



PLANNING COMMISSION

AGENDA

February 22, 2011

ROLL CALL: NEIL _____ JENSEN _____ FAKKEMA _____
WASINGER _____ OLIVER _____
WALLIN _____

1. **Approval of Minutes – January 25, 2011 – Page 3**
2. **Public Comment** – Planning Commission will accept public comment for items not otherwise on the agenda for the first 15 minutes of the Planning Commission meeting.

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3. **PROPOSED CHANGES TO CHAPTER 21.80 OHMC PERTAINING TO BINDING SITE PLANS – Public Hearing (continued)**

Development Services staff will present a revised draft of changes to Chapter 21.80 of the Oak Harbor Municipal Code which will establish a process for altering previously approved Binding Site Plans. The Public Hearing was opened on December 28, 2010. The Planning Commission may close the hearing and make a recommendation to the City Council.

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4. **LOW IMPACT DEVELOPMENT (LID) CODE UPDATE PROJECT – Public Hearing**

In January, 2011 staff presented the “staff draft” of the proposed LID code to Planning Commission. The staff draft represents two years of work by staff and Planning Commission about how the community should approach LID and contains new code provisions pertaining to streets, landscaping, and grading practices. In February, staff will continue discussions with Planning Commission about the draft code and Planning Commission may open a public hearing following the discussion.

MINUTES

January 25, 2011

**PLANNING COMMISSION
REGULAR MEETING
CITY HALL – COUNCIL CHAMBERS
January 25, 2011**

ROLL CALL: **Present:** Kristi Jensen, Keith Fakkema, Greg Wasinger, Gerry Oliver and Jeff Wallin. **Absent:** Bruce Neil. **Staff Present:** Development Services Director, Steve Powers; Senior Planner Ethan Spoo; and Associate Planner; Melissa Sartorius

Chairman Neil called the meeting to order at 7:30 p.m.

MINUTES: **MR. WASINGER MOVED, MR. OLIVER SECONDED, MOTION CARRIED TO APPROVE THE DECEMBER 28, 2010 MINUTES AS PRESENTED.**

PUBLIC COMMENT: No comments.

PROPOSED CHANGES TO CHAPTER 21.80 OHMC PERTAINING TO BINDING SITE PLANS – Public Hearing (continued)

Mr. Spoo summarized research and presented concepts for further discussion.

Mr. Spoo reported that State law requires an alteration process for binding site plans (BSP) and currently the City does not have an alteration process. State law also indicates that all development within a binding site plan shall be consistent with the approved binding site plan. Local jurisdictions are given the latitude and flexibility to shape that process to meet local circumstances.

Mr. Spoo reported that staff looked at 13 other jurisdictions across the State and found that 8 jurisdictions require all property owners within a BSP to sign a binding site plan alteration, and 5 jurisdictions require something less than all of the property owners to sign. Mr. Spoo further stated that staff believes that a balance is needed which allows for alterations but respects the rights of property owners within a BSP. Mr. Spoo stated that staff is proposing a two-tier process for requesting alterations to BSP's based on the findings and comments received at the last Planning Commission meeting.

Tier 1 provides for BSP's which exist at the time the code is adopted, assuming the code is adopted those BSP's would require the signatures of all owners within the BSP in order for an alteration to be made. Tier 2 would provide for future BSP's. Those BSP's would require the signatures of only the property owners whose lots are proposed to be altered.

In addition to the two-tier process, staff is recommending a change in requirements regarding what is shown on the binding site plan map. Only those things which are in the public interest would be shown on the BSP map. The existing BSP map requirements have required information which is not in the public interest to be recorded on the binding site plan. Once that information gets recorded, the City must settle disputes between property owners, even if those disputes don't pertain to the public interest. By reducing the requirements for what is shown on the binding site plan map, the City won't be in the position in deciding between private issues between property owners.

Mr. Spoo concluded by recommending that the Planning Commission accept public testimony and continue the hearing to February 22, 2011.

Mr. Fakkema opened the public hearing.

Bill Massey (41 NE Midway Blvd. Ste. 101) pointed out that OHMC 21.80.200 allows for minor modifications and has been used for minor modifications in the past. Mr. Massey supported keeping the existing code in place. Mr. Massey also used the Oak Tree Village Binding Site Plan as an example to demonstrate how a modification could be stopped by one person even though their lot may not even be connected. Mr. Massey also pointed that some of the Goldie Road properties that may be annexed in the future already have binding site plans through the County. Mr. Massey stated that there were more implications to the proposed changes than just the specific binding site plan that was discussed at the previous meeting.

Kenneth Manny (2094 SW Dillard Lane) stated he was property owner within the Oak Tree Village BSP. He noted that this BSP is separated by Cabot Drive and that making changes, minor or otherwise, would require him to get the consent of the property owners on the other side of Cabot Drive. Mr. Manny stated that the issue was of procedural fairness for people that own property in a situation where the interest of one group of owners is entirely different and separate from the interest of another group of owners. Mr. Manny believed if the Planning Commission were to adopt the plan that requires 100 percent unanimity; it would stop any type of development or modifications. Mr. Manny stated that it gives a disproportionate advantage to persons who simply say no for the reasons of saying no or they're too busy to read the document or they are not inclined to be cooperative or worst yet they want to get something out of it in exchange for their willingness to cooperate even though they are in no way affected. Mr. Manny asked the Planning Commission to carefully consider the options so that we don't find ourselves in a position where people with a legitimate interest in making a change to a BSP are essentially thwarted simply because it is impossible to get 100 percent unanimity among all of the owners. Mr. Manny stated that Oak Tree Village was a perfect example of why 100 percent unanimity can never be enforced and be fair at the same time.

Mr. Powers commented that the ideas that have been presented are only concepts at this stage and there is no specific draft language before the Planning Commission at this time.

Mel Vance (PO Box 2882) stated that he was torn between requiring a simple majority or a super majority and he was in favor of everyone having input regarding a BSP amendment. He also stated that he didn't think Oak Tree Village was a good example because he believed it was an extremely unusual situation to have a BSP that is split by a street. He suggested that Oak Tree Village be split into two BSP's if possible.

Chris Anderson (390 NE Midway Blvd.) stated that he was also a property owner within Oak Tree Village. Mr. Anderson read from RCW 58.17.035 and noted that it singles out commercial and industrial binding site plans and says that the approval for improvements and finalization of specific individual commercial or industrial lots shall be done by administrative approval. Mr. Anderson suggested treating commercial/industrial and residential BSP's separately as the RCW seems to do.

Bob Severns (1085 SE Regatta Dr., C201) agreed that common ownership of facilities such as driveways, parking spaces and stormwater facilities is appropriate and are commonly found in BSP's. Mr. Severns also noted that BSP's get changed even without alteration language by getting the proper parties together and execute documents to allow the change. Mr. Severns asked that the Planning Commission to not be confused that BSP's can't be changed because they can. Mr. Severns urged the Planning Commission not to make it too easy to change a BSP because to say that we're going to change the BSP and we're going to ignore the other parties even though they purchased their properties after the fact is not something the City wants to do. Mr. Severns pointed out that the majority of the 13 jurisdictions require all parties

to participate in alterations. Mr. Severns agreed with a simpler BSP process on a go-forward basis but suggested that there needs to be a proper search done on people that have an interest in the property and they need to be included in major alterations.

Sue Karahalios (1085 SE Regatta Dr., B-101) thanked staff for acknowledging that there are rights given to those that have an existing BSP. She also appreciated that there is consistency in how people are treated. She supported having all the owners involved in a BSP alteration.

Tom Moser (1204 Cleveland Ave., Mount Vernon WA) detailed his background and experience in land use law. Mr. Moser pointed out that the option to say that everyone gets to vote and you have to have 100 percent gives tremendous veto power to somebody who may own a lot or have an interest in a piece of property. He encouraged the Planning Commission to reconsider that option.

Mr. Moser noted that the language proposed uses the term “restrictive covenants”. He asked if the term meant the face of the BSP or does it mean the CC&R’s or the declarations of CC&R’s. He suggested defining the term.

Mr. Moser stated that the City should divide between public and private as Mr. Spoo has suggested.

Mr. Moser presented a letter dated November 3, 2004 from the City of Oak Harbor’s City Attorney Phil Bleyhl (Attachment 1). Mr. Moser noted the following points Mr. Bleyhl made in the letter:

- The City should not be in the business of deciding ownership.
- Minor modifications to BSP’s are allowed under the code.
- Sign-off by parties to the BSP is not necessary because it gives too much control.

Mr. Moser noted that there is a history of the City doing fine on amending BSP’s until very recently. The BSP amendments were done administratively and he didn’t see any reason that couldn’t continue.

Mr. Moser concluded by stating that just because somebody hasn’t built on a lot yet doesn’t make it the property of the people who have built and that doesn’t transfer ownership to somebody who hasn’t purchased the land.

Being not further public comment, Mr. Fakkema closed the public hearing.

Commission Discussion

Commissioners asked the following questions:

How many jurisdictions were looked at? Mr. Spoo said staff only looked at jurisdictions that had the information readily available on the internet which are the 13 jurisdictions listed in the staff report.

Did staff also consider commercial verses residential BSP’s? Mr. Powers said that staff did consider whether it is necessary to have a different process for commercial and industrial BSP’s and BSP’s used for condominiums but tried an approach that covers all the bases with a single set of procedures and then deal with the specifics of each application as they come forth.

The public hearing was continued to February 22, 2011.

PRELIMINARY DOCKET FOR THE 2011 COMPREHENSIVE PLAN AMENDMENTS – Public Hearing

Mr. Powers reported the City followed advertising procedures to inform the informing the public of the amendment cycle and called for applications. The City received no request for privately sponsored land use map amendments. Therefore, the docket has two items; the annual Capital Improvements Plan update and staff will continue to work on the UGA capacity analysis. In 2011, City staff will work with the County on furthering the analysis. It is not anticipated that there will be any actual Comprehensive Plan amendments coming out of the continuation of the UGA capacity analysis. Mr. Powers summarized the staff report which details the criteria for considering items for the docket and a draft City Council resolution for the proposed docket. Mr. Powers concluded by recommending that the Planning Commission conduct the public hearing and recommend that the City Council approve the proposed docket for the 2011 Comprehensive Plan amendments.

The public hearing was opened. No comments came forth and the public hearing was closed.

ACTION: MR. OLIVER MOVED, MS. JENSEN SECONDED, MOTION CARRIED TO FORWARD A RECOMMENDATION THAT THE CITY COUNCIL APPROVE THE PROPOSED DOCKET FOR THE 2011 COMPREHENSIVE PLAN AMENDMENTS.

LOW IMPACT DEVELOPMENT (LID) CODE UPDATE PROJECT – No Action Required

Mr. Spoo reviewed the concept of Low Impact Development and the project background. Mr. Spoo explained that LID is stormwater practices which mimic natural hydrologic cycle through the use of rain gardens, pervious pavement, native vegetation (Infiltration). Traditional stormwater management uses ponds and pipes (conveyance).

Mr. Spoo said that the reason for LID is the Puget Sound cleanup efforts by the State. There are also advantages to property owners and the community. By moving away from traditional stormwater practices to LID it reduces the amount of public stormwater infrastructure that the community has to maintain and in certain cases, the use of LID instead of a stormwater pond could open up more of the site to development.

Mr. Spoo summarized the project background as follows:

- Project start – late 2007 with grant award
- 2008 – Consultant drafted code
- 2009 – Staff reviewed code
- Early 2010 – Work with Planning Commission
- Late 2010 – Staff drafts code

Mr. Spoo summarized the proposed code changes as follows:

Title 11 “Streets”

- Changes to match subdivision code
- Provisions for LID in streets, sidewalks, driveways. Two new LID street sections

Title 19 “Zoning”

- Chapter 19.44 “Parking”
 - ✓ Maximum parking standard – 150% minimum
 - ✓ Variance required for more than 150% of minimum
 - ✓ Pervious surface for 125% or more
- Chapter 19.46 “Landscaping and Screening”
 - ✓ Tree retention is rolled into native vegetation areas

- ✓ Advantages over tree retention concept:
 - Cross over with critical areas and landscape areas
 - Focus on area instead of number
- Chapter 19.47 “Clearing and Grading”
 - ✓ Performance standards – the how and when of grading.
 - Phased grading – where possible
 - Dust suppression
 - Preserve duff layer
 - Approval required for wet season grading
- Title 21 – “Subdivisions”
 - ✓ New street sections consistent with Title 11
 - ✓ Corridor buffers as LID facilities

Mr. Spoo reported that future scheduling could be as follows:

- February – Revisions by staff, pending PC comments.
- February – Open public hearing. Possible recommendation to Council?
- March – present to council, Council hearing.
- April – adoption by Council

Commission Discussion

Commissioners asked the following questions:

Why is the entire development cleared when some of the lots are not built on for a long time?

Mr. Spoo said that it is cheaper to have the grading equipment on site one time rather than bringing the equipment back. In some cases, developers specify a phasing plan and there may be a few years between phases. In that case, it may be more appropriate to have phased grading.

Does the City offer any incentives to encourage phased grading? Mr. Spoo said that there were none at this point. Mr. Powers said it was an interesting idea that the City could consider. Mr. Powers also explained that the mass grading that occurs relates to the installation of the utilities as well. Depending upon how the subdivision is being served by utilities and where those utility lines may be; there is a need to grade more than what you might see in the first phase of building. But that doesn't mean there can't be some ways that we might see to limit that grading through this kind of ordinance.

Forty years ago developers saved trees and built around the trees. What has changed that makes it necessary to clear the entire site? Mr. Powers said that two things have changed; lot size and home size. Over the years we have seen lot sizes get smaller and home sizes get larger. When there was a smaller home on a larger lot it was possible and made good sense to grade just the area that for the home.

Where does the oil and sludge from the run-off go? Mr. Spoo said that it goes into the rain garden or the bioretention area. The oil settles into the soil and there are microbes that break down the hydrocarbon naturally into something that is not harmful to the environment.

Is this something the County is adopting as well? Mr. Spoo said that the County received the same grant and they are just now starting to look at LID.

BEING NO FURTHER BUSINESS BEFORE THE PLANNING COMMISSION, THE MEETING WAS ADJOURNED AT 9:08 P.M.

Steve
LARRY C.
PIER POINT
RELC

LAW DEPARTMENT

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November 3, 2004

Scott M. Missall
Short Cressman & Burgess
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Re: Pier Point

Dear Mr. Missall:

This letter is in response to your letter of October 15, 2004 concerning title to the lots which are undeveloped in the Pier Point Condominium Binding Site Plan area.

It seems to me there are four major issues:

1. Whether the development rights to these lots still exist as property rights of the title holder.
2. Whether the City can process a change in the development schedule as a minor modification of the site plan or for a change in intensity of use for a lot.
3. Who must sign-off on an application or approved site plan change.
4. Whether the owner of the vacant lots can shift units from one lot to another on the plat.

P.C. HRC.
REC'D. 1/25/11
RSP 8

1. Ownership is a predicate to processing of a permit change. Because the City does not adjudicate ownership, the City does not have to process a land use permit where ownership is disputed. See for example, Taylor v. Board of Adjustment of the Town of South Bethany (Del. Supr.) 1985 WL 188302 . However, since the City permit process is not actually the place to adjudicate ownership disputes, the City may proceed with processing a permit even when there might be questions concerning title. MacDonald v. Board of Adjustment of the Town of Dewey Beach, 558 A.2d 1083, 1086 (Dela. 1989) This is especially true where the applicant, as you have now provided, shows recognition of ownership interest by a title company, the City can move forward with processing the application for a binding site plan change. Sun Oil Company v. Railroad Commission, 390 S.W.2d 803, 807 (Tex, 1965). Such processing or even approval, however, is not made in derogation of any property rights of others who own or rent property in Pler Point Condominiums. Rather, in a sense the City is looking at the site plan -- i.e., the plan for development and not the binding site plan -- i.e., the division into lots, easements and other reciprocal rights. Thus, the City can approve changes again to the site plan without adjudicating other's ownership interests. The difficulty for your client is that both types of information are on the same document.

2. Minor modification process. It is apparent that the previous Planning Director followed a long process of dealing with these issues by allowing amendments of the binding site plan under OHMC 21.80.200. It is my understanding that such long standing interpretation will not be disturbed by the City at this time, although, it seems a bit strained.

Minor modification, however, cannot mean the shifting of residential units from one location to another in the same development.

3. Sign-off by parties on the binding site plan. A question was raised as to who had to sign off on any change to the binding site plan map. That issue is not addressed in the City Code. RCW 58.17.215 et seq., provides some guidance. It authorizes a partial amendment which covers only certain lots. So long as the owners of the lots are wanting to make the change to their lots, they can sign-off to an amendment which covers the "site plan" elements of the lots. It would seem, therefore, an amending document should only show the lots for which change is being sought and that the person's needing to sign-off on the site plan are the owners of record for the site plan and not all of the owners of the binding site plan. Such an approval would not affect the other owners' interests. In fact, as the RCW sections above cited: an easement interest will not be affected by such amendment. However, again, the City has no authority to affect the others' interests in the condominium and because site plan elements are located on the binding site plan map, it is arguable such rights may be claimed. In short, the new map would only cover the lots

involved. The issue then is access easements. I understand you feel those are acceptably handled. We would take no position on that.

4. Change in development schedule. It is my understanding that you are claiming the development schedule is purely a creature of City regulation. Therefore, it is part of the site plan and not an issue of ownership and a property right of others in the condominium association. As such, it is subject to amendment by the City and should be allowed subject to any changes in regulatory law which have occurred since then. I can conceive of no reason why it should not be permitted. Approval of the schedule change, however, would subject the owner into applying for and obtaining all of the necessary permits.

Yours truly,



Phillip L. Bleyhl
City Attorney

PLB/kp

cc: Development Services

Proposed Changes
to
Chapter 21.80 Binding Site Plan

Public Hearing
(continued from 1-25-11)

City of Oak Harbor Planning Commission Report

Date: February 22, 2011
Subject: Binding Site Plan Code
Amendments

FROM: Steve Powers, Director and Ethan Spoo, Senior Planner

PURPOSE

At its February meeting, Planning Commission will be in the third month of discussions regarding amendments to the binding site plan (BSP) code. This report continues those discussions where they left off in January. The code amendments, if approved, would establish a process for altering previously approved BSPs. With this report, staff presents the second draft of the code for the Planning Commission's consideration.

AUTHORITY

RCW 58.17.035 grants cities the authority to adopt by ordinance procedures for the division of land by use of a binding site plan. Should a city chose to adopt such an ordinance, is required to provide for the alteration or vacation of BSPs.

BACKGROUND

Binding Site Plans

State law provides for the BSP process as an alternative means of subdividing property. This method is typically used in commercial shopping centers, industrial parks and residential condominiums where individual ownership of specific buildings or spaces is desired and where common ownership of other facilities is appropriate (e.g. driveways, parking spaces, landscaping, and stormwater facilities).

The Municipal Code includes a chapter devoted to binding site plans (OHMC 21.80). A recent review of this existing language found that it does not specifically or adequately address alterations. Staff notes this review was the result of a recent application seeking to alter a previously approved binding site plan.

January 25, 2011 Planning Commission Meeting

Discussion concepts presented by staff at the January meeting introduced a two-tiered system whereby alterations to BSPs already in existence would require the signatures of all property owners within that BSP. All future BSPs would require that only those property owners whose lots are proposed to be altered sign the alteration application.

Planning Commission accepted testimony in an open public hearing based on the concepts presented by staff. Two distinctly different opinions were voiced by those who gave testimony: (1) those who believe that the signatures of all property owners within a BSP should be required to make alterations and (2) those who believe that signatures of less than all property owners within a BSP should be required (i.e. only those whose lots are proposed to be altered). The former group pointed out that a BSP, by its very nature, sets up expectations by property owners

of the need for consistency with that BSP. The latter group expressed concern that requiring all signatures would effectively prevent any changes to BSPs since one reluctant property owner could halt an alteration.

More detail on the public comments is available in the January 25, 2011 Planning Commission meeting minutes.

DISCUSSION

Additional Research

Based on comments received at last month's Planning Commission meeting, staff conducted additional research regarding how other communities around the state process alteration requests, as well as the nature of BSPs in Oak Harbor.

At last month's meeting, staff presented research from 13 communities distinguishing between those who require all property owners within a BSP to sign and those which require less than all to sign alteration applications. This month staff researched additional communities increasing the total number to 59. Of the 59 communities researched, 11 communities either do not have a BSP process or an alteration process. Of the 48 communities which do have a process, 39 (81%) require signatures by all property owners within the BSP to make alterations. However, we should proceed with caution in drawing conclusions from this information. Most of the jurisdictions in this category have code language stating that the same process shall be used for alterations as for submitting the original binding site plan application. The two actions are treated the same. It is not clear from this research whether or not any of these jurisdictions have encountered any difficulty in implementing this approach to alterations. This research also does not give any insight in to whether the other jurisdictions' application procedures are guided by policy, rather than code. See Attachment 1 for further detail.

Staff also looked into the number and type of BSPs within the Oak Harbor city boundaries. There are 13 BSPs in city boundaries, ten of which are commercial/industrial BSPs and three of which are residential condominiums. Only one BSP within the city has a construction schedule associated with it. See map in Attachment 2.

Topics for Consideration

The following topics are offered for the Planning Commission's consideration as you review the second draft of the amended code:

- **The City must have an alteration or vacation process.** It bears repeating that the City of Oak Harbor is required under RCW 58.17.035 to provide a process for property owners to seek to alter or vacate portions or all of an approved binding site plan.
- **Submittal of an application is the beginning, not the end, of the process.** It is important to note that the proposed code amendment is primarily intended to put into place a process by which applications for alterations may be submitted and considered. The process only begins with the receipt of the application. The review of the alteration application is deemed a Type II process (an administrative decision, requiring notice to the general public and property owners within 300 feet). This administrative decision is appealable to the City's Hearing Examiner.

- **Varying property owner interests.** At the January 25, 2011 Planning Commission meeting, one of the central issues (based on public testimony) was the topic of varying property owner interests. At issue is whether a single property owner, or group of property owners, should be able to submit an application for a binding site plan alteration without first securing the permission (in the form of signatures on the application) from all property owners within the binding site plan.
- **A BSP is a method of dividing land (public versus private interests).** The binding site plan process is a means of dividing property; it is the approval of this land division that is the ‘public interest.’ The existing code language requires certain information to be included on a binding site plan map that is not necessarily directly related to this purpose. Some of this information may be regulated by other permit procedures (such as through a site plan and design review approval per OHMC 19.48) or it may be in the form of private agreements (covenants) between property owners. It is staff’s belief that the City should not be adjudicating private interest issues, but should focus on issues clearly in the public interest.
- **Research findings.** Staff research shows that the majority of jurisdictions choose to require the signatures of all property owners within a BSP for alterations (by way of stating the procedure for alterations is the same as for original approval). It is unclear from this research whether or not requiring all property owners within a BSP to sign has led to problems. In other words, these cities should not necessarily be looked at as directly applicable models for the City of Oak Harbor. Staff research also shows that the City has relatively few BSPs and most of the BSPs are commercial or industrial. The staff recommendation seeks to create a process that will work with existing and future binding site plans.

SUMMARY OF SECOND DRAFT OF CODE

The second draft of the code responds to the above topics. The code has the following features:

- **Limit what is recorded on BSP map documents.** In order that the City focus its role on the subject land division and what is in the public interest, the language proposed by staff will limit what is recorded on future BSP map documents. Staff is proposing to limit what is recorded on a binding site plan map to those items which pertain directly to land division; primarily lots and their dimensions, rights-of-way, easements (access, parking, open space, etc.), and public utilities (sewer, water, storm).
- **The City will only accept alterations that pertain to the public interest.** As a way of distinguishing between public (land division) and private interests, the City will only accept an alteration application if it pertains to the items recorded on a binding site plan map. Since the items which are recorded on a binding site plan map are being limited, as per the first bullet above, staff believes this will focus the City on those items in the public interest.

Binding site plans approved prior to the date of the new ordinance include items not pertaining directly to land division. In recognition of this fact, the City will accept alterations to already established binding site plans for elements such as zoning setback lines, building envelopes, parking areas, general circulation, landscaping areas, proposed

use, location of buildings, and loading areas.

- **Alteration applications may be submitted by only those property owners who are directly affected.** At its January meeting, Planning Commission accepted public testimony indicating that requiring all signatures for BSP changes could limit private property rights as well as create a process which may be impossible for a property owner to initiate. On the other hand, the Commission also heard testimony that those property owners who may be directly affected by the proposed alteration should have a role in determining whether the amendment is submitted. After reviewing this testimony, other codes and weighing the pros and cons of different approaches, the staff recommends that only those property owners directly affected by the proposed alteration be required to sign the application. In some cases, this may be only one property owner if a change directly affects only his lots (e.g. the alteration of a property line or easement). In other cases, this may require the signatures of multiple property owners who may be affected, as would be the case if an alteration to a shared parking facility were proposed. Each alteration application would need to be accompanied by a title company certification proving ownership, and therefore, ability to submit the application. It is staff's opinion that this process is the most appropriate given all the information at our disposal.

CITIZEN COMMENTS

The Chair of the Planning Commission received a letter from Mr. Christian Anderson on behalf of Dry Lake Land Stewardship, LLC. Dry Lake Land Stewardship has been planning a new commercial development, which is partly within the Oak Tree Village Binding Site Plan. It is Mr. Anderson's opinion that alterations to a BSP should require the signatures of only the property owners directly affected. His contention is that requiring additional signatures may constitute a "taking" of private property and could hinder economic development within the City.

The Chair of the Planning Commission also received a letter from Mr. William Massey. In that letter, Mr. Massey expressed his opposition to requiring all property owners within a BSP to sign alterations. He proposed two alternative ways to process an alteration application: (1) by vote of the majority of the property owners contiguous to and directly affected by the proposed alteration and (2) a minor/major system whereby minor alterations would be decided administratively by staff and major alterations would be decided by the City's hearing examiner.

RECOMMENDATIONS

- Accept public testimony and close the public hearing.
- Recommend approval to City Council of the amendments to Chapter 21. 80 OHMC ("Binding Site Plans") as drafted in Attachment 5.

ATTACHMENTS

- Attachment 1 – Binding Site Plan Alterations: Signatures Required by Washington Jurisdictions.
- Attachment 2 – Map of binding site plans in Oak Harbor.
- Attachment 3 – Letter from Mr. Christian Anderson, Dry Lake Land Stewardship, LLC
- Attachment 4 – Letter from Mr. William Massey

- Attachment 5 – Draft amendments to Chapter 21.80 OHMC (“Binding Site Plans”) (Please note that both a legislative edit version and a ‘clean’ version are provided.)

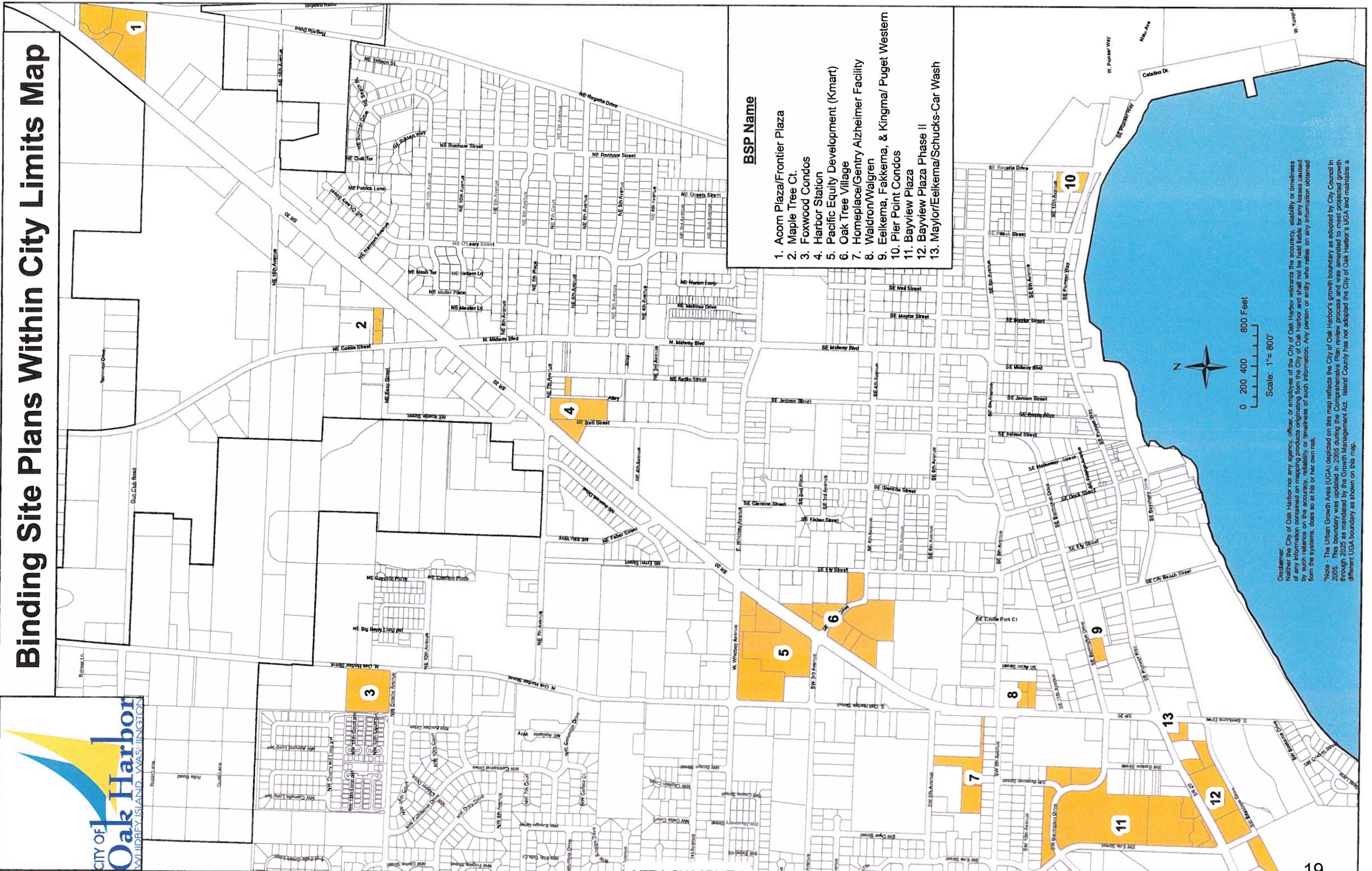
Attachment 1 - Binding Site Plan Alterations: Signature Required by Washington Jurisdictions

previously
researched

Jurisdiction	Required Signatures		Relevant Clause
	Less than All	All	
Aberdeen			Do not have BSP process
Anacortes		X	Modifications may be applied for pursuant to established city procedures.
Arlington		X	The application materials, procedures, review criteria, standards, etc., shall be the same as for the initial binding site plan
Auburn	X		"all owners of the properties directly affected"... "vacations shall no adverse impact"
Bainbridge Island			Do not have BSP process
Battleground			No alteration process
Bellingham		X	"shall be processed in the same manner as an original application."
Bonney Lake		X	Do not have BSP process
Bothell		X	"processed in same manner as the original specific binding site plan"
Bremerton			No alteration process
Burien	X		For residential, all signatures required, unless vacation in which case it's only the property owners involved. No commercial/industrial BSP allowed.
Burlington			No alteration process
Camas		X	Modifications may be applied for pursuant to established city procedures.
Centralia		X	Amendments to a binding site plan shall be processed pursuant to this title and must be recorded
Cheney	X		"shall contain the signatures of the majority of the persons having an ownership interest of lots, tract, parcels, site, or divisions in the subject binding site plan or portion to be altered"
Covington		X	same process required for a new application as set forth in this chapter
Des Moines		X	no alteration process
Edmonds		X	The proposed modification shall be considered in the same manner as the proposed subdivision.
Ellensburg			Do not have BSP process
Federal Way		X	"same process and requirements... for the approval of a binding site plan
Issaquah		X	Proposals for alterations and vacations of binding site plans shall be reviewed by the Planning Director/Manager using the criteria in IMC 18.13.160
Kenmore		X	Alteration of a binding site plan shall be accomplished by following the same process required for a new application as set forth in this chapter
Kirkland		X	Proposals for alterations and vacations of binding site plans shall be reviewed by the planning dept. using the criteria in KMC.
Kitsap County	X		"shall contain the signatures of the majority of those persons having an ownership interest of lots, tracts, parcels, sites, or divisions in the subject subdivision or portion to be altered"
Lacey	X		"application shall contain the signatures of the majority of persons having an ownership interest of the lots, tracts, or parcels, sites or divisions in the subject land division or portion to be altered"
Lake Forest Park			Do not have BSP process
Lake Stevens		X	Any request for a revision to an approved plan shall be reviewed pursuant to Section 14.16A.235
Longview		X	Amendments to a binding site plan shall be processed pursuant to this title and must be recorded.
Lynnwood		X	Alteration of an approved preliminary or final binding site plan other than slight deviations as defined in LMC 19.75.070(B) shall be accomplished by application as set forth in LMC 19.75.035 and shall be subject to all procedures and requirements established in this chapter.
Maple Valley		X	Amendment, modification and vacation of a binding site plan shall be accomplished by following the same procedure and satisfying the same laws, rules and conditions as required for a new binding site plan application, as set forth in this chapter.
Mercer Island			Do not have BSP process
Mill Creek			Do not have BSP process

Monroe		X	If the revision is substantial, the proposal shall follow the same procedures required for acquiring a binding site plan, as set forth in this chapter.
Moses Lake		X	no alteration process
Mount Vernon		X	major and minor modifications
Mountlake Terrace		X	The amended binding site plan shall be processed subject to all the procedures and requirements of this chapter.
Mukiteto		X	Alteration or vacation of binding site plans shall be accomplished by following the same process and applying the same criteria as for an initial application for binding site plan approval.
New Castle	X		"signatures of owners of portions of a binding site plan which are not altered by an amendment or rescission are not required on the amended binding site plan"
Olympia			No alteration process
Pasco		X	The recorded binding site plan may be altered at the City Planner's discretion by processing through the review/approval procedure.
Port Angeles		X	Alterations may be applied for pursuant to established city procedures.
Pullman			N/A
Puyallup		X	Alteration of an approved and recorded binding site plan shall be accompanied by application as set forth in PMC 19.10.040 and shall be subject to all procedures and requirements established in this chapter.
Redmond		X	Amendments to or vacations of an approved binding site plan shall be made through the subdivision vacation process and shall be made by all persons having an ownership interest in the portion to be vacated.
Richland		X	no alteration process
Sammamish		X	Alteration of a binding site plan shall be accomplished by following the same process required for a new application as set forth in this chapter.
Seatac	X		Any subdivision or binding site plan application under subsection (D) of this section shall require the written consent of parties representing no less than sixty-six percent (66%) ownership interest in the entire site
Shoreline		X	Amendment, modification and vacation of a binding site plan shall be accomplished by following the same procedure and satisfying the same laws, rules and conditions as required for a new binding site plan application.
Sultan		X	"shall be accomplished by following the same procedure and satisfying the same laws, rules, and conditions as required for a new binding site plan application"
Sunnyside		X	Whenever any person is interested in the vacation or alteration of a recorded binding site plan, the procedures set forth in SMC 16.06.040 through 16.06.090 contained herein shall be followed.
Tukwila	X		that only owners of lots within the BSP that are directly affected by the proposed alteration shall be required to authorize application for the alteration.
Tumwater	X		Where the lots within a recorded plat are held in more than one ownership, the application for replat shall not be accepted by the City for processing unless accompanied by the signatures of all property owners within the plat whose lot boundaries would be altered or affected by the replat.
University Place		X	"shall be accomplished by following the same procedure and satisfying the same laws, rules, and conditions as required for a new binding site plan application"
Walla Walla		X	"amendments...shall be processed pursuant to this chapter and must be recorded."
Washougal		X	"shall be accomplished by the same procedure set forth in this chapter for the original plan"
Wenatchee		X	no alteration process
West Richland		X	no alteration process
Woodland		X	"shall be accomplished by the same procedure set forth in this chapter for the original plan"
Yakima		X	"the acknowledged signatures of all parties having an ownership interest in the property"

Binding Site Plans Within City Limits Map



- BSP Name**
1. Acorn Plaza/Frontier Plaza
 2. Maple Tree Ct.
 3. Foxwood Condos
 4. Harbor Station
 5. Pacific Equity Development (Kmart)
 6. Oak Tree Village
 7. Homeplace/Gentry Alzheimer Facility
 8. Waldron/Waigren
 9. Eelkema, Fakkema, & Kingma/ Puget Western
 10. Pier Point Condos
 11. Bayview Plaza Phase II
 12. Bayview Plaza Phase I
 13. Maylor/Eelkema/Schucks-Car Wash

Disclaimer:
Neither the City of Oak Harbor nor any agency, officer, or employee of the City of Oak Harbor warrants the accuracy, reliability or timeliness of any information contained on mapping products originating from the City of Oak Harbor and shall not be held liable for any losses caused by such reliance on the accuracy, reliability or timeliness of such information. Any person or entity who relies on any information obtained from the systems, does so at his or her own risk.

Note - The Urban Growth Area (UGA) depicted on this map reflects the City of Oak Harbor's growth boundary as adopted by City Council in 2005. This boundary was updated in 2015 during the Comprehensive Plan review process and was amended to meet projected growth through 2025 as mandated by the Growth Management Act. Island County has not adopted the City of Oak Harbor's UGA and maintains a different UGA boundary as shown on this map.

RECEIVED

FEB 14 2011

**CITY OF OAK HARBOR
Development Services Department**

DRY LAKE LAND STEWARDSHIP LLC

chris.anderson@century21trophy.com

February 11, 2011

Mr. Nathan Spoo
City of Oak Harbor Planning Dept.
865 SE Barrington Drive
Oak Harbor, WA 98277

Chairman Bruce Neil
Oak Harbor Planning Commission
865 SE Barrington Drive
Oak Harbor, WA 98277

RE: Proposed Amendments to the Binding Site Plan Ordinance

Please consider the following:

Dry Lake Land Stewardship LLC's background

My Name is Christian A. Anderson. I am an Oak Harbor native, developer, real estate broker and a member of a group which has been planning a new commercial development within the City Limits of Oak Harbor.

The property which we intend to develop will serve as home to a "Home Grown" locally based commercial retail and service oriented company. The new facility will directly employ between 20 and 40 people once completed. During the construction of the facility it will directly and indirectly employ hundreds of others.

A portion of the property which we own and plan to develop lies within the Oak Tree Village Binding Site Plan (BSP). We have shared our plans with city staff and we have together developed a concept which is ready to be submitted for site plan review by the Oak Harbor City Planning Department. Our proposed site plan may require modifications to the Oak Tree Village BSP. It is unclear in our particular situation if any BSP landowner acknowledgement will be required because in our particular case the rights to access our larger parcel which adjoins the Oak Tree Village BSP were reserved prior to the issuance of final approval of the Oak Tree Village BSP.

Our development plans involve the modification of what is now an exit for some of the lots in the Oak Tree Village BSP onto Highway 20. Our plans also includes the modification of the

landscaping and will undoubtedly involve tying into or modifying existing utilities which are associated with the Oak Tree Village BSP.

The Oak Tree Village BSP was approved in the early 90's and all of the lots within the BSP have been transferred from the original developer to successor property owners. These property owners, some of which are not community based, may be very hard to communicate with and are not likely to be interested in taking the time to consider any change which does not directly effect them.

It is our opinion that any changes to the BSP ordinance should consider the long term economic effects on our local economy and not hinder Oak Harbor's inter-city development potential which would ultimately lead to "Sprawl" instead of "Infill" of the existing city limits.

Competing Views on the Proposed Amendment to the BSP Ordinance

The City of Oak Harbor is seeking public input on a proposed amendment to the current Binding Site Plan Ordinance. It is my understanding that the City Planners are attempting to amend the regulations governing BSP's to provide for a method to make changes to a BSP after the BSP has been adopted. It seems that there are differences of opinion on how the BSP amendment process should be administered.

At one end of the debate it is suggested that it should require 100% approval of all of the property owners who have any interest in the BSP to approve of any change to the BSP in all cases.

It is unclear to us if this scenario would include seeking permission of all property owners who simply own some of the rights associated with the real estate involved in the BSP or would it be perhaps that any associated parties with an interest in the BSP should have to bless a modification.

That scenario could potentially involve a tenant which owns a Lease Hold Estate, Mortgage or Lien Holders which may have a security interest, Owners of specific rights such as easements and or mineral rights which may own some but not all of the real property rights. Other such examples could be owners of view rights or mineral rights or water rights. Then of course there are the private property rights of the property owners which share a property line but are outside of the BSP and have shared rights.

The views on the other side of the debate seems to be, if a property owner is legally in title to the private real property after the BSP has been adopted, that private property owner would be entitled to, as a free citizen of the United States of America, make whatever changes to the property the owner desires without any governmental involvement whatsoever so long as it complies with the rest of the multitude of existing State, County and City ordinances.

In this scenario if another citizen or group did not approve of the changes the private property owner was making the conflicted parties could sort out their differences through whatever remedies they so chose which is already provided for under existing laws and customs.

BSP's effects on adjacent property owners

Other effects of the changes to ordinance should be considered as well. What about the neighboring properties of a BSP? Please consider this. What would the effect of a BSP be on a neighboring property owner if the property owner was somehow landlocked or surrounded by a BSP that was difficult or impossible to amend because it was impossible to get a majority of the landowners within the BSP to agree to a change? What if the owners within the BSP wished to extract money from the land locked private property owner in exchange for cooperation in amending the BSP for a minor change? We believe in that case BSP's could be considered Unconstitutional. It is what is known as a "taking". In our opinion it would be no different than surrounding a private property owner with what is akin to a giant mote without a draw bridge. Even if the Mote was on one or two sides the effect could be devastating to the private property owner who had nothing to do with creating the original BSP which is now looming around them. There is a protection for private property owners for this in the US Constitution under the 5th Amendment.

Washington State Law

Washington State Law provides guidance to how municipalities shall administer Binding Site Plans under Title 58 RCW. The section of the Revised Code of Washington (RCW) which specifically addresses how the municipal code shall be drafted by individual Cities and Counties is found under RCW 58.17.035. and is attached as Attachment "A" to the letter. I wish to point out that RCW 58.17.035 specifically identifies different types of BSP's. The ordinance groups them into categories such as residential, commercial and industrial. The ordinance goes on to say;

"Such ordinance may apply the same or different requirements and procedures to each of these three types of divisions and shall provide for the alteration or vacation of the binding site plan, and may provide for the administrative approval of the binding site plan".

In the next paragraph of the RCW it specifically mentions industrial and commercial BSP's. The state law says;

"The ordinance shall provide that after approval of the general binding site plan for industrial or commercial divisions subject to a binding site plan, the approval for improvements and finalization of specific individual commercial or industrial lots shall be done by administrative approval."

This requirement raises a question. Was the BSP Ordinance originally adopted in by the City of Oak Harbor in accordance with State Law? The next question that comes to mind is. If Oak Harbor's BSP ordinance was not in compliance with state law are the owners of the properties within the existing BSP's bound by any BSP ordinance at all? These are legal questions which should be addressed with haste.

Conclusion

We propose that any amended City Ordinance make it possible for individual property owners to efficiently and inexpensively make changes to a BSP in the same manner changes

are made to any other piece of real estate which is located outside of a BSP. A property owner interested in making an amendment should first look to the existing Covenants of the property for guidance as to who should have a say in the process.

If a method for amendment is unavailable in the Covenants it is our opinion that changes to the BSP be handled privately between property owners and then blessed administratively by the City. The City's only concern at that point should be to make sure the changes allow for similar Zoning and the safety and welfare of the public. After a brief review the planning department could then approve the proposed amendments, with any agreed upon changes, acknowledge them, and then suggest that the amendments be recorded with the County Auditor.

This in our view would be in the best interest of the City planners, local citizens as well as the individual property owners involved with the proposed Amendments to the BSP. We don't believe that it should be a requirement under the new revised code to seek permission from any or all people who claim to have an interest in the real estate located within the BSP.

It is also our opinion, based on knowledge of the real estate laws, that even if there are Covenants recorded on the property within a BSP that do specifically contain a procedure for privately amending the BSP, that it is not the place of the City Planning Department to defend the private property rights of individual private real estate owner or owners in enforcing those Covenants. Remedies and Protections for private property rights already exist in other areas of our existing laws.

Very Truly Yours,



CHRISTIAN ANKER ANDERSON
Member of Dry Lake Land Stewardship LLC

Attachment "A"

RCW 58.17.035
Alternative method of land division — Binding site plans.

A city, town, or county may adopt by ordinance procedures for the divisions of land by use of a binding site plan as an alternative to the procedures required by this chapter. The ordinance shall be limited and only apply to one or more of the following: (1) The use of a binding site plan to divisions for sale or lease of commercially or industrially zoned property as provided in RCW 58.17.040(4); (2) divisions of property for lease as provided for in RCW 58.17.040(5); and (3) divisions of property as provided for in RCW 58.17.040(7). Such ordinance may apply the same or different requirements and procedures to each of the three types of divisions and shall provide for the alteration or vacation of the binding site plan, and may provide for the administrative approval of the binding site plan.

The ordinance shall provide that after approval of the general binding site plan for industrial or commercial divisions subject to a binding site plan, the approval for improvements and finalization of specific individual commercial or industrial lots shall be done by administrative approval.

The binding site plan, after approval, and/or when specific lots are administratively approved, shall be filed with the county auditor with a record of survey. Lots, parcels, or tracts created through the binding site plan procedure shall be legal lots of record. The number of lots, tracts, parcels, sites, or divisions shall not exceed the number of lots allowed by the local zoning ordinances.

All provisions, conditions, and requirements of the binding site plan shall be legally enforceable on the purchaser or any other person acquiring a lease or other ownership interest of any lot, parcel, or tract created pursuant to the binding site plan.

Any sale, transfer, or lease of any lot, tract, or parcel created pursuant to the binding site plan, that does not conform to the requirements of the binding site plan or without binding site plan approval, shall be considered a violation of chapter 58.17 RCW and shall be restrained by injunctive action and be illegal as provided in chapter 58.17 RCW.

[1987 c 354 § 2.]

RCW 58.17.040
Chapter inapplicable, when.

The provisions of this chapter shall not apply to:

Not

(1) Cemeteries and other burial plots while used for that purpose;

(2) Divisions of land into lots or tracts each of which is one-one hundred twenty-eighth of a section of land or larger, or five acres or larger if the land is not capable of description as a fraction of a section of land, unless the governing authority of the city, town, or county in which the land is situated shall have adopted a subdivision ordinance requiring plat approval of such divisions: PROVIDED, That for purposes of computing the size of any lot under this item which borders on a street or road, the lot size shall be expanded to include that area which would be bounded by the center line of the road or street and the side lot lines of the lot running perpendicular to such center line;

(3) Divisions made by testamentary provisions, or the laws of descent;

A

(4) Divisions of land into lots or tracts classified for industrial or commercial use when the city, town, or county has approved a binding site plan for the use of the land in accordance with local regulations;

Commercial & Ind

A

(5) A division for the purpose of lease when no residential structure other than mobile homes or travel trailers are permitted to be placed upon the land when the city, town, or county has approved a binding site plan for the use of the land in accordance with local regulations;

Trailer Parks

(6) A division made for the purpose of alteration by adjusting boundary lines, between platted or unplatted lots or both, which does not create any additional lot, tract, parcel, site, or division nor create any lot, tract, parcel, site, or division which contains insufficient area and dimension to meet minimum requirements for width and area for a building site;

condos

A

(7) Divisions of land into lots or tracts if: (a) Such division is the result of subjecting a portion of a parcel or tract of land to either chapter 64.32 or 64.34 RCW subsequent to the recording of a binding site plan for all such land; (b) the improvements constructed or to be constructed thereon are required by the provisions of the binding site plan to be included in one or more condominiums or owned by an association or other legal entity in which the owners of units therein or their owners' associations have a membership or other legal or beneficial interest; (c) a city, town, or county has approved the binding site plan for all such land; (d) such approved binding site plan is recorded in the county or counties in which such land is located; and (e) the binding site plan contains thereon the following statement: "All development and use of the land described herein shall be in accordance with this binding site plan, as it may be amended with the approval of the city, town, or county having jurisdiction over the development of such land, and in accordance with such other governmental permits, approvals, regulations, requirements, and restrictions that may be imposed upon such land and the development and use thereof. Upon completion, the improvements on the land shall be included in one or more condominiums or owned by an association or other legal entity in which the owners of units therein or their owners' associations have a membership or other legal or beneficial interest. This binding site plan shall be binding upon all now or hereafter having any interest in the land described herein." The binding site plan may, but need not, depict or describe the boundaries of the lots or tracts resulting from subjecting a portion of the land to either chapter 64.32 or 64.34 RCW. A site plan shall be deemed to have been approved if the site plan was approved by a city, town, or county: (i) in connection with the final approval of a subdivision plat or planned unit development with respect to all of such land; or (ii) in connection with the issuance of building permits or final certificates of occupancy with respect to all of such land; or (iii) if not approved pursuant to (i) and (ii) of this subsection (7)(e), then pursuant to such other procedures as such city, town, or county may have established for the approval of a binding site plan;

(8) A division for the purpose of leasing land for facilities providing personal wireless services while used for that purpose. "Personal wireless services" means any federally licensed personal wireless service. "Facilities" means unstaffed facilities that are used for the transmission or reception, or both, of wireless communication services including, but not necessarily limited to, antenna arrays, transmission cables, equipment shelters, and support structures; and

(9) A division of land into lots or tracts of less than three acres that is recorded in accordance with chapter 58.09 RCW and is used or to be used for the purpose of establishing a site for construction and operation of consumer-owned or investor-owned electric utility facilities. For purposes of this subsection, "electric utility facilities" means unstaffed facilities, except for the presence of security personnel, that are used for or in connection with or to facilitate the transmission, distribution, sale, or furnishing of electricity including, but not limited to, electric power substations. This subsection does not exempt a division of land from the zoning and permitting laws and regulations of cities, towns, counties, and municipal corporations. Furthermore, this subsection only applies to electric utility facilities that will be placed into service to meet the electrical needs of a utility's existing and new customers. New customers are defined as electric service locations not already in existence as of the date that electric utility facilities subject to the provisions of this subsection are planned and constructed.

[2004 c 239 § 1; 2002 c 44 § 1; 1992 c 220 § 27; 1989 c 43 § 4-123. Prior: 1987 c 354 § 1; 1987 c 108 § 1; 1983 c 121 § 2; prior: 1981 c 293 § 3; 1981 c 292 § 2; 1974 ex.s. c 134 § 2; 1969 ex.s. c 271 § 4.]

Notes:

Severability -- Effective date -- 1989 c 43: See RCW 64.34.920 and 64.34.930.



William L. Massey

41 NE Midway Blvd., Suite 101
Oak Harbor, WA 98277

(360) 675-9091 (360) 675-5341 Fax

February 17, 2011

Bruce Neil
Chairman
Oak Harbor Planning Commission
865 SE Barrington Ave.
Oak Harbor, WA 98277

RECEIVED

FEB 17 2011

**CITY OF OAK HARBOR
Development Services Department**

Re: Proposed revisions to City of Oak Harbor Binding Site Plan Ordinance (OHMC 21.80).

Chairman Neil and Planning Commissioners

Our primary interest in the proposed revisions relate to the four separate parcels, of a total of eight parcels, 50% of the BSP owned by our company in Fee Simple Title, in the residential BSP known as Pier Point (our company's parcels are not part of the Pier Point Condominium). Our company also has a lenders deed of trust interest in a parcel of the BSP known as Oak Tree Village and we are therefore very concerned about restrictions that could impair the development rights of our client.

The changes to the ordinance, as they are currently proposed by staff, become a property rights issue wherein property owners within a BSP could control the reasonable use of another property owner even if there is no detriment to the property owners who vote against proposed changes to the BSP. Opposition could be based on the apathy or animosity of one or two individuals

It's interesting to note that at the December 28 Planning Commission hearing, staff member Mr. Spoo acknowledged that this issue was brought to the city's attention as a result of an application to alter an existing site plan. Further testimony, allowed by the Chairman, identified Pier Point. Staff member Mr. Powers acknowledged that there is a link between the history of the Pier Point application and the proposed ordinance changes.

Please consider the following:

Condominium ownership and regulations should not be confused with BSP regulations.

Using Pier Point as the example; there are eight parcels and within four of the parcels there are eight condo owners.

Rather than allowing all condo owners a vote, which creates a disproportionate advantage, it would be more fair to allow each parcel within the BSP one vote. The right to vote on an alteration should be allowed only if there might be an effect on the reasonable use of the properties outside the area of the proposed alteration such as easement changes, utility changes or changes to building envelopes. A tie in the voting should be settled by an arbiter.

In the case of a commercial BSP consider the potential detriment to a commercial applicant if every parcel owner has a vote in the process and one vote could negate the applicant's process.

If a vote is required it should only be by a majority of those property owners contiguous to, and directly affected by the proposed alteration.

As you have seen by the process to date this is a complicated issue and doesn't necessarily work fairly if put to a vote by neighboring property owners.

The City of Oak Harbor has adopted a Hearing Examiner process specifically to take the politics out of land use issues. As you can see by some of the testimony the Pier Point example appears to have become somewhat political.

"The City Council created the hearing examiner system in May 2004 to ensure that fair and impartial decisions are made on project permits that are quasi-judicial in manner and administrative decisions by city departments"

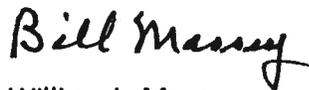
If changes to the BSP ordinance are required they should be addressed in the same manner as other land use issues, such as plats, by administrative procedure for minor modifications and a public hearing before the Hearing Examiner for a major change. In either case appeal procedures are in place if there are disagreements.

Our company currently has an appeal pending before the Island County Superior Court regarding our Pier Point application. **It might be instructive to table this issue to wait for the results of the appeal.**

As a side note, I have been retired from the development and construction business for several years now. Our company will not be building on the Pier Point lots and I am only pursuing the appeal as a matter of my belief in an owner's right of reasonable use. Private property rights.

If our appeal is successful Kathy and I will be donating a portion of, or all of the Pier Point parcels we own, as we have donated a number of our properties, to a non profit organization which will use the sale proceeds from the parcels toward affordable housing to benefit modest income families.

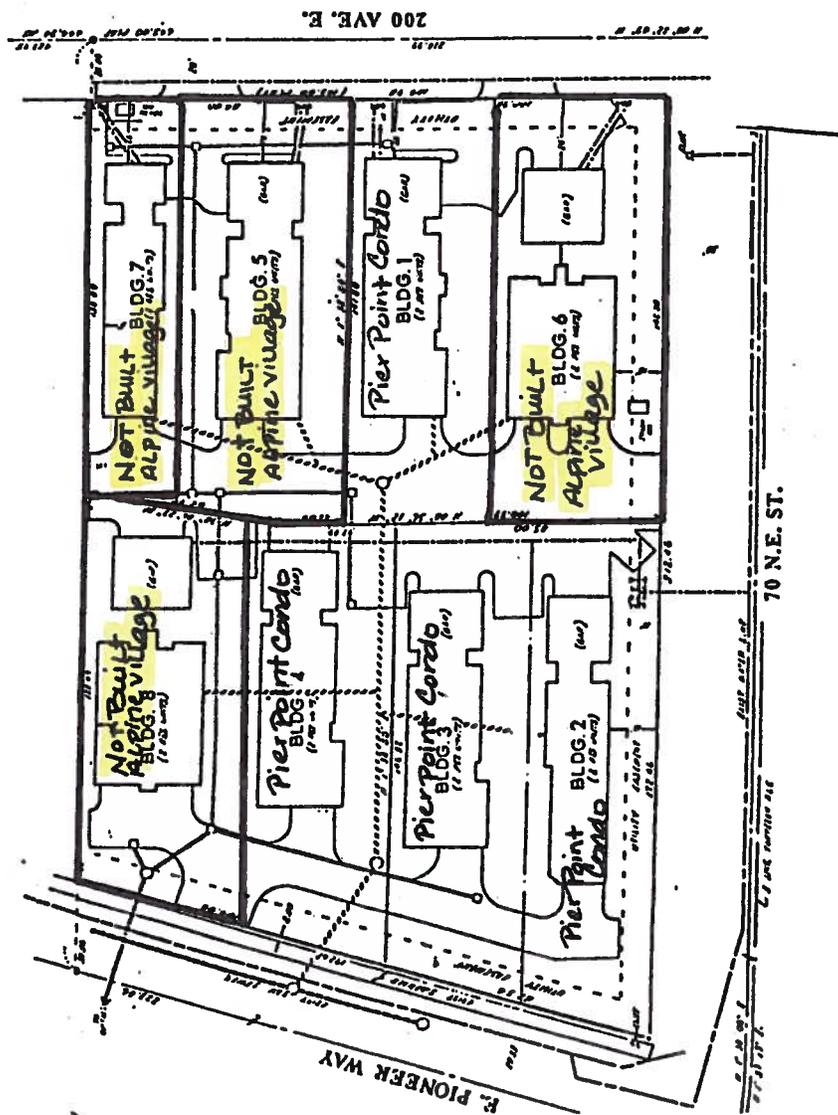
Sincerely,



William L. Massey

Cc: Ethan Spoo, Senior Planner, City of Oak Harbor
Steve Powers, Development Services Director, City of Oak Harbor
Margery Hite, City Attorney, City of Oak Harbor
Jim Slowik, Mayor, City of Oak Harbor

Enclosure: Copy of Pier Point map
Oak Tree Village map



Pier Point

Legislative Edit Version

Draft Amendments to
Chapter 21.80 OHMC
“Binding Site Plans”

ORDINANCE NO. _____

AN ORDINANCE AMENDING OAK HARBOR MUNICIPAL CODE CHAPTER 21.80, ENTITLED "BINDING SITE PLANS" FOR THE PURPOSES OF: (1) SPECIFYING THAT LOTS CREATED THROUGH BINDING SITE PLANS ARE LEGAL LOTS OF RECORD, (2) CLARIFYING TYPES OF MODIFICATIONS TO BINDING SITE PLAN STANDARDS ALLOWED, (3) ESTABLISHING A PROCESS FOR ALTERING OR VACATING PREVIOUSLY APPROVED BINDING SITE PLANS, (4) REVISING THE REQUIREMENTS FOR A BINDING SITE PLAN MAP TO INCLUDE ONLY THOSE ITEMS RELATED TO LAND DIVISION PURPOSES AND (5) AMENDING OTHER CODE LANGUAGE FOR CLARITY.

WHEREAS, RCW 58.17.035 grants jurisdictions an alternative method for land division known as "binding site plans" and;

WHEREAS, RCW 58.17.035 requires that binding site plan ordinances contain provisions for alteration or vacation of binding site plan documents;

WHEREAS, the City's existing Municipal Code does not presently have a specific process for altering or vacating approved binding site plans and;

WHEREAS, a SEPA environmental checklist was submitted for the proposed code changes and noticed in the Whidbey News Times on December 4, 2010 with a notice of application period ending on December 22, 2010 after a 15-day comment period and whereas the City received one e-mail comment. and;

WHEREAS, the City issued a SEPA Determination of Nonsignificance for the proposed code amendments on December 22, 2010 after a 15-day public comment and appeal period, as required by WAC Chapter 197-11-535 and whereas no comments or appeals were received during this period and;

WHEREAS, as required by RCW 36.70A.106, the City provided notice to the Department of Commerce on December 10, 2010 and received no comments from the Department; and;

WHEREAS, as part of an enhanced public participation process, the City provided notice of the Planning Commission public hearings to interested parties on December 17, 2010, January 7, 2011, and February 3, 2011 and that such notices were in addition to the usual notice procedures required for a code amendment.

WHEREAS, after due and proper notice, public hearings were conducted by the Planning Commission on December 28, 2010, January 25, 2011, and February 22, 2011 and a public hearing was held by the City Council on _____.

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

Binding Site Plan Code Amendment
Ordinance

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Section One. Oak Harbor Municipal Code Chapter 21.80 entitled "Binding Site Plans" last amended by § 10 of Ordinance 1568 is hereby amended to read as follows:

**Chapter 21.80
BINDING SITE PLANS**

Sections:

- 21.80.005 Title.**
21.80.010 Binding site plans allowed.
21.80.020 Division of property.
21.80.025 Condominium binding site plan.
21.80.030 Effect.
21.80.040 Application.
~~**21.80.050 Procedure upon application.**~~
21.80.060050 **Requirements for a binding site plan map.**
21.80.055 Site plan review required.
~~**21.80.070**~~060 **Certifications required.**
~~**21.80.080**~~070 **Title report.**
~~**21.80.090**~~ Survey required.
~~**21.80.100**~~080 **Approval procedure.**
~~**21.80.110**~~090 **Recording requirements.**
~~**21.80.120**~~100 **Development requirements.**
~~**21.80.130**~~110 **Standards for review of commercial binding site plan.**
~~**21.80.140**~~120 **Standards for binding site plans for condominium developments regulated by Chapter 64.32 and 64.34 RCW.**
~~**21.80.150**~~130 **Performance guarantee requirements.**
~~**21.80.160**~~140 **Warranty requirements for acceptance of final improvements.**
~~**21.80.170**~~150 **Survey required.**
~~**21.80.180**~~160 **Dedication – Warranty deed.**
~~**21.80.200**~~170 **Requirements for Modification of binding site plan standards.**
~~**21.80.180**~~ Alteration or vacation of an approved binding site plan.
~~**21.80.300**~~190 **Appeals to the hearing examiner.**
~~**21.80.400**~~200 **Enforcement.**

21.80.005 Title
This chapter shall be entitled "Binding Site Plans."

21.80.010 Binding site plans allowed.
It is provided that, as an alternative to subdivision or short subdivision requirements under this title, and as allowed by RCW Chapter 58.17, divisions of land may be completed by binding site plans for classes of property specified in OHMC 21.80.020(1) through (43).

21.80.020 Division of property.
Division of property by binding site plans may only be used for the following:
(1) Divisions of land into lots classified for industrial or commercial use;
(2) A division for the purpose of lease when no residential structure other than mobile homes or travel trailers are permitted to be placed upon the land so long as the site plan complies

Binding Site Plan Code Amendment
Ordinance

\\City1\planning\PlanCom\PC11\2-22-11\BSP Code Update\BSP amendment ord final draft 021811.doc

Page 2 of 11

with all applicable mobile home park regulations and the zoning code;

- ~~(3) A division made for the purpose of alteration by adjusting boundary lines, between platted or unplatted lots or both, which does not create any additional lot, tract, parcel, site, or division nor create any lot which contains insufficient area and dimension to meet minimum requirements for width and area for a building site; and~~
- (4)(3) A division of land subject to Chapter 64.32 and 64.34 RCW as now in effect or hereafter amended so long as the site plan complies with the standards for condominium division under OHMC 21.80.140120.

21.80.025 Condominium binding site plan.

Divisions of land into lots or tracts are allowed if:

- (1) A binding site plan may be used to divide property without proceeding through division by subdivision or short subdivision when the land or a portion of it is subject to either Chapter 64.32 or 64.34 RCW when the following conditions are met:
- (a) The improvements constructed or to be constructed thereon are required by the provisions of the binding site plan to be included in one or more condominiums or owned by an association or other legal entity in which the owners of units therein or their owners' associations have a membership or other legal or beneficial interest;
 - (b) The city has approved a binding site plan for all such land;
 - (c) Such approved binding site plan is recorded in the county or counties in which such land is located; and
 - (d) The binding site plan contains thereon the following statement:
All development and use of the land described herein shall be in accordance with this binding site plan, as it may be amended with the approval of the city, town, or county having jurisdiction over the development of such land, and in accordance with such other governmental permits, approvals, regulations, requirements, and restrictions that may be imposed upon such land and the development and use thereof. Upon completion, the improvements on the land shall be included in one or more condominiums or owned by an association or other legal entity in which the owners of units therein or their owners' associations have a membership or other legal or beneficial interest. This binding site plan shall be binding upon all now or hereafter having any interest in the land described herein.
- (2) The binding site plan may, but need not, depict or describe the boundaries of the lots or tracts resulting from subjecting a portion of the land to either Chapter 64.32 or 64.34 RCW.
- (3) The binding site plan for condominiums shall be deemed approved if:
- (a) Done in connection with the final approval of a subdivision plan or planned unit development with respect to all of such lands;
 - (b) Done in connection with the issuance of a building permit or final certificate of occupancy.

21.80.030 Effect.

Upon approval and recording of a binding site plan, any and all sale or leases of lots within the property covered by the site plan shall be in accordance with the binding site plan. Lots, parcels, or tracts created through the binding site plan procedure shall be legal lots of record. Such lot

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lines as are shown on the binding site plan shall be lot lines for setback purposes under the zoning code in effect at the time the issue of setbacks is to be determined. A binding site plan does not authorize construction. Construction is permitted upon approval of construction and building permits that implement the binding site plan.

21.80.035 Site plan review required.

A site plan pursuant to eChapter 19.48 is required for every lot created under this chapter.

21.80.040 Application.

An application for a binding site plan shall be submitted on a form prescribed by the Director and shall include all other requirements as specified in this eChapter. A binding site plan application may be processed concurrent with, or separate from, a site plan review application under Chapter 19.48 OHMC.

~~An applicant for site plan approval under Chapter 19.48 OHMC may at the time of application for site plan review also request that the site plan be processed as a binding site plan to allow the division of property into separate tracts, lots or parcels.~~

21.80.050 Procedure upon application.

~~At the same time or after obtaining site plan approval, the applicant shall submit a preliminary binding site map meeting the requirements of this chapter and the standards for development as set out in Chapter 21.40 OHMC.~~

21.80.060 Requirements for a binding site plan map.

The applicant shall submit two exact duplicate binding site plan maps meeting the following requirements. The ~~final~~ recorded binding site plan shall be drawn on mylar drafting film having dimensions of 24 inches by 36 inches and must include the following:

- (1) The name of the binding site plan;
- (2) Legal description of the entire parcel;
- (3) The date, scale and north arrow;
- (4) Boundary lines, right-of-way for streets, easements and property lines of lots and other sites with accurate bearings, dimensions or angles and arcs, and of all curve data;
- (5) Names and right-of-way widths of all streets within the parcel and immediately adjacent to the parcel. Street names shall be consistent with the names of existing adjacent streets;
- (6) Number of each lot and each block;
- (7) Reference to covenants, joint use, access easements, or other agreements ~~either to be filed separately or on the binding site plan~~ must be referenced on the binding site plan;
- (8) ~~Zoning setback lines and building envelope sites where applicable;~~
- (9) Location, dimensions and purpose of any easements, noting if the easements are private or public;
- (10) Location and description of monuments and all lot corners set and found;
- (11) Datum elevations and primary control points approved by the engineering department. Descriptions and ties to all control points shall be shown with dimensions, angles, and bearings;
- (12) A dedicatory statement acknowledging public and private dedications and grants;
- (13) ~~Parking areas, general circulation, and landscaping areas where applicable;~~

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- ~~(14)~~ Proposed use and location of building with dimensions where applicable;
- ~~(15)~~ Loading areas where applicable;
- ~~(16)~~(13) Utilities; and
- ~~(17)~~(14) Other restriction and requirements as deemed necessary by the city.

The binding site plan map shall be on a separate sheet(s) from the site plan processed under chapter 19.48.

21.80.070060 Certifications required.

- (1) A certificate is required giving a full and correct description of all lands divided as they appear on the binding site plan, including a statement that the division has been made with the free consent and in accordance with the desires of the owners. If the binding site plan is subject to a dedication, the certificate or a separate written instrument shall also contain the dedication of all streets and other areas to the public, to an individual or individuals, religious society or societies or to any corporation, public or private as shown on the binding site plan and a waiver of all claims for damages against any governmental authority which may be occasioned to the adjacent land by the established construction, drainage and maintenance of the road. The certificate or instrument of dedication shall be signed and acknowledged before a notary public by all parties having any ownership interest in the land divided and recorded as part of the final binding site plan.
- (2) A certification by a licensed surveyor is required, licensed in the state, that the binding site plan survey is accurate and conforms to the provisions of these regulations and state law.

21.80.080070 Title report.

All binding site plans shall be accompanied by a title company certification (current within 30 days from filing of the binding site plan) confirming that the title of the lands as described and shown on the binding site plan are in the name of the owner(s) signing the binding site plan.

~~**21.80.090 Survey required.**~~

~~A survey must be performed for every binding site plan by or under the supervision of a state of Washington registered land surveyor.~~

21.80.100080 Approval procedure.

- (1) Binding site plan approval shall be a Type II review process.
- ~~(2) As part of or after site plan review as provided under OHMC Title 19, applicants for final binding site plan approval shall file the required documents meeting all the requirements of this chapter with the development services department.~~
- ~~(3)~~ (2) The director shall review the final binding site plan application and circulate it to other city departments to determine whether the requirements of this chapter ~~and preliminary approval~~ have been met.
- (4) If the director and city engineer determine that the requirements are met, they shall approve and sign the binding site plan.
- (5) If either the director or the city engineer determine that the requirements have not been met, the ~~final~~ binding site plan shall be returned to the applicant for modification,

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correction, or other action as may be required for approval.

- (65) If the conditions have been met, the director and city engineer shall inscribe and execute their written approval on the face of the binding site plan.

21.80.110090 Recording requirements.

- (1) When the city finds that the binding site plan proposed for final approval meets all the conditions of final approval, then the applicant shall take both original mylar binding site plan maps to the Island County auditor. One of the originals of said binding site plan shall be recorded with the Island County auditor. The other will be stamped by the auditor and forthwith returned to Oak Harbor. In addition, the applicant will furnish the city with one paper copy of the mylar recorded by the auditor. In addition, one paper copy shall be furnished by the applicant to the Island County assessor.
- (2) The applicant must provide the city with proof of proper filing and recording before the binding site plan becomes valid. This proof shall include a certification by the applicant and the surveyor certifying that the binding site plan has not been altered between the time it was approved for recordation and the time of actual recordation by the Island County auditor.

21.80.120100 Development requirements.

All development must be in conformance with the recorded binding site plan.

21.80.130110 Standards for review of commercial and industrial binding site plans.

The following standards shall apply to commercial and industrial binding site plans:

- (1) Division lines between lots in commercial binding site plans shall be considered lot lines under Oak Harbor zoning code.
- (2) Each such tract or lot created by such binding site plan shall have one designated front lot line and one rear lot line including those which have no street frontage.
- (3) All tracts, parcels and lots created by a binding site plan shall be burdened by an approved maintenance agreement maintaining access to the various lots, tracts and parcels and for the cost of maintaining landscaping and other common areas.
- (4) When any lot, tract or parcel is created without 30 feet of street frontage, easements shall be given to the city allowing access for police, fire, public and private utilities along the access roads to each tract, lot or parcel.
- (5) If the city elects, the city shall be granted a power to maintain the access easements and file liens on the property for collection of the costs incurred in maintaining such way. The power to maintain such access ways shall impose no duty on the city to maintain the access way.
- (6) The binding site plan shall contain a provision that the owner's failure to keep the fire access lanes open and maintained may subject the property to being abated as a nuisance and the city may terminate occupancy of such properties until the access easement ways are adequately maintained.
- (7) Freestanding signage may be off of the tract, parcel or lot where the business is located as long as sign requirements are met within the area encompassed by the binding site plan.
- (8) Sufficient parking for each use must be located on the lot where the use is located or joint parking agreements must be recorded by the owners for the area of the binding site plan. Prior to building permit approval, parking agreements will be reviewed by the director.

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- (9) Landscaping requirements will be met for each phase of the binding site plan. Landscaping requirements may be met for an area of one or more lots as long as a joint maintenance agreement is recorded or included in declaration of covenants

21.80.140120 Standards for binding site plans for condominium developments regulated by Chapter 64.32 and 64.34 RCW.

Development standards for condominiums including residential units or structures shall meet either the standards set out in subsection (1) or (2) of this section:

- (1) All lots and development shall meet the minimum requirements of this title as now in effect or hereafter amended. Phase or lot lines shall be used as lot lines for setback purposes under the zoning code.
- (2) Condominiums may be developed in phases where ownership of the property is unitary but all structures may not be completed at the same time or differing lenders finance separate structures or areas of the property. The following conditions shall apply to phased condominiums:
 - (a) All areas not within the building envelope are subject to joint use and are burdened by a joint obligation to maintain any and all access ways. The city shall have no obligation to maintain such access ways.
 - (b) The city of Oak Harbor shall have an easement for access along and over access ways and parking areas to allow police, building, fire and utility department personnel to inspect and observe such property, buildings and activities on the property as well as for providing emergency and law enforcement services and easements for utilities over and under such access ways.
 - (c) Reciprocal easements for parking shall be provided to all tenants and owners.
 - (d) The developer has ~~submitted~~ entered into a binding schedule development agreement pursuant to eChapter 18.30 for completion of all phases.
 - (e) Phase lines must be treated as lot lines for setback purposes under the zoning code unless the property owner will place a covenant on the binding site plan that the setback area for built phases, contained in all unbuilt phases, shall become common areas and owned by the owners of existing units in the built portions of the condominium upon the expiration of the completion schedule described in ~~subsection (2) of this section~~ the development agreement pursuant to eChapter 18.30.
 - (f) All public improvements are guaranteed by bond or other security satisfactory to the city engineer or his designee.
 - (g) All built phases in a condominium binding site plan shall have joint and several obligation to maintain landscaping through covenants or easements or both to assure that the responsibility is shared among the various owners.

21.80.150130 Performance guarantee requirements.

- (1) In lieu of completing the required public improvements prior to approval of the binding site plan, the applicant may request ~~final~~ approval, subject to the approval of a suitable guarantee. The guarantee must be in a form acceptable to the city and in an amount commensurate with improvements to be completed. The amount of the guarantee is established at 100 percent of the cost of the city having to construct the improvements plus 20 percent for contingency. The guarantee amount will require yearly review by the

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city and the applicant will be required to revise the guarantee amount to reflect current inflation rate. Based on the revised amount, the applicant will resubmit suitable guarantee to the city. Also, the guarantee will be restricted as far as the amount of permissible time in which the improvements must be completed. If not a regular surety bond from an acceptable state approved surety, the guarantee must be in a form acceptable to the city attorney.

- (2) Guarantee funds will not be released by the city unless approval has been received from all applicable departments that are responsible for acceptance and/or maintenance of such improvements. Partial releases will not be allowed.
- (3) All improvements begun by the applicant must be completed. Once the applicant has begun making improvements, the applicant shall not be eligible for submitting a guarantee to the city to cover the incomplete improvements.
- (4) Public improvements must be in place at time of certificate of occupancy or acceptable assurances for completion with a temporary certificate of occupancy.

21.80.140160 Warranty requirements for acceptance of final improvements.

At the time of final acceptance of the improvements, the applicant shall provide to the city a one-year warranty guarantee at 10 percent of the established final cost of the public and/or off-site improvements which must be acceptable to the city.

21.80.170150 Survey required.

- (1) A survey must be performed for every binding site plan. The survey required must be conducted by or under the supervision of a Washington State registered land surveyor. The surveyor shall certify on the binding site plan that it is a true and correct representation of the lands actually surveyed and the survey was done in accordance with city and state law.
- (2) In all binding site plans, lot corner survey pins must be set before final approval can be granted.
- (3) In all binding site plans, perimeter monuments must be set before final approval can be granted.
- (4) In all binding site plans, control monuments must be set before final acceptance of public improvements. Performance guarantees must include the installation of all control monuments. Control monuments must be installed per city design and construction standards.
- (5) In all binding site plans, where final approval is to be granted by the acceptance of a performance guarantee, lot corner and perimeter monuments must be set. The performance guarantee must include the resetting of any monument that has been lost during construction of public improvements

21.80.190160 Dedication – Warranty deed.

Any dedication, donation or grant to the City as shown on a binding site plan shall be considered a statutory warranty deed to the grantee for the use intended. The binding site plan processes of this chapter shall not be used to create, alter, or eliminate any rights in property arising solely between private owners of property within the binding site plan. All such private dedications, donations or grants shall be separately recorded with the county auditor and reference thereto made on the binding site plan.

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21.80.200170 Requirements for modification of binding site plan standards.

- (1) Any applicant can request and make application to the city requesting. As part of the approval of an original binding site plan an applicant may request a modification of up to five percent from a lot dimensional requirement (setbacks, lot size, length, width, or lot coverage) of OHMC 21.80.130 or 21.80.140 or OHMC the applicable zoning standards found in Title 19 OHMC so long as the maximum density allowed in the zone is not exceeded.
- (2) Such request for modification shall be submitted by the applicant concurrently with the binding site plan application and considered by the director as an administrative a Type I decision.
- (3) The modification shall not be granted by the director until the following facts have been established:
 - (a) There are exceptional circumstances of conditions such as: locations of existing structures, lot configuration, topographic or unique physical features that apply to the subject property which prohibit the applicant from meeting the standards of this chapter;
 - (b) The authorization of the modification or variation will not be detrimental to the public welfare or injurious to property in the vicinity or zone in which the property is located;
 - (c) A hardship would be incurred by the applicant if he/she complied with the strict application of the regulations;
 - (d) Landscaping requirements are not thereby reduced.

21.80.180 Alteration or vacation of an approved binding site plan.

The purpose of this section is to provide a process by which changes (alterations or vacations) to a recorded binding site plan may be considered. Changes processed under this section must be related to the land division purposes of a binding site plan. Alteration or vacation of all or a portion of an approved binding site plan may be considered subject to the provisions of this section.

(1) Definitions.

- (a) Alteration: for the purposes of this section, an alteration is a change to the recorded binding site plan map that is related to or consistent with the land division purposes of this chapter and that generally relates to the items described in Section 21.80.050(4), (9), (16) or (17). For binding site plans approved prior to XXX, 2011, alterations may also be considered to the following elements of a binding site plan: zoning setback lines, building envelopes, parking areas, general circulation, landscaping areas, proposed use and location of buildings and loading areas.
- (b) Vacation: for the purposes of this section, a vacation is the removal of a property(s) from a binding site plan so that the obligations created under the binding site plan no longer apply to that property(s). Vacation may apply to a portion or the entirety of a binding site plan.

(2) Submittal requirements for alterations and vacations.

- (a) Application form. An application shall be submitted on a form provided by the Director.

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- (b) Title report. All applications to alter or vacate a binding site plan shall be accompanied by a title company certification (current within 30 days from filing of the application) confirming that the title of the lands as described and shown on the application are in the name of the owner(s) signing the application.
- (c) Authority to submit alteration or vacation application. The alteration or vacation application shall contain the signatures of all those owners of lots who are directly affected by the proposed alteration or vacation.
- (d) The alteration or vacation application for a binding site plan shall contain all materials required of binding site plan applications as specified in this chapter unless otherwise waived by the Director.

(3) Criteria for Review.

- (a) The proposed alteration shall meet the requirements of this Chapter applicable to the underlying binding site plan.
- (b) Any alteration of an approved binding site plan affecting an unexpired development agreement may, in the discretion of the Director, invalidate the existing development agreement and require negotiation of a new development agreement pursuant to Chapter 18.30. The new development agreement shall vest to the City development regulations in effect at the time the Director has determined the application for alteration to be technically complete in accordance with the requirements of Chapter 18.20-OHMC.
- (c) The proposed vacation shall not cause the remaining portions of an approved binding site plan to fail to meet the requirements of this Chapter. Any non-conformities created by such a vacation must be remedied prior to final approval of the vacation. Property within a binding site plan subject to an approved vacation shall constitute one lot, and the balance of the approved binding site plan shall remain as approved.

(4) Review process. Applications for alteration or vacation of a binding site plan shall be processed under a Review Process II according to Chapter 18.20-OHMC.

21.80.300190 Appeals to the hearing examiner.

- (1) An appeal of the decision relating to the binding site plan shall be made to the hearing examiner in accordance with the procedures set out in Chapter 18.40.
- (2) The written appeal shall include a detailed explanation stating the reason for the appeal. The decision of the hearing examiner shall be the final action.

21.80.400200 Enforcement.

The auditor shall refuse to accept for recording any binding site plan which does not bear the verification of approval as defined by this chapter. The city attorney is authorized to prosecute violation of this chapter and to commence actions to restrain and enjoin a violation of this chapter and compel compliance with the provisions of this chapter. The costs of such action shall be taxed against the violator.

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 (5) five days following publication.

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

() APPROVED by its Mayor this _____ day of _____, 2011.

() Vetoed

THE CITY OF OAK HARBOR

Mayor

Attest:

City Clerk

Approved as to Form:

City Attorney

Published: _____

“Clean” Version

Draft Amendments to
Chapter 21.80 OHMC
“Binding Site Plans”

ORDINANCE NO. _____

AN ORDINANCE AMENDING OAK HARBOR MUNICIPAL CODE CHAPTER 21.80, ENTITLED "BINDING SITE PLANS" FOR THE PURPOSES OF: (1) SPECIFYING THAT LOTS CREATED THROUGH BINDING SITE PLANS ARE LEGAL LOTS OF RECORD, (2) CLARIFYING TYPES OF MODIFICATIONS TO BINDING SITE PLAN STANDARDS ALLOWED, (3) ESTABLISHING A PROCESS FOR ALTERING OR VACATING PREVIOUSLY APPROVED BINDING SITE PLANS, (4) REVISING THE REQUIREMENTS FOR A BINDING SITE PLAN MAP TO INCLUDE ONLY THOSE ITEMS RELATED TO LAND DIVISION PURPOSES AND (5) AMENDING OTHER CODE LANGUAGE FOR CLARITY.

WHEREAS, RCW 58.17.035 grants jurisdictions an alternative method for land division known as "binding site plans" and;

WHEREAS, RCW 58.17.035 requires that binding site plan ordinances contain provisions for alteration or vacation of binding site plan documents;

WHEREAS, the City's existing Municipal Code does not presently have a specific process for altering or vacating approved binding site plans and;

WHEREAS, a SEPA environmental checklist was submitted for the proposed code changes and noticed in the Whidbey News Times on December 4, 2010 with a notice of application period ending on December 22, 2010 after a 15-day comment period and whereas the City received one e-mail comment, and;

WHEREAS, the City issued a SEPA Determination of Nonsignificance for the proposed code amendments on December 22, 2010 after a 15-day public comment and appeal period, as required by WAC Chapter 197-11-535 and whereas no comments or appeals were received during this period and;

WHEREAS, as required by RCW 36.70A.106, the City provided notice to the Department of Commerce on December 10, 2010 and received no comments from the Department; and;

WHEREAS, as part of an enhanced public participation process, the City provided notice of the Planning Commission public hearings to interested parties on December 17, 2010, January 7, 2011, and February 3, 2011 and that such notices were in addition to the usual notice procedures required for a code amendment.

WHEREAS, after due and proper notice, public hearings were conducted by the Planning Commission on December 28, 2010, January 25, 2011, and February 22, 2011 and a public hearing was held by the City Council on _____.

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

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Section One. Oak Harbor Municipal Code Chapter 21.80 entitled “Binding Site Plans” last amended by § 10 of Ordinance 1568 is hereby amended to read as follows:

**Chapter 21.80
BINDING SITE PLANS**

Sections:

- 21.80.005 Title.**
- 21.80.010 Binding site plans allowed.**
- 21.80.020 Division of property.**
- 21.80.025 Condominium binding site plan.**
- 21.80.030 Effect.**
- 21.80.040 Application.**

- 21.80.050 Requirements for a binding site plan map.**
- 21.80.055 Site plan review required.**
- 21.80.060 Certifications required.**
- 21.80.070 Title report.**

- 21.80.080 Approval procedure.**
- 21.80.090 Recording requirements.**
- 21.80.100 Development requirements.**
- 21.80.110 Standards for review of commercial binding site plan.**
- 21.80.120 Standards for binding site plans for condominium developments regulated by Chapter 64.32 and 64.34 RCW.**
- 21.80.130 Performance guarantee requirements.**
- 21.80.140 Warranty requirements for acceptance of final improvements.**
- 21.80.150 Survey required.**
- 21.80.160 Dedication – Warranty deed.**
- 21.80.170 Requirements for modification of binding site plan standards.**
- 21.80.180 Alteration or vacation of an approved binding site plan.**
- 21.80.190 Appeals to the hearing examiner.**
- 21.80.200 Enforcement.**

21.80.005 Title
This chapter shall be entitled “Binding Site Plans.”

21.80.010 Binding site plans allowed.
It is provided that, as an alternative to subdivision or short subdivision requirements under this title, and as allowed by RCW Chapter 58.17, divisions of land may be completed by binding site plans for classes of property specified in OHMC 21.80.020(1) through (3).

21.80.020 Division of property.
Division of property by binding site plans may only be used for the following:

- (1) Divisions of land into lots classified for industrial or commercial use;
- (2) A division for the purpose of lease when no residential structure other than mobile homes or travel trailers are permitted to be placed upon the land so long as the site plan complies with all applicable mobile home park regulations and the zoning code;

- (3) A division of land subject to Chapter 64.32 and 64.34 RCW as now in effect or hereafter amended so long as the site plan complies with the standards for condominium division under OHMC 21.80.120.

21.80.025 Condominium binding site plan.

Divisions of land into lots or tracts are allowed if:

- (1) A binding site plan may be used to divide property without proceeding through division by subdivision or short subdivision when the land or a portion of it is subject to either Chapter 64.32 or 64.34 RCW when the following conditions are met:
 - (a) The improvements constructed or to be constructed thereon are required by the provisions of the binding site plan to be included in one or more condominiums or owned by an association or other legal entity in which the owners of units therein or their owners' associations have a membership or other legal or beneficial interest;
 - (b) The city has approved a binding site plan for all such land;
 - (c) Such approved binding site plan is recorded in the county or counties in which such land is located; and
 - (d) The binding site plan contains thereon the following statement:

All development and use of the land described herein shall be in accordance with this binding site plan, as it may be amended with the approval of the city, town, or county having jurisdiction over the development of such land, and in accordance with such other governmental permits, approvals, regulations, requirements, and restrictions that may be imposed upon such land and the development and use thereof. Upon completion, the improvements on the land shall be included in one or more condominiums or owned by an association or other legal entity in which the owners of units therein or their owners' associations have a membership or other legal or beneficial interest. This binding site plan shall be binding upon all now or hereafter having any interest in the land described herein.
- (2) The binding site plan may, but need not, depict or describe the boundaries of the lots or tracts resulting from subjecting a portion of the land to either Chapter 64.32 or 64.34 RCW.
- (3) The binding site plan for condominiums shall be deemed approved if:
 - (a) Done in connection with the final approval of a subdivision plan or planned unit development with respect to all of such lands;
 - (b) Done in connection with the issuance of a building permit or final certificate of occupancy.

21.80.030 Effect.

Upon approval and recording of a binding site plan, any and all sale or leases of lots within the property covered by the site plan shall be in accordance with the binding site plan. Lots, parcels, or tracts created through the binding site plan procedure shall be legal lots of record. Such lot lines as are shown on the binding site plan shall be lot lines for setback purposes under the zoning code in effect at the time the issue of setbacks is to be determined. A binding site plan does not authorize construction. Construction is permitted upon approval of construction and building permits that implement the binding site plan.

21.80.035 Site plan review required.

A site plan pursuant to chapter 19.48 is required for every lot created under this Chapter.

21.80.040 Application.

An application for a binding site plan shall be submitted on a form prescribed by the Director and shall include all other requirements as specified in this Chapter. A binding site plan application may be processed concurrent with, or separate from, a site plan review application under Chapter 19.48 OHMC.

21.80.050 Requirements for a binding site plan map.

The applicant shall submit two exact duplicate binding site plan maps meeting the following requirements. The recorded binding site plan shall be drawn on mylar drafting film having dimensions of 24 inches by 36 inches and must include the following:

- (1) The name of the binding site plan;
- (2) Legal description of the entire parcel;
- (3) The date, scale and north arrow;
- (4) Boundary lines, right-of-way for streets, easements and property lines of lots and other sites with accurate bearings, dimensions or angles and arcs, and of all curve data;
- (5) Names and right-of-way widths of all streets within the parcel and immediately adjacent to the parcel. Street names shall be consistent with the names of existing adjacent streets;
- (6) Number of each lot and each block;
- (7) Reference to covenants, joint use, access easements, or other agreements to be filed separately must be referenced on the binding site plan;
- (8)
- (9) Location, dimensions and purpose of any easements, noting if the easements are private or public;
- (10) Location and description of monuments and all lot corners set and found;
- (11) Datum elevations and primary control points approved by the engineering department. Descriptions and ties to all control points shall be shown with dimensions, angles, and bearings;
- (12) A dedicatory statement acknowledging public and private dedications and grants;
- (13) Utilities; and
- (14) Other restriction and requirements as deemed necessary by the city.

The binding site plan map shall be on a separate sheet(s) from the site plan processed under chapter 19.48.

21.80.060 Certifications required.

- (1) A certificate is required giving a full and correct description of all lands divided as they appear on the binding site plan, including a statement that the division has been made with the free consent and in accordance with the desires of the owners. If the binding site plan is subject to a dedication, the certificate or a separate written instrument shall also contain the dedication of all streets and other areas to the public, to an individual or individuals, religious society or societies or to any corporation, public or private as

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shown on the binding site plan and a waiver of all claims for damages against any governmental authority which may be occasioned to the adjacent land by the established construction, drainage and maintenance of the road. The certificate or instrument of dedication shall be signed and acknowledged before a notary public by all parties having any ownership interest in the land divided and recorded as part of the final binding site plan.

- (2) A certification by a licensed surveyor is required, licensed in the state, that the binding site plan survey is accurate and conforms to the provisions of these regulations and state law.

21.80.070 Title report.

All binding site plans shall be accompanied by a title company certification (current within 30 days from filing of the binding site plan) confirming that the title of the lands as described and shown on the binding site plan are in the name of the owner(s) signing the binding site plan.

21.80.080 Approval procedure.

- (1) Binding site plan approval shall be a Type II review process.
- (2) The director shall review the application and circulate it to other city departments to determine whether the requirements of this chapter have been met.
- (3) If the director and city engineer determine that the requirements are met, they shall approve and sign the binding site plan.
- (4) If either the director or the city engineer determine that the requirements have not been met, the binding site plan shall be returned to the applicant for modification, correction, or other action as may be required for approval.
- (5) If the conditions have been met, the director and city engineer shall inscribe and execute their written approval on the face of the binding site plan.

21.80.090 Recording requirements.

- (1) When the city finds that the binding site plan proposed for final approval meets all the conditions of final approval, then the applicant shall take both original mylar binding site plan maps to the Island County auditor. One of the originals of said binding site plan shall be recorded with the Island County auditor. The other will be stamped by the auditor and forthwith returned to Oak Harbor. In addition, the applicant will furnish the city with one paper copy of the mylar recorded by the auditor. In addition, one paper copy shall be furnished by the applicant to the Island County assessor.
- (2) The applicant must provide the city with proof of proper filing and recording before the binding site plan becomes valid. This proof shall include a certification by the applicant and the surveyor certifying that the binding site plan has not been altered between the time it was approved for recordation and the time of actual recordation by the Island County auditor.

21.80.100 Development requirements.

All development must be in conformance with the recorded binding site plan.

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21.80.110 Standards for review of commercial and industrial binding site plans.

The following standards shall apply to commercial and industrial binding site plans:

- (1) Division lines between lots in commercial binding site plans shall be considered lot lines under Oak Harbor zoning code.
- (2) Each such tract or lot created by such binding site plan shall have one designated front lot line and one rear lot line including those which have no street frontage.
- (3) All tracts, parcels and lots created by a binding site plan shall be burdened by an approved maintenance agreement maintaining access to the various lots, tracts and parcels and for the cost of maintaining landscaping and other common areas.
- (4) When any lot, tract or parcel is created without 30 feet of street frontage, easements shall be given to the city allowing access for police, fire, public and private utilities along the access roads to each tract, lot or parcel.
- (5) If the city elects, the city shall be granted a power to maintain the access easements and file liens on the property for collection of the costs incurred in maintaining such way. The power to maintain such access ways shall impose no duty on the city to maintain the access way.
- (6) The binding site plan shall contain a provision that the owner's failure to keep the fire access lanes open and maintained may subject the property to being abated as a nuisance and the city may terminate occupancy of such properties until the access easement ways are adequately maintained.
- (7) Freestanding signage may be off of the tract, parcel or lot where the business is located as long as sign requirements are met within the area encompassed by the binding site plan.
- (8) Sufficient parking for each use must be located on the lot where the use is located or joint parking agreements must be recorded by the owners for the area of the binding site plan. Prior to building permit approval, parking agreements will be reviewed by the director.
- (9) Landscaping requirements will be met for each phase of the binding site plan. Landscaping requirements may be met for an area of one or more lots as long as a joint maintenance agreement is recorded or included in declaration of covenants

21.80.120 Standards for binding site plans for condominium developments regulated by Chapter 64.32 and 64.34 RCW.

Development standards for condominiums including residential units or structures shall meet either the standards set out in subsection (1) or (2) of this section:

- (1) All lots and development shall meet the minimum requirements of this title as now in effect or hereafter amended. Phase or lot lines shall be used as lot lines for setback purposes under the zoning code.
- (2) Condominiums may be developed in phases where ownership of the property is unitary but all structures may not be completed at the same time or differing lenders finance separate structures or areas of the property. The following conditions shall apply to phased condominiums:
 - (a) All areas not within the building envelope are subject to joint use and are burdened by a joint obligation to maintain any and all access ways. The city shall have no obligation to maintain such access ways.
 - (b) The city of Oak Harbor shall have an easement for access along and over access ways and parking areas to allow police, building, fire and utility department

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personnel to inspect and observe such property, buildings and activities on the property as well as for providing emergency and law enforcement services and easements for utilities over and under such access ways.

- (c) Reciprocal easements for parking shall be provided to all tenants and owners.
- (d) The developer has entered into a development agreement pursuant to Chapter 18.30 for completion of all phases.
- (e) Phase lines must be treated as lot lines for setback purposes under the zoning code unless the property owner will place a covenant on the binding site plan that the setback area for built phases, contained in all unbuilt phases, shall become common areas and owned by the owners of existing units in the built portions of the condominium upon the expiration of the completion schedule described in the development agreement pursuant to Chapter 18.30.
- (f) All public improvements are guaranteed by bond or other security satisfactory to the city engineer or his designee.
- (g) All built phases in a condominium binding site plan shall have joint and several obligation to maintain landscaping through covenants or easements or both to assure that the responsibility is shared among the various owners.

21.80.130 Performance guarantee requirements.

- (1) In lieu of completing the required public improvements prior to approval of the binding site plan, the applicant may request approval, subject to the approval of a suitable guarantee. The guarantee must be in a form acceptable to the city and in an amount commensurate with improvements to be completed. The amount of the guarantee is established at 100 percent of the cost of the city having to construct the improvements plus 20 percent for contingency. The guarantee amount will require yearly review by the city and the applicant will be required to revise the guarantee amount to reflect current inflation rate. Based on the revised amount, the applicant will resubmit suitable guarantee to the city. Also, the guarantee will be restricted as far as the amount of permissible time in which the improvements must be completed. If not a regular surety bond from an acceptable state approved surety, the guarantee must be in a form acceptable to the city attorney.
- (2) Guarantee funds will not be released by the city unless approval has been received from all applicable departments that are responsible for acceptance and/or maintenance of such improvements. Partial releases will not be allowed.
- (3) All improvements begun by the applicant must be completed. Once the applicant has begun making improvements, the applicant shall not be eligible for submitting a guarantee to the city to cover the incomplete improvements.
- (4) Public improvements must be in place at time of certificate of occupancy or acceptable assurances for completion with a temporary certificate of occupancy.

21.80.140 Warranty requirements for acceptance of final improvements.

At the time of final acceptance of the improvements, the applicant shall provide to the city a one-year warranty guarantee at 10 percent of the established final cost of the public and/or off-site improvements which must be acceptable to the city.

21.80.150 Survey required.

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- (1) A survey must be performed for every binding site plan. The survey required must be conducted by or under the supervision of a Washington State registered land surveyor. The surveyor shall certify on the binding site plan that it is a true and correct representation of the lands actually surveyed and the survey was done in accordance with city and state law.
- (2) In all binding site plans, lot corner survey pins must be set before final approval can be granted.
- (3) In all binding site plans, perimeter monuments must be set before final approval can be granted.
- (4) In all binding site plans, control monuments must be set before final acceptance of public improvements. Performance guarantees must include the installation of all control monuments. Control monuments must be installed per city design and construction standards.
- (5) In all binding site plans, where final approval is to be granted by the acceptance of a performance guarantee, lot corner and perimeter monuments must be set. The performance guarantee must include the resetting of any monument that has been lost during construction of public improvements

21.80.160 Dedication – Warranty deed.

Any dedication, donation or grant to the City as shown on a binding site plan shall be considered a statutory warranty deed to the grantee for the use intended. The binding site plan processes of this chapter shall not be used to create, alter, or eliminate any rights in property arising solely between private owners of property within the binding site plan. All such private dedications, donations or grants shall be separately recorded with the county auditor and reference thereto made on the binding site plan.

21.80.170 Requirements for modification of binding site plan standards.

- (1) As part of the approval of an original binding site plan an applicant may request a modification of up to five percent from a lot dimensional requirement (setbacks, lot size, length, width, or lot coverage) of the applicable zoning standards found in Title 19 OHMC so long as the maximum density allowed in the zone is not exceeded.
- (2) Such request for modification shall be submitted by the applicant concurrently with the binding site plan application and considered by the director as a Type I decision.
- (3) The modification shall not be granted by the director until the following facts have been established:
 - (a) There are exceptional circumstances of conditions such as: locations of existing structures, lot configuration, topographic or unique physical features that apply to the subject property which prohibit the applicant from meeting the standards of this chapter;
 - (b) The authorization of the modification or variation will not be detrimental to the public welfare or injurious to property in the vicinity or zone in which the property is located;
 - (c) A hardship would be incurred by the applicant if he/she complied with the strict application of the regulations;
 - (d) Landscaping requirements are not thereby reduced.

21.80.180 Alteration or vacation of an approved binding site plan.

The purpose of this section is to provide a process by which changes (alterations or vacations) to a recorded binding site plan may be considered. Changes processed under this section must be related to the land division purposes of a binding site plan. Alteration or vacation of all or a portion of an approved binding site plan may be considered subject to the provisions of this section.

(1) Definitions.

- (a) Alteration: for the purposes of this section, an alteration is a change to the recorded binding site plan map that is related to or consistent with the land division purposes of this chapter and that generally relates to the items described in Section 21.80.050(4), (9), (16) or (17). For binding site plans approved prior to XXX, 2011, alterations may also be considered to the following elements of a binding site plan: zoning setback lines, building envelopes, parking areas, general circulation, landscaping areas, proposed use and location of buildings and loading areas.
- (b) Vacation: for the purposes of this section, a vacation is the removal of a property(s) from a binding site plan so that the obligations created under the binding site plan no longer apply to that property(s). Vacation may apply to a portion or the entirety of a binding site plan.

(2) Submittal requirements for alterations and vacations.

- (a) Application form. An application shall be submitted on a form provided by the Director.
- (b) Title report. All applications to alter or vacate a binding site plan shall be accompanied by a title company certification (current within 30 days from filing of the application) confirming that the title of the lands as described and shown on the application are in the name of the owner(s) signing the application.
- (c) Authority to submit alteration or vacation application. The alteration or vacation application shall contain the signatures of all those owners of lots who are directly affected by the proposed alteration or vacation.
- (d) The alteration or vacation application for a binding site plan shall contain all materials required of binding site plan applications as specified in this chapter unless otherwise waived by the Director.

(3) Criteria for Review.

- (a) The proposed alteration shall meet the requirements of this Chapter applicable to the underlying binding site plan.
- (b) Any alteration of an approved binding site plan affecting an unexpired development agreement may, in the discretion of the Director, invalidate the existing development agreement and require negotiation of a new development agreement pursuant to Chapter 18.30. The new development agreement shall vest to the City development regulations in effect at the time the Director has determined the application for alteration to be technically complete in accordance with the requirements of Chapter 18.20.
- (c) The proposed vacation shall not cause the remaining portions of an approved binding site plan to fail to meet the requirements of this Chapter. Any non-conformities created by such a vacation must be remedied prior to final approval of the vacation. Property within a binding site plan subject to an approved

vacation shall constitute one lot, and the balance of the approved binding site plan shall remain as approved.

- (4) Review process. Applications for alteration or vacation of a binding site plan shall be processed under a Review Process II according to Chapter 18.20.

21.80.190 Appeals to the hearing examiner.

- (1) An appeal of the decision relating to the binding site plan shall be made to the hearing examiner in accordance with the procedures set out in Chapter 18.40..
- (2) The written appeal shall include a detailed explanation stating the reason for the appeal. The decision of the hearing examiner shall be the final action.

21.80.200 Enforcement.

The auditor shall refuse to accept for recording any binding site plan which does not bear the verification of approval as defined by this chapter. The city attorney is authorized to prosecute violation of this chapter and to commence actions to restrain and enjoin a violation of this chapter and compel compliance with the provisions of this chapter. The costs of such action shall be taxed against the violator.

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 (5) five days following publication.

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

() APPROVED by its Mayor this _____ day of _____, 2011.

() Vetoed

THE CITY OF OAK HARBOR

Mayor

Attest:

City Clerk

Approved as to Form:

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City Attorney

Published: _____

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Low Impact Development (LID)

Code Update

Public Hearing

City of Oak Harbor Planning Commission Report

Date: February 22, 2011
Subject: LID Code Update

FROM: Ethan Spoo, Senior Planner

PURPOSE

In February, Planning Commission will continue its discussion of the proposed amendments to Oak Harbor Municipal Code Titles 11, 19, and 21 to allow for and encourage Low Impact Development (LID). The discussion began in January with staff introducing the “staff draft” of the proposed code. This month, staff is recommending that Planning Commission open a public hearing on the draft code.

AUTHORITY

RCW 36.70A.040 gives cities legislative authority to adopt development regulations in conformance with their comprehensive plans.

BACKGROUND

Last month, staff briefed Planning Commission on the proposed “staff draft” of the LID code. The proposed amendments, if adopted, would affect Titles 11 (“Streets”), 19 (“Zoning”), and 21 (“Subdivisions”). The following bullets summarize the changes to each of the code titles:

- **Title 11 Streets.** There are many changes to this title, but most of the changes simply bring Title 11 back into conformance with Title 21 which was amended in March, 2010. The substantive “LID” changes to this Title are: (1) language in Section 11.17.040 which permits LID stormwater management practices in streets, driveways, parking areas, private roads, bike paths, walkways, and patios and (2) two new LID residential street sections from which applicants may choose.
- **Title 19 Zoning.** The changes to this title affect three chapters: 19.44 “Parking”, 19.46 “Landscaping and Screening”, and 19.47 “Clearing and Grading.” The parking chapter is being amended to create a parking maximum, with a variance process. The landscaping chapter is being amended to require native vegetation areas in new development, including requirements for tree selection and maintenance. The clearing and grading chapter is being amended to include new grading best practices which will reduce siltation and pollution of stormwater.
- **Title 21 Subdivisions.** This title is being amended to include two new LID street sections which match those in Title 11, as well as allowing for LID stormwater management facilities in corridor buffers.

DISCUSSION

Staff made one minor change to the code during the past month. The change pertains to the maximum parking standard in 19.44.105. So as to provide more flexibility for small businesses in Oak Harbor, the change would apply the maximum parking standard only to parking lots with a minimum of 50 requires spaces or more.

CITIZEN COMMENTS

As part of a public outreach effort for this project, staff sent a letter to contractors, builders, and developers who have done business with the City during the past few years. Staff received an e-mailed comment from Mr. Corey Johnson of C. Johnson Construction Inc. regarding the topic of parking maximums and the requirement that all spaces over 125% of the minimum be pervious surface. In summary, Mr. Johnson believes that the City should offer more options than pervious surface for treatment of stormwater for parking spaces above 125% of the minimum. He also expressed support for native vegetation areas in terms of the potential flexibility they offer to property owners. See Attachment D.

RECOMMENDATION

Staff recommends that Planning Commission open a public hearing to discuss the proposed amendments to titles 11, 19, and 21 and continue this public hearing until March 22, 2011 Planning Commission meeting.

ATTACHMENTS

- Attachment A – Draft ordinance amending Title 11 “Streets”
- Attachment B – Draft ordinances amending Title 19 “Zoning”
- Attachment C – Draft ordinance amending Title 21 “Subdivisions”
- Attachment D – E-mail from Mr. Corey Johnson regarding parking maximums

Attachment A

Draft ordinance amending Title 11
“Streets”

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF OAK HARBOR AMENDING CHAPTER 11.17 OF THE OAK HARBOR MUNICIPAL CODE ENTITLED "STREET DESIGN STANDARDS" INCORPORATING LOW IMPACT DEVELOPMENT STORMWATER MANAGEMENT PRACTICES IN STREET DESIGNS.

WHEREAS, the City of Oak Harbor's Comprehensive Plan in Environment Policy 2(h) says "the City should provide incentives to utilize Low Impact Development techniques for new development and redevelopment projects that will further promote resource protection and stewardship. Such incentives may include density credits, street width and/or parking requirement reductions, stormwater fee credits, landscape/park requirement credits, and/or expedited permit review processing. The City should also provide educational materials through pamphlets or web links to the public to educate the public on low impact development and;

WHEREAS, the City of Oak Harbor finds that Low Impact Development is a non-structural approach for managing stormwater from new and redeveloped sites which has been found by multiple professional and academic studies to have less impact on the environment, especially water quality, than conventional approaches for treating stormwater and;

WHEREAS, the City of Oak Harbor finds that Low Impact Development techniques are, in most cases, cost competitive or less expensive to install than conventional stormwater infrastructure and;

WHEREAS, the City finds that Low Impact Development techniques promote higher property values by using vegetated raingardens, native vegetation areas, and pervious pavements which are considered to be more aesthetically appealing than conventional stormwater techniques and;

WHEREAS, the City of Oak Harbor finds that the Oak Harbor Municipal Code currently has standards for incorporating Low Impact Development in site designs, that having such standards will further promote the use of Low Impact Development stormwater treatment techniques, and will help City staff review these projects more efficiently and;

WHEREAS, the City of Oak Harbor conducted seven (7) work sessions with the Planning Commission which were open to the public on the following dates: October 27, 2009, November 24, 2009, January 26, 2010, February 23, 2010, March 23, 2010, April 27, 2010, and May 25, 2010 and;

WHEREAS, the City of Oak Harbor conducted a public hearing before the Planning Commission on February 22, 2011 which was closed on March 29, 2011, and;

WHEREAS, the Oak Harbor Planning Commission recommended approval of the subject ordinance to the City Council and;

WHEREAS, the City of Oak Harbor issued notice of application and Determination of Non-Significance (DNS) for a SEPA Environmental Checklist in accordance with Chapter 43.21 RCW and;

WHEREAS, the City of Oak Harbor provided a 60-day comment period which began on X, 2011 and ended on X, 2011 to the Washington State Department of Commerce in accordance with Section 36.70A.106 RCW

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

Section One. Chapter 11.17 of the Oak Harbor Municipal Code, last amended by Section one of Ordinance 1430 in 2005, is hereby amended to read as follows:

Chapter 11.17

STREET DESIGN STANDARDS

Sections:

11.17.010 ~~_____~~ **General requirements.**

11.17.020 ~~_____~~ **Standard specifications.**

11.17.030 ~~_____~~ **Inspection and fees.**

11.17.040 ~~_____~~ **~~Required improvements.~~ Minimum Improvement Standards**

11.17.050 ~~_____~~ **Clearing and grading.**

11.17.060 ~~_____~~ **Monuments.**

11.17.070 ~~_____~~ **Street and block layout.**

11.17.075 ~~_____~~ **~~North Whidbey Enterprise Area street standards.~~**

11.17.080 ~~_____~~ **~~Other standards.~~ Right-of-way requirements**

11.17.090 ~~_____~~ **~~Variance~~ North Whidbey Enterprise Area street standards.**

11.17.100 ~~_____~~ **Street geometry.**

11.17.110 ~~_____~~ **Other standards See 11.**

11.17.010 General requirements.

- (1) These street standards shall apply to all development within the city of Oak Harbor. The improvements specified under this chapter are necessary prior to issuance of a building permit for any lot, parcel or tract which has access to such street. Bond or equivalent assurances pursuant to the Oak Harbor Municipal Code (OHMC) may be provided in lieu of construction so long as the required improvements are in place prior to occupancy of the premises for which the building permit is provided.
- (2) Building permits may be issued without complying with the provisions of this chapter:
 - (a) For lots or parcels with frontage on streets that:
 - (i) Were constructed and dedicated to the city prior to October 1, 2004; and
 - (ii) Met minimum street standards at the time of construction.

- (b) Building permits for remodeling, repair or restoration of existing buildings not exceeding 60 percent of the assessed valuation of the structure may be issued without compliance with this chapter.
- (3) Exception authorized under subsection (2) of this section shall not apply when:
 - (a) Street improvements are required by concurrency requirements of the Oak Harbor Municipal Code or by SEPA analysis;
 - (b) The regulations under the Oak Harbor Municipal Code requires sidewalks as a pedestrian amenity for the development; or
 - (c) Required by Local Improvement District LID^[eas2] assessment.
- (4) If street improvements are required by this chapter or Chapter 11.16 OHMC and before any building permit is issued, the property owner shall submit to the city engineer to obtain city approval of plans and profiles of the proposed street, drainage plans and profiles, sewer and water plans and profiles, and right-of-way section drawings, including utility line placement. All design drawings and construction inspections shall be completed under the supervision of the developer's engineer, as defined in this title.

11.17.020 Standard specifications.

The adopted DOE standards and standard specifications for municipal public works construction prepared by the Washington State chapter of the American Public Works Association and standard specifications in accordance with the latest edition of the Oak Harbor water systems plan, comprehensive Oak Harbor sewer system plan and Oak Harbor comprehensive plan shall be hereinafter referred to as the "standards" and said standards together with the laws of the state of Washington and the ordinances of the city of Oak Harbor, so far as applicable, shall apply except as amended or superseded by special provisions.

11.17.030 Inspection and fees.

The engineering department shall be responsible for approving all engineering drawings, the final inspection and acceptance of all street improvements. A charge for staff review, inspection and administrative time shall be prepared by the city engineer and billed to the developer. The charge shall be based on the city's hourly cost plus fringe benefits as a percentage of the hourly labor rate.

11.17.040 ~~Required improvements.~~ Minimum Improvement Standards^[eas3]

- (1) Minimum improvements along contiguous arterials and one-half of all other abutting streets shall consist of paved streets, curbs, gutters, sidewalks, monuments, sanitary and storm sewers, street lights, water mains, street name signs and all appurtenances thereto in accordance with specifications approved by the city engineer or adopted by OHMC 11.17.020^[eas4].
- (2) The city engineer shall determine the minimum required improvements. At a minimum, streets shall be constructed in accordance with their classification as determined by the comprehensive plan transportation element. The city engineer may require the submission of a professionally prepared traffic impact analysis to assist in determining the minimum street improvements required of any development. It is further provided that improvements of adjoining streets shall be

required only if there is substantial use of the street by the development in question.

- (3) Low Impact Development (LID) best management practices, such as permeable surfacing alternatives and on-site stormwater management facilities, are encouraged for street improvements, where site and soil conditions make LID feasible. Permeable surfacing and LID stormwater management facilities shall be constructed in accordance with the LID Technical Guidance Manual for Puget Sound (latest edition) and the manufacturer's recommendations. Permeable surfacing includes, but is not limited to: paving blocks, turf block, pervious concrete, porous asphalt, and other similar approved materials. Alternative surfacing methods may be approved for parking areas, emergency parking areas, public and private roads, road shoulders, bike paths, walkways, patios, driveways, and easement service roads unless site constraints make use of such materials detrimental to water quality. Use of permeable surfacing methods shall meet the imposed load requirements for fire apparatus, and shall be subject to review and approval by the Oak Harbor Public Works Department (Engineering Division) and the Fire Marshal[^{cas5}].

11.17.050 Clearing and grading.

All streets, roads and alleys shall be graded to their full width so that pavement and sidewalks can be constructed on the same plane. Before grading is started, the entire right-of-way area shall be cleared of all stumps, roots, brush, other objectionable materials, and all trees not intended for preservation.

11.17.060 Monuments.

Concrete monuments shall be set at controlling corners and points of curvature in each street, and at all street intersections. All surveys shall be of third order accuracy. The use of state plane coordinates is encouraged.

11.17.070 Street and block layout

- ~~(1) The street layout should provide for the following:~~
- ~~(a) The location of all principal, collector and minor arterials must conform to the circulation element of the Oak Harbor comprehensive plan, as now in effect or hereafter adopted;~~
 - ~~(b) Continuity and continuation of adjoining streets and arterials;~~
 - ~~(c) Access generally extended to boundaries of the tract;~~
 - ~~(d) Streets generally parallel with contour lines where practicable;~~
 - ~~(e) Streets intersecting at right angles or as nearly as possible and T-intersection design shall be utilized insofar as practical;~~
 - ~~(f) All streets dedicated shall be full width except along the boundary lines of the property. Half width streets may be permitted along the boundaries of a development upon approval therefor and if traffic study demonstrates that more is not needed. Dedication shall be required if use is made of the street by the property being developed;~~

- (g) — ~~Alleys shall be a minimum of 20 feet wide and paved. Alleys may be required in residential areas and to service all properties abutting arterials. Alleys may be required in all commercial and industrial areas; and~~
- (h) — ~~Access and utility easements for residential areas may be permitted in lieu of alleys. All utility easements shall contain access provisions for purpose of maintenance.~~
- (2) — ~~Where possible, blocks shall have sufficient width to provide for two rows of lots, each of which shall have a minimum depth of 90 feet.~~
 - (a) — ~~Pedestrian walkways seven feet in width may be required to provide circulation of pedestrians. These are to be paved in concrete.~~
 - (b) — ~~The number of intersecting streets with major arterials of all classes shall be held to a minimum.~~
- (3) — ~~Street Grades.~~
 - (a) — ~~The minimum grade on any street shall be 0.50 percent unless otherwise approved by the city engineer.~~
 - (b) — ~~Maximum grades shall not exceed the following grades unless otherwise approved by the city engineer:~~
 - (i) — ~~Residential streets: 10 percent;~~
 - (ii) — ~~Collector arterials: 10 percent;~~
 - (iii) — ~~Minor arterials: 10 percent;~~
 - (iv) — ~~Principal arterials: eight percent.~~
- (4) — ~~Street Right-of-Way Requirements.~~

	Right-of-Way Width (in feet)	Width of Pavement (in feet)	Sidewalk Width (in feet)	
			Residential	Commercial
Principal Arterials	60	44	6	6
Collector Arterials	60	44	5	6
Neighborhood Streets	50—60	36—44	5	
Alleys	20	16		

- (a) — ~~Increased Right-of-Way Requirements. The city engineer may require that street widths be increased from suggested street width above to provide for traffic movement and to reduce or eliminate traffic congestion.~~
- (b) — ~~Horizontal Curves. Where a deflection angle of more than 10 degrees in the alignment of a street occurs, a curve of reasonably long radius shall be introduced on streets 60 feet or more in width, the centerline radius of curvature shall be not less than 300 feet; on other streets, not less than 100 feet subject to review and approval by the engineering department.~~
- (c) — ~~Vertical Curves. All changes in grade shall be connected by vertical curves of a minimum length of 200 feet unless otherwise specified by the engineering department.~~

- (d) ~~Tangents. A tangent of at least 200 feet in length shall be provided between reverse curves for principal and minor arterials; 150 feet for collector streets; and 100 feet for residential access streets. The city engineer may authorize the modification of the above requirement when it can be shown that the minimum tangents would be impractical and where there would be no impact on traffic safety standards.~~
- (e) ~~Street intersections with centerline to centerline offsets of less than 125 feet shall not be allowed.~~
- (f) ~~Streets that end within a subdivision which will be extended in the future must be designed at least 200 feet beyond the limits of the subdivision.~~
- (5) ~~Dead end streets may be permitted where the proposed dead end street will not adversely affect the traffic flow and circulation within the area. Dead end streets shall terminate in a circular turnaround at least 80 feet in diameter. Recommended maximum length is 300 feet. The maximum allowable length is 400 feet, measured from center of intersection to center of cul-de-sac.~~
- (6) ~~Alleys or easements for utilities or pedestrian access having a total width of 20 feet may be required along rear or side lot lines.~~
- (7) ~~At street intersections, property line corners shall be rounded by an arc, the minimum radius of which shall be 20 feet. No rounding shall be required for the intersection of an alley with a street.~~

The standards in this section address pedestrian, vehicular and bicycle traffic flow on a site as it relates to surrounding sites. These provisions create continuous, multimodal connections across properties and developments of different ownership. In so doing, these standards facilitate the efficient and safe movement of pedestrians, bicycles and vehicles, giving each mode multiple route choices from origins to destinations.

- (1) Streets, sidewalks, pedestrian or bike paths, shall be linked within and between neighborhoods to create a continuous and interconnected network of roads and pathways;
- (2) Local Streets, Arterials and Collectors shall be extended to the boundary of the development, unless an exceptional circumstance of topography, critical areas or existing development prohibits the extension. Provided, that if an adjacent property has a reasonable likelihood of redeveloping in the future, the Director of Development Services may require a street stub. Streets that end within a proposed development which will be extended in the future must be designed at least 200 feet beyond the property boundary of the proposed development and shall be shown on the preliminary plat document.
- (3) The location of all Principal Arterials, Minor Arterials, and Collectors must conform to the Transportation Element of the Oak Harbor Comprehensive Plan;
- (4) All streets dedicated shall be full-width except along the boundary lines of the property. Half-width streets may be permitted along the boundaries of a development upon approval and in compliance with 11.17.040 OHMC where reasonably necessary as a direct result of the proposed development.
- (5) The number of intersecting streets with Principal or Minor arterials shall be held to a minimum.
- (6) Street intersecting at right angles or as nearly as possible and T-intersection

design shall be utilized insofar as practical.

(7) Alleys provide secondary access to an abutting property. Alleys may be considered as a design solution to provide vehicular or service access to residential, commercial, and industrial properties according to the following provisions:

(a) When alleys are proposed, they may be publicly dedicated and maintained or privately owned and maintained. All alleys which are dead-ends and do not provide a through connection to the other side of the block shall be privately owned and maintained.

(b) The dimensions of alleys must conform to Table 11.17-2.

(c) Alleys may be required by the city engineer as a design solution to serve residential properties which front on Arterials and Collectors and to minimize the number of driveway accesses on these streets. Alleys may also be required by the city engineer in commercial and industrial areas.

(d) Where private alleys are proposed, access and utility easements for residential areas may be permitted in lieu of public dedication. All utility easements shall contain access provisions for purpose of public utility maintenance^(eas7).

11.17.075 — North Whidbey Enterprise Area street standards

(1) ~~The standards contained in this section apply to the North Whidbey Enterprise Area as identified in Exhibit C of the Urban Growth Area Interlocal Agreement between Island County and the city of Oak Harbor, a copy of which is on file with the city clerk and available for public inspection.~~

(2) ~~Street Right of Way Requirements:~~

	Right-of-Way Width (in feet)	Width of Pavement (in feet)	Sidewalk Width (in feet)
Industrial Arterial	60	46	None
Industrial Collector	50	30	None
Industrial Local	50	30	None

~~The city engineer may increase the right of way requirements for cut slopes or other engineering needs when recommended by a traffic study.~~

(3) ~~Typical street cross sections for uses within the North Whidbey Enterprise Area and incorporating the requirements of subsection (2) of this section are on file with the city clerk^(eas8).~~

11.17.080 — Other Standards

(1) ~~Sidewalks:~~

(a) ~~Sidewalks shall be installed on both sides of all streets, along dead end streets and around cul de sacs. No physical obstructions such as poles and fire hydrants shall be constructed in the sidewalk. Sidewalks shall be a minimum of five feet wide and four inches thick. Where rolled curb has~~

been approved by the city engineer all sidewalks adjacent will be a minimum thickness of six inches.

- (b) ~~On streets where a proposed subdivision adjoins an existing subdivision or existing street dedication and the existing subdivision or existing street dedication does not meet city standards, the developer shall, as a minimum, be responsible for installing sidewalks on both sides of all streets within the proposed subdivision and on one side on streets around the perimeter of the proposed subdivision.~~
- (c) ~~All sidewalks shall be completed prior to an occupancy permit being granted for any new building.~~
- (2) ~~Other Utilities.~~
 - (a) ~~Street light standards and fixtures shall be provided to supply adequate lighting for the safety and convenience of the public.~~
 - (b) ~~Other utilities which are within a reasonable distance to the platted area shall be installed to provide electricity, natural gas, telephone, television cable, and other services to the platted area. Said utilities shall be restricted to underground installation.~~
 - (c) ~~All utilities (water, sewer, and electrical, and if available, gas and TV cable) shall be installed to the property line prior to acceptance of the public improvements.~~
- (3) ~~Traffic Control Devices. The developer shall install street name signs and traffic control signs and/or improvements and devices other than traffic signals to the satisfaction of the city engineer. The city may install such signs and devices at the expense of the developer.~~
- (4) ~~All utilities except water, sewer and storm sewer will be installed behind the sidewalk.~~

11.17.080 Right-of-Way requirements

Table 11.17-2 gives the minimum required dimensional standards for each functional street type listed in the Transportation Element of the Oak Harbor Comprehensive Plan. All newly proposed public streets must conform to the requirements in Table 11.17-2, unless an alternative Local Residential Street design has been approved per sections 21.60.070 or 21.60.080 OHMC.

Table 11.17 - 2. Required Street Improvements					
<u>Street Type</u>	<u>Right-of-way width *</u>	<u>Face of curb to-face of curb width</u>	<u>Sidewalk width each side</u>	<u>Landscape strip width each side</u>	<u>Bike lane width each side</u>
<u>Principal Arterial, 4-lane</u>	<u>97 - 105 feet</u>	<u>52 feet without bike lanes, 60 feet with bike lanes. Landscaped median is 12 feet.</u>	<u>8 feet</u>	<u>12 feet</u>	<u>4 feet.</u>

<u>Minor Arterial, 2-lane</u>	<u>80 feet</u>	<u>47 feet, with 11 foot center turn-lane</u>	<u>5 feet</u>	<u>10.5 feet</u>	<u>5 feet</u>
<u>Minor Arterial, Industrial (enterprise area)</u>	<u>60 feet</u>	<u>38 feet</u>	<u>none</u>	<u>6 feet (bioswale)</u>	<u>4 feet</u>
<u>Collector w/ bike lanes</u>	<u>66 feet</u>	<u>48 feet</u>	<u>5 feet</u>	<u>3 feet</u>	<u>5 feet</u>
<u>Collector, Industrial</u>	<u>50 feet</u>	<u>26 feet</u>	<u>none</u>	<u>6 feet (bioswale)</u>	<u>4 feet, one side</u>
<u>Local, Residential - Narrow</u>	<u>50 ft</u>	<u>28 feet with one parking lane. Or 28 feet including two 4-foot bike lanes and no parking</u>	<u>5 feet</u>	<u>5 feet</u>	<u>4 feet, optional</u>
<u>Local Residential, Wide</u>	<u>60 feet</u>	<u>36 feet parking on both sides. Or 36 feet with parking on one side and 4-foot bike lanes on both sides.</u>	<u>5 feet</u>	<u>5 feet</u>	<u>4 feet, optional.</u>
<u>Local LID Street #1</u>	<u>50 feet</u>	<u>28 feet with one parking lane. Or 28 feet including two 4-foot bike lanes and no parking. Travel and parking lanes shall be pervious.</u>	<u>5 feet</u>	<u>5 feet</u>	<u>4 feet, optional</u>
<u>Local LID Street #2</u>	<u>60 feet</u>	<u>34.5 feet, with one, 7.5-foot lane of pervious parking and 2-foot pervious</u>	<u>5 feet</u>	<u>11-foot bioswale and 4-foot planter strip (opposite side)</u>	<u>none</u>

		<u>shoulder (opposite side of parking).</u>			
<u>Alley</u>	<u>20</u>	<u>19 feet.***</u>	<u>none</u>		<u>none</u>

* All street types include a 6-inch strip at the outside edge of the physical improvements, but within the right-of-way, with the exception of the "Minor Arterial, Industrial" which has a 1-foot strip on the outside edge of right-of-way, the "Collector, Industrial" which has a 4 foot strip on the outside edge of right-of-way, and the Local LID Street #2 which has a 1-foot strip on the outside edge of right-of-way.

** All streets include 6-inch curbs not shown in the dimensions above, with the exception of alleys which do not have curbs.

*** 16-foot width pavement sections may be approved on alleys with permission from the city engineer.

- (1) Where landscape strips are required on Local Residential streets within the public right-of-way, they are to be maintained by the property owner whose property is adjacent to the landscape strip. Such landscape strips shall contain one hundred percent (100%) groundcover in the form of drought-tolerant grass or turf.
- (2) Intersection spacing of less than one hundred twenty five feet (125') is not allowed.
- (3) For land division of commercial or industrial property, dead-end streets may be permitted where the proposed dead-end street will not adversely affect the traffic flow and circulation within the area. Dead-end streets shall terminate in a turnaround approved by the city engineer. The maximum allowable length for dead-end streets is four hundred feet (400'), measured from the center of intersection to the dead-end terminus. Requirements for dead-end streets in residential subdivisions or short subdivisions are contained in OHMC section 21.60.110.
- (4) Increased right-of-way requirements: the city engineer may require that street widths be increased from the minimum width in Table 11.17-2 to provide for traffic movement, to reduce or eliminate traffic congestion and for safety reasons[cas10].

11.17.090 — Variance.

- (1) — Any developer can make application for a variance provided the request is received concurrently with the proposed development application. Such application shall include any and all details necessary to support the application. Variances may be granted under the following circumstances:
 - (a) — Because of the size of the lot or parcel to be developed, its topography, the condition or nature of adjoining streets, or the existence of unusual physical conditions, strict compliance with the provisions of this chapter would cause unusual and unnecessary hardship on the developer; or
 - (b) — The requirements for right-of-way dedication and street construction are not roughly proportional to the burdens imposed by the development on the street system; or
 - (c) — Alternative street designs will further circulation and urban design goals and policies of the comprehensive plan.
- (2) — Variances are a Type II review process.
- (3) — Such conditions may be required which may achieve, insofar as practicable, the objectives of the requirements for which a variance is authorized[cas11].

11.17.090 North Whidbey Enterprise Area street standards.

- (1) The standards contained in this section apply to the North Whidbey Enterprise Area as identified in Exhibit C of the Urban Growth Area Interlocal Agreement between Island County and the city of Oak Harbor, a copy of which is on file with the city clerk and available for public inspection.
- (2) Street Right-of-Way Requirements.

Table 11.17-1 North Whidbey Enterprise Area Street Standards

	<u>Right-of-Way Width (in feet)</u>	<u>Width of Pavement (in feet)</u>	<u>Sidewalk Width (in feet)</u>
<u>Industrial Arterial</u>	<u>60</u>	<u>46</u>	<u>None</u>
<u>Industrial Collector</u>	<u>50</u>	<u>30</u>	<u>None</u>
<u>Industrial Local</u>	<u>50</u>	<u>30</u>	<u>None</u>

The city engineer may increase the right-of-way requirements for cut slopes or other engineering needs when recommended by a traffic study.

- (3) Typical street cross-sections for uses within the North Whidbey Enterprise Area and incorporating the requirements of subsection (2) of this section are on file with the city clerk^{cas121}.

11.17.100 Street geometry.

- (1) Horizontal Curves. Where a deflection angle of more than 10 degrees in the alignment of a street occurs, a curve of reasonably long radius shall be introduced on streets 60 feet or more in width, the centerline radius of curvature shall be not less than 300 feet; on other streets, not less than 100 feet subject to review and approval by the engineering department.
- (2) Vertical Curves. All changes in grade shall be connected by vertical curves of a minimum of 200 feet unless otherwise specified by the engineering department.
- (3) Tangents. A tangent of at least 200 feet in length shall be provided between reverse curves for principal and minor arterials; 150 feet for collector streets; and 100 feet for residential access streets. The city engineer may authorize the modification of the above requirement when it can be shown that the minimum tangents would be impractical and where there would be no impact on traffic safety standards.
- (4) The minimum grade on any street shall be 0.50 percent unless otherwise approved by the city engineer. Maximum grades shall not exceed the following grades unless otherwise approved by the city engineer:
 - (a) Residential streets: 10 percent
 - (b) Collectors: 10 percent
 - (c) Minor arterials: 10 percent
 - (d) Principal arterials: 8 percent
- (5) At street intersections, property line corners shall be rounded by an arc, the minimum radius of which shall be 20, except as provided for in 21.50.100 OHMC. No rounding shall be required for the intersection of an alley with a street^{cas131}.

11.17.110 Other standards.

(1) Sidewalks.

- (a) Sidewalks shall be installed on both sides of all streets, along dead-end streets and around cul-de-sacs. No physical obstructions such as poles and fire hydrants shall be constructed in the sidewalk. Sidewalks shall be a minimum of five feet wide and four inches thick. Where rolled curb has been approved by the city engineer all sidewalks adjacent will be a minimum thickness of six inches.**
- (b) On streets where a proposed subdivision adjoins an existing subdivision or existing street dedication and the existing subdivision or existing street dedication does not meet city standards, the developer shall, as a minimum, be responsible for installing sidewalks on both sides of all streets within the proposed subdivision and on one side on streets around the perimeter of the proposed subdivision. These provisions may be amended for LID projects, when approved by the city engineer and development services director.**
- (c) All sidewalks shall be completed prior to an occupancy permit being granted for any new building.**

(2) Other Utilities.

- (a) Street light standards and fixtures shall be provided to supply adequate lighting for the safety and convenience of the public.**
- (b) Other utilities which are within a reasonable distance to the platted area shall be installed to provide electricity, natural gas, telephone, television cable, and other services to the platted area. Said utilities shall be restricted to underground installation.**
- (c) All utilities (water, sewer, and electrical, and if available, gas and TV cable) shall be installed to the property line prior to acceptance of the public improvements.**

(3) Traffic-Control Devices. The developer shall install street name signs and traffic control signs and/or improvements and devices other than traffic signals to the satisfaction of the city engineer. The city may install such signs and devices at the expense of the developer.

(4) All utilities except water, sewer and storm sewer will be installed behind the sidewalk.

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 (5) days after its publication.

PASSED by the City Council this ___ day of _____ 2010.

CITY OF OAK HARBOR

Approved () _____
Vetoed () Mayor

Date

ATTEST:

City Clerk

Approved as to Form:

City Attorney

Published: _____

Attachment B

Draft ordinance amending Title 19
“Zoning”

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF OAK HARBOR AMENDING CHAPTER 19.44 OF THE OAK HARBOR MUNICIPAL CODE ENTITLED "PARKING" INCORPORATING LOW IMPACT DEVELOPMENT STORMWATER MANAGEMENT PRACTICES IN PARKING FACILITIES.

WHEREAS, the City of Oak Harbor's Comprehensive Plan in Environment Policy 2(h) says "the City should provide incentives to utilize Low Impact Development techniques for new development and redevelopment projects that will further promote resource protection and stewardship. Such incentives may include density credits, street width and/or parking requirement reductions, stormwater fee credits, landscape/park requirement credits, and/or expedited permit review processing. The City should also provide educational materials through pamphlets or web links to the public to educate the public on low impact development and;

WHEREAS, the City of Oak Harbor finds that Low Impact Development is a non-structural approach for managing stormwater from new and redeveloped sites which has been found by multiple professional and academic studies to have less impact on the environment, especially water quality, than conventional approaches for treating stormwater and;

WHEREAS, the City of Oak Harbor finds that Low Impact Development techniques are, in most cases, cost competitive or less expensive to install than conventional stormwater infrastructure and;

WHEREAS, the City finds that Low Impact Development techniques promote higher property values by using vegetated raingardens, native vegetation areas, and pervious pavements which are considered to be more aesthetically appealing than conventional stormwater techniques and;

WHEREAS, the City of Oak Harbor finds that the Oak Harbor Municipal Code currently has standards for incorporating Low Impact Development in site designs, that having such standards will further promote the use of Low Impact Development stormwater treatment techniques, and will help City staff review these projects more efficiently and;

WHEREAS, the City of Oak Harbor conducted seven (7) work sessions with the Planning Commission which were open to the public on the following dates: October 27, 2009, November 24, 2009, January 26, 2010, February 23, 2010, March 23, 2010, April 27, 2010, and May 25, 2010 and;

WHEREAS, the City of Oak Harbor conducted a public hearing before the Planning Commission on February 22, 2011 which was closed on March 29, 2011, and;

WHEREAS, the Oak Harbor Planning Commission recommended approval of the subject ordinance to the City Council and;

WHEREAS, the City of Oak Harbor issued notice of application and Determination of Non-Significance (DNS) for a SEPA Environmental Checklist in accordance with Chapter 43.21 RCW and;

WHEREAS, the City of Oak Harbor provided a 60-day comment period which began on X, 2011 and ended on X, 2011 to the Washington State Department of Commerce in accordance with Section 36.70A.106 RCW

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

Section One. Section 19.44.010 of the Oak Harbor Municipal Code last adopted by Section 19 of Ordinance 1555 in 2009 is hereby amended to read as follows:

Chapter 19.44

PARKING

Sections:

- | | |
|------------------|--|
| 19.44.010 | Purpose and intent. |
| 19.44.020 | General requirements. |
| 19.44.030 | Bicycle parking. |
| 19.44.040 | Location. |
| 19.44.050 | Expansion, enlargement and occupancy. |
| 19.44.060 | Mixed occupancies. |
| 19.44.070 | Uses not specified. |
| 19.44.080 | Joint use. |
| 19.44.090 | Conditions required for joint use. |
| 19.44.100 | <u>Minimum parking space standards.</u> Table of minimum standards. |
| 19.44.105 | <u>Maximum parking space standards</u>^(eas). |
| 19.44.110 | Parking space size and access requirements. |
| 19.44.120 | Car and van pool parking. |
| 19.44.130 | Plans. |
| 19.44.140 | Loading areas. |

19.44.010 Purpose and intent

Provisions of this chapter are of general application to several of the districts described in Chapter 19.20 OHMC, except as noted in the CBD central business district. It is the intent of this chapter to set down provisions for off-street parking and loading areas to prevent congestion in the streets, promote and protect property values and to provide for the health, safety and welfare of the citizenry.

19.44.020 General requirements.

Parking areas, public or private, are permitted as accessory uses, operating in conjunction with permitted uses, unless otherwise permitted by this title. Each off-street parking space shall have a net area of not less than 180 square feet, exclusive of driveways or aisles, and shall be of usable shape and condition. To determine on a gross area basis, 270 square feet shall be allowed per vehicle. If the required parking space for a one-family or two-family dwelling is not provided in a covered garage, then such space shall be not less than 180 square feet The circulation pattern of all off-street parking areas excepting

driveways serving single-family or two-family dwellings shall not have as a part of the pattern any parking or parking maneuvers on a public sidewalk, highway, road, street or alley.

19.44.030 Bicycle parking.

Bicycle racks shall be provided for all nonresidential and multifamily uses. Such racks shall provide space for a minimum of one bicycle for each 10 parking spaces required to a maximum of 10 bicycle spaces.

19.44.040 Location.

Off-street parking facilities shall be located and operated in conjunction with the permitted use as hereinafter specified; where a distance is specified, such distance shall be the walking distance measured from the nearest point of the parking facility to the nearest point of the building that such facility is required to serve:

- (1) For one-family and two-family dwellings, on the same lot with the building they are required to serve;
- (2) For multiple dwellings, not more than 100 feet;
- (3) For hospitals, skilled nursing facilities, assisted living facilities, rooming houses and boarding houses, fraternity and sorority houses, not more than 300 feet;
- (4) For uses other than those specified above, not more than 500 feet;
- (5) Parking lots for passenger automobiles only shall be allowed when such parking lots are for the purpose of providing the off-street parking required by this title and are located and improved in accordance with this chapter, except that when any such parking lot is to serve a use first permitted in a less restrictive zone than the zone in which the parking lot is to be located, such parking lot may be allowed only by a variance granted by the hearing examiner after a public hearing and the finding that such parking lot will not be unduly detrimental to surrounding properties; provided, that additional landscaping or fencing as directed by the hearing examiner to visually screen parked cars from all residential properties in the vicinity shall be provided as conditions precedent to the granting of such variance; and provided, that at least 40 lineal feet of the boundary of such parking lot adjoins a less restrictive zone or is separated therefrom only by the width of an alley or street. Such parking lots shall not extend beyond said less restrictive zone more than 150 feet into the more restrictive zone in which the parking lot is to be located. No such parking lots shall be allowed for the purpose of serving nonconforming uses.

19.44.050 Expansion, enlargement and occupancy.

All new or substantially altered uses or structures shall be provided with special purpose off-street parking facilities as required by this chapter. No application for a building permit or change of occupancy for a new or substantially altered structure or improvement shall be approved unless there is included with such improvement or use a plot plan showing the required special off-street parking as required in this chapter. Wherever any building is enlarged in height or in ground coverage, off-street parking shall be provided for said expansion or enlargement in accordance with the requirements of the schedule; provided, however, that no parking space need be provided in the case of

enlargement or expansion where the number of parking spaces required for such expansion or enlargement is less than 10 percent of the parking spaces specified in the schedule for the building.

19.44.060 Mixed occupancies.

In the case of mixed uses, the total requirements for the various uses shall be computed separately. Off-street parking facilities for one use shall not be considered as specified for joint use.

19.44.070 Uses not specified.

In the case of uses not specifically mentioned in sections below, the requirements for off-street parking facilities shall be determined by the planning director. Such determination shall be based upon the requirements for the most comparable use listed.

19.44.080 Joint use.

Joint use of parking facilities is encouraged, where appropriate. The^[eas2] director, upon application, may authorize the joint use of parking facilities for the following uses or activities under conditions specified:

- (1) Up to 50 percent of the parking facilities required by this chapter for primarily nighttime uses such as theaters, bowling alleys, bars, restaurants and related uses may be supplied by certain other types of buildings or uses herein referred to as daytime uses such as banks, offices, retail and personal service shops, clothing, food, furniture, manufacturing or wholesale and related uses;
- (2) Up to 50 percent of the parking facilities required by this chapter for primarily daytime uses may be supplied by primarily nighttime uses;
- (3) Up to 100 percent of the parking facilities required by this chapter for a church, or for an auditorium incidental to a public or parochial school, may be supplied by the off-street parking facilities provided by uses primarily of a daytime nature.

19.44.090 Conditions required for joint use.

The building or use for which application is being made to utilize the off-street parking facilities provided by another building or use shall be located within 500 feet of such parking facilities in addition to which:

- (1) The applicant shall show that there is no substantial conflict in the principal operating hours of the two buildings or uses for which joint use of off-street parking facilities is proposed;
- (2) The applicant shall present a properly drawn legal instrument to be recorded with the Island County auditor, executed by the parties concerned for joint use of off-street parking facilities and approved as to form and manner of execution by the city attorney, to the hearing examiner upon application, such instrument to be filed with the building official upon approval of the hearing officer.

19.44.100 Minimum parking space standards ~~Table of minimum standards~~^[eas3]

Use	Required Parking
Residential, single-family	Two per dwelling
Residential, duplex	Two per dwelling
Residential, multiple	One and one-half per dwelling unit
Three or more bedroom dwelling unit	Two per three or more bedroom dwelling unit. In addition, multifamily projects with eight or more units shall provide one visitor parking space for each eight units.
Banks	One per 400 square feet of gross floor area, plus employee parking
Bowling alleys	Four per alley, plus employee parking
Churches, auditoriums and similar enclosed places of assembly	One per four seats and/or one per 30 square feet of assembly space without fixed seats
Skilled nursing facilities	One per five beds, plus owner and employee parking
College	One space per 200 square feet of class room space
Assisted living facilities	Minimum of 0.8 spaces per unit, with a maximum of one and one-half spaces per unit
Food and beverage places with sales and consumption on premises	One per three seats, plus one space for every two employees on the largest shift
Furniture, appliance, hardware, clothing and shoe stores, personal service stores such as beauty parlors, barbershops and physical fitness centers	One per 600 square feet gross floor area, plus employee parking
Gasoline stations	15 spaces, including pump service area
Hospital	One per two beds, excluding bassinets
Hotels, moter hotels	One per sleeping room, plus owner and employee parking
Libraries and museums	One per 200 square feet gross floor area, plus employee parking
Manufacturing uses, research testing and processing, assembling, all industries	One per each two employees on maximum shift and not less than one per each 800 square feet gross floor area
Mortuaries	One per 100 square feet of gross floor area used for assembly or one per five seats, plus employee parking
Motels	One per unit, plus owner and employee parking
Motor vehicle, machinery, plumbing, heating, ventilating, building supplies stores and services	One per 1,000 square feet floor area, plus employee parking
Offices not providing customer service	One per each employee
Offices of opticians, chiropractors and others licensed by the state of Washington	One per 400 square feet of gross floor area, plus employee parking

to practice the healing arts	
Offices, business and professional (other than medical and dental) with on-site customer service	One per 400 square feet of gross floor area, plus employee parking
Rooming houses, similar uses	One per dwelling unit
Schools, elementary and junior high	One per each employee and faculty member, plus 15 visitor parking
Schools, high	One per each 10 students, plus one per each employee and faculty member, plus 15 visitor parking
Shopping centers with over 30,000 square feet of gross floor area	Four and one-half spaces per 1,000 square feet gross floor area, but not to exceed five spaces per 1,000 square feet of gross floor area
Stadiums, sport arenas and similar open assemblies	One per four seats and/or one each 30 square feet of assembly space without fixed seats
Theaters	One per four seats, plus employee parking
Warehouses, storage and wholesale businesses	One per each employee, plus two additional spaces
Other retail	One per 300 square feet gross floor area, plus employee parking

19.44.105 Maximum parking space standards^(cas4)

Large, impervious parking areas represent inefficient use of land within the City's Urban Growth Area. Additionally, impervious parking areas generate stormwater runoff, with negative impacts to water quality and wildlife habitat. The following maximum parking space standards are designed to limit the total impervious area resulting from large parking lots, helping make land available for other uses, encouraging redevelopment and infill, and reducing negative water quality impacts. These standards shall only apply to parking lots with a minimum of 50 or more required spaces.

- (1) The maximum number of parking spaces allowed for each land use listed in section 19.44.100 shall be one hundred twenty-five percent (125%) of the required minimum number of spaces.
- (2) The Director of Development Services may approve an administrative variance allowing a maximum number of parking spaces to be one hundred fifty percent (150%) of the minimum number of required spaces in 19.44.100 provided that:
 - (a) Each additional space over one hundred twenty five percent (125%) must have a pervious surface designed to infiltrate stormwater approved by the City Engineer wherever soil conditions make infiltration feasible;
 - (b) A minimum of twenty percent (20%) of the parking lot area shall be landscaped.
- (3) A request to provide more than one hundred fifty percent (150%) of the minimum number of required parking spaces listed in 19.44.100 shall file a variance and meet the requirements of Chapter 19.66 OHMC. The variance shall be filed and

reviewed concurrently with the application for site plan review, binding site plan, subdivision, planned residential development or other required development permit. In no case shall more than 200% of the required minimum number of parking spaces be approved. In addition to meeting the requirements of 19.66, applications for variance shall:

- (a) File a parking demand study which demonstrates the projected need for the additional proposed parking spaces above one hundred fifty percent (150%) of the required minimum number of spaces. For the purposes of the parking demand study, "need" shall be defined as 90% occupancy during peak demand hours on more than ten (10) days per year;
- (b) The parking study shall be prepared by a transportation/traffic engineer registered in the state of Washington;
- (c) All proposed parking spaces above 125% of the minimum shall be composed of a pervious material wherever soil conditions make this feasible and as approved by the City Engineer.
- (d) All parking areas with more than one hundred twenty-five percent (125%) of the minimum number of required spaces approved through a variance shall have a minimum of twenty percent (20%) of the parking area as landscaping.

19.44.110 Parking space size and access requirements.

- (1) Standard Parking Spaces. All standard parking spaces shall meet the minimum criteria outlined in the table and figure below.
- (2) Compact Parking Spaces. Up to 40 percent of required parking spaces may be provided as compact spaces. The aisle widths required for standard spaces shall be applied to compact spaces. Parking space width, parking space depth and row width shall be as shown in the following table. The minimum parking space depth shall be 16 feet and the minimum parking space width shall be eight feet. Compact parking spaces shall be clearly marked by painting the word "compact" on the parking space(s).

Required Parking Dimensions					
Parking Angle	Stall Width	Stall Depth	Row Depth	Aisle Width (One Way)	Aisle Width (Two Way)
0°	Standard: 9' Compact: 8'	Standard: 23' Compact: 19'	Standard: 9' Compact: 8'	10'	18'
30°	Standard: 9' Compact: 8'	Standard: 20' Compact: 16'	Standard: 18' Compact: 15'	12'	20'
40°	Standard: 9' Compact: 8'	Standard: 20' Compact: 16'	Standard: 20' Compact: 16'	12'	20'
45°	Standard: 9'	Standard: 20' Compact: 16'	Standard: 21' Compact: 17'	12'	20'
50°	Compact: 8'	Standard: 20' Compact: 16'	Standard: 20' Compact: 16'	15'	20'
60°	Standard: 9' Compact: 8'	Standard: 20' Compact: 16'	Standard: 20' Compact: 16'	17'	20'

70°	Standard: 9' Compact: 8'	Standard: 20' Compact: 16'	Standard: 20' Compact: 16'	20'	20'
80°	Standard: 9' Compact: 8'	Standard: 20' Compact: 16'	Standard: 20' Compact: 16'	24'	24'
90°	Standard: 9' Compact: 8'	Standard: 20' Compact: 16'	Standard: 20' Compact: 16'	24'	24'

Graphic?

19.44.120 Car and van pool parking.

Any nonresidential development which shall provide priority spacing for car pools and van pools shall be allowed to reduce the total amount of required parking by 1.15 spaces for each priority car pool and van pool space provided.

19.44.130 Plans.

The plan of the proposed parking area shall be submitted to the city engineer at the time of the application for the building for which the parking area is required. The plan shall clearly indicate the proposed development, including location, size, shape, design, curb cuts, lighting, landscaping, construction details and other features and appurtenances required. The illustrations provided at the end of this chapter shall serve as a guide and illustrate the minimum requirements for parking stall configurations.

A legal description of the property is required and a parking area designated and recorded.

- (1) Parking areas shall be designed in conformance with the Oak Harbor design guidelines.
- (2) All traffic-control devices such as parking strips designating car stalls, directional arrow or signs, bull rails, curbs, and other developments, shall be installed and maintained as shown on the approved plans. Hard surfaced parking areas shall use paint or similar devices to delineate car stalls and directional arrows. All driveways, off-street parking areas and public off-street parking areas shall be hard surfaced with a minimum of two inches of asphalt concrete.
- (3) Minimum dimensions of off-street parking areas shall be not less than stated in this chapter.
- (4) Screen all parking lots from view of adjoining residential district or use through use of sight-obscuring fences, earth berms or landscaped planting strips, to a height of not less than six feet.
- (5) At least fifteen percent (15%) of every parking lot shall be landscaped. In all cases, landscaping shall be distributed throughout the parking area. LID stormwater management facilities are to be incorporated into the required landscaping as much as possible, unless site or soil conditions make LID stormwater management facilities infeasible. Parking lot landscaping shall conform to 19.46.030(5) with a preference for native species. For computation of required landscape area, allow 30 square feet per parking space. The landscaping shall consist of deciduous or coniferous plant material and may include turf, shrubs and flowers.
- (6) Pervious surfacing is encouraged in parking lots, where appropriate for the site

and soil conditions, and associated vehicular traffic. A minimum of 30% permeable surfacing in new and remodeled parking lots is encouraged where site and soil conditions make permeable surfacing feasible.

- (76) Lighting of areas provided for off-street parking shall be so arranged to not constitute a nuisance or hazard to passing traffic and where said lots share a common boundary with any "R" classified property, the illuminating devices shall be so shaded and directed to play their light away from "R" classified property.
- (7) Maintenance of all areas provided for off-street parking shall include removal and replacement of dead and dying trees, grass and shrubs, removal of trash and weeds, and repair of traffic control devices, signs, light standards, fences, walls, surfacing material, curbs and railings. (Ord. 1555 § 19, 2009). Maintenance of LID stormwater management facilities shall be completed in accordance with the *LID Technical Guidance Manual for Puget Sound* (current edition), the City's Public Works Maintenance Standards, and an approved operating and maintenance agreement.

19.44.140 Loading areas.

Each off-street loading space shall measure not less than 30 feet by 12 feet and shall have an unobstructed height of 14 feet six inches and shall be made permanently available for such purposes, and shall be hard surfaced, improved and maintained as required by this chapter. Required loading spaces shall be in conformance with the following table:

Department stores, freight terminals, industrial or manufacturing establishments, retail or wholesale stores or storage warehouses or any similar use which has or intends to have 10,000 square feet or more shall provide truck loading or unloading berths:

Square feet of aggregate gross floor area	Required number of berths
10,000 to 15,999	1
16,000 to 39,999	2
40,000 to 65,000	3
Each additional 16,000	1 additional

Auditoriums, convention or exhibit halls, sports arenas, hotels, office buildings, restaurants or similar uses which have or intend to have an aggregate gross floor area of 40,000 square feet or more shall provide truck loading or unloading berths:

Square feet of aggregate gross floor area	Required number of berths
40,000 to 59,999	1
60,000 to 160,000	2
Each additional 60,000	1 additional

Graphic?

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 (5) days after its publication.

PASSED by the City Council this ___ day of _____ 2010.

CITY OF OAK HARBOR

Approved () _____
Vetoed () Mayor

Date

ATTEST:

City Clerk

Approved as to Form:

City Attorney

Published: _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF OAK HARBOR AMENDING CHAPTER 19.46 OF THE OAK HARBOR MUNICIPAL CODE ENTITLED "LANDSCAPING AND SCREENING" PROMOTING LOW IMPACT DEVELOPMENT STORMWATER MANAGEMENT PRACTICES IN LANDSCAPE DESIGNS.

WHEREAS, the City of Oak Harbor's Comprehensive Plan in Environment Policy 2(h) says "the City should provide incentives to utilize Low Impact Development techniques for new development and redevelopment projects that will further promote resource protection and stewardship. Such incentives may include density credits, street width and/or parking requirement reductions, stormwater fee credits, landscape/park requirement credits, and/or expedited permit review processing. The City should also provide educational materials through pamphlets or web links to the public to educate the public on low impact development and;

WHEREAS, the City of Oak Harbor finds that Low Impact Development is a non-structural approach for managing stormwater from new and redeveloped sites which has been found by multiple professional and academic studies to have less impact on the environment, especially water quality, than conventional approaches for treating stormwater and;

WHEREAS, the City of Oak Harbor finds that Low Impact Development techniques are, in most cases, cost competitive or less expensive to install than conventional stormwater infrastructure and;

WHEREAS, the City finds that Low Impact Development techniques promote higher property values by using vegetated raingardens, native vegetation areas, and pervious pavements which are considered to be more aesthetically appealing than conventional stormwater techniques and;

WHEREAS, the City of Oak Harbor finds that the Oak Harbor Municipal Code currently has standards for incorporating Low Impact Development in site designs, that having such standards will further promote the use of Low Impact Development stormwater treatment techniques, and will help City staff review these projects more efficiently and;

WHEREAS, the City of Oak Harbor conducted seven (7) work sessions with the Planning Commission which were open to the public on the following dates: October 27, 2009, November 24, 2009, January 26, 2010, February 23, 2010, March 23, 2010, April 27, 2010, and May 25, 2010 and;

WHEREAS, the City of Oak Harbor conducted a public hearing before the Planning Commission on February 22, 2011 which was closed on March 29, 2011, and;

WHEREAS, the Oak Harbor Planning Commission recommended approval of the subject ordinance to the City Council and;

WHEREAS, the City of Oak Harbor issued notice of application and Determination of Non-Significance (DNS) for a SEPA Environmental Checklist in accordance with Chapter 43.21 RCW and;

WHEREAS, the City of Oak Harbor provided a 60-day comment period which began on X, 2011 and ended on X, 2011 to the Washington State Department of Commerce in accordance with Section 36.70A.106 RCW

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

Section One. Chapter 19.46 of the Oak Harbor Municipal Code, last amended by Section 20 of Ordinance 1555 in 2009, is hereby amended to read as follows:

Chapter 19.46
LANDSCAPING AND SCREENING

Sections:

19.46.010 Purpose.

19.46.020 Applicability.

19.46.030 ~~General landscape requirements.~~ Requirements for setbacks, perimeters, buffers, fences and screening, and parking lot.

19.46.035 North Whidbey Enterprise Area landscape requirements.

19.46.040 General landscaping standards.

~~19.46.045 Tree Retention~~

19.46.050 Fences and Hedges.

~~19.46.060 Phased projects~~

19.46.070 Conflicts.

19.46.080 Maintenance standards of required landscape areas.

~~19.46.090 Timing of landscape completion~~

19.46.100 Landscaping plans and irrigation plans required.

19.46.110 ~~Administrative relief and alternative compliance~~ Review of landscape plans.

19.46.120 ~~Enforcement of chapter~~ Phased projects.

19.46.130 Landscape performance bonding.

19.46.140 Native vegetation standards.

19.46.150 Tree species.

19.46.155 Tree removal outside of native vegetation areas.

19.46.160 Administrative relief and alternative compliance.

19.46.170 Enforcement of chapter. [cas1]

19.46.010 Purpose.

The purpose of this chapter is to provide uniform standards for the development and maintenance of the landscaping of private property and public rights-of-way. The purpose of landscaping is to improve the livability of residential neighborhoods, enhance the customer attraction of commercial areas, increase property values, improve the compatibility of adjacent uses, provide visual separation and physical buffers between incompatible adjacent land uses, provide visual relief from the expanse of parking lots, screen undesirable views, contribute to the image and appeal of the overall community,

and mitigate air and noise pollution.

These requirements are also intended to facilitate Low Impact Development techniques through ~~It is the intent of these requirements to encourage~~ ^(the eas2) retention of existing vegetation including ~~significant~~ trees to the extent feasible and to require ~~replanting~~ replanting ~~element~~ if ~~significant~~ existing trees are removed; to reduce erosion and storm water runoff; to preserve and promote urban wildlife habitats; to enhance the streetscapes along the city's public rights-of-way with an emphasis on trees; to define and separate vehicular and pedestrian traffic areas; to screen the appearance of parking areas from public rights-of-way and adjacent properties; and to make the city a more aesthetically pleasing place to live, shop and work.

19.46.020 Applicability.

The provisions of this chapter shall apply to any of the following:

- (1) All new public and private developments, multifamily housing larger than a duplex, and long plats;
- (2) Any additions to existing structures that exceed 30 percent of the gross floor area, or are in excess of 1,000 square feet;
- (3) Any expansion of a mobile home park in which the number of new mobile home lots exceeds 10 percent of the number of existing mobile home lots;
- (4) Provisions required by Chapter 19.48 OHMC;
- (5) Situations where this chapter imposes a requirement for buffering or screening between two uses, one of which is existing and the other new. The responsibility for satisfying this requirement rests entirely on the new use;
- (6) Single-family dwellings, duplexes, and current approved site plans shall be exempt;
- (7) Any preexisting vehicular surface area which expands in excess of 25 percent shall provide the landscaping required in OHMC 19.46.030. No expenditure made for removing existing asphalt, constructing planting areas, installing irrigation systems, and adding dirt and plant materials which is required in order to comply with these requirements shall be required to exceed four percent of the total assessed real property value of the subject property on which the improvements are being made.

19.46.030 General landscaping requirements. Requirements for setbacks, perimeters, buffers, fences and screening, and parking lots. ^(eas3)

- (1) Required minimum landscape setbacks apply to all zoning districts, except those projects specifically excluded in OHMC 19.46.020.
 - (a) Minimum width of landscape setback, as identified with the city's street classification plan:
 - (i) Large shopping centers in excess of five acres adjacent to principal arterial streets: 20 feet;
 - (ii) Any multifamily and nonresidential use constructed on a designated scenic transportation route: 20 feet;
 - (iii) All other uses adjacent to a principal arterial: 12 feet;
 - (iv) Adjacent to a minor arterial or collector arterial: 10 feet;

- (v) Adjacent to all other streets: eight feet;
 - (vi) Where roadway right-of-way expansion is proposed, the setback will begin at the anticipated new edge of the road.
- (b) **Minimum Number of Trees in Landscaped Setbacks.** There shall be four trees for every 100 linear feet of frontage of property adjacent to all street classifications. Guidelines for the specific types and locations of trees and other landscape materials in landscape setbacks are contained within the landscape policy manual.
- (c) **Design Standards.**
- (i) Some of the required landscape setback trees may be clustered in the setback. Parking lot screening may be included in the landscape setback width. The required landscaped setback trees may be permitted to be partially or totally located in the adjacent public right-of-way area, if:
 - (A) All of the required trees cannot be placed in the landscaped setback;
 - (B) There are no conflicts with utility easements;
 - (C) In the case of the state highway, the city engineer and State Highway Engineer approve;
 - (D) It shall be the responsibility of the adjacent property owner to care for landscaped rights-of-way;
 - (E) Where undeveloped adjacent right-of-way occurs, it shall be landscaped.

The required landscaped setback trees may be located in the adjacent public right-of-way area if these trees cannot be placed in the landscaped setback area due to the existing development of the site. However, such trees are required only to the extent that: (1) the city engineer and State Highway Engineer approve the trees in the case of a state highway; and (2) no conflicts exist within utility easements.
 - (ii) Opaque walls and fences which obstruct view shall be located outside (building side) of the setback to maintain a landscaped appearance along the street.
 - (iii) Administrative relief of the requirements of this section may be requested in accordance with OHMC 19.46.110160.
- (2) **Required Minimum Landscape Perimeters.** Planting areas within side and rear yards that are not occupied by structures shall be as follows:
- (a) **Minimum Width of Perimeter.** Five feet for the length of the property line, unless otherwise specified under screening requirements of this chapter;
 - (b) **Exemptions.** Perimeter of industrial site or commercial yard that is not substantially visible from the right-of-way or located where screening is not required, shall be exempt;
 - (c) **Planting Requirements.**
 - (i) A minimum of four trees shall be planted for every 100 linear feet, or fraction thereof, of perimeter planting area;

- (ii) Shrubs and ground cover plantings shall be in quantities and spacing that will provide for 80 percent ground coverage within three years;
 - (iii) When abutting properties with different land use classifications occurs, the screening requirements under OHMC 19.46.030(3) and (4) shall supersede the requirements of this subsection;
 - (d) **Connecting Driveways.** When connecting joint driveways, or shared parking lots are provided between sites, the minimum area requirements may be reduced by the area occupied by the driveway that would otherwise be landscaped under the requirements of this subsection.
- (3) **Required Minimum Landscape Buffers.**
- (a) **Buffers between (1) adjacent nonresidential and residential uses; and (2) adjacent nonresidential uses and single-family residential zones:**
 - (i) **Design Standards.** The buffer shall be a minimum of 12 feet wide and shall be located on the property line adjacent to any single-family residential community. Said buffer shall generally consist of a mix of predominantly evergreen plantings including trees, shrubs, and ground covers. Evergreen trees shall be a minimum height of four feet at time of planting. Planting shall be chosen and spaced so as to grow together within four years of their planting in a manner that is sufficient to obscure sight through the barrier. The entire planting strip shall be landscaped; however, those plantings used to achieve the sight-obscuring screen shall cover at least six feet of the width of the strip.
 - (b) **Buffers between adjacent multifamily residential and single-family residential zones:**
 - (i) **Design Standards.** The buffer shall be a minimum of 10 feet wide and shall be located on the property line adjacent to the single-family residential community.
 - (c) **Buffers between nonresidential and residential uses separated by a nonarterial street, public alley or private street:**
 - (i) **Design Standards.** The buffer shall be a minimum of 12 feet in depth. The minimum number of trees in the buffer shall be two trees for every 20 linear feet of buffer. The trees will consist of a mix of evergreen and deciduous. Depending upon the nonresidential use, evergreens may be increased to help obscure sight between the two uses. An opaque structure with a maximum height of six feet may be optional along the common property line. If a fence is constructed, planting shall still occur as stated above. The buffer may be reduced to 10 feet if an opaque structure is erected.
 - (d) **Buffers between an industrial classified district and a residential classified district:**
 - (i) **Design Standards.** All sites in an industrial district having a common boundary with a residential district shall be planted and maintained along such common boundary with a view-obscuring

coniferous greenbelt of shrubs, trees and native vegetation not less than six feet in height nor less than 10 feet in width, for screening purposes and controlling access.

- (4) **Fences and Screening.** When applicable, the requirements of this section shall supersede the requirements of other sections of this chapter.

- (a) **Purpose.** The requirements of this subsection are intended to reduce visual impacts and incompatible characteristics of:

- (i) Abutting properties with different land use classifications;
- (ii) Service areas and facilities, including loading and storage areas;
- (iii) Parking areas located in front of buildings;
- (iv) Any other use or area as required under this section, or determined to be necessary by the planning director (or designee).

The fence or landscaping screen shall be sight obscuring, obstructing storage areas from view on the sides of the property abutting, adjoining, or facing a residential district. The fence shall be of such material and design as will not detract from adjacent residences and shall be built according to plans submitted by the owner or his/her authorized agent and approved by the planning director (or designee).

- (b) **Landscaping.** Screen planting shall consist of evergreen trees planted a maximum of 15 feet on center, or hedges with dense evergreen foliage, in combination with deciduous trees and hedges for seasonal color and texture. Ground cover shall be planted at a density to form an effective barrier to cover 85 percent of the ground surface within two years.

- (i) On a corner lot there may be placed and maintained:
 - (A) A fence or screen not more than three feet in height; provided, that it is not sight obstructing (50 percent of the area of the fence or screen is open) along a public or private street;
 - (B) A six-foot-high open wire fence along the property line facing the side street; provided, that it does not come closer to the street right-of-way on the front of the lot than the required building setback;
 - (C) A four-foot-high solid fence or hedge parallel to the property line facing the side street; provided, it is 10 feet back from the side street; and provided, that it does not come closer to the street on the front of the lot than the rear of the building.

- (ii) In commercial zones, no fence or hedge may be placed on the front yard setback except where required to screen the property from the adjacent lot, then the screen shall extend to the street right-of-way.

- (c) **Minimum Width.**

- (i) **Landscape Screening.** If screening is to be achieved through the use of plant materials only, the screening area shall be a minimum of 10 feet in width. If other materials, such as fencing, walls or berms, are used in conjunction with the landscaping, the width may

be reduced, as described in subsections (4)(c)(ii) through (iv) of this section.

- (ii) Earth Berm Alternative. If an earth berm is incorporated into the screening plan, medium size shrubs and/or evergreen trees shall be spaced a maximum of four and one-half feet on center and the width of the screening area may be reduced to eight feet.
- (iii) Fence Alternative. If a fence option is selected, maximum spacing of medium sized shrubs shall be six feet on center, and the width of the screening area may be reduced to seven feet. The fence shall be constructed of exterior weather- resistant wood, or applicable alternative. One alternative may be a cyclone fence; however, such a fence shall include slats, and if the fence is next to a right-of-way, landscaping shall be planted between the fence and the right-of-way. Plantings must obscure 75 percent of a cyclone fence within four years.
- (iv) Wall Alternative. If a wall at least five feet high is to be used for screening, the planting requirements shall be as specified under subsection (1) of this section, and the screening width may be reduced to five feet. Screen walls shall be constructed with masonry, block, rockery or textured concrete, subject to design approval by the planning director.

(d) Uses Requiring Screening. The planning director may require screening to protect adjacent properties from negative impacts of any permitted or conditional use in a zoning district. Except as otherwise required by the planning director, screening shall be required in the following instances:

- (i) Developments located in districts listed on the left side of the chart below shall provide screening when they adjoin districts specified on the right side of the chart.

District to Be Developed	District to Be Screened
Multifamily residential	Single-family residential
Semi-public	All residential
Commercial/business	All residential
Industrial	All residential/commercial

- (ii) Churches, community centers, and other similar conditional uses shall provide perimeter screening when adjoining a residential district.

(e) Fence and screen height limits in the various zones are as follows:

Residential Zones:	Front yard	3 feet maximum
	Side yard	6 feet maximum
	Rear yard	6 feet maximum
Commercial Zones:	Front yard	0 feet maximum
	Side yard	6 feet maximum

Industrial Zones:	Rear yard	6 feet maximum
	Front yard	8 feet maximum
	Side yard	8 feet maximum
	Rear yard	8 feet maximum

(5) Minimum Parking Lot Requirements.

(a) Required Trees.

- (i) One tree of a type suitable for parking lots shall be provided for every 10 open (not in a garage) vehicular parking spaces in parking lots with 10 or more spaces;
- (ii) The tree types and minimum planter sizes shall be consistent with the landscape policy manual. Trees chosen shall be appropriate to a parking lot location;
- (iii) The required trees may be clustered but shall be located to divide and break up expanses of paving and long rows of parking spaces and to create a canopy effect in the parking lot. In order to be considered within the parking lot, the trees must be located in planters that are bounded on at least three sides of parking lot paving. This means only trees in landscaped “islands” or “fingers” can count toward the parking lot tree requirement;
- (iv) Planters shall be of sufficient size and design to accommodate the growth of the trees and to prevent damage to the trees by vehicles;
- (v) The number of species required shall vary according to the overall number of trees required to be planted. The species shall be planted in proportion to the required mix. The species mix shall not apply to areas of vegetation required to be preserved by law nor those located in areas designated as natural. The number of species to be planted are indicated below.

Required # of trees	Maximum # of species
6 – 10	2
11 – 15	3
16 +	4

- (b) Required Landscape Area. At least 15 percent of every parking lot shall be landscaped. In all cases, with the exception of vehicular display lots, landscaping shall be distributed throughout the parking area. Landscaping located in required setbacks or buffers may not be used to meet this requirement. If LID rain gardens or bioretention facilities are proposed, they are to be incorporated into the required parking lot landscaping unless site and soil conditions make such facilities infeasible. LID stormwater management facilities shall be designed and constructed in accordance with the *Low Impact Development Technical Guidance Manual for Puget Sound* (current edition). The^[eas4] landscaping shall consist of deciduous and/or coniferous material and may include turf, shrubs, and flowers.

(c) Required Screening.

- (i) Open parking spaces (except those in single-family residential projects in any zone district) shall be screened from the view of adjacent properties and streets to mature minimum height of 30 inches by the use of berms and/or plantings;
 - (ii) A minimum of two-thirds of the affected street frontage or property boundary, not counting intersecting driveways, must have the required screen;
 - (iii) The required screening may be a component of the required landscape setback;
 - (iv) Structures such as decorative walls or fences may be approved through an administrative relief request if the planning director (or other designee) finds that:
 - (A) The structures avoid a blank and monotonous appearance by such measures as architectural articulation and the planting of vines, shrubs or trees; or
 - (B) The total use of the berms and/or plantings is not physically feasible; or
 - (C) The structures attractively complement the use of berms and/or plantings;
 - (v) The maximum spacing of plants to achieve an acceptable screen and the maximum acceptable grades for screening areas, such as sodded berms and planting beds, shall be consistent with the landscaping policy manual;
 - (vi) Guidelines for the specific types and location of trees, shrubs and other landscape materials in parking lots are contained within the landscape policy manual as approved by city council or thereafter amended.
- (6) In addition to the requirements and standards of this chapter, the landscape guidelines in the design guidelines shall apply. (Ord. 1221 § 1, 2000).

19.46.035 North Whidbey Enterprise Area landscape requirements.

- (1) The standards contained in this section apply to the North Whidbey Enterprise Area as identified in Exhibit C of the Urban Growth Area Interlocal Agreement between Island County and the city of Oak Harbor, a copy of which is on file with the city clerk and available for public inspection.
- (2) Significant Tree Retention. Significant tree retention in the I, PIP, C-4 and nonresidential development, short subdivision and subdivision in the PRE zones shall meet the following standards:
 - (a) Applicants should retain 15 percent of the significant trees found on the property except for those trees found in the building footprints, access roads, parking areas and utility line trenches. Applicants should give attention to the following:
 - (i) Preservation of significant trees along the perimeter of the property; and
 - (ii) Preservation of significant trees near or adjacent to critical areas; and

- (iii) Preservation of significant trees which create a distinctive skyline feature; and
 - (iv) Preservation of Garry Oak trees; and
 - (v) Trees that may constitute a safety hazard should be removed; and
 - (vi) Special attention shall be given to preservation of significant trees on properties identified in the 2001 Oak Harbor Comprehensive Plan, Environmental Element, Woodland Map.
- (b) An inventory of significant trees shall be submitted with all applications for subdivision, short subdivision or site plan review.
- (3) Landscaping, screening and buffering in the I and PIP zones shall meet the following standards:
- (a) Open storage, trash or recycling areas shall be screened by fencing and/or landscaping;
 - (b) Landscaping including street trees spaced no further than 20 feet on center shall be required in all front yards and the abutting public road; and
 - (c) Buffers between industrial zones and adjacent residential properties shall be planted along the common boundary. The planting should include coniferous shrubs, trees and native vegetation. Fencing may be incorporated to help ensure an effective visual buffer.
- (4) Landscape for I, PIP and C-4 lands abutting Goldie Road and Oak Harbor Road shall meet the following standards:
- (a) A 20-foot landscape setback shall be established; and
 - (b) The area between the property line and drainage swale shall be planted with low profile foliage; and
 - (c) The landscape area shall be planted with a mixture of native evergreen trees containing a variety of species, colors and textures for a year-round green attractive appearance; and
 - (d) If the landscape buffer setback does not have existing significant vegetation, the buffer will be planted with native evergreen trees. If deciduous trees are desired they may be planted at a rate of two evergreen to one deciduous tree; and
 - (e) Maximum spacing of the trees shall be 10 feet on center or equivalent grouping as determined by site and existing conditions; and
 - (f) Roadway and intersection requirements shall prevail if a conflict arises with the landscape standards listed herein.

19.46.040 General landscaping standards.

- (1) Landscape Materials.
- (a) Landscape materials shall be defined as evergreen or deciduous trees, shrubs, and ground cover plants, perennial or annual flowers, and lawn. River rock, fountains, ponds, ~~bark~~, rockeries, ornamental or decorative walkways (provided both sides abut landscaping) may be included, where, in the opinion of the planning director, additional ornamental features may be considered as part of the landscape materials, subject to the administrative relief process.

- (b) Suggested tree species plant material suited to the unique soils, geology, and weather patterns of Oak Harbor are contained in the landscape policy manual at the city planning department. 19.46.150 OHMC^(cas5).
 - (c) Planting shall occur based on species tolerance to the environment in which it will be placed.
 - (d) No artificial lawn or plants will be permitted in landscaped areas.
- ~~(2) Erosion Control Plan. The city may require temporary erosion and sediment control measures as part of the landscape plan for the development. Erosion or sediment control plan shall be reviewed prior to or in conjunction with a plat or site plan.~~^(cas6)
 - (23) Drainage Detention/Retention Ponds. If a proposed detention pond has a slope ratio of 3:1 or greater, where fencing around the pond will be required, a fencing and landscaping plan shall be submitted to the planning department. Submittal of the proposed fencing and landscaping plan shall occur in conjunction with short plat, preliminary plat, or site plan review applications, depending on the project type.
 - (34) Land Clearing Plan. Clearing of landscaping is required to be in accordance with the provisions of Chapter 19.47 OHMC.
 - (45) Pollution Control. It shall be the responsibility of the property owner to ensure that storm runoff from landscaped areas does not contain excessive amounts of fertilizer, insecticides, and herbicides that may be harmful to aquatic life, and to take measures to prevent runoff water impacts as required by the Department of Ecology and Wildlife and as specified in the Puget Sound Water Quality Manual. One measure to reduce the use of chemicals is the use of native plants in landscape areas.
 - (56) Safety Features/Utilities. Installation of landscape materials shall not obstruct access to fire connections, post indicator valves (PIVs) and hydrants, standpipes, sprinkler connections, utility vaults, pedestals, and other public and private utility facilities. ~~Appropriate species of plants for areas affected by overhead utility lines can be found in the plant list.~~ Landscaping shall not obstruct fire apparatus access roads.^(cas7)
 - ~~(67) Irrigation and Watering. An underground irrigation system is required which is adequate to provide watering needs for plant materials. Small preexisting sites may receive special consideration through the administrative relief process. Also, administrative relief from the irrigation requirement may be requested for planting areas which contain only drought tolerant vegetation.~~^(cas8)
 - (78) Visibility Triangle. Along street frontages, within 30 feet of an alley or unsignalized street intersection, or within 25 feet of a driveway, no shrub shall be higher than 30 inches from street gutter grade and no tree shall have branches or foliage below eight feet above street level. At signalized intersections the conditions of this section shall not be necessary, but it shall be required that only deciduous trees be located at signalized intersections. Under no circumstances shall landscaping interfere with sight distance visibility.
 - (89) Where practical, landscaping shall be designed to not block solar gain or solar access by surrounding properties.
 - (10) Special Landscaping Districts. The area of the CBD central business district, for

the purpose of this chapter, will be considered a special landscaping district. This area is substantially developed on zero setbacks from the right-of-way, making it impractical to meet the full extent of the requirements of this chapter. Businesses located in this district shall meet parking lot landscaping standards as shown in OHMC 19.46.030 (5) and shall participate in a street tree planting program in the street right-of-way adjacent to the parcel frontage.

- (11) Xeriscape Process. Xeriscape is a process by which sound horticultural, landscaping, and efficient water-using principles come together. The style of the xeriscapes can be quite variable. Drought resistant landscaping, such as a contemporary design or a Spanish garden, could qualify as xeriscape when constructed to meet the following six principles:
 - (a) Good Design. Based on careful selection of low-water-use plants or drought tolerant plants;
 - (b) Soil Improvement. Improvements including the addition of manure, compost, or other organic materials which can be amended into the soil;
 - ~~(c) Use of Mulch. Beauty bark or other organic substance to beautify the landscape and help maintain moisture in the soil;~~^{cas9;}
 - (c) Limited Lawn Areas. Minimizing grass areas results in minimal lawn maintenance;
 - (d) Efficient Water Use. Water between 12:00 midnight and 6:00 a.m. to help prevent fungus growth, and lower the evaporation rate of water;
 - (e) Good Maintenance. Maintain the landscape to reflect a weed and trash free environment.
- (12) Landscaping for Freestanding Signs. All primary freestanding signs shall include, as part of their design, landscaping about their base to prevent automobiles from hitting the sign supporting structure and to improve the overall appearance of the installation. If the required landscaping is not completed within 60 days after completion of sign installation, the sign is in violation of this chapter.
- (13) Groundcover. Groundcover shall be planted and maintained within all required landscaping areas. Groundcover refers to low-growing dense growth of plants, such as pachysandra or crown vetch, planted for ornamental purposes or to prevent soil erosion in areas where turf is difficult to grow, as in deep shade or on a steep slope. Groundcover shall consist of plantings that will achieve complete coverage within two years. Groundcover is not required within the dripline of any shrub or evergreen tree and within a two-foot radius of a deciduous tree trunk.
- (14) Undeveloped Areas. Undeveloped areas of a lot which are not required to be landscaped by other requirements of this chapter shall be planted with groundcover. Groundcover may consist of planted or existing vegetation maintained so as not to exceed one foot in height. For the purposes of this section, grass can be considered to be groundcover.^{cas10.}
- (15) Bark, Mulch and Gravel. Bark, mulch, gravel or other similar non-vegetative material shall only be used to assist vegetative growth and maintenance within landscaping areas. Non-vegetative material shall not be a substitute for, or interfere with, required vegetative groundcover.^{cas11.}
- (16) Tree Topping and Thinning. Topping and thinning of trees shall be allowed as long as it does not negatively effect the health of the tree.^{cas12.}

(18) Calculations/Measurements. All calculations and measurements within this chapter shall be rounded to the nearest whole number with greater than or equal to .50 being rounded up.^{cas13}

19.46.045 Tree Retention^{cas14}

(1) The purpose and intent of this section is to reduce the aesthetic and environmental impacts of site development while promoting reasonable use of land and to implement the city's comprehensive plan by:

- (a) Avoiding the removal of significant trees and stands of trees in order to maintain ecological functions and maintain Oak Harbor's urban environment;
- (b) Providing measures to protect trees from construction impacts and ensure their survival; and
- (c) Providing flexibility in order to retain stands of trees of ecological or aesthetic importance, or to allow for revegetation when trees cannot be retained.

(2) All development proposals and land clearing applications shall retain at least 15 percent of the significant trees, as defined in Chapter 19.08.^{cas15}

(a) Trees shall be retained within stands or clustered. Narrow strips and single unprotected significant trees shall be avoided. Improvements shall be designed to give priority to protection of trees with the following characteristics:

- (i) Healthy significant trees over 50 feet in height;
- (ii) Significant trees that form a continuous canopy or grove of trees;
- (iii) Significant trees on steep slopes or adjacent to existing open space, parkland, wetlands, water courses and conservancy areas; and
- (iv) Significant trees which provide a distinctive feature, such as a skyline, corridors along arterial and collector streets, or provide a land-use buffer along the perimeter of the proposed development.^{cas16}

(b) All areas where vegetation is retained shall be designated as a native growth protection area, conservation easement, deed restriction or other means of deed conveyance.

(3) Exceptions:

- (a) The minimum significant tree percentage may be reduced on sites with special circumstances and where revegetation is proposed. Special circumstances include, but are not limited to:
 - (i) The retention of significant trees precludes reasonable development of the property.
 - (ii) Physical limitations such as existing lot size, soils or topography.
 - (iii) Deteriorated health of trees.
 - (iv) Potentially hazardous trees.
 - (v) Trees subject to blowdown after construction.

- ~~(b) — The minimum significant tree percentage may be reduced for preliminary plat applications that demonstrate special circumstances and propose revegetation:~~
- ~~(i) — With approval from the planning commission a revegetation plan shall give consideration to revegetation and its proximity to existing vegetation, steep slopes, open space, parkland, wetlands, water courses, conservancy areas, arterial and collector streets, effectiveness as a land use buffer, enhancement of existing stands of native vegetation or other similar conditions.~~
 - ~~(ii) — The revegetation plan may combine the use of native species and nonnative species,~~
 - ~~(iii) — The revegetation plan shall provide for a two to one tree replacement ratio.~~
 - ~~(iv) — Replacement trees shall be a minimum two and one half inch caliper for deciduous trees or a minimum of six feet in height from existing grade for conifers and comply with the requirements of subsection (5) of this section.~~
- ~~(c) — The minimum significant tree percentage may be reduced for short plat, development and land clearing applications that demonstrate special circumstances and propose revegetation:~~
- ~~(i) — With approval from the director a revegetation plan shall give consideration to revegetation and its proximity to existing vegetation, steep slopes, open space, parkland, wetlands, water courses, conservancy areas, arterial and collector streets, effectiveness as a land use buffer, enhancement of existing stands of vegetation or other similar conditions.~~
 - ~~(ii) — The revegetation plan may combine the use of native species and nonnative species with a preference for the species outlined in 19.46.115 (4).~~
 - ~~(iii) — The revegetation plan shall provide for a two to one tree replacement ratio.~~
 - ~~(iv) — Replacement trees shall be a minimum two and one half inch caliper for deciduous trees or a minimum of six feet in height from existing grade for conifers and comply with the requirement of subsection (5) of this section.~~
- ~~(d) — Trees which do not meet the definition of significant trees may be credited towards the minimum significant tree percentage to be retained in order to facilitate the preservation of a greater number of smaller trees if a group of trees and its associated undergrowth provide a distinctive feature, are on a steep slope or adjacent to existing open space, parkland, wetlands, water courses, conservancy areas, arterial and collector streets, effectiveness as a land use buffer, enhancement of existing stands of vegetation or other similar conditions.~~
- ~~(e) — A reduction in the replacement ratio required by subsections (3)(b) and (c) of this section may be considered for planting an understory to enhance habitat.~~

- (f) ~~The director may approve the removal of significant trees that have been retained pursuant to this chapter, if it is determined that the tree is diseased, physically deteriorated, potentially hazardous, damaged or subject to windthrow. Significant trees that are removed as approved by the director, and the one year maintenance period has expired, shall be replaced at a one to one ratio. Replacement trees shall be a minimum two and one half inch caliper for deciduous trees or a minimum of six feet in height from existing grade for conifers~~^(eas 17).
- (4) ~~Determining the Number of Significant Trees to be Retained.~~
- (a) ~~For plats, short plats and binding site plans, trees that are within a regulated environmentally sensitive area shall be excluded and will not contribute towards the base number of significant trees or the 15 percent retention requirement.~~
- (b) ~~For all other development and clearing applications, trees that are within a regulated environmentally sensitive area, within the building footprint or are within the required landscape area shall be excluded and will not contribute towards the base number of significant trees or the 15 percent retention requirement.~~
- (c) ~~All development proposals and clearing applications shall include a drawing showing the location of all significant trees, trees to be retained, trees to be removed, groves of trees and other natural features on and adjacent to the site.~~
- ~~(i) Parcels larger than five acres may utilize a sampling methodology to identify significant trees. Parcels smaller than five acres shall utilize a survey methodology to identify significant trees.~~
- (5) ~~Revegetation and Survival Standards~~^(eas 18).
- (a) ~~Sites with documented special circumstances in conformance with subsection (3) of this section shall provide a revegetation plan. The plan shall include:~~
- (i) ~~Written documentation of the special circumstances that make the retention of significant trees impracticable;~~
- (ii) ~~Information required under OHMC 19.46.100;~~
- (iii) ~~The revegetation plan shall replace significant trees that are required to be retained at a two to one ratio. Replacement trees shall be a minimum two and one half inch caliper for deciduous trees or a minimum of six feet in height from existing grade for conifers; and~~
- (iv) ~~Priority shall be given to revegetation and its proximity to existing vegetation, steep slopes, open space, parkland, wetlands, water courses, conservancy areas, arterial and collector streets, effectiveness as a land use buffer, enhancement of existing stands of vegetation or other similar conditions.~~
- (b) ~~All trees (replacement trees and retained trees) shall be maintained in a healthy growing condition. All trees found to be diseased, dead or dying within one year of acceptance by the city shall be replaced. Trees planted~~

as part of a revegetation plan shall be replaced at a one to one ratio and retained trees shall be replaced at a two to one ratio.

~~(56)~~ Construction Standards.

- ~~(a)~~ A vegetation protection plan shall be submitted for all vegetation that is to be retained. The vegetation protection plan may be combined with the grading/clearing plan or the temporary erosion control plan.
- ~~(b)~~ Barrier fencing or silt fencing shall be placed around the root zone of all trees and vegetation to be retained. There shall be no construction activity within the fencing.
- ~~(c)~~ Any clearing to be done within the root zone must be approved by the director and utilize hand grubbing and light equipment. No fill will be allowed within the root zone unless approved by the director. ~~cas19~~.

~~(7)~~ Modifications of Standards in Order to Preserve Significant Trees or Stands of Vegetation.

- ~~(a)~~ A variance may be granted to allow intrusion of a building into a setback yard by five feet to preserve significant trees elsewhere on the property.
- ~~(b)~~ Setback averaging may be utilized to preserve significant trees elsewhere on the property. A reduced setback shall be compensated by an increased setback elsewhere. ~~cas20~~.
- ~~(c)~~ A variance may be granted to allow a 10 percent reduction in parking spaces to preserve significant trees elsewhere on the property.

~~(8)~~ Professional Evaluation. In determining tree removal or replacement, the director may require a professional evaluation or tree protection plan by a certified arborist at the applicant's expense, where the director determines that such evaluation is necessary to comply with the standards of this section. The evaluation may include providing a hazardous tree assessment, evaluation of the anticipated effects of a proposed project on the viability of trees on the site, developing a plan for tree protection or replacement and evaluation after construction. ~~cas21~~.

19.46.050 Fences and hedges.

- (1) Fences and hedges a maximum of six feet in height may be placed and maintained on the side and rear lot line, and across the front of the property line even with the front of the building on the lot but not closer to the street right-of-way than the required setback. On corner lots the setback shall apply to both streets.

Within the setback area a fence not more than three feet in height may be constructed; provided, that it is not sight-obscuring (50 percent of the area of the fence is open).

Within the setback area a solid hedge may be planted not to exceed a height of more than three feet.

On a corner lot there may be placed and maintained:

- (a) A fence or hedge not more than three feet in height; provided, that it is not sight-obstructing (50 percent of the area of the fence or hedge is open);
- (b) A six-foot-high open wire fence along the property line facing the side street; provided, that it does not come closer to the street right-of-way on the front of the lot than the required building setback;

- (c) A four-foot-high solid fence or hedge parallel to the property line facing the side street; provided, it is 10 feet back from the side street; and provided, that it does not come closer to the street on the front of the lot than the rear of the house.
- (2) In commercial zones, no fence or hedge may be placed on the front yard setback except where required to screen the property from the adjacent lot, then the screen shall extend to the street right-of-way.
- (3) Fence and hedge limits in the various zones are as follows:

Residential Zones:	Front yard	3 feet maximum
	Side yard	6 feet maximum
	Rear yard	6 feet maximum
Commercial Zones:	Front yard	0 feet maximum
	Side yard	6 feet maximum
	Rear yard	6 feet maximum
Industrial Zones:	Front yard	8 feet maximum
	Side yard	8 feet maximum
	Rear yard	8 feet maximum

19.46.060 — Phased projects.

~~Phased projects include but are not limited to shopping centers, large site developments proceeding in phases, applicable subdivisions, cluster developments, and business parks. Before construction permits are issued for the first phase of any phased project, conceptual approval of the landscaping plan for the site as a whole is required. Final approval of the landscaping plan for each phase is required before construction permits are issued for a phase. Installation of landscaping for each phase of development shall be required prior to releasing occupancy permits for that phase. Relief may be available per OHMC 19.46.110.~~

~~Landscaping along a frontage road or perimeter screening may be required to be installed in the first phase. Criteria to be considered in the decision includes but is not limited to the following:~~

- ~~(1) — Timing of phases of a project;~~
- ~~(2) — Proximity to residential areas^[cas22].~~

19.46.070 Conflicts.

- (1) If the provisions of this chapter conflict with other ordinances or regulations, the more stringent limitation or requirement shall govern or prevail to the extent of the conflict.
- (2) In the event that, because of lot configuration, adjacent land uses, or special circumstances, more landscaping is required to meet all requirements of this title, the higher amount of landscaping shall be required.

19.46.080 Maintenance standards of required landscape areas.

- (1) Maintenance of Cultivated Areas.

- (a) General. The owner of land subject to this chapter shall be responsible for the maintenance of said land in good condition so as to present a healthy, neat, and orderly landscape area.
- (b) Maintenance of Plants. All landscaping and screening areas shall be maintained in a healthy, growing condition. Broken, dead, or dying trees, shrubs, or other plants shall be replaced. All landscaping and screening shall be kept free of trash and weeds.
- (c) Tree Removal. It shall be the responsibility of each private property owner to remove any dead, diseased, or dangerous trees or shrubs, or part thereof, located on private property which overhang or interfere with traffic control devices, public sidewalks, rights-of-way, or property owned by the city. The city shall have the authority to order the removal and possible replacement of any such trees or shrubs.
- (d) Pruning.
 - (i) All pruning should be accomplished according to good horticultural standards. Trees shall be pruned only as necessary to promote healthy growth;
 - (ii) Unless special approval is provided, trees shall be allowed to attain their normal size and shall not be severely pruned or "hat racked" in order to permanently maintain growth at a reduced height;
 - (iii) Trees may be periodically pruned or thinned in order to reduce the leaf mass and stimulate further branching.
- (e) Mowing. Grass shall be mown as required in order to encourage deep root growth and therefore the preservation of irrigation water.
- (f) Edging. All roadways, curbs, and sidewalks shall be edged when necessary in order to prevent encroachment from the adjacent grass areas. Power trimmers shall not be used to trim grasses around trees since they will quickly remove bark causing deterioration and eventual death of the tree.
- (g) Watering. All watering of planted areas shall be managed so as to:
 - (i) Maintain healthy flora;
 - (ii) Make plant material more drought-tolerant;
 - (iii) Avoid excessive turf growth;
 - (iv) Minimize fungus growth;
 - (v) Stimulate deep root growth;
 - (vi) Minimize leaching of fertilizers;
 - (vii) Minimize cold damage.

Watering of plants and trees should always be in sufficient amounts to thoroughly soak the root ball of the plant and the surrounding area, thereby promoting deep root growth and drought tolerance.

Whenever possible, automatic irrigation systems should be installed and operation should occur between the hours of 12:00 midnight and 6:00 a.m. Irrigation during these hours helps to reduce fungus growth and loss of water due to evaporation.

If an irrigation system is installed it shall be regularly maintained to eliminate waste of water due to loss of heads, broken pipes, or misjudged nozzles.

~~(2) Maintenance of Natural Plant Communities.~~

~~(a) General. All areas preserved as natural plant communities shall be annually cleared of nonnative vegetation and lawn grasses, and cleared of all trash and other debris.~~^{cas23}

~~(b) Required Management Plan. For all areas of preserved plant communities larger than three acres in area, the owner shall submit for the approval of the planning department a narrative management plan indicating the manner in which the owner will preserve the native plant communities. The narrative shall include:~~

~~(i) Whether the existing vegetation is to be preserved in the existing species composition;~~

~~(ii) If applicable, the manner in which the composition of existing plant material is to be preserved;~~

~~(iii) The maintenance schedule for removal of debris and exotic species;~~

~~(iv) Other information the planning department feels necessary to approve a management plan.~~

~~All natural plant communities shall be managed in order to maintain the plant community for the purpose it was preserved.~~

~~When applicable, the planning department shall make periodic inspections of the natural areas to verify the owner's adherence to the approved management plan.~~^{cas24}

19.46.090 — Timing of landscaping completion.

~~(1) Completion of Landscaping. All landscaping must be completed in accordance with the approved landscape plan before a certificate of occupancy may be issued for any building on the lot. In the event that weather conditions do not allow for the installation of the landscaping, the property owner shall provide the planning director with documented assurance that the landscaping will be completed within six months. The building official may then issue a one six month temporary certificate of occupancy and permit the owner to complete the landscaping within the six month period. For the purpose of this subsection, "documented assurance" means:~~

~~(a) A bond or other assurance acceptable to the city equal to 112 percent of the estimated installation costs shall be required. Such deposit shall be accompanied by a letter which shall stipulate completion of all landscape development no later than six months after the issuance of the certificate of occupancy or date of final approval, whichever is later.~~

~~(b) If these conditions are not met, the city may use the deposit to perform the landscape development.~~^{cas25}

19.46.100 Landscaping and irrigation plans required.

Landscaping and irrigation plans shall be submitted for any landscaping activity required by OHMC 19.46.020.^{cas26} The landscaping plan shall be reviewed by the Director. All landscaping plans shall include information regarding existing vegetation to be preserved onsite and newly proposed plantings.

~~(1) General. Prior to the issuance of any building permit, a landscape plan shall be submitted to, reviewed by, and approved by the Director^[ens27].~~

~~(12) Nature of Required Plans. Landscape plans for lots larger than one and one-half acres in size shall be prepared by and bear the seal of an architect or landscape architect, or other professional with demonstrated qualifications.~~

~~(23) Contents of Landscape Plan. The landscape plan shall be drawn to scale with dimensions and distances shown and include the following:~~

- ~~(a) Be drawn to scale, including dimensions and distances;~~
- ~~(b) Delineate the existing and proposed parking spaces, or other vehicular areas, access aisles, driveways, and similar features;~~
- ~~(c) Show all landscape features including height, quality, type, botanical and common names, place of planting and all areas of vegetation, in context with the location and outline of any existing or proposed and other improvements on the site;~~
- ~~(d) Gross acreage, area of preservation, number of trees to be planted and/or preserved, other plants to be planted and/or preserved, and square footage of paved areas shall be included in a tabulation that clearly displays this and other relevant information necessary for the planning department to evaluate compliance with the provisions of this chapter;~~
- ~~(e) Include an irrigation plan, which shows zones, connecting nozzles, distribution valves, irrigation lines, sprinkler heads, timer location, and backflow prevention device, as well as other information integral to the proposed irrigation system.~~

~~An application and inspection fee, in the amount set by the city council from time to time, shall be collected by the building department at time of application for certificate of occupancy. (Ord. 1555 § 20, 2009^[cas28]).~~

~~(a) Information regarding vegetation to be preserved:~~

- ~~(i) Locations of perimeters of individual trees and native vegetation areas to be preserved. The tree protection area for trees to be preserved shall be shown on the plan in accordance with 19.46.140(9).~~
- ~~(ii) Size, species, and health of trees to be preserved.~~
- ~~(iii) General locations of trees proposed for removal.~~
- ~~(iv) Limits of construction on site.~~
- ~~(v) Narrative description of tree protection and tree maintenance measures required for the trees to be preserved.~~
- ~~(vi) Timeline for clearing, grading and installation of tree protection measures.~~
- ~~(vii) If native vegetation retention areas are proposed, the acreage of on-site critical areas, excluding critical area buffers and acreage of on-site public and private roads.~~
- ~~(viii) If native vegetation retention areas are proposed, the calculation of average trees per square foot of protected native vegetation area shall be provided.~~

~~(b) Information regarding newly proposed vegetation:~~

- (i) Show all property lines and easements for ingress/egress and drainage;
 - (ii) Show all existing and proposed structures. The square footage and location for each existing and proposed structure shall be identified;
 - (iii) Show all pedestrian / bike connections and adjacent landscaping areas, storage, garbage, recycling, employee recreation and aboveground stormwater detention and treatment areas;
 - (iv) Show all paved, impervious surface areas, not including structures. The location of parking, loading and circulation areas and the total paved, impervious surface square footage shall be identified;
 - (v) Show all proposed and existing outdoor fixtures and equipment such as utility vaults (structures), fire hydrants, light fixtures, fences, retaining walls, ornamental fountains, pools, benches and garbage containers. The size and location of each item above shall be identified;
 - (vi) Location, size, species, spacing and number of trees to be planted.
 - (vii) Each proposed landscaping area shall have its square footage indicated on the plan.
 - (viii) Narrative description and detail showing any site preparation, installation, and maintenance measures necessary for the long-term survival and health of the vegetation.
 - (ix) Timeline for site preparation, installation, and maintenance of vegetation.
 - (x) Cost estimate for the purchase, installation and three years maintenance.
- (3) Irrigation Plan. The landscape plan shall include an irrigation plan. An irrigation plan is required to ensure that the planting will be watered at a sufficient level for plant survival and healthy growth. For projects subject to professional design criteria, the irrigation method shall be by a permanent underground system with an automatic controller. An overriding rain sensor switch shall be provided. Also, administrative relief from the irrigation requirement may be requested for planting areas which contain only drought tolerant vegetation^[cas29].
- (a) The irrigation plan shall show zones, connecting nozzles, distribution valves, irrigation lines, sprinkler heads, timer location, and backflow prevention device, as well as other information integral to the proposed irrigation system.
 - (b) An application and inspection fee, in the amount set by the city council from time to time, shall be collected by the building department at time of application for certificate of occupancy.
 - (c) Alternative irrigation systems, including the reliance on drought-tolerant plantings which meet the intent of this section, may be considered by the city. The city may require a professional review of the proposed alternative irrigation system or drought-tolerant plantings at the applicant's expense.

- (i) If drought-tolerant, native species are selected, a watering plan is required for the establishment phase of new plantings. The plan must provide adequate watering of the newly installed trees for a minimum of three years.

19.46.110 Administrative relief and alternative compliance.

The standards contained in this chapter are intended to encourage development which is economically viable and environmentally satisfying. The standards are not intended to be arbitrary or to inhibit creative solutions. Projects may justify approval of alternative methods for compliance with the standards. Conditions may arise where normal compliance is impractical or impossible, or where maximum achievement of the city's objectives can only be obtained through alternative compliance.

~~(1) Requests for alternative compliance and administrative relief may be accepted for any application to which the requirements of this chapter apply, when one or more of the following conditions exist:~~

- ~~(a) Topography, soil, vegetation or other site conditions make it impossible or impractical; or improved environmental quality would result from alternative compliance;~~
- ~~(b) Space limitations, unusually shaped lots, and prevailing practices in the surrounding neighborhood may justify alternative compliance for infill sites, and for improvements and redevelopment in older communities;~~
- ~~(c) Parking lots with five parking spaces or less may apply for administrative relief in order to reconfigure landscaping to be less than 15 percent of the parking lot. For example, a portion of the requirement can be met by landscaping around the perimeter of the parking lot;~~
- ~~(d) Change of use of an existing site increases the buffer required more than it is feasible to provide;~~
- ~~(e) Safety considerations make alternative compliance necessary;~~
- ~~(f) When an alternative proposal is equal or better than normal compliance in its ability to fulfill all landscaping requirements in this chapter;~~
- ~~(g) Alternative types of irrigation for preexisting conditions.~~

~~(2) The following may be considered as a remedy in the cases where alternative compliance is proposed:~~

- ~~(a) Alternative compliance shall be limited to the specific project under consideration and shall not establish precedents for acceptance in other cases;~~
- ~~(b) Requests for alternative compliance shall be accompanied by sufficient explanation and justification, written and/or graphic, to allow appropriate evaluation and decision;~~
- ~~(c) A request for alternative compliance shall be submitted to the planning director (or designee) at the time the plan is submitted. In the case of those plans for which no public hearing is required, the decision of the planning director (or designee) will be final, unless the applicant appeals the decision to the planning commission. In the case of those plans for which a planning commission or other public hearing is required:~~

- (i) ~~The request for alternative compliance shall be submitted no less than 21 calendar days prior to the scheduled date of the hearing;~~
- (ii) ~~The planning director (or designee) will forward a recommendation to the proper hearing authority a minimum of five working days prior to the hearing;~~
- (d) ~~The planning director may request modification of proposed standards in the administrative relief proposal.~~^{cas30}

19.46.110 Review of landscape plans.

- (1) Landscape plans shall be submitted and reviewed concurrently with a development or use permit and shall be processed as part of the integrated permit process under 18.20.360 OHMC.
- (2) Landscape plans shall be incorporated by reference in any approval issued for the underlying permit or application. Compliance with the plans shall be a condition of such approval.
- (3) The Director may allow or approve minor modifications to an approved landscape plan during the site development construction process to account for unforeseen site conditions and circumstances. The submittal of an amended landscape plan meeting the requirements of this Chapter may be required.^{cas31}

19.46.120 Enforcement of chapter.

~~A violation of any of the provisions of this chapter shall be a civil offense and any person failing to comply thereof shall be punished by a fine not to exceed \$250.00 or value of materials and labor to bring the property into compliance with this chapter, whichever is greater. It shall be a separate offense for each and every day or portion thereof during which any violation of any part of the provisions of this chapter is committed, continued or permitted.~~^{cas32}

19.46.120 Phased projects.

Phased projects include but are not limited to shopping centers, large site developments applicable subdivisions, planned residential developments, and business parks. Before construction permits are issued for the first phase of any phased project, conceptual approval of the landscaping plan for the site as a whole is required. Final approval of the landscaping plan for each phase is required before construction permits are issued for a phase. Installation of landscaping for each phase of development shall be required prior to releasing occupancy permits for that phase. Relief may be available per OHMC

19.46.160.

Landscaping along a frontage road or perimeter screening may be required to be installed in the first phase. Criteria to be considered in the decision includes but is not limited to the following:

- (1) Timing of phases of a project;
- (2) Proximity to residential areas.^{cas33}

19.46.130 Landscape performance bonding.

- (1) All required landscaping shall be installed prior to a certificate of occupancy being issued.

- (2) Deferment. The installation of landscaping may be deferred for up to six months from the date an applicant receives a temporary or permanent certificate of occupancy. A bond shall be submitted to the city in order to ensure the completion of the landscaping in accordance with the approved plan. It shall be the responsibility of the applicant and the property owner to contact the city upon completion of the landscaping work and request an inspection.
- (3) Performance Bond Amount and Type. A three-year performance bond shall be required to ensure landscaping completion and a minimum plant survival of eighty percent (80%) at the end of three years. The type of bond shall be approved by the city and must be submitted on forms supplied by the City of Oak Harbor. The approved bond shall be posted with the development services department prior to the issuance of a building permit. The bond amount shall be 150 percent of a landscaping bid amount submitted and approved by the city. The bid amount must include labor and materials. The type of landscape performance bonds which are acceptable include cash bonds, assignment of funds, and insurance company performance bonds.
- (4) Failure to Complete Landscaping. Failure to complete all of the required landscaping within six months of the issuance of a certificate of occupancy permit shall constitute a violation and the city shall use the bond to complete the required landscaping.
- (5) Subsections (1), (2), and (3) above shall apply to all landscaping within a development site including street trees required within the public right of way and all landscaping within tracts or lots owned by private entities, such as homeowners' associations^[eas34].

19.46.140 Native Vegetation Standards^[eas35]

Tree and vegetation retention provides substantial benefits including, but not limited to, erosion prevention, reduction in storm-water runoff, preservation of fish and wildlife habitat, improved water and air quality, energy conservation, reductions in the development impacts on the stormwater drainage system and hydrologic resources, and provides a better transition between adjacent land uses.

(1) Applicability

The native vegetation standards set forth in this section apply to all commercial and residential projects that require one or more of the following approvals: a binding site plan, conditional use permit, manufactured home park development plan, site plan review, planned business park master plan, subdivision, or planned residential development. Short subdivisions are exempt from these requirements.

(2) Definition of Native Vegetation and Allowed Uses.

- (a) Definition. Native vegetation includes native, undisturbed areas or rehabilitation of previously disturbed areas. Native vegetation shall consist of plants and trees that are indigenous to the Pacific Northwest or near natives that are suitable for the Pacific Northwest climate. For the purposes of this chapter, native vegetation is defined by a tree density of no less than one tree per 600 square feet.

(b) Allowed Uses. Native vegetation may integrate pervious, passive recreation facilities, stormwater dispersion facilities, and approved surface water restoration projects. Active open space shall not count towards native vegetation requirements. Activities within native vegetation areas shall be limited to passive recreation (e.g. trails), removal of invasive species, amendment of disturbed soils, and planting of native vegetation.

(3) Native Vegetation Retention and Tree Density Standards.

(a) Minimum Standards. Table 19.46.140-1 provides minimum vegetation retention standards by zone. The native vegetation must be comprised of a minimum tree density of one tree per 600 square feet.

TABLE 19.46.140-1: Native Vegetation Optional Standards by Zone

<u>ZONE</u>	<u>Native Vegetation Retention (% of site area)</u>
<u>PRE, R1</u>	<u>15%</u>
<u>R2</u>	<u>10%</u>
<u>R3, R4, OS</u>	<u>10%</u>
<u>RO</u>	<u>10%</u>
<u>C1, C3, C4, C5, CBD</u>	<u>5%</u>
<u>I, PBP, PIP</u>	<u>5%</u>
<u>PF</u>	<u>5%</u>

(b) The minimum native vegetation area may be reduced on sites with special circumstances and where replacement and supplemental plantings are proposed. Special circumstances include, but are not limited to:

- (i) The retention of native vegetation to the percentages specified in Table 19.46.140-1 precludes economically feasible development of the property.
- (ii) Physical limitations such as existing lot size, soils or topography.
- (iii) Deteriorated health of trees.
- (iv) Potentially hazardous trees.
- (v) Trees subject to blowdown after construction.

The replacement and supplemental plantings should be located in clusters or contiguous tracts and placed to maximize aesthetic, hydrologic, or habitat function and values.

(4) General Provisions.

Native Vegetation Areas shall meet the following additional standards:

(a) Trees shall be retained in stands or clusters. A professional forester, arborist, or landscape architect shall prepare the landscape plan to ensure that retained vegetation is not susceptible to windthrow. See 19.46.100 for landscape plan requirements.

(b) Native vegetation may be accommodated within perimeter landscaping or other required landscaped areas.

- (c) The minimum native vegetation retention may be decreased to 10 percent for non-residential uses (e.g., churches, schools, etc.) that are permitted outright or conditionally in residential zones.
- (d) The calculation of the native vegetation retention area for public school sites shall be based upon the total acreage of the school site minus the areas set aside for playfields in the school site plan; provided that for the purposes of the calculation, such playfield areas shall not exceed 30 percent of the gross site area.
- (e) Critical areas and their buffers may be counted towards this standard so long as they contain existing native vegetation (e.g. a steep slope with Douglas fir may be counted while one with Himalayan blackberry may not). Critical areas and their buffers that will be counted towards native vegetation shall not have to comply with the replanting standards within this chapter. Land below an ordinary high water mark shall not be counted towards the required native vegetation.
- (f) Any soils disturbed through the site development process that are to be counted toward the native vegetation requirements shall be amended in accordance with the "Guidelines for Implementing Soil Quality and Depth" (BMP T5.13 in DOE Stormwater Management Manual for Western Washington 2005).

(5) Selection Standards.

The following selection standards should be used with the applicant's design concept in order to meet the standards outlined in Table 19.46.140-1.

- (a) Fifteen percent (15%) of trees on the project site which are 12-inches or greater in diameter and which have a live crown ratio (total tree height in relation to branched portion of the tree) of fifty percent (50%) or more shall be preserved.
 - (b) Utilize the site inventory and analysis techniques to determine which portions of the site are best suited to leave native vegetation. Typically these are the most environmentally sensitive areas such as wetlands, steep slopes, floodplains, critical fish and wildlife habitat areas. In residential developments up to twenty-five percent (25%) of the required native vegetation specified in Table 19.46.140-1 may be incorporated into the individual lot design where strict covenants or other protection measures are put in place. Where individual lots are utilized, they should be connected either physically or hydrologically to other native vegetation or conservation areas.
 - (c) Minimize changes to natural topography in an effort to maintain pre-development flow path lengths in natural drainage patterns.
 - (d) Maintain surface roughness to reduce flow velocities and encourage sheet flow on the lot by preserving native vegetation, forest litter and surface topography.
- (6) Flexible standards to allow for native vegetation areas.
- (a) Administrative relief under section 19.46.160 OHMC may be granted to allow intrusion of a building into a setback yard by five feet to allow for the provision of native vegetation areas elsewhere on the property.

(b) Setback averaging may be utilized to allow for native vegetation areas elsewhere on the property.

(c) Administrative relief under section 19.46.160 OHMC may be granted to allow a ten percent (10%) reduction in parking spaces to allow for the provision of native vegetation areas elsewhere on the property.

(7) Replanting Requirements.

(a) If the site or lot has been previously cleared, then the minimum percentage of native vegetation shall be replanted to meet the requirements of subsection (b) below.

(b) New trees that will be planted in native vegetation areas shall meet the revegetation standards in this section and shall be native species. For a list of native species see section 19.46.150 OHMC.

(i) Replacement deciduous and broad-leaf evergreen trees shall have a minimum 2" d.b.h. at planting. Replacement coniferous evergreen trees shall have a minimum height of 6' at planting;

(ii) Reforested areas shall be replanted with a minimum of 25% deciduous species and 25% coniferous species;

(iii) Trees within designated critical areas shall be replanted at a 2:1 ratio.

(8) Permanent Protections^{cas371}.

A permanent protective mechanism shall be legally established to ensure that the proposed native vegetation area is preserved and protected in perpetuity in a form that is acceptable to both the applicant and the City and filed with the County Auditor's office. Restrictions on the future use of the native vegetation area shall also be recorded on the face of the plat for subdivision applications. A permanent native vegetation area shall be established using one of the following mechanisms.

(a) Placement in a separate non-building tract owned in common by all lots within the subdivision;

(b) Covered by a protective easement or public or private land trust dedication;

(c) Preserved through an appropriate permanent protective mechanism that provides the same level of permanent protection as subsection (1) of this section as determined by the approval authority.

(9) Protection of Native Vegetation Areas During and After Development

(a) All trees and tree stands proposed for retention or to be placed in a native vegetation area shall be protected before and during site development and construction through adherence to the following requirements:

(i) A native vegetation area shall be designed to protect each tree or tree stand during site development and construction. The native vegetation area shall conform to the approved landscape plan.

(ii) Native vegetation areas may vary widely in shape, but must extend a minimum of three feet beyond the existing tree canopy area along the outer edge of the tree stand, unless otherwise approved by the Director of Development Services.

- (iii) Native vegetation areas shall be added and clearly labeled on all applicable site development, plat, and construction drawings, submitted to the Director of Development Services.
- (iv) No clearing, grading, filling, or other development activities shall occur within the native vegetation area, except where approved in advance by the Director and noted on the Landscape Plan.
- (v) No vehicles, construction materials, fuel, or other materials shall be placed in native vegetation area. Movement of any vehicles within the native vegetation area shall be prohibited.
- (vi) No nails, rope, cable, signs, or fencing shall be attached to any tree proposed for retention.
- (vii) The grade level around the tree may not be lowered within the greater of: (1) the area defined by the drip line of the tree at time of development; or (2) an area around the tree equal to 1 foot in diameter for each 1 inch of tree diameter as measured 1 foot above pre-existing grade at time of development, unless a registered landscape architect, certified arborist or certified nursery professional determines that the long-term health of the tree will not be significantly harmed.
- (viii) Trenching and other activities within or adjacent to native vegetation areas that may cut or damage the roots of trees proposed for retention shall be prohibited unless recommended by a professional forester, certified arborist or licensed landscape architect and approved by the City of Oak Harbor.
- (ix) The City of Oak Harbor may approve the use of alternate tree protection techniques if the trees will be protected to an equal or greater degree than provided by this section. A description of alternate techniques shall be submitted to and reviewed by the Director along with the site plan, short subdivision, subdivision, planned residential development or other development application^{cas381}.

(10) Tree Topping.

- (a) Topping or pollarding of trees within the native vegetation area is prohibited.
- (b) Topping or pollarding may occur when there is an identifiable safety hazard, to remove dead, diseased or unhealthy materials, or to avoid overhead utilities.

(11) Maintenance of Native Vegetation Areas.^{cas391}

- (a) Removal of trees within native vegetation areas is not allowed, unless the tree is dead or in a state of irreversible decline. In determining tree removal or replacement, the director may require a professional evaluation or tree protection plan by a certified arborist at the applicant's expense, where the director determines that such evaluation is necessary to comply with the standards of this section. The evaluation may include providing a hazardous tree assessment, evaluation of the anticipated effects of a proposed project on the viability of trees on the site, developing a plan for

tree protection or replacement and evaluation after construction. Trees that become diseased, severely damaged, or which die shall be replaced. Replacement trees shall be a minimum two and one-half-inch caliper for deciduous trees or a minimum of six feet in height from existing grade for conifers.

- (b) Minor trimming of trees within native vegetation areas is permitted as long as trimming activities do not negatively affect the long-term health and survivability of the tree. Trimming of select branches is allowed for safety reasons, e.g. cracked branches which may fall and become a hazard.
- (c) General. All native vegetation areas shall be annually cleared of nonnative vegetation and lawn grasses, and cleared of all trash and other debris.
- (d) Developer responsibility for maintenance of trees, including removal or replacement of diseased, dead, or dying trees, shall be as follows:
 - (i) Within residential subdivisions the developer shall be responsible for maintaining trees on individual lots until such time as the individual lots are sold at which point the individual lot owner shall assume responsibility. Developer responsibility for maintaining trees within common tracts shall remain in effect until such time as the common tract is transferred to the control of a homeowner's association or, where no homeowner's association exists, until such time as all individual lots within the subdivision are sold, at which point the homeowner's association or individual lot owners shall assume responsibility.
 - (ii) Within all other developments, developer responsibility for maintaining trees shall remain in effect until such time as the property sale occurs. Upon the property sale, the new owner shall assume the responsibility for maintenance.
 - (iii) Compliance with the landscape plan shall be a condition of approval and shall be identified on the face of the binding site plan, conditional use permit, manufactured home park development plan, site plan review, planned business park master plan, subdivision, or planned residential development.
- (e) Failure to maintain trees as required in this section shall constitute a violation of this Chapter and any associated land use or subdivision approvals.

19.46.150 Tree species^(cas40).

The following table provides information on selected species of native and non-native trees suitable for replanting. All species listed are suited to the climate conditions found in the Pacific Northwest. The list is for guidance only and is not intended to be all-inclusive. Other tree species may be utilized where appropriate when recommended by a professional forester, certified arborist, licensed landscape architect, or as approved by the Director. Species availability and quantity may be limited in some cases. It is best to coordinate in advance with nurseries specializing in native plants. For bioretention areas, a complete list of appropriate plants can be found in Appendix 3 of the *LID Technical Guidance Manual for Puget Sound* (2005).

<u>Characteristics and Use of Select Tree Species</u>				
<u>Species</u> <u>Scientific Name</u>	<u>Native</u> <u>Tree?</u>	<u>Canopy Size</u> <u>Category</u>	<u>Street Tree?</u>	<u>Characteristics</u>
<u>Grand fir</u> <u><i>Abies grandis</i></u>	<u>Yes</u>	<u>Large</u>	<u>No</u>	<u>Coniferous tree achieving heights of up to 150 feet. Tolerant of a variety of soil conditions, similar needs as Douglas fir.</u>
<u>Vine maple</u> <u><i>Acer circinatum</i></u>	<u>Yes</u>	<u>Small</u>	<u>No</u>	<u>Deciduous tree typically reaching heights of 5-35 feet. Tree-like in open sun, crooked sprawling and vine-like in shade. Good fall color. Tolerant of a wide variety of soil conditions. Prefers moist soils, but can tolerate drier conditions once established.</u>
<u>Big leaf maple</u> <u><i>Acer macrophyllum</i></u>	<u>Yes</u>	<u>Large</u>	<u>No</u>	<u>Deciduous tree. Form varies widely based upon competition and soil conditions. Typically 20 to 30 feet high when grow in open conditions but can reach heights of 80 feet or more in the forest. Good fall color. Tolerant of a wide variety of soil conditions. Similar environmental needs as Douglas fir.</u>
<u>Red Alder, Oregon Alder, Western Alder</u> <u><i>Alnus rubra</i></u>	<u>Yes</u>	<u>Medium</u>	<u>No</u>	<u>Deciduous tree to 50 feet. Best in restoration settings. Mature trees can be very attractive, especially in naturalized settings. Beautiful, mottled grey bark.</u>
<u>Serviceberry</u> <u><i>Amelanchier alnifolia</i></u>	<u>Yes</u>	<u>Small</u>	<u>No</u>	<u>Deciduous tree seldom larger than 20 feet in height. Tolerant of a wide variety of soil conditions. Fruit very valuable to wildlife.</u>
<u>Madrone</u> <u><i>Arbutus menziessii</i></u>	<u>Yes</u>	<u>Medium</u>	<u>No</u>	<u>Attractive tree, but very difficult to establish. Expect high losses. Review plant establishment notes at www.soundnativeplants.com before considering. Do not provide supplemental water once established.</u>

<u>Characteristics and Use of Select Tree Species</u>				
<u>Species</u> <u>Scientific Name</u>	<u>Native</u> <u>Tree?</u>	<u>Canopy Size</u> <u>Category</u>	<u>Street Tree?</u>	<u>Characteristics</u>
<u>Weeping nootka</u> <u>cypress</u> <u><i>Chamaecyparis</i></u> <u><i>nootkatensis</i></u> <u>'Pendula'</u>	<u>Yes</u>		<u>No</u>	<u>Narrow (5')</u> , <u>pyramidal evergreen</u> <u>conifer. Main trunk grows</u> <u>straight up with branchlets that</u> <u>weep straight down from</u> <u>drooping branches.</u>
<u>Hybrid Western</u> <u>dogwood</u> <u>'Eddie's White</u> <u>Wonder'</u> <u><i>Cornus nutallii x</i></u> <u><i>florida</i></u>	<u>Yes</u>	<u>Small</u>	<u>Yes</u>	<u>Hybrid of <i>Cornus florida</i> and the</u> <u>native western dogwood species.</u> <u>More successful than the native</u> <u>species for transplanting.</u> <u>Deciduous tree up to 30 feet in</u> <u>height. Prefers well-drained sites</u> <u>and partial shade. Could work</u> <u>well as a supplemental planting</u> <u>under a canopy of larger trees.</u>
<u>Black hawthorn</u> <u><i>Crataegus douglasii</i></u>	<u>Yes</u>	<u>Small</u>	<u>No</u>	<u>Deciduous tree up to 30 feet in</u> <u>height. Scarlet fruit. Prefers</u> <u>highly fertile soil and grows best</u> <u>in moist, open areas.</u>
<u>Oregon Ash</u> <u><i>Fraxinus latifolia</i></u>	<u>Yes</u>	<u>Medium</u>	<u>No</u>	<u>Deciduous tree up to 80 feet in</u> <u>height. Prefers moist or wet sites</u> <u>with rich soils. Works well for</u> <u>streamside and wetland plantings.</u> <u>Best in natural or restoration</u> <u>plantings and generally not</u> <u>appropriate for ornamental</u> <u>landscaping applications.</u>
<u>Mountain Ash</u>	<u>Yes</u>	<u>?</u>	<u>?</u>	<u>Deciduous perennial tree. Light</u> <u>gray, smooth bark. Flowers in</u> <u>May or June after leaves are full</u> <u>grown.</u>
<u>Incense cedar</u> <u><i>Libocedrus decurrens</i></u>	<u>No</u>	<u>Large</u>	<u>Yes</u>	<u>Coniferous tree achieving height</u> <u>of 150 feet. Drought and wind</u> <u>resistant. Slow growth. Native to</u> <u>California, Nevada, Oregon.</u>
<u>Sitka spruce</u> <u><i>Picea sitchensis</i></u>	<u>Yes</u>	<u>Large</u>	<u>No</u>	<u>Coniferous tree achieving 80-160</u> <u>feet. Best in moist areas.</u>
<u>Shore pine</u> <u><i>Pinus contorta</i></u>	<u>Yes</u>	<u>Medium</u>	<u>No</u>	<u>Coniferous tree to 35 feet tall.</u> <u>Can be trained if a more</u> <u>manicured look is desired.</u>
<u>Western white pine</u> <u><i>Pinus monticola</i></u>	<u>Yes</u>	<u>Medium</u>	<u>No</u>	<u>Coniferous tree to 60 feet tall.</u>

<u>Characteristics and Use of Select Tree Species</u>				
<u>Species</u> <u>Scientific Name</u>	<u>Native</u> <u>Tree?</u>	<u>Canopy Size</u> <u>Category</u>	<u>Street Tree?</u>	<u>Characteristics</u>
<u>Black cottonwood</u> <u><i>Populus balsamifera</i></u> <u>spp.</u> <u><i>trichocarpa</i></u>	<u>Yes</u>	<u>Large</u>	<u>No</u>	<u>Heavy-limbed deciduous tree, brittle wood. Best in moist, native plantings where space is plentiful</u>
<u>Choke Cherry</u> <u><i>Prunus virginiana</i></u>	<u>No</u>	<u>Medium</u>	<u>No</u>	<u>Needs well drained soil. Usually upright branching with an oval crown. Fragrant white flowers.</u>
<u>Douglas fir</u> <u><i>Pseudotsuga menziesii</i></u>	<u>Yes</u>	<u>Large</u>	<u>No</u>	<u>Fast growing, long lived coniferous tree growing to height of 150 feet or more. Prefers drier sites, but tolerates a wide variety of soil conditions.</u>
<u>Western crabapple</u> <u><i>Pyrus (Malus) fusca</i></u>	<u>Yes</u>	<u>Small</u>	<u>No</u>	<u>Best in native or restoration plantings and generally not appropriate for ornamental landscape use.</u>
<u>Cascara</u> <u><i>Rhamnus purshiana</i></u>	<u>Yes</u>	<u>Medium</u>	<u>No</u>	<u>Deciduous tree that produces black berries.</u>
<u>Western red cedar</u> <u><i>Thuja plicata</i></u>	<u>Yes</u>	<u>Large</u>	<u>No</u>	<u>Coniferous tree growing to height of 150 feet or more. Best under moist, shaded conditions, but tolerates a wide variety of soil conditions once established.</u>
<u>Western hemlock</u> <u><i>Tsuga heterophylla</i></u>	<u>Yes</u>	<u>Large</u>	<u>No</u>	<u>Fairly fast grower. Picturesque and also makes a good background, screen, or hedge.</u>
<u>Japanese Maple</u> <u><i>Acer Palmatum</i></u>	<u>No</u>	<u>Small</u>	<u>Yes</u>	<u>Common deciduous landscape tree. Slow growing; typically grow to no larger than 20 feet in height. Well suited for small lot use. Popular varieties 'Atropurpureum' and 'Bloodgood.'</u>
<u>Norway Maple</u> <u>(varieties)</u> <u><i>Acer platanoides</i></u>	<u>No.</u>	<u>Large</u>	<u>Yes</u>	<u>Common deciduous landscape tree. Typically achieves heights of 50 to 60 feet. Care must be taken near sidewalks and drives as roots can become a problem.</u>

<u>Characteristics and Use of Select Tree Species</u>				
<u>Species</u> <u>Scientific Name</u>	<u>Native</u> <u>Tree?</u>	<u>Canopy Size</u> <u>Category</u>	<u>Street Tree?</u>	<u>Characteristics</u>
<u>Red Maple</u> <u><i>Acer rubrum</i></u>	<u>No</u>	<u>Small</u>	<u>Yes</u>	<u>Common deciduous landscape tree. Varieties 'Armstrong' and 'Red Sunset' are recommended for street tree use. Fast growing, typically to 40 feet with brilliant fall color. May be appropriate in a native setting.</u>
<u>Whitebarked Himalayan birch</u> <u><i>Betula utilis</i> var. <i>jacquemontii</i></u>	<u>No</u>	<u>Medium</u>	<u>No</u>	<u>Prefers rich, moist, well drained soil. Narrow tree with oval crown. Brilliant white bark. Yellow fall color.</u>
<u>Incense cedar</u> <u><i>Calocedrus decurrens</i></u>	<u>No</u>	<u>Large</u>	<u>No</u>	<u>Coniferous tree achieving height of 150 feet. Drought and wind resistant. Slow growth. Native to California, Nevada, Oregon. Appropriate for native restoration areas.</u>
<u>European hornbeam</u> <u><i>Carpinus betulus</i></u>	<u>No</u>	<u>Medium</u>	<u>Yes</u>	<u>Deciduous tree growing to 40 feet. Variety 'Fastigiata' recommended for street tree use.</u>
<u>Eastern redbud</u> <u><i>Cercis canadensis</i></u>	<u>No</u>	<u>Medium</u>	<u>Yes</u>	<u>Tolerates any soil but wet. Short trunk with spreading branches. Flowers appear before leaves. Heart-shaped leaves emerge reddish and turn dark green. Yellow fall color.</u>
<u>Katsura Tree</u> <u><i>Cercidiphyllum japonicum</i></u>	<u>No</u>	<u>Medium</u>	<u>Yes</u>	<u>Deciduous tree, slow growing to 40 feet. Good fall color. Well suited for small lot use.</u>
<u>Washington hawthorn</u> <u><i>Crataegus phaenopyrum</i></u>	<u>No</u>	<u>Small</u>	<u>Yes</u>	<u>Small deciduous tree, typically no larger than 25 feet. Well suited for small lot use with good fall color.</u>
<u>White Ash (varieties)</u> <u><i>Fraxinus americana</i></u>	<u>No</u>	<u>Medium</u>	<u>Yes</u>	<u>Prefers deep, moist, well drained soil. Green leaflets turn to purple shades. Fall color may include yellow, orange, red, and dark purple.</u>
<u>Green ash</u> <u><i>Fraxinus amreicana</i></u>	<u>No</u>	<u>Medium</u>	<u>Yes</u>	<u>Fast growing deciduous tree with height of 40 feet. For street tree use, seeless varieties such as 'Marshall' are preferred.</u>

<u>Characteristics and Use of Select Tree Species</u>				
<u>Species</u> <u>Scientific Name</u>	<u>Native</u> <u>Tree?</u>	<u>Canopy Size</u> <u>Category</u>	<u>Street Tree?</u>	<u>Characteristics</u>
<u>Honey locust</u> <u><i>Gleditsia triacanthos</i></u>	<u>No</u>	<u>Medium</u>	<u>Yes</u>	<u>Fast growing deciduous tree with height of 40 feet. Varieties 'Shademaster', 'Skyline', and 'Moraine' are preferred varieties.</u>
<u>American sweet gum</u> <u><i>Liquidambar styraciflua</i></u>	<u>No.</u>	<u>Medium</u>	<u>Yes</u>	<u>Common landscape tree very tolerant of urban conditions. Achieves heights of 60 feet with good fall color. Not good in windy settings- the branches are brittle and break easily.</u>
<u>Tulip tree</u> <u><i>Liriodendron tulipifera</i></u>	<u>No</u>	<u>Large</u>	<u>No</u>	<u>Large deciduous tree achieving height of up to 60 feet. Very tolerant of urban conditions.</u>
<u>Crabapple</u> <u><i>Malus sp.</i></u>	<u>No</u>	<u>Medium</u>	<u>Yes</u>	<u>Large deciduous tree achieving height of up to 60 feet. Very tolerant of urban conditions.</u>
<u>Dawn redwood</u> <u><i>Metasequoia glyptostroboides</i></u>	<u>No</u>	<u>Large</u>	<u>No</u>	<u>A deciduous conifer. Fast growing. Bright green fern-like needles. Fall color ranges from bronze to apricot.</u>
<u>Sourwood</u> <u><i>Oxydendron arboreum</i></u>	<u>No</u>	<u>Medium</u>	<u>Yes</u>	<u>Medium deciduous tree with good fall color. Achieves height of 18 feet.</u>
<u>Yoshino flowering cherry</u>	<u>No</u>	<u>Medium</u>	<u>Yes</u>	<u>Medium sized deciduous tree achieving height of 40 feet. Fast growing.</u>
<u>Flowering callery pear</u> <u><i>Pyrus calleryana</i></u>	<u>No</u>	<u>Medium</u>	<u>Yes</u>	<u>Widely used in commercial landscaping. Deciduous tree 25 to 40 feet. Well suited to urban conditions. Varieties for street tree use include 'Aristocrat', 'Bradford', 'Capital', 'Chanticlear', 'Redspire' and 'Whitehouse'.</u>
<u>Pin Oak</u> <u><i>Quercus palustris</i></u>	<u>No</u>	<u>Large</u>	<u>No</u>	<u>Deciduous tree achieving heights of 50 to 80 feet. Better suited to park or large lot use due to size.</u>
<u>Scarlet oak</u> <u><i>Quercus coccinea</i></u>	<u>No</u>	<u>Large</u>	<u>No</u>	<u>Oval to round canopy shape with high, open branching pattern. Bright green leaves turn scarlet in fall. Deep roots allow for lawn or perennial plant growth beneath canopy.</u>

<u>Characteristics and Use of Select Tree Species</u>				
<u>Species</u> <u>Scientific Name</u>	<u>Native</u> <u>Tree?</u>	<u>Canopy Size</u> <u>Category</u>	<u>Street Tree?</u>	<u>Characteristics</u>
<u>English oak</u> <u><i>Quercus robur</i></u>	<u>No</u>	<u>Large</u>	<u>No</u>	<u>Prefers well drained sites. Open form. Deep green leaves with yellow-brown fall color. Needs ample space.</u>
<u>Giant Sequoia</u> <u><i>Sequoiadendron</i></u>	<u>No</u>	<u>Large</u>	<u>No</u>	<u>A good choice in a landscape with adequate space.</u>
<u>Japanese snowbell</u>	<u>No</u>	<u>Medium</u>	<u>Yes</u>	<u>Needs well drained soil and ample water. Medium green foliage with yellow fall color. Blooms in June with fragrant white bell-shaped flowers.</u>
<u>Little Leaf Linden</u> <u><i>Tilia cordata</i></u>	<u>No</u>	<u>Small</u>	<u>Yes</u>	<u>Small deciduous tree reaching height of 30 feet. Tolerant of urban conditions.</u>
<u>Sawleaf zelkova</u> <u><i>Zelkova serrata</i></u>	<u>No</u>	<u>Large</u>	<u>No</u>	<u>Water well initially to establish deep roots. Once established, very drought and wind tolerant. Fall foliage varies from yellow to dark red. Smooth gray bark.</u>
<u>Notes: Canopy size categories: (a) Large - mature canopy area >1,250 square feet (b) Medium – mature canopy area 450 to 1,250 square feet (c) Small – mature canopy area 450 square feet or less</u>				

19.46.155. Tree removal outside of native vegetation areas.

The director may approve the removal of trees that are not part of a native vegetation area that were required to be retained as part of a previous plan approval, if it is determined that the tree is diseased, physically deteriorated, potentially hazardous, damaged or subject to wind throw. Trees that are removed as approved by the director shall be replaced at a one to one ratio. Replacement trees shall be a minimum two and one-half-inch caliper for deciduous trees or a minimum of six feet in height from existing grade for conifers.

19.46.160 Administrative relief and alternative compliance^{cas411.}

The standards contained in this chapter are intended to encourage development which is economically viable and environmentally satisfying. The standards are not intended to be arbitrary or to inhibit creative solutions. Projects may justify approval of alternative methods for compliance with the standards. Conditions may arise where normal compliance is impractical or impossible, or where maximum achievement of the city's objectives can only be obtained through alternative compliance.

(1) Requests for alternative compliance and administrative relief may be accepted for any application to which the requirements of this chapter apply, when one or more of the following conditions exist:

- (a) Topography, soil, vegetation or other site conditions make it impossible or impractical; or improved environmental quality would result from alternative compliance;
 - (b) Space limitations, unusually shaped lots, and prevailing practices in the surrounding neighborhood may justify alternative compliance for infill sites, and for improvements and redevelopment in older communities;
 - (c) Parking lots with five parking spaces or less may apply for administrative relief in order to reconfigure landscaping to be less than 15 percent of the parking lot. For example, a portion of the requirement can be met by landscaping around the perimeter of the parking lot;
 - (d) Change of use of an existing site increases the buffer required more than it is feasible to provide;
 - (e) Safety considerations make alternative compliance necessary;
 - (f) When an alternative proposal is equal or better than normal compliance in its ability to fulfill all landscaping requirements in this chapter;
 - (g) Alternative types of irrigation for preexisting conditions.
- (2) The following may be considered as a remedy in the cases where alternative compliance is proposed:
- (a) Alternative compliance shall be limited to the specific project under consideration and shall not establish precedents for acceptance in other cases;
 - (b) Requests for alternative compliance shall be accompanied by sufficient explanation and justification, written and/or graphic, to allow appropriate evaluation and decision;
 - (c) A request for alternative compliance shall be submitted to the planning director (or designee) at the time the plan is submitted. In the case of those plans for which no public hearing is required, the decision of the planning director (or designee) will be final, unless the applicant appeals the decision to the planning commission. In the case of those plans for which a planning commission or other public hearing is required:
 - (i) The request for alternative compliance shall be submitted no less than 21 calendar days prior to the scheduled date of the hearing;
 - (ii) The planning director (or designee) will forward a recommendation to the proper hearing authority a minimum of five working days prior to the hearing;
 - (d) The planning director may request modification of proposed standards in the administrative relief proposal. (Ord. 1221 § 1, 2000).

19.46.170 Enforcement of chapter.

A violation of any of the provisions of this chapter shall be a civil offense and any person failing to comply thereof shall be punished by a fine not to exceed \$250.00 or value of materials and labor to bring the property into compliance with this chapter, whichever is greater. It shall be a separate offense for each and every day or portion thereof during which any violation of any part of the provisions of this chapter is committed, continued or permitted. (Ord. 1221 § 1, 2000^(cas421)).

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 (5) days after its publication.

PASSED by the City Council this ____ day of _____ 2010.

CITY OF OAK HARBOR

Approved () _____
Vetoed () Mayor

Date

ATTEST:

City Clerk

Approved as to Form:

City Attorney

Published: _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF OAK HARBOR AMENDING CHAPTER 19.47 OF THE OAK HARBOR MUNICIPAL CODE ENTITLED "LAND CLEARING" PROMOTING LOW IMPACT DEVELOPMENT CLEARING AND GRADING PRACTICES.

WHEREAS, the City of Oak Harbor's Comprehensive Plan in Environment Policy 2(h) says "the City should provide incentives to utilize Low Impact Development techniques for new development and redevelopment projects that will further promote resource protection and stewardship. Such incentives may include density credits, street width and/or parking requirement reductions, stormwater fee credits, landscape/park requirement credits, and/or expedited permit review processing. The City should also provide educational materials through pamphlets or web links to the public to educate the public on low impact development and;

WHEREAS, the City of Oak Harbor finds that Low Impact Development is a non-structural approach for managing stormwater from new and redeveloped sites which has been found by multiple professional and academic studies to have less impact on the environment, especially water quality, than conventional approaches for treating stormwater and;

WHEREAS, the City of Oak Harbor finds that Low Impact Development techniques are, in most cases, cost competitive or less expensive to install than conventional stormwater infrastructure and;

WHEREAS, the City finds that Low Impact Development techniques promote higher property values by using vegetated raingardens, native vegetation areas, and pervious pavements which are considered to be more aesthetically appealing than conventional stormwater techniques and;

WHEREAS, the City of Oak Harbor finds that the Oak Harbor Municipal Code currently has standards for incorporating Low Impact Development in site designs, that having such standards will further promote the use of Low Impact Development stormwater treatment techniques, and will help City staff review these projects more efficiently and;

WHEREAS, the City of Oak Harbor conducted seven (7) work sessions with the Planning Commission which were open to the public on the following dates: October 27, 2009, November 24, 2009, January 26, 2010, February 23, 2010, March 23, 2010, April 27, 2010, and May 25, 2010 and;

WHEREAS, the City of Oak Harbor conducted a public hearing before the Planning Commission on February 22, 2011 which was closed on March 29, 2011.

WHEREAS, the Oak Harbor Planning Commission recommended approval of the subject ordinance to the City Council and;

WHEREAS, the City of Oak Harbor issued notice of application and Determination of Non-Significance (DNS) for a SEPA Environmental Checklist in accordance with Chapter 43.21 RCW and;

WHEREAS, the City of Oak Harbor provided a 60-day comment period which began on X, 2011 and ended on X, 2011 to the Washington State Department of Commerce in accordance with Section 36.70A.106 RCW

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

Section One. Chapter 19.47 of the Oak Harbor Municipal Code, last amended by Section 21 of Ordinance 1555 in 2009, is hereby amended to read as follows:

**Chapter 19.47
LAND CLEARING**

Sections:

19.47.010	Purpose.
19.47.020	Applicability.
<u>19.47.025</u>	<u>Definitions</u>
19.47.030	Permits.
19.47.040	Exemptions.
19.47.050	Application for land clearing permit.
19.47.060	Minor clearing permit.
<u>19.47.065</u>	<u>Performance standards.</u>
19.47.070	Performance bond or cash guarantee.
19.47.080	Appeals.
19.47.090	Civil/criminal enforcement.
19.47.100	Injunctive enforcement.
19.47.110	Severability.
19.47.120	Permit fees.
19.47.130	Compliance with state law^[eas1].

19.47.010 Purpose.

These regulations are adopted for the following purposes. ~~The city staff shall consider such purposes as criteria or standards of the issuance of land clearing permits under OHMC 19.47.050^[eas2].~~

- (1) To promote the public health, safety and general welfare of the citizens of Oak Harbor;
- (2) To preserve and enhance the city's physical and aesthetic character by preventing indiscriminate removal or destruction of trees and ground cover on undeveloped and partially developed property;
- (3) To promote land development practices that result in a minimal disturbance to the city's vegetation and soils;
- (4) ~~To minimize surface water and ground water runoff and diversion and to prevent erosion and reduce the risk of slides^[eas3];~~
- (5) To minimize the need for additional storm drainage facilities; and to promote Low

- Impact Development grading and clearing techniques^[eas4];
- (6) To acknowledge that trees and ground cover reduce air pollution by producing pure oxygen from carbon dioxide;
 - (7) To promote building and site planning practices that are consistent with the city's natural topographic and vegetation features while at the same time recognizing that certain factors such as condition (e.g., disease, danger of falling, etc.), proximity to existing and proposed structures and improvements, interference with utility services, protection of scenic views, and the realization of a reasonable enjoyment of property may require removal of certain trees and ground cover;
 - (8) To ensure prompt development, restoration and replanting and effective erosion control of property after land clearing through the use of phased development, performance bonds, and other reasonable controls;
 - (9) To reduce siltation and water pollution;
 - (10) To implement the goals and objectives of the Washington State Environmental Policy Act;
 - ~~(11) To maintain the rural character of the city~~^[eas5];
 - (12) To protect and enhance critical lands and their buffers;
 - (13) To implement the following environmental element policies as stated in the comprehensive plan:
 - (a) Policy 1.c: Protect the public and public resources and facilities from injury, loss of life, property damage or financial loss due to flooding, erosion, landslides, soil subsidence and slope failure;
 - ~~(b) Policy 6.e: Require planting or retention of trees and shrubs with new development and substantial development projects~~^[eas6];
 - ~~(e)~~(b) Policy 6.g: The city shall require developers to submit and receive city approval of erosion control and limit-of-clearing plans, as applicable, prior to release of forest practices permits and land clearing;
 - ~~(d)~~(c) Policy 6.h: Consider adopting a land clearing and grading ordinance to prevent indiscriminate removal or destruction of trees and ground cover on undeveloped and partially developed property;
 - (14) ~~Not to prevent~~To allow the reasonable development of land in the city of Oak Harbor^[eas7].

19.47.020 Applicability.

This chapter applies to all properties within the city with exceptions as listed shown in OHMC 19.47.040. This chapter does not apply to oak trees, which are regulated under Chapter 20.16 OHMC.

19.47.025 Definitions

- (1) “Caliper” shall mean the diameter of any tree trunk as measured at a height of four feet above the ground on the upslope side of the tree.
- (2) “Creek” shall mean those areas where surface waters flow sufficiently to produce a defined channel or bed. A defined channel or bed is indicated by hydraulically sorted sediments or the removal of vegetative litter or loosely rooted vegetation by the action of moving water. The channel or bed need not contain water year

- around. This definition is not meant to include storm water runoff devices or other entirely artificial watercourses unless they are used to store and/or convey pass-through stream flows naturally occurring prior to construction.
- (3) “Clearing” shall mean the act of cutting and/or removing vegetation. This definition shall include grubbing vegetation.
 - (4) “Clearing and Grading Permit” shall mean the written approval of the city of Oak Harbor to proceed with the act of clearing property within the city limits of Oak Harbor. The Clearing and Grading Permit includes the associated approved plans and any conditions of approval as well as the permit form itself.
 - (5) “Critical Area” shall mean any area designated as a critical area pursuant to RCW 36.70A.170 and Chapter 20.02 OHMC.
 - (6) “Development” shall mean any activity that requires federal, state, or local approval for the use or modification of land or its resource. These activities include, but are not limited to, subdivision and short subdivisions; binding site plans; planned residential developments; variances; shoreline substantial development; clearing activity; excavation; embankment; fill and grade work; converting fallow land or undeveloped land to agricultural purposes; activity conditionally allowed; building or construction; ~~revokeable encroachment permits;~~ and septic approval.
 - (8) “Dry Season” shall mean the months of May through September.
 - (9) “Ecology” shall mean Washington State Department of Ecology.
 - (10) “Erosion” shall mean the wearing away of the land surface by running water, wind, ice, or other geological agents, including such processes as gravitational creep. Also, the detachment and movement of soil or rock fragments by water, wind, ice, or gravity. The following terms are used to describe different types of water erosion:
 - (11) Geological erosion – The normal or natural erosion caused by geological processes acting over long geologic periods and resulting in the wearing away of mountains, building up of floodplains, coastal plains, etc. Synonymous with natural erosion.
 - (12) Natural erosion – Wearing away of the earth’s surface by water, ice, or other natural agents under natural environmental conditions of climate, vegetation, etc., undisturbed by humans. Synonymous with geological erosion.
 - (13) “Excavation” shall mean the removal of material such as earth, sand, gravel, rock, or asphalt from a parcel, tract, or lot of land.
 - (14) “Fill” shall mean earth, sand, gravel, rock, asphalt, or other solid material used to increase the ground surface elevation or to replace excavated material.
 - (15) “Filling” shall mean the act of placing fill material (~~earth, sand, gravel, rock, asphalt, or other solid material~~) on any soil surface, natural vegetative covering, or other fill material to raise the ground elevation or to replace excavated material.
 - (16) “Geotechnical Engineer” shall mean a professional engineer currently registered in the state of Washington, qualified by reason of experience and education in the practice of geotechnical engineering, and designated by the owner as the geotechnical engineer of record for the project.
 - (17) “Grading” shall mean the movement of earth material through mechanical or other means to create the finished surface and contour of a project site.

- (18) “Grubbing” shall mean the act of removing vegetation by the roots.
- (19) “Ground cover” shall mean a dense covering of small plants such as salal, ivy, ferns, mosses, grasses, or other types of vegetation which normally cover the ground.
- (20) “Land Disturbance Activity” shall mean any activity that results in movement of earth, or a change in the existing soil cover and/or the existing soil topography. Land disturbing activities include, but are not limited to, clearing, grading, filling, and excavation.
- (21) “Low Impact Development (LID)” shall mean a stormwater management strategy that emphasizes conservation and use of existing natural site features integrated with distributed, small-scale stormwater controls to more closely mimic natural hydrologic patterns in residential, commercial, and industrial settings.
- (22) “Partially developed lot” shall mean a lot or parcel of land upon which a structure (refer to 19.08.875 OHMC for the definition of a structure) is located and which is of sufficient area so as to be capable of accommodating additional development pursuant to the Oak Harbor zoning code; or which may be subdivided in accordance with the city of Oak Harbor subdivision chapter.
- (23) “Permit” shall mean, unless otherwise noted, the Clearing and Grading Permit; see Clearing and Grading Permit.
- (24) “Removal” shall mean the actual destruction or causing the effective destruction through damaging, poisoning or other direct or indirect actions resulting in the death of a tree or ground cover.
- (25) “Runoff” shall mean water from rain, melted snow, or irrigation that flows over the land surface.
- (26) “Sedimentation” shall mean the process of gravity-induced settling and deposition of fragmented rock, soil, or organic particles displaced, transported, and deposited by erosive water-based processes.
- (27) “Wet Season” shall mean the period of the year between October 1 and April 30.

19.47.030 Permits.

No person, corporation, or other legal entity shall engage in or cause land clearing in the city without having obtained a land clearing permit or minor clearing permit. Obtaining a land clearing permit or minor clearing permit does not exempt any person from obtaining a grading permit, when required.

19.47.040 Exemptions.

The following shall be exempt from the provisions of this chapter:

- (1) The installation and maintenance of fire hydrants, surface electrical transformer boxes, water meters, water and sewer mains, pumping stations, pedestrian or bicycle paths ~~connections~~^{connections}, and street improvements by the city or its contractors;
- (2) Removal of trees and ground cover in emergency situations involving immediate danger to life or property or substantial fire hazards;
- (3) Removal of dead or diseased ground cover or trees. If there is a question as to whether ground cover or trees are diseased, an ~~arborist~~^{forester} or city staff shall inspect the site and determine whether the plant needs to be removed;

- (4) Removal of trees or ground cover on partially developed lots, for purposes of general property and utility maintenance, landscaping or gardening; provided, that this exemption shall not apply to any land clearing which includes the use of a bulldozer or similar mechanical equipment and shall not be construed to eliminate the requirement of permits for land clearing for the purpose of developing the property with substantial permanent improvements such as roads, driveways, utilities, or buildings;
- (5) Developed ^[eas10] single-family residential lots;
- (6) Individual undeveloped single-family residential lots where a building permit has been issued.

19.47.050 Application for land clearing permit.

- (1) An application for a land clearing permit shall be submitted by the owner or authorized agent on a form provided by the city and shall be accompanied by such of the following documents and information as are determined to be necessary by the city staff as indicated on the application form.
- (2) Applications shall be submitted with the preliminary plat application, where applicable.
- (3) ~~The e~~City staff shall complete its review and make its decision within 20 working days from the date a complete land clearing application is submitted, if such application is submitted as a stand-alone application. However, if the application is submitted with a preliminary plat, binding site plan, site plan review, planned residential development or other development application, the review shall be completed within the prescribed timelines of Chapter 18.20 OHMC, unless an extension is authorized by the Development Services Director, ~~planning~~ director ^[eas11].
- (4) Any permit granted hereunder shall expire six months from the date of issuance. Approved plans shall not be amended without authorization of the city staff. The permit may be suspended or revoked by the city staff because of incorrect information supplied, not following the approved plan or any violation of the provisions of this chapter. A one-time six-month extension may be approved by the Development Services Director ~~planning~~ director upon submission of a letter from the applicant stating the reason for delay and approximate time clearing will be completed.
- (5) The city shall be advised by the property owner or authorized agent the day prior to beginning any land clearing operations.
- (6) Land clearing involving the use of heavy equipment shall be limited to those hours indicated in OHMC 6.56.030(1)(h).
- (7) The applicant shall be responsible for posting the property as per Chapter 18.21 OHMC.
- (8) In the case that multiple owners own a share in a property, a homeowners' association or other similar maintenance association shall be responsible for continued maintenance of the land and remaining vegetation, subsequent to land clearing.
- (9) An erosion and sediment control plan shall be approved prior to issuance of a land clearing permit, or as a condition of approval of a land clearing permit.

19.47.060 Minor clearing permit.

In the case that a property owner wishes to remove five percent or less of the total trees and ground cover on a site, the owner may apply for a minor clearing permit.

- (1) To apply for a permit, the owner must submit a letter requesting approval to remove the trees and/or ground cover. Such letter shall provide the following information:
 - (a) The percentage of total ground cover and trees which will be removed, as compared to the existing amount of trees and ground cover on the lot;
 - (b) Location of the trees and/or ground cover proposed for removal;
 - (c) If applicable, the approximate date the last minor clearing permit was approved by the city;
 - (d) Date that trees and/or ground cover are to be removed.
- (2) At no time shall the city approve, either by individual permit or by multiple permits, the removal of more than five percent of ground cover and trees on a lot per year through the minor clearing permit. Any proposed tree or ground cover removal above the annual maximum of five percent is subject to the land clearing permit process.
- (3) The minor clearing permits may not be used for requesting the removal of trees within a required buffer on arterial streets per 21.60.180.-

19.47.065 Performance standards^{eas12}.

All of the performance standards in this section are required unless an exemption from a particular standard is clearly justified in the narrative of the construction SWPPP. Compliance with the following performance standards is required prior to the approval of a land clearing permit in 19.47.050 OHMC, unless an exemption is clearly justified in the SWPPP.

(1) Minimize Potential Impacts

All grading and clearing activities shall be conducted so as to minimize potential adverse effects of these activities on forested lands, surface water quality and quantity, groundwater recharge, fish and wildlife habitat, adjacent properties, and downstream drainage channels, in accordance with the performance standards in this section.

(2) Stormwater Consistency of Standards

All standards under this code will be consistent with the latest version of the *Stormwater Management Manual for Western Washington*, pursuant to Title 12 OHMC.

(3) Natural Features and Vegetation Retention

Projects shall be phased to the maximum degree practical and shall take into account seasonal work limitations, to decrease exposed soils and minimize adverse impacts to natural features and vegetation resulting from land disturbance activities. The Director of Development Services shall have the authority to require a phased land clearing plan^{eas13}.

(4) Aesthetics

Land disturbance activity shall be undertaken in such a manner so as to preserve and enhance the city of Oak Harbor's aesthetic character. Important landscape characteristics that define the aesthetic character, such as large landmark trees, important vegetation species, and unique landforms or other natural features shall be preserved to every extent practical^{eas14}.

(5) Dust Suppression

Dust from clearing, grading, and other construction activities shall be minimized at all times. Impervious surfaces on or near the construction area shall be swept, vacuumed, or otherwise maintained to suppress dust entrainment. Any dust suppressants used shall be approved by the Development Services Director ~~planning division manager~~ or designee. Petrochemical dust suppressants are prohibited. Watering the site to suppress dust is also prohibited unless it can be done in a way that keeps sediment out of the drainage system^[eas15].

(6) Erosion and Sedimentation Control^[eas16]

Erosion and sedimentation control BMPs shall be designed and implemented appropriate to the scale of the project and necessary to prevent sediment from leaving the project site, including but not limited to, the standards and requirements described in this chapter, and in the latest edition of the *Department of Ecology Stormwater Management Manual for Western Washington*.

(a) In addition to the measures in this and other codes and ordinances, the planning division manager or designee may impose the following erosion control measures, or other additional measures, as appropriate for the project:

(ii) Funding additional city inspection time, up to a full-time inspector.

(iii) Stopping work if necessary to control erosion and sedimentation.

(7) Native Soil Protection and Amendment

(a) The duff layer and native topsoil should be retained in an undisturbed state to the maximum extent practicable. In areas requiring grading, remove and stockpile the duff layer and topsoil on site in a designated, controlled area, not adjacent to public resources and critical areas, to be reapplied to other portions of the site where feasible^[eas17].

(8) Protection of Critical Areas

The function and values of all critical areas, including all stream types, geologically unstable areas, critical aquifer recharge areas, frequently flooded areas, wetlands, and fish and wildlife conservation areas or habitats, and their critical areas buffers located on or adjacent to the site shall be protected from clearing and grading activities that result in sedimentation, erosion, and degradation. Such impacts shall be avoided by appropriate use of setbacks, erosion, and sediment control measures and other appropriate best development and management practices consistent with Title 20 Environment^[eas18].

(9) Avoidance of Hazards

Land disturbance activities shall not result in off-site physical damage, nor pose a danger or hazard to life or property.

(10) Cut and Fill Slopes

Cut and fill slopes shall be designed and constructed in a manner that will minimize erosion. In addition, slopes shall be stabilized in accordance with the requirements of this section. The applicant shall:

(a) Submit a geotechnical report, prepared by a geotechnical engineer, when required pursuant to Title 20 OHMC including Critical Area Ordinance provisions for qualified professional reports.

- (b) Minimize clearing and grading on slopes fifteen (15) percent or greater and meet any geologically sensitive areas performance standards set forth in Chapter 20.28 OHMC.
- (c) Comply with the Geologically Sensitive Areas Land Use Code restrictions (OHMC 20.28) applicable to slopes forty (40) percent or greater and to areas of colluvial or landslide deposit on slopes of fifteen (15) percent or greater.
- (d) Limit the maximum gradient of artificial slopes to no steeper than 2:1 [two (2) feet of horizontal run to one (1) foot of vertical fall] unless a geotechnical engineering report and slope stability analysis is provided and shows that a factor of safety of at least 1.5 for static loads and 1.1 for pseudostatic loads can be met.
- (e) Do no clearing, excavation, stockpiling, or filling on the potential slide block of an unstable or potentially unstable slope unless it is demonstrated to the City Engineer's satisfaction that the activity would not increase the load, drainage, or erosion on the slope.
- (f) Do no clearing, excavation, stockpiling, or filling on any unstable or potentially unstable areas (such as landslide deposits) unless it is demonstrated to the City Engineers that the activity would not increase the risk of damage to adjacent property or natural resources or injury to persons.
- (g) Intercept any ground water, subsurface water, or surface water drainage encountered on a cut slope and discharge it at a location approved by the city of Oak Harbor Development Services Department. Off-site stormwater (run-on) or groundwater shall be diverted away from slopes and undisturbed areas with interceptor dikes, pipes and/or swales. Off-site stormwater should be managed separately from stormwater generated on the site.
- (h) Design and protect cut and fill slopes to minimize erosion.
- (i) Excavated material shall be placed on the uphill side of trenches, consistent with safety and space considerations.
- (i) Check dams shall be placed at regular intervals within constructed channels that are cut down a slope.
- (k) At the top of slopes, collect drainage in pipe slope drains or protected channels to prevent erosion. Temporary pipe slope drains shall handle the expected peak 10-minute flow velocity from a Type 1A, 10-year, 24-hour frequency storm for the developed condition. Alternatively, the 10-year, 1-hour flow rate predicted by an approved continuous runoff model, increased by a factor of 1.6, may be used. The hydrologic analysis shall use the existing land cover condition for predicting flow rates from tributary areas outside the project limits. For tributary areas on the project site, the analysis shall use the temporary or permanent project land cover condition, whichever will produce the highest flow rates. Bare soil areas should be modeled as landscaped area.

(11) Slash Removal

Slash from clearing shall preferably be chipped and spread across the site within one (1)

year of project completion.

(12) Seasonality – Temporary Restrictions

Seasonality refers to the wet season (defined as the period from October 1 through April. Clearing, grading, and other land disturbing activities may be approved by the Development Services Director/planning division manager or designee for proposals that have minimal disturbance of soils and are on sites with predominant soils that have low runoff potential, and are not hydraulically connected to sediment/erosion-sensitive features. The following criteria also apply:

- (a) Wet season clearing, grading, and other land disturbing activities may be approved provided an erosion and sediment control plan is prepared by a professional engineer that specifically identifies methods of erosion control for wet weather conditions to control erosion/sedimentation, surface water run off, and safeguard slope stability. In a situation where erosion or sediment is not contained on site, construction activity shall cease immediately and notification of the Development Services Director/planning division manager shall be made within twenty-four (24) hours.
- (b) When approval is issued in the dry season (defined as the months of May through September), and work is allowed to continue in the wet season, the city of Oak Harbor may require additional measures to limit erosion and/sedimentation, for slope stability. The Director/planning division manager or designee may prohibit land-disturbing activities during certain days of the wet season. Determinations shall be made on a site-specific basis and evaluation of the following:
 - (i) Average existing slope on the site.
 - (ii) Quantity of proposed cut and/or fill.
 - (iii) Classification of the predominant soils and their erosion and runoff potential.
 - (iv) Hydraulic connection of the site to features that are sensitive to erosion impacts.
 - (v) Storm events and periods of heavy precipitation^[eas19].
- (c) If a clearing and grading approval is issued for work during the wet season and the Director/planning division manager subsequently issues a “Stop Work” order or correction notice for insufficient erosion and sedimentation control, the approval will be suspended until the dry season, or until the Director/planning division manager determines that weather conditions are favorable and effective erosion and sedimentation control is in place.
- (d) Certain activities are exempted from seasonal restrictions (For a list of exemptions, see Stormwater Management Manual for Western Washington, Construction SWPPP, Vol. 2^[eas20]).

(14) Site-Specific Requirements

Additional, site-specific requirements may be established after a site visit by the city. These requirements shall be based on specific site conditions and are limited to additional temporary erosion and sedimentation control and the mitigation of hazardous or potentially hazardous conditions that pose a threat off site or habitat preservation^[eas21].

(15) Tree Retention

Clearing plans shall show tree retention areas and native vegetation retention areas and shall conform to all the requirements of 19.46 for protection during construction and development.

(16) Protection of Trees During Construction

Protection of trees during construction and development shall conform to the requirements of 19.46.140.

19.47.070 Performance bond or cash guarantee.

The city staff may require, as a condition to the granting of a permit, that the applicant furnish a performance bond or cash guarantee to the city to secure the applicant's obligation, after the approved land clearing has been accomplished, to complete the restoration and replanting of the property in accordance with the terms of the permit and within the term thereof. The bond shall be in an amount equal to the estimated cost of such restoration and replanting, plus an additional 10 percent and with surety and conditions satisfactory to the city staff.

19.47.080 Appeals.

Any person or persons aggrieved by any action of the city staff may within 15 days of such action file a written notice of appeal in accordance with Chapter 1.24 OHMC.

19.47.090 Civil/criminal enforcement.

A violation of any of the provisions of this chapter shall be a misdemeanor and any person found guilty thereof shall be punished by a fine not to exceed \$500.00 or replacement value, whichever is greater. It shall be a separate offense for each and every day or portion thereof during which any violation of any part of the provisions of this chapter is committed, continued or permitted.

19.47.100 Injunctive enforcement.

Any violation of the provisions of this chapter is hereby declared to be a public nuisance and may be abated through proceedings for injunctive or similar relief in superior court or other court of competent jurisdiction.

19.47.110 Severability.

If any section, paragraph, subsection, clause or phrase of this chapter is for any reason held to be unconstitutional or invalid by action of law, such decision shall not affect the validity of the remaining portions of this chapter.

19.47.120 Permit fees.

After review and approval of the application a land clearing permit and minor clearing permit will be issued at a cost ~~determined from time to time by the city council.~~ in accordance with the "City of Oak Harbor Comprehensive Permit and Fee List²²¹."

19.47.130 Compliance with state law.

All clearing shall be done in accordance with applicable state laws.

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 (5) days after its publication.

PASSED by the City Council this ____ day of _____ 2010.

CITY OF OAK HARBOR

Approved () _____
Vetoed () Mayor

Date

ATTEST:

City Clerk

Approved as to Form:

City Attorney

Published: _____

Attachment C

Draft ordinance amending Title 21
“Subdivisions”

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF OAK HARBOR AMENDING TITLE 21 OF THE OAK HARBOR MUNICIPAL CODE ENTITLED "SUBDIVISIONS" FOR THE PURPOSES OF PROMOTING LOW IMPACT DEVELOPMENT STORMWATER MANAGEMENT PRACTICES IN SUBDIVISIONS, SHORT SUBDIVISIONS, AND BINDING SITE PLANS.

WHEREAS, the City of Oak Harbor's Comprehensive Plan in Environment Policy 2(h) says "the City should provide incentives to utilize Low Impact Development techniques for new development and redevelopment projects that will further promote resource protection and stewardship. Such incentives may include density credits, street width and/or parking requirement reductions, stormwater fee credits, landscape/park requirement credits, and/or expedited permit review processing. The City should also provide educational materials through pamphlets or web links to the public to educate the public on low impact development and;

WHEREAS, the City of Oak Harbor finds that Low Impact Development is a non-structural approach for managing stormwater from new and redeveloped sites which has been found by multiple professional and academic studies to have less impact on the environment, especially water quality, than conventional approaches for treating stormwater and;

WHEREAS, the City of Oak Harbor finds that Low Impact Development techniques are, in most cases, cost competitive or less expensive to install than conventional stormwater infrastructure and;

WHEREAS, the City finds that Low Impact Development techniques promote higher property values by using vegetated raingardens, native vegetation areas, and pervious pavements which are considered to be more aesthetically appealing than conventional stormwater techniques and;

WHEREAS, the City of Oak Harbor finds that the Oak Harbor Municipal Code currently has standards for incorporating Low Impact Development in site designs, that having such standards will further promote the use of Low Impact Development stormwater treatment techniques, and will help City staff review these projects more efficiently and;

WHEREAS, the City of Oak Harbor conducted seven (7) work sessions with the Planning Commission which were open to the public on the following dates: October 27, 2009, November 24, 2009, January 26, 2010, February 23, 2010, March 23, 2010, April 27, 2010, and May 25, 2010 and;

WHEREAS, the City of Oak Harbor conducted a public hearing before the Planning Commission on February 22, 2011 which was closed on March 29, 2011.

WHEREAS, the Oak Harbor Planning Commission recommended approval of the subject ordinance to the City Council and;

WHEREAS, the City of Oak Harbor issued notice of application and Determination of Non-Significance (DNS) for a SEPA Environmental Checklist in accordance with Chapter 43.21 RCW and;

WHEREAS, the City of Oak Harbor provided a 60-day comment period which began on X, 2011 and ended on X, 2011 to the Washington State Department of Commerce in accordance with Section 36.70A.106 RCW

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

Section One. Chapter 21.10 of the Oak Harbor Municipal Code, last amended by Ordinance 1568, section three in 2010, is hereby readopted.

Section Two. Chapter 21.20 of the Oak Harbor Municipal Code, last amended by Ordinance 1568, section four in 2010, is hereby amended to read as follows:

**Chapter 21.20
PRELIMINARY PLATS**

Sections:

- 21.20.010 Purpose and Applicability.**
- 21.20.020 Process for preliminary plat.**
- 21.20.030 Application and submission requirements.**
- 21.20.040 Prints, application and fee submittal.**
- 21.20.050 Review procedures.**
- 21.20.060 Dedications.**
- 21.20.070 Planning commission public hearing.**
- 21.20.080 City council decision.**
- 21.20.090 Effect of approval.**

21.20.010 Purpose and Applicability.

The purposes of a preliminary plat (preliminary subdivision) application is to:

- (1) Accept public comment on the proposed plat application in accordance with the public participation goals and policies of the comprehensive plan and;
- (2) Review the proposed division of land for conformance with the comprehensive plan, zoning standards contained in Title 19 OHMC and design standards of this title including, but not limited to, lot size, setbacks and density prior to submittal of detailed construction plans and drawings under the provisions of Chapter 21.30 OHMC.

A preliminary plat shall be required when division of land into ten (10) or more lots, tracts, or parcels is proposed for which a binding site plan process is not being followed.

21.20.020 Application and submission requirements.

- (1) The preliminary plat shall be prepared, stamped and signed by a licensed land

- surveyor.
- (2) The preparer shall, by placing his or her signature and seal upon the face of the plat, certify that all information is portrayed accurately and that the proposed subdivision complies with the standards and requirements of this title, the Oak Harbor zoning ordinance, and any other applicable land use and development controls.
 - (3) The preliminary plat must be prepared in accordance with the following minimum requirements:
 - (a) The preliminary plat shall be reproducible;
 - (b) All geographic information portrayed by the preliminary plat shall be accurate, legible, and drawn to an engineering (decimal) scale;
 - (c) The horizontal scale of a preliminary plat shall be one hundred (100) feet or fewer to the inch, except that the vicinity sketch and typical street cross sections may be drawn to any other appropriate scale; and
 - (d) A preliminary plat shall be twenty-four (24) inches by thirty-six (36) inches in size, and if more than one (1) sheet is needed, each sheet shall be numbered consecutively and an index sheet showing the entire property and orienting the other sheets, at any appropriate scale, shall be provided.
 - (4) The preliminary plat must include the following information:
 - (a) Name of proposed plat;
 - (b) Name, address and phone number of the subdivider (owner) and the name, address and phone number and seal of the surveyor preparing the plat;
 - (c) An accurate and complete legal description of the area being platted;
 - (d) All parcels of land intended to be dedicated or temporarily reserved for public use and the conditions attached thereto shall be accurately indicated;
 - (e) The lines and names of all streets and other public ways, pedestrian/bike connections, parks, playgrounds and easements intended to be dedicated for public use and/or common areas granted for use of inhabitants of the subdivision;
 - (f) There shall be a vicinity sketch at a scale of not more than eight hundred (800) feet to the inch showing the proposed plat in relation to surrounding land. All platted or public rights-of-way for a distance of at least a quarter mile shall be shown, and additional area shall be illustrated, if necessary, to show connecting streets or arterials;
 - (g) Monuments found and established during the preliminary survey;
 - (h) Names and addresses of all land owners contiguous to the proposed plat;
 - (i) Present zoning classification on and adjacent to the proposed plat;
 - (j) Date, scale, north arrow and lot lines; and
 - (k) All mapped information shall be prepared in a neat and legible manner.
 - (5) On a separate sheet of paper from the preliminary plat map, a site plan showing the following:
 - (a) Name of plat;
 - (b) Topography of the area with a maximum five-foot (5') contour intervals;
 - (c) City datum shall be used;

- (d) Location of all utilities and sizing of existing and proposed public utilities, including but not limited to fire hydrants, water, sewer, storm drains, electricity, gas, telephone and cablevision lines, mail boxes; and
 - (e) Existing structures and natural features and all proposed and existing improvements within and adjoining the proposed subdivision as required by the design standards contained in Chapters 21.50 and 21.60 OHMC.
- (6) A landscape plan showing all of the following:
- (a) All buffers, screening, native vegetation and/or tree retention areas, fences and hedges required by Chapter 19.46 OHMC^(east);
 - (b) Landscaping around stormwater ponds as required by this title;
 - (c) Any landscaping required in the public right-of-way or pedestrian/bicycle connections, including location, type and spacing of street trees; and
 - (d) Locations of light fixtures in pedestrian/bike connections and along all streets;
- (7) An environmental checklist and review fee shall be required in accordance with city ordinance upon the submittal of a preliminary plat;
- (8) A copy of any deed restrictions or protective covenants existing or proposed; and
- (9) Any additional materials, supporting documentation, and fees necessary to fulfill the requirements of other applicable municipal standards defined in the Oak Harbor Municipal Code.

21.20.030 Prints, application and fee submittal.

The preliminary plat application number of prints and applicable fees shall be as set forth on forms provided by the development services department.

21.20.040 Review procedures.

- (1) Preliminary subdivision approval shall be a Type IV review process as outlined in OHMC Chapter 18.20.
- (2) Upon receipt of the proposed preliminary plat application and determination of “fully completed” status, the director shall distribute it to each of the following for their review and comments as applicable:
 - (a) City administrator or such other person as designated by the mayor;
 - (b) City engineer;
 - (c) Fire chief;
 - (d) Police chief;
 - (e) Public works superintendent;
 - (f) City park board;
 - (g) Island County planning department;
 - (h) Oak Harbor school district;
 - (i) Post office;
 - (j) Public and private utilities (such as power and natural gas), telephone, cable TV, telecommunications providers holding franchises in Oak Harbor; and
 - (k) Other agencies designated by the mayor.
- (3) For purposes of this section, the term “fully completed,” as used in RCW 58.17.033, is the same as “Technically Complete” as defined and referenced in

OHMC 18.20.350.

- (4) The director shall prepare and give notice of the time, location and purpose of the hearing to the following agencies, if applicable:
 - (a) Department of Transportation if the preliminary plat is adjacent to the right-of-way of a state highway or within two (2) miles of the boundary of a state or municipal airport; and
 - (b) The county if the preliminary plat abuts the city limits.

21.20.050 Dedications.

- (1) Dedication of land to any public body, provision of public improvements to serve the subdivision, and/or impact fees imposed in conformity with RCW 82.02.050 through 82.02.090 may be required as a condition of subdivision approval. Dedications shall be clearly shown on the final plat. No dedication, provision of public improvements, or impact fees imposed under RCW 82.02.050 through 82.02.090 shall be allowed that constitutes an unconstitutional taking of private property. The city shall not, as a condition to the approval of any subdivision, require a release from damages to be procured from other property owners.
- (2) If the preliminary plat includes a dedication of a public park with an area of less than two (2) acres and the donor has designated that the park be named in honor of a deceased individual of good character, the city shall adopt the designated name.

21.20.060 Planning commission public hearing.

- (1) Notice shall be provided of a public hearing before the planning commission.
 - (a) The director shall set a public hearing before the planning commission on the preliminary plat application.
 - (b) The director shall publish notice of the hearing not less than fifteen (15) days prior to the hearing date in a newspaper of general circulation in the area where the real property which is proposed to be subdivided is located.
 - (c) The director shall also give special notice of the hearing to landowners of adjacent real property located within three hundred (300) feet of any portion of the boundary of the proposed subdivision. If the owner of the real property which is proposed to be subdivided owns another parcel or parcels of real property which lie adjacent to the real property proposed to be subdivided, special notice shall also be given to landowners of real property any portion of the boundaries of which are adjacent to real property owned by the owner of the real property proposed to be subdivided.
 - (d) All hearing notices shall include a description of the location of the proposed subdivision. The description may be in the form of either a vicinity location sketch or a written description other than a legal description.
- (2) The planning commission shall consider the preliminary plat application and make a recommendation to the city council whether to approve or disapprove the proposed subdivision.

- (a) The public hearing shall be an open record hearing where testimony and evidence shall be taken subject to the rules of procedure of the planning commission.
- (b) The applicant shall be given an opportunity to testify and produce evidence in support of the preliminary plat application.
- (c) Members of the public shall also be allowed to testify and to produce evidence.
- (d) The planning commission shall review the application to determine whether the proposed subdivision conforms to the city's comprehensive plan, zoning code, and other planning documents adopted by the city council.
- (e) The planning commission shall enter written finding of fact and conclusions concerning the proposed subdivision and include them in the recommendations to the city council.
- (f) The recommendations of the planning commission shall be transmitted to the city council within fourteen (14) days of action by the planning commission.

21.20.070 City council decision.

- (1) The preliminary plat application shall be placed on the agenda for the next regular city council meeting not less than one (1) week after the city council's receipt of the planning commission recommendations.
- (2) Consideration of the application by the city council shall be a closed record proceeding. The city council shall make its determination whether to approve or disapprove the application based on the record created before the planning commission and the planning commission's recommendations.
- (3) The city council shall inquire into the public use and interest proposed to be served by the establishment of the subdivision and dedication(s). It shall make written findings:
 - (a) Whether appropriate provisions have been made for, but not limited to, the public health, safety and general welfare, for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and schoolgrounds, and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who walk to and from school.
 - (b) Whether the public use and interest will be served by the platting of the subdivision and dedication(s).
 - (c) The city council may approve or disapprove the application by resolution, which shall include the written findings required in paragraph (3) of this section. The city council may condition approval of the preliminary plat upon actions to meet the requirements of paragraph (3) of this section. The city council may not require a release from damages to be procured from other property owners as a condition of preliminary plat approval.
 - (d) The city council decision shall be made within ninety (90) days of the date of the director's determination that the application is fully completed,

excluding those excepted time periods specified in RCW 58.17.140, unless the applicant consents in writing to an extension of the time period for decision.

21.20.080 Effect of approval.

- (1) Approval of the preliminary plat by the city council shall constitute approval for the applicant to develop construction plans and specifications for facilities and improvements, as required, in strict conformance with the approved preliminary plat, street and utility standards adopted by the city, and any special conditions required by the council.
- (2) Permission shall not be granted for installation of required improvements until all construction plans and specifications have been approved in writing by the city engineer.
- (3) Time for performance. Except as provided for in 21.40.020, construction shall be completed within five (5) years of the date of the city council resolution approving the preliminary plat or the preliminary plat approval shall terminate and all permits and approvals issued pursuant to such authorization shall expire and be null and void. If construction has been commenced but the work has been abandoned for a period of one (1) year or more, and if no extension of time has been granted as provided in 21.40.020 OHMC, the authorization granted for the preliminary plat shall terminate and all permits and approvals issued pursuant to such authorization shall expire and be null and void.

Section Three. Chapter 21.30 of the Oak Harbor Municipal Code last amended by Ordinance 1568, section five in 2010, is hereby readopted.

Section Four. Chapter 21.40 of the Oak Harbor Municipal Code last amended by Ordinance 1568, section six in 2010, is hereby readopted.

Section Five. Chapter 21.50 of the Oak Harbor Municipal Code last amended by Ordinance 1568, section seven in 2010, is hereby amended to read as follows.

**Chapter 21.50
GENERAL DESIGN STANDARDS**

Sections:

- 21.50.010 Purpose.**
- 21.50.020 Applicability.**
- 21.50.030 Relationship to other plans required by this title.**
- 21.50.040 Waiver of requirements – Procedure.**
- 21.50.050 General improvement standards.**
- 21.50.060 Streets – Access requirements.**
- 21.50.070 Streets – Required improvements.**
- 21.50.080 Streets – Relationship to adjoining development.**
- 21.50.090 Alleys.**
- 21.50.100 Lot Dimensions.**

21.50.010. Purpose.
The design standards in this chapter implement the goals and policies of the Oak Harbor Comprehensive Plan for the division of land within city boundaries into lots, tracts, and parcels, as well as set requirements for the design and provision of public infrastructure needed to serve land divisions.

21.50.020. Applicability.
The general design standards in this chapter apply to all divisions of land within the City of Oak Harbor, including binding site plans, short subdivisions, and subdivisions.

21.50.030 Relationship to other plans required by this title.
All improvements required by this chapter for land divisions must be shown on the preliminary plat site plan, short subdivision map, or the binding site plan map, as applicable.

21.50.040 Waiver of requirements - Procedure.
(1) Any subdivider can make application for a waiver from one (1) or more of the design standards contained in this chapter provided the request is received concurrently with the proposed subdivision, short subdivision, binding site plan or dedication. In addition, the waiver process described in this section may be used to vary from the residential design standards in Chapter 21.60. A waiver shall be granted only upon a finding that strict compliance with the provisions for subdivision, short subdivision, binding site plan or dedication would cause unusual and unnecessary hardship on the subdivider due to the following:

- (a) Because of the size of the tract to be subdivided; or,
 - (b) Its topography; or,
 - (c) The condition or nature of adjoining areas; or,
 - (d) The existence of unusual physical conditions.
- (2) No waiver shall be granted which allows a subdivision, short subdivision or binding site plan, which is not in the public interest as identified in RCW 58.17.010 et seq.
 - (3) Subdivision waivers are a Type IV review process, as described in Chapter 18.20 of the OHMC and shall accompany and be processed with the preliminary plat, short subdivision, binding site plan or boundary line adjustment application.
 - (4) Such conditions may be required which may achieve, insofar as practicable, the objectives of the requirements for which a waiver is authorized.
 - (5) Application for an Adjustment or Waiver from the Local Residential Street designs contained in Table 21.50 -1 shall be processed in accordance with the provisions of section 21.60.070 and 21.60.080 OHMC, not the provisions of this section.

21.50.050 General improvement standards.

The standards of this section shall apply generally throughout the city of Oak Harbor.

- (1) A water distribution system, including fire hydrants, shall provide domestic water service and fire protection to each lot. Said system shall conform to the city's comprehensive water plan, established policy and state requirements. Fire hydrant type and location shall be subject to the review and approval of the fire chief or his designee. Water mains and distribution systems shall be installed as shown on construction plans approved by the city engineer pursuant to Chapter 21.30 OHMC
- (2) Sewer mains shall be installed as shown on drawings approved by the city engineer and shall conform to the city's comprehensive sewer plan. When required, sewer mains, manholes, lift stations and force mains shall be installed in all subdivisions prior to any water service being connected to any improvements. Service connections shall be provided to each lot.
- (3) Drainage:
 - (a) All drainage in and through the subdivision shall be the responsibility of the subdivider.
 - (b) The subdivider may divert or enclose the natural drainage in his subdivision after providing a drainage system approved by the city engineer. The subdivider shall bear all costs associated with diverting or enclosing natural drainage and such alterations shall comply with Title 20 OHMC.
 - (c) All drainage within street rights-of-way must be contained in underground pipes and culverts except where permitted in gutters, or where Low Impact Development ("LID") stormwater management facilities are approved by the city;
 - (d) Where required, the subdivider shall design and install storm drain detention or infiltration systems.

- (e) Alternate drainage structures, facilities and conveyances, such as LID techniques, may be acceptable where soil conditions permit, subject to approval by the city engineer.
 - (f) For maintenance purposes, all storm water detention or treatment facilities shall be placed in a tract, unless located within a public right-of-way.
- (4) Streets:
- (a) Paved streets, sidewalks, landscape strips and concrete curbs and gutters shall be required on all dedicated street rights-of-way in all subdivisions, unless an alternative design has been approved in accordance with section 21.60.070 and 21.60.080. LID alternatives such as permeable surfacing and on-site stormwater management facilities are encouraged where site and soil conditions make these feasible alternatives. All improvements shall be constructed in conformance with city street and utility standards and, when applicable, the “LID Technical Manual for Puget Sound” (Puget Sound Action Team, January, 2005 edition).
 - (b) The improvements shall be made from intersection to intersection, intersection to subdivision boundary, or from subdivision boundary to subdivision boundary.
 - (c) All streets, roads and alleys shall be graded to their full width so that pavement and sidewalks can be constructed on the same plane. Before grading is started, the entire right-of-way area shall be cleared of all stumps, roots, brush and other objectionable materials, and all trees not intended for preservation.
 - (d) On streets where a proposed subdivision adjoins an existing subdivision or existing street dedication and the existing subdivision or existing street dedication does not meet city standards, the subdivider shall, as a minimum, be responsible for installing paved streets, sidewalks, curbs, gutters, landscape strips, street trees, monuments, sanitary and storm sewers, street lights, water mains, and street name signs on both sides of all streets within the subdivision and on one (1) side on streets around the perimeter of the proposed subdivision. Any partial street improvements required on the perimeter of a subdivision shall be designed to allow for two-way vehicular traffic where reasonably necessary as a direct result of the creation of the subdivision.
- (5) Alleys shall be constructed to the standards indicated in Table 21.50 – 1.
- (6) Sidewalks:
- (a) Sidewalks shall be installed on both sides of all streets, along dead-end streets and around cul-de-sacs. No physical obstructions such as poles, fire hydrants, utility boxes, utility vaults, or mailboxes shall be constructed in the sidewalk or overhang the sidewalk from zero to eight (8) feet above grade. Sidewalks shall be a minimum of five (5) feet wide and four (4) inches thick. Where rolled curb has been approved by the city engineer, all sidewalks adjacent will be a minimum thickness of six (6) inches.
 - (b) All sidewalks shall be completed prior to an occupancy permit being granted for any new building.
- (7) Other Utilities:

- (a) Street light standards and fixtures shall be provided to supply adequate lighting for the safety and convenience of the public.
 - (b) Franchise utilities shall be installed to provide electricity, natural gas, telephone, television/internet cable, and other services to the platted area. Said utilities shall be restricted to underground installation.
 - (c) All utilities (water, sewer, and electrical, and if available, gas, TV cable, and internet cable) shall be installed to the property line prior to acceptance of the public improvements.
- (8) The subdivider shall install street name signs and traffic control signs and/or improvements and devices other than traffic signals to the satisfaction of the city engineer. The city may install such signs and devices at the expense of the subdivider.
- (9) All utilities except water, sewer and storm sewer will be installed behind the sidewalk.

21.50.060 Streets - Access requirements.

- (1) Each lot in a subdivision or short subdivision must have access to a public street or road. This requirement does not apply to lots created through a binding site plan. Alternatively, access may be by private access easement within a residential short subdivision in accordance with the requirements of sections 21.60.120 – through 21.60.140 of this title. In the case of lots intended for use by single-family residences, no more than one (1) driveway access is permitted for each lot, except as authorized by the city engineer.
- (2) Whenever a proposed lot created through land divisions abuts two (2) or more streets of a different functional classification, access to the lot must be from the street with the lowest functional classification. Provided, that access may be from the street with the highest functional classification if it is determined by the city engineer that access from the street with the lower functional classification is impractical or impossible due to:
- (a) Existing site conditions;
 - (b) Existing structures; and/or
 - (c) Topography or critical areas constraints of the site.

21.50.070 Streets - Required Improvements.

- (1) Table 21.50 – 1 gives the minimum required dimensional standards for each functional street type listed in the Transportation Element of the Oak Harbor Comprehensive Plan. All public rights-of-way proposed within subdivisions, short subdivisions or binding site plans must conform to the requirements in Table 21.50 – 1, unless an alternative Local Residential Street design has been approved in accordance with section 21.60.070 or 21.60.080.

Table 21.50 – 1. Required Street Improvements					
Street Type	Right-of-way width *	Face of curb to-face of curb width	Sidewalk width each side	Landscape strip width each side	Bike lane width each side
Principal Arterial, 4-lane	97 - 105 feet	52 feet without bike	8 feet	12 feet	4 feet.

		lanes, 60 feet with bike lanes. Landscaped median is 12 feet.			
Minor Arterial, 2-lane	80 feet	47 feet, with 11 foot center turn-lane	5 feet	10.5 feet	5 feet
Minor Arterial, Industrial (enterprise area)	60 feet	38 feet	none	6 feet (bioswale)	4 feet
Collector w/ bike lanes	66 feet	48 feet	5 feet	3 feet	5 feet
Collector, Industrial	50 feet	26 feet	none	6 feet (bioswale)	4 feet, one side
Local, Residential - Narrow	50 ft	28 feet with one parking lane. Or 28 feet including two 4-foot bike lanes and no parking	5 feet	5 feet	4 feet, optional
Local Residential, Wide	60 feet	36 feet parking on both sides. Or 36 feet with parking on one side and 4-foot bike lanes on both sides.	5 feet	5 feet	4 feet, optional.
<u>Local LID Street #1</u>	<u>50 feet</u>	<u>28 feet with one parking lane. Or 28 feet including two 4-foot bike lanes and no parking. Travel and parking lanes shall be pervious.</u>	<u>5 feet</u>	<u>5 feet</u>	<u>4 feet, optional</u>

<u>Local LID Street #2</u>	<u>60 feet</u>	<u>34.5 feet, with one, 7.5-foot lane of pervious parking and 2-foot pervious shoulder (opposite side of parking).</u>	<u>5 feet</u>	<u>11-foot bioswale and 4-foot planter strip (opposite side).</u>	<u>None.</u>
Alley	20	19 feet.***	none		none

* All street types include a 6-inch strip at the outside edge of the physical improvements, but within the right-of-way, with the exception of the "Minor Arterial, Industrial" which has a 1-foot strip on the outside edge of right-of-way, and the "Collector, Industrial" which has a 4 foot strip on the outside edge of right-of-way, and the Local LID Street #2 which has a 1-foot strip on the outside edge of right-of-way eas2).

** All streets include 6-inch curbs not shown in the dimensions above, with the exception of alleys which do not have curbs.

***16-foot width pavement sections may be approved on alleys with permission from the city engineer.

- (2) Where landscape strips are required on Local Residential streets within the public right-of-way, they are to be maintained by the property owner whose property is adjacent to the landscape strip. Such landscape strips shall contain one hundred percent (100%) groundcover in the form of drought-tolerant grass or turf.
- (3) Intersection spacing of less than one hundred twenty five feet (125') is not allowed.
- (4) For land division of commercial or industrial property, dead-end streets may be permitted where the proposed dead-end street will not adversely affect the traffic flow and circulation within the area. Dead-end streets shall terminate in a turnaround approved by the city engineer. The maximum allowable length is for dead-end streets is four hundred feet (400'), measured from the center of intersection to the dead-end terminus. Requirements for dead-end streets in residential subdivisions or short subdivisions are contained in OHMC section 21.60.110.
- (5) All public roads shall also meet the requirements Title 11 OHMC.

21.50.080 Streets - Relationship to adjoining development.

The standards in this section address pedestrian, vehicular and bicycle traffic flow on a site as it relates to surrounding sites. These provisions create continuous, multimodal connections across properties and developments of different ownership. In so doing, these standards facilitate the efficient and safe movement of pedestrians, bicycles and vehicles, giving each mode multiple route choices from origins to destinations.

- (1) Streets, sidewalks, pedestrian or bike paths, shall be linked within and between neighborhoods to create a continuous and interconnected network of roads and pathways;
- (2) Local Streets, Arterials and Collectors shall be extended to the boundary of the development, unless an exceptional circumstance of topography, critical areas or existing development prohibits the extension. Provided, that if an adjacent property has a reasonable likelihood of redeveloping in the future, the director may require a street stub. Streets that end within a subdivision which will be extended in the future must be designed at least 200 feet beyond the limits of the subdivision and shall be shown on the preliminary plat document.

- (3) The location of all Principal Arterials, Minor Arterials, and Collectors must conform to the Transportation Element of the Oak Harbor Comprehensive Plan;
- (4) All streets dedicated shall be full-width except along the boundary lines of the plat. Half-width streets may be permitted along the boundaries of a development upon approval of a final plat and in compliance with 21.50.050(4) OHMC where reasonably necessary as a direct result of the creation of the subdivision.
- (5) The number of intersecting streets with Principal or Minor arterials shall be held to a minimum.
- (6) Increased right-of-way requirements: the city engineer may require that street widths be increased from the minimum width in Table 21.50 - 1 to provide for traffic movement, to reduce or eliminate traffic congestion and for safety reasons.

21.50.090 Alleys.

Alleys provide secondary access to an abutting property. Alleys may be considered as a design solution to provide vehicular or service access to residential, commercial and industrial properties according to the following provisions:

- (1) When alleys are proposed, they may be publicly dedicated and maintained or privately owned and maintained. All alleys which are dead-ends and do not provide a through connection to the other side of the block shall be privately owned and maintained.
- (2) The dimensions of alleys must conform to Table 21.50 – 1.
- (3) Alleys may be required by the city engineer as a design solution to serve residential properties which front on Arterials and Collectors and to minimize the number of driveway accesses on these streets. Alleys may also be required by the city engineer in commercial and industrial areas.
- (4) Where private alleys are proposed, access and utility easements for residential areas may be permitted in lieu of public dedication. All utility easements shall contain access provisions for purpose of public utility maintenance.

21.50.100 Lot Dimensions.

The following requirements address the size and shape of lots created as part of subdivisions or short subdivisions and are intended to create a well-ordered and efficient arrangement of lots.

- (1) Every lot shall have a minimum width of sixty feet (60') at the building line. All lots which do not have a width of sixty feet (60') at the setback line as referenced under the applicable zoning ordinance shall indicate on the face of the final plat the location of said building line.
- (2) The size, shape, and orientation of lots shall meet the minimum area and width requirements of the applicable zoning classification and shall be appropriate for the type of development and use contemplated.
- (4) Generally, the depth of the lot should not be more than three (3) times the width of the lot.
- (5) All lots shall have a minimum frontage of thirty feet (30') on a public street unless access from a shared drive or private street has been approved in accordance with the requirements of 21.60.120 through 21.60.140.
- (6) Insofar as practical, side lot lines shall be at right angles to street lines or radial to curved street lines, and no more than twenty (20) degrees from perpendicular to

the front property line with which it intersects.

- (7) Side and rear lot lines shall be straight, or composed of straight line elements.
- (8) All lot corners in subdivisions and short subdivisions at intersections of dedicated public rights-of-way shall have a minimum radius of fifteen feet (15').

Section Six. Chapter 21.60 of the Oak Harbor Municipal Code last amended by section eight of Ordinance 1568 is hereby amended to read as follows:

**Chapter 21.60
RESIDENTIAL DESIGN STANDARDS**

Sections:

- 21.60.010 Purpose.**
- 21.60.020 Applicability.**
- 21.60.030 Relationship to other plans required by this title.**
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- 21.60.250 Stormwater ponds –Location and design.**
- 21.60.260 Stormwater ponds – Required landscaping.**

21.60.010 Purpose.

The following design criteria address the street, block and lot layout, landscaping and aesthetic design of residential subdivisions and short subdivisions and are intended to create attractive and safe neighborhoods and networks for pedestrians, bikes and vehicular travel within Oak Harbor. The criteria promote “walkable” neighborhoods which contribute to the efficient and comfortable movement of pedestrians, within Oak Harbor, and a reduction in the growth of vehicle trips, in accordance with the comprehensive plan policies.

21.60.020 Applicability.

The design standards contained in this chapter shall apply to all residential subdivisions or short subdivisions of land within the City of Oak Harbor, unless stated otherwise and are in addition to the general design standards of OHMC Chapter 21.50. These standards

do not apply to the division of land for commercial or industrial use.

21.60.030 Relationship to other plans required by this title.

All improvements required by this chapter for land divisions must be shown on the preliminary plat site plan, or short subdivision map, as applicable.

21.60.040 Blocks – Configuration.

- (1) Blocks shall be deep enough to allow two (2) tiers of lots, except where:
 - (a) There is an abutting Principal or Minor Arterial defined in the Transportation Element of the Comprehensive Plan;
 - (b) The location and extent of environmental constraints prevents a two-tiered lot arrangement;
 - (c) Unusual shape or small size of the lot prevents a two-tiered lot arrangement;
 - (d) A single-tiered lot arrangement may be permitted on the boundary of a residential subdivision or short subdivision bordering existing non-residential development.
 - (e) Prior to approval of a single-tier lot configuration based on exceptions (a), (b) or (c), the proponent has demonstrated to the city that a different layout or provision of an alley system is not feasible.

21.60.050 Blocks – Size.

- (1) Blocks shall be a maximum of eight hundred (800) feet in length, as defined in 21.10,
- (2) Blocks may be up to a maximum of one thousand feet (1,000') in length provided:
 - (a) The applicant has demonstrated, through written materials, drawings, and illustrations, submitted as part of the plat application, that an exceptional circumstance exists. Exceptional circumstances are steep topography (exceeding 10%), a critical area designated in the comprehensive plan or delineated in a critical areas report; and
 - (b) An alternative block pattern is proposed which achieves the purpose of this chapter; and,
 - (c) A mid-block pedestrian/bike connection conforming to the design standards of this chapter are provided for all blocks over eight hundred feet (800') in length.

21.60.060 Local residential streets - Alternative designs.

- (1) The following process for reviewing alternative street designs applies to Local Residential streets only. The City has a two-tiered process for reviewing alternative Local Residential street designs which do not meet the requirements in Table 21.50 - 1:
 - (a) In the first tier, applicants for residential subdivisions may request to vary from the standard designs in Table 21.50-1 for Local Residential streets. Such requests must continue to provide all of the essential elements listed in 21.60.070. These types of alterations are reviewed administratively through an "Adjustment" application under a Review Process II.

- (b) In the second tier, applicants may propose unique Local Residential street designs which eliminate one (1) or more of the essential elements found in 21.60.070 under a Review Process IV which shall be reviewed by planning commission at the time the preliminary plat is reviewed.

21.60.070 Local residential streets - Adjustment application for alternative designs.

- (1) The director may at the request of an applicant, allow adjustments under a Type II Review process to the Local Residential Street sections specified in Table 21.50 - 1 "Required Street Improvement Standards" in residential subdivisions. If an adjustment is requested, it must meet both provisions (a) and (b) below.
 - (a) All of the "essential elements" continue to be provided in the street design. Essential elements are:
 - (i) Pedestrian facilities must be provided on both sides of the street. Pedestrian facilities must be a minimum of five (5) feet in width, but need to be either concrete (pervious or impervious) or hard-packed gravel. However, hard-packed gravel surfaces may only be provided adjacent to critical areas, and shall not be provided adjacent to residential lots.
 - (ii) Adequate public parking is provided. In place of on-street parallel parking lanes, applicants for residential subdivisions may provide public parking in the form of head-in parking, diagonal parking, parking courts, or parking in side alleys. A minimum of one (1) public parking space per two (2) residential units in the subdivision must be provided, whether or not parking is provided in on-street parallel spots, or an alternative design (parking courts, parking alleys, etc.) or a combination. Public parking spaces must meet the parking space size and access requirements specified in 19.44.110 OHMC, with the exception of on-street parallel spaces which shall be eight feet (8') in width by twenty feet (20') in length. The public parking spaces must be interspersed throughout the subdivision or short subdivision and within convenient walking distance to all units.
 - (iii) A landscaping element which has a total dimension of ten (10) feet in width. The landscape element may be one (1) or more landscape strips located within the street section. No single landscape strip may be less than three (3) feet in width. Low Impact Development (LID) bio-retention and stormwater treatment facilities qualify as landscaping elements as long as they are located within the public right-of-way.
 - (iv) Two (2), minimum ten (10) foot wide travel lanes.
 - (b) A narrative is provided which describes how the proposed design will meet all of the following:
 - (i) How the proposed street section will provide an equal or better street design for vehicles and pedestrians.

- (ii) The proposed design will not compromise vehicle or pedestrian safety,
- (iii) Public utilities, such as storm, sewer and water can continue to be provided, as necessary to serve the development.
- (iv) All comprehensive plan designated vehicular and pedestrian connections will continue to be provided.

21.60.080 Local residential streets – Waiver application for alternative designs.

- (1) Applicants for residential subdivisions or short subdivisions may also propose alternative Local Residential Street designs which do not contain all of the essential elements listed in section 21.60.070 above. The waiver will be reviewed by the planning commission under a Type IV review as specified in OHMC 18.20.260 and must be reviewed concurrently with the preliminary plat application.
- (2) If an applicant is proposing to eliminate one (1) or more essential elements listed in 21.60.070 through the waiver process, all of the criteria for Adjustment contained 21.60.070(1)(b) must be met. In addition, applicants must meet criteria (a), (b), and (c) below and also meet either criteria (d) or criteria (e).
 - (a) There are unique site conditions (topography, critical areas or size and / or shape of the site) not common to other residential sites, which necessitate street designs that do not have all of the essential elements listed in 21.60.070(1)(a),
 - (b) Essential elements which have been eliminated from the street design are unnecessary either from a functional (pedestrian or automobile movement) or safety standpoint,
 - (c) Essential elements are not being eliminated solely for applicant convenience and,
 - (d) The applicant proposes to offset the loss of the essential element by replacing it with another element (i.e. bike lanes in place of landscaping) within the street section or
 - (e) The unique site conditions limit the applicant’s ability to provide either the essential elements listed in 21.60.070 OHMC or any replacement elements referenced in (d) above.

21.60.090 Local residential streets – Submittal requirements for alternative street designs.

- (1) Requests for alternative Local Residential Street designs, either under the Adjustment or Waiver processes must be received from the applicant at the time of preliminary plat submittal and must contain the following:
 - (a) Section drawings prepared by an engineer certified in the State of Washington that clearly illustrates the proposed street improvements.
 - (b) Written rationale for requesting to vary from the Local Residential Street improvements which meets all of the criteria in 21.60.070(1)(b) (if Adjustment or Waiver is pursued) and the criteria in 21.60.080(2) (if Waiver is pursued).

21.60.100 Local residential streets – Layout.

- (1) The street pattern utilized for short subdivisions and subdivisions shall be a grid or modified grid, with four or three-way intersections designed at right angles. Blocks shall be rectilinear. The grid or modified grid street pattern may be adjusted to a curvilinear street pattern where the following factors are present on site:
- (a) Infeasible due to steep topography (exceeding 10 percent) or presence of critical areas designated in the comprehensive plan; or delineated in a critical areas report in accordance with the requirements of Title 20 OHMC of this code, and/or
 - (b) Substantial improvements exist on adjacent properties which inhibit a grid or modified grid pattern and/or
 - (c) In lieu of the requirement for a grid or modified grid street pattern, alley access is an acceptable street pattern, in accordance with the requirements of 21.50.090.

21.60.110 Local residential streets – Limitations on dead-ends.

Dead-end streets may only be permitted in residential subdivisions or short subdivisions by the city engineer where, due to demonstrable physical constraints, no future connection to a larger street pattern is physically possible.

- (1) Dead-end streets shall only be allowed where:
- (a) There exists an exceptional circumstance of steep topography (exceeding 10 percent), a critical area identified in the Comprehensive Plan or delineated in a critical areas report, or existing development which prohibits a stub street or connection to the adjacent property;
 - (b) The street length for the dead-end as measured from the intersection to the terminus is no longer than 400 feet;
 - (c) The design of the dead-end turn-around has been approved by the city engineer and the Fire Department. Oak Harbor encourages alternative dead-end designs which reduce stormwater impacts and use less space. Dead-end designs shall meet minimum turning radius requirements for appropriate design vehicles.
 - (d) A pedestrian/bike connection has been provided for connectivity or future connectivity at the terminus of the dead-end constructed to the standards in 21.60.210 through 21.60.240; or
 - (e) A temporary turn-around may be approved when connections to adjacent properties cannot be extended at the time of development, but will be provided in the future and such temporary turn-around is required for emergency vehicles.

21.60.120 Access Easements – When allowed.

- (1) The City may, at the request of the applicant and as permitted by the Oak Harbor zoning code, allow access to residential lots created through a short subdivision by alternative means in the form of shared drives and private streets. The purpose of the provisions in sections 21.60.120 through 21.60.140 is to optimize the opportunity for efficient and compatible use of land and infrastructure within city

limits and where full public street improvements are not needed to serve the development. Alternative access may be provided when the applicant demonstrates that all of the following criteria have been met as part of the short subdivision application:

- (a) Public utilities can be accommodated in the access easement or other easements on the site;
- (b) The access easement will not compromise, pedestrian, bicyclist, or vehicular safety and will provide for efficient traffic movement within the short subdivision and connecting to the surrounding circulation system;
- (c) A public street is not necessary to provide access to a future developable area.
- (d) A site contains steep topography (exceeding 10 percent) or a critical area(s), and the use of an access easement would reduce impacts to those areas. If a site contains steep topography or critical areas, criteria (a) through (c) must continue to be met; and
- (e) The access easement must conform to the requirements of the Transportation Element of the Comprehensive Plan, OHMC section 21.60.130, and all other relevant street and utility standards as adopted by the city which are on file with the city clerk.

21.60.130 Access Easements – Design.

- (1) Shared drives and private streets shall, at a minimum, be constructed to the following standards:

Table 21.60 – 1 Access Easement Dimensions		
Feature	Shared Drives	Private Streets
Pavement width	Minimum 16 feet for up to 2 units, or 20 feet for 3 or more units.	Minimum 20 feet
Sidewalk	N/A	5 feet, one side only
On- street parking	N/A	Optional. If provided, parallel parking must be 8 feet wide. The public parking requirements from OHMC 21.60.070 must be met.
Maximum length	150 feet	400 feet
Turnaround required?	N/A	Yes, if more than 150 feet in length, or as required by the city engineer.

- (2) Shared drives may be created which access a total of four (4) residential units in any combination of single-family detached units and / or duplex units.
 - (a) Shared drives may be connected to private streets as long as the total number of units served by the private street does not exceed nine (9).
- (3) Private streets may be created which access a total of nine (9) residential units in any combination of single-family detached units and / or duplex units.
 - (a) Where a private street intersects a public street, signage shall be placed at the entrance to the private street indicating that the street is private and is not maintained by the City of Oak Harbor.

- (4) All land divisions with more than nine (9) residential units accessing the same street must provide public streets that meet the configurations described in Table 21.50 – 1.

21.60.140 Access Easements – Utility services.

A maximum of two (2) lots can be served by private utility side services within an easement, unless the city engineer determines that a public utility main is necessary for adequate area service. Three (3) or more lots served within an easement will require public utilities.

21.60.150 Street Trees – Requirement.

Street trees shall be required along both sides of Local Residential Streets. The purpose of street trees is to improve the visual quality of streets, improve the pedestrian environment, and provide the environmental benefits of improved air quality, reduced stormwater impacts, and reduced heat-island effects associated with large paved areas.

21.60.160 Street Trees – Species

The following standards shall apply to the installation of street trees on any Local Residential Street containing landscape strips within a subdivision or short subdivision

- (1) Street trees of a species specified in 21.60 - 2, shall be planted in the designated landscape strip within the public right-of-way, with a maximum spacing of thirty feet (30') along frontage for all divisions of land and on both sides of any public street. Landscape strip minimum dimensions are contained in Table 21.60 – 2;
- (2) At the time of planting, all street trees shall be a species listed in Table 21.60 - 2 “Street Tree Species” or as otherwise approved by the director.
- (3) The following table identifies tree species acceptable to the City of Oak Harbor.

Table 21.60 – 2. Street Tree Species	
Species	Characteristics
Armstrong Maple	Common deciduous landscape tree. Fast growing, typically 40 feet with brilliant fall color. May be appropriate in a native setting.
Red Sunset Maple	Common deciduous landscape tree. Fast growing, typically to 40 feet with brilliant fall color. May be appropriate in a native setting.
Paper Bark Maple <i>Acer Griseum</i>	Small, compact tree appropriate as a street tree.
Japanese Hornbeam <i>Carpinus Japonica</i>	Deciduous tree, mid-size, compact tree recommended for street tree use.
Lavelle Hawthorne <i>Crataegus Lavelle</i>	Appropriate for street tree use.
Little Leaf Linden <i>Tilia Cordata</i>	Small deciduous tree reaching height of 30 feet. Tolerant of urban conditions.
Autumn Brilliance Serviceberry <i>Amelanchier Arborea</i>	Slow growing, small compact tree.

21.60.170 Street Trees – Maintenance and protection.

To protect their function, define management responsibilities, and protect the health of the street trees, the following language shall be placed on face of the plat:

Street trees planted in the designated landscape strip along the frontage of all lots, in accordance with the approved landscape plan associated with the residential plat of _____, shall be maintained by the property owners of lots directly adjacent to the location of the street trees. The replacement of street trees for those that have died is the responsibility of the adjacent property owners. The location and tree species for replacement street trees must be in conformance with the approved landscape plan for the plat or as approved by the director and shall not obstruct the travel lane or parking stalls at full maturity. If property owners do not maintain street trees, the City of Oak Harbor may choose to maintain these trees and invoice the adjacent property owner for the cost of the work.

21.60.180 Landscape buffer – Requirement.

A landscaped buffer shall be required along all Minor Arterial roads for a width of at least twenty-five feet (25') abutting all standard residential subdivisions. The purpose of the landscape buffer is to minimize the impact of the roads on adjacent residential uses, encourage tree preservation and planting, and to create visually attractive corridors along these roadways. The landscape buffer shall be established as a separate tract on the face of the plat. The provisions in this section and 21.60.190 and 21.60.200 OHMC do not apply to short subdivisions.

21.60.190 Landscape buffer - Design.

The landscape buffer may incorporate either natural vegetation, applicant proposed vegetation or a combination of both. The purpose of the following requirements is to provide a “complete” buffer which contains overstory, understory and groundcover vegetation.

- (1) The Landscape Buffer shall include the following landscaping:
 - (a) Trees planted thirty feet (30') on center along the entire length of the edge closest to the arterial road, and no closer than ten feet (10') from this edge of the buffer to avoid conflicts with the required utility easement.
 - (b) Shrubs and bushes to provide ninety percent (90%) cover of the buffer area within two (2) years; drought-tolerant, low-maintenance varieties are required.
 - (c) Sufficient shrubs and bushes to provide a continuous four-foot (4') high visual screen of the arterial road from within the land division. The plantings must not restrict site distance at intersections.
 - (d) In addition to the street trees identified in (a), throughout the entire buffer area a mix of deciduous and coniferous trees, of a species determined suitable by the City of Oak Harbor, shall be provided at a planting density of at least one (1) tree for every four hundred (400) square feet of the buffer area.
 - (e) All required plantings in the buffer shall avoid conflicts with public utilities and the species shall be selected to avoid root damage to sidewalks, streets and curbing.

(f) The dual use of landscaped buffers as LID stormwater management facilities is encouraged, provided that the purpose and character of the landscaping is not compromised^(cas3).

- (2) Those areas of the landscape buffer where suitable natural vegetation of understory and ground cover and healthy stands of trees not prone to wind throw or blow down after adjacent areas have been cleared, may be retained as substitute for the required landscaping in (1) provided:
- (a) Trees are planted as in accordance with (1)(a);
 - (b) Evergreen ground cover is present in accordance with (1)(b);
 - (c) Screening is present in accordance with (1)(c); and,
 - (d) The minimum number of trees are present in accordance with (1)(d).
 - (e) Trees which pose a safety hazard from wind-throw, as determined by an arborist, must be removed.

21.60.200 Landscape buffer – Maintenance and protection.

To protect their function, define management responsibilities, and protect the health of the landscape buffers, the following language shall be placed on face of the plat:

- (1) Tract(s) _____, are set aside as landscape buffers. No vehicular access to the adjacent roadway is permitted through the tract(s) to protect vegetation and planting areas for their environmental and aesthetic value to the community; and
- (2) Maintenance of Tract(s) _____ shall be the responsibility of the home owners association and not the City of Oak Harbor. If the association disbands, maintenance responsibility for Tract(s) defaults to the individual lot owners within the boundaries of the originally approved residential subdivision. If the landscape buffer is not maintained, the City of Oak Harbor may choose to impose a fee structure or invoice the property owners within the boundaries of the originally approved residential plat to maintain landscape buffers.
- (3) All vegetation shall be maintained to preserve the health of the buffer plantings and to maintain the landscaping in a manner that conforms to the original landscape and maintenance plans associated with the residential plat approval, including replacement of dead or diseased plantings.
- (4) Trees deemed to be a hazard by a professional arborist certified in the State of Washington may be removed, subject to approval by the City of Oak Harbor. Removed trees must be replaced. The city reserves the right to exempt the requirement for an Arborist's assessment if the tree is obviously a hazard, diseased, or dead.
- (5) No dumping of vegetation or debris is allowed in buffer tract(s).
- (6) No structures are allowed in buffer tract(s).

21.60.210 Pedestrian/bike connections – When required.

Pedestrian/bike connections shall be integrated into the design of subdivisions to enhance the connectivity throughout the plat. They should generally be placed in locations shown in the Comprehensive Plan. The applicant shall install pedestrian/bike connections in subdivisions and short subdivisions in any of the following circumstances:

- (1) Sidewalks shall be provided along both sides of public streets in accordance with Table 21.50 - 1, unless an adjustment or waiver is requested in accordance with

code section 21.60.070 or 21.60.080 OHMC.

- (2) If the pedestrian/bike connection is necessary to provide non-circuitous pedestrian and/or bike access to a park, open space, or activity center within or adjacent to the subdivision;
- (3) Mid-block pedestrian/bike connections for blocks that are over eight hundred feet (800') long;
- (4) Pedestrian/bike connections shall be provided to all adjacent uses at no greater than eight hundred-foot (800') intervals. The location of these connections must be coordinated between property owners. Specific connections to adjacent uses may be waived if:
 - (a) The applicant has exhibited through written materials, drawings, and illustrations, submitted as part of the plat application, that this is impractical or unsafe due to:
 - (i) Existence of an exceptional circumstance. Exceptional circumstances are steep topography (exceeding 10 percent), critical areas designated in the comprehensive plan or delineated in a critical areas report or existing development.
 - (ii) The land use characteristics of the adjacent use or potential use as determined by the Comprehensive Plan Land Use Designation; or
 - (b) An alternative connection to a bordering street can provide a non-circuitous route to the adjacent use; and
 - (c) An easement or dedication for future connection is provided to properties which have a reasonable likelihood of redeveloping as determined by the director.

21.60.220 Pedestrian/bike connections – Design.

This section provides the minimum design requirements for pedestrian/bike connections which are required by section 21.60.210. Sidewalks do not need to meet the standards specified in this section. Pedestrian/bike connections which meet the design standards in this section and the safety standards in 21.60.230 may be counted as active open space in planned residential developments.

- (1) Pedestrian/bike connections shall be built to the following standards:
 - (a) Be constructed within an easement twenty feet (20') wide,
 - (b) The pedestrian/bike connection itself shall be either concrete or asphalt (pervious or impervious) and be a minimum of ten feet (10') wide;
 - (c) Hard-packed gravel may be used for walkway surface in areas adjacent to critical areas designated in the comprehensive plan or delineated through a critical areas report;
 - (d) A landscape strip of five (5) feet shall be provided on either side with one hundred percent (100%) ground cover and deciduous trees planted at a maximum thirty-foot (30') interval with no less than two (2) trees on each side of the pedestrian bike connection. Ground cover shall be low-maintenance, drought tolerant varieties. Bark mulch and wood chips are not allowed in landscaped areas adjacent to the pedestrian/bike connection;
- (2) Fencing along pedestrian connections shall comply with Chapter 19.46 OHMC

- and shall not be constructed of chain link, plastic, or vinyl strips.
- (3) Lots should front on the pedestrian/bike connection, where possible, to provide visual access and safety of these facilities. The sides of lots may be located along pedestrian/bike connections, however, this is a less preferable option, since fencing is required to separate the pedestrian/bike connection from areas on private lots such as side and rear yards. If lots front on pedestrian/bike connections, secondary access to these lots may be provided from an alley.
 - (4) All pedestrian/bike connections required by this code must be publicly accessible either by way of easement or through public dedication:
 - (a) The city may choose not to accept dedication of pedestrian/bike connections at its discretion; and
 - (b) All pedestrian/bike connections must be designed to city standards contained in sections 21.60.220 and 21.60.230.
 - (5) Continuous pedestrian/bike connections shall be provided by aligning with street ends, other pedestrian/bike facilities, and connecting destinations or trails.
 - (6) All trails proposed as part of subdivisions or short subdivisions shall be designed in accordance with the Parks, Recreation and Open Space Plan.

21.60.230 Pedestrian/bike connections - Safety.

The following safety requirements apply to all pedestrian/bike connections in subdivisions and short subdivisions with the exception of sidewalks:

- (1) Visibility.
 - (a) Users shall have clear vision from one (1) end to of the connection to the other;
 - (b) Plantings shall provide clear visibility from the ground up to thirty inches (30”) above grade;
 - (c) In natural or critical areas with existing vegetation, sight lines for pedestrian and bike safety may vary if:
 - (i) The protection required of the critical area by other OHMC or other applicable regulations prohibits the pedestrian/bike connection design from meeting this requirement
- (3) The entire length of the pedestrian/bike connection must be well lit. Bollard lighting must be used with number of lights and spacing of light fixtures shown on the preliminary plat landscape plan.
- (4) Bollard lighting is required at pedestrian/bike connection entrances;
- (5) Signage directing users to the pedestrian/bike connection and appropriate use is required at all entrances;
- (6) The intersections of pedestrian/bike connections with arterial streets shall provide a ten foot by ten foot (10’ x 10’) visibility triangle to promote clear vision into the pedestrian/bike connection.
- (7) Mid-block connections which cross more than one (1) residential block and intersect streets, must meet the following safety requirements:
 - (a) Adequate site distance for vehicles to see pedestrians and bikes and come to a complete stop;
 - (b) Signage from both directions, warning motorists of the pedestrian/bike crossing;

- (c) At a minimum, painted striping must be provided to delineate the crosswalk. Applicants are encouraged to use crossing designs which include different materials, such as pavers or pavement patterns, or rumble strips to warn motorists of the crossing. Raised crosswalks may also be provided.
- (d) Staggered bollards at all intersections of mid-block crossings and the public right-of-way must be provided. If safety measures cannot be provided to ensure adequate pedestrian/bike safety, the mid-block crossing may be required at a different location or the city engineer may require additional design features to ensure safety of the facility.

21.60.240 Pedestrian/bike connections – Maintenance and protection.

- (1) Pedestrian/bike connections and trails shall be maintained by an association of home owners. If the pedestrian/bike connection is part of the city-wide trail system, the city will maintain the connection.
- (2) Language detailing the purpose, maintenance responsibilities of the home owners' association, and design standards for these facilities must be placed on the face of the plat.
- (3) If these facilities are not adequately maintained to allow safe pedestrian and bicycle passage and/or landscaping is overgrown or in a state of decline, the City may choose to maintain the facility and bill the homeowner's association for the cost.

21.60.250 Stormwater ponds - Location and design.

Stormwater ponds shall be located and designed with consideration to aesthetics and to incorporate the facility as an amenity to the subdivision or short subdivision with features such as landscaping and natural building materials. The provisions in this section apply to all subdivisions and short subdivisions proposed within Oak Harbor. The following design requirements shall apply to the location and design of stormwater ponds.

- (1) To create the visual effect of larger open space areas, stormwater facilities shall be located near open spaces, unless site conditions or topography do not allow.
- (2) Structural materials utilized within stormwater pond design must have regard for natural aesthetic principles defined as follows:
 - (a) All structural elements of ponds shall utilize stone or other natural material that have decorative finishes. Acceptable pond materials are brick, natural stone, gabions and architectural blocks. Concrete is an acceptable material, subject to the standards of (b) below.
 - (b) Use of concrete in stormwater ponds shall be limited to the following finish types:
 - (i) Relief or architectural detail
 - (ii) Fractured finish
 - (iii) Exposed aggregate
 - (iv) Cast in patterns or textures

In addition, when concrete is used as a pond material, it shall be screened by planting to reduce the visual impact of these facilities.
- (c) The use of Ecology block and synthetic stone veneers in pond construction is prohibited.

- (d) All masonry in contact with pond water must be designed to withstand spalling. Pourous pond materials shall be placed above the wet zone.
- (3) To limit the need for safety fencing resulting from steep slopes, stormwater facilities shall be designed with shallow internal slopes (recommend 3:1 or flatter), whenever feasible. If safety fencing is required it must:
 - (a) Be decorative or ornamental in nature. Gray, galvanized, chain-link fencing, chain-link fencing with slats or wood-plank fencing is not permitted. Vinyl clad chain-link fencing of green, brown or black color is acceptable if screened by plantings;
 - (b) For safety reasons, fencing must not completely limit visibility to the pond; and
 - (c) Ponds shall be designed such that safety fencing is not required on more than two (2) sides of the pond or fifty percent (50%) of the circumference, whichever is less.

21.60.260 Stormwater pond - Landscaping.

Landscaping shall be required for all stormwater ponds within subdivisions and short plats. The purpose of the landscaping is to improve visual quality. The following standards shall apply to the landscaping for stormwater ponds:

- (1) A landscape plan that meets the standards of this section and the DOE (Department of Ecology) Stormwater Manual shall be designed by a Landscape Architect certified in the State of Washington and submitted as part of the preliminary plat or the preliminary application.
- (2) A perimeter landscape area, a minimum ten (10) feet wide, is required adjacent to all stormwater ponds and shall be placed in a tract owned and maintained by an association of homeowners. This area shall be delineated on the face of the plat and associated landscape plan. The perimeter landscape area shall include:
 - (a) Evergreen ground cover, shrubs and bushes, to provide one hundred percent (100%) cover of the perimeter area within two (2) years. Native species and low-maintenance varieties are preferred;
 - (b) A mix of evergreen and deciduous trees to provide visual interest with a planting density of at least one (1) tree for every two hundred-fifty (250) square feet of landscape perimeter.
 - (c) Existing vegetation may be used to fulfill the landscaping requirements. However, all trees which pose a safety hazard and are subject to wind-throw must be removed.
 - (d) Trails or pedestrian paths are allowed near the pond, provided that the side slopes of the pond are 3:1 or flatter or safety fencing is provided around the pond. If a trail or pedestrian path is included around the stormwater facility, the area outside the trail or pedestrian path, but within the 10-foot landscape area must have one hundred percent groundcover within two (2) years.
- (3) All landscaping for stormwater ponds shall be placed in a tract and maintained according to industry standards by a homeowner's association. If stormwater ponds are not maintained by the homeowner's association to provide for the necessary minimum treatment/detention functions and the pond tract, including

- landscaping, is not being maintained, the City may choose to perform necessary maintenance of the facility and bill the homeowner's association for the cost.
- (4) Any landscaping provided shall be above the freeboard water level.

Section Seven. Chapter 21.70 of the Oak Harbor Municipal Code, last amended by Section nine of Ordinance 1568 is hereby readopted.

Section Eight. Chapter 21.80 of the Oak Harbor Municipal Code, last amended by Section ten of Ordinance 1568, is hereby readopted.

Section Nine. Chapter 21.90 of the Oak Harbor Municipal Code, last amended by Section eleven of Ordinance 1568 is hereby readopted.

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 as required by law.

PASSED by the City Council this ___ day of _____ 2010.

CITY OF OAK HARBOR

Approved () _____
 Vetoed () Jim Slowik, Mayor

Date

ATTEST:

Approved as to Form:

City Clerk

City Attorney

Published: _____

PASSED by the City Council this ___ day of _____ 2010.

CITY OF OAK HARBOR

Approved () _____
 Vetoed () Mayor

Date

ATTEST:

City Clerk

Approved as to Form:

City Attorney

Published: _____

Attachment D

E-mail
from Mr. Corey Johnson

Ethan Spoo

From: Corey Johnson [Corey@cjc-inc.com]
Sent: Thursday, February 17, 2011 3:26 PM
To: Ethan Spoo
Subject: Low Impact Development Code Updates

Ethan,

Thank you for talking with me today about the proposed low impact codes. I wanted to follow up with this email so you could share it with the planning commission as you suggested.

With regard to the Maximum parking standards, I am not opposed to the idea of trying to reduce the amount of impervious area created by more than the minimum allowed parking stalls, but I am opposed to the idea of requiring the fact that all stalls that exceed 125% of the minimum number to be pervious concrete. To require only one specific option is dictating a means and method to the developer. Pervious concrete can be expensive by its nature. If the city likes the idea of pervious then why not create an incentive for using pervious concrete. Also, there may be other ways the developer can retain, treat, and reduce his or her storm water leaving the site. Such examples could be rain gardens and infiltration beds underground. Please leave the developer multiple options for construction when you adopt the final code updates.

I also wanted to comment about the Native vegetation areas, and as I understood you the intent would provide the developer options to cluster significant trees in areas like open space or detention ponds/ rain gardens. The other benefit would be that the amount of trees standing alone and becoming "danger trees" would likely be able to be mitigated by the new code. I do like the idea of allowing this flexibility.

Thanks,

Corey Johnson



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