

City of Oak Harbor
City Council Meeting

Agenda
for
Tuesday, January 4, 2011
6:00 p.m.

HAPPY NEW YEAR

**Oak Harbor City Council
REGULAR MEETING
6:00 p.m.
Tuesday, January 4, 2011**

Welcome to the Oak Harbor City Council Meeting

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

CALL TO ORDER

INVOCATION

Tim Geist, Bible Baptist Church

ROLL CALL

MINUTES

NON-ACTION COUNCIL ITEMS:

1. WSDOT Presentation – Repair and Repaving Project on SR-20 in June and July 2011.
2. Proclamation – North Whidbey Relay for Life Day.
3. Public Comments.

COUNCIL CONSIDERATION AND ACTION ON THE FOLLOWING MATTERS:

4. Consent Agenda:

Page 12

- a. Contract Amendment - Island County Department of Emergency Management.

Page 19

- b. Professional Services Agreement – EnviroIssues, Pioneer Way Project.

Page 27

- c. Recommended Council Memberships – Committees and Boards.

Page 29

- d. Introduction – Bond Ordinance, Marina Dredging Project.

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

Page 63

5. Senior Services of Island County Presentation; and, Senior Services of Island County Contract.

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6. Final Consideration – Building Code Amendments.

Page 111

7. Final Consideration – Ordinance Amending Utility Billing and Collection Procedures.

8. City Administrator's Comments.

9. Council Members' Comments.

- Standing Committee Reports

10. Mayor's Comments.

ADJOURN

“The true sign of intelligence is not knowledge but imagination.”

- Albert Einstein

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.

**City Council Meeting
Tuesday, December 21, 2010, 6:00 p.m.
City Hall – Council Chambers**

5:45 p.m. – 6:00 p.m. The Fil-Am Choir

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

INVOCATION Dave Jenkins, Living Faith Christian Center

ROLL CALL

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

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

MINUTES

MOTION: Councilmember Palmer moved to approve the 12/7/10 regular meeting minutes. The motion was seconded by Councilmember Munns and carried unanimously.

NON-ACTION COUNCIL ITEMS

Employee Introduction – Joseph Stowell, Project Engineer

City Engineer Eric Johnston introduced Mr. Stowell and talked about his professional experience. Mr. Stowell will be the resident engineer for the Pioneer Way Improvements project and will be onsite with the project specialist. He is also working on the Waste Water Treatment Plant project. Mr. Stowell thanked Mayor, Council, and staff for this welcome. He and his family are enjoying Oak Harbor, the Sound, and availability of outdoor activities.

Public Comments

Helen Chatfield-Weeks, 1415 SE 9th, Oak Harbor. Ms. Chatfield-Weeks spoke in support of the Municipal Pier Project and its future along with the many years of work that the Municipal Pier Committee has dedicated to this project. Some funding is still in place and the Upland Pier Project in the Flintstone Park area will provide a beautiful addition to the waterfront.

Mel Vance, P.O. Box 2882, Oak Harbor. Mr. Vance spoke about trimming the Pioneer Way Improvements Project budget, the use of Envirolssues, concerns of downtown business owners, and the City's lease of office space downtown during the project. Mr. Vance suggested rearranging construction management responsibilities, and sharing the leased space with everyone working on the project (marketing consultant, Harborside Merchants marketing rep, Chamber of Commerce rep, construction manager, and project engineer).

There were no other public comments.

Consent Agenda

- A. Increase in Oak Harbor Senior Center Membership Fee
- B. Agreement Extension – For I.T. Services with Oak Harbor School District
- C. Agreement – ICOM Building Lease
- D. Introduction – Building Code Amendments
- E. Resolution – Pioneer Way Sidewalks
- F. Grant Agreement – Approval of Department of Ecology Storm Water Capacity Grant Agreement for Pioneer Way
- G. Introduction – Ordinance Amending Utility Billing Due Date
- H. Approval of Accounts Payable Vouchers (Pay Bills)

Councilmember Dudley asked that Consent Agenda Items B and F be removed for discussion.

MOTION: Councilmember Dudley moved to approve Consent Agenda Items A, C, D, E, G, and H with Item H paying accounts payable check numbers 144012 – 144185 in the amount of \$390,053.57, payroll check number 94332 in the amount of \$.27, payroll check numbers 94333 – 94341 in the amount of \$394,258.80, and payroll check number 94349 in the amount of \$46.00. The motion was seconded by Councilmember Severns and carried unanimously.

Consent Agenda Item B – Agreement Extension for I.T. Services with Oak Harbor School District

The City of Oak Harbor and the Oak Harbor School District have enjoyed a cost-effective and beneficial agreement for providing technology services during the past five years. Review of the existing agreement terms and changes in technology during the past five years have made it necessary to rewrite this agreement. Both the School District Superintendent and City Administrator ask to extend the current agreement for up to twelve months while new terms and updates can be considered. Councilmember Dudley asked what the technology issues are and why more time is needed. Mr. Schmidt responded that the entire framework of the agreement needs to be addressed along with the level of service received by the City, email server problems, archiving, hosting, and possibly video-streaming. Councilmember Dudley asked about the City's telephone system which is also handled by the School District and if that would be included in the future agreement. Mr. Schmidt did not see a need to change our phone

system coverage at this time. Mr. Schmidt emphasized that the City and School District want to do a thorough review of the existing agreement and it will need to come before the standing committees. This will return to Council before the duration of the agreement's amendment expires (December 31, 2011). The Interlocal Agreement will be recorded with the County (along with subsequent Interlocal Agreements). Discussion followed about system failures on weekends (they have lessened) and the number of network seats (Council laptops are included as individual network seats).

Consent Agenda Item F – Storm Water Grant Agreement

The grant agreement has been drafted to assist the City in providing retrofit water quality treatment and low impact development improvements as part of the SE Pioneer Way Street Improvements Project. The project is eligible for the grant program since the City is providing more storm water quality and treatment than is required by the code or by compliance with the NPDES permit. The form of the agreement was prepared by the Department of Ecology. Councilmember Dudley asked if the grant would increase project funds. City Engineer Eric Johnston noted that these grant funds will allow a reduction in contributions from the storm water utility.

MOTION: Councilmember Dudley moved to approve Consent Agenda Item B – Agreement Extension for I.T. Services with Oak Harbor School District, and Consent Agenda Item F – Storm Water Grant Agreement. The motion was seconded by Councilmember Palmer and carried unanimously.

Memorial Proposal – Early Oak Harbor Families

Public Works Director Cathy Rosen presented this agenda bill and agenda packet page revisions for pages 125 through 128 to change the phrase "settlers" to "land claim holders." The agenda bill considered the placement of a public memorial honoring the first three settlers to take up land claims in Oak Harbor: Mr. Freund, Mr. Sumner and Mr. Tafetzon. The memorial commemorates the first land claims made 160 years ago at the location where the settlers arrived. The proposed memorial will be an attractive art piece that will promote opportunities for public interactions and social activities through conversations about Oak Harbor's history. The proposed location for the memorial is on the east side of Windjammer Park, near the location of the first landing by boat of Mr. Freund, Mr. Sumner and Mr. Tafetzon. The Parks Division staff will conduct the site work, preparing the concrete pad for the art piece, with materials to be purchased and supplied by the donors. Ms. Sue Karahalios has agreed to raise donations in the amount of \$22,000, which will be required to construct and install the sculpture. Once the art piece has been completed, the sculpture will be gifted to the City. City staff has taken this proposal through all of the necessary steps, as noted in the Substantial Gift, Memorial or Tribute policy. The City of Oak Harbor will reserve the right to relocate the art piece if deemed necessary in the future.

Mayor Slowik called for public comments.

Mel Vance P.O. Box 2882, Oak Harbor. Mr. Vance felt the memorial should not be placed on the trail's waterside because of corrosion. Staff should review long-term maintenance for all art in Oak Harbor. Can the ¼ percent tax dedicated to public art be used for maintenance? Please clarify this for all pieces of art in the City.

Helen Chatfield-Weeks, 1415 SE 9th, Oak Harbor. Ms. Chatfield-Weeks spoke as Chair of the Park Board. I think it is too modern. It should have been three men with a Native American guide holding a paddle. I voted in favor of it but prefer a more historic/realistic piece.

Ron Hancock, Pioneer Way and OHFD. I've been involved with the Parks Department and Oak Harbor Fire Department. Personally, I do not like modern art in historic areas but I think this piece is appropriate. The Waterfront Trail system follows a natural historic timeline. Moving toward the condominiums, you have a boardwalk and are physically moving into a new area; moving the legacy into future generations. Mr. Hancock would like to see the trail system used as a teaching tool representative of the community's stewardship. He presented a photograph (graphic) of an older hand passing a baton to a younger hand and asked that this concept be used at some point.

There were no other public comments.

Council Discussion

Discussion followed about the dimensions of the sculpture (9 ½ feet tall) if the Arts Commission had considered a larger size, and many thanks from Mayor and Council to Ms. Karahalios for her dedication and work on this project.

Mayor Slowik asked Ms. Karahalios to speak to Council.

Sue Karahalios, P.O. Box 144, Oak Harbor. Ms. Karahalios responded that, yes, the Arts Commission asked for a larger size which was considered, but the cost increase would be significant and this size is in keeping with the beauty of Windjammer Park and does not distract from the view. Ms. Karahalios also noted that there were no photos of Clement Sumner (precluding an historic rendition).

Council discussion continued to maintenance.

Richard Nash, 3336 N. Green Road. Mr. Nash is the memorial's artist and talked about the sculpture's material and maintenance. The three sculptures are made of corten steel, which is stronger than regular steel, and placed in a triangular formation on a concrete surface. The steel has copper in it and will age to a point where it quits weathering and oxidation is the protectant. Salt spray will probably be washed away by frequent rain.

Council discussion followed about seagulls using the memorial as a perch and what could be done to deter this, night illumination which will be put in place (by the City) sometime after the memorial is complete, and the upcoming site ribbon-cutting on January 4th. Discussion continued about funding and the Art Commission's public art priorities which came before Council several months ago. Council suggested that first names be added to the Resolution, Agreement, and Memorial: Ulrich Freund, Clement

Washington Sumner, and Zakarias Martin Taftezon. Council again thanked everyone involved with this project.

- MOTION:** Councilmember Paggao moved to add the first names of each founder (Ulrich Freund, Clement Washington Sumner, and Zakarias Martin Taftezon) and,
1. Approve the Memorial to the City of Oak Harbor's First Three Settlers (land claim holders) and accept the gift of the art piece, once completed, as per the Substantial Gift, Memorial or Tribute Policy;
 2. Approve the Resolution and authorize the Mayor to sign; and
 3. Approve the Agreement for the Memorial Donation and authorize the Mayor to sign.
- The motion was seconded by Councilmember Munns and carried unanimously.

Ms. Karahalios, in turn, thanked everyone, especially Hank Nydam, Greg Hancock, and Rich Nash. She noted that the Noon Rotary has offered to help with this project through their non-profit status and that she will be coming forward with final plaque wording. Mayor Slowik again noted Ms. Karahalios' service as a past State Representative, City Council Member, great volunteer leadership and her involvement with the City. Mayor Slowik also thanked all of the City's volunteers for their work on past projects.

2010 Solid Waste Franchise – Goldie Road / Byrne Annexation Area

Public Works Director Cathy Rosen presented this agenda bill and ordinance to provide a solid waste franchise for ten years to Island Disposal for the area annexed under Ordinance No. 1574.

Mayor Slowik called for public comments but there were none.

Council Discussion

Discussion followed about the term of the franchise and that Island Disposal has agreed to the franchise agreement.

- MOTION:** Councilmember Munns moved to adopt the ordinance granting a franchise for solid waste disposal services to Island Disposal for a period of ten (10) years in recently annexed portions of the City. The motion was seconded by Councilmember Campbell.

Councilmember Severns asked to amend the motion to specifically describe this property.

AMENDMENT TO THE

- MOTION:** Councilmember Severns moved to amend the motion to say for a period of ten (10) years in the franchised territory annexed under Ordinance 1574 – Goldie Road / Byrne Annexation. The amending motion was seconded by Councilmember Munns.

**VOTE ON THE AMENDMENT
TO THE MOTION:**

The amending motion carried unanimously.

**VOTE ON THE ORIGINAL
MOTION (as amended):**

The original motion carried unanimously.

Final Consideration – International Fire Code Amendments

Fire Chief Mark Soptich presented this agenda bill for final consideration of two ordinances: one amending Chapter 8.03 of the Oak Harbor Municipal Code and one amending Chapter 8.08 of the Oak Harbor Municipal Code. These ordinances were introduced at the December 7, 2010 City Council meeting. The International Fire Code (IFC) is updated every three years. WAC 51-54-003 adopted the 2009 Edition of the IFC with amendments. Local jurisdictions may amend the codes but such codes shall not result in a code that is less than the minimum performance standards and objectives contained in the State Building Code (RCW 19.27.060).

Mayor Slowik called for public comments but there were none.

Council Discussion

Discussion followed regarding removal of Marina language, if Appendix J was included in the packet (no), the capability of two-way radios in larger facilities, parking areas, balconies and decks as defined by size, and the radius around fire hydrants.

MOTION: Councilmember Munns moved to adopt the ordinance amending Chapter 8.03 of the Oak Harbor Municipal Code “International Fire Code.” The motion was seconded by Councilmember Campbell and carried unanimously.

MOTION: Councilmember Munns moved to adopt the ordinance amending Chapter 8.08 of the Oak Harbor Municipal Code “Unauthorized Burning, Interfering with Firefighting, Inspections.” The motion was seconded by Councilmember Campbell and carried unanimously.

City Administrator’s Comments

City Administrator Paul Schmidt talked about upcoming holidays and office closure dates, the January 13, 2011 Council workshop on the Wastewater Treatment Plant Facility Plan, an update on the City’s petition to Island County regarding growth management, approval of the Shoreline Substantial Development Permit, the potential for acquiring fifteen additional parking spaces on Pioneer Way, the project specialist interviews, and the Pioneer Way project bid opening on January 20, 2011. Project office space at 720 Pioneer Way has been tentatively leased.

Council Members' Comments

Council Members gave their respective standing committee reports, AWC report, asked about the half-mast flag (for Corporal James Collins from Yelm, WA; killed in action in Afghanistan), noted an improvement in national retail statistics for the month of December, asked about the audit report response, a possible workshop on the Open Public Meeting Act (potentially toward the end of January), thanked all involved with the Tree of Hope (which served 840 children), and Happy Holidays to all.

Mayor's Comments

Mayor Slowik also wished Council, staff, and the community a Merry Christmas and Happy New Year; 2010 was a wonderful year filled with many blessings.

ADJOURN

With no other business coming before Council, Mayor Slowik adjourned the meeting at 7:30 p.m.

Connie T. Wheeler
City Clerk

City of Oak Harbor

OFFICE OF THE MAYOR
JIM SLOWIK
MAYOR



PROCLAMATION IN RECOGNITION OF

NORTH WHIDBEY RELAY FOR LIFE DAY JANUARY 12, 2011

WHEREAS, In May 1985, Dr. Gordy Klatt, a colorectal surgeon and avid runner, took the first step of his 24-hour walk/run around a track in Tacoma, Washington. He clocked 83 miles raising \$27,000 to support the American Cancer Society. The following year, 220 supporters on 19 teams joined Dr. Klatt in this overnight event and the American Cancer Society Relay For Life was born; and,

WHEREAS, over the last 26 years, Relay For Life has spread to over 5,000 communities in the United States and over twenty foreign countries. What began as one man's statement in the fight against cancer has led to the development of a worldwide event to help find a cure for cancer; and,

WHEREAS, the Relay For Life is a fun-filled overnight event designed to celebrate survivorship and raise money for research and programs of the American Cancer Society. During the event, teams of people take turns walking or running laps at a local track. Each team tries to keep at least one team member on the track at all times; and,

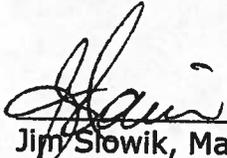
WHEREAS, the Relay For Life represents hope that those lost to cancer will never be forgotten, that those facing cancer will be supported, and that one day, cancer will be eliminated; and,

WHEREAS, Island County raised \$236,382.16 in 2010 with North Whidbey raising \$216,566.58 of that amount; and

WHEREAS, the twenty-fifth anniversary Relay For Life of North Whidbey "Seasons of Hope" Kickoff Celebration is Wednesday, January 12, 2011.

NOW, THEREFORE, WE, Jim Slowik, Mayor, and Councilmembers of the City of Oak Harbor do hereby proclaim, **January 12, 2011** as **North Whidbey Relay for Life Day** in the City of Oak Harbor, and urge all citizens of Oak Harbor to participate in the 2011 Relay For Life; and join us in recognition of the many volunteers that dedicate their time and efforts to help find a cure for cancer.

Signed this 4th day of January, 2011


Jim Slowik, Mayor

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

Bill No. 3

Date: JANUARY 4, 2011

Subject: **PUBLIC COMMENTS**

FROM: **Jim Slowik, Mayor**

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:



Jim Slowik, Mayor

Paul Schmidt, City Administrator



Doug Merriman, Finance Director



Margery Hite, City Attorney

SUMMARY STATEMENT

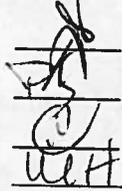
City Council will accept public comments for items not otherwise on the agenda for the first 15 minutes of the Council meeting. You may also speak to any of the consent agenda items.

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

Bill No. c/n 4a
Date: January 4, 2011
Subject: Amendment A to Contract E09-181
with Island County Department of
Emergency Management

FROM: Mark Soptich, Fire Chief

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 (note)

PURPOSE

The purpose of this amendment is to extend the basic contract E09-181, through February 28, 2011 to match the original agreement. The agreement would authorize the City to receive \$27,270 from the State Homeland Security Grant Program through the Island County Department of Emergency Management.

AUTHORITY

Oak Harbor Municipal Code 2.310.040 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

During the August 4, 2010 meeting, the City Council approved a sub recipient agreement with the Island County Department of Emergency Management to receive the City's share of a Department of Homeland Security Grant.

The grant is based on the City's population and totals \$27,270.00 for the period of September 2008 through February 2011. The agreement is required with Island County and utilizes the vetting and reimbursement process to receive the funds.

City of Oak Harbor City Council Agenda Bill

These funds will make improvements in the city's Emergency Operations Center and a mobile command unit enhancing our ability to maintain interoperable communications during emergencies.

The basic contract E09-181 between Island County and Snohomish County was amended and extended until February 28, 2011. This amendment will also extend the basic contract E09-181 between the City of Oak Harbor and Island County until February 28, 2011.

STANDING COMMITTEE REVIEW

RECOMMENDED ACTIONS

Authorize the Mayor and the Director of Emergency Services to sign the agreement with Island County.

ATTACHMENTS

Amendment A to Contract E09-181 between Island County Department of Emergency Management and the City of Oak Harbor.

MAYOR'S COMMENTS

Expired contract

Island County AMENDMENT

1. Contractor Name and Address: City of Oak Harbor 865 SE Barrington Oak Harbor, WA 98277		2. CONTRACT NUMBER: E09 - 181	3. AMENDMENT NUMBER: A
4. Contractor's Contact Person, phone number: Mark Soptich, 360-279-4700		5. Island County STAFF CONTACT, NAME/TELEPHONE: Helen Price Johnson Commissioner, 360-679-7357	
6. TIN or SSN: 91-6001321	7. CATALOG OF FEDERAL DOMESTIC ASST. (CFDA) # 97.067	8. FUNDING SOURCE NAME/AGREEMENT #: 2008 GE T8-0038	
9. FUNDING AUTHORITY: Department of Homeland Security (DHS), -Office of Grants & Training (OGT); Washington State Military Department-Emergency Management Division (EMD), Snohomish County - Department of Emergency Management (County), Island County Department of Emergency Management, and Island County Fire Protection District #1.			
10. DESCRIPTION/JUSTIFICATION OF AMENDMENT, MODIFICATION, OR CHANGE ORDER: The U.S. Department of Homeland Security (DHS) is providing funds to enhance the capability of state and local units of government to prevent, deter, respond to, and recover from incidents of terrorism through the FFY 2008 Homeland Security Grant Program, - State Homeland Security Program (SHSP). The funding is being provided to address the unique exercise, training, planning and management and administration needs of emergency responders. Island County is provided access to these funds by contract with Washington State Homeland Security Region 1 as administered by Snohomish County. A portion of those funds is allocated by subrecipient agreement to the City of Oak Harbor to fulfill the terms of the State Homeland Security Grant Program (SHSGP) Agreement between Snohomish County and Island County. In accordance with the provisions of Amendment B to Contract Number E09-181, extending the performance period of contract number E09-181 to 28 February 2011, the Island County Department of Emergency Management and the City of Oak Harbor wish to extend the period of support under paragraph A of this subrecipient agreement by four months to match the performance period of contract number E09-181. Additional technical changes are also necessary.			
11. AMENDMENT TERMS AND CONDITIONS: <ol style="list-style-type: none"> 1. Change subrecipient agreement paragraph A, period of the SHSGP Grant, September 1, 2008 through October 31, 2010 to September 1, 2008 through February 28, 2011. 2. Change subrecipient agreement paragraph B to read: <ol style="list-style-type: none"> B. As subrecipient of the SHSGP Grant, the City will: <ol style="list-style-type: none"> 1. Comply with all the terms and conditions with which Island County must comply under the attached SHSGP Grant attached hereto marked Attachment A as amended by Exhibit C, Amendment A, attached to this Amendment A. 2. Request approval of the use of the SHSGP Grant funds up to \$27,270.00 for approved equipment through the Island County Department of Emergency Management; and 3. Submit the City's pay vouchers for approved use of the SHSGP Grant funds to the Island County Department of Emergency Management, no later than February 18, 2011. No other changes are required. All other terms and conditions of the original contract and any previous amendments thereto remain in full force and effect.			

Island County and Contractor acknowledge and accept the terms of this contract amendment and attachments hereto and

Island County and Contractor acknowledge and accept the terms of this contract amendment and attachments hereto and have executed this amendment as of the date and year written below. The rights and obligations of both parties to this contract are governed by this Contract Amendment Face Sheet and other documents incorporated herein by reference or attached and identified in the original contract document. A copy of this contract amendment shall be attached to and incorporated into the original agreement between Island County and the Contractor. Any reference in such contract to the "contract" shall mean "contract as amended."

IN WITNESS WHEREOF, the parties hereto have executed this amendment as of the date and year last written below:

FOR ISLAND COUNTY:

FOR OAK HARBOR:

Signature Date
Helen Price Johnson, Chair
Board of Island County Commissioners

Signature Date
Jim Slowik, Mayor

Signature Date
Mark Soptich, Oak Harbor Emergency Services

SUBRECIPIENT AGREEMENT
BETWEEN ISLAND COUNTY AND THE CITY OF OAK HARBOR
STATE HOMELAND SECURITY GRANT PROGRAM

This subrecipient agreement is entered into by Island County, a political subdivision of the State of Washington, and the City of Oak Harbor (City), a municipal corporation, to fulfill the terms of the State Homeland Security Grant Program agreement between Snohomish County and Island County (SHSGP Grant).

A. The period of this subrecipient agreement is the same as the time period of the SHSGP Grant, September 1, 2008 through October 31, 2010.

B. As subrecipient of the SHSGP Grant, the City will:

1. Comply with all the terms and conditions with which Island County must comply under the attached SHSGP Grant attached hereto marked Attachment "A"

2. Request approval of the use of the SHSGP Grant funds for up to \$27,270.00 for approved equipment, through David L. Hollett, Island County Department of Emergency Management; and

→ 3. Submit the City's pay vouchers for approved use of the SHSGP Grant funds to David L. Hollett, Island County Department of Emergency Management, no later than October 22, 2010.

C. Island County will:

1. Process the City's request or requests for approval of the use of the SHSGP Grant funds for training exercises and equipment;

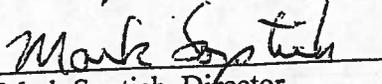
2. Process the City's pay vouchers and submit them to Snohomish County for reimbursement; and

3. Reimburse the City the amount of funds provided by Snohomish County from the SHSGP Grant for the City's approved training exercises and equipment.

D. Each party to this agreement shall assume the risk of, be liable for, and pay all damages, losses, costs and expenses caused by its officers, officials, and employees arising out of any duty performed, or not performed, while acting in good faith within the scope of its responsibilities of this agreement.

City of Oak Harbor

By:  8/6/10
Jim Slowik, Mayor Date

 8/6/10
Mark Soptich, Director Date
Oak Harbor Emergency Services

Board of County Commissioners
Island County, Washington

By:  7-12-10
Helen Price Johnson, Chair Date

SNOMISH COUNTY CONTRACT FACE SHEET

1. Contractor Name and Address: Island County - Department of Emergency Management P.O. Box 5000 Coupeville, WA 98239		2. Contract Amount: \$ 131,739	3. Contract Number E09-131
4. Contractor's Contact Person, phone number: Dave Hollett, (360) 579-7370		5. Contract Start Date: September 1, 2008	6. Contract End Date: April 30, 2010
7. County's Regional Coordinator /phone number: Tammy Jones, (425) 388-3072		8. State Business License #: NA	9. UBI # (state revenue): 313-014-451
10. Funding Authority: Washington State Military Department (Department) and the U.S. Department of Homeland Security (DHS)The U.S. Department of Homeland Security (DHS), Washington State Military Department -Emergency Management Division (Department); and Snohomish County - Department of Emergency Management (County)			

11. Funding Source Agreement #: 2008-GE-T8-0038	12. Program Index # & OBJ/SUB-OJ: N/A	13. CFDA # & Title: 97.067 SHSP	14. TIN or SSN: 91-6001321
15. Service Districts: (BY LEGISLATIVE DISTRICT) 10 (BY CONGRESSIONAL DISTRICT): 2	16. Service Area by County(ies): Island County		17. Women/Minority-Owned, State Certified?: <input checked="" type="checkbox"/> N/A <input type="checkbox"/> NO <input type="checkbox"/> YES, OMWBE # _____
18. Contract Classification: <input type="checkbox"/> Personal Services <input type="checkbox"/> Client Services <input checked="" type="checkbox"/> Public/Local Gov't <input type="checkbox"/> Collaborative Research <input type="checkbox"/> A/E <input type="checkbox"/> Other _____		19. Contract Type (check all that apply): <input checked="" type="checkbox"/> Contract <input checked="" type="checkbox"/> Grant <input type="checkbox"/> Agreement <input checked="" type="checkbox"/> Intergovernmental (RCW 39.34) <input type="checkbox"/> Interagency	
20. Contractor Selection Process: <input checked="" type="checkbox"/> "To all who apply & qualify" <input type="checkbox"/> Competitive Bidding <input type="checkbox"/> Sole Source <input type="checkbox"/> A/E RCW <input type="checkbox"/> N/A <input type="checkbox"/> Filed w/OFM? <input type="checkbox"/> Advertised? <input type="checkbox"/> YES <input type="checkbox"/> NO		21. Contractor Type (check all that apply) <input type="checkbox"/> Private Organization/Individual <input type="checkbox"/> For-Profit <input checked="" type="checkbox"/> Public Organization/Jurisdiction <input checked="" type="checkbox"/> Non-Profit <input type="checkbox"/> VENDOR <input checked="" type="checkbox"/> SUBRECIPIENT <input type="checkbox"/> OTHER	

22. BRIEF DESCRIPTION:
The U.S. Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA) is providing funds to enhance the capability of state and local units of government to prevent, deter, respond to, and recover from catastrophic and/or terrorist events through the FFY08 Homeland Security Grant, State Homeland Security Program. This funding is being provided to address the unique exercise, training, planning, equipment, organization, and management and administration needs of emergency responders.

The County and Contractor acknowledge and accept the terms of this contract and attachments hereto and have executed this contract as of the date and year written below. This contract consists of the following: Contract Face Sheet; Special Terms and Conditions; Exhibit A, General Terms and Conditions; Exhibit B, Statement of Work; Exhibit C, Budget; and Exhibit D, Bi-Annual Progress Report which govern the rights and obligations of both parties to this contract.

In the event of an inconsistency in this contract, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order:

- (a) Applicable Federal and State Statutes and Regulations
- (b) Statement of Work
- (c) Special Terms and Conditions
- (d) General Terms and Conditions, and if attached,
- (e) any other provisions of the contract incorporated by reference.

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

IN WITNESS WHEREOF, the parties hereto have executed this contract this 11 day of MAY, 2009.

FOR THE COUNTY:
MARK SOINE
Deputy Executive 6/19/09
Signature _____ Date _____
Aaron Reardon, Snohomish County Executive

FOR THE CONTRACTOR:
John Dean 5-11-09
Signature _____ Date _____
John Dean, Chairman

John Pennington 5/26/09
Signature _____ Date _____
John Pennington, Director Snohomish County DEM

Angie Homola 5-11-09
Signature _____ Date _____
Angie Homola, Commissioner

APPROVED AS TO FORM:
[Signature] 5/27/09 17
Deputy Prosecuting Attorney Date

[Signature] 5-11-09
Date

FFY 07 State Homeland Security Grant Program

DETAILED BUDGET

Island County

PLANNING	Sub-Category		
	Salaries & Benefits	\$	19,486
	Consultants/Sub-Contracting	\$	24,514
	Goods & Services	\$	1,097
	Travel & Per Diem	\$	-
	Pass Thru	\$	27,000
	Other		
	Total	\$	72,097
TRAINING	Sub-Category		
	Salaries & Benefits		
	Overtime		
	Consultants/Sub-Contracting		
	Goods & Services	\$	1,000
	Travel & Per Diem		
	Pass Thru		
	Other		
	Total	\$	1,000
EXERCISE	Sub-Category		
	Salaries & Benefits		
	Overtime	\$	1,500
	Consultants/Sub-Contracting		
	Goods & Services	\$	750
	Travel & Per Diem	\$	-
	Pass Thru		
	Other		
	Total	\$	2,250
	Funding Source:		
MANAGEMENT & ADMINISTRATION	Sub-Category		
	Salaries & Benefits	\$	-
	Consultants/Sub-Contracting		
	Goods & Services	\$	-
	Travel & Per Diem	\$	-
	Pass Thru		
	Other		
	Total	\$	-
EQUIPMENT		\$	10,400
	Total Budget	\$	85,747

1. Expenditures may only occur within the categories and sub-categories listed above. Except for Salaries & Benefits and Management and Administration (M&A) costs, up to 10% of the total grant may be shifted between it's sub-categories without prior approval. Any increase to Salaries & Benefits and M&A require prior written approval from the County. Any changes that exceed 10% require prior written approval from the County and may be changed by amendment.

2. G& T Grant program requirements affirm that federal funds will be used to supplement existing funds, and will not replace (supplant) funds that have been appropriated for the same purpose.

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

Bill No. dhp HB
Date: January 4, 2011
Subject: Pioneer Way Improvements
Professional Services - EnviroIssues

FROM: Steve Powers
Development Services Director

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

PURPOSE

This agenda bill responds to the City Council's previous action to table this item to the January 4, 2011 meeting.

SUMMARY STATEMENT

At the December 7, 2010 meeting the City Council tabled this item until January 4, 2011 meeting. This action was taken to allow the item to be reworked; the Council also directed that the reworked approach include the critical public outreach that must be accomplished in January and February. The minutes from that meeting are Attachment A to this agenda bill while the agenda bill (without attachments) from that meeting is Attachment B.

After the December 7th meeting, staff reviewed both the Council's action and the substance of their discussion as they relate to providing construction outreach for the SE Pioneer Way Improvements Project. As the result of this review staff has established the following course of action:

1. Staff will undertake the public outreach efforts in January and February. The staff involved in this effort will include the Project Engineer and the Project Specialist. In order to ensure that staff time is available for these tasks, staff time from other projects will be diverted to this project.
2. The construction outreach contract will come forward to the City Council once the construction bids have been opened and once a construction management contract has been negotiated. This will allow staff an opportunity to further refine the scope of work and the City Council to see the actual costs associated with each of these project components. It is hoped that this approach will assist the Council in your decision making process.
3. While it is still possible that the construction outreach agreement will come forward as a separate item, staff will further explore the possibility of including this effort as a subtask

to the construction management contract.

STANDING COMMITTEE REPORT

Construction outreach, as a concept, was previously discussed with the full City Council and the contract presented on December 7th, was presented to the Public Works Standing Committee on December 2nd. No additional committee review has taken place.

RECOMMENDED ACTION

No action is required.

ATTACHMENTS

Attachment A – City Council meeting minutes from December 7, 2010

Attachment B – Professional Services – EnviroIssues agenda bill from December 7, 2010
(without attachments).

MAYOR'S COMMENTS

and cost savings. The bonus incentive was also clarified as defined in WSDOT's 2010 Standard Specifications.

Discussion continued regarding funding amounts, soft construction costs, the use of an office in downtown space during the course of this project, how the bid is awarded and qualifications of contractors who respond, no sales tax on roadway construction, night work and costs, infrastructure and what can be done in sections (power infrastructure cannot be split, but sewer manhole-to-manhole can be done in sections), and the bid language. Discussion followed about the 9% contingency, how the timeline is progressing and the structure of the timeline, how the light standards will be used for other purposes, the use of a construction management firm and what they do for a project, how staff is involved with construction management, and the Windjammer Plan and two-way roadway recommendations. Councilmember Alberg stated, for the record, that the Windjammer Plan also said that the City should consider one-way.

MOTION: Councilmember Alberg moved to pass Resolution 10-26 authorizing staff to advertise the SE Pioneer Way Improvements Project for bidding. The motion was seconded by Councilmember Munns.

Discussion continued about tax on roadway projects (no tax), wiring for the light standards being underground (yes) and done all at once (yes), and contact with the property owners about their costs for power to their buildings. Mayor Slowik clarified that the property owners were made aware of those costs as individual owners were contacted concerning the right-of-way.

VOTE ON THE

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

Break

Mayor Slowik called for a break at 8:35 p.m. and the meeting reconvened at 8:40 p.m.

Professional Services Agreement – EnviroIssues, Pioneer Way Improvements Project

Development Services Director Steve Powers presented this agenda bill and introduced Erin Taylor, EnviroIssues who was also in attendance at this meeting. Mr. Powers led a PowerPoint presentation and noted that Attachment Three in the agenda packet was out of order. Mr. Powers also pointed out that there will be three newsletters and the refreshments line item should be \$200 not \$300. This agenda bill requested approval of a professional services contract with EnviroIssues for assistance with the SE Pioneer Way Street Improvements Project. The contract, which has a not to exceed limit of \$149,897.46 will provide construction outreach for the project. EnviroIssues will be a key point of contact providing information to the general public and will track, communicate resolution, and respond to community concerns and questions voiced during construction activities. The contract timeframe is between January 1, 2011 and December 31, 2011. The scope of work includes five tasks as identified below.

9 21

Specific deliverables are also listed; the completion date of these items will depend to a very large degree on the construction schedule.

- Task 1: Task management
- Task 2: In-person outreach readiness/execution
- Task 3: City-sponsored outreach events
- Task 4: Attraction-oriented promotional activities
- Task 5: City communications

The proposed contract is for construction outreach services. It does not provide for the marketing activities as described by the Chamber of Commerce's Pioneer Way Revitalization: Marketing and Economic Stabilization Plan that was presented at the October workshop. It is anticipated that a separate agenda item will be presented to the Council on this topic.

Mayor Slowik called for public comments.

Jill Schacht, 690 SE Pioneer Way, Oak Harbor. As a business person in downtown Oak Harbor, please prioritize communication and make it a consistent effort throughout the project to business customers and the general public. Having a professional take on that job would be important.

Mel Vance, P.O. Box 2882, Oak Harbor. I have nothing against EnviroIssues but I've heard this project referred to as a Cadillac plan and it should be and has been scaled back. Some of these tasks could be done by a construction management company. I also have seen no indications on how much will be lost in sales tax revenue during this project. Start thinking Yugo instead of Cadillac and what we have to have instead of what we want to have.

There were no other public comments.

Council Discussion

Discussion followed about EnviroIssues' transportation costs (ferry, company cars, personal cars), onsite EnviroIssues staff members (between three staff members with Katie Fredlund as the primary staff member), choosing another firm closer to Oak Harbor, and the amount of pre-construction funds used to date. Mr. Johnston talked about the City's project specialist who will be in the downtown office each day but cannot be responsible for all of the communication needs. This position will be hired from Public Works' approved operations budget which is separate from the project budget. Discussion continued about the \$149,897.46 being requested for EnviroIssues' outreach assistance, costs for the project specialist (who will also be working on other projects along with Pioneer Way), construction outreach as a large part of this project, inclusion of Harborside Merchants, how to distribute daily updates on the Pioneer Way project, use of Channel 10, and local contact rather than hotlines and blogs that are not staffed in Oak Harbor. The public will want to talk with someone onsite; consider removing task two. The City's project manager will be a reactive position while outreach needs to be proactive and anticipate problems. Discussion continued about the positive use of blogs which, in past projects, have garnered positive hits rather than meeting comments. Graphics and brochures have been excellent and easy for the layman to understand. Discussion followed about returning this proposed agreement to staff for further refinement.

MOTION: Councilmember Munns moved to table this agenda item to the first meeting in January (January 4, 2011) to allow this to be reworked. The motion was seconded by Councilmember Campbell.

Discussion continued about timing and that January and February are critical outreach months. It was suggested that outreach be included in the complete bidding package, that if that is done the City would lose control of outreach since it would be part of construction management, and that staff should have a chance to return this to Council. It was noted (but not a motion) that this could be remanded back to staff until the City receives bids and the construction management contract is in place which would place this in the first meeting in February. It was noted that this is not on the critical path of the construction schedule but there are tasks that may be of importance to the merchants and community. With regard to construction management, the City did consider that this contractor would also become responsible for outreach. One of the construction management companies contacted would be using Envirolssues since construction management deals with contractors. Inclusion with construction management could also increase the City's costs.

AMENDMENT TO THE

MOTION: Councilmember Dudley moved to amend the motion to include the critical public outreach that needs to be done in January and February. The motion was seconded by Councilmember Severns.

VOTE ON THE AMENDMENT TO THE

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

VOTE ON THE ORIGINAL

MOTION (as amended):
The original motion carried unanimously.

Break

Mayor Slowik called for a break at 9:55 p.m. and the meeting reconvened at 10:00 p.m.

Oak Harbor Marina – As part of the Oak Harbor Parks Department

Development Services Director Steve Powers presented this agenda bill in response to a City Council request for information related to the Marina and whether it should be included as part of the Parks Department. Mr. Powers introduced Harbormaster Mack Funk and present and past Marina Committee members, Bob Nelson and Steve Williford. It was assumed that there are two main areas of interest related to this topic: operations and funding. The Marina is an Enterprise Fund operation with moorage and other customer-generated revenues supporting operations, maintenance and capital expenditures. The Marina is already included in the adopted Parks, Recreation and Open Space Plan. Including the Marina in the Plan allows the City to take advantage of State grant opportunities. The Marina is presently the recipient of some General Fund monies in the form of leasehold tax, non-moorage customer generated revenues (storage unit fees), City Hall staff time and park maintenance activities. The Parks

City of Oak Harbor
City Council Agenda Bill

Bill No. 8
Date: December 7, 2010
Subject: Pioneer Way Improvements
Professional Services – EnviroIssues

FROM: Steve Powers *SP*
Development Services Director

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

SUMMARY STATEMENT

This agenda bill requests approval of a professional services contract with EnviroIssues for assistance with the SE Pioneer Way Street Improvements Project. The contract, which has a not to exceed limit of \$149,897.46 will provide construction outreach for the project.

AUTHORITY

The authority to enter into agreements for improvements or use of real property is granted to the City of Oak Harbor under RCW 35A.11.020. This is a professional services contract.

SUMMARY STATEMENT

The Pioneer Way Improvements project will completely reconstruct an existing street and utilities within the heart of the community's downtown. As such it is one of the more significant and complicated public works projects undertaken by the City in recent years. City and contractor coordination with the affected businesses and property owners will be critical through the duration of the construction project.

BACKGROUND

A City Council workshop on the Pioneer Way Improvements project was held on October 27, 2010. This workshop presented a number of concepts to the Council including an overall project management approach, what is construction outreach and how might it be accomplished for this project, a marketing approach for the downtown and an estimated budget for these items. Please see Attachment 1 for the presentation used at the workshop.

DISCUSSION

Contract Scope of Work, Compensation and Direct Costs

As described in the attached scope of work, EnviroIssues will be responsible for a number of

2700 24

activities intended to provide targeted construction outreach activities. Prior to and throughout construction on SE Pioneer Way, EnviroIssues will work with the City and the project team to communicate daily construction activities to businesses, shoppers, the Oak Harbor community and commuters in the area. EnviroIssues will be a key point of contact providing information to the general public and will track, communicate resolution and respond to community concerns and questions voiced during construction activities.

The contract timeframe is between January 1, 2011 and December 31, 2011. The scope of work includes five tasks as identified below. Specific deliverables are also listed; the completion date of these items will depend to a very large degree on the construction schedule.

- Task 1: Task management
- Task 2: In-person outreach readiness/execution
- Task 3: City-sponsored outreach events
- Task 4: Attraction-oriented promotional activities
- Task 5: City communications

The scope and fee assumes EnviroIssues will be available on-site in Oak Harbor for one day per week, with up to one additional day per month (for a total of five days per month). The on-going construction outreach activities will be accomplished on-site or from EnviroIssues offices.

The detailed scope of work (with compensation schedule) is included in the attached contract (Attachment 2). The fee for this service is \$149,897.46. This fee includes EnviroIssues labor costs of \$141,223.46 and their direct costs of \$8,674.00. The fee does not include the City's estimated direct costs of \$74,040. A breakdown of the estimated direct costs is also included in Attachment 3. Please note this is an estimate: the City's actual direct costs will be determined by the number and scale of outreach activities undertaken. This is a time and materials contract. EnviroIssues will only be paid for work that is performed.

The proposed contract is for construction outreach services. It does not provide for the marketing activities as described by the Chamber of Commerce's Pioneer Way Revitalization: Marketing and Economic Stabilization Plan that was presented at the October workshop. It is anticipated that a separate agenda item will be presented to the Council on this topic.

Policy Consideration

During the construction of public works projects the City typically interacts with the affected property owners, businesses and the community through its contractor, design engineers (staff and/or outside engineers) and inspectors. The amount of direct staff involvement in this process is determined by the scale of the project and staff workload. This process is sufficient for most public works projects.

If the City Council decides a greater degree of public coordination than the norm is required for the Pioneer Way Improvements project, there are not sufficient staff resources to meet this desire.

701 25

Approval of this contract acknowledges that the level of desired public communication and interaction is greater than the norm and the available staff resource.

Justification

The scope of work proposed under this contract by EnviroIssues includes 1,683 hours of effort over a 12 month time. At current levels and workloads, City staff has neither the availability nor the expertise necessary to provide the same level of effort needed for this project.

Funding

Funding for this contract is included within the overall project budget of \$8,350,000 and is included in the adopted 2011-2012 Budget. A break-down of project revenue sources and estimated project expenses was included in the staff workshop presentation of October 27, 2010 (Attachment 1).

STANDING COMMITTEE REPORT

A workshop with the full City Council was held on October 27, 2010. That workshop discussed the concept of a construction outreach effort in detail. The proposed contract was presented to the Public Works and Utilities Standing Committee on December 2, 2010.

RECOMMENDED ACTION:

Authorize the Mayor to sign a professional services contract with EnviroIssues for construction outreach assistance on the Pioneer Way Street Improvements project with a not to exceed limit of \$149,897.46.

ATTACHMENTS:

- Attachment 1: City Council workshop PowerPoint presentation from 10/27/10
- Attachment 2: Proposed contract, scope of work and compensation schedule and
- Attachment 3: Estimated direct cost summary

MAYOR'S COMMENTS:

102 26

City of Oak Harbor
City Council Agenda Bill

Bill No. CHA 4d
Date: January 4, 2011
Subject: Recommended Council
Memberships - Committees and
Boards

FROM: Paul Schmidt 
City Administrator

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

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

PURPOSE

The purpose of this agenda bill is for City Council to approve, as recommended by Mayor Slowik, Council membership for the Island County Economic Development Council, Island Transit Board, Association of Washington Cities Board of Directors, and to appoint a City Council member to the Oak Harbor Lodging Tax Advisory Committee.

AUTHORITY

Appointment to boards and commissions is generally governed by OHMC Chapter 2.65, providing for Council approval of Mayoral appointments. However, OHMC 2.66.020 specifically provides that the City Council appoints the members of the Oak Harbor Lodging Tax Advisory Committee.

SUMMARY STATEMENT

Mayor Slowik is recommending these Council Members for the following Committees and Boards:

1. Jim Campbell – Oak Harbor Lodging Tax Advisory Committee
2. Scott Dudley – Island County Economic Development Council
3. Jim Palmer – Island Transit Board
4. Beth Munns – Association of Washington Cities Board of Directors, District 14

STANDING COMMITTEE REPORT

N/A

RECOMMENDED ACTION

1. Appoint Jim Campbell as the Council Member and Chair of the Oak Harbor Lodging Tax Advisory Committee.
2. Approve the Mayor's appointment of the following Council Members for their respective membership on these Committees and Boards:
Scott Dudley – Island County Economic Development Council
Jim Palmer – Island Transit Board
Beth Munns – Association of Washington Cities Board of Directors, District 14

ATTACHMENTS

None

MAYOR'S COMMENTS

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

Bill No. CHA 4-D
Date: January 4, 2011
Subject: Introduction – Bond Ordinance
for Oak Harbor Marina
Redevelopment Phase 2/Dredge
Project.

FROM: Doug Merriman, Finance Director 

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:



Jim Slowik, Mayor

Paul Schmidt, City Administrator

Approved to form by bond counsel, Foster Pepper PLLC

PURPOSE

An introduction of an ordinance of the City of Oak Harbor, Washington, relating to the City's small boat harbor and marina; providing for the issuance of approximately \$2,745,000 par value of Marina Revenue Bonds, 2011, of the City to provide part of the funds with which to pay the cost of making redevelopment improvements and dredging work to the Oak Harbor Marina; to fund a debt service reserve for the bonds herein authorized and to pay the costs of issuance and sale of such bonds; fixing the date, form, maturities, interest rates, terms and covenants of such bonds; establishing a bond redemption account and a construction account; and approving the sale and providing for the delivery of the bonds to Martin Nelson & Company of Seattle, Washington.

AUTHORITY

The City has authority under RCW 35A.11.020 to regulate its internal affairs and to provide for the improvement of public ways in the rendering of local social, cultural, recreational, educational, governmental, or corporate services, including operating and supplying of utilities and municipal services commonly or conveniently rendered by cities or towns.

SUMMARY STATEMENT:

This ordinance is the guiding document authorizing the sale of the revenue bonds required to finance the Oak Harbor Marina Redevelopment Phase 2/Dredge Project. The ordinance specifies all of the financial terms and agreements pertaining to the bond issue, including the proposed use of the bond proceeds and the proposed repayment schedule. The ordinance is presented for introduction purposes, with the request that the ordinance be brought forward at the City Council's January 18, 2011 meeting for final consideration.

STANDING COMMITTEE REVIEW:

This item will be reviewed by the Finance Committee on January 12, 2011.

RECOMMENDED ACTION:

1. Schedule a public hearing on this matter for January 18, 2011.

ATTACHMENTS:

Proposed bond ordinance.

CITY OF OAK HARBOR, WASHINGTON

ORDINANCE NO. _____

AN ORDINANCE of the City of Oak Harbor, Washington, relating to the City's small boat harbor and marina; providing for the issuance of \$_____ par value of Marina Revenue Bonds, 2011, of the City to provide part of the funds with which to pay the cost of making improvements to that small boat harbor and marina, including _____, to fund a debt service reserve for the bonds herein authorized and to pay the costs of issuance and sale of such bonds; fixing the date, form, maturities, interest rates, terms and covenants of such bonds; establishing a bond redemption account and a construction account; and approving the sale and providing for the delivery of the bonds to Martin Nelson & Company of Seattle, Washington.

This document prepared by:

*Foster Pepper PLLC
1111 Third Avenue, Suite 3400
Seattle, Washington 98101
(206) 447-4400*

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CITY OF OAK HARBOR, WASHINGTON

ORDINANCE NO. _____

AN ORDINANCE of the City of Oak Harbor, Washington, relating to the City's small boat harbor and marina; providing for the issuance of \$_____ par value of Marina Revenue Bonds, 2011, of the City to provide part of the funds with which to pay the cost of making improvements to that small boat harbor and marina consisting of _____, to fund a debt service reserve for the bonds herein authorized and to pay the costs of issuance and sale of such bonds; fixing the date, form, maturities, interest rates, terms and covenants of such bonds; establishing a bond redemption account and a construction account; and approving the sale and providing for the delivery of the bonds to Martin Nelson & Company of Seattle, Washington.

The City Council of the City of Oak Harbor, Washington, do ordain as follows:

Section 1. Recitals and Findings. The City Council of Oak Harbor, Washington (the "City") makes the findings and determinations set forth below. Capitalized terms have the meanings given in Section 2.

1.1 **Background.** The City now owns, operates and maintains a small boat harbor and marina (the "Marina") constructed pursuant to Ordinance No. 372, as the Marina has been added to, bettered and extended.

1.2 **Project Description.** The City's Marina requires various improvements, additions, described in Exhibit A, the estimated cost of which is _____, and the City does not have available sufficient funds to pay the cost.

1.3 **Project Description.** The City Council specifies, adopts and orders the carrying out of the improvements to the Marina, comprising the Project described in Exhibit A, which is incorporated by this reference. The life of the improvements comprising the Project is declared to be at least equal to the term of the Bonds. The cost of carrying out the improvements shall

be paid from the proceeds of the Bonds and from other money available to the City for such purpose.

1.4 Sufficiency of Gross Revenue. The City Council finds and determines that the Gross Revenue and benefits to be derived from the operation and maintenance of the Marina at the rates to be charged for use of and services provided at the Marina will be more than sufficient to meet all of the Maintenance and Operation Expense and to permit the setting aside into the Bond Account out of the Gross Revenue of amounts sufficient to pay the principal of and interest on the Bonds when due. The City Council declares that in fixing the amounts to be paid into the Bond Account under this ordinance it has exercised due regard for Maintenance and Operation Expense and has not obligated the City to set aside and pay into the Bond Account an amount of Gross Revenue of the Marina that in its judgment will be available over and above such Maintenance and Operation expense.

1.5 Purchase Offer. Martin Nelson & Company has presented a Bond Purchase Agreement offering to purchase the Bonds under the terms and conditions as set forth in this ordinance.

1.6 Issuance of Bonds. Based on the foregoing, the City Council therefore determines that it is necessary and in the best interest of the City to issue and sell the Bonds to pay the cost of constructing such improvements to the Marina, to fund a reserve for the Bonds and to pay the costs of issuance and sale of the Bonds;

Section 2. Definitions. As used in this ordinance, the following words shall have the following meanings:

“Annual Debt Service” means, in any calendar year, all amounts required to be paid in that year (including mandatory redemption amounts of Term Bonds) in respect of principal of and interest on the Parity Bonds outstanding or maturing in that year.

“Average Annual Debt Service” means, as of the date of its calculation, the sum of the Annual Debt Service with respect to the Parity Bonds outstanding (including all Parity Bonds maturing in the calendar year of calculation) for all calendar years during which those Parity Bonds are scheduled to remain outstanding, divided by the number of those calendar years (without regard to bond years).

“Bond Counsel” means Foster Pepper PLLC or any firm of lawyers nationally recognized and accepted as bond counsel and so engaged by the City for that purpose.

“Bond Account” means the Marina Revenue Bond Account, 2011, created in Section 11 of this ordinance in the office of the Finance Director, for the purpose of paying and securing the principal of and interest on the Parity Bonds.

“Bond Insurer” means, for any Future Parity Bonds, such provider of bond insurance as may be approved by the City Council.

“Bond Register” means the books or records maintained by the Bond Registrar containing the name and mailing address of the owner of each Bond and the principal amount and number of Bonds held by each owner.

“Bond Registrar” means the fiscal agent of the State of Washington as the same may be designated by the State from time to time.

“Bonds” means the \$_____ par value Marina Revenue Bonds, 2011.

“City” means the City of Oak Harbor, Washington, a municipal corporation duly organized and existing under and by virtue of the laws of the State of Washington.

"Code" means the United States Internal Revenue Code of 1986, as amended, and applicable rules and regulations promulgated thereunder.

"Construction Account" means the special account created in Section 23 of this ordinance in the office of the Finance Director designated as the Marina Construction Account.

"Coverage Requirement" means for any calendar year, that Net Revenue in that calendar year, plus all amounts on deposit in the Principal and Interest Subaccount on the last business day prior to the commencement of that calendar year, shall be equal to at least 1.25 times the Average Annual Debt Service on all outstanding Parity Bonds.

"DTC" means The Depository Trust Company, New York, New York.

"Finance Director" means the Finance Director of the City.

"Future Parity Bonds" means all revenue bonds and other obligations of the City for borrowed money (including, without limitation, financing leases) issued or incurred after the date of the issuance of the Bonds, the payment of which constitutes a lien and charge on the Net Revenue in equal rank with the lien and charge upon such revenue required to be paid into the Bond Account to pay and secure the payment of the principal of and interest on the Parity Bonds.

"Government Obligations" means those obligations described under the definition of government obligations in RCW 39.53.010(4), as it now reads or hereafter may be amended, and which otherwise lawful investments for the City at the time of such investment.

"Letter of Representations" means the Blanket Issuer Letter of Representations dated December 8, 1997, between the City and DTC.

"Marina" means the small boat harbor and marina owned and operated by the City constructed pursuant to Ordinance No. 372 and any additions and betterments and extensions

thereof at any time made, including the improvements acquired and constructed with the proceeds of the Bonds.

“Marina Revenue” or ***“Gross Revenue”*** means the gross operating income received from the operation and maintenance of the Marina.

“Maintenance and Operation Expense” means all reasonable expenses incurred by the City in causing the Marina to be operated and maintained in good repair, working order and condition.

“MSRB” means the Municipal Securities Rulemaking Board.

“Maximum Annual Debt Service” means, as of any calculation date, the maximum amount of Annual Debt Service that will mature or become due in any future calendar year with respect to all the outstanding Parity Bonds.

“Net Revenue” for any calendar year means the Gross Revenue for that calendar year less Operations and Maintenance Expenses for that calendar year. In calculating Net Revenue, the City shall not take into account any non-cash gains or losses with respect to any real or personal property, investment or agreement that it may be required to recognize under generally accepted accounting principles, such as unrealized mark-to-market gains and losses.

“Operating Fund” means the Marina Construction and Operating Fund established by Ordinance No. 372 in the office of the Finance Director, into which fund the City has pledged to pay all Marina Revenue as received.

“Parity Bonds” means the Bonds and any Future Parity Bonds.

“Parity Conditions” means those conditions for the issuance of Future Parity Bonds, as such conditions are set forth in Exhibit B attached to this ordinance and incorporated by this reference.

“Permitted Investments” means investments that are legal investments for the City at the time of such investment.

“Principal and Interest Subaccount” means the subaccount of that name created in the Bond Account.

“Project” means the improvements and betterments to the Marina specified in Exhibit A, which is incorporated by this reference.

“Rating Agency” or “Rating Agencies” means any nationally-recognized securities rating agency or agencies providing a rating on any of the Parity Bonds at the request of the City.

“Registered Owner” means a person shown on the Bond Register as the owner of a Parity Bond.

“Reserve Subaccount” means the subaccount of that name created in the Bond Account.

“Reserve Requirement” means, as of any date of calculation, the lesser of Maximum Annual Debt Service on the outstanding Parity Bonds or 125% of Average Annual Debt Service on the outstanding Parity Bonds, but at no time shall the Reserve Requirement exceed an amount equal to 10% of proceeds of the Parity Bonds secured by the Reserve Subaccount.

“Reserve Security” means any bond insurance, security, letter of credit, guaranty, surety bond or similar credit enhancement device providing for or securing the payment of all or part of the principal of and interest on the Parity Bonds, issued by an institution which has been assigned a credit rating at the time of issuance of the device in one of the two highest rating categories of each of at least two Rating Agencies (without regard to graduations within a rating category).

“Rule” means paragraph (b)(5) of Rule 15c2-12 promulgated by the SEC pursuant to the Securities Exchange Act of 1934, as such Rule may be amended from time to time.

“SEC” means the United States Securities and Exchange Commission.

“State” means the State of Washington.

“Term Bond Maturity Year” means the year in which a Term Bond matures.

“Term Bonds” means Parity Bonds that are subject to mandatory redemption prior to their scheduled maturity date or dates.

“Undertaking” means the City’s undertaking pursuant to Section 26 of this ordinance to provide annual financial information and notice of material events.

Section 3. Project. The City Council orders the making of improvements to the Marina as provided in the City’s Oak Harbor Marina Redevelopment Phase 2 – Dredging more particularly described in Exhibit A to this ordinance (the “Project”).

Section 4. Authorization and Description of Bonds. For the purposes set forth above, the City shall issue the Bonds in the aggregate principal amount of \$_____. The Bonds shall be designated Marina Revenue Bonds, 2011; shall be dated their date of initial delivery; shall be in the denomination of \$5,000 or any integral multiple thereof within a single maturity; shall be numbered separately in the manner and with any additional designation as the Bond Registrar deems necessary for purposes of identification; shall bear interest (computed on the basis of a 360-day year of twelve 30-day months), payable semiannually on each April 1 and October 1, commencing on April 1, 2011, to the maturity or earlier redemption of the Bonds; and shall mature on October 1 in years and amounts and bear interest at the rates per annum as follows:

<u>Maturities</u>	<u>Principal Amounts</u>	<u>Interest Rates</u>	<u>Maturities</u>	<u>Principal Amounts</u>	<u>Interest Rates</u>
2011	\$	%	2018	\$	%
2012			2019		
2013			2020		
2014			***		
2015			2025		
2016			***		
2017			2030		

The life of the capital facilities finance with the proceeds of the Bonds exceeds the term of the Bonds.

Section 5. Registration and Transfer of Bonds. The Bonds shall be issued only in registered form as to both principal and interest and recorded on the Bond Register. The Bond Register shall contain the name and mailing address of the owner of each Bond and the principal amount and number of each of the Bonds held by each owner. Bonds surrendered to the Bond Registrar may be exchanged for Bonds in any authorized denomination of an equal aggregate principal amount and of the same interest rate and maturity. Bonds may be transferred only if endorsed in the manner provided thereon and surrendered to the Bond Registrar. Any exchange or transfer shall be without cost to the owner or transferee. The Bond Registrar shall not be obligated to exchange or transfer any Bond during the 15 days preceding any principal payment or redemption date.

The Bonds initially shall be registered in the name of Cede & Co., as the nominee of DTC. The Bonds so registered shall be held in fully immobilized form by DTC as depository in accordance with the provisions of the Letter of Representations. Neither the City nor the Bond Registrar shall have any responsibility or obligation to DTC participants or the persons for whom they act as nominees with respect to the Bonds regarding accuracy of any records maintained by DTC or DTC participants of any amount in respect of principal of or interest on

the Bonds, or any notice which is permitted or required to be given to registered owners hereunder (except such notice as is required to be given by the Bond Registrar to DTC).

For so long as any Bonds are held in fully immobilized form, DTC or its successor depository shall be deemed to be the registered owner for all purposes hereunder and all references to registered owners, bondowners, bondholders or the like shall mean DTC or its nominees and shall not mean the owners of any beneficial interests in the Bonds. Registered ownership of such Bonds, or any portions thereof, may not thereafter be transferred except: (i) to any successor of DTC or its nominee, if that successor shall be qualified under any applicable laws to provide the services proposed to be provided by it; (ii) to any substitute depository appointed by the City or such substitute depository's successor; or (iii) to any person if the Bonds are no longer held in immobilized form.

Upon the resignation of DTC or its successor (or any substitute depository or its successor) from its functions as depository, or a determination by the City that it no longer wishes to continue the System of book entry transfers through DTC or its successor (or any substitute depository or its successor), the City may appoint a substitute depository. Any such substitute depository shall be qualified under any applicable laws to provide the services proposed to be provided by it.

If (i) DTC or its successor (or substitute depository or its successor) resigns from its functions as depository, and no substitute depository can be obtained, or (ii) the City determines that the Bonds are to be in certificated form, the ownership of Bonds may be transferred to any person as provided herein and the Bonds no longer shall be held in fully immobilized form.

Section 6. Payment of Bonds. Both principal of and interest on the Bonds shall be payable in lawful money of the United States of America. Interest on the Bonds shall be paid

by checks or drafts of the Bond Registrar mailed on the interest payment date to the registered owners at the addresses appearing on the Bond Register on the 15th day of the month preceding the interest payment date or, if requested in writing by a Registered Owner of Bonds prior to the applicable record date, by wire transfer on the interest payment date. Principal of the Bonds shall be payable upon presentation and surrender of the Bonds by the Registered Owners to the Bond Registrar. Notwithstanding the foregoing, as long as the Bonds are registered in the name of DTC or its nominee, payment of principal of and interest on the Bonds shall be made in the manner set forth in the Letter of Representations. The Bonds shall be payable solely out of the Bond Account and shall not be general obligations of the City.

Section 7. Redemption and Open Market Purchase of Bonds.

7.1 Optional Redemption. Bonds maturing in the years 2011 through 2020, inclusive, shall be issued without the right or option of the City to redeem those Bonds prior to their stated maturity dates. The City reserves the right and option to redeem Bonds maturing on or after October 1, 2025, prior to their stated maturity dates at any time on or after October 1, 2020, as a whole or in part within one or more maturities selected by the City, at a price equal to the principal amount to be redeemed, without premium, plus accrued interest to the date fixed for redemption.

7.2 Mandatory Redemption. If not previously redeemed as described above or purchased in the open market under the provisions set forth herein, the Term Bonds due on October 1 in the years 2025 and 2030 will be called for redemption randomly (in such manner as the Bond Registrar shall determine) at a price of par, plus accrued interest, on October 1 in the years and amounts as follows:

2025 Term Bonds

<u>Mandatory Sinking Fund Redemption Dates</u>	<u>Mandatory Sinking Fund Redemption Amounts</u>
2021	\$
2022	
2023	
2024	
2025 (<i>Maturity</i>)	

2030 Term Bonds

<u>Mandatory Sinking Fund Redemption Dates</u>	<u>Mandatory Sinking Fund Redemption Amounts</u>
2026	\$
2027	
2028	
2029	
2030 (<i>Maturity</i>)	

7.3 Partial Redemption of the Bonds. Portions of the principal amount of any Bond, in installments of \$5,000 or any integral multiple thereof, may be redeemed. If less than all of the principal amount of any Bond is redeemed, upon surrender of that Bond at either of the principal offices of the Bond Registrar, there shall be issued to the registered owner, without charge therefor, a new Bond (or Bonds, at the option of the registered owner) of the same maturity and interest rate in any of the denominations authorized by this ordinance in the aggregate principal amount remaining unredeemed.

7.4 Open Market Purchase. The City further reserves the right and option to purchase any or all of the Bonds in the open market at any time at any price acceptable to the City plus accrued interest to the date of purchase.

7.5 Cancellation of Bonds. All Bonds purchased or redeemed under this section shall be canceled.

Section 8. Notice of Redemption. While the Bonds are held by DTC in book-entry only form, any notice of redemption shall be given at the time, to the entity and in the manner

required by DTC in accordance with the Letter of Representations, and the Bond Registrar shall not be required to give any other notice of redemption. If the Bonds cease to be in book-entry only form, the City shall cause notice of any intended redemption of Bonds to be given by the Bond Registrar not less than 20 nor more than 60 days prior to the date fixed for redemption by first-class mail, postage prepaid, to the registered owner of any Bond to be redeemed at the address appearing on the Bond Register at the time the Bond Registrar prepares the notice, and the requirements of this sentence shall be deemed to have been fulfilled when notice has been mailed as so provided, whether or not it is actually received by the owner of any Bond.

In the case of an optional redemption, the notice may state that the City retains the right to rescind the redemption notice and the related optional redemption of Bonds by giving a notice of rescission to the affected registered owners at any time prior to the scheduled optional redemption date. Any notice of optional redemption that is so rescinded shall be of no effect, and the Bonds for which the notice of optional redemption has been rescinded shall remain outstanding.

In addition, the redemption notice shall be mailed within the same period, postage prepaid, to the MSRB and to such other persons and with such additional information as the Finance Director shall determine, but these additional mailings shall not be a condition precedent to the redemption of Bonds.

Interest on Bonds called for redemption shall cease to accrue on the date fixed for redemption unless the Bond or Bonds called are not redeemed when presented pursuant to the call.

Section 9. Failure to Redeem Bonds. If any Bond is not redeemed when properly presented at its maturity or call date, the City shall be obligated to pay interest on that Bond at

the same rate provided in the Bond from and after its maturity or call date until that Bond, both principal and interest, is paid in full or until sufficient money for its payment in full is on deposit in the bond redemption fund hereinafter created and the Bond has been called for payment by giving notice of that call to the registered owner of each of those unpaid Bonds.

Section 10. Operating Fund. By Ordinance No. 372 there previously has been created and established, and the City shall continue to maintain, in the office of the Finance Director a Marina Construction and Operating Fund (the "Operating Fund"), into which fund the City pledges to pay all Marina Revenue as received. Money on deposit in the Operating Fund shall be spent and used by the City only in the manner and order specified by Ordinance No. 372 and this ordinance. Provision shall first be made for the payment from the Operating Fund of the debt service requirements of the Bonds and any Future Parity Bonds in each year and making up any deficiency in the Reserve Subaccount arising from any withdrawal of cash therefrom. After provision has been made for the payment of that debt service and making up any deficiency in the Reserve Subaccount, current expenses shall be paid from the Operating Fund. Current expenses shall include all necessary operating expenses, current maintenance charges, expenses of reasonable upkeep and repairs, properly allocated share of charges for insurance and all other expenses incident to the operation of a small boat harbor and marina, but shall exclude depreciation and all general administrative expenses of the City. If in any year Marina Revenue is insufficient to pay the debt service requirements on the Bonds and any Future Parity Bonds and such current expenses, the deficiency in the payment of such current expenses shall be paid from other revenues of the City legally available for that payment.

Section 11. Bond Account. The Bond Account is created and established within the Operating Fund held in the office of the Finance Director as a special account of the City to be

designated the Marina Revenue Bond Account, 2011, which fund is hereby divided into two subaccounts, namely a Principal and Interest Subaccount and a Reserve Subaccount. The City may create sinking fund subaccounts or other subaccounts in the Bond Account for the payment or securing the payment of Parity Bonds as long as the maintenance of such subaccounts does not conflict with the rights of the owners of Parity Bonds.

Section 12. Flow of Funds. The funds deposited in the Operating Fund shall be used only for the following purposes in the following order of priority:

(a) Payment of debt service requirements of the Bonds and any Future Parity Bonds in each year and making up any deficiency in the Reserve Subaccount arising from any withdrawal of cash therefrom;

(b) Current expenses, which will include all necessary operating expenses, current maintenance charges, expenses of reasonable upkeep and repairs, properly allocated share of charges for insurance and all other expenses incident to the operation of a small boat harbor and marina, but will exclude depreciation and all general administrative expense of the City. If in any year Marina Revenue is insufficient to pay the debt service requirements on the Bonds and any Future Parity Bonds and such current expenses, the deficiency in the payment of such current expenses will be paid from other revenues of the City legally available for that payment.

Section 13. Payments into the Bond Account. So long as any of the Bonds are outstanding against the Bond Account, the City pledges and irrevocably binds itself to set aside and pay into the Bond Account from the Marina Revenue, certain fixed amounts without regard to any fixed proportion, namely:

(a) Into the Principal and Interest Subaccount on or before each debt service payment date an amount which, together with other money on deposit therein, will be sufficient to pay the debt service coming due and payable on that next debt service payment date, including mandatory redemption amounts due on that date with respect to any Term Bonds; and

(b) Into the Reserve Subaccount, either:

(1) on the date of issue, and thereafter annually in regular installments over a period of not to exceed five years an amount, which together with other money and Reserve Securities on deposit therein, will equal the Reserve Requirement for the outstanding Parity Bonds; or

(2) one or more Reserve Securities the value of which, together with any amount deposited under subsection (1), above, are equal to the Reserve Requirement for the outstanding Parity Bonds. of the Bonds from the proceeds of the Bonds, the Reserve Requirement for the Bonds.

Section 14. Covenant to Maintain Reserve Subaccount. The City covenants and agrees that it will at all times maintain in the Reserve Subaccount an amount (including the value of all Reserve Securities deposited therein) equal to the Reserve Requirement, except for withdrawals as authorized in this subsection, until there is a sufficient amount in the Principal and Interest Subaccount and Reserve Subaccount to pay the principal of and interest on all outstanding Parity Bonds, at which time the money in the Reserve Subaccount may be used to pay any such principal and interest so long as the money remaining on deposit in the Reserve Subaccount is not less than the Reserve Requirement calculated based on the remaining outstanding Parity Bonds. If there are sufficient funds in the Bond Account to pay all outstanding Parity Bonds and the Reserve Requirement as to those outstanding Parity Bonds is met, excess money in the Bond Account may be used for any Marina purpose.

In the event that the amounts in the Bond Account are insufficient to make any debt service payment on any outstanding Parity Bonds, amounts shall be withdrawn from the Reserve Subaccount to make up that deficiency. Any deficiency created in the Reserve Subaccount by reason of such a withdrawal shall then be made up from Net Revenue, but only after necessary provision has been made for Operations and Maintenance Costs and for the required payments into the Principal and Interest Subaccount.

Section 15. Investment of Funds. All money in the Bond Account may be kept in cash or may be invested in any investment lawful for the City. Interest earned on investments in the Reserve Subaccount allocable to the Bonds shall be deposited in and become a part of the Principal and Interest Subaccount, or be deposited in an appropriate fund and used for capital

purposes of the Marina as determined by the City. Interest earned on the investment of funds on deposit in the Principal and Interest Subaccount for payment of debt service on the Bonds shall be retained in the Principal and Interest Subaccount.

If the City fails to set aside and pay into the Bond Account the amounts above set forth, the registered owner of any of the outstanding bonds payable out of the Bond Account may bring an action against the City to compel the setting aside and payment of such money.

Section 16. Pledge of Revenue and Lien Position. Gross operating income received from the operation and maintenance of the City's Marina is pledged for the payment of the Bonds and any Future Parity Bonds which may be issued hereafter. This pledge constitutes a lien and charge upon the Marina Revenue prior and superior to any other liens and charges whatsoever, except that the charge and lien of the Bonds will be on a parity with the charge and lien thereon for any Future Parity Bonds. After fulfilling the requirements each year for payment of debt service on the Bonds and maintaining the Reserve Requirement, the Marina Revenues may be used to pay operation and maintenance expenses of the facilities and capital expenditures for the Marina. In the event that Marina Revenue is insufficient to pay the operation and maintenance expenses of the Marina, the deficiency in the payment of such expenses will be paid from other revenues of the City legally available for that payment.

Section 17. Form and Execution of Bonds. The Bonds shall be printed or lithographed on good bond paper in a form consistent with the provisions of this ordinance and state law and shall be signed by the Mayor and City Clerk, either or both of whose signatures may be manual or in facsimile, and the seal of the City or a facsimile reproduction thereof shall be impressed or printed thereon.

Only Bonds bearing a Certificate of Authentication in the following form, manually signed by the Bond Registrar, shall be valid or obligatory for any purpose or entitled to the benefits of this ordinance:

CERTIFICATE OF AUTHENTICATION

This Bond is one of the fully registered City of Oak Harbor, Washington, Marina Revenue Bonds, 2011, described in the Bond Ordinance.

WASHINGTON STATE FISCAL AGENCY
Bond Registrar

By _____
Authorized Signer

The authorized signing of a Certificate of Authentication shall be conclusive evidence that the Bonds so authenticated have been duly executed, authenticated and delivered and are entitled to the benefits of this ordinance.

If any officer whose facsimile signature appears on the Bonds ceases to be an officer of the City authorized to sign bonds before the Bonds bearing his or her facsimile signature are authenticated or delivered by the Bond Registrar or issued by the City, those Bonds nevertheless may be authenticated, delivered and issued and, when authenticated, issued and delivered, shall be as binding on the City as though that person had continued to be an officer of the City authorized to sign bonds. Any Bond also may be signed on behalf of the City by any person who, on the actual date of signing of the Bond, is an officer of the City authorized to sign bonds, although he or she did not hold the required office on the date of issuance of the Bonds.

Section 18. Duties of Bond Registrar. The Bond Registrar shall keep, or cause to be kept, at its principal corporate trust office, sufficient books for the registration and transfer of the Bonds, which shall be open to inspection by the City at all times. The Bond Registrar is

authorized, on behalf of the City, to authenticate and deliver Bonds transferred or exchanged in accordance with the provisions of the Bonds and this ordinance, to serve as the City's paying agent for the Bonds and to carry out all of the Bond Registrar's powers and duties under this ordinance and City Ordinance No. 789 establishing a system of registration for the City's bonds and obligations.

The Bond Registrar shall be responsible for its representations contained in the Bond Registrar's Certificate of Authentication on the Bonds. The Bond Registrar may become the owner of Bonds with the same rights it would have if it were not the Bond Registrar and, to the extent permitted by law, may act as depository for and permit any of its officers or directors to act as members of, or in any other capacity with respect to, any committee formed to protect the rights of Bond owners.

Section 19. Covenants. The City covenants and agrees with the owner of each of the Bonds for as long as any of the same remain outstanding as follows:

(a) It will duly and punctually pay or cause to be paid out of the Bond Account the principal of and interest on the Bonds at the times and places as provided in this ordinance and in the Bonds, and it will faithfully do and perform and at all times observe any and all covenants, undertakings and provisions contained in this ordinance and in the Bonds.

(b) It will at all times keep and maintain or cause to be kept and maintained the Marina facilities in good repair, working order and condition and will at all times operate the same and the business in connection therewith in an efficient manner and at reasonable cost.

(c) It will at all times establish, maintain and collect rentals, tariffs, rates and charges for the use, operation and lease of its Marina facilities that will produce Net Revenue which each year will be sufficient to meet the Coverage Requirement.

(d) It will not allow the use of the Marina without charge for any purpose for which by ordinance or regulation charges must be made, nor shall it permit the use of the Marina by any person on a basis different than permitted to all members of the general public or that otherwise results in "private business use" of the Marina under the Code.

(e) It will keep and maintain proper books of accounts and accurate records of all of its Marina Revenue received and all costs of maintenance and operation of the Marina.

(f) It will at all times keep and arrange to keep all of its Marina properties producing material amounts of Marina Revenue insured against loss or damage by fire, extended coverage or other casualties usually insured against in the ordinary course of business in an amount equal to not less than 90 percent of the full insurable value of such property, and it will further keep such property covered by war risk insurance to the extent the same is or may become available.

(g) It will at all times keep or arrange to keep in force and effect policies of public liability and property damage insurance insuring against damages that may result from the use of such property and which will protect the City against anyone claiming damages of any kind or nature arising from the use, occupancy or operation of those properties.

Section 20. Preservation of Tax Exemption for Interest on Bonds. The City covenants that it will take all necessary actions to prevent interest on the Bonds from being included in gross income for federal income tax purposes, and it will neither take any action nor make or permit any use of proceeds of the Bonds or other funds of the City treated as proceeds of the Bonds at any time during the term of the Bonds which will cause interest on the Bonds to be included in gross income for federal income tax purposes. The City also covenants that it will, to the extent the arbitrage rebate requirement of Section 148 of the Code is applicable to the Bonds, take all actions necessary to comply (or to be treated as having complied) with that requirement in connection with the Bonds, including the calculation and payment of any penalties that the City has elected to pay as an alternative to calculating rebatable arbitrage, and the payment of any other penalties if required under Section 148 of the Code to prevent interest on the Bonds from being included in gross income for federal income tax purposes.

Section 21. Small Governmental Issuer Arbitrage Rebate Exception and Designation of Bonds as "Qualified Tax-Exempt Obligations." The City finds and declares that (a) it is a duly organized and existing governmental unit of the State of Washington and has general

taxing power; (b) no Bond which is part of this issue of Bonds is a "private activity bond" within the meaning of Section 141 of the United States Internal Revenue Code of 1986, as amended (the "Code"); (c) at least 95% of the net proceeds of the Bonds will be used for local governmental activities of the City (or of a governmental unit the jurisdiction of which is entirely within the jurisdiction of the City); (d) the aggregate face amount of all tax-exempt obligations (other than private activity bonds and other obligations not required to be included in such calculation) issued by the City and all entities subordinate to the City (including any entity that the City controls, that derives its authority to issue tax-exempt obligations from the City, or that issues tax-exempt obligations on behalf of the City) during the calendar year in which the Bonds are issued is not reasonably expected to exceed \$5,000,000; and (e) the amount of tax-exempt obligations, including the Bonds, designated by the City as "qualified tax-exempt obligations" for the purposes of Section 265(b)(3) of the Code during the calendar year in which the Bonds are issued does not exceed \$10,000,000. The City therefore certifies that the Bonds are eligible for the arbitrage rebate exception under Section 148(f)(4)(D) of the Code and designates the Bonds as "qualified tax-exempt obligations" for the purposes of Section 265(b)(3) of the Code.

Section 22. Refunding or Defeasance of the Bonds. The City may issue refunding bonds pursuant to the laws of the State of Washington or use money available from any other lawful source to pay when due the principal of and interest on those Parity Bonds, or any portion thereof included in a refunding or defeasance plan (the "Defeased Bonds"), and to redeem and retire, refund or defease such Defeased Bonds and to pay the costs of such refunding or defeasance.

If the City deposits irrevocably with an escrow agent money and/or Government Obligations sufficient in amount, together with the earnings thereon, sufficient to pay the principal of and premium, if any, on any particular Parity Bond or Parity Bonds or portions thereof becoming due (the "Defeased Bonds"), together with all interest accruing thereon to the due date or redemption date, and pays or makes provision for payment of all fees, costs and expenses of that escrow agent due or to become due with respect to the Defeased Bonds, all liability of the Marina with respect to the Defeased Bonds shall cease, the Defeased Bonds shall be deemed not to be outstanding hereunder and the Registered Owners of the Defeased Bonds shall be restricted exclusively to the money or Government Obligations so deposited, together with any earnings thereon, for any claim of whatsoever nature with respect to the Defeased Bonds, and that escrow agent shall hold that money, Government Obligations and earnings in trust exclusively for those Registered Owners and that money, Government Obligations and earnings shall not secure any other Parity Bonds under this ordinance. After establishing such an escrow account, the City may apply any money in any other fund or account established for the payment or redemption of the Defeased Bonds to any lawful purposes as it shall determine, subject only to the rights of the owners of any other Parity Bonds then outstanding. Defeased Bonds shall be excluded from computation of the Coverage Requirement and other covenants under this ordinance.

Section 23. Construction Account; Deposit of Bond Proceeds. There is created and established in the office of the City Finance Director a special account designated as the Marina Construction Account, 2011 (the "Construction Account"). The principal proceeds received from the issuance and sale of the Bonds shall be deposited as follows: (1) an amount equal to the Reserve Requirement for the Bonds shall be deposited in the Reserve Subaccount as a

reserve for Parity Bonds, and (2) the balance shall be deposited in the Construction Account and shall be used to pay the costs of carrying out the Project and the costs of issuance of the Bonds. Other District funds shall be deposited in the Construction Account as required to accomplish its purpose. Pending the expenditure of the principal proceeds out of the Construction Account, the Finance Director may temporarily invest such proceeds in any legal investment and the investment earnings may be retained in the Construction Account and spent for the purposes of that fund except that any earnings subject to the federal rebate requirement may be withdrawn from the Construction Account and used to meet that rebate requirement.

Section 24. Approval of Bond Purchase Contract. Martin Nelson & Company of Seattle, Washington, has presented a purchase contract (the "Bond Purchase Contract") to the City offering to purchase the Bonds under the terms and conditions provided in the Bond Purchase Contract, which written Bond Purchase Contract is on file with the City Clerk. The City Council finds that entering into the Bond Purchase Contract is in the City's best interest and therefore accepts the offer contained therein and authorizes its execution by City officials. The Bonds will be printed at City expense and will be delivered to the purchaser in accordance with the Bond Purchase Contract, with the approving legal opinion of Foster Pepper PLLC, municipal bond counsel of Seattle, Washington, regarding the issuance of the Bonds. The proper City officials are authorized and directed to do everything necessary for the prompt delivery of the Bonds to the purchaser and for the proper application and use of the proceeds of the sale thereof.

Section 25. Preliminary Official Statement Deemed Final. The City Council has been provided with copies of a preliminary official statement dated _____, 2011 (the "Preliminary Official Statement"), prepared in connection with the sale of the Bonds. For

the sole purpose of the Bond purchaser's compliance with Securities and Exchange Commission Rule 15c2-12(b)(1), the City "deems final" that Preliminary Official Statement as of its date, except for the omission of information as to offering prices, interest rates, selling compensation, aggregate principal amount, principal amount per maturity, maturity dates, options of redemption, delivery dates, ratings and other terms of the Bonds dependent on such matters.

Section 26. Undertaking to Provide Continuing Disclosure. To meet the requirements of SEC Rule 15c2-12(b)(5) (the "Rule"), as applicable to a participating underwriter for the Bonds, the City makes the following written undertaking (the "Undertaking") for the benefit of holders of the Bonds:

26.1 Undertaking to Provide Annual Financial Information and Notice of Material Events. Undertaking to Provide Annual Financial Information and Notice of Material Events. The City undertakes to provide or cause to be provided, either directly or through a designated agent, to the MSRB, in electronic format as prescribed by the MSRB, accompanied by identifying information as prescribed by the MSRB:

- (a) Annual financial information and operating data of the type included in the final official statement for the Bonds and described in subsection (b) of this section ("annual financial information");
- (b) Timely notice (not in excess of ten business days after the occurrence of the event) of the occurrence of any of the following events with respect to the Bonds:
 - (1) principal and interest payment delinquencies;
 - (2) non-payment-related defaults, if material;
 - (3) unscheduled draws on debt service reserves reflecting financial difficulties;
 - (4) unscheduled draws on credit enhancements reflecting financial difficulties;

- (5) substitution of credit or liquidity providers, or their failure to perform;
 - (6) adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notice of Proposed Issue (IRS Form 5701 – TEB) or other material notices or determinations with respect to the tax status of the Bonds;
 - (7) modifications to rights of holders of the Bonds, if material;
 - (8) Bond calls (other than scheduled mandatory redemptions of Term Bonds), if material, and tender offers;
 - (9) defeasances;
 - (10) release, substitution, or sale of property securing repayment of the Bonds, if material;
 - (11) rating changes;
 - (12) bankruptcy, insolvency, receivership or similar event of the City (a “Bankruptcy Event”), which is considered to occur when any of the following occur: (A) the appointment of a receiver, fiscal agent or similar officer for the City in a proceeding under the U.S. Bankruptcy Code or (i) in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the City, or (ii) if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or (B) the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the obligated person;
 - (13) the consummation of a merger, consolidation, or acquisition involving the City or the sale of all or substantially all of the assets of the City, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and
 - (14) appointment of a successor or additional trustee or the change of name of a trustee, if material.
- (c) Timely notice of a failure by the City to provide required annual financial information on or before the date specified in subsection (b) of this section.

26.2 Type of Annual Financial Information Undertaken to be Provided. The annual financial information that the City undertakes to provide in subsection (a) of this section:

- (a) Shall consist of (1) annual financial statements prepared (except as noted in the financial statements) in accordance with applicable generally accepted accounting principles promulgated by the Government Accounting Standards Board and made applicable to Washington State local governmental units such as the City, as such principles may be changed from time to time, which statements shall not be audited, except, however, that if and when audited financial statements are otherwise prepared and available to the City they will be provided; (2) a statement of authorized, issued and outstanding Parity Bonds; and (3) debt service coverage ratios;
- (b) Shall be provided not later than the last day of the ninth month after the end of each fiscal year of the City (currently, a fiscal year ending December 31), as such fiscal year may be changed as required or permitted by State law, commencing with the City's fiscal year ending December 31, 2011; and
- (c) May be provided in a single or multiple documents, and may be incorporated by specific reference to documents available to the public on the Internet website of the MSRB or filed with the SEC.

26.3 Amendment of Undertaking. The Undertaking is subject to amendment after the primary offering of the Bonds without the consent of any holder of any Bond, or of any broker, dealer, municipal securities dealer, participating underwriter, rating agency or the MSRB, under the circumstances and in the manner permitted by the Rule. The City will give notice to the MSRB of the substance (or provide a copy) of any amendment to the Undertaking and a brief statement of the reasons for the amendment. If the amendment changes the type of annual financial information to be provided, the annual financial information containing the amended financial information will include a narrative explanation of the effect of that change on the type of information to be provided.

26.4 Beneficiaries. The Undertaking evidenced by this section shall inure to the benefit of the City and any holder of Bonds, and shall not inure to the benefit of or create any rights in any other person.

26.5 Termination of Undertaking. The City's obligations under this Undertaking shall terminate upon the legal defeasance of all of the Bonds. In addition, the City's obligations under this Undertaking shall terminate if those provisions of the Rule which require the City to comply with this Undertaking become legally inapplicable in respect of the Bonds for any reason, as confirmed by an opinion of Bond Counsel, or other counsel familiar with federal securities laws, delivered to the City, and the City provides timely notice of such termination to the MSRB.

26.6 Remedy for Failure to Comply with Undertaking. As soon as practicable after the City learns of any failure to comply with the Undertaking, the City will proceed with due diligence to cause such noncompliance to be corrected. No failure by the City or other obligated person to comply with the Undertaking shall constitute a default in respect of the Bonds. The sole remedy of any holder of a Bond shall be to take such actions as that holder deems necessary, including seeking an order of specific performance from an appropriate court, to compel the City or other obligated person to comply with the Undertaking.

26.7 Designation of Official Responsible to Administer Undertaking. The Finance Director of the City (or such other officer of the City who may in the future perform the duties of that office) or his or her designee is authorized and directed in his or her discretion to take such further actions as may be necessary, appropriate or convenient to carry out the Undertaking of the City in respect of the Bonds set forth in this section and in accordance with the Rule, including, without limitation, the following actions:

- (a) Preparing and filing the annual financial information undertaken to be provided;
- (b) Determining whether any event specified in subsection (a) has occurred, assessing its materiality, where necessary, with respect to the Bonds, and, if material, preparing and disseminating any required notice of its occurrence;
- (c) Determining whether any person other than the City is an "obligated person" within the meaning of the Rule with respect to the Bonds, and obtaining from such person an undertaking to provide any annual financial information and notice of listed events for that person in accordance with the Rule;
- (d) Selecting, engaging and compensating designated agents and consultants, including but not limited to financial advisors and legal counsel, to assist and advise the City in carrying out the Undertaking; and
- (e) Effecting any necessary amendment of the Undertaking.

Section 27. Effective Date of Ordinance. This ordinance shall take effect and be in force from and after its passage and five days following its publication as required by law.

PASSED by the City Council and APPROVED by the Mayor of the City of Oak Harbor, Washington, at a regular open public meeting thereof, this ____ day of January, 2011.

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 Ordinance No. ____ (the "Ordinance") is a full, true and correct copy of an ordinance duly passed at a regular meeting of the City Council of the City held at the regular meeting place thereof on January ____, 2011, as that ordinance appears on the minute book of the City; and the Ordinance will be in full force and effect five days after publication in the City's official newspaper; 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 passage of the Ordinance.

IN WITNESS WHEREOF, I have hereunto set my hand this ____ day of January, 2011.

CITY OF OAK HARBOR, WASHINGTON

Connie Wheeler, City Clerk

EXHIBIT A**Project Description**

The proceeds of the Bonds will be used to finance the City's Oak Harbor Marina Redevelopment Phase 2 - Dredging, including maintenance dredging of the Marina, both in open fairways and under and around existing dock structures, disposal of dredge material, near-shore environmental mitigation, including planting of native vegetation and placement of habitat mix fill and beach sand material to support aquatic life, removal of unused in-water structures, and dredge surveys and water quality monitoring, together with such other capital improvements to the Marina as may be determined by the City.

EXHIBIT B**Parity Conditions**

The City may issue Future Parity Bonds only for lawful Marina purposes and only if the following conditions are met and complied with at the time of the issuance of those Future Parity Bonds:

(a) All payments then required by this ordinance and any other ordinance hereafter enacted pertaining to the Bonds or to any Future Parity Bonds hereafter issued shall have been made into the Bond Account and maintained intact therein.

(b) Provision shall be made for payment into the Reserve Subaccount in the Bond Account of such additional amounts over a period of not to exceed 5 years from the date of issuance of the Future Parity Bonds as may be necessary to maintain a balance in the Reserve Subaccount at least equal to the Reserve Requirement.

(c) The City shall have on file a certificate from a certified public accountant or licensed professional engineer showing that the annual Net Revenue available for debt service on all Bonds, any Future Parity Bonds then outstanding and the Future Parity Bonds proposed to be issued shall be at least equal to 1.25 times Average Annual Debt Service; provided that if such parity computation is based exclusively upon the historical operating revenue of the Marina facilities, the parity certificate may be provided by the Finance Director. The Marina Revenue to be used in such parity computation shall include the historical operating revenue of the Marina facilities for any twelve consecutive calendar months out of the twenty-four calendar months immediately preceding the month of delivery of such Future Parity Bonds, and may be adjusted to include revenue derived from rate changes, if any, placed in effect subsequent to the twelve-month period used in the certificate and estimates of any revenue to be derived from the facilities constructed with the proceeds of the Future Parity Bonds proposed to be issued. In calculating historical operating revenue with respect to any portion of the Marina facilities which was in operation for a portion of but not the entire twelve-month period used in the certificate, the revenue from that portion of the Marina facilities may be adjusted to reflect a reasonable estimate of revenue that would have been produced in a full twelve-month period.

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

Bill No. 5
Date: January 4, 2011
Subject: Senior Services of Island County:
Professional Services Contract

FROM: Steve Powers, Development Services Director *PSP*
Mike McIntyre, Senior Services Administrator

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

PURPOSE

This agenda bill presents a professional services contract with Senior Services of Island County for nutrition and information and assistance programs. The contract term is for two years at a cost of \$18,000 per year.

AUTHORITY

RCW 35A.11.020 provides local legislative bodies the authority to provide cultural and recreational services and to contract for those services.

SUMMARY STATEMENT

The City of Oak Harbor has financially supported senior programs since 1974, initially with Island County and then with Senior Services of Island County (SSIC). Since 2005, the City has paid \$18,000 annually to Senior Services of Island County to help offset the costs of the senior food program, farmer's market vouchers, case management services and a number of other services directed at benefiting our senior citizens. In 2008, the City and SSIC executed a new professional services agreement more in keeping with the standard level of practice for such agreements. The contract term was for two years in the amount of \$18,000 per year. The contract expires at the end of 2010; if the City's contribution to these programs and services is to continue the City Council must approve a new contract. Ms. Cheryn Weiser, SSIC Executive Director, has requested that the contract be renewed in her letter of December 2, 2010 (please see attached).

The fund source for the SSIC agreement comes directly from the General Fund and is not included in the City's Senior Center budget. The 2011-2012 budget recently approved by the City Council allocates \$18,000 per year for this program support.

The proposed professional services agreement provides for professional and administrative services for the same programs and services, at the same levels, and cost as the one approved in 2008. The City will pay SSIC \$1,500 per month for providing the professional services

described in the scope of work included with the contract. Some minor revisions were made to the existing agreement clarifying the agreement is for professional services to administer the programs and services defined in the scope of work. Other revisions reflect the current breadth of SSIC's activities. SSIC will present a monthly invoice to the City in the form as prescribed by the City.

STANDING COMMITTEE REPORT

This item was presented to the Governmental Services Committee at their December 14, 2010 meeting

RECOMMENDED ACTION

Authorize the Mayor to sign a two-year professional services agreement with Senior Services of Island County for professional and administrative services for nutrition and Information and Assistance programs, in the amount of \$18,000 per year.

ATTACHMENTS

Letter from Cheryn Weiser, SSIC Executive Director, dated December 2, 2010
Professional Services Agreement

MAYOR'S COMMENTS

SENIOR SERVICES OF ISLAND COUNTY

www.islandseniorservices.org

A United Way Agency

December 2, 2010

Mr. Steve Powers
City of Oak Harbor
865 SE Barrington Drive
Oak Harbor WA 98277

RE: Contract Renewal

Dear Steve,

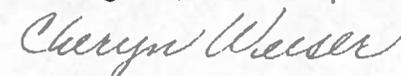
It is our desire to continue our contractual relationship with Oak Harbor to provide critical services to seniors in Oak Harbor. We request that you recommend approval of our contract to the City Council of Oak Harbor.

Our Nutrition Program includes Meals on Wheels, Congregate Meals and Nutrition Counseling to seniors. In 2011, we expect to serve about 6000 meals in the Oak Harbor Senior Center and deliver, using volunteers, about 12,000 meals to home-bound seniors in the Oak Harbor area. For these meals, our estimated direct costs in terms of food ingredients, preparation labor and delivery will be approximately \$134,000 in 2011.

Our Information & Assistance Program delivers important information to seniors and their caregivers about medical care and living choices. We have one staff member who is devoted primarily to serving seniors who come into Oak Harbor Senior Center or who call for assistance. Our direct cost in providing this service at the Oak Harbor Senior Center is \$40,000.

We appreciate the ability to operate our program out of the Oak Harbor Senior Center and assist the City in serving the senior citizens of Oak Harbor.

With regards,



Cheryn Weiser
Executive Director

Main Office:
South Whidbey Office
14594 SR 525
Langley WA, 98260
(360) 321-1600
(360) 678-3373

Oak Harbor Office
51 S.E. Jerome Street
Oak Harbor, WA 98277
(360) 675-0311

Cambay Apartments
50 North Main St.
Coupeville WA, 98239
(360) 678-8886

Community Thrift
5518 Woodard
Freeland, WA 98248
(360) 331-5701

Camano Senior Center
606 Arrowhead Rd
Camano Island, WA,
98282
(360) 387-6201 (I&A)
(360) 387-0222 (Center)

Nutrition Program
Meals on Wheels
Senior Information &
Assistance
South Whidbey Bay View
Senior Center

Volunteer Office
Cambay Apartments
Adult Day Services
Community Thrift
S-MSA

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**NUTRITION and INFORMATION & ASSISTANCE
PROFESSIONAL SERVICES AGREEMENT**

THIS AGREEMENT, is made and entered into in duplicate this _____ day of _____, 2010, by and between the CITY OF OAK HARBOR, a Washington municipal corporation, hereinafter referred to as the "CITY" and SENIOR SERVICES OF ISLAND COUNTY, a private non-profit corporation, authorized to do business in the State of Washington, hereinafter referred to as the "SERVICE PROVIDER".

RECITALS:

WHEREAS, the CITY believes supporting programs aimed at providing assistance to the senior community is an important undertaking; and

WHEREAS, the nutrition and Information & Assistance programs are two areas where the focused expenditure of public monies can greatly benefit the senior community; and

WHEREAS, the CITY has provided partial funding for these programs for over 30 years; and

WHEREAS, the CITY cannot reasonably undertake the funding of these programs alone; and

WHEREAS, the SERVICE PROVIDER also receives funding for these programs from the Northwest Regional Council on Aging, Island County and private fundraising efforts; and

WHEREAS, the CITY contribution to these programs can be utilized to assist in funding the professional and administrative costs associated with operating these programs for the Oak Harbor senior community; and

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

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

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

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

1. Scope of Services.

The SERVICE PROVIDER shall ~~perform such services and accomplish such tasks as are necessary for providing~~ provide professional and administrative services necessary to support and provide nutrition and Information & Assistance (I&A) services to the City of Oak Harbor that primarily serve senior residents of Oak Harbor. The professional and administrative services necessary to support the ~~All of the~~ tasks and services set out in the scope of services detailed in Exhibit "A" attached hereto shall be performed throughout the term of this Agreement.

The City shall provide the necessary space at the Senior Center premises located at 51 SE Jerome Street in Oak Harbor for SERVICE PROVIDER to perform services as described in Exhibit "A".

2. Term.

The ~~Project~~ professional services shall begin on January 1, 2011, and shall be completed no later than December 31, 2012, unless sooner terminated according to the provisions herein.

3. Compensation and Method of Payment.

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

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

3.3 The CITY shall pay the SERVICE PROVIDER for work performed under this Agreement as follows:
The City shall pay SERVICE PROVIDER the amount of \$1,500 per month for providing the services set out in Exhibit A. SERVICE PROVIDER shall present a monthly invoice in the form set out in Exhibit C attached hereto.

4. Reports and Inspections.

4.1 The SERVICE PROVIDER, at such times and in such forms as the CITY may require, shall furnish to the CITY such statements, records, reports, data, and information as the CITY may request pertaining to matters covered by this Agreement. SERVICE PROVIDER agrees to provide monthly reports in the form set out in Exhibit B hereto together with every monthly invoice (in the form set out in Exhibit C).

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

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

5. Independent Contractor Relationship.

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

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

6. Hold Harmless/Indemnification.

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

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

6.3 For purposes of this indemnification provision only, SERVICE PROVIDER expressly waives its immunity pursuant to Title 51 RCW for claims by its employees, officers, and agents arising out of SERVICE PROVIDER'S performance under this Agreement.

7. Treatment of Assets.

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

8. Compliance with Laws.

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

9. Nondiscrimination.

9.1 The CITY is an equal opportunity employer.

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

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

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

10. Assignment/subcontracting.

10.1 The SERVICE PROVIDER shall not assign its performance under this Agreement or any portion of this Agreement without the written consent of the

CITY, and it is further agreed that said consent must be sought in writing by the SERVICE PROVIDER not less than thirty (30) days prior to the date of any proposed assignment. The CITY reserves the right to reject without cause any such assignment.

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

11. Changes.

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

12. Termination.

12.1 Termination for Convenience. Either party may terminate this Agreement for any reason whatsoever by providing written notice of at least sixty (60) days prior to the date of termination. In the event of termination for convenience, the CITY will pay the SERVICE PROVIDER for all costs incurred in the performance of this Agreement through the date of termination.

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

13. Notice.

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

14. Attorneys Fees and Costs.

If any legal proceeding is brought for the enforcement of this Agreement, or because of a dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover from the other party, in

addition to any other relief to which such party may be entitled, reasonable attorney's fees and other costs incurred in that action or proceeding.

15. Jurisdiction and Venue.

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

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

16. Severability.

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

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

17. Entire Agreement.

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

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

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

SENIOR SERVICES OF ISLAND COUNTY
14594 SR 525
Langley, WA 98260

By _____
Jim Slowik, Mayor

By _____
George Fisher, President

Attest:

Attest: Approved by the Board of Directors

Connie Wheeler, Clerk

James Cloore, Secretary

Approved as to Form:

Margery Hite, City Attorney

Exhibit A

SCOPE OF WORK

The SERVICE PROVIDER will provide professional and administrative services to administer the following programs:

Information & Assistance Program

Provides staffing to operate ~~27~~ 35 hours (part time) a week Monday through ~~Thursday~~ Friday from 8 am to 3 pm in the Oak Harbor Senior Center.

Provides appropriate and accurate information on services, products and resources available to clients and their families through social service agencies, medical providers and community partners in the aging network and keeps current on new services in community to refer to clients.

Screens clients for services, including case management by telephone interviews, home visits and office visits. Assesses clients need and refers to appropriate services. Provides follow up with clients to assure needs are met. Conduct two ~~telephonic~~ targeting surveys a year to determine population being served.

Provides crisis/mental health referrals for clients and maintain client files which document services provided.

Develop and maintain resource files to provide to clients on availability of services in the community.

Directs the Family Caregiver Support Program to include Case Management for Respite clients to use ~~Daybreak Adult Services~~ Caregiver's Cove and In-Home Care respite services from local Caregiver agencies. Prepares monthly budget report and consultant budget report to Northwest Regional Council (NWRC) planner in charge of Respite.

Serves as Respite Case Manager including screening, CARE assessment, ongoing authorizations and reoccurring yearly assessments of current clients using respite services.

Provides standard case management services for clients needing intense care, and continuing assistance.

Case Aide to case managers by providing Individual Provider Orientation to caregivers assigned to Medicaid in-home care (COPES) clients. Monitors each case manager's clients care plan on a monthly basis.

Provides liaison with community agencies and organizations that support senior clients, attend monthly meetings and makes referrals as necessary to include Adult Protective Services as a mandatory reporter.

Completes monthly statistics on clients served during the month.

Manages and updates job bank referral lists for use by clients who have need for caregivers, housekeepers and handymen.

Assists families and senior clients apply for DSHS Medicaid (COPES) through outreach, prescreening for Medicaid programs, facilitating Medicaid applications, assistance in utilizing Medicaid services and interagency coordination for medical services.

Notary Public to clients in need of notary services.

Administrator for signing up clients using the Meals on Wheels Program, Washington State Dental Program, Farmer's Market Voucher Program, Island County Trash Discount Cards and other reoccurring programs on a continuing basis.

Administrator and accounts receivable manager for nutritional supplements sold to clients who need this product.

Draft routine correspondence and mail information to client's request information on various services provided.

Provide outreach and information to difficult to service populations including clients with limited English proficiency, rural/isolated populations and those of minority older adults.

Attend quarterly Information & Assistance training meetings.

Provide information on Medicare, Medicare RX and Medicaid and assist clients in accessing these programs by assisting with documentation required. Coordinate the services with local DSHS office.

Home Delivered Nutrition Program (Meals on Wheels)

Provide adequate staffing to safely operate a lunch delivery including a hot lunch meal and /or frozen meals which are delivered to homebound eligible participants three days/week, Monday, Wednesday, and Friday (except holidays). Paid staff will be supplemented by local volunteers.

Provide a lunch which ensures a high quality nutritious meal; meets one third of the nutrition requirements for seniors 60+. The delivery of meals emphasizes a safe, nutritious meal and also provides for a connection to the community with a gate keeping function as an additional asset.

Nutrition Director develops and provides Meals on Wheels monthly menu available for participants for their use and planning.

An intake assessment which allows for the start of new participants will be done before the start of a new participant. It is the primary function of Meals on Wheels Assessor to complete

intakes: if time allows, I & A (information and assistance) Senior Services employees may also complete intakes and send to Meals on Wheels assessor.

A voluntary nutrition screening tool will be collected as well as demographic information, in a Participant Information Form (PIF) for each client. This information is kept on file with the nutrition program and copies sent to Northwest Regional Council Area on Aging.

Provide the City with appropriate copy for use in publicity materials, brochure, required forms, etc. Publication and printing expenses will be the sole responsibility of the City.

Meals on Wheels will provide assessments on new Meals on Wheels participants within 2 weeks of the new client starting to receive the home delivered meals and once a year thereafter, unless otherwise needed.

Meals on Wheels Assessor and volunteers delivering the meals will make referrals to other agencies as appropriate.

Meals on Wheels assessor will maintain participant files and records and collect emergency contact information as well as confidential records authorization to exchange information, if needed.

Work cooperatively with case managers and family members to assure that Meals on Wheels service is provided in a quality manner.

Meal Site Manager will submit monthly reports to the Nutrition Director and provide necessary paperwork in compliance with Northwest Regional Council requirements directly to Northwest Regional Council as required.

Assure that training is available for volunteer and SSIC staff and any required certifications are secured and documented.

Assure appropriate safety and health standards are followed as outlined by Washington Island County Health Department.

Provide and make available a policy and procedure manual.

The SSIC Program Director will coordinate/meet as needed with NWRC representatives, specifically, but not exclusively for the purpose of satisfying annual review requirements.

**Congregate Nutrition Program
Lunch at Oak Harbor Senior Center**

Assure that at a minimum the Oak Harbor Nutrition Program meets all applicable Nutrition Care standards.

Provide adequate staffing to safely operate a lunch meal occurring three days/week, Monday, Wednesday, and Friday (except holidays). Paid staff will be supplemented by local volunteers.

Provide a lunch which ensures a high quality nutritious meal; meets one third of the nutrition requirements for seniors 60+. The meal atmosphere emphasizes a safe caring environment, quality of life experiences, and social interaction.

Provide a monthly menu available for participants for their use and planning.

A voluntary nutrition screening tool will be collected as well as demographic information, in a Participant Information Form (PIF) for each client. This information is kept on file with the nutrition program records and copies are sent to Northwest Regional Council Area on Aging.

Provide the City with appropriate copy for use in publicity materials, brochure, required forms, etc. Publication and printing expenses will be the sole responsibility of the City.

Meal Site Manager and volunteers will make referrals to other agencies as appropriate.

Work cooperatively with case managers, physicians and family members to assure that care plans are followed.

Meal Site Manager will submit monthly reports to the Nutrition Director. This will include dates attending the site and numbers of meals received.

Provide necessary paperwork in compliance with Northwest Regional Council requirements directly to Northwest Regional Council as required.

Assure that training is available for volunteer and SSIC staff and any required certifications are secured and documented.

Assure appropriate safety and health standards are followed as outlined by Washington Island County Health Department.

Provide and make available a policy and procedure manual.

The SSIC Program Director will coordinate/meet as needed with NWRC representatives, specifically, but not exclusively for the purpose of satisfying annual review requirements.

Assure that at a minimum the Nutrition Congregate Meal Program meets all applicable Nutrition Care standards.

EXHIBIT B

MONTHLY REPORTS

MONTHLY PROGRAM SUPPORT

Monthly Report for: _____

Program Days: _____

Information & Assistance Program

Number of Cases Managed _____

Number of Liaison Referrals _____

Outreach Assistant Referrals _____

Home Delivered Nutrition Program

Number of Home Deliveries _____

Number of Assessments for _____

New Meal Participants _____

Congregate Nutrition Program

Number of Congregate Lunches _____

Exhibit C

NUTRITION and I&A PROGRAM

Monthly invoice for Professional Services provided by Senior Services of Island County
(payment address: Senior Services of Island County, 5518 Woodard Ave, Freeland, WA 98249)

Services for the Month of: _____

Submitted by: _____

Date: _____

Monthly contracted services charge: \$ 1,500

Total reimbursable expenses \$ _____

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

Bill No. 6
Date: January 4, 2011
Subject: 2009 International Building
Codes

FROM: Steve Powers, Development Services Director *RSP*
David W. Anderson, Building Official

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

PURPOSE

This agenda bill introduces an ordinance to amend the City's Building Code to reflect changes to the 2009 International Building Code, 2009 International Residential Code, 2009 International Mechanical Code, 2009 Uniform Plumbing Code and the 2009 Washington State Energy Code as regulated and approved by the Washington State Building Code Council on July 1, 2010 and with changes reflecting City practices.

This item was introduced to the City Council on December 21, 2010.

AUTHORITY

The various codes contained herein are adopted by the Washington State Building Code Council pursuant to Chapter 19.27 and 70.92 RCW. Those codes are periodically updated by the Building Code Council. State law provides that unless amended by the City Council, the State Building Code shall be in effect in the City (RCW 19.27.031).

SUMMARY STATEMENT

The City is currently using the 2006 version of these codes unless noted otherwise. The following 2009 International Codes have been adopted by the Washington State Building Code Council and became effective on July 1, 2010. Under state law, cities and counties are responsible for enforcing these codes. Rather than adopting each code, this ordinance provides that the most recent edition is in effect as amended by City Code. Since the codes are in effect by state law, only local amendments should be actually adopted. Listed below is a summary of the 2009 codes and some of the most significant changes from the 2006 version.

- 2009 International Building Code (IBC): the most significant changes pertain to fire resistive separations between occupancies. These fire resistive assemblies are required to be identified and labeled. All group M occupancies, where the display and sale of upholstered furniture occurs, are now required to be sprinklered. Luminous egress path markings shall be provided in certain occupancies over 75 feet in height. Nightclubs are

required to be sprinklered as of December 1, 2010 if they have viewing areas of live performances areas in excess of 350 square feet.

- 2009 International Residential Code (IRC): residential single-family homes are now required to be sprinklered if this provision is adopted by local cities and counties. The City of Oak Harbor is not proposing such a requirement at this time. Habitable attic spaces now require emergency escape and rescue openings. Where fixed seating is adjacent to a guardrail, the height of the guardrail is measured from the top of the fixed seating (36 inches). Carbon monoxide alarms are now required in new and existing Group R occupancies.
- 2009 International Mechanical Code (IMC): is similar in format and requirements to our current adopted Mechanical Code, the 2006 IMC. The Mechanical Code establishes minimum installation standards for all heating, ventilation, air conditioning, ductwork and commercial hood installation requirements. This proposal is only an upgrade to a more current edition as adopted by the State.
- 2009 Uniform Plumbing Code (UPC): is similar in format and requirements to our current adopted Plumbing Code, the 2006 UPC. The Plumbing Code establishes minimum installation standards for all plumbing installations, cross connection, potable water supply, traps, fixtures, sanitary drainage and indirect wastes. This proposal is only an upgrade to a more current edition as adopted by the State.
- 2009 Washington State Energy Code (WSEC): has been formatted to include both residential and commercial energy requirements into one code. One of the significant changes is the requirement for advanced framing of residential trusses to comply with the R-38 requirements for attic insulation. The 2009 Energy Code establishes minimum installation standards for all buildings and structures for heating, insulation, ventilation, HVAC systems and commercial hoods. The effective date of the Washington State Energy Code has been delayed by the Washington State Building Code Council to January 1, 2011.

STANDING COMMITTEE REPORT

This item was presented to the Government Services Standing Committee on June 8, 2010 and on October 12, 2010.

RECOMMENDED ACTION

Adopt ordinance.

ATTACHMENTS

Draft ordinance.

MAYOR'S COMMENTS

ORDINANCE NO.

AN ORDINANCE AMENDING TITLE 17 "BUILDINGS" AND SECTION 3.64.535 "BUILDING AND MISCELLANEOUS DEVELOPMENT PERMIT FEES" OF THE OAK HARBOR MUNICIPAL CODE TO ADOPT THE INTERNATIONAL BUILDING CODES WITH SPECIFIC PROVISIONS APPLICABLE TO THE CITY OF OAK HARBOR.

WHEREAS, the City of Oak Harbor is authorized to adopt ordinances for the general welfare of its citizens; and

WHEREAS, the City is further authorized to adopt and enforce building codes and to adopt and amend provisions of the State building codes under Chapter 19.27 of the Revised Code of Washington; and

WHEREAS, the International Existing Building Code has been included in the State adoption of the International Building Code 51-50 WAC; and

WHEREAS, the Washington State Ventilation and Indoor Air Quality Code has been included in the State adoption of the Washington State Energy Code 51-11WAC; and

WHEREAS, the City Council deems adoption of this ordinance to be in the best interest of its citizens;

NOW, THEREFORE, the City Council of the City of Oak Harbor, Washington does hereby ordain as follows:

Section One. Oak Harbor Municipal Code Section 3.64.535 adopted in §9 of Ordinance 1399 in 2004 is hereby amended to read as follows:

3.64.535 Building Code and miscellaneous development permit fees.

(1) Floodplain Ordinance. The following fees shall be charged for permits under Chapter 17.20 OHMC.

Description	Fee
Floodplain Development Permit	\$120.00
Variance	\$89.00

(2) Building permits and fees under Chapter ~~17.04~~ 17.05, 17.10 and 17.12 OHMC are hereby adopted by reference under this subchapter.

(3) Grading Permits. Grading permits under Chapter ~~17.04~~ 17.05 OHMC shall be charged as follows:

Description	Fee
50 cubic yds or less	
Plan Review	No Fee
Permit Fee	\$23.50
51 to 100 cubic yds	
Plan review	\$23.50
Permit Fee	\$37.00
101 to 1,000 cubic yds	
Plan Review	\$37.00
Permit Fee	
First 100 cubic yds	\$37.00
Each additional 100 cubic yds	\$17.50
1001 to 10,000 cubic yds	
Plan Review	\$49.25
Permit Fee	
First 1,000 cubic yds	\$194.50
Each additional 1,000 cubic yds	\$14.50
10,001 to 100,000 cubic yds	
Plan review	
First 10,000 cubic yds	49.25
Each additional 10,000 cubic yds	\$24.50
Permit fee	
First 10,000 cubic yds	\$325.00
Each additional 10,000 cubic yds	\$66.00
100,001 to 20,000 200,000	
Plan Review	
First 100,000 cubic yds	\$269.75
Each additional 10,000 cubic yds	\$13.25

Description	Fee
Permit fee (100,001 cubic yds or more)	
First 100,000 cubic yds	\$919.00
Each additional 10,000 cubic yds	\$36.50
200,001 cubic yds or more	
Plan review	
First 200,000 cubic yds	\$402.25
Each additional 10,000 cubic yds	\$7.25
Permit fee (see above)	

Section Two. The table of contents of Title 17 of the Oak Harbor Municipal Code is hereby amended to read as follows for the following chapters:

Title 17

BUILDINGS

Chapters:

- 17.05 ~~2006~~ International Building Code
- 17.06 ~~2006~~ International Residential Code
- 17.10 ~~2006~~ International Mechanical Code
- 17.12 ~~2006~~ Uniform Plumbing Code
- 17.14 ~~2006~~ Washington State Energy Code
- ~~17.18 2006 Washington State Ventilation and Indoor Air Quality Code~~
- 17.20 Flood Damage Prevention
- 17.22 2006 International Property Maintenance Code
- 17.24 Sidewalks, Curbs and Gutters Installation
- ~~17.28 2006 International Existing Building Code~~
- 17.30 Noise Attenuation Standards
- 17.40 Survey Monuments

Section Three. Oak Harbor Municipal Code Chapter 17.05 adopted by §4 of Ordinance 1514 in 2007 is hereby amended to read as follows:

Chapter 17.05

2006-INTERNATIONAL BUILDING CODE

Sections:

- 17.05.010 Title.
- 17.05.015 ~~Documents adopted by reference~~ Applicability of the International Building Code.
- 17.05.020 Administration and enforcement – Rules and regulation.
- 17.05.025 Administration and enforcement – Building official authority.
- 17.05.030 Permit fees.

2009 International Building Code Ordinance

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- 17.05.035 **Building permit – Additional charge.**
- 17.05.040 **Notices.**
- 17.05.050 **Liability limitations.**
- 17.05.060 **Amendments – Additions.**
- 17.05.090 **Penalties.**
- 17.05.110 **Severability.**
- 17.05.120 **Hearing examiner to function as appeals board.**

17.05.010 Title.

This chapter shall be known as the International Building Code of the city of Oak Harbor.

17.05.015 ~~Documents adopted by reference~~ Applicability of the International Building Code.

The ~~2006 Edition~~ most recent edition of the International Building Code, ~~including the chapters of its Appendix: E, F, G, I, and J as published by the International Code Council, and changes thereto as set forth in Chapter 51-50 WAC and adopted by the Washington State Building Code Council under the provisions of Chapter 19.27 RCW and as amended herein is in effect as the City's building code,~~ are hereby adopted by reference with the deletions, additions, and exceptions as set out in this chapter and shall be the city's building code. One ~~One~~ A copy of each document listed in this section shall be filed in the office of the city clerk for examination by the public.

17.05.020 Administration and enforcement – Rules and regulation.

The city council may, upon notice and hearing, promulgate, adopt, and issue those rules and regulations necessary for the effective and efficient administration of this code.

17.05.025 Administration and enforcement – Building official authority.

The building official of the city shall be deemed to be the "building official" as defined in ~~Section 202~~ of the International Building Code. The International Building Code shall be administered and enforced by the building official of the city.

17.05.030 Permit fees.

The city of Oak Harbor hereby adopts the following fee schedule for the building code:

- (1) Building Permit Fees Adopted. For determining the value of a structure, the most current issue of the Building Safety Journal Magazine, which offers the square foot construction costs table ~~building valuation data fee schedule~~ as published by the International Code Council, is adopted by reference.
- (2) Plan Review Fees Adopted. When submittal documents are required by the International Building Code Section 107, a plan review fee shall be paid at the time of submitting the submittal documents for plan review. The said plan review fee shall be 65 percent of the building permit fee as determined in Table 17-1. The plan review fees specified are separate fees from the permit fees and are in addition to the permit fees. When submittal documents are incomplete or changed so as to require additional plan review or when the project involves deferred submittals items, an additional plan review fee shall be charged at the rate shown in Table 17-2.

TABLE 17-1 BUILDING PERMIT FEES	
Total Valuation	Fees
\$1.00 to \$500.00	\$23.50
\$501.00 to \$2,000	\$23.50 for the first \$500.00 plus \$3.05 for each additional \$100.00 or fraction thereof, to and including \$2,000
\$2,001 to \$25,000	\$69.25 for the first \$2,000 plus \$14.00 for each additional \$1,000 or fraction thereof, to and including \$25,000
\$25,001 to \$50,000	\$391.25 for the first \$25,000 plus \$10.10 for each additional \$1,000 or fraction thereof, to and including \$50,000
\$50,001 to \$100,000	\$643.75 for the first \$50,000 plus \$7.00 for each additional \$1,000 or fraction thereof, to and including \$100,000
\$100,001 to \$500,000	\$993.75 for the first \$100,000 plus \$5.60 for each additional \$1,000 or fraction thereof
\$500,001 to \$1,000,000	\$3,233.75 for the first \$500,000 plus \$4.75 for each additional \$1,000 or fraction thereof, to and including \$1,000,000
\$1,000,001 and up	\$5,608.75 for the first \$1,000,000 plus \$3.65 for each additional \$1,000 or fraction thereof

TABLE 17-2 OTHER INSPECTIONS AND FEES:	
1. Inspections outside of normal business hours (minimum charge – two hours)	\$47.00 per hour
2. Reinspection fee assessed under provision of Section 305(g)	\$47.00 per hour
3-2. Inspections for which no fee is specifically indicated (minimum charge – one-half hour)	\$47.00 per hour
4-2. Additional plan review required by changes, additions or revisions to approved plans (minimum charge – one-half hour)	\$47.00 per hour
5-4. For use of outside consultants for plan checking and inspections, or both	Actual costs
6. Residential energy code plan review	\$30.00 per unit
7. Occupancy permit fee	\$20.00
8. Nonresidential energy code plan review and inspection fees:	Building permit fees shall be as listed in Table 17-3.

TABLE 17-3 MISCELLANEOUS BUILDING PERMIT FEES	
ACTION	FEE
Antenna Tower	\$25.00
Building Code Interpretation	\$329.00
Change Lot After Plan Review or Issuance of Permit	\$100.00
Change Plans During or After Plan Review	New Plan Review Fee
Change or Revise Plans After Issuance of Permit	Current Hourly Rate per IBC or New Plan Review Fee
Covered Patio	Varies by Valuation
Covered Porch	Varies by Valuation
Decks	Varies by Valuation
Demolitions	\$50.00 Plus \$4.50 State Surcharge
Espresso Carts (portable and stand alone)	\$250.00
Factory Built Structures	Varies by Valuation

TABLE 17-3 MISCELLANEOUS BUILDING PERMIT FEES

Fences Over 6 Feet in Height	Current Hourly Rate per IBC for Plan Review Plus \$25.00 Permit Fee
Flagpoles	\$25.00
Fireplaces, Freestanding, Wood, Gas, and Propane	\$35.00
Fireplaces, Inserts, Wood, Gas and Propane	\$25.00
Mobile Homes, Single Wide	\$120.00
Mobile Home, Double and Triple Wide	\$150.00
Modular Homes or Buildings	\$500.00
Modular Offices (Job Shacks)	\$350.00
Moved Buildings	\$50.00 Prior to Moving Together with a Building Permit Fee Based on the IBC Valuation for New Building and Cost of Moved Building.
Occupancy Permit	\$21.00
Penalty Permit Fee	Double Permit Fee
Residential Energy Code Plan Review	\$30.00 per unit
Re-Roofs Residential	(Permit Required for Overlays of Two Layers or More) \$25.00
Commercial	Varies by Valuation
Retaining Walls (Permit Not Required Under Four Feet)	\$100.00 or IBC Valuation, Whichever Is Greater
Satellite Dish	(48" Diameter or Greater) \$25.00
Signs 25 Sq. Ft. or Less (New Construction)	Permit Fee, Plan Review Fee, and \$4.50 Surcharge Plus \$25.00
26 Sq. Ft. or More (New Construction)	Permit Fee, Plan Review Fee, and \$4.50 Surcharge Plus \$50.00
25 Sq. Ft. or Less (Existing)	Permit Fee, and \$4.50 Surcharge Plus \$25.00
26 Sq. Ft. or More (Existing)	Permit Fee, and \$4.50 Surcharge Plus \$50.00
Solariums	Varies by Valuation
Work Commencing Before Issuance of Permit	(Whichever Is Greater) Double Permit Fee or \$100.00
Wood Stoves Including Inserts	\$100.00

~~(2)~~(3) International Property Maintenance Code. A fee for an on-site compliance inspection by the building official or his representative shall be as set forth by Table 17-2, Miscellaneous Building Inspection Fees. Upon such application and payment of the fee herein provided the building official shall notify the applicant of the date and time of the inspection.

~~(3)~~(4) Uniform Swimming Pool, Spa and Hot Tub Code. The fees for swimming pools, spas, and hot tubs shall be as set forth in Table 17-5, Plumbing Permit Fees.

~~(4)~~(5) Washington State Energy Code. A fee for an on-site compliance inspection by the building official or his representative shall be as set forth by Table 17-2, Miscellaneous Building Inspection Fees. Upon such application and payment of the fee herein provided the building official shall notify the applicant of the date and time of the inspection.

~~(5)~~ ~~Washington State Ventilation and Indoor Air Quality Code. A fee for an on-site~~

~~compliance inspection by the building official or his representative shall be as set forth by Table 17-2, Miscellaneous Building Inspection Fees. Upon such application and payment of the fee herein provided the building official shall notify the applicant of the date and time of the inspection.~~

- ~~(6) Washington State Historic Building Code. A fee for an on-site compliance inspection by the building official or his representative shall be as set forth by Table 17-2, Miscellaneous Building Inspection Fees. Upon such application and payment of the fee herein provided the building official shall notify the applicant of the date and time of the inspection.~~

17.05.035 Building permit – Additional charge.

- (1) An additional charge of \$4.50 shall be added to the cost of a building permit and an additional surcharge of \$2.00 per residential unit on buildings with more than one unit for purposes of paying fees required by RCW 19.27.085 as now in effect or hereafter amended.
- (2) The funds collected under subsection (1) of this section shall be held by the city treasurer and transmitted to the state as required by law.

17.05.040 Notices.

It is unlawful for any person to remove, mutilate, destroy or conceal any lawful notice issued or posted by the building official pursuant to the provisions of this code.

17.05.050 Liability limitations.

Nothing contained in this chapter or in the International Building Code is intended to be, nor shall be, construed to create or form the basis for any liability on the part of the city or its officers, employees or agents, for any injury or damage resulting from the failure of a building to conform to the provisions of the International Building Code.

17.05.060 Amendments – Additions.

The following sections and appendix chapters of the International Building Code ~~as adopted in OHMC 17.05.015~~ in effect are amended to read as follows:

- (1) Appendix chapters E, F, G, I and J of the International Building Code are hereby adopted.

- ~~(1)~~(2) Section 101.1 is hereby amended to read as follows:

101.1 Title. These regulations shall be known as the Building Code of the City of Oak Harbor, Washington hereinafter referred to as "this code".

- ~~(2)~~ Section 101.4.1 is hereby amended to read as follows:

~~101.4.1 Electrical. The provisions of the National Electrical Code as set forth in the Washington Administrative Code Chapter 296-46B as regulated and enforced by State of Washington Labor & Industries, Electrical Division shall apply to the installation of electrical systems, including alterations, repairs, replacement, equipment, appliances, fixtures, fittings and appurtenances thereto.~~

(3) Section ~~101.4.4~~101.4.3 is hereby amended to read as follows:

~~101.4.4~~101.4.3 Plumbing. The provisions of the City of Oak Harbor Plumbing Code as adopted by the Oak Harbor Municipal Code Chapter 17.12 shall apply to the installation, alteration, repair and replacement of plumbing systems, including equipment, appliances, fixtures, fittings and appurtenances, and where connected to a water or sewage system and all aspects of medical gas system. The provisions of the State of Washington requirements for private sewage disposal shall apply to private sewage disposal systems.

(4) Section ~~101.4.5~~101.4.4 is hereby amended to read as follows:

~~101.4.5~~101.4.4 Property Maintenance. The provisions of the City of Oak Harbor Property Maintenance Code as adopted by Oak Harbor Municipal Code Chapter 17.22 shall apply to existing structures and premises; equipment and facilities; light, ventilation, space heating, sanitation, life and fire safety hazards, responsibilities of owners, operators and occupants; and occupancy of existing premises and structures.

(5) Section ~~101.4.7~~101.4.6 is hereby amended to read as follows:

~~101.4.7~~101.4.6 Energy. The provisions of the State of Washington Energy Code as adopted by Oak Harbor Municipal Code Chapter 17.14 ~~and the State of Washington Ventilation and Indoor Air Quality Code as adopted by Oak Harbor Municipal Code Chapter 17.18~~ shall apply to all matters governing the design and construction of buildings for energy efficiency.

(6) Section 101.4.7 is hereby added to read as follows:

101.4.7 Electrical. The provisions of the National Electrical Code as set forth in the Washington Administrative Code Chapter 296-46B as regulated and enforced by State of Washington Labor & Industries, Electrical Division shall apply to the installation of electrical systems, including alterations repairs, replacement, equipment, appliances, fixtures, fittings and appurtenances thereto.

(6)(7) Section 105.2 is hereby amended to read as follows:

105.2 Work exempt from permit. Exemptions from permit requirements of this code shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this code or any other laws or ordinances of this jurisdiction. Permits shall not be required for the following:

Building:

1. One-story detached accessory structures used as tool and storage sheds, playhouses and similar uses, provided the floor area does not exceed 120 square feet (11 m²).
2. Fences not over 6 feet (1829 mm) high.
3. Oil derricks.
4. Retaining walls that are not over 4 feet (1219 mm) in height measured from the bottom of the footing to the top of the wall, provided the wall is set back from any adjacent property lines or structures a distance at least equal to the height of the wall and the material retained slopes 1 vertical to 2 horizontal (or less) up and away from the wall unless supporting a surcharge or impounding Class I, II or IIIA liquids.

5. Water tanks supported directly on grade if the capacity does not exceed 5,000 gallons (18925 L) and the ratio of height to diameter or width does not exceed 2:1.
6. Sidewalks and driveways not more than 30 inches (762 mm) above adjacent grade, and not over any basement or story below and are not part of an accessible route.
7. Painting, papering, tiling, carpeting, cabinets, counter tops and similar finish work.
8. Temporary motion picture, television and theater stage sets and scenery.
9. Prefabricated swimming pools accessory to a Group R-3 occupancy that are less than 24 inches (610 mm) deep, do not exceed 5,000 gallons (18925 L) and are installed entirely above ground.
10. Shade cloth structures constructed for nursery or agricultural purposes, not including service systems.
11. Swings and other playground equipment.
12. Window awnings supported by an exterior wall that do not project more than 54 inches (1372 mm) from the exterior wall and do not require additional support of Group R-3 and U occupancies.
13. Nonfixed and movable fixtures, cases, racks, counters and partitions not over 5 feet 9 inches (1753 mm) in height.

Electrical:

Repairs and maintenance: Minor repair work, including the replacement of lamps or the connection of approved portable electrical equipment to approved permanently installed receptacles.

Radio and television transmitting stations: The provisions of this code shall not apply to electrical equipment used for radio and television transmissions, but do apply to equipment and wiring for a power supply and the installations of towers and antennas.

Temporary testing systems: A permit shall not be required for the installation of any temporary system required for the testing or servicing of electrical equipment or apparatus.

Gas:

1. Portable heating appliance.
2. Replacement of any minor part that does not alter approval of equipment or make such equipment unsafe.

Mechanical:

1. Portable heating appliance.
2. Portable ventilation equipment.
3. Portable cooling unit.
4. Steam, hot or chilled water piping within any heating or cooling equipment regulated by this code.
5. Replacement of any part that does not alter its approval or make it unsafe.

6. Portable evaporative cooler.
7. Self-contained refrigeration system containing 10 pounds (5 kg) or less of refrigerant and actuated by motors of 1 horsepower (746 W) or less.

Plumbing:

1. The stopping of leaks in drains, water, soil, waste or vent pipe, provided, however, that if any concealed trap, drain pipe, water, soil, waste or vent pipe becomes defective and it becomes necessary to remove and replace the same with new material, such work shall be considered as new work and a permit shall be obtained and inspection made as provided in this code.
2. The clearing of stoppages or the repairing of leaks in pipes, valves or fixtures and the removal and reinstallation of water closets, provided such repairs do not involve or require the replacement or rearrangement of valves, pipes or fixtures.

~~(7)~~(8) Section 105.3.1.1 is hereby added to read as follows:

105.3.1.1 Prerequisites for Issuance of Permit.

The Building Official shall determine whether the following requirements have been met prior to issuance of a permit:

1. Any requirements or regulations imposed on a project as a condition of a land use approval process;
2. Any requirements or regulations imposed on a project as a condition of the site civil process;
3. Any transportation, school, parks or other mitigation or impact fees are paid as adopted by Oak Harbor Municipal Code Sections 11.32 or 19.48 respectively;
4. Approval of Design Review as required by Oak Harbor Municipal Code for Design Guidelines and Regulation as required by Title 19.
5. Compliance with the State Environmental Policy Act, as adopted by Oak Harbor Municipal Code Title 20.
6. Compliance with the Flood Management requirements as adopted by Oak Harbor Municipal Code Title 11 and Title 20.
7. Compliance with environmentally Critical Areas Protection requirements as required by Oak Harbor Municipal Code Title 20.

~~(8)~~(9) Section ~~106.1~~107.1 is hereby amended to read as follows:

~~106.1~~107.1 ~~Submittal Documents. General. Submittal documents consisting of~~ construction documents, statement of special inspections, geotechnical report and other data shall be submitted in ~~one~~ two or more sets with each permit application. The construction documents shall be prepared by a registered design professional where required by the statutes of the jurisdiction in which the project is to be constructed. Where special conditions exist, the building official is authorized to require additional construction documents to be prepared by a registered design professional. All plans for construction, erection, enlargement, alteration or repairs of building or structures 4,000

square feet or over shall be designed, prepared and stamped by an architect or engineer licensed by the state of Washington.

Exception: The building official is authorized to waive the submission of construction documents and other data not required to be prepared by a registered design professional if it is found that the nature of the work applied for is such that review of construction documents is not necessary to obtain compliance with this code.

~~(9)~~(10) Section ~~108.3~~109.3 is hereby amended to read as follows:

~~108.3~~109.3 Building permits valuations. The applicant for a permit shall provide an estimated permit value at time of application. Permit valuations shall include total value of work, including materials and labor, for which the permit is being issued, such as electrical, gas, mechanical, plumbing equipment and permanent systems. If, in the opinion of the building official, the valuation is underestimated on the application, the permit shall be denied, unless the applicant can show detailed estimates to meet the approval of the building official. Final building permit valuation shall be set by the building official. The valuation for commonly built structures shall be determined by the most current issue of the Building Safety Journal, which offers ~~building valuation data fee schedule~~ square foot construction costs table as published by the International Code Council, adopted herein by reference.

~~(10)~~(11) Section ~~108.6~~109.6 is hereby amended to read as follows:

~~108.6~~109.6 Refunds. The building official is authorized to establish a refund policy. The building official may authorize refunding of any fee paid hereunder which was erroneously paid or collected. The building official may authorize refunding of not more than 80 percent of the permit fee paid when no work has been done under a permit issued in accordance with this code. The building official may authorize refunding of not more than 80 percent of the plan review fee paid when an application for a permit for which a plan review has been paid is withdrawn or canceled before any plan reviewing is done. The building official shall not authorize refunding of any fee paid except on written application filed by the original permittee not later than 180 days after the date of fee payment.

~~(11)~~(12) Section ~~110.5~~111.5 is hereby added to read as follows:

~~110.5~~111.5 Violation of requirements for certificate of occupancy. The City Council affirms that the issuance of any certificate of occupancy is of vital importance in the safeguarding of life safety, property safety and health of occupants of any structure; and further, that the enforcement of all city development regulations is of vital importance to the city's economic vitality and the public good. Any person allowing a building to be occupied without a certificate of occupancy first being issued as required by this Chapter shall be subject to the civil penalty provisions of the Oak Harbor Municipal Code Section 17.05.090.

~~(12)~~(13) Section ~~112~~113 is hereby amended to read as follows:

~~112~~113.1 Board of Appeals. All references to the term "board of Appeal(s)" shall deem to mean the Hearing Examiner as per OHMC 18.40.180. Permits under this chapter shall be Type I review process as per OHMC 18.20.230. Appeals of decisions of applicable codes adopted under this chapter shall be to the hearing examiner.

~~(13)~~(14) Section 202 is hereby amended to read as follows:

GRADE PLANE. A referenced plane representing the average of the finished ground

level, adjoining the building at all exterior walls. Where the finished ground level slopes away from the exterior walls, the reference plane shall be established by the lowest points within the area between the building and the lot line or, where the lot line is more than 10 feet from the building between the structure and a point 10 feet from the building.

~~(14) Section 403.1 is hereby amended to read as follows:~~

~~403.1 Applicability. The provisions of this section shall apply to buildings with an occupied floor located more than 50 feet (15240 mm) above the lowest level of fire department vehicle access. Such buildings shall be provided with an approved automatic sprinkler system throughout in accordance with Section 4.3.2.~~

~~Exception: The provisions of this section shall not apply to the following buildings and structures:~~

- ~~1. Airport traffic control towers in accordance with Section 412.~~
- ~~2. Open parking garages in accordance with Section 4.6.3.~~
- ~~3. Buildings with an occupancy in Group A-5 in accordance with Section 3.3.1.~~
- ~~4. Low hazard special industrial occupancies in accordance with Section 503.1.1.~~
- ~~5. Buildings with an occupancy in Group H-1, H-2 or H-3 in accordance with Section 415.~~

(15) Section 3201.5 is hereby added to read as follows:

3201.5 Right-of-Way Permits. A permit is required for any construction, alteration, repair, move, demolish, replace, use or encroachment into the public right-of way as determined by the City Engineer.

(16) Appendix Section J103.1 is hereby amended to read as follows:

J103.1 Permits Required. Except as exempted in Section J103.2, no grading shall be performed without first having obtained a permit therefor from the City Engineer. A grading permit does not include the construction of retaining walls or other structures.

(17) Appendix Section J104.3 is hereby amended to read as follows:

~~J104.3 Soils report. A soils report prepared by registered design professionals shall be provided which shall identify the nature and distribution of existing soils; conclusions and recommendations for grading procedures; soil design criteria for any structures or embankments required to accomplish the proposed grading; and, where necessary, slope stability studies, and recommendations and conclusions regarding site geology.~~

~~Exception: A soils report is not required where the building official or the city engineer determines that the nature of the work applied for is such that a report is not necessary.~~

J104.3 Geotechnical report.

A geotechnical report prepared by a registered design professional shall be provided.

The report shall contain the following:

1. The nature and distribution of existing soils;
2. conclusions and recommendations for grading procedures;
3. Soil design criteria for any structures or embankments required to accomplish the proposed grading; and
4. where necessary, slope stability studies, and recommendations and conclusions regarding site geology.

Exception: A geotechnical report is not required where the building code official

or city engineer determines that the nature of the work applied for is such that a report is no necessary.

(18) Appendix J106.1 is hereby amended to read as follows:

J106.1 Maximum slope. The slope of cut surfaces shall be no steeper than is safe for the intended use, and shall be no steeper than 2 horizontal to 1 vertical (50 percent) unless the applicant furnishes a soils report justifying a steeper slope.

Exceptions:

1. A cut surface may be at a slope of 1.5 horizontal to 1 vertical (67 percent) provided that all the following are met:
 - 1.1 It is not intended to support structures or surcharges.
 - 1.2 It is adequately protected against erosion.
 - 1.3 It is no more than 8 feet (2438 mm) in height.
 - 1.4 It is approved by the city engineer.
2. A cut surface in bedrock shall be permitted to be at a slope of 1 horizontal to 1 vertical (100 percent).

(19) Appendix J108.3 is hereby amended to read as follows:

J108.3 Slope protection. Where required to protect adjacent properties at the toe of a slope from adverse effects of the grading, additional protection, approved by the city engineer, shall be included. Such protection may include but shall not be limited to:

1. Setbacks greater than those required by Figure J108.1.
2. Provisions for retaining walls or similar construction.
3. Erosion protection of the fill slopes.
4. Provision for the control of surface waters.

(20) Appendix J109.3 is hereby amended to read as follows:

J109.3 Interceptor Drains. Interceptor drains shall be installed along the top of cut slopes receiving drainage from a tributary width greater than 40 feet, measured horizontally. They shall have a minimum depth of 1 foot and a minimum width of 3 feet. The slope shall be approved by the city engineer, but shall not be less than 50 horizontal to 1 vertical. The drain shall be paved with concrete not less than 3 inches in thickness, or by other materials suitable to the application. Discharge from the drain shall be accomplished in a manner to prevent erosion and shall be approved by the city engineer.

17.05.090 Penalties.

- (1) It shall be unlawful for a person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy or maintain any building, structure or building service equipment or cause or permit the same to be done in violation of this chapter or the technical codes.
- (2) Civil Violation. Except as provided in subsections (4) and (5) of this section, any violation of any of the provisions of this chapter or of the technical codes constitutes a

civil violation as provided for in Chapter 1.28 OHMC, for which a monetary penalty may be imposed as provided therein.

- (3) **Criminal Penalty.** In addition to or as an alternative to any other penalty provided in this chapter or by law, any person who intentionally or knowingly violates any of the provisions of this chapter or the technical codes shall be guilty of a misdemeanor and upon conviction shall be punishable by a fine of up to \$1,000 or a jail sentence of up to 90 days in jail, or both such fine and jail time.
- (4) **Plumbing Code Violations.** Violations of the Uniform Plumbing Code ~~and Plumbing Code Standards~~ as adopted under OHMC 17.12.020 shall be misdemeanors punishable by a fine of up to \$1,000 or a jail sentence of up to 90 days, or both such fine and jail time.
- (5) **Violations of Orders under This Chapter.** Any person constructing, repairing, operating, maintaining, changing an occupancy, occupying or moving a building, structure, occupancy, or premises contrary to the provisions of this chapter or who continues to construct, repair, operate, maintain, change occupancy, occupy or move such building, structure, occupancy or premises when ordered by the building official to desist from violating a provision or provisions of this chapter shall be guilty of a misdemeanor punishable by a fine of up to \$1,000 or a jail sentence of up to 90 days, or both such fine and jail time.
- (6) **Separate Offense.** Each day or portion thereof upon which a violation occurs constitutes a separate offense under subsections (1), (2), (3), (4) and (5) of this section.
- (7) **Destruction of Notice.** It shall be unlawful for any person to remove, mutilate, destroy or conceal any notice issued and posted by the building official pursuant to the provisions of this chapter or the building code which violations shall be a civil offense as described in subsection (2) of this section.

17.05.110 Severability.

Should any section, paragraph, sentence or word of this chapter or codes hereby adopted be declared for any reason to be invalid, it is the intent of the city council that it would have passed all other portions of this chapter and of the codes hereby adopted independent of the elimination herefrom of any such portions as may be declared invalid and accordingly such declaration of invalidity shall not affect the validity of this chapter as a whole nor any part hereof other than the part so declared to be invalid.

17.05.120 Hearing examiner to function as appeals board.

Permits under this chapter shall be Type I review process. Appeals of decisions of codes adopted under this chapter shall be to the hearing examiner. References to the board of appeals shall be to the hearing examiner.

Section Four. Oak Harbor Municipal Code Chapter 17.06 adopted by §6 of Ordinance 1514 in 2007 is hereby amended to read as follows:

Chapter 17.06
2006 INTERNATIONAL RESIDENTIAL CODE

Sections:

- 17.06.010 Title.
- 17.06.020 ~~Documents adopted by reference~~ Applicability of the International Residential Code.
- 17.06.030 Administration and enforcement – Rules and regulation.
- 17.06.040 Administration and enforcement – Building official authority.
- 17.06.050 Notices.
- 17.06.060 Liability limitations.
- 17.06.070 Amendments – Additions.
- ~~17.06.075 Amendments – Deletions~~
- 17.06.080 Penalties.
- 17.06.090 Severability.
- 17.06.100 Hearing examiner to function as appeals board.

17.06.010 Title.

This chapter shall be known as the International Residential Code of the city of Oak Harbor.

17.06.020 ~~Documents adopted by reference~~ Applicability of the International Residential Code.

The ~~2006~~ 2009 ~~most recent~~ most recent Edition of the International Residential Code, including the chapters of its Appendix: A, B, C, D, G, H, J, and K as published by the International Code Council, ~~and changes thereto as set forth in Chapter 51-51 WAC and as adopted by the Washington State Building Code Council under the provisions of Chapter 19.27 RCW and amended herein, are in effect in the City of Oak Harbor.~~ adopted by reference with the deletions, additions, and exceptions as set out in this chapter and shall be the city's residential code; provided, however, that chapters 11, and 25 through 42-43 of the 2006-2009 International Residential Code are not adopted. One ~~One~~ copy of each the document identified in this section shall be filed in the office of the city clerk for examination by the public.

17.06.030 Administration and enforcement – Rules and regulation.

The city council may, upon notice and hearing, promulgate, adopt, and issue those rules and regulation necessary for the effective and efficient administration of this code.

17.06.040 Administration and enforcement – Building official authority.

The building official of the city shall be deemed to be the "building official" as defined in ~~Section 202~~ of the International Building Code. The International Residential Code shall be administered and enforced by the building official of the city.

17.06.050 Notices.

It is unlawful for any person to remove, mutilate, destroy or conceal any lawful notice issued or posted by the building official pursuant to the provisions of this code.

17.06.060 Liability limitations.

Nothing contained in this chapter or in the International Residential Code is intended to be, nor shall be, construed to create or form the basis for any liability on the part of the city or its officers, employees or agents, for any injury or damage resulting from the failure of a building to conform to the provisions of the International Residential Code.

17.06.070 Amendments – Additions.

The following sections and appendix chapters of the International Residential Code ~~as adopted in OHMC 17.06.020~~ ineffect are amended to read as follows:

(1) Appendix chapters H, J, and K of the International Residential Code are hereby adopted.

(1)(2) Section R101.1 is hereby amended to read as follows:

R101.1 Title. These provisions shall be known as the ~~International~~ Residential Code for One and Two-Unit Dwellings of the City of Oak Harbor, and shall be cited as such and will be referred to herein as "this code."

(2)(3) Section R108.3 is hereby amended to read as follows:

R108.3 Building Permit Valuations:

The applicant for a permit shall provide an estimated permit value at the time of application. Building permit valuations shall include total value of work for which the permit is being issued, such as electrical, gas, mechanical, plumbing equipment and permanent systems, including materials and labor. If in the opinion of the building official, the valuation is underestimated on the application, the permit shall be denied, unless the applicant can show detailed estimates to meet the approval of the building official. Final building permit valuation shall be set by the building official. The valuation for commonly built structures shall be determined by the most current issue of the Building Safety Journal, which offers building valuation data fee schedule as published by the International Code Council, adopted herein by reference.

(3)(4) Section R108.5 is hereby amended to read as follows:

R108.5 Refunds. The building official is authorized to establish a refund policy. The building official may authorize refunding of any fee paid hereunder which was erroneously paid or collected. The building official may authorize refunding of not more than 80 percent of the permit fee paid when no work has been done under a permit issued in accordance with this code. The building official may authorize refunding of not more than 80 percent of the plan review fee paid when an application for a permit for which a plan review has been paid is withdrawn or canceled before any plan reviewing is done. The building official shall not authorize refunding of any fee paid except on written application filed by the original permittee not later than 180 days after the date of fee payment.

(4)(5) Section R112 is hereby amended to read as follows:

R112.1 Board of Appeals. All references to the term "board of Appeal(s)" shall deem to mean the Hearing Examiner as per OHMC 18.40.180. Permits under this chapter shall be Type I review

process as per OHMC 18.20.230. Appeals of decisions of applicable codes adopted under this chapter shall be to the hearing examiner.

(5)(6) Table R301.2(1) is hereby amended to read as follows:

Ground Snow Load	20-17 PSF
Wind speed:	85 MPH
Seismic Design Group:	D1
Damage from Weathering:	Moderate
Frost Line Depth:	12 Inches
Termite:	None to Slight
Decay:	Slight to Moderate
Winter Design Temp:	27 Degrees
Ice Shield Underlayment:	No
Air Freezing Index:	N/A
Mean Annual Temperature:	50 Degrees

(6)(7) Section R310.1 is hereby amended to read as follows:

R310.1 Emergency escape and rescue required. Basements and every sleeping room shall have at least one operable emergency and rescue opening. Such opening shall open directly into a public street, public alley, yard or court. Where basements contain one or more sleeping rooms, emergency egress and rescue openings shall be required in each sleeping room, but shall not be required in adjoining areas of the basement. Where emergency escape and rescue openings are provided they shall have a sill height of not more than 44 inches (1118 mm) above the floor. Where a door opening having a threshold below the adjacent ground elevation serves as an emergency escape and rescue opening and is provided with a bulkhead enclosure, the bulkhead enclosure shall comply with Section R310.3. The net clear opening dimensions required by this section shall be obtained by the normal operation of the emergency escape and rescue opening from the inside. Emergency escape and rescue openings with a finished sill height below the adjacent ground elevation shall be provided with a window well in accordance with Section R310.2. Emergency escape and rescue openings shall open directly into a public way, or to a yard or court that opens to a public way.

Exception: Basements used only to house mechanical equipment and not exceeding total floor area of 200 square feet (18.58 m2).

R310.1.1 Minimum opening area.

All emergency escape and rescue openings shall have a minimum net clear opening of 5.7 square feet (0.530 m2).

Exception: Grade floor openings shall have a minimum net clear opening of 5 square feet (0.465 m2).

R310.1.2 Minimum opening height.

The minimum net clear opening height shall be 24 inches (610 mm).

310.1.3 Minimum opening width.

The minimum net clear opening width shall be 20 inches (508 mm).

310.1.4 Operational constraints.

Emergency escape and rescue openings shall be operational from the inside of the room without the use of keys, tools or special knowledge.

310.1.5 Replacement of Emergency Escape and Rescue Opening. If emergency escape and rescue openings are replaced or renewed, except for glazing replacement or renewal, the opening sizes shall be as required for new construction.

17.06.075 Amendments Deletions

Chapters 11 and 25-43 of the International Residential Code are deleted and not applicable within the City of Oak Harbor.

17.06.080 Penalties.

- (1) It shall be unlawful for a person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, or utilize a mechanical system, or cause same to be done, in conflict with or in violation of any of the provisions of this chapter or the technical codes.
- (2) Civil Violation. Except as provided in subsections (4) and (5) of this section, any violation of any of the provisions of this chapter or of the technical codes constitutes a civil violation as provided for in Chapter 1.28 OHMC, for which a monetary penalty may be imposed as provided therein.
- (3) Criminal Penalty. In addition to or as an alternative to any other penalty provided in this chapter or by law, any person who intentionally or knowingly violates any of the provisions of this chapter or the technical codes shall be guilty of a misdemeanor and upon conviction shall be punishable by a fine of up to \$1,000 or a jail sentence of up to 90 days in jail, or both such fine and jail time.
- (4) Violations of Orders under This Chapter. Any person constructing, repairing, operating, maintaining, changing an occupancy, occupying or moving a building, structure, occupancy, or premises contrary to the provisions of this chapter who continues to construct, repair, operate maintain, change occupancy, occupy or move such building, structure, occupancy or premises when ordered by the building official to desist from violating a provision or provisions of this chapter shall be guilty of a misdemeanor punishable by a fine of up to \$1,000 or a jail sentence of up to 90 days, or both such fine and jail time.
- (5) Separate Offense. Each day or portion thereof upon which a violation occurs constitutes a separate offense under subsections (1), (2), (3) and (4) of this section.
- (6) Destruction of Notice. It shall be unlawful for any person to remove, mutilate, destroy or conceal any notice issued and posted by the building official pursuant to the provisions of this chapter or the building code which violations shall be a civil offense as described in subsection (2) of this section.

17.06.090 Severability.

Should any section, paragraph, sentence or word of this chapter or codes hereby adopted be declared for any reason to be invalid, it is the intent of the city council that it would have passed all other portions of this chapter and of the codes hereby adopted independent of the elimination herefrom of any such portions as may be declared invalid and accordingly such declaration of

invalidity shall not affect the validity of this chapter as a whole nor any part hereof other than the part so declared to be invalid.

17.06.100 Hearing examiner to function as appeals board.

All references to the term "board of appeal(s)" shall deem to mean the hearing examiner as per OHMC 18.40.180. Permits under this chapter shall be Type I review process as per OHMC 18.20.230. Appeals of decisions of applicable codes adopted under this chapter shall be to the hearing examiner.

Section Five. Oak Harbor Municipal Code Chapter 17.10 adopted by §8 of Ordinance 1514 in 2007 is hereby amended to read as follows:

**Chapter 17.10
2006 INTERNATIONAL MECHANICAL CODE**

Sections:

- 17.10.010 Title**
- 17.10.020 ~~Document adopted by reference~~ Applicability of International Mechanical Code.**
- 17.10.030 Administration and enforcement – Rules and regulations.**
- 17.10.040 Administration and enforcement – Building official authority.**
- 17.10.050 Notices.**
- 17.10.060 Liability limitations.**
- 17.10.070 Amendments – Additions.**
- 17.10.080 Penalties.**
- 17.10.090 Severability.**
- 17.10.100 Hearing examiner to function as appeals board.**

17.10.010 Title.

This chapter shall be known as the International Mechanical Code of the city of Oak Harbor.

17.10.020 ~~Document adopted by reference~~ Applicability of International Mechanical Code.

The ~~2006-2009~~ most recent edition of the International Mechanical Code including ~~Appendix A~~ as published by the International Code Council, ~~and changes thereto as set forth in Chapter 51-52 WAC and adopted by the Washington State Building Code Council under the provisions of Chapter 19.27 RCW as amended herein is in effect in the City of Oak Harbor,~~ are adopted by reference with the deletions, additions, and exceptions as set out in this chapter and shall be the city's mechanical code. One copy of each document listed in this section shall be filed in the office of the city clerk for examination by the public.

17.10.030 Administration and enforcement – Rules and regulations.

The city council may upon notice and hearing promulgate such rules and regulations as may be necessary to the effective and efficient administration of the code.

17.10.040 Administration and enforcement – Building official authority.

The International Mechanical Code shall be administered and enforced by the city building official.

17.10.050 Notices.

It is unlawful for any person to remove, mutilate, destroy or conceal any lawful notice issued or posted by the building official pursuant to the provisions of this code.

17.10.060 Liability limitations.

Nothing contained in this chapter or in the International Mechanical Code is intended to be, nor shall be, construed to create or form the basis for any liability on the part of the city or its officers, employees or agents, for any injury or damage resulting from the failure of a building to conform to the provisions of the International Mechanical Code.

17.10.070 Amendments – Additions.

The following sections and appendix chapters of the International Mechanical Code ~~as adopted in OHMC 17.10.020~~ in effect are amended to read as follows:

(1) Appendix A of the International Mechanical Code is hereby adopted.

(~~1~~)(2) Section 106.4.3 is hereby amended to read as follows:

106.4.3 Expiration. Every permit issued by the building official under the provisions of this code shall expire by limitation and become null and void if the work authorized by such permit is not commenced within one hundred eighty (180) days from the date of such permit, or if the work authorized by such permit is suspended or abandoned at any time after the work is commenced for a period of one hundred eighty (180) days. Before such work recommences, a new permit shall be first obtained and the fee, therefore, shall be one-half the amount required for a new permit for such work, provided no changes have been made or will be made in the original construction documents for such work, and provided further that suspension or abandonment has not exceeded one year. In order to renew action on a permit after expiration, the permittee shall pay a new full permit fee.

(~~2~~)(3) Section 106.5.2 is hereby amended to read as follows:

106.5.2 Fee Schedule. The fees for mechanical work shall be as indicated in Table 17-6 Mechanical Permit Fees.

(~~3~~)(4) Table 17-6 Mechanical Permit Fees.

TABLE 17-6 MECHANICAL PERMIT FEES

ACTION	FEE
Permit Issuance and Heaters	
For the issuance of each mechanical permit	\$23.50
For issuing each supplemental permit for which the original permit has not expired, been canceled or finalized	\$7.25
Unit Fee Schedule (In addition to required permits as listed above.)	
Furnaces	
For the installation or relocation of each forced air or gravity type furnace or burner, including ducts and vents attached to such appliance, up to and	\$15.00

ACTION	FEE
including 100,000 Btu/h (29.3 kW)	
For the installation or relocation of each forced air or gravity type furnace or burner, including ducts and vents attached to such appliance over 100,000 Btu/h (29.3 kW)	\$18.00
For the installation or relocation of each floor furnace, including vent	\$15.00
For the installation or relocation of each suspended heater, recessed wall heater or floor mounted unit heater	\$15.00
Appliance Vents	
For the installation, relocation or replacement of each appliance vent installed and not included in an appliance permit	\$7.00
Repairs or Additions	
For the repair of, alteration of, or addition to each heating appliance, refrigeration unit, cooling unit, absorption unit, or each heating, cooling, absorption or evaporative cooling system, including installation of controls regulated by the Mechanical Code	\$14.00
Boilers, Compressors and Absorption Systems	
For the installation or relocation of each boiler or compressor to and including 3 horsepower (10.6 kW), or each absorption system to and including 100,000 Btu/h (29.3 kW)	\$15.00
For the installation or relocation of each boiler or compressor over 3 horsepower (10.6 kW) to and including 15 horsepower (52.7 kW), or each absorption system over 100,000 Btu/h (29.3 kW) to and including 500,000 Btu/h (146.6 kW)	\$27.00
For the installation or relocation of each boiler or compressor over 15 horsepower (52.7 kW) to and including 30 horsepower (105.5 kW), or each absorption system over 500,000 Btu/h (146.6 kW) to and including 1,000,000 Btu/h (293.1 kW)	\$37.00
For the installation or relocation of each boiler or compressor over 30 horsepower (105.5 kW) to and including 50 horsepower (176 kW), or each absorption system over 1,000,000 Btu/h (293.1 kW) to and including 1,750,000 Btu/h (512.9 kW)	\$55.00
For the installation or relocation of each boiler or compressor over 50 horsepower (176 kW), or each absorption system over 1,750,000 Btu/h (512.9 kW)	\$93.00
Air Handling	
For each air handling unit to and including 10,000 cubic feet per minute (cfm) (4719 Us), including ducts attached thereto Note: This fee does not apply to an air handling unit which is a portion of a factory assembled appliance, cooling unit, evaporative cooler or absorption unit for which a permit is required elsewhere in the Mechanical Code.	\$11.00
For each air handling unit over 10,000 cfm (4719 Us)	\$18.00
Evaporative Coolers	
For each evaporative cooler other than portable type	\$11.00
Ventilation and Exhaust	
For each ventilation fan connected to a single duct	\$7.00
For each ventilation system which is not a portion of any heating or air conditioning system authorized by a permit	\$11.00
For the installation of each hood which is served by mechanical exhaust, including the ducts for such hood	\$11.00
Incinerators	
For the installation or relocation of each domestic type incinerator	\$18.00
For the installation or relocation of each commercial or industrial type incinerator	\$15.00
Gas Piping Systems	

ACTION	FEE
For each gas piping system of one to five outlets	\$5.00
For each additional outlet over five, each	\$1.00
Miscellaneous	
For each appliance or piece of equipment regulated by the Mechanical Code but not classed in other appliance categories, or for which the fee is listed in the table	\$11.00
Other Inspection and Fees Refer to Table 17-2.	

| ~~(4)~~(5) Section 106.5.3 is hereby amended to read as follows:

106.5.3 Fee Refunds. The building official shall authorize the refunding of fees as follows:

1. The full amount of any fee paid hereunder which was erroneously paid or collected.
2. Not more than 80 percent of the permit fee paid when no work has been done under a permit issued in accordance with this code.
3. Not more than 80 percent of the plan review fee paid when an application for a permit for which a plan review fee has been paid is withdrawn or canceled before any plan reviewing is done.

The building official shall not authorize refunding of any fee paid except on written application filed by the original permittee not later than 180 days after the date of fee payment.

| ~~(5)~~(6) Section 108.1 is hereby amended to read as follows:

108.1 Unlawful Acts. It shall be unlawful for a person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert, demolish or utilize a mechanical system, or cause the same to be done, in conflict with or in violation of any of the provisions of this code. Each separate day or any portion thereof, during which any violation of this code occurs or continues, shall be deemed to constitute a separate offense.

| ~~(6)~~(7) Section 202 is hereby amended to read as follows:

SUBSTANTIALLY REMODELED. Substantially Remodeled is any alteration or restoration of a building exceeding 60 percent of the assessed valuation of such building within a twelve-month period.

| ~~(7)~~(8) Section 901.5 is hereby added to read as follows:

901.5 Solid Fuel Burning Devices. No used fuel-burning device shall be installed in new or existing buildings unless such device is United States Environmental Protection Agency certified or a pellet stove either certified or exempt from certification by the United States Environmental Protection Agency. **EXCEPTION:** antique wood cook stoves and heaters manufactured prior to 1940.

17.10.080 Penalties.

- (1) It shall be unlawful for a person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy or maintain any building, structure or building service equipment or cause or permit the same to be done in violation of this chapter or the technical codes.
- (2) Civil Violation. Except as provided in subsections (4) and (5) of this section, any violation of any of the provisions of this chapter or of the technical codes constitutes a civil violation as provided for in Chapter 1.28 OHMC, for which a monetary penalty may

be imposed as provided therein.

- (3) **Criminal Penalty.** In addition to or as an alternative to any other penalty provided in this chapter or by law, any person who intentionally or knowingly violates any of the provisions of this chapter or the technical codes shall be guilty of a misdemeanor and upon conviction shall be punishable by a fine of up to \$1,000 or a jail sentence of up to 90 days in jail, or both such fine and jail time.
- (4) **Violations of Orders under This Chapter.** Any person constructing, repairing, operating, maintaining, changing an occupancy, occupying or moving a building, structure, occupancy, or premises contrary to the provisions of this chapter who continues to construct, repair, operate, maintain, change occupancy, occupy or move such building, structure, occupancy or premises when ordered by the building official to desist from violating a provision or provisions of this chapter shall be guilty of a misdemeanor punishable by a fine of up to \$1,000 or a jail sentence of up to 90 days, or both such fine and jail time.
- (5) **Separate Offense.** Each day or portion thereof upon which a violation occurs constitutes a separate offense under subsections (1), (2), (3) and (4) of this section.
- (6) **Destruction of Notice.** It shall be unlawful for any person to remove, mutilate, destroy or conceal any notice issued and posted by the building official pursuant to the provisions of this chapter or the building code which violations shall be a civil offense as described in subsection (2) of this section.

17.10.090 Severability.

Should any section, paragraph, sentence or word of this chapter or codes hereby adopted be declared for any reason to be invalid, it is the intent of the city council that it would have passed all other portions of this chapter and of the codes hereby adopted independent of the elimination herefrom of any such portions as may be declared invalid and accordingly such declaration of invalidity shall not affect the validity of this chapter as a whole nor any part hereof other than the part so declared to be invalid.

17.10.100 Hearing examiner to function as appeals board.

All references to the term "board of appeal(s)" shall deem to mean the hearing examiner as per OHMC 18.40.180. Permits under this chapter shall be Type I review process as per OHMC 18.20.230. Appeals of decisions of applicable codes adopted under this chapter shall be to the hearing examiner.

Section Six. Oak Harbor Municipal Code Chapter 17.12 adopted by §10 of Ordinance 1514 in 2007 is hereby amended to read as follows:

Chapter 17.12
2006 UNIFORM PLUMBING CODE

Sections:

- 17.12.010 Title.**
17.12.020 ~~Document adopted by reference~~ Applicability of Uniform Plumbing Code.
17.12.030 Administration and enforcement – Rules and regulations.
17.12.040 Administration and enforcement – Building official authority.
17.12.050 Notices.
17.12.060 Liability limitations.
17.12.070 Amendments – Additions.
~~17.12.075 Amendments – Deletions~~
17.12.080 Penalties.
17.12.090 Severability.
17.12.100 Hearing examiner to function as appeals board.
17.12.010 Title.

This chapter shall be known as the Uniform Plumbing Code of the city of Oak Harbor.

17.12.020 ~~Document adopted by reference~~ Applicability of Uniform Plumbing Code.
The ~~2006~~ ~~2009~~ most recent edition of the Uniform Plumbing Code, including Appendix H as published by the International Association of Plumbing and Mechanical Officials and ~~changes thereto as set forth in Chapter 51-56 WAC as adopted by the Washington State Building Code Council under the provisions of RCW 19.27 as amended herein is in effect in the City of Oak Harbor~~ are adopted by reference with the deletions, additions, and exceptions as set out in this chapter and shall be the city's plumbing code; provided, however, that Chapter 51215 Water Heaters, Chapter 7, Part II, Building Sewers, Chapter 12, Gas Piping, and Chapter 15, Fire Stop Protection, are not adopted. One copy of each the document listed in this section shall be filed on file in the office of the city clerk for examination by the public.

17.12.030 Administration and enforcement – Rules and regulations.

The city council may upon notice and hearing promulgate such rules and regulations as may be necessary to the effective and efficient administration of the code.

17.12.040 Administration and enforcement – Building official authority.

The Uniform Plumbing Code shall be administered and enforced by the city building official.

17.12.050 Notices.

It is unlawful for any person to remove, mutilate, destroy or conceal any lawful notice issued or posted by the building official pursuant to the provisions of this code.

17.12.060 Liability limitations.

Nothing contained in this chapter or in the Uniform Plumbing Code is intended to be, nor shall be, construed to create or form the basis for any liability on the part of the city or its officers, employees or agents, for any injury or damage resulting from the failure of a building to conform to the provisions of the Uniform Plumbing Code.

17.12.070 Amendments – Additions.

The following sections of the Uniform Plumbing Code as adopted in OHMC 17.12.020 in effect are amended to read as follows:

- (1) Section 103.4.1 is hereby amended to read as follows:

103.4.1 Permit Fees. Fees shall be assessed in accordance with the provisions of this section and as set forth in the fee schedule Table 17-5. The fees are determined and adopted by the city of Oak Harbor.

TABLE 17-5 PLUMBING PERMIT FEES

ACTION	FEE
Permit Issuance	
For the issuance of each plumbing permit	\$20.00
For issuing each supplemental permit for which the original permit has not expired, been canceled or finalized	\$10.00
Unit Fee Schedule (In addition to required permits as listed above)	
For each plumbing fixture or on one (1) trap or set of fixtures on one trap (including water, drainage piping and backflow protection thereof)	\$7.00
For each building sewer and each trailer park sewer	\$15.00
Rainwater systems per drain (inside building)	\$7.00
For each cesspool (where permitted)	\$7.00
For each private sewage disposal system	\$40.00
For each water heater including vent	\$12.00
For each industrial waste pretreatment interceptor, including its trap and vent, excepting kitchen type grease interceptors functioning as fixture traps	\$7.00
For each installation, alteration, or repair of water piping or water treating equipment, or both, each	\$7.00
For repair or alteration of drainage or vent piping, each fixture	\$7.00
For each lawn sprinkler system on any one meter, including backflow protection devices thereof	\$7.00
For atmospheric type vacuum breakers or backflow protection devices not included in lawn sprinkler systems	
1 to 5 devices	45.00
Over 5 devices, each	\$1.00
For each backflow protection device other than atmospheric type vacuum breakers:	
2 inches (50.8 mm) diameter and smaller	\$7.00
Over 2 inches (50.8 mm) diameter	\$15.00
For each graywater system.	\$40.00
For initial installation and testing for a reclaimed water system	\$30.00
For each annual cross-connection testing of a reclaimed water system (excluding initial test)	\$30.00
For each medical gas piping system serving one to five inlets or outlets for a specific gas.	\$50.00
For each additional medical gas inlet or outlet	\$5.00
Swimming Pools For each swimming pool or spa:	
Public pool	Varies by Valuation Plus Permit Fee
Public spa	Varies by Valuation Plus Permit Fee
Private pool	Varies by Valuation Plus Permit Fee
Private spa	\$30.00

ACTION	FEE
Miscellaneous	
For each appliance or piece of equipment regulated by the Plumbing Code but not classed in other appliance categories, or for which no other fee is listed in this code.	\$7.00
<u>Other Inspections and Fees Refer to Fee Table 17-2.</u>	

(2) Section 103.4.5 is hereby amended to read as follows:

103.4.5 Fee Refunds.

103.4.5.1 The building official may authorize the refunding of any fee paid hereunder which was erroneously paid or collected.

103.4.5.2 The building official may authorize refunding of 80 percent of the permit fee paid when no work has been done under a permit issued in accordance with this code.

103.4.5.3 The building official shall not authorize the refunding of any fee paid except on written application filed by the original permittee not later than 180 days after the date of fee payment.

103.4.5.4 The building official may authorize refunding of not more than 80 percent of the plan review fee paid when an application for a permit for which a plan review has been paid is withdrawn or canceled before any plan reviewing is done.

17.12.075 Amendments Deletions.

The following sections of the Uniform Plumbing Code are deleted and not in effect in the City of Oak Harbor:

Chapter 12.

Chapter 15.

Those requirements of Chapter 5 relating to venting and combustion air of fuel fired appliances.

Those portions of the Uniform Plumbing Code addressing building sewers.

17.12.080 Penalties.

- (1) It shall be unlawful for a person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy or maintain any building, structure or building service equipment or cause or permit the same to be done in violation of this chapter or the technical codes.
- (2) Civil Violation. Except as provided in subsections (4) and (5) of this section, any violation of any of the provisions of this chapter or of the technical codes constitutes a civil violation as provided for in Chapter 1.28 OHMC, for which a monetary penalty may be imposed as provided therein.
- (3) Criminal Penalty. In addition to or as an alternative to any other penalty provided in this chapter or by law, any person who intentionally or knowingly violates any of the provisions of this chapter or the technical codes shall be guilty of a misdemeanor and

upon conviction shall be punishable by a fine of up to \$1,000 or a jail sentence of up to 90 days in jail, or both such fine and jail time.

- (4) **Plumbing Code Violations.** Violations of the Uniform Plumbing Code as adopted under this chapter shall be misdemeanors punishable by a fine of up to \$1,000 or a jail sentence of up to 90 days, or both such fine and jail time.
- (5) **Violations of Orders under This Chapter.** Any person constructing, repairing, operating, maintaining, changing an occupancy, occupying or moving a building, structure, occupancy, or premises contrary to the provisions of this chapter who continues to construct, repair, operate, maintain, change occupancy, occupy or move such building, structure, occupancy or premises when ordered by the building official to desist from violating a provision or provisions of this chapter shall be guilty of a misdemeanor punishable by a fine of up to \$1,000 or a jail sentence of up to 90 days, or both such fine and jail time.
- (6) **Separate Offense.** Each day or portion thereof upon which a violation occurs constitutes a separate offense under subsections (1), (2), (3), (4) and (5) of this section.
- (7) **Destruction of Notice.** It shall be unlawful for any person to remove, mutilate, destroy or conceal any notice issued and posted by the building official pursuant to the provisions of this chapter or the building code which violations shall be a civil offense as described in subsection (2) of this section.

17.12.090 Severability.

Should any section, paragraph, sentence or word of this chapter or codes hereby adopted be declared for any reason to be invalid, it is the intent of the city council that it would have passed all other portions of this chapter and of the codes hereby adopted independent of the elimination herefrom of any such portions as may be declared invalid and accordingly such declaration of invalidity shall not affect the validity of this chapter as a whole nor any part hereof other than the part so declared to be invalid.

17.12.100 Hearing examiner to function as appeals board.

All references to the term "board of appeal(s)" shall deem to mean the hearing examiner as per OHMC 18.40.180. Permits under this chapter shall be Type I review process as per OHMC 18.20.230. Appeals of decisions of applicable codes adopted under this chapter shall be to the hearing examiner.

Section Seven. Oak Harbor Municipal Code Chapter 17.14 adopted by §12 of Ordinance 1514 in 2007 is hereby amended to read as follows:

**Chapter 17.14
2006-WASHINGTON STATE ENERGY CODE**

2009 International Building Code Ordinance

Page 27 of 30

\\City\planning\CC\11-4-11\Building Code Amendments Ord 010411.doc

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Sections:

- 17.14.010 Title.**
17.14.020 ~~Document adopted by reference~~ Applicability of Washington State Energy Code.
17.14.030 Administration and enforcement – Rules and regulations.
17.14.040 Administration and enforcement – Building official authority.
17.14.050 Notices.
17.14.060 Liability limitations.
17.14.070 Penalties.
17.14.080 Severability.
17.14.090 Hearing examiner to function as appeals board.

17.14.010 Title.

This chapter shall be known as the ~~energy code~~ Washington State Energy Code of the city of Oak Harbor.

17.14.020 ~~Document adopted by reference.~~ Applicability of Washington State Energy Code.

The most recent version of the Washington State Energy Code, 2006 Edition, ~~and Chapter 51-11 WAC,~~ as adopted by the Washington State Building Code Council under the provisions of Chapter 19.27A RCW, ~~are adopted by reference with the deletions, additions, and exceptions as set out~~ is in effect in the City of Oak Harbor and in this chapter and shall be the city's energy code. One copy of ~~each document listed in this section~~ the Energy Code shall be filed in the office of the city clerk for examination by the public.

17.14.030 Administration and enforcement – Rules and regulations.

The city council may upon notice and hearing promulgate such rules and regulations as may be necessary to the effective and efficient administration of the code.

17.14.040 Administration and enforcement – Building official authority.

The Washington State Energy Code shall be administered and enforced by the city building official.

17.14.050 Notices.

It is unlawful for any person to remove, mutilate, destroy or conceal any lawful notice issued or posted by the building official pursuant to the provisions of this code.

17.14.060 Liability limitations.

Nothing contained in this chapter or in the Washington State Energy Code is intended to be, nor shall be, construed to create or form the basis for any liability on the part of the city or its officers, employees or agents, for any injury or damage resulting from the failure of a building to conform to the provisions of the Washington State Energy Code.

17.14.070 Penalties.

- (1) It shall be unlawful for a person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy or maintain any building, structure or building service equipment or cause or permit the same to be done in violation of this chapter or the technical codes.

- (2) **Civil Violation.** Except as provided in subsections (4) and (5) of this section, any violation of any of the provisions of this chapter or of the technical codes constitutes a civil violation as provided for in Chapter 1.28 OHMC, for which a monetary penalty may be imposed as provided therein.
- (3) **Criminal Penalty.** In addition to or as an alternative to any other penalty provided in this chapter or by law, any person who intentionally or knowingly violates any of the provisions of this chapter or the technical codes shall be guilty of a misdemeanor and upon conviction shall be punishable by a fine of up to \$1,000 or a jail sentence of up to 90 days in jail, or both such fine and jail time.
- (4) **Violations of Orders under This Chapter.** Any person constructing, repairing, operating, maintaining, changing an occupancy, occupying or moving a building, structure, occupancy, or premises contrary to the provisions of this chapter who continues to construct, repair, operate, maintain, change occupancy, occupy or move such building, structure, occupancy or premises when ordered by the building official to desist from violating a provision or provisions of this chapter shall be guilty of a misdemeanor punishable by a fine of up to \$1,000 or a jail sentence of up to 90 days, or both such fine and jail time.
- (5) **Separate Offense.** Each day or portion thereof upon which a violation occurs constitutes a separate offense under subsections (1), (2), (3) and (4) of this section.
- (6) **Destruction of Notice.** It shall be unlawful for any person to remove, mutilate, destroy or conceal any notice issued and posted by the building official pursuant to the provisions of this chapter or the building code which violations shall be a civil offense as described in subsection (2) of this section.

17.14.080 Severability.

Should any section, paragraph, sentence or word of this chapter or codes hereby adopted be declared for any reason to be invalid, it is the intent of the city council that it would have passed all other portions of this chapter and of the codes hereby adopted independent of the elimination herefrom of any such portions as may be declared invalid and accordingly such declaration of invalidity shall not affect the validity of this chapter as a whole nor any part hereof other than the part so declared to be invalid.

17.14.090 Hearing examiner to function as appeals board.

All references to the term "board of appeal(s)" shall deem to mean the hearing examiner as per OHMC 18.40.180. Permits under this chapter shall be Type I review process as per OHMC 18.20.230. Appeals of decisions of applicable codes adopted under this chapter shall be to the hearing examiner.

Section Eight. Oak Harbor Municipal Code Chapter 17.18 adopted by §15 of Ordinance 1514 in 2007 is hereby deleted in its entirety.

Section Nine. Oak Harbor Municipal Code Chapter 17.28, 2006 International Existing Building Code adopted by §19 of Ordinance 1514 in 2007 is hereby deleted in its entirety.

Section Ten. Severability and Savings Clause

- (1) 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.
- (2) Deletion or amendment of provisions from the Oak Harbor Municipal Code shall not terminate any obligation to the City already vested or incurred thereunder.

Section Eleven. Effective Date. This Ordinance shall be in full force and effect (5) five days after its publication.

PASSED by the City Council this ___ day of _____ 2011.

CITY OF OAK HARBOR

Approved () _____
Vetoed () Jim Slowik, Mayor

Date

ATTEST:

Approved as to Form:

City Clerk

City Attorney

Published: _____

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

Bill No. 7
Date: January 4, 2011
Subject: Public Hearing and Final
Consideration - Ordinance
Amendment, Utility Billing Due
Date

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

This ordinance proposes to amend Chapter 3.95 for the purpose of updating a component of the City utility billing and collection procedures. The ordinance was introduced to City Council on December 21, 2010. This agenda bill asks that Council conduct a public hearing and review the proposed ordinance for final consideration.

AUTHORITY

The City has authority under RCW 35A.11.020 to regulate its internal affairs and to provide for the improvement and beautification of public ways in the rendering of local social, cultural, recreational, educational, governmental, or corporate services, including operating and supplying of utilities and municipal services commonly or conveniently rendered by cities or towns.

SUMMARY STATEMENT:

This ordinance will specifically update OHMC 3.95.070 to clarify the language used to set the date on which utility bills become delinquent. The Finance Department has been receiving inquiries from the public regarding the possibility of adding a few additional days to the current delinquency date in order to facilitate timely payment by customers. Based on this input, the Finance Department recommends that the delinquency date be moved to the 18th day of the month following the month in which the bills were mailed to customers. Doing so gives customers more notice and lead time between the date they receive their invoices and the final date that payment is due.

STANDING COMMITTEE REVIEW:

This item has not been reviewed by the Finance Standing Committee.

RECOMMENDED ACTION:

1. Hold a public hearing
2. Approve the ordinance amending OHMC 3.95 to adjust utility payment due date.

ATTACHMENTS:

Proposed ordinance amending Oak Harbor Municipal Code Chapter 3.95 "Utility Billing and Collection Procedures."

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF OAK HARBOR AMENDING OAK HARBOR MUNICIPAL CODE CHAPTER 3.95 ENTITLED "UTILITY BILLING AND COLLECTION PROCEDURES"

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

Section One. Oak Harbor Municipal Code Chapter 3.95 entitled "Utility Billing and Collection Procedures" is hereby amended to read as follows:

**Chapter 3.95
UTILITY BILLING AND COLLECTION PROCEDURES**

Sections:

- 3.95.010 Policy and scope.
- 3.95.020 Definitions.
- 3.95.040 Application – Account initiation fee.
- 3.95.050 Account to be initiated by property owner or agent.
- 3.95.060 Payments applied.
- 3.95.070 Charges – Due date.
- 3.95.080 Delinquency.
- 3.95.090 Hearing prior to utility service turn-off.
- 3.95.100 Water cut-offs – Lien enforcement.
- 3.95.110 Disconnect water service – Charge – Unpaid – Payment requisite for reconnect.
- 3.95.120 Turning water on – Charges.
- 3.95.130 Utility connection charges – Waiver for low-income persons.
- 3.95.140 Security deposits for service and late fees.
- 3.95.150 Collection agency.
- 3.95.160 Billing error appeals.
- 3.95.170 NSF check – Fee for collection.

3.95.010 Policy and scope.

- (1) The policy of the city is to apply standardized utility billing and collection procedures to simplify customer and administrative response to the process involved.
- (2) This chapter shall apply to the water, stormwater, sewer and solid waste utilities.

3.95.020 Definitions.

- (1) "Utility" refers to any of the city of Oak Harbor utilities which include stormwater utility (rates and regulations which are codified under OHMC Title 12), sewer utility (rates and regulations which are codified in OHMC Title 14), water utility (rates and regulations

which are codified under OHMC Title 13) and the solid waste utility (rates and regulations which are codified in OHMC Title 15).

- (2) "Finance director" means the chief financial officer of the city of Oak Harbor.
- (3) "Lien" is the lien for utilities authorized by state law. For the water utility, the lien statutes are RCW 35.21.290 and 35.21.300. For the solid waste utility, the lien statutes are RCW 35.21.140 and 35.21.150. For the stormwater utility and sewer utility, the lien statutes are RCW 35.67.200 through 35.67.290.
- (4) "Supervisor of the Water Department" means the public works director or his or her designee.

3.95.040 Application – Account initiation fee. Application to have utility accounts initiated shall be made during normal working hours in writing on forms directed by the finance director. An account initiation fee of Twenty-five Dollars (\$25.00) shall be paid in advance by each applicant for utility service before the utility service is provided. The account initiation fee shall be nonrefundable. The account initiation fee shall only apply to new accounts and not existing accounts or transferring accounts within the city limits of Oak Harbor.

3.95.050 Account to be initiated by property owner or agent

- (1) Utility accounts shall be opened by and billed to the owner of the property to which the services are rendered or to such property owner's designated agent. Utility accounts for water and sanitary sewer service must be based upon service to at least one meter. No account may be opened for service to a customer unless that customer is responsible for all service to the water meter applicable to that account.
- (2) A "designated agent" may be a tenant, property manager, or other person designated in writing by the property owner as the property owner's agent for all purposes related to the utility account. The finance director shall prescribe the requisite form to be used by property owners wishing to designate an agent pursuant to this section. All owners of property, however, shall remain ultimately and legally liable for the payment of any and all utility charges against the premises to which such utility service has been furnished or is available to the maximum extent allowed by law.
- (3) Tenant Accounts. In the event that a tenant meeting the requirements of RCW 35.21.217 requests to open a new account due to non-payment of the existing account by the landlord, the tenant shall be allowed to open such an account PROVIDED that the tenant agrees to pay all charges owing which accrued during the tenant's occupancy of the premises. In no event shall an account be opened for service unless the customer is responsible for all service to the water meter applicable to that account.

3.95.060 Payments applied. Payments received by the city for utility service shall be applied in the following order:

- (1) Outstanding late charges;
- (2) Solid waste charges;
- (3) Stormwater utility charges;
- (4) Sanitary sewer charges;
- (5) Water charges.

3.95.070 Charges – Due date. Utility service charges shall be billed monthly for services provided during the previous billing period. Bills shall be due upon billing and payable not later than the eighteenth (18th) day of the calendar month following after the calendar month date of mailing. Thereafter the utility service charges shall become delinquent. Sewer, stormwater and solid waste utility charges shall bear interest at the rate of eight percent (8%) per annum, prorated monthly, and water utility charges shall bear interest at the rate of eight percent (8%) per annum.

3.95.080 Delinquency. If the account is not paid when due, the city shall assess a Fifteen Dollar (\$15.00) delinquency payment and give notice that the utility account is delinquent.

In addition, the notice shall:

- (1) Set a date for water turn-off not less than (7) seven days after giving of notice; and
- (2) Specify that service will be shut off unless payment in full is made to the City within (7) seven days; and
- (3) Advise that a hearing may be requested by contacting the finance department prior to the scheduled date for water turn-off; and
- (4) Provide the address and telephone number of the finance department; and
- (5) Advise that an additional charge of Ten Dollars (\$10.00) will be added to the bill if water cut-off or meter removal is implemented as a charge for cutting off the water and/or meter removal; and
- (6) Provide that service will not be shut off while a hearing is pending.

3.95.090 Hearing prior to utility service turn-off. Upon customer request of the finance director or his/her designee, the customer shall be given the opportunity to explain why the utility service should not be turned off. Service will not be shut off while this hearing is pending. The finance director or his/her designee shall set the hearing date to be held within three (3) days of the customer's request for a hearing.

3.95.100 Water cut-offs – Lien enforcement.

- (1) Sewer and Stormwater Lien. As an alternative method to enforce the lien for nonpayment of sewer or stormwater services or both, the city may cut off water service and refuse to provide water service to premises which were furnished water after the charges have become delinquent and unpaid; provided, that unless the lien is filed with the Island County auditor, the lien shall not be for more than (6) six months' service.
- (2) Water Lien. As a means of enforcement, the lien for water services supplied by the city may cut off and refuse to supply water to the premises which were furnished with the water services after the charges have become delinquent and unpaid; provided, that the lien may not be for more than four (4) months of water services.
- (3) The fee charged for turning off water shall be Ten Dollars (\$10.00) and shall be assessed by 4:30 p.m. the day before the water is turned off.

3.95.110 Disconnect water service – Charge – Unpaid – Payment requisite for reconnect. If the service has been disconnected because the water, sewer or stormwater bill has not been paid, the water service shall not be turned on until the charges under the applicable lien or liens have been paid.

3.95.120 Turning water on – Charges. No water from the city water supply shall be turned on for service into any premises by any person except the supervisor of the water department or his/her designee. A fee of Fifteen Dollars (\$15.00) shall be charged for turning water on for service. This charge shall not be assessed when turning water on for purposes of account initiation pursuant to OHMC 3.95.040. The charge for turning on the water after 5:00 p.m. on any work day or on weekends shall be Seventy-five Dollars (\$75.00) except for emergency responses.

3.95.130 Utility connection charges – Waiver for low-income persons. The finance director may waive connection charges for properties purchased by low-income persons from organizations exempt from tax under Section 501(c)(3) of the federal Internal Revenue Code as amended prior to July 23, 1995. Waivers of connection charges for the same class of utility service must be uniformly applied to all qualified property. Nothing in this section authorizes the impairment of a contract.

3.95.140 Security deposits for service and late fees.

- (1) Security Deposit for Continuing Service. The finance director may order a deposit as a condition of continuing or restoring any utility service where it appears, in his/her discretion, there is a risk of nonpayment or underpayment or as permitted by 11 USC Section 366 or any other applicable law. The deposit shall be a reasonable amount, but in no case less than four (4) months' established billing.

- (2) **Solid Waste Only Billing.** Where premises are not served by city water or sewer service, the customer is required to tender a deposit to the utility department equal to four (4) months of the estimated cost of the service to be provided as determined by the utility department.
- (3) **Front Load Dumpster Security.** The solid waste utility shall collect advance payment for container placement and up to four (4) months of charges for rental. The city finance director may accept satisfactory securities or surety bond in lieu of cash payment. Such payment or security may be applied toward the payment of service charges whenever the same shall become due. The solid waste utility reserves the right to require additional advance payment for subsequent service that may be requested by the customer.
- (4) When a utility deposit required under this section remains unpaid for more than thirty (30) days after giving notice of the same, the city may terminate utility service for the utility requiring deposit including turning off water so long as notice and availability of hearing is provided as per this chapter.

3.95.150 Collection agency.

- (1) The city may refer unpaid accounts for collection to a collection agency approved by the city council for which there is a contract.
- (2) Accounts referred to collection shall be only after written notice has been given to the account holder at his/her last known address by certified mail, return receipt requested, and by regular mail, postage prepaid thirty (30) days in advance of the referral to collection.

3.95.160 Billing error appeals.

- (1) **Time for filing.** A utility account-holder objecting to any utility service charge billing may request a hearing before the city administrator by filing a written request with the finance director within sixty (60) days of the first service date on the challenged billing.
- (2) **Form of appeal.** The request shall set forth the name, address and phone number of the person requesting the hearing; the nature of the service charges at issue, such as water, sewer, stormwater or solid waste; the amount of the billing; the dates of service; and the basis for the objection.
- (3) **Setting of hearing date.** The city administrator or his/her designee shall set a hearing date and time within two (2) weeks of the date of receipt of the request for a hearing, and shall advise the person requesting the hearing of the hearing date, time and location using the address and telephone information provided by the requestor.
- (4) **Failure to appear.** Failure of the requestor to appear for this hearing without prior notice and excuse shall constitute a waiver of the hearing.

- (5) **Format of the hearing.** At the hearing, the requestor shall have the opportunity to present evidence and argument in support of requestor's objections to the utility service charge billing.
- (6) **Determination of City Administrator.** The city administrator shall consider the evidence and argument submitted by the requestor and make a determination on requestor's challenge in writing within ten (10) days.
- (7) **Time for Appeal from City Administrator Determination.** The determination of the city administrator shall be final unless appealed within five (5) business days of the date of mailing the determination to the address provided by the requestor above.
- (8) **Appeals to Hearing Examiner.** Appeals from the determination of the city administrator shall be to the hearing examiner. The procedures of OHMC 1.24.020 – 1.24.110 shall apply to these appeals.
- (9) **Decision of Hearing Examiner Final.** The decision of the hearing examiner shall be final unless appealed to a court of competent jurisdiction within thirty (30) days of issuance of the hearing examiner's decision.
- (10) **Amount Owing,** In the event that the account-holder's appeal results in a determination that an amount is owing to the city, the amount must be paid within three (3) days of the date of the final decision.

3.95.170 NSF check – Fee for collection. The fee charged for a nonsufficient fund check (NSF check) shall be Forty Dollars (\$40.00), or the amount of the NSF check, whichever is less.

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

Section Three. Effective Date. This Ordinance shall be in full force and effect five days after publication.

PASSED by the City Council this _____ day of _____, 2010.
 APPROVED by its Mayor this _____ day of _____, 2010.

THE CITY OF OAK HARBOR

 Mayor

Attest:

City Clerk

Approved as to Form:

City Attorney

Published: _____