

City of Oak Harbor

City Council Meeting Agenda

For

April 7, 2009
7:00 p.m.



Oak Harbor City Council

7:00 p.m.

Tuesday, April 7, 2009

Welcome to the Oak Harbor City Council Meeting

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

Thank you for participating in your City Government!

CALL TO ORDER

PLEDGE OF ALLEGIANCE

INVOCATION Pastor David Lura – First United Methodist

ROLL CALL

MINUTES 3/24/09 Regular Meeting

NON-ACTION COUNCIL ITEMS:

1. Introduction of New Employees – none this evening.
2. Employee Recognition – Randy Payne – Public Works, 10 years.
3. Proclamation – Pam Headridge Day.
4. Public Comments.

COUNCIL CONSIDERATION AND ACTION ON THE FOLLOWING MATTERS:

5. Consent Agenda:

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- a. State Appropriation Contract- Marina Dredging Design Engineering.

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- b. Agreement – with Whidbey Animals' Improvement Foundation (WAIF) for Animal Shelter Services.
- c. Resolution – Resolution 09-09 to set a Public Hearing for Local Improvement District 2007-1, Bayshore Drive. ADDED AT THE MEETING.
- d. Pay Bills.

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6. Approval to submit Community Oriented Policing Services (COPS) Grant Application for Hiring and Recovery Program.

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7. Continued from 3/3/09 Council Meeting – Element Nightclub License.

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8. Public Hearing and Final Consideration – Arts Ordinances.

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9. Public Hearing – Re-Zoning to Implement Comprehensive Plan Map Use Changes.

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10. Firefighter's Association Labor Agreement.

11. City Administrator's Comments.

12. Councilmembers' Comments.

- Standing Committee Reports

13. Mayor's Comments.

ADJOURN

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

"One good wish changes nothing; one good decision changes everything."

- Anonymous

Regular City Council Meeting
Tuesday, March 24, 2009, 7:00 p.m.
Council Workshop preceded the meeting from 6:00 p.m. to 6:45 p.m.
City Hall Council Chambers

COUNCIL WORKSHOP, 6:00 p.m. – 6:45 p.m.

Bruce Roberts, Director of Information Services, gave a 45 minute workshop on use of Council's laptop computers which were distributed this evening.

CALL TO ORDER

Mayor Slowik called the meeting to order at 7:00 p.m.

INVOCATION

Councilmember Palmer gave this evening's invocation.

ROLL CALL

Mayor Jim Slowik
Six members of the Council,
Rick AlMBERG
James M. Campbell
Beth Munns
Danny Paggao, Mayor Pro Tem
Jim Palmer
Bob Severns

Paul Schmidt, City Administrator
Margery Hite, City Attorney
Doug Merriman, Finance Director
Steve Powers, Development Services Director
Cathy Rosen, Public Works Director
Rick Wallace, Chief of Police
Mike McIntyre, Senior Services Director
Mack Funk, Harbormaster
Renée Recker, Executive Assistant to the Mayor

ABSENT

Councilmember Eric Gerber was absent and formally excused from this meeting.

MINUTES

MOTION:

COUNCILMEMBER MUNNS MOVED TO APPROVE THE MINUTES OF THE 3/3/09 REGULAR MEETING, THE MOTION WAS SECONDED BY COUNCILMEMBER SEVERNS. COUNCILMEMBER ALMBERG ABSTAINED FROM THE VOTE; COUNCILMEMBERS CAMPBELL, MUNNS, PAGG AO, PALMER, AND SEVERNS VOTED IN FAVOR OF APPROVING THE 3/3/09 MINUTES. THE MOTION CARRIED.

NON-ACTION COUNCIL ITEMS

Public Comments

Helen Chatfield-Weeks, 1415 SE 9th. Ms. Chatfield-Weeks spoke in honor of Eve Oliver who regularly attended Council meetings thirty years ago. Ms. Chatfield-Weeks also spoke in support of the Island County Conservation Futures Program, and protection of the Fidalgo Avenue Garry Oak.

Denise Morrow, 33856 SR-20, Island Mini Storage. Ms. Morrow spoke with concern about past requests to be placed on Council's agenda to discuss the stormwater draining into Island Mini Storage's retention pond. Ms. Morrow is not requesting a discount on their stormwater bill but is requesting inclusion on Council's agenda to discuss their stormwater issues.

Lynda Tamayo, Ladies Society of St. Augustine's Church. Ms. Tamayo invited everyone to attend the April 18th St. Augustine's Talent Show from 7:00 p.m. – 9:00 p.m. Dinner will also be served.

Mel Vance 275 NW 8th. Mr. Vance spoke with concern about Consent Agenda Item e – Professional Services Agreement for Signal Light Maintenance, and felt that there are less expensive options for this maintenance. Mr. Vance supported Council's use of laptop computers and talked about the popularity of the upcoming Whidbey Island Marathon. 2,000 to 2,500 participants are expected this year.

With no other comments coming forth, Mayor Slowik closed this portion of the meeting at 7:10 p.m.

Mayor Slowik asked City Attorney Hite to address the Morrow's request for inclusion on a Council agenda. Ms. Hite addressed procedural questions and steps:

1. The agenda is prepared by the Mayor and sent to City Council Members.
2. A Council Member can introduce an item, with a second by another Member, and then have it set over to the next meeting.
3. An item can be added within 48 hours by the majority approval of Council.
4. Staff can be directed to prepare documents for consideration at a following meeting.

Ms. Hite continued that, with respect to the Morrow's particular request, it sounds like a claim. There are limitations on what Council can act upon. Council acts on ordinances, documents, permits, licensing; the majority of items are legislative. Grievances should be directed to staff.

Council Discussion

Discussion followed about staff research and a fact paper before consideration of inclusion on a Council agenda. It was suggested that the Public Works and Utilities Standing Committee review these issues first. City Administrator Schmidt noted that a memorandum and position response about Island Mini Storage had been given to Council Members a month or two ago (actual date was January 7, 2009). Mayor Slowik added that a simple motion could be made to refer this matter to that committee.

MOTION: COUNCILMEMBER ALMBERG MOVED THAT THE ISLAND MINI STORAGE STORMWATER ISSUE BE INCLUDED IN A NEAR FUTURE PUBLIC WORKS AND UTILITIES STANDING COMMITTEE MEETING FOR DATA AND DOCUMENT REVIEW. THE MOTION WAS SECONDED BY COUNCILMEMBER MUNNS.

Mayor Slowik noted that this motion did not require a vote. The matter is referred to the Public Works and Utilities Standing Committee and the Morrow's will be contacted for that meeting. City Attorney Hite also talked about the stormwater ordinances which will be needed for the NPDES Phase 2 Permit, and that these ordinances will be amended by August with presentation to Council in June or July. This will provide another opportunity for public comment on stormwater issues.

COUNCIL CONSIDERATION AND ACTION ON THE FOLLOWING MATTERS

Consent Agenda

- a. **Noise Permit – Holland Happening**
- b. **Noise Permit – Kiwanis Club Easter Service**
- c. **Refer to Lodging Tax Advisory Committee – 1.) Contract – Greater Oak Harbor Chamber of Commerce; 2.) Remaining 2% Funds; 3.) Banner Policy**
- d. **Appointment – Councilmember Rick Almberg to the Whidbey Sustainable Coalition**
- e. **Professional Services Agreement – Signal Light Maintenance**
- f. **Homeland Security Grant Agreement**
- g. **Bid Award – Self-propelled Sweeper**
- h. **Pay Bills**

Councilmember Palmer asked that item d be removed. Councilmember Munns asked that item c be removed.

MOTION: COUNCILMEMBER CAMPBELL MOVED TO APPROVE CONSENT AGENDA ITEMS A, B, E, F, G, AND H WITH ITEM H PAYING ACCOUNTS PAYABLE CHECK NUMBERS 136347 – 136500 IN THE AMOUNT OF \$556,533.73; AND PAYROLL CHECK NUMBERS 92767 – 92774 IN THE AMOUNT OF \$87,440.00. THE MOTION WAS SECONDED BY COUNCIL PALMER AND CARRIED UNANIMOUSLY.

Consent Agenda Item C

Refer to Lodging Tax Advisory Committee – 1.) Contract – Greater Oak Harbor Chamber of Commerce; 2.) Remaining 2% Funds; 3.) Banner Policy

Ms. Munns asked about flat contributions instead of a percentage of 2% funds. It was clarified that the entire agenda item is a referral to the Lodging Tax Advisory Committee and not set for Council action this evening.

MOTION: COUNCILMEMBER MUNNS MOVED TO APPROVE CONSENT AGENDA ITEM C WHICH AUTHORIZES SUBMITTAL TO THE LODGING TAX ADVISORY COMMITTEE OF THE THREE DRAFT INDIVIDUAL PROPOSAL CONCEPTS TO CHANGE THE USE OF REVENUE RECEIVED FROM THE 2% LODGING TAX. THE MOTION WAS SECONDED BY COUNCILMEMBER CAMPBELL AND CARRIED UNANIMOUSLY.

Consent Agenda Item D

Appointment – Councilmember Rick Almberg to the Whidbey Sustainable Coalition

Councilmember Palmer asked what this Coalition represents; what is its mission? Mayor Slowik noted that this is a new Coalition formed by the County through the Council of Governments and intended to identify environmentally-friendly resources for Island County. All agencies will have a representative and there are no by-laws at this point.

MOTION: COUNCILMEMBER PALMER MOVED TO APPROVE THIS COMMITTEE APPOINTMENT, THE MOTION WAS SECONDED BY COUNCILMEMBER SEVERNS AND CARRIED UNANIMOUSLY.

Resolution No. 09-04 – Green Power Challenge

Cathy Rosen, Public Works Director presented this agenda bill which recommended that the City Council adopt Resolution No. 09-04 authorizing participation in the Whidbey Island Green Power Challenge. Resolution No. 09-04 also directed staff to purchase green power for the Seaplane Base Wastewater Treatment Plant and City Hall for twelve months. By participating in the Green Power Challenge, the City will take a leadership role in environmental stewardship and help reduce our dependence on fossil fuels, build a wider range of renewable energy sources in our region, and raise community awareness about the benefits of green power. The Challenge is scheduled to begin during the week of April 26, 2009 and run through Labor Day, September 7, 2009. If the goal of increasing the number of customers purchasing green power by 30% island-wide is met, Puget Sound Energy will provide a grant in the amount of \$20,000 to be used for a renewable energy project(s) on Whidbey Island. Ms. Rosen also noted that the City has made a grant application to the Northwest Clean Air Agency to reduce or eliminate net cost for this period.

Mayor Slowik called for public comments.

Mel Vance 275 NW 8th. Mr. Vance felt this is a good first step and urged the City to also use solar panels and wind generators.

Council Discussion

Discussion followed about the sources for green power, green power costs, that small programs are funded through this effort, the program's intent is to develop new resources, and the offset of costs through the Northwest Clean Air Agency grant.

MOTION: COUNCILMEMBER CAMPBELL MOVED TO ADOPT RESOLUTION NO. 09-04 AUTHORIZING PARTICIPATION IN THE WHIDBEY ISLAND GREEN POWER CHALLENGE AND DIRECTING STAFF TO PURCHASE GREEN POWER FOR THE SEAPLANE BASE WASTEWATER TREATMENT PLANT AND CITY HALL FOR TWELVE MONTHS. THE MOTION WAS SECONDED BY COUNCILMEMBER ALMBERG AND CARRIED UNANIMOUSLY.

Resolution No. 09-08 – Supporting Ft. Casey and Ft. Ebey State Parks

Mayor Slowik presented this agenda bill and Resolution No. 09-08 supporting Fort Casey and Fort Ebey State Parks and urging Governor Gregoire to keep these historically-significant Whidbey Island Parks open. The Washington State Parks and Recreation Commission has been tasked by Washington State Governor Christine Gregoire to expand seasonal closures and mothball or transfer State Parks in order to further reduce costs by \$22.9 million dollars for the State 2009-2011 biennium budget. Fort Casey and Fort Ebey State Parks have been included in a draft list of potential parks to be mothballed.

Council Discussion

Discussion followed about the negative economic impact that would be experienced with these closures, and that Fort Ebey and Fort Casey State Parks have over a million visitors each year. Discussion continued about the redundancies in State agencies with a suggestion to have the City send a letter to the Governor asking to streamline these agencies. The outfall project was presented as an example of a project that would benefit from a streamlined aquatic permitting process.

MOTION: COUNCILMEMBER PAGGAO MOVED TO AUTHORIZE THE MAYOR TO SIGN RESOLUTION NO. 09-08 SUPPORTING FORT CASEY AND FORT EBEL STATE PARKS AND URGING THE GOVERNOR TO KEEP THEM OPEN. THE MOTION WAS SECONDED BY COUNCILMEMBER PALMER AND CARRIED UNANIMOUSLY.

Public Hearing – Sign Code Amendment for Electronic Message Center Signs

Steve Powers, Development Services Director presented this agenda bill and PowerPoint presentation regarding a text amendment to the Oak Harbor Municipal Code that would permit electronic message center signs in certain commercial and industrial zoning districts. He noted that there was an inconsistency in the agenda bill concerning Council's action this evening. The recommended action is to conduct the public hearing on the ordinance amending Oak Harbor Municipal Code Chapter 19.36, Sign Code, permitting electronic message center signs in certain commercial and industrial districts and continue the matter until the CTED review is complete.

An electronic message center sign, also referred to as an electronic reader board, is one that has a scrolling or changing message of a commercial nature. Currently, the sign code allows electronic reader boards in the Public Facilities (PF) zoning district only; in this district these signs may only display messages of a non-commercial nature. The proposed amendment to Oak Harbor Municipal Code (OHMC) Chapter 19.36, Sign Code, adds electronic message center signs as permitted signs in the following commercial and industrial zoning districts:

- C-1, C-3, C-4, C-5
- I, PIP, PBP

Electronic message center signs would *not* be allowed in the following zoning districts:

- CBD
- R-O
- Any residential districts

Mr. Powers talked about the following points in response to issues identified by the Planning Commission:

1. Aesthetic issues.
2. Appropriateness for the community.
3. The special designation of SR-20 as a scenic highway and its role in determining whether or not this type of signage should be allowed there.
4. Whether or not this type of signage is appropriate for all commercial properties.
5. Percent of sign area to be the electronic message center.

In summary, the proposed amendment:

1. Expands the sign options available to commercial properties by allowing for a sign with a changing message.
2. Does not increase the total amount of signs available to a business or project.
3. Establishes the standards by which the signs would be allowed (maximum area, length of time for message, colors, etc.).
4. Does not allow for video boards (signs with changing pictures).

Mayor Slowik opened the public hearing at 7:40 p.m.

Randy Bradford 1499 SE 9th. Mr. Bradford spoke in support of electronic message centers and would like full color. These signs increase business and do make a difference. Mr. Bradford distributed a handout which is attached to the minutes as Exhibit A.

Jeff Rossi, Island Signs and 150 NW Clipper Drive. Mr. Rossi spoke with concern about Section 6 of the proposed amendment ordinance which addresses requirements applicable to all signs. Will there be a design review board and who determines design. He also supports the use of color without going to video signage. Mr. Rossi presented a handout which is attached to these minutes as Exhibit B.

Lynn Burge, 390 Whidbey. Dr. Burge spoke in support of electronic message centers as an effective advertising tool. He presented a handout and photos of the City of Lynden's intersection which are attached to these minutes as Exhibit C.

Jill Johnson, Executive Director of the Greater Oak Harbor Chamber of Commerce. Ms. Johnson spoke in support of electronic message centers. From a tourism perspective and the scenic byway, Oak Harbor is more commercial than other cities right now, but Ms. Johnson felt that this signage is appropriate and effective. The Chamber and the Chamber's Board support the sign code amendment.

Lee Rossley, 2949 Goldie Road. Mr. Rossley spoke with concern about all signage becoming affected by this amendment and was also concerned with the use of a design review committee which he felt could be ineffective. Mr. Rossley supported the use of electronic message centers as a tool to change messages without using a ladder and manual change out.

Mel Vance, 275 NW 8th. Mr. Vance felt a non-moving picture would be fine, understood the Pioneer Way restrictions, but hoped that in the future, downtown businesses might be allowed a small LED sign in their windows.

With no other comments coming forth, Mayor Slowik closed the comment period at 7:55 p.m.

Council Discussion

Discussion followed about design review (no additional design review), existing and new site plan requirements, the relationship between signage and the building (flagged out signage would be inconsistent), and signage review which still remains with the building and site plan review process. Discussion continued about the potential for automobile accidents if drivers are reading the signs (Chief Wallace talked about a high accident location but reports have not listed this type of signage as a cause), signage aesthetics, monochromatic color, and that the amendment does not provide for multi-color display or changing backdrops. This is not retroactive to existing signage, and was unanimously recommended by the Planning Commission. The existing sign code language adopted in 1986 and 25-year compliance date from 1986 for non-conforming signs was also discussed; could that timeframe be extended.

MOTION: COUNCILMEMBER ALMBERG MOVED TO DEFER THIS MATTER UNTIL THE CTED REVIEW IS COMPLETE AND TO KEEP THE PUBLIC HEARING OPEN ON THE ORDINANCE AMENDING OHMC CHAPTER 19.36, SIGN CODE, PERMITTING ELECTRONIC MESSAGE CENTER SIGNS IN CERTAIN COMMERCIAL AND INDUSTRIAL DISTRICTS. THE MOTION WAS SECONDED BY COUNCILMEMBER PALMER AND CARRIED UNANIMOUSLY.



Break

Mayor Slowik called for a five-minute break at 8:20 p.m. and the meeting reconvened at 8:25 p.m.

**Appearance of Fairness and Quasi-judicial Procedure
Nightclub Applications – El Cazador, Mi Pueblo Grill II, and Oak Harbor Tavern**

Mayor Slowik described the purpose of this procedure and will ask questions of Council with regard to all three businesses. He read from RCW 42.36.060:

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

- Places on the record the substance of any written or oral ex parte communication concerning the decision of the action; and
- Provides that a public announcement of the content of the communication and of the parties' rights to rebut the substance of the communication shall be made at each hearing where action is considered or taken on the subject to which the communication is related.

Mayor Slowik also asked each Council Member to state for the record what ex parte contacts they have had, whether written or oral, concerning the matter(s) to be decided. Each Council Member said they had no ex parte contacts.

Mayor Slowik asked the following questions of each Council Member naming each business in this order:

1. El Cazador,
2. Mi Pueblo Grill II
3. Oak Harbor Tavern

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

4. Does any member of this Council live or own property within 300 feet of the area which will be impacted by the decision in this proceeding?	Mr. Almberg	Mr. Campbell	Ms. Munns	Mr. Paggao	Mr. Palmer	Mr. Severns
	No	No	No	No	No	1/3 interest in property within 300 feet of Mi Pueblo; no to the two other businesses.
5. Does any member of this Council have any special knowledge about the substance of the merits of this proceeding which would or could cause the Council Member to prejudge the outcome of this proceeding?	Mr. Almberg	Mr. Campbell	Ms. Munns	Mr. Paggao	Mr. Palmer	Mr. Severns
	No	No	No	No	No	No
6. Is there any member of this Council who believes that he or she cannot sit and hear this matter fairly and impartially, both as to the respective positions of the proponents and the opponents in this proceeding?	Mr. Almberg	Mr. Campbell	Ms. Munns	Mr. Paggao	Mr. Palmer	Mr. Severns
	No	No	No	No	No	No
7. Is there any member of the audience who because of the "Appearance of Fairness Doctrine" wishes to disqualify any member of the Council from hearing this matter? If so, please state the name of the Council Member and the reason or reasons why you believe that Council Member should be disqualified.						
No audience members came forward.						

Public Hearing – Nightclub Application for El Cazador

Rick Wallace, Chief of Police presented this agenda bill regarding El Cazador's application for a Nightclub License pursuant to Ch. 5.22 OHMC. The applicant is Ms. Hilda Rodriguez and, as required in OHMC 5.22.045(2), an investigation was conducted by the Oak Harbor Police Department. El Cazador is made up of a large restaurant area with a smaller, but separate, area closed to those under the age of 21 that is designated for alcohol sales and includes an area for social dancing. The business is located in a single story building located in a business center near SR-20 and Whidbey Avenue. Several other businesses are located nearby and a fairly large apartment complex is located across the street (SR-20). In checking with the businesses closest in proximity to El Cazador, none had any negative comments about the business. Suggested conditions for this nightclub license are:

1. Adhere to all existing laws, regulations, ordinances and zoning conditions of the State of Washington and the City of Oak Harbor applicable to the nightclub business located at 32195 SR-20, Oak Harbor, Washington.
2. Ensure that the current practice consisting of at least one designated security person, either from existing on duty employees or in addition to, will be on duty on Fridays and Saturdays, between the hours of 10:00 p.m. and 2:00 a.m.

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

Mayor Slowik opened the public hearing at 8:35 p.m.

Mel Vance 275 NW 8th. Mr. Vance said that a previous nightclub license applicant had to meet a larger number of conditions, specifically for security and operating hours, and it is unfair to impose lesser conditions on other nightclubs.

With no other comments coming forth, Mayor Slowik closed the public hearing at 8:37 p.m.

Council Discussion

Discussion followed about the difference in nightclub conditions, the parking lot for this business, concentrating on inside activities as well as the parking lot, and the differences in each business's activity. Chief Wallace felt that each business should be reviewed on an individual basis since each will present a different set of circumstances. Discussion continued about background checks on corporations and single individuals of a corporation.

MOTION: COUNCILMEMBER ALMBERG MOVED TO APPROVE AND ISSUE A NIGHTCLUB LICENSE TO EL CAZADOR WITH THE FOLLOWING CONDITIONS:

- 1. Adhere to all existing laws, regulations, ordinances and zoning conditions of the State of Washington and the City of Oak Harbor applicable to the nightclub business located at 32195 SR-20, Oak Harbor, Washington.**
- 2. Ensure that the current practice consisting of at least one designated security person, either from existing on duty employees or in addition to, will be on duty on Fridays and Saturdays, between the hours of 10:00 p.m. and 2:00 a.m.**

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

THE MOTION WAS SECONDED BY COUNCILMEMBER CAMPBELL AND CARRIED UNANIMOUSLY.

Public Hearing – Nightclub Application for Mi Pueblo Grill II

Rick Wallace, Chief of Police presented this agenda bill regarding Mi Pueblo Grill II's application for a Nightclub License pursuant to Ch. 5.22 OHMC. The applicant is Mr. Miguel Elizondo and, as required in OHMC 5.22.045(2), an investigation was conducted by the Oak Harbor Police Department. The business is located in a two-story building near several businesses on Bayshore Drive and behind businesses on Pioneer Way. The second floor of the business is used for restaurant food sales with alcohol service provided. The first floor contains a smaller area, closed to people under 21 years of age. This area is open to the view of the larger portion, which is available as additional restaurant area until 9:00 p.m., at which time the entire downstairs area is closed to those under the age of 21.

A small space used for public dancing is also in this area. In checking with the businesses closest in proximity to Mi Pueblo Grill II, none had any negative comments about the business. Suggested conditions for this nightclub license are:

1. Adhere to all existing laws, regulations, ordinances and zoning conditions of the State of Washington and the City of Oak Harbor applicable to the nightclub business located at 916 SE Bayshore Drive, Oak Harbor, Washington.
2. Ensure that the current practice consisting of at least one designated security person, either from existing on duty employees or in addition to, will be on duty on Fridays and Saturdays, between the hours of 10:00 p.m. and 2:00 a.m.

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

Mayor Slowik opened the public hearing at 8:50 p.m.

Mel Vance, 275 NW 8th. Mr. Vance, for the record, had the same concerns he expressed in comments about El Cazador and again stated that all nightclubs should be operating under the same set of conditions. He added that, in addition to security requirements in the parking lot, the nightclub owner should be held responsible for its patrons.

With no other comments coming forth, Mayor Slowik closed the public hearing at 8:52 p.m.

Council Discussion

Discussion followed about the calls for PD service, if complaints are specific to this business, and that Chief Wallace had made presentations on all three applicants during the Public Safety Standing Committee meeting. Discussion continued about the definition of a juvenile complaint (under the age of 18) and a minor in possession of alcohol (typically between the ages of 18 and 20). More discussion followed about enforcement of conditions and not adding requirements on businesses that have not created a problem. Consider each business individually when applying conditions.

MOTION: **COUNCILMEMBER PALMER MOVED TO APPROVE AND ISSUE A NIGHTCLUB LICENSE TO MI PUEBLO GRILL II WITH THE FOLLOWING CONDITIONS:**

1. Adhere to all existing laws, regulations, ordinances and zoning conditions of the State of Washington and the City of Oak Harbor applicable to the nightclub business located at 916 SE Bayshore Drive, Oak Harbor, Washington.
2. Ensure that the current practice consisting of at least one designated security person, either from existing on duty employees or in addition to, will be on duty on Fridays and Saturdays, between the hours of 10:00 p.m. and 2:00 a.m.

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

THE MOTION WAS SECONDED BY COUNCILMEMBER SEVERNS AND CARRIED UNANIMOUSLY.

Public Hearing – Nightclub Application for Oak Harbor Tavern

Rick Wallace, Chief of Police presented this agenda bill regarding Oak Harbor Tavern’s application for a Nightclub License pursuant to Ch. 5.22 OHMC. The applicant is Ms. Joan Hoing and, as required in OHMC 5.22.045(2), an investigation was conducted by the Oak Harbor Police Department. The business is located in a single-story building in the central business district with several business located nearby. Oak Harbor Tavern is restricted to beer and wine sales, closed to those under the age of 21, with some food items available. Oak Harbor Tavern provides music for its customers and management has stated their intention to provide occasional live music during the year. In checking with the businesses closest in proximity to Oak Harbor Tavern, none had any negative comments about the business, but there was some concern about litter. The common parking lot is owned by another business behind Oak Harbor Tavern. Oak Harbor Tavern will redouble its efforts to remove litter.

Suggested conditions for this nightclub license are:

1. Adhere to all existing laws, regulations, ordinances and zoning conditions of the State of Washington and the City of Oak Harbor applicable to the nightclub business located at 940 SE Pioneer Way, Oak Harbor, Washington.
2. Ensure that the current practice consisting of at least one designated security person, either from existing on duty employees or in addition to, will be on duty on Fridays and Saturdays, between the hours of 10:00 p.m. and 2:00 a.m.

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

Mayor Slowik opened the public hearing at 9:00 p.m.

Mel Vance, 275 NW 8th. Mr. Vance referred to his previous comments but felt that Oak Harbor Tavern has fewer problems than other downtown taverns. He noted that the back parking area is not immediately behind Oak Harbor Tavern. Special consideration should be given to coordinate and insure parking lot coverage when it is not adjacent to a business.

With no other comments coming forth, Mayor Slowik closed the public hearing at 9:02 p.m.

MOTION: COUNCILMEMBER SEVERNS MOVED TO APPROVE AND ISSUE A NIGHTCLUB LICENSE TO OAK HARBOR TAVERN WITH THE FOLLOWING CONDITIONS:

1. Adhere to all existing laws, regulations, ordinances and zoning conditions of the State of Washington and the City of Oak Harbor applicable to the nightclub business located at 940 SE Pioneer Way, Oak Harbor, Washington.
2. Ensure that the current practice consisting of at least one designated security person, either from existing on duty employees or in addition to, will be on duty on Fridays and Saturdays, between the hours of 10:00 p.m. and 2:00 a.m.

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

THE MOTION WAS SECONDED BY COUNCILMEMBER MUNNS AND CARRIED UNANIMOUSLY.

Introduction – Arts Commission Ordinance

Doug Merriman, Finance Director presented this introduction to two ordinances which will amend portions of Oak Harbor Municipal Code Chapter 3.71 Utility Taxes, and portions of Chapter 2.29 Oak Harbor Arts Commission.

Section 3.71.010 Businesses Subject to Utility Tax, is amended to impose a quarter percent utility tax increase on water suppliers, sewage treatment and collections businesses, and solid waste collection providers for the purpose of funding public art. In addition, the proposed *Section 3.71.060 Allocation of Utility Tax to the Art Acquisition and Maintenance Fund*, directs that City Council shall decide, no less frequently than through the adoption of every biennial budget, what proportion of the utility tax collected shall be allocated to the Art Acquisition and Maintenance Fund. Finally, Section Two of the ordinance describes the process by which the ordinance shall be subject to referendum.

Section 2.29.020 Purpose and Functions of the Oak Harbor Arts Commission, is amended to add wording to better describe the purpose of the Commission, and to establish the Commission as a recommending body to the Mayor and City Council on matters of public art programs. Finally, *Section 2.29.120* is amended to eliminate the rule that an additional one percent charge be applied against capital projects for art funding, and that the proceeds from the changes in *Section 3.71.010* will be placed in the General Fund with a direct allocation being made of the designated monies to the Art Acquisition and Maintenance Fund.

Mr. Merriman led an informative and easily-understood PowerPoint presentation which illustrated the need for these changes and is attached to the minutes as Exhibit D.

Mayor Slowik called for public comments.

Mel Vance, 275 NW 8th. Mr. Vance found this confusing and asked how this could be shown on individual utility bills.

Karla Freund, Oak Harbor Arts Commission. On behalf of the Arts Commission, Ms. Freund spoke in support of these proposed changes and thanked Mr. Merriman, Mr. Schmidt and Mayor and Council for their work on these changes.

Council Discussion

Discussion followed about the existing percentage structure, dependence on capital improvement projects, that this is not broken out on the utility bill but is instead a budget line item, any future adjustments to the ¼ percent if rates increase, investment in the Art Commission Fund, the time period on referendums (within 7 calendar days), and most importantly, that this proposal is cost-neutral.

This agenda item will come back before Council on April 7, 2009.

Bid Award – Three Generators

Cathy Rosen, Public Works Director presented this agenda bill to authorize the purchase of three generators. The 2009-2010 biennial budget for the Wastewater Division includes funds to replace the two RBC Wastewater Treatment Plant generators (one of these generators is on loan from DNR) with one new generator, and the Wastewater Lagoon generator with one new generator that will be reliable, adequate in size and require less maintenance. In addition, the

Water Division budgeted to install a new generator at the Ault Field Booster Pump Station for emergency power supply which is required to increase reliability of the system that supplies water to the City. This upgrade was identified as capital improvement program #11 in the 2003 water system plan. Currently, there is no back up generator at the Ault Field Booster Pump Station. Per OHMC 2.320.040, a formal bid process was required. On February 13, 2009, four formal bids were received and opened. In order to determine the lowest responsible bidder, staff evaluated each bid based on objective factors including discounts, accuracy and compliance with the specifications.

Mayor Slowik called for public comments.

Mel Vance, 275 NW 8th. Mr. Vance asked about the surplus generator and if it could be used elsewhere in the City's departments rather than surplus it.

Ms. Rosen clarified that, as with every piece of City equipment, the City tries to place it in another department before surplusing or auctioning it off. The loaned DNR generator will be returned to DNR.

MOTION: COUNCILMEMBER MUNNS MOVED TO AWARD THE BID FOR PURCHASE OF THREE GENERATORS TO CUMMINS MACHINERY IN THE AMOUNT OF \$424,169.20. THE MOTION WAS SECONDED BY COUNCILMEMBER PALMER AND CARRIED UNANIMOUSLY.

City Administrator's Comments

Mr. Schmidt talked about the regularly-scheduled Council and Committee meetings and the ARRA stimulus. The City will be watchful for funding opportunities regarding broadband, marine creosote removal, block grant for downtown improvements, energy efficiency, and transportation.

Council Members' Comments

Standing committee reports were given by Councilmembers Paggao, Campbell, Severns and Palmer. Mr. Palmer talked about his attendance in Coupeville at a CTED meeting. He had also participated in the St. Patrick's Day Parade and heard that some merchants were unhappy about the length of street closure for the short parade. Mr. Palmer also talked about the utility rate survey, and thanked Mr. Merriman for keeping the City's financial health in good shape. Mr. Severns talked about the car wash fundraiser on Sunday, March 28th for Sydney Boyer at the fire station between 10:00 a.m. and 3:00 p.m. Sydney is eleven years old and suffering from an aggressive form of bone cancer. He also thanked Chief Wallace for the Police Department's Annual Report. Mr. Almborg talked about his bluewater sailing over the last two months from Panama to the Galapagos and 3,000 westward miles to the Marquesas – wonderful people everywhere, a terrific trip. Ms. Munns talked about the recent Washington, D.C. trip which was very encouraging. Association of Washington Cities had a special briefing presented by a legislative affairs representative (National League of Cities) to discuss means to match needs to the Federal level; unification rather than individual messages from 282 cities. Ms. Munns also talked about the successful Pentagon visit and that Oak Harbor is considered the "poster child" as a city successfully working with a naval base. Mr. Campbell also talked about the Washington, D.C. trip and the training seminars held early in the week in D.C.; excellent seminars which emphasize sustainability and well-run cities. Mr. Campbell encouraged all

Council Members to attend these training seminars. Mr. Campbell talked about successfully meeting with Cabinet members who know what they want to do and are excited to do it. The message is we need to talk to Washington, D.C. Mr. Campbell also talked about the Pentagon trip, speaking with the acting Secretary of the Navy, and that the Oak Harbor delegation was well-treated. It was a great and successful trip.

Mayor's Comments

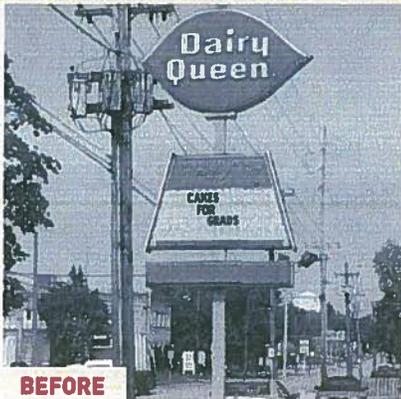
Mayor Slowik also talked about the Washington, D.C. trip and that meeting with Cabinet secretaries was a once in a lifetime experience. He also had an extended meeting with Representative Rick Larsen and spoke about City projects. Rep. Larsen pledged support and might be able to help the City with a stimulus package. Mayor Slowik met with Senator Patty Murray who was on the floor but able to step out and talk. Sen. Murray may be able to help with summer youth programs. Mayor Slowik also recognized Irene Carman's artwork which is now hanging in Council Chambers. Mayor Slowik talked about Sydney Boyer's parents and encouraged everyone to attend the car wash fundraiser. And finally, he talked about the March 29th Whidbey Island Marathon and the bridge and road closures for this popular event.

ADJOURN

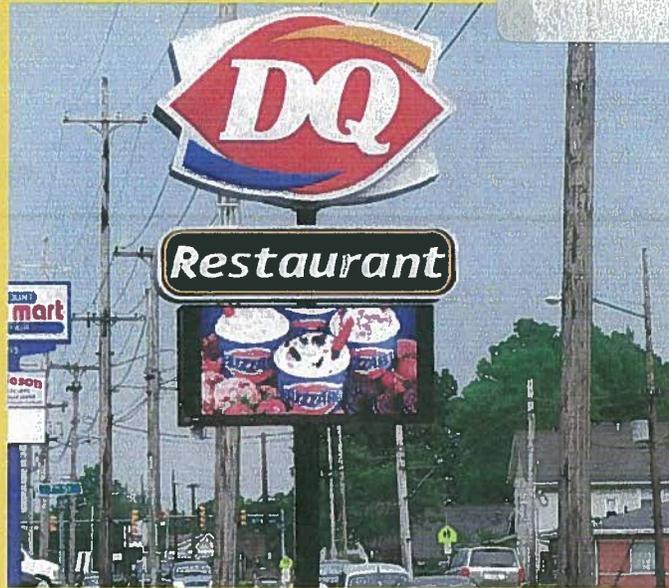
With no other business coming before Council, Councilmember Campbell moved to adjourn; the motion was seconded by Councilmember Palmer and carried unanimously. The meeting adjourned at 10:00 p.m.

Connie T. Wheeler
City Clerk

RESTAURANTS :: Dairy Queen - Cuyahoga Falls, OH



BEFORE



AFTER

:: SIGN SPECS ::
 19mm Color LED
 Matrix: 48 x 96
 6-Lines x 19 Characters
 40" High x 7' Wide

Background

Bill Marble has owned his Cuyahoga Falls, Oh. Dairy Queen for the past 30 years. For nearly every one of those years, he could count on his sales to peak in the summertime as families stopped in for Blizzards, Peanut Buster Parfaits and other signature DQ treats. But in 2008, his summer sales were uncommonly flat. With fall approaching, Marble knew he needed a strategy to get his numbers back up before the year's end. Working with Agnew Sign Company in Akron, Oh., he bought a full-color, 40" x 7' electronic message center from Watchfire by Time-O-Matic.

Results

After having his sign installed in September 2008, Marble's Dairy Queen saw an immediate and dramatic increase in business. "Here are two numbers - \$2,000 and \$23,000," Marble said. "At the time I got the sign, I was up a little less than \$2,000 for the year. The second number, \$23,000, is how much I was up at the end of the year. That's an increase of \$21,000 in the last three months. Now what would you attribute that to?"

"He's like a kid with a new toy. I'm sure now he just wishes he would have bought it (the sign) five years ago."

--- Chuck Agnew, Owner, Agnew Signs

Case Study

For nearly 70 years, Dairy Queen has been an icon in the American fast food landscape. But in a crowded fast food market, an impressive legacy doesn't guarantee great sales. Bill Marble, who owns and operates a Dairy Queen in Cuyahoga Falls, realized this in the summer of 2008 when his year-to-date sales were only up \$2,000. "The way I see it," said Marble, "If I'm not up more than that, I'm down."

Marble needed to reconnect with the Cuyahoga Falls community. Although his restaurant is located on a busy thoroughfare, his old-fashioned letterboard sign wasn't making an impact on drivers. After conducting some research, Marble decided to invest in a full-color electronic message center from Watchfire by Time-O-Matic.

Marble bought his sign from Agnew Signs in Akron, Oh., which handled the installation and helped with city zoning issues. According to Agnew Signs owner Chuck Agnew, installing an LED sign isn't much more complicated than putting up a traditional sign. "There's a little more welding, because they come in two pieces," he said. "And you have to line up the sensors so you can control it remotely, but that's nothing major. Overall, it takes about an extra four hours."

Once the sign went up, so did Marble's sales. According to a monthly report published by his territorial operator, Marble's restaurant had the largest sales increase of all 36 Dairy Queens in his region in November of 2008. And that disappointing \$2,000 sales increase through September? By the year's end, it had skyrocketed to \$23,000.

Agnew isn't surprised by Marble's success. But he is surprised by the timing. "He managed to do it in November and December, which would typically be slow months."

Marble credits the boost in sales exclusively to his new Watchfire sign. Now when motorists drive by, they take notice. "I'm sitting in my store right now, and I just watched a truck go by and look at my sign," Marble said. "I love it." And his customers love it, too. "I can't tell you how many positive comments I get on this sign," he said.

"One of the great things about a Watchfire sign is you can change the messages easily, and it works immediately. One day during lunch, we were dead. So I went and changed the sign to advertise 89-cent hot dogs. Within minutes, a customer came in and ordered two hot dogs."

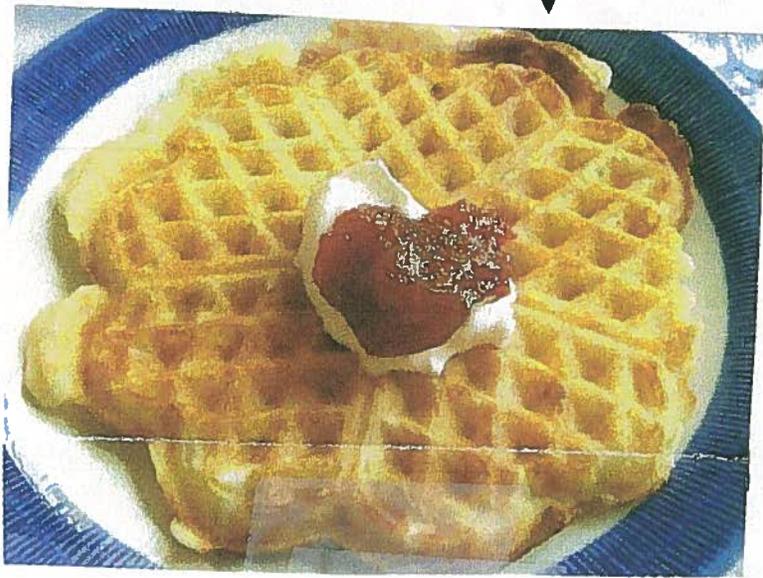
--- Bill Marble, Owner, Dairy Queen, Cuyahoga Falls, Oh.

FOR MORE INFORMATION CALL YOUR LOCAL SIGN DEALER.

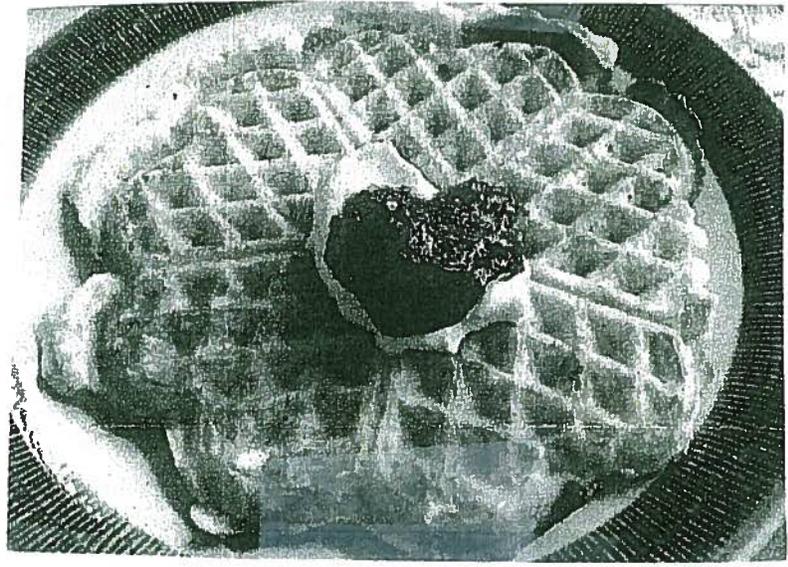


National Waffle Day

This is an effective sign ↘



← EFFECTIVE



THIS DOES NOT
COMMUNICATE
WELL

←

Frequently Asked Questions about EMCs

For easiest navigation, the following questions about EMCs are also links to their **location** and **answer** on this page. An answer may also contain a link to additional information on this SBA signage site. After each answer, a link is provided to bring you back to the top of this page.

[What are EMCs?](#)

[How are message centers used?](#)

[We have a sign, why would my business use a message center?](#)

[How will an electronic message display work best for my business?](#)

[Is an electronic message center a cost-effective advertising medium?](#)

[What level of return on investment can I expect?](#)

[How much can I expect to spend on an electronic message center?](#)

[What about safety? Aren't EMCs a distraction for drivers?](#)

[What about face changes? Can I change the face or copy of my sign?](#)

1. [What are EMCs?](#)

Electronic variable message centers are computerized programmable electronic visual communication devices. They are capable of storing and displaying multiple messages in dozens of formats and at varying intervals. Similar to reader boards, they allow their owners to change copy frequently, but without the cost of replacing missing or broken letters, and without the physical labor involved in changing copy.

Unlike the traditional reader boards, the message on an EMC can easily be changed throughout the day or week to suit the demographics of the people passing by. This allows the business owner to advertise specials, display public service information, or provide other items of public interest in a manner quickly and easily read by those passing by at any given time. Consequently, the effectiveness of an electronic message center is not limited by the space or surface area constraints that hamper business communication on reader boards. For additional information, review the [Features & Advantages of EMCs](#).

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2. [How are message centers used?](#)

Message centers are used by businesses that want the flexibility to control their own graphics and message unit and be able to change their communication to meet their needs and the needs of their customers.

- o **Large Corporations** - have used such devices for years, in forums ranging from sports stadiums to Times Square. They like the ability to advertise their products in a dynamic format in which they can change their messages frequently and easily.
- o **State Highway Departments** have also realized the value of electronic message centers, and are increasingly

using them to inform and direct traffic in large metropolitan areas, thereby easing traffic congestion and increasing traffic safety. Large-scale urban studies are currently being done to expand message center use in this area, with other "intelligent" components, to create integrated intelligent transportation systems. Under the Manual on Uniform Traffic Control Devices (MUTCD), they are used for regulatory, warning, and guidance purposes related to traffic control.

- o **Local Banks** have for years used the familiar time and temperature units.
- o **Small Businesses** are quickly realizing the advertising power of these dynamic visual communications devices as most people in a community look at the signs frequently. Although EMCs have been quite expensive in the past, often costing around \$30,000 or more for a small, simple unit, recent technological breakthroughs have drastically reduced production and operating costs, bringing them within an affordable range.
- o **Entertainment establishments, restaurants, casinos, and theme parks** use EMCs extensively to create a district or zone effect.

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3. We have a sign; why does my business need a message center?

Consider for a moment the speed at which traffic passes by the average business. A motorist has only a few seconds to see and comprehend any given sign. For example, on a street with traffic passing at 45 miles per hour, a car that is 500 feet in front of a given sign will have only 7.6 seconds to read the sign before it passes, under normal driving conditions. A business' sign must be conspicuous if it is to catch the attention of passing motorists within the limited amount of time available.

Motorists often spot electronic message centers quickly because the copy changes, the letters are illuminated, and the signs have traditionally been used as public service devices. Additionally, electronic message centers may have greater visibility from further distances, especially in poor lighting conditions, giving the motorist additional time to read the message displayed while safely maneuvering his or her vehicle.

Message Centers act as a consolidating type of advertising. In other words, they offer businesses a way of posting a variety of information in one place rather than relying on numerous signs and banners displayed in windows, for example. This can be a real advantage for a business located in a district with strict rules about temporary signs.

Most importantly, the electronic message center almost always increases a business's share of revenue. This is a result of the "branding" of the site through the use of specific logos, reinforcement of other advertising messages, allowing for public service notices, generating exact impulse stops, and helping to change customers' buying habits once they have stopped.

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4. How will an electronic message display work best for my business?

The growth in number of media options in recent years is good news for businesses because of the variety available to meet individual business communication needs. However, each new advertising option draws its audience away from other existing audiences. This is not true with EMCs. The display's audience is determined by the sign's message, its location, and the number of vehicles that pass it each day, and its audience continually grows.

The electronic message display rapidly becomes a landmark in a business's local community, because it offers a valuable public service to the entire community by displaying:

- o Public service information
- o Civic events
- o Personal and holiday greetings
- o Current time and temperature
- o Specific advertising messages

Passing viewers often look forward to reading clever new messages, and may even come to rely upon the message service in some settings. But most importantly to the business owner, the passing viewers will remember:

- o What the business is, and
- o Where the business is located.

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5. *Is an electronic message center a cost-effective advertising medium?*

Yes. Businesses often select their advertising medium, and messages, based upon the cost per thousand exposures of their message to the public. ON this basis, no other form of advertising comes close to matching the efficiency and cost-effectiveness, dollar for dollar, of an electronic message display. Compare the figures below:

- o **Newspaper advertising** - the cost on average is about \$7.39 for 1000 exposures within a 10-mile radius of the business location.
- o **Television advertising** - The cost on average is approximately \$6.26 per 1000 exposures.
- o **Radio advertising** - The cost is about \$5.47 per 1000 exposures.
- o **New LED electronic message center display** - The cost is less than \$0.15 per 1000 exposures. How? Assume, for example, that you spend \$30,000.00 on this type of system, and that its useful life is about ten years. The amortized daily cost of the message center would equal about \$2.74. Add to this the daily cost of electricity for this new LED unit (approximately \$0.20), thus giving your business a daily message center expense total of \$8.82. With a daily traffic count of 20,000 vehicles passing your business, you would have a cost of less than \$0.45 per thousand exposures (counting drivers only)!

Best of all, with an electronic message center, a business does not have to worry about missing its target audience,

becoming "yesterday's news," or facing expensive production costs for changing its message, as happens frequently with the other forms of advertising mentioned.

With an electronic variable message display:

- The business owns the form of advertising
- The advertising works for the business 24 hours a day, 365 days a year
- The sign acts as the "salesman on the street" attracting customers into the business
- The advertising speaks directly to the potential customers as they drive past the business location, and the EMC makes the business a landmark in its community.

Finally, many message center manufacturers provide leasing programs, which include service and maintenance, thereby providing another option for covering the cost of usage.

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6. What level of return on investment can I expect?

For businesses that choose to enhance their signage with an electronic message display, the owners typically see an increase in business of 15% to 150%. Using the smaller number, consider the following example.

A small business generating \$1,000.00 a day in revenue adds an electronic message center. The business soon increases by 15%, adding another \$150 per day in total revenue. That translates into an additional \$1,050.00 a week in revenue, or \$54,600.00 per year.

It has been said that in retailing, "the last dollars are the best dollars," meaning that each additional customer adds a greater marginal percentage to the business's bottom line profit. In the foregoing example, we can only speculate upon the actual impact upon profit, but assuming that the business was at or above its "break-even" point before adding the electronic message center, the addition of \$54,600.00 per year in revenue would clearly add to the business's profit.

Keep in mind that with this example, the investment in the electronic message center unit would likely be about one-third of the additional revenue generated in the first year of its operation alone.

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7. How much can I expect to spend on an electronic message center?

Before you wonder how much a business will spend on an electronic message center, first determine how much will be spent overall on marketing and advertising. It is not uncommon for a business that is already using a variety of media advertising without an electronic message center to divert some of those advertising dollars to an investment in one of these displays, greatly increasing exposure, business volume and customer acquisition - all without spending any additional revenue.

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Technological breakthroughs have reduced the costs of producing these communications devices and have considerably reduced the previous level of expense for operating message centers. New technology is available that allows message centers to:

- o operate 24 hours a day continuously for many years with minimal bulb or LED replacement; and
- o consume electricity at a daily cost of as little as \$0.20 for a small LED display, or approximately \$74.00 per year.

Best of all, these new message centers can be purchased for much less than their predecessors. Even small and medium-sized companies are finding an investment in a changeable electronic sign is worthwhile. Technological advancements are occurring so rapidly that a greater variety of these signs is within financial reach, offering the small business a tremendous on-site advertising tool that ties the advertised product directly to the location where it can be purchased.

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8. *What about safety? Aren't EMCs a distraction for drivers?*

Over the last few decades, discussion pertaining to signage has centered on four fronts:

1. maintaining the **economic vitality of commercial districts** through signage
2. the First Amendment (see this SBA site's "[Legal Considerations](#)" and the "[Legal Resources](#)" in the Glossary/Resources tab for in-depth detail about legal rights, protections and more)
3. **community aesthetics**; and
4. traffic safety.

Some might argue that signs cause traffic accidents by distracting the driver of a vehicle. However, this has never been proven to be the case with a well-designed sign. A well-designed sign has a brief, easy-to-read message, in lettering large enough to be easily seen and read by a driver. Further, the sign is illuminated to assist in its visibility and legibility. The sign is of a sufficient size and height that it is easily seen, as well as placed in a location where a driver would naturally look.

If anything, well-designed and placed signage can increase safety. As quoted in the article, "[Traffic and On-Premise Sign Regulation](#)"* which speaks to this issue of safety in detail, "To facilitate safe movement and meet information needs, roadside signs, both commercial and noncommercial, must provide drivers with clear messages that are visible under all environmental conditions." The article continues with, "Signs that do not optimally communicate ... can create driver frustration or disorientation." And finally, "These driver behaviors many times cause accidents - accidents which might have been avoided had the pertinent sign been visible and readable in sufficient time for the viewer/driver to process its message and safely respond."

Electronic message centers - like other types of signage - when properly designed, placed, maintained, and illuminated can actually **promote** greater traffic safety.

* "**Signline**", a publication of the International Sign Association, has given us permission to reproduce the 2001 article,

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"Traffic and On-Premise Sign Regulation". This article also outlines the standards outlined by the Federal Highway Administration (FHWA) in their "Manual on Uniform Traffic Control Devices" (MUTCD). [Click here to view the article](#) (in pdf format).

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9. *What about face changes? Can I change the face or copy of my sign?*

The subject of copy and face changes on signs, and exactly how much control regulators should have over it, is riddled with complexities. The federal courts have been clear in restricting sign codes to content-neutral regulations of time, place and manner of display, but what about copy and face changes? Several cases have bearing on the issue.

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Continue to:

- [Features and Advantages of EMCs](#)
- [An Answer to the Challenge of Changing Demographics](#)
- [Electronic Message Centers: Safe and Legal](#)

[Back to the opening page of EMCs](#)

[Why Use Signage?](#) | [Types of Signage](#) | [Understanding The Value of Signage](#) | [Obtaining Your Signage](#)
[FAQs](#) | [Legal Considerations](#) | [Glossary/Resources](#) | [Sign Gallery](#) | [Signage Home](#)
[Co-Sponsors](#) | [Disclaimers](#) | [Privacy Policy](#)

Content comments to: info@signagefoundation.org

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*Last Modified: 07-01-02

EXISTING ELECTRIC MESSAGE CENTERS IN OAK HARBOR INSTALLED AND WORKING 2

Exhibit B



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**EXISTING NON-ELECTRIC MESSAGE CENTERS 3
 IN OAK HARBOR INSTALLED AND WORKING**



NOTE, THE AMOUNT OF DIRT AND GRIME THESE SIGNS BUILD UP BETWEEN THE LINES, ALSO THE AMOUNT OF LABOR TO PUT A MESSAGE UP"EACH LETTER GOES UP ONE AT A TIME" MAKING IT HARDER FOR BUSINESSES TO CHANGE THERE MESSAGES MOST BUSINESSES TRY TO PROMOTE CITY AND SCHOOL EVENTS ON THERE SIGNS TOO.

ELECTRIC MESSAGE CENTERS BUSINESS OWNERS WOULD LIKE TO BE ALLOWED



WE ARE HOPING FOR FULL COLOR DISPLAYS AND IF YOU MUST WRITE IN RULES ON TIMES BETWEEN CHANGES LIMIT VIDEO OR HAVE NO VIDEO DISPLAY, A LOT OF OUR CLIENTS WOULD LIKE TO DISPLAY STATIC PICTURES OF THERE PRODUCTS. ALSO CONSIDER THESE SIGNS SEPARATE FROM THE CURRENT SIGN SPACE ALLOWED, A POLE SIGN IN OAK HARBOR IS A MAX 100SQFT. A BUSINESS COMPLEX CAN HAVE 16 BUSINESSES IN ONE AREA THEY CAN ONLY HAVE ONE POLE SIGN FOR ALL OF THEM MAKING FOR REALLY TINY SIGNS THEY COULD ALL SHARE A MESSAGE CENTER TO HELP EACH BUSINESS GET NOTICED

2

OPTOMETRIC PHYSICIAN

CONTACTS - VISUAL THERAPY

DR. E.L. Burge

Harborview Vision Clinic
390 E. Whidbey Ave., #101
Oak Harbor, WA 98277
360.675.2295 Phone/Fax
E-mail: burgeel@whidbey.net

Member of American Optometric Association

Exhibit C

Mar. 24, 2009

City of Oak Harbor
City Council Regular Meeting

1. Photo of Lynden intersection, Rite Aide Digital sign on the Guide-Meridian Highway. A corner busy with traffic which will have even more vehicles in 2010 for the Olympic Games.
2. The Kiplinger Letter, Fall 2008, stated that the most efficient way to advertize is the digital sign. It currently is the fastest growing form of advertizing.
3. Telephone advertizing expense for the past five years was \$ 34,800 of which \$30,311 was sent to Verizon Directories, Dallas, Texas. I would rather spend this money in Oak Harbor.



City of Oak Harbor
Ordinance for the Arts
March 24, 2009

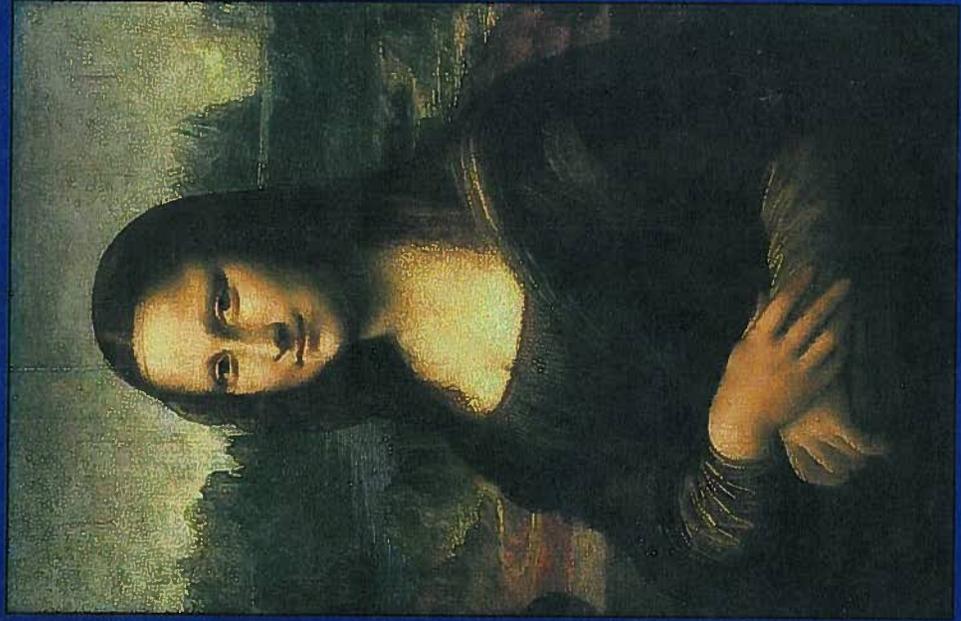
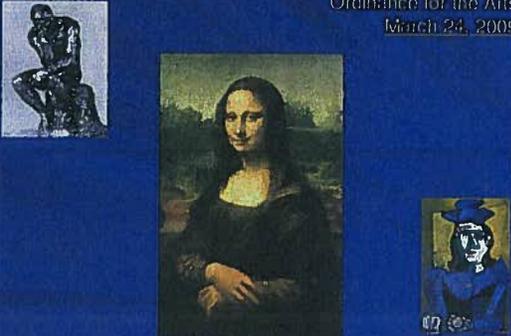


Exhibit D

City of Oak Harbor
Ordinance for the Arts
March 23, 2009



History



1) Ordinance #1438 passed by City Council on October 18, 2005:

- Expresses that public art "enhances... the community and benefits the health and welfare of the City's residents."
- Created the Arts Commission & administration of the Arts program.
- Established City Funding of the Arts by requiring that the City shall set aside 1% of its share of each capital project for arts.
- In 2005, the City began budgeting for this 1% increase and utility rates were adjusted to include a small portion to fund the program.

Difficulties with current ordinance:



1) Nexus and "project being constructed" requirements:

- The current ordinance states that the 1% set aside funds must be spent on the project being constructed.
 - *Positive:* May identify or screen an unhealthy project.
 - *Negative:* Placement of Art may not be prudent. Public may not have access to location.

Positive of project specific Art:



Negative: Best location for Art?



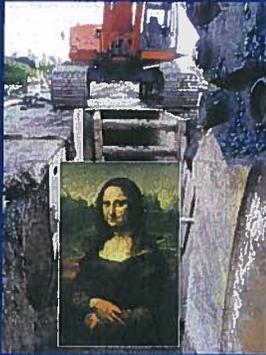
Negative: Best location for Art?



Negative: Best location for Art?



Negative: Best location for Art?



Difficulties: Legal problems with Nexus



Thursday, September 16, 2005

Public funding of the arts enriches Seattle citizenry

By GAYTHER H. JOHNSTON

Seattle is renowned for its public art but the city's prominence is being attacked from within. The Washington State Court of Appeals heard oral arguments Wednesday in a lawsuit in which several Seattle City Light ratepayers claim that the utility's participation in the city's 32-year-old One Percent for Art Ordinance is an inappropriate use of utility fees.

Seattle is rare among American cities in that the government owns its electric utility. This lawsuit affects City Light's participation in the One Percent for Art program — not that of other city agencies.

Seattle's ordinance requires that 1 percent of capital improvement project costs for public facilities be dedicated to public art enhancements to the project. The art is often visual, such as a sculpture or mural in a public space, but in other cases may be incorporated into the entire design execution of the project.

Difficulties: Uneven funding

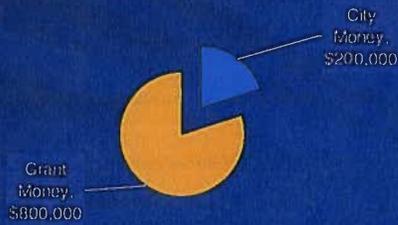
Difficult to plan and budget for art:

- Capital projects occur as needed and maybe not occur during a given year.
- Capital outlay projects vary in size.
- \$5,000 water project: \$50
- \$50,000,000 Treatment plant: \$500,000
- Makes it difficult to plan, budget for, and administer an art program that makes sense.

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Difficulties: Grants and contributions

\$1 Million Capital Outlay Project



11

Difficulties: Grants and contributions

Total set aside for arts on \$1 million project is \$10,000.
But because of grant money not being eligible for arts:

Rate payers pay $\$10,000 / \$200,000 = 5\%$





To continue the art program, we need a funding mechanism for art that:

- *Is cost neutral: No increase in rates!!*
- *Places art in a manner that makes sense.*
- *Provides a funding source that is consistent and manageable.*



Two methods of funding available:

- 1) *1% set aside from capital outlay – existing method*
- 2) *Implement a specifically restricted portion of the utility B&O tax being designated for art.*
 - *Eliminate 1% capital outlay method.*
 - *Replace it with a 1% utility B&O tax.*



What is the difference using a utility B&O tax?

- *The proceeds from utility B&O tax can be designated and restricted for art without the Nexus requirement.*
- *The revenue generated is even over time.*
 - *Allows for better budgeting and financial planning.*
 - *The Arts Commission can develop a long-term art plan with Council approval.*
- *Avoids the legal pitfalls and complications of grants.*

Comparison of two methods (Based on 2009-2010 Utility Budget
2017-2018 CR)

Based on 1% Capital Outlay

	2009	2010	2011	2012
Water	1,245,000	725,000	1,700,000	1,133,000
Sewer	1,017,500	783,000	4,350,000	1,681,000
Solid Waste	0	0	0	0
Total	2,262,500	1,508,000	6,050,000	2,814,000

1% for Arts \$22,345 \$15,100 \$50,640 \$28,950 \$126,345

Based on 1/4% Utility B&O

	2009	2010	2011	2012
Water	3,782,393	3,982,119	4,121,493	4,266,745
Sewer	3,747,917	3,785,396	3,917,885	4,055,011
Solid Waste	2,303,953	3,053,913	3,159,715	3,270,157
Total	9,834,263	10,821,428	11,201,154	11,591,913

1/4% B&O \$20,206 \$27,056 \$28,003 \$28,983 \$110,308

What is the effect on my utility bill?

Doug's Utility Bill

	2-month Billing	1% Method	1/4% B&O Method
Water	\$93.60	\$0.27	\$0.23
Sewer	\$73.04	\$0.22	\$0.18
Solid Waste	\$46.30	\$0.13	\$0.12
	\$212.94	\$0.62	\$0.53
Monthly:		\$0.31	\$0.27



Would this accomplish our goals?

- *Cost neutral:* 1/4% B&O would actually result in a small rate decrease.
- *Placement:* Art can be placed in viewable areas.
- *Even funding:* Provides an even and predictable funding source.

How do we implement this?



Two ordinances on April 7, 2009:

Ordinance #1: reports "1% capital outlay set aside" method.

Ordinance #2: replace the 1% method with a 14% Utility B&O tax.

Restricts funds to Art Fund

Questions ???

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

Bill No. 2

Date: April 7, 2009

Subject: Employee Recognition

FROM: Jim Slowik
Mayor 

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

SUMMARY STATEMENT

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

- Randy Payne / Public Works – 10 years

City of Oak Harbor

OFFICE OF THE MAYOR
JIM SLOWIK
MAYOR



PROCLAMATION IN RECOGNITION OF

PAM HEADRIDGE DAY

WHEREAS, Pam Headridge has coached the Oak Harbor High School Wildcat Cheerleaders for 18 seasons, and;

WHEREAS, during her very successful tenure, she has established the Wildcat cheerleading squad as one of the top cheerleading programs in the country as her teams have won several titles at the state, region and national levels, and;

WHEREAS, for her efforts, she has been honored numerous times, including being named National Coach of the Year, Washington State Coach of the Year, National Federation Sectional 8 Spirit Coach of the Year and induction into the Washington State Cheerleading Coaches Hall of Fame, and;

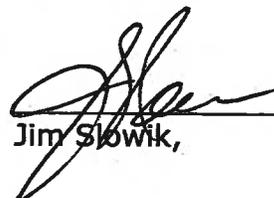
WHEREAS, her commitment, as a coach, is to develop organizational skills, teamwork, the joy of giving back to the community, leadership, communication skills, poise, physical fitness and confidence in her cheerleaders, and;

WHEREAS, she so deeply believes in the benefits of cheerleading that she implemented a no-cut policy at Oak Harbor High School to encourage as many girls and boys to participate in this activity that empowers them to believe in themselves. Her policy has provided opportunities to students with physical challenges, including deafness and Down syndrome, and;

WHEREAS, she is widely renowned for her understanding of her sport and travels the country teaching at conferences and seminars.

NOW, THEREFORE, WE, Jim Slowik, Mayor, and Councilmembers of the City of Oak Harbor do hereby designate **April 7, 2009** as **Pam Headridge Day**.

Signed this 7th day of April, 2009



Jim Slowik,

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

Bill No. 4

Date: APRIL 7, 2009

Subject: **PUBLIC COMMENTS**

FROM: **Jim Slowik, Mayor**

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:



Jim Slowik, Mayor

Paul Schmidt, City Administrator

Doug Merriman, Finance Director

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

 Margery Hite, City Attorney

SUMMARY STATEMENT

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

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

Bill No. C/A 5A
Date: April 7, 2009
Subject: State Appropriation Contract for
Marina Dredging Design
Engineering

FROM: Steve Powers, Development Services Director *PCP*
Mack Funk, Harbormaster

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

PURPOSE

This agenda bill presents a contract between the City of Oak Harbor and the Washington State Department of Community, Trade and Economic Development (CTED) that provides for City reimbursement of up to \$58,263.00 in costs associated with the engineering design of the Marina maintenance dredging.

AUTHORITY

Washington State law authorizes cities to enter into contracts. Specifically, RCW 35.21.010(1) reads, in part, as follows:

Municipal corporations now or hereafter organized are bodies politic and corporate under the name of the city of, or the town of, as the case may be, and as such may . . . contract or be contracted with...

The Oak Harbor Municipal Code (OHMC) requires City Council approval for certain contracts. Specifically, OHMC 2.390.010, states:

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.

As this contract exceeds the \$30,000 limitation Council approval is required.

SUMMARY STATEMENT

In 2007 the City received an award of CTED funds intended to assist with the design of the dredging required to maintain the Marina. Subsequent to that award staff submitted the required, preliminary paperwork to CTED. On October 8, 2008, the Council approved an engineering

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contract for Phase I Marina improvements which included the dredging design work. The City recently received the contract from the CTED that once approved by the Council, will allow the City to seek reimbursement for the dredging design work costs.

STANDING COMMITTEE REPORT

The contract was reviewed by the Governmental Services Committee at their March 9, 2009 meeting.

RECOMMENDED ACTION

Authorize the Mayor to sign a contract with CTED to provide reimbursement funding for Marina dredging design work.

ATTACHMENTS

CTED, Local and Community Projects Program, Capital Contract Number 08-96105-095

MAYOR'S COMMENTS

HR

**STATE OF WASHINGTON
DEPARTMENT OF COMMUNITY, TRADE AND ECONOMIC DEVELOPMENT
LOCAL AND COMMUNITY PROJECTS PROGRAM
CAPITAL CONTRACT NUMBER 08-96105-095**

THIS CONTRACT, entered into by and between the City of Oak Harbor (a unit of local government hereinafter referred to as the CONTRACTOR), and the Washington State Department of Community, Trade and Economic Development (hereinafter referred to as the DEPARTMENT), WITNESSES THAT:

WHEREAS, the DEPARTMENT has the statutory authority under RCW 43.330.050 (5) to cooperate with and provide assistance to local governments, businesses, and community-based organizations; and

WHEREAS, the DEPARTMENT is also given the responsibility to administer state funds and programs which are assigned to the DEPARTMENT by the Governor or the Washington State Legislature; and

WHEREAS, the Washington State Legislature has, in Laws of 2007, Chapter 520, Section 1041, made an appropriation to support the Local and Community Projects Program, and directed the DEPARTMENT to administer those funds; and

WHEREAS, the enabling legislation also stipulates that the CONTRACTOR is eligible to receive funding for acquisition, construction, or rehabilitation (a venture hereinafter referred to as the "Project").

NOW, THEREFORE, in consideration of covenants, conditions, performances, and promises hereinafter contained, the parties hereto agree as follows:

1. FUNDING

The funds awarded to the CONTRACTOR hereunder shall be a sum up to, but not to exceed \$58,263.00. The DEPARTMENT has retained the amount of \$737.00 for costs directly associated with managing the completion of this contract.

2. SERVICE PROVISIONS

- a) Funds awarded under this contract shall be used solely and specifically for capital construction costs associated with the Oak Harbor Dredging Preconstruction Activities project, as contemplated in Laws of 2007, Chapter 520, Section 1041.
- b) The CONTRACTOR shall perform in accordance with the terms and conditions of this contract and the following attachments which, by this reference, are made a part of this contract:

ATTACHMENT A (Project Budget)

ATTACHMENT B (Certification of the Availability of Funds to Complete the Project)

ATTACHMENT C (Project Scope of Work)

ATTACHMENT D (Certification of the Payment and Reporting of Prevailing Wages)

N/A

~~ATTACHMENT E (Certification of Intent to Enter the Leadership in Energy and Environmental Design Certification Process)~~

3. SPECIAL CONDITION(S)

None.

4. CONTRACT PERIOD

- a) The effective date of this contract shall be the date of the last signature of the contracting parties.
- b) Unless terminated earlier pursuant to Section 9, 12, or 29, hereof, the termination date shall be June 30, 2011.

5. CERTIFICATION OF FUNDS

- a) The release of state funds under this contract is contingent upon the CONTRACTOR certifying that it has expended or has access to funds from non-state sources as set forth in ATTACHMENT B (CERTIFICATION OF THE AVAILABILITY OF FUNDS TO COMPLETE THE PROJECT), hereof. Such non-state sources may consist of a combination of any of the following:
 - i) Eligible Project expenditures prior to the execution of this contract.
 - ii) Cash dedicated to the Project.
 - iii) Funds available through a letter of credit or other binding loan commitment(s).
 - iv) Pledges from foundations or corporations.

- v) Pledges from individual donors.
 - vi) The value of real property when acquired solely for the purposes of this Project, as established and evidenced by a current market value appraisal performed by a licensed, professional real estate appraiser, or a current property tax statement. The DEPARTMENT will not consider appraisals for prospective values of such property for the purposes of calculating the amount of non-state matching fund credit.
 - vii) In-kind contributions, subject to the DEPARTMENT'S approval.
- b) The CONTRACTOR shall maintain records sufficient to evidence that it has access to or has expended funds from such non-state sources, and shall make such records available for the DEPARTMENT'S review upon reasonable request.
6. EXPENDITURES ELIGIBLE FOR REIMBURSEMENT
 The CONTRACTOR may be reimbursed, at the rate set forth elsewhere in this contract, for Project expenditures in the following cost categories:
- a) Real property, and costs directly associated with such purchase, when purchased or acquired solely for the purposes of the Project;
 - b) Design, engineering, architectural, and planning;
 - c) Construction management and observation (from external sources only);
 - d) Construction costs including, but not limited to, the following:
 - Site preparation and improvements;
 - Permits and fees;
 - Labor and materials;
 - Taxes on Project goods and services;
 - Capitalized equipment;
 - Information technology infrastructure; and
 - Landscaping.
7. REIMBURSEMENT PROVISIONS
- a) Payments to the CONTRACTOR shall be made on a reimbursement basis only. For the purposes of this contract, reimbursement shall be construed to mean costs incurred and paid, or costs incurred and payable within thirty (30) days.
 - b) The DEPARTMENT shall reimburse the CONTRACTOR for one-hundred percent (100%) of eligible Project expenditures, up to the maximum payable

under this contract. When requesting reimbursement for costs incurred or expenditures made, the CONTRACTOR shall submit to the DEPARTMENT a signed and completed Invoice Voucher (Form A-19), referencing the Project activity performed, and any appropriate documentation. The voucher must be certified by an official of the CONTRACTOR with authority to bind the CONTRACTOR. The final voucher shall be submitted to the DEPARTMENT within fifteen (15) days following the completion of work or other termination of this contract.

- c) Each request for payment must be accompanied by a Project Status Report, which describes, in narrative form, the progress made on the Project since the last invoice was submitted, as well as a report of Project status to date. The DEPARTMENT will not release payment for any reimbursement request received unless and until the Project Status Report is received.
- d) After approving the Invoice Voucher and Project Status Report, the DEPARTMENT shall promptly remit a warrant to the CONTRACTOR.
- e) The CONTRACTOR shall not submit invoices more than once monthly.

8. EVALUATION AND MONITORING

- a) The CONTRACTOR shall cooperate with and freely participate in any monitoring or evaluation activities conducted by the DEPARTMENT that are pertinent to the intent of this contract, including periodic site inspections.
- b) The CONTRACTOR shall provide the DEPARTMENT with photographs, either hard copy or electronically, which depict visually the progress made on the Project. Such photographs shall be submitted to the DEPARTMENT at the inception of the Project, upon 50 percent of completion, and upon completion, as applicable.
- c) The DEPARTMENT or the State Auditor and any of their representatives shall have full access to and the right to examine during normal business hours and as often as the DEPARTMENT or the State Auditor may deem necessary, all the CONTRACTOR'S records with respect to all matters covered in this contract. Such representatives shall be permitted to audit, examine, and make excerpts or transcripts from such records and to make audits of all contracts, invoices, materials, payrolls, and records of matters covered by this contract. Such rights last for six (6) years from the date final payment is made hereunder.

9. NONDISCRIMINATION PROVISION

- a) During the performance of this contract, the CONTRACTOR shall abide by all applicable federal and state nondiscrimination laws and regulations, including,

but not limited to Chapter 49.60 RCW (Washington's Law Against Discrimination) and 42 U.S.C. 12101 et. seq. (the Americans With Disabilities Act [ADA]).

- b) The CONTRACTOR shall make the Project facilities available to the public in a manner that assures fair, equal, and non-discriminatory treatment to all persons without regard to race, color, religion, sex, age, or national origin. No person shall be refused service, be given discriminatory treatment, be denied any privilege, use of facilities, or participation in activities on account of race, color, religion, sex, or the presence of a sensory, mental, or physical handicap, or be required to participate in any religious worship, exercise or instruction. The funds provided under this contract shall not be used to fund religious worship, exercise, or instruction.
- c) In the event of the CONTRACTOR'S noncompliance or refusal to comply with any nondiscrimination law, regulation, or policy, this contract may be rescinded, canceled, or terminated in whole or in part, and the CONTRACTOR may be declared ineligible for further contracts with the DEPARTMENT. The CONTRACTOR shall, however, be given a reasonable time in which to remedy any such noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth in Section 23 of this contract.

10. CONTRACT MODIFICATIONS

The DEPARTMENT and the CONTRACTOR may, from time to time, desire to make changes to this contract. Any such changes that are mutually agreed upon by the DEPARTMENT and the CONTRACTOR shall be incorporated herein by written amendment. It is mutually agreed and understood that, except for the budget modifications described in Section 11 of this contract, no alteration or variation of the terms of this contract shall be valid unless made in writing and signed by the parties hereto, and that any oral understanding or agreements not incorporated herein shall not be binding.

11. MODIFICATIONS TO THE PROJECT BUDGET

- a) Notwithstanding any other provision of this contract, the CONTRACTOR may, at its discretion, make modifications not to exceed fifteen percent (15%) of each line item in the Project Budget (Attachment A), hereof.
- b) The CONTRACTOR shall notify the DEPARTMENT in writing when making any budget modification or modifications that would exceed fifteen percent (15%) of any budget line item. Any such request shall require the written approval of the DEPARTMENT, and any such modifications shall be made in writing and signed by both parties, and attached to the Project Budget (Attachment A), hereof.

- c) Nothing in this section shall be construed to permit an increase in the amount of funds available for the Project, as set forth in Section 1 of this contract.

12. TERMINATION OF CONTRACT

- a) If, through any cause, the CONTRACTOR shall fail to fulfill in a timely and proper manner its obligations under this contract or if the CONTRACTOR shall violate any of its covenants, agreements or stipulations of this contract, the DEPARTMENT shall thereupon have the right to terminate this contract and withhold the remaining allocation if such default or violation is not corrected within twenty (20) days after the DEPARTMENT'S submitting written notice to the CONTRACTOR describing such default or violation; Provided, that if more than twenty (20) days are required to correct any such default or violation and the CONTRACTOR has initiated appropriate corrective measures as reasonably determined by the DEPARTMENT, the DEPARTMENT will not terminate this CONTRACT for such default or violation.
- b) Notwithstanding any provisions of this contract, either party may terminate this contract by providing the other party with written notice of such termination, specifying the effective date thereof, at least thirty (30) days prior to such date.
- c) In the event this contract is terminated, the CONTRACTOR shall be reimbursed for eligible expenses incurred prior to the effective date of such termination and not otherwise paid for by the DEPARTMENT, as the DEPARTMENT reasonably determines.
- d) In the event funds are not reappropriated for this Project in the 2009 - 2011 biennial budget, this contract shall terminate on June 30, 2009.

13. SPECIAL PROVISION

The DEPARTMENT'S failure to insist upon the strict performance of any provision of this contract or to exercise any right based upon a breach thereof or the acceptance of any performance during such breach, shall not constitute a waiver of any right under this contract.

14. HOLD HARMLESS

- a) It is understood and agreed that this contract is solely for the benefit of the parties hereto and gives no right to any other party. No joint venture or partnership is formed as a result of this contract. Each party hereto agrees to be responsible and assume liability for its own negligent acts or omissions, or those of its officers, agents, or employees to the fullest extent required by law, and agrees to save, indemnify, defend, and hold the other party harmless from any such liability. In the case of negligence of more than one party, any damages allowed shall be levied in proportion to the percentage of negligence attributable to each party, and

each party shall have the right to seek contribution from the other party in proportion to the percentage of negligence attributable to the other party.

- b) This indemnification clause shall also apply to any and all causes of action arising out of the performance of work activities under this contract. Each contract for services or activities utilizing funds provided in whole or in part by this contract shall include a provision that the DEPARTMENT and the state of Washington are not liable for damages or claims from damages arising from any subcontractor's performance or activities under the terms of the contracts.
- c) The CONTRACTOR shall defend, indemnify and save the DEPARTMENT, its officers, and employees harmless, from and against any and all claims, including reasonable attorney fees, made by the CONTRACTOR, its subcontractors, their employees and subcontractors, and any other persons, relating to the payment or reporting of prevailing wages under RCW 39.04 or RCW 39.12.

15. RECAPTURE PROVISION

In the event that the CONTRACTOR fails to expend state funds in accordance with state law and/or the provisions of this contract, the DEPARTMENT reserves the right to recapture state funds in an amount equivalent to the extent of noncompliance.

Repayment by the CONTRACTOR of state funds under this recapture provision shall occur within thirty (30) days of demand. In the event that the DEPARTMENT is required to institute proceedings to enforce this recapture provision, the DEPARTMENT shall be entitled to its cost thereof, including reasonable attorney's fees.

16. OWNERSHIP OF PROJECT/CAPITAL FACILITIES

The DEPARTMENT makes no claim to any real property improved or constructed with funds awarded under this contract and does not assert and will not acquire any ownership interest in or title to the capital facilities and/or equipment constructed or purchased with state funds under this contract. This provision does not extend to claims that the DEPARTMENT may bring against the CONTRACTOR in recapturing funds expended in violation of this contract.

17. RELATIONSHIP BETWEEN THE PARTIES

The CONTRACTOR and its employees or agents performing under this contract are not deemed to be employees of the DEPARTMENT nor agents of the DEPARTMENT in any manner whatsoever, nor will they hold themselves out as nor claim to be officers or employees of the DEPARTMENT or of the state of Washington hereof and will not make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the DEPARTMENT or of the state of Washington.

18. GOVERNING LAW AND VENUE

This contract shall be construed and enforced in accordance with, and the validity and performance hereof shall be governed by, the laws of the state of Washington. Venue of any action at law between the parties arising out of this contract shall be the superior court of Thurston County, Washington.

19. SEVERABILITY

In the event any term or condition of this contract or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other terms, conditions, or applications of this contract that can be given effect without the invalid term, condition, or application. To this end the terms and conditions of this contract are declared severable.

20. REDUCTION IN FUNDS

In the event state funds appropriated for the work contemplated under this contract are withdrawn, reduced, or limited in any way by the Governor or the Washington State Legislature during the contract period, the parties hereto shall be bound by any such revised funding limitations as implemented at the discretion of the DEPARTMENT, and shall meet and renegotiate the contract accordingly.

21. ENTIRE AGREEMENT

This contract and all attachments hereto contain all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this contract and attachments shall be deemed to exist or to bind any of the parties hereto.

22. SIGNAGE, MARKERS AND PUBLICATIONS

If, during the period covered by this contract, the CONTRACTOR displays or circulates any communication, publication, or donor recognition identifying the financial participants in the Project, any such communication or publication must identify "The State of Washington" as a participant.

23. DISPUTES

Except as otherwise provided in this contract, when a bona fide dispute arises between the parties and it cannot be resolved through discussion and negotiation, either party may request a dispute hearing. The parties shall select a dispute resolution team to resolve the dispute. The dispute resolution team shall consist of a representative appointed by the DEPARTMENT, a representative appointed by the CONTRACTOR, and a third party mutually agreed upon by both parties. The dispute resolution team shall attempt, by majority vote, to resolve the dispute. The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial setting.

24. REGULATION COMPLIANCE

The CONTRACTOR shall be responsible for obtaining all necessary licenses and permits, and for complying with any federal, state and municipal laws, codes, and regulations applicable to the project funded by this contract.

25. PREVAILING WAGE LAW

The Project funded under this contract may be subject to state prevailing wage law (Chapter 39.12 RCW). The CONTRACTOR is advised to consult the Industrial Statistician at the Washington Department of Labor and Industries to determine whether prevailing wages must be paid. The DEPARTMENT is not responsible for determining whether prevailing wage applies to this Project or for any prevailing wage payments that may be required by law.

26. CHANGE OF OWNERSHIP OR USE FOR CONTRACTOR-OWNED PROPERTY

- a) The CONTRACTOR understands and agrees that any and all real property or facilities owned by the CONTRACTOR that are acquired, constructed, or otherwise improved by the CONTRACTOR using state funds under this contract shall be held and used by the CONTRACTOR for the purpose or purposes stated elsewhere in this contract for a period of at least ten (10) years from the date the final payment is made hereunder.
- b) This provision shall not be construed to prohibit the CONTRACTOR from selling any property or properties described in this section; Provided, that any such sale shall be subject to prior review and approval by the DEPARTMENT, and that all proceeds from such sale shall be applied to the purchase price of a different facility or facilities of equal or greater value than the original facility and that any such new facility or facilities will be used for the purpose or purposes stated elsewhere in this contract.
- c) In the event the CONTRACTOR is found to be out of compliance with this section, the CONTRACTOR shall repay to the state general fund the principal amount of the grant as stated in Section 1, hereof, plus interest calculated at the rate of interest on state of Washington general obligation bonds issued most closely to the effective date of the legislation in which the subject facility was authorized. Repayment shall be made pursuant to Section 15 (Recapture provision).

27. CHANGE OF USE FOR LEASED PROPERTY

- a) The CONTRACTOR understands and agrees that any facility leased by the CONTRACTOR that is constructed, renovated, or otherwise improved using state funds under this contract shall be used by the CONTRACTOR for the purpose or

purposes stated elsewhere in this contract for a period of at least ten (10) years from the date the final payment is made hereunder.

- b) In the event the CONTRACTOR is found to be out of compliance with this section, the CONTRACTOR shall repay to the state general fund the principal amount of the grant as stated in Section 1, hereof, plus interest calculated at the rate of interest on state of Washington general obligation bonds issued most closely to the effective date of the legislation in which the subject facility was authorized. Repayment shall be made pursuant to Section 15 (Recapture Provision).

28. HISTORICAL AND CULTURAL ARTIFACTS

In the event that historical or cultural artifacts are discovered at the Project site during construction, the CONTRACTOR shall immediately stop construction and notify the local historical preservation officer and the state historical preservation officer at the Washington State Department of Archaeology and Historic Preservation.

29. REAPPROPRIATION

- a) The parties hereto understand and agree that any state funds not expended by June 30, 2009, will lapse on that date unless specifically reappropriated by the Washington State Legislature. If funds are so reappropriated, the state's obligation under the terms of this contract shall be contingent upon the terms of such reappropriation.
- b) In the event any funds awarded under this contract are reappropriated for use in a future biennium, the DEPARTMENT reserves the right to assign a reasonable share of any such reappropriation for administrative costs.

30. SURVIVAL

- a) The terms and conditions contained in this contract that by their sense and context are intended to survive the termination of this contract, including Sections 14 (Hold Harmless), 15 (Recapture Provision), 18 (Governing Law and Venue), 22 (Signage, Markers and Publications), 23 (Disputes), 26 (Change of Ownership or Use for Contractor-Owned Property) and 27 (Change of Use for Leased Property), shall so survive.

31. ADMINISTRATION

- a) The CONTRACTOR'S representative shall be Mack Funk.
- b) The DEPARTMENT'S representative shall be Daniel Aarthun.

**ATTACHMENT A
PROJECT BUDGET**

<u>Line Item</u>	<u>Amount</u>
Architecture & Engineering	\$191,600.00
Total Contracted Amount:	\$191,600.00

The CONTRACTOR, by its signature, certifies that the Project Budget set forth above has been reviewed and approved by the CONTRACTOR'S governing body or board of directors, as applicable, as of the date and year written below.

CONTRACTOR

TITLE

DATE

**ATTACHMENT B
 CERTIFICATION OF THE AVAILABILITY OF FUNDS
 TO COMPLETE THE PROJECT**

<u>Non-State Funds</u>	<u>Amount</u>	<u>Total</u>
Marina Cash	\$133,337.00	
Total Non-State Funds	\$133,337.00	\$133,337.00
<u>State Funds</u>		
2007-2009 State Capital Budget	\$58,263.00	\$58,263.00
Total Non-State and State Sources		\$191,600.00

CERTIFICATION

The CONTRACTOR, by its signature, certifies that project funding from sources other than those provided by this contract and identified above has been reviewed and approved by the CONTRACTOR'S governing body or board of directors, as applicable, and has either been expended for eligible Project expenses, or is committed in writing and available and will remain committed and available solely and specifically for carrying out the purposes of this Project as described in elsewhere in this contract, as of the date and year written below. The CONTRACTOR shall maintain records sufficient to evidence that it has expended or has access to the funds needed to complete the Project, and shall make such records available for the DEPARTMENT'S review upon reasonable request.

 CONTRACTOR

 TITLE

 DATE

**ATTACHMENT C
PROJECT SCOPE OF WORK**

PROJECT SUMMARY

Funds awarded under this grant shall be used for design costs associated with the Oak Harbor Marina redevelopment project.

The City of Oak Harbor Marina redevelopment project encompasses the phased reconstruction and upgrading of the existing marina facilities. The state appropriation will cover costs associated with the effort to design the necessary dredging portion of this project.

Design is currently in progress and is anticipated to be completed by September 2009.

The CONTRACTOR shall make all plans and documents funded in whole or in part by this contract available to the Department upon reasonable request.

The CONTRACTOR, by its signature, certifies that the declaration set forth above has been reviewed and approved by the CONTRACTOR'S governing body as of the date and year written below.

CONTRACTOR

TITLE

DATE

**ATTACHMENT D
CERTIFICATION OF THE PAYMENT AND REPORTING
OF PREVAILING WAGES**

CERTIFICATION

The CONTRACTOR, by its signature, certifies that all contractors and subcontractors performing work on the Project shall comply with prevailing wage laws set forth in Chapter 39.12 RCW, as applicable to the Project funded by this contract, including but not limited to the filing of the "Statement of Intent to Pay Prevailing Wages" and "Affidavit of Wages Paid" as required by RCW 39.12.040. The CONTRACTOR shall maintain records sufficient to evidence compliance with Chapter 39.12 RCW, and shall make such records available for the DEPARTMENT'S review upon request.

The CONTRACTOR, by its signature, certifies that the declaration set forth above has been reviewed and approved by the CONTRACTOR'S governing body as of the date and year written below.

CONTRACTOR

TITLE

DATE

**ATTACHMENT E
CERTIFICATION OF INTENT TO ENTER THE LEADERSHIP IN ENERGY AND
ENVIRONMENTAL DESIGN (LEED) CERTIFICATION PROCESS**

CERTIFICATION

The CONTRACTOR, by its signature, certifies that it will enter into the Leadership in Energy and Environmental Design certification process, as stipulated in RCW 39.35D, as applicable to the Project funded by this contract. The CONTRACTOR shall, upon receipt of LEED certification by the United States Green Building Council, provide documentation of such certification to the DEPARTMENT.

The CONTRACTOR, by its signature, certifies that the declaration set forth above has been reviewed and approved by the CONTRACTOR'S governing body or board of directors, as applicable, as of the date and year written below.

N/A

CONTRACTOR

TITLE

DATE



City of Oak Harbor

MEMORANDUM

DATE: April 3, 2009

TO: Mayor Slowik
City Councilmembers

FROM: Paul Schmidt, City Administrator

Please note that we have been asked to add a consent agenda item to the April 7, 2009 City Council Agenda. It is a housekeeping item to set a hearing date for the final assessment roll for the Bayshore Drive LID Number 2007-1. The Resolution simply sets the hearing date for May 19, 2009.

Thank you for your consideration of this agenda bill addition.

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

Bill No. _____
Date: April 7, 2009
Subject: Bayshore Drive LID
Setting of Public
Hearing Date

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 item is to initiate the final assessment roll for Local Improvement District No. 2007-1 (Bayshore Drive).

AUTHORITY

RCW 35.43.150 requires City Council to set a hearing date by resolution for a public hearing on the final assessment for a local improvement district.

SUMMARY STATEMENT

On December 4, 2007, the Oak Harbor City Council passed Ordinance 1519 to establish Local Improvement District 2007-1. The construction is now complete on Bayshore Drive and to continue with the local improvement district process, a public hearing is to be conducted by City Council to establish the final assessment amounts.

This agenda bill simply sets a date to have the public hearing on the May 19, 2009 City Council meeting.

STANDING COMMITTEE REPORT

Local Improvement District 2007-1 has been discussed in the Public Works Standing Committee.

RECOMMENDED ACTION

City Council approve Resolution No. 09-09 to set a public hearing date for Local Improvement District 2007-1.

ATTACHMENTS

Resolution No. 09-09
Ordinance 1519

MAYOR'S COMMENTS

CITY OF OAK HARBOR, WASHINGTON

RESOLUTION NO. 09-09

A RESOLUTION of the City of Oak Harbor, Washington, fixing a time and place for hearing on the final assessment roll for Local Improvement District No. 2007-1 (Bayshore Drive LID), and directing that notice thereof be given in the manner required by law.

WHEREAS, the final assessment roll for Local Improvement District No. 2007-1, which was created and established by Ordinance No. 1519 passed by the City Council on December 4, 2007, has been prepared as provided by law and is on file with the City Clerk, and it is necessary to fix the date for a hearing thereon before the City Council; NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF OAK HARBOR, WASHINGTON, that the public hearing on the final assessment roll for Local Improvement District No. 2007-1 will be held before the City Council at 7 p.m., local time, in the Council Chambers, City Hall, 865 S.E. Barrington Drive, Oak Harbor, Washington on May 19, 2009. The City Clerk is instructed to cause notice to be given both by mailing and publication as required by law.

ADOPTED by the City Council of the City of Oak Harbor, Washington, at a regular open public meeting thereof on the 7th day of April, 2009.

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

CERTIFICATION

I, the undersigned, City Clerk of the City of Oak Harbor, Washington (the "City"), hereby certify as follows:

1. The attached copy of Resolution No. 09-09 (the "Resolution") is a full, true and correct copy of an Resolution duly adopted at a regular meeting of the City Council of the City held at the regular meeting place thereof on April 7, 2009, as that Resolution appears on the minute book of the City; and the Resolution will be in full force and effect immediately following its adoption; and

2. A quorum of the members of the City Council was present throughout the meeting and a majority of those members present voted in the proper manner for the adoption of the Resolution.

IN WITNESS WHEREOF, I have hereunto set my hand this ____ day of April, 2009.

CITY OF OAK HARBOR, WASHINGTON

_____, City Clerk

CITY OF OAK HARBOR, WASHINGTON

ORDINANCE NO. 1519

AN ORDINANCE OF THE CITY OF OAK HARBOR ORDERING THE IMPROVEMENT OF BENEFITED PROPERTIES WITHIN THE BAYSHORE DRIVE AREA OF THE CITY BY THE CONSTRUCTION AND INSTALLATION OF STREET IMPROVEMENTS, OTHERWISE KNOWN AS THE "BAYSHORE DRIVE STREET IMPROVEMENTS," TOGETHER WITH ASSOCIATED AND NECESSARY WATER, SIDEWALKS, STREET LIGHTING, STORM DRAINAGE AND OTHER APPURTENANCES ALL IN ACCORDANCE WITH RESOLUTION NO. 07-14 OF THE CITY COUNCIL; ESTABLISHING LOCAL IMPROVEMENT DISTRICT NO. 2007-1 TO ASSESS THE COST AND EXPENSE OF CARRYING OUT THOSE IMPROVEMENTS AGAINST THE PROPERTIES SPECIALLY BENEFITED THEREBY

WHEREAS, by Resolution No. 07-14, adopted July 3, 2007, the City Council of the City of Oak Harbor, Washington (the "City"), declared its intention to order the improvement of the benefited properties within the Bayshore Drive area of the City, by constructing and installing street improvements, otherwise known as the "Bayshore Drive Street Improvements," together with associated and necessary water, sidewalks, street lighting, storm drainage and other appurtenances, and the formation of a local improvement district to be known as Local Improvement District No. 2007-1 ("LID No. 2007-1", the "District", or the "LID") encompassing the territory described in Exhibit A to such resolution, for the construction and installation of the improvements described in Exhibit B to that resolution (the "Improvements"); and fixed December 4, 2007, at 7:00 p.m., local time, in City Hall, located at 865 SE Barrington Drive, Oak Harbor, Washington, as the time and place for hearing all matters relating to the proposed Improvements and all comments thereon and objections thereto and for determining the method of payment for the Improvements; and

WHEREAS, the City Engineer, has caused an estimate to be made of the cost and expense of the proposed Improvements and certified that estimate to the City Council, together with all relevant papers and information in his possession touching the proposed Improvements, a description of the boundaries of the proposed LID and a statement of what portion of the cost and expense of the Improvements should be borne by the property within the proposed District; and

WHEREAS, that estimate is accompanied by a diagram of the proposed Improvements showing thereon the lots, tracts, parcels of land, and other property which will be specially benefited by the proposed Improvements and the estimated cost and expense thereof to be borne by each lot, tract and parcel of land or other property; and

WHEREAS, public health and safety problems have been created and now exist within the proposed LID because of the lack of adequate road facilities; and

WHEREAS, proper notice of the above hearing was given in the manner provided by law, and the hearing was held by the City Council on the date and at the time above mentioned, and all persons appearing at such hearing and wishing to be heard were heard; and

WHEREAS, the City Council has determined it to be in the best interests of the City that the Improvements as hereinafter described be carried out and that a LID be created in connection therewith encompassing the territory as hereinafter described;

Now, therefore, THE CITY COUNCIL OF THE CITY OF OAK HARBOR, do ordain as follows:

Section One. The City Council finds that the Improvements as hereinafter described are necessary for the protection of the public health and safety within the LID as hereinafter revised. After due consideration and being fully advised, the City Council orders the improvement of the properties within the area described in Exhibit A, as revised and attached hereto and by this reference made a part hereof, by installing street improvements, otherwise known as the "Bayshore Drive Street Improvements," together with associated and necessary water, sidewalks, street lighting, storm drainage and other appurtenances, as more fully described in Exhibit B, and attached hereto and by this reference made a part hereof.

All of the foregoing shall be in accordance with the plans and specifications therefor prepared by the City's consulting engineers, and may be modified by the City Council as long as such modification does not affect the general purpose of the Improvements.

Section Two. There is created and established a LID to be called Local Improvement District No. 2007-1 of the City of Oak Harbor, Washington, the boundaries or territorial extent of the LID being more particularly described in Exhibit A, as the territory described in Resolution No. 07-14, and approved by this ordinance, and the scope of the Improvements to be acquired therein, being more particularly described in Exhibit B, as the description in Resolution No. 07-14, and approved by this ordinance.

Section Three. The total estimated cost and expense of the Improvements, taking into account information presented at the hearing, is now declared to be \$681,000. One half of the \$681,000 cost and expense, minus the cost and expense of the improvements on SW Beeksma Drive and minus one half the cost and expense of fill previously placed, shall be borne by and assessed against the property specially benefited by such Improvements included in the LID which embraces as nearly as practicable all property specially benefited by such Improvements. The remainder shall be borne by the City as the cost of the special benefit to the public at large.

In accordance with the provisions of RCW 35.44.047, the City may use any method or combination of methods to compute assessments which may be deemed to more fairly reflect the special benefits to the properties being assessed than the statutory method of assessing the properties.

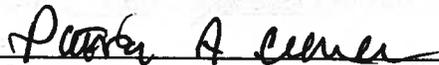
Section Four. No property, any portion of which is outside the LID, may connect to those Improvements constructed or made a part of such LID unless either that property shall have been subject to the special assessments on the assessment roll for the LID or the owners of that property shall have paid prior to such connection a charge in lieu of assessment which shall be at least the equivalent of those assessments which would have been applied to that property had it been included within the LID.

Section Five. Within 15 days of the passage of this ordinance, there shall be filed with the Finance Director the title of the Improvements and LID number, a copy of the diagram or print showing the boundaries of the LID and the preliminary assessment roll or abstract of such roll showing thereon the lots, tracts and parcels of land that will be specially benefited thereby and the estimated cost and expense of such Improvements to be borne by each lot, tract or parcel of land. The Finance Director immediately shall post the proposed assessment roll upon his index of local improvement assessments against the properties affected by the LID.

Section Six. This ordinance shall be in full force and effect five days after its passage and publication as required by law.

PASSED by the City Council and approved by its Mayor, this 4th day of December, 2007.

THE CITY OR OAK HARBOR



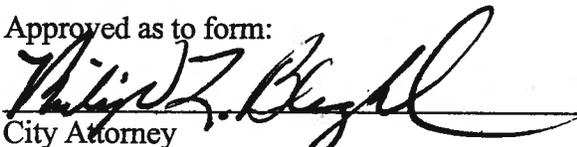
Mayor

Attest:



City Clerk

Approved as to form:



City Attorney

Published: DECEMBER 12, 2007

CERTIFICATION

I, Connie Wheeler the undersigned, City Clerk of the City of Oak Harbor, Washington, (the "City"), hereby certify under penalty of perjury under the Laws of the State of Washington as follows:

1. The attached copy of Ordinance No. 1519 (the "Ordinance") is a full, true and correct copy of the Ordinance duly adopted at a regular meeting of the Council held at the regular meeting place thereof on December 4, 2007, as the Ordinance appears on the minute book of the City; and the Ordinance is now in full force and effect.

2. A quorum of the members of the Council was present throughout the meeting and a majority of those members present voted in the proper manner for the adoption of the Ordinance.

Signed this 4th day of December 2007, at Oak Harbor, Washington.



City Clerk



**Fakkema
and
Kingma, Inc.**

EXHIBIT A

840 SE 8th Ave., Suite 102 • Oak Harbor, WA 98277-2996 • (360) 675-5973 • (877) 321-7242 • FAX (360) 675-7255 • EMAIL: fandk@whidbey.net

PROPOSED LID LAND DESCRIPTION

That portion of the U. Freund Donation Land Claim in Sections 2 and 3, Township 32 North, Range 1 East of the Willamette Meridian, described as follows:

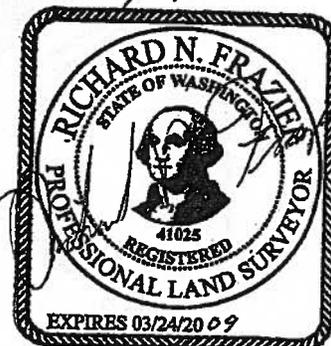
Lots 2 and 4 of City of Oak Harbor Binding Site Plan No. BSP 00-1 as approved August 28, 2000, and recorded August 29, 2000, under Auditor's File No. 20015334, records of Island County, Washington.

ALSO, that portion of SW Bayshore Drive as shown on said City of Oak Harbor Binding Site Plan No. BSP 00-1 lying East of the West line of aforesaid Lot 2, projected southeasterly.

ALSO, Lots B and C of City of Oak Harbor Short Plat No. 2-86 as approved September 16, 1986, and recorded September 17, 1986, under Auditor's File No. 86011700, records of Island County, Washington.

ALSO, that portion of S. Beeksmas Drive lying West of the East line of U. Freund Donation Land Claim, South of the North line of aforesaid Lot B, projected easterly, and North of a line running East from the most easterly southeast corner of aforesaid SW Bayshore Drive.

Situate in Island County, Washington



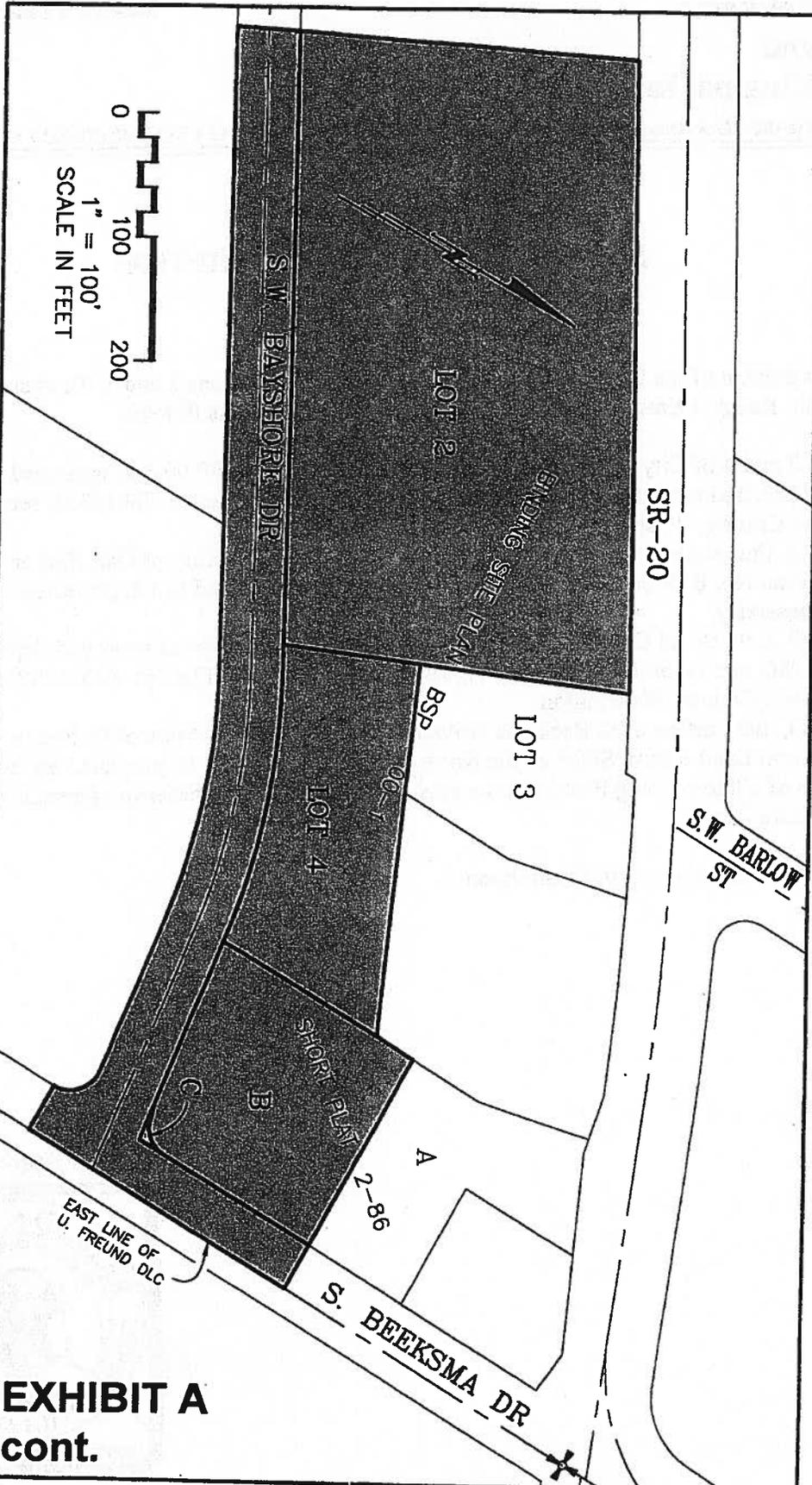


EXHIBIT A
cont.

CITY OF OAK HARBOR, WASHINGTON

RESOLUTION NO 07-14

A RESOLUTION of the City Council of the City of Oak Harbor, Washington, declaring its intention to order the improvement of benefited properties within the City by the construction and installation of street improvements, otherwise known as the Bayshore Drive Street Improvements, together with associated and necessary water, sidewalks, street lighting and storm drainage and other appurtenances, and to create a local improvement district to be known as Local Improvement District NO. 2007-1 to assess the cost and expense of carrying out those improvements against the properties specially benefited thereby, and notifying all persons who desire to object to the improvements to appear and present their objections at a hearing before the City Council to be held on December 4, 2007.

WHEREAS, considering the need to protect and promote the public health, safety and welfare by providing alternative means of vehicular access to SR-20 from commercial properties, and to foster and promote continued economic development, it is necessary to construct the Bayshore Drive Street Improvements; and

WHEREAS, the SE Bayshore Drive Street Improvements are included as necessary project in the transportation element of the City of Oak Harbor Capital Facilities plan and Transportation Improvement Plan (TIP); and

WHEREAS, public sentiment and support has been expressed for the project and an informal petition has been submitted by the benefiting properties owners requesting the City form a local improvement district to finance and construct the improvements; and

WHEREAS, the City Council believes that the Bayshore Drive Street Improvements should be constructed; and

WHEREAS, the project will confer both general benefits to the public and special benefits to the properties along the street and where allowed for by State law the City can make a contribution to project to reflect the general benefits to the public and assess the remainder of cost to the special benefiting properties; and

WHEREAS, funding for the project has been included in the adopted 2007-2008 City of Oak Harbor budget; and

WHEREAS, the City Council is of the opinion that a local improvement district should be formed for the purpose of carrying out the needed street improvements and financing their installation;
NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF OAK HARBOR, WASHINGTON, as follows:

Section 1. It is the intention of the City Council of the City of Oak Harbor Washington, to order the improvement of the benefited properties within the City, by completing the street known as Bayshore Drive from SW Beeksma Drive to SW Erie Street, together with the necessary grading, fill, paving, water and storm drain utilities, street lighting and other associated and necessary appurtenances (the "Improvements") to generally ameliorate access to the territory described in Exhibit A, attached hereto and by this reference made a part hereof, and the formation of a local improvement district within such territory to be known as Local Improvement District No. 2007-1 ("LID No. 2007-1" or the "LID") for the construction and installation of the Improvements, which will be constructed and installed in accordance with Exhibit B, attached hereto and by this reference made a part hereof.

All of the foregoing Improvements shall be in accordance with plans and specifications therefore prepared at the direction of the City Engineer, or by a duly qualified consultant under a contract authorized by the City Council, and approved by the City, and may be modified by the City, provided that said modifications do no affect the general purpose of the Improvements.

Section 2. The total estimated cost and expense of the Improvements is declared to be \$630,000. A proportionate share of the cost and expense of the Improvements shall be borne by, and assessed against, the property specially benefited by the Improvements to be included in the LID to be established embracing, as nearly as practicable, all the property specially benefited by the Improvements. Assessments shall not exceed the special benefit to the property as required by State law. The City of Oak Harbor shall not be included in the LID as a benefiting property, but shall contribute a proportionate share of the cost of the project generally benefiting the public as allowed for by State law. The City of Oak Harbor's contribution to the project shall not be limited to the special benefit to a specific property, but shall be determined by the City Council based on the benefits to public health, safety, welfare and economic development. Preliminary assessments against benefiting properties and the City Oak Harbor contribution will be determined and declared at the time of the formation hearing. Actual assessments may vary from estimated assessments as long as they do not exceed a figure equal to the increased true and fair value to the Improvements add to the property.

Section 3. The City Clerk is authorized and directed to give notice of the adoption of this resolution and of the date, time and place fixed for the public hearing to each owner or reputed owner for any lot, tract, parcel of land or other property within the proposed LID by mailing such notice at least fifteen days before the date fixed for public hearing to the owner or reputed owner of the property as shown on the rolls of the Island County Assessor at the address shown thereon, as required by law.

This resolution also shall be published in at least two consecutive issues of the official newspaper of the City, the date of the first publication to be at least fifteen days prior to the date fixed for the public hearing.

Section 4. All persons who may desire to object to the Improvements are notified to appear and present those objections at a hearing before the City Council to be held in City Hall, located at 865 SE Barrington Drive, Oak Harbor, Washington, at 7p.m., on December 4, 2007 which time and place are fixed for hearing all matters relating to the Improvements and all objections thereto and for determining the method of payment for the Improvements. All persons who may desire to object thereto should appear and present their objections at that hearing. Persons favoring the Improvements also will be heard. Any person whom may wish to file a written protest with the City Council may do so within 30 days after the date of passage of the ordinance ordering the Improvements in the event the LID is formed. The written protest should be signed by the property owner and should include the legal description of the property for which the protest is filed and that protest should be delivered to the City Clerk at City Hall, 865 SE Barrington Drive, Oak Harbor, WA 98277.

Section 5. The City Engineer is directed to submit, or cause to be submitted, to the City Council on or prior to December 4, 2007, all data and information required by law to be submitted.

The foregoing resolution was ADOPTED by the City Council of the City of Oak Harbor, Washington at a regular open meeting thereof this 3rd day of July, 2007.


PATRICIA COHEN, Mayor

ATTEST:


Connie Wheeler, City Clerk

FORM APPROVED:


Philip Bleyhl, City Attorney

City of Oak Harbor
 Resolution to Form Bayshore Drive Street Improvements LID
 July 3, 2007
 EXHIBIT B
 Description of Improvements

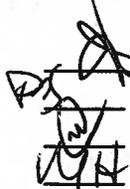
Bayshore Drive LID Right of Way			
<i>On</i>	<i>From</i>	<i>To</i>	<i>Description</i>
SE Beeksma Drive	Centerline of SW Bayshore Drive ROW	Approximately 250' North to existing sidewalks and half street improvements	Half street improvements on West side of ROW including sidewalks, curbs, gutters, storm drainage, driveways, street lighting, grading, associated utilities and relocations and paving
Bayshore Drive ROW	Centerline of SW Beeksma Drive	Approximately 1000' West at terminus of existing SW Bayshore drive stub	Full width street improvements including sidewalks, curbs, gutters, storm drainage, driveways, street lighting, grading, associated utilities and relocations and paving

City of Oak Harbor
City Council Agenda Bill

Bill No. N/A 5B
Date: April 7, 2009
Subject: 2009 Animal Shelter Services
Contract - 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

The purpose of this agenda item is to forward to City Council, for review and/or approval, 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

OHMC 7.04.040 Animal control authority.

"Animal control authority" means the department of the city charged with the responsibility of administering the provisions of this chapter, or the department and any other agency to which this responsibility is contractually delegated and which is thereby charged with the duty of enforcing the animal control laws of the city and/or with the shelter and welfare of animals.

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.

SUMMARY STATEMENT

In late December 2008, 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 2008 contract for 2009. The current contract expired December 31, 2008. This proposed contract would expire December 31, 2009.

The City shall pay to Contractor monthly payments of Seven Thousand 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, City shall pay Thirty Dollars (\$30.00) per call-out for after hours (after 5:00 p.m. and before 8:00 a.m., or on Holidays) for service requests deemed necessary by the Oak Harbor Police Department, upon proper billing by Contractor within 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.

The City of Oak Harbor and WAIF originally came to the terms of the contract in 2005 following a request for proposal and contract bidding process and the contract has been in force in one year increments since then.

STANDING COMMITTEE REPORT

The Public Safety Standing Committee reviewed this agenda item on March 19, 2009.

RECOMMENDED ACTION

Approve and authorize the Mayor to sign the Animal Shelter Services Contract on behalf of the City of Oak Harbor.

ATTACHMENTS

Proposed Animal Shelter Services Contract (Whidbey Animals' Improvement Foundation and City of Oak Harbor)

MAYOR'S COMMENTS

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

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

WHEREAS, the City is authorized by law to regulate the licensing and welfare of animals within the City limits; and

WHEREAS, the Contractor has proposed to operate the City animal shelter and to provide trained staff and volunteers to administer the operation of the shelter; and

WHEREAS, the City Council finds it is in the best interests of the City and its citizens to provide trained staffing and administrative services for the shelter of animals.

NOW, THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. **PURPOSE:** The City and the Contractor enter into this Contract to provide animal shelter services to the City of Oak Harbor.
2. **CONTRACT DOCUMENTS:** This contract, and so much of the Contractor's proposal that is not inconsistent with the Agreement, comprise the contract documents and are intended as a final expression of the understanding of the parties. There are no promises, terms, obligations, or conditions other than those contained in the contract documents. In the event of conflict between the contract documents, the documents control in the order listed.
3. **SERVICES:**
 - A. **Contractor Services:** The Contractor shall provide animal shelter services for all animals subject to the City's jurisdiction that are surrendered, impounded or quarantined. For the purpose of this contract, "animal" or "animals" is defined as domestic cats, domestic cat hybrids, domestic dogs and domestic dog hybrids only. Services relating to other mammals, birds, reptiles and amphibians are addressed in Subsection A (17) under this Section. 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, per municipal and state ordinances.
 - (2) Have available the services of a local veterinarian for emergency medical attention for injured, sick, or diseased animals housed at the shelter.

- (3) Act as the animal shelter operator by furnishing and maintaining the shelter for the handling of all animals as defined herein from the City, whether they are stray, impounded, or otherwise turned over or surrendered to the Contractor by City residents, law enforcement officers, animal control, or NAS personnel.
- (4) Accept animals for surrender at shelter facility in timely manner.
- (5) Maintain a minimal kill philosophy that assures no animal will be euthanized for space or time limits.
- (6) Arrange for the humane destruction and disposal of animals euthanized by Contractor or under its direct care and control at Contractor's expense, and based upon humane practices.
- (7) Provide proper food, water, housing and humane care for all animals under its control pursuant to this contract.
- (8) Maintain sanitation and cleaning protocols as stated in Contractor's proposal, to minimize disease transmission.
- (9) Provide basic medical care, including vaccinations, de-worming and flea treatment, if needed, to incoming animals.
- (10) The Contractor shall require any person adopting an animal to obtain a license from the jurisdiction in which the animal will reside.
- (11) The Contractor shall require any person reclaiming an animal to obtain a license and pay any fees or fines before removal from the shelter.
- (12) Contractor will establish and maintain a foster care program for unwanted animals.
- (13) Contractor will operate a spay and neuter program for adopted animals to reduce the number of unwanted animals.
- (14) Contractor will establish and maintain a volunteer program to help operate and staff programs.
- (15) Contractor will establish an exercise program for animals kept at the shelter, within the geographical boundaries designated by the Navy or City.
- (16) Contractor will assist the City in an aggressive licensing program for dogs and cats.

- (17) As noted above, Contractor's services apply to companion dogs and cats only. In the case of other mammals, birds, reptiles and amphibians, Contractor will provide referral services to local rescue groups for the care and handling of these animals wherever possible.
- (18) Provide sufficient, competent and trained staff to assume the responsibilities of this contract.
- (19) Adopt out stray or unclaimed animals with animal licenses, as required by City law.
- (20) Provide monthly reports to the Chief of Police regarding shelter activities including number of incoming animals, including those animals deemed unadoptable and disposition of same, as well as animals refused intake to the animal shelter, and those placed on any "waiting lists."
- (21) Provide quarterly financial reports to the Chief of Police.
- (22) Maintain the name and address of every person to whom an animal is released and provide same on request to the City.
- (23) Contractor, along with designated employees and volunteers, will undergo a criminal background check prior to beginning work at the facility, per Navy regulations for admission onto the Naval Base facility.

B. Shelter Facility: The City operates an animal shelter on NASWI-SPB which is subject to regulation, control and ownership by the United States. See Section 5 below. The Contractor is authorized to use the City's existing animal shelter on NAS Whidbey Island Property during the term of this Contract, as long as it is made available by the Navy, the City and provided that the Navy allows the Contractor to use the shelter facility during the term of this Contract. The shelter will not exceed current capacity except for reasonable periods of time. City personal property located at the City's animal shelter may be used by the Contractor upon consent of the City and inventory of items to be used. Shelter facility shall be operated and maintained 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." Contractor to make space and access available for after-hours drop offs of animals as defined herein by animal control, NAS personnel and city police.

No tenancy in favor of Contractor in the premises is created by this contract. The City and Navy allow use of the animal shelter by the Contractor to facilitate performance of this agreement. Contractor may not use the facility upon termination of this agreement. Upon termination of this agreement, Contractor will remove all animals Contractor has accepted into the animal shelter 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. Contractor shall not alter or improve the premises without prior written approval of the Chief of Police. All City-approved improvements must comply with the bidding and public works laws applicable to the City.

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 shelter. 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 animal shelter authorized by this agreement.

C. Costs: Contractor shall be responsible for all shelter service costs of animals brought to the facility. Shelter costs shall include all costs of care of such animals, including, but not limited to, food, cleaning supplies, veterinary care and grooming. City will continue to pay heat, electricity, water and sewer at current facility. Contractor will pay for telephone service. Contractor shall maintain the grounds at facility. Due to the access difficulties with garbage service, the Contractor will ensure that solid waste will be packaged in a manner that will allow for disposal by the Animal Control Officer (ACO).

D. Medical Costs for Sick/Injured Animals Picked Up By Animal Control:
On occasion, the ACO may come into contact with an animal in need of immediate medical attention. The ACO will attempt to contact the Shelter Manager before obtaining medical treatment if possible. If unable to contact the Shelter Manager, the ACO should attempt to make contact with the Lead Animal Care Technician. If unable to contact either party, the ACO will ensure that such emergency treatment to relieve pain/suffering is limited to \$200.00, and will notify WAIF of action taken.

E. Shelter Procedures:

(1) Licensed Stray Animals: The Contractor shall obtain owner information. Contractor shall then 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. The animal shall be held for a minimum period as outlined by City Ordinance unless written instructions to the

- contrary are provided by animal control requesting Contractor to maintain the animal in protective custody pending legal action. 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.
- (2) Unlicensed Stray Animals: The animals shall be held for a period as outlined by 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: These animals do not have a specific holding period, but may be disposed of at any time at the sole discretion of the Contractor or his or her designee.
 - (4) Other Animals: These animals do not have a specific holding period, but those that may be stray pets should be held as above.
 - (5) Animal Redemption: Impounded animals shall be released to owners or custodians only upon proof of ownership, current license and payment of applicable fees and fines. Those individuals representing themselves as a custodian must also provide written authorization for release from the owner.
 - (6) Animal Quarantine: Animals that have bitten people, or are suspected of having bitten people, shall be kept a minimum of 10 days from date of bite, for observation. Shelter 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.
 - (7) 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.
 - (8) Animal Destruction and Disposal: The disposal and destruction of animals shall be accomplished at Contractor's expense, and in a manner approved by the State which will not subject the animal to unnecessary pain.
 - (9) Sterilization: All animals which fall under Contractor's ownership following any applicable holding period will be altered as long as service is available. Contractor agrees to pursue a one-hundred percent (100%) effective spay/neuter rate.
 - (10) Feral Cats Trap, Neuter and Release: Contractor will provide spay and neuter to feral cats trapped under its trap and release program.

- (11) Citizen Complaints: All citizen complaints regarding animals shall be referred to the Animal Control Officer upon receipt.

4. 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 services.
- 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.
- D. Contractor retains the right to set all adoption, medical and surrender fees, and such other fees not governed by City ordinance.

5. 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 shelter facility are open to the public (a minimum of 3 hours per day Monday through Friday for animal redemption as required by Navy MOU.)
- B. A location where animals can be delivered by animal control officer, NAS personnel and Oak Harbor Police Department personnel 24-hours per day.
- C. Days the office and shelter 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.

6. TREATMENT OF PUBLIC: Contractor and City shall use good public relation processes so as to treat the public fairly and courteously in carrying out services required under this Contract.
7. CITY-FIRST PROVISION: Contractor may accept animals for sheltering from persons residing outside the City, but Contractor shall give first priority and always maintain space for sheltering animals brought to the City shelter by Animal Control, NAS Personnel, Oak Harbor Police Department and citizens of the City of Oak Harbor. Animals shall be documented as to the jurisdiction they came from (City or County). The housing of such animals will not interfere with space needed for animals impounded by animal control and shall present no danger to the impounded animals, nor create a nuisance due to overcrowding.

8. 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 agreement may terminate this Contract within thirty 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.
9. 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 \$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 30 days of service. City shall verify that the Contractor has provided the services required under this agreement in a form acceptable to the City.
 - C. City shall pay the cost of heat, water, sewer for the current shelter while it is located at Bldg 297 NAS Seaplane Base, as long as the Contractor is not in default of this agreement.
 - 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. All monies obtained by the Contractor for impound, boarding and surrender fees, adoption and medical fees and other administration and redemption fees shall be retained by the Contractor. It is the desire of the City to initiate an aggressive licensing program.
 - F. 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.
10. CONTRACT TERM: This contract shall begin on January 1, 2009 and end on December 31, 2009. 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.

11. HOLD HARMLESS/INDEMNIFICATION:

- A. Contractor shall defend, indemnify and hold harmless the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the Contractor in performance of this Agreement, 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 Agreement 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 care and/or custody and control of the Contractor. 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 Agreement for claims arising out of the arrest or detention of the animal or arising out of any situation occurring prior to the time that Contractor assumes responsibility for the animal(s).

12. 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. It shall be the duty of the Chief of Police to see that the terms of this contract are complied with, and to forward to the City Council all requests for changes in the policy requested by the Contractor. 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.

13. 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.

14. **INSURANCE**: The Contractor shall assure that it and its employees and volunteers in connection with the contract are protected against the risk of loss by the following insurance coverage:
- A. Worker's Compensation Insurance to the statutory limits.
 - B. General Commercial Liability Insurance of at least \$1,000,000 per occurrence; \$1,000,000 aggregate, combined Single Limit (CSL) and naming the City of Oak Harbor as an Additional Insured. The policy shall be primary to any policy the City may otherwise carry (Primary Coverage), and treat employees of the City in the same manner as members of the general public (Cross Liability Coverage).
 - C. Commercial Automobile Liability Insurance of at least \$1,000,000 per accident. (CSL), and naming the City of Oak Harbor as an Additional Insured. The policy shall be primary to any policy the city may otherwise carry (Primary Coverage), and treat employees of the City in the same manner as members of the general public (Cross Liability Coverage).
 - D. The above policies shall be issued by companies that meet with the approval of the City's Finance Director. The policies shall not be cancelled without at least 30 days written notice to the City as Additional Insured.
 - E. The Contractor shall provide a Certificate of Insurance and upon request a certified copy of the insurance policies with all endorsements as evidence of coverage. Approval of insurance is a condition precedent to full execution of this contract. Such proof shall be received by the City prior to beginning performance of the contract.
15. **RECORDS**: Along with records specified in Section 3, 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 Animal Control Officer.
 - 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.
 - F. Final disposition of animals, including number of animals euthanized, adopted or redeemed.
 - G. Records of animals refused placement at the animal shelter by shelter staff, and the reason/s for refusal.
 - H. Records of animals placed on any "waiting lists," as well as any subsequent intake into the animal shelter.
 - I. Any additional information that may be required by the City through its regulatory laws. The above information shall be accessible to the City during normal business hours, upon request.
16. **REPORTS:** At the close of each month, the Contractor shall provide the Chief of Police monthly statistical reports which will include the number of animals handled, adoptions made, strays returned, euthanasia performed and overall program results consistent with Contractor's current reporting format.
17. **FINANCIAL RECORDS AND AUDITS:** The Contractor shall maintain complete and accurate records concerning the revenues derived by the Contractor under this Contract and/or shelter operations from whatever source including, but not limited to, revenues from impound, administrative, boarding, reclaim and adoption fees. The records shall be maintained on a generally accepted accounting basis and shall be clearly identified and readily accessible. The Contractor shall allow the Finance Director or his designee, to examine and audit all of the Contractor's books and records which relate to this contract during regular business hours on regular business days. In addition, a financial statement of operations, in a format currently used by Contractor, will be provided for review to the City's Chief of Police and Finance Director each quarter. Within reasonable time after submittal of the report, the Contractor shall be available to discuss the report with the Chief of Police and City Council if requested.
18. **CONFIDENTIALITY:** The Contractor, to the extent allowed by law, will keep all information it receives concerning complaints, names, addresses and phone numbers of complainants and the names and addresses and phone numbers of license holders confidential. The Contractor will, to the greatest extent possible, protect an individual's right of privacy and shall not circulate or permit the circulation of this information for purposes other than those related to the duties undertaken in this Contract. However, the Contractor is not prevented from releasing that information which may be necessary for the location of an animal's owner, or for the gaining of consent for medical treatment.
19. **NONDISCRIMINATION:**
- A. The City is an equal opportunity employer.

B. Nondiscrimination in Employment. In the performance of this Agreement, 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 Agreement 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 Agreement on the grounds of race, creed, color, national origin, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental or physical disability or the use of a trained guide dog or service animal by a person with a disability.

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.

20. AMENDMENTS: This contract may be amended at any time by mutual written agreement between the parties.

21. PROHIBITED INTERESTS:

A. Conflict of Interest: No officer, employee, member or agent of either the City or the Contractor who exercises any functions or responsibilities in connection with

the carrying out of this Contract shall have any personal interest, direct or indirect, in providing goods or services at a profit to the Contractor.

- B. Contractor's Employees: No personnel employed by the Contractor shall acquire any rights or status in the City's Civil Service, or have any other form of governmental employment, nor shall they be deemed employees or agents of the City or any other government for any purpose other than as specified in this Agreement. The Contractor shall be responsible in full for the payment of its employees, including Worker's Compensation, insurance, payroll deductions, and all related costs.

22. 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 Seven 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. If the parties cannot reach agreement, the issues involved shall be determined by arbitration as described below.

If the parties cannot agree, they mutually agree to submit to arbitration under this subsection any controversy or dispute arising out of such changes identified in this section.

Either party shall give written notice to the other of the existence and nature of any dispute proposed to be arbitrated in sufficient detail. If, within twenty days, the dispute is not resolved through negotiations pursued diligently in good faith, then either party may initiate arbitration by appointing a person to serve as one of the arbitrators and so advising the other party in writing. Within ten calendar days thereafter, the other party shall by written notice appoint a second person as an arbitrator and the two thus appointed shall select a third arbitrator to serve as chairperson of the panel of arbitrators. Such three arbitrators shall determine all matters by majority vote, provided, however, if the two arbitrators appointed by the parties shall be unable to agree upon the appointment of the third arbitrator within ten days after the appointment of the second arbitrator, both shall give written notice of such failure to agree to the parties, and, if the parties fail to agree up on the selection of such third arbitrator within ten days after the arbitrators appointed by the parties give such notice, then either of the parties upon written notice to the other may require such appointment from and pursuant to the rules of the American Arbitration Association.

The determination of the majority of the arbitrators shall be conclusive upon the parties. The majority of the arbitrators shall give written notice to the parties stating their determination and their findings of fact and conclusions of law, and shall furnish to each party a copy thereof signed by them within seven calendar days from the date of such determination.

Each party shall pay the cost of its own arbitrator. The parties shall each pay half of the cost of the third arbitrator.

Notwithstanding the availability of the dispute resolution mechanisms described above, the parties shall attempt to resolve all controversies or disputes arising under or related to this contract document through negotiations pursued diligently in good faith.

23. **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."

24. **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.
25. **THIRD PARTIES:** 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.
26. **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.

27. **INTERPRETATION:** As a further condition of this Contract, the parties acknowledge that this Contract shall be deemed and construed to have been prepared and mutually agreed upon by each party and it shall be expressly agreed that any uncertainty or ambiguity existing therein shall not be construed against any party. In the event that any party shall take an action, whether judicial or otherwise, to enforce or interpret any of the terms of the Contract, the prevailing party shall be entitled to recover from the other party all expenses which may be reasonably incurred in taking such action, including attorney's fees and costs, whether incurred in a court of law or otherwise.

EXECUTED, this _____ day of _____, 2009 for the **WHIDBEY ANIMALS' IMPROVEMENT FOUNDATION**

President of the Whidbey Animals' Improvement Foundation

Executive Director of the Whidbey Animals' Improvement Foundation

EXECUTED, this the _____ day of _____, 2009 for the **CITY OF OAK HARBOR:**

Jim Slowik, Mayor

ATTEST:

Connie Wheeler, City Clerk

APPROVED AS TO FORM:

Margery Hite, City Attorney

DEPARTMENTAL APPROVAL:

Richard W. Wallace, Chief of Police

ATTACHMENT "A"

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

Whidbey Animals' Improvement Foundation Operating Schedule

Open to Public for Viewing and Adoption

Wednesday through Sunday – 12 to 4 p.m.

Open for redemption and Surrender of Animals

Monday through Sunday – 9am to 4pm

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

Holiday Closures

Shelter will be closed on the following holidays:

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

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

ATTACHMENT "B"

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

The following is the text of the Navy MOU:

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

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

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

TC

- 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: _____

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

Bill No. 6
Date: April 7, 2009
Subject: Community Oriented
Policing Services (COPS) Grant

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

Determine whether or not the Mayor and the City Council want the Police Department to apply for grant funding, available as part of the American Recovery and Reinvestment Act stimulus funding program, to restart the now vacant High School Resource Officer program.

AUTHORITY

Oak Harbor Municipal Code Section 2.310.040(3) states:

2.310.040 Grants

- (1) *Nothing in this chapter shall prevent the City from complying with the terms and conditions of any grant, gift or bequest which is otherwise consistent with law.*
- (2) *The Mayor or his/her designee is authorized to apply for grants in any amount and to execute grant contracts for grants of not more than \$30,000. The Mayor or his/her designee shall notify the City Council periodically of such grant applications and grant contract approvals.*
- (3) *Grant contracts in excess of \$30,000 shall require Council approval.*

SUMMARY STATEMENT

In 2009 the Oak Harbor Police Department's High School Resource Officer position was cut from the Police budget based upon mutual financial concerns with both the Oak Harbor School District and the Oak Harbor Police Department.

As part of the recently enacted American Recovery and Reinvestment Act, grant funding has been made available to qualified law enforcement agencies as part of COPs, (Community Oriented Policing Services), Hiring and Recovery Program.

This grant would provide 100 percent funding at the agencies entry level wage and benefits costs for three years from that officer's date of employment. The Police Department would be required to retain this position, in addition to the Police Department's current authorized staffing level, for

an additional one year period from the end date of the grant funding.

The Oak Harbor School District has expressed an interest in partnering with the Police Department in applying for the grant funding.

Final determination as to whether or not to actually accept the grant funding can be made if and when the Police Department is actually awarded the funding.

STANDING COMMITTEE REPORT

This agenda item was discussed at the March 19, 2009 Public Safety Standing Committee Meeting.

RECOMMENDED ACTION

Authorize the Police Department to apply for grant funding under the COPS Hiring Recovery Program to replace the now vacant High School Resource Officer position.

ATTACHMENTS

Grant Application.

MAYOR'S COMMENTS

Application for Federal Assistance SF-424

Version 02

*1. Type of Submission:

- Preapplication
- Application
- Changed/Corrected Application

*2. Type of Application

- New
- Continuation
- Revision

* If Revision, select appropriate letter(s)

*Other (Specify) _____

3. Date Received:

4. Applicant Identifier:

5a. Federal Entity Identifier:

*5b. Federal Award Identifier:

State Use Only:

6. Date Received by State:

7. State Application Identifier:

8. APPLICANT INFORMATION:

*a. Legal Name:

*b. Employer/Taxpayer Identification Number (EIN/TIN):

*c. Organizational DUNS:

d. Address:

*Street 1: _____

Street 2: _____

*City: _____

County: _____

*State: _____

Province: _____

*Country: _____

*Zip / Postal Code _____

e. Organizational Unit:

Department Name:

Division Name:

f. Name and contact information of person to be contacted on matters involving this application:

Prefix: _____ *First Name: _____

Middle Name: _____

*Last Name: _____

Suffix: _____

Title:

Organizational Affiliation:

*Telephone Number:

Fax Number:

*Email:

***9. Type of Applicant 1: Select Applicant Type:**

Type of Applicant 2: Select Applicant Type:

Type of Applicant 3: Select Applicant Type:

*Other (Specify)

***10 Name of Federal Agency:**

11. Catalog of Federal Domestic Assistance Number:

CFDA Title:

***12 Funding Opportunity Number:**

*Title:

13. Competition Identification Number:

Title:

14. Areas Affected by Project (Cities, Counties, States, etc.):

***15. Descriptive Title of Applicant's Project:**

16. Congressional Districts Of:

*a. Applicant: _____

*b. Program/Project: _____

17. Proposed Project:

*a. Start Date: _____

*b. End Date: _____

18. Estimated Funding (\$):

*a. Federal _____

*b. Applicant _____

*c. State _____

*d. Local _____

*e. Other _____

*f. Program Income _____

*g. TOTAL _____

***19. Is Application Subject to Review By State Under Executive Order 12372 Process?**

- a. This application was made available to the State under the Executive Order 12372 Process for review on _____
- b. Program is subject to E.O. 12372 but has not been selected by the State for review.
- c. Program is not covered by E. O. 12372

***20. Is the Applicant Delinquent On Any Federal Debt? (If "Yes", provide explanation.)**

- Yes No

21. *By signing this application, I certify (1) to the statements contained in the list of certifications** and (2) that the statements herein are true, complete and accurate to the best of my knowledge. I also provide the required assurances** and agree to comply with any resulting terms if I accept an award. I am aware that any false, fictitious, or fraudulent statements or claims may subject me to criminal, civil, or administrative penalties. (U. S. Code, Title 218, Section 1001)

By clicking this box and typing my name below, I also certify that I have been legally and officially authorized by the appropriate governing body to submit this application and act on behalf of the grant applicant entity. I certify that I have read, understand, and agree, if awarded, to abide by all of the applicable grant compliance terms and conditions as outlined in the COPS Application Guide, the COPS Grant Owner's Manual, assurances, certifications and all other applicable program regulations, laws, orders, or circulars. In addition, I certify that the information provided on this form and any attached forms is true and accurate to the best of my knowledge. I understand that false statements or claims made in connection with COPS programs may result in fines, imprisonment, debarment from participating in federal grants, cooperative agreements, or contracts, and/or any other remedy available by law to the federal government.

** I AGREE

** The certifications and assurances as well as grant terms and conditions can be found at the end of the application.

Authorized Representative:

Prefix: _____

*First Name: _____

Middle Name: _____

*Last Name: _____

Suffix: _____

*Title: _____

*Telephone Number: _____

Fax Number: _____

* Email:

*Signature (Typed Name) of Authorized Representative:

*Date Signed:

OMB Number: 4040-0004

Expiration Date: 01/31/2009

***Applicant Federal Debt Delinquency Explanation**

The following should contain an explanation if the Applicant organization is delinquent of any Federal Debt.

COPS Hiring Recovery Program (CHRP) Application

COPS Application Attachment to SF-424

The COPS Hiring Recovery Program (CHRP) is a competitive grant program that provides funding directly to law enforcement agencies having primary law enforcement authority to create and preserve jobs and to increase their community policing capacity and crime-prevention efforts. CHRP funding is available to hire full-time career law enforcement officers. There is no local matching requirement, but grant funding will be based on your agency's current entry-level salaries and benefits for sworn officer positions. Any additional costs for higher salaries and benefits for positions hired under the CHRP grant must be paid for by the grantee agency.

In preparing your agency's grant application, please be advised that grantees are prohibited from reducing state, local, or tribal funding for sworn officer positions *as a direct result of applying for and/or receiving this CHRP grant*. Instead, this program is intended to supplement the amount of state, local, or tribal funding that your agency would otherwise be able to budget for sworn officer positions.

In addition, at the conclusion of federal funding, grantees must retain all sworn officer positions awarded under the CHRP grant. The retained CHRP-funded positions should be added to your agency's law enforcement budget with state and/or local funds, over and above the number of locally-funded sworn officer positions that would have existed in the absence of the grant.

To the extent possible, all data should come from a publicly verifiable source, and documentation may be requested by the COPS Office. This information will be used to evaluate your jurisdiction's need for federal assistance to address its public safety needs and to preserve and create jobs.

SECTION 1: EXECUTIVE INFORMATION

Note: Listing individuals without ultimate programmatic and financial authority for the grant could delay the review of your application, or remove your application from consideration.

A. Applicant ORI Number: _____

B. Applicant DUNS Number: _____

A Data Universal Numbering System (DUNS) number is required. A DUNS number is a unique nine-digit sequence recognized as the universal standard for identifying and keeping track of entities receiving federal funds. For more information about how to obtain a DUNS number, please refer to the How to Apply section of the COPS Application Guide.

C. Central Contractor Registration (CCR)

All applicants are required to maintain current registrations in the Central Contractor Registration (CCR) database. The CCR database is the repository for standard information about federal financial assistance applicants, recipients, and sub-recipients. For more information about how to register with the CCR, please refer to the How to Apply section of the COPS Application Guide. Please note that applicants must update or renew their CCR at least once per year to maintain an active status.

Does your agency have an active registration with the Central Contractor Registry?

Yes No

If no, will your agency agree to have an active registration with the Central Contractor Registry before any COPS grant funding is awarded? Yes No

D. GNIS ID: 2411287

Please enter your Geographic Names Information System (GNIS) Identification Number. This is a unique ID assigned to all geographic entities by the U.S. Geological Survey. To look up your GNIS Feature ID, please go to the website: <http://geonames.usgs.gov/domestic/index.html>. For more information about how to obtain a GNIS number, please refer to the How to Apply section of the CHRP Application Guide.

E. Law Enforcement Executive/Program Official Information:

For Law Enforcement Agencies: Enter the law enforcement executive's name and contact information. This is the highest ranking law enforcement official within your jurisdiction (e.g., Chief of Police, Sheriff, or equivalent).

Title:

First Name: MI: Last Name: Suffix:

Agency Name:

Street Address 1:

Street Address 2:

City: State: Zip Code:

Telephone: Fax:

E-mail:

Type of Agency:

F. Government Executive/Financial Official Information:

For Government Agencies: Enter the government executive's name and contact information. This is the highest ranking official within your jurisdiction (e.g., Mayor, City Administrator, Tribal Chairman, or equivalent).

Title:

First Name: MI: Last Name: Suffix:

Agency Name:

Street Address 1:

Street Address 2:

City: State: Zip Code:

Telephone: Fax:

E-mail:

Type of Government Entity:

SECTION 2: GENERAL AGENCY INFORMATION

A. General Applicant Information

1. Cognizant Federal Agency: _____

Enter your jurisdiction's Cognizant Federal Agency. A Cognizant Federal Agency, generally, is the federal agency from which your jurisdiction receives the most federal funding. Your Cognizant Federal Agency also may have been previously designated by the Office of Management and Budget.

2. Fiscal Year: ___/___/___ to ___/___/___ (mo/day/yr) Enter your jurisdiction's fiscal year.

3. Jurisdictional population as of the 2000 U.S. Census: _____

Check here if the jurisdictional population is not represented by U.S. Census figures (e.g., colleges, special agencies, school police departments, etc.). (If checked, skip Question 4 and go to Question 5)

4. Enter the total jurisdictional population as of the 2007 Census Estimate. The Census Estimate can be looked up in the American FactFinder at <http://FactFinder.census.gov>.

5. If the jurisdictional population is not represented by U.S. Census figures, please indicate the size of the population in 2007: _____

Please indicate the source of this estimate: _____

(Question 5 is N/A unless the checkbox in #3 above is checked)

6. Do officers have primary law enforcement authority for this entire jurisdictional population? [An agency with primary law enforcement authority is defined as the first responder to calls for service, and has ultimate and final responsibility for the prevention, detection, and/or investigation of crime within its jurisdiction.]

YES _____ NO _____
(If yes, skip to section B below)

a) If NO, what is the actual population for which your department has primary law enforcement authority? For example, your service population may be the 2007 Census Estimate minus the population of the incorporated towns and cities that have their own police departments within your geographic boundaries. _____

B. Law Enforcement Agency Information

1. Enter the Current Fiscal Year Budgeted Sworn Force Strength:

Full-time: 27 Part-time: _____

The budgeted number of sworn officer positions is the number of sworn positions your agency has funded within its budget, including state, Bureau of Indian Affairs, and locally-funded vacancies. Do not include unfunded vacancies or unpaid/reserve officers.

2. Enter the Actual Sworn Force Strength as of the Date of This Application:

Full-time: 27 Part-time: _____

The actual number of sworn officer positions is the actual number of sworn positions employed by your agency as of the date of this application. Do not include funded but currently vacant positions or unpaid positions.

SECTION 3: CHRP PROGRAM REQUEST

Your agency may apply for COPS funds to use on or after the official grant award start date to hire new, additional officer positions (including filling existing unfunded vacancies) or rehire officers who have already been laid off, or are currently scheduled to be laid off on a future date, as a result of state, local or tribal budget reductions. Please base your application request on your agency's current anticipated needs for funding in these primary categories. Please also be mindful of the initial three-year grant period and your agency's ability to fill and retain the officer positions awarded, while following your agency's established hiring policies and procedures.

As described in detail in the CHRP Application Guide, it is imperative that applicants understand that the COPS statute nonsupplanting requirement mandates that CHRP funds may be used only to supplement (increase) a grantee's law enforcement budget for sworn officer positions and may not supplant (replace) state, local, or tribal funds that a grantee otherwise would have spent on officer positions if it had not received a CHRP award. This means that if your agency plans to:

- (a) Hire new officer positions (including filling existing officer vacancies that are no longer funded in your agency's budget): It must hire these additional positions on or after the official grant award start date, above its current budgeted (funded) level of sworn officer positions, and otherwise comply with the nonsupplanting requirement as described in detail in the CHRP Application Guide and Grant Owner's Manual;
- (b) Rehire officers who have already been laid off (at the time of application) as a result of state, local, or tribal budget cuts: It must rehire the officers on or after the official grant award start date, maintain documentation showing the date(s) that the positions were laid off and rehired, and otherwise comply with the nonsupplanting requirement as described in detail in the CHRP Application Guide and Grant Owner's Manual;
- (c) Rehire officers who are (at the time of application) currently scheduled to be laid off on a future date as a result of state, local, or tribal budget cuts: It must continue to fund the officers with its own funds from the grant award start date until the date of the scheduled lay-off (for example, if the CHRP award start date is September 1 and the lay-off is scheduled for November 1, then the CHRP funds may not be used to fund the officers until November 1, the date of the scheduled lay-off), identify the number and date(s) of the scheduled lay-off(s) in this application [see below], maintain documentation showing the date(s) and reason(s) for the lay-off, and otherwise comply with the nonsupplanting requirement as described in detail in the CHRP Application Guide and Grant Owner's Manual. [Please note that as long as your agency can document the date that the lay-off(s) would occur if the CHRP funds were not available, it may transfer the officers to the CHRP funding on or immediately after the date of the lay-off without formally completing the administrative steps associated with a lay-off for each individual officer.]

Documentation that may be used to prove that scheduled lay-offs are occurring for local economic reasons that are unrelated to the availability of CHRP grant funds may include (but are not limited to) council or departmental meeting minutes, memoranda, notices, or orders discussing the lay-offs; notices provided to the individual officers regarding the date(s) of the lay-offs; and/or budget documents ordering departmental and/or jurisdiction-wide budget cuts. These records must be maintained with your agency's CHRP grant records during the grant period and for three years following the official closeout of the CHRP grant in the event of an audit, monitoring, or other evaluation of your grant compliance. The following tips are designed to help

comply with the program and financial requirements associated with the administration of your grant. <http://www.cops.usdoj.gov/Default.asp?Item=2116>

When completing the questions below, please base your responses on your agency's current (at the time of application) needs for funding in the three hiring categories (new hires, rehires of previously laid off officers, and rehiring officers who are scheduled to be laid off on a specific future date). CHRP grant awards will be made for officer positions requested in each of these three categories and recipients of CHRP awards are required to use awarded funds for the specific categories awarded.

During the review of your agency's application, if the COPS Office reduces the number of positions you requested in the application, the COPS Office may contact you to obtain a new number of officer positions requested in each category.

How many CHRP sworn officer positions is your agency requesting (total)? 1

How many of the positions will be:

- (a) To hire new, additional officer positions (including to fill existing vacancies that are no longer funded in your agency's budget)? 1
- (b) To rehire officers who have already been laid off (at the time of application) as a result of state, local, or tribal budget reductions? _____
- (c) To rehire officers who are (at the time of application) currently scheduled to be laid off on a specific future date as a result of state, local, or tribal budget reductions?
____ (# Positions)
_____ Date of the scheduled lay-off for these officers

If your agency has planned multiple future lay-off dates, please use the additional space below:

____ (# Positions)
_____ Date of the scheduled lay-off for these officers

____ (# Positions)
_____ Date of the scheduled lay-off for these officers

Special Reminder for Rehired Officers:

The CHRP program awards funding based on your agency's *entry-level* salary and benefits package. Any additional (higher than entry-level) salary and benefits expenses for rehired officers must be paid by your agency.

Certification Regarding Scheduled Lay-Offs:

If your agency plans to use CHRP funds to rehire officers who are currently scheduled to be laid off on a future date (under category c above), please certify (by checking the appropriate boxes) to the following:

Certification:

- My agency has and will maintain documentation showing the date(s) of the scheduled lay-off(s) and demonstrating that the scheduled lay-off(s) is/are occurring for fiscal

reasons that are unrelated to the availability or receipt of CHRP grant funds (as described above).

┘ My agency will use its own funds to continue funding these officers until the scheduled date(s) of the lay-off(s) and will use CHRP funds to rehire these officers only on or after the scheduled date of the lay-off(s).

┘ My agency recognizes that the CHRP program provides funding based on our entry-level salary and benefits package and that any additional costs for rehired officers beyond entry-level are our responsibility to pay with other sources of funding.

If an applicant receives an award, and after receiving the awards needs to change the hiring categories, it must request a post-award grant modification to change the categories of hiring and receive prior approval before spending CHRP funding by calling the COPS Office Response Center at 1-800-421-6770.

The American Recovery and Reinvestment Act (Recovery Act) requires grantees to report their financial and programmatic progress within 10 days after the end of each calendar quarter. The Recovery Act reporting requirements are in addition to quarterly financial status report and quarterly programmatic progress report requirements. The COPS Office plans to request information from grantees consistent with Section 1512 of the Recovery Act, including collecting information on the number of new jobs created and the number of jobs preserved using CHRP funding. Awarded agencies will be required to submit information in a timely manner as a condition of the award. The COPS Office is then required to post data from grantee reports to Recovery.gov. Please be advised that the submission of programmatic and financial reports on a timely basis is a significant condition of the CHRP grant and a violation of the grant requirement may result in termination of grant funding or other remedies.

In order to aid in compliance with the reporting requirements, awarded agencies should be prepared to track and report CHRP funding separately from other funding sources (including other COPS and federal grants) to ensure accurate financial and programmatic reporting on a timely basis. Your agency should ensure that you have financial internal controls in place to monitor the use of CHRP funding and ensure that its use is consistent with grant terms and conditions. Good practices in this area would include written accounting practices, an accounting system that tracks all drawdowns and grant expenditures, and the ability to track when each CHRP position funded is filled or vacant (including if the position was for a new hire or a re-hire).

SECTION 4: NEED FOR FEDERAL ASSISTANCE

1) Enter your law enforcement agency's total operating budget for the current AND previous two fiscal years.

CURRENT FISCAL YEAR (2009) \$ _____

PREVIOUS FISCAL YEAR (2008) \$ 4,837,438

PREVIOUS FISCAL YEAR (2007) \$ 4,623,153

2) Enter the total jurisdictional (city, county, state, tribal) operating budget for the current AND previous two fiscal years.

CURRENT FISCAL YEAR (2009) \$ _____

PREVIOUS FISCAL YEAR (2008) \$ _____

PREVIOUS FISCAL YEAR (2007) \$ _____

3) Enter the total jurisdictional (city, county, state, tribal) locally generated revenues for the current AND previous two fiscal years. *Locally generated revenues may include locally generated property taxes, sales taxes and other taxes and revenue sources (for example, transportation taxes, transient lodging taxes, licensing fees, other non-property taxes and franchise taxes).*

CURRENT FISCAL YEAR (2009) \$ _____

PREVIOUS FISCAL YEAR (2008) \$ _____

PREVIOUS FISCAL YEAR (2007) \$ _____

4) Enter the total jurisdictional (city, county, state, tribal) general fund balance for the current and previous two fiscal years.

CURRENT FISCAL YEAR (2009) \$ _____

PREVIOUS FISCAL YEAR (2008) \$ _____

PREVIOUS FISCAL YEAR (2007) \$ _____

5) Since January 1, 2008, what percentages of the following employees in your jurisdiction (city, county, state, tribal) have been reduced through lay-offs:

Civilian Law Enforcement Agency Personnel	<u>0</u> %
Sworn Law Enforcement Agency Personnel	<u>0</u> %
Other Government Agency Personnel	<u>0</u> %

6) Since January 1, 2008, what percentages of the following employees in your jurisdiction (city, county, state, tribal) have been reduced through furloughs that have lasted or are scheduled to last a minimum of forty hours over the course of a fiscal year:

Civilian Law Enforcement Agency Personnel	<u>0</u> %
Sworn Law Enforcement Agency Personnel	<u>0</u> %
Other Government Agency Personnel	<u>0</u> %

7) Since January 1, 2008 what percentages of the following employees in your jurisdiction (city, county, state, tribal) have been reduced due to official policies that limit your jurisdiction's ability to fill vacancies (i.e., hiring freezes):

Civilian Law Enforcement Agency Personnel	<u>0</u> %
Sworn Law Enforcement Agency Personnel	<u>7</u> %
Other Government Agency Personnel	<u>0</u> %

8) The U.S. Census Bureau American Community Survey (ACS) provides multi-year poverty rate estimates for communities. For jurisdictions with a Census population greater than 20,000, please go to the U.S. Census Bureau's American FactFinder (<http://FactFinder.census.gov>) to determine the percent of families in poverty in your jurisdiction based on the 2005-2007 ACS. For jurisdictions below 20,000 in population or not represented in the U.S. Census, please select the nearest best match for your jurisdiction (for example, the county in which your jurisdiction is located). Please see the CHRP Application Guide for additional information and help in using the American FactFinder.

Percent of families in poverty _____ %

9) The Bureau of Labor Statistic's' Local Area Unemployment Statistics (LAUS) program provides monthly estimates of unemployment for communities. Please go to the Bureau of Labor Statistics' LAUS website: (www.bls.gov/lau/data.htm) to find detailed instructions for looking up your local area's unemployment rate. As with the previous question, it may be necessary to select the nearest best match to your jurisdiction (for example, a city of fewer than 25,000 people may report their county level rate). Please see the CHRP Application Guide for additional information and help in using the LAUS data.

Percentage unemployed for January 2009 _____ %

Percentage unemployed for January 2008 _____ %

10) Indicate your jurisdiction's estimated residential property foreclosure rate for calendar year 2008. This rate should be calculated as the total number of new default and auction foreclosure filings and new bank-owned foreclosures (REOs) in 2008 divided by the total number of residential households.

_____ %

_____ Check here if the information necessary to calculate this rate is unavailable.

11) Indicate if your jurisdiction has experienced any of the following events since January 1, 2008:

_____ Military base closure or realignment.

_____ A declaration of natural or other major disaster or emergency has been made pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act. (42 U.S.C. 5121 et seq.)

_____ A declaration as an economically or financially distressed area by the state in which the applicant is located.

____ Downgrading of the applicant's bond rating by a major rating agency.

____ Has filed for or been declared bankrupt by a court of law.

____ Has been placed in receivership or its functional equivalent by the state or federal government.

System Note: They can select multiple items above.

12) Indicate if, since January 1, 2008, your jurisdiction has experienced an unplanned, non-recurring, capital outlay or unanticipated loss of revenue that has had a significant negative impact on your jurisdiction's fiscal health.

Yes ____ No ____

12a) If YES, please express the cost of this event as a percentage of your total current operating budget ____% and please describe the event (please limit to 350 characters):

13) Using UCR crime definitions enter the actual number of incidents reported to your jurisdiction in calendar year 2008 for the following crime types:

Criminal Homicide: 0
Forcible Rape: 23
Robbery: 3
Aggravated Assault: 294
Burglary: 122
Larceny (except motor vehicle theft): _____
Motor Vehicle Theft: 7

*Note: If your agency currently reports to NIBRS, or does not report crime incident totals at all, please ensure that your data is converted to UCR Summary Data style. Please see the CHRP Application Guide or the FBI's UCR Handbook (www.fbi.gov/ucr/handbook/ucrhandbook04.pdf) for more information.

SECTION 5: LAW ENFORCEMENT & COMMUNITY POLICING STRATEGY

Proposed Community Policing Plan

COPS grants must be used to initiate or enhance community policing activities. Please complete the following questions to describe the types of community policing activities that will result from CHRP funding. You may find more detailed information about community policing at the COPS Office web site <http://www.cops.usdoj.gov/Default.asp?Item=36>.

Community Partnerships

Community partnerships are on-going collaborative relationships between the law enforcement agency and the individuals and organizations they serve to both develop solutions to problems and increase trust in the police.

My agency:

- P1) Regularly distributes relevant crime and disorder information to community members.
- a) does not currently do, and has no plans to implement under this grant
 - b) does not currently do, and plans to initiate under this grant
 - c) currently does, and plans to continue doing under this grant
 - d) currently does, and plans to expand/enhance under this grant
- P2) Routinely seeks input from the community to identify and prioritize neighborhood problems (e.g., through regularly scheduled community meetings, annual community surveys, etc.).
- a) does not currently do, and has no plans to implement under this grant
 - b) does not currently do, and plans to initiate under this grant
 - c) currently does, and plans to continue doing under this grant
 - d) currently does, and plans to expand/enhance under this grant
- P3) Regularly collaborates with other local government agencies that deliver public services.
- a) does not currently do, and has no plans to implement under this grant
 - b) does not currently do, and plans to initiate under this grant
 - c) currently does, and plans to continue doing under this grant
 - d) currently does, and plans to expand/enhance under this grant
- P4) Regularly collaborates with non-profit organizations and/or community groups.
- a) does not currently do, and has no plans to implement under this grant
 - b) does not currently do, and plans to initiate under this grant
 - c) currently does, and plans to continue doing under this grant
 - d) currently does, and plans to expand/enhance under this grant
- P5) Regularly collaborates with local businesses.
- a) does not currently do, and has no plans to implement under this grant
 - b) does not currently do, and plans to initiate under this grant
 - c) currently does, and plans to continue doing under this grant
 - d) currently does, and plans to expand/enhance under this grant
- P6) Regularly collaborates with informal neighborhood groups and resident associations.
- a) does not currently do, and has no plans to implement under this grant

- b) does not currently do, and plans to initiate under this grant
- c) currently does, and plans to continue doing under this grant
- d) currently does, and plans to expand/enhance under this grant

Problem Solving

Problem solving is an analytical process for systematically 1) identifying and prioritizing problems, 2) analyzing problems, 3) responding to problems, and 4) evaluating problem solving initiatives. Problem solving involves an agency-wide commitment to go beyond traditional police responses to crime to proactively address a multitude of problems that adversely affect quality of life.

My agency:

PS1) Routinely incorporates problem-solving principles into patrol work.

- a) does not currently do, and has no plans to implement under this grant
- b) does not currently do, and plans to initiate under this grant
- c) currently does, and plans to continue doing under this grant
- d) currently does, and plans to expand/enhance under this grant

PS2) Identifies and prioritizes crime and disorder problems through the routine examination of patterns and trends involving repeat victims, offenders, and locations.

- a) does not currently do, and has no plans to implement under this grant
- b) does not currently do, and plans to initiate under this grant
- c) currently does, and plans to continue doing under this grant
- d) currently does, and plans to expand/enhance under this grant

PS3) Routinely explores the underlying factors and conditions that contribute to crime and disorder problems.

- a) does not currently do, and has no plans to implement under this grant
- b) does not currently do, and plans to initiate under this grant
- c) currently does, and plans to continue doing under this grant
- d) currently does, and plans to expand/enhance under this grant

PS4) Systematically tailors responses to crime and disorder problems to address their underlying conditions.

- a) does not currently do, and has no plans to implement under this grant
- b) does not currently do, and plans to initiate under this grant
- c) currently does, and plans to continue doing under this grant
- d) currently does, and plans to expand/enhance under this grant

PS5) Regularly conducts assessments to determine the effectiveness of responses to crime and disorder problems.

- a) does not currently do, and has no plans to implement under this grant
- b) does not currently do, and plans to initiate under this grant
- c) currently does, and plans to continue doing under this grant
- d) currently does, and plans to expand/enhance under this grant

Organizational Transformation

Organizational transformation is the alignment of organizational management, structure, personnel and information systems to support community partnerships and proactive problem-solving efforts.

My agency:

- OC1) Incorporates community policing principles into the agency's mission statement and strategic plan.
- a) does not currently do, and has no plans to implement under this grant
 - b) does not currently do, and plans to initiate under this grant
 - c) currently does, and plans to continue doing under this grant
 - d) currently does, and plans to expand/enhance under this grant
- OC2) Practices community policing as an agency-wide effort involving all staff (i.e. not solely housed in a specialized unit).
- a) does not currently do, and has no plans to implement under this grant
 - b) does not currently do, and plans to initiate under this grant
 - c) currently does, and plans to continue doing under this grant
 - d) currently does, and plans to expand/enhance under this grant
- OC3) Incorporates problem-solving and partnership activities into personnel performance evaluations.
- a) does not currently do, and has no plans to implement under this grant
 - b) does not currently do, and plans to initiate under this grant
 - c) currently does, and plans to continue doing under this grant
 - d) currently does, and plans to expand/enhance under this grant

Community Policing Plan Narrative (please limit to 2,000 words)

Please describe your agency's implementation plan for this program (if awarded), with specific reference to each of the following elements of community policing: (a) community partnerships and support, including consultation with community groups, private agencies, and/or other public agencies; (b) related governmental and community initiatives that complement your agency's proposed use of CHRP funding; and (c) organizational transformation – how your agency will use these funds, if awarded, to reorient its mission to community policing or enhance its involvement in and commitment to community policing. This narrative will not be scored for selection purposes but serves, along with the previous questions, as your agency's community policing plan. Your organization may be audited or monitored to ensure that it is initiating or enhancing community policing in accordance with this plan. The COPS Office may also use this information to understand the needs of the field, and potentially provide for training, technical assistance, problem solving and community policing implementation tools.

If your organization receives this CHRP grant funding, these responses will be considered as your organization's community policing plan. We understand that your community policing needs may change during the life of your CHRP grant (if awarded), and minor changes to this plan may be made without prior approval of the COPS Office. We also recognize that this plan may incorporate a broad range of possible community policing strategies and activities, and that your agency may implement particular community policing strategies from the plan on an as-needed basis throughout the life of the grant. If your agency's community policing plan changes significantly, however, you must submit those changes in writing to the COPS Office for approval. Changes are "significant" if they deviate from the range of possible community policing activities identified and approved in this original community policing plan submitted with your application.

CP1) To what extent is there community support in your jurisdiction for implementing the proposed grant activities?

- a) Minimal support
- b) Moderate support
- c) High level of support

CP2) If awarded, to what extent will the grant activities impact the other components of the criminal justice system in your jurisdiction?

- a) Potentially increased burden
- b) No change in burden
- c) Potentially decreased burden

SECTION 6: CONTINUATION OF PROJECT AFTER FEDERAL FUNDING ENDS

Applicants must plan to retain all sworn officer positions awarded under the CHRP grant for a minimum of 12 months at the conclusion of 36 months of federal funding for each position. The retained CHRP-funded positions should be added to your agency's law enforcement budget with state and/or local funds at the end of grant funding, over and above the number of locally-funded sworn officer positions that would have existed in the absence of the grant. At the time of grant application, applicants must affirm that they plan to retain the positions and identify the planned source(s) of retention funding. We understand that your agency's source(s) of retention funding may change during the life of the grant. Your agency should maintain proper documentation of any changes in the event of an audit, monitoring

or other evaluation of your grant compliance. Please refer to the frequently asked questions on retention which can be found here <http://www.cops.usdoj.gov/Default.asp?Item=2115>.

Has your agency planned to retain all additional sworn officer positions under this grant for a minimum of 12 months at the conclusion of 36 months of federal funding for each position? YES NO

(If YES, move on to next question)

(If NO, "Agencies that do not plan to retain all the positions awarded under this grant are ineligible to receive CHRP funding")

Please identify the source(s) of funding that your agency plans to utilize to cover the costs of retention from the drop-down box listed below:

- General funds
- Raise bond/tax issue
- Asset forfeiture funds
- Private sources/donations
- Fundraising efforts
- Other (Please provide a brief description of the source(s) of funding not to exceed 75 words.)

Section 7: Budget Detail Worksheets

Instructions:

This worksheet will assist your agency in reporting your agency's current **entry-level** salary and benefits costs and identifying your agency's total three-year salary and benefits request per officer position. Please list the current entry-level base salary and fringe benefits **rounded to the nearest whole dollar** for one full-time sworn officer position within your agency. **Do not include employee contributions.**

Please complete the budget worksheet(s) based on your agency's current annual first year entry-level salary and benefit package for your locally-funded officer positions. Please be advised that CHRP funding must only pay for entry-level salaries and benefits. Any additional costs incurred for higher than entry-level salaries and benefits for officers hired under the CHRP grant will be your agency's responsibility.

Note: Part-time positions will not be funded.

Please refer to the CHRP Application Guide for additional information.

BUDGET SUMMARY

Budget Category	Category Total	Line #
A. Sworn Officer Positions	\$.00	1
Total Project Amount:	\$.00	
Total Federal Share Amount:)	\$.00	
<p style="text-align: center;">Contact Information for Budget Questions</p> <p>Please provide contact information of the financial official that the COPS Office may contact with questions related to your budget submission.</p> <p>Authorized Official's Typed Name:</p> <p>First Name</p> <p>Last Name</p> <p>Title</p> <p>Phone</p> <p>Email</p>		

SECTION 8: ASSURANCES

Several provisions of federal law and policy apply to all grant programs. The Office of Community Oriented Policing Services needs to secure your assurance that the applicant will comply with these provisions. If you would like further information about any of these assurances, please contact your state's COPS Grant Program Specialist at (800) 421-6770.

By the applicant's authorized representative's signature, the applicant assures that it will comply with all legal and administrative requirements that govern the applicant for acceptance and use of federal grant funds. In particular, the applicant assures us that:

1. It has been legally and officially authorized by the appropriate governing body (for example, mayor or city council) to apply for this grant and that the persons signing the application and these assurances on its behalf are authorized to do so and to act on its behalf with respect to any issues that may arise during processing of this application.
2. It will comply with the provisions of federal law, which limit certain political activities of grantee employees whose principal employment is in connection with an activity financed in whole or in part with this grant. These restrictions are set forth in 5 U.S.C. § 1501, et seq.
3. It will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act, if applicable.
4. It will establish safeguards, if it has not done so already, to prohibit employees from using their positions for a purpose that is, or gives the appearance of being, motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business or other ties.
5. It will give the Department of Justice or the Comptroller General access to and the right to examine records and documents related to the grant.
6. It will comply with all requirements imposed by the Department of Justice as a condition or administrative requirement of the grant, including but not limited to: the requirements of 28 CFR Part 66 and 28 CFR Part 70 (governing administrative requirements for grants and cooperative agreements); 2 CFR Part 225 (OMB Circular A-87), 2 CFR 220 (OMB Circular A-21), 2 CFR Part 230 (OMB Circular A-1 22) and 48 CFR Part 31.000, et seq. (FAR 31.2) (governing cost principles); OMB Circular A-1 33 (governing audits) and other applicable OMB circulars; the applicable provisions of the Omnibus Crime Control and Safe Streets Act of 1968, as amended; 28 CFR Part 38.1; the current edition of the COPS Grant Monitoring Standards and Guidelines; the applicable COPS Grant Owners Manuals; and with all other applicable program requirements, laws, orders, regulations, or circulars.
7. If applicable, it will, to the extent practicable and consistent with applicable law, seek, recruit and hire qualified members of racial and ethnic minority groups and qualified women in order to further effective law enforcement by increasing their ranks within the sworn positions in the agency.
8. It will not, on the ground of race, color, religion, national origin, gender, disability or age, unlawfully exclude any person from participation in, deny the benefits of or employment to any person, or subject any person to discrimination in connection with any programs or activities funded in whole or in part with federal funds. These civil rights requirements are found in the non-discrimination provisions of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (42 U.S.C. § 3789d); Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d); the Indian Civil Rights Act (25 U.S.C. §§ 1301-1303); Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794); Title II, Subtitle A of the Americans with Disabilities Act (ADA) (42 U.S.C. § 12101, et seq.); the Age Discrimination Act of 1975 (42 U.S.C. § 6101, et seq.); and Department of Justice Non-Discrimination Regulations contained in Title 28, Parts 35 and 42 (subparts C, D, E and G) of the Code of Federal Regulations.
- A. In the event that any court or administrative agency makes a finding of discrimination on grounds of race, color, religion, national origin, gender, disability or age against the applicant after a due process hearing, it agrees to forward a copy of the finding to the Office of Civil Rights, Office of Justice Programs, 810 7th Street, NW, Washington, D.C. 20531.
- B. If your organization has received an award for \$500,000 or more and has 50 or more employees, then it has to prepare an EEOP and submit it to the Office for Civil Rights ("OCR"), Office of Justice Programs, 810 7th Street, N.W., Washington, DC 20531, for review within 60 days of the notification of the award. If your organization received an award between \$25,000 and \$500,000 and has 50 or more employees, your organization still has to prepare an EEOP, but it does not have to submit the EEOP to OCR for review. Instead, your organization has to maintain the EEOP on file and make it available for review on request. In addition, your organization has to complete Section B of the Certification Form and return it to OCR. If your organization received an award for less than \$25,000; or if your organization has less than 50 employees, regardless of the amount of the award; or if your organization is a medical institution, educational institution, nonprofit organization or Indian tribe, then your organization is exempt from the EEOP requirement. However, your organization must complete Section A of the Certification Form and return it to OCR.
9. Pursuant to Department of Justice guidelines (June 18, 2002 Federal Register (Volume 67, Number 117, pages 41455-41472)), under Title VI of the Civil Rights Act of 1964, it will ensure meaningful access to its programs and activities by persons with limited English proficiency.
10. It will ensure that any facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the project are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify us if advised by the EPA that a facility to be used in this grant is under consideration for such listing by the EPA.
11. If the applicant's state has established a review and comment procedure under Executive Order 12372 and has selected this program for review, it has made this application available for review by the state Single Point of Contact.
12. It will submit all surveys, interview protocols, and other information collections to the COPS Office for submission to the Office of Management and Budget for clearance under the Paperwork Reduction Act of 1995 if required.
13. It will comply with the Human Subjects Research Risk Protections requirements of 28 CFR Part 46 if any part of the funded project contains non-exempt research or statistical activities which involve human subjects and also with 28 CFR Part 22, requiring the safeguarding of individually identifiable information collected from research participants.

SECTION 9: CERTIFICATIONS

Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements Coordination with Affected Agencies.

Although the Department of Justice has made every effort to simplify the application process, other provisions of federal law require us to seek your agency's certification regarding certain matters. Applicants should read the regulations cited below and the instructions for certification included in the regulations to understand the requirements and whether they apply to a particular applicant. Signing this form complies with certification requirements under 28 CFR Part 69, "New Restrictions on Lobbying," 2 CFR Part 2867, "Government-Wide Debarment and Suspension (Nonprocurement)," 28 CFR Part 83 Government-Wide Requirements for Drug-Free Workplace (Grants)," and the coordination requirements of the Public Safety Partnership and Community Policing Act of 1994. The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Justice determines to award the covered grant.

1. Lobbying

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 28 CFR Part 69, for persons entering into a grant or cooperative agreement over \$100,000, as defined at 28 CFR Part 69, the applicant certifies that:

A. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the making of any federal grant; the entering into of any cooperative agreement; and the extension, continuation, renewal, amendment or modification of any federal grant or cooperative agreement;

B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure of Lobbying Activities," in accordance with its instructions;

C. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all sub-recipients shall certify and disclose accordingly.

2. Debarment, Suspension and Other Responsibility Matters (Direct Recipient)

As required by Executive Order 12549, Debarment and Suspension, and implemented at 2 CFR Part 2867, for prospective participants in primary covered transactions, as defined at 2 CFR Part 2867, Section 2867.437 -

A. The applicant certifies that it and its principals:

(i) Are not presently debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of federal benefits by a state or federal court, or voluntarily excluded from covered transactions by any federal department or agency;

(ii) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) or private agreement or transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion or receiving stolen property, making false claims, or obstruction of justice, or commission of any offense indicating a lack of business

integrity or business honesty that seriously and directly affects your present responsibility.

(iii) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (A)(ii) of this certification; and

(iv) Have not within a three-year period preceding this application had one or more public transactions (federal, state or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. Drug-Free Workplace (Grantees Other Than Individuals)

As required by the Drug-Free Workplace Act of 1988, and implemented at 28 CFR Part 83, for grantees, as defined at 28 CFR Part 83, Sections 83 and 83.510 -

A. The applicant certifies that it will, or will continue to, provide a drug-free workplace by:

(i) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(ii) Establishing an on-going drug-free awareness program to inform employees about -

(a) The dangers of drug abuse in the workplace;

(b) The grantee's policy of maintaining a drug-free workplace;

(c) Any available drug counseling, rehabilitation and employee assistance programs; and

(d) The penalties that may be imposed upon employees for drug-abuse violations occurring in the workplace;

(iii) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (i);

(iv) Notifying the employee in the statement required by paragraph (i) that, as a condition of employment under the grant, the employee will -

(a) Abide by the terms of the statement; and

(b) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(v) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (iv)(b) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: COPS Office, 1100 Vermont Ave., NW, Washington, D.C. 20530. Notice shall include the identification number(s) of each affected grant.

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of performance (street address, city, county, state, zip code)

(vi) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (iv)(b), with respect to any employee who is so convicted -

_____ Check if there are workplaces on file that are not identified here. 4. Coordination

(a) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

The Public Safety Partnership and Community Policing Act of 1994 requires applicants to certify that there has been appropriate coordination with all agencies that may be affected by the applicant's grant proposal if approved. Affected agencies may include, among others, the Office of the United States Attorney, state or local prosecutors, or correctional agencies. The applicant certifies that there has been appropriate coordination with all affected agencies.

(b) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement or other appropriate agency;

(vii) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (i), (ii), (iii), (iv), (v) and (vi).

Grantee Agency Name and Address:

_____ Grantee IRS/ Vendor Number: _____

False statements or claims made in connection with COPS grants (including cooperative agreements) may result in fines, imprisonment, disbarment from participating in federal grants or contracts, and/or any other remedy available by law.

I certify that the assurances provided are true and accurate to the best of my knowledge.

Elections or other selections of new officials will not relieve the grantee entity of its obligations under this grant.

By clicking this box and typing my name below, I certify that I have been legally and officially authorized by the appropriate governing body to submit this application and act on behalf of the grant applicant entity. I certify that I have read, understand, and agree, if awarded, to abide by all of the applicable grant compliance terms and conditions as outlined in the COPS Application Guide, the COPS Grant Owner's Manual, assurances, certifications and all other applicable program regulations, laws, orders, or circulars. In addition, I certify that the information provided on this form and any attached forms is true and accurate to the best of my knowledge. I understand that false statements or claims made in connection with COPS programs may result in fines, imprisonment, debarment from participating in federal grants, cooperative agreements, or contracts, and/or any other remedy available by law to the federal government.

Typed Name of Law Enforcement Executive
(or Official with Programmatic Authority, as applicable)

Date

By clicking this box and typing my name below, I certify that I have been legally and officially authorized by the appropriate governing body to submit this application and act on behalf of the grant applicant entity. I certify that I have read, understand, and agree, if awarded, to abide by all of the applicable grant compliance terms and conditions as outlined in the COPS Application Guide, the COPS Grant Owner's Manual, assurances, certifications and all other applicable program regulations, laws, orders, or circulars. In addition, I certify that the information provided on this form and any attached forms is true and accurate to the best of my knowledge. I understand that false statements or claims made in connection with COPS programs may result in fines, imprisonment, debarment from participating in federal grants, cooperative agreements, or contracts, and/or any other remedy available by law to the federal government.

Typed Name of Government Executive
(or Official with Financial Authority, as applicable)

Date

SECTION 10: Disclosure of Lobbying Activities

Instructions for Completion of SF-LLL, Disclosure of Lobbying Activities

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District number, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFPD E-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting registrant identified in item 4 to influence the covered Federal action.
(b) Enter the full name(s) of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

Disclosure of Lobbying Activities

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352.

Not Applicable

1. Type of Federal Action: a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. Status of Federal Action: _____ a. bid/offer/application b. initial award c. post-award	3. Report Type: _____ a. initial filing b. material change <i>For Material Change Only:</i> Year: _____ Quarter: _____ Date of last report _____
4. Name and Address of Reporting Entity: Prime - Subawardee Tier _____, if known: Congressional District (number), if known: _____	5. If Reporting Entity In No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District (number), if known: _____	
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, if applicable:	
8. Federal Action Number, if known:	9. Award Amount, if known: \$	
10. a. Name and Address of Lobbying Registrant (if individual, last name, first name, MI):	10. b. Individuals Performing Services (including address if different from No.1 0a) (last name, first name, MI):	
11. Information requested through this form is authorized by Title 31 U.S.C. Section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.	Typed Name:	
	Print Name:	
	Title:	
Federal Use Only:	Telephone No.: _____ Date: _____ Authorized for Local Reproduction, Standard Form - LLL	

SECTION 11: CERTIFICATION OF REVIEW AND REPRESENTATION OF COMPLIANCE WITH REQUIREMENTS

The signatures of the Law Enforcement Executive/Program Official and Government Executive/Financial Official, and any applicable program partners on the Certification of Review and Representation of Compliance with Requirements:

- 1) Assures the COPS Office that the applicant will comply with all legal, administrative, and programmatic requirements that govern the applicant for acceptance and use of federal funds as outlined in the applicable COPS Application Guide; AND
- 2) Attests to the accuracy of the information submitted with this application (including the Budget Detail Worksheets).

The signatures on this application must be made by the actual executives named on this application unless there is an officially documented authorization for a delegated signature. If your jurisdiction has such an official document, it must be attached to this application. Applications with missing, incomplete, or inaccurate signatories or responses may not be considered for funding.

Signatures shall be treated as a material representation of fact upon which reliance will be placed when the Department of Justice determines to award the covered grant.

Please be advised that a hold may be placed on this application if it is deemed that the applicant agency is not in compliance with federal civil rights laws, and/or is not cooperating with an ongoing federal civil rights investigation, and/or is not cooperating with a COPS Office compliance investigation concerning a current grant award.

Person Submitting this Application

By clicking this box and typing my name below, I certify that I have been legally and officially authorized by the appropriate governing body to submit this application and act on behalf of the grant applicant entity. I certify that I have read, understand, and agree, if awarded, to abide by all of the applicable grant compliance terms and conditions as outlined in the COPS Application Guide, the COPS Grant Owner's Manual, assurances, certifications and all other applicable program regulations, laws, orders, or circulars. In addition, I certify that the information provided on this form and any attached forms is true and accurate to the best of my knowledge. I understand that false statements or claims made in connection with COPS programs may result in fines, imprisonment, debarment from participating in federal grants, cooperative agreements, or contracts, and/or any other remedy available by law to the federal government.

Please type your name here in place of your signature:

Law Enforcement Executive

By clicking this box and typing my name below, I certify that I have been legally and officially authorized by the appropriate governing body to submit this application and act on behalf of the grant applicant entity. I certify that I have read, understand, and agree, if awarded, to abide by all of the applicable grant compliance terms and conditions as outlined in the COPS Application Guide, the COPS Grant Owner's Manual, assurances, certifications and all other applicable program regulations, laws, orders, or circulars. In addition, I certify that the information provided on this form and any attached forms is true and accurate to the best of my knowledge. I understand that false statements or claims made in connection with COPS programs may result in fines, imprisonment, debarment from participating in federal grants, cooperative agreements, or contracts, and/or any other remedy available by law to the federal government.

Please type your name here in place of your signature:

Government Executive

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By clicking this box and typing my name below, I certify that I have been legally and officially authorized by the appropriate governing body to submit this application and act on behalf of the grant applicant entity. I certify that I have read, understand, and agree, if awarded, to abide by all of the applicable grant compliance terms and conditions as outlined in the COPS Application Guide, the COPS Grant Owner's Manual, assurances, certifications and all other applicable program regulations, laws, orders, or circulars. In addition, I certify that the information provided on this form and any attached forms is true and accurate to the best of my knowledge. I understand that false statements or claims made in connection with COPS programs may result in fines, imprisonment, debarment from participating in federal grants, cooperative agreements, or contracts, and/or any other remedy available by law to the federal government.

Please type your name here in place of your signature:

"COPS ONLINE NOTE: The only electronic signature submitted online with this application will be the individual registered with the user name and password that was entered during the COPS Online login process. However, the signatures of both the Law Enforcement Executive/Program Official and the Government Executive/Financial Official, as well as any applicable program partners' signatures, are **REQUIRED** for Sections 8, 9 and 11 of this application. Original, signed hard copies of the Certification of Review and Representation of Compliance with Requirements, Assurances and Certifications must be kept in the agency's files and furnished upon request."

By clicking this box, I have read and understand this requirement.

Warning: Once you submit your application you will be unable to change any of your application information. Please ensure that you have reviewed all of your information before submitting your application to the COPS Office.

Paperwork Reduction Act Notice

The public reporting burden for this collection of information is estimated to be up to two hour per response, depending upon the COPS program being applied for, which includes time for reviewing instructions. Send comments regarding this burden estimate or any other aspects of the collection of this information, including suggestions for reducing this burden, to the Office of Community Oriented Policing Services, U.S. Department of Justice, 1100 Vermont Avenue, N.W., Washington, DC 20530; and to the Public Use Reports Project, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

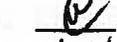
You are not required to respond to this collection of information unless it displays a valid OMB control number. The OMB control number for this application is 1103-0098 and the expiration date is 05/31/2011.

City of Oak Harbor
City Council Agenda Bill

Agenda Bill No. 7
Date: April 7, 2009
Subject: Element Nightclub License -
REVISED

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 revision to the proposed conditions for the Nightclub License to be issued to Mr. Mike Kummerfeldt for operation of The Element as a nightclub. The changes in conditions were requested by the City Council and do two things: (1) the hours for which security personnel are required in condition #5 have been changed from "between 0115 and 0230" to "between 0115 and 0400"; and (2) the period for review found in condition #8 has been changed from "a six-month basis" to "a three-month basis". Condition #8 is further clarified to require that the Chief of Police shall provide an investigative report to the City Council for public hearing as a result of the three-month review, to be held pursuant to OHMC 5.22.090.

AUTHORITY:

OHMC 5.22.045(4) states:

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

SUMMARY STATEMENT:

A public hearing on the requested Nightclub License was held on March 3, 2009. After the public hearing was closed, the City Council considered the license and proposed conditions. As a result, the City Council directed staff to modify the license conditions to expand the hours for which security personnel are required on Friday and Saturday nights (Condition #5), and to provide that the review of conditions shall be held quarterly and will trigger a public hearing pursuant to OHMC 5.22.090.

Mike Kummerfeldt, owner of Element Nightclub, has been advised of the additional conditions being considered by the City Council and will have the opportunity to respond at the April 7, 2009 City Council meeting.

STANDING COMMITTEE REVIEW:

The Public Safety Standing Committee reviewed the original agenda item on February 12, 2009.

RECOMMENDED ACTION:

That a Nightclub License be issued to the above applicant in accordance to Chapter 5.22 of the Oak Harbor Municipal Code with the following stipulated conditions:

The nightclub license-holder shall:

1. Adhere to all laws, regulations, ordinances and zoning conditions of the State of Washington and the City of Oak Harbor applicable to the nightclub business located at 656 SE Bayshore Drive, Suite #1, Oak Harbor, Washington.
2. With the exception of ingress and egress to and from the building, ensure that doors and windows remain closed at all times while any type of music or entertainment is playing.
3. Fully shield all new and/or existing site and building mounted lighting so that light is directed downward and stays on-site.
4. Ensure that the parking lot, sidewalk and the adjacent city park are kept clean of litter, daily by 6:00 a.m.
5. Provide designated and visible security personnel and security measures sufficient to reduce the potential for illegal activity, noise violations or any other public health and safety violation as described in the Oak Harbor Municipal Code, inside and outside the business to include the parking lot and adjacent properties. This will include:
 - o A minimum of four designated and visible security personnel within the building, while open for business as a nightclub.
 - o On Friday and Saturday nights, a minimum of four designated and visible security personnel will be in the parking lot between 0115 and 0400. Security shall monitor

the parking lot during business hours to prevent or report to police, as appropriate, any potentially illegal activity occurring in the parking lot or visible in adjacent properties.

- The license-holder shall implement and enforce a ban policy, that will ban patrons from the club, for a three month period, who:
 - Engage in activities in the business and/or parking lot which either result in arrest or would constitute probable cause for arrest.
 - Create noise violations in the business and parking lot.
 - Loiter in the parking lot for more than ten minutes.
 - Engage in illegal activity immediately adjacent to the business property, after leaving the club.
 - The license-holder will provide the Oak Harbor Police Department with a copy of the list of banned patrons on a weekly basis.
 - The license-holder shall implement and enforce a policy which requires club employees to call the police, as soon as possible, when they witness potentially criminal activity in the business, in the parking lot, and adjacent to the club property.
6. Provide Oak Harbor Police Department monthly with a list of current security employees.
 7. On a monthly basis, provide OHPD with the current hours of operation for each of the three different types of businesses at this location: nightclub, card room and sports bar.
 8. Meet with the Chief of Police, or his designee, on a three-month basis, to review the efficacy of the conditions of this license in meeting the goals of the Nightclubs Ordinance, Ch. 5.22 OHMC. The Chief of Police shall submit an investigative report as a result of the quarterly review to the City Council to report upon the efficacy of the conditions of this license in preventing or mitigating the noise, traffic and public health and safety impacts of the nightclub. This investigative report shall lead to a City Council public hearing pursuant to OHMC 5.22.090.
 9. The license-holder acknowledges that the Chief of Police or other city official may, pursuant to OHMC 5.22.090, submit an investigative report to the City Council at any time if, in that official's opinion, the license conditions have not been sufficient to mitigate the noise, traffic and public health and safety impacts of the nightclub. In the event that such report is submitted to the City Council, the license-holder may be subject to new or additional conditions as provided in OHMC 5.22.090.

Any violation of the above conditions, according to the Chief of Police of Oak Harbor, shall subject the license-holder to the penalties of Oak Harbor Municipal Code 5.22.065 and may subject the license-holder to license revocation per Oak Harbor Municipal Code Section .22.070.

ATTACHMENTS:

None

(Investigative Report, License Application and Chapter 5.22 OHMC previously provided)

MAYOR'S COMMENTS:

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City of Oak Harbor City Council Agenda Bill

Bill No. 8

Date: April 7, 2009

Subject: Arts Ordinances

FROM: Doug Merriman, Finance Director 

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

 Jim Slowik, Mayor

 Paul Schmidt, City Administrator

 Margery Hite, City Attorney, as to form

PURPOSE

The purpose of the two attached ordinances is to amend portions of Oak Harbor Municipal Chapter 3.71 Utility Taxes and portions Chapter 2.29 Oak Harbor Arts Commission.

Section 3.71.010 Businesses subject to utility tax is amended to impose a quarter percent utility tax increase on water suppliers, sewage treatment and collections businesses, and solid waste collection providers for the purpose of funding public art. In addition, the proposed Section 3.71.060 Allocation of utility tax to the art acquisition and maintenance fund directs that city council shall decide, no less frequently than through the adoption of every biennial budget, what proportion of the utility tax collected shall be allocated to the Art Acquisition and Maintenance Fund. Finally, Section Two of the ordinance the process by which the ordinance shall be subject to referendum.

Section 2.29.020 Purpose and functions of the Oak Harbor Arts Commission is amended to add wording to better describe the purpose of the Commission, and to establish the Commission as a recommending body to the Mayor and City Council on matters of public art programs. Finally, Section 2.29.120 is amended to eliminate the rule that an additional one percent charge be applied against capital projects for art funding, and that the proceeds from the changes in Section 3.71.010 will be placed in the General Fund with a direct allocation being made of the designated monies to the Art Acquisition and Maintenance Fund.

AUTHORITY

RCW 35A.82.020 Licenses and permits -- Excises for regulation

RCW 35.102.020 Utility businesses

RCW 35A.11.020 Powers vested in legislative bodies of noncharter and charter code cities.

SUMMARY STATEMENT

Experience under the current Ordinance:

In 2005, the City Council adopted Ordinance No. 1435 creating a new Chapter 2.29 Oak Harbor Arts Commission to the Oak Harbor Municipal Code for reasons that include the following:

- 1) To establish the Oak Harbor Arts Commission.
- 2) To provide a funding source for the acquisition and maintenance of public art by stipulating the City set aside one percent (1%) of its share of each capital construction project for arts.
- 3) To direct that, to the extent possible, that the funds would be expended "with the project being constructed."

Since the adoption of the Ordinance, City staff have budgeted for and set aside the appropriate funds for the acquisition and maintenance of public art. However, during the effort of complying with the ordinance, City staff has experienced several issues which make the logistical management of the art program difficult.

The first area of difficulty is that the ordinance requirement that funds will be expended “with the project being constructed” restricts the location and nature of public art. In several instances, the project may require the installation, replacement or repair of underground pipelines or similar infrastructure, or the project may be located in an inaccessible location where public viewing of art is impaired. In these cases, attaching or placing art on or adjacent to the projects makes no prudent sense. What is needed is a funding source that gives better latitude for proper placement and presentation of art to the public.

The second area of difficulty is the lack of an on-going steady source of funds needed to appropriately plan for, acquire, and maintain public art on a consistent basis. Under the current Ordinance, funding for the arts only occurs when certain capital projects are completed. These projects are typically scheduled on the basis of need, the projects may be delayed due to inclement weather or financial constraints, or the projects may be funded with federal or state grants or other revenue sources that are not allowable funding sources for public art. Accordingly, the receipt of revenues for arts may experience uneven periods that are not conducive to sound budgeting and expenditure practices. What is needed for prudent planning purposes is a dedicated, timely, and consistent source of revenue that allows for an appropriate level of art development.

Improving elements of proposed Ordinance:

- 1) Cost Neutral - The primary improved element of these changes is that the overall financial effect is cost neutral. There will be neither a rate increase, nor any other additional costs passed on to the rate payers as a result of these ordinances.
- 2) Placement of Art - Allows for the placement and presentation of art that makes sense. The source of funding from a utility tax allows for better discretion and planning of art projects, and removes the awkwardness of trying to incorporate art into projects in remote, or sometimes underground, locations.
- 3) Steady and consistent revenue source - The previous funding of art being tied to capital projects made it very difficult to budget for and plan any appropriate art projects. Capital projects only occur on an as needed basis, they may be deferred as projects are reevaluated and reprioritized, and certain funding sources used to pay for capital outlay projects may not be eligible to fund art projects. The new method of funding provides a level and consistent revenue stream that can be anticipated with relative ease, which allows for easier planning and scheduling of art presentations.

STANDING COMMITTEE REPORT

This topic was presented and reviewed at the Finance Standing Committee on March 11, 2009.

RECOMMENDED ACTION

- 1) Hold a public hearing.
- 2) Pass ordinance.

ATTACHMENTS

- 1) Ordinance amending OHMC Chapter 2.29
- 2) Ordinance amending OHMC Chapter 3.71

MAYOR'S COMMENTS

AN ORDINANCE OF THE CITY OF OAK HARBOR AMENDING OAK HARBOR MUNICIPAL CODE SECTION 2.29.020 ENTITLED "PURPOSE AND FUNCTIONS OF THE OAK HARBOR ARTS COMMISSION" AND AMENDING OAK HARBOR MUNICIPAL CODE SECTION 2.29.120 ENTITLED "CITY FUNDING OF THE ARTS" TO ELIMINATE PROJECT-LEVEL ARTS FUNDING AND REPLACE IT WITH UTILITY TAX FUNDING PURSUANT TO CH. 3.71 OHMC

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

Section One. Oak Harbor Municipal Code Chapter 2.29 entitled "Oak Harbor Arts Commission" is hereby amended to read as follows:

**CHAPTER 2.29
OAK HARBOR ARTS COMMISSION**

Sections:

- 2.29.005 Findings
- 2.29.010 Creation of arts commission
- 2.29.020 Purpose and functions of the Oak Harbor arts commission
- 2.29.030 Monetary donations and gifts of works of art to the city
- 2.29.040 Membership of commission
- 2.29.050 Term of office of members
- 2.29.060 Appointment, vacancy or removal
- 2.29.070 Temporary vacancies
- 2.29.080 Officers
- 2.29.090 Meetings of the commission
- 2.29.100 Organization and procedure
- 2.29.110 Administration
- 2.29.120 City funding of the arts

2.29.005 Findings. The city council finds that public artistic expressions of all kinds enhance the cultural, economic, educational and social life of the community and benefit the health and welfare of the city's residents. In its role as guardian of the health and welfare of the city, the city council finds it appropriate, necessary, and desirable to promote and support public experiences of the visual arts and other artistic disciplines for the good of the citizens of Oak Harbor.

2.29.010 Creation of arts commission. An arts commission of the city of Oak Harbor, to be known as the "Oak Harbor arts commission" is hereby established to serve as an advisory body to the mayor and Oak Harbor city council. The commission shall consist of 11 members who shall serve without compensation.

2.29.020 Purpose and functions of the Oak Harbor arts commission. The purpose of the Oak Harbor arts commission shall be to foster the creative arts in Oak Harbor. "Creative arts" shall include all forms of the visual and performing arts. The arts commission shall make recommendations to the Mayor and City Council on activities, projects and programs which the city should sponsor or undertake to promote the following aims:~~functions of the Oak Harbor arts commission shall be as follows:~~

- (1) Foster arts and cultural programs for the enrichment of the city and its citizens.
- (2) Foster the development of a local arts community, encouraging an environment for the success of working individual artists.
- (3) Coordinate and strengthen new and existing art organizations and develop cooperation with regional entities.
- (4) Develop a program for public art, including identifying sources of funding.
- (5) Further the vision of Oak Harbor as a vibrant and progressive community.
- (6) Review this chapter and make recommendations for changes.

2.29.030 Monetary donations and gifts of works of art to the city. The city shall establish a separate fund to receive monetary donations for public art. Gifts of art to the city shall be reviewed by the Oak Harbor arts commission and shall be forwarded to the city council prior to acceptance or rejection by the city.

2.29.040 Membership of commission. The majority voting membership of said commission must reside within the city of Oak Harbor or work within the city.

2.29.050 Term of office of members. The term of office of the members appointed shall be for periods of four years; provided, initial appointments shall be as follows:

- (1) Three shall be appointed for initial terms of two years.
- (2) Three shall be appointed for initial terms of three years.
- (3) Five shall be appointed for initial terms of four years.

2.29.060 Appointment, vacancy or removal.

- (1) In appointing members and filling vacancies, the mayor and council should endeavor to obtain a diverse cross-section of Oak Harbor's residents as members and also appoint members from groups having an interest in the arts and cultural activities, practicing artists and other persons employed in artistic endeavors.

- (2) Vacancies on said commission from whatever cause, except temporary vacancies as hereinafter provided, shall be filled by the mayor, subject to city council approval, for the unexpired term.
- (3) Any member of the commission may be removed from said commission prior to the expiration of his/her term by a two-thirds vote of the city council, subject to the provisions of subsection (2) of this section.
- (4) The appointment of any member of the commission who has been absent from three consecutive regular or special meetings of the commission without the approval of said commission shall automatically terminate. The administrator shall notify any member whose appointment has automatically ended and report to the appointing authority that a vacancy exists on said commission and that an appointment should be made for the unexpired term. The commission shall have the power and authority to excuse any member from attendance at any regular business meeting or study session for good cause.

2.29.070 Temporary vacancies. A member of the commission may be granted a leave of absence by the city council and a temporary vacancy shall thereupon exist for the period of such leave of absence.

During the period of such temporary vacancy, the city council may fill such vacancy by a temporary appointment to said commission; provided, however, that the period of such temporary appointment shall not exceed the period of the temporary vacancy.

At the expiration of a leave of absence so granted, the member shall automatically resume full and permanent membership on said commission.

2.29.080 Officers. The arts commission shall elect its officers, including a chairperson, vice chairperson and other officers, as it may deem necessary. The commission may set up committees.

2.29.090 Meetings of the commission. The Oak Harbor arts commission shall establish a regular time and place of meeting, and shall hold at least six regular meetings a year. Special meetings of the commission may be called at any time by the chairperson or by a quorum of the members of the commission upon personal notice being given to all members of the commission. If personal notice cannot be given, written notice must be received by such members at least 24 hours prior to said meeting.

2.29.100 Organization and procedure. The commission may make and alter any rules and regulations governing its organization and procedures not consistent with this chapter or any other ordinance of the city, subject to the approval of the city council. Requests for recommendations and study of matters within the area of interest of the commission must be submitted to it five days prior to any scheduled meeting.

2.29.110 Administration. The mayor shall appoint an officer or employee of the city to act as administrator for the Oak Harbor arts commission.

2.29.120 City funding of the arts.

- (1) The city council in the bi-annual budget may set aside special funds to be placed in the arts fund.
- (2) ~~To the extent permitted by law or contract, the city shall set aside one percent of its share of each capital construction project for arts. Such set aside will not apply to grants or contributions by others. To the extent possible, such funds will be expended with the project being constructed; provided, that for smaller projects, funds may be accumulated to obtain more appropriate types of public art. Monies allocated to the arts fund from the utility tax shall be collected shall be placed in the General Fund with a direct allocation to the Art Acquisition and Maintenance Fund pursuant to OHMC 3.71.060 as established and restricted pursuant to Ordinance No. 1501..~~

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

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

PASSED by the City Council and approved by its Mayor this _____ day of _____, 2009.

THE CITY OF OAK HARBOR

Mayor

Attest:

City Clerk

Approved as to Form:

City Attorney

Published: _____

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ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF OAK HARBOR AMENDING OAK HARBOR MUNICIPAL CODE SECTION 3.71.010 ENTITLED "BUSINESSES SUBJECT TO UTILITY TAX" TO IMPOSE A QUARTER OF ONE PERCENT UTILITY TAX INCREASE ON WATER SUPPLIERS, SEWAGE TREATMENT AND COLLECTION BUSINESSES AND STORMWATER COLLECTION AND TREATMENT BUSINESS; ADDING A NEW SECTION 3.71.060 ENTITLED "ALLOCATION OF UTILITY TAX TO THE ART ACQUISITION AND MAINTENANCE FUND"; AND PROVIDING FOR REFERENDUM RIGHTS AND PROCEDURES AS TO THE UTILITY TAX INCREASE

WHEREAS, the City Council of the City of Oak Harbor adopted Ordinance No. 1438 in 2005, creating a new Chapter 2.29 to the Oak Harbor Municipal Code, establishing the Oak Harbor Arts Commission; and

WHEREAS, OHMC 2.29.120 stipulates that the City set aside one percent (1%) of its share of each capital construction project for arts; and

WHEREAS, OHMC 2.29.120 also stipulates that, to the extent possible, such funds would be expended "with the project being constructed"; and

WHEREAS, the City Council finds that this method of funding public art unduly restricts the location and nature of public art; and

WHEREAS, an on-going steady source of funding for the arts is desirable; and

WHEREAS, a small increase in the percentage of utility tax levied under Chapter 3.71 would provide such a steady source of funding in an initial estimated amount of \$25,000 per year; and

WHEREAS, every increase in the rate of business and occupation tax is subject to referendum pursuant to RCW 35.21.706;

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

Section One. Oak Harbor Municipal Code Chapter 3.71 entitled "Utility Taxes" is hereby amended to read as follows:

**CHAPTER 3.71
UTILITY TAXES**

Sections:

- 3.71.010 Businesses subject to utility tax
- 3.71.020 Provisions applicable to this chapter
- 3.71.030 Remittance of tax
- 3.71.040 General fund

- 3.71.050 Violation - Penalty
- 3.71.060 Allocation of utility tax to the art acquisition and maintenance fund

3.71.010 Businesses subject to utility tax. There is hereby levied upon all persons engaged in business activities taxable under this chapter an occupation tax in the amounts to be determined by the application of the respective rates against gross income of such taxpayer. Taxpayers engaged in or carrying on the business shall be charged with collection of the tax as a condition of doing business, and the tax shall be levied thereafter upon their subscribers at the rate set forth below and in proportion to their contribution to gross income as defined by this chapter.

- (1) Water Suppliers. Upon every person, including the city, engaged in or carrying on the business of selling or furnishing water for domestic or commercial purposes, a ~~fee or~~ tax equal to six and one quarter percent (6-1/4%) of the total gross income from such activity, such tax to be paid covering each month's business activity and to be paid within thirty (30) days following the conclusion of the next preceding month. Such tax shall be applicable to the extraterritorial revenues of such businesses if their principal place of business and most of the business activity is situated within the corporate limits of Oak Harbor and if the system which generates the extraterritorial revenue is interconnected with a portion of the system located within the city and at least sixty percent (60%) percent of the total system (by value) is located within the city of Oak Harbor.
- (2) Sewer Collection and Treatment. Upon every person, including any sewer utility, engaged in or carrying on the business of collecting and treating sewer waste within the city, a ~~fee or~~ tax equal to six and one quarter percent (6-1/4%) of the total gross income from such activities, such tax to be paid covering each month's business activities, and to be paid within thirty (30) days following the conclusion of such month.
- (3) Solid Waste Collection. Upon every person engaged in or carrying on the business of collecting and transporting solid waste as defined OHMC Title 15, a ~~fee~~ tax equal to six and one quarter percent (6-1/4%) of the total gross income from such activities, such tax to be paid covering each month's business activities, and to be paid within thirty (30) days following the conclusion of such month.
- (4) Storm Water Collection. Upon every person engaged in or carrying out the business of collecting or treatment of water within the city, a ~~fee or~~ tax equal to six percent of the total gross income from such activities, such tax to be paid covering each month's business activities, and to be paid within thirty (30) days following the conclusion of such month.

3.71.020 Provisions applicable to this chapter. Provisions of Chapter 3.70 OHMC concerning returns, filing and procedures for collections of certain taxes shall also apply to this chapter.

3.71.030 Remittance of tax. The tax shall be collected by the business. The business shall pay to the city, upon a monthly basis, the tax levied by this chapter plus accumulated interest.

The tax shall be paid not later than thirty (30) days following the end of the monthly period. The remittance shall be accompanied by a form to be provided and prescribed by the finance director.

3.71.040 General fund. The tax collected shall be placed in the general fund.

3.71.050 Violation - Penalty. Any person who fails or refuses to pay the tax when due or fails to make or file a report or application as required by Chapter 3.70 OHMC or OHMC 3.71.020 shall be guilty of a misdemeanor punishable by a fine not to exceed \$1,000 or a jail sentence of 90 days or both such fine and jail time.

3.71.060 Allocation of utility tax to the art acquisition and maintenance fund. The city council shall decide, no less frequently than through the adoption of every biennial budget, what proportion of the utility tax collected pursuant to this chapter shall be allocated to the Art Acquisition and Maintenance Fund for the purposes set forth in Ch. 3.26 OHMC.

Section Two. The increase in utility tax adopted by this ordinance shall be subject to referendum in accordance with RCW 35.21.706, as follows:

- (1) A referendum petition may be filed with the city clerk of Oak Harbor; PROVIDED, that such petition must be filed within seven (7) calendar days from the date this ordinance is adopted;
- (2) Within ten (10) calendar days of the filing of such petition, the city clerk shall confer with the petitioner concerning form and style of the petition, issue the petition an identification number and secure an accurate, concise and positive ballot title from the city attorney;
- (3) Thereafter, the petitioner shall have thirty (30) calendar days in which to secure the signatures of not less than fifteen percent (15%) of the registered voters of the city, as of the last municipal general election, upon petition forms which contain the ballot title and the full text of the measure referred.
- (4) Upon receipt of the petition signatures, the city clerk shall verify the sufficiency of the signatures in the petition and, if sufficient valid signatures are properly submitted, shall certify the referendum measure to the next election ballot within the city or at a special election ballot as provided pursuant to RCW 35.17.260(2).

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

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

PASSED by the City Council and approved by its Mayor this _____ day of _____, 2008.

THE CITY OF OAK HARBOR

Mayor

Attest:

City Clerk

Approved as to Form:

City Attorney

Published: _____

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

Bill No. 9
Date: April 7, 2009
Subject: 2008 Comprehensive Plan
Amendments Rezonings

FROM: Steve Powers, Development Services Director *SP*

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

PURPOSE

This agenda bill presents ordinances for City Council approval that would implement the 2008 Comprehensive Plan Land Use Map Amendments. The ordinances will rezone those properties that were approved for land use changes.

AUTHORITY

The authority to establish land use control is provided by Chapter 36.70A.040. The Growth Management Act, requires the City to plan and development regulations as defined by RCW 36.70A.040 be consistent with the Comprehensive Plan.

SUMMARY STATEMENT

The City Council approved the 2008 Comprehensive Plan Amendments on December 16, 2008. The Comprehensive Plan amendments included three requests for Land Use Map changes, revisions to the Capital Improvements Plan and update of the Transportation Element. The three properties and the associated changes are listed below:

- 1) 164 NE Ernst Street – This 12,590 square feet lot is located north of SR 20 and Ernst Drive intersection. The zoning change considered is from R1, Single Family Residential to RO, Residential Office.
- 2) 33170 SR 20 – This 40,000 square feet lot is located on the southeast corner of SR20 and NE Narrows. The zoning change considered is from RO, Residential Office to C3, Community Commercial.
- 3) Two properties (R13335-454-3221, R13335-468-3460) along Goldie Street that are currently zoned I, Industrial and are considered for change to C3, Community Commercial. The 2008 Comprehensive Plan Amendment process considered 5

properties along Goldie Street. Only two properties that are within the city limits are considered in this rezoning process. The remaining three properties will acquire City zoning designation only upon annexation.

More details of the properties, their locations and effects of the zoning change can be found in the Planning Commission report that has been attached to the agenda bill. The Planning Commission conducted a public hearing on February 24th, 2009 and voted unanimously to recommend that the City Council approve the proposed zoning changes.

STANDING COMMITTEE REPORT

The Standing Committees did not review the proposed zoning changes since this is an implementation step to the already approved Comprehensive Plan Amendments.

RECOMMENDED ACTION

- Conduct the Public Hearing.
- Adopt the ordinance that will approve the rezoning of Island County parcel number S7285-210-00020 from R-1, Single Family Residential to RO, Residential Office.
- Adopt the ordinance that will approve the rezoning for the Island County parcel number R13335-428-4450 from RO, Residential Office to C3, Community Commercial.
- Adopt the ordinance that will approve the rezoning for the Island County parcel numbers R13335-454-3221 and R13335-468-3460 from I, Industrial to C3, Community Commercial with the condition that development of the property will not include any residential dwelling units.

ATTACHMENTS

Ordinances

Planning Commission report dated February 19, 2009

MAYOR'S COMMENTS

ORDINANCE NO. _____

AN ORDINANCE REZONING CERTAIN PROPERTY FROM R-1 (SINGLE FAMILY RESIDENTIAL) TO R-O (RESIDENTIAL OFFICE).

WHEREAS, The City of Oak Harbor has initiated rezoning to the properties in question, to reflect the land use designation of said properties as per the Land Use Designation Map of the 2008 Comprehensive Plan; and

WHEREAS, a public hearing was held before the Planning Commission of the City of Oak Harbor on February 24, 2009, and said hearing was published as required by law; and

WHEREAS, the zone change has been recommended for approval by the Planning Commission on February 24, 2009; and

WHEREAS, the City Council of the City of Oak Harbor held a hearing and has considered the records of the City of Oak Harbor concerning the rezone recommendation of the various parties and the application,

NOW THEREFORE, the City Council of the City of Oak Harbor do ordain as follows:

Section One: The following described property situated in the County of Island, State of Washington, is rezoned from R-1 (Single Family Residential) to R-O (Residential Office):

Legal Description
Lot 2 of Koetje 2nd Replat, Oak Harbor, Island County.

Section Two: The official zoning map shall be changed accordingly.

Section Three: Effective Date. This ordinance shall be in full force and effect five days after the date of publication.

PASSED by the City Council and approved by its Mayor this 7th day of April, 2009.

THE CITY OF OAK HARBOR

Mayor

Attest:

City Clerk

Approved as to form:

City Attorney

Published: _____

ORDINANCE NO. _____

AN ORDINANCE REZONING CERTAIN PROPERTY FROM R-O (RESIDENTIAL OFFICE) TO C-3 (COMMUNITY COMMERCIAL).

WHEREAS, The City of Oak Harbor has initiated rezoning to the properties in question, to reflect the land use designation of said properties as per the Land Use Designation Map of the Comprehensive Plan; and

WHEREAS, a public hearing was held before the Planning Commission of the City of Oak Harbor on February 24, 2009, and said hearing was published as required by law; and

WHEREAS, the zone change has been recommended for approval by the Planning Commission on February 24, 2009; and

WHEREAS, the City Council of the City of Oak Harbor held a hearing and has considered the records of the City of Oak Harbor concerning the rezone recommendation of the various parties and the application,

NOW THEREFORE, the City Council of the City of Oak Harbor do ordain as follows:

Section One: The following described property situated in the County of Island, State of Washington, is rezoned from R-O (Residential Office) to C-3 (Community Commercial):

Legal Description

That portion of the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$, Section 35, Township 33 North, Range 1 East, W.M., described as follows:

Beginning at intersection of East boundary of State Highway 1-D and the South boundary of NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 35, Township 33 North, Range I East, W.M.: thence Northeasterly along East boundary of said Highway 1-D, 400 feet to the TRUE POINT OF BEGINNING; thence Southeasterly at right angles to said Highway 1-D, 200 feet; thence Northeasterly parallel to said Highway 1-D, 200 feet; thence at right angles 200 feet to East boundary of said Highway 1-D; thence Southwesterly along Southeasterly boundary of said Highway 1-D, 200 feet to the TRUE POINT OF BEGINNING; situated in Oak Harbor, Island County, State of Washington.

Section Two: The official zoning map shall be changed accordingly.

Section Three: Effective Date. This ordinance provided hereby, shall be in full force and effect five days after the date of publication as required by law.

PASSED by the City Council and approved by its Mayor this 7th day of April, 2009.

THE CITY OF OAK HARBOR

Mayor

Attest:

City Clerk

Approved as to form:

City Attorney

Published: _____

ORDINANCE NO. _____

AN ORDINANCE REZONING CERTAIN PROPERTY FROM I, (INDUSTRIAL) TO C-3 (COMMUNITY COMMERCIAL).

WHEREAS, The City of Oak Harbor has initiated rezoning to the properties in question, to reflect the land use designation of said properties as per the Land Use Designation Map of the Comprehensive Plan; and

WHEREAS, the proposed zoning change requires restrictions to prohibit residential uses on the property to mitigate the impacts and ensure compatibility with Whidbey Island Naval Air Station at Ault Field and to further the "Air Installation Compatible Use Zone" (AICUZ) study; and

WHEREAS the restriction will better meet the goals and policies of the Oak Harbor Comprehensive Plan; and

WHEREAS, a public hearing was held before the Planning Commission of the City of Oak Harbor on February 24, 2009, and said hearing was published as required by law; and

WHEREAS, the zone change has been recommended for approval by the Planning Commission on February 24, 2009; and

WHEREAS, the City Council of the City of Oak Harbor held a hearing and has considered the records of the City of Oak Harbor concerning the rezone recommendation of the various parties and the application,

NOW THEREFORE, the City Council of the City of Oak Harbor do ordain as follows:

Section One: The following described property situated in the County of Island, State of Washington, is rezoned from I (Industrial) to C-3 (Community Commercial):

Legal Description
(Parcel No. R13335-454-3221)

That portion of the G.W.L. Allen Donation Land Claim and of Government Lot 8, Section 35, Township 33 North, Range 1 East of the Willamette Meridian, described as follows:

Beginning at the Northeast corner of the Plat of GOLDIE ROAD ACRES, as per plat recorded in Volume 4 of Plats, page 31, records of Island County, Washington, said plat being the true point of beginning;
thence Westerly along the North boundary of Goldie Road Acres, and said boundary extended 476.77 feet;

thence North a distance of 208 feet;
thence West a distance of 208 feet to the East boundary of a tract conveyed to Benjamin Ronhaar by deed recorded June 12, 1953, under Auditor's File No. 90305, records of Island County Washington;
thence North a distance of 366.2 feet to the North boundary of a tract conveyed to Andrew VanderStoep, by deed recorded July 7, 1945, under Auditor's File No 62885, records of Island County, Washington;
thence Easterly along said North boundary to Goldie Road;
thence Southerly along the West boundary of Goldie Road to the point of beginning;

EXCEPT that portion beginning at the intersection of the North line of the above described tract and the Westerly line of Goldie Road;
thence Southerly along said West line of Goldie Road a distance of 104 feet;
thence West a distance of 208 feet;
thence North approximately 104 feet to the North line of the above described tract;
thence East to the point of beginning;

ALSO EXCEPT that portion beginning at the Northeast corner of the Plat of GOLDIE ROAD ACRES, as per plat recorded in Volume 4 of Plats, page 1, records of Island County, Washington;
thence Westerly along the North boundary of said plat a distance of 340 feet;
thence North a distance of 208 feet;
thence East to a distance of 204 feet;
thence North a distance of 12 feet;
thence East a distance of 117.98 feet, more or less, to the Westerly line of Goldie Road;
thence Southerly along said Westerly line to the point of beginning;

ALSO EXCEPT that portion beginning at the Northeast corner of the Plat of GOLDIE ROAD ACRES, as per plat recorded in Volume 4 of Plats, page 31, records of Island County, Washington;
thence Westerly along the North boundary of said plat, if extended 476.77 feet to the true point of beginning;
thence North a distance 208 feet;
thence East a distance or 125 feet;
thence South a distance or 208 feet;
thence West a distance of 125 feet to the true point of beginning.

Situated in the County of Island, State of Washington.

Legal Description
(Parcel No. R13335-468-3460)

That portion of the G.W.L. Allen Donation Claim and of Government Lot 8, Section 35, Township 33 North, Range 1 East of the Willamette Meridian, described as follows:

Beginning at the Northeast corner of the Plat of Goldie Road Acres, according to the plat thereof recorded in Volume 4 of Plats, page 31, records of Island County, Washington; thence Westerly along the North boundary of said Plat of Goldie Road Acres, and said boundary extended a distance of 476.77 feet; thence North a distance of 208 feet; thence West a distance of 208 feet; thence North a distance of 366.2 feet to the North boundary of tract conveyed to Andrew VanderStoep by Deed recorded July 7, 1945, under Auditor's File No. 62885, records of Island County, Washington; thence Easterly along said North boundary to the Westerly boundary of Goldie Road and the true point of beginning; thence Southerly along the Westerly boundary of Goldie Road a distance of 104 feet; thence West a distance of 208 feet; thence North a distance of 104 feet, more or less, to the North boundary of said land as conveyed to Andrew VanderStoep; thence East along said North boundary to the true point of beginning.

Situated in Island County, Washington.

Section Two: The rezoning is conditioned upon no residential dwelling units being permitted in any development of the property;

Section Three: This ordinance shall be recorded with Island County Auditor's Recording Department.

Section Four: The official zoning map shall be changed accordingly.

Section Five: Effective Date. This ordinance provided hereby, shall be in full force and effect five days after the date of publication.

PASSED by the City Council and approved by its Mayor this 7th day of April, 2009.

THE CITY OF OAK HARBOR

Mayor

Attest:

City Clerk

Approved as to form:

City Attorney _____

Published: _____

**City of Oak Harbor
Report to the Planning
Commission**

Date: February 19, 2009

Subject: 2008 Comprehensive Plan Rezoning

FROM: **Cac Kamak, AICP
Senior Planner**

Summary

The three proposed rezonings before the Planning Commission would implement land use changes approved as part of the 2008 Comprehensive Plan Amendments. The Planning Commission has reviewed each of these proposals as part of the Land Use Map amendments associated with the Comprehensive Plan review in 2008.

This process is to change the Oak Harbor Municipal Code (OHMC) zoning designation of the sites in question to concur with designations defined in the Comprehensive Plan Land Use Map. While the Land Use map indicates the long term use foreseen for the sites, the zoning designation codifies specific land use limits and requirements (such as use restrictions, setbacks, development requirements, etcetera).

At the conclusion of the public hearings it will be necessary for the Planning Commission to forward recommendations to the City Council regarding these rezonings.

Public Notice and Comment

Public notices of the applications before the Planning Commission were executed as per the requirements of the Oak Harbor Municipal Code. These notices included site posting, letters sent to the affected property owners and owners of properties within 300 feet of the affected properties, and publishing in the local newspaper.

Staff has not received any comments or question on the rezonings.

Background

The 2008 Comprehensive Plan Amendments included 3 requests for land use changes and updates to the Capital Facilities Plan and the Transportation Element. The Planning Commission held a public hearing on these amendments on October 28, 2008. After further review and deliberation, the Planning Commission, on November 25, 2008 forwarded the Amendments to the City Council with a recommendation for approval. The City Council held a public hearing on the Amendments and approved the 2008 Comprehensive Plan Amendments on Dec 16, 2008.

The Future Land Use Map is a planning tool and the changes approved to this document are implemented by changing the zoning of these properties. The proposed rezonings would implement land use changes approved as part of the 2008 Comprehensive Plan. It

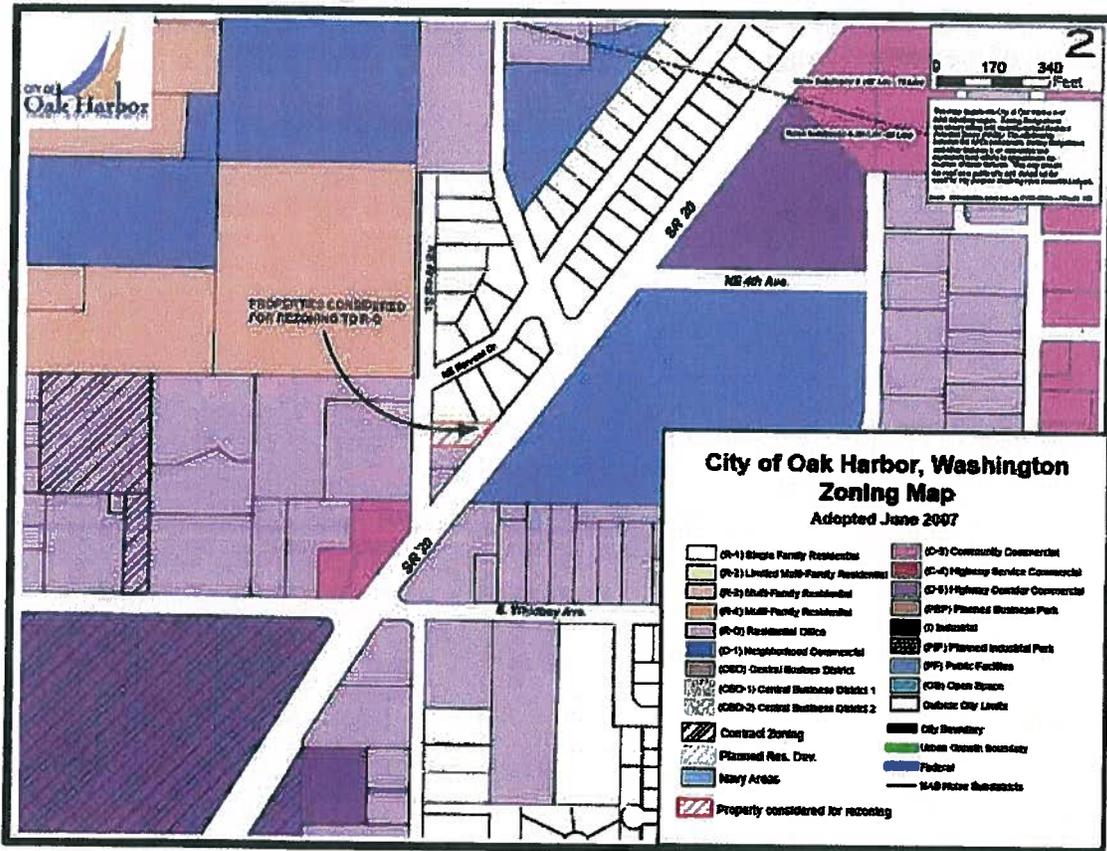
will be necessary for the Planning Commission to forward recommendations to the City Council regarding these items.

Site Information and Analysis

While the long term land use vision of each of the proposed sites is embodied in the Future Land Use Map designation of the Comprehensive Plan, the specific zoning of each site must be changed to correspond with this vision. Staff has identified specific characteristics of each of the rezonings for the Commission's consideration.

164 NE Ernst Drive

At this meeting the Planning Commission will conduct a public hearing to consider changing the zoning for Island County parcel number S7285-210-00020 from R-1, Single Family Residential to RO, Residential Office. This 12,590 square foot lot is located north of SR 20 and Ernst Drive intersection. (The affected area is identified on the map below).



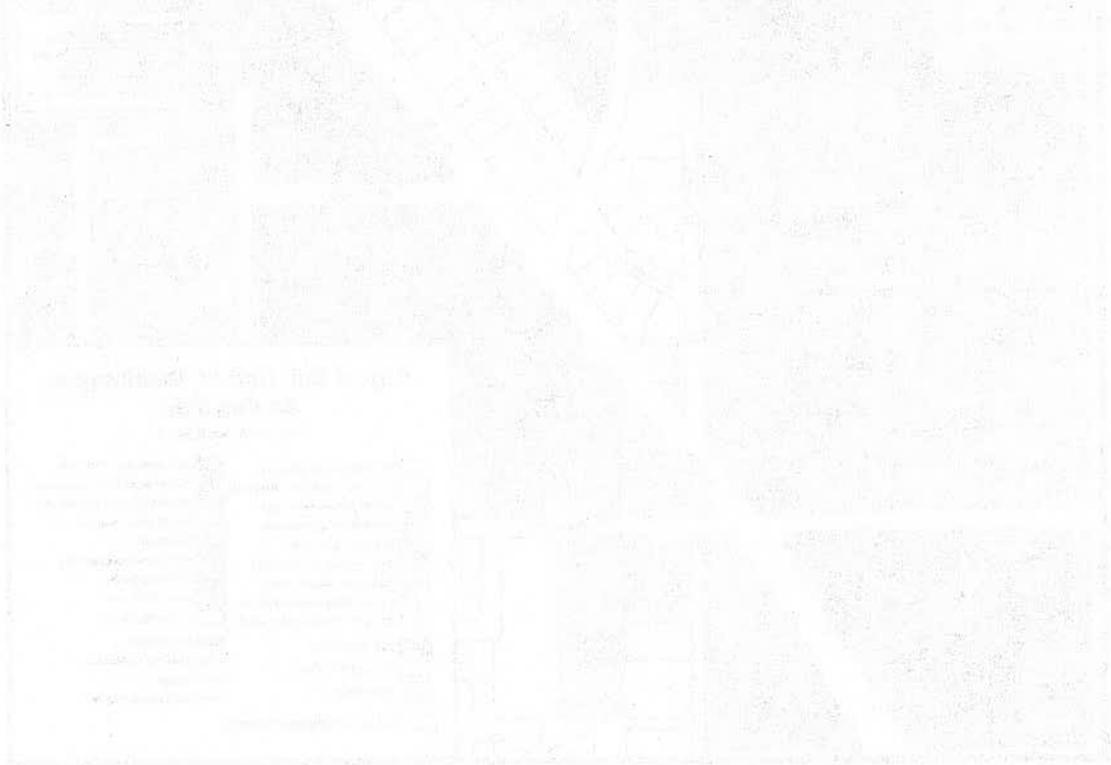
Existing Zoning: R-1 Single Family Residential
 Proposed Zoning: R-O Residential Office

Effect of proposed zoning changes:

- Increases the intensity of land uses permitted in the current district. Residential Office zoning district can be considered as a transitional zone between residential and commercial.
- Although the rezoning will expand the list of uses that can be built on the property, the request for change was based on using the property to support the existing use to the south (currently being constructed as an office).

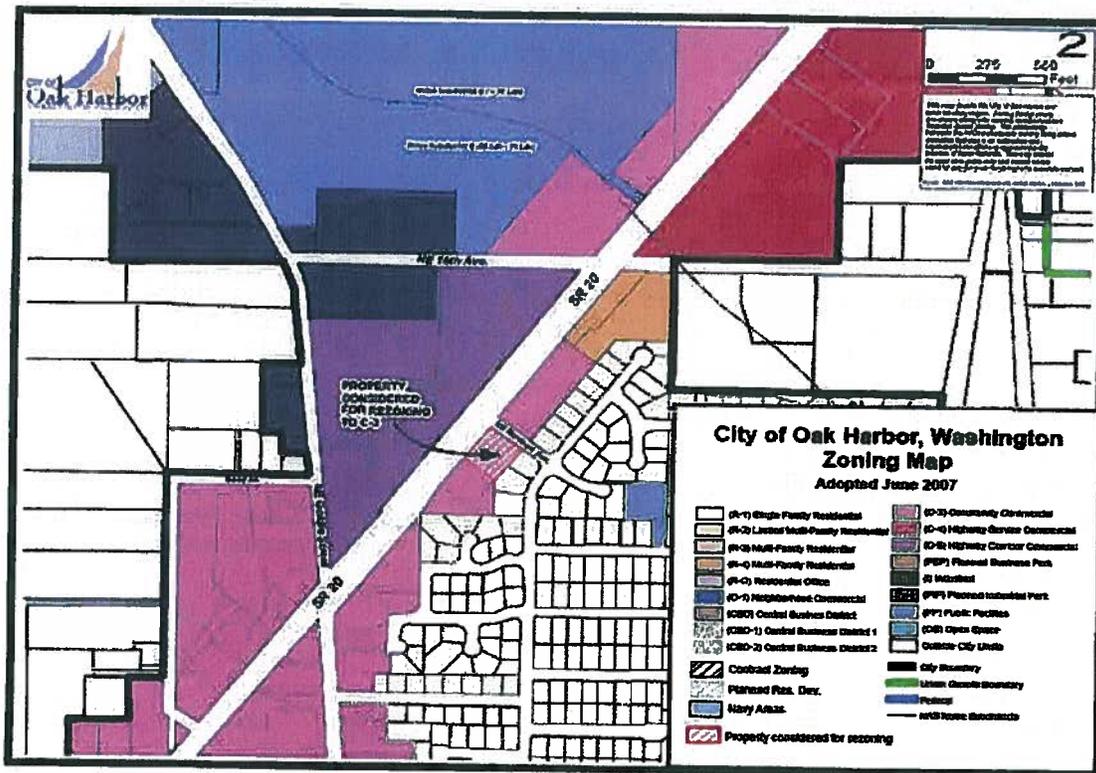
- Depending on changes that are proposed on the property, the development may be required to meet the site plan and design guidelines requirements.
- The front yard setback remains the same (20 ft).
- The side yard setback remains the same (12 ft and 5 ft).
- The rear yard setback remains unchanged (20 ft).

Staff recommendation: Given the previous approval of the Comprehensive Plan Land Use designation changes for the subject sites, and the above items, staff recommends approval of the zoning change.



33170 SR 20

At this meeting the Planning Commission will conduct a public hearing to consider changing the zoning for the Island County parcel number R13335-428-4450 from RO, Residential Office to C3, Community Commercial. This 40,000 square foot lot is located on the Southeast corner of SR20 and NE Narrows.



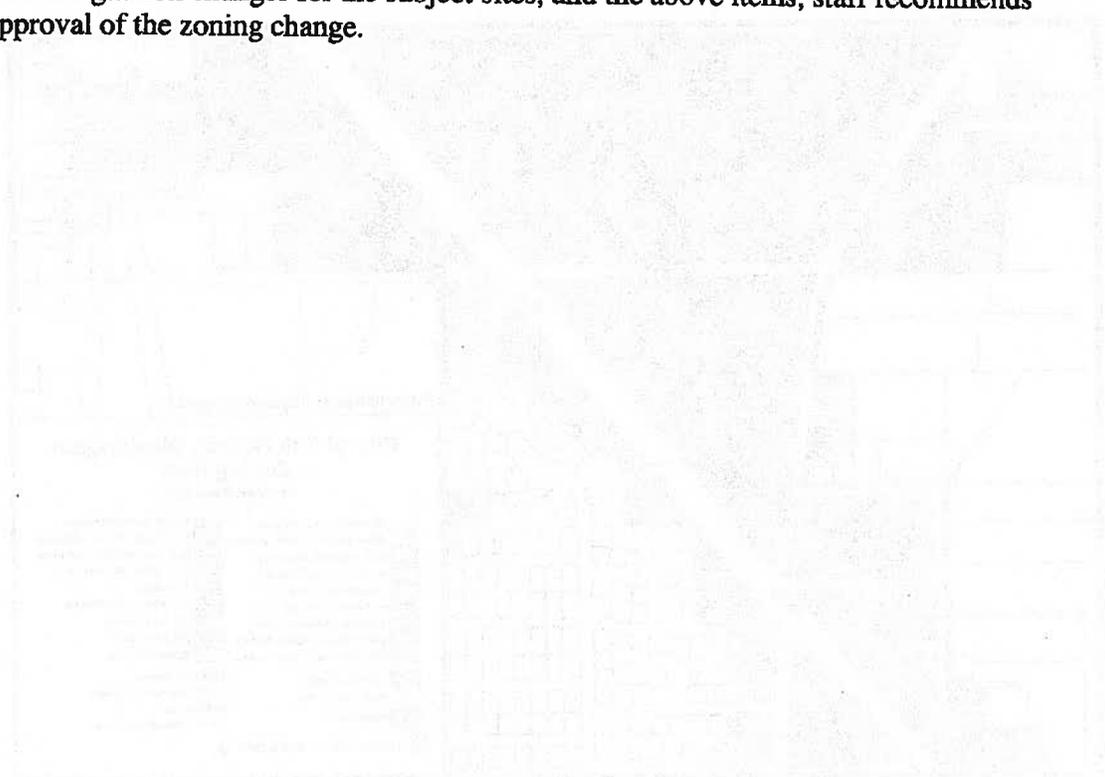
Existing Zoning: RO, Residential Office
 Proposed Zoning: C-3, Community Commercial
 Effect of proposed zoning changes:

- Adds opportunity for commercial uses within close proximity to SR-20 and other properties zoned community commercial.
- Since the OHMC zoning districts are pyramidal in structure, uses allowed in the C-1, R-O and R-4 districts would be permitted in the proposed zoning district.
- Creates potential for commercial uses that are not currently permitted.
- Requires the same site plan and design review processes and restrictions.
- The front yard setback is increased from 20 ft to 35ft (with provisions to reduce it to 15ft with increased landscaping).
- The side yard setback is changed from a minimum of 12 ft and 5 ft to none and

increases 30 ft for sides abutting residentially zoned property. For corner lots, the side yard abutting a public street shall be the same as the front yard.

- The minimum rear yard setback is eliminated but buffers will be required based on adjacent land uses.

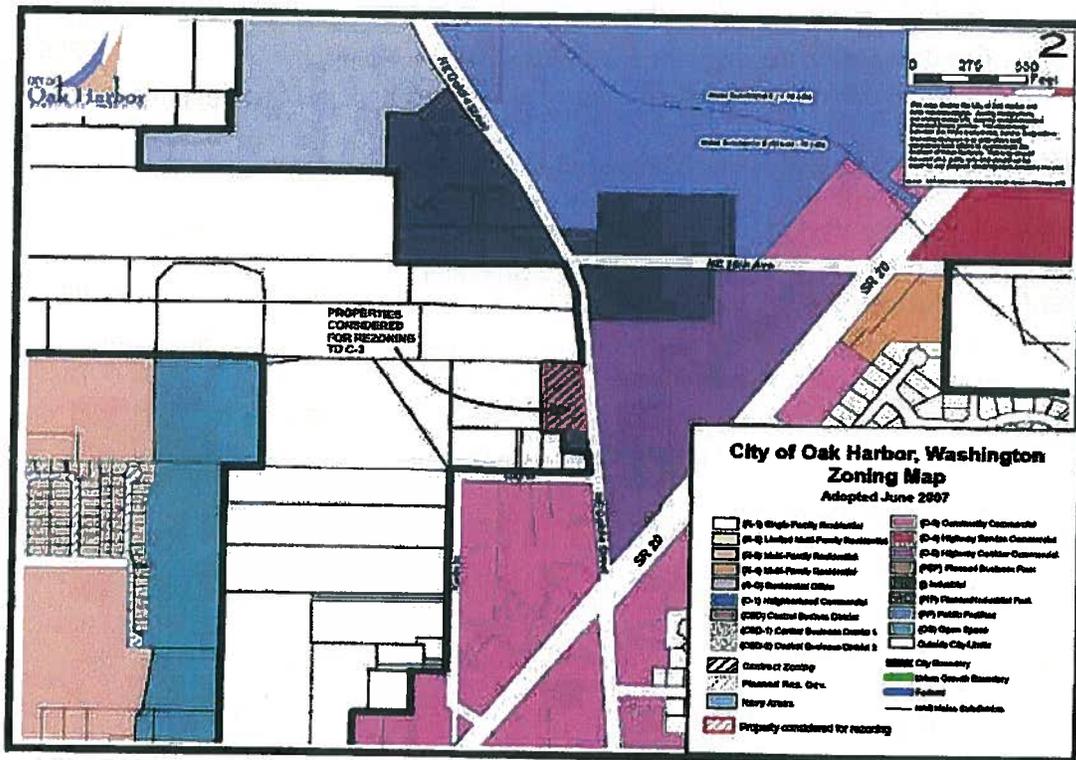
Staff recommendation: Given the previous approval of the Comprehensive Plan Land Use designation changes for the subject sites, and the above items, staff recommends approval of the zoning change.



Goldie Road Properties

At this meeting the Planning Commission will conduct a public hearing to consider changing the zoning for the Island County parcel numbers R13335-454-3221, R13335-468-3460 from I, Industrial to C3, Community Commercial.

These two properties are located west of Goldie Road, north of Easy Street and south of 16th Avenue. The 2008 Comprehensive Plan Land Use Amendments changed the designation for 5 properties of which only two are in the City and can be rezoned.



Existing Zoning: I, Industrial
 Proposed Zoning: C-3 Community Commercial
 Effect of proposed zoning changes:

- Adds opportunity to expand the commercial property inventory that is needed in Oak Harbor.
- Creates potential for commercial uses that are not currently permitted.
- Requires the same site plan and design review processes and restrictions as the current zoning.
- The front yard setback remains the same at 35 ft (with provisions to reduce it to 15ft with increased landscaping).
- The side yard setback is the same (none) for both districts but will be increased

- from 10 ft to 30 ft if adjacent to residential zoned properties.
- The minimum rear yard setback is the same (none)
- Buffering as per the requirements of OHMC 19.46 Landscaping and Screening with additional requirements considered through the SEPA review.

Staff recommendation: Given the previous approval of the Comprehensive Plan Land Use designation change for the subject site, and the above items, staff recommends approval of the zoning change.

Recommendations

1. Conduct public hearings for each of the items presented.
2. Forward recommendations of approval for each item to City Council.

Attachments: (from Oak Harbor Municipal Code, Chapter 19)

- Exhibit A: Article II. R-1 – Single Family Residential
- Exhibit B: Article VI. RO – Residential Office
- Exhibit C: Article IX. C-3 – Community Commercial
- Exhibit D: Article XIV. I - Industrial

Article II. R-1 – Single-Family Residential

19.20.100 Purpose and intent.

The R-1 single-family residential district is intended for low density, urban, single-family residential uses, while providing sufficient density to allow the city to effectively provide needed urban services. The densities for this district range between a minimum of three units per gross acre and a maximum of six units per gross acre. (Ord. 1221 § 1, 2000).

19.20.105 Principal permitted uses.

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

- (1) One single-family detached dwelling structure on each lot;
- (2) Development under a planned residential development as per Chapter 19.31 OHMC. (Ord. 1221 § 1, 2000).

19.20.110 Accessory permitted uses.

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

- (1) Accessory uses and structures incidental to any permitted residential uses, such as servants' quarters, garages, greenhouses, or workshops, and barns; provided, that none shall be rented or occupied for gain;
- (2) All radio, television and microwave receiving antennas, whether variously described as a wire, dish, tower antenna, or otherwise, located within the setback lines of the lot. (Ord. 1221 § 1, 2000).

19.20.115 Conditional uses permitted.

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

- (1) All radio, television and microwave receiving antennas, whether variously described as a wire, dish, tower antenna, or otherwise, located outside of the setback lines of the lot when:
 - (a) Reception cannot be obtained when located within the setback lines;
 - (b) The location in a setback yard does not block the view of Oak Harbor Bay proposed from other property;
 - (c) The antenna does not cause a danger to adjacent properties;
 - (d) The antenna installation complies with all other zoning and building provisions of this code.
- (2) Assisted living facility.
- (3) Cemetery, mausoleum, or crematorium, but only in connection therewith.
- (4) Churches and associated rectories, convents or other similar structures.
- (5) Community center building.
- (6) Excavations, other than simple foundation.
- (7) Garages, for storage only of automobiles as an accessory to a public or quasi-public institution.
- (8) Golf course, including club house, but not an independent pitch-and-putt course, golf driving range or miniature golf.
- (9) Government buildings for administrative or protective services, government storage yards, treatment plants, well sites, pump stations and sanitary landfills.
- (10) Group home.
- (11) Home occupations as regulated in Chapter 19.34 OHMC.
- (12) Hospital.
- (13) Landfills, reclamation to improve steep, low or otherwise unusable land.
- (14) Mortuaries.
- (15) Nursery and landscape material, including greenhouses.
- (16) Private club, lodge, social or recreation building or community assembly hall (except those

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- having a chief activity carried on for monetary gain); provided, that the buildings used for such purpose may require additional front, rear or side yard setback from an adjoining lot in any residential district beyond the established requirements in the parent zoning district.
- (17) Private nursery school, foster home, kindergarten, or child day care center, not qualifying as a home occupation, on a legal lot, provided there is established in connection therewith an outdoor play area having a minimum area of 1,000 square feet plus an additional 50 square feet for each child in excess of eight.
 - (18) Private park or recreational area operated by a nonprofit community organization or association as a neighborhood playground, or local community recreational area, operated for the benefit of and exclusive use of members and their invited guests. Applications for a conditional use under this section shall state the specific use or uses to which the proposed neighborhood playground or local community recreational area shall be put. Conditional uses granted under this section shall be limited to one or more of the specific use or uses requested. Any use or uses in addition to or different from those specifically permitted by the hearing examiner hereunder shall require the separate approval of the hearing examiner. Included within the generality of the phrase "neighborhood playground, or local community recreational areas," but not limited thereto, are swimming pools, community beaches and tennis courts, together with appurtenances thereto.
 - (19) Public school.
 - (20) Public or private college.
 - (21) Public, private or parochial school and supporting dormitory facilities.
 - (22) Public or semi-public building serving as a library, museum or other similar purpose.
 - (23) Public transportation shelter stations.
 - (24) Public utility and communications facility, such as a branch telephone exchange, static transformer, booster station, or pumping station, provided there shall be no service or storage buildings or yards in connection therewith.
 - (25) Radio and television broadcasting stations and towers.
 - (26) Rapid transit terminals.
 - (27) Skilled nursing facility. (Ord. 1405 § 7, 2004; Ord. 1221 § 1, 2000).

19.20.120 Density provisions.

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

- (1) Minimum density, three DU/AC; maximum density, six DU/AC;
- (2) Minimum lot area, 7,200 square feet;
- (3) Minimum lot width, 60 feet;
- (4) Minimum lot depth, 90 feet;
- (5) Minimum front yard, 20 feet;
- (6) Minimum side yard setbacks are 12 feet and five feet, however, minimum side yard along the flanking street of a corner lot, 15 feet;
- (7) Minimum rear yard, 20 feet;
- (8) Maximum building height, 35 feet;
- (9) Maximum lot coverage, 35 percent of lot area;
- (10) A single-story accessory building containing less than 600 square feet of floor area may be constructed within five feet of either sideline or rear property line provided there is six feet of unencumbered space between the principal structure and the accessory building. Accessory buildings shall not have a metal finish except when the finish is listed by the manufacturer or approved by the building department as a nonglare finish. The maximum floor area of an accessory structure shall not exceed 50 percent of the floor area of the primary structure;
- (11) Development as a planned residential development may occur subject to Chapter 19.31 OHMC. (Ord. 1221 § 1, 2000).

Article VL RO – Residential Office

19.20.230 Purpose and intent.

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

19.20.235 Principal permitted uses.

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

- (1) Offices for the following:
 - (a) Accountants;
 - (b) Attorneys;
 - (c) Physicians, osteopaths, dentists, optometrists, opticians, chiropractors and others licensed by the state of Washington to practice the healing arts;
 - (d) Engineers, architects, surveyors, planners and those engaged in the practice of drafting or graphics;
 - (e) Insurance brokers;
 - (f) Lumber brokers;
 - (g) Real estate sales;
 - (h) Stockbrokers;
 - (i) Software developers;
 - (j) Offices similar to the above but not specifically listed; subject to approval by the planning director;
- (2) Principal uses permitted outright in an R-4 district;
- (3) Other uses as defined by the planning director to be similar to those identified above and having equal or less impact on the purposes of this section. (Ord. 1221 § 1, 2000).

19.20.240 Accessory permitted uses.

- (1) Accessory uses and structures incidental to any permitted residential uses, such as servants' quarters, garages, greenhouses, or workshops; provided, that none shall be rented or occupied for gain;
- (2) Gardening and horticultural activities and related structures for noncommercial purposes;
- (3) Television satellite dish reflectors, ground-mounted within required building setback lines. (Ord. 1221 § 1, 2000).

19.20.245 Conditional uses permitted.

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

- (1) Any conditional uses permitted in an R-4 district;
- (2) Restaurants, excluding drive-up windows; provided, that any area devoted to a bar must be less than 20 percent of the restaurant seating area. (Ord. 1405 § 10, 2004; Ord. 1221 § 1, 2000).

19.20.250 Density provisions.

In an RO district, the following density provisions apply:

- (1) Minimum lot area, 7,200 square feet;
- (2) Minimum lot width, 72 feet;
- (3) Minimum lot depth, 90 feet;
- (4) Minimum front yard, 20 feet; see subsection (6) of this section;
- (5) Minimum side yard setbacks are 12 feet and five feet on one side, except on corner lots abutting a public street, then 20 feet;

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- (6) Minimum rear yard, 20 feet except when abutting a public street, then 35 feet. In addition to the above, any building of more than two stories in height must provide a minimum of two feet additional front, side and rear yard setback for each additional story;
- (7) Maximum building height, 35 feet;
- (8) Maximum lot coverage by building, 45 percent. A minimum of 20 percent of lot area is to be kept free of impervious surfacing;
- (9) A single-story accessory building containing less than 600 square feet of floor area may be constructed within five feet of either sideline or rear property line, provided there is six feet of unencumbered space between the principal structure and the accessory building. Accessory buildings shall not have a metal finish except when the finish is listed by the manufacturer or approved by the building department as a nonglare finish. The maximum floor area of an accessory structure shall not exceed 50 percent of the floor area of the primary structure. (Ord. 1221 § 1, 2000).

19.20.255 Landscaping requirements.

- (1) All nonresidential development shall be in accordance with the provisions of the Oak Harbor design guidelines.
- (2) Landscaping and buffers shall be constructed and maintained in accordance with the provisions of Chapter 19.46 OHMC. (Ord. 1221 § 1, 2000).

19.20.260 Site plan and design review required.

Site plan and design review shall be required as defined in Chapter 19.48 OHMC. (Ord. 1221 § 1, 2000).

Article IX. C-3 – Community Commercial

19.20.335 Purpose and intent.

The C-3 community commercial district is intended to provide for those types of retail, wholesale, transportation, and service uses which, because of traffic and other requirements, depend upon particular locations to serve the needs of the community and its trading area. Generally, the permitted uses require large sites and access from either major or minor arterials. (Ord. 1221 § 1, 2000).

19.20.340 Principal permitted uses.

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

- (1) Any principal use permitted in a C-1 and CBD district, provided dwelling units are:
 - (a) Above and secondary to essential or primary floor uses;
 - (b) Ground level access is independent of the business uses from an inside lobby, elevators, and/or corridors, and an enclosed interior court, or other separate access provisions;
- (2) Amusement enterprise including bowling alley, roller or ice rink, dancehall, shooting gallery, and trampoline;
- (3) Animal hospital when located not closer than 200 feet from a residential zoning district, provided all animals are housed in a completely enclosed building;
- (4) Assembly hall;
- (5) Automobile or truck service station;
- (6) Automobile repair of all kinds, including body and fender work, provided there shall be no wrecking, junking, dismantling, or salvaging operations;
- (7) Automobile sales and service;
- (8) Bakery;
- (9) Book publishing and binding;
- (10) Carwash;
- (11) Contractor's plants and storage yards;
- (12) Currency exchange;
- (13) Extended stay motel;
- (14) Feed and seed store, retail or wholesale;
- (15) Film processing plant;
- (16) Grocery store;
- (17) Laboratory for experimental or research work or testing;
- (18) Laundry and dry cleaning, dyeing, or rug cleaning plant;
- (19) Nursery and landscape material including greenhouses;
- (20) Offices;
- (21) Plumbing shop;
- (22) Places of entertainment;
- (23) Recycling of glass and metal cans when conducted within a wholly enclosed building, including scrap paper or rag storage;
- (24) Shopping centers;
- (25) Sign shop, but not manufacture or assembly of electrically illuminated signs;
- (26) Supermarket;
- (27) Taxidermist;
- (28) Upholstery shop;
- (29) Veterinary clinic (hospital) (see animal hospital);
- (30) Other uses of similar character, but not including a specific listed industrial use permitted in an I industrial district, subject to approval by the city council;
- (31) Other uses as defined by the planning director to be similar to those identified above and having equal or less impact on the purposes of this section. (Ord. 1383 § 1, 2004; Ord. 1221 § 1, 2000).

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19.20.345 Accessory permitted uses.

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

- (1) A use customarily incidental and subordinate to a principal use permitted outright;
- (2) On-site hazardous waste treatment and storage facilities as an accessory use to any activity generating hazardous waste and lawfully allowed in this zone; provided, that such facilities meet the state siting criteria adopted pursuant to the requirements of RCW 70.105.210;
- (3) Television satellite dish reflectors, roof-mounted and within building setback lines not to exceed 35-foot height limitations. (Ord. 1221 § 1, 2000).

19.20.350 Conditional uses permitted.

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

- (1) Conditional uses permitted in a C-1 and CBD district;
- (2) Drive-in theater;
- (3) Fuel oil distribution, retail and wholesale, provided incidental storage is maintained underground;
- (4) Fuel yard;
- (5) Go-kart tracks;
- (6) Gymnasium;
- (7) Lumber yard, retail or wholesale, including building supplies, hardware, and related items;
- (8) Mobile home and trailer sales lot;
- (9) Mortuary;
- (10) Outdoor use, activity or storage only in conjunction with a permitted use. A solid sight-obscuring fence or other appropriate screening approved by the planning director is required around the outside edges of the area devoted to the outdoor use, activity or storage. The height of outdoor storage abutting public streets or residential zones shall not be higher than the height of the screen device approved by the planning director. Outdoor use, activity or storage areas located adjacent to C-3 property may be located in the required interior side and rear setback yards. All outdoor use, activity or storage areas located adjacent to residential zones must meet required setbacks for the primary use. No outdoor use, activity or storage shall be permitted in the front yard setback;
- (11) Produce stand;
- (12) Schools for drop-out and at-risk students;
- (13) Stadium;
- (14) Truck terminal;
- (15) Wholesale warehouse or storage establishments, but only occupying a completely enclosed building. (Ord. 1405 § 13, 2004; Ord. 1221 § 1, 2000).

19.20.355 Density provisions.

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

- (1) Minimum lot area, no limitation;
- (2) Minimum lot width, no limitation;
- (3) Minimum lot depth, no limitation;
- (4) Minimum front yard, 35 feet. The building setback may be reduced to 15 feet if the entire setback area from property line to building is landscaped where reduction occurs;
- (5) Minimum side yard, no limitation, except when abutting a residentially zoned property, then 30 feet each. For corner lots, the side yard abutting a public street shall be the same as the front setback;
- (6) Minimum rear yard, no limitation, except when abutting a public street, then it shall be the same as the front setback;
- (7) Maximum building height, 35 feet;
- (8) Maximum lot coverage, no limitation. (Ord. 1221 § 1, 2000).

19.20.360 Conditions governing permitted uses.

EXHIBIT C

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

- (1) With the exception of sales lots, outside storage or equipment yard, or yards containing outside industrial operation in connection with a use permitted outright or a conditional use in a C-3 district abutting, adjoining, or located across a street from a residential zoning district, or located along a street designated by the comprehensive plan as a state highway, or a major or secondary arterial, shall be enclosed by a fence. The fence shall be sight-obscuring, obstructing the storage from view on the sides of the property abutting, adjoining, or facing a residential district. The fence shall be of such material and design as will not detract from adjacent residences and shall be built according to plans submitted by the owner or his authorized agent and approved by the planning director. In no case shall the fence be required to have a height in excess of 10 feet;
- (2) Automobile, mobile home or trailer sales lots shall be drained and surfaced with crushed rock except in those portions of the lot maintained as landscape areas;
- (3) The use of property shall not be objectionable because of odor, dust, smoke, cinders, exhaust fumes, noise, or vibration, or because of unsightly structures, facilities or open storage;
- (4) Design shall be in accordance with the provisions of the Oak Harbor design guidelines;
- (5) Landscaping and buffers shall be constructed and maintained in accordance with the provisions of Chapter 19.46 OHMC. (Ord. 1221 § 1, 2000).

19.20.365 Site plan and design review required.

Site plan and design review shall be required as defined in Chapter 19.48 OHMC. (Ord. 1221 § 1, 2000).

19.20.368 Relation to aviation environs overlay zone.*

Property located in an aviation environs overlay zone, as governed in Chapter 19.50 OHMC, shall meet the requirements for noise attenuation in Chapter 17.30 OHMC and the comprehensive plan land use element. (Ord. 1221 § 1, 2000).

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

Article XIV. I – Industrial

19.20.725 Purpose and intent.

The I industrial district is intended to accommodate certain industrial structures and uses having physical and operational characteristics which might adversely affect the adjoining residential and commercial uses. Regulations are designed to permit those industrial uses which can be operated in a relatively clean, quiet and safe manner compatible with adjoining land uses. (Ord. 1221 § 1, 2000).

19.20.730 Principal permitted uses.

In an I district, the following are principal permitted buildings and uses:

- (1) Principal uses permitted in a C-3 district except those as specifically prohibited in OHMC 19.20.620;
- (2) Automobile sales and service;
- (3) Bedding, carpet and pillow manufacture, cleaning and renovating;
- (4) Bottling and processing of nonalcoholic beverages, the production of which is devoid of fumes, noxious odors, or waste products;
- (5) Cold storage plants;
- (6) Food and drug processing;
- (7) Manufacture and assembly of light and small items made from previously prepared materials and includes operations which do not create noise, smoke, odor, vibration or other objectionable nuisances to the extent that they are detrimental to surrounding uses;
- (8) Public utilities;
- (9) Welding and machine shop;
- (10) Other uses of similar character, subject to approval by the city council. (Ord. 1221 § 1, 2000).

19.20.735 Principal uses permitted – Location limited.

The following principal uses are permitted outright if located 200 feet or more from the boundary of any residential zoning district:

- (1) Assembly, manufacture, rebuilding, compounding, processing, preparation, or treatment of such articles or products as batteries, bottles, mattresses, furniture, tools, hardware, and paper products, but not the manufacture of paper itself;
- (2) Canning, processing and freezing of fruit and vegetables;
- (3) Electroplating;
- (4) Machine, welding, or metalworking shop, but not including punch presses, drop hammers, or other noise and vibration producing equipment;
- (5) Tire retreading;
- (6) Woodworking shop. (Ord. 1221 § 1, 2000).

19.20.740 Accessory permitted uses.

In an I district, the following are accessory uses permitted outright:

- (1) A use customarily incidental and subordinate to a principal use permitted outright;
- (2) On-site hazardous waste treatment and storage facilities as an accessory use to any activity generating hazardous waste and lawfully allowed in this zone; provided, that such facilities meet the state siting criteria adopted pursuant to the requirements of RCW 70.105.210. (Ord. 1221 § 1, 2000).

19.20.745 Prohibited uses.

No building, structure or premises or a portion thereof, established after the effective date of this chapter, shall be used for human habitation, permanent, transient or temporary except as quarters for a caretaker, guard or other person whose permanent residency on the premises is required for operational safety or protective purposes. (Ord. 1221 § 1, 2000).

EXHIBIT D

19.20.750 Conditional uses permitted.

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

- (1) Any conditional use permitted in a C-3 district;
- (2) Cement and asphalt plants;
- (3) Manufacture or processing of such nondurable goods as chemical and allied products, petroleum products, fertilizers, but excluding explosives and ammonia;
- (4) Metal fabrication and boiler or tank works;
- (5) Mixing plants for concrete or paving material;
- (6) Off-site hazardous waste treatment and storage facilities; provided, that such facilities meet the state siting criteria adopted pursuant to the requirements of RCW 70.105.210;
- (7) Oxygen manufacture and/or storage;
- (8) Produce stand;
- (9) Rodenticide, insecticide and pesticide mixing plants;
- (10) Wrecking yard. (Ord. 1405 § 16, 2004; Ord. 1221 § 1, 2000).

19.20.755 Density provisions.

In an I district, the following density provisions apply:

- (1) Minimum lot area, no limitation;
- (2) Minimum lot width, no limitation;
- (3) Minimum lot depth, no limitation;
- (4) Minimum front yard, 35 feet;
- (5) Minimum side yard, no limitation, except when abutting a residentially zoned property, then 10 feet each. For corner lots, a side yard abutting a public street shall be 35 feet except that the city council may approve a variable setback of not less than 20 feet or the established building line on adjoining property, whichever is greater, after consideration at a public meeting or public hearing;
- (6) Minimum rear yard, no limitation except when abutting a public street, then 35 feet;
- (7) Maximum building height, 35 feet;
- (8) Maximum lot coverage, no limitation. (Ord. 1221 § 1, 2000).

19.20.760 Conditions governing permitted uses.

- (1) Design shall be in accordance with the provisions of the Oak Harbor design guidelines.
- (2) Landscaping and buffers shall be constructed and maintained in accordance with the provisions of Chapter 19.46 OHMC. (Ord. 1221 § 1, 2000).

19.20.765 Site plan and design review required.

Site plan and design review shall be required as defined in Chapter 19.48 OHMC. (Ord. 1221 § 1, 2000).

19.20.768 Relation to aviation environs overlay zone.*

Property located in an aviation environs overlay zone, as governed in Chapter 19.50 OHMC, shall meet the requirements for noise attenuation in Chapter 17.30 OHMC and the comprehensive plan land use element. (Ord. 1221 § 1, 2000).

* Code reviser's note: Ord. 1221 added this section as OHMC 19.20.770. It has been editorially renumbered to avoid duplication of section numbers.

City of Oak Harbor City Council Agenda Bill

Bill No. 10
Date: April 7, 2009
Subject: Labor Agreement with the Oak
Harbor Firefighters Local 4504 IAFF

FROM: Doug Merriman, Finance Director 

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

 Jim Slowik, Mayor
 Paul Schmidt, City Administrator
 Margery Hite, City Attorney, as to form

PURPOSE

The purpose of this agenda bill is to present for approval the draft labor agreement between the City of Oak Harbor and the Oak Harbor Firefighters Local 4504 IAFF. The proposed agreement covers the time period of January 1, 2009 through December 31, 2010. The agreement covers both the firefighter and lieutenant employee classes consisting of eight authorized positions within the fire department.

AUTHORITY

RCW 35A.11.020 Powers vested in legislative bodies of non-charter and charter code cities.
RCW 41.56 Public Employee's Collective Bargaining
RCW 41.56.100 Authority and duty of employer to engage in collective bargaining -- Limitations -- mediation, grievance procedures upon failure to agree.

SUMMARY STATEMENT

The negotiations for the 2009-2010 labor agreement firefighters union have been completed with tentative agreement reached on all areas under discussion. The proposed agreement will cover a two year period beginning January 1, 2009 through December 31, 2010. The following areas represent those topics of discussion that have been incorporated into the new agreement:

- 1) Article 6 – Salary and Wages. The labor agreement contains a cost of living adjustment provision utilizing 90% of the increase in the Seattle Area Consumer Price Index calculated using the net change from June 30th of one year through June 30th of the year preceding the agreement start date. In addition to the cost of living calculation, a comparable analysis is performed on the firefighter salary scales of nine similarly sized cities. Since the time of the Union's initial contract, the City and the Union have agreed to use the 50% benchmark, or the arithmetic average of these comparable cities in determining the base salary levels for both the firefighter and lieutenant pay scales. The analysis using the 2008 Union contracts from the comparable cities showed that the firefighter classification was 5.305% lower than the 50% benchmark, and that the lieutenant classification was 2.79% lower than the 50% benchmark. The contracted phases in the two adjustments by adjusting salary numbers by one half of the benchmark deficiency in 2009 with the residual amount of the deficiency being adjusted into the 2010 salary numbers.

Firefighter	Steps					
	A	B	C	D	E	F
2009 Salary	4,083	4,269	4,464	4,668	4,881	5,103
2009 Rates based on Comparables	4,299	4,495	4,701	4,915	5,139	5,374
<u>Percentage Difference in Salary levels</u>	% Change	5.305%	5.305%	5.305%	5.305%	5.305%
Annual Salary Adjustment		2.65%	2.65%	2.65%	2.65%	2.65%
Final 2009 with 2.65%	4,191	4,382	4,582	4,791	5,010	5,239

Shift Lieutenant	Steps					
	A	B	C	D	E	F
2009 Salary	4,715	4,930	5,155	5,390	5,636	5,894
2009 Rates based on Comparables	4,847	5,068	5,299	5,541	5,794	6,058
<u>Percentage Difference in Salary levels</u>	% Change	2.790%	2.790%	2.790%	2.790%	2.790%
Annual Salary Adjustment		1.40%	1.40%	1.40%	1.40%	1.40%
Final 2009 with 1.4%	4,781	4,999	5,227	5,466	5,715	5,976

- 2) Holidays: 12 and 24 hour shift personnel work a longer work week than regular 40 hour per week personnel. 40 hour per week personnel are afforded 11 holidays, or 88 hours of holiday time, annually. An adjustment has been made to increase the holidays hours afforded 12 and 24 hour personnel to the equivalent hour amount of 94 hours.
- 3) Physical Fitness: Firefighters go through a series of annual medical tests to ensure their physical and mental health is to a standard that allows them to adequately fulfill their role as a City firefighter. The City and the Union have worked together to establish a medical standard of physical measurement that meets this requirement. The agreed upon standard is set at the 11 METS.
- 4) A small typographical change has been made to the contract to adjust the term Guild to the term Union.

STANDING COMMITTEE REPORT

This topic was presented and reviewed at the Finance Standing Committee on March 11, 2009.

RECOMMENDED ACTION

- 1) Authorize the Mayor to sign the labor agreement with the Oak Harbor Firefighters Local 4504 IAFF.

ATTACHMENTS

- 1) Comparable City data
- 2) Draft Union Agreement

MAYOR'S COMMENTS

City of Oak Harbor
Proposed Fire Adjustments to Salary

Firefighter	Steps					
	A	B	C	D	E	F
2009 Salary	4,083	4,269	4,464	4,668	4,881	5,103
2009 Rates based on Comparables	4,299	4,495	4,701	4,915	5,139	5,374
<u>Percentage Difference in Salary levels</u>	5.305%	5.305%	5.305%	5.305%	5.305%	5.305%
Annual Salary Adjustment	2.65%	2.65%	2.65%	2.65%	2.65%	2.65%
Final 2009 with 2.65%	4,191	4,382	4,582	4,791	5,010	5,239

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Annual Salary Adjustment	1.40%	1.40%	1.40%	1.40%	1.40%	1.40%
Final 2009 with 1.4%	4,781	4,999	5,227	5,466	5,715	5,976

Support Services Lieutenant	Steps					
	A	B	C	D	E	F
2009 Salary	4,715	4,930	5,155	5,390	5,636	5,894
2009 Rates based on Comparables	4,847	5,068	5,299	5,541	5,794	6,058
<u>Percentage Difference in Salary levels</u>	2.790%	2.790%	2.790%	2.790%	2.790%	2.790%
Annual Salary Adjustment	1.40%	1.40%	1.40%	1.40%	1.40%	1.40%
Final 2009 with 1.4%	4,781	4,999	5,227	5,466	5,715	5,976

Less: Lacey/Centralia

Comparables	Firefighters		Lieutenants	
	Lower	Upper	Lower	Upper
Aberdeen	4,018	5,129	5,923	5,923
Arlington	4,246	5,662		6,228
Mount Vernon	4,475	5,457		6,003
Port Angeles	4,187	5,373	5,456	5,738
Tumwater	4,407	5,357		5,894
South King	4,442	5,552	6,107	6,329
Anacortes	4,465	5,088	5,806	6,292
Averages	4,320	5,374	5,823	6,058

DRAFT

LABOR AGREEMENT

BY AND BETWEEN

CITY OF OAK HARBOR

AND

OAK HARBOR FIREFIGHTERS LOCAL 4504 IAFF

Contract Ending December 31, 2010

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Article 1 - Recognition

1.1 The City hereby recognizes that the Union is the sole and exclusive bargaining representative of all regular full-time uniformed personnel as defined in RCW 41.56. PERC has specified a unit for this bargaining unit, which is defined as:

"All uniformed personnel of the City of Oak Harbor Fire Department as defined in RCW 41.56.030(7), excluding supervisors, confidential employees and all other employees."

1.2 This unit covers all firefighters and lieutenants in the Oak Harbor Fire Department. There are no captains at this time.

Article 2 - Union Membership

- 2.1 All employees of the City covered by this Agreement shall become and remain members in good standing in the Union or pay a service fee as a condition of employment to the Union not exceeding the amount of regular Union dues and initiation fees and not exceeding the maximum agency service fee that may be assessed as a matter of law; provided: objections to joining the Union which are based on bona fide religious tenets or teachings of a church or religious body of which such employee is a member will be observed. Any such employee shall pay an amount of money equivalent to regular Union dues and initiation fees to a non-religious charity or to another charitable organization mutually agreed upon by the employee affected and the bargaining representative to which such employee would otherwise pay the dues and initiation fees. The employee shall furnish written proof to the Union that such payment has been made. If the employee and the bargaining representative do not reach agreement on such matter, the Public Employment Relations Commission shall designate the charitable organization.
- 2.2 The Union may notify the City to terminate the employment of any employee not in compliance with the provisions of Section 2.1 above. The City shall terminate the employment of any such employee within seven (7) days of receiving notice from the Union and verification that the employee is not in compliance with Section 2.1 above.
- 2.3 The Union shall indemnify and defend the City and hold it harmless against any and all claims, demands, suits or other forms of liability that may arise out of, or by reason of, any action taken by the City for the purposes of complying with the provisions of this Article.

Article 3 - Union Business

- 3.1 Grievance Committee - One member designated by the Union shall be granted leave from duty with full pay and benefits for all meetings between the City and the Union for the purpose of processing grievances, when such meetings take place at a time during which such members are scheduled to be on duty. The designee shall remain available to respond to emergency calls based upon the City's staffing needs.

Upon notification to the Fire Chief, the Union and its representatives shall be allowed permission to meet at the Oak Harbor Fire Station, during pre-arranged "non-structured" time, with employees covered by this Agreement to investigate possible grievances and ascertain that this agreement is being adhered to. Such permission is conditional on no disruption of Department business activities, normal work duties, and adherence to the safety standards. In the event that a meeting was interrupted due to emergency activities, the meeting shall be continued to a time mutually agreed upon between the Union and the Fire Chief or his/her designee.

- 3.2 Other Union Business - The City shall provide a bulletin board, located conspicuously at each fire station, for the posting of notices relating to local Union business and local Union activities, which are approved by the Union President or designee.

Article 4 - Management Rights

- 4.1 Any and all rights concerned with the management and operations of the Department are vested exclusively in the City unless otherwise provided for by the terms of this Agreement. The City has the authority to adopt reasonable rules for the operation of the Department and the conduct of its employees, provided such rules are not in conflict with the provisions of this Agreement. The City has the right to (among other actions) discipline or discharge employees for just cause, to lay off employees due to financial reasons or other legitimate business reasons; to transfer and promote employees; to assign work and determine duties of employees consistent with the traditional duties of Firefighters; to schedule hours of work; to determine the number of personnel to be assigned to duty at any one time; to establish reasonable performance and productivity standards; to introduce and use new improved, or automated methods and equipment; to build, move, or modify its facilities; to take action on any matter in the event of an emergency; and to perform all other functions not expressly limited by this Agreement.
- 4.2 The Employer reserves the right to contract out for goods and services, provided said contracting out does not displace any members of the bargaining unit. In the event of the Employer's business or budgetary necessity results in a reduction or elimination of Fire service operations, the Employer and the Union shall negotiate the effects of such changes.

Article 5 - Prevailing Rights

5.1 The Union and Employer agree that the “wages, hours and working conditions” in effect at the time of signature of this Agreement and which are not addressed in this Agreement nor waived in the Management Rights clause herein will remain in effect unless the Employer wishes to change a mandatory subject of bargaining not addressed or waived. If so, the Employer agrees to bargain regarding such changes not addressed or waived pursuant to its obligation under Chapter 41.56 RCW.

Article 6 - Salary and Wages

- 6.1 Pay Period - Wages shall be payable monthly, on the last business day of the month, to the employees of the Union.
- 6.2 Monthly Salaries - Effective January 1, 2009, the base monthly wage for firefighter EMT - Defib. classification shall be:

Firefighter

<u>A</u> 3,811	<u>B</u> 3,979	<u>C</u> 4,192	<u>D</u> 4,383	<u>E</u> 4,674	<u>F</u> 4,764
<u>A</u> 4,191	<u>B</u> 4,382	<u>C</u> 4,582	<u>D</u> 4,791	<u>E</u> 5,010	<u>F</u> 5,239

There shall be six (6) months of service between steps A and B, thereafter there shall be one (1) year between each step.

Shift Lieutenant

<u>A</u> 4,403	<u>B</u> 4,623	<u>C</u> 4,843	<u>D</u> 5,063	<u>E</u> 5,283	<u>F</u> 5502
<u>A</u> 4,781	<u>B</u> 4,999	<u>C</u> 5,227	<u>D</u> 5,466	<u>E</u> 5,715	<u>F</u> 5,976

There shall be (6) months of service between steps A and B, thereafter there shall be one (1) year between each step.

Support Services Lieutenants

<u>A</u> 4,403	<u>B</u> 4,623	<u>C</u> 4,843	<u>D</u> 5,063	<u>E</u> 5,283	<u>F</u> 5502
<u>A</u> 4,781	<u>B</u> 4,999	<u>C</u> 5,227	<u>D</u> 5,466	<u>E</u> 5,415	<u>F</u> 5,976

There shall be six (6) months of service between steps A and B, thereafter there shall be one (1) year between each step.

The employee's hourly rate shall be calculated by dividing the employee's annual salary by the number of hours in the employees assigned annual work schedule. (For example, the employee's hourly rate on a 40-hour work week would be derived by taking the employee's annual salary and dividing that by (40 x 52) hours.) The salaries reflected on the schedule include a component intended to compensate for all incentive type payouts.

- 6.3 Deferred Compensation - The City shall maintain a City sponsored Deferred Compensation Plan.
- 6.4 ~~Effective January 1, 2008~~, On January 1 of each year, the wage rates contained in this Article shall be increased by ninety percent (90%) of the percentage change in the Seattle Area Consumer Price Index annual percentage change for the period July 1 through June 30 of the

preceding year; however, said percentage adjustment shall not be less than two percent (2%), nor shall it exceed four percent (4%). The Index used shall be the Consumer Price Index For All Wage Earners and Clerical Workers (CPI-W) 1982-84 = 100 as published by the Bureau of Labor Statistics and normally released in June of each calendar year.

6.5 Effective January 1, 2010, the base monthly wage for firefighter EMT - Defib. classification shall receive an additional 2.65% salary adjustment after the application of the salary increase as presented in paragraph 6.4. This increase is to phase in the salary adjustment to move this classification pay scale to the average of comparable cities.

6.6 Effective January 1, 2010, the base monthly wage for Shift and Support Service Lieutenants classifications shall receive an additional 1.4% salary adjustment after the application of the salary increase as presented in paragraph 6.4. This increase is to phase in the salary adjustment to move this classification pay scale to the average of comparable cities.

Article 7 - Probation

- 7.1 Probation Period - New employees shall be subject to a twelve (12) month probation period following successful completion of recruit training as determined by the Fire Chief or designee. Said probation period may be extended one (1) time only for up to an additional six (6) months. During this period, such employee shall be evaluated by the Employer and may be terminated at the sole discretion of the Employer.
- 7.2 Promoted employees shall serve a probationary period of twelve (12) months. If during that time the employee fails to perform the duties of the new position satisfactorily, he will be permitted to return to his previous position without loss of seniority. The Employer shall provide each probationary promoted employee with an objective written evaluation of his job performance and progress every ninety (90) days.

Article 8 - Work Out of Classification

- 8.1 An employee who performs the duties of a Lieutenant, for a minimum of four (4) hours shall receive a 10% premium pay for the shift worked in the acting capacity.
- 8.2 The following criteria shall be used for assignments to acting in the capacity of Lieutenant:

Short-term vacancies (two (2) months or less) the senior firefighter on shift will be assigned. Department seniority will be used.

Long-term vacancies (more than two (2) months) will be filled by the employee at the top of the current Lieutenant's promotion list. Civil Service Rules shall apply to determine eligibility for such assignments. Where there is no current list for the position, the senior firefighter will be assigned.

Article 9 - Payroll Deduction

- 9.1 Pursuant to RCW 41.56.100 110, upon the written authorization of an employee within the bargaining unit, the City shall deduct from the pay of such employee the monthly amount of dues as certified by the secretary of the Union and shall transmit the same to the treasurer of the Union.

Article 10 - Hours of Duty

- 10.1 Day Shift - The normal working hours for employees assigned to the eight (8) hour day shift shall be from 0800 to 1700, Monday through Friday, not to exceed (40) hours per work week, and not to include a one (1) hour lunch period. Employees covered under this section of the Agreement may work a flexible work schedule, with mutual agreement of the employee and the Chief.
- 10.2 Twelve hour shift (0700 to 1900) - The normal hours of work for the employees assigned to the twelve (12) hour shift shall be from 0700 to 1900 for four (4) consecutive days followed by four (4) consecutive days off. Shift work falling on Mondays/drill days shall be fourteen (14) hour workdays.
- 10.3 Twenty-four (24) hour shift (0700 to 0700) - The normal working hours for employees assigned to the twenty-four (24) hour shift shall be from 0700 to 0700. The work schedule shall be illustrated in the following manner: 24 hours on duty, 24 hours off duty, 24 hours on duty, 24 hours off duty, 24 hours on duty, and 96 hours off duty with this cycle repeated. Refer to Section 10.4 for average work week.
- 10.4 Kelly Day - DEFINITION: A continuous twenty-four (24) hour period starting at 0700 and ending at 0700 the following day.
- In order to reduce the average work week to an annual average total of 2,728 hours, each employee assigned to a twenty-four hour shift shall be granted (8) eight Kelly Days per year, to be scheduled by the Chief. Under the provisions of FSLA 7(k), the normal work week for employees assigned to the twenty-four (24) hour shift is 204 hours in a 27-day work period.
- 10.5 Notice of Shift Change - All Employees covered by this Agreement shall receive notice, when possible, fourteen (14) calendar days in advance of a change from one shift to another; such notice shall be in writing. This time limit may be waived at the discretion of the Chief in the case of permanent appointments to a promotional position within the bargaining unit and necessary shift adjustments caused by such appointments.
- 10.6 Change in Work Schedule for Training - For the purposes of training, an employee's work schedule may be changed, with fourteen (14) calendar days advance notice, in order to manage overtime costs and to take advantage of training programs.
- 10.7 Other Hours of Work - Other hours of work changes may be made by mutual agreement between the employee and the employee's supervisor with the final approval of the Chief or the Chief's designee.
- 10.8 Right to Assign - The employer retains the right to assign any member of the Union to any one of the above shifts set forth in Sections 10.1, 10.2, and 10.3.
- 10.9 The scheduling of employee days of work and days off shall be determined by the type of shift.

Article 11 - Overtime and Call Back

- 11.1 Overtime shall be defined as any hours or portions of hours worked beyond an employee's normally scheduled work hours.
- 11.2 Overtime shall be compensated at one and one-half (1 ½) times the employee's hourly rate calculated by dividing the employee's annual salary by the number of hours in the employees assigned annualized work schedule. For example, the employee's hourly rate on a 40-hour work week would be derived by taking the employee's annual salary and dividing that by (40 x 52) hours and multiplying the result by one point five (1.5).
- 11.3 In the event that overtime is the beginning of, or the extension of an employee's shift, overtime shall be computed to the next thirty minute increment (e.g. 1-30 minutes = ½ hour of overtime, 31-60 minutes = 1 hour of overtime).
- 11.4 In the event overtime is not the extension of or the beginning of an employee's shift, a minimum of one (1) hour of overtime shall be paid to the employee when the employee is requested to return to duty or involved in activities as defined in section 11.5. After the one (1) hour, overtime shall be paid in increments as defined in section 11.3.
- 11.5 An employee shall be entitled to overtime pay when off shift and required to attend a meeting or training. For training purposes, an employee shall be entitled to overtime if given less than fourteen (14) calendar days advance notice as specified in Section 10.6.
- 11.6 Overtime callback for night shift coverage - Minimum staffing for Night D-Shift will be determined by City administration (Mayor/Council) approved positions. POC personnel may request unfilled night shift position/s until noon each day for that night's shift. After that time, Command will fill positions with career personnel. Career personnel of like positions (i.e. Firefighter / Firefighter, Officer / Officer) shall be contacted on a rotating basis.

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Article 12 - Vacation and Leave

12.1 Accruals

Eight (8) Hour Day shift employees:

Time Period	Regular Vacation	In lieu of holidays	Combined	Monthly Accrual	Maximum Accrual
0 - 5 Years	96	N/A	96	8	192
6 - 10 years	120	N/A	120	10	240
11 - 15 years	160	N/A	160	13.33	320
16 - 20 years	180	N/A	180	15	360
21 - + years	200	N/A	200	16.66	400

Twelve (12) Hour Shift employees (Includes vacation in lieu of holidays and floating holiday):

Time Period	Regular Vacation	In lieu of holidays	Combined	Monthly Accrual	Maximum Accrual
0 - 5 Years	103	94	197	16.417	206
6 - 10 years	130	94	224	18.667	260
11 - 15 years	173	94	267	22.250	346
16 - 20 years	195	94	289	24.083	390
21 - + years	216	94	310	25.833	432

Twenty-four (24) hour shift employees (Includes vacation in lieu of holidays and floating holiday):

Time Period	Regular Vacation	In lieu of holidays	Combined	Monthly Accrual	Maximum Accrual
0 - 5 Years	200	94	294	24.500	256
6 - 10 years	246	94	340	28.333	348
11 - 15 years	292	94	386	32.167	440
16 - 20 years	314	94	408	34.000	482
21 - + years	330	94	424	35.333	516

12.1.1 Employees shall accrue 1/12th of their authorized vacation and holiday leave credit each pay period, and the payroll process will debit for the vacation leave used during the pay period. (This is based on twelve (12) pay periods per year.)

12.1.2 Vacation benefits shall be accrued from the date of hire and the rate change will be effective on the pay period of the employee's anniversary date, unless the anniversary date falls on the pay period, which shall then become the effective date. An employee shall not be eligible to take paid vacation until he or she has completed 6 months of service.

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12.1.3 If employees are not authorized to take vacation leave due to circumstances beyond their control, the Mayor or designee shall authorize the employee an additional 120 calendar days to use accrued vacation leave in excess of maximum accrual limits without loss of benefit.

12.2 Leave Schedule - Employees shall schedule all annual vacation leave no later than January 1 of each year. The time which employees shall take their vacation shall be approved by the Fire Chief or his designee with regard for the needs of the Fire Department.

12.2.1 Annual vacation leave may be changed after all leave is scheduled with agreement by both the employee and the Chief.

12.3 Termination Payment - If permitted by State law, an employee's accrued vacation will be paid in one lump sum upon termination of employment. Payment shall be at the affected employee's current rate.

12.4 Transfer of Work Shifts - If an employee is transferred from one shift to another, the vacation leave bank and accrual rate shall be adjusted to meet the new schedule, either increased or decreased based on the change in the average hourly work week.

Article 13 - Sick Leave

13.1 Non-duty Sick Leave for LEOFF II - All employees whose retirement benefits are provided by State law under LEOFF II shall receive non-duty sick leave for sickness and injuries that are non-duty related pursuant to applicable State Law. Full-time employees shall accumulate sick leave at the rate listed below in Section 13.1.1.

13.1.1 First year bank	Annual	Monthly	Maximum accrual
Day Shift employee	96 hours	8	1440
12 hour employee	104 hours	8.66	1440
24 hour employee	144 hours	12	1440

13.2 Non-duty Sick Leave may be used for the following reasons.

13.2.1 Personal illness, injury, or incapacity of the employee to perform his/her duties.

13.2.2 Enforced quarantine of the employee by a public health official.

13.2.3 May be used for personal doctor or dental appointments, for an emergency, or as otherwise approved by the Chief.

13.3 Family and Medical leave shall be provided for qualifying conditions in accordance with State law.

Maternity leave shall be provided in compliance with the Washington Family Leave Act.

13.4 Duty Related Disability for LEOFF II employees qualifying for supplemental disability leave pursuant to RCW 41.04.500 - .550, shall be granted adequate on-duty injury sick leave to provide the full benefits provided by such RCW sections for up to six (6) months for each new and separate duty related disability.

In cases of prolonged illness or injury of six (6) months, the Employee shall be placed on an inactive status and the employee's position shall no longer be held open. A new employee may be hired to replace the disabled employee and the disabled employee shall be moved to the first position on the hire list and shall fill the first vacancy as long as the employee is 1) released as rehabilitated by the Department of Labor and Industries, 2) passes a departmental physical examination and 3) is certified to perform the essential functions of the job by a qualified physician.

13.5 Notification When Unable to Report - An employee must notify the Command Officer as soon as possible prior to the beginning of a shift if they are not able to report for duty due to reasons listed in Section 13.2., 13.3, and 13.4.

13.6 Verification - The employer may require that an employee produce a doctor's verification of the employee's need of absence from work if a pattern or practice of absence is noted.

- 13.7 Transferring Vacation Leave - Employees shall have the ability to transfer vacation leave from their accrued vacation to another employee's sick leave bank by the agreement of the City and both employees. The level of sickness, injury, or other infirmity must be of a life threatening nature, and the donating employee must maintain a minimum of 48 hours of accrued vacation. When a transfer occurs between two different shift types, a conversion shall be made to convert the number of hours to the same basis as the accrual rate of the receiving employee.
- 13.8 Transfer of Work Shifts - If an employee is transferred from one shift to another, the sick leave bank and accrual rate shall be adjusted to meet the new schedule, either increased or decreased based on the change in the average hourly work week.
- 13.9 Cash out of sick leave - Regular employees hired before October 20, 1998, who retire or voluntarily separate from the City shall receive payment of any accumulated sick leave in accordance with the following schedule:
- After 5 years of service ---- 10% of accumulated sick leave
 - After 10 years of service ---- 25 % of accumulated sick leave
 - After 15 years of service ---- 35% of accumulated sick leave
 - After 20 years of service ---- 45% of accumulated sick leave
 - After 25 years of service ---- 50% of accumulated sick leave
 - After 30 years of service ---- 60% of accumulated sick leave

Article 14 - Light Duty

14.1 Personnel who are injured or sick and therefore on leave for duty-related or non-duty related reasons, may be assigned to light duty if appropriate work is available and both the Chief and the employee agree in writing to the assignment. Employees assigned to light duty shall work their regular scheduled shifts unless otherwise agreed by both the Fire Chief and the employee.

Article 15 - Compensatory Time

- 15.1 Employees entitled to overtime pay may request compensatory time off instead of cash payment. This request may be approved by the Chief on a case-by-case basis as not to compromise coverage or disrupt normal Oak Harbor Fire Department operations. If compensatory time is exercised, the employee is credited with one and one-half times the hours worked as overtime. The maximum accrual of compensatory time to be held at any time shall be 240 hours. After maximum accrual, overtime compensation shall be paid.
- 15.2 Employees must use compensatory time within six months of the time it was authorized and earned. Each department shall maintain records of overtime and compensatory time and ensure that the departmental budget is accurately reflecting such activity. A review should be conducted periodically as part of the City's budget process.

Article 16 - Separations

16.1 Separations - Only employees employed by the City on the effective date of this Agreement shall be compensated under the terms of this Agreement. Separated employees shall receive compensation in effect at the time of the employee's separation.

Article 17 - Clothing and Equipment

- 17.1 Clothing - The department shall provide clothing in the form of uniforms and station wear as specified by Department Policy. Items shall be replaced at no cost to the employee, subject to fair wear and tear.
- 17.2 Cleaning Allowance - The department shall provide an allotment of \$20 per month of active on-duty employment for routine cleaning of uniforms.
- 17.3 Protective Clothing and Equipment - Protective clothing and equipment shall be provided by the City and maintained by the City at no cost to the employee. All Articles of protective clothing and equipment shall be as specified by the Department.

Article 18 - Holidays

18.1 Day Shift Employees - For those employees scheduled to work the eight (8) hour day shift, the holidays as described in Section 18.1.1 shall be recognized and observed:

- 18.1.1 New Year's Day
- Martin Luther King Day
- President's Day
- Memorial Day
- Independence Day
- Labor Day
- Veteran's Day
- Thanksgiving Day
- Day after Thanksgiving Day
- Christmas

Any holiday falling on Saturday will be celebrated on the preceding Friday. Any holiday falling on Sunday will be celebrated on the following Monday.

18.1.2 In addition to Section 18.1, eight (8) hour shift employees shall receive one (1) floating holiday shift per year. An employee shall not be eligible to the paid floating holiday until he or she has completed 6 months of service.

18.2 In lieu of holidays and the floating holiday, employees assigned to twelve (12) or twenty-four (24) hour shifts shall accrue (~~88~~ 94) hours of holiday leave as outlined in article twelve.

Twelve hour shift employees assigned to work on a City recognized holiday that occurs on a Monday (14 hour day) shall take two hours of vacation from 19:00 to 21:00. Shift shall end at 19:00.

Article 19 - Shift Trade

- 19.1 Personnel shall have the option to trade shifts or portions of shifts when it does not interfere with the operation of the Fire Department. Shift trades are an agreement between two employees of like rank and are done on a voluntary basis. Shift trades shall result in no additional cost to the City nor interfere with the operation of the Department as determined by the Fire Chief or designee. The City shall have no obligation to keep records of such trades nor to revise hours of work to reflect the substitutions, except as required by the Fair Labor Standards Act.
- 19.2 Personnel must obtain prior written approval from the duty command officer prior to trading shifts.

Article 20 - Bereavement Leave

- 20.1 Upon notification to the Fire Chief or designee an employee shall be allowed time off from work on scheduled workdays because of death in the employee's immediate family. The employee will be paid for such time up to a maximum of three days for 24-hour shifts, four days for 12-14 hour shift employees, and up to five days for 40-hour week employees. For the purpose of this section, immediate family is defined as: spouse, mother, father, sister, daughter, brother, son, mother-in-law, father-in-law, step-parent, step-child, grandparent, grandchildren, brother-in-law, sister-in-law, son-in-law, daughter-in-law, or any other relative who is an actual member of the employee's household. Depending upon staffing levels, the Fire Chief or designee may approve the use of accumulated vacation and/or holiday leave to supplement the bereavement leave.

Article 21 - Insurance

- 21.1 The City will offer a health plan to employees in the bargaining unit. The City shall pay for the employee's premium.
- 21.2 The City shall also provide employee dental insurance, long term disability and life insurance, at no cost to the employee. The employee will have the option to purchase additional life insurance at the employee's cost.
- 21.3 The City shall pay 75% of the dependent medical and dental coverage.
- 21.4 The City shall also reimburse to bargaining unit members, employed as of January 1, 2001, 40% of employee medical/dental premiums, and spouse/dependent medical/dental premiums that the employee chooses not to use. For any change in benefit selections, or for persons hired after January 1, 2001, the reimbursements rate for the above unused premiums will be at 25%.
- 21.5 The City reserves the right to change or provide alternate insurance carriers, health maintenance organizations, or benefit levels or to self-insure as it deems appropriate for any form or portion of insurance coverage referred to in this Article, so long as the new coverage and benefits are substantially similar to the conventional insurance provided herein. The City will not be responsible for changes unilaterally imposed by an insurance provider in benefits, co-payment provisions or deductibles so long as the City uses its efforts to minimize changes in incumbent insurance providers from one plan year to another.
- 21.6 The City agrees to enroll, effective on the first day of the month following the execution by both parties of this agreement, in the Medical Reimbursement plan (MERP) that is made available by the Washington State Council of Firefighters. Payment of the monthly premiums related to MRP shall be paid by the employee through payroll deduction the sum of \$75.00 per month.

Article 22 - Education Reimbursement/Training/Certification

- 22.1 Expenses of Special Training and Education - The expenses of special training and education required by the City shall be reimbursed by the City including:

Registration

Transportation

Food and lodging (per thresholds established by City policy)

The employee driving to/from and time spent in attendance at such training and education will be compensated at the appropriate rate of pay (either straight time or overtime).

- 22.2 Educational Reimbursement - The City may consider payment of up to two approved job related college courses per academic quarter (or semester) taken from accredited college when the following conditions are met:

22.2.1 The need for additional training is required by statute or law.

22.2.2 The required skills are not available in the local labor market.

22.2.3 The incumbent that is seeking training is considered to be the most qualified candidate for the training and will be able to provide training for other employees.

22.2.4 The request for reimbursement must be approved prior to the employee starting a course.

The employee's supervisor shall provide a written request to be routed through the Fire Chief and include a description of the course, how it relates to the employee position and the approximate cost of tuition. If approved, reimbursement is based on successful completion of the course. Letter grade of A or B, 100% reimbursement; letter grade of C, 85% reimbursement. Any grade lower than C will not qualify for tuition reimbursement. Employees that receive this benefit will complete a summary of their training and will design a training session based upon their course work. The employee will be available to train other employees in similar positions.

- 22.3 Required Certifications - Certifications may be required by the City. Lodging, travel expenses and tuition costs will be paid by the City, if applicable. Hours spent to complete City required certifications or re-certifications will be compensated at the appropriate rate of pay (either straight time or overtime).

- 22.4 Scheduling - The City retains the right to alter an employee's work schedule with seven calendar days' advance notice to manage the financial and operational impacts on the Fire Department (e.g. to avoid the necessity of having to pay overtime for the purposes of this Article).

Article 23 - Off-Duty Employment

23.1 No employee shall utilize their employment or position with the Oak Harbor Fire Department for personal financial gain.

Article 24 - Work Stoppage

24.1 The Union agrees there shall be no strikes, slowdowns, stoppage of work or any interference with the efficient management of the fire department, during the term of this Agreement.

Article 25 - Drug and Alcohol Testing

- 25.1 **General Rule:** The Employer and Union jointly recognize the need for a drug and alcohol free workplace and the appropriate use of drug and alcohol testing. Employees shall be subject to substance screening when the facts, circumstances, physical evidence, physical symptoms or a pattern of performance or behavior cause management to reasonably conclude that an employee has reported to work or is working impaired.
- 25.2 The following testing mechanisms shall be used for drug and alcohol testing performed on members of the Union:
- 25.2.1 **Screening Test.** Any screening test shall be performed for drug testing using the Immunoassay (IA) method and for alcohol using breathalyzer or blood test.
- 25.2.2 **Positive Results.** Any positive results on the initial screening test shall be confirmed through the use of Gas Chromatography/Mass Spectrometry (GC/MS).
- 25.3 **Drug Testing Procedures -** The testing procedure shall be used whenever an employee is required to give a urine sample.
- 25.3.1 **Listing of Drugs Taken.** Prior to testing, the employee will be requested to list all drugs currently being used by the employee on a form to be supplied by the testing facility.
- 25.3.2 **Sampling.** A urine sample will be taken of the employee. The test shall be given in such a manner as to protect the authenticity and reliability of the sample and the privacy of the individual.
- 25.3.3 **Tests.** The sample will first be tested using the screening procedure set forth in Section 25.2.1. If the sample tests are positive for any prohibited drug, the confirmatory test specified in Section 25.2.2 will be employed.
- 25.3.4 **Procedure After Positive Results.** If the confirmatory test is positive for the presence of an illegal drug, the employee will be notified of the positive result, and will be provided with copies of all documents pertinent to the test sent to or from the employer by the laboratory. The employee will then have the option of having the untested sample submitted to a NIDA Certified lab of the employee's own choosing, to be tested at the employee's cost. If the retest results in a negative, the employer will reimburse the employee for all costs. The employer and employee will be given a copy of the results.
- 25.3.5 **Documentation.** Each step in collecting and processing of the urine specimens shall be documented to establish procedural integrity and a chain of evidence.
- 25.3.6 **Right of Access.** The employer and any employee who tests positive shall be given access to all written documentation available from the testing laboratory which verifies the accuracy of the equipment used in the testing process, the chain of custody of the specimen and the accuracy rate of the laboratory.

- 25.4 First Offense - Limitation or Action "First Offense". Any action taken by the employer for a "first offense" shall be rehabilitative in nature (i.e., counseling referral, treatment.), except when the employee is involved in criminal activity.
- 25.5 Second Offense - Second or more offenses by an employee shall be subject to disciplinary action, up to and including dismissal.
- 25.6 Informing Employees - All employees shall be fully informed of the Employer's drug and alcohol testing policy. Employees will be provided with information concerning the impact of the use of alcohol and drugs on job performance. In addition, the Employer shall inform the employees on how the tests are conducted, what the test can determine and the consequence of testing positive for drug use. All newly hired employees will be provided with this information on their initial date of hire. No employee shall be tested before this information is provided to him/her. Employees who voluntarily come forward and ask for assistance to deal with the drug or alcohol problem shall not be disciplined by the Employer for doing so. No disciplinary action will be taken against an employee unless he/she refuses the opportunity for rehabilitation, fails to complete a rehabilitation program successfully, or again tests positive for drugs or alcohol after completing an appropriate program.
- 25.7 Employee Testing - Employees shall not be subjected to random medical testing involving urine or blood analysis or other similar or related tests for the purpose of discovering possible drug or alcohol abuse. If, however, objective evidence exists establishing probable cause to believe an employee's work performance is impaired due to drug or alcohol abuse, the Employer will require the employee to undergo a medical test consistent with the conditions as set forth in the Policy.
- 25.7.1 In the event an employee is involved in an accident with serious injury requiring off-site medical treatment, the employee may be ordered to submit to drug testing where surrounding circumstances provide an articulable suspicion that the employee is impaired.
- 25.7.2 "For Cause" (also known as "Reasonable Cause") is defined as work-related performance, behaviors and actions that a reasonable and prudent person would believe constitute a potential hazard, either to oneself or others which could indicate that an employee may be under the influence of an illegal drug, or may be abusing a prescription or over the counter (OTC) drug, or alcohol.
- 25.8 Sample Collection. May allow for testing by a lab that may not be SAMSHA certified but whose procedures substantially comply.
- 25.8.1 The collection and testing of the samples shall be performed only by a laboratory and by a physician or health care professional qualified and authorized to administer and determine the meaning of any test results. The laboratory performing the test shall be one that is certified by the National Institute of Drug Abuse (NIDA). The laboratory chosen must be agreed to between the Union and the Employer. The laboratory used shall also be one whose procedures are periodically tested by NIDA where they analyze unknown samples sent to an independent party. The results of employee tests shall be made available to the Medical Review Physician.

- 25.8.2 Collection of blood or urine samples shall be conducted in a manner which provides the highest degree of security for the sample and freedom from adulteration. Recognized strict chain of custody procedures must be followed for all samples as set by NIDA. The Union and the Employer agree that security of the biological urine and blood samples is absolutely necessary; therefore, the Employer agrees that if the security of the sample is compromised in any way, any positive test shall be invalid and may not be used for any purpose.
- 25.8.3 Blood or urine sample will be submitted as per NIDA Standards. Employees have the right for Union or legal counsel representatives, whichever is more readily accessible, to be present during the submission of the sample. Employees shall not be witnessed while submitting a urine specimen. Prior to submitting a urine or blood sample, the employee will be required to sign a consent and release form (as attached to this Policy).
- 25.8.4 A portion of the original sample will be separated by the lab in all cases for an independent analysis in the event of a positive test result. All samples must be stored in a scientific acceptable preserved manner as established by NIDA. All positive confirmed samples and related paperwork must be retained by the laboratory for at least twelve (12) months or for the duration of any grievance disciplinary action or legal proceedings, whichever is longer. At the conclusion of this period, the paperwork and specimen shall be destroyed. Tests shall be conducted in a manner as to ensure that an employee's legal drug use and diet does not affect the test results.
- 25.9 Drug Testing - The laboratory shall test for only the substances and within the limits as follows for the initials and confirmation test as provided within NIDA standards. The initial test shall use an immunoassay which meets the requirements of the Food and Drug Administration for commercial distribution. The following initial cutoff levels shall be used when screening specimens to determine whether they are negative for drugs or classes of drugs.

INITIAL TESTING

Marihuana metabolites	100 ng/ml
Cocaine metabolites	300 ng/ml
Opiate metabolites (1)	300 ng/ml
Phencyclidine	25 ng/ml
Amphetamines	1,000 ng/ml
<u>Barbiturates:</u>	
Secobarbital	300 ng/ml
Phenobarbital	1000-3000 ng/ml
Butalbital	1000 ng/ml
<u>Benzodiazepines:</u>	
Oxazepam	300 ng/ml
Chlordiazepoxide	3000 ng/ml
Diazepam	2000 ng/ml
Methadone	300 ng/ml
Methaqualone	300 ng/ml
Propoxyphene	300 ng/ml
Ethanol	0.03 g/dl

If immunoassay is specific for free morphine, the initial test level is 25 ng/ml. If initial testing results are negative, testing shall be discontinued, all samples destroyed and records of the testing expunged from the employee's file. Only specimens identified as positive on the initial test shall be confirmed using gas chromatography/mass spectrometry (GC/MS) techniques at the following listed cutoff values:

CONFIRMATORY TESTING

Marihuana metabolites (1)	15 ng/ml
Cocaine metabolites (2)	150 ng/ml
<u>Opiates</u>	
Morphine	300 ng/ml
Codeine	300 ng/ml
Phencyclidine	25 ng/ml
<u>Amphetamines</u>	
Amphetamine	500 ng/ml
Methamphetamine	500 ng/ml
Barbiturates	200 ng/ml
Benzodiazepines	200 ng/ml
Methadone	100 ng/dl
Methaqualone	300 ng/ml
Propoxyphene	100 ng/ml
Ethanol	0.03 g/dl

(1) *Delta-9-tetrahydrocannabinol-9-carboxylic acid*

(2) *Benzoylcegonine*

If confirmatory testing results are negative, all samples shall be destroyed and record of the testing expunged from the employee's file.

25.10 Alcohol Testing - Alcohol Consumption Disclosure - An employee who has consumed any alcoholic beverage and who is called in on off-duty time will advise his/her supervisor of that consumption.

25.11 Medical Review Physician - The Medical Review Physician shall be chosen and agreed upon between the Union and the Employer and must be a licensed physician with a knowledge of substance abuse disorders. The Medical Review Physician shall be familiar with the characteristics of test (sensitivity, specificity and predictive value), the laboratories running the tests and the medical conditions and work exposures of the employee.

The role of the Medical Review Physician will be to review and interpret the positive test results. He must examine the alternate medical explanations for any positive test results. This action shall include conducting a medical review with the affected employee, review of the employee's medical history and review of any other relevant biomedical factors. The Medical Review Physician must review all medical records made available by the tested employee when a confirmed positive test could have resulted from legally prescribed medication.

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- 25.12 Laboratory Results - The laboratory will advise only the employee and the Medical Review Physician of the positive results. The results of a positive drug or alcohol test can only be released to the Employer by the Medical Review Physician once he has completed his view and analysis of the laboratory's test. The Employer will be required to keep the results confidential and it shall not be released to the general public.
- 25.13 Testing Program Costs - The Employer shall pay for all costs involving drug and alcohol testing as well as the expenses involved with the Medical Review Physician. The Employer shall also reimburse each employee for their time and expenses including travel incurred involved in the testing procedure only, if outside normal shift schedule.
- 25.14 Union Held Harmless - This drug and alcohol testing program was initiated by the Employer. The Union and its members agree to the program. However, the Union shall be held harmless for the violation of any employee rights arising from the administration of the City's drug and alcohol testing program.
- 25.15 Changes in Testing Procedures - The parties recognize that during the life of this Agreement, there may be improvements in the technology of testing procedures which provide more accurate testing. In that event, the parties will bargain in good faith whether to amend this procedure to include such improvements. If the parties are unable to agree on the amendments they will be submitted to dispute resolution procedures as agreed upon in this contract.
- 25.16 No employee may refuse to take a drug or alcohol screen test when so ordered by a supervisor. No employee may contaminate, tamper with or alter in any way a urine drug/alcohol screen specimen or provide false information when responding to required questions for a drug or alcohol screen test.
- 25.17 Consent Forms - Drug and Alcohol Testing Consent Form (which will apply to all testing but alcohol breath test). A different form for breathalyzer testing will be provided by the Employer.

Article 26 - Military Leave

26.1 The City agrees to pay military leave of up to ~~15~~ 21 days per year for military service pursuant to RCW 38.40.060.

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Article 27 - Seniority Article

- 27.1 Seniority – An employee’s seniority shall be defined as that period from the employee’s most recent first day of uniformed full-time compensated work with the Oak Harbor Fire Department.
- 27.2 Employees with the same date of hire shall be assigned a seniority order, based on the individual’s total score from the entire testing process of the Employer (i.e. Civil Service and the Department). The higher the total score, the higher the seniority ranking.
- 27.3 A seniority list shall be maintained by the Employer and shall be brought up to date prior to January 31st of each year. This list shall be forwarded to the Secretary of the Union. The list shall show date of hire and date promoted, if any.
- 27.4 Seniority shall prevail in lay-offs for all employees who have completed their initial probationary period, provided the senior employee is capable of performing the duties of the less senior employee. No new employee shall be hired until the laid off employees have been given the opportunity to return to work. Employees who are laid off shall be placed on a recall list for a period of three (3) years. Employees, if recalled, shall be recalled in inverse order of their layoff. Recalled employees returning from layoff in excess of one year will be subject to a physician’s examination and must demonstrate within (90) ninety days of their recall that they are able to meet the physical demands associated with the work to be performed. Employees who are eligible for recall shall be given (30) thirty calendar days notice of recall sent by registered mail. The recalled employee must notify the City of their intention to return to work within fourteen (14) calendar days of their receipt of the recall notice. The City shall have fulfilled its obligations by mailing the recall notice by registered mail, return receipt requested, to the mailing address provided by the departing employee. It shall be the obligation and responsibility of the employee who was laid off to keep the City informed of their latest mailing address.
- 27.5 During the period that any employee is on an authorized leave of absence without pay, seniority shall accrue. If an employee is on layoff status, seniority shall not accrue. Upon returning to work after such leave or layoff, the employee shall be granted the level of seniority previously accrued.

Article 28 - Jury and Witness Duty

- 28.1 Jury Duty - Employees shall be granted up to 4 weeks leave with full pay while required to perform jury duty. In order to receive such leave, employees must surrender to the City all compensation except reimbursement for meals and mileage connected with their jury duty. Employees released from jury duty or while waiting to be impaneled shall report to the Chief or his designee for assignment. Any jury duty period beyond 4 weeks shall be without pay.
- 28.2 Witness Duty - Employees shall be released from duty without loss of pay to appear and testify in court when the matter arose out of the good faith performance of the employee's official duties.

Article 29 - Physical Fitness

- 29.1 The City and the Union recognize the physical and mental health of bargaining unit employees is of vital importance in fulfilling the responsibilities of the job of Firefighter.
- 29.2 ~~It is the intent of~~ The City and the Union ~~to~~ define and establish a Physical Fitness Wellness program for the members of the bargaining unit utilizing the guidelines established in the "Fire Service Joint Labor Management Wellness-Fitness Initiative" which is a partnership between the International Association of Firefighters and the International Association of Fire Chiefs.

The Wellness portion of the program ~~will be established not later than December 30, 2007 and~~ will include an annual medical exam which will include at a minimum:

- A) Medical History Questionnaire
- B) Physical examination by a medical doctor
 - a. Vital signs
 - b. Head, eyes, ears, nose, throat
 - c. Neck
 - d. Cardiovascular
 - e. Pulmonary
 - f. Gastrointestinal
 - g. Genitourinary
 - h. Rectal
 - i. Lymph Nodes
 - j. Neurological
 - k. Musculoskeletal
 - l. Skin
 - m. Respirator screening

All information gathered as a result of the pre-screening and wellness testing process shall remain confidential between the medical or other service provider and the employee. The physician shall be allowed to provide the City with information which relates to the employee's medical fitness for duty according to a mutually agreed upon standard set by the Union and the City. The standard is set at 11 METS (see form in Appendix A). This Physical Fitness Program shall be non-punitive.

The Physical Fitness portion of the program ~~will be established not later than June 30, 2008 and~~ will include an annual fitness evaluation that measures at a minimum:

- A) Aerobic Capacity
- B) Muscular Strength
 - a. Grip Strength
 - b. Leg Strength
 - c. Arm Strength
- C) Muscular Endurance
- D) Flexibility

~~In the event that an alternate physical fitness test has not been established by June 30, 2008, the current physical agility test as referenced in Appendix A will be used until such time as a new physical fitness test is identified.~~

- 29.3 Employees will be allowed sixty (60) minutes per shift for physical fitness and up to fifteen (15) minutes to shower and change of clothes, provided said physical fitness conditioning periods shall not interfere with scheduled shift work such as drills, training, inspections or emergency responses. Work-outs will be scheduled by the Lieutenants, subject to the approval of the Chief. Employees not participating in scheduled physical fitness will use that time performing operational duties and projects.

Article 30 - Non-Discrimination

30.1 The parties agree to be silent on the issue of non-discrimination, unless otherwise agreed.

Article 31 - Grievance Procedure

- 31.1 It is understood and agreed between the parties to this agreement that this grievance procedure is the only grievance procedure applicable to members of the Union. This is the only procedure agreed to by the Union and Employer to settle their disputes or grievances under this agreement. For the purposes of this Article, days shall be Monday through Friday except for paid holidays.
- 31.2 A grievance is defined as an alleged misapplication or violation of the City rules and regulations, or the contract clauses of this agreement. An aggrieved person is the individual Employee who is making claim that his/her rights have been violated or believes that he/she has received inequitable treatment because of some condition of his/her employment in the areas indicated above, or the Union on behalf of its membership. Any aggrieved Employee may personally, or with the assistance of his/her Union representative, seek relief through this process.
- 31.3 In the presentation of grievances at all levels, Employees shall be safe from restraint, interference, discrimination, or reprisal.
- 31.4 Only individual Employees, or groups of Employees, or the Union representatives shall have the right to file grievances under this Article, provided further that the grievance is filed in compliance with other criteria established under this Article.
- 31.5 Individual Employees or groups of Employees shall have the right to present grievance in person or with the assistance of the Union representative provided that any settlement reached is not inconsistent with the provisions of this agreement and that the grievance has been properly filed and adjudicated according to the established procedure as set forth in this Article.
- 31.6 When possible, all grievances shall be heard on City time.
- 31.7 If a grievance hearing extends beyond the Employee's normal shift, no overtime will be paid for the time beyond the Employee's normal hours of work. Extension of time for hearing a grievance beyond that indicated may be secured, provided that both parties are in agreement. This extension must be in writing and signed by the appropriate representatives of the City and personally by the Employee, or his/her representative.
- 31.8 If a grievance is pursued to arbitration, the arbitration board or arbitrator shall have no power to add to, subtract from, or modify any of the terms of this agreement, or any supplement thereof, or add to, subtract from, or modify any arbitration submission agreed to by the parties of this agreement.
- 31.9 Submission to arbitration: Upon receipt of a written request for arbitration, the City and the Union shall attempt to prepare a submission to be signed by the Union and the City setting forth the issues in dispute. If the City and the Union cannot agree upon the submission for arbitration, each party, at least two (2) days in advance of the hearing, shall submit to the other a statement of the issues it considers in dispute. The arbitrator or arbitrators shall determine, at or before the hearing, the issue or issues to be arbitrated. All issues in dispute must be arbitrable under the terms of this agreement. Such questions

of arbitrariness must be ruled on by the arbitrator or arbitrators prior to hearing the issues of the case provided they are found to be arbitrable.

- 31.10 The grievance procedure provided below shall be exclusive and shall replace any other grievance procedure for adjustment of any disputes arising from the application and interpretation of this agreement.
- 31.11 Field or full-time Union business representatives who wish to investigate a grievance on City time must secure permission from the Chief prior to his/her investigation.
- 31.12 Prior to filing of a formal written grievance, an Employee must discuss the problem with his/her immediate supervisor. If the problem cannot be solved at this level, the Employee or his/her representative may submit his/her grievance to the Chief.
- 31.13 **STEP 1 - FIRE CHIEF:** If an Employee, or the Union, has not been satisfied during oral presentation of his/her grievance to the Chief, the Employee, or his/her representative, may present it to the Chief in writing. A grievance must be filed within ten (10) days of when the alleged grievance occurred. The grievant should state the reasons for his/her grievance, the time (date) that the grievance occurred, relief sought and the Article and clause of the contract, which has been misapplied. The grievance must be heard within ten (10) working days after it is received by the Chief. It is the responsibility of the Chief to attempt to resolve the grievance. He/She must make formal written answer to the Employee within (10) working days after the grievance hearing is completed. If the Employee feels the matter is not resolved, then the grievance may be filed into the second step.
- 31.14 **STEP 2 - MAYOR OR HEARING OFFICER DESIGNEE:** If the Employee wishes to pursue the grievance, the Employee must submit his/her request in writing within ten (10) working days after the receipt of the written answer. The grievance will be submitted to the Mayor, or his/her designee, with a copy to the Chief, after which a hearing will be held within (10) working days of its receipt.
- 31.15 The Mayor or his/her designee will provide a written answer within ten (10) working days after the hearing has been completed. If the Employee is not satisfied with the answer given by the Mayor, or his/her designee, and if he/she wishes to pursue the grievance, he/she may, within five (5) working days after receipt of the answer at step 2, request mediation of the grievance.
- 31.16 **MEDIATION PROCEDURES:** If the employee requests mediation, the Union or the City Administrator shall forward a request to the Public Employees Relations Commission (PERC) to assign a mediator from the PERC staff. Upon designation of the mediator, the parties will make every attempt to schedule a date for mediation within fifteen (15) days.
- 31.17 Proceedings before the mediator shall be confidential and informal in nature. No transcript or other official record of the mediation conference shall be made.
- 31.18 The mediator shall attempt to ensure that all necessary facts and considerations are revealed. The mediator shall have the authority to meet jointly and/or separately with the parties and gather such evidence as deemed necessary.

- 31.19 The mediator shall not have the authority to compel resolution of the grievance. If the mediator is successful in obtaining agreement between the parties, he/she shall reduce the grievance settlement in writing. Said settlement shall not constitute a precedent unless both parties so agree.
- 31.20 If the parties to the dispute mutually agree that the mediation is not producing a resolution or if the mediator concludes that further proceedings will not be productive, the mediation will be ended.
- 31.21 If mediation fails to settle the dispute, the mediator may not serve as arbitrator in the same matter nor appear as a witness for either party. None of the statements or offers of compromise made in mediation can be used in any future arbitration as evidence against the City or the Employee.
- 31.22 **STEP 3 - ARBITRATION:** If the employee does not choose to pursue mediation, he/she may, within (5) working days after receipt of the answer at step 2, file his/her grievance in writing to a board of arbitration of 2 members, 1 representing the employer and 1 representing the Union. If said board cannot agree within five (5) days, upon mutual consent of both parties, a third member, who must be a disinterested party, shall be selected from a list of arbitrators supplied by the Federal Mediation and Conciliation Service, or the State Public Employees Relation Commission (PERC) and the decision of the board of arbitration shall be binding. It is further agreed by both parties hereto that during such arbitration there shall be no suspension of work. It is further understood and agreed that said arbitration board is not vested with power to change this agreement in any of its parts, but only to interpret the same. All differences submitted by either party to arbitration shall be settled within fifteen (15) days following notice being served on the arbitration board.
- 31.23 Issues raised by the City or Union which are of general concern regarding application or interpretation of this agreement may be initiated in arbitration after the Mayor, or his/her designated representative, and the chief business agent of the Union, or his/her designee, have had an opportunity to discuss and investigate the issue. Decisions reached in this type of issue are not subject to retroactivity, but subject only to future application, or interpretation, of the specific Article or paragraph of this contract in question.
- 31.24 Grievances may be processed through either the Grievance Procedure or City of Oak Harbor Civil Service Rules and Regulations. The choice of the administrative process shall preclude the utilization of the other.

Article 32 - Savings Clause

32.1 If any provision of this agreement or any Addendum hereto is declared by legislative or judicial authority to be unlawful, unenforceable, or not in accordance with applicable statutes, all other provisions of this Agreement shall remain in full force and effect for the duration of this Agreement and the City and Union will meet for renegotiation of such unlawful or unenforceable provisions for the purpose of a reasonable and lawful replacement.

Article 33 - Duration

33.1 This Agreement, and all of the terms and conditions herein, shall be the entire collective bargaining Agreement of the parties. It shall become effective and shall remain in full force and effect until December 31, 2010.

Dated this _____ day of _____, 2009

Mayor
City of Oak Harbor

President
Oak Harbor Firefighters' Local 4504 IAFF

APPENDIX A

**WELLNESS FITNESS FORM FOR MEETING THE STANDARD OF 11 METS
WASHINGTON INSTITUTE OF SPORTS MEDICINE & HEALTH**

Fire Fighter: _____ completed a Comprehensive Wellness / Physical Exam at the Institute.

Date of Exam _____

The Wellness/Physical Exam components include the following:

- ◆ Past Medical/Health History
- ◆ History of Surgeries / Accidents / Hospitalizations / Allergies / Medications / Vaccination Status / Social history / Family Health History
- ◆ General Physical Exam Components: skin / head / eyes / ears / nose / throat / neck / lymph nodes / lings / back / cardiac / pulses / abdomen / GI / GU / rectal / heme / neuro / musculoskeletal / endocrine / genital / extremities

As Part of the overall exam process the flowing components were assessed:

- ◆ Fasting Blood Chemistry profile
- ◆ Urinalysis
- ◆ Resting EKG
- ◆ Body Composition
- ◆ Functional Movement Screening or Strength Testing
- ◆ Flexibility Tests
- ◆ Pulmonary Function (including FEV1 & VC)
- ◆ Maximal Treadmill Exercise Stress Test with EKG and Hemodynamics (BP)
- ◆ Comprehensive Computerized Health Risk Appraisal

The patient will b given a comprehensive review of the findings. Patient will be given a plan of action for lowering specific health risk findings, and improving overall health.

If referral for further evaluation and treatment was indicated by the findings, this was accomplished. The physical exam was performed by Thomas DePuydt, MD.

_____ (circle one) Did Not Meet / Met / Exceeded the Oak Harbor Fire Department FITNESS FOR DUTY STANDARD of 11 METS Maximal Functional Capacity on the Maximal Treadmill Test.

Sincerely,

David L. Parker, Ph.D

~~PROCEDURES FOR OAK HARBOR FIRE DEPARTMENT
PHYSICAL AGILITY PERFORMANCE TEST~~

~~IN ORDER OF PERFORMANCE~~

- ~~1) AERIAL CLIMB — The aerial climb tests the applicant's leg strength, endurance, and fear of heights.~~

~~———— The participant must successfully climb a 100-foot aerial ladder, touch the top rung and return to the ground. The applicant must successfully complete the aerial climb to proceed.~~

- ~~2) BEAM WALK — This item measures balance and the ability to maintain body equilibrium while carrying a load.~~

~~———— The participant stands at one end of a beam measuring 16' long x 3 5/8" wide 11 inches from the floor. Given a 25-pound weight, the participant will walk the length of the beam without stopping, falling or stepping off the beam.~~

- ~~3) CHIN UPS — This task measures "dynamic strength" — the ability to effectively move one's body weight.~~

~~———— The participant will grasp the bar, with palms facing away from the body. With the arms fully extended and without swinging, the participant will pull himself up towards the bar until the chin touches, completing as many as possible.~~

- ~~4) WEIGHT LIFTS — Four lifts shall be performed.~~

- | | |
|--------------------------------------|-------------------------------------|
| A) Squats | 90 pounds |
| B) Biceps Curl | 60 pounds (E-Z Curl Bar) |
| C) Incline Shoulder Press | 60 pounds |
| D) Lat Pulls | 70 pounds |

~~———— Weight lifting shall be performed with as many repetitions for each activity as the participant can perform.~~

- ~~5) SIT AND REACH FLEXIBILITY — This measures the flexibility of the hips, low back and hamstrings.~~

~~———— The participant, in a seated position with shoes off and heels touching the floor, will reach forward, with knees flat, as far as possible holding the position for one second. The best of three trials will be measured.~~

- ~~6) ABDOMINAL CURL — This determines trunk strength and endurance. The participant will assume a supine position with knees bent, feet not held down by another individual, in a position 12 inches from the buttocks. The arms held straight with hands resting on the thighs. Slide the hands up the thigh until the palms reach the kneecaps. Return to the point where the shoulder blades touch the floor. Repeat as many as possible in one minute.~~

~~7) ONE MILE WALK/RUN The one mile walk/run provides a measure of stamina. The participant should be dressed in running shoes to perform this evaluation. Each participant shall be timed for their ability to walk/run one mile. The maximum amount of time allowed is 12 minutes.~~

~~RE: NFPA 1001~~

~~CITY OF BELLEVUE PHYSICAL AGILITY PERFORMANCE STANDARDS~~

~~MIS REPORT 8/88~~

~~KING COUNTY FIRE DISTRICT 10~~

CITY OF OAK HARBOR FIRE DEPARTMENT
PHYSICAL AGILITY TEST

DESCRIPTION OF EVENTS

- ~~1) — AERIAL CLIMB — The candidate shall climb a fully extended 100 foot aerial ladder at a 70 degree angle, touch the top rung and return to the ground. Candidates shall be equipped and wear gloves, helmet, and a safety belt. This is a PASS/FAIL event. The candidate must PASS to proceed in the selection process.~~
- ~~2) — BEAM WALK — The candidate shall walk along a balance beam measuring approximately 16' long X 3 5/8" wide, and 11 inches from the ground carrying a 25 pound weight without stopping, falling off or stepping off the beam. This is a PASS/FAIL event.~~
- ~~3) — CHIN UPS — The candidate will grasp the bar, palms facing away from the body, arms fully extended and feet off the floor. Without a swing, pull himself up so the chin is touching the bar and return to a position where the arms are fully extended in a smooth and continuous motion without excessive resting. Repeat this motion as many times as possible. Lifting straps are not allowed. This is a scored event.~~
- ~~4) — SQUATS — Candidates are standing in a squat rack with a padded bar and lifting belt applied around the candidate's waist. A spotter will be in position behind the candidate. The candidate is required to squat 90 pounds until the thigh is parallel to the floor as many times as possible without interruption or stopping. Deep squats or partial squats shall not be allowed. This is a scored event.~~
- ~~5) — BICEPS CURL — The candidate stands arms held straight with an EZ Curl bar loaded with 60 pounds with the candidate's heels 8 inches from a wall. The candidate is required to curl the weight as many times as possible without interruption and in a smooth and continuous motion. The arms shall return to an extended (straight) position. Excessive upper body motion (swinging) will not be allowed. This is a scored event.~~
- ~~6) — INCLINE SHOULDER PRESS — The candidate is seated with their back against an incline board and is required to press the weight (60 pounds) as many times as possible without interruption and in a smooth and continuous motion. This is a scored event.~~
- ~~7) — LAT PULLS — The candidate at a Lat Pull Machine shall pull 70 pounds to the upper portion of the chest as many times as possible without interruption and in a smooth and continuous motion. The candidate shall remain in an upright position and shall not be allowed to lean back excessively. Hand position on the bar shall be at shoulder width or greater. No weight lifting straps are allowed. This is a scored event.~~
- ~~8) — SIT AND REACH FLEXIBILITY — The candidate in a seated position with the heels and back of the knees touching the floor reaches forward to the toes or beyond holding the position for one second. The best of three attempts will be allowed. This is a PASS/FAIL event.~~
- ~~9) — ABDOMINAL CURL — The candidate shall assume a supine position on the floor, knees bent, heels 12 inches from the buttocks and feet NOT held down by another candidate. The arms held straight with the palms resting on the thighs, slide the palms up the thigh until the~~

~~palms touch the kneecaps. Return to the point where the shoulder blades touch the floor. Repeat as many times in one minute. This is a TIMED and SCORED event.~~

~~10) ONE MILE WALK/RUN Candidate shall be required to run or walk one mile. This event is TIMED and SCORED. A maximum of 12 minutes is allowed to complete the event.~~

OAK HARBOR FIRE DEPARTMENT

PHYSICAL AGILITY SCORING SHEET

CANDIDATES NAME: _____ DATE _____

Evaluators, do not mark the numeric value in the SCORE column.

AERIAL CLIMB PASS _____ FAIL _____ Must PASS to proceed.

BEAM WALK PASS _____ FAIL _____ SCORE _____

CHIN UPS _____ COMPLETED _____ SCORE _____

WEIGHT LIFTING

SQUATS (90 LBS.) _____ COMPLETED _____ SCORE _____

BICEPS CURL (60 LBS.) _____ COMPLETED _____ SCORE _____

INCLINE SHOULDER PRESS (60 LBS.) _____ COMPLETED _____ SCORE _____

LAT PULLS (70 LBS.) _____ COMPLETED _____ SCORE _____

SIT & REACH FLEXIBILITY PASS _____ FAIL _____ SCORE _____

ABDOMINAL CURL _____ COMPLETED _____ SCORE _____

MILE WALK/RUN _____ TIME _____ SCORE _____

_____ TOTAL SCORE _____

RECEIVED BY _____

(Signature)

OAK HARBOR FIRE DEPARTMENT

PHYSICAL AGILITY SCORING SHEET

CANDIDATES NAME: _____ DATE _____

Evaluators, do not mark the numeric value in this column.

AERIAL CLIMB _____ PASS ___ FAIL _____

BEAM WALK _____ PASS ___ FAIL _____
SCORE _____

CHIN UPS _____ COMPLETED _____
SCORE _____

WEIGHT LIFTING:

SQUATS (90 LBS.) _____ COMPLETED _____
SCORE _____

BICEPS CURL (60 LBS.) _____ COMPLETED _____
SCORE _____

INCLINE SHOULDER _____
PRESS (60 LBS.) _____ COMPLETED _____
SCORE _____

LAT PULLS (70 LBS.) _____ COMPLETED _____
SCORE _____

SIT AND REACH FLEXIBILITY PASS ___ FAIL _____
SCORE _____

ABDOMINAL CURL _____ COMPLETED _____
SCORE _____

MILE WALK/RUN _____ TIME _____
SCORE _____

_____ TOTAL SCORE _____

_____ RECEIVED BY _____
_____ (Signature)

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**PHYSICAL ABILITY POINT SYSTEM
IN ORDER OF PERFORMANCE**

AERIAL CLIMB
PASS \ FAIL

BEAM WALK
PASS: 50 POINTS
FAIL: 0 POINTS

CHIN UPS

REPS	POINTS	REPS	POINTS
10	123	5	109
9	121	4	106
8	118	3	103
7	115	2	100
6	112	1	50

WEIGHT LIFTING

<u>SQUATS</u> (90 LBS)		<u>BICEPS CURL</u> (60 LBS)		<u>SHOULDER PRESS</u> (60 LBS)		<u>LAT PULLS</u> (70 LBS)	
REPS	POINTS	REPS	POINTS	REPS	POINTS	REPS	POINTS
10	90	5	80	10	90	20	90
11	91	6	82	11	91	21	91
12	92	7	84	12	92	22	92
13	93	8	86	13	93	23	93
14	94	9	88	14	94	24	94
15	95	10	90	15	95	25	95
16	96	11	92	16	96	26	96
17	97	12	94	17	97	27	97
18	98	13	96	18	98	28	98
19	99	14	98	19	99	29	99
20	100	15	100	20	100	30	100
21	101	16	101	21	101	31	101
22	102	17	102	22	102	32	102
23	103	18	103	23	103	33	103
24	104	19	104	24	104	34	104
25	105	20	105	25	105	35	105
26	106	21	106	26	106	36	106
27	107	22	107	27	107	37	107
28	108	23	108	28	108	38	108
29	109	24	109	29	109	39	109
30	110	25	110	30	110	40	110
		26	111				
		27	112				
		28	113				
		29	114				
		30	115				

FLEXIBILITY
PASS: 50 POINTS
FAIL: 0 POINTS

ABDOMINAL CURLS

REPS	POINTS	REPS	POINTS	REPS	POINTS	REPS	POINTS
23	83	34	94	45	105	56	116
24	84	35	95	46	106	57	117
25	85	36	96	47	107	58	118
26	86	37	97	48	108	59	119
27	87	38	98	49	109	60	120
28	88	39	99	50	110	61	121
29	89	40	100	51	111	62	122
30	90	41	101	52	112	63	123
31	91	42	102	53	113	64	124
32	92	43	103	54	114	65 OR 125	
33	93	44	104	55	115		

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CARDIOVASCULAR ENDURANCE - 1 MILE WALK/RUN

TIME (MIN)	SCORE
06:00	124
06:15	122
06:30	120
06:45	118
07:00	116
07:15	114
07:30	112
07:45	110
08:00	108
08:15	106
08:30	104
08:45	102
09:00	100
09:15	95
09:30	90
09:45	85
10:00	80
10:15	75
10:30	70
10:45	65
11:00	60
11:15	55
11:30	50
11:45	45
12:00	40

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APPENDIX B

Confidential Reinstatement Agreement
Oak Harbor Firefighters Union

I, _____, request reinstatement to my former position with the City of Oak Harbor. I understand that my reinstatement to employment is conditional, subject to the following terms:

1. I have successfully completed an approved rehabilitation program at a licensed, approved facility and will actively comply with any and all follow-up requirements as stated by the program mandates.
2. I understand that any future violation of the substance abuse policy, or failure to comply with and complete the follow-up terms of the approved treatment program will result in my immediate termination of employment.
3. I understand and recognize the importance of involving, (if applicable) my spouse, family or the significant other person in my life in the process of my recovery program.
4. I understand and agree that, as a condition to reinstatement, I am expected to meet all established requirements of the policies and procedures and that I will continue to be subject to established procedures for failure to comply with these standards.
5. I understand that my past conduct and my recovery program require that I comply with random drug screening requests during the period of this Agreement. My failure to comply with this section may result in my immediate termination.
6. I understand that I will be subject to the terms of this Reinstatement Agreement for a period of twelve (12) months from the date of my reinstatement. Upon completion of this twelve (12) month period, I will receive a formal, written review of my work performance and recovery progress during such period. This evaluation will determine if the terms of this Agreement have been met, require modification or, if special detailed circumstances warrant, should be extended.

ACKNOWLEDGMENT

I understand and agree that my reinstatement and continued employment are conditioned upon my satisfactory compliance with the terms listed above. I have discussed these terms with my supervisor(s) and understand that, should I fail to comply with the terms of those sections specifically cited or in all other sections not so noted, I will be subject to further disciplinary action, up to and including termination of employment with the City of Oak Harbor.

Date: _____

Employee Signature

Copy received and acknowledged:

Print Name of Employee

Initials _____

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ADDENDUM C

**DRUG TESTING
CONSENT / RELEASE**

I consent to the collection of a urine sample by _____, and its analysis by _____, for those drugs specified in the Collective Bargaining Agreement.

The laboratory administering the tests will be allowed to release the results to my Employer only after the laboratory's results have been reviewed and interpreted by the Medical Review Physician. The information provided to the Employer shall be only whether the tests were confirmed positive or were negative and not any other results of the test without my written consent.

The laboratory is not authorized to release the results of this test to any other person without my written consent.

I understand that I have the right to my complete tests results and that the laboratory will preserve the sample for at least twelve months. I have the right to have this sample separated at the lab and a portion tested at my expense at a second NIDA Certified laboratory of my choice, in the event the test results are confirmed positive.

I understand that the Employer is requiring me to submit to this testing as a condition of my employment and that alteration of the sample or failure to reasonably cooperate with the collection of a urine sample may result in disciplinary action by the Employer.

I understand that a confirmed positive test may result in a requirement that I undergo rehabilitation.

By signing this consent form, I am not waiving any of my rights under any federal, state or local law, statute, constitution, ordinance, administrative rule or regulation or common law provision. I understand that I have the right to challenge any confirmed positive test result and any Employer action based thereon, by filing a grievance under the Collective Bargaining Agreement.

Date _____

Employee _____

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