of vegetation or other similar conditions.

(ii) The revegetation plan may combine the use of native species and nonnative species.

(iii) The revegetation plan shall provide for a two to one tree replacement ratio.

(iv) Replacement trees shall be a minimum two and one-half-inch caliper for deciduous trees or a minimum of six feet in height from existing grade for conifers and comply with the requirement of subsection (5) of this section.

(d) Trees which do not meet the definition of significant trees may be credited towards the minimum significant tree percentage to be retained in order to facilitate the preservation of a greater number of smaller trees if a group of trees and its associated undergrowth provide a distinctive feature, are on a steep slope or adjacent to existing open space, parkland, wetlands, water courses, conservancy areas, arterial and collector streets, effectiveness as a land use buffer, enhancement of existing stands of vegetation or other similar conditions.

(e) A reduction in the replacement ratio required by subsections (3)(b) and (c) of this section may be considered for planting an understory to enhance habitat.

(f) The director may approve the removal of significant trees that have been retained pursuant to this chapter, if it is determined that the tree is diseased, physically deteriorated, potentially hazardous, damaged or subject to windthrow. Significant trees that are removed as approved by the director, and the one-year maintenance period has expired, shall be replaced at a one to one ratio. Replacement trees shall be a minimum two and one-half-inch caliper for deciduous trees or a minimum of six feet in height from existing grade for conifers.

(4) Determining the Number of Significant Trees to be Retained.

(a) For plats, short plats and binding site plans, trees that are within a regulated environmentally sensitive area shall be excluded and will not contribute towards the base number of significant trees or the 15 percent retention requirement.

(b) For all other development and clearing applications, trees that are within a regulated environmentally sensitive area, within the building footprint or are within the required landscape area shall be excluded and will not

contribute towards the base number of significant trees or the 15 percent retention requirement.

(c) All development proposals and clearing applications shall include a drawing showing the location of all significant trees, trees to be retained, trees to be removed, groves of trees and other natural features on and adjacent to the site.

(i) Parcels larger than five acres may utilize a sampling methodology to identify significant trees. Parcels smaller than five acres shall utilize a survey methodology to identify significant trees.

(5) Revegetation and Survival Standards.

(a) Sites with documented special circumstances in conformance with subsection (3) of this section shall provide a revegetation plan. The plan shall include:

(i) Written documentation of the special circumstances that make the retention of significant trees impracticable;

(ii) Information required under OHMC 19.46.100;

(iii) The revegetation plan shall replace significant trees that are required to be retained at a two to one ratio. Replacement trees shall be a minimum two and one-half-inch caliper for deciduous trees or a minimum of six feet in height from existing grade for conifers; and

(iv) Priority shall be given to revegetation and its proximity to existing vegetation, steep slopes, open space, parkland, wetlands, water courses, conservancy areas, arterial and collector streets, effectiveness as a land use buffer, enhancement of existing stands of vegetation or other similar conditions.

(b) All trees (replacement trees and retained trees) shall be maintained in a healthy growing condition. All trees found to be diseased, dead or dying within one year of acceptance by the city shall be replaced. Trees planted as part of a revegetation plan shall be replaced at a one to one ratio and retained trees shall be replaced at a two to one ratio.

(6) Construction Standards.

(a) A vegetation protection plan shall be submitted for all vegetation that is to be retained. The vegetation protection plan may be combined with the grading/clearing plan or the temporary erosion control plan.

(b) Barrier fencing or silt fencing shall be placed around the root zone of all trees and vegetation to be retained. There shall be no construction activity within the fencing.

(c) Any clearing to be done within the root zone must be approved by the director and utilize hand grubbing and light equipment. No fill will be allowed within the root zone unless approved by the director.

(7) Modifications of Standards in Order to Preserve Significant Trees or Stands of Vegetation.

(a) A variance may be granted to allow intrusion of a building into a setback yard by five feet to preserve significant trees elsewhere on the property.

(b) Setback averaging may be utilized to preserve significant trees elsewhere

on the property. A reduced setback shall be compensated by an increased setback elsewhere.

(c) A variance may be granted to allow a 10 percent reduction in parking spaces to preserve significant trees elsewhere on the property.

(8) Professional Evaluation. In determining tree removal or replacement, the director may require a professional evaluation or tree protection plan by a certified arborist at the applicant's expense, where the director determines that such evaluation is necessary to comply with the standards of this section. The evaluation may include providing a hazardous tree assessment, evaluation of the anticipated effects of a proposed project on the viability of trees on the site, developing a plan for tree protection or replacement and evaluation after construction.

19.46.050 Fences and hedges.

(1) Fences and hedges a maximum of six feet in height may be placed and maintained on the side and rear lot line, and across the front of the property line even with the front of the building on the lot but not closer to the street right-of-way than the required setback. On corner lots the setback shall apply to both streets.

Within the setback area a fence not more than three feet in height may be constructed; provided, that it is not sight-obscuring (50 percent of the area of the fence is open).

Within the setback area a solid hedge may be planted not to exceed a height of more than three feet.

On a corner lot there may be placed and maintained:

(a) A fence or hedge not more than three feet in height; provided, that it is not sight-obstructing (50 percent of the area of the fence or hedge is open);

(b) A six-foot-high open wire fence along the property line facing the side street; provided, that it does not come closer to the street right-of-way on the front of the lot than the required building setback;

(c) A four-foot-high solid fence or hedge parallel to the property line facing the side street; provided, it is 10 feet back from the side street; and provided, that it does not come closer to the street on the front of the lot than the rear of the house.

(2) In commercial zones, no fence or hedge may be placed on the front yard setback except where required to screen the property from the adjacent lot, then the screen shall extend to the street right-of-way.

(3) Fence and hedge limits in the various zones are as follows:

Residential Zones:	Front yard	3 feet maximum
	Side yard	6 feet maximum
	Rear yard	6 feet maximum
Commercial Zones:	Front yard	0 feet maximum
	Side yard	6 feet maximum
	Rear yard	6 feet maximum
Industrial Zones:	Front yard	8 feet maximum
	Side yard	8 feet maximum
	Rear yard	8 feet maximum

19.46.060 Phased projects.

Phased projects include but are not limited to shopping centers, large site developments proceeding in phases, applicable subdivisions, cluster developments, and business parks. Before construction permits are issued for the first phase of any phased project, conceptual approval of the landscaping plan for the site as a whole is required. Final approval of the landscaping plan for each phase is required before construction permits are issued for a phase. Installation of landscaping for each phase of development shall be required prior to releasing occupancy permits for that phase. Relief may be available per OHMC 19.46.110.

Landscaping along a frontage road or perimeter screening may be required to be installed in the first phase. Criteria to be considered in the decision includes but is not limited to the following:

(1) Timing of phases of a project;

(2) Proximity to residential areas.

19.46.070 Conflicts.

(1) If the provisions of this chapter conflict with other ordinances or regulations, the more stringent limitation or requirement shall govern or prevail to the extent of the conflict.

(2) In the event that, because of lot configuration, adjacent land uses, or special circumstances, more landscaping is required to meet all requirements of this title, the higher amount of landscaping shall be required.

19.46.080 Maintenance standards.

(1) Maintenance of Cultivated Areas.

(a) General. The owner of land subject to this chapter shall be responsible for the maintenance of said land in good condition so as to present a healthy, neat, and orderly landscape area.

(b) Maintenance of Plants. All landscaping and screening areas shall be maintained in a healthy, growing condition. Broken, dead, or dying trees, shrubs, or other plants shall be replaced. All landscaping and screening shall be kept free of trash and weeds.

(c) Tree Removal. It shall be the responsibility of each private property owner to remove any dead, diseased, or dangerous trees or shrubs, or part thereof, located on private property which overhang or interfere with traffic control devices, public sidewalks, rights-of-way, or property owned by the city. The city shall have the authority to order the removal and possible replacement of any such trees or shrubs.

(d) Pruning.

(i) All pruning should be accomplished according to good horticultural standards. Trees shall be pruned only as necessary to promote healthy growth;

(ii) Unless special approval is provided, trees shall be allowed to attain their normal size and shall not be severely pruned or "hat racked" in order to permanently maintain growth at a reduced height;

(iii) Trees may be periodically pruned or thinned in order to reduce the leaf mass and stimulate further branching.

(e) Mowing. Grass shall be mown as required in order to encourage deep root growth and therefore the preservation of irrigation water.

(f) Edging. All roadways, curbs, and sidewalks shall be edged when necessary in order to prevent encroachment from the adjacent grass areas.

Power trimmers shall not be used to trim grasses around trees since they will quickly remove bark causing deterioration and eventual death of the tree.

(g) Watering. All watering of planted areas shall be managed so as to:

(i) Maintain healthy flora;
(ii) Make plant material more drought tolerant;
(iii) Avoid excessive turf growth;
(iv) Minimize fungus growth;
(v) Stimulate deep root growth;
(vi) Minimize leaching of fertilizers;
(vii) Minimize cold damage.

Watering of plants and trees should always be in sufficient amounts to thoroughly soak the root ball of the plant and the surrounding area, thereby promoting deep root growth and drought tolerance.

Whenever possible, automatic irrigation systems should be installed and operation should occur between the hours of 12:00 midnight and 6:00 a.m. Irrigation during these hours helps to reduce fungus growth and loss of water due to evaporation.

If an irrigation system is installed it shall be regularly maintained to eliminate waste of water due to loss of heads, broken pipes, or misjudged nozzles.

(2) Maintenance of Natural Plant Communities.

(a) General. All areas preserved as natural plant communities shall be annually cleared of nonnative vegetation and lawn grasses, and cleared of all trash and other debris.

(b) Required Management Plan. For all areas of preserved plant communities larger than three acres in area, the owner shall submit for the approval of the planning department a narrative management plan indicating the manner in which the owner will preserve the native plant communities. The narrative shall include:

(i) Whether the existing vegetation is to be preserved in the existing species composition;
(ii) If applicable, the manner in which the composition of existing plant material is to be preserved;
(iii) The maintenance schedule for removal of debris and exotic species;
(iv) Other information the planning department feels necessary to approve a management plan.

All natural plant communities shall be managed in order to maintain the plant community for the purpose it was preserved.

When applicable, the planning department shall make periodic inspections of the natural areas to verify the owner's adherence to the approved management plan.

19.46.090 Timing of landscaping completion.

(1) Completion of Landscaping. All landscaping must be completed in accordance with the approved landscape plan before a certificate of occupancy may be issued

for any building on the lot. In the event that weather conditions do not allow for the installation of the landscaping, the property owner shall provide the planning director with documented assurance that the landscaping will be completed within six months. The building official may then issue a one six-month temporary certificate of occupancy and permit the owner to complete the landscaping within the six-month period. For the purpose of this subsection, "documented assurance" means:

(a) A bond or other assurance acceptable to the city equal to 112 percent of the estimated installation costs shall be required. Such deposit shall be accompanied by a letter which shall stipulate completion of all landscape development no later than six months after the issuance of the certificate of occupancy or date of final approval, whichever is later.

(b) If these conditions are not met, the city may use the deposit to perform the landscape development.

19.46.100 Landscape plans required.

(1) General. Prior to the issuance of any building permit, a landscape plan shall be submitted to, reviewed by, and approved by the planning director.

(2) Nature of Required Plans. Landscape plans for lots larger than one and one-half acres in size shall be prepared by and bear the seal of an architect or landscape architect, or other professional with demonstrated qualifications.

(3) Contents of Landscape Plan. The landscape plan shall:

(a) Be drawn to scale, including dimensions and distances;

(b) Delineate the existing and proposed parking spaces, or other vehicular areas, access aisles, driveways, and similar features;

(c) Show all landscape features including height, quality, type, botanical and common names, place of planting and all areas of vegetation, in context with the location and outline of any existing or proposed and other improvements on the site;

(d) Gross acreage, area of preservation, number of trees to be planted and/or preserved, other plants to be planted and/or preserved, and square footage of paved areas shall be included in a tabulation that clearly displays this and other relevant information necessary for the planning department to evaluate compliance with the provisions of this chapter;

(e) Include an irrigation plan, which shows zones, connecting nozzles, distribution valves, irrigation lines, sprinkler heads, timer location, and backflow prevention device, as well as other information integral to the proposed irrigation system.

An application and inspection fee, in the amount set by the city council from time to time, shall be collected by the building department at time of application for certificate of occupancy.

19.46.110 Administrative relief and alternative compliance.

The standards contained in this chapter are intended to encourage development which is economically viable and environmentally satisfying. The standards are not intended to be arbitrary or to inhibit creative solutions. Projects may justify approval of alternative methods for compliance with the standards. Conditions may arise where normal

compliance is impractical or impossible, or where maximum achievement of the city's objectives can only be obtained through alternative compliance.

(1) Requests for alternative compliance and administrative relief may be accepted for any application to which the requirements of this chapter apply, when one or more of the following conditions exist:

(a) Topography, soil, vegetation or other site conditions make it impossible or impractical; or improved environmental quality would result from alternative compliance;

(b) Space limitations, unusually shaped lots, and prevailing practices in the surrounding neighborhood may justify alternative compliance for infill sites, and for improvements and redevelopment in older communities;

(c) Parking lots with five parking spaces or less may apply for administrative relief in order to reconfigure landscaping to be less than 15 percent of the parking lot. For example, a portion of the requirement can be met by landscaping around the perimeter of the parking lot;

(d) Change of use of an existing site increases the buffer required more than it is feasible to provide;

(e) Safety considerations make alternative compliance necessary;

(f) When an alternative proposal is equal or better than normal compliance in its ability to fulfill all landscaping requirements in this chapter;

(g) Alternative types of irrigation for preexisting conditions.

(2) The following may be considered as a remedy in the cases where alternative compliance is proposed:

(a) Alternative compliance shall be limited to the specific project under consideration and shall not establish precedents for acceptance in other cases;

(b) Requests for alternative compliance shall be accompanied by sufficient explanation and justification, written and/or graphic, to allow appropriate evaluation and decision;

(c) A request for alternative compliance shall be submitted to the planning director (or designee) at the time the plan is submitted. In the case of those plans for which no public hearing is required, the decision of the planning director (or designee) will be final, unless the applicant appeals the decision to the planning commission. In the case of those plans for which a planning commission or other public hearing is required:

(i) The request for alternative compliance shall be submitted no less than 21 calendar days prior to the scheduled date of the hearing;

(ii) The planning director (or designee) will forward a recommendation to the proper hearing authority a minimum of five working days prior to the hearing;

(d) The planning director may request modification of proposed standards in the administrative relief proposal.

19.46.120 Enforcement of chapter.

A violation of any of the provisions of this chapter shall be a civil offense and any person failing to comply thereof shall be punished by a fine not to exceed $250.00 or value of materials and labor to bring the property into compliance with this chapter, whichever is

greater. It shall be a separate offense for each and every day or portion thereof during which any violation of any part of the provisions of this chapter is committed, continued or permitted.

Section Twenty-One. Oak Harbor Municipal Code Chapter 19.47 is hereby re-adopted to read as follows:

Chapter 19.47
LAND CLEARING

Sections:

19.47.010 Purpose.
19.47.020 Applicability.
19.47.030 Permits.
19.47.040 Exemptions.
19.47.050 Application for land clearing permit.
19.47.060 Minor clearing permit.
19.47.070 Performance bond or cash guarantee.
19.47.080 Appeals.
19.47.090 Civil/criminal enforcement.
19.47.100 Injunctive enforcement.
19.47.110 Severability.
19.47.120 Permit fees.
19.47.130 Compliance with state law.

19.47.010 Purpose.

These regulations are adopted for the following purposes. The city staff shall consider such purposes as criteria or standards of the issuance of land clearing permits under OHMC 19.47.050.

(1) To promote the public health, safety and general welfare of the citizens of Oak Harbor;

(2) To preserve and enhance the city's physical and aesthetic character by preventing indiscriminate removal or destruction of trees and ground cover on undeveloped and partially developed property;

(3) To promote land development practices that result in a minimal disturbance to the city's vegetation and soils;

(4) To minimize surface water and ground water runoff and diversion and to prevent erosion and reduce the risk of slides;

(5) To minimize the need for additional storm drainage facilities;

(6) To acknowledge that trees and ground cover reduce air pollution by producing pure oxygen from carbon dioxide;

(7) To promote building and site planning practices that are consistent with the city's natural topographic and vegetation features while at the same time recognizing that certain factors such as condition (e.g., disease, danger of falling, etc.), proximity to existing and proposed structures and improvements, interference with utility services, protection of scenic views, and the realization of a reasonable enjoyment of property may require removal of certain trees and ground cover;

(8) To insure prompt development, restoration and replanting and effective erosion control of property after land clearing through the use of phase development, performance bonds, and other reasonable controls;

(9) To reduce siltation and water pollution;

(10) To implement the goals and objectives of the Washington State Environmental Policy Act;
(11) To maintain the rural character of the city;
(12) To protect and enhance critical lands and their buffers;
(13) To implement the following environmental element policies as stated in the comprehensive plan:
  (a) Policy 1.c: Protect the public and public resources and facilities from injury, loss of life, property damage or financial loss due to flooding, erosion, landslides, soil subsidence and slope failure,
  (b) Policy 6.c: Require planting or retention of trees and shrubs with new development and substantial development projects,
  (c) Policy 6.g: The city shall require developers to submit and receive city approval of erosion control and limit-of-clearing plans, as applicable, prior to release of forest practices permits and land clearing,
  (d) Policy 6.h: Consider adopting a land clearing and grading ordinance to prevent indiscriminate removal or destruction of trees and ground cover on undeveloped and partially developed property;
(14) Not to prevent the reasonable development of land in the city of Oak Harbor.

19.47.020 Applicability.
This chapter applies to all properties within the city with exceptions as shown in OHMC 19.47.040. This does not apply to oak trees, which are regulated under Chapter 20.16 OHMC.

19.47.030 Permits.
No person, corporation, or other legal entity shall engage in or cause land clearing in the city without having obtained a land clearing permit or minor clearing permit. Obtaining a land clearing permit or minor clearing permit does not exempt any person from obtaining a grading permit, when required.

19.47.040 Exemptions.
The following shall be exempt from the provisions of this chapter:
(1) The installation and maintenance of fire hydrants, surface electrical transformer boxes, water meters, water and sewer mains, pumping stations, pedestrian or bicycle paths, and street improvements by the city or its contractors;
(2) Removal of trees and ground cover in emergency situations involving immediate danger to life or property or substantial fire hazards;
(3) Removal of dead or diseased ground cover or trees. If there is a question as to whether ground cover or trees are diseased, a forester or city staff shall inspect the site and determine whether the plant needs to be removed;
(4) Removal of trees or ground cover on partially developed lots, for purposes of general property and utility maintenance, landscaping or gardening; provided, that this exemption shall not apply to any land clearing which includes the use of a bulldozer or similar mechanical equipment and shall not be construed to eliminate the requirement of permits for land clearing for the purpose of developing the property with substantial permanent improvements such as roads, driveways, utilities, or buildings;
(5) Developed single-family residential lots;

(6) Individual undeveloped single-family residential lots where a building permit has been issued.

19.47.050 Application for land clearing permit.

(1) An application for a land clearing permit shall be submitted by the owner or authorized agent on a form provided by the city and shall be accompanied by such of the following documents and information as are determined to be necessary by the city staff as indicated on the application form.

(2) Applications shall be submitted with the preliminary plat application, where applicable.

(3) The city staff shall complete its review and make its decision within 20 working days from the date a complete application is submitted, unless an extension is authorized by the planning director.

(4) Any permit granted hereunder shall expire six months from the date of issuance. Approved plans shall not be amended without authorization of the city staff. The permit may be suspended or revoked by the city staff because of incorrect information supplied, not following the approved plan or any violation of the provisions of this chapter. A one time six-month extension may be approved by the planning director upon submission of a letter from the applicant stating the reason for delay and approximate time clearing will be completed.

(5) The city shall be advised by the property owner or authorized agent, the day prior to beginning any land clearing operations.

(6) Land clearing involving the use of heavy equipment shall be limited to those hours indicated in OHMC 6.56.030(8).

(7) The applicant shall be responsible for posting the property as per Chapter 18.21 OHMC.

(8) In the case that multiple owners own a share in a property, a homeowners' association or other similar maintenance association shall be responsible for continued maintenance of the land and remaining vegetation, subsequent to land clearing.

(9) An erosion and sediment control plan shall be approved prior to issuance of a land clearing permit, or as a condition of approval of a land clearing permit.

19.47.060 Minor clearing permit.

In the case that a property owner wishes to remove five percent or less of the total trees and ground cover on a site, the owner may apply for a minor clearing permit.

(1) To apply for a permit, the owner must submit a letter requesting approval to remove the trees and/or ground cover. Such letter shall provide the following information:

   (a) The percentage of total ground cover and trees which will be removed, as compared to the existing amount of trees and ground cover on the lot;

   (b) Location of the trees and/or ground cover proposed for removal;

   (c) If applicable, the approximate date the last minor clearing permit was approved by the city;

   (d) Date that trees and/or ground cover are to be removed.

(2) At no time shall the city approve, either by individual permit or by multiple permits, the removal of more than five percent of ground cover and trees on a lot

per year through the minor clearing permit. Any proposed tree or ground cover removal above the annual maximum of five percent is subject to the land clearing permit process.

(3) The minor clearing permits may not be used for requesting the removal of trees within a required buffer on arterial streets.

19.47.070 Performance bond or cash guarantee.

The city staff may require, as a condition to the granting of a permit, that the applicant furnish a performance bond or cash guarantee to the city to secure the applicant's obligation, after the approved land clearing has been accomplished, to complete the restoration and replanting of the property in accordance with the terms of the permit and within the term thereof. The bond shall be in an amount equal to the estimated cost of such restoration and replanting, plus an additional 10 percent and with surety and conditions satisfactory to the city staff.

19.47.080 Appeals.

Any person or persons aggrieved by any action of the city staff may within 15 days of such action file a written notice of appeal in accordance with Chapter 1.24 OHMC.

19.47.090 Civil/criminal enforcement.

A violation of any of the provisions of this chapter shall be a misdemeanor and any person found guilty thereof shall be punished by a fine not to exceed $500.00 or replacement value, whichever is greater. It shall be a separate offense for each and every day or portion thereof during which any violation of any part of the provisions of this chapter is committed, continued or permitted.

19.47.100 Injunctive enforcement.

Any violation of the provisions of this chapter is hereby declared to be a public nuisance and may be abated through proceedings for injunctive or similar relief in superior court or other court of competent jurisdiction.

19.47.110 Severability.

If any section, paragraph, subsection, clause or phrase of this chapter is for any reason held to be unconstitutional or invalid by action of law such decision shall not affect the validity of the remaining portions of the chapter.

19.47.120 Permit fees.

After review and approval of the application a land clearing permit and minor clearing permit will be issued at a cost determined from time to time by the city council.

19.47.130 Compliance with state law.

All clearing shall be done in accordance with applicable state laws.

Section Twenty-Two. Oak Harbor Municipal Code Chapter 19.48 is hereby re-adopted to read as follows:

Chapter 19.48
SITE PLAN REVIEW PROCEDURES

Sections:

19.48.010 Purpose and intent.
19.48.020 Applicability.
19.48.030 Exemptions.
19.48.032 Requirements for application submittal.
19.48.035 Requirements for the site plan map.
19.48.037 General evaluation criteria for site plan approval.
19.48.039 Timing of certain actions in site plan approval, reviewed development.
19.48.040 Basis for determining the review process.
19.48.050 Decision criteria for site plan review.
19.48.052 Supplemental issues in considering review of impacts to surrounding properties and use.
19.48.054 Supplemental issues in considering mitigation of impacts to the site.
19.48.056 Supplemental issues in considering mitigation of traffic impacts.
19.48.058 Supplemental issues in considering mitigation of impacts from signage and surrounding property.
19.48.060 Commercial and industrial design guidelines.
19.48.070 Site plan review procedures.
19.48.080 Authority for conditions or plan modifications.
19.48.090 Minor modifications to an approved site plan.
19.48.100 Major modifications to an approved site plan.
19.48.110 Timing of development permits.
19.48.120 Expiration and extension of site plan approval.
19.48.130 Exception to time limit for phased projects.
19.48.180 Revocation of site plan and design review approval.
19.48.190 Compliance required.
19.48.200 Penalty for noncompliance.

19.48.010 Purpose and intent.

The purpose of site plan approval shall be to assure that the site plan of proposed uses is compatible with existing and potential uses and complies with development regulations and the comprehensive plan of the city of Oak Harbor. Site plan elements subject to this section include, but are not limited to, site layout, building orientation, pedestrian and vehicular access, signage, landscaping, natural features of the site, screening and buffering, parking and loading arrangements, and illumination. Site planning is the horizontal and vertical arrangement of these elements so as to be compatible with the physical characteristics of a site and with the surrounding area. Site plan review may include design review, which addresses the aesthetic considerations of architectural style, exterior treatment and colors. Site plan review should occur at an early stage in the development of a project, when the scale, intensity and layout of a project are known. The intent of the site plan approval shall be to:

(1) Promote integrated project review of various city codes concerned with

development;

(2) Assure consistency with development regulations and plans;

(3) Protect neighboring owners and uses by assuring that reasonable provisions have been made for such matters as sound and sign buffers, light and air, and those other aspects of site plans which may have substantial effects on neighboring land uses;

(4) Promote the orderliness of community growth, protect and enhance property values and minimize discordant and undesirable impacts of development both on- and off-site;

(5) Promote coordination of public or quasi-public elements, such as walkways, driveways, paths, and landscaping within segments of larger developments and between individual developments;

(6) Ensure convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent areas;

(7) Protect the desirable aspects of the natural landscape and environmental features of the city by minimizing the undesirable impacts of proposed developments on the physical environment;

(8) Minimize conflicts that might otherwise be created by a mix of uses within allowed zones; and

(9) Promote the creation of "campus-like" settings in appropriate zones.

19.48.020 Applicability.

(1) Site Plan Review. No use shall be commenced nor shall any development permit be issued for any use or structure requiring site plan approval pursuant to this section until the director has approved or approved with conditions a site plan when required by this chapter. Development permits issued shall be in accordance with the approved site plan.

(2) A site plan review shall be required in the following instances:

(a) Original construction of new facilities or structures.

(b) Variances.

(c) Conditional use permits.

(3) Binding Site Plans. If the applicant desires to make the site plan a binding site plan, the applicant shall notify development services in writing, at the time of application, and meet the additional requirements listed in Chapter 21.80 OHMC and pay any additional fees required.

If a binding site plan is applied for anytime after the application for site plan is made, a new or amended site plan may be required to meet the requirements of Chapter 21.40 OHMC, except OHMC 21.40.080.

19.48.030 Exemptions.

A site plan shall not be required for remodeling existing buildings or structures, provided:

(1) The alterations conform with any prior approved site plan; and

(2) The alterations do not modify the existing site layout; or for single-family dwellings or single duplexes except those located in critical areas or in cases when two or more duplexes will be built on the same lot.

19.48.032 Requirements for application submittal.

The applicant shall submit the following items:

(1) An application fee;

(2) A verified statement by the applicant that the property affected by the application is in the exclusive ownership of the applicant, or that the applicant has submitted the application with the consent of all owners of the affected property;

(3) Ten copies of the following:

(a) A cover sheet listing contents of the application package;

(b) An application form with at least one original copy signed by the applicant in ink;

(c) A written narrative that describes the existing conditions and proposed project in detail, describing how the project meets and/or exceeds the site plan review criteria as listed in OHMC 19.48.037 and 19.48.050 and including all information about the proposed and existing use, size, landscaping, screening, lighting, noise, structure(s), structural changes, hours of operation, and capacity (storage, students, etc.) of the project;

(d) A complete and accurate site plan map that conforms to the requirements listed in OHMC 19.48.035;

(e) All associated applications, to the extent applicable, e.g., SEPA, floodplain, habitat, shoreline, wetland, variances, conditional use, transportation concurrency, land clearing;

(f) A mailing list of all property owners adjacent to the project site, along with a map showing locations of the adjacent property owners unless the application requires a review process IV, in which case the list of property owners must include all owners within a 300-foot radius of the site;

(g) Any additional information requested in, or as a result of any, preapplication conference;

(4) Three copies of the following:

(a) A preliminary storm water report. If the project involves the addition or redevelopment of 2,000 square feet or more of impervious surfacing, storm water review will be required for the project;

(b) A traffic impact study, if applicable, indicating the number of additional average daily trips the proposal could be expected to generate, prepared by a professional engineer certified to practice in Washington State;

(c) Any other environmental studies required;

(5) Any other additional copies of application package needed for public hearings.

19.48.035 Requirements for the site plan map.

The applicant shall submit a site plan map that is complete and accurate with a minimum scale of one inch the equivalent of 20 feet, and of a minimum size of 24 inches by 36 inches with the following information:

(1) General Information.

(a) Project name;

(b) Street address of property;

(c) Page border;

(d) Title block containing the drawing title, scale, revision number, if applicable, north arrow, date;

(e) Vicinity map including streets and surrounding landmarks within 500 feet of the property or enough information to easily locate the site on a large

city map;

(f) Legal description of the property as provided by the Island County assessor's office;

(g) Parcel number as provided by the Island County assessor's office;

(h) Parcel map as provided by the Island County assessor's office showing all adjacent parcels;

(i) Existing zoning;

(j) Square footage of floor area in each structure;

(k) Parking spaces and parking lot dimensions;

(l) Type of Construction Proposed. Indicate color and texture of exterior surfaces, e.g., wood, concrete, block, composite;

(m) Number of units, if applicable;

(n) If project will be developed in phases, indicate the number of units or buildings for each phase;

(o) Project density, including number of units per gross acre.

(2) Site Information.

(a) Location of property lines, indicating exterior lines with bold solid lines and interior property lines with long dashed lines;

(b) Topographic contour lines showing both existing and proposed elevations, at no more than five-foot intervals, extending a minimum of 10 feet beyond the property line. The interval should be such that the existing and proposed slopes of the property can be determined on the drawing. Proposed contours shall show ties to existing contours and show spot elevations as needed;

(c) Easements showing all existing, proposed, public and private easements;

(d) Building setbacks indicating the front, rear and side building setbacks with clear dimensions;

(e) Distance to adjacent structures on site, if applicable;

(f) Proposed building(s), including dimensions;

(g) Sizes and locations of solid waste containers showing details of any site screening fences or structures and screening of dumpsters, etc.;

(h) Location of existing and proposed signs including elevation, size, material, color, design and method of illumination;

(i) Locations and dimensions of off-street parking, including handicap parking, how parking is designated per unit if applicable, lot striping, wheel stops and curbing, include turning radii in the circulation pattern;

(j) Locations and sizes/widths of existing and proposed driveways, traffic flow, and parking lot circulation and maneuvering;

(k) Locations and dimensions of existing and proposed rights-of-way, streets, curbs, gutters, and street centerlines, including pavement edges;

(l) Dimensions and locations of sidewalks and wheelchair ramps;

(m) Limits of the paved areas.

(3) Building Information.

(a) Architectural elevations of existing and proposed buildings, including height and number of stories, along with any mechanical roof-mounted equipment;

(b) Generalized floor plans, planned uses for each area of building (including occupancy type, if known), finished floor elevations, exiting and accessibility accommodations.

(4) Infrastructure Improvements.

(a) Location of existing and proposed storm sewers, catch basins, manholes, parking lot storm drains, detention structures, etc.;

(b) Location and size of existing and proposed water mains, valves, service lines, size of water meters, sprinkler systems, fire hydrants, and backflow devices;

(c) Location and size of existing and proposed sanitary sewer collectors, manholes, pumping stations, force main and side services, including cleanouts;

(d) Location of other existing and proposed utilities, including, but not limited to, gas, power, telephone, streetlights.

(5) Landscaping. The applicant shall submit a landscape plan that is consistent with the proposed site plan. The plan shall be complete and accurate with a minimum scale of one inch equivalent of 20 feet, and of minimum size of 24 inches by 36 inches with the following information:

(a) Project name;

(b) Street address of property;

(c) Page border;

(d) Title block containing the drawing title, scale, revision number if applicable, north arrow, date;

(e) For lots larger than 1.5 acres in size the landscape plan shall be prepared by and bear the seal of a landscape architect, architect, or other professional with similar qualifications;

(f) Dimensions and distance;

(g) Existing and proposed parking spaces, or other vehicle areas, access aisles, driveways, and similar features;

(h) All landscape features including height, quality, type, botanical and common names, places of planting and all areas of vegetation shall be shown in context with the location and outline of any existing or proposed and other improvements on the site including fences, walls or berms;

(i) Gross acreage, area of preservation, number of trees to be planted and/or preserved, other plants to be planted and/or preserved, and square footage of paved areas shall be included in a table that clearly displays this and other relevant information necessary for the evaluation of compliance with the provisions of Chapter 19.46 OHMC, Landscaping and Screening;

(j) Percentage of parking lot area to be landscaped;

(k) Planting details including soil and staking requirements;

(l) Maintenance requirements; and

(m) Irrigation plan showing number, location and type of heads, zones, and drip systems, if applicable, as well as water meter locations and sizes.

19.48.037 General evaluation criteria for site plan approval.

An application that complies with all of the following general evaluation criteria listed below, the requirements of this title, and applicable city standards shall be approved. An

application that does not comply with these criteria shall be denied by the city.

(1) Comprehensive Plan. The proposed site plan and other application information proposed for development shall be consistent with the city's comprehensive plan.

(2) Zoning. The proposed site plan and other required application information shall meet the requirements of this title;

(3) Natural Environment. The site plan and other required application information shall meet the requirements of environmentally sensitive area regulations of OHMC Title 20 and the State Environmental Policy Act, Chapter 197-11 WAC;

(4) Public Services. The proposed project shall be designed to meet the following:

(a) Adequate water supply to city standards as listed in OHMC Title 13;

(b) Adequate sewer facilities to city standards as listed in OHMC Title 14;

(c) Appropriate surface water management to city standards as listed in OHMC Title 12;

(d) Adequate fire protection and hydrants to city standards as listed in OHMC Title 8;

(e) Appropriate street improvements (including sidewalks) or site access facilities to city standards for or to all anticipated uses within the project as listed in OHMC Titles 11 and 17 and Chapter 21.40 OHMC;

(f) Provisions for all appropriate deeds, dedications and all other easements; and

(g) Provisions made for access to and maintenance of all common facilities.

(5) Existing Public Facilities and Services. The proposed project shall be designed to not adversely impact the public facilities and services which the city has adopted a level of service for without providing for additional mitigation means meeting the city's approval.

Mitigation measures, if necessary, must be proposed by the applicant and designed by a certified professional in that applicable field.

(6) Phasing Plan. In lieu of requiring the completion of all public/private improvements for the entire site prior to occupancy of any structure on the site, the city may approve a phasing plan. The city may require suitable guarantees as provided in Chapter 19.90 OHMC. The public/private im-provements in each phase must be designed to stand on their own as required by the city. A phasing plan can only be approved if each city department responsible for the conditions of the permit agrees on the phased development plan. In most cases, those departments are development services, public works, and fire.

19.48.039 Timing of certain actions in site plan approval, reviewed development.

Unless specifically excepted by other ordinances, generally, the development plan approval process requires the following items be provided at the times specified in the tables below.

(1) Permits to apply for before or with the site plan application:

Permit	When Permit Application Must be Made
Limited clearing permit. (Only applicable when a SEPA application is not required).	Before site plan application.

Grading permit.	With site plan application.
Clearing permit.	With site plan application.
SEPA checklist.	With or before site plan application.
Concurrency application.	With or before site plan application.

(2) Actions that need to be taken, fees that need to be paid and plans that need to be submitted before the building permit will issue. All items can be provided concurrent with site plan application:

Action	**Actions That Need to be Taken Before the Building Permit Will be Issued**
Impact fees for park and transportation.	Fee to be paid before building permit will issue.
System development charges for water and sewer.	Fee to be paid before building permit will issue.
Latecomer's agreement.	Fee to be paid and agreement filed, before building permit will issue
Engineering plan.	Approved before building permit will issue.
Landscape plan.	Approved before building permit will issue.
Installation of streets.	Before building permit will issue or when bonded for as provided in Chapter 19.90 OHMC.
Installation of public water utility improvements.	Before building permit will issue or when bonded for as provided in Chapter 19.90 OHMC.
Installation of public sewer improvements.	Before building permit will issue or when bonded for as provided in Chapter 19.90 OHMC.
Installation of surface water management facilities.	Before building permit will issue or when bonded for as provided in OHMC 12.30.535.

(3) Connections and installations to be made before an occupancy permit will be issued or the use will be approved:

Connections and Installations	**Timing**

Installation of private sewer improvements (as defined in OHMC 14.03.060) outside of building.	Before occupancy permit will issue or use is approved.
Connection to an approved water supply.	Before occupancy permit will issue or use is approved.
Connection to the sewer system.	Before occupancy permit will issue or use is approved.
Installation of landscaping and sprinkler system.	Before occupancy permit will issue or use is approved or when bonded for as provided in OHMC 19.46.090.

19.48.040 Basis for determining the review process.

(1) Unless otherwise directed, the approval of a site plan is a Type II review process.

(2) The site plan approval shall be a Type I review process for projects with a total building square footage less than or equal to 4,000 square feet.

(3) The site plan approval shall be a Type IV review process when one of the following conditions applies:

(a) The director determines that based on departmental comments or public input there are significant unresolved concerns that are raised by the proposal; or

(b) The applicant has requested a public hearing; or

(c) The proposed project is larger than any one of the following:

(i) One hundred semi-attached or attached residential units;

(ii) One hundred fifty thousand square feet of gross floor area for industrial uses;

(iii) Thirty-five thousand square feet of gross floor area for commercial offices or similar uses;

(iv) Four stories or 45 feet in height;

(v) Ten acres in size.

19.48.050 Decision criteria for site plan review.

The reviewing authority shall review and act upon site plans based upon comprehensive planning considerations and the following criteria in this section. These criteria are objectives of good site plans to be aimed for in development within the city of Oak Harbor. However, strict compliance with any one or more particular criterion may not be necessary or reasonable. These criteria also provide a frame of reference for the applicant in developing a site, but are not intended to be inflexible standards or to discourage creativity and innovation. The site plan review criteria include the following:

(1) Consistency as determined under Chapter 18.20 OHMC;

(2) Mitigation of impacts to surrounding properties and uses;

(3) Mitigation of environmental impacts of the proposed site plan to the site;

(4) Conservation of area-wide property values;

(5) Safety and efficiency of vehicle and pedestrian circulation;
(6) Provision of adequate light and air;
(7) Mitigation of noise, odors and other harmful or unhealthy conditions;
(8) Availability of public services and facilities to accommodate the proposed use;
(9) Prevention of neighborhood deterioration and blight.

19.48.052 Supplemental issues in considering review of impacts to surrounding properties and use.

The following issues shall be considered in determining impacts on surrounding properties and uses:

(1) Mitigation of undesirable impacts of proposed structures and site layouts that could impair the use of surrounding uses and structures and of the community;
(2) Provision of desirable transition and linkage between uses and to the street, utility, walkway, and trail systems in the surrounding area by the arrangement of easements, landscaping, fencing and/or other buffering techniques, in order to prevent conflicts and to promote coordinated and planned benefit from, and access to, such elements;
(3) Effective location, design and screening of parking and service areas in order to promote efficient function of such facilities, to provide integrated facilities between uses when beneficial, to promote "campus-like" layouts in appropriate zones, and to prevent unnecessary repetition and conflict between the uses and service areas of facilities;
(4) Mitigation of the unnecessary and avoidable impacts of new construction on views from existing buildings and future development sites, recognizing the public benefit and desirability of maintaining visual accessibility to attractive natural features and of promoting "campus-like" settings in appropriate zones;
(5) Provision of effective screening from public streets and residential uses for all permitted outdoor storage area (except auto and truck sales), for surface mounted utility equipment, for rooftop equipment and for all refuse and garbage containers, in order to promote a "campus-like" setting where appropriate and to preserve the effect and intent of screening or buffering otherwise required by the zoning code; and
(6) Consideration of placement and design of exterior lighting in order to avoid excessive brightness or glare to adjacent properties and streets.

19.48.054 Supplemental issues in considering mitigation of impacts to the site.

The following issues shall be considered in determining impacts of development to the site:

(1) Building placement and spacing to provide for privacy and noise reduction; orientation to views and vistas and to site amenities, to sunlight and prevailing winds, and to pedestrian and vehicle needs;
(2) Preservation of the desirable natural landscape through retention of existing vegetation and limited soil removal, insofar as the natural characteristics will enhance the proposed development; and
(3) Design and protection of planting areas so that they are not susceptible to damage from vehicles or pedestrian movements.

19.48.056 Supplemental issues in considering mitigation of traffic impacts.

The following issues shall be considered in determining safety and efficiency of vehicular and pedestrian circulation:

(1) Provision of adequate and safe vehicular access to and from all properties;

(2) Arrangement of the circulation pattern so that all ingress and egress movements may occur at as few points as possible along the public street, the points being capable of channelization for turning movements;

(3) Consolidation of access points with adjacent properties, when feasible;

(4) Promotion of the safety and efficiency of the internal circulation system, including the location, design and dimensions of vehicular and pedestrian access points, drives, parking, turnarounds, maneuvering areas, walkways, bikeways, and emergency access ways; and

(5) Separation of loading and delivery areas from parking and pedestrian areas.

19.48.058 Supplemental issues in considering mitigation of impacts from signage and surrounding property.

The following issues shall be considered in determining impacts of development from signage on surrounding property and public spaces:

(1) Employment of signs primarily for the purpose of identification;

(2) Management of sign elements, such as size, location and arrangement so that signs complement the visual character of the surrounding area and appear in proportion to the building and site to which they pertain; and

(3) Moderation of surface brightness or lighting intensity except for that necessary for sign visibility.

19.48.060 Commercial and industrial design guidelines.

The commercial and industrial design guidelines, referred to as "design guidelines," a copy of which is filed with the Oak Harbor city clerk, are hereby adopted as the design guidelines for the commercial and industrial zones of Oak Harbor and shall be applied as follows:

(1) All of the design guidelines apply to new construction.

(2) To the extent reasonably practicable, the design guidelines shall apply to all exterior remodels with a value in excess of 60 percent of the building valuation and which also have a total value in excess of $100,000 ("major exterior remodels").

(3) For exterior remodels with a value less than 60 percent of the building valuation of which have a total value less than $100,000 ("minor exterior remodels"), it is only required that the proposed improvements meet the design guidelines and do not lead to further nonconformance with the design guidelines. For example, if a property owner decides to replace a window, then the window shall meet the guideline standards, but new pedestrian coverings are not required.

(4) The design guidelines do not apply to remodels that do not change the exterior appearance of the building. However, if a project involves both exterior and interior improvements, then the project valuation shall include both exterior and interior improvements.

(5) The design guidelines are intended to supplement the design standards in the city of Oak Harbor's zoning ordinance. Some of the design guidelines state that the city may relax or modify zoning ordinance standards if the design guidelines are

met. Other guidelines include provisions, requirements, or considerations that are in addition to the zoning ordinance standards. Where the design guidelines and zoning ordinance standards conflict and there is no provision in the design guidelines, the most restrictive shall apply.

19.48.070 Site plan review procedures.

(1) Fees shall be as set out in Chapter 3.64 OHMC.

(2) Application forms shall, along with Chapter 18.20 OHMC requirements, include such other items which will allow resolving issues raised by the criteria of this chapter.

(3) Circulation and Review of Application. Upon receipt of a completed application, the director shall route the application for review and comments to various city departments and other jurisdictions or agencies with an interest in the application. This routing should be combined with circulation of environmental information.

(4) Comments from the reviewing departments shall be made in writing. Unless a proposed site plan is subsequently modified, the recommendations of the reviewing departments shall constitute the final comments of the respective departments with regard to the proposed site plan. Lack of comment from a department shall be considered a recommendation for approval of the proposed site plan. However, all departments reserve the right to make later comments of a code compliance nature during building permit review. This includes such requirements as exact dimensions, specifications or any other requirement specifically detailed in the city code.

(5) Revisions or modifications to site plan application. Whenever a revised site plan or new information is received from an applicant, the development services department may recirculate the application to concerned departments. Consulted departments shall respond in writing within 10 days with any additional comments. In general, the city's environmental determination of significance or nonsignificance will not be issued until after final departmental comments on the site plan or revised site plan are received.

(6) Director to Determine Necessity for Public Hearings. Upon receipt of final departmental comments and after the close of the public comment period, the director shall determine the necessity for a public hearing on the site plan.

19.48.080 Authority for conditions or plan modifications.

(1) The reviewing authority shall have the power to place reasonable conditions on or modify a site plan in order to satisfy the general purposes of this section and to achieve consistency with the review criteria. Such conditions or modifications may include, but are not limited to, screening, buffering, building location, and orientation, paving, landscaping, vegetation removal, grading and contouring. The reviewing authority shall also have the power to fix the location and configuration of driveways, walkways, parking and loading areas, emergency access, curbs, planting areas and signs. When only a portion of a site is proposed for development, such power to condition, modify or fix shall be exercised only for that area which is directly related to or may be impacted by the actual proposed development.

(2) To the extent necessary to meet the site review criteria and to the extent necessary

to compensate for the impacts attributable to the proposed development, the reviewing authority may impose additional requirements, including:

(a) Modification of Plan Subsequent to Public Hearing and Prior to Decision. In all cases, if an applicant can demonstrate that a site plan can be made consistent with the review criteria and general purposes by alternative modifications to the site plan, the reviewing authority shall accept the alternative modifications proposed by the applicant.

(b) Denial of Site Plan. If the reviewing authority finds that the site plan application cannot be made consistent with the general purposes and review criteria of this chapter by requiring reasonable conditions, then the site plan shall be denied.

(3) Limitations on Authority. The authority to condition or deny site plan applications should be exercised to the minimum extent necessary to protect the public interest and welfare as expressed in the purposes of this chapter.

19.48.090 Minor modifications to an approved site plan.

Minor modifications may be permitted by the director. To be considered a minor modification, the amendment must not:

(1) Involve more than a 10 percent increase in area or scale of the development in the approved site plan; or

(2) Have a significantly greater impact on the environment and facilities than the approved plan; or

(3) Change the boundaries of the originally approved plan.

19.48.100 Major modifications to an approved site plan.

Major modifications to an approved site plan require a new application. The review and approval shall rest with the approval body which approved the original site plan. Major modifications involve a substantial change in the basic site design plan, intensity, density, use and the like generally involving more than a 10 percent change in area or scale.

19.48.110 Timing of development permits.

Development permits may be processed simultaneously with the site plan review. Development permits shall not be issued until the appeal period for an approved site plan has expired.

19.48.120 Expiration and extension of site plan approval.

The final approval of a site plan shall expire within two years of the date of approval. A single two-year extension may be granted for good cause by the approval body which approved the original site plan. Extensions are a Type II review process.

19.48.130 Exception to time limit for phased projects.

(1) Phasing Permitted. For development proposed on only a portion of a particular site, an applicant may choose to submit a site plan application for either the entire site or a portion of the site. In the latter case, the application shall state clearly the area of the site and the proposed development, including phases, for which site plan approval is being requested. In every case, the site plan application and review shall cover at least that portion of the site which is directly related to or may be impacted by the actual proposed development, as determined by the

director.

(2) Authority for Extension of Time. The director may grant site plan approval for large projects planned to be developed or redeveloped in phases over a period of years, exceeding the normal time limits of this chapter. Such approval shall include clearly defined phases and specific time limits for each phase.

(3) Expiration of Phase(s). If the time limits of a particular phase are not satisfied then site plan approval for that phase and subsequent phases shall expire. The director shall also determine if such a phased project will be eligible for any extensions of the time limits.

(4) Vested for the Purposes of Zoning. As long as the development of a phased project conforms to the approved phasing plan, the zoning regulations in effect at the time of the original approval shall continue to apply. However, all construction shall conform to the building code, fire code and public utility regulations in or adopted under OHMC Title 12, 13, 14 and 15 or otherwise required by state law, in force at the time of building permit application.

19.48.180 Revocation of site plan and design review approval.

(1) Revocation or Modification Allowed. Approval of a site plan and design review application may be revoked or modified by the planning commission after a public hearing on any one or more of the following grounds:

(a) That the approval was obtained by fraud or misrepresentation of facts;

(b) That the development or use pursuant to the approved site plan and design review is being or has been exercised contrary to the terms or conditions of such approval, or in violation of any statute, ordinance, law or regulation;

(c) That the development or use for the site plan and design review for which the approval was granted is being or has been so exercised as to be detrimental to the public health, safety or welfare.

(2) Upon determination by the director or his designee that possible grounds for revocation of the site plan and design review approval exist, the matter shall be placed on the planning commission agenda. After the public hearing, the planning commission shall:

(a) Revoke the site plan and design review approval;

(b) Affirm the approval of the site plan and design review as previously granted; or

(c) Modify previously imposed conditions or require additional conditions including periodic review to insure development or use is in conformance with the site plan and design review, and requirements of the Oak Harbor Municipal Code.

19.48.190 Compliance required.

No person shall violate or fail to comply with the provisions of this chapter or any adopted site plan and design review approval or any conditions or provisions thereof, nor shall a building permit be issued for any structure which would violate or fail to comply with any adopted site plan and design review approval for the parcel or parcels on which such structure is to be located.

19.48.200 Penalty for noncompliance.

Anyone found in violation of this chapter shall be guilty of a civil infraction subject to a maximum of $250.00 fine. Each day the violation continues may be considered as a separate violation.

Section Twenty-Three. Oak Harbor Municipal Code Chapter 19.50 is hereby re-adopted to read as follows:

Chapter 19.50
AVIATION ENVIRONS OVERLAY ZONE

Sections:

19.50.010 Purpose.
19.50.020 Application of chapter provisions.
19.50.030 Definitions.
19.50.040 Subdistricts.
19.50.050 AE overlay zone use restrictions.
19.50.060 Exemptions.

19.50.010 Purpose.

(1) The aviation environs (AE) overlay zone is created with the following purposes:
   (a) To protect the public health, safety and welfare by regulating development and land use within noise-sensitive areas and accident potential zones;
   (b) To ensure compatibility between the Whidbey Island Naval Air Station at Ault Field and surrounding land uses;
   (c) To protect the air station from incompatible encroachment.

(2) The AE overlay zone shall serve as an overlay district that applies additional standards and requirements to properties located within an underlying zoning district. In the case of conflicting standards and requirements, the more stringent standards and requirements shall apply.

19.50.020 Application of chapter provisions.

Within the AE overlay zone, any proposed new or modified use or structure is subject to the use restrictions, construction standards and disclosure requirements provided in this chapter. This chapter applies to all properties in the city located within the AE overlay zone.

(1) Permitted Uses. Land uses within the AE overlay zone shall be consistent with the underlying zoning district in which the proposal is located and with the land use restrictions identified in this chapter. For property only partially within the AE overlay zone, the land use restrictions in this chapter apply only to those portions within the boundaries of the AE overlay zone.

(2) Underlying Zoning District. Where more than one (1) underlying zoning district applies to a particular property in the AE overlay zone, the provisions of this chapter shall apply only to the specific zoning district in which a particular portion of the property is located.

(3) Change of Use. For a proposed change of use to an existing structure, the provisions of this chapter apply to the entire existing structure if the change of use results in an increase in the density of people per acre or if the use of the existing structure is changed to one or more allowed uses requiring noise attenuation.

(4) Nonconforming Uses. Nothing contained in this chapter affects existing structures or the right to continue uses already established before the effective date of these regulations, nor do these regulations preclude any reasonable repairs to or alterations of buildings or properties used for such existing uses, subject to the

nonconforming use provisions contained in this title.

(5) For the purposes of this chapter, the provisions herein shall apply to properties annexed into the city that are located inside the AE overlay zone.

19.50.030 Definitions.

The following definitions shall apply to this chapter. In addition, the definitions set forth in Chapter 17.30 OHMC concerning attenuation standards for noise, as now in effect or as hereafter adopted, shall also apply to this chapter.

(1) "Accident potential zones (APZs)" means areas delineated as having measurable potential for aircraft accidents based on historical accident and operations data throughout the military.

(2) "Air Installation Compatible Use Zones (AICUZ) Study" means a study prepared by the United States Department of Defense for Ault Field at NAS Whidbey Island that analyzes various airfield planning parameters related to aircraft operations, noise and safety and provides recommendations that can be used to further promote compatible land use surrounding Ault Field.

(3) "Floor area ratio (FAR)" means the ratio between the square feet of gross floor area of the building and the site area. The FAR is customarily used to measure nonresidential land use intensities.

(4) "Maximum floor area ratio (FAR)" means the highest permitted FAR for a given land use. This ratio is calculated by multiplying the average people per car for a given land use by the maximum number of occupied parking spaces per 1,000 square feet of gross leasable area for said land use by 43.56 (square feet per acre divided by 1,000), then dividing the total into the desired maximum density for an acre (people per acre).

19.50.040 Subdistricts.

There are hereby established and mapped six subdistricts of the AE overlay zone.

(1) Subdistrict Definitions. The subdistricts of the AE overlay zone, as described below, are based on the 2005 Air Installation Compatible Use Zone (AICUZ) Study for Naval Air Station Whidbey Island's Ault Field as it relates to mapped accident potential zones and Ldn noise contours.

(a) Accident Potential Subdistrict 1. This subdistrict corresponds to that area of the city inside the AICUZ Accident Potential Zone I.

(b) Accident Potential Subdistrict 2. This subdistrict corresponds to that area of the city inside the AICUZ Accident Potential Zone II.

(c) Accident Potential Subdistrict 3. This subdistrict corresponds to that area of the city within 1,000 feet of either accident potential subdistricts 1 or 2.

(d) Noise Subdistrict A. This subdistrict corresponds to that area of the city located between the AICUZ 60 and 65 Ldn noise contours.

(e) Noise Subdistrict B. This subdistrict corresponds to that area of the city located between the AICUZ 65 and 75 Ldn noise contours.

(f) Noise Subdistrict C. This subdistrict corresponds to that area of the city located within the AICUZ 75 Ldn and higher noise contours.

(2) Subdistrict Boundaries. Boundaries for the AE overlay zone subdistricts defined in subsection (1) of this section are as depicted on the official zoning map for the city.

19.50.050 AE overlay zone use restrictions.

This section establishes restrictions within the AE overlay zone subdistricts on those uses that would otherwise be permitted in the underlying zoning districts.

(1) Accident Potential Subdistricts 1, 2 and 3. The restrictions for accident potential subdistricts 1 and 2 are based on AICUZ land use compatibility standards for accident potential zones, and adapted for the specific context of Oak Harbor. The restrictions for accident potential subdistrict 3 are based on consistency with the city's comprehensive plan to ensure that land uses around accident potential zones conserve the highest degree of public health, safety and welfare.

(a) Maximum Density. The maximum number of persons per acre for a permitted land use within the accident potential subdistricts shall be 25 persons per acre for accident potential subdistrict 1, 30 persons per acre for accident potential subdistrict 2 and 50 persons per acre for accident potential subdistrict 3. To provide a measurement for determining maximum density, a maximum floor area ratio (FAR) has been established for each permitted land use. Total permitted gross floor area for a permitted land use is determined by multiplying the total square footage of land area by the FAR for that land use.

(b) Permitted Uses and FAR Standards. The table that follows establishes permitted and conditionally permitted uses and FAR standards within the accident potential subdistricts. Since these subdistricts overlay only the auto/industrial commercial land use designation, as mapped in the Oak Harbor comprehensive plan, the table considers only those uses permitted in the underlying C-4 highway service commercial zoning district which implements this designation.

C-4 Permitted Land Uses	**Accident Potential Subdistrict 1** (25 persons per acre)	**Accident Potential Subdistrict 2** (30 persons per acre)
Automobile and Truck Service Stations	Yes(maximum FAR 0.14)	Yes(maximum FAR 0.17)
Automobile Sales and Service	Yes(maximum FAR 0.14)	Yes(maximum FAR 0.17)
Boat Sales and Boat Repair	Yes(maximum FAR 0.14)	Yes(maximum FAR 0.17)
Car Washes	Yes(maximum FAR 0.11)	Yes(maximum FAR 0.13)
Coffee Kiosks	Not permitted	Limited to 100 square feet
Contractor Offices and Related Storage	Yes(maximum FAR 0.11)	Yes(maximum FAR 0.13)
Drive-In Banks	Not permitted	Yes(maximum FAR 0.13)
Equipment Rental	Not permitted	Yes(maximum FAR 0.13)
Farm and Garden Supplies, Plant Nurseries	Not permitted	Yes(maximum FAR 0.13)
Furniture Manufacturing	Yes(maximum FAR 0.28)	Yes(maximum FAR 0.34)
Furniture Sales	Not permitted	Yes(maximum FAR 0.17)
Mobile and Modular Home Sales	Yes(maximum FAR 0.14)	Yes(maximum FAR 0.17)
Printing and Publishing	Yes(maximum FAR 0.28)	Yes(maximum FAR 0.34)
Professional and Scientific Instrument Manufacturing	Not permitted	Not permitted
Real Estate Sales	Not permitted	Yes(maximum FAR 0.13)
Recreational Vehicle Sales	Yes(maximum FAR 0.14)	Yes(maximum FAR 0.17)
Restaurants	Not permitted	Not permitted

Self-Storage Facilities	Yes(maximum FAR 1.0)	Yes(maximum FAR 1.2)
Uses Requiring a Conditional Use Permit		
Amateur Radio Tower and Antenna	Not permitted	Not permitted
Government Buildings for Administrative or Protective Services	Not permitted	Yes(maximum FAR 0.14)
Government Storage Yards, Treatment Plants, Well Sites, Pump Stations	Yes(restricted)	Yes
Public Transportation Shelter Stations	Yes(restricted)	Yes
Public Utility and Communications Facility	Yes(restricted)	Yes
Radio and Television Broadcasting Stations and Towers	Not permitted	Not permitted
Retail or Wholesale Building Supplies, Hardware	Yes(maximum FAR 0.11)	Yes(maximum FAR 0.13)

(c) For uses noted as "restricted," please refer to the AICUZ Study for guidance.

(d) For sites containing more than one permitted use, the most restrictive maximum FAR shall be applied to the entire site.

(e) For sites already developed to the maximum FAR, changes of use are permitted only in cases where the proposed new use has the same or more restrictive maximum FAR than the current use.

(f) For calculating the maximum FAR, the higher of the weekend or weekday parking space occupancy rate shall be used.

(2) Noise Subdistricts A, B and C. New residential or noise-sensitive commercial uses, construction and reconstruction, remodeling, and/or additions to existing buildings in noise subdistricts A, B and C of the AE overlay zone shall be made to comply with Chapter 17.30 OHMC.

(a) Proposed Uses and Structures. The compatibility table contained in Chapter 17.30 OHMC identifies permitted uses and development standards that apply to proposed development within the AE overlay zone. All proposed uses and structures must comply with these standards.

(b) Interior Day-Night Average Noise Level (Ldn). All proposed uses and structures must comply with the noise level reduction (NLR) standards as provided in the compatibility table in Chapter 17.30 OHMC. Compliance with NLR requirements shall be evidenced prior to issuance of an occupancy permit or business license permit.

19.50.060 Exemptions.

The provisions of this chapter shall not be deemed applicable to the following when permitted in the underlying district:

(1) Temporary Uses. Temporary uses including, but not limited to, public celebrations and outdoor entertainment events so long as the period of operation does not exceed five days, does not exceed the maximum densities established by the applicable subdistrict and is associated with an existing permanent use;

(2) Temporary Structures. Temporary buildings and structures that are not used for residential purposes and that meet the applicable requirements as contained within

this chapter so long as such uses and associated structures are constructed incidental to a permitted use, as per the requirements of this chapter;

(3) Agricultural Structures. Bona fide agricultural buildings, structures, improvements, and associated nonresidential developments;

(4) Accessory Uses and Structures. Accessory uses and structures incidental to a permitted principal structure or use and within the intent, purposes, or objectives of these regulations; structures housing accessory uses must be included in the gross floor area when calculating for consistency with the maximum FAR;

(5) Mobile and Manufactured Homes. Mobile homes and manufactured homes constructed after April 1, 1992, in general complying with the performance standards of this chapter, may be located within existing, expanded or new mobile home parks within the AE noise subdistrict A. Mobile homes and manufactured homes constructed prior to April 1992 shall not be located within AE noise subdistrict A unless the development services director determines that the sound attenuation standards are met or may be met by making modifications to the home. All mobile homes and manufactured homes located within the AE noise subdistrict B shall comply with these regulations.

Section Twenty-Four. Oak Harbor Municipal Code Chapter 19.56 is hereby re-adopted to read as follows:

Chapter 19.56
SHORELINE MANAGEMENT*

Sections:

19.56.010 Administration of the city of Oak Harbor shoreline master program.
19.56.020 Policy.
19.56.030 Administration.
19.56.040 Map.
19.56.070 Penalties.

*** Prior legislation: Ords. 1033 and 1165.**

19.56.010 Administration of the city of Oak Harbor shoreline master program.

(1) No development shall occur within the shorelines of the city of Oak Harbor unless the same conforms to the "Oak Harbor shoreline master program" adopted by reference, a copy of which is on file with the city clerk's office and which shall be made available for public inspection.

(2) Administration of the shoreline master program shall be as set out in Sections 10, 11 and 12 of the shoreline master program.

19.56.020 Policy.

(1) From the effective date of this chapter until such time as an applicable master program has become effective, a permit shall be granted only when the proposed development is consistent with:
   (a) The applicable master program;
   (b) The policy of Section 2 of the Shoreline Management Act of 1971;
   (c) So far as can be ascertained, the master program being developed for the city of Oak Harbor.

(2) After adoption or approval, as appropriate, by the Department of Ecology of an applicable master program, a permit shall be granted only when the proposed development is consistent with:
   (a) The applicable master program; and
   (b) The policy of Section 2 of the Shoreline Management Act of 1971.

(3) With respect to timber situated within 200 feet abutting landward within the city of Oak Harbor, a permit shall be granted only for selective commercial timber cutting, so that no more than 30 percent of the merchantable trees may be harvested in any 10-year period of time; provided, that other timber harvesting methods may be permitted to those limited instances where the topography, soil conditions or silviculture practices necessary for regeneration render selective logging ecologically detrimental; provided further, that clear cutting of timber which is solely incidental to the preparation of land for other uses authorized by this chapter may be permitted.

(4) Surface drilling for oil and gas is prohibited in the waters of Puget Sound north to the Canadian boundary and the Strait of Juan de Fuca seaward from the ordinary high water mark on all lands within 1,000 feet landward from said mark.

(5) A permit shall be denied if the proposed development is not consistent with the above enumerated policies.

19.56.030 Administration.
The planning agency is vested with the duty of administering the rules and regulations relating to the shoreline development permits and may prepare and require the use of such forms as are essential to its administration.

19.56.040 Map.
Shorelines of the state located within Oak Harbor may be designated on an official shoreline map to be kept in the office of the planning agency.

19.56.070 Penalties.
The city attorney shall bring such injunctive, declaratory, or other actions as are necessary to insure that no uses are made of the shorelines of the state located within Oak Harbor in conflict with the provisions and programs of this chapter in accordance with Sections 21, 22, and 23 of the Shoreline Management Act of 1971.

Section Twenty-Five. Oak Harbor Municipal Code Chapter 19.60 is hereby re-adopted to read as follows:

Chapter 19.60
ADMINISTRATION

Sections:

19.60.010 Planning director.
19.60.020 Records.
19.60.030 Permits issued contrary to this title.
19.60.040 Certificate of occupancy and nonconforming uses.
19.60.050 Uses.

19.60.010 Planning director.

The planning director shall be responsible for enforcing the provisions of this title. The planning director, and his duly authorized representatives, shall have the right to enter any building or enter upon any land during the daytime in the course of their duties in the enforcement of this title, upon showing proper identification and upon giving reasonable notice, subject to requirements of law.

19.60.020 Records.

The planning director shall maintain in his office, planning, zoning and environmental review records which shall be open to the public for inspection. The planning director shall keep a record of each and every identifiable complaint, the complaint of a violation of any of the provisions of this title, the action taken, consequent to any such complaint, which records shall be open to the public for inspection.

19.60.030 Permits issued contrary to this title.

Any building permit, certificate of occupancy, or other authorization issued, granted or approved in violation of the provisions of this title, shall be null and void and of no effect without the necessity of any proceedings for a revocation or nullification thereof, and any work undertaken or use established pursuant to any such building permit, certificate of occupancy, or other authorization shall be unlawful, and no action shall be taken by any board, officer, or any employee of the city purporting to validate any such violation.

19.60.040 Certificate of occupancy and nonconforming uses.

All nonconforming uses of buildings or land shall, within one year of the date when said use of building or land becomes nonconforming, obtain a similar certificate of occupancy from the building official. The planning director shall make his best efforts to notify nonconforming users and inform them that they must apply for said certificate of occupancy, but his failure to do so shall not excuse the property owner from securing the certificate. Nonconforming uses of land and nonconforming buildings for which no certificate of occupancy has been issued within one year provided for herein, shall be conclusively presumed in violation of this title and may be abated as provided herein.

19.60.050 Uses.

Before any application is taken for a zone change, a conditional use permit, a variance, an application for a planned residential development or an appeal from the planning

director's decision, a fee shall be paid as set forth in OHMC Title 3.

Section Twenty-Six. Oak Harbor Municipal Code Chapter 19.66 is hereby re-adopted to read as follows:

Chapter 19.66
VARIANCES*

Sections:

19.66.010 Purpose.
19.66.020 Criteria for governing application.
19.66.030 Excluded factors.
19.66.040 Variances for oak tree protection.
19.66.050 Prohibited uses not otherwise allowed.
19.66.060 Minimum variance.
19.66.070 Conditions.
19.66.080 Time decision is effective.
19.66.090 Administrative variance.

*** Prior legislation: Unnumbered ordinance dated 4/7/1992.**

19.66.010 Purpose.

The purpose of this chapter is to set forth criteria and procedures to vary or adopt the strict application of the terms of this title. However, variances may not be granted to vary the use and procedural requirements of this title.

19.66.020 Criteria for governing application.

A variance may be approved by the board of adjustment only when it is established that:

(1) Special conditions or circumstances exist which are peculiar to the land such as size, shape, topography or location, not applicable to other lands in the zoning district and that literal interpretation of the provisions of this title would deprive the property owner of rights commonly enjoyed by other properties similarly situated in the same district under the terms of this title;

(2) The special conditions do not result from actions of the applicant;

(3) The granting of the variance does not amount to a rezone;

(4) The variance will not grant a special privilege to the subject property which is denied other lands in the same district;

(5) The granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements within the vicinity.

19.66.030 Excluded factors.

The following matters shall not be considered:

(1) The special circumstances of the applicant such as the fact that the applicant cannot afford to comply with the code;

(2) That a more profitable use of the property is possible with a variance.

19.66.040 Variances for oak tree protection.

The goal of this section is to provide no net loss or gain in buildable area when oak trees are present and allow for design flexibility. In order to ameliorate the impact of Ordinance No. 898, codified in Chapter 20.16 OHMC, the following variances may be

allowed under the zoning code:

(1) Setbacks. A variance may be granted to allow intrusion of a building into a setback yard by 10 feet to preserve an oak tree located elsewhere on the property. In no event shall a setback less than five feet to a side yard or 10 feet to an adjacent public street be approved;

(2) Parking. Parking requirements may be reduced by two vehicles per oak tree preserved on the property. In no event shall there be less than one space per dwelling unit.

19.66.050 Prohibited uses not otherwise allowed.

With respect to uses of land, buildings and other structures, this title is declared to be a definition of the public interest by the city council and the spirit of this title will not be observed by any variance which permits a use not generally, or by a conditional use, permitted in the district involved or any use expressly or by indication prohibited by terms of this title in said district. Therefore, under no circumstances shall the hearing examiner grant a variance to permit a use not generally or by conditional use permitted in the district involved or any use expressly or by implication prohibited by the terms of this title in the said district.

19.66.060 Minimum variance.

Upon finding a variance is necessary, the hearing examiner shall authorize the minimum variance from the zoning code provisions necessary to allow the owner the rights enjoyed by other properties in the vicinity with the same zoning.

19.66.070 Conditions.

In granting any variance, the hearing examiner may condition approval on appropriate conditions and safeguards which will mitigate the variance impact on the lands in the vicinity and which further the purposes and provisions of this zoning code.

19.66.080 Time decision is effective.

The decision of the hearing examiner granting or denying a variance shall not become final until the expiration of 10 days from the date of action by the hearing officer, unless the officer shall find that the making of the decision effective immediately is necessary for the preservation of property or personal rights and shall so certify on the record of the request for a conditional use permit. If a building permit and/or occupancy permit is not obtained for the subject property within six months from the date of the hearing officer's decision, the variance shall be canceled and automatically become null and void. The decision of the hearing examiner shall be final, subject to review by the superior court.

19.66.090 Administrative variance.

(1) The following variances are minor and may be approved by the planning director under Chapter 19.48 OHMC to achieve the purpose of the site plan review process:

   (a) Up to five percent reduction in lot area, setbacks and lot width from the amount required in the zoning district in which the subject property is located;

   (b) Up to five percent increase in lot coverage and building heights from the amount required in the zoning district in which the subject property is

located.

(2) No variance shall be approved by the planning director which will allow an increase in the number of dwelling units on a parcel or which will permit the reduction in area of any lot created after the effective date of the ordinance codified in this chapter.

(3) Prior to approval of an administrative variance, the planning director shall determine that the granting of the variance will not be significantly detrimental to the public health, safety and welfare, or injurious to nearby property or improvements.

Section Twenty-Seven. Oak Harbor Municipal Code Chapter 19.67 is hereby re-adopted to read as follows:

Chapter 19.67
CONDITIONAL USES

Sections:

19.67.010 Purpose.
19.67.020 Hearing examiner.
19.67.030 Criteria.
19.67.040 General conditions.
19.67.050 Special permit condition.
19.67.060 Time decision is effective.

19.67.010 Purpose.

The purpose of this chapter is to set forth criteria, conditions and procedures for granting or denying a conditional use permit.

19.67.020 Hearing examiner.

Conditional use permits shall be granted or denied by the hearing examiner; provided, that the city council may grant or deny a conditional use permit as part of a rezone or a planned residential development under this title.

19.67.030 Criteria.

No conditional use shall be granted unless it meets the following criteria:

(1) All special conditions for the particular use are met;
(2) It does not have a significant, adverse environmental impact resulting in excessive noise, light and glare or soil erosion on adjacent property;
(3) It is provided with adequate parking;
(4) It is served with adequate public streets, public utilities and facilities;
(5) It otherwise meets the purpose of the district in which it is to be placed;
(6) It meets the goals and policies of the Oak Harbor comprehensive plan.

19.67.040 General conditions.

The following conditions shall be applied to each permit:

(1) The conditional use shall not be transferable to a subsequent user unless specifically authorized by the hearing examiner who finds it appropriate and a permit authorizing the transferability is on record with the Island County auditor;
(2) The conditional use permit must be acted on within one year of the date of granting. Otherwise the conditional use permit shall expire and be null and void;
(3) The conditional use permit applies only to the property for which application is made.

19.67.050 Special permit condition.

Approval of a conditional use permit application may be conditioned so that the required findings can be made. Permit conditions may include requirements which:

(1) Increase the required lot size or yard dimensions;
(2) Increase street width;
(3) Control the location and number of access points to the property;

(4) Increase the number of off-street parking or loading spaces required;
(5) Limit the number of signs;
(6) Limit the coverage or height of buildings because of obstructions to view and reduction of light and air to adjacent property;
(7) Limit or prohibit openings in sides of buildings or structures or expand requirements for screening or landscaping where necessary to reduce noise and glare and maintain the property in a character in keeping with the surrounding area;
(8) Establish requirements under which any future enlargement or alteration of the use shall be reviewed by the city and new conditions imposed;
(9) Establish regulations for the use of the property as necessary to protect nearby property or improvements from detrimental effects of the proposed use such as limiting the hours of operation or number of employees.

19.67.060 Time decision is effective.

The decision of the hearing examiner is final 10 days after the date of action by the hearing officer. The decision of the hearing examiner shall be final unless appealed to superior court within 10 days from the date of action.

Section Twenty-Eight. Oak Harbor Municipal Code Chapter 19.75 is hereby re-adopted to read as follows:

Chapter 19.75
MAP AMENDMENTS AND CONTRACT REZONES

Sections:

19.75.010 Purpose.
19.75.020 Map rezones.
19.75.030 Contract zoning.

19.75.010 Purpose.

The purpose of this chapter is to set forth criteria for dealing with rezone hearings which the courts classify as quasi-judicial. These procedures and criteria may also be used for other map amendments.

19.75.020 Map rezones.

(1) Development Proposal. A quasi-judicial rezone application (map amendment) shall require a specific development proposal for the subject property with sufficient detail to enable the city to evaluate the applicant's proposal for conformance with the applicable criteria and to adequately condition the rezone request to protect the public health, welfare and safety. In addition, the director may require the applicant to participate in a meeting to inform citizens about the proposal.

(2) Processing. An application for a quasi-judicial rezone shall be processed in accordance with OHMC Title 18 and 19.

(3) Open Record Hearing. An open record public hearing shall be held on each application. Any person may participate in the hearing by submitting written comments or making oral comments at the hearing.

(4) Decision Criteria.

(a) The application may be approved or approved with conditions or modifications if the applicant has demonstrated that the proposal complies with the decision criteria set forth in this section.

(b) The applicant carries the burden of proof and must demonstrate that the criteria are met by a preponderance of the evidence.

(c) If the criteria are met, the rezone may be granted.

(d) The applicant must demonstrate the following:

(i) The proposed rezone is in the best interest of the residents of the city;

(ii) The proposed rezone is appropriate because either:

(A) Conditions in the immediate vicinity of the subject property or within the city have so significantly changed since the property was given its present zoning that, under those changed conditions, a rezone is within the public interest; or

(B) The rezone will correct a zone classification or zone boundary that was inappropriate when established; or

(C) The proposed rezone is consistent with the comprehensive plan; or

(D) The proposed rezone is consistent with all applicable provisions of this title including any specific design criteria;

(iii) The proposed rezone bears a substantial relation to the public health, safety, and welfare;

(iv) A site plan of the proposed project, if considered, is designed to minimize all significant adverse impacts on other properties;

(v) A site plan, if considered, is designed to minimize impacts upon the public facilities, services and utilities;

(vi) The proposal is not inconsistent with the surrounding area;

(vii) If applicable, that there is a means of developing, preserving, and maintaining open space;

(viii) All conditions necessary to lessen any impacts of the proposed use can be monitored and enforced.

(5) Requisites of a Decision. After considering all of the information submitted on the matter, the following findings, conclusions and decision shall be made:

(a) A statement of facts presented at the hearing that supports the decision, including facts supporting any conditions and restrictions that are recommended.

(b) A statement of the conclusions based on those facts.

(c) The application of the criteria used to make the decision.

(d) A determination that significant adverse impacts on other properties can be minimized through mitigation measures imposed as conditions of approval and identifying the mitigation measures.

(6) Nature of Decision. The city council may as its decision do one of the following:

(a) Approve the application for rezone;

(b) Approve the application with modifications or conditions; or

(c) Deny the application.

(7) Ordinance Required. The city council shall include in an ordinance granting the rezone any conditions and restrictions it determines are necessary to meet the decision criteria or to eliminate or minimize any undesirable effects of granting a rezone. Any conditions, modifications and restrictions that are imposed shall become part of the decision.

(8) Minor Modifications. Subsequent to the adoption of the ordinance, the applicant may apply for a minor modification to a site plan approved as part of that ordinance. The director shall review applications for a minor modification. The director may approve a minor modification only if the director finds that:

(a) The change will not result in reducing the landscaped area, buffer areas, or the amount of open space on the project by more than five percent;

(b) The change will not result in increasing the residential density;

(c) The change will not result in increasing gross floor area of the project by more than five percent;

(d) The change will not result in any structure, or vehicular circulation or parking area being moved more than 30 feet in any direction and will not

reduce any required yard;

(e) The change will not increase any adverse impacts or undesirable effects of the project and that the change in no way significantly alters the project; and

(f) The change will not modify the intent of any condition.

(9) Major Modifications. If the applicant seeks a modification to the approved site plan that does not meet the requirements of a minor modification, the applicant may propose a major modification by submitting an application for a quasi-judicial project-related rezone. The city will process such application in the same manner as an application for a new quasi-judicial project-related rezone.

19.75.030 Contract zoning.

(1) A contract may be tendered as part of a requested rezone or requested by the planning commission or city council as a condition of granting a rezone. Such contract shall not provide for additional uses, increased density or uses of less restrictive bulk and density requirements than those of the parent district. Such contracts can decrease potentially permitted uses, decrease intensity of uses and increase restrictions on bulk and density over the parent zone and tender other restrictions or compensations for amelioration of impacts caused by the rezone or development. The criteria for granting or denying a contract rezone will be those set out in OHMC 19.75.020 and the following:

(a) Whether the additional restrictions and mitigation measures actually mitigate identified adverse impacts sufficiently to assure there will be no major adverse impact on the health, welfare and safety of the city;

(b) Whether the additional restrictions will better meet the goals and policies of the Oak Harbor comprehensive plan;

(c) Whether a time limit should be imposed within which development must be completed;

(d) What should be the consequences of not complying with conditions imposed;

(e) Whether the proposed development will stabilize a boundary between districts;

(f) Whether the proposed use is compatible with adjoining uses;

(g) Whether there are adequate assurances available to assure that the mitigation measures will be maintained;

(h) What are the costs of monitoring the imposition and maintenance of mitigation, and who is to bear the cost of such measures.

(2) Because a contract is a change from the normal zoning of Oak Harbor it shall be a disfavored method of handling a zoning matter and it shall not be used unless the evidence is clear and convincing that mitigation measures will solve the problems identified with rezoning actions.

Section Twenty-Nine. Oak Harbor Municipal Code Chapter 19.80 is hereby re-adopted to read as follows:

Chapter 19.80
TEXT AMENDMENTS

Sections:

19.80.010 Scope.
19.80.020 Review criteria.

19.80.010 Scope.

This chapter shall cover criteria for text amendments, additions or deletions of general application to this zoning code. (

19.80.020 Review criteria.

(1) The following criteria, along with other relevant issues, must be met in each amendment, addition or deletion to the text, tables and figures of the zoning code:

(a) The amendment must be consistent with the Oak Harbor comprehensive plan;

(b) The amendment must substantially promote the public health, safety and welfare.

(2) An addition or deletion to the text, tables and figures of the zoning code may also be made if such change is needed to clarify the meaning of this zoning code, correct an error, or to add text or issues which should not have been omitted.

Section Thirty. Oak Harbor Municipal Code Chapter19.85 is hereby re-adopted to read as follows:

Chapter 19.85
PROCEDURE FOR AMENDMENTS TO THE ZONING CODE

Sections:

19.85.010 Scope.
19.85.020 Planning commission review.
19.85.030 City council.
19.85.040 Quasi-judicial hearing procedure.

19.85.010 Scope.

This procedure shall be followed for all amendments to the zoning code whether quasi-judicial or legislative.

19.85.020 Planning commission review.

The planning commission shall review each change, addition or deletion to the zoning code. A public hearing shall be held by the planning commission for each proposal. After a decision, their findings, recommendations, transcripts and evidence thereon shall be transmitted to the city council for their action.

19.85.030 City council.

(1) After receipt of the recommendations of the planning commission, the city council shall consider the recommendation. The council may adopt or remand the recommendations without holding an additional public hearing.

(2) If a majority of the city council, excluding absentees and persons excluded by reason of conflict of interest and appearance of fairness wish to consider any change to the recommendation, the council shall set a public hearing on the matter. The city council, after hearing, may approve, deny, subject approval to conditions or remand for further action by the planning commission.

19.85.040 Quasi-judicial hearing procedure.

The following procedures shall only apply to amendments of the zoning code which are quasi-judicial in nature:

(1) Notice. Notice shall be provided as required by OHMC 18.20.090(3);

(2) Hearing Body. The planning commission shall act as the hearing body for map or text amendments. The city council may elect to hold another hearing as provided under state law;

(3) Presiding Officer. The chairperson of the planning commission shall be the presiding officer and shall have authority to regulate all matters of hearing procedure including admissibility of evidence, the terms and duration and order of speakers; provided, the hearing body may overrule a decision of the presiding officer by a simple majority vote of members present and available to vote;

(4) Witnesses. All witnesses shall be sworn;

(5) Exhibits. To be considered, an item, map, document, letter, written material or photograph must be entered into the record as an exhibit. Exhibits to the extent possible shall be provided to the recording officer prior to the meeting;

(6) Notice. The hearing body may take notice of those items which a court may take judicial notice of;

(7) Order of Presentation.

(a) First, the staff shall describe the nature of the proposal and make other comments relevant to the matter including the relevant SEPA analysis, if any,

(b) Second, the proponent shall present fully its case for establishing the change proposed,

(c) Third, opponents and citizens shall be given an opportunity to provide input,

(d) Fourth, if necessary, each side will be allowed an opportunity to provide rebuttal. The presiding officer may regulate as he or she deems proper,

(e) Fifth, argument may be allowed;

(8) Examination. Cross-examination shall be allowed after a witness has testified, provided, the council member or planning commission member may reserve any or all questioning until after presentation of witnesses and argument. There is no right of rebuttal to matters brought up in council or commission questioning;

(9) Discussion. Discussion by the hearing body shall be conducted in public but may be in a room separate from the hearing room. Only those matters made a part of the record shall be considered by the hearing body in reaching its decision. It shall make written findings with its decision and may assign to a proponent or an opponent the job of completing the proposed finding. If exception by a party is taken to a finding, that exception shall be made in writing and presented to staff before the hearing at which they are considered;

(10) Reconsideration. Reconsideration of a vote may be had at any time prior to ratification of an ordinance of final adoption of findings and/or minutes terminating a matter;

(11) Procedures prescribed herein are directory and variances therefrom shall not result in invalidation of an action taken.

Section Thirty-One. Oak Harbor Municipal Code Chapter 19.90 is hereby re-adopted to read as follows:

Chapter 19.90
ASSURANCES

Sections:

19.90.010 Purpose.
19.90.020 Site improvement assurance.
19.90.030 Maintenance of assurances.
19.90.040 Release of assurances.
19.90.050 Assurance administration.

19.90.010 Purpose.

The purpose of this chapter is to establish the requirements and procedures for assurances when required to ensure compliance with the zoning code when construction of improvements or landscaping is required.

19.90.020 Site improvement assurance.

Before the building official approves and issues a temporary certificate of occupancy for a planned residential development, a site plan development, mobile home park or any other development for which improvements are required, either on site or off site to comply with the zoning code, the developer or owner of the property involved shall provide the city with a bond or other similar security in a form approved by the planning director adequate to ensure that the required on and off site improvements will be completed before a final certificate of occupancy is issued. The bond or security shall be based on the full cost of the uncompleted, required site improvements including drainage and landscaping.

19.90.030 Maintenance of assurances.

Before the building official approves the final certificate of occupancy, the developer or owner shall provide a bond or a similar security in a form approved by the planning director for 10 percent of the cost of the site improvements including drainage which shall be adequate to ensure the maintenance of the site improvements for one year after the site improvements are completed, provided, however, that the prorated security to ensure the maintenance of landscaping improvements shall be retained for a period of two years after the landscaping improvements are completed.

19.90.040 Release of assurances.

The building official shall release the site improvements assurance only upon the approval of the planning director and only after the site improvements are complete and satisfactory and the developer or owner has provided the required maintenance assurance. The building official, upon approval by the planning director, shall release the maintenance assurance or portions thereof not obligated to ensure maintenance not performed not less than one year after the effective date of the assurance except in the case of a landscaping assurance which shall be two years.

19.90.050 Assurance administration.

The planning director shall consult with the city attorney to determine the amount of the

assurances on completion of phases of work, additional assurances for extensions of time and related matters. Assurances shall be kept in the custody of the city finance director.

Section Thirty-Two. Oak Harbor Municipal Code Chapter 19.100 is hereby re-adopted to read as follows:

Chapter 19.100
PENALTIES, NUISANCES AND ENFORCEMENT

Sections:

19.100.010 Penalty for violation.
19.100.020 Legal proceedings by city attorney.

19.100.010 Penalty for violation.

(1) Any person or corporation whether owner, lessee, principal, agent, employee or otherwise, who violates any of the provisions of this title or permits any such violation or fails to comply with any of the requirements thereof, or who erects, constructs, reconstructs, alters, enlarges, converts, moves, or uses any building or uses any land in violation of any detailed statements or plans submitted by him and approved under the provisions of this title, is guilty of a misdemeanor and, upon conviction thereof, shall be punishable by a fine not exceeding $300.00. Each week's continued violation shall constitute a separate additional violation.

(2) It is a misdemeanor to permit, tolerate, allow or otherwise engage in a prohibited use for the zone where the property is located. It is no defense that the person charged with this offense did not act intentionally, recklessly or negligently. It is the defendant's burden of proof to establish that the use complies with all conditions of a validly granted conditional use permit or variance under this title of the Oak Harbor Municipal Code.

(3) It is a public nuisance to permit, tolerate, maintain, construct or use property in the city contrary to requirements of this zoning code.

(4) In case a building or structure is erected, constructed, reconstructed, altered, converted or maintained, or any building, structure or land is used in violation of this title, the proper legal authorities of the city of Oak Harbor, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful maintenance or use, to restrain, correct or abate such violation, to prevent the occupancy of said building, structure, or land, or to prevent any illegal act, conduct, business or use in or about such building, structure, or land.

19.100.020 Legal proceedings by city attorney.

The city attorney, upon request of the planning director, shall institute any necessary legal proceedings to enforce the provisions of this title.

Section Thirty-Three. Oak Harbor Municipal Code Chapter 19.110 is hereby re-adopted to read as follows:

Chapter 19.110
JUDICIAL REVIEW

Sections:
19.110.010 Zoning code amendments.
19.110.020 Judicial review of the hearing examiner.

19.110.010 Zoning code amendments.
Decisions of the city council on a map amendment or text amendment shall be final and conclusive unless within 21 days of date of action by the city council, appeal authorized by law or the Constitution is taken to a court of competent jurisdiction by an aggrieved party by writ of review, writ of prohibition and writ of mandamus or petition for declaratory judgment. Date of action is defined as the date of passage of an ordinance or resolution or, in the case of decision by the council to deny a rezone or text amendment, the date of adopting the findings of fact and conclusions concerning such action.

19.110.020 Judicial review of the hearing examiner.
Orders or decisions of the hearing examiner on a conditional use permit or variance are final and conclusive unless within 21 days of the action the original applicant or an adverse party files a declaratory judgment act, writ of review, writ of prohibition, or writ of mandamus in a court of competent jurisdiction.

THE CITY COUNCIL HERBEY ADOPTS THE PROPOSED CODE REVISIONS DESCRIBED HEREIN AS "INTERIM REGULATIONS" AS ALLOWED BY RCW 36.70.795.

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

Section Thirty-Five. Effective Date. This ordinance provided hereby, shall be in full force and effect five days after the date of publication.

PASSED by the City Council and approved by its Mayor this 21st day of April, 2009.

THE CITY OF OAK HARBOR

_____
Mayor

Attest:

_____

City Clerk

Approved as to Form:

_____

City Attorney

Published: _____

City of Oak Harbor
City Council Agenda Bill

Bill No. 6
Date: June 2, 2009
Subject: Chamber of Commerce – Annual Report

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 action is to provide City Council a report on the past year tourism activities undertaken by the Greater Oak Harbor Chamber of Commerce in compliance with the 1999 Tourism Information and Tourist Promotion Contract.

AUTHORITY

Paragraph 6 (B) of the 1999 Tourism Information and Tourist Promotion Contract between the City and the Greater Oak Harbor Chamber of Commerce requires a report "fully describing what work has been performed pursuant to this contract and including a current statement of revenues and costs".

RCW Chapter 67.28 provides authority for the City of Oak Harbor to enter into tourism information and tourism promotion contracts with non-profit entities such as the Oak Harbor Chamber of Commerce.

SUMMARY STATEMENT

This report by the Oak Harbor Chamber of Commerce is for informational purposes and is intended to provide the City Council a basis for supporting the continued contribution of 2% lodging tax revenue.

STANDING COMMITTEE REPORT

The Oak Harbor Chamber annual report is an informational item only.

RECOMMENDED ACTION

No Action required.

ATTACHMENTS

Oak Harbor Chamber of Commerce 2008 Profit & Loss Statement

City of Oak Harbor
City Council Agenda Bill

MAYOR'S COMMENTS

Greater Oak Harbor
Profit & Loss
January through December 2008

			Jan - Dec 08
Income			
REVENUE- INTEREST INCOME			
Interest		1,335.45	
Total REVENUE- INTEREST INCOME			1,335.45
REVENUE-FUNDRAISING			41,360.00
REVENUE-MEMBERSHIP			
New Members			
Associate members	(96.25)		
New Members - Other	11,352.50		
Total New Members		11,256.25	
Renewals			
Bad debts	(100.00)		
Declined renewals	(11,962.50)		
Renewals - Other	86,616.65		
Total Renewals		74,554.15	
Trade for Services		(1,460.00)	
Value Added Program		17,707.50	
Total REVENUE-MEMBERSHIP			102,057.90
REVENUE-PROG & SERVICES			
Advertising Opportunities			
Directory Listing	3,970.00		
Indoc bags	230.00		
Lists & Labels	10.00		
Newsletter Ads	35.00		
Newsletter Inserts	600.00		
Total Advertising Opportunities		4,845.00	
Annual Banquet			
Sponsor	1,000.00		
Table Decor raffle	430.00		
Annual Banquet - Other	6,613.75		
Total Annual Banquet		8,043.75	
Business Expo			
Raffle ticket sales	561.00		
Sponsorship	1,000.00		
Table & Setup fees	1,865.00		
Total Business Expo		3,426.00	
Downtown Development			
Sponsor donation	500.00		
Total Downtown Development		500.00	
Luncheons			
Display table	50.00		
Door Prize Donations	3,431.00		
Luncheon sponsor	2,000.00		
Luncheons - Other	14,584.00		
Total Luncheons		20,065.00	
Misc Inc			
Donations	891.00		
Misc Inc - Other	2.00		
Total Misc Inc		893.00	
VIC Building			
Rental	1,339.00		
Total VIC Building		1,339.00	
Total REVENUE-PROG & SERVICES			39,111.75

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Greater Oak Harbor
Profit & Loss
January through December 2008

				Jan - Dec 08
REVENUE-SPECIAL EVENTS				
4th of July				
4th July Sponsorship			2,050.00	
Fundraisers				
Banquet Raffle		4,020.00		
Dessert Auction		4,475.00		
Fireworks donations		248.56		
Fireworks Sponsor of the Day		3,900.00		
Holler for a dollar		51.00		
Tour Boat Auction		4,200.00		
Total Fundraisers			16,894.56	
Parade Fees			370.00	
Vendor Booths			3,993.50	
Total 4th of July				23,308.06
Holland Happening				
HH Sponsorship			6,000.00	
Canal Race			672.00	
Food Vendors			2,801.25	
Parade Fee			497.00	
Tee Shirts			2,247.75	
Tiles			1,030.00	
Tulips			1,061.50	
Vendor Booths			11,529.50	
Wooden Shoes			1,404.75	
Total Holland Happening				27,243.75
Military Support				
Support Troops BBQ			1,392.39	
Total Military Support				1,392.39
Total REVENUE-SPECIAL EVENTS				51,944.20
REVENUE-TOURISM				
City 2%				52,320.00
City Promotion 2%				
2007 City Promo			3,100.00	
City Promotion 2% - Other			9,500.00	
Total City Promotion 2%				12,600.00
County 2%				20,500.00
Total REVENUE-TOURISM				85,420.00
Total Income				321,229.30
Expense				
EXPENSES-ALL STAFF				
Health Benefits				5,771.10
Payroll Expense				
Gross Wages			115,863.52	
Payroll Tax Expenses				
L&I		247.42		
Payroll Tax Expenses - Other		9,630.79		
Total Payroll Tax Expenses			9,878.21	
Total Payroll Expense				125,741.73
Staff Development				3,002.34
Travel/Mileage				448.80
Volunteer Retention				299.57
Total EXPENSES-ALL STAFF				135,263.54
EXPENSES-BUSINESS/G&A				
Accounting Services				660.00
Bank Charges/VISA				957.63

Greater Oak Harbor
Profit & Loss
January through December 2008

		Jan - Dec 08	
Building			
Land lease(split)	2,257.90		
Leasehold/prop taxes (split)	2,810.21		
Mortgage payment (split)	7,212.36		
Total Building		12,280.47	
Copier Lease		1,801.74	
Dues & Subscriptions		324.00	
Insurance, Liability			
D&O liability insurance	1,840.00		
Insurance, Liability - Other	1,367.36		
Total Insurance, Liability		3,207.36	
Licenses, Fees, Permits		205.00	
Maintenance/Repairs		3,259.02	
Miscellaneous		0.00	
Office Supplies		2,172.91	
Postage / General			
postage machine	338.24		
Postage / General - Other	1,601.56		
Total Postage / General		1,939.80	
Printing		919.15	
Technology		1,264.22	
Telephone		1,477.54	
Utilities		2,426.47	
Total EXPENSES-BUSINESS/G&A			32,895.31
EXPENSES-PROGRAMS & SERVICES			
Advertising/Marketing			
Public Relations	4,946.49		
Website	2,257.67		
Advertising/Marketing - Other	5,526.35		
Total Advertising/Marketing		12,730.51	
Annual Banquet		6,535.99	
Annual Board Retreat		76.67	
B. After Hours		214.19	
Bad Debt		904.00	
Business Expo			
Expo advertising	1,438.30		
Expo Expenses	3,227.60		
Total Business Expo		4,665.90	
Cash/Set-up/Change		0.00	
Committee meetings			
Meeting expense	38.49		
Committee meetings - Other	22.00		
Total Committee meetings		60.49	
Luncheons		17,706.09	
Membership			
Plaques and Awards	97.66		
Recruitment & Incentive	1,594.88		
Membership - Other	162.00		
Total Membership		1,854.54	
Newsletter			
Postage	2,210.00		
Printing	2,841.28		
Newsletter - Other	257.81		
Total Newsletter		5,309.09	
Retail Promotions		1,230.39	
Total EXPENSES-PROGRAMS & SERVICES			51,287.86

Greater Oak Harbor
Profit & Loss
January through December 2008

				Jan - Dec 08
EXPENSES-SPECIAL EVENTS				
4th of July				
Advertising			1,926.62	
Carnival License			150.00	
Fireworks			15,104.28	
Fireworks Fundraisers				
Banquet raffle exp		969.51		
Fireworks Fundraisers - Other		21.24		
Total Fireworks Fundraisers			990.75	
Games & Prizes			211.89	
Parade Sound			135.50	
Porta Potties/Clean-up			1,761.30	
Postage			30.45	
Sponsorship Exp			1,083.35	
Supplies			198.74	
Total 4th of July				21,592.88
Holland Happening				
Advertising			988.35	
Canal Race				
Prize		185.00		
Canal Race - Other		48.75		
Total Canal Race			233.75	
Carnival			317.41	
Communications			146.35	
Entertainment				
Stage		1,729.85		
Entertainment - Other		1,042.60		
Total Entertainment			2,772.45	
Excise/Sales Taxes			445.11	
Operation Exp			4,959.14	
Parade			108.40	
Porta Potties			1,677.92	
Postage			440.34	
Poster			515.11	
security			990.00	
Shoemaker			423.00	
Sponsorship/VIP Reception			71.19	
Supplies			1,119.48	
Tee Shirts			1,941.20	
Tiles			1,743.00	
Tulips			680.93	
Vendors			152.90	
Wooden Shoes			1,659.28	
Total Holland Happening				21,385.31
Militatary Support				
Support Our Troops			1,392.39	
Total Militatary Support				1,392.39
Total EXPENSES-SPECIAL EVENTS				44,370.58
EXPENSES-TOURISM				
Advertising/Marketing				
Billboard				
2 % Reimbursement		(9,080.80)		
Billboard - Other		9,080.80		
Total Billboard			0.00	

Greater Oak Harbor
Profit & Loss
January through December 2008

		Jan - Dec 08
City promotion	10,549.11	
IC Tourism reimburse	(210.00)	
Website	2,738.91	
Advertising/Marketing - Other	10,547.27	
Total Advertising/Marketing		23,625.29
Copier Lease (split)		1,801.62
Dues/Subscriptions		97.00
Insurance, Liability		1,367.27
Maintenance & Repairs		3,164.79
Office Supplies		1,349.45
Postage - VIC		
postage mach.	84.56	
Postage - VIC - Other	1,571.51	
Total Postage - VIC		1,656.07
Printing		806.03
Staff Development		131.00
Technology		911.22
Telephone		1,479.36
Travel/Mileage		90.24
Utilities		2,289.52
VIC Bldg		
Land Lease (split)	2,257.80	
Leasehold/Property Taxes (split	2,810.21	
Mortgage payment	7,212.36	
Total VIC Bldg		12,280.37
Volunteer Retention		766.59
WOW Trailer		1,045.39
Total EXPENSES-TOURISM		52,861.21
Reconciliation Discrepancies		0.20
Total Expense		316,678.70
Net Income		**4,550.60**

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City of Oak Harbor
City Council Agenda Bill

Bill No. 7
Date: June 2, 2009
Subject: Tourism Services Agreement with the Chamber of Commerce

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 current tourism information and promotion services contract between the City and the Greater Oak Harbor Chamber of Commerce expires on July 14, 2009. That contract was executed ten years ago, with the City agreeing to pay an annual reimbursement of $52,320 or $4,360 each month. The Greater Oak Harbor Chamber of Commerce performs a commendable service of disseminating tourism information and promoting tourism in general. The purpose of this action is to consider the recommendation of the Oak Harbor Lodging Tax Advisory Committee to approve the Agreement and authorize the Mayor to enter into the proposed Tourism Services Agreement with the Greater Oak Harbor Chamber of Commerce.

AUTHORITY

Pursuant to RCW 67.28.1817(2) and Oak Harbor Municipal Code Section 2.66.040(4), the City Council of Oak Harbor is required to submit to the lodging tax advisory committee, for its review and comment, proposals for, among other reasons, "a change in the use of the revenue received from such a tax". The draft contract proposed an increase in the use of lodging tax proceeds for tourism promotion and marketing, thereby requiring review by the Lodging Tax Advisory Committee.

On May 6, 2009, the Oak Harbor Lodging Tax Advisory Committee recommended approval of the proposed draft Tourism Agreement by the City of Oak Harbor with the Greater Oak Harbor Chamber of Commerce.

SUMMARY STATEMENT

Preliminary discussions between the City and Chamber of Commerce regarding the basis for a new contract began late last year. It is common for cities in the State of Washington to have some sort of contractual relationship with their respective Chamber of Commerce to assist with tourism promotion. The source of funds to promote tourism is typically referred as the "2% Lodging Tax" that is authorized by the State and is locally generated through the sales tax revenue from lodging room transactions. The "2% Lodging Tax" we refer to is actually a total of 4% of lodging sales tax. Washington State credits the first 2% of lodging sales tax back to the cities from the State's share of the 6% sales tax. The second 2% tax is an additional tax imposed upon the local lodging business. The intent of the "2% Lodging Tax" is to utilize those tax proceeds generated by lodging room taxes to promote further tourism in the community which in theory

causes more hotel/motel use. As such, "2% Lodging Tax" funds are very restricted in application and are to be used solely for promotion of tourism.

The City of Oak Harbor should realize annually approximately $160,000 of "2% Lodging Tax" proceeds. This proposed contract with the Greater Oak Harbor Chamber of Commerce would reimburse the Chamber up to $6,667 a month ($80,000 a year) for those eligible tourism activities approved by the City. The term of this proposed contract would be from July 1, 2009 until December 31, 2012. The end date of the proposed contract is meant to coincide with a new City biennium budget process and in anticipation of the State of Washington's plans to significantly revise the statute authorizing the "2% Lodging Tax".

STANDING COMMITTEE REPORT

The proposed Tourism Services Agreement was presented to the General Governmental Standing Committee on February 9, 2009 and the Finance Committee on February 11, 2009. No further Standing Committee review is required.

RECOMMENDED ACTION

Consider the Oak Harbor Lodging Tax Advisory Committee's recommendation of approval and authorize the Mayor to enter into the proposed Tourism Services Agreement with the Greater Oak Harbor Chamber of Commerce.

ATTACHMENTS

Proposed Agreement

MAYOR'S COMMENTS

TOURISM SERVICES AGREEMENT

THIS AGREEMENT, is made and entered into in duplicate this _____ day of _____, 2009, by and between the City of Oak Harbor, a Washington municipal corporation, hereinafter referred to as the "CITY" and the Greater Oak Harbor Chamber of Commerce, hereinafter referred to as the "CHAMBER OF COMMERCE".

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

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

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

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

1. Scope of Services.

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

2. Term.

   The tourism service agreement shall begin on **July 1, 2009**, and shall end no later than **December 31, 2012**, unless sooner terminated according to the provisions herein.

3. Compensation and Method of Payment.

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

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

   3.3 The CITY shall pay the CHAMBER OF COMMERCE for work performed under this Agreement as follows: For tourist information and tourist promotion services – not to exceed **$6,667** per month, based upon actual costs of employee time at

the regular hourly wage of such employee(s) and actual costs of promotion materials including employee time.

4. Reports and Inspections.

4.1 The CHAMBER OF COMMERCE at such times and in such forms as the CITY may require, shall furnish to the CITY such statements, records, reports, data, and information as the CITY may request pertaining to matters covered by this Agreement. The CHAMBER OF COMMERCE reporting responsibilities for this Agreement are as detailed in Exhibit "B" attached hereto and incorporated herein.

4.2 The CHAMBER OF COMMERCE will be requested upon invite to present an annual report to the CITY no later than the last regularly scheduled City Council meeting of April for the prior calendar year's reportable activities.

4.2 The CHAMBER OF COMMERCE shall, with reasonable notice and during reasonable works hours, make available for examination all of its records and data with respect to all matters covered, directly or indirectly, by this Agreement and shall permit the CITY or its designated authorized representative to audit and inspect other data relating to all matters covered by this Agreement. The CITY shall receive a copy of all audit reports made by the agency or firm as to the CHAMBER OF COMMERCE'S activities. The CITY may, at its discretion, conduct an audit at its expense, using its own or outside auditors, of the CHAMBER OF COMMERCE'S activities that relate, directly or indirectly, to this Agreement.

5. Independent Contractor Relationship.

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

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

6. Chamber of Commerce Employees/agents.

The CITY may at its sole discretion make recommendation to CHAMBER OF COMMERCE to remove an employee(s), agent(s) or servant(s) from employment on this Project. The CHAMBER OF COMMERCE may, however, employ that (those) individual(s) on other non-CITY related projects. In the event the CHAMBER elects not to remove an employee upon CITY recommendation, the CITY may consider such an act as a termination for cause.

7. Hold Harmless/Indemnification.

7.1 CHAMBER OF COMMERCE shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the CHAMBER OF COMMERCE in performance of this Agreement, except for injuries and damages caused by the sole negligence of the CITY. For purposes of this Hold Harmless/Indemnification Agreement, CHAMBER OF COMMERCE hereby waives its immunity under Worker's Compensation (Title 57 RCW) and acknowledges that this waiver has been expressly negotiated.

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

8. Insurance.

The CHAMBER OF COMMERCE shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the CHAMBER OF COMMERCE, its agents, representatives, or employees.

8.1 Minimum Scope of Insurance. CHAMBER OF COMMERCE shall obtain insurance of the types described below:

a. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The CITY shall be named as an additionally insured under the CHAMBER OF COMMERCE'S Commercial General Liability insurance policy with respect to the work performed for the CITY.

b. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

8.2 Minimum Amounts of Insurance. CHAMBER OF COMMERCE shall maintain the following insurance limits:

a. 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.

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

a. The CHAMBER OF COMMERCE'S insurance coverage shall be primary insurance as respects the CITY. Any insurance, self-insurance, or insurance pool coverage maintained by the CITY shall be excess of the CHAMBER OF COMMERCE'S insurance and shall not contribute with it.

b. The CHAMBER OF COMMERCE'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.

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

8.5 Verification of Coverage. CHAMBER OF COMMERCE 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 CHAMBER OF COMMERCE before commencement of the work.

9. Treatment of Assets.

Title to all property furnished by the CITY shall remain in the name of the CITY.

10. Compliance with Laws.

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

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

11. Nondiscrimination.

11.1 The CITY is an equal opportunity employer.

11.2 Nondiscrimination in Employment. In the performance of this Agreement, the CHAMBER OF COMMERCE 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 CHAMBER OF COMMERCE 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 CHAMBER OF COMMERCE shall take such action with respect to this Agreement as may be required to ensure full compliance with local, state and federal laws prohibiting discrimination in employment.

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

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

12. Assignment/subcontracting.

12.1 The CHAMBER OF COMMERCE shall not assign its performance under this Agreement or any portion of this Agreement without the written consent of the CITY, and it is further agreed that said consent must be sought in writing by the CHAMBER OF COMMERCE not less than thirty (30) days prior to the date of

any proposed assignment. The CITY reserves the right to reject without cause any such assignment.

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

13. Changes.

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

14. Maintenance and Inspection of Records.

14.1 The CHAMBER OF COMMERCE shall maintain books, records and documents, which sufficiently and properly reflect all direct and indirect costs related to the performance of this Agreement and shall maintain such accounting procedures and practices as may be necessary to assure proper accounting of all funds paid pursuant to this Agreement. These records shall be subject at all reasonable times to inspection, review, or audit, by the CITY, its authorized representative, the State Auditor, or other governmental officials authorized by law to monitor this Agreement. The CITY anticipates no more than one audit per year.

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

15. Other Provisions.

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

16. Termination.

16.1 Termination for Convenience. The CITY may terminate this Agreement, in whole or in part, at any time for any reason by giving at least one hundred twenty (120) days' written notice to the CHAMBER OF COMMERCE. Upon such termination for convenience, the City shall pay the CHAMBER

OF COMMERCE for all services provided under this Agreement through the date of termination.

16.2 Failure of Appropriation. The CITY may terminate this Agreement due to failure of appropriation by giving at least thirty (30) days' written notice to the CHAMBER OF COMMERCE. Upon such termination the City shall pay the CHAMBER OF COMMERCE for all services provided under this Agreement through the date of termination.

16.3 Termination for Cause. If the CHAMBER OF COMMERCE fails to perform in the manner called for in this Agreement, or if the CHAMBER OF COMMERCE fails to comply with any other provisions of the Agreement and fails to correct such noncompliance within twenty (20) days' written notice thereof, the CITY may terminate this Agreement for cause. Termination shall be effected by serving a notice of termination on the CHAMBER OF COMMERCE setting forth the manner in which the CHAMBER OF COMMERCE in default. The CHAMBER OF COMMERCE will only be paid for services performed in accordance with the manner of performance set forth in this Agreement through the date of termination.

17. Notice.

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

18. Attorneys Fees and Costs.

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

19. Jurisdiction and Venue.

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

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

20. Severability.

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

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

21. Entire Agreement.

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

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

CITY:	CHAMBER OF COMMERCE:
CITY OF OAK HARBOR	GREATER OAK HARBOR CHAMBER OF COMMERCE
Address: 865 SE Barrington Drive Oak Harbor, WA 98277	Address: 32630 SR 20 Oak Harbor, WA 98277
_____ Jim Slowik, Mayor	_____ By: Randy Bradford, President

Attest:

_____
Connie Wheeler, City Clerk

Tourism Services Agreement
Exhibit "A"
Scope of Services

1. Maintenance and Operation of Tourist Information Facility. The Chamber of Commerce will maintain and operate a tourist facility for the distribution of tourist-related information as follows:

   i. **Services:** The Chamber of Commerce will furnish services generally considered to be of an informational and assistance nature to tourists and visitors to the community, including travel directions, directions to points of interest, lodging accommodations and other hospitality services, recreational activities, cultural events, emergency services, and other referral services.

   ii. **Hours of Operation:** The City anticipates the Chamber of Commerce shall generally maintain minimum hours of operation of the Tourist Information Facility located at 32630 SR 20 in Oak Harbor from 9:00 AM to 5:00 PM, Monday through Friday, on regularly recognized business days. If minimum hours are reduced by the Chamber of Commerce, the City may adjust payment to the Chamber of Commerce to reflect the reduction in operation hours.

   iii. **Staffing:** The Chamber of Commerce will provide qualified, trained staff to operate the tourist information facilities in a professional and competent manner.

2. Other Tourist Promotion Activities:

   i. In addition to the operation of the tourist information facility, the Chamber of Commerce will provide "Tourist Promotion" services as defined by RCW 67.28.080(6), including purchase and distribution of media (print, broadcast or electronic), large bill board promotion displays and the facilitation of special events and festivals designed to attract tourists.

   ii. The Chamber of Commerce agrees that all tourist promotion funds received from the City will promote tourism within the City of Oak Harbor and not benefit individual members of the Chamber of Commerce.

3. <u>Funding Allocation Outline</u>

i. The Chamber of Commerce will perform Tourist Information Facility Services and Tourism Promotion Activities in accordance with the Funding Outline set forth herein:

A. Annual Operation Cost of Tourist Information Facility	$70,000
B. Annual Tourist Promotion Activities Cost	$10,000
Total Annual Fund Allocation	$80,000

Tourism Services Agreement
Exhibit "B"
Record Keeping and Reporting

1. No later than the last regularly scheduled City Council meeting of April for the prior calendar year's reportable activities, Chamber of Commerce will schedule and present an annual report to the Mayor and City Council consisting of the following items:

   a) Total revenue received from the City of Oak Harbor for the fiscal year or any partial fiscal year from this agreement.
   b) The list of festivals, special events or other non-profit organizations that received funds or services from the Chamber of Commerce under this agreement.
   c) The list of festivals, special events, or tourism facilities sponsored or owned by the Chamber of Commerce that received funds from this agreement.
   d) The amount of revenue expended on each festival, special event, or tourism-related facility owned by the Chamber of Commerce or sponsored by other non-profit organizations that received funds from the Chamber of Commerce under this agreement.
   e) The estimated number of tourists, persons traveling over fifty miles to Oak Harbor, persons remaining at Oak Harbor overnight, and lodging stays generated per festival or special event.

2. Chamber of Commerce shall schedule and present at a regularly scheduled City Council meeting no later than October 31, an annual budget proposal that includes the following information:

   a) Those tourism and promotion budget goals and objectives for the upcoming budget year that will require City reimbursement.
   b) A summary total of all budgeted expenditures that will require City reimbursement.
   c) A summary total for each proposed tourism or promotion program of all budgeted expenditures requiring City reimbursement.
   d) A summary total for each proposed festival or planned event of all budgeted expenditures requiring City reimbursement.

City of Oak Harbor
City Council Agenda Bill

Agenda Bill No. 8
Date: June 2, 2009
Subject: Marina Aquatic Lands Lease with WA State Dept. of Natural Resources

FROM: Steve Powers PSP
Development Services Director

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

PURPOSE:
This agenda bill presents a twenty-year aquatic lands lease between the City of Oak Harbor and the Washington State Department of Natural Resources (DNR) which would allow the Marina to continue to operate in its present location at a reduced fee for ten years.

AUTHORITY
The authority to enter into a reduced fee lease for a public marina comes from RCW 79.105.620.

SUMMARY STATEMENT

Background
In March of 2008 ESSB 6532 provided the City an opportunity to enter into a "reduced fee" lease with DNR for a period of ten years. The new law created RCW 79.105.620 (please see Exhibit 1). Under our prior lease, the City was responsible for paying DNR approximately $50,000 per year for the aquatic lands portion of our leasehold. In order to take advantage of this law the City is required to enter into a new lease with DNR. The lease is for a 10-year period rent free with an option to renew for ten (10) additional years with rent at State rates (See Section 4.1 b). Although the new law went into effect on June 12, 2008, the City did not receive a draft lease from DNR until November 3, 2008. The conditions of the draft lease were not acceptable to the City and we have been working since that time to negotiate a more favorable agreement. The State law requires that the new lease be executed by June 12, 2009.

DNR Draft Lease
There are two primary documents associated with the lease: the lease itself and Exhibit B. The lease is DNR standard 'boilerplate' and Exhibit B provides details about the Marina and the proposed redevelopment project. While the City has some minor objections with the lease, our

real concerns are found in Exhibit B. The originally proposed lease included the following major areas of concern for City staff:

1. The lease provisions are "regulating" areas subject to regulatory authority of other agencies. Essentially, DNR is using the lease process to act as another permit agency even though our proposed redevelopment project has already gone through the full permitting process with agencies of jurisdiction. The most notable example of this is that the lease requires the City to provide new floats comprised of at least fifty-percent (50%) grating with sixty-percent (60%) openings for the entire Marina. DNR is seeking this improvement to meet ambient light transmission levels that will allow for 30 percent ambient light to reach the sediment or 90 percent of the light at the structure's surface to reach the water surface under the structures. DNR maintains that the addition of grating (or additional ambient light through other design alternatives) is important to improving the aquatic environment surrounding the Marina.

   In fact, the City's Hydraulic Project Approval (HPA) issued by the Washington Department of Fish and Wildlife already requires measures to improve the ambient light conditions. The new ADA compliant aluminum gangway shall be fully grated. The two most waterward sections of the new public multi-use float shall be 8 foot wide floats with fish passageways 2 foot wide every 6 feet, covered with grating. Covered slips shall have a minimum of 60% open space on the sides and their interiors shall be painted white to maximize the internal distribution of light. These permit conditions are already required of the City as it undertakes the project.

2. The lease provisions would require the City to undertake the mitigation required for our redevelopment project within the lease period whether or not we start or complete the project. Similarly, the City would be required to complete certain conservation measures within that same time period.

3. A number of other areas of concern were forwarded to DNR in a November 21, 2008 letter from City Attorney Hite to Ms. Janis Snoey, Assistant Attorney General, DNR Division (please see Exhibit 2)

City Draft Lease

After several months of work without making any noticeable progress, and keeping the June 12, 2009 deadline in mind, staff forwarded to DNR a revised lease. This version is one that we can recommend to the City Council for approval. The major areas of change in this version address the following topics:

1. The draft last sent by DNR required the City to undertake a major improvement project at the Marina. While the City has obtained permits which authorize such a project, the City Council has not appropriated funds for this purpose. The City's version removes the mandatory construction requirement.

2. The DNR draft also required the City to undertake certain "conservation measures", whether or not the City does the proposed project. These conservation measures are expensive. The City agrees that it will meet the conservation measures when it does repairs and renovations but cannot agree to lease requirements to make improvements if it does not change what is there now.

3. The City's version of Exhibit B removes the requirement for grating as a condition of the lease. Staff is of the opinion that requirements such as this should come through the project permitting process.

DNR Response

As of the date of this agenda bill, the City has not had a formal response from DNR on our proposed lease. We have informally heard from local DNR staff members that they understand our concerns related to implementing conservation and mitigation measures in advance of building our redevelopment project and will accept our changes. They have also forwarded to staff a revised Exhibit B which only requires the City to implement these measures if we undertake a reconstruction or new construction project.

DNR staff has not, however, accepted the City's proposed changes with respect to the float/grating issue. While they have offered a design alternative, it would still require to City to implement what is believed to be a costly addition to the proposed project. DNR has shifted their focus from grating to what can be done to meet ambient light transmission levels that will allow for 30 percent ambient light to reach the sediment or 90 percent of the light at the structure's surface to reach the water surface under the structures. In some cases this can be met structural with grating and in others a combination of several measures that will include grating but to a lesser degree. Again, staff is of the opinion that requirements such as this should come through the project permitting process rather than through the lease conditions.

Budgetary Considerations

RCW 79.105.620 would allow the City to save $50,000/year over a ten-year period of time, for a total savings of $500,000. The City's consulting engineer for the marina redevelopment project (the firm of Reid Middleton) estimates that meeting DNR's grating/ambient light requirements could add between $1.8 to $4.3 million dollars to the cost of the full redevelopment project. From strictly a dollars and cents standpoint, the benefits of the new State law are outweighed by the costs associated with the proposed lease. Further more, the City has no ability to allocate and appropriate funds in an amount that is as yet, unknown.

CONCLUSION

In order to take advantage of the provisions of RCW 79.105.620 that allow for a reduced fee lease, the City of Oak Harbor and DNR need to execute a lease by June 12, 2009. The City has negotiated in good faith with DNR agreeing to lease conditions we believe can reasonably be met. Staff does not recommend the City Council enter into a lease with DNR that includes mandatory light passage maximization whenever the City might replace, renovate, repair existing improvements or construct new improvements without benefit of specific negotiation at the time

permits are sought. The lease attached to this agenda bill represents the terms that staff believes are appropriate for the Oak Harbor Marina.

Staff recommends that the City Council approve the lease as presented and authorize the Mayor to sign. It is the staff's intention to then forward the signed lease to DNR for their consideration and approval.

STANDING COMMITTEE REVIEW

This item was presented to the Governmental Services Standing Committee on May 11, 2009.

RECOMMENDED ACTIONS:

Approve the lease as presented by staff and authorize the Mayor to sign.

ATTACHMENTS:

Exhibit 1	RCW 79.105.620
Exhibit 2	Letter from City Attorney Hite to Ms. Janis Snoey, Assistant Attorney General, DNR Division, dated November 21, 2008
Exhibit 3	Draft lease and exhibits

MAYOR'S COMMENTS:

RCW 79.105.620
City use of state-owned aquatic lands for publicly owned marina -- Reduced fee lease -- Expiration date. ***(Expires July 1, 2029.)***

(1)(a) A city with a population between twenty thousand and twenty-five thousand on June 12, 2008, and that currently operates a publicly owned marina may enter into a reduced fee lease authorizing the city to use state-owned aquatic lands for the purpose of operating a publicly owned marina. The office of financial management's population estimate must be used to determine a city's population for purposes of this section. The lease period may not exceed twenty years.

(b) No rent is due the state for the use of state-owned aquatic lands for the first ten years under such a lease. During subsequent years under such a lease, rent is due for only those lands that have been included under a previous aquatic land lease for the marina. The lease may not be renewed, extended, or put into holdover.

(2) A city choosing to enter into a lease as provided in subsection (1) of this section must do so within one year of June 12, 2008. Prior to entering into such a lease, the city must be in good standing with the department and must have paid all amounts owed the department including any accrued interest.

(3) State-owned aquatic lands that may be included in the lease are limited only to those lands included in the most recent expired lease with the city for the marina, along with any state-owned aquatic lands immediately adjacent to those lands. Only those marina operations conducted directly by the city may be included within the leased area.

(4) If a city chooses to enter into an agreement as provided in subsection (1) of this section, the city is not eligible to apply for grants from the aquatic lands enhancement account created under RCW 79.105.150 for the first ten years of the lease.

(5) Upon expiration of the twenty-year lease, the city may enter into a new lease for the use of state-owned aquatic lands or vacate the lands as agreed to in the expiring lease. To ensure the consistent statewide application of aquatic land management principles, the new lease must be completed in accordance with all applicable sections of this title.

(6) This section expires July 1, 2029.

[2008 c 132 § 1.]

EXHIBIT 1

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LAW DEPARTMENT

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

Margery Hite
City Attorney
AnhKiet Ngo
Asst. City Attorney/*Prosecutor*

Kim Perrine
Legal Administrative Assistant
Marianne Ledgerwood
Paralegal

November 21, 2008

Janis Snoey, Assistant Attorney General
Department of Natural Resources Division
P O Box 40100
Olympia, WA 98504-0100

Re: Aquatic lands lease between DNR and
City of Oak Harbor - Lease No. 20-A10082

Dear Ms. Snoey:

As counsel to the City of Oak Harbor, I am writing to you in your role as counsel for DNR on the proposed aquatic lands lease between DNR and the City of Oak Harbor. The City received the proposed lease on November 3, 2008 and has acted expeditiously to review its terms. We have consulted with our insurer (WCIA) and our engineer for the marina redevelopment project (Shannon Kinsella of Reid, Middleton); and have the following concerns:

1. Past due rent. As you know, ESSB 6532 was signed by the Governor on March 25, 2008, effective June 12, 2008, providing that cities the size of Oak Harbor and operating a publicly owned marina may enter into a lease of state-owned aquatic lands for a ten-year period without rent. On May 7, 2008 the City tendered rent payments due under the prior lease of $9,175.86, through June 24, 2008, so that the City would be current on its rent obligations at the expected date for a new lease.

   However, the City did not receive a lease from DNR until November 3rd of this year. In that letter (dated October 28, 2008), DNR charged the City for additional rent since the City's tender at the end of June, as well as late interest penalties for the City's failure to pay rent while DNR was preparing a lease. DNR has indicated an unwillingness to discuss these charges, in spite of the fact that DNR's own fiscal note indicated a July 1, 2008 beginning date for the new lease. While we have pointed out that those rent charges and late interest penalties arise from DNR's delay in preparing a lease, we have been informed that our only recourse is to sue DNR (We have been informed that we will

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EXHIBIT 2

receive a letter from the Commissioner confirming that the October 28, 2008 is an order or decision of the Commissioner which will then trigger the court review provisions of RCW 79.105.160).

2. Lease provisions "regulating" areas subject to regulatory authority of other agencies. Exhibit B to the standard form lease specifically limits the uses and activities of the City in its marina. While we think it is appropriate for DNR to have prior information and approval over changes to the infrastructure of the marina, the provisions in Exhibit B exceed this legitimate function of DNR as manager of the lands in several significant ways:

   a. DNR is imposing regulatory requirements on the City that the regulatory agencies with authority over the subject-matter have already addressed in permitting decisions. Section IV of Exhibit B requires grating with at least sixty (60) percent open space on the individual piers, finger docks, floats and gangways. The City has obtained permits for these structures and negotiated alternative mitigation with the regulatory agencies – the Washington Department of Fish and Wildlife (WDFW) and the U.S. Army Corps of Engineers. In essence, DNR is re-regulating this issue. See also the provisions at pp. 4-8 dictating the manner of the marina redevelopment in detail. The Marina has obtained permits from WDFW, the Army Corps of Engineers, DOE and a local shoreline development permit for its proposed redevelopment activities. These permits may expire or require re-negotiation before all the redevelopment is completed. While it is appropriate to require the City to have the necessary permits and to abide by their conditions, DNR lease rules should not interfere with the actions of the applicable regulatory agencies.

   b. DNR is also seeking to regulate matters that are subject to the authority of other agencies generally. The lease should require the City to meet the regulations of those agencies but should not add another layer of DNR rules. Even in cases where the DNR rules reflect today's regulations, it is inappropriate to set rules in a ten-year lease which will inevitably be subject to modification by regulatory agencies in the next ten years. Some examples of this are found in Section I (B) of Exhibit B (regulating sewage waste disposal by live-aboards); Section III (A) of Exhibit B (regulating sewage and wastewater practices for the marina); Section III (C) (establishing rules for use of fuel and other hazardous substances); Section III (D) (setting rules for boat maintenance and repair by marina customers); Section IV (A) (required conservation measures during renovation, repair and new construction); Section IV (B) (Description of Mitigation and Shoreline Enhancement) (requiring certain mitigation and shoreline enhancement measures).

3. Lease provisions dictating the City's future improvement efforts. "Before the end of the initial term, Tenant shall conduct the phased reconstruction and upgrading of the existing marina facilities described below". (Section IV(B) Ms. Gustafson asked Harbormaster, Mack Funk for the language that the City used in applying for its permits. However, now

that the permit approvals have been received, the City Council will still need to approve and fund the redevelopment work. Yet Exhibit B requires the City to undertake specific phased reconstruction and upgrading of the existing marina facilities (Section IV(B)). These improvements are desirable but have not been approved or funded. It is also impossible to say with the particularity of Exhibit B exactly how this will go forward. At this point, the City's consulting engineers are doing a study for the first phase of the dredging project and a design for accessibility improvements and for electrical and water improvements to the marina. Specific requirements for this work so far in advance of final project approval are neither practical nor appropriate.

4. Restrictions on Use. The limitations on use in Section 2 appear to exclude existing uses, and potential uses the City believes would be consistent with the marina. The proposed language states: "Tenant shall use the Property for a commercial marina, boat launch, storage units, parking administrative building (the "Permitted Use") and for no other purpose." The City currently also has a public park on the property and a fuel dock. In the future, the City would like to be able to allow concessionaires to sell food, conduct boat rentals and offer similar services to marina users.

5. Lease requirements for construction which do not comport with engineering best practices. According to the City's engineer, Shannon Kinsella, Section IV(A) of Exhibit B requires the City to use piling stop-collars or similar devices for floats. Ms. Kinsella does not believe this is the best engineering practice for this kind of structure. The City does not believe that DNR should dictate engineering decisions by inserting them into its lease.

6. Performance Bond Requirements and Flat Prohibitions on Using Fill. Section 7.3 requires the City to post a performance bond for any work to be performed on the marina. It should not be necessary for the City to incur this cost since the City is a municipal corporation rather than a private entity. There are also firm prohibitions on work under this section such as placement of fill, construction of a new bulkhead or an increase in covered moorage. These flat prohibitions are too stringent – the City may need to place fill on the uplands to repair and maintain parking surfaces, for example. Shannon Kinsella points out that it may be necessary to use fill for a variety of reasons: to re-grade the upland area to improve drainage, to build new buildings with a higher floor elevation than the existing grade, etc. The City may also wish to demolish the upland storage units, which would require fill to restore the surfaces to appropriate levels. While the City has no objection to getting prior approval from DNR, the flat prohibitions are unworkable.

7. Insurance. We have advised DNR that the City is insured through the WCIA risk pool. DNR has indicated that this is satisfactory to the agency but will not modify any of the terms of the standard form insurance language to conform to the actual practice of WCIA. In light of DNR's unwillingness to modify any insurance lease terms and in reliance upon WCIA's assurance that it can work with DNR to meet the requirements set out in the lease on the City's behalf, the City will accept the insurance provisions.

8. Survey description. The City Engineer points out an error in the survey description which should be corrected (a repetition of a portion of a survey description). Also, Parcel D should not be excluded from the property subject to the lease.

9. Signature of Mayor. The Mayor of the City of Oak Harbor is Jim Slowik, not Patty Cohen.

The City of Oak Harbor requests that DNR make the following changes to the lease:

1. Date the lease to begin as of July 1, 2008 so that the ten-year rent-free lease period runs from that date. This would result in a modification of the amount of rent due and owing to the period from June 24- July 1, 2008.

2. Delete those provisions of Exhibit B that create new rules on practices subject to state, federal and local agency regulation and/or permits issued to the City. Section 2.3 already requires the City to "keep current and comply with all conditions and terms of any permits, licenses, certificates regulations ordinances, statutes, and other government rules and regulations regarding its use and occupancy of the Property."

3. Eliminate requirements for City renovation and construction. These are still tentative. It is appropriate to include the City's general plans for improvements as part of what may be done under the lease. It is not appropriate, however, to require the City to undertake them and not to deviate from the initial plans. The City would accept a provision that requires the City to present its plans for renovation and construction to DNR for DNR approval, such approval not to be unreasonably withheld.

4. Delete specific design and engineering requirements other than that they must meet the Washington state standards for design and engineering professionals. DNR should not substitute its engineering judgment in a lease for that of design and engineering professionals.

5. Delete all requirements for regulations and best practices that do not allow for change over time. These include the City's own Best Management Practices, attached to Exhibit B as Attachment 3. These are not current but more importantly are subject to improvement as time goes on and thus should not be cast in stone as of the date of the lease.

6. Eliminate the requirement for a performance bond for construction by the City (Section 7.3). Change prohibitions in Section 7.3 to requirements for prior approval by DNR.

7. Include park, fuel dock and public concessions related to the marina use in the "Permitted Use" (Section 2.1).

8. Include Parcel D in the survey description of the property and correct the duplication of language in the survey description.

9. Correct the Mayor's signature line.

We would appreciate the opportunity to discuss these requests with you.

We have attempted to work as expeditiously as possible to get our changes to you within the 30 day period you specified. Please let me know if DNR is willing to discuss these changes and if a meeting can be arranged.

Thank you for your assistance.

Very truly yours,

Margery Hite

Margery Hite
City Attorney

cc: Senator Mary Margaret Haugen
Mayor Jim Slowik
City Administrator Paul Schmidt
Harbormaster Mack Funk
Lisa Roberts, WCIA
Shannon Kinsella, Reid Middleton

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STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES
Peter Goldmark, Commissioner of Public Lands

AQUATIC LANDS LEASE
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STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES
DOUG SUTHERLAND, Commissioner of Public Lands

AQUATIC LANDS LEASE

AQUATIC LANDS LEASE NO. 20-A10082

THIS LEASE is made by and between the STATE OF WASHINGTON, acting through the Department of Natural Resources ("State"), and CITY OF OAK HARBOR, a government entity ("Tenant").

BACKGROUND

Tenant desires to lease the aquatic lands commonly known as Oak Harbor, which are tidelands and bedlands located in Island County, Washington, from State, and State desires to lease the property to Tenant pursuant to the terms and conditions of this Lease.

THEREFORE, the Parties agree as follows:

SECTION 1 PROPERTY

1.1 Property Defined.

(a) State leases to Tenant and Tenant leases from State the real property described in Exhibit A and A-1 together with all the rights of State, if any, to improvements on and easements benefiting the Property, but subject to the exceptions and restrictions set forth in this Lease (collectively the "Property").

(b) This Lease is subject to all valid interests of third parties noted in the records of Island County, or on file in the office of the Commissioner of Public Lands, Olympia, Washington; rights of the public under the Public Trust Doctrine or federal navigation servitude; and treaty rights of Indian Tribes.

(c) This Lease does not include any right to harvest, collect or damage any natural resource, including aquatic life or living plants, any water rights, or any mineral

rights, including any right to excavate or withdraw sand, gravel, or other valuable materials, except to the extent expressly permitted in Exhibit B.

(d) State reserves the right to grant easements and other land uses on the Property to others when the easement or other land uses will not interfere unreasonably with the Permitted Use.

1.2 Inspection. State makes no representation regarding the condition of the Property, improvements located on the Property, the suitability of the Property for Tenant's Permitted Use, compliance with governmental laws and regulations, availability of utility rights, access to the Property, or the existence of hazardous substances on the Property. Tenant inspected the Property and accepts it "AS IS."

SECTION 2 USE

2.1 Permitted Use. Tenant shall use the Property for a commercial marina, boat launch, storage units, parking, administrative building, fuel dock, public park and access trail (the "Permitted Use"), and for no other purpose without state approval, which State shall not unreasonably withhold. This is a mixed use, with 24.24 acres of water-dependent use and 4.61 acres of nonwater-dependent use. Exhibit B describes the Permitted Use in detail.

2.2 Restrictions on Use.

(a) Tenant shall not cause or permit any damage to natural resources on the Property, except to the extent expressly permitted in Exhibit B.

(b) Unless approved by State in writing and in accordance with Exhibit B, Tenant shall not cause or permit any filling activity to occur on the Property or adjacent state-owned aquatic land. This prohibition includes any deposit of rock, earth, ballast, wood waste, refuse, garbage, waste matter including chemical, biological, or toxic wastes, hydrocarbons, any other pollutants, or other matter.

(c) Tenant shall not cause or permit waste on the Property or adjacent state-owned aquatic land.

(d) Failure to Comply with Restrictions on Use.

(1) Tenant's failure to comply with the restrictions on use under this Subsection 2.2 is a default subject to Section 14, Default and Remedies. Tenant shall cure the default by taking all steps necessary to remedy the failure and restore the Property to the condition before the failure occurred within the time for cure provided in Subsection 14.2.

(2) If Tenant fails to cure the default in the manner described in this Paragraph 2.2(d), the default becomes an Event of Default subject to Subsection 14.3, Remedies. In addition, the State may (1) restore the Property and charge Tenant remedial costs and/or (charge Tenant natural resource damages. On demand by State, Tenant shall pay all costs and/or damages.

(e) State's failure to notify Tenant of Tenant's failure to comply with all or any of the restrictions set out in this Subsection 2.2 does not constitute a waiver of any remedies available to State.

(f) This Section 2.2 does not limit Tenant's liability under Section 8, below.

2.3 Conformance with Laws. Tenant shall, at all times, keep current and comply with all conditions and terms of any permits, licenses, certificates, regulations, ordinances, statutes, and other government rules and regulations regarding its use or occupancy of the Property.

2.4 Liens and Encumbrances. Tenant shall keep the Property free and clear of any liens and encumbrances arising out of or relating to its use or occupancy of the Property, unless expressly authorized by State in writing.

2.5 Residential Use. Tenant shall limit the number of residential slips, and shall manage any residential uses on the Property, in accordance with the provisions of WAC 332-30-171 and as specified in Exhibit B.

SECTION 3 TERM

3.1 Term Defined. The term of this Lease is ten (10) years (the "Term"), beginning on the 12th day of June, 2009 (the "Commencement Date"), and ending on the 11th day of June, 2019 (the "Termination Date"), unless terminated sooner under the terms of this Lease.

3.2 Renewal of the Lease. Tenant may have the option to renew this Lease for one (1) additional term of ten (10) years each. The initial Term of this Lease, and all renewal terms, shall not exceed twenty (20) years in the aggregate. Tenant must file with State a written request to renew at least one (1) year prior to the Termination date and State will respond with consent or denial within ninety (90) days. Renewal will be effective upon State's agreement. State may deny the renewal request if Tenant is in default at the time. The terms and conditions of any renewal term will be the same as this Lease, except that Tenant shall pay rent. In addition, State may require financial security and modify the provisions dealing with hazardous waste or impacts to natural resources. At the time of State's agreement to renew this Lease, State shall notify Tenant what the annual rent shall be as calculated pursuant to Section 4.1(b).

3.3 End of Term.

(a) Upon the expiration or termination of this Lease, Tenant shall remove Improvements in accordance with Section 7, Improvements, and surrender the Property to State in the same or better condition as on the Commencement Date, reasonable wear and tear excepted.

(b) Definition of Reasonable Wear and Tear.

(1) Reasonable wear and tear is deterioration resulting from the Permitted Use that has occurred without neglect, negligence, carelessness, accident, or abuse of the Property by Tenant or any other person on the premises with the permission of Tenant.

(2) Reasonable wear and tear does not include any deposit of material prohibited under Paragraph 2.2(b) unless expressly permitted by State in writing and regardless of whether the deposit is incidental to or the byproduct of the Permitted Use.

(c) If Property is in worse condition, excepting for reasonable wear and tear, on the surrender date than on the Commencement Date, the following provisions apply.

(1) State shall provide Tenant a reasonable time to take all steps necessary to remedy the condition of the Property. State may require Tenant to enter into a right-of-entry or other use authorization prior to the Tenant entering the Property to remedy any breach of this Subsection 3.3.

(2) If Tenant fails to remedy the condition of the Property in a timely manner, then State may take any steps reasonably necessary to remedy Tenant's failure. Upon demand by State, Tenant shall pay all costs of such remedial action, including but not limited to the costs of removing and disposing of any material deposited improperly on the Property, lost revenue resulting from the condition of the Property prior to and during remedial action, and any administrative costs associated with the remedial action.

3.4 Holdover.

(a) If Tenant remains in possession of the Property after the Termination Date, the occupancy will not be an extension or renewal of the Term. The occupancy will be a month-to-month tenancy, which either Party may terminate on thirty (30) days' written notice. The terms of the tenancy will be the same as the terms of this Lease, except that if the holdover tenancy follows the initial term of this Lease, Tenant shall pay annual rent as provided for a renewal term under Paragraph 4.1(b).

(1) The monthly rent during the holdover following the renewal term will be the same rent that would be due if the Lease were still in effect.

(2) Payment of more than the monthly rent will not be construed to create a periodic tenancy longer than month-to-month. If Tenant pays more than the monthly rent and State provides notice to vacate the property, State shall refund the amount of excess payment remaining after the Tenant ceases occupation of the Property.

(b) If State notifies Tenant to vacate the Property and Tenant fails to do so within the time set forth in the notice, Tenant will be a trespasser and shall owe the State all amounts due under RCW 79.02.300 or other applicable law.

SECTION 4 RENT

4.1 Annual Rent.

(a) In conformance with RCW 79.105.620, Tenant shall pay no rent during the initial Term of this Lease.

(b) If the Parties renew this Lease as provided in Section 3, Tenant shall pay annual rent calculated in accordance with State's statutes, rules, and practices current at the time of renewal. During the renewal term, the rent is subject to adjustment in accordance with State's statutes, rules, and practices current at the time of

renewal. The annual rent, upon the Commencement Date of the renewal term or as adjusted thereafter (the "Annual Rent"), is due and payable in full on or before the Commencement Date of the renewal term and on or before the same date of each year thereafter. Any payment not paid by State's close of business on the date due is past due.

4.2 Payment Place. Tenant shall make payment to Financial Management Division, 1111 Washington St SE, PO Box 47041, Olympia, WA 98504-7041.

4.3 Adjustment Based on Use. Annual Rent is based on Tenant's Permitted Use of the Property, as described in Section 2 above. If Tenant's Permitted Use changes, the Annual Rent shall be adjusted as appropriate for the changed use. If Tenant's changed use is inconsistent with RCW 79.105.620, Tenant shall pay annual rent calculated as provided for a renewal term under Paragraph 4.1(b).

SECTION 5 OTHER EXPENSES

5.1 Utilities. Tenant shall pay all fees charged for utilities in connection with the use and occupancy of the Property, including but not limited to electricity, water, gas, and telephone service.

5.2 Taxes and Assessments. Tenant shall pay all taxes (including leasehold excise taxes), assessments, and other governmental charges, of any kind whatsoever, applicable or attributable to the Property, Tenant's leasehold interest, the improvements, or Tenant's use and enjoyment of the Property.

5.3 Right to Contest. If in good faith, Tenant may contest any tax or assessment at its sole cost and expense. At the request of State, Tenant shall furnish reasonable protection in the form of a bond or other security, satisfactory to State, against any loss or liability resulting from such contest.

5.4 Proof of Payment. If required by State, Tenant shall furnish to State receipts or other appropriate evidence establishing the payment of any amounts this Lease requires Tenant to pay.

5.5 Failure to Pay. If Tenant fails to pay any of the amounts due under this Lease, State may pay the amount due, and recover its cost in accordance with Section 6.

SECTION 6 LATE PAYMENTS AND OTHER CHARGES

6.1 Late Charge. If State does not receive any rental payment within ten (10) days of the date due, Tenant shall pay to State a late charge equal to four percent (4%) of the amount of the payment or Fifty Dollars ($50), whichever is greater, to defray the overhead expenses of State incident to the delay. Failure to pay rent constitutes a default by the Tenant and State may seek remedies under Section 14 as well as late charges and interest as provided in this section.

6.2 Interest Penalty for Past Due Rent and Other Sums Owed.

(a) Tenant shall pay interest on the past due rent at the rate of one percent (1%) per month until paid, in addition to paying the late charges determined under Subsection 6.1, above.

(b) If State pays or advances any amounts for or on behalf of Tenant, Tenant shall reimburse State for the amount paid or advanced and shall pay interest on that amount at the rate of one percent (1%) per month from the date State notifies Tenant of the payment or advance. This includes, but is not limited to, State's payment of taxes of any kind, assessments, insurance premiums, costs of removal and disposal of materials or Improvements under any provision of this Lease, or other amounts not paid when due

6.3 Referral to Collection Agency and Collection Agency Fees. If State does not receive payment within thirty (30) days of the due date, State may refer the unpaid amount to a collection agency as provided by RCW 19.16.500 or other applicable law. Upon referral, Tenant shall pay collection agency fees in addition to the unpaid amount.

6.4 No Accord and Satisfaction. If Tenant pays, or State otherwise receives, an amount less than the full amount then due, State may apply such payment as it elects. State may accept any payment in any amount without prejudice to State's right to recover the balance of the rent or pursue any other right or remedy. No endorsement or statement on any check, any payment, or any letter accompanying any check or payment constitutes accord and satisfaction.

6.5 No Counterclaim, Setoff, or Abatement of Rent. Except as expressly set forth elsewhere in this Lease, Tenant shall pay rent and all other sums payable by Tenant without the requirement that State provide prior notice or demand. Tenant's payment is not subject to any counterclaim, setoff, deduction, defense or abatement.

SECTION 7 IMPROVEMENTS

7.1 Improvements Defined.

(a) "Improvements," consistent with RCW 79.105 through 79.145, are additions within, upon, or attached to the land. This includes, but is not limited to, fill, structures, bulkheads, docks, pilings, and other fixtures.

(b) "Personal Property" means items that can be removed from the Property without (1) injury to the Property or Improvements or (2) diminishing the value or utility of the Property or Improvements.

(c) "State-Owned Improvements" are Improvements made or owned by State. State-Owned Improvements includes any construction, alteration, or addition to State-Owned Improvements made by Tenant.

(d) "Tenant-Owned Improvements" are Improvements made by Tenant with State's consent or acquired by Tenant from former tenant in accordance with RCW 79.125.300 or 79.130.040.

(e) "Unauthorized Improvements" are Improvements made on the Property without State's prior consent or Improvements made by Tenant that do not conform to plans submitted to and approved by the State.

7.2 Existing Improvements. On the Commencement Date, the following Improvements are located on the Property: Pier, ramp, pilings, docks, floats, fuel station and tanks, covered moorage, upland storage units, office building, restrooms, 2 pumpout facilities, public park, parking, and boat ramp. The Improvements are Tenant-Owned Improvements..

7.3 Construction, Major Repair, Modification, and Demolition.

(a) This Subsection 7.3 governs construction, alteration, replacement, major repair, modification, demolition, and deconstruction of Improvements ("Work"). Section 11 governs routine maintenance and minor repair of Improvements and the Property.

(b) Except in an emergency, Tenant shall not conduct any Work, except as described in Exhibit B, without State's prior written consent, as follows:

(1) State may deny consent if State determines that denial is in the best interests of the State. State may impose additional conditions reasonably intended to protect and preserve the Property. If Work is for removal of Improvements at End of Term, State may waive removal of any or all Improvements.

(2) State will deny consent for any Work that provides for

(i) Placement of fill below ordinary high water, unless fill is intended for mitigation in accordance with Exhibit B,

(ii) Construction of new bulkhead, or

(iii) An increase in the total square footage of covered moorage.

(3) Except in an emergency, Tenant shall submit to State plans and specifications describing the proposed Work concurrent with submitting permit applications to regulatory authorities unless Tenant and State otherwise agree to coordinate permit applications. At a minimum, or if no permits are necessary, Tenant shall submit plans and specifications at least ninety (90) days before commencement of Work.

(4) State waives the requirement for consent if State does not notify Tenant of its grant or denial of consent within sixty (60) days of submittal.

(c) Tenant shall notify State of emergency Work within five (5) business days of the start of such Work. Upon State's request, Tenant shall provide State with plans and specifications or as-builts of emergency Work.

(d) Tenant shall not commence or authorize Work until Tenant provides State with a copy of Tenant's contract for the Work which requires that the Tenant's Contractor shall:

(1) Obtain a performance and payment bond in an amount equal to one hundred twenty-five percent (125%) of the estimated cost of construction, a copy of which shall be provided to the State upon the City's receipt;

(2) Maintain the performance and payment bond until <u>all</u> costs of the Work, including all laborers and material suppliers, have been paid in full; and

(3) Obtain all required permits.

(e) Before completing Work, Tenant shall remove all debris and restore the Property, to an orderly and safe condition. If Work is intended for removal of Improvements at End of Term, Tenant shall restore the leasehold Property in accordance with Subsection 3.3, End of Term.

(f) Upon completing work, Tenant shall promptly provide State with as-built plans and specifications.

(g) State shall not charge rent for authorized Improvements installed by Tenant during this Term of this Lease, but State may charge rent for such Improvements when and if Tenant or successor obtains a subsequent use authorization for the Property and State has waived the requirement for Improvements to be removed as provided in Subsection 7.4.

7.4 Tenant-Owned Improvements at End of Lease.

(a) Disposition

(1) Tenant shall remove Tenant-Owned Improvements in accordance with Subsection 7.3 upon the expiration, termination, or cancellation of the Lease unless State waives the requirement for removal.

(2) Tenant-Owned Improvements remaining on the Property on the expiration, termination or cancellation date shall become State-Owned Improvements without payment by State, unless State elects otherwise. State may refuse or waive ownership. If RCW 79.125.300 or 79.130.040 apply at the time this Lease expires, Tenant could be entitled to payment by the new tenant for Tenant-Owned Improvements.

(3) If Tenant-Owned Improvements remain on the Property after the expiration, termination, or cancellation date without State's actual or deemed consent, State may remove all Improvements and Tenant shall pay the costs of removal and disposal.

(b) Conditions Under Which State May Waive Removal of Tenant-Owned Improvements.

(1) State may waive removal of any or all Tenant-Owned Improvements whenever State determines that it is in the best interests of the State and regardless of whether Tenant re-leases the Property.

(2) If Tenant re-leases the Property, State may waive requirement to remove Tenant-Owned Improvements. State also may consent to Tenant's continued ownership of Tenant-Owned Improvements.

(3) If Tenant does not re-lease the Property, State may waive requirement to remove Tenant-Owned Improvements upon consideration of a timely request from Tenant, as follows:

(i) Tenant must notify State at least one (1) year before the Termination Date of its request to leave Tenant-Owned Improvements.

(ii) State, within ninety (90) days, will notify Tenant whether State consents to any or all Tenant-Owned Improvements remaining. State has no obligation to grant consent.

(iii) State's failure to respond to Tenant's request to leave Improvements within ninety (90) days is a denial of the request.

(c) Tenant's Obligations if State Waives Removal.

(1) Tenant shall not remove Improvements if State waives the requirement for removal of any or all Tenant-Owned Improvements.

(2) Tenant shall maintain such Improvements in accordance with this Lease until the expiration, termination, or cancellation date. Tenant shall be liable to State for cost of repair if Tenant causes or allows damage to Improvements State has designated to remain.

7.5 Disposition of Unauthorized Improvements.

(a) Unauthorized Improvements belong to State, unless State elects otherwise.

(b) State may either:

(1) Consent to Tenant ownership of the Improvements, or

(2) Charge rent for use of the Improvements from the time of installation or construction and

(i) Require Tenant to remove the Improvements in accordance with Subsection 7.3, in which case Tenant shall pay rent for the Improvements until removal,

(ii) Consent to Improvements remaining and Tenant shall pay rent for the use of the Improvements, or

(iii) Remove Improvements and Tenant shall pay for the cost of removal and disposal, in which case Tenant shall pay rent for use of the Improvements until removal and disposal.

7.6 Disposition of Personal Property.

(a) Tenant retains ownership of Personal Property unless Tenant and State agree otherwise in writing.

(b) Tenant shall remove Personal Property from the Property by the Termination Date. Tenant is liable for any damage to the Property and Improvements that results from removal of Personal Property.

(c) State may sell or dispose of all Personal Property left on the Property after the Termination Date.

(1) If State conducts a sale of Personal Property, State shall apply proceeds first to the State's administrative costs in conducting the sale, second to payment of amount that then may be due from the Tenant to the State. State shall pay the remainder, if any, to the Tenant.

(2) If State disposes of Personal Property, Tenant shall pay for the cost of removal and disposal.

SECTION 8 ENVIRONMENTAL LIABILITY/RISK ALLOCATION

8.1 Definitions.

(a) "Hazardous Substance" means any substance that now or in the future becomes regulated or defined under any federal, state, or local statute, ordinance, rule,

regulation, or other law relating to human health, environmental protection, contamination, pollution, or cleanup, including, but not limited to, the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6901 *et. seq.,* as amended; Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. 9601 *et seq.*, as amended; Washington's Model Toxics Control Act ("MTCA"), Chapter 70.105 RCW, as amended; and Washington's Sediment Management Standards, WAC Chapter 173-204.

(b) "Release or threatened release of Hazardous Substance" means a release or threatened release as defined under any law described in Paragraph 8.1(a).

(c) "Utmost care" means such a degree of care as would be exercised by a very careful, prudent, and competent person under the same or similar circumstances; the standard of care applicable under MTCA, RCW 70.105D.040.

8.2 General Conditions.

(a) Tenant's obligations under this Section 8 extend to the area in, on, under, or above:

(1) The Property and

(2) Adjacent state-owned aquatic lands where a release or the presence of Hazardous Substances may arise from Tenant's use of the Property.

(b) Standard of Care.

(1) Tenant shall exercise the utmost care with respect to Hazardous Substances.

(2) Tenant shall exercise utmost care for the foreseeable acts or omissions of third parties with respect to Hazardous Substances, and the foreseeable consequences of those acts or omissions, to the extent required to establish a viable, third-party defense under the law, including – but not limited to – RCW 70.105D.040.

8.3 Current Conditions and Duty to Investigate.

(a) State makes no representation about the condition of the Property. Hazardous Substances may exist in, on, under, or above the Property.

(b) This Lease does not impose a duty on State to conduct investigations or supply information to Tenant about Hazardous Substances.

(c) Tenant is responsible for conducting all appropriate inquiry and gathering sufficient information concerning the Property and the existence, scope, and location of any Hazardous Substances on the Property, or adjacent to the Property, that allows Tenant to meet Tenant's obligations under this Lease.

8.4 Use of Hazardous Substances.

(a) Tenant, its subtenants, contractors, agents, employees, guests, invitees, or affiliates shall not use, store, generate, process, transport, handle, release, or dispose of Hazardous Substances, except in accordance with all applicable laws.

(b) Tenant shall not undertake, or allow others to undertake by Tenant's permission, acquiescence, or failure to act, activities that:

(1) Result in a release or threatened release of Hazardous Substances, or

(2) Cause, contribute to, or exacerbate any contamination exceeding regulatory cleanup standards whether the regulatory authority requires cleanup before, during, or after Tenant's occupancy of the Property.

(c) If use of Hazardous Substances related to Tenant's use or occupancy of the Property results in violation of law:

(1) Tenant shall submit to State any plans for remedying the violations, and

(2) Tenant shall implement any remedial measures State may require in addition to remedial measures required by regulatory authorities.

8.5 Management of Contamination.

(a) Tenant shall not undertake activities that:

(1) Damage or interfere with the operation of remedial or restoration activities;

(2) Result in human or environmental exposure to contaminated sediments;

(3) Result in the mechanical or chemical disturbance of on-site habitat mitigation.

(b) If requested, Tenant shall allow reasonable access to:

(1) Employees and authorized agents of the Environmental Protection Agency, the Washington State Department of Ecology, health department, or other similar environmental agencies; and

(2) Potentially liable or responsible parties who are the subject of an order or consent decree that requires access to the Property. Tenant may negotiate an access agreement with such parties, but Tenant may not unreasonably withhold such agreement.

8.6 Notification and Reporting.

(a) Tenant shall immediately notify State if Tenant becomes aware of any of the following:

(1) A release or threatened release of Hazardous Substances;

(2) Any new discovery of or new information about a problem or liability related to, or derived from, the presence of any Hazardous Substance;

(3) Any lien or action arising from the foregoing;

(4) Any actual or alleged violation of any federal, state, or local statute, ordinance, rule, regulation, or other law pertaining to Hazardous Substances;

(5) Any notification from the US Environmental Protection Agency (EPA) or the Washington State Department of Ecology (DOE) that remediation or removal of Hazardous Substances is or may be required at the Property.

(b) Tenant's duty to report under Paragraph 8.6(a) extends to the Property, adjacent state-owned aquatic lands where a release or the presence of Hazardous Substances could arise from the Tenant's use of the Property, and any other property used by Tenant in conjunction with Tenant's use of the Property where a release or the presence of Hazardous Substances on the other property would affect the Property.

(c) Tenant shall provide State with copies of all documents concerning environmental issues associated with the Property, and submitted by Tenant to any federal, state or local authorities. Documents subject to this requirement include, but are not limited to, applications, reports, studies, or audits for National Pollution Discharge and Elimination System Permits; Army Corps of Engineers permits; State Hydraulic Project Approvals (HPA); State Water Quality certification; Substantial Development permit; and any reporting necessary for the existence, location, and storage of Hazardous Substances on the Property.

8.7 Indemnification.

(a) "Liabilities" as used in this Subsection 8.7 means any claims, demands, proceedings, lawsuits, damages, costs, expenses, fees (including attorneys' fees and disbursements), penalties, or judgments.

(b) Tenant shall fully indemnify, defend, and hold State harmless from and against any Liabilities that arise out of, or relate to:

(1) The use, storage, generation, processing, transportation, handling, or disposal of any Hazardous Substance by Tenant, its subtenants, contractors, agents, invitees, guests, employees, affiliates, licensees, or permittees occurring anytime Tenant occupies or has occupied the Property;

(2) The release or threatened release of any Hazardous Substance, or the exacerbation of any Hazardous Substance contamination resulting from any act or omission of Tenant, its subtenants, contractors, agents, employees, guests, invitees, or affiliates occurring anytime Tenant occupies or has occupied the Property.

(c) Tenant shall fully indemnify, defend, and hold State harmless for any Liabilities that arise out of or relate to Tenant's breach of obligations under Subsection 8.5.

(d) Third Parties.

(1) Tenant has no duty to indemnify State for acts or omissions of third parties unless Tenant fails to exercise the standard of care required by Paragraph 8.2(b)(2). Tenant's third-party indemnification duty arises under the conditions described in Subparagraph 8.7(d)(2).

(2) If an administrative or legal proceeding arising from a release or threatened release of Hazardous Substances finds or holds that Tenant failed to exercise care as described in Subparagraph 8.7(d)(1), Tenant shall fully indemnify, defend, and hold State harmless from and against any liabilities arising from the acts or omissions of third parties in relation to the release or threatened release of Hazardous Substances. This includes any liabilities arising before the finding or holding in the proceeding.

8.8 Reservation of Rights.

(a) For any environmental liabilities not covered by the indemnification provisions of Subsection 8.7, the Parties expressly reserve and do not waive or relinquish any rights, claims, immunities, causes of action, or defenses relating to the presence, release, or threatened release of Hazardous Substances that either Party may have

against the other under federal, state, or local laws, including, but not limited to, CERCLA, MTCA, and the common law.

(b) This Lease affects no right, claim, immunity, or defense either Party may have against third parties, and the Parties expressly reserve all such rights, claims, immunities, and defenses.

(c) The provisions under this Section 8 do not benefit, or create rights for, third parties.

(d) The allocations of risks, liabilities, and responsibilities set forth above do not release either Party from, or affect the liability of either Party for, claims or actions by federal, state, or local regulatory agencies concerning Hazardous Substances.

8.9 Cleanup.

(a) If Tenant's act, omission, or breach of obligation under Subsection 8.4 results in a release of Hazardous Substances, Tenant shall, at Tenant's sole expense, promptly take all actions necessary or advisable to clean up the Hazardous Substances in accordance with applicable law. Cleanup actions shall include, without limitation, removal, containment, and remedial actions.

(b) Tenant's obligation to undertake a cleanup under Section 8 is limited to those instances where the Hazardous Substances exist in amounts that exceed the threshold limits of any applicable regulatory cleanup standards.

(c) At the State's discretion, Tenant may undertake a cleanup of the Property pursuant to the Washington State Department of Ecology's Voluntary Cleanup Program, provided that Tenant cooperates with the Department of Natural Resources in development of cleanup plans. Tenant shall not proceed with Voluntary Cleanup without the Department of Natural Resources approval of final plans. Nothing in the operation of this provision is an agreement by the Department of Natural Resources that the Voluntary Cleanup complies with any laws or with the provisions of this Lease. Tenant's completion of a Voluntary Cleanup is a release from or waiver of any obligation for Hazardous Substances under this Lease.

8.10 Sampling by State, Reimbursement, and Split Samples.

(a) State may conduct sampling, tests, audits, surveys, or investigations ("Tests") of the Property at any time to determine the existence, scope, or effects of Hazardous Substances.

(b) If such Tests, along with any other information, demonstrate the existence, release, or threatened release of Hazardous Substances arising out of any action, inaction, or event described or referred to in Subsection 8.4, above, Tenant shall promptly reimburse State for all costs associated with such Tests.

(c) State shall not seek reimbursement for any Tests under this Subsection 8.10 unless State provides Tenant written notice of its intent to conduct any Tests at least thirty (30) calendar days prior to undertaking such Tests, except when such Tests are in response to an emergency. Tenant shall reimburse State for Tests

performed in response to an emergency if State has provided such notice as is reasonably practical.

(d) Tenant is entitled to obtain split samples of any Test samples obtained by State, but only if Tenant provides State with written notice requesting such samples within twenty (20) calendar days of Tenant's receipt of notice of State's intent to conduct any non-emergency Tests. Tenant solely shall bear the additional cost, if any, of split samples. Tenant shall reimburse State for any additional costs caused by split sampling within thirty (30) calendar days after State sends Tenant a bill with documentation for such costs.

(e) Within sixty (60) calendar days of a written request (unless otherwise required pursuant to Paragraph 8.6(c), above), either Party shall provide the other with validated final data, quality assurance/quality control information, and chain of custody information, associated with any Tests of the Property performed by or on behalf of State or Tenant. There is no obligation to provide any analytical summaries or the work product of experts.

SECTION 9 ASSIGNMENT AND SUBLETTING

9.1 State Consent Required. Tenant shall not convey, transfer, or encumber any part of Tenant's interest in this Lease or the Property without State's prior written consent, which State shall not unreasonably condition or withhold.

(a) In determining whether to consent, State may consider, among other items, the proposed transferee's financial condition, business reputation and experience, the nature of the proposed transferee's business, the then-current value of the Property, and such other factors as may reasonably bear upon the suitability of the transferee as a tenant of the Property. State may refuse its consent to any sale, conveyance, mortgage, assignment, pledge, sublet, or other transfer or encumbrance if said transfer will result in subdivision of the leasehold. Tenant shall submit information regarding any proposed transferee to State at least thirty (30) days prior to the date of the proposed transfer.

(b) State reserves the right to condition its consent upon:

(1) changes in the terms and conditions of this Lease, including, but not limited to, the Annual Rent; and/or

(2) the agreement of Tenant or transferee to conduct Tests for Hazardous Substances on the Property or on other property owned or occupied by Tenant or the transferee.

(c) Each permitted transferee shall assume all obligations under this Lease, including the payment of rent. No assignment, sublet, or transfer shall release, discharge, or otherwise affect the liability of Tenant.

(d) State's consent under this Subsection 9.1 does not constitute a waiver of any claims against Tenant for the violation of any term of this Lease.

(e) During the initial term, State will not approve assignment to a transferee that does not meet the requirements of RCW 79.105.620 unless transferee agrees to pay annual rent calculated as provided for a renewal term under Paragraph 4.1(b) and

provide financial security in accordance with Paragraph 10.4(a). The initial rent payment, prorated to coincide with the next annual anniversary of the Commencement Date, is due and payable on the first day that the assignment is effective. Thereafter, annual rent is due and payable on the annual anniversary of the Commencement Date.

9.2 Rent Payments Following Assignment. The acceptance by State of the payment of rent following an assignment or other transfer does not constitute consent to any assignment or transfer.

9.3 Terms of Subleases.

(a) Tenant shall submit the terms of all subleases to State for approval.

(b) Tenant shall incorporate the following requirements in all subleases:

(1) The sublease must be consistent with and subject to all the terms and conditions of this Lease;

(2) The sublease must provide that this Lease controls if the terms of the sublease conflict with the terms of this Lease;

(3) The term of the sublease (including any period of time covered by a renewal option) must end before the Termination Date of the initial Term or any renewal term;

(4) The sublease must terminate if this Lease terminates for any reason;

(5) The subtenant must receive and acknowledge receipt of a copy of this Lease;

(6) The sublease must prohibit the prepayment to Tenant by the subtenant of more than the annual rent;

(7) The sublease must identify the rental amount subtenant is to pay to Tenant;

(8) The sublease must provide that there is no privity of contract between the subtenant and State;

(9) The sublease must require removal of the subtenant's Improvements and trade fixtures upon termination of the sublease;

(10) The subtenant's permitted use must be within the scope of the Permitted Use; and

(11) The sublease must require the subtenant to meet all obligations of Tenant under Section 10, Indemnification, Financial Security Insurance.

9.4 Short-Term Subleases of Moorage Slips, Storage Lockers, and Parking. Short-term subleasing of moorage slips, storage lockers, and parking for a term of less than one year does not require State's written consent or approval pursuant to Subsections 9.1 or 9.3. Tenant shall conform moorage sublease agreements to the sublease requirements in Subsection 9.3.

SECTION 10 INDEMNITY, FINANCIAL SECURITY, INSURANCE

0.1 Indemnity.

(a) Tenant shall indemnify, defend, and hold State, its employees, officers, and agents harmless from any and all Claims arising out of the use, occupation, or control of the Property by Tenant, its subtenants, contractors, agents, invitees, guests, employees, affiliates, licensees, or permittees.

(b) "Claim" as used in this Subsection 10.1 means any financial loss, claim, suit, action, damages, expenses, fees (including attorneys' fees), penalties, or judgments attributable to bodily injury, sickness, disease, death, and damages to tangible property, including, but not limited to, land, aquatic life, and other natural resources. "Damages to tangible property" includes, but is not limited to, physical injury to the Property and damages resulting from loss of use of the Property.

(c) State shall not require Tenant to indemnify, defend, and hold State harmless for claims that arise solely out of the willful or negligent act of State or State's elected officials, employees, or agents.

(d) Tenant waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend, and hold State and its agencies, officials, agents, or employees harmless.

(e) Section 8, Environmental Liability/Risk Allocation, exclusively shall govern Tenant's liability to State for Hazardous Substances and its obligation to indemnify, defend, and hold State harmless for Hazardous Substances.

10.2 Insurance Terms.

(a) Insurance Required.

(1) At its own expense, Tenant shall procure and maintain during the Term of this Lease, the insurance coverages and limits described in this Subsection 10.2 and in Subsection 10.3, Insurance Types and Limits. State may terminate this Lease if Tenant fails to maintain required insurance.

(2) Unless State agrees to an exception, Tenant shall provide insurance issued by an insurance company or companies admitted to do business in the State of Washington and have a rating of A- or better by the most recently published edition of Best's Reports. Tenant may submit a request to the risk manager for the Department of Natural Resources to approve an exception to this requirement. If an insurer is not admitted, the insurance policies and procedures for issuing the insurance policies shall comply with Chapter 48.15 RCW and 284-15 WAC.

(3) All general liability, excess, umbrella, property, builder's risk, and pollution legal liability insurance policies must name the State of Washington, the Department of Natural Resources, its elected and appointed officials, agents, and employees as an additional insured on.

(4) All insurance provided in compliance with this Lease must be primary as to any other insurance or self-insurance programs afforded to or maintained by State.

(b) Waiver.

(1) Tenant waives all rights against State for recovery of damages to the extent insurance maintained pursuant to this Lease covers these damages.

(2) Except as prohibited by law, Tenant waives all rights of subrogation against State for recovery of damages to the extent that they are covered by insurance maintained pursuant to this lease.

(c) Proof of Insurance.

(1) Tenant shall provide State with a certificate(s) of insurance executed by a duly authorized representative of each insurer, showing compliance with insurance requirements specified in this Lease and, if requested, copies of policies to State.

(2) The certificate(s) of insurance must reference additional insureds and the Lease number.

(3) Receipt of such certificates or policies by State does not constitute approval by State of the terms of such policies.

(d) State must receive written notice before cancellation or non-renewal of any insurance required by this Lease, as follows:

(1) Insurers subject to RCW 48.18 (admitted and regulated by the Insurance Commissioner): If cancellation is due to non-payment of premium, provide State ten (10) days' advance notice of cancellation; otherwise, provide State forty-five (45) days' advance notice of cancellation or non-renewal.

(2) Insurers subject to RCW 48.15 (surplus lines): If cancellation is due to non-payment of premium, provide State ten (10) days' advance notice of cancellation; otherwise, provide State thirty (30) days' advance notice of cancellation or non-renewal.

(e) Adjustments in Insurance Coverage.

(1) State may impose changes in the limits of liability for all types of insurance as State deems necessary.

(2) Tenant shall secure new or modified insurance coverage within thirty (30) days after State requires changes in the limits of liability.

(f) If Tenant fails to procure and maintain the insurance described above within fifteen (15) days after Tenant receives a notice to comply from State, State may either:

(1) Deem the failure an Event of Default under Section 14, or

(2) Procure and maintain comparable substitute insurance and pay the premiums. Upon demand, Tenant shall pay to State the full amount paid by State, together with interest at the rate provided in Subsection 6.2 from the date of State's notice of the expenditure until Tenant's repayment.

(g) General Terms.

(1) State does not represent that coverage and limits required under this Lease are adequate to protect Tenant.

(2) Coverage and limits do not limit Tenant's liability for indemnification and reimbursements granted to State under this Lease.

(3) The Parties shall use any insurance proceeds payable by reason of damage or destruction to property first to restore the real property covered by this Lease, then to pay the cost of the reconstruction, then to pay the State any sums in arrears, and then to Tenant.

10.3 Insurance Types and Limits.

(a) General Liability Insurance.

(1) Tenant shall maintain commercial general liability insurance (CGL) or marine general liability (MGL) covering claims for bodily injury, personal injury, or property damage arising on the Property and/or arising out of Tenant's use, occupation, or control of the Property and, if necessary, commercial umbrella insurance with a limit of not less than Five Million Dollars ($5,000,000) per each occurrence. If such CGL or MGL insurance contains aggregate limits, the general aggregate limit must be at least twice the "each occurrence" limit. CGL or MGL insurance must have products-completed operations aggregate limit of at least two times the "each occurrence" limit.

(2) CGL insurance must be written on Insurance Services Office (ISO) Occurrence Form CG 00 01 (or a substitute form providing equivalent coverage). All insurance must cover liability arising out of premises, operations, independent contractors, products completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another party assumed in a business contract) and contain separation of insured (cross-liability) condition.

(3) MGL insurance must have no exclusions for non-owned watercraft.

(b) Workers' Compensation.

(1) State of Washington Workers' Compensation.

(i) Tenant shall comply with all State of Washington workers' compensation statutes and regulations. Tenant shall provide workers' compensation coverage for all employees of Tenant. Coverage must include bodily injury (including death) by accident or disease, which arises out of or in connection with Tenant's use, occupation, and control of the Property.

(ii) If Tenant fails to comply with all State of Washington workers' compensation statutes and regulations and State incurs fines or is required by law to provide benefits to or obtain coverage for such employees, Tenant shall indemnify State. Indemnity shall include all fines; payment of benefits to Tenant, employees, or their heirs or legal representatives; and the cost of effecting coverage on behalf of such employees.

(2) Longshore and Harbor Workers' Act. The Longshore and Harbor Workers' Compensation Act (33 U.S.C. Section 901 *et seq.*) may require Tenant to provide insurance coverage for longshore and harbor workers other than seaman. Tenant shall ascertain if such insurance is required and, if required, shall maintain insurance in compliance with this Act. Tenant is responsible for all civil and criminal liability arising from failure to maintain such coverage.

(3) Jones Act. The Jones Act (46 U.S.C. Section 688) may require Tenant to provide insurance coverage for seamen injured during employment resulting from negligence of the owner, master, or fellow crew members. Tenant shall ascertain if such insurance is required and, if required, shall maintain insurance in compliance with this Act. Tenant is responsible for all civil and criminal liability arising from failure to maintain such coverage.

(c) Employer's Liability Insurance. Tenant shall procure employer's liability insurance, and, if necessary, commercial umbrella liability insurance with limits not less than One Million Dollars ($1,000,000) each accident for bodily injury by accident.

(d) Property Insurance.

(1) Tenant shall buy and maintain property insurance covering all real property and fixtures, equipment, tenant improvements and betterments (regardless of whether owned by Tenant or State). Such insurance must be written on an all risks basis and, at minimum, cover the perils insured under ISO Special Causes of Loss Form CP 10 30, and cover the full replacement cost of the property insured. Such insurance may have commercially reasonable deductibles. Any coinsurance requirement in the policy must be waived. The policy must include State as an insured and a loss payee.

(2) Tenant shall buy and maintain boiler and machinery insurance required by contract documents or by law, covering all real property and fixtures, equipment, tenant improvements and betterments (regardless of whether owned by Tenant or State) from loss or damage caused by the explosion of boilers, fired or unfired vessels, electric or steam generators, or pipes.

(3) In the event of any loss, damage, or casualty which is covered by one or more of the types of insurance described above, the Parties to this Lease shall proceed cooperatively to settle the loss and collect the proceeds of such insurance, which State shall hold in trust, including interest earned by State on such proceeds, for use according to the terms of this Lease. The Parties shall use insurance proceeds in accordance with Subparagraph 10.2(g)(3).

(4) When sufficient funds are available, using insurance proceeds described above, the Parties shall continue with reasonable diligence to prepare plans and specifications for, and thereafter carry out, all work necessary to:

(i) Repair and restore damaged building(s) and/or Improvements to their former condition, or

(ii) Replace and restore damaged building(s) and/or Improvements with a new building(s) and/or Improvements on the Property of a quality and usefulness at least equivalent to or more suitable than, damaged building(s) and/or Improvements.

(e) Builder's Risk Insurance.

(1) Tenant shall procure and maintain in force, or require its contractor(s) to procure and maintain in force, builder's risk insurance on the entire work during the period construction is in progress and until completion of the project and acceptance by State. Such insurance must be written on a completed form and in an amount equal to the value of the completed building and/or Improvements, subject to subsequent modifications to the sum. The insurance must be written on a replacement cost basis. The insurance must name Tenant, all contractors, and subcontractors in the work as insured. State must be named additional insured as required by Subparagraph 10.2(a)(3)).

(2) Insurance described above must cover or include the following:

(i) All risks of physical loss except those specifically excluded in the policy, including loss or damage caused by collapse;

(ii) The entire work on the Property, including reasonable compensation for architect's services and expenses made necessary by an insured loss;

(iii) Portions of the work located away from the Property but intended for use at the Property, and portions of the work in transit;

(iv) Scaffolding, falsework, and temporary buildings located on the Property; and

(v) The cost of removing debris, including all demolition as made legally necessary by the operation of any law, ordinance, or regulation.

(3) Tenant or Tenant'(s) contractor(s) is responsible for paying any part of any loss not covered because of application of a deductible contained in the policy described above.

(4) Tenant or Tenant'(s) contractor shall buy and maintain boiler and machinery insurance required by contract documents or by law, covering insured objects during installation and until final acceptance by permitting authority. If testing is performed, such insurance must cover such operations. The insurance must name Tenant, all contractors, and subcontractors in the work as insured. State must be named additional insured as required by Subparagraph 10.2(a)(3)).

(f) Business Auto Policy Insurance.

(1) Tenant shall maintain business auto liability insurance and, if necessary, commercial umbrella liability insurance with a limit not less than One Million Dollars ($1,000,000) per accident. Such insurance must cover liability arising out of "Any Auto."

(2) Business auto coverage must be written on ISO Form CA 00 01, or substitute liability form providing equivalent coverage. If necessary, the policy must be endorsed to provide contractual liability coverages and cover a "covered pollution cost or expense" as provided in the 1990 or later editions of CA 00 01.

10.4 Financial Security.

(a) State will not require Tenant to provide financial security except in the event of assignment or a change in use. If State requires financial security, Tenant shall procure and maintain during the remaining Term of this Lease a corporate security bond or provide other financial security that State, at its option, may approve ("Security"). Tenant shall provide Security in an amount equal to two years rent and the estimated cost to remove improvements, which secures Tenant's performance of its obligations under this Lease, with the exception of the obligations under Section 8, Environmental Liability/Risk Allocation. Tenant's failure to maintain the Security, if required, in the required amount during the Term constitutes a breach of this Lease.

(b) All Security must be in a form acceptable to the State.

(1) Bonds must be issued by companies admitted to do business within the State of Washington and have a rating of A-, Class VII or better, in the most recently published edition of Best's Reports, unless State approves an exception. Tenant may submit a request to the risk manager for the Department of Natural Resources for an exception to this requirement.

(2) Letters of credit, if approved by State, must be irrevocable, allow State to draw funds at will, provide for automatic renewal, and comply with RCW 62A.5-101, *et. seq.*

(3) Savings account assignments, if approved by State, must allow State to draw funds at will.

(c) Adjustment in Amount of Security.

(1) State may require an adjustment in the Security amount:

(i) At the same time as revaluation of the Annual Rent,

(ii) As a condition of approval of assignment or sublease of this Lease,

(iii) Upon a material change in the condition or disposition of any Improvements, or

(iv) Upon a change in the Permitted Use.

(2) Tenant shall deliver a new or modified form of Security to State within thirty (30) days after State has required adjustment of the amount of the Security.

(d) Upon any default by Tenant in its obligations under this Lease, State may collect on the Security to offset the liability of Tenant to State. Collection on the Security does not (1) relieve Tenant of liability, (2) limit any of State's other remedies, (3) reinstate or cure the default or (4) prevent termination of the Lease because of the default.

SECTION 11 ROUTINE MAINTENANCE AND REPAIR

11.1 State's Repairs. This Lease does not obligate State to make any alterations, maintenance, replacements, or repairs in, on, or about the Property, or any part thereof, during the Term.

11.2 Tenant's Repairs and Maintenance

(a) Routine maintenance and repair are acts intended to prevent a decline, lapse or, cessation of the Permitted Use and associated Improvements. Routine maintenance or repair is the type of work that does not require regulatory permits.

(b) At Tenant's own expense, Tenant shall keep and maintain the Property and all Improvements in good order and repair and in a safe condition. State's consent is not required for routine maintenance or repair.

(c) At Tenant's own expense, Tenant shall make any additions, repairs, alterations, maintenance, replacements, or changes to the Property or to any Improvements on the Property that any public authority may be require.

SECTION 12 DAMAGE OR DESTRUCTION

12.1 Notice and Repair.

(a) In the event of any damage to or destruction of the Property or any Improvements, Tenant shall promptly give written notice to State. State does not have actual knowledge of the damage or destruction without Tenant's written notice.

(b) Unless otherwise agreed in writing, Tenant shall promptly reconstruct, repair, or replace the Property and any Improvements as nearly as possible to its condition immediately prior to the damage or destruction in accordance with Subsection 7.3, Construction, Major Repair, Modification, and Demolition.

12.2 State's Waiver of Claim. State does not waive any claims for damage or destruction of the Property unless State provides written notice to Tenant of each specific claim waived.

12.3 Insurance Proceeds. Tenant's duty to reconstruct, repair, or replace any damage or destruction of the Property or any Improvements on the Property is not conditioned upon the availability of any insurance proceeds to Tenant from which the cost of repairs may be paid. The Parties shall use insurance proceeds in accordance with Subparagraph 10.2(g)(3).

12.4 Rent in the Event of Damage or Destruction. Unless the Parties mutually agree to terminate this Lease, there is no abatement or reduction in rent during such reconstruction, repair, and replacement.

12.5 Default at the Time of Damage or Destruction. If Tenant is in default under the terms of this Lease at the time damage or destruction occurs, State may elect to terminate the Lease and State then shall have the right to retain any insurance proceeds payable as a result of the damage or destruction.

SECTION 13 CONDEMNATION

13.1 Definitions.

(a) "Taking" means that an entity authorized by law exercises the power of eminent domain, either by judgment, settlement in lieu of judgment, or voluntary conveyance in lieu of formal court proceedings, over all or any portion of the Property and any Improvements. This includes any exercise of eminent domain

on any portion of the Property and Improvements that, in the judgment of the State, prevents or renders impractical the Permitted Use.

(b) "Date of Taking" means the date upon which title to the Property or a portion of the Property passes to and vests in the condemner or the effective date of any order for possession if issued prior to the date title vests in the condemner.

13.2 Effect of Taking. If there is a taking, the Lease shall terminate proportionate to the extent of the taking as of the date of taking. If this Lease terminates, in whole or in part, Tenant shall pay all rentals and other charges payable by Tenant to State and attributable to the Property taken up to the date of taking. If Tenant has pre-paid rent, Tenant will be entitled to a refund of the pro rata share of the pre-paid rent attributable to the period after the date of taking.

13.3 Allocation of Award.

(a) In the event of any condemnation, the Parties shall allocate the award between State and Tenant based upon the ratio of the fair market value of (1) Tenant's leasehold estate and Tenant-Owned Improvements on the Property and (2) State's interest in the Property; the reversionary interest in Tenant-Owned Improvements, if any; and State-Owned Improvements, if any.

(b) If Tenant and State are unable to agree on the allocation, the Parties shall submit the dispute to binding arbitration in accordance with the rules of the American Arbitration Association.

SECTION 14 DEFAULT AND REMEDIES

14.1 Default Defined. Tenant is in default of this Lease on the occurrence of any of the following:

(a) Failure to pay Annual Rent or other expenses when due;

(b) Failure to comply with any law, regulation, policy, or order of any lawful governmental authority;

(c) Failure to comply with any other provision of this Lease;

(d) Proceedings are commenced by or against Tenant under any bankruptcy act or for the appointment of a trustee or receiver of Tenant's property.

14.2 Tenant's Right to Cure.

(a) A default becomes an "Event of Default" if Tenant fails to cure the default within the applicable cure following State's written notice of default. Upon an Event of Default, State may seek remedies under Subsection 14.3.

(b) Unless expressly provided elsewhere in this Lease, the cure period is ten (10) days for failure to pay rent or other monetary defaults; for other defaults, the cure period is thirty (30) days.

(c) State may elect to deem a default by Tenant as an Event of Default if the default occurs within six (6) months after a default by Tenant for which State has provided notice and opportunity to cure. This Paragraph 14.2 is effective regardless of whether the first and subsequent defaults are of the same nature.

14.3 Remedies.

(a) State may terminate this Lease and remove Tenant by summary proceedings or otherwise.

(b) Without terminating this Lease, State may relet the Property on any terms and conditions as State may decide are appropriate.

(1) State shall apply rent received by reletting to: (1) to the payment of any indebtedness other than rent due from Tenant to State; (2) to the payment of any cost of such reletting; (3) to the payment of the cost of any alterations and repairs to the Property; and (4) to the payment of rent and leasehold excise tax due and unpaid under this Lease. State shall hold and apply any balance to Tenant's future rent as it becomes due.

(2) Tenant is responsible for any deficiency created by the reletting during any month and shall pay the deficiency monthly.

(3) At any time after reletting, State may elect to terminate this Lease for the previous Event of Default.

(c) State's reentry or repossession of the Property under Paragraph 14.3(b) is not an election to terminate this Lease or cause a forfeiture of rents or other charges Tenant is obligated to pay during the balance of the Term, unless (1) State gives Tenant written notice of termination or (2) a legal proceeding decrees termination.

(d) The remedies specified under this Subsection 14.3 are not exclusive of any other remedies or means of redress to which the State is lawfully entitled for Tenant's breach or threatened breach of any provision of this Lease.

SECTION 15 ENTRY BY STATE

State may enter the Property at any reasonable hour to inspect for compliance with the terms of this Lease. State's failure to inspect the Property does not constitute a waiver of any rights or remedies under this Lease.

SECTION 16 DISCLAIMER OF QUIET ENJOYMENT

16.1 No Guaranty or Warranty.

(a) State believes that this Lease is consistent with the Public Trust Doctrine and that none of the third-party interests identified in Paragraph 1.1(b) will materially or adversely affect Tenant's right of possession and use of the Property, but State makes no guaranty or warranty to that effect.

(b) State disclaims and Tenant releases State from any claim for breach of any implied covenant of quiet enjoyment. This disclaimer and release includes, but is not limited to, interference arising from exercise of rights under the Public Trust Doctrine; Treaty rights held by Indian Tribes; and the general power and authority of State and the United States with respect to aquatic lands and navigable waters.

(c) Tenant is responsible for determining the extent of Tenant's right to possession and for defending Tenant's leasehold interest.

16.2 Eviction by Third-Party. If a third-party evicts Tenant, this Lease terminates as of the date of the eviction. In the event of a partial eviction, Tenant's rent obligations abate as of the date of the partial eviction, in direct proportion to the extent of the eviction; this Lease shall remain in full force and effect in all other respects.

SECTION 17 NOTICE AND SUBMITTALS

17.1 Notice. Following are the locations for delivery of notice and submittals required or permitted under this Lease. Any Party may change the place of delivery upon ten (10) days written notice to the other.

State: DEPARTMENT OF NATURAL RESOURCES
Aquatic Region
919 North Township Street
Sedro Woolley, WA 98284

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

The Parties may deliver any notice in person, by facsimile machine, or by certified mail. Depending on the method of delivery, notice is effective upon personal delivery, upon receipt of a confirmation report if delivered by facsimile machine, or three (3) days after mailing. All notices must identify the Lease number. On notices transmitted by facsimile machine, the Parties shall state the number of pages contained in the notice, including the transmittal page, if any.

17.2 Contact Persons. On the Commencement Date, the following persons are designated day-to-day contact persons. Any Party may change the Contact Person upon reasonable notice to the other.

State: Aquatic Region-Orca Strait District
Office: 360-856-3500
Fax: 360-256-2150

Tenant: Oak Harbor Marina, Harbor Master
Office: 360-279-4575
Fax: 360-240-0603

SECTION 18 MISCELLANEOUS

18.1 Authority. Tenant and the person or persons executing this Lease on behalf of Tenant represent that Tenant is qualified to do business in the State of Washington, that Tenant has full

right and authority to enter into this Lease, and that each and every person signing on behalf of Tenant is authorized to do so. Upon State's request, Tenant shall provide evidence satisfactory to State confirming these representations. State enters into this Lease pursuant to the authority granted to State in RCW Chapters 43.12 and 43.30, RCW Title 79 and the Washington State Constitution.

18.2 Successors and Assigns. This Lease binds and inures to the benefit of the Parties, their successors, and assigns.

18.3 Headings. The headings used in this Lease are for convenience only and in no way define, limit, or extend the scope of this Lease or the intent of any provision.

18.4 Entire Agreement. This Lease, including the exhibits and addenda, if any, contains the entire agreement of the Parties. This Lease merges all prior and contemporaneous agreements, promises, representations, and statements relating to this transaction or to the Property.

18.5 Waiver.

(a) The waiver of any breach or default of any term, covenant, or condition of this Lease is not a waiver of such term, covenant, or condition; of any subsequent breach or default of the same; or of any other term, covenant, or condition of this Lease. State's acceptance of a rental payment is not a waiver of any preceding or existing breach other than the failure to pay the particular rental payment that was accepted.

(b) The renewal of the Lease, extension of the Lease, or the issuance of a new lease to Tenant, does not waive State's ability to pursue any rights or remedies under the Lease.

18.6 Cumulative Remedies. The rights and remedies under this Lease are cumulative and in addition to all other rights and remedies afforded by law or equity or otherwise.

18.7 Time is of the Essence. TIME IS OF THE ESSENCE as to each and every provision of this Lease.

18.8 Language. The word "Tenant" as used in this Lease applies to one or more persons and regardless of gender, as the case may be. If there is more than one Tenant, their obligations are joint and several. The word "persons," whenever used, shall include individuals, firms, associations, and corporations. The word "Parties" means State and Tenant in the collective. The word "Party" means either or both State and Tenant, depending on the context.

18.9 Invalidity. The invalidity, voidness, or illegality of any provision of this Lease does not affect, impair, or invalidate any other provision of this Lease.

18.10 Applicable Law and Venue. This Lease is to be interpreted and construed in accordance with the laws of the State of Washington. Any reference to a statute means that statute as presently enacted or hereafter amended or superseded. Venue for any action arising

out of or in connection with this Lease is in the Superior Court for Thurston County, Washington.

18.11 Recordation. At Tenant's expense and within thirty (30) days of receiving the fully-effective Lease, Tenant shall record this Lease or a memorandum documenting the existence of this Lease in the county in which the Property is located. The memorandum must contain, at a minimum, the Property description, the names of the Parties, the State's lease number, and the duration of the Lease. Tenant shall provide State with recording information, including the date of recordation and file number. If Tenant fails to record this Lease, State may record it and Tenant shall pay the costs of recording upon State's demand.

18.12 Modification. Upon written agreement of both parties, this Lease may be modified by written amendment. All amendments shall be adopted in the same manner and with the same formality as the original execution of this Lease. Approval of the Oak Harbor City Council shall be required for the modification of this Lease by Tenant.

18.13 Survival. Any obligations of Tenant not fully performed upon termination of this Lease do not cease, but continue as obligations of the Tenant until fully performed.

18.14 Exhibits. All referenced exhibits are incorporated in the Lease unless expressly identified as unincorporated.

THIS AGREEMENT requires the signature of all Parties and is effective on the date of the last signature below.

CITY OF OAK HARBOR
a Government Entity

Dated: _____

_____
By: JIM SLOWIK

Title: Mayor

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES

Dated: _____

_____
By: Title:

Commissioner of Public Lands

Special Aquatic Lands Lease
Approved as to Form on _____

_____
By: Janis Snoey
Assistant Attorney General
State of Washington

ACKNOWLEDGMENT

STATE OF WASHINGTON)
) ss
County of)

I certify that I know or have satisfactory evidence that JIM SLOWIK is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledged it as the Mayor of the CITY OF OAK HARBOR to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

(Seal or stamp)

_____
(Signature)

_____
(Print Name)
Notary Public in and for the State of Washington, residing at_____
My appointment expires:_____

STATE ACKNOWLEDGMENT

STATE OF WASHINGTON)
) ss
County of)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Commissioner of Public Lands, and ex officio administrator of the Department of Natural Resources of the State of Washington to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

(Seal or stamp)

_____
(Signature)

_____
(Print Name)
Notary Public in and for the State of Washington, residing at _____
My appointment expires _____

City of Oak Harbor
Aquatic Lands Lease Number 20-A10082
May 27, 2009

EXHIBIT "B" – Maintenance and Operations Plan

I. DESCRIPTION OF PERMITTED USE:

Tenant owns and operates the Oak Harbor Marina, a public year-round, full service marina providing facilities and services for boaters and visitors. The marina has operated under an Aquatic Land Lease since 1974. Tenant intends to continue to operate substantially the same facility through the new lease period. The Permitted Use includes:

A. General

- 353 permanent moorage slips, ranging in size from 24 to 50 feet, both open and covered.
- 52 guest moorage slips, and an additional 600 lineal feet of side tie moorage.
- A full service fuel dock, providing gasoline, diesel, oils, additives and propane.
- Launching via an overhead sling hoist (capacity 6,500 lb.)
- Public boat ramp.
- Restrooms, showers, laundromat, ice and public telephone.
- Public park and picnic tables are available near the marina office. Additional public access and transient moorage with picnic tables that is available on a first come basis on the breakwater dock.
- High speed wireless internet service.
- Storage units (104), accommodation for boats on trailers, boating equipment, etc.
- Parking storage for boats on trailers; RV's and boat trailers are available on filled tidelands and the City's upland property.
- Public events and activities throughout the year are held on the leasehold.

B. Residential Use. Tenant may authorize up to ten percent (10%) of the marina's slips for residential use. Residential use is defined in Washington Administrative Code (WAC) 332-30-106(62). All residential uses shall conform to WAC Chapter 332-30 as now or hereafter amended and the following:

- All sewage waste, including treated waste from Marine Sanitation Devices (MSDs) Type I and II, shall be disposed of upland.
- Tenant shall verify that residential tenants are disposing of waste upland. Tenant shall provide records of verification to State upon request.
- Tenant shall provide a diagram, or a list of the slips with residential use of the marina.
    - The diagram shall note the location of each residential slip, type of vessel, name of the occupant, the date the slip lessee initiated their slip agreement and the size of the slip.

- Tenant shall update the diagram or slip list every four years or upon request by State.
- Four months before the end of the initial term, Tenant shall provide a signed and dated list of all residential slips.

C. Upland Storage Units: Tenant has provided State a copy of the standard blank sublease for these units. Tenant shall provide State a new copy whenever Tenant makes changes to the standard. Tenant shall maintain executed subleases on file at the marina and supply a copy of each to State upon request.

II. EXISTING CONDITION:

The existing structures and improvements within the lease area were developed in three phases. The majority of in-water structures and all structures on the filled tidelands were built in 1974. In 2008, the condition of structures is as described below:

All floats are concrete, with wooden whalers and steel through rods providing structural integrity. Most pilings are wood/creosote. The condition of this portion of the marina is good, with some deterioration of wood whalers and piling hoops. Four docks contain some covered slips. Roofs/roof beams were rebuilt on D dock in 2001 and on E dock in 2002. Roof structures are in fair condition.

An outer breakwater dock provides outstanding guest moorage. The first 660 feet of this dock were installed in 1987, and an additional 250 feet in 1998. Again, all floats are concrete, with wood whalers. Pilings anchoring this breakwater float are steel. Breakwater walls are wood. Walls on the original 660 ft. of the breakwater dock were rebuilt in 2000, as a result of extensive storm damage. Condition of this portion of the marina is excellent.

There are two floating pumpouts in the marina; one at the fuel dock and the other tied to the breakwater dock. The last is known as the SS WATERLOO, a 30-foot aluminum barge that provides a restroom, pumpout and port-a-potty dump service to that portion of the marina. This facility is maintained and serviced by in-house staff. Sewage from the pumpouts is deposited directly into the City of Oak Harbor's sewer line that is connected to the sewer plant.

III. MANAGEMENT AND MAINTENANCE:

A. Sewage and Wastewater. Tenant shall manage sewage and wastewater in accordance with (1) Department of Ecology's Best Management Practices; and (2) the following:

- Tenant shall locate pumpouts to be accessible to all boats and clearly marked with signs at the waterward end of each pier and gangway.
- Tenant shall inspect pumpouts on a monthly basis and immediately make all necessary repairs. Upon State's request, Tenant shall verify inspections and repairs. Acceptable forms of verification include:
  - Receipts from pump-out services.
  - Copies of contracts from pump–out services.

- Marina operator's recorded observation that vessel heads are wired shut while in marina.
- Marina operator's recorded use of fluorescein dye tablets, placed in heads by marina operator on a regular basis.

- Tenant shall make every reasonable effort to prevent discharge of sewage in state waters, which is prohibited by state law.
- Tenant shall discourage discharge of gray water.
- Tenant shall encourage, inform, or direct boat owners and operators as follows:
  - Use "green" products inside and outside of boats, floats and other improvements.
  - Use harsher products only for spot cleaning followed by wipe down with absorbent material.
  - Do not discharge gray water overboard from decks.
  - Use strainers in sink drains.
  - Before washing plates, scrape into trash receptacles.
  - Do not use garbage disposal while in the marina.
- Tenant shall inform marina users about upland bathrooms, showers and laundry facilities by posting or handing out printed information.

B. Marina Dock Maintenance: Tenant shall maintain docks as follows:

- Frequently inspect dock for emergent problems or damage.
- Establish a systematic program of underwater inspection by divers, to check for damage from logs or debris, inspect piling zincs, and remove sea growth from utility service lines.
- Annually tighten throughrods that provide primary strength to the structure.
- Biennially (or as required) replace piling zincs.
- Maintain general cleanliness and appearance of dock.
- Inspect and replace wood whalers, rub boards, piling hoops as needed.

C. Use of Fuel and other Hazardous Substances. Tenant shall manage and direct others to manage fuel and other hazardous substances in accordance with law, Section 8 of this Lease, and as follows:

- Store fuel tanks, lubricants and chemicals at upland locations (filled tidelands, off-site, or at any other location that is not over water).
- Inspect fuel storage tanks, fuel pumps and equipment on a monthly basis and make all necessary repairs immediately. Upon State's request, Tenant shall verify inspections and repairs.
- Provide and maintain clearly marked spill containment materials adequate to contain a spill from the largest boat that may use the facility.
- Post National and State oil and chemical spill hotlines at multiple locations.
- Require all employees to train for spill response and prevention as specified by the Washington Department of Ecology. Upon request by State, submit annual verification of the training dates and names of the employees who have completed the training.

- Dispose of all oil, hazardous substances and solid waste in accordance with federal, state and local laws.

D. Boat Maintenance and Repair. Tenant shall manage and direct others to manage boat repair and maintenance as follows:

- No underwater or outside hull scraping, sanding, grinding, or other removal of paints or finishes, and underwater refinishing work. Boats shall be removed from state waters and repaired on the uplands where proper tarps, dust drip and spill containment measures shall be used to prevent contamination.
- Only minor repairs or refinishing inside the hull may be conducted while the boat is in water. Care shall be taken to prevent solvents, cleaners, paint or dust from transferring outside of the hull. Workers shall use tarps, dust, drip cover and cloths and dispose of all materials in accordance with law at an upland location.

IV. RENOVATION, REPAIRS AND NEW CONSTRUCTION

A. Conservation Measures. Whenever replacing, renovating, or repairing improvements, regardless of whether under Section 7 or Section 11 of the Lease, or constructing new improvements, Tenant shall implement the following conservation measures:

- Install only flotation material that is encapsulated in a shell resistant to ultraviolet radiation and/or abrasion and which prevents breakup or release of flotation material to the water.
- Do not use vehicle tires as flotation material or as dock or float bumpers that come into contact with the water at any time.
- For floats with the potential to ground out (come in contact with the underlying tidelands), provide stoppers set to a height sufficient to keep the bottom of the floats at least twelve (12) inches above the substrate at all times. Minimize the number of pilings used in new construction, thereby minimizing changes to existing sediment transport.
- Maximize light passage through overwater structures.
  - Remove covered moorage whenever possible.
  - Renovated or replaced covered moorage shall have at least five (5) percent of the roof area in skylights.
- Orient night lighting to minimize the amount of light shining directly onto the water.
- Make every reasonable effort to minimize noise during nighttime operations.
- Post no-wake signs throughout the leasehold to minimize noise and sediment re-suspension.
- Install storm drain filters on all storm drains that discharge directly into the bay.
- Inspect filters monthly and replace as needed. Annually submit verification of the inspections and filter replacements to State.

- Do not use treated wood timbers or pilings below the waterline. Use steel or concrete for new or replacement piles.
- When feasible, remove structures/fixtures that are no longer in operation or use.
- Maintain the dredge basin with a depth gradient shallower toward shore to avoid deep pockets that can act as unflushed holding basins.
- Before construction or replacement of covered storage, Tenant shall submit plans and specifications showing the location for State approval in accordance with Section 7.3 of the Lease.

B. Mitigation Measures. When conducting activities permitted under the Hydraulic Project Approval permit (HPA) from Washington State Department of Fish and Wildlife (WDFW) issued for Planned Marina Development, described below, install all required mitigation in accordance with the HPA and the following:

- Before initiating mitigation work, including placement of fill to soften shoreline, Tenant shall submit detail plans and specifications for State approval in accordance with Section 7.3 of the Lease. State agrees in principle with use of fill for mitigation purposes.
- Perform a beach survey five (5) years after completion of the beach enhancement required by the HPA. The survey shall include fish species, established vegetation and invertebrates. Tenant shall submit sampling protocols to State for approval before undertaking the survey. Tenant shall submit copies of any and all reports or surveys associated with the enhancement project to State within three months of completion of the report or survey. This includes reports and surveys completed by both regulatory agencies and non-governmental entities.

C. Planned Marina Redevelopment. As of the Commencement Date, Tenant secured permits for phased reconstruction and upgrading of the existing marina facilities. Tenant has not secured funding for this work and the City Council has not determined whether to implement the full scope of work.

Permits current as of the Commencement Date include Section 404 permit issued by the United States Army Corps of Engineers (Permit #: NWS-2007-951-NO, issued on September 21, 2008), Hydraulic Project Approval (HPA) from the Washington Department of Fish and Wildlife, (Permit #: 111469-11 issued on January 25, 2008) and a Shoreline Conditional Use Permit (Permit #:2008-NW-1003, issued on March 28, 2008), (collectively "Commencement Permits"). Tenant anticipates that the permits will expire before all of the authorized work is funded or completed.

State grants its approval for work authorized under the Commencement Permits. Unless otherwise explicitly required under this Exhibit B, State does not require Tenant to submit plans and specifications as required by Section 7.3 of the Lease for work authorized under the Commencement Permits. For work not authorized

under the Commencement Permits and if any Commencement Permit expires before the work described below is complete, Tenant shall submit plans and specification to State and obtain State's approval of work in accordance Section 7.3.

The following summarizes the proposed future improvements authorized under the Commencement Permits If there is a conflict between the work described below and a Commencement Permit, the Commencement Permit prevails:

- Phased dredging of entire marina basin to depths of minus 9 feet, minus 12 feet, and minus14 feet Mean Lower Low Water *(MLLW)* to accommodate the various types and sizes of vessels that utilize the marina.
- Replacement of existing headwalk/approach float.
- Addition of a new F dock between existing E dock and existing wave barrier/transient moorage float *(current F dock to be renamed G dock)*. New dock/float will have space/slips for up to 82 vessels, primarily 40 to 50 feet in length, with space for five vessels up to 60 feet.
- Replacement of the non-ADA compliant gangway on the main approach pier with an ADA compliant gangway.
- Enhancement of up to 800 linear feet of marina shoreline through beach nourishment and planting of dunegrass.
- Removal of existing creosote timber boat grid.
- Replacement of existing docks A through E with five new docks. New docks will have slips for up to 259 vessels ranging from 21 feet to over 45 feet in length.
- Removal of five sunken timber barges and creosote timber log boom at the south perimeter of the marina and replace with a 1,020-foot long, public access, multi-use float with utilities.
- Donation of $50,000 to the Island County Marine Resources Committee *(MRC)* to allow them to construct and/or expand their partially funded restoration project in Cornet Bay.

City of Oak Harbor
City Council Agenda Bill

Agenda Bill No. 9
Date: June 2, 2009
Subject: Scenic Estates Preliminary Plat
Request for Extension

FROM: Steve Powers PSP
Development Services Director

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

PURPOSE:
This agenda bill seeks City Council action on a request for an extension of the Scenic Estates Preliminary Plat which expired on April 18, 2009. The request was made by Mr. Karl Krieg of K and D Development on March 27, 2009, before the plat expired. Receipt of Mr. Krieg's letter prior to the expiration date ensures that the one year extension can be considered as a timely request.

AUTHORITY
The authority to grant a time extension for a maximum of one year is provided by OHMC 21.30.020(2). The said extension shall be conditioned upon the plat meeting all subdivision requirements which are in effect at the time the extension is granted and upon a showing that the applicant has attempted in good faith to submit the final plat within the three-year period.

SUMMARY STATEMENT
On April 18, 2006, the Oak Harbor City Council approved the Preliminary Plat for Scenic Estates, located west of SW Freund Street near the intersection of SW Scenic Heights Street. Per OHMC 21.30.020(1), the application for the final plat shall be submitted within three years of the preliminary plat approval. The City sent a courtesy letter to the applicant on February 12, 2009 informing them that the preliminary plat would expire soon. The applicant's response letter (Exhibit 2) cited that the recent downturn of the economy and the residential housing market has precluded them from completing the project. The applicant believes that market conditions will improve in the next year and that the project can then be completed.

PROJECT INFORMATION

Developer:	K and D Development
Owner:	K and D Development
Location:	West of SW Freund Street near the intersection of SW Scenic Heights Street
Zoning:	R-1 Single-family Residential

Comprehensive Plan Designation:	Low-Density Residential
Site Area:	4.03 Acres
Units:	13 residential lots/1 tree reserve lot
Density:	3.5 dwelling units per acre
Average Lot size:	9,316 square feet

PROJECT DESCRIPTION

The Scenic Estates Preliminary Plat is a 14-lot plat proposed on two lots (Island County parcel numbers R13210-491-3150 and R13210-466-2900). Properties to the south of the site are in unincorporated Island County and properties on the west and north are existing single family on larger lots. Lot sizes range from 7,231 square feet to 12,602 square feet. The project includes a new public street to serve the proposed lots (with the prospect of a future connection near the northwest corner), street and sidewalk improvements, installation of utilities and a 7,705 square foot reserve lot set aside to meet the City's tree retention standards.

CITY COUNCIL REVIEW

The Oak Harbor Municipal Code provides for an extension of plat approval with the City Council responsible for making a final decision. The review standard for approval of a plat extension is a showing that the applicant has attempted in good faith to submit the final plat within the three-year period.

The preliminary plat of Scenic Estates was approved on April 18, 2006. The City issued a clearing permit and approved the Temporary Erosion and Sediment Control (TESC) Plan for the project on April 25, 2006. A grading permit was approved on August 7, 2006 and civil plans for the plat were approved by the City on July 13, 2007. As of the date of this agenda bill, work completed on-site includes initial grading of the site and completion of a portion of the storm drain facility in relation to stabilizing the site. Construction of the project is not yet complete and a final plat has not been submitted or approved.

Staff feels the actions above demonstrate effort in moving towards final plat approval and are sufficient in showing that the applicant has attempted in good faith to meet the requirements for submitting the final plat within three years.

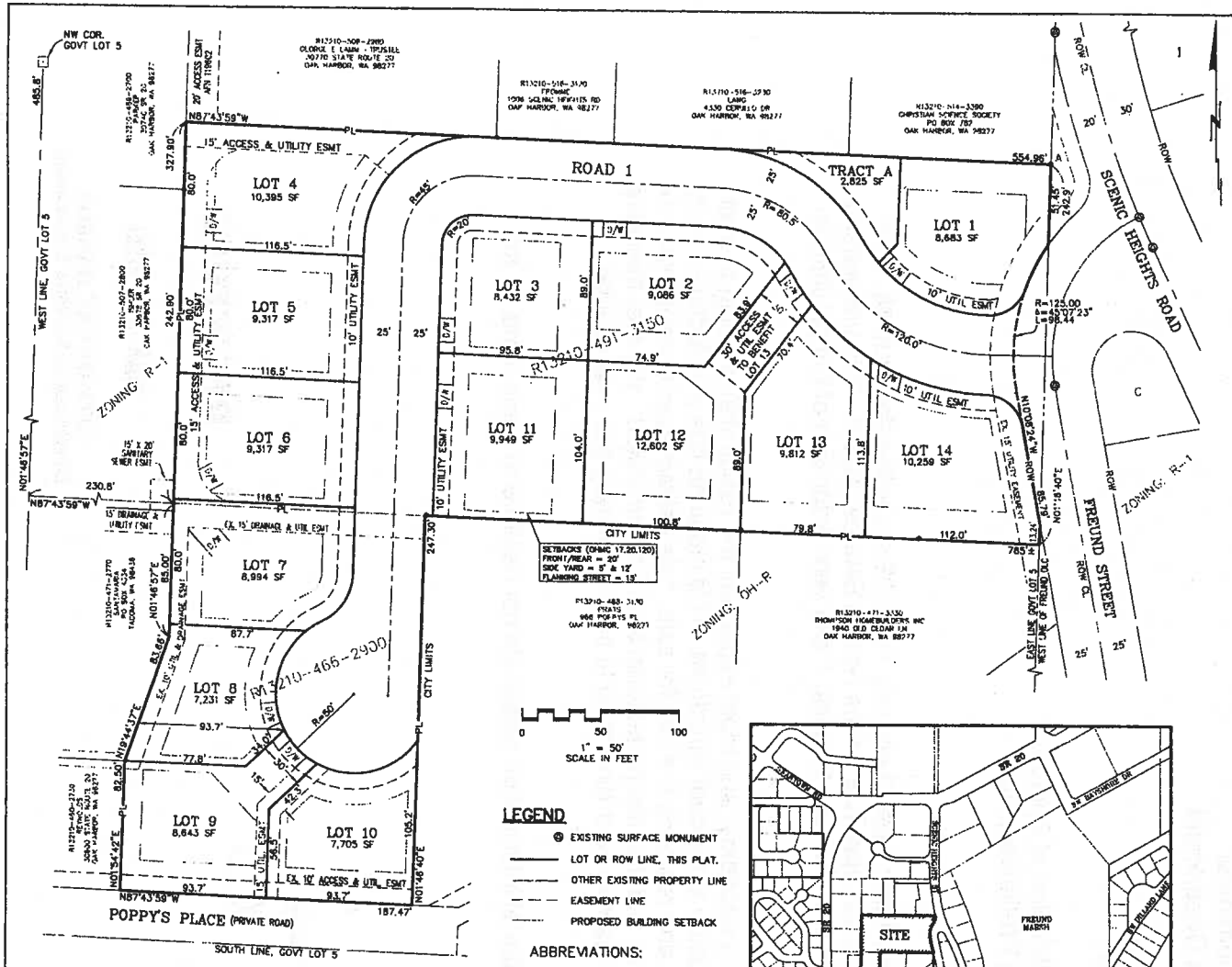
RECOMMENDED ACTIONS:

1. Approve the ordinance for a one-year extension for the Scenic Estates Preliminary Plat, allowing K and D Development an additional year for submission of an application on the final plat.

ATTACHMENTS:

Exhibit 1:	Scenic Estates Preliminary Plat, Dated April 18, 2006
Exhibit 2:	Letter from Mr. Krieg to City, Dated March 27, 2009
Exhibit 3:	Letter from City to Mr. Krieg, Dated April 6, 2009

MAYOR'S COMMENTS:

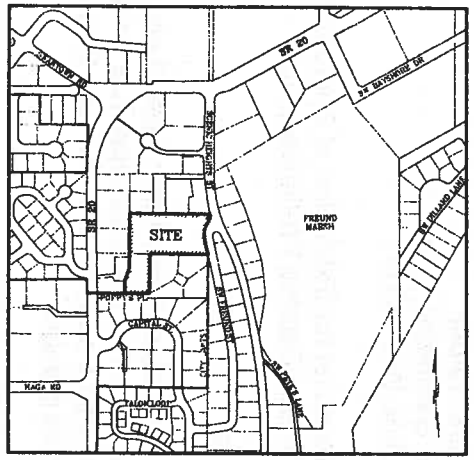


LEGEND

- EXISTING SURFACE MONUMENT
- LOT OR ROW LINE, THIS PLAT.
- OTHER EXISTING PROPERTY LINE
- EASEMENT LINE
- PROPOSED BUILDING SETBACK

ABBREVIATIONS:

CL – CENTERLINE
D/W – DRIVEWAY LOCATION
DLC – DONATION LAND CLAIM
EX – EXISTING
ESMT – EASEMENT
L – LENGTH
MON – MONUMENT
PL – PROPERTY LINE
R – RADIUS
ROW – RIGHT OF WAY
SF – SQUARE FEET
Δ – DELTA



VICINITY MAP
SCALE 1"=600'

RESTRICTIONS & MAINTENANCE PROVISIONS

1. THE MAINTENANCE RESPONSIBILITIES OF TRACT A BELONG TO THE HOMEOWNERS ASSOCIATION AS DEFINED BY THE COVENANTS CODES AND RESTRICTIONS. IF THE ASSOCIATION DISBANDS, THEN THE RESPONSIBILITY DEFAULTS TO THE INDIVIDUAL LOT OWNERS.
2. THE STREET TREES PLANTED ALONG THE FRONT OF ALL LOTS, AS PER THE APPROVED LANDSCAPE PLAN AND THE SEPA MDNS ASSOCIATED WITH THE PLAT OF SCENIC ESTATES DIV No. 1, SHALL BE MAINTAINED BY THE HOME OWNERS ASSOCIATION, IF THE ASSOCIATION DISBANDS, THEN THE RESPONSIBILITY DEFAULTS TO THE AFFECTED INDIVIDUAL LOT OWNERS. IF THESE TREES ARE TO BE REPLACED, THEY SHALL BE PLANTED OUTSIDE OF THE 10 FT. UTILITY EASEMENT, AND THE SPECIES AND LOCATION SHALL CONFORM TO THE APPROVED LANDSCAPE PLAN.
3. ACCESS FOR ALL LOTS SHALL BE FROM INTERIOR ROADS AND LIMITED TO THE LOCATIONS SHOWN HEREIN UNLESS OTHERWISE PERMITTED BY THE CITY OF OAK HARBOR.
4. USE AND MAINTENANCE OF THE COMMON AREAS AND PRIVATE EASEMENTS WITHIN THIS PLAT IS THE RESPONSIBILITY OF THE HOMEOWNERS ASSOCIATION AS DESCRIBED IN THE COVENANT CODES AND RESTRICTIONS RECORDED FOR THIS PLAT. NO DUMPING OF DEBRIS OR YARD WASTE SHALL BE ALLOWED IN ANY COMMON AREAS INCLUDING BUT NOT LIMITED TO TRACTS A AND LOT 10 (SEE NOTE 5 BELOW).
5. OWNERSHIP AND MAINTENANCE RESPONSIBILITES FOR LOT 10 SHALL REMAIN WITH K AND D DEVELOPMENT AND THEIR SUCCESSORS AND ASSIGNS FOR THE INTERIM PURPOSE OF MEETING TREE RETENTION REQUIREMENTS SPECIFIED IN OHMC 19.48.05 FOR THE PLAT OF SCENIC ESTATES DIVISION NO. 1. SALE OR DEVELOPMENT ACTIVITY ON THIS LOT SHALL NOT OCCUR UNTIL CONDITIONS SPECIFIED BY AGREEMENT RECORDED UNDER AFN _____ ARE SATISFIED AND AN ALTERNATIVE METHOD OF TREE RETENTION IS APPROVED BY THE CITY OF OAK HARBOR.

PLAT DATA

OWNER
K AND D DEVELOPMENT (C/O KARL KRIEG)
70 W SLEEPER RD
OAK HARBOR, WA 98277
(360) 679-4151

SURVEYING/ENGINEERING
FAKKEMA & KINGMA INC.
840 SE 8TH AVE – SUITE 102
OAK HARBOR, WA 98277
(360) 675-5973

CANE ENGINEERING
925 EAST DOYLE
OAK HARBOR, WA 98277
(360) 279-0815

LAND DESCRIPTION
THAT PORTION OF GOVERNMENT LOT 5, SECTION 10, TOWNSHIP 32 NORTH, RANGE 1 EAST OF THE WILLAMETTE MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 5;
THENCE SOUTH ALONG THE WEST LINE THEREOF 485.8 FEET TO THE TRUE POINT OF BEGINNING; THENCE
EAST 785 FEET, MORE OR LESS, TO THE BOUNDARY LINE BETWEEN GOVERNMENT LOT 5 AND THE U. FREUND DONATION LAND CLAIM;
THENCE NORTH ALONG SAID BOUNDARY LINE 242.9 FEET; THENCE
WEST PARALLEL WITH THE FIRST COURSE OF THIS DESCRIPTION TO THE WEST LINE OF SAID GOVERNMENT LOT 5; THENCE
SOUTH ALONG SAID WEST LINE 242.9 FEET, MORE OR LESS, TO THE TRUE POINT OF BEGINNING.

EXCEPT THE WEST 230.8 FEET THEREOF;

ALSO EXCEPT THAT PORTION CONVEYED TO THE CITY OF OAK HARBOR FOR RIGHT OF WAY PURPOSES BY DEED RECORDED NOVEMBER 7, 1996, UNDER AUDITOR'S FILE No. 96019381, RECORDS OF ISLAND COUNTY, WASHINGTON.

TOGETHER WITH LOT 1 OF CITY OF OAK HARBOR SHORT PLAT No. 5-93 AS RECORDED IN VOLUME 3 OF SHORT PLATS, PAGE 3, UNDER AUDITOR'S FILE No. 95005073. RECORDS OF ISLAND COUNTY WASHINGTON.

ALSO TOGETHER WITH AN EASEMENT FOR INGRESS AND EGRESS ALONG THE FOLLOWING DESCRIBED PROPERTY:

THAT PART OF GOVERNMENT LOT 5, SECTION 10, TOWNSHIP 32 NORTH, RANGE 1 EAST OF THE WILLAMETTE MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID GOVT LOT 5; THENCE
SOUTH 14 FEET; THENCE
EAST 230.8 FEET; THENCE
SOUTH 226.9 FEET TO THE NORTH LINE OF A TRACT CONVEYED MARION C. CHRISTENSEN AND LORNA E. CHRISTENSEN BY DEED RECORDED UNDER AUDITOR'S FILE No. 107171, RECORDS OF ISLAND COUNTY, WASHINGTON;
THENCE EAST ALONG THE NORTH LINE OF SAID CHRISTENSEN TRACT A DISTANCE OF 20 FEET; THENCE
NORTH 242.9 FEET TO THE NORTH LINE OF SAID LOT 5; THENCE
WEST ALONG THE NORTH LINE OF SAID LOT 5 TO THE POINT OF BEGINNING.

SITUATE IN THE COUNTY OF ISLAND, STATE OF WASHINGTON.

PARCEL NUMBERS
R13210-491-3150
R13210-466-2900

ZONING
R-1

COMPREHENSIVE PLAN DESIGNATION
LOW DENSITY RESIDENTIAL

LOT INFORMATION

LOT #	AREA (SQ. FT.)	LOT #	AREA (SQ. FT.)
1	8,683	8	7,231
2	9,086	9	8,643
3	8,432	10	7,705
4	10,395	11	9,949
5	9,317	12	12,602
6	9,317	13	9,812
7	8,994	14	10,259
TOTAL AREA IN LOTS			130,425
TOTAL AREA IN STREETS			42,253
TOTAL AREA IN TRACTS			2,825
TOTAL AREA			175,503
NET AREA			3.0 ACRES
UNITS PER ACRE, NET:			4.7 UNITS/AC.
UNITS PER ACRE, GROSS:			3.5 UNITS/AC
AVERAGE LOT SIZE:			9,316 SF

RECEIVED
DEC - 1 2005
CITY OF OAK HARBOR
Development Services Department

336

P-1

12/15/05

ROBERT D. CRAIG
STATE OF WASHINGTON
11841
REGISTERED PROFESSIONAL LAND SURVEYOR
EXPIRES 12/16/06

F&K CK

K AND D DEVELOPMENT
PLAT OF SCENIC ESTATES
PRELIMINARY PLAT MAP

OAK HARBOR — WASHINGTON

SURVEYED BY: NA — DATE: NA
DRAWN BY: JTF — DATE: 12-14-05

Fakkema And Kingma, Inc.
CONSULTING ENGINEERING & LAND SURVEYING
840 SE 8TH AVE., SUITE 102 OAK HARBOR, WA 98277 (360)675-5973

SCALE: 1" = 100'
PROJECT NO. 4564
SHEET 1 OF 1

K & D Development
4643 North Moran Road
Oak Harbor, WA 98277

March 27, 2009

Lisa Bebee, Permit Coordinator
Development Services Department
City of Oak Harbor
865 S.E. Barrington Drive
Oak Harbor, WA 98277

Re: Request for Extension of Approval
Scenic Estates Preliminary Plat

Dear Lisa,

We are in receipt of your letter dated February 12, 2009 regarding the April 18, 2009 expiration of preliminary plat approval for the Scenic Estates project. We understand, however, that if approved by the City Council, a one year extension of the preliminary plat can be granted.

As we are all aware, the economy, and most especially the residential housing market, has recently experienced a significant slowdown. This situation has precluded us from completing the project and readying the lots for sale. We believe market conditions will improve in the next year and that the project can then be completed. We are, therefore, requesting herein that the one year extension to the preliminary plat approval be granted.

If we can provide additional information please do not hesitate to contact me, or my engineer, Greg Cane.

Sincerely,
K & D Development

Karl Krieg
President

cc. Greg Cane

RECEIVED

MAR 3 1 2009

CITY OF OAK HARBOR
Development Services Department

CITY OF
Oak Harbor
WHIDBEY ISLAND, WASHINGTON

April 6, 2009

Mr. Karl Krieg
K & D Development
4643 North Moran Road
Oak Harbor, WA 98277

RE: Request for extension of Scenic Estates Preliminary Plat

Dear Mr. Krieg:

Thank you for your letter requesting an extension of the preliminary plat approval for the Scenic Estates project. As you are already aware, the preliminary plat approval expires on April 18, 2009. Receipt of your letter prior to this date ensures that your one year extension will be considered as a timely request.

The City Council may grant a time extension for a maximum of one year per Oak Harbor Municipal Code 21.30.020 (2). The extension shall be conditioned upon the plat meeting all subdivision requirements which are in effect at the time the extension is granted and upon a showing that the applicant has attempted in good faith to submit the final plat within the three-year period.

As we understand it, you have demonstrated effort in moving towards final plat approval by the submittal and approval of civil plans to the City, grading the site, and completing a portion of the storm drain system. If you have additional information you would like to add to your request, please submit it to the Development Services Department. Consideration for your request by the City Council is tentatively set for the May 19, 2009 meeting. Should the meeting date change, staff will contact you.

Should you have any questions regarding this letter please feel free to contact me at (360) 279-4511.

Sincerely,

Steve Powers, AICP
Development Services Director

cc: Mr. Greg Cane, Cane Engineering
Eric Johnston, City Engineer
File

ORDINANCE NO. _____

AN ORDINANCE APPROVING A ONE-YEAR EXTENSION OF THE TIME FOR FILING AN APPLICATION FOR A FINAL PLAT UPON THE PRELIMINARY PLAT OF SCENIC ESTATES.

WHEREAS, a public hearing was held by the Planning Commission on March 28, 2006, and said hearing was published on March 11, 2006 in the Whidbey News Times; and

WHEREAS, the City Council adopted the Findings of Fact, Conclusions of Law and Record of Decision of the Planning Commission by reference and approved the Preliminary Plat of Scenic Estates on April 18, 2006; and

WHEREAS, the City Council finds that the applicant (K and D Development) has attempted in good faith to submit the final plat application with the three-year period provided in OHMC 21.30.020(i),

NOW THEREFORE, the City Council of the City of Oak Harbor do ordain as follows:

Section One. A one-year extension of the preliminary plat of Scenic Estates consisting of 13 single-family residential lots and 1 tree retention lot on 4.03 acres (Island County Parcel Numbers R13210-491-3150 and R13210-466-2900) under City file number PPL 05-00001, is hereby approved subject to the conditions contained in the Planning Commission Findings of Fact, Conclusions of Law, and Record of Decision (attached as Exhibit 1) before the final plat may be filed. This extension is conditioned upon the final plat meeting all the subdivision requirements which are in effect on the date of this ordinance.

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

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

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

THE CITY OF OAK HARBOR

_____
Mayor

Attest:

_____
City Clerk

Approved as to Form:

_____

City Attorney

Published:_____

BEFORE THE CITY OF OAK HARBOR PLANNING COMMISSION
STATE OF WASHINGTON

In Re K and D Development	)	FINDINGS OF FACT
Preliminary Plat #05-00001	)	CONCLUSIONS OF LAW
Scenic Estates	)	RECORD OF DECISION

This matter having come as a public hearing before the Oak Harbor Planning Commission on the 28th day of March, 2006 upon application of K and D Development, petitioner, appearing in person; Development Services Department of the City of Oak Harbor appearing by it's Director; and the City of Oak Harbor Planning Commission being advised and having considered the evidence and testimony presented now make the following:

1. FINDINGS OF FACT

1.1 Jurisdiction herein was obtained by an application from K and D Development for Preliminary Plat approval of Scenic Estates, a 14-lot subdivision located west of Scenic Heights Street at the intersection SW Freund Street, more specifically encompassing Island County parcel numbers R13210-491-3150 and R13210-466-2900. Four subdivision waiver requests were also submitted with this application.

1.2 The City of Oak Harbor Planning Commission after due notice of hearing did consider the application of K and D Development for the Preliminary Plat of Scenic Estates at a regular meeting on March 28, 2006. The hearing was recorded and a written transcript may be prepared therefrom.

1.3 The City of Oak Harbor Planning Commission discussed all matters presented thereto and concluded that:

.i An environmental assessment was made of the project in accordance with the checklist requirements of the State Environmental Policy Act of 1971. This proposal has been determined to not have a significant impact upon the environment. An Environmental Impact Statement is not required under RCW 43.21C.030(2)C.

.ii A Determination of Nonsignificance (DNS) was issued for the proposal on March 1, 2006 and the appeal period expired on March 20, 2006.

.iii The application as submitted by K and D Development for the Scenic Estates preliminary plat meets the requirements of the subdivision ordinance of the City of Oak Harbor and of RCW 58.17.

.iv The Scenic Estates preliminary plat meets the zoning requirements for the district in which it is located and is consistent with the Oak Harbor Comprehensive Plan.

EXHIBIT 1

.v The application for four subdivision waivers, specifically the length of the cul de sac, the grade of the new street, the width of the right of way south of Lot 7 and the deletion of a sidewalk abutting Island County parcel number R13210-468-3130 are justified due to the topography and shape of the property, and that strict compliance with the City's standards will cause unusual and unnecessary hardship for the proponent.

1.4 The Scenic Estates Preliminary Plat #05-00001 has been processed in accordance with RCW Title 58, the City of Oak Harbor Zoning Ordinance Title 19, the State Environmental Policy Act RCW 43.21C and the Open Meetings Act of 1971 RCW 42.30 and the action is in accord therewith.

From the foregoing FINDINGS OF FACT, the Oak Harbor Planning Commission makes the following:

2. CONCLUSION OF LAW

2.1 The findings of fact as noted in the records of the City of Oak Harbor Development Services Office upon which the recommendation for approval of the Preliminary Plat of Scenic Estates was made by the City of Oak Harbor Planning Commission are proper and have not been reached in an arbitrary or capricious manner nor without due process of law.

3. RECORD OF DECISION

3.1 On March 28, 2006 the Oak Harbor Planning Commission did recommend that the City Council approve the Preliminary Plat and accompanying subdivision waivers for Scenic Estates, application #PPL-05-00001, submitted by K and D Development, subject to the following conditions:

a. The development of the Scenic Estates subdivision shall be in general conformance with the preliminary plat, preliminary street and utility plan and preliminary tree retention and landscape plan received December 19, 2005.

b. Following approval of the Preliminary Plat, construction plans must be submitted to and approved by the Engineering Department prior to commencing any construction activities. These plans must include all street and frontage improvements (including sidewalk, curb, gutter, paving, traffic control, storm drainage, and street illumination) and all existing and proposed utilities including, but not limited to water, sewer, storm drainage (including a site drainage analysis), power, telephone, cable, and gas. All proposed improvements must meet the City of Oak Harbor standards for materials and installation practices.

c. Any and all requests for reimbursement for private construction of public infrastructure via developers reimbursement agreements, system development charge credits, over-sizing costs or other funding source shall be submitted by the applicant to the City Council prior to final action on the preliminary plat for Scenic Estates.

d. All proposed on and off site improvements associated with this project must be completed and accepted prior to final plat approval. A Performance Bond, in the amount of 112% of

the cost to construct required, uninstalled, improvements may be posted in lieu of installation of the improvements, provided, such a bond is approved by the City Engineer.

e. Construction Best Management Practices (BMPs) (such as silt fencing, straw bales, mulching and hydroseeding) shall be utilized to minimize erosion and sedimentation. As may be periodically required in response to changing site conditions, and as required by the City of Oak Harbor, the applicant shall amend, correct, improve, or alter erosion and sediment control measures to ensure their effectiveness.

f. Tree retention requirements for Scenic Estates shall be substantially as outlined on the Tree Retention and Landscape Plan, with a portion of the tree retention standard to be met on Lot 10 to be owned and maintained by the developer. A plat condition shall be noted stating that this lot will remain unbuildable until such time as the applicant is eligible for and gains approval through a program to transfer the on-site tree retention requirement to an off-site location.

g. If there are unforeseen impacts on tree retention areas adjacent to those being cleared for building lots and roadways, the Applicant shall prepare an alternative landscape and tree retention plan that provides procedures, design flexibility, and implementation necessary for addressing those impacts. This plan must be approved by the City prior to implementation.

h. As may be periodically required in response to changing site conditions, and as may be required by unforeseen impacts, the Applicant shall amend, correct, improve, or alter tree retention plans to ensure their effectiveness, including but not limited to: revegetation of areas; selective felling of trees; hand clearing of understory; or other technique acceptable to the City.

i. The access and utility easement around Lots 4, 5 and 6 shall be 20 feet in width.

j. The street right of way in front on Lot 4 shall run due north and shall meet the northern property line at a 90-degree angle.

k. Traffic calming measures to reduce vehicular speeds shall be designed and incorporated in the project along longer stretches of the interior roadway.

l. The stormwater system for the project shall be subject to the DOE Technical Manual, to Best Management Practices, and shall be subject to review and approval by the City. Final design of the stormwater management system for the plat shall include consideration of a regional, off-site facility in the Freund march vicinity.

m. Mitigate air quality degradation on adjacent properties during construction by hydrospraying the development site and cleaning construction vehicles as needed to reduce dust emissions and tracking of soil.

o. Construction activities shall be scheduled to avoid concurrent operation of the loudest equipment.

p. All on-site lighting (residential, street and pedestrian) shall be of a non-glare, downward directed nature to eliminate effects on neighboring areas.

3.2 This order is advisory to the City Council and may be accepted by the City Council, remanded to the Planning Commission for reconsideration, or rejected by the City Council after public hearing.

APPROVED AND ADOPTED THE 28th DAY OF MARCH 2006.

PLANNING COMMISSION
CITY OF OAK HARBOR, WASHINGTON

Chair

Attest:

Kathy Gifford
Clerk to the Planning Commission

City of Oak Harbor
City Council Agenda Bill

Bill No. 10
Date: June 2, 2009
Subject: Right of Way Acquisition- Oak Harbor Street Project

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

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

PURPOSE

This agenda bill requests Council authorization for the Mayor to enter into purchase and sale agreements with those property owners who have agreed to sell rights of way for the improvement of Oak Harbor Street to the City. It also requests approval for a required payment to the property owners at the Woodside North Condominium Association for their actual costs in evaluating the City's offer for purchase of a right-of-way across their property, even though they rejected the City's offer.

AUTHORITY

The authority to enter into agreements and acquire property for improvements is granted to the City of Oak Harbor under RCW 35A.11.020. The requirement to pay for actual costs of property owners evaluating the City's offer to purchase a right of way arises out of federal and state regulations and may be found in the Local Agency Guidelines, April 2007.

SUMMARY STATEMENT

The City of Oak Harbor has several state and federal grants for improvements to Oak Harbor Street between Crosby Road and Whidbey Avenue. The planned improvements generally consist of sidewalks, curbs, gutters, utility relocation, lighting and safety improvements. As originally scoped, the project included a new roundabout at the intersection of Oak Harbor Street and NE 7th Avenue. However, the property owners at the Woodside North Condominiums have rejected the City's offer to purchase right of way from them, necessitating re-design of the intersection. For the rest of the project, in order to construct the improvements, right-of-way acquisitions from a number of properties are necessary.

Acquisition #1 Woodside North Condominiums

The original concept for improvements to the intersection of NE 7th Avenue and Oak Harbor Street included a roundabout. In order to construct the roundabout, right-of-way (ROW) needed to be purchased from the Woodside North Condominium Association. Following procedures required when using federal transportation funds and procedures adopted by the City, a ROW

agent was retained by the City for the negotiations. The ROW agent is certified by the Washington State Department of Transportation (WSDOT) as qualified to follow the policies and procedures required under federal law for the acquisition of property using federal funds.

The ROW agent, Universal Field Services, contacted the Woodside North Condominium Association and indicated that the City was desirous to acquire a portion of the property for the street improvements. An independent appraisal was completed and an offer based on the fair market value was proposed to the Association. After several attempts and offers to reach an agreeable price, the ROW agent recommended that the City either withdraw the offer or move into formal condemnation proceedings. Given the time and expense of the condemnation proceedings and the escalating project cost, it was recommended to not condemn the property but to simply withdraw the offer. In withdrawing the offer, the City is obligated under the regulations for ROW acquisition with federal funds to compensate the property owners for expenses, not to exceed $750 per owner, incurred during the negotiations. Note that as a condominium association that each owner of an individual unit has a share in the common property and that there are 93 units in the association. The allowable expenses include attorney fees, appraisal costs and other costs typical of real estate negotiations. Attached is the payment voucher to Woodside North Condominium Association in the amount of $8,583.55 based on their claim for allowable expenses in that amount for evaluation of the City's offer. Funding for the settlement will come from the project budget in Fund 104 Arterial Streets which includes gas tax funds and state and federal grant funds.

It is important to note that by not acquiring the property that the proposed roundabout will not be included in the street improvements project. The safety issues will be controlled by turn lanes and a three way stop rather than the roundabout.

Acquisition #2 Muleskinner Inc

Located on the east side of Oak Harbor Street and north of NE 10th Avenue, the property owned by Muleskinner, Inc is large tract with one single family residence. Currently zoned for multi-family housing, the property is not developed to its highest and best use (based on the zoning). Muleskinner, Inc has submitted plans to the City to develop the property in accordance with the zoning. However, given the current market conditions, it may be some time before the applicant moves forward with the project.

In order to construct the Oak Harbor Street improvements project, notably sidewalks, a narrow strip of property, owned by Muleskinner, Inc., is required. Normally, as part of the site development, the owner would be required to provide both the improvements and a dedication of Right of Way (ROW). However, since the City's project is on a faster schedule than the property owner's development plans, the City needs to either purchase the right-of-way property outright or find an alternate means of conveyance. As with the Woodside Condominiums, the City's contracted ROW agent negotiated with the property owner and reached an agreement with the property owner to acquire the property in exchange for waiver of certain City development requirements on the remaining property (known as "Crosby Trace").

The property needed for the right-of-way (5,306 square feet) is appraised at $44,000. In lieu of paying this amount of money, the City would contract to waive the requirements for street

improvements to Oak Harbor Street associated with the Crosby Trace site plan approval required by Chapter 11.16 OHMC (Required Street Improvements), OHMC 19.48.037(4)(e)(General evaluation criteria for site plan approval – street improvements), and Chapter 11.17 OHMC (Improvement Standards). The value of these street improvements, based on construction cost estimates, is $35,000. The City would also agree to include the 5,306 square feet of right-of-way for the Oak Harbor Street extension in the density calculations for the Crosby Trace site plan under OHMC 19.08.245; and further agree that the landscaping between the edge of Oak Harbor Street and the sidewalk for that street frontage on the Crosby Trace site plan shall be included as part of the required landscaping for the site plan pursuant to OHMC 19.46.030(1)(a)(vi) and OHMC 19.46.030(1)(c)(i). These last two agreements are consistent with City Development Services regulations and practices.

Acquisition #3 through #6

The remaining right-of-way areas are proposed to be acquired through standard purchase and sales agreements. These areas are small areas along the edges of properties that are needed to widen the roadway and to provide adequate corners at intersections for the improvements necessary for the street improvements.

Appraisals for each acquisition were completed by a certified appraisal. Following WSDOT right-of-way acquisition procedures an independent check on the appraisal was completed and an offer based on fair market value was proposed to the owner of each parcel by the City's agent. Negotiations with the property owners, through the city's agent, led to an agreed price that includes the fair market offer and administrative settlement costs. Administrative settlement costs include considerations for loss of landscaping or other features that may not have been apparent in the appraisal but are of value. A summary of four parcels and the negotiated sales prices are shown in the attached spreadsheet.

STANDING COMMITTEE REPORT

This item was presented to the Public Works standing committee who had no objections.

RECOMMENDED ACTION

A motion, for the purpose of improvements to Oak Harbor Street between Crosby Road and Whidbey Avenue, to:

1. Authorize payment of the settlement of expenses actually incurred in evaluating the City's offer to Woodside North Condominium Association in the sum of $8,583.55 (not to exceed the statutory maximum of $750 per property owner);
2. Authorize the Mayor to sign a purchase and sale agreement with Muleskinners, Inc. to acquire 5,306 square feet of right-of-way appraised at $44,000 in exchange for the following City commitments with respect to the pending Crosby Trace site plan as now submitted or subsequently resubmitted for the same property:
    a. Waiver of the requirements for street improvements to Oak Harbor Street associated with the Crosby Trace site plan approval, and/or subdivision required by Chapter 11.16 OHMC (Required Street Improvements), OHMC

19.48.037(4)(e)(General evaluation criteria for site plan approval – street improvements), and Chapter 21.50 OHMC (Improvement Standards). The value of these street improvements, based on construction cost estimates, is $35,000.

b. Agreement to include the 5,306 square feet of right-of-way for the Oak Harbor Street extension in the density calculations for the Crosby Trace site plan under OHMC 19.08.245.

c. Agreement that the landscaping between the edge of Oak Harbor Street and the sidewalk for that street frontage on the Crosby Trace site plan shall be included as part of the required landscaping for the site plan pursuant to OHMC 19.46.030(1)(a)(vi) and OHMC 19.46.030(1)(c)(i).

3. Authorize the Mayor to sign a purchase and sale agreement for the acquisition of right-of-way from Puget Sound Energy in the amount of $5,100 for 512 square feet of right of way.
4. Authorize the Mayor to sign a purchase and sale agreement for the acquisition of right of way from Cove Apartments in the amount of $16,400 for 1,353 square feet of right of way.
5. Authorize the Mayor to sign a purchase and sale agreement for the acquisition of Right of way from Concordia Lutheran Church in the amount of $75,000 for 4,917 square feet of right of way.
6. Authorize the Mayor to sign a purchase and sale agreement for the acquisition of right of way from John Hoffelt in the amount of $9,800 for 813 square feet of right of way.

All purchase and sale agreements must be approved and signed by the City Attorney prior to execution.

ATTACHMENTS

Payment voucher to Woodside North Condominium Association
Summary of ROW acquisitions and costs
Map of ROW acquisition locations

MAYOR'S COMMENTS

Payment Request/Real Property Voucher

AGENCY NAME:

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

I HEREBY CERTIFY UNDER PENALTY OF PERJURY THAT THE ITEMS AND AMOUNTS LISTED HEREIN ARE PROPER CHARGES AGAINST THE CITY OF OAK HARBOR. THAT THE SAME OR ANY PART THEREOF HAS NOT BEEN PAID AND THAT I AM AUTHORIZED TO SIGN FOR THE CLAIMANT. (Please sign in ink.)

GRANTOR OR CLAIMANT:

NAME: Woodside North Condominium Association
NAME:
ADDRESS: 490 N Oak Harbor St
CITY, STATE, ZIP: Oak Harbor, WA 98277
PHONE NO.:
FAX NO.:

(Signature) Date 3/06/09

(Signature) Date

Tax ID # (TIN)/SSN #: 91-1328172

Tax ID # (TIN)/SSN #:

PROJECT TITLE: N. OAK HARBOR STREET IMPROVEMENTS
R/W & PARCEL NO. #180 – S845-000-0000

☐ Make Warrant Payable To *(if different than name noted above)*:
☐ Remit Warrant To *(if different than above)*:
☐ Hold Warrant for Pick-Up and Delivery By Authorized Right of Way Agent

Type of Business ☐ Individual ✓ Corporation ☐ Partnership ☐ Other

Type of Claim ☐ Initial ☐ Supplementary ☑ Final

In Full, Complete and Final Payment for the professional fees incurred prior to withdrawal of offer to purchase property for the above project.

For All Lands/Interests Conveyed:	$	0.00
For All Improvements:	$	0.00
For All Damages:	$	0.00
Less Special Benefits:	$	0.00
JUST COMPENSATION	$	0.00
Administrative Settlement:	$	0.00
	$	0.00
Professional Fees (Acquisition):	$	8,583.55
SUBTOTAL:	$	0.00
FINAL SETTLEMENT:	$	8,583.55
Other Items:	$	0.00
SUBTOTAL:	$	0.00
Deductions:	- $	0.00
SUBTOTAL:	- $	0.00
AMOUNT TO BE PAID:	$	8,583.55

Right-of-Way Agent: Beverly Koski

Signature: Date: 3/9/09

Approved for Payment:
CITY OF OAK HARBOR:

Signature: Date:

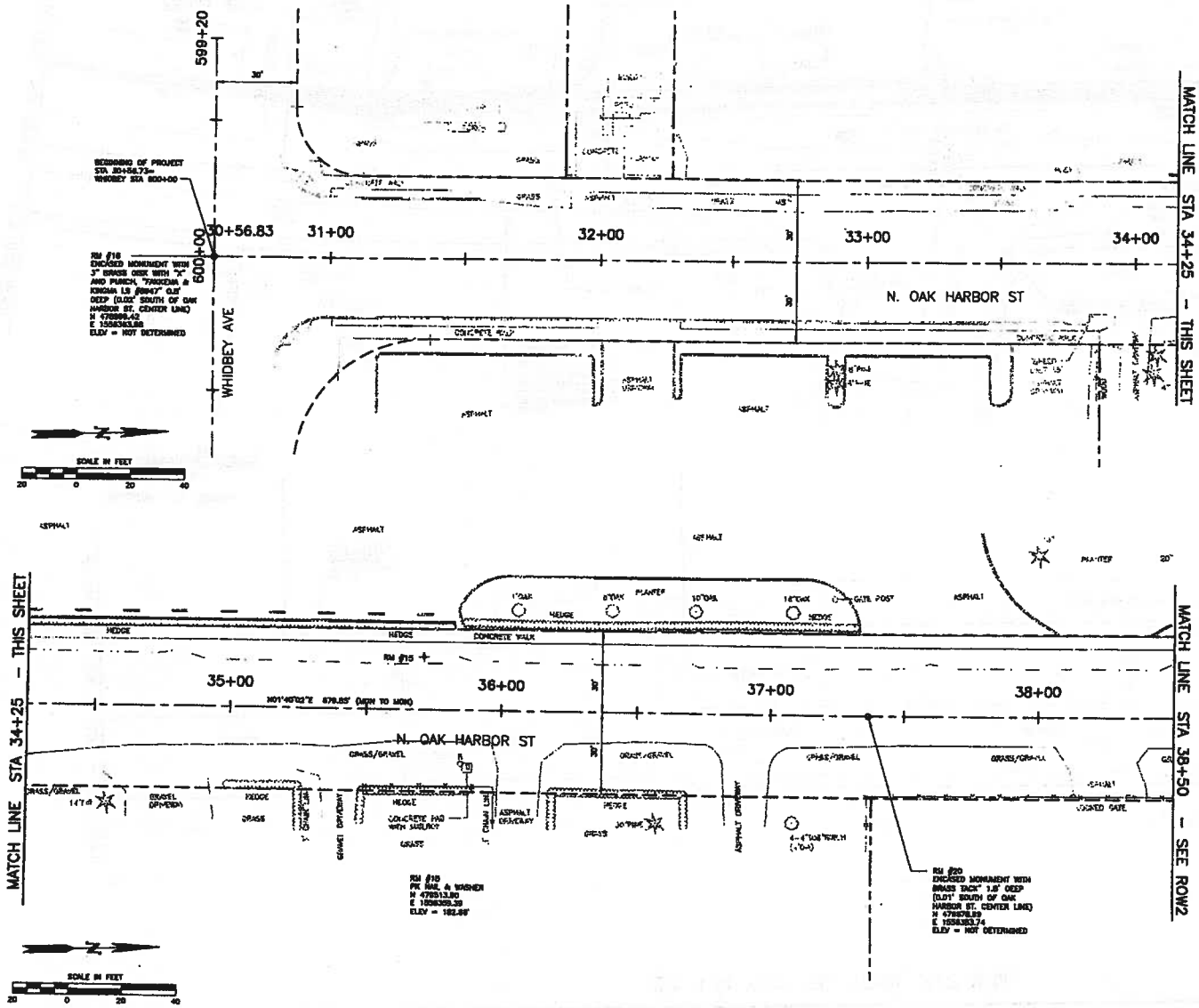
No. Oak Harbor Street Improvements
Whidbey Avenue to Crosy Avenue

Summary of Acquisitions

Map Identifier	Parcel Number	Owner	Area (square feet)	Fair Market offer	negotiated offer
1	R13335-183-0570	PSE	512	$ 5,100	$ 5,100.00
2	R13335-209-0510	Cove Apartments	1353	$ 16,400	$ 16,400.00
3	R13335-237-0580	Concordia Lutheran Church	4914	$ 59,200	$ 75,000.00
4	R13335-316-1140	John Hoffelt	813	$ 9,800	$ 9,800.00
5	RS8495-000-0000	Woodside North Condominium	7010	$ 100,300	offer rejected
6	S8495-000-0000	Muleskinner	5306	$ 44,000	negotiated exchange
			total	**$ 234,800**	$ 106,300.00

original planned budget for ROW **$ 100,000.00**
original project budget **$ 2,486,599.00**

SW 1/4 SEC. 35, T33N, R1E W.M.



LEGEND:

- EXISTING PROPERTY LINE
- EXISTING RIGHT OF WAY
- PROPOSED RIGHT OF WAY

NOTE: 7"
IF "7" DOES NOT MEASURE 1" ADJUST SCALES ACCORDINGLY.

NO.	DATE	BY	REVISION

Reid Middleton
728 134th Street SW - Suite 200
Everett, Washington 98204
Ph: 425 741-3800

CITY OF OAK HARBOR
NE 7TH AVE/N. OAK HARBOR ST
RIGHT OF WAY PLAN

SCALE 1"=20'
DRAWN PCG
CHK'D KAO
SHEET 1 OF
DATE 01/2006
FILE 25-2005-009

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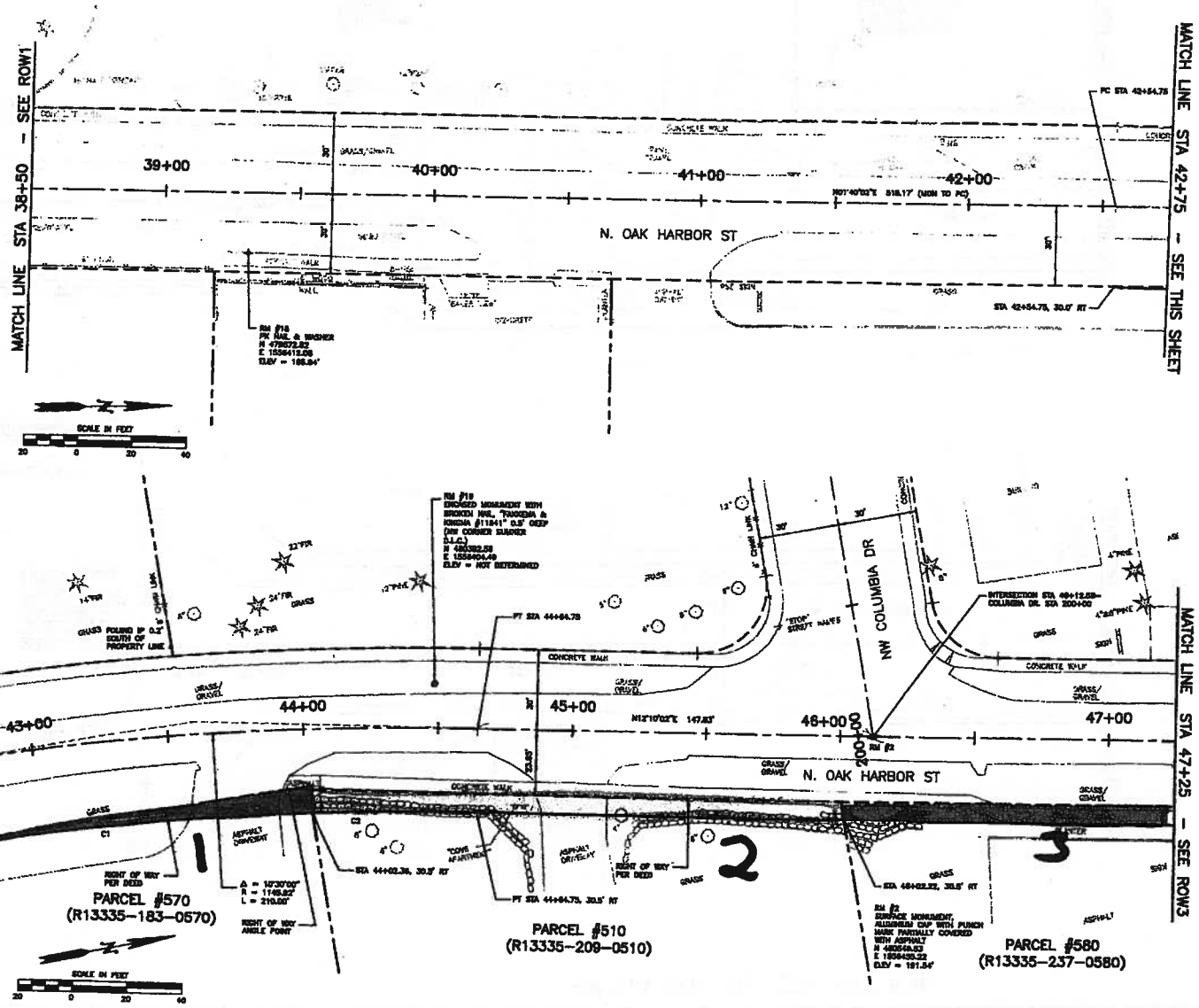
SW 1/4 SEC. 35, T33N, R1E W.M.



LEGEND:

- EXISTING PROPERTY LINE
- EXISTING RIGHT OF WAY
- PROPOSED RIGHT OF WAY

PARCEL#	OWNER NAME	TAKE
570	PUGET SOUND ENERGY	510 SF
510	WINNIE, LLC	1385 SF
580	CONCORDIA LUTHERAN CHURCH	4915 SF

PROPOSED R.O.W. CURVE DATA				
	Δ	R	T	L
C1	7°22'50"	1115.42	71.94	143.68
C2	3°07'10"	1115.42	30.37	60.73

NOTE: IF "L" DOES NOT MEASURE 1" ADJUST SCALES ACCORDINGLY.

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728 134th Street SW · Suite 200
Everett, Washington 98204
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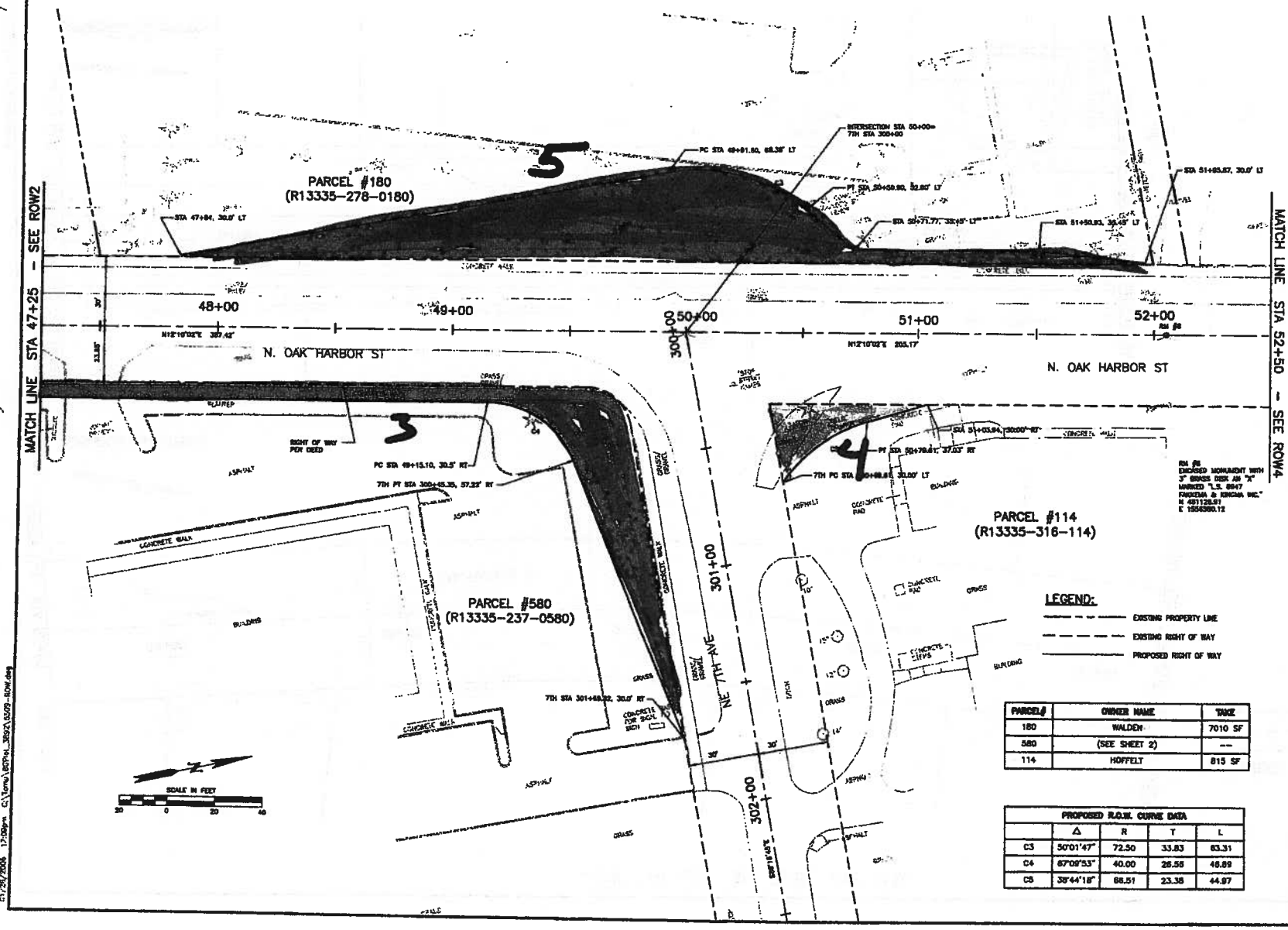
CITY OF OAK HARBOR
NE 7TH AVE/N. OAK HARBOR ST
RIGHT OF WAY PLAN

SCALE 1"=20'
DR. DJ
CK. PCG
APP. MAO
SHEET NO. 2
DATE 01/2006
JOB NO. 25-2005-009

352

SW 1/4 SEC. 35, T33N, R1E W.M.
NW 1/4 SEC. 35, T33N, R1E W.M.



PARCEL#	OWNER NAME	TAKE
180	WALDEN	7010 SF
580	(SEE SHEET 2)	--
114	HOFFELT	815 SF

PROPOSED R.O.W. CURVE DATA				
	Δ	R	T	L
C3	50°01'47"	72.50	33.83	63.31
C4	67°09'53"	40.00	26.56	46.89
C5	38°44'18"	66.51	23.38	44.97

EXPIRES 06/19/

NOTE: "L" IF "L" DOES NOT MEASURE 1" ADJUST SCALES ACCORDINGLY.

REVISION

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Everett, Washington 98204
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CITY OF OAK HARBOR
NE 7TH AVE/N. OAK HARBOR ST

RIGHT OF WAY PLAN

SCALE 1"=20'
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25-2005-009

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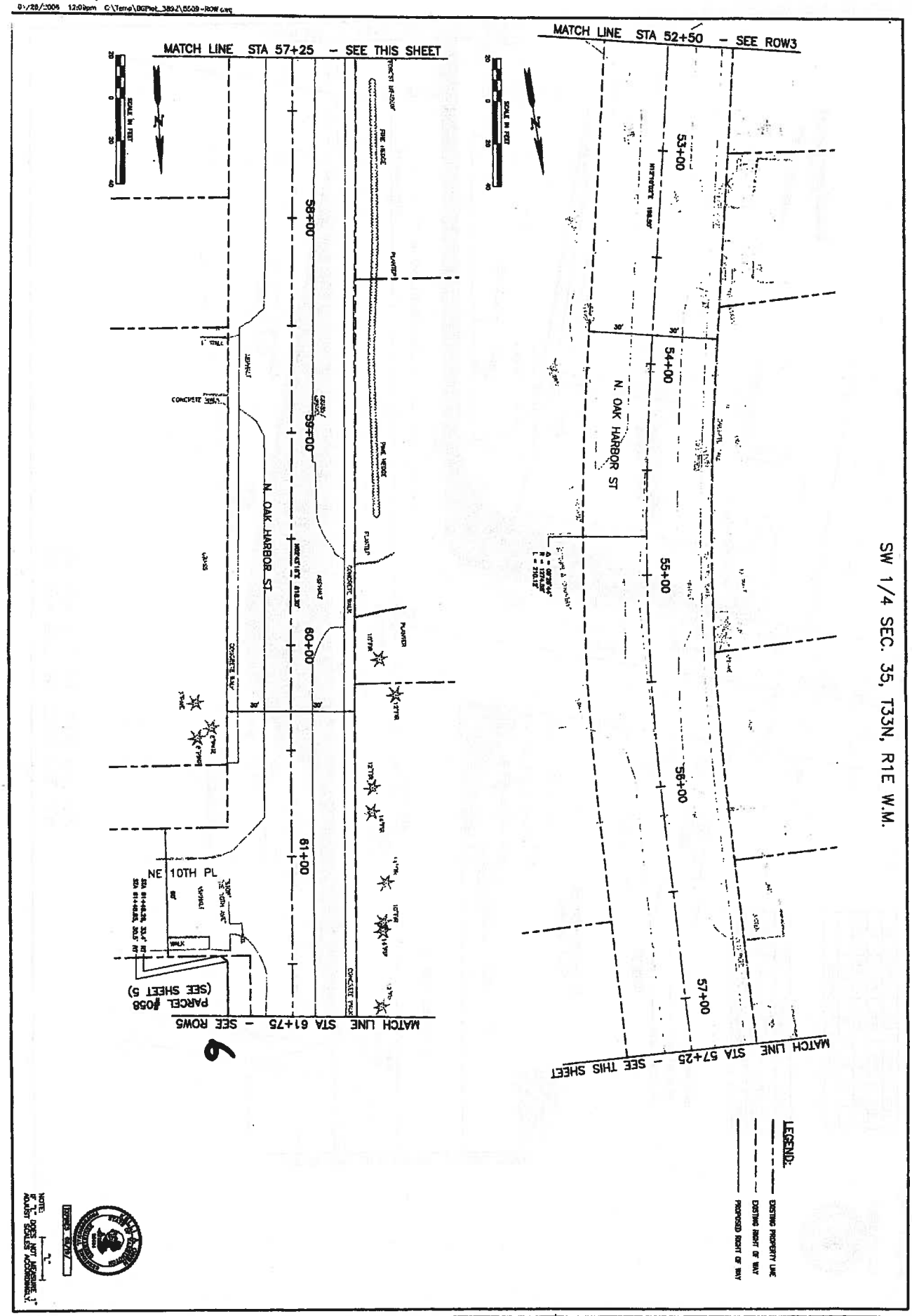
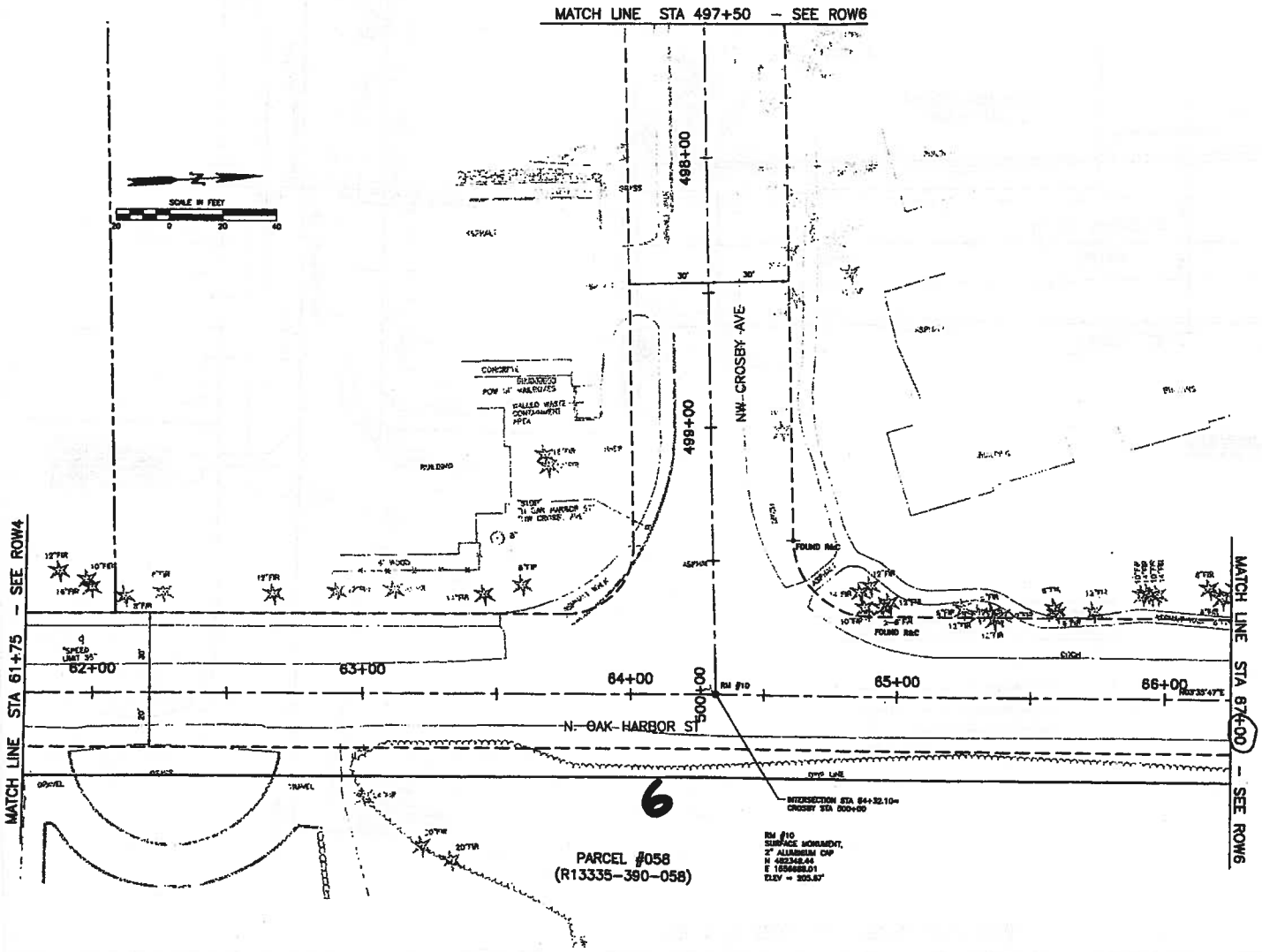


CITY OF OAK HARBOR NE 7TH AVE/N. OAK HARBOR ST RIGHT OF WAY PLAN	ReidMiddleton 728 134th Street SW · Suite 200 Everett, Washington 98204 Ph: 425 741-3800	NO. DATE BY	REVISION

01/2006 25-2005-009 4

354

SW 1/4 SEC. 35, T33N, R1E W.M.



LEGEND:

- EXISTING PROPERTY LINE
- EXISTING RIGHT OF WAY
- PROPOSED RIGHT OF WAY

PARCEL#	OWNER NAME	TAKE
058	MULESKINNER INC.	5305 SF

NOTE: IF "L" DOES NOT MEASURE 1" ADJUST SCALES ACCORDINGLY.

EXPIRES 08/19/

REVISION

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Everett, Washington 98204
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CITY OF OAK HARBOR
NE 7TH AVE/N. OAK HARBOR ST

RIGHT OF WAY PLAN

SCALE 1"=20'
DWN SL
CHK PCG
APP KAD
SHEET NO. 5
DATE 01/2006
JOB NO. 25-2005-009

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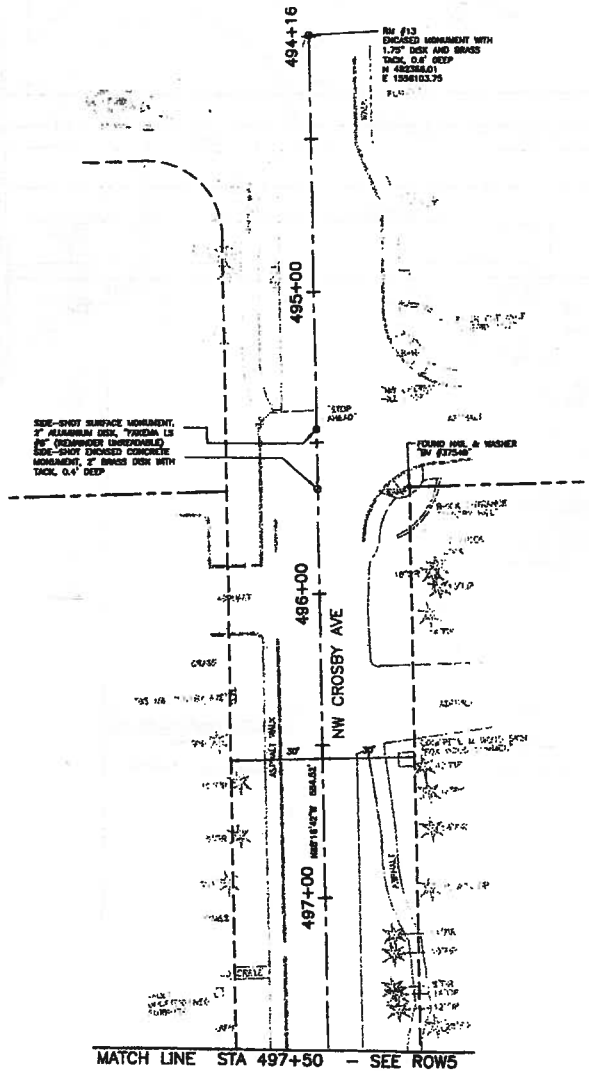
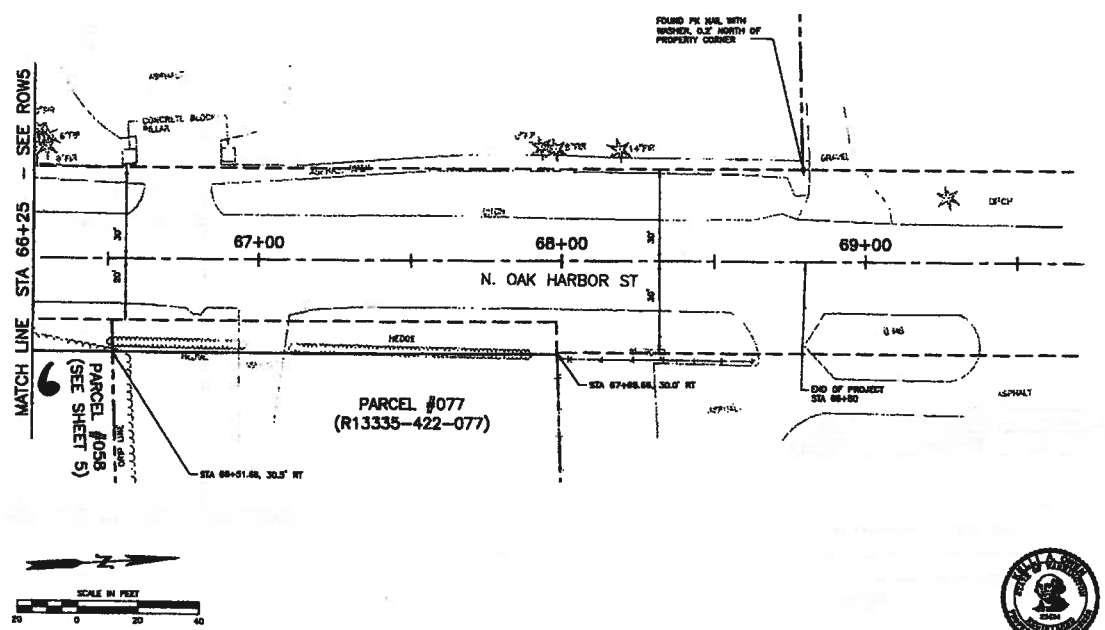


LEGEND:

- EXISTING PROPERTY LINE
- EXISTING RIGHT OF WAY
- PROPOSED RIGHT OF WAY

PARCEL#	OWNER NAME	TAKE
077	MOYER	1545 SF



NOTE: "L" IF "L" DOES NOT MEASURE 1" ADJUST SCALES ACCORDINGLY.

REVISION

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CITY OF OAK HARBOR
NE 7TH AVE/N. OAK HARBOR ST

RIGHT OF WAY PLAN

SCALE 1"=20'
SHEET NO. 6
DATE 01/2006
DR 25-2005-009

2510