

City of Oak Harbor

City Council Meeting Agenda for

**Wednesday,
August 3, 2011
6:00 p.m.**

*Whidbey Island's Premier
Waterfront Community*

Oak Harbor City Council
REGULAR MEETING
Wednesday, August 3, 2011, 6:00 p.m.

Welcome to the Oak Harbor City Council Meeting

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

CALL TO ORDER

INVOCATION

ROLL CALL

MINUTES

NON-ACTION COUNCIL ITEMS:

1. Video Presentation – Navy's Centennial.
2. Public Comments.

COUNCIL CONSIDERATION AND ACTION ON THE FOLLOWING MATTERS:

3. Consent Agenda:

Page 52

- a. Noise Permit – Habitat for Humanity.

Page 55

- b. Noise Permit – Lighthouse Christian Center.

Page 58

- c. Noise Permit – DK Party.

Page 61

- d. Jail Services Contract – For provision of occasional Oak Harbor City Jail Services for the City of Burlington.

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

Page 74

4. Pioneer Way Update.

Page 78

5. Bid Award – SR20 & SW Erie Street Culvert Design Project.

Page 86

6. WAIF Discussion – (Continued from the 7/12/11 meeting).

7. City Administrator's Comments.

8. Council Members' Comments.

- Standing Committee Reports

9. 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.

*If you don't like something change it; if you can't change it, change the way you think about it.
~Mary Engelbreit*

**City Council Meeting
Tuesday, July 12, 2011, 6:00 p.m.
City Hall – Council Chambers**

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

INVOCATION

ROLL CALL

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

Paul Schmidt, City Administrator
Margery Hite, City Attorney
Doug Merriman, Finance Director
Steve Powers, Development Services Director
Ethan Spoo, Senior Planner
Cathy Rosen, Public Works Director
Eric Johnston, City Engineer
Larry Cort, Project Manager
Rick Wallace, Chief of Police
Mark Soptich, Fire Chief
Mike McIntyre, Senior Services Director
Renée Recker, Executive Assistant to the Mayor

Jim Palmer was absent and formally excused from the meeting.

Mayor Slowik asked that public comments be limited to three minutes for each comment since this evening's agenda was large.

MINUTES

MOTION: Councilmember Munns moved to approve the 6/28/11 meeting minutes. The motion was seconded by Councilmember Severns and carried unanimously.

NON-ACTION COUNCIL ITEMS

Employee Recognition – Marianne Ledgerwood, 10 years

City Attorney Margery Hite introduced and recognized Marianne Ledgerwood from the City's Law Department, and talked about Ms. Ledgerwood's special expertise in domestic violence prevention and prosecution, and her work as staff support on criminal cases. Marianne manages the Law Department's processes with grace and aplomb. Along with Kim Perrine, Ms. Ledgerwood leads the City's Relay for Life team. Marianne is also a horsewoman and 4-H leader. Ms. Ledgerwood introduced two of her three children and said it has been a wonderful ten years in a great office and City.

Proclamation – Christmas in July

Councilmember Munns read and presented this proclamation to Jean Wieman, North Whidbey Help House Executive Director, and Help House staff members, Tim and Cindy Noe. On Saturday, July 16, 2011, volunteers from Soroptimist International of Oak Harbor, Kiwanis Club of Oak Harbor, Oak Harbor Lions Club, and NAS Whidbey

Island will be staged at local grocery stores and Wal-Mart asking shoppers to contribute to the Help House Christmas in July Food and Fund Drive. As of May 2011, North Whidbey Help House has distributed 2,302 food baskets that have fed 6,037 people. This is an increase of 57 food baskets and 288 people fed over the same time last year. Ms. Wieman noted that the average income for Help House clients is \$806.00; 80 percent of their funding comes from private donations and 90 percent of those funds goes directly to Help House. She thanked the City for its continued support.

Report – Whidbey Island Marathon

City Administrator Paul Schmidt distributed rack cards for the 2012 Marathon, Half Marathon, and 5K Fun Run/Walk, and gave a PowerPoint presentation on 2011's Marathon. Sponsors, local vendors, Race Director Tamra Sipes, Race Coordinator Karen Crouch, and all of the race volunteers were thanked for their hard work. A report was distributed to the Mayor and City Council and is attached to these minutes as Exhibit A. Mayor Slowik distributed plaques and/or certificates of appreciation to platinum sponsor Waste Management, Inc., gold sponsor Puget Sound Energy, silver sponsor Wal-Mart, silver sponsor Albertson's, silver sponsor Whidbey News Times, and a special presentation to the entire Charbaneau Family for their volunteer work with the Marathon. 425 volunteers helped make 2011's Marathon a great success.

Pioneer Way Update

This was added to the agenda at this point in the meeting. Larry Cort, Pioneer Way Project Manager, reported on the status of the contractor – Strider Construction, Inc., the archeological finds and investigation, and impacts on the project's budget. The project is still stopped, and no excavation filling or pervious cover can be added to the site until the archeological excavation permit is issued by the Department of Archeology and Historic Preservation. Strider's work has been suspended until July 18, 2011 or beyond. City staff has assumed some of Strider's responsibilities, Public Works is watering the street to keep dust down, there has been some pothole grading, and everyone is involved with traffic control. The City has made a specific request for eleven safety-related actions that would help with pedestrian and vehicle safety and these actions are currently under review. There are two emergency excavation permits prepared by Northwest Archeological Associates: the first addresses Pioneer Way itself and focuses on the delineation of the site and cultural resources portion of the Pioneer Way permit along with the possibility of additional work if more discoveries are made. The Tribal comment period closed today and four Tribes have submitted written comments on the emergency permit. These comments will be routed to all of the Tribes and the City and each will have an opportunity to comment. No date has been set yet for response. The second permit addresses the Pit Road site and its preparation was more complex in addressing the Tribes' interests and how the recovery of human remains and artifacts will be achieved. This permit was signed today and will be submitted to the State tomorrow. All of this activity impacts the project's budget. The original \$8.3 million was revised to \$6.9 million (\$1.4 million less than the original authorization). The City is expecting the \$6.9 million to grow because of the archeological finds in these areas: An increase in money to Strider Construction, Inc.; the extension of time for Strider and split up of their work flow, and Strider's subsequent

need to reorganize their own crews and subcontractors; the cost increase to hire an archeological firm for Pioneer Way and the Pit Road site which will also be dependent on the State's final permit; site security as requested by the Tribes and State (5:00 p.m. to 8:00 p.m. and twenty-four hours on the weekend); and once the project is up and going again, the onsite archeological monitor. The City will continue to supply documents to the Tribes and State and the Pioneer Way office will continue to manage and work with the Tribes, the State, and Strider once they are back onsite.

Council Discussion

Council members and Dr. Cort talked about the two permits, the complexity, review and preparation of the second permit, and the permits' coverage of both Pioneer Way and the Pit Road site.

Public Comments

Ron Apgar, Paint Your World, Pioneer Way and President of the Downtown Merchants Association. Mr. Apgar read a letter of support for the Pioneer Way Improvements Project and the revitalization of downtown, and urged the Council to release funds for outreach and mitigation. Mr. Apgar's letter which also included Mercy Speth, Vice President; Margaret Livermore; Treasurer; Kristi Jensen, Secretary; Jill Schacht, Board Member; and Kathy Collantes, Board Member; is attached to these minutes as Exhibit B.

Mercy Speth, Vice President, Downtown Merchants Association. Ms. Speth spoke about Kristi Jensen's comments from the 6/28/11 City Council meeting concerning promotional tee shirts purchased for \$1,000 noting that Bayview Embroidery donated the lime green tee shirts being worn by the merchants this evening.

Christon Skinner, 1802 Beeksma Drive, Oak Harbor. I have lived and worked here for thirty-two years. Debbie (Skinner) is a lifelong resident. I have a big investment in Oak Harbor and I am here to convey to the Council that there are those who support the City's significant projects without complaint and delay. There are a lot of reasonable, thinking people in Oak Harbor who support you, but negativity seems to be getting the attention. Ignore those voices, stay the course, and realize your constituents are behind you. The loudest voices are not necessarily the majority.

Bob Olson, Whidbey Wild Bird, Pioneer Way. Get the Arts Commission back on track. Lose Moonwaves; no one likes it. Take that money and have the Arts Commission work with the Tribes and get a water theme on Ireland Street. Make a memorial to our Native Americans entombed under the City streets.

Paul Brewer, 225 NE Ernst, Oak Harbor. Oak Harbor Tavern is having a fundraiser on Friday with B-B-Q ribs. In walking around Flintstone Park, we are using monies for a building that will not serve a pier or ferry. Do not build this new structure for foot passengers. Return the grant money. Do we have the matching funds to spare; keep the money for other things. Revisit this project and let's not build it. Keep Flintstone Park the way it is.

Shane Hoffmire, 50 SW 8th Avenue, Oak Harbor. I spoke about the perception of our community at the last meeting; it is of the up-most importance. That perception has been terrible due to our leadership. (At the last meeting) we brought issues that we thought were important. They were not a political high jinks. The Mayor chose to

dismiss our thoughts rather than acknowledge the public comments made by his constituents. I appreciate and respect the vast number of City staff. We all have a respect and tolerance level and there are mistakes and lie after lie. Do a no confidence vote on the Mayor. We are faced with a great many issues. Trust has been lost in the Mayor and his immediate staff. I hope there will be more positive issues in the future.

Gerry Oliver, 740 SE Pioneer Way, Oak Harbor. I believe in the project and the revitalization. I went (moved) downtown and took \$60,000 of my own money and I offer a vote of confidence to you, Mayor.

Carla Dozier, Carla's Shear Inspiration, Bayshore Drive. I have been in this location for thirty years. I also believe in the downtown and its positive outcome. I am with you, Mayor and Council.

Lt. Col. Scott Vogt, USMC, 322 SW Judson Drive, Oak Harbor. Lt. Col. Vogt spoke in support of the North Whidbey Parks and Recreation District proposed levy noting that one of the facilities that would come to end if the levy does not succeed is the John Vanderzicht Memorial Pool. As a member of the Save the Pool committee for the North Whidbey Parks and Recreation District, he talked about the number of programs that are a part of the pool's activities and that the pool provides the only year-around indoor recreational facility that is suitable for all ages and abilities. The levy would provide about half of the funds needed for the North Whidbey Parks and Recreation District including Clover Valley Softball and Clover Valley off-leash park. The existing levy is capped at 18 cents and has been paid for the last twenty-plus years. The new levy will cap at 17 cents on property values or approximately \$34 per year. All of the District's programs need your support. Mayor Slowik talked about Lt. Col. Vogt's dedication to the community, his family, and that he is serving as Chair of the Save the Pool Committee.

Robyn Kolaitis, 2141 SW Dillard Lane, Oak Harbor. I appreciate that Mr. Skinner stated his beliefs, but there are reasonable people on both sides who are not necessarily loud. We speak because we truly believe in what we are saying and we too want to see the merchants succeed.

Grace Lafountain, 225 NE Ernst, Oak Harbor. It would be a disaster to dismantle Flintstone Park. I have friends and family who take photos with the Flintstone Car, picnic there, and fish on the pier. A large building would ruin the area. Keep it quiet and the way it is.

Paul Newman, 886 SE Bayshore Drive, Oak Harbor. Mr. Newman wrote the Sound Off editorial (regarding the Multi-Modal Facility / Flintstone Park) in the Whidbey News Times and wanted to add a final point that had also been touched on by Mr. Brewer. If there had not been grant funds, would this be done given everything else the City has to do? Returning the grant funds can be refreshing and gain a lot of applause. Say it didn't work out and we are returning the money in good faith. There would be political glory for all involved and it would be well-deserved. The park would remain preserved.

Donna Grate (no address given). I live next door to Flintstone Park in the Harbor Park Condominiums. I looked at the architectural drawings and I think it would be a great improvement and what is planned makes sense. The 2,300 s.f. building is for the community to use for parties, etc., with two new restrooms and a new area for picnics. I think it is an upgrade. We would all be proud of it and would appreciate what Council did.

Joyce Tighe, 196 NW 12th Court, Oak Harbor. I have lived here since 1958 and have seen lots of changes. When I read about Flintstone Park, don't re-build Flintstone Park but do rebuild the restrooms. Please leave the only spot that is a nice little City park alone. (The community building) could be put where the old gazebo is, or use the old Ford lot; there are other choices. Keep the small park with a view.

Mel Vance, PO 2882, Oak Harbor. Pull the Frontier Communications Agreement for discussion. It is not prudent to enter into an agreement until we know what the State is doing.

With no other public comments coming forth, Mayor Slowik closed this portion of the meeting.

Break

Mayor Slowik called for a short break at 7:00 p.m. and the meeting reconvened at 7:15 p.m.

COUNCIL CONSIDERATION AND ACTION ON THE FOLLOWING MATTERS

Consent Agenda

- A. Noise Permit – Rotary Club Car Show
- B. Noise Permit – Island Classic Mustang Club
- C. Noise Permit – Fidalgo Avenue Merchants Association
- D. Noise Permit – North Whidbey Island Sunrise Rotary Club – Challenge Series
- E. Noise Permit – Gizmo's Board Shop
- F. Noise Permit – Event Planning Committee for Rick Almborg
- G. Appointment – Arts Commission, Peggy Darst Townsdin
- H. Bid Award – Senior Center HVAC
- I. Safe Routes to School Project
- J. SE Pioneer Way Project Construction Agreement – Frontier Communications Northwest
- K. Excused Absence Request – Rick Almborg, 8/3/11 and 9/20/11 Council Meetings
- L. Agreement with Island County – State Homeland Security Grant
- M. Approval of Accounts Payable Vouchers

Councilmember Campbell asked to remove Item J for discussion.

MOTION: Councilmember Campbell moved to approve Consent Agenda items A, B, C, D, E, F, G, H, I, K, L, and M with Item M paying Accounts Payable check numbers 146425 – 146440 in the amount of \$1,811.57, Accounts Payable check number 146441 in the amount of \$80.00, Accounts Payable check numbers 146442 – 146574 in the amount of \$164,488.74, and Payroll Check number 94859 in the amount of \$5,635.63. The motion was seconded by Councilmember Munns and carried unanimously.

Item J – SE Pioneer Way Project Construction Agreement – Frontier Communications Northwest

Councilmember Campbell stated that Pioneer Way agenda bills should never be on the consent agenda. Larry Cort, Pioneer Way Project Manager, talked about this agenda bill and construction agreement with Frontier Communications Northwest for work associated with the relocation of overhead communication lines and conversion to an underground system. City staff has been working together for over a year on the effort to underground Frontier's facilities and are satisfied that the agreement, proposed costs, and schedule are consistent and are within the project funding levels previously approved by the Council. Dr. Cort noted that the contract with Frontier will pull cable through the underground system. Staff's work with Frontier over the last few months has brought forward an agreement which is less money than originally anticipated and good news for the City. Councilmember Campbell asked about the impact of the Pioneer Way Project's delay and if that would create a schedule delay for Frontier. Dr. Cort noted that Frontier can proceed with Phase 1 as soon as equipment is onsite which would allow cable to be pulled for Phase 1.

Council discussion continued about whether the State DAHP process/permit would disallow this work completely, and Mayor Slowik asked Dr. Cort if there is a clause in the agreement that would address that possibility (the agreement addresses Phase 1 and Phase 2), whether approval of this agreement could be held off until the City receives the State's response, and the agreement's 30 percent payment at \$65,100. Dr. Cort noted that this is a construction agreement which pays for work performed. If Phase 1 became the limit of this agreement, the City would not pay for Phase 2. Phase 2 does not have individual service connections. Strider Construction has already installed conduit in the street with Frontier's on-site supervision. The wire can be pulled through that conduit. The City has paid for its portion of the design costs and that is complete. Wire needs to be pulled along with equipment installed in the hand holes. Frontier has stepped forward to bear connection costs from the right-of-way to the buildings. Originally, the customers were paying for these costs and now Frontier will assume them. Council discussion returned to Phase 1, that Phase 1's work is in place, and that the agreement can be stopped if problems arise in Phase 2.

MOTION: Councilmember Almberg moved to authorize the Mayor to execute the Construction Agreement with Frontier Communications Northwest for construction work associated with the relocation of overhead communication lines and conversion to an underground system. The motion was seconded by Councilmember Munns.

VOTE ON THE

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

Public Hearing – 2010 Comp Plan Rezoning

Development Services Director Steve Powers presented this agenda bill and ordinances that would implement the 2010 Comprehensive Plan Land Use Map Amendments. Approval of the ordinances will rezone those properties that were previously approved for land use map changes. Because of the one-to-one relationship between the Comprehensive Plan Land Use Map designations and the official zoning map zoning districts, the zoning map changes are a necessary part of the Comprehensive Plan Land Use Map changes made in 2010. The Comprehensive Plan amendments included three requests for Land Use Map changes. The three properties and the associated changes are:

1. R13210-527-3480 – Scenic Heights Trailhead site - zoning change from R-1, Single Family Residential to PF, Public Facilities.
2. R14437-231-3630 – Water Reservoir Site near Gun Club Road – zoning change from PBP, Planned Business Park to PF, Public Facilities.
3. R13325-500-2250, R13325-470-2250, R13325-444-2220, R13325-455-2550 – SE corner of SR 20 and Fakkema Road – zoning change from C4, Highway Service Commercial to OS, Open Space.

These rezonings are legislative, not quasi-judicial, in nature.

The Planning Commission conducted a public hearing on the proposed rezonings on April 26, 2011 in accordance with OHMC 18.20.270 (1). At the conclusion of the public hearing, the Planning Commission recommended to the City Council approval of the proposed rezonings.

Mayor Slowik opened the public hearing at 7:30 p.m.

Paul Brewer, 225 NE Ernst, Oak Harbor. I support the changes for the former Boyer property to Open Space. Trees are needed there to make the property more presentable and help reduce maintenance.

Sandy Peterson, 964 NW Longview, Oak Harbor. If C4 is changed to Open Space, is the property unusable?

Mayor Slowik closed the public hearing at 7:23 p.m.

Council Discussion

Councilmember Dudley asked Mr. Powers to respond to Ms. Peterson's question. Mr. Powers noted that C4 zoning is specialized and comes with a list of limited uses. The former Boyer property is under the Navy's APZ which limits use. The City acquired the property so that commercial development would not be put in harm's way.

Mr. Dudley noted the Jensen and Fakkema motion on page 2 of the 4/26/11 Planning Commission minutes seemed to speak to the Water Reservoir site's zoning rather than rezoning of the SR-20 / Fakkema Road site. Mr. Powers felt this was a typographic error. Councilmember Severns expressed the same concern as Ms. Peterson noting that the City will still be expected to maintain the property even if trees are planted. Mr. Powers responded that an oak grove is just a proposed project and unfunded. Council

discussion continued about open space and the size of this property, the possibility of future zoning changes, and that the property was acquired by the City to substantially limit its use. Council discussion followed about the base's future and impact on the property if the base were to be downsized, the agreements with the Navy, State, and County prohibiting use in the APZ, and that the Comprehensive Plan has been approved and the zoning map needs to be consistent with the Plan. Any reversion would have to come back to discussion of the Comprehensive Plan. City Administrator Schmidt added that the City owns the property in title and deed and the Navy and County have two separate easements that cannot be waived; this is in perpetuity and would require the Navy and County's removal. Councilmember Paggao asked about the definitions on page 171 of the agenda packet addressing permitted uses with attention to the language addressing principal permitted uses and accessory permitted uses in relationship to a golf course, club house, and other related buildings and his concern with encroachment on NASWI. Mr. Powered responded that this OHMC language is not tailored for this property but is meant for any open space. Since the City is usually the owner of open space, the City would look at anti-encroachment policy. The Navy was supportive of the Comprehensive Plan Land Use Map zoning changes. With City ownership of this property, the City would not be pursuing development and there is specific language regarding cell towers. The City controls what is done on this property and would not put forth an application that does not meet the City's goals and long-term policies. Discussion continued about the process to purchase this property with the main reason being safety and APZ for NASWI. Ms. Munns finished this discussion by saying the base is good and solid.

MOTION: Councilmember Munns moved to adopt the ordinance that will approve the rezoning of Island County parcel number R13210-527-3480 – Scenic Heights Trailhead site - R-1, Single Family Residential to PF, Public Facilities. The motion was seconded by Councilmember Campbell and carried unanimously.

MOTION: Councilmember Munns moved to adopt the ordinance that will approve the rezoning for the Island County parcel number R14437-231-3630 – Water Reservoir Site near Gun Club Road –from PBP, Planned Business Park to PF, Public Facilities. The motion was seconded by Councilmember Severns and carried unanimously.

MOTION: Councilmember Munns moved to adopt the ordinance that will approve the rezoning for the Island County parcel numbers R13325-500-2250, R13325-470-2250, R13325-444-2220, R13325-455-2550 – SE corner of SR 20 and Fakkema Road – from C4, Highway Service Commercial to OS, Open Space. The motion was seconded by Councilmember Campbell and carried unanimously.

Public Hearing – Oak Harbor Municipal Code Revisions – Low Impact Development

Development Services Director Steve Powers introduced Senior Planner Ethan Spoo who led this presentation and then thanked Mr. Spoo and the Planning Commission for their hard work on these revisions. Mr. Spoo gave a PowerPoint presentation noting that stormwater issues are prevalent at the State level concerning the health of Puget Sound and the code amendments affecting Titles 11, 19, and 21 will promote and establish a review process for the use of Low Impact Development (LID) stormwater treatment techniques. LID is a set of stormwater practices which mimic natural water flow and filtration processes. Conventionally, stormwater has been treated by capturing it in pipes and conveying to a stormwater pond or to regional water bodies, such as the Puget Sound. More recently, the thinking on stormwater has gravitated from conveyance (the old method) to emphasize infiltration/LID (the new method). Thus, LID attempts to infiltrate stormwater into the ground where pollutants can be filtered by vegetation and natural processes in the soil. Studies show LID more effectively removes these pollutants from stormwater. For this reason, it has been promoted by the Federal Government, State of Washington and the environmental community. Examples of LID practices include rain gardens, pervious surfaces, green roofs, narrow roads, native vegetation areas, and careful grading techniques. In 2007, the City of Oak Harbor was awarded a technical services grant from the Puget Sound Partnership (PSP) to help the City identify barriers in the municipal code to the implementation of LID. PSP did not identify barriers in the City's code preventing applicants from using LID techniques in the City. In fact, the City has allowed LID practices to be installed on a site-by-site, case-by-case basis in the past with the approval of the City Engineer. PSP's consultant, AHBL, working with the City in 2008, suggested revisions to the City's code, and provided the City draft code language in 2009. In 2010, staff worked with the Planning Commission in a series of work sessions to further craft and refine the code to meet our local conditions. Having received a recommendation of approval from the Planning Commission on March 29, 2011, the draft code incorporates the Planning Commission's comments. LID has generally been found in studies to be cost competitive with conventional stormwater infrastructure. A 2007 study conducted by the U.S. Environmental Protection Agency found that use of LID techniques reduced overall stormwater development costs. A study by ECONorthwest, an economics firm, came to a similar conclusion. While there is very little information on the maintenance costs of LID, anecdotal evidence suggests that maintenance costs can be higher for LID, depending on the specific LID practice used. Aside from the immediate history of this project, it is also important to note the broader regulatory and policy context for LID. The City's NPDES Phase II permit, condition S5.C.4 (a) iv states that the City is required to adopt code provisions which:

"...allow non-structural preventive actions and source reduction approaches such as Low Impact Development Techniques (LID), measures to minimize the creation of impervious surfaces and measures to minimize the disturbance of native soils and vegetation. Provisions for LID should take into account site conditions, access and long-term maintenance."

The City is required at a minimum, to allow for LID stormwater treatment techniques by the NPDES Phase II permit. It is expected that the next version of this permit may

require the use of LID as the treatment type of choice. The City amended Title 12 (Stormwater) in 2010 to meet the above condition in the municipal stormwater permit. The new LID code (Titles 11, 19, and 21), would give staff a basis by which to review new LID facilities. Just as important as the LID concepts themselves is the issue of whether the City establishes them as mandatory, incentive-based, or voluntary. The following table illustrates what is proposed under the draft code:

LID Concept	Mandatory	Incentive-based	Voluntary
LID Streets		X	X
LID Parking	X		
Native vegetation areas	X	X	
Clearing and grading practices			X

Mr. Spoo talked about the emails and letter received from Wayne Crider, Executive Officer of Skagit/Island Counties Builders Association (SICBA) which were copied for Council and are attached to these minutes as Exhibit C – email received from Mr. Crider at 2:44 p.m. on July 12, 2011; and Exhibit D – email and letter received from Mr. Crider at 1:44 p.m. on July 12, 2011. Mr. Spoo noted that Mr. Crider had questions about parking and Mayor Slowik added that SICBA is a strong supporter of LID, both commercial and residential, with encouragement toward voluntary and incentives.

Mayor Slowik opened the public hearing at 8:00 p.m.

Paul Brewer, 225 NE Ernst, Oak Harbor. Five or six years ago, past Councilmember Sheila Crider gave a presentation about non-pervious surfaces and the use of pervious surfaces for big box stores. Use some of that history and past studies and don't reinvent the wheel. You bring up the same issues again and again.

In answer to Mr. Brewer's concerns, Mayor Slowik noted that Mr. Spoo is a Senior Planner with the City and not an outside consultant.

Billie Cook, 651 SE Bayshore Drive, Oak Harbor. Were any of these low impact development techniques used in the Pioneer Way project? Is this voluntary for residential builders or would it add to the cost of building a house or condominium?

Sandy Peterson, 964 NW Longview, Oak Harbor. Mr. Crider mentioned incentives which is always better than edicts.

Wayne Locke, 1962 NE Sumner Drive, Oak Harbor. What is the calculation for pervious and non-pervious surfaces? Make this information public. Mr. Locke also talked about the use of gravel.

Mel Vance, PO Box 2882, Oak Harbor. This is a good start, but don't consider it permanent. There should be more emphasis on native plants and more equality between residential and commercial.

With no other public comments coming forth, Mayor Slowik closed the public hearing at 8:10 p.m.

Council Discussion

Councilmember Munns asked Mr. Spoo to address the public's comments.

In response to Mr. Brewer's comments: It is true that this has come up in the past. This project is a compilation of all of that previous work. The City received a State grant (technical services grant) for work on this project along with work from Puget Sound Partnership's consultant, AHBL.

In response to Ms. Cook's comments: LID techniques are used for the Pioneer Way Project such as filterra stormwater devices.

In response to Mr. Locke's comments: Pervious and impervious surface calculations are not part of this project, but the City is looking into this.

In response to Mr. Vance's comments: There is a percentage of native plants for commercial and residential projects.

Councilmember Munns noted that, as a part of the Master Gardener program, some native species are categorized as noxious weeds and should not be used; pay attention to what will live in our climatic zone.

Discussion continued about pervious surfaces on large properties creating a cost savings since these properties would not be charged an impervious surface rate, NPDES mandates, concern about on-street parking and if it is practical to limit it, the provision in the Subdivision Code for new development to provide off-street and on-street parking, if Council can ask for additional parking spaces in a development (would not change the minimum but would change the maximum), and that the Institute of Transportation Engineers Manual defines the parking standard. Council discussion followed regarding Mr. Crider's comments concerning parking and voluntary versus non-voluntary and asked Mr. Spoo if he could decipher Mr. Crider's issues. Mr. Spoo thought that he was concerned with the maximum parking requirement, percolate versus non-percolating soils, and an applicant's choices. In response to Councilmember Campbell's question about SICBA's attendance at any of the many meetings (Planning Commission, standing committees, etc.) held prior to this evening, Mr. Spoo thought SICBA did attend but did not recall if they questioned the code amendments for the use of LID. Councilmember Paggao asked about street design standards regarding landscape strips which are to be maintained by the property owner adjacent to the strip and how the City would enforce non-maintenance of these strips (compliance is found within the Subdivision Code; unsure of City's resources to enforce it). Mr. Paggao also talked about Bill Massey's concern about pervious surfaces on commercial developments, soil testing to see if a pervious surface is required (soil percolation), and mandatory pervious surfaces. Mr. Spoo noted that it is important to know if the soil will percolate, 19.44.105 (3) (a), and Mr. Powers added that other LID techniques can be used in place of pervious surface, 19.44.105 (3) (b).

Break

Mayor Slowik called for a break at 8:30 p.m. and the meeting resumed at 8:40 p.m.

Councilmember AlMBERG asked City Engineer Eric Johnston to explain the designation for an NPDES II community. The Federal Clean Water Act addresses pollution prevention for bodies of water, stormwater and run-off. Under permits for smaller cities, (NPDES II communities), the current permit encourages low impact development (LID). An incentive-based system removes barriers to low impact development. LID provisions should take site conditions, access, and long-term maintenance into account. Mr. Crider talked about incentives and flexibility. The City has had stormwater standards in place for many years with attention paid to stormwater quality and stormwater quantity. Mr. Johnston talked about the Scenic Heights Trailhead Project as an example of LID; this project used rain gardens and surfaces that then did not require an unsightly retention pond. Developers will look at a cost/ratio benefit. If a pervious surface is chosen, the footprint of a traditional retention pond is reduced, and the utility calculation for an impervious surface is reduced. Pervious and impervious surfaces are defined in the Oak Harbor Municipal Code. In reference to a comment about gravel, gravel parking lots are not allowed in the City since they act as a pollutant transport. Councilmember AlMBERG's concluding statement: LID concepts really do work when parties are working together and there is flexibility for site conditions, soil conditions, and access. Councilmember Severns asked about Ms. Cook's comment concerning building costs. Could this be less expensive to build but more expensive to maintain? Mr. Spoo noted that there is quite a bit of debate in the development community. LID versus traditional building is competitive but maybe slightly more expensive. There has been a lot of Planning Commission and staff work to bring this forward. Mr. Severns also had concerns about on-street parking and native vegetation called out as both mandatory and incentive-based. Mr. Spoo responded that it is both; native vegetation would reduce a stormwater bill. Mr. Severns was concerned with and would not support privately-owned alleys or streets. Councilmember Dudley asked why this was removed from the 6/7/11 City Council agenda. Mr. Spoo responded that a section of code was omitted which should have been included. Mr. Dudley asked about Planning Commission minutes regarding incentives and if there were any changes (not at this point) and what the City was doing to attract developers. Mr. Dudley felt that the City is handcuffing developers. Mr. Dudley read into the record the letter attached to Mr. Crider's first email (Exhibit D to these minutes). Mr. Powers noted that these are policy choices; Council can choose to accept in whole or in part, or send this back to the drawing board. Mr. Powers talked about the later email from Mr. Crider and the conversation he had with Mr. Crider which provided information that assisted him (Exhibit C to these minutes). The issue of looking at projects individually – some projects would have been subjected to a subdivision waiver process which requires more effort from developers. The LID proposed code amendments allow the development community to already know what is expected rather than consider expectations project by project. Councilmember Severns also talked about the additional information in Mr. Crider's second email (Exhibit C). Councilmember AlMBERG felt that, if Councilmember Dudley wanted to review the Code, he would not have a problem with that review. It is not as rigid and mandated as Mr. Crider's original letter suggested.

MOTION: Councilmember Alberg moved to table the Low Impact Development Proposed Code Amendments and remand this back to the Planning Department. The motion was seconded by Councilmember Dudley and carried unanimously.

No date was given for return to City Council.

Mayor Slowik talked about the Sustainable Whidbey Coalition of which he is a member and that Oak Harbor is the only agency on Whidbey that is this far along; the others are looking to Oak Harbor for leadership on LID and this issue. The City is a member of SICBA and we all feel a responsibility to answer SICBA. Remanding back to the Planning Department is a positive action. Mayor Slowik recognized and thanked Mr. Spoo for all of the work he has done on LID and the proposed Code amendments.

In response to an earlier Council question regarding the nature of recommended actions and if every part of ordinance title must be read into the action, City Attorney Hite noted that if a document is attached, Council can move to adopt the attached ordinance or document. Sometimes there are strictly-spoken motions, though. If Council makes a motion for something that is not written out, then the motion must provide greater specificity.

Public Hearing – Multi-Modal Facility Project Shoreline Substantial Development Permit

Development Services Director Steve Powers presented this agenda bill and application for a Shoreline Substantial Development Permit (SSDP) by the City of Oak Harbor to construct uplands improvements associated with the Multimodal Facility Project in Flintstone Park. Since this was a quasi-judicial proceeding, City Attorney Hite talked about the need for Councilmembers to each determine whether the appearance of fairness doctrine requires that the Councilmember recuse himself or herself from sitting on the quasi-judicial matter, and if the matter is a land-use decision and this is the City's own application, each Councilmember shall identify the following for this proceeding:

1. If they own property within 300 feet of the subject property.
2. If they stand to gain or lose any financial benefit as a result of the outcome of the hearing.
3. If they have any personal, family or other connection to any party such that their ability to be impartial might be called into question.
4. Whether they can hear and consider the application in a fair and objective manner.

Councilmember Dudley answered no to 1 through 3, and to number 4 he could consider the application in a fair and object manner.

Councilmember Severns stated that he has a 1/3 interest in property within 300 feet and asked to be recused from this discussion.

Councilmember Alberg answered no to 1 through 3, and to number 4 he could consider the application in a fair and object manner.

Councilmember Paggao answered no to 1 through 3, and to number 4 he could consider the application in a fair and object manner.

Councilmember Campbell answered no to 1 through 3, and to number 4 he could consider the application in a fair and object manner.

Councilmember Munns answered no to 1 through 3, and to number 4 she could consider the application in a fair and object manner.

Upon disclosure of any of the above potential appearance of fairness concerns, the public was given an opportunity to object to any Councilmember sitting on the quasi-judicial matter based on the appearance of fairness doctrine. There were no objections from the public.

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

Councilmember Dudley stated that he had a conversation with Finance Director Doug Merriman last Thursday regarding the financing of this project. Mr. Dudley also had a conversation with Paul Brewer about the financing of this project. Mr. Dudley talked about standing committee discussions where three Councilmembers are in attendance and how the City will pay for this \$1.4 million project with \$800,000 in grant funds and \$600,000 needed from the City. In the conversation with Mr. Merriman, it does not sound like REET funds can be used. This is what Mr. Dudley said to Mr. Brewer; how can we spend money we don't have, how can we move forward on this project. Councilmember Dudley said this would have no effect on his ability to be fair.

Councilmember Alberg said he had talked with staff to refresh his understanding of the global Windjammer Park Project and the downtown redevelopment plan. Mr. Alberg also had an on-street conversation with Paul Newman and the Multimodal Facility Project was discussed. Councilmember Alberg said this would have no effect on his ability to be fair. City Attorney Hite asked about the substance of these conversations. Mr. Alberg, with regard to staff (Mr. Powers and Mr. Johnston), noted that what is before us is a shoreline substantial development permit and he asked about the length of time for this permit and if there is an expiration date and/or ability to renew the permit. Mr. Alberg noted that his conversation with Mr. Johnston was more technical in nature with regard to the Windjammer Plan. Mr. Alberg stated that he had the same course of conversation with Mr. Newman, talked about the condition of the existing restroom, and did not support a stand-alone building that is only a restroom. Mr. Newman summarized his Sound Off article and, when looking at it as a stand-alone, felt the funds should be returned which would make a statement.

Councilmember Paggao had no ex parte contacts.

Councilmember Campbell had a short conversation with a person who uses that area to feed the homeless. Councilmember Campbell said this would have no effect on his ability to be fair.

Councilmember Munns had no ex parte contacts.

Councilmember Dudley also noted a conversation with Councilmember Campbell after the Public Works Standing Committee meeting and briefed him on what I disclosed.

There was no public rebuttal to the ex parte contacts as stated above.

Development Services Director Powers noted that this evening's presentation is for the Shoreline Substantial Development Permit and is not an authorization for bid or project construction. As noted in the agenda bill's timeline, this project has been subject to a lot of review over the years with a large amount of public involvement. The Pier Committee, Parks Board, Planning Commission, and City Council have taken a number of actions related to this project.

Mayor Slowik opened the public hearing at 9:45 p.m.

Billie Cook, 651 SE Bayshore Drive, Oak Harbor. I do hope when financing comes forward the Council looks toward how to fund beyond the grant. I don't think it is in compliance with current shoreline practices. I cannot see the water with this building in place. This is a small park and there is too much development for it. 90-person capacity for the building and only 12 parking spaces. This is not consistent with good practices to have so much in a small area.

Carla Dozier, 830 SE Bayshore Drive, Oak Harbor. This is directly in front of my building and I've been in business for 30 years. The waterfront is one of our last resources. I never thought that a public park would change my view to the water. I have concerns with parking and the increase of traffic on Bayshore. With 100 people at an event, where are you going to park?

Helen Chatfield-Weeks, 1415 SE 9th, Oak Harbor. We have members of the Park Board here, we are talking about the shoreline permit and we take seriously the Planning Commission's suggestion to say yes.

Paul Brewer, 225 NE Ernst, Oak Harbor. When this first came up, the Pier Project was in mind and this was a passenger ferry ticket office. It has grown beyond its intent. We went out for the grant money for the Pier Project, not for this. We already have problems with Element Nightclub and will have the same with events in this building. Who is going to pay for the maintenance of that facility? The \$600,000 in matching funds, where are we going to get it? This is just another project that we are pushing through. I don't want to see the condominium residents complaining like those around Element. Is it zoned for an events center? The pier will never be built. Do we want to throw more money into a bad project or send the grant funds back.

Paul Newman, 886 SE Bayshore Drive, Oak Harbor. The project will not affect my view, but I would like to mention three more things:

Public honesty. All of Mr. Powers slides said Municipal Pier Project which was the genesis; not an events center. It has indeed changed.

Secondly, Noise. I have been impacted by Element Nightclub and my fence has been wrecked. An event with 100 people will impact parking and traffic. It is not needed. Finally, there are not that many vest pocket parks in Oak Harbor. Refurbish, don't demolish. Don't change the character of this park for something that never was the genesis.

Sandy Peterson, 964 NW Longview, Oak Harbor. I don't live near this park. If you put a larger building on that park land, you will change what will flow into the bay. We don't have much shoreline. If we run dirt into it, we have to pay to clean it up. You can make the park pretty without impacting the land so much.

Dr. Dawn Keith-Madeiros, 840 SE Bayshore Drive. I will be partially impacted by the loss of my view. I haven't seen what will come to fruition until the downtown is settled. Parking cannot be accommodated and the Pioneer Way Project was not dealing with cars. This is ahead of itself and not financially viable.

Mel Vance, P.O. Box 2882, Oak Harbor. If it is decided to build a smaller project, do we have to go through the permit process again? Scaling back, could we use part of the grant and give the rest back. A lot of questions need to be answered especially in light of what is happening on Pioneer Way. Save the money toward what is happening there.

Break

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

Council Discussion

Councilmember Dudley asked Finance Director Doug Merriman why he did not initial the agenda bill. Mr. Merriman responded that he had concerns about the project itself and the project's funding issues even though this agenda bill is for the shoreline substantial development permit. I want us to talk about funding now. Mr. Merriman was asked about his concerns. Mr. Merriman said that he needed to set aside political and future needs and look at the numbers. Back when this started we were looking at grant funds and what we would get back. Looking at the history of this project, the City's out-of-pocket costs have lessened our rate of return from \$4.00 to \$1.25 now. We have not had a lot of staff discussion about where that City money is coming from. Prior to the concept of the ferry evaporating, we took out \$493,000 in grants and if the project is not completed, we would have to pay the grants back. Right now today, two aspects will cost us \$900,000 out-of-pocket cash: \$600,000 and \$300,000 to pay back the initial grant. To improve what we have is about \$600,000. Today, \$300,000 of out-of-pocket money is paying for the multimodal project. Is it prudent to spend funds for a project that, in the future, may not be done? Consider the law of escalation: we need to have these discussions before we get too far into the project.

Council discussion followed about the \$606,000 from REET funds which was presented to the Public Works Standing Committee and where that funding would come from. Mr. Merriman noted that a significant portion was committed to Pioneer Way. Our bidding came in less than expected. Our savings would return some of that money back to the REET fund. Mr. Merriman also talked about a meeting held yesterday (which was after

the agenda packet's distribution) that identified three funding sources. Council discussion followed about Mr. Merriman's concerns, noting that this was new information and brings considerable doubts. Is there a timeline for when the funds have to be spent? City Administrator Schmidt responded that there is a timeline but he did not have the exact date. Council asked for the "drop dead" date and funding conditions (i.e., could funds be used to dredge an existing channel accessing the floating dock). Mr. Schmidt noted that these funds must specifically augment the public transit facility on the other side of the street; that is what originated transit funds as a source. Council asked if the transit funds could be co-mingled with Federal funds for transient moorage improvements downtown and Mr. Schmidt responded that he did not know if the grant funds would be convertible. Those funds were specific to Island Transit's facility; that is how these funds were acquired and the City would be held to that scope. Mr. Powers was asked if the permit application is approved, could he determine the expiration date. Mr. Powers noted that it could be extended: the project would have to begin within two years of the effective date – the date that the Department of Ecology takes action. The City can then extend by one year. The project has to be completed within five years, but there could a one-year extension from that date, as well. Discussion followed about the circulation design as shown in the site plan and if the City is bound by that design. This circulation pattern allows for a lot of traffic. Could the pattern be changed under this permit? Emergency access could be accommodated with other surfaces. What is the compelling reason for having asphalt and parking so close to the Waterfront Trail? Mr. Powers noted that the project's genesis goes back to some level of improvement for existing circulation and parking. The site plan in the agenda bill is intended for more formalized parking, and the use of the building as an event center would necessitate parking to work with that building. Mr. Powers, in response to whether the City would be bound to the design, noted there is room for variations in that plan, but there would be additional design costs to redo the design drawings. Council talked about the scale of the asphalt which seems out-of-scale for this small site, and whether the permit is ready for submittal. The City has already invested in that process and if approved tonight or at a future date, would be submitted to the Department of Ecology which then has 30 days to approve the permit. The Flintstone Car would remain onsite. Council discussion followed about future opportunity for review of the design, budget, and authorization for the bidding process. It was clarified that this evening's agenda bill is only presenting the Shoreline Substantial Development Permit for Council's consideration. Future meetings would address design, budget, authorization for bidding, and contract award. The Shoreline Substantial Development Permit would still be needed in spite of any design changes and further project research.

MOTION: Councilmember Munns moved to approve the Shoreline Substantial Development Permit. The motion was seconded by Councilmember Paggao.

Continued Discussion

Discussion followed about the \$2,118 application fee (the City charges itself this fee since it is City property), concern over funding for this project, and the desire to see the project's financing before moving forward.

VOTE ON THE

MOTION: Council unanimously opposed this motion and the motion failed.

Councilmember Severns returned to the meeting.

Public Hearing – Ordinance amending OHMC re: Temporary Political Signs (Interim).

Development Services Director Steve Powers led this agenda bill which presented an Interim ordinance amending OHMC 19.36.080(8), the portion of the City's sign code dealing with temporary political signs. Legal review raises concerns about the enforceability of the provision limiting the placement of campaign signs to the 60-day period immediately preceding an election. The recommendation is to eliminate the language limiting the campaign sign period to 60 days pre-election but not to modify the other existing provisions. This ordinance was proposed as an interim ordinance while undergoing Planning Commission and Department of Commerce review. This matter was prompted by a citizen complaint requesting enforcement of the City's temporary political signs ordinance. Mr. Powers noted that the American Civil Liberties Union of Washington had sent an email and commenting letter this afternoon (July 12, 2011 at 4:31 p.m.) which is attached to these minutes as Exhibit E.

Mayor Slowik opened the public hearing at 10:45 p.m.

Shane Hoffmire, 50 SW 8th Avenue, Oak Harbor. Act tonight for full and immediate repeal. Don't be misled by staff any longer. This ordinance is ridiculous and unnecessary. Do what is constitutionally obligated. I speak for my beloved community.
Paul Brewer, 225 NE Ernst, Oak Harbor. I would like to see this ordinance repealed. Political signage is selectively enforced by the City, County, and State. Freedom of speech is vital and that is the issue. You should be allowed to put up signs when you first file.

Mel Vance, P.O. Box 2882, Oak Harbor. When it comes to candidates, there are State regulations that come into play, and they should be adopted. This is an ordinance about issues. Bumper stickers are on cars year round. The proposed wording is better than what I was going to ask for.

Sandy Peterson, 964 NW Longview Drive, Oak Harbor. We should be careful about being too far-reaching. People have a right to know who is running; freedom of speech should ring out.

With no other comments coming forth, Mayor Slowik closed the public hearing at 10:50 p.m.

Council Discussion

Council discussion noted that the ordinance is not being repealed, there is a section change within the OHMC addressing temporary and special signs 19.36.080 (8) Political Signs on Private Property not a Headquarters. Using an interim ordinance will allow the City time for Planning Commission and Department of Commerce review. Mr. Powers noted that striking all of the language leaves nothing saying that political signage is an

allowed use. With the interim ordinance, that use remains but the 60-day time period preceding an election language has been stricken with the period of seven days following such election language remaining in place. Council asked about use of the 60-day period per RCW and why the Department of Commerce has to be notified. Mr. Powers noted there have been challenges in other cities and all growth/development regulations have to be sent to the Department of Commerce for their review and comment. The effective date of ordinances was also noted (full force and effect five days after publication).

MOTION: Councilmember Munns moved to adopt the ordinance amending Section 19.36.080 of the Oak Harbor Municipal Code pertaining to temporary political signs as an interim ordinance pending Planning Commission and Department of Commerce review. The motion was seconded by Councilmember Campbell and carried unanimously.

Referral to Lodging Tax Advisory Committee – Change in the Use of Lodging Taxes

Finance Director Doug Merriman presented this agenda bill which refers potential changes in the use of lodging taxes (2% funds) that may be under consideration by the City. Topics include, but are not limited to:

1. Possible changes in funding options, currently designated through a multi-agency interlocal agreement, for the City's participation in the Island-wide marketing promotion program.
2. Review policy considerations and the funding options for marketing of businesses within the City limits.
3. Discuss and review application procedures for 2% grant requests.

Number two would include Pioneer Way, and number three addresses the grant program.

There were no public comments. Mr. Merriman was thanked for his diligence and hard work.

MOTION: Councilmember Severns moved to refer potential changes in the use of 2% funds to the Lodging Tax Advisory Committee for review and comment. The motion was seconded by Councilmember Dudley and carried unanimously.

Outreach Funding Discussion

Finance Director Doug Merriman gave a PowerPoint presentation on the rules regarding gifting of public funds which is attached to these minutes and Exhibit F.

Mayor Slowik called for public comments.

Mel Vance, P.O. Box 2882, Oak Harbor. Find out exactly what funds are available.

Mercy Speth, 890 SE Pioneer Way, Oak Harbor. Reinstate the outreach funds.

There were no other public comments.

Council Discussion

Discussion followed regarding the funds still remaining in place (less what has been spent) with the issue being how they can be spent, identification of advertising costs, unit prices and quantities each month, how the proposed outreach cost amounts were determined, and detailing each expenditure. Council encouraged working with the downtown merchants toward the best use of these funds, and asked if any advertisements were underway that could not be cancelled (only one). Council also talked about advertisements which were shown to the merchants and that staff has worked hard on outreach.

MOTION: Councilmember Munns moved to reinstate advertising and other outreach activities for the Pioneer Way Improvement Project. The motion was seconded by Councilmember Dudley.

Councilmember Almborg would like to receive monthly incremental reports on how this funding is spent.

AMENDMENT TO THE

MOTION: Councilmember Almborg, as an amendment to the original motion, asked that Council receive monthly financial reports on how the money was spent and how it is going to be spent. The amendment was seconded by Councilmember Munns.

Councilmember Campbell asked why Council would need to review this funding each and every month since it is a line item in the whole budget process. Let staff include this in their reports. Councilmember Almborg talked about modifying the motion but cap it at \$25,000. City Administrator Schmidt noted that \$46,350 has already been spent. Councilmember Almborg stated that he trusted staff and knows the City has professional staff; he wanted to know what the funding is being spent on since the outreach figures seem like plugged-in numbers without unit prices.

VOTE ON THE AMENDMENT TO THE

MOTION: The amendment to the original motion carried unanimously.

Discussion continued on the original motion. Councilmember Dudley stated that, with regard to the last advertorial, we did not go to business owners for proof approval and that is why he had brought it up and that is why we discontinued the original advertorials. We need merchant buy-in and approval.

VOTE ON ORIGINAL MOTION AS

AMENDED: The original motion carried unanimously.

WAIF Discussion

MOTION: Councilmember Alberg moved to postpone this discussion to the next Council meeting (July 12, 2011). The motion was seconded by Councilmember Severns and carried unanimously.

City Administrator's Comments

City Administrator Schmidt felt that a City Council Special Meeting might need to be scheduled (no date given) regarding Pioneer Way once the archeological report has been received.

Council Members' Comments

With the lateness of the hour, Council Members deferred their standing committee reports. The 7/13/11 Finance Standing Committee meeting has been cancelled.

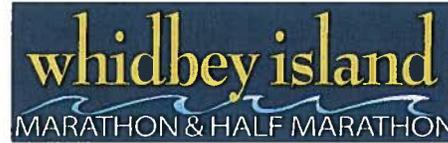
Mayor's Comments

Again with the lateness of the hour, Mayor Slowik deferred his comments this evening.

ADJOURN

With no further business coming before the Council, the meeting adjourned at 11:45 p.m.

Connie T. Wheeler
City Clerk



Whidbey Island Marathon

2011 Report *

Total No. of Participants	1893
Total No. of "Off-Island Participants	1471
Total Fees collected for Registration ¹	\$112,684.05
Projection of "Off-Island" Economic Impact ²	\$266,820
Projection of Total Event Impact ³	\$296,600
Total Revenue of Event Proceeds ⁴	\$157,884.05
Total Event Expenses	\$153,267.57

¹ Actual Fees for Registration

² Off Island = \$200 per participant greater than 50 miles from Oak Harbor
\$110 per participant less than 50 miles from Oak Harbor
\$70 per participant from Whidbey Island

³ Total of all registered participants

⁴ Total of proceeds with all registration fees and sponsors

* Report numbers were based on actual number of participants and expenses to date. Economic impact figures are assumptions only and are not to be considered or relied upon as fact based information.

Whidbey Island Marathon

2011 Actuals

Expenses

Race Coordination	\$25,400.00
Race Contractor	\$17,000.00
Salaries	\$15,888.00
Tech Shirts	\$17,912.50
Volunteer & 5K Shirts	\$5,538.55
Medals	\$5,251.00
Awards / Announcer	\$6,492.98
Permits / Sanctioning	\$680.00
Advertising, Signage, Marketing	\$16,905.33
National Barricade	\$7,077.62
Seattle Expo / R&R Expo	\$3,044.00
Sheriff, WSP	\$1,464.31
Coupeville Track Team	\$2,000.00
School District	\$670.00
Shuttles	\$2,253.00
Rentals	\$8,163.23
Timing Company	\$9,265.35
Sound System, Stage	\$1,800.00
Medical Aide	\$387.50
Lodging for Contractors	\$2,247.86
Water, food	\$2,132.48
Entertainment	\$300.00
Misc. Expenses	\$1,393.86

TOTAL

\$153,267.57

Income

Participation Fees	
Full Marathon	\$17,538.00
Half Marathon	\$89,315.00
5K Fun Run	\$5,831.05
Vendor Booths	\$2,625.00
Shirt Sales	\$1,125.00
Sponsorship	\$37,000.00
2% Funding	\$4,450.00

TOTAL

\$157,884.05

Whidbey Island Marathon

2012 Budget

Expenses

Race Coordination	\$28,000.00
Race Contractor	\$17,000.00
Salaries	\$16,000.00
Tech Shirts	\$18,000.00
Volunteer & 5K Shirts	\$6,000.00
Medals	\$5,500.00
Awards / Announcer	\$6,500.00
Permits / Sanctioning	\$850.00
Advertising, Signage, Marketing	\$17,000.00
National Barricade	\$7,750.00
Seattle Expo, R&R Expo	\$3,200.00
Sheriff, WSP	\$1,500.00
Coupeville Track Team	\$1,000.00
School District	\$720.00
Shuttles	\$2,500.00
Rentals	\$10,000.00
Timing Company	\$9,500.00
Sound System, Stage	\$1,200.00
Medical Aide	\$400.00
Lodging for contractors	\$2,800.00
Water, food	\$2,000.00
Entertainment	\$300.00
Misc. Expenses	\$1,280.00

TOTAL

\$159,000.00

Income

Participation Fees	
Full Marathon	\$18,000.00
Half Marathon	\$92,000.00
5K Fun Run	\$6,000.00
Vendor Booths	\$3,000.00
Shirt Sales	\$1,000.00
Sponsorship	\$35,000.00
2% Funding	\$4,000.00

TOTAL

\$159,000.00

25



Local Vendors used for services during Marathon:

- The Coachman Inn
- Bayview Embroidery 'N Print
- Custom Engraving
- Diamond Rentals
- Office Max
- SeaTac Shuttle
- Whidbey News Times
- Coupeville School District [Track Team]
- Oak Harbor School District [Shuttle]
- Island County Sheriff Department

	City	Multipier	No of Participants	Total
	Seattle	200	364	72800
WA	Oak Harbor	70	317	22190
WA	Coupeville	70	56	3920
WA	Bellingham	110	53	5830
WA	Anacortes	110	40	4400
WA	Bellevue	200	39	7800
WA	Everett	110	39	4290
WA	Tacoma	200	33	6600
WA	Mount Vernon	110	23	2530
WA	Mukilteo	110	22	2420
WA	Kirkland	110	22	2420
WA	Bremerton	200	21	4200
WA	Spokane	200	21	4200
WA	Olympia	200	20	4000
WA	Lynwood	110	19	2090
WA	Clinton	70	19	1330
WA	Bothell	110	18	1980
WA	Redmond	110	18	1980
WA	Renton	200	17	3400
OR	Portland	200	17	3400
WA	Puyallup	200	17	3400
WA	Snohomish	200	16	3200
WA	Edmonds	200	16	3200
WA	Freeland	70	15	1050
WA	Stanwood	200	14	2800
WA	Sammamish	200	14	2800
WA	Sedro Woolley	110	13	1430
WA	Shoreline	200	12	2400
WA	Poulsbo	200	11	2200
WA	Marysville	110	11	1210
WA	Bainbridge Is	200	11	2200
WA	Gig Harbor	200	10	2000
WA	Langley	70	10	700
WA	Pt. Orchard	200	10	2000
UT	Salt Lake City	200	10	2000
WA	Vancouver	200	9	1800
WA	Lake Stevens	200	9	1800
WA	Issaquah	200	9	1800
WA	Federal Way	200	8	1600
WA	Burlington	110	8	880
WA	Sequim	200	8	1600
WA	Pt. Angeles	200	8	1600
WA	Mill Creek	200	7	1400
WA	Silverdale	200	7	1400
WA	Woodinville	200	7	1400
WA	Auburn	200	7	1400
WA	Ferndale	200	7	1400
WA	Kent	200	7	1400
WA	Lynden	200	7	1400
WA	Lacey	200	6	1200

WA	Arlington	200	6	1200
WA	Bonney Lake	200	6	1200
BC	Vancouver	200	6	1200
WA	Monroe	200	6	1200
WA	Richland	200	6	1200
NV	Reno	200	5	1000
WA	Moses Lake	200	5	1000
WA	Pt. Townsend	200	5	1000
CA	San Diego	200	5	1000
WA	Covington	200	5	1000
AK	Anchorage	200	5	1000
WA	Bow	200	5	1000
WA	Kennewick	200	5	1000
WA	Kingston	200	4	800
WA	Kenmore	200	4	800
WA	Lake Forest Park	200	4	800
WA	Edgewood	200	4	800
BC	Gillies Bay	200	4	800
WA	Everson	200	4	800
WA	Greenbank	70	4	280
WA	Belfair	200	4	800
WA	Des Moines	200	4	800
WA	Cheney	200	4	800
WA	Snoqualmie	200	4	800
WA	Newberg	200	4	800
MT	Missoula	200	3	600
FL	Orlando	200	3	600
WA	Orting	200	3	600
WA	Shelton	200	3	600
WA	Sedro Woolley	110	3	330
WA	Vashon	200	3	600
BC	Victoria	200	3	600
AK	Wasilla	200	3	600
WA	Camano Island	110	3	330
CO	Denver	200	3	600
WA	Battle Ground	200	3	600
WA	DuPont	200	3	600
WA	Duvall	200	3	600
OR	Hillsboro	200	3	600
OR	Hood River	200	2	400
BC	Kamloops	200	2	400
WA	LaConner	110	4	440
WA	Lakewood	200	2	400
CA	Loma Linda	200	2	400
WA	E. Wenatchee	200	2	400
MD	Ellicott City	200	2	400
WA	Enumclaw	200	2	400
WA	Graham	200	2	400
WA	Fall City	200	2	400
OH	Amelia	200	2	400
MN	Bloomington	200	2	400
WA	Brier	200	2	400

WA	Auburn	200	2	400
MD	Baltimore	200	2	400
BC	Duncan	200	2	400
WA	Deer Park	200	2	400
BC	Delta	200	4	800
OR	Corbett	200	2	400
AB	Calgary	200	2	400
OR	Corvallis	200	2	400
WA	Carnation	200	2	400
WA	Buckley	200	2	400
TX	Cibolo	200	2	400
ID	Coeur d'Alene	200	2	400
WA	West Richard	200	2	400
BC	Williams Lake	200	2	400
WA	Walla Walla	200	2	400
CA	Walnut Creek	200	2	400
WA	Wapato	200	2	400
WA	Spanaway	200	2	400
BC	Vancouver	200	2	400
PA	Sharon	200	2	400
CA	San Francisco	200	2	400
WA	Suquamish	200	2	400
BC	Surrey	200	2	400
MN	Osage	200	2	400
CA	Pasadena	200	2	400
VA	Reston	200	2	400
MO	Rolla	200	2	400
WA	North Bend	200	2	400
NW	Newscastle	200	2	400
WA	Newman Lake	200	2	400
WA	Neilton	200	2	400
WA	Mountlake Terrance	200	2	400
MN	Minneapolis	200	2	400
FL	Miramar	200	2	400
WA	Mercer Island	200	2	400
WA	Maple Valley	200	2	400
WA	Marysville	200	1	200
CT	Mansfield Center	200	1	200
WA	Maple Falls	200	1	200
BC	Merritt	200	1	200
ID	McCall	200	1	200
WA	Milton	200	1	200
CA	Monterey	200	1	200
WA	Montesano	200	1	200
ID	Moscow	200	1	200
WA	Mount Vernon	110	2	220
OR	Neskowin	200	1	200
TX	New Braunfels	200	1	200
WA	Nine Mile Falls	200	1	200
WA	North Lakewood	200	1	200
CA	Sacramento	200	1	200
BC	Richmond	200	1	200

WA	Ritzville	200	1	200
WA	Port Townsend	200	1	200
WA	Quinalt	200	1	200
WA	Reardan	200	1	200
	Prague	200	1	200
OR	Prineville	200	1	200
WA	Prosser	200	1	200
WA	Puyallup	200	1	200
WA	Pasco	200	1	200
FL	Pensacola Beach	200	1	200
AZ	Phoenix	200	1	200
PA	Pittsburg	200	2	400
TX	Plano	200	1	200
MT	Polson	200	1	200
WA	Pacific	200	1	200
FL	Palm Beach Garden	200	1	200
WA	Port Hadlock	200	1	200
BC	Port Moody	200	1	200
CA	Oceanside	200	1	200
WA	Spokane Valley	200	1	200
WA	Startup	200	1	200
WA	Sumas	200	1	200
WA	Sumner	200	1	200
CA	Signal Hill	200	1	200
CA	Soquel	200	1	200
WA	South Colby	200	1	200
BC	South Surrey	200	1	200
CA	San Jose	200	1	200
OR	Scappoose	200	1	200
AZ	Scottsdale	200	1	200
WA	Seabeck	200	1	200
WA	Seatac	200	1	200
WA	Seattle	200	3	600
TX	San Angelo	200	1	200
BC	Vancouver	200	1	200
WA	Washougal	200	1	200
WA	Tacoma	200	1	200
WA	Thorp	200	1	200
OR	Tigaro	200	1	200
ME	Topsham	200	1	200
CA	Torrance	200	1	200
BC	Tsawwassen	200	1	200
WA	Tukwila	200	1	200
WA	Tumwater	200	1	200
WA	Underwood	200	1	200
WA	Winlock	200	1	200
WA	Yakima	200	1	200
OH	Westerville	200	1	200
WA	White Salmon	200	1	200
OR	West Linn	200	1	200
CO	Colorado Springs	200	1	200
SC	Columbia	200	1	200

BC	Coquitlam	200	1	200
WA	Clear Lake	200	1	200
IL	Chicago	200	1	200
BC	Chiliwack	200	1	200
BC	Burnaby	200	1	200
SC	Cayce	200	1	200
IL	Champaign	200	1	200
MA	Cambridge	200	1	200
CA	Carlsbad	200	1	200
CA	Corte Madera	200	1	200
BC	Creston	200	1	200
CA	Cupertino	200	1	200
St. Marteen	Dawn Beach	200	1	200
KY	Covington	200	1	200
MT	Dillon	200	1	200
TX	Austin	200	1	200
GA	Atlanta	200	1	200
CA	Los Angeles	200	1	200
BC	Abbotsford	200	1	200
WA	Acme	200	1	200
CA	Alamo	200	1	200
NM	Albuquerque	200	1	200
VA	Alexandria	200	1	200
WA	Algona	200	1	200
WA	Amanda Park	200	1	200
WA	Amboy	200	1	200
NY	Brooklyn	200	1	200
FL	Brooksville	200	1	200
ID	Boise	200	1	200
WA	Blaine	200	1	200
CA	Bayside	200	1	200
OR	Beaverton	200	1	200
WA	Bellevue	200	1	200
WA	Gold Bar	200	1	200
WA	Ft. Lewis	200	2	400
OH	Gahanna	200	1	200
CA	Galt	200	1	200
BC	Gibsons	200	1	200
ND	Grand Forks	200	1	200
WA	Grandview	200	1	200
CA	Granite Bay	200	1	200
CO	Greeley	200	1	200
WA	Greenbank	70	1	70
MT	Helena	200	1	200
VA	Herndon	200	1	200
WA	Ephrata	200	1	200
CA	Escondido	200	1	200
OR	Eugene	200	1	200
WA	Fife	200	1	200
AZ	Flagstaff	200	1	200
CA	Folsom	200	1	200
OR	Forest Grove	200	1	200

WA	Eatonville	200	1	200
NY	East Amberst	200	1	200
MN	Edina	200	1	200
WA	Electric City	200	1	200
WA	Ellensburg	200	1	200
CA	Long Beach	200	1	200
TX	Longview	200	1	200
WA	Lake Tapps	200	1	200
WA	Lake Stevens	200	1	200
WA	Liberty Lake	200	1	200
NJ	Linwood	200	1	200
OR	La Grande	200	1	200
OR	La Pine	200	1	200
CA	Lake Forest	200	1	200
OR	Lake Oswego	200	1	200
AK	Kasigluk	200	1	200
HI	Kihei	200	1	200
NY	Hopewell Jct.	200	1	200
WA	Humptulips	200	1	200
ID	Idaho Falls	200	1	200
NY	Jamestown	200	1	200
WA	Ft. Lewis	200	1	200
AK	Juneau	200	1	200
HI	Kailua	200	1	200

1893

296920

On behalf of the members of the Downtown Merchants Association we'd like to say ...

THANK YOU Oak Harbor for your continued support and patronage! The Downtown Merchants Association is looking forward to the completion of the Pioneer Way Improvement Project, a Public Works Project. Due to this project the citizens of Oak Harbor and the Merchants along Pioneer Way reap the benefits of a fresh and revitalized downtown. The sidewalks will be safer for pedestrians and will give citizens a place to meet and greet when they come down to shop or dine. The merchants downtown are working hard to sustain their business and serve the Oak Harbor community. While suffering economic pressure from loss of foot traffic the Downtown Merchants Association is trying hard to promote downtown with events like First Fridays, the Gift Bag Give Away, and passing out bags full of gift certificates and coupons to citizens of Oak Harbor. The Downtown Merchants Association is a positive group merchants with wonderful ideas about how to make our downtown a place to come to now and in the future. Come downtown, brave the trails leading to our establishments, shop, dine, and talk to all of us, you will find that we are a diverse group with many and varied opinions regarding the current construction. More importantly we are your neighbors, committed to the successful completion of the Pioneer Way Improvement project. We, again, want to thank all those community members and SE Pioneer Way Improvement Staff who are helping and supporting us.

Downtown Merchants Association
Ron Apgar, President
Mercy Speth, Vice President
Margaret Livermore, Treasurer
Kristi Jensen, Secretary
Jill Schacht, Board Member
Kathy Collantes, Board Member

Connie Wheeler**Exhibit C**

From: Beth Munns
Sent: Tuesday, July 12, 2011 3:32 PM
To: Connie Wheeler
Subject: FW: SICBA Input for Tonight

From: Wayne Crider [mailto:Wayne@sicba.org]
Sent: Tuesday, July 12, 2011 2:44 PM
To: wayne@sicba.org
Subject: SICBA Input for Tonight

Councilmembers et al,

I just got off the phone with Mr Powers and would like to make it very clear that SICBA does support LID type development both commercial and residential.

And I would also like to make it clear that the input from SICBA is meant for the commercial side of development. However, one portion talks about smaller streets and that was addressed as well.

In sub divisions we do support smaller streets but parking can be a problem so when you look at the matrix you have been provided for smaller streets in a LID, please be sure to include extra parking places so it is truly functional and does not impede ingress and egress of emergency vehicles as has been the case in other jurisdictions. As I said in my first transmittal, Mount Vernon just enlarged the size of their streets because of the parking fiasco they encounter on a daily basis. Hopefully they will consider requiring more parking spaces be provided in LID in the future instead of relying on the street itself to provide the answer. Human nature says park in front of my house. Maybe it is an education lesson for those living in an LID.

Where our biggest concern lies is that once over 50 parking spaces are reached, (where did this number come from?) a commercial entity must develop using LID regulations for parking. I think the question should be why not look at the commercial development and see what fits - letting the developer have some flexibility which this does not allow once they have more than 50 spaces. They must develop using LID unless they can demonstrate that LID doesn't work. And what is the cost to demonstrate LID doesn't work? Why not encourage LID with incentives and let the developer look at both options? Why not allow the developer to develop the property to its highest and best use and if it is necessary to put in underground holding that will serve as settling and filters before releasing the stormwater, in order to reach the required stormwater control, what is wrong with that? A good example would be the redevelopment of the area on Midway Blvd where the old Saars Market once stood. If a developer comes in to tear that out and redevelop it as has been mentioned in numerous public hearings as a viability for development in the city, why would he/she be forced into LID if they can demonstrate an alternative type system that will serve the same purpose that could be less expensive since the parking lot already exists? This is where policy must be looked at very carefully and talked about to be sure everyone is understanding of what is being proposed and approved. Flexibility is the key to attracting future businesses.

Make sure it is a flexible code and not one that is only one way.

And, yes we do understand that development can happen in Oak Harbor that is not LID. But as the proposed code is written, when commercial reaches a threshold, then a portion of the commercial development will be mandated to be LID. This is where flexibility is needed to be sure we don't preclude investors and developers from wanting to do something in the city.

Lastly, LID should be voluntary with incentives. Not mandatory (regardless of number of parking spots but by the project) once a certain threshold is reached. When a threshold is set, sometimes it doesn't work. This is why we question where the numbers came from for the number of spaces and the percentages that are outlined as requiring pervious pavement. The way the ordinance is also written, it looks like once 200% is reached, it will not be approved. Are there some mitigation offerings that would allow this to not be the case and allow a developer to do the project with alternative systems?

7/12/2011

34

Please understand that SICBA is a strong proponent of LID. That being said, we must also look at standard development and support that as well since we have both types in our industry. We firmly stand that LID should be voluntary with incentives and that should also be the consideration for commercial development. LID is voluntary, sustainable and eco friendly. With the right incentives, developers will want to develop the entire project as LID regardless of size - rather than be forced to because a threshold is met. In other words, get rid of the thresholds and evaluate each project on its own merits with a strong recommendation that LID be the preferable way to develop with incentives.

The ordinance is good overall but does not appear to provide a lot of flexibility to the commercial development community once a threshold is reached.

Only one more question: What are the incentives that would make a developer to want to develop under LID?

Charles W (Wayne) Crider, Executive Officer
Skagit/Island Counties Builders Association
15571A Peterson Rd
Burlington, WA 98233
(360) 757-6916
wayne@sicba.org

Connie Wheeler**Exhibit D**

From: Beth Munns
Sent: Tuesday, July 12, 2011 3:31 PM
To: Connie Wheeler
Subject: FW: SICBA input for July 12th City Council Meeting Concerning Low Impact Development
Attachments: SKMBT_C45111071210550.pdf

From: Wayne Crider [mailto:Wayne@sicba.org]
Sent: Tuesday, July 12, 2011 1:04 PM
To: wayne@sicba.org
Subject: SICBA input for July 12th City Council Meeting Concerning Low Impact Development

Councilmembers,

Attached is SICBA's written input for tonight's Oak Harbor City Council meeting concerning Low Impact Development. Please read it and if you have questions, give me a call and we can talk.

I cannot be at the meeting tonight because of an association Board of Directors meeting that I must attend.

If possible, I would like to ask one of the councilmembers to read this into the minutes of the meeting during the public hearing portion of Item 7 on the agenda. I will drop the original copy off in the morning for the files.

Thank you,

C. W. Crider

Charles W (Wayne) Crider, Executive Officer
Skagit/Island Counties Builders Association
15571A Peterson Rd
Burlington, WA 98233
(360) 757-6916
wayne@sicba.org

7/12/2011

34



July 12, 2011

From: Skagit/Island Counties Builders Association
To: Oak Harbor City Council

Subj: Low Impact Development (LID) Ordinance

To Whom It May Concern:

The following is the written input of the Skagit/Island Counties Builders Association (SICBA) addressing the proposed ordinance concerning Low Impact Development (LID) in Oak Harbor. SICBA is a roughly 600-member association representing the voice of the local building industry in Skagit and Island Counties.

First let us thank you and commend you for stepping out and being proactive in the construction of an ordinance to govern development since Whidbey Island is truly a sole source aquifer. Even though the city's water comes from the Skagit River via Anacortes, we would be dependent on our emergency aquifers should a natural disaster happen that would cut the supply of fresh water to the island.

The way the proposed ordinance is worded, it appears this will be the only way development can happen in the city. Not only is it addressing a portion of Low Impact Development, it is changing the parking regulations in a completely different chapter of the code. If this is the case, shouldn't Oak Harbor openly address this fact with the citizens and the development community and clearly state that this is the purpose of this ordinance? And – as it is written – this is the only way development of any kind will be approved in the city? What happens if a project is unable to move forward under the LID criteria and has to be averted because there is no other way for the development to be constructed? And what is the City of Oak Harbor's culpability if the economic value of the property is severely limited or erased because of this ordinance?

One of those areas of concern is the parking criterion. Under the proposed ordinance, it states that over 125% parking from the minimum must be pervious surface or treat the Stormwater in some other manner such as rain gardens, etc. We would like to question why different percentages have been chosen instead of looking at each project individually and assessing how the Stormwater needs to be and is treated regardless of parking availability? And, why would an arbitrary number such as the 50 parking spaces be chosen for all development? It is our understanding that LID is voluntary and not mandatory but in this case, the City of Oak Harbor is proposing to make the LID parking criteria a standard and mandatory throughout the city for projects that have more than 50 parking spaces proposed.

Another area of concern is the native vegetation area. We agree that native vegetation will enhance the control of Stormwater and erosion but we also know there are some species that are invasive in nature and should not be considered for planting. It is our suggestion that the city have the plant listings in the proposed ordinance looked at by a qualified entity and determine if some are considered noxious weeds (Crown Vetch) in this state. Why would we want to plant

something that is noxious as a way of controlling Stormwater when native plants will do the job effectively? Many noxious weeds will actually overtake native species and render them useless. We do, however like the opportunity to cluster trees into areas that are open or detention ponds/rain gardens. This should reduce the amount of trees that are planted singly and should provide a safer environment. That being said, this all should be voluntary – not mandatory.

As we mentioned above, the most troublesome portion of this entire proposal is the parking and the lack thereof. This includes single-family residential (SFR) neighborhoods as well as multi-family complexes. And, if the guidelines are 2 for SFR as is currently listed in Title 21, then you are not providing enough since the average family has two vehicles anyway and when the children become old enough for their own vehicle they have more than two. So they park on the street. When we look at Title 21, street sizes, we need to keep in mind we are dealing with human nature. If you do not provide ample parking within the development, then they will park on the street regardless of whether there is parking provided or not. And, as has happened in Mount Vernon, the standard size of the street has been enlarged to be sure parking is allowed on both sides of the street because of ingress and egress problems for emergency vehicles. Are we looking at having to change this at a later time to be sure we have ample access or is enforcement not going to be a problem for parking all over the streets as was the problem in Mount Vernon? Is there a lesson to be learned from Mount Vernon?

In LID projects Stormwater is required to be treated and handled on site in most cases. In fact, the LID portion of SICBA's Built Green® Communities program requires that the water be handled on site through the use of rain gardens and filtration through pervious surface without size being an issue. This is voluntary and should be in all cases. If a developer can show how they will manage the Stormwater through LID guidelines, they should be allowed to build what they need and the parking should not be a factor – even if it is over 125% and even possibly above the 200% allowed – provided they have adequately taken care of the Stormwater. The numbers chosen for the whole parking issue should be reconsidered and looked at for each project instead of painting them all with one brush.

Since some of the provisions of this ordinance are going to affect the other codes, it certainly looks like this will be the only method of development that will be approved. Economic development has been every administration's goal for many years. So why is the city looking to stop this through an ordinance that is not flexible when a certain threshold is reached rather than finding a way to make something work that is beneficial to the proponent and the city? That would be business and development friendly. Why can the city not look at each project individually and approve or disapprove it based on its merits? If there is a problem and it looks like the city needs an outside set of eyes to look at something, isn't there a Hearings Examiner available? And, while Stormwater is a main concern of pollution of Puget Sound, it is understandable that the city would affect a course to reduce this pollution source. However, if the developer does not want to develop using LID guidelines or cannot develop what is proposed because of the requirements of the guidelines, there should be an alternative available for them. If a filtration system is required to allow standard development there should be a way the developer can use that option rather than setting aside a portion of the parking to adequately conform with the LID provisions.

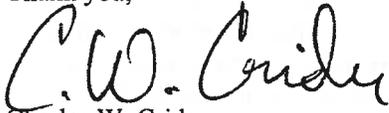
SICBA does promote Low Impact Development as a voluntary method of development. And with this voluntary type of development, it would be great if the jurisdictions would see fit to allow some up-zoning or other methods of mitigation that would encourage developers to use this method of development. Incentives are basic but are something the development community

understands and would readily accept provided they allow something substantive that can be easily recognized and are not part of a mandatory rule that provides no encouragement for use.

What is needed is an ordinance that recognizes all the issues associated with development regardless of whether it is commercial or residential; whether it exceeds the threshold for standard development versus Low Impact Development; and ensures it is economically feasible, environmentally sound, is beneficial and meets the goals of the city's comprehensive plan.

From what we see in the proposed ordinance, it does not do these things but implements one way for development in the city. There should be flexibilities, alternatives and opportunities for developers to want to use Low Impact Development rather than mandating it. With incentives, you might see more businesses wanting to come to Oak Harbor and become a viable part of a strong and vibrant economy.

Thank you,



Charles W. Crider

Executive Officer

Skagit/Island Counties Builders Association

Connie Wheeler**Exhibit E**

From: Steve Powers
Sent: Tuesday, July 12, 2011 4:31 PM
To: Connie Wheeler
Subject: FW: ACLU Comment Regarding Political Sign Ordinance OHMC 19.36.080(8)
Attachments: Oak Harbor Sign Ordinance Letter 071211 (2).pdf

Hi Connie,

Will you please provide copies of this e-mail and letter to the Mayor, Council, etc.? Thanks.
 Steve

From: Shankar Narayan [mailto:snarayan@aclu-wa.org]
Sent: Tuesday, July 12, 2011 4:21 PM
To: Jim Slowik; Danny Paggao; Rick Almberg; blandjcampbell@aol.com; Jim Campbell; Scott Dudley; Beth Munns; Jim Palmer; Robert Severns
Cc: Jennifer Shaw; Shankar Narayan; Steve Powers
Subject: ACLU Comment Regarding Political Sign Ordinance OHMC 19.36.080(8)

Dear Mayor Slowik and City Council Members:

Please find attached the ACLU of Washington's comment on the Council's consideration of changes to the city ordinance regulating the placement of political signs on public and private property. We strongly urge the City Council to adopt an interim ordinance that comports with Washington's strong constitutional protections for political speech, as detailed in the attached letter. We look forward to discussing this issue with you further.

Please note that I will be on a leave of absence beginning next week. In the meantime, please make sure that Jennifer Shaw (copied), our Deputy Director, is included on any correspondence regarding this matter.

Best,
 Shankar.

Shankar Narayan
 Legislative Director
 American Civil Liberties Union of Washington
 901 5th Avenue, Suite 630
 Seattle WA 98164
 (206) 624-2184 x281
snarayan@aclu-wa.org
<http://www.aclu-wa.org>



40

7/12/2011

Shankar Narayan
LEGISLATIVE DIRECTOR



July 12, 2011

Mayor and City Council Members
City of Oak Harbor
Oak Harbor, WA
VIA ELECTRONIC MAIL

AMERICAN CIVIL
LIBERTIES UNION
OF WASHINGTON
705 2ND AVENUE, 3RD FL.
SEATTLE, WA 98104
T/206.624.2184
WWW.ACLU-WA.ORG

JESSE WING
BOARD PRESIDENT

KATHLEEN TAYLOR
EXECUTIVE DIRECTOR

Re: City of Oak Harbor Political Sign Ordinance OHMC 19.36.080(8)

Dear Mayor Slowik and City Council Members:

I write on behalf of the American Civil Liberties Union of Washington (ACLU-WA). We are a statewide, non-partisan, non-profit organization with over 25,000 members, dedicated to the preservation and defense of constitutional and civil liberties. It has come to our attention that the Oak Harbor City Council is considering the adoption of an interim ordinance that amends requirements regarding the placement of political signs on public and private property. We strongly urge the City Council to adopt an interim ordinance that comports with Washington's strong constitutional protections for political speech, particularly given that Oak Harbor's current law may run afoul of those protections.

Oak Harbor's current code includes OHMC 19.36.080(8)(d), which reads:

- (d) Political Signs Not Allowed on Public Property. It is unlawful for any person to 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.

This subsection is broad in the sweep of its prohibition on protected speech. As currently drafted, it may amount to a blanket ban on signs on public property, potentially in locations considered "traditional public forums." These traditional public forums are spaces traditionally used for public assembly and debate, and both the state and federal constitutions provide strong protections for the posting of political signs in such locations.

Washington state precedent makes clear that political speech in traditional public forums has the utmost constitutional protection. As Washington's Supreme Court noted in the Collier case, "[b]ecause these places occupy a special position in terms of First Amendment protection, the government's ability to restrict expressive activity is very limited."¹ As the Collier² case discussed, traditional public forums include parks, streets and sidewalks. These are forms of city owned property from which Oak Harbor's current ordinance arguably bans all signs. While it is true that signs need not be allowed on all city owned property, they cannot simply be banned from that part of city owned property which is a traditional public forum.

The Washington Supreme Court in Collier ruled that a government attempting to regulate political signs placed in a traditional public forum must show the regulation is "narrowly drawn to serve a compelling state interest."³ The aesthetics and safety concerns asserted by the City of Tacoma in Collier were ruled to be insufficiently compelling to meet that standard. Similarly, the City of Oak Harbor should consider whether a compelling state interest has been articulated in support of its current ordinance or any proposed changes to it, and whether the ordinance is "narrowly drawn." In addition, the current ordinance is ambiguously written, so even if its intent was not to entirely ban signs in traditional public forums, the fact that it can be read to have that effect ("Political Signs Not Allowed on Public Property") could have a chilling effect on protected speech that violates constitutional protections.

Other Washington jurisdictions also recognize that political signs may be regulated on public property but not banned outright. See, for example, Bothell Municipal Code 12.22.098; Seattle Municipal Code 23.55.012(C)(3). These jurisdictions impose reasonable time, place and manner restrictions rather than bans, thereby preserving residents' freedom of speech while at the same time addressing any legitimate, specific concerns, such as safety concerns, the city government may have around the posting of signs. It is also important that any proposed ordinance leave open sufficient alternative means of communication.

Separately, we are encouraged by the City Council's proposed change to OHMC 19.36.080(8)(a), which generally appears to allow political signs on private property. The City has little basis to regulate such political signs and should encourage robust political engagement there, rather than attempt to ban or stifle such constitutionally protected free expression.

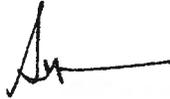
¹ Collier v. Tacoma, 121 Wn.2d 737, 747, 854 P.2d 1046 (1993).

² Collier, 121 Wn.2d at 747.

³ Collier, 121 Wn.2d at 753-54.

Blanket bans on political signs on public property, including traditional public forums, is not only unconstitutional, but poor public policy. If the City of Oak Harbor has specific, compelling concerns (going beyond mere aesthetics) with respect to signs on public property, the City should consider an ordinance that is narrowly tailored to addressing those concerns without stifling the political speech of its residents. Thank you for your consideration of these concerns.

Sincerely,

A handwritten signature in black ink, appearing to be 'Shankar Narayan', with a long horizontal line extending to the right.

Shankar Narayan
Legislative Director

Cc: Steve Powers, Development Services Director

City of Oak Harbor

Rules on Gifting of Public Funds



1

Rules on Gifting of Public Funds

Prohibition Against Gifts/Lending of Credit

Article 8, section 7 of the state constitution has been the direct basis of several lawsuits against local governmental entities. That provision is as follows:

"No county, city, town or other municipal corporation shall hereafter give any money, or property, or loan its money, or credit to or in aid of any individual, association, company or corporation, except for the necessary support of the poor and infirm, or become directly or indirectly the owner of any stock in or bonds of any association, company or corporation".

2

44

Rules on Gifting of Public Funds

Subsidizing or Assisting Private Individuals or Organizations

A city or county is often asked to use its funds, property, or borrowing power (credit) to subsidize or assist endeavors by individuals or private organizations, such as the construction or operation of recreational facilities, economic development, or tourist promotion, and other civic or charitable works. *However, the Washington State Supreme Court has long held that no matter how public the purpose may be, it may not be accomplished by public gifts or loans to private persons or organizations* (except certain aid to the poor or infirm).

Health Care Facilities v. Ray, 93 Wn.2d 108, 115-16, 605 P.2d 1260 (1980)]

Johns v. Wadsworth, 80 Wash. 352, 354-55, 141 Pac. 892 (1914) (the legislature may not authorize the use of public funds to aid a private fair);

3

Analysis Process: "Double Layer" Analysis

While certain events may qualify for funding, a second layer of analysis is required:

Examples:

- 2% Tourism money: Whidbey Car Show is a qualified event. However, only advertising targeting individuals outside of the City limits is allowed.
- Pioneer Way could qualify for outreach funding: Payment needs to have a specific project connection in order to comply with State Law.

4

Actual questions and answers from the last few months:

Will the City pay my utility bill?

- No. State constitution Article 8, Section 7

Will the City include an advertisement for my individual business with the utility bills?

- No. State constitution Article 8, Section 7
- Audit finding: City of Oak Harbor – advertising on city vehicles
- Audit finding: City of Bellingham – advertising in a public facility.

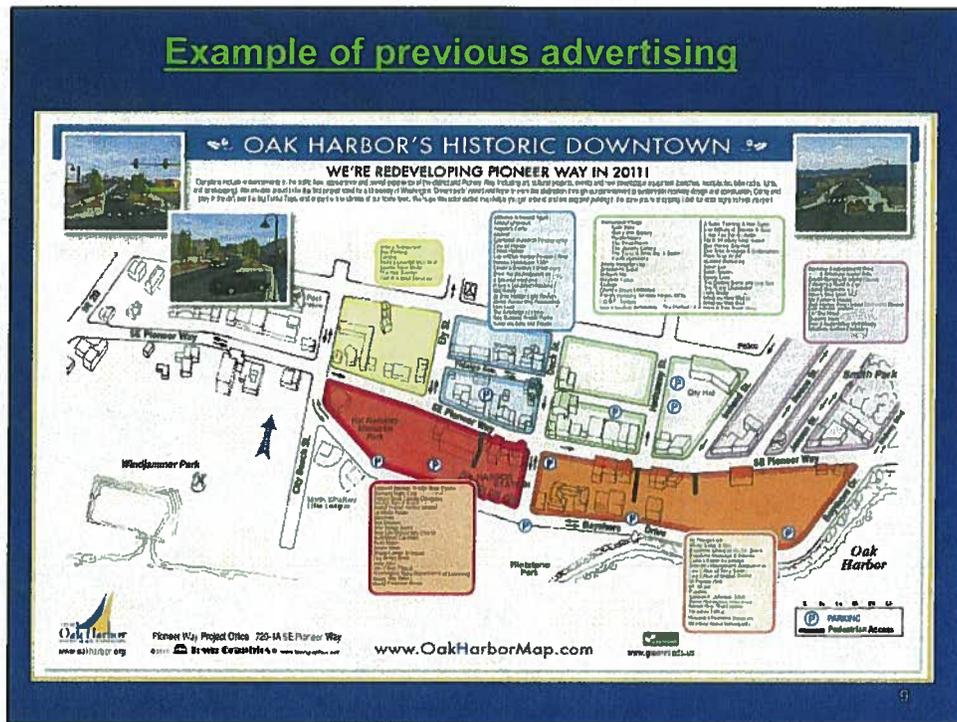
5

Actual questions that have previously been asked:

Can the City directly spend money for festivals, special events, musicians, tents, advertising, or economic development as long as we call it “mitigation”?

- No. State constitution Article 8, Section 7.
- **Johns v. Wadsworth**, 80 Wash. 352, 354-355, 141 Pac.892 (1914) Legislature may not authorize the use of public funds for a fair.
- **Anderson v. O'Brien**, 84 Wn.2d 64, 70, 524 P.2d 379 (1974) A program with a “public purpose” may not justify a gift or loan of credit to a private entity for that purpose, except in the aid of the poor or infirm.

6



Funding:

The majority of the Pioneer Way Improvement project is utility in nature

- Funding sources for marketing:
 - Utility funds
 - 2% funds (in some cases)
 - General fund (in some cases)
- Funding sources NOT available for marketing:
 - Real Estate Excise Tax (REET)
 - Rural County Sales Tax (.09)

Summary:

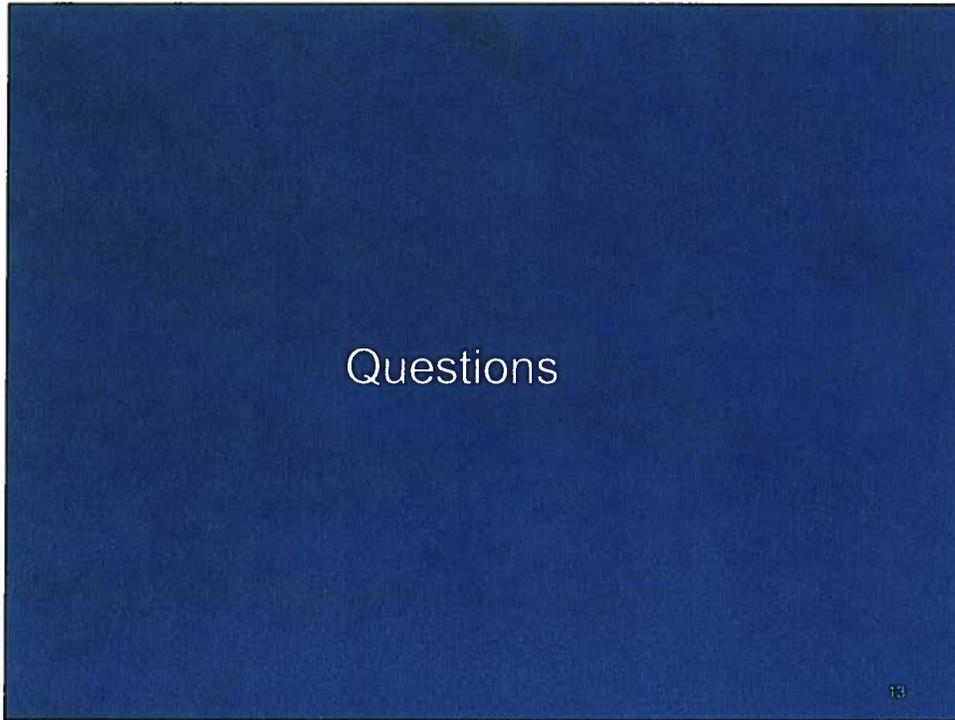
- The City is prohibited from direct support of individual businesses by the State Constitution.
- Advertising support and certain other costs may be incurred as long as there is a demonstrated connection to the construction project.
- The City may devote a larger portion of its advertising space to include the names of the impacted businesses.

11

Summary:

- While the City is prohibited from direct support of a festival or fair, SOME costs pertaining to a “ribbon cutting” or project completion event are permissible.
 - Must relate to the project
 - Do the “double layer” analysis
 - Ask for guidance before committing to cost.
 - Every revenue source has a rule.
 - Even with the best of intentions or the level of public purpose of a project, State law drives the level of support available.

12



Website	\$10,000
Newspaper Ads	\$12,000
Wayfinding Signs	\$25,000
Temporary Signs	\$10,000
Billboard	\$15,000
Radio Ads	\$10,000
Printing	\$12,000
Stuffers/Posters	\$14,500
Miscellaneous	<u>\$14,000</u>
Subtotal	\$122,500
Contract	\$34,560
Incidentals	<u>\$10,440</u>
Grand Total	\$167,500

50

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

Bill No. 2

Date: AUGUST 3, 2011

Subject: **PUBLIC COMMENTS**

FROM: Jim Slowik, Mayor

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

SUMMARY STATEMENT

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

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

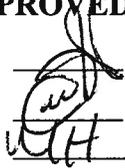
Agenda Bill No. 2/A 3A

Date: August 3, 2011

Subject: Noise Permit – Habitat for Humanity

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 Habitat for Humanity of Island County for amplified sound associated with a block party celebration for new homeowners and volunteers scheduled for August 21st, 2011.

AUTHORIZATION:

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

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

SUMMARY STATEMENT:

Habitat for Humanity of Island County submitted a Noise Permit request for amplified sound associated with a block party celebration for new homeowners and volunteers scheduled for August 21th, 2011. The amplified sound will consist of a sound system for a ukulele band.

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

STANDING COMMITTEE REVIEW:

Not required.

RECOMMENDED ACTION:

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

ATTACHMENTS:

Noise Permit.

MAYOR'S COMMENTS:

CITY OF OAK HARBOR

NOISE PERMIT

Name: Habitat for Humanity

Location of Event: NW Longview Drive in the
Crosby Commons Development

Date of Event: August 21, 2011

Hours of Operation: 1:00 p.m. – 4:00 p.m.

Permitted Noise: Sound system for music and
announcements

Approval Conditions: None

Date of City Council
Approval:

Issued this day of August, 2011.

Karen Crouch, Special Events Coordinator

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

Please post this notice on site

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

Agenda Bill No. CJA 38

Date: August 3, 2011

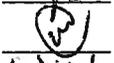
Subject: Noise Permit – Lighthouse Christian
Center

FROM: Paul Schmidt, City Administrator 

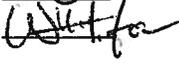
INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:



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 Lighthouse Christian Center for amplified sound associated with a church picnic scheduled for August 28th, 2011, at Windjammer Park.

AUTHORIZATION:

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

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

SUMMARY STATEMENT:

Lighthouse Christian Center submitted a Noise Permit request for amplified sound associated with a church picnic scheduled for August 28th, 2011. The amplified sound will consist of a sound system for a live band.

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

STANDING COMMITTEE REVIEW:

Not required.

RECOMMENDED ACTION:

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

ATTACHMENTS:

Noise Permit.

MAYOR'S COMMENTS:

CITY OF OAK HARBOR

NOISE PERMIT

Name: Lighthouse Christian Center

Location of Event: Windjammer Park Gazebo
and surrounding area

Date of Event: August 28, 2011

Hours of Operation: 12:00 p.m. – 3:00 p.m.

Permitted Noise: Sound system for live band

Approval Conditions: Face speakers away from campground
area

Date of City Council
Approval:

Issued this day of August, 2011.

Karen Crouch, Special Events Coordinator

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

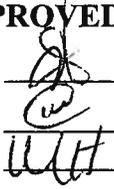
Please post this notice on site

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

Agenda Bill No. OJA 30
Date: August 3, 2011
Subject: Noise Permit – DK Party

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 Joseph Araucto for amplified sound associated with a party scheduled for August 27th, 2011, at Windjammer Park.

AUTHORIZATION:

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

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

SUMMARY STATEMENT:

Mr. Araucto submitted a Noise Permit request for amplified sound associated with a party scheduled for August 27th, 2011. The amplified sound will consist of a sound system for a ukulele band.

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

STANDING COMMITTEE REVIEW:

Not required.

RECOMMENDED ACTION:

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

ATTACHMENTS:

Noise Permit.

MAYOR'S COMMENTS:

CITY OF OAK HARBOR

NOISE PERMIT

Name: DK Party

Location of Event: Windjammer Park Gazebo
and surrounding area

Date of Event: August 27, 2011

Hours of Operation: 10:00 a.m. – 7:00 p.m.

Permitted Noise: Sound system for ukulele band

Approval Conditions: Face speakers away from campground
area

Date of City Council
Approval:

Issued this day of August, 2011.

Karen Crouch, Special Events Coordinator

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

Please post this notice on site

LO

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

Bill No. N/A 30
Date: August 3, 2011
Subject: Jail Services Contract

FROM: Rick Wallace, Chief of Police

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

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

PURPOSE:

This is a proposed Interlocal Agreement for Jail Services between the City of Oak Harbor and the City of Burlington for the purpose of providing occasional Oak Harbor City Jail services for the City of Burlington.

AUTHORITY:

OHMC 2.390.010 Council approval.

Unless otherwise authorized or directed by law, ordinance or council resolution (for example, responding to an emergency), all contracts over \$30,000 require council approval. (Ord. 1470 § 8, 2006).

OHMC 2.310.050 Professional service contracts.

Contracts for professional services, including contracts for legal and consulting services, are not subject to the bidding requirements of Chapters 2.310 through 2.390 OHMC. The mayor or his/her designee shall promulgate procedures and standards for the approval of such contracts. Contracts for architectural and engineering services shall be awarded in accordance with Chapter 2.350 OHMC and Chapter 39.80 RCW. For purposes of this section, "professional services" are those services involving skill, education and special knowledge and where the work is predominately mental and intellectual, rather than physical and mechanical. The mayor shall establish guidelines and procedures for obtaining professional services. Professional service contracts in excess of \$30,000 shall require approval by the city council. Contracts for professional services under \$30,000 shall be reviewed by the finance director or the city attorney prior to signing to assure compliance with the Oak Harbor biannual budget, provisions of Chapter 2.390 OHMC and purchasing.

Jail Services Contract
August 3, 2011

DESCRIPTION:

Within the last few months the police department was approached by the Police Chief for the City of Burlington and other law enforcement agencies in the region, inquiring if the Oak Harbor City Jail had the ability to take in prisoners, sentenced and pre-sentenced, for short periods of time. An analysis of the daily population of the jail determined that we have the capability to take in several prisoners, on a daily basis, without compromising the operations of the jail.

The attached interlocal agreement for jail services was prepared and has been approved by the Police Chief, the City Attorney and the Mayor from the City of Burlington.

Highlights of the proposed contract are:

- The Oak Harbor City Jail is not guaranteeing cell space. It is space available only.
- The City of Burlington is responsible for transportation to and from the Jail.
- The City of Burlington is responsible for medical expenses for their prisoners.
- The fee is \$65.00 per prisoner per day.
- The proposed contract is essentially identical to the one in existence between the City of Oak Harbor and the City of Anacortes.

RECOMMENDATION

Approve and authorize the Mayor to sign the Interlocal Agreement for Jail Services between the City of Burlington and the Oak Harbor City Jail.

ATTACHMENTS

1) Proposed Jail Services Contract

MAYOR'S COMMENTS:



July 18, 2011

Tim Sterkel
860 S.E. Barrington Drive
Oak Harbor, WA 98277

Dear Mr. Sterkel:

At the July 14, 2011 City Council meeting, the council approved the Interlocal Agreement for Jail Services with the City of Oak Harbor. Enclosed is the original agreement with City of Burlington signatures.

The document is ready for City of Oak Harbor signatures.

Please return a fully executed copy to me. Call if you have any questions or concerns.

Sincerely,

Judy Sheahan
Administrative Assistant

Enclosure

INTERLOCAL AGREEMENT
FOR JAIL SERVICES

THIS INTERLOCAL AGREEMENT FOR JAIL SERVICES (hereinafter "Agreement") is made and entered into by and between the CITY OF OAK HARBOR (HEREINAFTER "Oak Harbor"), and the CITY OF BURLINGTON (hereinafter "Burlington").

WHEREAS, Chapters 39.34 and 70.48 RCW authorize cities to enter into contracts for jail services that specify the responsibilities of each party; and

WHEREAS, Oak Harbor has a jail facility, and Burlington desires to enter into this agreement to utilize Oak Harbor's jail facility and the terms and conditions of this agreement;

NOW, THEREFORE, in consideration of the mutual covenants, conditions and promises contained herein, Oak Harbor and Burlington mutually agree as follows:

1. **DEFINITIONS.** Unless the context clearly shows another usage is intended, the following terms shall have the following meanings in this agreement:
 - a. Oak Harbor Jail means a place owned and operated by Oak Harbor primarily designed, staffed and used for the housing of adults charged with a criminal offense, for the punishment and correction of offenders after conviction of a criminal offense, or for confinement and/or holding during a criminal investigation, or a civil detention to enforce a court order. As of the date of the execution of this agreement, this jail is located at 865 SE Barrington Dr., Oak Harbor, WA 98277
 - b. Burlington prisoner means a person arrested by Burlington Police and held and confined in the Oak Harbor Jail (post-trial) pursuant to a violation of an Burlington ordinance, or a violation of State law which designates the crime for which the person is held to be a misdemeanor or gross misdemeanor. The term Burlington prisoner shall not include a person arrested for a felony offense by Burlington Police, a person arrested on a warrant issued by another jurisdiction or for charges initiated by a non-Burlington Police Officer, or a person charged by the County Prosecutor with a felony or an attempt to commit a felony, even if there is a plea to, or a conviction of a lesser offense. An Burlington prisoner shall not include juveniles.
2. **JAIL AND HEALTH SERVICES.**
 - a. For prisoners accepted under this Agreement, Oak Harbor shall accept Burlington's prisoners and furnish jail facilities, booking, custodial services, and personnel for the confinement of Burlington prisoners equal to those Oak Harbor provides for the confinement of its own prisoners. Medical costs for emergency health care for Burlington prisoners shall be the responsibility of Burlington. In

the event an inmate is transported to the hospital, the hospital shall be directed to bill Burlington directly. Oak Harbor shall notify Burlington prior to outside medical care being provided for an Burlington prisoner; provided, however, that when emergency medical care is required in life-threatening circumstances, the notification may occur as soon as practicable, which may be after emergency medical care has been provided.

3. **ACCEPTANCE OF PRISONERS.**

- a. Burlington understands that Oak Harbor will accept prisoners on a nonexclusive basis under this Agreement. The acceptance of prisoners is subject to space being available. Oak Harbor reserves the right to reserve space in the jail for its anticipated prisoner needs and may require the removal of Burlington prisoners to accommodate Oak Harbor prisoners.
- b. Prisoners may not be continuously incarcerated in the Oak Harbor Jail longer than thirty (30) days or contrary to any Federal or State statutes or regulations or constitutional requirements for the Oak Harbor Jail.
- c. Burlington agrees that if any Burlington prisoner is deemed out of control and dangerous by the personnel at the Oak Harbor Jail, on eight (8) hours' notice from Oak Harbor to Burlington, Burlington shall make arrangements to remove and transport to another facility. Oak Harbor may also refuse to book any persons who are suspected to be an extreme danger to themselves or to other inmates.

4. **RATE AND PAYMENT.** Burlington shall pay Oak Harbor at a rate per prisoner on a 24-hour basis (or portion of 24 hours) set out in **Schedule A** attached hereto. Said rates shall be adjusted, from time to time, by mutual agreement in advance of the renewal of any term of this agreement as provided in Section 16.

- a. Payment shall be made promptly, by Burlington to Oak Harbor, within thirty (30) days after a monthly statement is submitted by Oak Harbor to Burlington.
- b. Each party may examine the other's books and records to verify charges. If an examination reveals an improper charge, an adjustment shall be applied to the next month's statement, or if the agreement has terminated, by an appropriate payment from one to the other. The parties agree to meet at least once each year to examine and verify charges for the previous year. The parties shall enter into a written agreement verifying and reconciling charges, for the previous year, and closing the books on an annual basis.
- c. Should the prisoner be sentenced to pay a portion of the daily rate, that amount will be collected by the City of Burlington.

5. **DELIVERY OF OFFENDERS.**

- a. Burlington shall provide or arrange for transportation of its prisoners to and from the Facility except when the transportation is determined by Oak Harbor staff to be necessary to secure emergency medical evaluation or treatment, or when transportation is required to support the orderly operation of the Jail.
- b. Oak Harbor shall not provide transportation, except in extraordinary situations when Oak Harbor and Burlington mutually agree transportation should be provided by Oak Harbor rather than by Burlington.
- c. Transport with Costs. For any transports by Oak Harbor required by court order or made at Burlington's request, Burlington shall reimburse Oak Harbor for all costs associated with such transport.
- d. Contract Agency Transport. Burlington shall provide at least twenty-four (24) hours written notice to Oak Harbor prior to transporting a prisoner from the Oak Harbor Jail. Burlington shall be responsible for retaking custody of a prisoner at the Oak Harbor Jail for transporting the prisoner.

6. **RETURN OF OFFENDERS.**

- a. Return of Offenders to Burlington. Burlington may demand that its Offenders be returned to its custody at any time. These transfers will be at Burlington's expense if made by other than Oak Harbor's regularly-scheduled trips to the scheduled location.
- b. As soon as practical but not later than seven (7) days after receiving a request from Oak Harbor to return an Offender, Burlington will accept custody of any Offender whom Oak Harbor requests to be returned to Burlington's custody. Oak Harbor shall be responsible for transportation of the Offender to the nearest suitable location as designated by Burlington in this event.
- c. Should an Offender be returned to Burlington as a result of any action by Burlington or by a court of competent jurisdiction that prevents the Offender's confinement at Oak Harbor's Facility, Burlington shall bear the cost, if made by other than Oak Harbor's regularly-scheduled trips to the scheduled location. Burlington shall accept custody immediately, under such circumstances.
- d. An Offender who completes his sentence, is released by a court order, or is placed on probation or parole may be released directly from Oak Harbor's Facility. Approximately one (1) week before release, Oak Harbor shall complete a "Wants and Warrants" check on the Offender and shall notify Burlington and the interested jurisdiction if there are any wants or warrants found.

7. **TRANSPORTATION AND SECURITY.** Burlington shall provide transportation and security for Offenders being transported to and from court appearances unless other arrangements are made with Oak Harbor.

Burlington shall reimburse Oak Harbor for the cost of any such transportation and security at an hourly rate of Twenty Eight Dollars and Eighty-two Cents (\$28.82) and for time and a half at Forty-three Dollars and Twenty-three Cents (\$43.23) and at the federal mileage rate as it currently exists or is hereafter amended.

8. **DURATION.** The initial term of this agreement shall commence upon execution by both parties and shall expire on December 31, 2012. Burlington shall have an option to renew this agreement for a two-year term commencing on January 1, 2013, and ending on December 31, 2014.
9. **RECORD KEEPING (BOOKING).** Oak Harbor agrees to maintain a system of record keeping relative to the booking and confinement of each Burlington prisoner in such style and manner as equivalent to Oak Harbor's records pertaining to its own prisoners. Such records shall include, but not be limited to, the following information: defendant's name, charge, booking date, and release date. Along with monthly billing statements, Oak Harbor shall submit to Burlington, or its authorized representatives, copies of said records.
10. **BOOKING PROCEDURE.** Prisoners will be booked by Oak Harbor according to procedures and policies of Oak Harbor, by completing for each such prisoner, an appropriate booking sheet with a copy to be provided to Burlington, if requested. Personal property will be held by Oak Harbor in the same manner as for its own prisoners.
11. **RELEASE OF BURLINGTON PRISONERS FROM OAK HARBOR JAIL.** No Burlington prisoner confined in the Oak Harbor Jail subject to this Agreement shall be released except:
- a. In compliance with orders of the court in those matters in which the courts have jurisdiction;
 - b. If the prisoner has served his or her sentence;
 - c. As determined by the Oak Harbor Chief of Police, or his designee, as part of a plan to reduce prisoner population as a result of facility overcrowding; PROVIDED, however, Burlington prisoners shall be released or relocated to the Skagit County Jail on a "first in first out" basis.
 - d. Where in the discretion of the Jail Supervisor or the Special Operations Lieutenant such release is warranted, Oak Harbor shall notify Burlington Police of such event, as soon as possible.

12. **ACCESS TO BURLINGTON PRISONERS.** All Burlington police officers, investigators, interpreters, mental health professionals, the Prosecuting Authority and the prisoner's counselor, or assigned counsel, shall have the right to interview the prisoner inside the confines of the Oak Harbor Jail, subject only to necessary security rules. Interview rooms will be made available to Burlington Police and others, in equal priority, with those made available for Oak Harbor prisoners.
13. **OPERATION OF JAIL.** Oak Harbor agrees to operate the jail to current professional standards and practices in accordance with all State and Federal standards, whether set by constitution, statute or regulation. Burlington shall receive equal treatment to that supplied to Oak Harbor's own prisoners.
14. **INDEMNIFICATION.**
 - a. Except as otherwise provided in 14(c), Burlington agrees to defend, indemnify and hold harmless Oak Harbor and its elected officials, officers, agents and employees, or any of them, from any and all claims, actions, suits, liability, loss, costs, expenses and damages of any nature whatsoever by reason of or arising out of any act of omission of Burlington, its elected officials, officers, agents and employees, or any of them in arresting, detaining, charging or transporting prisoners, except to the extent said claim, action, loss or damage is the result of the negligence of Oak Harbor. In the event that any suit based upon such a claim, action, loss or damage is brought against Oak Harbor, Burlington shall defend the same at its sole cost and expense; provided, that Oak Harbor retains the right to participate in said suit if any principle of governmental or public law is involved, and if a final judgment is rendered against Oak Harbor, its elected officials, officers, agents, employees or any of them, or jointly against Oak Harbor and Burlington and their respective elected officials, officers, agents and employees or any of them, Burlington shall satisfy and discharge the same.
 - b. Except as otherwise provided in 14(c), Oak Harbor agrees to defend, indemnify and hold harmless Burlington and its elected officials, officers, agents and employees, or any of them, from any and all claims, actions, suits, liability, loss, costs, expenses and damages of any nature whatsoever by reason of or arising out of any act or omission of Oak Harbor, its elected officials, officers, agents and employees, or any of them in confining or releasing persons who have been presented to and accepted by the Oak Harbor Jail by Burlington, its elected officials, officers, agents and employees while said persons are in the jail or in the custody of Oak Harbor outside the jail, except to the extent said claim, action, loss or damage is the result of the negligence of Burlington. In the event that any suit based upon such a claim, action, loss or damage is brought against Burlington, Oak Harbor shall defend the same at its sole cost and expense; provided that Burlington retains the right to participate in said suit if any principle of governmental or public law is involved, and if a final judgment is rendered against Burlington, its elected officials, officers, agents and employees or any of them, or jointly against Burlington and Oak Harbor and their respective elected

officials, officers, agents and employees or any of them, Oak Harbor shall satisfy and discharge the same.

- c. In the event of the concurrent negligence of the parties, each party shall be responsible for payment of any claim or judgment in proportion to the percentage of fault attributed to that party.
 - d. The indemnities provided for in this paragraph 14 shall apply to all legal costs and attorneys' fees incurred by the party indemnified. In any action to enforce the indemnities provided for in this paragraph, the prevailing party shall be entitled to recovery of costs and attorneys' fees for the enforcement of these indemnities.
15. **INSURANCE.** At the date of entering into this agreement, Burlington and Oak Harbor are each members of the Washington Cities Insurance Authority (WCIA). So long as each city is a member of the WCIA, it agrees to abide by the WCIA compact and all other applicable rules, regulations and requirements that are necessary to keep each city as a member in good standing. In the event either party to this agreement ceases to be a member of WCIA, the parties shall renegotiate the insurance provisions of this agreement with the intent being to provide insurance which adequately covers the nature of the risks associated with each party's responsibilities under this agreement.
16. **TERMINATION OF AGREEMENT.** Burlington shall provide written notice of its intent to terminate this agreement without cause not less than 180 days prior to expiration of this agreement (or any extension or renewal thereof). Oak Harbor shall provide written notice of its intent to terminate this agreement not less than one hundred eight (180) days prior to expiration of this agreement (or any extension or renewal thereof). In the event of termination of this agreement (or any extension or renewal thereof), the parties will work cooperatively to ensure the orderly transition of defendants from Oak Harbor Jail to another facility.
17. **DISPUTE RESOLUTION.**
- a. The Police Chiefs for each city and appropriate staff, shall meet annually to discuss any pending issues and to resolve disputes, if any.
 - b. It is the parties' intent to resolve any disputes relating to the interpretation or application of this agreement informally through discussions at the staff level. In the event disputes cannot be resolved informally, resolution shall be sought by the City Administrators. If the City Administrators reach no resolution within thirty (30) days, the parties agree to submit the dispute to nonbinding mediation/dispute resolution.
18. **WAIVER.** No waiver of any right under this Agreement shall be effective unless made in writing by the authorized representative of the party to be bound thereby. Failure to insist upon full performance on any one or several occasions does not constitute consent to or waiver of any later nonperformance.

19. **ASSIGNMENT.** Neither this Agreement nor any interest herein or claim hereunder shall be assigned or transferred, in whole or in part, by either Oak Harbor or Burlington to any other person or entity without the prior written consent of the other party. In the event that such prior written consent to an assignment is granted, the assignee shall assume all duties, obligations and liabilities of its assignor stated in this Agreement.
20. **INDEPENDENT CONTRACTOR.** Each party to this agreement is an independent contractor with respect to the subject matter herein. Nothing in this Agreement shall make any employee of Oak Harbor an employee of Burlington, and vice versa, for any purpose, including, but not limited to: withholding of taxes, payment of benefits, worker's compensation pursuant to Title 51 RCW, or any other rights or privileges accorded to either city's employee(s) by virtue of their employment. At all times pertinent hereto, employees of Oak Harbor are acting as Oak Harbor employees and employees of Burlington are acting as Burlington employees.
21. **PARTIAL INVALIDITY.** Whenever possible, each provision of this agreement shall be interpreted in such a manner as to be effective and valid under applicable law. Any provisions of this agreement which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provisions hereof, and such other provisions shall remain in full force and effect.
22. **NO THIRD-PARTY RIGHTS.** Except as expressly provided herein, nothing in this Agreement shall be construed to permit anyone other than the parties hereto and their successors and assigns to rely upon the covenants and agreements herein contained nor to give any such third party a cause of action (as a third-party beneficiary or otherwise) on account of any nonperformance hereunder.
23. **INTEGRATION.** This written Agreement constitutes the complete and final agreement between Oak Harbor and Burlington. There are no other oral or written agreements between the parties as to the subjects covered by this Agreement. No changes or additions to this Agreement shall be valid or binding upon either party unless such change or addition be in writing and executed by both parties.
24. **NOTICES AND ADMINISTRATORS.** Unless stated otherwise herein, all notices and demands shall be in writing and sent or hand delivered to the parties at their addresses as follows:

TO CITY OF BURLINGTON:

Greg Thramer, Finance Director
833 S Spruce Street
Burlington, WA 98233

TO CITY OF OAK HARBOR:

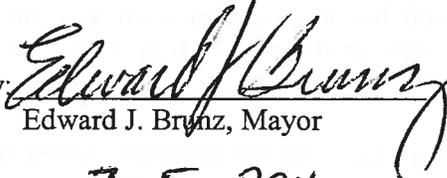
City Finance Director
865 SE Barrington Dr.
Oak Harbor, WA 98277

The Oak Harbor Chief of Police shall serve as Oak Harbor's Administrator or responsible official, for this Agreement. The Chief of Police, for Burlington, shall serve as Burlington's Administrator or responsible official, for this Agreement.

- 25. **GOVERNING LAW.** This Agreement shall be governed by the construed in accordance with the laws of the State of Washington as they now read or are hereafter amended.
- 26. **APPROVAL AND FILING.** Each party shall approve this Agreement by resolution, ordinance or otherwise pursuant to the laws of the governing body of said party. The attested signature of the officials identified below shall constitute a presumption that such approval was properly obtained. A copy of this Agreement shall be filed with the Skagit County Auditor's office pursuant to RCW 39.34.040.

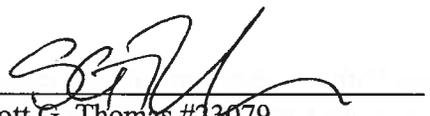
IN WITNESS WHEREOF, the parties have hereunto set their hands and seals this ____ day of _____ 2011.

CITY OF BURLINGTON

By: 
Edward J. Brunz, Mayor

Date: 7-15-2011

APPROVED as to form:


Scott G. Thomas #23079
City Attorney

Date: 7-15-11


Greg Thamer
Finance Director

Date: _____

CITY OF OAK HARBOR

By: _____
Jim Slowik, Mayor

Date: _____

APPROVED as to form:

Margery Hite, #8450
City Attorney

Date: _____

ATTEST:

Connie Wheeler, City Clerk

SCHEDULE A

Daily maintenance fee:

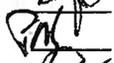
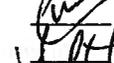
2011	\$65.00
2012	\$68.00

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

Bill No. 4
Date: August 3, 2011
Subject: Pioneer Way Project Update

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

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

PURPOSE

This agenda bill presents the monthly report to the City Council with respect to the Pioneer Way Reconstruction Project.

SUMMARY STATEMENT

The City Council has expressed interest in receiving regular updates from project staff on the progress of the Pioneer Way Reconstruction Project. This agenda bill and attachment are intended to supplement the oral report provided at the Council meeting.

In summary, the Pioneer Way construction project remains shut down pending the issuance of archaeological permits and permission from the State Department of Archaeology and Historic Preservation (DAHP) to continue working. Efforts to obtain these permits and other issues are highlighted below:

- Two Emergency Archaeological Excavation Permits are under review by DAHP – one for the Pioneer Way project area and one for the gravel pit north of town where the excavated materials were taken. The permits cover boundary delineation of the archaeological site, recovery of disturbed ancestral remains and a plan for the ultimate disposition of those remains.
- Both sites have been fenced off for security and the City has retained Security Services Northwest of Port Townsend to provide site security at the Pioneer Way site on weekends and from 5 pm to 8 am on weekdays.
- Last Tuesday, July 26, 2011, DAHP gathered together representatives of the interested and consulting Tribes and City officials to discuss the two archaeological permits.
- The City has submitted a formal request to DAHP to allow the selective placement of

gravel in various locations to enhance pedestrian safety and ADA mobility.

- The suspension of the City's contract with Strider Construction has now been extended through August 8, 2011.

With respect to expenditures, it is clear that the need to deal with the archaeological finds and the spoils piles removed from the site will result in significant changes to the project budget, both overall and by major line item. The attached spreadsheet provides an overview of running costs by budget category and estimated July expenditures. Please note that we are now tracking costs associated with the archaeological work in three areas – the investigation itself (subject to Council approval of a contract with an archaeologist), construction monitoring for the work in late June and after work resumes, and site security and other related expenses.

In the new column entitled "Project Estimate," no amounts have been entered as yet for the three line items encompassing the archaeology work. These omissions are deliberate in that the scope of work will in large part be determined by the State permit. At this point, without the permits in hand, there are too many unknowns to forward a reasonable estimate. Likewise, there could very well be a need to increase our contract amounts with Strider Construction, KBA and Fakkema & Kingma due to the archaeological work and associated project delays. Here again, we will not have a reliable basis for an estimate on any increases until we have permits.

STANDING COMMITTEE REPORT

Regular updates on Pioneer Way are provided to the Governmental Services and Public Works and Utilities Standing Committees.

RECOMMENDED ACTION

Information only – no action required

ATTACHMENTS

1. Pioneer Way Project Running Costs – July 2011

MAYOR'S COMMENTS

Pioneer Way - July Running Costs and Estimated Expenditures

	Contract/Budget	July 2011	Total to Date	Project Estimate
Pre-Construction Costs	\$ 1,004,592		\$ 1,004,592	\$ 1,004,592
Roadway/City Utilities/Parking Alternate	\$ 4,007,976	\$ 200,000	\$ 2,707,415	\$ 4,007,976
City Share of PSE/Frontier Undergrounding	\$ 630,000 ¹	\$ 65,100	\$ 70,600	\$ 630,000
Inspection/testing	\$ 23,012	\$ 4,260	\$ 15,452	\$ 23,012
Surveyor	\$ 117,385 ²	\$ 21,487	\$ 80,136	\$ 117,385
Construction Management	\$ 398,975 ³	\$ 20,000	\$ 200,768	\$ 398,975
Other	\$ 185,000 ⁴	\$ 5,000	\$ 29,185	\$ 185,000
Public Art (1% of project)	\$ 80,000		\$ -	\$ 65,000
Construction Mitigation Outreach	\$ 167,500	\$ 10,000	\$ 56,350	\$ 167,500
Archaeological Investigation				
Archaeological Monitoring		\$ 10,000	\$ 10,000	
Site Security/Other (through Sept)		\$ 25,960	\$ 25,960	
Contingency	\$ 257,863 ⁵	\$ 4,897	\$ 4,897	\$ 257,863
Total Project Cost	\$ 6,872,303	\$ 366,704	\$ 4,205,355	\$ 6,857,303

- NOTES:**
- 1) estimated City share of costs associated with undergrounding
 - 2) includes both contracts for pre-construction and construction survey work
 - 3) includes only NTE limit on KBA Contract
 - 4) city direct costs, ie office space, equipment, permit fees
 - 5) 10% contingency, and approximately \$50k for engineering design

Source	Amount
Hotel/Motel	\$15,000
Art Funds	\$80,000
Arterials	\$130,000
Wastewater	\$1,000,000
Stormwater	\$520,000
REET 1	\$2,100,000
REET 2	\$2,700,000
Island County Economic Development Grant	\$1,000,000
Water	\$200,000
Total	\$7,745,000

Note: updated amounts per 2011-2012 Biennial Budget

Pioneer Way Construction - Biennial Budget 2011-2012

Fund: 104 ARTERIALS

Revenue:

	2011	2012
104.00.308.080.0000	527,984	334,811
104.00.334.003.8000	-	-
104.00.336.000.8700	123,244	125,000
104.00.361.011.0000	-	-
104.00.367.011.0000	1,800	100
104.00.397.000.0000	6,520,000	-
104.10.337.007.1000	1,000,000	-
Fund: 104 Total Revenue:	8,173,028	459,911

Expenditure:

104.00.508.080.0000	334,811	240,889
104.00.541.010.4100	-	-
104.00.541.030.4900	-	-
104.00.542.010.9941	89,217	94,022
104.00.542.030.4100	10,000	10,000
104.00.545.030.4100	-	-
104.00.595.020.6100	-	-
104.00.597.099.1100	-	-
104.10.543.030.4600	14,000	15,000
104.10.595.030.4600	-	-
104.10.595.030.6300	75,000	100,000
104.10.595.030.6310	7,650,000	-
104.10.595.030.6320	-	-
104.10.595.031.6300	-	-
104.10.595.033.6300	-	-
Fund: 104 Total Expenditure:	8,173,028	459,911

Fund: 104 Total Net Budget:

	-	-
--	---	---

Budgeted Revenues

Water	\$200,000
Sewer	1,000,000
Storm Drain	520,000
Arterials Fund	130,000
REET I	2,100,000
REET II	2,700,000
	<u>6,650,000</u>

Total Budgeted Sources - Arterials Fund #104

	1,000,000
	<u>\$7,650,000</u>

Other budgeted sources

Lodging Tax Fund #116 - Advertising	15,000
Art Fund #115 - Pioneer Way Artwork	80,000
	<u>95,000</u>

Total project funding sources - all sources

	<u>\$7,745,000</u>
--	--------------------

Note: Utility revenues determined by Public Works/Engineering

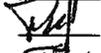
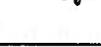
77

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

Bill No. 5
Date: August 3, 2011
Subject: SR-20 & SW Erie Street Culvert
Design Project Award of Bid

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

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

PURPOSE

This agenda bill recommends awarding a contract for construction of the SR-20 & SW Erie Street Culvert Design Project to C. Johnson Construction Inc. in the amount of \$31,738.00.

AUTHORITY

Oak Harbor Municipal Code Chapter 2.330.010 provides for the contracting for Public Works and Improvements as follows:

Except as otherwise authorized by Chapters 39.04 and 39.28 RCW, or RCW 35.22.620, relating to emergency public works, or other applicable general state law, as now enacted or as hereafter amended, all public works and improvements shall be done by contract pursuant to public notice and call for competitive bids in accordance with this chapter whenever the estimated cost of such public work or improvement, including the cost of materials, supplies, equipment and labor, will exceed the sum of \$30,000 if more than one craft or trade is involved with the public works project, or in excess of \$20,000 if only a single craft or trade is involved with the public works project or the public works project is street signalization or street lighting; provided, the city may use a small works roster pursuant to RCW 35.22.620. It is further provided, that the council may authorize public works construction projects without bid up to the bid limitation in RCW 35.22.620 as now in effect or as hereafter amended.

SUMMARY STATEMENT

The proposed construction project will divert flow from one storm drain system to another to reduce flooding at the intersection of SR-20 and Pioneer Way. The proposed project will construct two (2) storm drain manholes connected by 24-inch storm drain pipe at the intersection of SR-20 and SW Erie Street. Work will be performed at night and in cooperation with the ongoing SR-20 paving project. The work is being coordinated with WSDOT as part of the ongoing overlay project.

The project is needed to help alleviate recurrent flooding that occurs near the intersection of SR-20 and SE Pioneer Way. Consistent with the Comprehensive Storm Water Plan, portions of the storm water flows from the west side of Oak Harbor can be diverted towards the Freund Marsh area for release to Oak Harbor Bay through the existing tide gate structure. Doing so will reduce the amount of storm water discharged through the 42-inch outfall in Windjammer Park thereby reducing the flooding potential. While additional study and engineering is needed to determine the volume that can be diverted, construction of this short section of drainage pipe will allow for future diversions without having to work within the SR-20 roadway being paved this year. The design includes flexibility for public works staff to alter, adjust or shut off diversion of flows as may be needed pending further engineering study of the Freund Marsh area for additional storm water conveyance and treatment.

DISCUSSION:

The engineer's estimate for the project ranged between \$25,000 and \$29,900. Pursuant to RCW 35.22.620 staff developed the project and bid procurement based on the small works roster process. Contractors appearing on the Municipal Research and Services Center of Washington (MRSC) small works roster were solicited for bids. The project was anticipated to be less than the \$30,000 administrative contract authority vested with the Mayor in OHMC 2.390.020 and as such Council authorization to advertise the project was not required. C. Johnson Construction was the only bidder with a proposed cost of \$31,738.00. As the single bid was higher than the \$30,000 limit contained in OHMC 2.390.020, Council authorization is required to proceed with award of the contract.

Amount of the Contract: Staff received and opened 1 sealed bid on June 17, 2011. The bid totals are tabulated below.

Contractor	Location	Bid Total
C. Johnson Construction	Oak Harbor, WA	\$31,738.00
<i>Engineer's Estimate</i>	<i>Oak Harbor, WA</i>	<i>\$25,000 to \$29,900</i>

Staff reviewed the bid prices and is knowledgeable of the qualifications and experience of the low bidder. It is recommended that a contract in the amount of \$31,738.00 be awarded to C. Johnson Construction Inc., who is the lowest responsible bidder.

While the sole bid is slightly higher than the engineer's estimate, the bid price is reasonable and appropriate for the scope of work.

City staff will retain responsibility for the construction administration and inspection.

Construction Contingency: Most construction projects involve change orders and modifications to the contract plans. Delays in processing change order requests can result in costly delay claims against the City. To minimize the possibility of delays and the resulting claims, staff requests that the City Engineer be authorized to administratively approve up to \$5,000 approximately 15% of the contract amount, for change orders.

Funding: Funding for the project was included in the storm drain division budget. ✓

Justification: The project is needed to manage and control storm water and reduce the flooding potential at the intersection of SR-20 and SE Pioneer Way.

STANDING COMMITTEE REPORT

This project was discussed at the Public Work Committee as part of the monthly major engineering project report.

RECOMMENDED ACTION:

Authorize the Mayor to sign a contract with C. Johnson Construction, Inc. in the amount of \$31,738.00 plus all applicable taxes and authorize the City Engineer to administratively approve changes to the construction contract totaling not more than \$5,000.

ATTACHMENTS:

Contract Form
Construction Drawings

MAYOR'S COMMENTS:



AGREEMENT

THIS AGREEMENT is entered into by and between the CITY OF OAK HARBOR (hereinafter called the Owner) and C. Johnson Construction, Inc. hereinafter called the Contractor).

The Owner and the Contractor agree as follows:

ARTICLE 1. WORK.

The work shall consist of the installation of two 60-inch diameter storm drain manholes and 24-inch HDPE storm drain pipe. Additional work includes, but is not limited to, asphalt pavement repair, roadway striping, and property restoration. All work shall be in conformance with the Contract Plans, Contract Provisions and 2010 Standard Specifications for Road, Bridge and Municipal Construction.

ARTICLE 2. CONTRACT TIME.

The Contractor shall be substantially complete with the Work within twenty one (21) calendar days (the Physical Completion Date) of a date specified in the Notice to Proceed.

ARTICLE 3. ROAD CLOSURE

No Road Closures will be allowed without prior approval from the Engineer.

ARTICLE 4. CONTRACT PRICE.

The Owner shall pay the Contractor the amount(s) set forth in the Proposal (in United States dollars) for completion of the Work in accordance with the Contract Documents.

ARTICLE 5. CONTRACT DOCUMENTS.

The Contract Documents, which comprise the entire agreement between the Owner and the Contractor concerning the Work, consists of the following:

1. This Agreement and contract form;
2. The Call for Bids;
3. The Contractor's Proposal including the bid, bid schedule(s), information required of Bidder, and all required certificates and affidavits;
4. The Performance Bond and the Labor and Material Payment Bond;
5. Change Orders and written Change Directives issued after the effective date of this Agreement;

6. Addenda numbers None, inclusive;
7. The Special Provisions;
8. Appendices None, inclusive;
9. The Plans (or drawings):
10. Amendments to the WSDOT Standard Specification for Road, Bridge and Municipal Construction 2010 edition;
11. WSDOT Standard Specifications for Road, Bridge and Municipal Construction, 2010 edition;
12. City of Oak Harbor Standard Details;
13. WSDOT Standard Plans;

In the event of any conflict or inconsistency between any of the foregoing documents, the conflict or inconsistency shall be resolved upon the basis of the numerical order. The document or documents assigned the small number or numbers being controlling over any document having a larger number in the numerical order set forth above. Provided, however, although the supplemental conditions incorporate standard specifications by reference, in case of conflict or inconsistency, these standard specifications have a numerical order as shown above.

There are no Contract Documents other than those listed in this Article 5. The Contract Documents may be amended only in writing by Addendum, Change Order or Change Directive as provided in the Contract Documents.

ARTICLE 6. MISCELLANEOUS.

No assignment of any of the Contractor's rights under or interests in the Contract Documents, including but not limited to rights to payment, will be allowed without the prior written consent of the Owner. Unless specifically stated in a written consent to an assignment, no assignment will release or discharge the Contractor-assignor from any duty or responsibility under the Contract Documents.

The Contract Documents are binding upon the Owner and the Contractor, and their respective partners, successors, assigns and legal representatives.

ARTICLE 7. INDEMNIFICATION

The Contractor shall defend indemnify and hold the City, its officers, officials, employees and volunteers harmless from any claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115 then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the City, its officers, officials, employees, and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this agreement.

IN WITNESS WHEREOF, Owner and Contractor have caused this Agreement to be executed the day and year first above written.

CITY OF OAK HARBOR

CONTRACTOR

By _____

By _____

Date _____

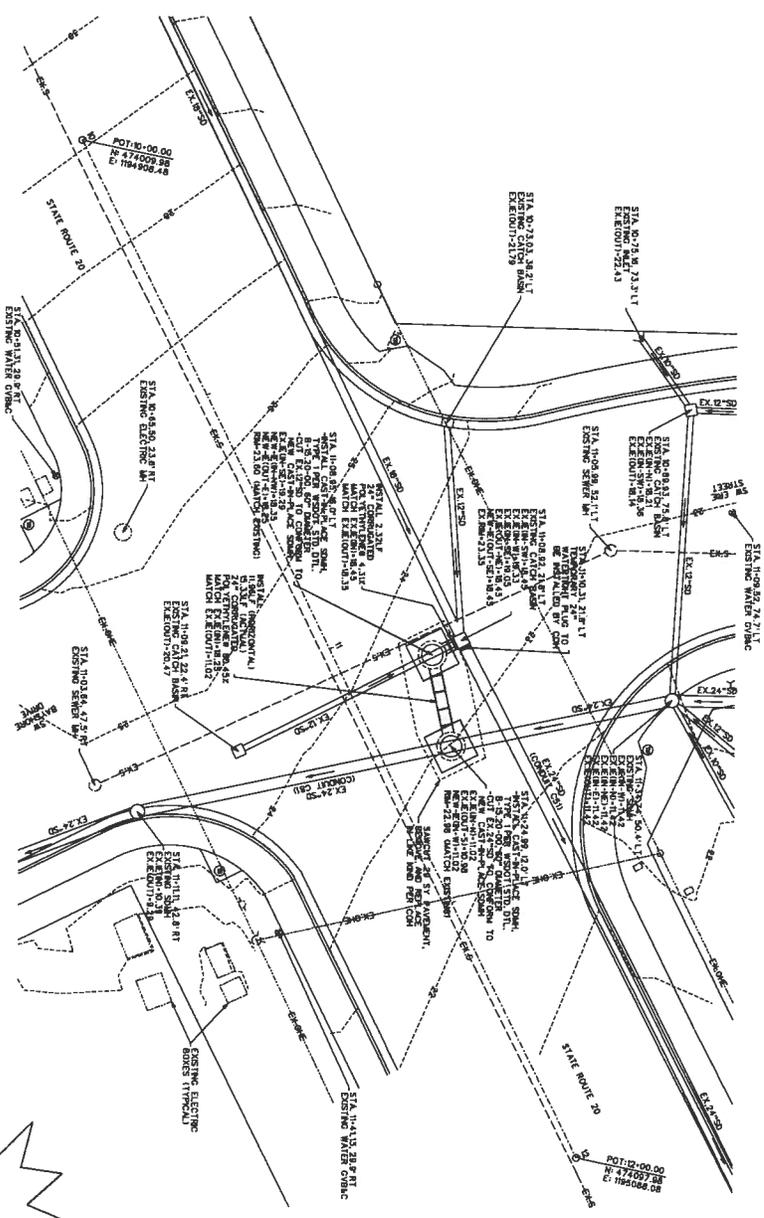
Title _____

Attest _____

Address for giving notices

License No. _____

Agent for service of process: _____



STATIONING ALONG STATE ROUTE 20	
Stationing	Stationing
0	0
5	5
10	10
15	15
20	20
25	25
30	30
35	35

NOTE:
 CONTRACTOR IS TO USE
 EXTREME CAUTION WHEN
 WORKING NEAR EXISTING OVERHEAD
 TRANSMISSION LINES AND AROUND
 EXISTING POWER POLES

NOTES:
 REFER TO SHEET 2-09-4 AND
 SHEET 2-09-5 FOR TYPICAL DESIGN AND DETAIL
 DESIGN AND CONSTRUCTION OF STORM DRAINAGE
 SYSTEMS SHALL BE IN ACCORDANCE WITH THE
 WASHINGTON STATE DEPARTMENT OF TRANSPORTATION
 STANDARD SPECIFICATIONS FOR HIGHWAYS AND
 BRIDGES, LATEST EDITION, AND ANY
 AMENDMENTS THERE TO.
 NEW PAVEMENT SECTIONS TO BE AT LEAST NUMBER NOT SET
 ASHALLY OVER (3") UNLESS OTHERWISE INDICATED.



	PROJECT	SHEET DESCRIPTION	LYON ENGINEERING Civil Engineers • Land Surveyors 565 TECHNICAL DRIVE OAK HARBOR, WA 98277 (360) 278-1400														
	SR20/ERIE STREET/ BAYSHORE DRIVE STORM DRAINAGE	DRAINAGE SYSTEM RECONFIGURATION	<table border="1" style="width: 100%;"> <thead> <tr> <th>NO.</th> <th>DATE</th> <th>REVISIONS</th> </tr> </thead> <tbody> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> </tbody> </table>	NO.	DATE	REVISIONS											
NO.	DATE	REVISIONS															
SHEET NO. 2 OF 2 SHEETS																	

88

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

Bill No. 6
Date: August 3, 2011
Subject: WAIF Contract

FROM: **Paul Schmidt**
City Administrator

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:
[Signature] Jim Slowik, Mayor
[Signature] Doug Merriman, Finance Director
[Signature] Margery Hite, City Attorney, as to form

PURPOSE

This agenda bill is requested by City Council by a motion and second from the June 28, 2011, regularly scheduled City Council meeting.

AUTHORITY

OHMC 1.04.020(3)
Public Notice for full council agenda – Introduction of action.

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

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

FUNDING

Budget Amount: \$ N/A Funds Required: \$ N/A
Appropriation Requested: \$ N/A Appropriation Source: \$ N/A

City of Oak Harbor City Council Agenda Bill

SUMMARY STATEMENT

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

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

STANDING COMMITTEE REPORT

N/A

RECOMMENDED ACTION

N/A

ATTACHMENTS

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

Exhibit B – 2011 WAIF contract.

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

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

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

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

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

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

**FROM: Rick Wallace
Chief of Police**

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

PURPOSE

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

AUTHORITY

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

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

SUMMARY STATEMENT

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



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

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

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

STANDING COMMITTEE REPORT

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

RECOMMENDED ACTION

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

ATTACHMENTS

Proposed 2011 WAIF Contract

MAYOR'S COMMENTS

89

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

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

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

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

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

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

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

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

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

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

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

NOW, THEREFORE THE PARTIES AGREE AS FOLLOWS:

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

2. **SERVICES:**

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

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

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

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

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

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

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

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

- D. Costs: Contractor shall be responsible for all costs of providing services to dogs and cats brought to the holding facility pursuant to this Contract. Such costs shall include all costs of care of such animals, including, but not limited to, food, cleaning supplies, veterinary care and grooming. City will pay the utility bills for heat, electricity, water and sewer provided to the holding facility. Contractor will pay for telephone service. Contractor shall maintain the grounds at the holding facility in a clean and neat appearance. Due to the access difficulties with garbage service, the Contractor will ensure that solid waste is packaged in a manner that will allow for timely disposal by the Animal Control Officer (ACO).
- E. Medical Costs for Sick/Injured Animals Picked Up By Animal Control: Contractor shall be responsible for providing veterinary care to any and all dogs or cats impounded or quarantined by City or Navy personnel authorized to utilize the animal control holding facility under this Contract. In the event that such authorized personnel assume custody of a dog or cat in need of immediate veterinary attention, the personnel will first attempt to contact the Shelter Manager before obtaining veterinary treatment if possible. If unable to contact the Shelter Manager, the authorized personnel will next attempt to make contact with the Lead Animal Care Technician. If unable to contact either party, the authorized personnel may obtain emergency treatment to relieve the immediate pain/suffering of the animal at a cost of no more than Two Hundred Dollars (\$200.00), and will notify Contractor of action taken.
- F. Holding Facility Procedures:
- (1) Licensed Stray Animals: If the dog or cat placed in the holding facility is licensed by the City of Oak Harbor, the Contractor shall use owner information from the City or other sources to attempt to give notice to the owner by way of personal contact, telephone or mail that the animal is being held at the shelter. If the owner is notified via telephone, this notice, including the time and name of the person contacted shall be noted in records kept by Contractor and provided to the City monthly. The animal shall be held for a minimum period as outlined by City ordinance unless written instructions to the contrary are provided by the animal control authority requesting Contractor to hold the animal pending legal action. If not claimed during the applicable holding period, an animal shall be subject to disposition pursuant to Contractor's program for placing and/or disposing of unclaimed dogs and cats.

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

3. **CITY RETAINED AUTHORITY:**

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

- C. **Independent Fees:** The City retains authority to establish impound fees for animals impounded pursuant to City ordinances. The Contractor may recommend changes in City fees.
4. **HOURS OF OPERATION:** The Contractor shall submit to the City, as Attachment A to this Contract, a schedule of its operating hours which shall include:
- A. Days and hours when the office and holding facility are open to the public (a minimum of three (3) hours per day Monday through Friday for reclaiming of animals as required by the Memorandum of Understanding between the Navy and the City of Oak Harbor).
- B. A location where animals can be delivered by ACO, NAS personnel and Oak Harbor Police Department personnel 24-hours per day.
- C. Days the office and holding facility will be closed for City observed holidays.

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

5. **TREATMENT OF PUBLIC:** Contractor shall treat the public fairly and courteously in carrying out services required under this Contract.
6. **NAVY MOU:** The City currently has an agreement with the Navy, authorizing use of their facility on the Seaplane Base located in Oak Harbor. In exchange, the Contractor is responsible for hours of operation as stated in the MOU. A copy of the current Memorandum of Understanding with the U.S. Navy is attached to this document as Attachment B. Should those facilities become unavailable, either party to this Contract may terminate this Contract within thirty (30) days after they become unavailable. The Navy may restrict access to the base and/or this facility as it deems appropriate and the Contractor's use of the facility is subject to such restriction. Restrictions may include, but are not limited to, delay and access requirement of security clearance for employee. The City is not responsible for damages or costs incurred by reason of Navy actions.
7. **COMPENSATION:**
- A. The City shall pay to Contractor monthly payments of Seven Thousand and Eighty Three Dollars, and Thirty-three Cents (\$7,083.33) for services under the Contract after the month for which the services are rendered.
- B. Additionally, City shall pay Thirty Dollars (\$30.00) per call-out for after hours (before 8 a.m. and after 5 p.m. or on Holidays) for service requests deemed necessary by Oak Harbor Police Department, upon proper billing by Contractor within thirty (30) days of service. City shall verify that the Contractor has provided the services required under this Contract in a form acceptable to the City.

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

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

860 SE Barrington Drive
Oak Harbor, WA 98277

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

PO Box 1108
Coupeville, WA 98239

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

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

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

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

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

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

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

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

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

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

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

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

14. **FINANCIAL RECORDS AND AUDITS:** The Contractor shall maintain books, records and documents, which sufficiently and properly reflect all direct and indirect costs related to the performance of this Contract and shall maintain such accounting procedures and practices as may be necessary to assure proper accounting of all funds paid pursuant to this Contract. These records shall be subject at all reasonable times to inspection, review, or audit, by the City, its authorized representative, the State Auditor, or other governmental officials authorized by law to monitor this Contract.

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

15. **NONDISCRIMINATION:**

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

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

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

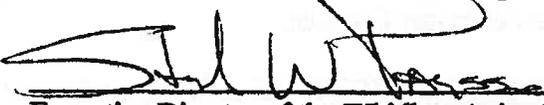
the City of Oak Harbor. Any uniforms or insignia used by Contractor shall not use the words "Oak Harbor."

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

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



President of the Whidbey Animals' Improvement Foundation



Executive Director of the Whidbey Animals' Improvement Foundation

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



Jim Slowik, Mayor

ATTACHMENT "A"

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

Whidbey Animals' Improvement Foundation Operating Schedule

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

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

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

Holiday Closures

Shelter will be closed on the following holidays:

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

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

ATTACHMENT "B"

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

The following is the text of the Navy MOU:

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

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

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

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

For Naval Air Station, Whidbey Island

For the City of Oak Harbor

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

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

Date: _____

Date: _____



DEPARTMENT OF THE NAVY

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

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

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

Dear Mayor Slowik:

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

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

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

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

Sincerely,

A handwritten signature in black ink, appearing to read "G. J. Johnston", is written over a horizontal line.

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

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

City of Oak Harbor

OFFICE OF THE MAYOR
JIM SLOWIK
MAYOR



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

Exhibit D

May 5, 2011

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

Dear Mr. Nanney:

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

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

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

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Slowik".

Jim Slowik
Mayor

WAIF Whidbey Animals' Improvement Foundation

Exhibit E

1-11-11 RR

July 11, 2011

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

Dear Mayor Slowik:

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

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

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

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

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



Stephen Paysse
Executive Director
Whidbey Animals' Improvement Foundation

cc: City Council

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

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

108

Oak Harbor Shelter

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

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

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

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

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

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

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

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

City of Oak Harbor

OFFICE OF THE MAYOR
JIM SLOWIK
MAYOR



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

Exhibit F

July 12, 2011

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

Dear CAPT Johnston:

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

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

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

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

Sincerely,

Jim Slowik
Mayor