

City of Oak Harbor

City Council Meeting

Agenda for

May 4, 2010

6:00 p.m.

**Mother's Day is
May 9th**



Oak Harbor City Council
Tuesday, May 4, 2010, 6:00 p.m.

Welcome to the Oak Harbor City Council Meeting

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

Thank you for participating in your City Government!

CALL TO ORDER

INVOCATION

ROLL CALL

MINUTES

NON-ACTION COUNCIL ITEMS:

1. Employee Introduction – Jessica Neill-Hoyson, Human Resources Director.
2. Employee Recognitions – Steve McCalmont, OHFD, 10 years; Dean Faris, OHFD, 25 years; Otto Lawson, Public Works, 10 years.
3. Proclamation – National Public Works Week.
4. Proclamation – Elks Youth Week.
5. Proclamation – National Nurses Week.
6. Public Comments.

COUNCIL CONSIDERATION AND ACTION ON THE FOLLOWING MATTERS:

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7. Consent Agenda:

- a. Excused Absence – Councilmember Beth Munns, from the 5/18/2010 Council meeting.
- b. Approval of Accounts Payable Vouchers (Pay Bills).

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8. Public Hearing – Nightclub License, Lava Lounge.

Page 36

9. Public Hearing – Nightclub License, Off the Hook.

Page 53

10. Public Hearing – Interim Ordinance, Adult Entertainment Facilities Overlay Zone.

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11. Ordinance, Stormwater Management, OHMC 12.30. Public Hearing was continued from the 2/16/10 Council Meeting.

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12. 42-Inch Outfall Reconstruction – Public Works Trust Fund Loan Application.

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13. Agreement – IntoLight, for Street Lights on Oak Harbor Street.

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14. Contract, Legal Services – Pioneer Way Right of Way.

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15. Ordinance Introduction – Council Standing Committees and Council Meetings.

16. City Administrator's Comments.

17. Councilmembers' Comments.

- Standing Committee Reports.

18. Mayor's Comments.

ADJOURN

"Don't be fooled by the calendar. There are only as many days in the year as you make use of."
~ Charles Richards

**City Council Meeting
Tuesday, April 20, 2010, 6:00 p.m.
City Hall – Council Chambers**

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

INVOCATION Tim Gebhardt, Seventh Day Adventist Church

ROLL CALL

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

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

MINUTES

MOTION: Councilmember Palmer moved to approve the 4/6/10 meeting minutes. The motion was seconded by Councilmember Munns. Councilmembers Almberg, Dudley, Palmer, Munns, Paggao and Severns voted in favor of the motion. Councilmember Campbell abstained from the vote since he did not attend the 4/6/10 meeting. The motion carried.

NON-ACTION COUNCIL ITEMS

Proclamation – Older Americans Month

Councilmember Dudley read the proclamation and presented it to Councilmember Campbell. Older Americans Month honors older adults and the professionals, family members, and volunteers who care for them.

Proclamation – Like to Bike

Councilmember Almberg read the proclamation and presented it to Arnie Peterschmidt. Oak Harbor has been named a bicycle-friendly community by the League of American Bicyclists. Mr. Peterschmidt thanked Mayor and Council for helping raise awareness of biking as transportation and talked about the local grass roots cycling group. The group will be participating in the Holland Happening parade and Councilmembers Almberg, Munns, Palmer, and Severns will join them. Other upcoming group activities include the

Green Fair at Skagit Valley College on May 8th, a beater bike giveaway along with maintenance and repair tips for bike ownership, a bike rodeo which teaches basic cycling skills, and a most miles ridden contest in May emphasizing bike trips instead of car trips. May 21st is Bike to Work Day. Councilmember Almberg mentioned that Holland Happening parade bike participants will wear pink ribbons in honor of Maribeth Crandell's battle with cancer. Ms. Crandell is a founding member of this grass roots group.

Public Comments

Mel Vance, P.O. Box 2882. Mr. Vance congratulated City staff who helped coordinate this year's Whidbey Island Marathon. Mr. Vance has volunteered at the marathon for years and saw fewer problems this year; a wonderful event. Mayor Slowik also thanked Paul Schmidt and Karen Crouch for their hard work noting that a great deal of effort from every City department went into the marathon.

With no other comments coming forth, Mayor Slowik closed public comments at 6:15 p.m.

Consent Agenda

- A. Excused Absence – Mayor Pro Tem Danny Paggao, from the May 18, 2010 meeting.
- B. Noise Permit – Honeycutt/Thomas Wedding.
- C. Approval of Accounts Payable Vouchers.

MOTION: Councilmember Severns moved to approve consent agenda items A, B, and C with item C paying accounts payable check numbers 141092 – 141257 in the amount of \$355,891.08, payroll check numbers 93756 – 93763 in the amount of \$91,990.00, and payroll check numbers 93764 – 93765 in the amount of \$137.73. The motion was seconded by Councilmember Campbell and carried unanimously.

Oak Harbor Garden Club Proposal

Public Works Director Cathy Rosen presented this agenda bill for approval of the Oak Harbor Garden Club's donation and installation of a gazebo at Hal Ramaley Park. Garden Club members attended the August 10, 2009 Park Board meeting to request support for their proposal to install a gazebo at this park. The Garden Club adopted the park several years ago and has worked to improve it and maintain the landscape since that time. The Club has raised the necessary funds and is ready to implement their plan to donate a gazebo to be located at the park. At the March 8, 2010 Park Board meeting, the Garden Club received unanimous approval from the Board for their project. The gazebo at Hal Ramaley Park has been included in the City's Parks Gifts and Memorials Catalog for several years and is considered a substantial gift. An agreement for the gazebo donation will be signed by the Mayor and Garden Club President.

Mayor Slowik called for public comments.

Judy Biddle, Oak Harbor Garden Club, Chair of the gazebo committee. Ms. Biddle introduced other Garden Club members and noted that this gazebo and the Club's work in the park represent a link to the community. Ms. Biddle talked about other Garden Club projects – plant sale on May 15th, Oak Harbor garden tour on June 19th, and thanked Hank Nydam and the parks staff for their work and cooperation. Ms. Biddle also thanked those who have volunteered on this project for their continued support of this project. Contributions are welcome for future features.

Mel Vance, P.O. Box 2882. Mr. Vance spoke in support of the park and the gazebo but was concerned about its use at night and suggested a timed light which would shut off when the park is closed.

Hank Nydam, Parks Manager. Mr. Nydam talked about this wonderful contribution to the park. Hal Ramaley Park is a display garden which takes a great deal of work; 400 – 500 volunteer hours a year. With the addition of the gazebo, weddings and gatherings can be hosted there and the gazebo will be lighted for Christmas. Vandalism in this park has decreased over the last few years (in answer to Mr. Vance's comments). It was noted that noise permits will be needed if a special event has amplified sound.

Council thanked the Garden Club for continuing to beautify the community.

MOTION: Councilmember Munns moved to approve the Oak Harbor Garden Club request to donate and install a gazebo at Hal Ramaley Park. The motion was seconded by Councilmember Palmer and carried unanimously.

Byrne-Goldie Road Annexation

Development Services Director Steve Powers presented this agenda bill and ordinance to annex property into the City of Oak Harbor along with an associated annexation agreement. The proposed annexation is for properties owned by Goldie Road LLC along Goldie Road and properties along Easy Street. The annexation agreement applies only to properties owned by Goldie Road LLC. On January 23, 2008, Mr. Sean Byrne, managing partner of Goldie Road LLC, submitted a request to annex two properties which are located approximately 300 feet north of Easy Street, on the west of NE Goldie Street. On February 19, 2008, Mr. Byrne submitted an amendment to the request including an additional property north of the original requested area. The three properties included in the request totaling approximately 13.75 acres in size are all owned by Goldie Road LLC. On March 18, 2008, the City Council considered Mr. Byrne's request for annexation and geographically modified the annexation area to include properties along Easy Street. The modification was done to further Comprehensive Plan policies that recommend avoiding unincorporated areas from being completely surrounded by City property and squaring off City boundaries where possible. The City Council action authorized circulation of the petition and required the simultaneous adoption of the zoning classification and the assumption of all City indebtedness for properties in the annexation area. The City Council also directed staff to prepare an annexation agreement in conjunction with the annexation petition. Following the request for annexation, Mr. Byrne filed a sponsored amendment for consideration with the 2008 Comprehensive Plan amendments. This sponsored

amendment requested changing the land use designation from Planned Industrial Park to Community Commercial. The amendment was approved by the City Council on December 2, 2008. Therefore, the properties owned by Goldie Road LLC considered for annexation are designated as Community Commercial. Mr. Byrne submitted the annexation petition for the area that was approved by the City Council in March 2008. The three properties owned by Goldie Road LLC in the annexation area constitutes 67% of the value of the total annexation area and therefore meet the requirements of RCW 35A.14.120 for a valid petition. The County has reviewed the annexation petition and has made a Determination of Sufficiency beginning January 29, 2010. The Determination of Sufficiency is valid for six months. With the submittal of a valid petition and the Determination of Sufficiency complete, the final action on the annexation may now be considered by the City Council in a public hearing. In the pursuit of annexation and eventual development of his properties, Mr. Byrne has been negotiating with the City for purchase of City-owned property adjacent to the annexation area. If Mr. Byrne acquires the City-owned property it would be combined with his properties as part of the overall development site. Details regarding the purchase of the property are addressed separate from the annexation agreement in a purchase and sale agreement. The initial intent to annex and the Comprehensive Plan Amendment in 2008 drew attention from the property owners and residents in the annexation area. Recently, Mr. Byrne has contacted the property owners along Easy Street by mail regarding the annexation petition. City staff notified the property owners and residents regarding the annexation and the date of public hearing. In reviewing the proposed annexation against the policies in the Comprehensive Plan, it can be concluded that the annexation as proposed furthers the City's goals regarding growth and annexation. The geographical modification by the City Council on March 18, 2008 to include properties that will be surrounded by the annexation will further the goal to avoid annexations that would result in unincorporated enclaves and inclusion of the properties to the north and west of Easy Street will further the goal to square off City boundaries when possible.

Mayor Slowik opened the public hearing at 6:30 p.m. but there were no public comments so the public hearing was closed.

Council Discussion

Discussion followed about the Evergreen Mobile Home Park which is not part of a development plan at this time. The mobile home park is a non-conforming use today and will remain a non-conforming use upon annexation. Individual units can be improved, but additional mobile home pads/units cannot be added. Discussion followed about the properties along Easy Street and their obligations (no mandatory connection to City water, garbage collection will stay the same; the essential difference will be City property tax instead of County property tax). Discussion continued about hooking into City sewer (only if within 200 feet of the property), and the use of the word "compelled" in reference to connections. A compelling action falls to the City Engineer. Easy Street may not presently hold City sewer line. There is nothing developed today triggering half-street development.

Council asked that the word "Auditor" in the second whereas paragraph on page one of the ordinance be changed to the word "Assessor" and a hanging sentence ending in "the" should add the word "same." Discussion followed about the owner's responsibility to construct NE 16th Avenue to standards established in the Transportation Plan and whether the City has any obligation (the owners assume responsibility for street construction).

MOTION: Councilmember AlMBERG moved to approve the annexation agreement between the City and Goldie Road LLC and adopt the annexation ordinance. The motion carried unanimously.

Agreement – SR-20 Cleanup, Oak Harbor Fire Department Adopt-A-Highway Program

Fire Chief Mark Soptich presented this agenda bill. Oak Harbor Fire Department personnel have participated in the Adopt-A-Highway program since 1991. The agreement requires that litter be picked up for 2.7 miles along SR-20 within the City limits no less than four times per year. WSDOT provides warning signs, litter bags, and safety equipment to perform the task. The litter is placed along the shoulder of the highway for pickup and disposal by WSDOT. This program is an opportunity for department members to serve their community in a different way. The program requires a small amount of time and helps beautify the City along the SR-20 corridor.

There were no public comments.

MOTION: Councilmember Munns moved to approve the Adopt-A-Highway Agreement AAH-1-2-284 with the Washington State Department of Transportation and authorize the Mayor to sign the agreement. The motion was seconded by Councilmember Campbell and carried unanimously.

Shoreline Management Plan – State Grant and Consultant Selection Process

Development Services Director Steve Powers presented this agenda bill which requested City Council approval to pursue a grant for \$125,000 with the Washington State Department of Ecology (DOE) for the purposes of updating the City's Shoreline Master Program (SMP). The agenda bill also requests approval to begin the architectural/engineering services selection process so that a qualified consultant can be selected to perform the SMP updates.

There were no public comments.

Council Discussion

Discussion followed regarding combining or separating the motions, whether the grant process would be completed before the contract is assigned, and mention that this is not an unfunded mandate and state funds are being obtained; matching funds are not required. Discussion continued regarding the grant amount, benefit to the Shoreline Management Plan other than compliance, and response time for the grant award.

MOTION: Councilmember Dudley moved to authorize staff to submit the Department of Ecology grant. The motion was seconded by Councilmember Severns and carried unanimously.

MOTION: Councilmember Dudley moved to authorize the Mayor or his designee to enter into a grant agreement with the Department of Ecology. The motion was seconded by Councilmember Palmer and carried unanimously.

MOTION: Councilmember Dudley moved to authorize staff to proceed with the consultant selection process. The motion was seconded by Councilmember Palmer and carried unanimously.

Interlocal Agreements – North Whidbey Park and Recreation District

Public Works Director Cathy Rosen presented this agenda bill for interlocal agreements with North Whidbey Park and Recreation District. The District will be responsible for all aspects of the lifeguarding program, including providing a safety monitor for the lagoon area, scheduling, hiring, training and some general maintenance (housekeeping) responsibilities within a designated area. The District will ensure that all lifeguards are certified, and will provide liability insurance for the lifeguarding program. The District will also be responsible for wading pool maintenance, including daily cleaning, water testing, purification and the daily opening and closing of the pool(s). The District will carry liability insurance on the staff members assigned to maintain and operate the wading pool(s). The 2009-2010 Parks Budget provides funding in the amount of \$29,072 for these services. Also, under a separate agreement, the District will once again be providing paddle boat and canoe rentals at the windmill, and will pay the City \$100 per month for use of the windmill for this purpose. This fee will cover the cost to the City for utilities and overhead and includes any leasehold excise tax that will be due. With 2010, the Parks Division would like to implement a third interlocal agreement with North Whidbey Park and Recreation District for Recreational Services, which includes such programs as a Running Club, Sailing Program, Kids Love Soccer Program, as well as supporting the Teen Activity Council and other mutually agreed upon programs at City-owned parks and facilities. This agreement would support a continuing goal of the City, as stated in the Six-Year Parks, Recreation and Open Space Plan, to work with North Whidbey Park and Recreation District to establish recreational programs in the community. There would be no cost to the City for the District to provide these services and there would be no cost to the District to use City facilities.

Mayor Slowik called for public comments.

Mel Vance, P.O. Box 2882. Mr. Vance asked for clarification regarding the fees and lifeguard services.

Council Discussion

Discussion followed about the agreement amounts, the time frame for the agreements and services, and if there was any conflict with the sailing program (no, the same program).

MOTION: Councilmember Palmer moved to approve the Interlocal Agreements with the North Whidbey Park and Recreation District for Water Recreational Protection Services, Boat Rental Services, and Recreational Services, and authorize the Mayor to sign the agreements. The motion was seconded by Councilmember AlMBERG and carried unanimously.

Pioneer Way Right-of-Way (ROW) Acquisition Authorization

City Attorney Margery Hite presented this agenda bill concerning the issue of legal action regarding settlement of the City's title to the right-of-way for the Pioneer Way Improvement Project. City Engineer Eric Johnston, Richard Langabeer, and Christina Farnham of Langabeer and Tull were also present.

Mayor Slowik called for a five minute break at 7:10 p.m. to load a PowerPoint presentation for this agenda bill. The meeting reconvened at 7:15 p.m.

Pioneer Way has been a City street since the outset of Oak Harbor's incorporation as a town. Originally known as Barrington Drive, Pioneer Way appears as a dirt road through town in earliest pictures of Oak Harbor. Members of the public have driven and walked along Pioneer Way for decades. From the 1970s forward, the sidewalks along Pioneer Way were created and maintained by the City. However, there are no historical legal documents establishing the City's ownership of the right-of-way for some of the sidewalk areas. As a legal matter, though, the City has what is known as a "prescriptive easement" to the right-of-way since the City has used and maintained the right-of-way as a public thoroughfare for over ten years. The City likewise has responsibility for the state of the sidewalks and the street in the City's right-of-way. Where personal injury or property damage is attributable to the disrepair of the sidewalks and street, the City may have liability for the injuries and damage occurring within the City right-of-way. For the Pioneer Way Improvement Project, the City believes it has a prescriptive easement that it can rely upon to perform the sidewalk work. The most conservative approach would be for the City to obtain clear legal documents setting out the City's ownership of the right-of-way. This may be obtained through deeds from property owners or through legal action in the courts to declare the City's right to public right-of-way. Staff proposes that the property owners be offered an opportunity to confirm the City's existing prescriptive right-of-way easement by executing an express easement to the City rather than going through a trial. Payment would be nominal and reflect the litigation costs that could, pro rata, be attributed to that parcel of property. The estimated costs of litigation are assumed to be \$40,000 so the payment for making a trial unnecessary is \$1,290 per parcel. For those property owners who would not confirm the City's prescriptive easement, the City would institute a quiet title action in Island County

Superior Court. This would give the property owners an opportunity to appear and defend if they wish to argue that the City does not have a prescriptive easement.

Richard Langebeer, Langabeer and Tull, continued this presentation beginning with the PowerPoint slide indicating where Pioneer Way right-of-way had not been called out. Mr. Langabeer talked about the City's historical and continuing use of Pioneer Way for street and sidewalk purposes noting that the City already has a prescriptive easement on Pioneer Way. If the public already has this right, it would be contrary for the City to pay for it via public funds; the public has the easement, the City has the ability to establish and use the right-of-way. Citizens have established the public use. If the true owner knows that the easement is being used and for a period of ten years does nothing, that is the statute of limitation and they are barred from other use. The public has the right to use that property as it has been used. Mr. Langabeer referred to this definitive use as open, uninterrupted, exclusive, notorious for a ten-year period. There is no basis to preclude; it becomes clear that there is a prescriptive right. What "historically" means is that permission was not given by the true owner. If there is a permissive use, it will not ripen into a prescriptive easement. With public use, it is clear from cases that there has to be some expression of conveyance beyond the oral, "sure, you can use the sidewalk." Courts look at the public's right for continuous use and unless there is a definitive permissive use, absent that, it is a public right-of-way. A court may infer a permissive use in private context but we do not see that in a public context. Mr. Langabeer complimented Eric Johnston, Rich Tyhuis, Russ Parbarcus, Paul Schmidt and other City employees and City officials who have provided Langabeer and Tull with a considerable amount of information that has been under review since early March. There is clear historical evidence that the sidewalk has been in place since 1975 and earlier. The public has a prescriptive easement which means the City has a prescriptive easement and that right of use. If, after a ten-year period, a property owner said the City does not have that right of use, it would be ineffective. Once a prescriptive easement is established, it is there. Mr. Langabeer talked about the need for a quiet title; a treatise – adverse possession and prescriptive use is unwritten title. The public owns the use of the property but there is not a paper title so a quiet title action is brought forward. The public cannot bring this action, but the City can bring quiet title action on the public's behalf. Mr. Langabeer repeated the terms: open, notorious, continuous, uninterrupted use for ten years makes it prescriptive use and the burden shifts to the true owner to show it is permissive. That is their opportunity. It is not in the City's interest to bring a lawsuit for quiet title against the property owners. Prescriptive right is a matter of law and a question of fact and there is no dispute or facts from the property owners indicating permissive use. The property owners have an option to arguably step out. The public does not use taxpayer money for property the public already has. New sidewalks will bring a significant enhancement and improvement to Pioneer Way and it seems that there would be a strong interest by the property owners toward an easement. The expense figure was calculated on what is estimated for a quiet title action, a settlement figure; this is not payment for property. With regard to a Councilmember's question about excise tax, this is not a conveyance of title but rather is a use of property which would not incur excise tax.

Mayor Slowik called for public comments.

Mel Vance, P.O. Box 2882. Mr. Vance expressed his discomfort with this agenda bill and felt some of the arguments were mistaken. He did not want to see an adversarial position created between property owners and the City and felt the City should work with the property owners.

Council Discussion

Discussion followed about the timeframe for quiet title action, whether the City could contact the property owners (response was a considerable amount of time has been spent on informing the City and what process the City can rely on), how the \$40,000/\$1,290 would be paid out (noting it is not property compensation), where this action is heard (Superior Court), and further clarification about excise tax. Discussion continued about the property owners' disagreement with the Pioneer Way Improvement Project, that quiet title action is common with County roads held as an example, and that not every property on Pioneer Way is affected with clarification that there are 22 and not 31 property owners. Proper documentation is needed. City Engineer Eric Johnston was asked to describe the configuration slivers that this action addresses which is only a matter of several feet between public and private use. The City will attempt to make personal contacts, but the City needs to move forward. Discussion continued about the benefit to improving Pioneer Way and the sidewalks, how the property owners will respond, and that this has been discussed with property owners beginning with the series of open houses presented by the Mayor and staff. A schedule was established and reviewed/approved by Council. Council also had an executive session concerning this recommendation. Mayor Slowik noted that this evening's discussion could have been done in executive session but Mayor and staff felt it was important for the public to hear this discussion.

MOTION: Councilmember Munns moved to approve a resolution authorizing the City to pay property owners who confirm the City's prescriptive easement to Pioneer Way without the need for litigation. The motion was seconded by Councilmember Almberg. Councilmembers Almberg, Campbell, Munns, Paggao, Palmer, and Severns voted in favor of the motion. Councilmember Dudley opposed. The motion carried.

MOTION: Councilmember Munns moved to approve a resolution authorizing the City to institute a quiet title action to settle the City's prescriptive easement to the Pioneer Way right-of-way through a quiet title action. The motion was seconded by Councilmember Almberg. Councilmembers Almberg, Campbell, Munns, Paggao, Palmer, and Severns voted in favor of the motion. Councilmember Dudley opposed. The motion carried.

Mayor Slowik called for a five-minute break at 8:40 p.m. and the meeting reconvened at 8:45 p.m.

City Administrator's Comments

Mr. Schmidt talked about the successful Whidbey Island Marathon event and the team effort that went into the event. Final numbers are still being assembled, but 1,911 timing chips were registered. AWC has once again awarded a Well City Award of Excellence to Oak Harbor for the fifth consecutive year. 35 cities out of 281 cities received this award. Mr. Schmidt thanked the Wellness Committee for their hard work. The Committee is working on 2011, and if the City receives an award in 2011, we will also receive a two percent discount on our health benefits premium which amounts to a five-figure savings. Mr. Schmidt also talked about the utility rates workshop scheduled for May 27, 2010, 6:00 p.m., at City Hall.

Councilmembers' Comments

Council Members gave their respective standing committee reports. Councilmember Palmer talked about the Marathon and his mother's photo. Councilmember Munns talked about AWC and the close of the legislative session and how much she enjoyed helping in the Marathon and the number of countries and states represented by the participants. Councilmember AlMBERG thanked Mr. Schmidt, Ms. Crouch, Ms. Sipes, and Mr. Smithson along with all of the staff and volunteers who made this event a success. Councilmember Dudley talked about the 2010 Commander in Chief's installation and that NASWI is considered the best base in the Navy and second overall for base excellence.

Mayor's Comments

Mayor Slowik complimented Council on this evening's brisk meeting in spite of a number of heavy subjects, and talked about his appreciation of Council's professionalism. Mayor Slowik's third grandchild was just born and is named James. Mayor Slowik had also updated the Chamber at a luncheon meeting along with a more detailed update during the Chamber's After Hours Event on Pioneer Way. He will be attending the Mayor's Summit in Sammamish which allows for discussion of regional issues. Mayor Slowik also thanked everyone for their hard work on the Marathon.

ADJOURN

With no other business coming forth, the Mayor adjourned the meeting at 9:00 p.m.

Connie T. Wheeler
City Clerk

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

Bill No. 2
Date: May 4, 2010
Subject: Employee Recognitions

FROM: Jim Slowik, Mayor

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

PURPOSE

To recognize City employees for 10 years of service or more.

AUTHORITY

It is the practice of the City to recognize dedicated employees who have completed 10 years or more of service.

SUMMARY STATEMENT

The Mayor and City Council will recognize the following employees for their years of service with the City:

- Otto Lawson / Public Works Department with 10 years of service
- Steve McCalmont / Fire Department with 10 years of service
- Dean Faris / Fire Department with 25 years of service

STANDING COMMITTEE REPORT

None

RECOMMENDED ACTION

Congratulate Mr. Lawson, Mr. McCalmont and Mr. Faris for their years of service.

ATTACHMENTS

None

MAYOR'S COMMENTS

None

City of Oak Harbor

OFFICE OF THE MAYOR
JIM SLOWIK
MAYOR



PROCLAMATION IN RECOGNITION OF

NATIONAL PUBLIC WORKS WEEK

MAY 16 – 22, 2010

WHEREAS, Public works services provided in our community are a integral part of our citizens' everyday lives; and

WHEREAS, the support of an understanding and informed citizenry is vital to the efficient operation of Public Works systems and programs such as water, sewers, storm drain, streets, public buildings, and solid waste collection; and,

WHEREAS, the health, safety and comfort of this community greatly depends on these facilities and services; and

WHEREAS, the quality and effectiveness of these facilities, as well as their planning, design and construction, is vitally dependent upon the efforts and skill of Public Works officials; and

WHEREAS, the efficiency of the qualified and dedicated personnel who staff our Public Works Department is materially influenced by the people's attitude and understanding of the importance of the work they perform; and

WHEREAS, the theme of this year's celebration is "Public Works: Above, Below and All Around You".

NOW, THEREFORE, WE, Jim Slowik, Mayor, and Councilmembers of the City of Oak Harbor do hereby proclaim, **May 16 – 22, 2010** as **National Public Works Week**.

Signed this 4th day of May, 2010



Jim Slowik, Mayor

City of Oak Harbor

OFFICE OF THE MAYOR
JIM SLOWIK
MAYOR



PROCLAMATION IN RECOGNITION OF

ELKS YOUTH WEEK

MAY 2 - 8, 2010

WHEREAS, the City of Oak Harbor believes that our young residents are a vital component to our city, deserving of recognition and support as they prepare to meet the challenges and opportunities of the future; and

WHEREAS, these young citizens will assume responsibility for our society in the years ahead and need our guidance, inspiration, and encouragement to develop the qualities of character essential to future leadership; and,

WHEREAS, we demonstrate our understanding of their hopes, aspirations, and sincere willingness to contribute by recognizing partnerships with organizations that encourage the achievement of civic excellence; and

WHEREAS, the Benevolent and Protective Order of Elks has designated the first full week in May as Elks National Youth Week, in tribute to our young citizens, honoring them, for their achievements and contributions to the community, city and nation.

NOW, THEREFORE, WE, Jim Slowik, Mayor, and Councilmembers of the City of Oak Harbor do hereby proclaim, **May 2 - 8, 2010** as **Elks Youth Week** and urge all citizens to join us in this special observation.

Signed this 4th day of May, 2010



Jim Slowik, Mayor

City of Oak Harbor

OFFICE OF THE MAYOR
JIM SLOWIK
MAYOR



PROCLAMATION IN RECOGNITION OF

NATIONAL NURSES WEEK

With the Theme: "Nurses, Caring Today for a Healthy Tomorrow"

WHEREAS, The nearly 2.9 million registered nurses in the United States comprise our nation's largest health care profession; and

WHEREAS, the depth and breadth of the registered nursing profession meets the different and emerging health care needs of the American population in a wide range of settings; and

WHEREAS, the American Nurses Association, as the voice for the registered nurses of this country, is working to chart a new course for a healthy nation that relies on increasing delivery of primary and preventive health care; and

WHEREAS, a renewed emphasis on primary and preventive health care will require the better utilization of all of our nation's registered nursing resources; and

WHEREAS, professional nursing has been demonstrated to be an indispensable component in the safety and quality of care of hospitalized patients; and

WHEREAS, that more qualified registered nurses will be needed in the future to meet the increasingly complex needs of health care consumers in this community.

NOW, THEREFORE, WE, Jim Slowik, Mayor, and Councilmembers of the City of Oak Harbor do hereby declare the week of **May 6 through 12, 2010** as **National Nurses Week** along with the American Nurses Association, Naval Hospital Oak Harbor and the NHOH Nurses Association in celebration of the ways in which registered nurses strive to provide safe and high quality patient care and map out the way to improve our health care system. We ask that all residents of this community join in honoring the registered nurses who care for all of us. That the residents of Oak Harbor celebrate the accomplishments and efforts of our registered nurses to improve our health care system and show our appreciation for the nation's registered nurses not just during this week, but at every opportunity throughout the year.

Signed this 4th day of May, 2010


Jim Slowik, Mayor

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

Bill No. 6

Date: MAY 4, 2010

Subject: PUBLIC COMMENTS

FROM: Jim Slowik, Mayor

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

SUMMARY STATEMENT

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

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

Bill No.
Date:
Subject:

C/A TA
May 4, 2010
Excused Absence Request
Councilmember Beth Munns

FROM: Jim Slowik
Mayor

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

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

PURPOSE

The purpose of this agenda bill is to present and approve Councilmember Beth Munns' excused absence request for the May 18, 2010 City Council meeting.

AUTHORITY

Per RCW 35A.12.060: ...*A council position shall become vacant if the councilmember fails to attend three consecutive regular meetings of the council without being excused by the council.*

SUMMARY STATEMENT

Councilmember Munns has submitted an excused absence request since she will not be able to attend the May 18, 2010 City Council meeting.

STANDING COMMITTEE REPORT

N/A

RECOMMENDED ACTION

Approve Councilmember Beth Munns excused absence from the May 18, 2010 City Council meeting.

ATTACHMENTS

None

MAYOR'S COMMENTS

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

Bill No. 8
Date: May 4, 2010
Subject: Public Hearing - Lava Lounge
Nightclub License

FROM: Rick Wallace, Chief of Police

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

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

PURPOSE:

This is an application for a Nightclub License pursuant to Ch. 5.22 OHMC. The applicant is Jason Youngsman. Since no disqualifying restrictions prevent the issuance of a Nightclub License to the applicant, the City Council will hold a public hearing to determine what conditions should be imposed to mitigate noise, traffic and other similar public health and safety impacts on operation of the Lava Lounge Nightclub.

AUTHORITY:

OHMC 5.22.045(4) states:

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

DESCRIPTION:

In late 2009, Jason Youngsman, manager of the Lava Lounge Nightclub, applied for and received a temporary Nightclub License and as required under the ordinance, a police investigation was conducted. The following is a summary of that investigation:

Lava Lounge Nightclub License
May 4, 2010

From April 1, 2009 through March 31, 2010, the Oak Harbor Police Department responded to a total of ninety (90) calls for police service to the nightclub. Twenty (20) of those calls have no significant bearing on this issue and should not be viewed as having a negative connotation towards the nightclub as these types of calls for police service could occur at any business or private residence.

The remaining seventy (70) calls for service do relate directly to the nature of the business at the nightclub:

Assault Complaints	26
Closed by arrest	11
Settled by contact	7
Gone on arrival	1
Unfounded	4
Open	3
Disorderly Conduct Complaints	11
Settled by contact	9
Gone on arrival	2
Domestic – Physical Assault	1
Closed by arrest	1
Fraud	3
Arrest	3
Harassment	2
Settled by contact	2
Sexual Assault	1
Unfounded	1
Indecent Exposure	3
Arrest – urinating in public	3

Lava Lounge Nightclub License
May 4, 2010

Suspicious Person	5
Settled by contact	5
Theft	3
Complaint taken – open	3
DUI Report	2
Arrested	1
Unfounded	1
Vehicle Prowl	1
Complaint taken – open	1
Vehicle Theft	1
Unfounded	1
Liquor Violation Complaints	5
Closed by arrest	2
Settled by contact	2
Unfounded	1
Minor in Possession	2
Arrest	2
Violation Controlled Substance Act	2
Gone on Arrival	2
Warrant Arrest	1
Arrest	1
Weapons Complaint	1
Arrest	1

Lava Lounge Nightclub License
May 4, 2010

The license applicant, Jason Youngsman, has been informed of the conditions that will be recommended by the police department to the Nightclub License, should the Council approve it, and has expressed his opinion that he will be able to meet or exceed those conditions.

STANDING COMMITTEE REVIEW:

The Public Safety Standing Committee reviewed this agenda item on April 15, 2010.

RECOMMENDED ACTION:

1. Hold a public hearing pursuant to OHMC 5.22.045(4).
2. Consider approval and issuance of the nightclub license to Lava Lounge as follows:

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

The nightclub license-holder shall:

1. Adhere to all laws, regulations, ordinances and zoning conditions of the State of Washington and the City of Oak Harbor applicable to the nightclub business located at 930 SE Pioneer Way, Oak Harbor, Washington.
2. With the exception of ingress to and egress from the building, ensure that doors and windows remain closed at all times while any type of music or entertainment is playing.
3. Fully shield all new and/or existing site and building mounted lighting so that light is directed downward and stays on-site.
4. Ensure that the parking lot, sidewalk and the adjacent city park are swept clean of litter, daily by 6:00 a.m.
5. Provide designated and visible security personnel and security measures sufficient to reduce the potential for illegal activity, noise violations or any other public health and safety violation as described in the Oak Harbor Municipal Code, inside and outside the business to include the parking lot and adjacent properties. This will include:
 - a. On Friday and Saturday nights, between the hours of 10:00 p.m. and 04:00 a.m., a minimum of four designated and visible security personnel will be on duty at the nightclub.
 - b. Security shall also monitor the parking lot(s) and sidewalk areas of the nightclub between the hours of 01:30 a.m. and 02:30 a.m., to prevent or report to police, as appropriate, any potentially illegal activity occurring in the parking lots or visible in adjacent properties.
 - c. The license-holder shall implement and enforce a ban policy, that will ban patrons from the club, for a three month period, who:
 - Engage in activities in the business and/or parking lot which either result in arrest or would constitute probable cause for arrest.
 - Create noise violations in the business and parking lot.
 - Loiter in the parking lot for more than ten minutes.

- d. The license-holder will provide the Oak Harbor Police Department with a copy of the list of banned patrons on a weekly basis.
- e. The license-holder shall implement and enforce a policy which requires club employees to call the police, as soon as possible, when they witness potentially criminal activity in the business, in the parking lot, and adjacent to the club property.
6. Provide Oak Harbor Police Department monthly with a list of current security employees.
7. On a monthly basis, provide OHPD with the current hours of operation at this location.
8. Meet with the Chief of Police, or his designee, on a six-month basis, to review the efficacy of the conditions of this license in meeting the goals of the Nightclubs Ordinance, Ch. 5.22 OHMC. The Chief of Police shall submit an investigative report to the City Council at least annually to report upon the efficacy of the conditions of this license in preventing or mitigating the noise, traffic and public health and safety impacts of the nightclub. This investigative report shall lead to a City Council hearing pursuant to OHMC 5.22.090.
9. The license-holder acknowledge that the Chief of Police or other city official may, pursuant to OHMC 5.22.090, submit an investigative report to the City Council at any time if, in that official's opinion, the license conditions have not been sufficient to mitigate the noise, traffic and public health and safety impacts of the nightclub. In the event that such report is submitted to the City Council, the license-holder may be subject to new or additional conditions as provided in OHMC 5.22.090.

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

ATTACHMENTS:

1. Investigative Report.
2. License Application.
3. Chapter 5.22 OHMC.

MAYOR'S COMMENTS:

Lava Lounge Nightclub License
May 4, 2010

**OAK HARBOR POLICE DEPARTMENT
MEMORANDUM**

To: Paul Schmidt
City Administrator

From: R. Wallace
Chief of Police

Date: April 8, 2010

Subject: Investigative Report – Lava Lounge Nightclub License

On September 91, 2009, Jason Youngsman, manager of Lava Lounge located at 930 SE Pioneer Way Oak Harbor, Washington, applied for a nightclub license. A temporary license was issued at the time of application as provided for in OHMC 5.22.040.

As required in OHMC 5.22.045(2), an investigation was conducted by the Oak Harbor Police Department.

Lava Lounge is a restaurant and lounge located in a two-story building at 930 SE Pioneer Way in Oak Harbor. The business area is comprised of upstairs and downstairs areas of operation. The restaurant portion, where meals are served to those of all ages and alcohol is served to those 21 years of age and over, is located on the first floor. There is also a separate section of the first floor, closed to those under the age of 21, where there is seating for dining and alcohol service. Recorded and live music is played and there is an area for social dancing. There is an additional area for music and dancing located on the second floor.

From April 1, 2009 through March 31, 2010, there were ninety (90) calls for service at that address. Twenty (20) of those calls have no significant bearing on this issue and should not be viewed as having a negative connotation towards the nightclub as these types of calls for police service could occur at any business or private residence. The seventy (70) remaining calls for service do pertain to the license conditions and are described as follows:

**Investigative Report
Lava Lounge Nightclub License
Page 2**

Assault Complaints - 26

**Closed by arrest - 11
Settled by contact - 7
Gone on arrival - 1
Unfounded - 4
Open - 3**

Disorderly Conduct Complaints - 11

**Settled by contact - 9
Gone on arrival - 2**

Domestic - Physical Assault - 1 - Closed by arrest

Fraud - 3 - Arrest

Harassment - 2 - Settled by contact

Sexual Assault - 1 - Unfounded

Indecent Exposure - 3 - Arrest (urinating in public)

Suspicious Person - 5 Settled by Contact

Theft - 3 - Complaint Taken/open

**Investigative Report
Lava Lounge Nightclub License
Page 3**

DUI Report - 2

**Arrest - 1
Unfounded - 1**

Vehicle Prowl - 1 - Complaint Taken/open

Vehicle Theft - 1 - Unfounded

Liquor Violation Complaints - 5

**Closed by arrest - 2
Settled by contact - 2
Unfounded - 1**

Minor in Possession (Alcohol) - 2 - Arrest

Violation Controlled Substance Act - 2 - Gone on arrival

Warrant Arrest - 1 - Arrest

Weapons Complaint - 1 - Arrest

In a review with the Director of Development Services and the Oak Harbor Fire Chief regarding this business, it was determined there were no issues about the building that were of concern as related to the issuance of the nightclub license.

As a result of my investigation, I could find no disqualifying restrictions which would prevent the issuance of a Nightclub License to the applicant.



September 11, 2009

Jason Youngsman
1871 SW Waterside Court
Oak Harbor, WA 98277

RE: Temporary Nightclub License
Location: Lava Lounge
930 SE Pioneer Way
Oak Harbor, WA 98277

Dear Mr. Youngsman:

In accordance with City of Oak Harbor Ordinance No. 1544, please find enclosed a temporary nightclub license for your nightclub license application submitted on September 9, 2009. This temporary nightclub license shall be in effect until the Oak Harbor City Council takes action on your pending application. We will notify you well in advance of that Council meeting date once it has been set.

Please feel free to contact me or our Chief of Police, Rick Wallace if you have any questions regarding the status of your pending nightclub license application.

Sincerely,



Connie Wheeler
City Clerk

cc: Chief of Police Wallace
City Administrator Schmidt
D. Nichols

CITY OF OAK HARBOR
865 S.E. BARRINGTON DR.
OAK HARBOR, WA 98277
(360) 679-5551

BUSINESS LICENSE

Lava Lounge
930 SE Pioneer Way
Oak Harbor, WA 98277
LOCATION OF BUSINESS
CITY OF OAK HARBOR

THIS CERTIFIES that the business or individual listed below is hereby licensed to do business within the

Jason Youngsman
1871 SW Waterside Court
Oak Harbor, WA 98277

Temporary License
EXPIRATION DATE
Upon final Council action
on pending application.

DATE ISSUED	LICENSE NUMBER
9/11/09	NC-0008 Nightclub
SIC NUMBER	SALES TAX CODE
	1503

FINANCE DIRECTOR

This license is to be displayed conspicuously at the location of business, and is not transferable or assignable.

20



City of Oak Harbor
865 SE Barrington Drive
Oak Harbor, WA 98277
Phone: (360)279-4500
Fax: (360)279-4507

Application for Nightclub License
Oak Harbor Municipal Code Chapter 5.22
Ordinance No.: 1544

Application Fee: \$200 plus \$10 for WATCH background check = \$210

Personal Information

Name of Business: LAVA LOUNGE

Address of Business: 930 SE Pioneer Way
Where nightclub will be conducted.

Owner of Business: MGR Jason Youngman

Owner's Address: 1871 SW Waterside CT

Owner's Phone/Cell Number: (360) 320-4139

Date of Birth: [REDACTED]

Social Security No.: [REDACTED]

Driver's License No.: [REDACTED]

Please answer the following questions:

1. Are you a citizen of the United States of America? yes
2. Have you been convicted of a felony within the last five years? no
3. Have you been convicted of a violation of any federal or state law or city ordinance concerning the manufacture, possession, or sale of liquor subsequent to the passage of the Washington State Liquor Act? no
4. Have you ever been convicted of a violation of any federal or state law, or city ordinance concerning the manufacture, possession, or sale of narcotics? no
5. Have you ever forfeited a bond to appear in court to answer charges of any violations as stated above? no
6. Are you the owner _____ manager X or agent _____ of this business?

NOTE: Per OHMC Chapter 5.22.030 (2):

No license shall be issued to a person whose place of business is conducted by a manager or agent, unless such manager or agent also applies and qualifies for a nightclub license for the same business location.

7. Are you a co-partner of this business?

no

NOTE: Per OHMC Chapter 5.22.030 (3):

No license shall be issued to a co-partnership unless all the members thereof shall be qualified to obtain a license as provided herein.

8. Is this business a corporation?

Yes

NOTE: Per OHMC Chapter 5.22.030 (4):

No license shall be issued to a corporation, unless all of the officers, directors and stockholders thereof shall be qualified to obtain a license as provided in this chapter. Such license shall be issued to the manager or other directing head thereof.

9. If this is a partnership or corporation, please include names, addresses, and phone numbers of same. If more space is needed, please attach an additional sheet.

Terry Suzuki 206-696-3533

10. Indicate the type of musical entertainment you will provide.

DJ, Live Band, Karaoke

11. Describe the hours of operation, expected attendance figures, and activities that will take place on the premises. If more space is needed, please attach an additional sheet.

Monday 11am-12am Tuesday ^{Saturday} 11am-2am Sunday 11am-12am
100+ people on Friday and Saturday 50 people daily Dancing, singing
eating, Drinking

12. Describe the floor plan, parking areas, fire exits, and other physical features of the nightclub. If more space is needed, please attach an additional sheet.

Box type Club portion, parking in front and rear Fire exit in
rear of building. upstairs has a fire exit also.

I do solemnly swear that I have read the City of Oak Harbor's Ordinance No. 1544 regulating nightclub licensing and that I will abide by the rules set forth therein and I furthermore swear that the facts I have stated in this application are true.


Signature

8/16/09
Date

Upon application, you will immediately be issued a temporary license. OHMC 5.22.040. After investigation by City officials, you will be notified of their report and the date upon which the City Council will conduct a hearing for issuance of a regular license. OHMC 5.22.045 sets forth these procedures.

Background Check Information

DRIVER'S CHECK – Run each state listed on the application and enter state name below.
STATE _____ STATE _____ STATE _____ STATE _____ STATE _____
VEHICLE REGISTRATION/CHECK STOLEN
WATCH _____ WACIC/NCIC _____ LOCAL RECORDS _____
POLICE DEPT. APPROVAL _____ DATE _____

Received by City Clerk and forwarded to Chief of Police, Oak Harbor Police Department
on: 9-9-09 [Signature]
Date City Clerk's Signature

Oak Harbor Police Department

Date Received: _____
Attach investigation report and recommendations and any reports requested of other City departments.

City Council Action

Date: _____

Decision/Findings (show below or attach report):

License Conditions:

Review Date (if any scheduled):

**Chapter 5.22
NIGHTCLUBS**

Sections:

- 5.22.010 Definitions.**
- 5.22.020 License required.**
- 5.22.030 Issuance restrictions.**
- 5.22.040 Filing of application.**
- 5.22.045 License conditions.**
- 5.22.050 Annual license fee.**
- 5.22.060 Proration of license fee.**
- 5.22.065 Violation of license conditions.**
- 5.22.070 Revocation of license.**
- 5.22.080 License – Compliance required.**
- 5.22.090 Revision of license conditions.**
- 5.22.100 Appeal to court.**

5.22.010 Definitions.

- (1) "Nightclub" means any "premises" as defined herein on which any music, singing, dancing or other combination of these activities is permitted as entertainment after 10:00 p.m., on one or more days per week. The playing of incidental music on any premises where the receipts for the sale of food constitute 75 percent or more of the gross business income of the establishment shall not be considered a "nightclub" for purposes of this chapter, unless an opportunity for social dancing is provided on the premises.
- (2) "Premises" means any room, place, or space whatsoever in the city of Oak Harbor which is open to the general public in connection with any hotel, restaurant, cafe, club, tavern or eating place directly or indirectly selling, serving, or providing the public liquor, with or without food.
- (3) "Liquor" means all beverages defined in RCW 66.04.200.
- (4) "Person" means one or more natural persons of either sex, firms, copartnerships and corporations; whether acting by themselves or by servant, agent or employee.

The provisions of this chapter shall not apply to temporary activities conducted pursuant to a city special event permit issued pursuant to Chapter 5.50 OHMC and lasting no longer than 48 hours. (Ord. 1544 § 1, 2008; Ord. 321 § 1, 1972).

5.22.020 License required.

It is declared to be unlawful for any person to conduct, manage or operate a nightclub unless such person is the holder of a valid license from the city of Oak Harbor so to do, obtained in the manner provided in this chapter. A first violation of the requirement to obtain a license shall be a civil infraction filed pursuant to Chapter 1.28 OHMC, punishable by a fine of \$250.00. A second violation shall be a civil infraction punishable by a fine of \$500.00. A first or second violation of the requirement to obtain a license shall be a civil offense subject to the procedures of Chapter 1.28 OHMC. Thereafter, further violation of the requirement to obtain a license of this chapter shall be a misdemeanor punishable by a fine not exceeding \$1,000, up to 90 days in jail, or both such fine and jail time. (Ord. 1544 § 1, 2008; Ord. 321 § 2, 1972).

5.22.030 Issuance restrictions.

No license shall be issued to:

- (1) A person who has not resided in the state of Washington for at least one month prior to making application.
- (2) A person whose place of business is conducted by a manager or agent, unless such manager or agent also applies and qualifies for a nightclub license for the same business location.
- (3) A copartnership, unless all the members thereof shall be qualified to obtain a license as provided herein.
- (4) A corporation, unless all of the officers, directors and stockholders thereof shall be qualified to obtain a license as provided in this chapter. Such license shall be issued to the manager or other directing head thereof. (Ord. 1544 § 1, 2008; Ord. 588 § 1, 1981; Ord. 321 § 3, 1972).

5.22.040 Filing of application.

Application for a nightclub license shall be made to the city clerk, together with a receipt from the city finance director or designee for the amount of the license in full. The license application shall include personal identification information requested by the city including date of birth and Social Security number. The application shall also specify the business location upon which the nightclub will be conducted. The application fee includes the fee to cover the cost of a WATCH criminal background check, as provided in OHMC 3.64.100. Upon filing of the application and fees, the applicant(s) shall be issued a temporary license which shall expire upon the city council determination set forth in OHMC 5.22.045, unless stayed by filing of a judicial appeal within 30 days of the city council decision appealed. (Ord. 1544 § 1, 2008; Ord. 321 § 4, 1972).

5.22.045 License conditions.

- (1) Upon receipt of an application for a nightclub license, the city clerk shall transmit the application to the chief of police, who shall immediately conduct a WATCH criminal background check of the applicant(s).
- (2) The chief of police shall also investigate the business location to determine whether there are any features of the establishment which pose noise, traffic or other similar public health or safety concerns for the operation of a nightclub. The chief of police may request the assistance of other city departments, including the fire department and/or the building official, in assessing the impacts of the proposed business location if used as a nightclub.
- (3) The chief of police shall report to the city council the result of his investigation and make recommendations concerning any conditions that should be placed upon the nightclub license to reduce noise, traffic or other similar public health and safety impacts. Allowable conditions may include, but are not limited to, restrictions upon the hours of operation, structural improvements to the premises to reduce noise impacts on neighboring uses, limitations on the numbers of patrons at any one time, landscaping or other screening, and requirements for traffic control. Periodic review of the efficacy of the imposed conditions may also be a condition of the nightclub license.
- (4) The city council shall hold a public hearing with respect to the issuance of the nightclub license. The applicant(s) shall be entitled to respond to any findings of the police chief or other city officials and any proposed conditions on the nightclub license. Unless the applicant is restricted from holding a nightclub license pursuant to OHMC 5.22.030, the city council shall then determine whether the noise, traffic and other similar public health and safety impacts of the

nightclub require mitigation through specified conditions and, if so, shall impose such conditions on the license. In no event shall the expressive content of any music, singing or dancing be the basis for denial of a nightclub license or any conditions placed thereon.

- (5) The decision of the city council shall be the final decision of the city. (Ord. 1544 § 1, 2008).

5.22.050 Annual license fee.

Any person desiring to operate a nightclub shall first procure a nightclub license. The annual fee for a nightclub license shall be \$200.00 plus \$10.00 for an annual WATCH criminal background check. (Ord. 1544 § 1, 2008; Ord. 321 § 5, 1972).

5.22.060 Proration of license fee.

There shall be no prorating of the fee mentioned in OHMC 5.22.050, and such license fee shall expire on December 31st of each year; except that in the event that the original application be made subsequent to June 30th, then one-half of the annual license fee may be accepted for the remainder of the year. The license shall not be assignable. (Ord. 1544 § 1, 2008; Ord. 321 § 6, 1972).

5.22.065 Violation of license conditions.

A license holder who violates any license condition of his/her nightclub license shall be subject to civil penalties as follows:

- (1) First violation of a license condition: \$500.00 fine per violation;
- (2) Second violation of same license condition: \$750.00 fine per violation;
- (3) Third violation of same license condition: \$1,000 fine per violation.

First, second and third violations of license conditions shall constitute civil offenses and shall be governed by the procedures of Chapter 1.28 OHMC.

The fourth or greater violation of the same license provision shall constitute a misdemeanor punishable by a fine not exceeding \$1,000, up to 90 days in jail, or both such fine and jail time. (Ord. 1544 § 1, 2008).

5.22.070 Revocation of license.

The city council reserves unto itself the power to revoke any license issued under the provisions of this chapter at any time upon a finding that:

- (1) The license was procured by fraud or false representation of fact; or
- (2) The applicant is barred from holding a nightclub license due to violation of any of the restrictions of OHMC 5.22.030; or
- (3) The conditions imposed upon the license pursuant to OHMC 5.22.045 were knowingly and willfully violated by the person holding such license or at his/her direction; or
- (4) A crime or offense involving moral turpitude is committed on the premises in which the nightclub is conducted with knowledge of the licensee.

Before revoking any such license, the city council shall, upon at least 10 days' notice to the licensee, hold a public hearing concerning such revocation, at which time the licensee shall be entitled to be heard and introduce the testimony of witnesses. Members of the public may also be permitted to testify at such public hearing. The action of the city council after such hearing, relative to such revocation, shall be final. (Ord. 1544 § 1, 2008; Ord. 996 § 1, 1995; Ord. 321 § 7, 1972).

5.22.080 License – Compliance required.

In addition to the conditions imposed pursuant to OHMC 5.22.045, all nightclub licensees shall comply

with the rules or regulations of the Washington State Liquor Control Board relating to the sale of intoxicating liquor. A finding of violation by the Washington State Liquor Control Board shall also constitute a violation of license conditions pursuant to OHMC 5.22.065. (Ord. 1544 § 1, 2008; Ord. 321 § 8, 1972).

5.22.090 Revision of license conditions.

The city council also reserves to itself the power to revise the conditions of the nightclub license upon information received indicating that the existing conditions are not sufficient to mitigate the noise, traffic and public health and safety impacts associated with the nightclub business location. A revision proceeding shall be initiated by an investigative report by the chief of police, fire chief, building official or other city official.

In the event that such investigative report is filed, the license holder shall be sent a copy of the complaint and/or report and provided at least 10 days' notice of a hearing to determine whether the conditions of the license shall be modified. At a public hearing before the city council, the license holder shall have the opportunity to respond to the investigative report, and to present any evidence in opposition to a modification of conditions. The city council shall base any change in conditions on the license upon noise, traffic or other similar public health and safety impacts. In no event shall the expressive content of any music, singing or dancing be the basis for denial of a nightclub license or any conditions placed thereon. The decision of the city council, after a public hearing on the proposed change in conditions, shall be final. (Ord. 1544 § 1, 2008; Ord. 321 § 9, 1972).

5.22.100 Appeal to court.

Appeal of any final decision of the city under this chapter shall be to superior court. The city's decision shall be stayed upon appeal filed within 30 days of the city council decision appealed, pending judicial review. (Ord. 1544 § 1, 2008).

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

Bill No. 9
Date: May 4, 2010
Subject: Public Hearing – Off the Hook
Nightclub License

FROM: Rick Wallace, Chief of Police

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

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

PURPOSE:

This is an application for a Nightclub License pursuant to OHMC Chapter 5.22. The applicant is Claude Johnston. Since no disqualifying restrictions prevent the issuance of a nightclub license to the applicant, the City Council will hold a public hearing to determine what conditions should be imposed to mitigate noise, traffic and other similar public health and safety impacts on operation of Off The Hook.

AUTHORITY:

OHMC 5.22.045(4) states:

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

DESCRIPTION:

On March 19, 2010, Claude Johnston, owner of Off the Hook located at 880 SE Pioneer Way Oak Harbor, Washington, applied for a nightclub license. A temporary license was issued at the time of application as provided for in OHMC 5.22.040.

City of Oak Harbor City Council Agenda Bill

As required in OHMC 5.22.045(2), an investigation was conducted by the Oak Harbor Police Department. The business is located 880 SE Barrington Drive.

Off the Hook is a restaurant and lounge located in a two-story building at 880 SE Pioneer Way in Oak Harbor. The business area is comprised of two main areas. (1) The restaurant portion where meals are served to those of all ages and alcohol is served to those 21 years of age and over. (2) There is also a separate section of the building, closed to those under the age of 21, where there is seating for dining and alcohol service. Recorded and live music is played and there is an area for social dancing.

It should be noted that Off The Hook is a follow-on business to TOCG's whose Nightclub License was approved by Council action during the January 2010 Council Meeting. TOCG's ceased operation in March 2010. Since there is no current data for Off the Hook I have included the information provided for the Nightclub application for TOCG's as well as the calls for service from January 1, 2010 through March 2010.

From November 1, 2008 through October 31, 2009, there were thirty-two (32) calls for service at that address. Eight (8) of those calls have no significant bearing on this issue and should not be viewed as having a negative connotation towards the nightclub as these types of calls for police service could occur at any business or private residence. The twenty-four (24) remaining calls for service do pertain to the license conditions and are described as follows:

Assault Complaints	11
Closed by arrest	6
Settled by contact	4
Gone on arrival	1
Disorderly Conduct Complaints	3
Closed unfounded	1
Settled by contact	1
Gone on arrival	1
Noise Complaints	1
Unfounded	1
Strongarm Robbery	1
This case is still open	1
Suspicious Person	1
Gone on arrival	1
DUI Report	1
Gone on arrival	1

City of Oak Harbor City Council Agenda Bill

Liquor Violation Complaints	5
Closed by arrest	3
Gone on arrival	1
Assist agency	(ICSO) 1

Weapons Complaint (Airsoft Pellet Gun)	1
Closed by arrest	1

Additional Police Calls For Service (January through March 2010)

There were seven (7) total calls for police service during this time period. One (1) was not applicable to this type of review and the remaining six are described as follows:

- (1) Physical Assault – Settled by Contact – No assault – “Misunderstanding.”
- (1) Disorderly Conduct – Gone on Arrival.
- (2) Noise Complaints – Unfounded – Officer determined the noise was not excessive, it was during normal business hours, (Both between 5pm and 6pm).
- (1) DUI – Arrest, in front of business 2am.
- (1) Liquor Violation – Employee in business drinking alcohol - Referred.

In a review with the Director of Development Services and the Oak Harbor Fire Chief regarding this business, it was determined there were no issues about the building that were of concern as related to the issuance of the nightclub license.

PUBLIC SAFETY STANDING COMMITTEE RECOMMENDATIONS:

This agenda item was reviewed by the Public Safety Standing Committee on November 19, 2009 and again on April 15, 2010.

RECOMMENDED ACTION:

1. Hold a public hearing pursuant to OHMC 5.22.045(4).
2. Consider approval and issuance of the nightclub license to Off The Hook with the following conditions:

City of Oak Harbor City Council Agenda Bill

The nightclub license-holder shall:

1. Adhere to all laws, regulations, ordinances and zoning conditions of the State of Washington and the City of Oak Harbor applicable to the nightclub business located at 880 SE Pioneer Way, Oak Harbor, Washington.
2. With the exception of ingress to and egress from the building, ensure that doors and windows remain closed at all times while any type of music or entertainment is playing.
3. Ensure that there is no smoking within twenty-five feet of any door or window located at 880 SE Pioneer Way Oak Harbor, Washington, as described in RCW 70.160.075.
4. Provide two designated and visible security personnel, between 10:00 p.m. and 02:00 a.m. on Fridays and Saturdays, and implement security measures sufficient to reduce the potential for illegal activity, noise violations or any other public health and safety violation as described in the Oak Harbor Municipal Code, inside and outside the business to include the front sidewalk and the adjacent properties.
5. The license-holder shall implement and enforce a ban policy, that will ban patrons from the club, for a three month period, who:
 - a. Engage in activities in the business and/or parking lot which either result in arrest or would constitute probable cause for arrest.
 - b. Create noise violations in the business and parking lot.
 - c. Loiter in the parking lot for more than ten minutes.
 - d. The license-holder will provide the Oak Harbor Police Department with a copy of the list of banned patrons on a weekly basis.
 - e. The license-holder shall implement and enforce a policy which requires club employees to call the police, as soon as possible, when they witness potentially criminal activity in the business, in the parking lot, and adjacent to the club property.

Any violation of the above conditions shall subject the license-holder to the penalties of Oak Harbor Municipal Code 5.22.065 and may subject the license-holder to license revocation per Oak Harbor Municipal Code Section 5.22.070 or revision of license conditions pursuant to OHMC 5.22.090.

ATTACHMENTS:

1. Investigative Report.
2. Temporary License and License Application.
3. Oak Harbor Municipal Code Chapter 5.22.

MAYOR'S COMMENTS:

**OAK HARBOR POLICE DEPARTMENT
MEMORANDUM**

To: Paul Schmidt
City Administrator

From: R. Wallace
Chief of Police

Date: April 5, 2010

Subject: Investigative Report – Off The Hook Nightclub License

On March 19, 2010, Claude Johnston, owner of Off the Hook, located at 880 SE Pioneer Way Oak Harbor, Washington, applied for a nightclub license. A temporary license was issued at the time of application as provided for in OHMC 5.22.040.

As required in OHMC 5.22.045(2), an investigation was conducted by the Oak Harbor Police Department.

Off the Hook is a restaurant and lounge located in a single-story building at 880 SE Pioneer Way in Oak Harbor. The business area is comprised of two main areas. (1) The restaurant portion where meals are served to those of all ages and alcohol is served to those 21 years of age and over. (2) There is also a separate section of the building, closed to those under the age of 21, where there is seating for dining and alcohol service. Recorded and live music is played and there is an area for social dancing.

It should be noted that Off The Hook is a follow-on business to TOCG's whose Nightclub License was approved by Council action during the January 2010 Council Meeting. TOCG's ceased operation in March 2010. Since there is no current data for Off the Hook, I have included the information provided for the Nightclub application for TOCG's.

Investigative Report
Off the Hook Nightclub License
Page 2

From November 1, 2008 through October 31, 2009, there were thirty-two (32) calls for service at that address. Eight (8) of those calls have no significant bearing on this issue and should not be viewed as having a negative connotation towards the nightclub as these types of calls for police service could occur at any business or private residence. The twenty-four (24) remaining calls for service do pertain to the license conditions and are described as follows:

Assault Complaints - 11

Closed by arrest - 6

Settled by contact - 4

Gone on arrival - 1

Disorderly Conduct Complaints - 3

Closed Unfounded - 1

Settled by contact - 1

Gone on arrival - 1

Noise Complaints - 1

Unfounded - 1

Strongarm Robbery - 1 (This case is still open)

Suspicious Person - 1 (Gone on arrival)

DUI Report - 1 (Gone on arrival)

Liquor Violation Complaints - 5

Closed by arrest - 3

Gone on arrival - 1

Assist agency - 1 (ICSO)

Weapons Complaint(Airsoft pellet gun) - 1

Closed by arrest

Additional Police Calls For Service (January through March 2010)

There were seven (7) total calls for police service during this time period. One (1) was not applicable to this type of review and the remaining six are described as follows:

- (1) Physical Assault – Settled by Contact – No assault – Misunderstanding”**
- (1) Disorderly Conduct – Gone on Arrival**
- (2) Noise Complaints – Unfounded – Officer determined the noise was not excessive, it was during normal business hours. (Both between 5pm and 6pm).**
- (1) DUI – Arrest, in front of business 2am.**
- (1) Liquor Violation – Employee in business drinking alcohol - Referred.**

In a review with the Director of Development Services and the Oak Harbor Fire Chief regarding this business, it was determined there were no issues about the building that were of concern as related to the issuance of the nightclub license.

As a result of my investigation, I could find no disqualifying restrictions which would prevent the issuance of a Nightclub License to the applicant.



March 19, 2010

Claude Johnston
19 W. Troxell
Oak Harbor, WA 98277

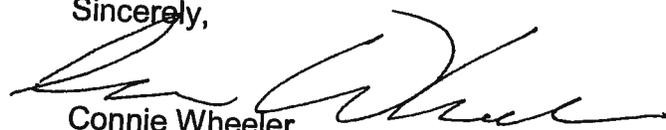
RE: Temporary Nightclub License
Location: Off the Hook
880 SE Pioneer Way
Oak Harbor, WA 98277

Dear Mr. Johnston:

In accordance with City of Oak Harbor Ordinance No. 1544, please find enclosed a temporary nightclub license for your nightclub license application submitted on March 16, 2010. This temporary nightclub license allows you to operate now and shall be in effect until the Oak Harbor City Council takes action on your pending application. Our Chief of Police, Rick Wallace, reviews nightclub applications and will let you (me, too) know when we have that Council date in place. We will notify you well in advance of that Council meeting date once it's set.

Please feel free to contact me or Chief Wallace if you have any questions regarding the status of your pending nightclub license application.

Sincerely,



Connie Wheeler
City Clerk

cc: Chief of Police Wallace
City Administrator Schmidt
D. Nichols

4B

CITY OF OAK HARBOR
865 S.E. BARRINGTON DR.
OAK HARBOR, WA 98277
(360) 679-5551

BUSINESS LICENSE

Off the Hook
880 SE Pioneer Way
Oak Harbor, WA 98277
LOCATION OF BUSINESS

THIS CERTIFIES that the business or individual listed below is hereby licensed
to do business within the **CITY OF OAK HARBOR**

Claude Johnston
19 W. Troxell
Oak Harbor, WA 98277

Temporary License

EXPIRATION DATE	
Upon final Council action on pending application.	
DATE ISSUED	LICENSE NUMBER
3-19-10	NC-0009 Nightclub
SIC NUMBER	SALES TAX CODE
	1503

Dayle A. Maximus
FINANCE DIRECTOR

This license is to be displayed conspicuously at the location of business, and is not transferable or assignable.

467



City of Oak Harbor
865 SE Barrington Drive
Oak Harbor, WA 98277
Phone: (360)279-4500
Fax: (360)279-4507

Application for Nightclub License Oak Harbor Municipal Code Chapter 5.22

Ordinance No.: 1544

Application Fee: \$200 plus \$10 for WATCH background check = \$210

Personal Information

Name of Business:

OFF THE HOOK

Address of Business:

Where nightclub will be conducted.

880 SE PIONEER Way
oak HARBOR Wa 98277

Owner of Business:

CLAUDE JOHNSTON

Owner's Address:

19 W TROXELL
oak HARBOR Wa 98277

Owner's Phone/Cell Number:

Home 360 679-4501 CELL 360 632 8379

Date of Birth:

[REDACTED]

Social Security No.:

[REDACTED]

Driver's License No.:

[REDACTED]

Please answer the following questions:

1. Are you a citizen of the United States of America? Yes
2. Have you been convicted of a felony within the last five years? NO
3. Have you been convicted of a violation of any federal or state law or city ordinance concerning the manufacture, possession, or sale of liquor subsequent to the passage of the Washington State Liquor Act? NO
4. Have you ever been convicted of a violation of any federal or state law, or city ordinance concerning the manufacture, possession, or sale of narcotics? NO
5. Have you ever forfeited a bond to appear in court to answer charges of any violations as stated above? NO
6. Are you the owner Yes manager _____ or agent _____ of this business?

NOTE: Per OHMC Chapter 5.22.030 (2):
No license shall be issued to a person whose place of business is conducted by a manager or agent, unless such manager or agent also applies and qualifies for a nightclub license for the same business location.

7. Are you a co-partner of this business?

NO

NOTE: Per OHMC Chapter 5.22.030 (3):

No license shall be issued to a co-partnership unless all the members thereof shall be qualified to obtain a license as provided herein.

8. Is this business a corporation?

YES

NOTE: Per OHMC Chapter 5.22.030 (4):

No license shall be issued to a corporation, unless all of the officers, directors and stockholders thereof shall be qualified to obtain a license as provided in this chapter. Such license shall be issued to the manager or other directing head thereof.

9. If this is a partnership or corporation, please include names, addresses, and phone numbers of same. If more space is needed, please attach an additional sheet.

Marta Johnston - 1722 Bridock Ln Oak Harbor wa 98277
360 679 5076

10. Indicate the type of musical entertainment you will provide.

Bands

11. Describe the hours of operation, expected attendance figures, and activities that will take place on the premises. If more space is needed, please attach an additional sheet.

Open Seven days a week, music will be primarily
on Friday and Saturdays, Hopfully 100 people will be
attending

12. Describe the floor plan, parking areas, fire exits, and other physical features of the nightclub. If more space is needed, please attach an additional sheet.

We have the front entrance, a rear entrance, exit and
a side door in the kitchen. There is parking on the front
street and parking in the rear of building

I do solemnly swear that I have read the City of Oak Harbor's Ordinance No. 1544 regulating nightclub licensing and that I will abide by the rules set forth therein and I furthermore swear that the facts I have stated in this application are true.

Clara Johnston
Signature

3/14/2010
Date

Upon application, you will immediately be issued a temporary license. OHMC 5.22.040. After investigation by City officials, you will be notified of their report and the date upon which the City Council will conduct a hearing for issuance of a regular license. OHMC 5.22.045 sets forth these procedures.

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Background Check Information

DRIVER'S CHECK – Run each state listed on the application and enter state name below.				
STATE <u>NA</u>	STATE _____	STATE _____	STATE _____	STATE _____
VEHICLE REGISTRATION/CHECK STOLEN				
WATCH <input checked="" type="checkbox"/>	WACIC/NCIC <input checked="" type="checkbox"/>	LOCAL RECORDS <input checked="" type="checkbox"/>		
POLICE DEPT. APPROVAL <u>[Signature]</u>				DATE <u>3/31/10</u>

Received by City Clerk and forwarded to Chief of Police, Oak Harbor Police Department
on: 3/16/10 Date _____
[Signature] City Clerk's Signature

Oak Harbor Police Department

Date Received: _____
Attach investigation report and recommendations and any reports requested of other City departments.

City Council Action

Date: _____

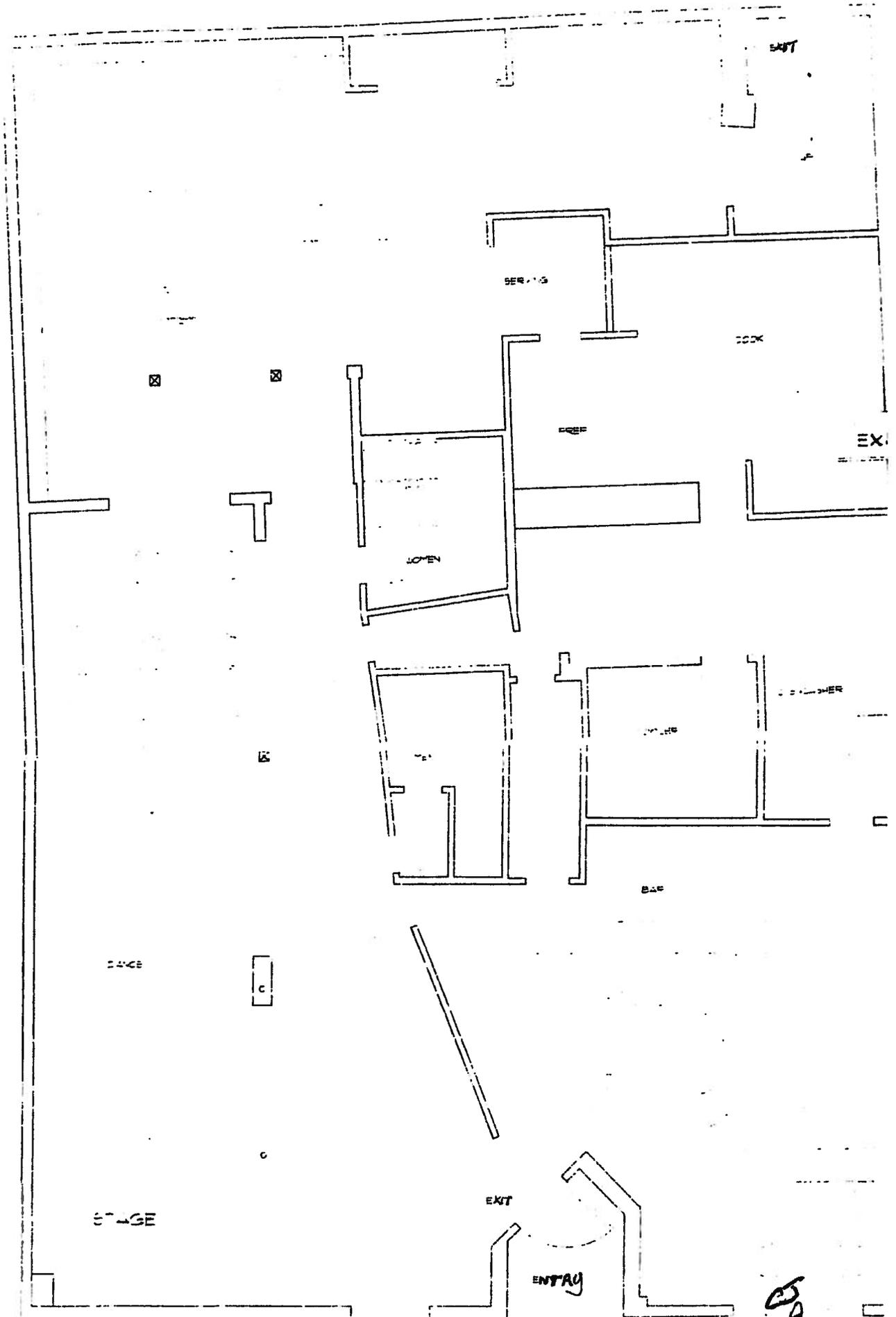
Decision/Findings (show below or attach report):

License Conditions:

Review Date (if any scheduled):

47

[Outline of the Premises]



48

6

**Chapter 5.22
NIGHTCLUBS**

Sections:

- 5.22.010 Definitions.**
- 5.22.020 License required.**
- 5.22.030 Issuance restrictions.**
- 5.22.040 Filing of application.**
- 5.22.045 License conditions.**
- 5.22.050 Annual license fee.**
- 5.22.060 Proration of license fee.**
- 5.22.065 Violation of license conditions.**
- 5.22.070 Revocation of license.**
- 5.22.080 License – Compliance required.**
- 5.22.090 Revision of license conditions.**
- 5.22.100 Appeal to court.**

5.22.010 Definitions.

- (1) "Nightclub" means any "premises" as defined herein on which any music, singing, dancing or other combination of these activities is permitted as entertainment after 10:00 p.m., on one or more days per week. The playing of incidental music on any premises where the receipts for the sale of food constitute 75 percent or more of the gross business income of the establishment shall not be considered a "nightclub" for purposes of this chapter, unless an opportunity for social dancing is provided on the premises.
- (2) "Premises" means any room, place, or space whatsoever in the city of Oak Harbor which is open to the general public in connection with any hotel, restaurant, cafe, club, tavern or eating place directly or indirectly selling, serving, or providing the public liquor, with or without food.
- (3) "Liquor" means all beverages defined in RCW 66.04.200.
- (4) "Person" means one or more natural persons of either sex, firms, copartnerships and corporations; whether acting by themselves or by servant, agent or employee.

The provisions of this chapter shall not apply to temporary activities conducted pursuant to a city special event permit issued pursuant to Chapter 5.50 OHMC and lasting no longer than 48 hours. (Ord. 1544 § 1, 2008; Ord. 321 § 1, 1972).

5.22.020 License required.

It is declared to be unlawful for any person to conduct, manage or operate a nightclub unless such person is the holder of a valid license from the city of Oak Harbor so to do, obtained in the manner provided in this chapter. A first violation of the requirement to obtain a license shall be a civil infraction filed pursuant to Chapter 1.28 OHMC, punishable by a fine of \$250.00. A second violation shall be a civil infraction punishable by a fine of \$500.00. A first or second violation of the requirement to obtain a license shall be a civil offense subject to the procedures of Chapter 1.28 OHMC. Thereafter, further violation of the requirement to obtain a license of this chapter shall be a misdemeanor punishable by a fine not exceeding \$1,000, up to 90 days in jail, or both such fine and jail time. (Ord. 1544 § 1, 2008; Ord. 321 § 2, 1972).

5.22.030 Issuance restrictions.

No license shall be issued to:

- (1) A person who has not resided in the state of Washington for at least one month prior to making application.
- (2) A person whose place of business is conducted by a manager or agent, unless such manager or agent also applies and qualifies for a nightclub license for the same business location.
- (3) A copartnership, unless all the members thereof shall be qualified to obtain a license as provided herein.
- (4) A corporation, unless all of the officers, directors and stockholders thereof shall be qualified to obtain a license as provided in this chapter. Such license shall be issued to the manager or other directing head thereof. (Ord. 1544 § 1, 2008; Ord. 588 § 1, 1981; Ord. 321 § 3, 1972).

5.22.040 Filing of application.

Application for a nightclub license shall be made to the city clerk, together with a receipt from the city finance director or designee for the amount of the license in full. The license application shall include personal identification information requested by the city including date of birth and Social Security number. The application shall also specify the business location upon which the nightclub will be conducted. The application fee includes the fee to cover the cost of a WATCH criminal background check, as provided in OHMC 3.64.100. Upon filing of the application and fees, the applicant(s) shall be issued a temporary license which shall expire upon the city council determination set forth in OHMC 5.22.045, unless stayed by filing of a judicial appeal within 30 days of the city council decision appealed. (Ord. 1544 § 1, 2008; Ord. 321 § 4, 1972).

5.22.045 License conditions.

- (1) Upon receipt of an application for a nightclub license, the city clerk shall transmit the application to the chief of police, who shall immediately conduct a WATCH criminal background check of the applicant(s).
- (2) The chief of police shall also investigate the business location to determine whether there are any features of the establishment which pose noise, traffic or other similar public health or safety concerns for the operation of a nightclub. The chief of police may request the assistance of other city departments, including the fire department and/or the building official, in assessing the impacts of the proposed business location if used as a nightclub.
- (3) The chief of police shall report to the city council the result of his investigation and make recommendations concerning any conditions that should be placed upon the nightclub license to reduce noise, traffic or other similar public health and safety impacts. Allowable conditions may include, but are not limited to, restrictions upon the hours of operation, structural improvements to the premises to reduce noise impacts on neighboring uses, limitations on the numbers of patrons at any one time, landscaping or other screening, and requirements for traffic control. Periodic review of the efficacy of the imposed conditions may also be a condition of the nightclub license.
- (4) The city council shall hold a public hearing with respect to the issuance of the nightclub license. The applicant(s) shall be entitled to respond to any findings of the police chief or other city officials and any proposed conditions on the nightclub license. Unless the applicant is restricted from holding a nightclub license pursuant to OHMC 5.22.030, the city council shall then determine whether the noise, traffic and other similar public health and safety impacts of the

nightclub require mitigation through specified conditions and, if so, shall impose such conditions on the license. In no event shall the expressive content of any music, singing or dancing be the basis for denial of a nightclub license or any conditions placed thereon.

- (5) The decision of the city council shall be the final decision of the city. (Ord. 1544 § 1, 2008).

5.22.050 Annual license fee.

Any person desiring to operate a nightclub shall first procure a nightclub license. The annual fee for a nightclub license shall be \$200.00 plus \$10.00 for an annual WATCH criminal background check. (Ord. 1544 § 1, 2008; Ord. 321 § 5, 1972).

5.22.060 Proration of license fee.

There shall be no prorating of the fee mentioned in OHMC 5.22.050, and such license fee shall expire on December 31st of each year; except that in the event that the original application be made subsequent to June 30th, then one-half of the annual license fee may be accepted for the remainder of the year. The license shall not be assignable. (Ord. 1544 § 1, 2008; Ord. 321 § 6, 1972).

5.22.065 Violation of license conditions.

A license holder who violates any license condition of his/her nightclub license shall be subject to civil penalties as follows:

- (1) First violation of a license condition: \$500.00 fine per violation;
- (2) Second violation of same license condition: \$750.00 fine per violation;
- (3) Third violation of same license condition: \$1,000 fine per violation.

First, second and third violations of license conditions shall constitute civil offenses and shall be governed by the procedures of Chapter 1.28 OHMC.

The fourth or greater violation of the same license provision shall constitute a misdemeanor punishable by a fine not exceeding \$1,000, up to 90 days in jail, or both such fine and jail time. (Ord. 1544 § 1, 2008).

5.22.070 Revocation of license.

The city council reserves unto itself the power to revoke any license issued under the provisions of this chapter at any time upon a finding that:

- (1) The license was procured by fraud or false representation of fact; or
- (2) The applicant is barred from holding a nightclub license due to violation of any of the restrictions of OHMC 5.22.030; or
- (3) The conditions imposed upon the license pursuant to OHMC 5.22.045 were knowingly and willfully violated by the person holding such license or at his/her direction; or
- (4) A crime or offense involving moral turpitude is committed on the premises in which the nightclub is conducted with knowledge of the licensee.

Before revoking any such license, the city council shall, upon at least 10 days' notice to the licensee, hold a public hearing concerning such revocation, at which time the licensee shall be entitled to be heard and introduce the testimony of witnesses. Members of the public may also be permitted to testify at such public hearing. The action of the city council after such hearing, relative to such revocation, shall be final. (Ord. 1544 § 1, 2008; Ord. 996 § 1, 1995; Ord. 321 § 7, 1972).

5.22.080 License – Compliance required.

In addition to the conditions imposed pursuant to OHMC 5.22.045, all nightclub licensees shall comply

with the rules or regulations of the Washington State Liquor Control Board relating to the sale of intoxicating liquor. A finding of violation by the Washington State Liquor Control Board shall also constitute a violation of license conditions pursuant to OHMC 5.22.065. (Ord. 1544 § 1, 2008; Ord. 321 § 8, 1972).

5.22.090 Revision of license conditions.

The city council also reserves to itself the power to revise the conditions of the nightclub license upon information received indicating that the existing conditions are not sufficient to mitigate the noise, traffic and public health and safety impacts associated with the nightclub business location. A revision proceeding shall be initiated by an investigative report by the chief of police, fire chief, building official or other city official.

In the event that such investigative report is filed, the license holder shall be sent a copy of the complaint and/or report and provided at least 10 days' notice of a hearing to determine whether the conditions of the license shall be modified. At a public hearing before the city council, the license holder shall have the opportunity to respond to the investigative report, and to present any evidence in opposition to a modification of conditions. The city council shall base any change in conditions on the license upon noise, traffic or other similar public health and safety impacts. In no event shall the expressive content of any music, singing or dancing be the basis for denial of a nightclub license or any conditions placed thereon. The decision of the city council, after a public hearing on the proposed change in conditions, shall be final. (Ord. 1544 § 1, 2008; Ord. 321 § 9, 1972).

5.22.100 Appeal to court.

Appeal of any final decision of the city under this chapter shall be to superior court. The city's decision shall be stayed upon appeal filed within 30 days of the city council decision appealed, pending judicial review. (Ord. 1544 § 1, 2008).

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

Agenda Bill No. 10
Date: May 4 2010
Subject: Interim Adult Entertainment
Facilities Overlay Zone Ordinance --
Public Hearing

FROM: Steve Powers, Development Services Director *SP*

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

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

PURPOSE

Two separate actions are proposed in this agenda bill. The first is the adoption of a resolution which states the City's public hearing requirement on the interim ordinance has been satisfied. The second is the adoption of a revised interim ordinance. This agenda bill requests that the City Council conduct a public hearing on Ordinance 1572, the Interim Adult Entertainment Facilities Overlay Zone Ordinance adopted in March 23, 2010, approved on an emergency basis on March 23, 2010 and requires that a public hearing be held within sixty (60) days of adoption. This agenda bill also presents amendments to the interim ordinance for the Council's consideration.

AUTHORITY

RCW 36.70A.390 allows cities to adopt interim zoning ordinances without first conducting a public hearing so long as a hearing is conducted on the interim ordinance within sixty (60) days of adoption.

BACKGROUND:

City Council Action

On March 23, 2010 the City Council adopted an interim ordinance on an emergency basis regulating the location of adult entertainment facilities. Prior to that action, the Oak Harbor Municipal Code (OHMC) did not address land uses of this nature.

The adopted interim ordinance made the following changes to the OHMC:

1. It adopts a temporary zoning ordinance which permits adult entertainment establishments to be located in an "Adult entertainment facilities overlay zone" within the C-3, Industrial and Planned Industrial Park zones. This overlay zone was drawn to create a buffer around incompatible uses.
2. The overlay draws a 750 ft. buffer around religious institutions, parks and schools.

3. It also draws a 100 ft. buffer between the overlay and residentially zoned neighborhoods.
4. It amended OHMC 18.20.250 to include a process for requesting an extension of time for non-conforming adult entertainment facilities.

The agenda bill and minutes from the March 23rd meeting are attached to this agenda bill as Attachment 1.

Interim Ordinance

As was noted above, the interim ordinance was adopted pursuant to RCW 36.70A.390, which states in part:

A county or city governing body that adopts a moratorium, interim zoning map, interim zoning ordinance, or interim official control without holding a public hearing on the proposed moratorium, interim zoning map, interim zoning ordinance, or interim official control, shall hold a public hearing on the adopted moratorium, interim zoning map, interim zoning ordinance, or interim official control within at least sixty days of its adoption, whether or not the governing body received a recommendation on the matter from the planning commission or department. If the governing body does not adopt findings of fact justifying its action before this hearing, then the governing body shall do so immediately after this public hearing. A moratorium, interim zoning map, interim zoning ordinance, or interim official control adopted under this section may be effective for not longer than six months, but may be effective for up to one year if a work plan is developed for related studies providing for such a longer period. A moratorium, interim zoning map, interim zoning ordinance, or interim official control may be renewed for one or more six-month periods if a subsequent public hearing is held and findings of fact are made prior to each renewal.

This procedure allows the City to utilize a temporary zoning ordinance to take additional time to study and hone its zoning regulations, to create a public participation process and to permit the establishment of adult entertainment facilities, at the same time as restricting patently inappropriate locations in the immediate future.

RCW 36.70A.390 sets out very specific steps the City must follow in adopting an interim ordinance. After adopting an interim ordinance, the City is required to meet the following procedural requirements:

1. A city governing body that adopts an interim zoning ordinance without holding a public hearing on the proposed ordinance shall hold a public hearing on the interim zoning ordinance within at least sixty days of its adoption.

The public hearing is scheduled for May 4, 2010 which is within sixty (60) days of the adoption date of March 23, 2010.

2. The city's governing body shall conduct the public hearing whether or not they have received a recommendation on the matter from the planning commission.

The hearing is scheduled for May 4th prior to receipt of the Planning Commission's recommendation. The proposed resolution includes direction to staff to forward the ordinance to the Planning Commission for their review and recommendation.

3. If the governing body does not adopt findings of fact justifying its action before this hearing, then the governing body shall do so immediately after this public hearing. Findings of fact were adopted with the interim ordinance. Revised findings of fact are proposed to support the proposed amendments to the revised interim ordinance.
4. An interim zoning ordinance adopted under this section may be effective for not longer than six months, but may be effective for up to one year if a work plan is developed for related studies providing for such a longer period. Staff is developing a work plan outlining the work to be completed during the balance of the initial six month period. It is not known at this time if the interim ordinance will need to be extended beyond the six month timeframe.

Proposed Amendments to Interim Ordinance

During the March 23rd meeting, there was both citizen and City Council concern with two aspects of the interim ordinance: the adequacy of the 100-foot buffer from residentially zoned properties and the inclusion of C-3 zoned properties located on SR-20 as part of the available sites inventory. Generally speaking the concern with the 100-foot buffer was that it did not match the 750-foot buffer around other sensitive uses (churches, schools and parks) and that it was insufficient to protect neighborhoods. The concern with the C-3 zoned properties along SR-20 was that they were somewhat near informal community gathering places (such as a grocery store) and that the highway locations were inconsistent with the scenic byway designation of SR-20.

In response to these comments and concerns, staff proposes the interim ordinance be amended by increasing the buffer from residentially zoned properties to 750-feet. The increased distance provides the same level of protection to all of the identified sensitive (or incompatible) uses: churches, schools, parks and residentially zoned properties.

A byproduct of increasing the buffer is that the C-3 zoned properties previously included in the available sites inventory are now eliminated. This step would leave only the Industrial and Planned Industrial Park sites located along NE Goldie Street in the overlay zone. It is important to note that while it is intended that this number of sites is sufficient for the purposes of an interim ordinance, it may not be sufficient for the final ordinance.

STANDING COMMITTEE REVIEW:

The regulation of adult entertainment was discussed at the Public Safety Standing Committee on February 18th and at the Governmental Services Standing Committee on March 9th. The proposed amendments to the interim ordinance were discussed with the Governmental Services Standing Committee on April 13th.

RECOMMENDED ACTION:

- Conduct public hearing on interim ordinance and on amendments to the interim ordinance.
- Adopt resolution affirming the City of Oak Harbor's compliance with the public hearing requirements of RCW 36.70A.390 and referring the interim ordinance to the Planning Commission for review and recommendation.
- Adopt amended Interim Adult Entertainment Facilities Overlay Zone ordinance.

ATTACHMENTS:

1. Agenda bill and (w/o attachments) from March 23, 2010 meeting and minutes
2. Interim Adult Entertainment Facilities Overlay Zone (Ordinance 1572)
3. Resolution
4. Revised Interim Adult Entertainment Facilities Overlay Zone ordinance
5. Revised Adult Entertainment Facilities Overlay Zone map

MAYOR'S COMMENTS:

City of Oak Harbor
City Council Agenda Bill

Agenda Bill No. 9
Date: March 23, 2010
Subject: Interim Adult Entertainment
Facilities Overlay Zone Ordinance --
Emergency Ordinance

FROM: Steve Powers, Development Services Director *rsp*

INITIALED AS APPROVED FOR
SUBMITTAL TO THE COUNCIL BY:

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

SUMMARY STATEMENT: This ordinance is an interim measure to be adopted on an emergency basis to address the appropriate location for a use not currently addressed in the Oak Harbor Municipal Code. Adult entertainment is a form of expression protected by the First Amendment to the U.S. Constitution. However, there are well-studied negative secondary effects associated with this use in the form of impacts on crime, neighborhoods and property values. Local governments are authorized to impose zoning regulations to address the associated negative secondary effects, as long as there remain sufficient "alternative avenues of communication" available for the use after the imposition of the regulations.

The proposed interim ordinance makes the following changes to the OHMC:

1. It adopts a zoning ordinance which permits adult entertainment establishments to be located in an "Adult entertainment facilities overlay zone" within the C-3, Industrial and Planned Industrial Park zones. This overlay zone was drawn to create a buffer around incompatible uses.
2. The overlay draws a 750 ft. buffer around religious institutions, parks and schools.
3. It also draws a 100 ft. buffer between the overlay and residentially zoned neighborhoods.
4. It amends OHMC 18.20.250 to include extensions of time for non-conforming adult entertainment facilities.

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The buffers are intended to mitigate the negative secondary effects of adult entertainment facilities upon sensitive uses such as schools, churches and parks and on residential neighborhoods and property values, while still retaining sufficient parcels for adult entertainment uses to be located within the City.

Emergency ordinance: The proposal is that the City Council adopt this interim ordinance on an emergency basis to address adult entertainment uses that may seek to locate within the city limits in the near future. The City staff has received several inquiries about City regulations on the subject in recent months and notes that the absence of regulations creates an imminent risk that an inappropriate location could be chosen for an adult entertainment facility. Since there are no regulations specifically addressing this use in the Oak Harbor Municipal Code (OHMC), it is necessary to ensure that potential applicants are directed to the overlay zone rather than locating next to a church, school, park or residential zone.

Adopting the interim ordinance on an emergency basis allows the City to take additional time to study and hone its zoning regulations, to create a public participation process and to permit the establishment of adult entertainment facilities, at the same time as restricting patently inappropriate locations in the immediate future.

There are several requirements of the emergency ordinance:

1. It must be passed by a majority plus one of the whole membership of the council.
2. The council must make a finding that the ordinance is necessary for the protection of public health, public safety, public property or the public peace.
3. There must be a public hearing on the ordinance within 60 days of adoption. Staff recommends the hearing be set for May 4, 2010.

The interim ordinance may remain in effect for six months, subject to an extension of up to a year, so that the Planning Commission may make its recommendation, public participation may be encouraged and so that any further studies deemed necessary be undertaken. During the period of the interim ordinance, the City will also undertake its obligations to perform a SEPA review and to provide 60 days' prior notification of the new zoning provision to the Department of Commerce.

Policy considerations: If the City Council determines to regulate this use, it must do so in light of well-settled U.S. Supreme Court decisions on the subject. Because of First Amendment considerations, the use is protected within established limitations. The City Council may regulate the use for negative secondary impacts. Many other jurisdictions have studied the use and determined that there are negative impacts upon schools, churches, parks, neighborhoods and

property values, in addition to associated criminal activity, as a result of the activities and location of adult entertainment uses.

The proposed ordinance lays out a zoning framework for addressing the negative secondary impacts of adult entertainment uses. It is intended to address those uses seeking to locate in the City until a final ordinance can be adopted. It is recommended that the City Council adopt this as an interim measure and direct that further study, public participation and Planning Commission recommendation go forward to be included in the ultimate decision on a final ordinance.

Budget considerations: This interim ordinance is not anticipated to have any budget impacts.

STANDING COMMITTEE REVIEW: Regulation of adult entertainment was discussed at the Public Safety Standing Committee on February 18th and at the Government Services Standing Committee on March 9th.

RECOMMENDED ACTION:

1. Consider the record.
2. Allow public comment.
3. Adopt the Interim Adult Entertainment Facilities Overlay Zone Ordinance.

ATTACHMENTS:

•Proposed interim ordinance establishing zoning locations for adult entertainment facilities which include the following:

1. Findings that an emergency exists requiring the immediate effectiveness of the interim ordinance for the protection of public health, safety and peace;
2. Findings of Fact substantiating the need to establish the zones in which adult entertainment facilities may locate;
3. A new chapter of the zoning code entitled "Adult Entertainment Facilities Overlay Zone";
4. Amendment of OHMC 18.20.250 to include extensions of time for non-conforming adult entertainment facilities;
5. A public hearing date on the interim ordinance for May 4, 2010.

•Legal Memorandum for the Record – Zoning

MAYOR'S COMMENTS:

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MOTION: Councilmember Paggao moved to recind the vote on Consent Agenda Items E and G. The motion was seconded by Councilmember Dudley.

Discussion followed about the lengthy process to bring these proposed vessel sales before Council, that there has been no communication on behalf of these boats except a partial payment with a check that had insufficient funds and has since gone to collection, and that ownership is unknown for the other boat.

VOTE ON THE

MOTION: Councilmembers Paggao and Dudley voted in favor of the motion. Councilmembers Almberg, Palmer, Munns, and Severns opposed. The motion did not carry.

Consent Agenda Item B, Noise Permit – Whidbey Island Tea Party

MOTION: Councilmember Palmer moved to approve the noise permit for the Whidbey Island Tea Party. The motion was seconded by Councilmember Munns and carried unanimously.

Public Hearing – Proposed Ordinance banning Public Nudity

Public Hearing – Proposed Ordinance for Adult Entertainment Licensing and Regulation

City Attorney Hite explained that the two proposed ordinances for public hearing both have to do with nude expression and were combined for comments so the public does not have to comment twice. Comments will be included on both. Ms. Hite talked about the effective dates for each of these ordinances as well as the third ordinance which is not set for public hearing but will be open to public comment.

1. Ordinance banning Public Nudity: This Ordinance shall be in full force and effect five days after publication.
2. Ordinance for Adult Entertainment Licensing and Regulation: Having found that an emergency exists, OHMC 5.20.020 of this ordinance shall be in full force and effect immediately. The remaining sections of this ordinance shall be in full force and effect five days after publication.
3. Interim Ordinance – Adult Entertainment Facilities Overlay Zone: Having found that adoption of this Ordinance as an emergency is necessary for the protection of the public welfare, public safety and the public peace, this interim ordinance shall be in full force and effect immediately.

Ms. Hite also explained that this last ordinance must be adopted by a majority plus one of the whole membership of the Council and there must be a public hearing on the interim ordinance within 60 days of adoption. The hearing would be set for May 4, 2010. The interim ordinance must also come before the Planning Commission, undergo SEPA review and review by the Department of Commerce. It may remain in effect for six months subject to an extension of up to a year to allow for this review process.

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Prosecuting Attorney / Law and Justice Coordinator Bill Hawkins gave the presentation for the proposed ordinance banning public nudity and the proposed ordinance for adult entertainment licensing and regulation. Mr. Hawkins began his presentation by noting that Oak Harbor will be celebrating its centennial in five years and has done without this type of adult entertainment establishment through all of these years. This has changed within the last couple of months and we have been asked to address legal principles. This is a heavily regulated area. Why can't we ban it? The answer is that you cannot ban it legally but you can regulate it extensively. Total bans on nude dancing have been invalidated. Municipalities may regulate protected expression. We do not start from scratch; we are allowed by law to consider the collective weight of studies and communities from Washington and around the country. Council must find that regulations are specific to address the impact of an establishment and curb the harmful secondary effects without limiting expressive conduct. Negative secondary effects: Those that are found inside the establishment (prostitution, involvement of minors, alcohol and drugs, licensing violations) and then outside of the establishment through impact on neighborhoods, the business community, lifestyles, property values, churches, schools, parks, increased criminal activity, increased traffic problems, and increased need for police protection and response. Mr. Hawkins gave examples of other communities and the problems experienced with adult entertainment establishments and cited Palm Beach, FL as a helpful example for Oak Harbor's proposed ordinance language.

Proposed Ordinance Banning Public Nudity

The proposed ordinance would ban public nudity, with appropriate exemptions for any child under age ten (10) years of age, breastfeeding, nudity within a locker room or other similar facility used for changing clothing in connection with athletic or exercise activities, nudity within a hospital or other medical facility for health-related purposes, and for a licensed entertainer performing in an adult entertainment establishment upon a stage at least eighteen (18) inches above the immediate floor level and removed at least ten (10) feet from the nearest patron. For many years, public lewdness, obscenity and nudity have been regulated by Washington state statutes regarding moral nuisance, public nuisance, and indecent exposure. Until recently, these laws supported enforcement measures satisfactorily. However, in recent months, several Washington jurisdictions have experienced shortcomings with existing laws as applied to "bikini baristas" and similar forms of activity. Some jurisdictions have found it necessary and advisable to adopt local ordinances banning public nudity. Public nudity itself is conduct subject to regulation. *Erie v. PAP's AM*, 529 U.S. 277 (2000); *O'Day v. King County*, 109 Wn.2d 796 (1988); *Ino Ino, Inc., v. Bellevue*, 132 Wn.2d 103 (1997). A ban on public nudity is a content-neutral restriction that regulates conduct, not expression. *Id.* Oak Harbor has historically banned public nudity under existing laws. An ordinance specifically and expressly banning public nudity is not intended to prohibit conduct not already prohibited under existing laws or to be a stricter standard, but merely to facilitate enforcement.

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Proposed Ordinance – Adult Entertainment Licensing and Regulation

The purpose of this ordinance is to address the appropriate licensing and regulation of the conduct and operation of a use not currently addressed in the Oak Harbor Municipal Code. Adult entertainment is a form of expression protected by the First Amendment to the U.S. Constitution and Article I, Section 5, of the Washington State Constitution. However, there are well documented negative secondary effects associated with adult entertainment in the form of impacts on crime, neighborhoods, property values and increased cost of municipal services. Local governments are authorized to impose licensing and conduct and operation regulations to address the associated negative secondary effects, as long as there remain sufficient "alternative avenues of communication" available for use after the imposition of the regulations. The proposed ordinance makes the following changes to the Oak Harbor Municipal Code:

- (1) It authorizes the City to investigate and in appropriate cases issue licenses to owners and operators of adult entertainment establishments, the managers of the establishments and the entertainers.
- (2) The ordinance imposes standards of conduct and operation and regulates adult entertainment concerning attire, minimum distance between entertainers and patrons, prohibits sexual contact between entertainers and patrons, prohibits direct tipping of entertainers and, imposes standards on the interior layout of adult entertainment establishments, imposes an age minimum for employees, entertainers and patrons, and prohibits the sale of alcoholic beverages in adult entertainment establishments.

The ten (10) foot separation is intended to mitigate the negative secondary effects of adult entertainment including prostitution and other illegal activity that has contributed to the profitability of adult entertainment and table dancing and lap dancing. The standards of conduct and operation are intended to mitigate the negative secondary effects of adult entertainment facilities, by addressing significant criminal activity that has historically and regularly occurred in adult entertainment establishments while still permitting the expressive aspect of stage dancing. The criminal activity associated with adult entertainment includes prostitution, narcotics transactions, breaches of the peace, and organized crime. If the City Council determines to regulate this use, it must do so in light of well settled decisions of the U.S. Supreme Court, other federal courts and the Washington appellate courts on the subject. Because of First Amendment considerations, the use is protected within established limitations. The City Council may regulate the use for negative secondary impacts. Many other jurisdictions have studied adult entertainment and determined that there are negative impacts upon neighborhoods, property values and increased municipal services associated with adult entertainment establishments, in addition to associated criminal activity. The City Council may rely on the experiences of other jurisdictions and on findings in appellate court decisions in determining the existence of negative secondary impacts. The proposed ordinance regulates and licenses adult entertainment establishments as a way of minimizing the negative secondary impacts of adult entertainment establishments.

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

Michelle O'Kelley, 1753 SE 4th. I am the person in the paper. I think that what City staff and City Council are doing is great. I believe in First Amendment rights. I believe that efforts can succeed. My opposition is to the zoning ordinance and I would like to talk about a modification to the public nudity and licensing ordinances: the 10 foot rule between patrons and the stage. I am asking for a physical barrier of no less than 4 feet to allow less distance between stage and patrons. I am hoping for the best, leniency, and sympathy for small business owners. I want to be at the top of the ladder of success.

Rev. Tim Geist, 1076 Landing Circle. Rev. Geist spoke in opposition to adult entertainment and his complete statement is attached to these minutes as Exhibit A.

Carolyn Pivarnik, 745 SE 8th Avenue. I am concerned with secondary effects. Dancers make their living dancing close. It puts them in a position of not making a living or breaking the law. Lap dances are the most lucrative source of tips. Ms. Pivarnik talked about an attorney's statement which was meant to elicit sympathy for the dancers which defined dancers as independent contractors. Ms. Pivarnik talked about the arrest of two dancers for prostitution which included a 16 year old. Rules can be posted, but those rules will not last long in order for dancers to make a living. Crime elements will take a foothold. The common denominator for sex trafficking of women in the U.S. is adult entertainment establishments including strip clubs.

Mel Vance, P.O. Box 2882. Mr. Vance felt that the public nudity ordinance should be sent back to committee and not passed this evening. The ordinance for adult entertainment licensing and regulation should also sent back to committee and a moratorium should be put in place while the City works on these proposals. There are exemptions that are very specific and do not include everything that we should be exempting. The ordinances do not include massage businesses, tattoo and piercing parlors, both of which can involve nudity. I found at least 30 separate language revisions that need to be made in the adult entertainment ordinance which include a broader range than strip clubs such as adult videos. This has been rushed through. It is legal to impost a temporary moratorium. These ordinances are not ready and need more work. Impose a moratorium.

Jim Kiesel, 1372 Orchard Loop. Mr. Kiesel thanked Council for their service to our City. We are approving adult entertainment in our community. Mr. Kiesel then talked about this evening's invocation. You have a hard decision to make and I encourage you to do what is right. We have a supreme God above the Supreme Court. I am sure there is an appetite for this type of entertainment and that there is money to be made. Pornography is a drug.

Kali Waldron, 1678 Zylstra Road. I want to see the next generation make a difference and these establishments will bring about the destruction of youth. This can ruin their lives.

Michele Sladko, 1199 SE 9th. I am against this. Do the ban on nudity. As far as adult entertainment, I am concerned with the effect on the community. I am awakened by the bars on Pioneer Way right now. If these businesses come in, it will adversely affect the area. I will not feel safe.

Brian Jones, 959 SW 3rd Avenue. As a father of two young ladies, I cringe at the thought of having this in our community. I have lived in larger areas, and chose to come back to Oak Harbor because these establishments don't exist here. If you can't ban it, I ask that you make it hard for a business like this to operate in our City.

Juan Palm, 2090 Crosswoods. As a former Minnesota resident, I know that these types of businesses look for areas that are ill-equipped to monitor them. Do not think that our long history without adult entertainment establishments will prevent this. I commend Mr. Hawkins and Council and ask that regulations be quickly put in place.

Nicole Brown, 1313 NW Falls Creek. I was a dancer for 4 years. This is difficult lifestyle and I moved back to Whidbey Island to get away from this lifestyle. Oak Harbor already has enough problems with drugs and violence.

Michael Harris, 590 Birch Street. I was in the Navy and was stationed in Oak Harbor after 20 years in the Navy. I love this town for its lifestyle. I was stationed in San Diego for the first 17 years and adult entertainment could be viewed there. As a Christian man, I find it distasteful. Think about what it can do to the sailors. I have seen, firsthand, the statistics that Mr. Hawkins mentioned; grief, brawls, murder, prostitution – it all happens. No alcohol – it doesn't matter, they will get drunk beforehand. The police department, hospitals, and mortuaries will all be involved.

Dan Renner, 950 SW Silverberry Street. I am the pastor of Calvary Chapel here in Oak Harbor. We don't want this to come to our community. I also grew up in San Diego and don't want to see this come here.

Dawn King, 549 SE Quaker Street. I have been an Oak Harbor resident for 29 years. I am a Christian, married, and have 4 young boys. I am against adult entertainment. The sex industry is a \$97.6 billion dollar industry; \$5 billion for strip clubs alone. How many more will be allowed in our community? The Seattle Times reported that police departments working the strip club beat find illegal sexual activity. Who will pay for the growing law enforcement need? Dancers are assaulted, threatened with weapons, sexually abused as children, use drugs, have sexually transmitted diseases, and many dancers feel desperately isolated and alone. Would you want this for your daughter? Would you encourage your son to frequent such an establishment?

Carley Knapp, 505 Grandview. I am very concerned about this. Why does Michelle want to do this to our town; degrade our town. Other cities would do anything to keep this from happening. We should not allow it. I am concerned about Michelle's children.

Wayne Knapp, 505 Grandview. Other speakers have done a good job. This is a cancer on our society. It denigrates our society. You have got to make the right decision. This industry breeds crime, death, and destruction of personal lives. We say the Supreme Court says it's alright, I don't think so. It is foolish to let this industry come into our town. I think it is wrong.

Jerry Pitsch, 2527 West Beach Road. Most of what I wanted to say has been covered. Whether the Supreme Court decision is right or wrong, we need to make a moral decision. I encourage you to challenge the First Amendment and do the right thing morally.

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Mike Thelan, 1401 SE Dock Street. People's rights are usurped by governing bodies above us; the Supreme Court. The church building down the street is being challenged because it wants a steeple, yet we can allow this and have to protect a business of this nature. Sex sells. I find it interesting that this is a way to put children through school. I can't imagine the impact on existing businesses. You need to put this in the most remote place that you can to protect other businesses. What Mr. Hawkins said bothers me; that everything predicts more crime, problems, policing, yet we are at the edge of City budgets. We are volunteering to step up to something that we have no ability to provide for.

Kathleen Bourbeau, 976 NW Prow. My family has been here for over 50 years and my husband has been in the Navy for 15 years. I wanted to come back here to start a family. I love this town, I love this country. This is all about the Constitution. I am a card-carrying member of the NRA. I love our town and we need to save our small town. This terrifies me. Look at Lynden. Lynden is very creative about keeping things out.

Helen Chatfield-Weeks, 1415 se 9th. I never thought I would be present for such a suggestion for Oak Harbor, but I am not a bit worried about what the result will be. I depend on Mr. Hawkins' advice.

Ivan Lathrop, 2606 Airline Way. I am an ordained minister (retired) in the Church of Nazarene. My first pastorate was in Oak Harbor. Our son wanted to come back here and I told him what a great town this is. We can see that you are working hard on this situation. We are behind you and know that you will do everything you can. We will support and work with you. Yes, I am opposed to this and wish we could ban it, and I hope you can come close to that.

Dolly Griffith, 76 N. Oak Harbor Street. I have been a resident for 2 years. Protect the women if this is allowed. My best friend was sexually abused, was told she could end up as a dancer. It takes advantage of them. To get to top of ladder from people who are weak or who have lost their self worth, and then think that money is happiness is wrong. Life is full of problems; money won't make you happy without spiritual fulfillment. We will all be judged some day.

Gerry Oliver, 947 NW Prow. When I spoke of entrepreneurship to succeed earlier this evening, I don't believe that adult entertainment is right. I am a lifetime resident of Oak Harbor and it is obvious that this type of entertainment attracts the wrong kind of people. People come here for the beauty of this area and the community. Regulate this heavily and make it tough for this type of business to exist in Oak Harbor. How do I explain this to my daughters? I don't think this needs to only be a church issue; it needs to be a community issue.

Richard Felds, 547 SE 6th Avenue. I first came here in 1995 to visit. We moved here in 2003 from a city of over 200,000. This is heavy on everyone's mind and heart. It is just not right for this type of community. We went to a lot of work to promote Oak Harbor through the Windjammer Project.

Joel Geist, 1076 Landing Circle. My views have been expressed by most of the other speakers. This is a beautiful town and I would hate to see our reputation ruined.

Jeff Waldron, 1678 Zylstra Road. I am strongly opposed to this. Take a rotten piece of fruit and it will ruin the whole bowl.

Rev. David Jenkins, 2111 Pinewood Way. My church is in the same building that they want to move into. All that is required for evil to prevail is for good men to do nothing.

Don't change the flavor of this community. Where are the benefits to our community? We open the door if we don't regulate this out of our community. I have been here for over 20 years. Don't allow undesirable elements to come into our City.

Beatrice LaMay, P.O. Box 3014, Oak Harbor. Think about the children. Look at our playgrounds, parks, and your children. They can be easily reeled in. It is easy to say "adult," but think of children and what happens when patrons leave the clubs. People have to live in these environments. They are not operating on their own; an 18 year old does not say they want to be a stripper. The environment is already here.

Tina Bowman, 2461 Highpoint Lane. We moved here 9 years ago. I was born and raised in Escondido which used to be a cow town and is now a metropolis. We fell in love with Oak Harbor. I heard it was a wonderful place to raise your kids. Raise them according to good morals. I would hate to leave this town for the same reasons we left another. Make the choice for humanity and not the Supreme Court. Make the right decision.

With no other comments coming forth, Mayor Slowik closed the public hearing at 8:30 p.m.

Break

Mayor Slowik called for a five-minute break at 8:30 and the meeting reconvened at 8:35 p.m.

Response from Mr. Hawkins and Chief of Police Wallace

Mr. Hawkins noted that he had heard some moving and wise comments this evening even though they might not be legally correct. In answer: What are the City's chances if we fight this? If you choose to ban, your chance of winning that would be zero. The City would be hauled into court, sued for damages, and would lose. It is reckless to take on the Supreme Court. This is an emergency measure than can be tightened up. The interim zoning ordinance comes back for additional review. In response to the inclusion of tattoo parlors, tattooing does not exist in public so this would not be a factor. With regard to a theater being turned into adult entertainment, there is language in the adult entertainment ordinance addressing plays, operas, musicals, or other dramatic works which are not obscene. Changing the 10 foot barrier to 4 feet, as suggested by Ms. O'Kelley – the record documents clearly that 3 feet, 4 feet, was difficult to enforce; 6 feet and 8 feet are still within arms reach, and 10 feet is now the most aggressive ban in place. It is clear that shorter barriers do not work. A 10 foot distance does not stop prostitution, but it forces the club to be set up in a certain way, and I disagree strongly with going to a 4 foot distance. With regard to Rev. Geist's comments on public nudity and that the ordinance does not ban nude dancing. The U.S. Supreme Court does say that a locality can ban nude dancing. We have not gone to that type of a ban because the Washington State Supreme Court holds a conflicting opinion and we don't believe a ban on nude dancing would be tolerated. No other jurisdiction in Washington has attempted that and we would spend a great deal of money in expensive litigation. The City of Renton spent \$1 million in 1986. We are presenting the best ordinances that we believe can be sustained in court.

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Mayor Slowik swore in Chief of Police, Rick Wallace for his testimony.

Chief Wallace:

This testimony is directed towards the ban on public nudity and not necessarily to the adult entertainment ordinance. We have used indecent exposure and lewd conduct, but there is no ordinance/language in place in our Municipal Code that regulates public nudity. Prior to 2008, it was determined that an existing ordinance was too vague and subsequently repealed. It was used toward amateur nights, wet T-shirt contests, but we were on weak ground. What could we do without an ordinance in place; especially addressing public nudity. This ordinance will fulfill that need.

Council Discussion

In response to a question about a majority plus one vote, City Attorney Hite explained that the vote is needed for the adult entertainment facilities overlay zone interim ordinance to be adopted on an emergency basis. The adult entertainment and licensing ordinance has a section explaining what is being talked about in the zoning ordinance. Discussion continued about citizen's rights and minimal/moderate government involvement and that what has been presented is the best direction, how to define morality (found in OHMC's nuisance language), and that larger cities, by size, have more areas to help with a buffer zone but Oak Harbor is a small and tightly developed community which limits the buffering area and zoning choices. Suggested changes to the public nudity ordinance:

On page one: The first Whereas, second sentence add the word "is" in front of the word "detrimental."

On page two: In Definitions, number 2 "person": say "any legal entity authorized to do business in the State of Washington" instead of corporation, partnership or association.

Discussion continued about wet T-shirt contests (covering must be fully opaque per the public nudity ordinance), how to keep 18 year olds from entering a club, the 5-year suspension/revocation term and if that is set by the state (a matter of case law), and the license application process. Discussion followed about conversation between dancers and patrons, cubical room size and doors, how bathrooms can be watched (cannot be electronically monitored), the use of uniformed PD officer inspections and undercover officers, and signage. Photography in a club (most likely monitored by club management), the 10 foot barrier, and use of moratoriums was also discussed. In the past, it was typical for cities to impose moratoriums, but the 30-day time limit is not enough of a study period and the City needs to move forward right now. The sale of alcohol brings a club under the strict enforcement and large staff of the Liquor Control Board and clubs usually avoid the potential for Liquor Control Board violations by not serving alcohol. This then allows 18 year olds to enter a club. Legislation was recently changed to allow local jurisdictions more local control. Discussion continued about "applicant control persons" in the definitions section of the adult entertainment ordinance which speaks to significant interest in the club and keeps silent partnership at bay. The application process was discussed again, the under the age of 10 years exemption in the public nudity ordinance was also discussed (uniformly used in other

jurisdiction's ordinances) and the finality of the first two ordinances – public nudity and adult entertainment. Ordinances can be amended; the zoning overlay ordinance is interim as discussed earlier. Ms. Hite had worked on these issues for Snohomish County and noted that this is an elaborate industry. The public is our strongest voice and it is the community that stands up and keeps the community true. Discussion continued about how quickly the license must be turned around along with discussion about the license fees. The City is allowed to charge enough to cover costs and, looking at other ordinances, these fees are the best estimate of actual costs. Discussion returned to the allowable age of patrons, 18 or 21 depending on alcohol or no alcohol, and that clubs would prefer to sell liquor even though they would lose a younger patron, but considering the nature of the club's activity, would not risk a Liquor Control Board violation and closure.

MOTION: Councilmember Munns moved to adopt the ordinance banning public nudity. The motion was seconded by Councilmember Palmer and carried unanimously.

MOTION: Councilmember Munns moved to adopt the ordinance regulating adult entertainment. The motion was seconded by Councilmember Severns.

Council asked if a club can be forced to sell liquor (no) and Ms. Hite also clarified that OHMC 5.20.020 of the adult entertainment ordinance shall be in full force and effect immediately.

VOTE ON THE MOTION TO ADOPT THE ADULT ENTERTAINMENT ORDINANCE:
The motion carried unanimously.

Interim Ordinance – Adult Entertainment Facilities Overlay Zone

Development Services Director Steve Powers presented this agenda bill. This ordinance is an interim measure to be adopted on an emergency basis to address the appropriate location for a use not currently addressed in the Oak Harbor Municipal Code. Adult entertainment is a form of expression protected by the First Amendment to the U.S. Constitution. However, there are well-studied negative secondary effects associated with this use in the form of impacts on crime, neighborhoods, and property values. Local governments are authorized to impose zoning regulations to address the associated negative secondary effects, as long as there remain sufficient "alternative avenues of communication" available for the use after the imposition of the regulations. The proposed interim ordinance makes the following changes to the OHMC:

1. It adopts a zoning ordinance which permits adult entertainment establishments to be located in an "Adult entertainment facilities overlay zone" within the C-3, Industrial and Planned Industrial Park zones. This overlay zone was drawn to create a buffer around incompatible uses.
2. The overlay draws a 750 ft. buffer around religious institutions, parks and schools.

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3. It also draws a 100 ft. buffer between the overlay and residentially zoned neighborhoods.
4. It amends OHMC 18.20.250 to include extensions of time for non-conforming adult entertainment facilities.

The buffers are intended to mitigate the negative secondary effects of adult entertainment facilities upon sensitive uses such as schools, churches and parks and on residential neighborhoods and property values, while still retaining sufficient parcels for adult entertainment uses to be located within the City. The proposal is that the City Council adopt this interim ordinance on an emergency basis to address adult entertainment uses that may seek to locate within the City limits in the near future. City staff has received several inquiries about City regulations on the subject in recent months and notes that the absence of regulations creates an imminent risk that an inappropriate location could be chosen for an adult entertainment facility. Since there are no regulations specifically addressing this use in the Oak Harbor Municipal Code (OHMC), it is necessary to ensure that potential applicants are directed to the overlay zone rather than locating next to a church, school, park or residential zone. Adopting the interim ordinance on an emergency basis allows the City to take additional time to study and hone its zoning regulations, to create a public participation process and to permit the establishment of adult entertainment facilities, at the same time as restricting patently inappropriate locations in the immediate future. There are several requirements of the emergency ordinance:

1. It must be passed by a majority plus one of the whole membership of the Council.
2. The Council must make a finding that the ordinance is necessary for the protection of public health, public safety, public property or the public peace.
3. There must be a public hearing on the ordinance within 60 days of adoption. Staff recommends the hearing be set for May 4, 2010.

The interim ordinance may remain in effect for six months, subject to an extension of up to a year, so that the Planning Commission may make its recommendation, public participation may be encouraged, and so that any further studies deemed necessary be undertaken. During the period of the interim ordinance, the City will also undertake its obligations to perform a SEPA review and to provide 60 days' prior notification of the new zoning provision to the Department of Commerce. If the City Council determines to regulate this use, it must do so in light of well-settled U.S. Supreme Court decisions on the subject. Because of First Amendment considerations, the use is protected within established limitations. The City Council may regulate the use for negative secondary impacts. Many other jurisdictions have studied the use and determined that there are negative impacts upon schools, churches, parks, neighborhoods and property values, in addition to associated criminal activity, as a result of the activities and location of adult entertainment uses. The proposed ordinance lays out a zoning framework for addressing the negative secondary impacts of adult entertainment uses. It is intended to address those uses seeking to locate in the City until a final ordinance can be adopted. It is recommended that the City Council adopt this as an interim measure and direct that further study, public participation and Planning Commission recommendation go forward to be included in the ultimate decision on a final ordinance.

Mr. Powers also gave a summarizing PowerPoint presentation which is attached to these minutes as Exhibit B.

Mayor Slowik called for public comments at 10:20 p.m.

Michele Sladkow, 1199 SE 9th Avenue. Ms. Sladkow objected to the location by the Safeway parking lot since there are a lot of teenagers in this area.

Juan Palm, 2090 Crosswoods. How many proposed areas are occupied by existing businesses? At the intersection of SR-20 and 16th, there are multi-family homes directly across the street.

Jill Johnson, 1499 SE 9th. Highway 20 is designated a scenic byway and the Chamber of Commerce receives grant funds through that status. How would an adult entertainment business on the highway affect or impact the scenic byway status? I would hate to see Oak Harbor become the Amsterdam of Whidbey Island.

Tashia LaMay I work two jobs. I don't want to see this by Safeway. A lot of traffic goes by there, including teens.

Tim Geist, 1076 Landing Circle. I would like to see the sites out of sight; Goldie Road or Gun Club Road.

Mel Vance, P.O. Box 2882. I recall Mayor Cohen's administration addressing zoning for adult entertainment in industrial areas. I would like to see C-3 zoning taken off the table since there are established businesses there. Another area that should be included is the Hackney property at the end of Gun Club Road. That would be an out of sight area away from churches and businesses. The south edge of this property is clipped by proximity to a church and residential area, but the bulk of this property is out of the way.

With no other comments coming forth, Mayor Slowik closed comments on this subject at 10:30 p.m.

Mr. Powers noted that this is an interim ordinance which will be worked on over the next six months but the City does need to meet its obligation to provide a sufficient number of sites. Businesses are not an automatically excluding criteria. The Hackney property is designated as a planned business park. It was not excluded from consideration because of the buffer; it was excluded because it cannot be served by sewer at this time. We are challenged by where we have commercial property locations and the relationship to churches, schools, and the highway. As said earlier, we are a compact community and we are trying to handle a convergence of factors. The multi-family units near 16th and SR-20 were excluded because of the 100 foot buffer and properties on the west side of the highway are actually in commercial zoning. This matter has been before the Council two separate times in the last ten years, but was not adopted by Council. Mr. Powers also called attention to the thirteen separate findings of fact within the ordinance and that Oak Harbor is relying on the experience and findings done by other communities, as well. These studies are extensive and significant and document secondary impacts.

Ms. Hite referred to her legal memorandum noting that this is an interim ordinance that, if not adopted tonight, would not be available for consideration until the second meeting in April.

Council Discussion

Discussion followed about the urgency of this interim ordinance, the buffer zone size and whether it could match the 1,000 foot drug and gun free zones around schools or become uniformly a 750 foot radius for all buffers. Mr. Powers noted that staff worked toward balancing how the buffers work and that larger buffers covered more land area but then excluded any site provisions. It was also noted that the City would not redraw the buffer zone as uses move into the City. Definitions of churches and schools were discussed, Safeway Center was eliminated because of its proximity to Beeksma/Gateway Park, and the discrepancy between buffer zone radiuses continued to be discussed along with what a sufficient number of sites would be for a city the size of Oak Harbor. Adult entertainment cannot be zoned out of existence and the courts do not have a flat answer. Discussion continued about bringing utilities to a proposed property and why an undeveloped property could not be included. Oak Harbor will have greater flexibility at an interim stage but a property has to be part of the general commercial real estate market. Council felt there should be greater separation between residential areas and adult entertainment and returned to discussing planned business parks. If a 750 foot buffer was used around residential properties, the community would be covered with the exception of industrial and planned industrial on Goldie Road. Mr. Powers again commented on the issue of infrastructure: We cannot look at adult entertainment sites the way we look at regular development. With adult activity, by its very nature, we have a limited number of locations. Without infrastructure, other cities have run into trouble. Potential sites have to be reasonably served by infrastructure. Ms. Hite, responding to a question about annexations, noted that this is not a moving target; we are adopting a map and just this map and not addressing future annexations. This is written as its own overlay zone.

Mayor Slowik noted that this discussion had also been held on a staff level and he, too, had been uncomfortable with certain site selections. If we are creating an emergency ordinance on a temporary basis to allow a reasonable amount of site inventory, what if we flip that around, tightened this up tonight, and then allow the next six months to consider available areas. City Attorney Hite felt this would put the City in the realm of risk. If you reduce the number of available parcels, you are less likely to sustain. On the other hand, it is an interim ordinance; is there available opportunity in the other parcels. Mr. Powers added that the Goldie Road parcels, the PIP (Planned Industrial Park) include one developed and one undeveloped parcel. Ms. Hite noted that the industrially zoned parcels have general uses like C-3 parcels and this is not true for PIP.

Discussion continued about the Goldie Road parcels and if they are sub-dividable (yes for industrial, no for PIP which are 5-acres in size; the parcels have to be considered as they are today). Discussion continued about the impact of adult entertainment establishments on SR-20, how schools are defined (daycare centers and kindergarten

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schools do not fall under the definition but could be covered by the residential buffer if they are in a residential area), and repeated discussion about the use of a 1,000 foot buffer instead of a 750 foot buffer for churches, schools, and parks. A 1,000 foot buffer would then include the Goldie Road properties, SR-20 locations, and some of the industrial area, but maybe not the PIP. It would decrease the number of available parcels and potentially create a ban. Cities that use 1,000 feet as a buffer zone have remaining space available for potential sites.

MOTION: Councilmember Munns moved to adopt the Interim Adult Entertainment Facilities Overlay Zone Ordinance. The motion was seconded by Councilmember Almberg.

Discussion continued about adopting this ordinance now and how it would affect a club six months from now that establishes on SR-20. Mr. Powers noted that, if it becomes a nonconforming condition, it then requires a nonconforming use to close in one year.

AMENDMENT TO THE MOTION: Councilmember Dudley moved to amend the motion and add the same 750 foot buffer zone to residential zones as we allow for churches, parks and schools. The motion was seconded by Councilmember Paggao.

Discussion followed about the Goldie Road parcels and if they would be eliminated (possibly the industrial, but not PIP), if it is likely that properties on SR-20 are going to be used at this point, and the risk involved in eliminating potential properties for adult entertainment use. City Attorney Hite noted that this interim ordinance requires a public hearing in sixty days, and has to return to Council in six months following Planning Commission review, SEPA review, and notification to and review by the Department of Commerce. In the absence of this ordinance, an adult entertainment establishment can locate anywhere in C-3.

Councilmember Dudley spoke to the amendment: I do think there is a risk with that first parcel on the right coming down SR-20. Discussion included removing that one parcel (which would need a rationale) and how the Goldie Road parcels and SR-20 parcels would be measured (buffered).

VOTE ON THE AMENDMENT TO THE ORIGINAL MOTION: Councilmembers Dudley and Paggao voted in favor of the amendment. Councilmembers Almberg, Munns, Palmer, and Severns opposed. The amendment to the original motion did not carry.

VOTE ON THE ORIGINAL

MOTION: Councilmembers Almberg, Munns, Paggao, Palmer, and Severns voted in favor of the original motion. Councilmember Dudley opposed. The original motion received a five to one vote in favor and carried.

Mayor Slowik thanked Ms. Hite, Mr. Hawkins, Mr. Powers, Mr. Schmidt and Mr. Wallace for their extensive work on these ordinances – it took a monumental effort.

Authorization to Negotiate Scope of Work with Carollo Engineers – Wastewater Treatment Facility

City Engineer Eric Johnston presented this agenda bill which summarized the engineering consultant selection process for the wastewater treatment facility project. During development of the Sewer Comprehensive Plan in 2006 and 2007, the need for additional wastewater treatment facilities began to emerge. The sewer plan identifies the need for additional capacity as early as 2017 depending on the level of growth that may occur within the City service area. The need for additional facilities is also driven by the condition of the existing plants and anticipated regulatory changes likely to occur in the next 5 years. Specifically, the RBC treatment plant near Windjammer Park has reached the end of its useful and practical life. Constructed in the early 1970's, the RBC plant utilizes an outdated process technology and equipment that is no longer supported by the industry. The condition of the existing treatment facilities and the capacity of the system are only part of the issues facing the City. The Puget Sound Partnership Action Agenda identifies a number of areas targeted for Puget Sound cleanup efforts. A key target of the cleanup effort is ensuring that dissolved oxygen levels are sufficient to sustain marine life. Dissolved oxygen levels drop as the nutrient loading increases. Municipal wastewater treatment plants are identified as significant contributors to nutrient loading in Puget Sound. The addition of nutrient removal from treated wastewater as a condition of discharge permits issued by the Department of Ecology is likely to occur in the near future as implementation of the Puget Sound Action plan gains momentum. Neither the RBC nor the SPB lagoon plants are capable of nutrient removal without significant investment. Finally, the recent conversion of the Crescent Harbor marsh area from freshwater to salt water habitat has resulted in a significant flooding risk to the SPB lagoon plant that threatens the long term viability of a treatment plant at that location. In following this prescribed process for selecting the most qualified firm, City staff issued a request for qualifications for the project in September of 2009. From the list of eight firms who submitted, four firms were short listed for further consideration. The short list was based on a staff review and ranking of the submitted statements of qualifications. Each of the four firms short listed were invited to a formal interview in February 2010. Councilmembers Paggao, Almberg and Munns together with Mayor Slowik and City staff formed the interview panel and based on the written proposal and the interviews, Carollo Engineers was selected as the most qualified engineering firm to assist the City with the development of the wastewater facility plan. It is worth noting at this point that the RFP document included goals for wastewater effluent quality that are significantly higher than the current permit

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ORDINANCE NO. 1572

AN INTERIM ORDINANCE OF THE CITY OF OAK HARBOR ADOPTING A NEW CHAPTER 19.52 TO THE OAK HARBOR MUNICIPAL CODE ENTITLED "ADULT ENTERTAINMENT FACILITIES OVERLAY ZONE", ENTERING FINDINGS OF FACT CONCERNING THE NEGATIVE SECONDARY EFFECTS OF ADULT ENTERTAINMENT FACILITIES, FINDING AN EMERGENCY WITH RESPECT TO PUBLIC HEALTH, SAFETY AND WELFARE REQUIRING IMMEDIATE ADOPTION OF AN INTERIM ORDINANCE TO ADDRESS PERMISSIBLE LOCATIONS FOR ADULT ENTERTAINMENT FACILITIES, AND AMENDING OHMC 18.20.250 ENTITLED "REVIEW PROCESS III" TO INCLUDE APPLICATIONS FOR EXTENSIONS OF TIME FOR NON-CONFORMING ADULT ENTERTAINMENT FACILITIES

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

Section One. Findings of Fact. Based on the record submitted in this case, the public comments, and the experience of the city officials of the city of Oak Harbor, the city council hereby enters the following findings of fact:

1. The city of Oak Harbor takes notice and specifically relies upon the experiences and studies utilized by other cities and counties in combating the specific adverse impacts of adult entertainment and sexually oriented businesses, including nude and semi-nude dancing. This includes, but is not limited to, the studies relied upon and findings of fact entered by the city councils of the cities of Bellevue, Tukwila, SeaTac, Federal Way, Burien, Everett and Shoreline.
2. The above-referenced studies and findings of fact establish that there are significant and documented negative secondary effects associated with adult entertainment establishments, including increased crime, negative impacts on neighborhoods and decreases in property values. The crimes associated with adult entertainment establishments include prostitution, drug use and sales, and assaults.
3. These negative associated effects of adult entertainment establishments are particularly harmful to schools, religious institutions, parks and residential neighborhoods.
4. It is not the intent of this chapter to suppress or censor any expressive activities protected by the First Amendment of the United States Constitution or Article I, Section 5 of the Washington State Constitution, but rather to establish locations within the city where adult entertainment facilities may locate in such a way as to buffer sensitive uses from the secondary effects of adult entertainment establishments.
5. The Oak Harbor Municipal Code does not presently address the appropriate zone for an adult entertainment business. The closest existing zone is the C-3 Community Commercial zone in which "amusement enterprises" and "places of entertainment" are

permitted uses. Principal uses permitted in the C-3 district are also allowed in the Industrial district.

6. Recent inquiries about locating adult entertainment uses in the city create a reasonable expectation that such uses may attempt to locate in the city and would, therefore, locate in the C-3 Community Commercial zone.
7. However, without further refinement, there are parcel locations in the C-3 Community Commercial zone which would abut or fall within a seven hundred and fifty (750) feet radius of religious institutions, schools, and parks or within one hundred (100) feet of residentially zoned neighborhoods. The city council finds that locating an adult entertainment facility in such parcel locations would be detrimental to existing churches, schools, parks and residential zones, and that the public safety, welfare and peace dictates that adult entertainment facilities not be located in such proximity with those uses.
8. Therefore, the city council finds that an emergency exists requiring immediate council action to establish an adult entertainment facilities overlay zone which both establishes permissible locations for adult entertainment facilities and also buffers sensitive uses from the secondary impacts of adult entertainment facilities. This emergency adoption is necessary for the protection of public welfare, safety and peace.
9. The adult entertainment facilities overlay zone established in the interim ordinance will permit adult entertainment facilities uses to locate in a portion of a general commercial zone (C-3 Community Commercial), the Industrial zone and the Planned Industrial Park zone.
10. The interim adult entertainment facilities overlay zone contains eleven (11) parcels of property – eight (8) in the C-3 Community Commercial zone, one (1) in the Industrial zone, and two (2) in the Planned Industrial Park zone. All of the parcels have City water and sewer available to them. The total acreage available in all thirteen parcels is 27.92–9.06 acres in C-3 Community Commercial, 9.08 in Industrial, and 9.78 acres in Planned Industrial Park.
11. At the time of the adoption of the interim ordinance, the city council is aware of no adult entertainment facilities meeting the definition of adult entertainment facility which are located in the City of Oak Harbor and there are no applications for permits for such facilities pending. In light of all these circumstances, the city council finds that there are sufficient parcels in the adult entertainment facilities overlay zone to accommodate demand for properly zoned real estate for those uses in the next year.
12. The city council further finds that an interim ordinance is necessary to establish immediate zoning regulations for adult entertainment facilities uses while the city council studies and evaluates the issues involved in locating adult entertainment facilities in greater detail.

13. The city council further intends that the study and evaluation period will include opportunities for public participation and comment, planning commission recommendation, SEPA review and review by the Washington State Department of Commerce.

Section Two: There is hereby added a new Chapter 19.52 entitled "Adult Entertainment Facilities Overlay Zone" to Title 19 of the Oak Harbor Municipal Code to read as follows:

Chapter 19.52
ADULT ENTERTAINMENT FACILITIES OVERLAY ZONE

Sections:

- 19.52.010 Purpose.
19.52.020 Application of chapter provisions.
19.52.030 Definitions.
19.52.040 Adult entertainment facilities overlay zone established.
19.52.045 Overlay zone map adopted.
19.52.050 Adult entertainment overlay zone use restrictions.
19.52.060 Non-conforming uses.

19.52.010 Purpose. The purpose of this chapter is to establish an overlay district within which adult entertainment facilities may be located in such a way as to mitigate the adverse secondary effects associated with such facilities. Because of the adverse secondary effects of adult entertainment facilities, restrictions on location are necessary: to protect residents, especially sensitive uses such as schools, religious institutions, parks and residential neighborhoods, from crimes, nuisances and disturbances of the public welfare, peace and safety; to preserve property values; and to respect the place of neighborhoods, schools, religious institutions and parks in the city of Oak Harbor. It is not the intention of this ordinance to suppress any constitutionally protected speech or expression, but to provide sufficient alternative avenues of communication for adult entertainment uses at the same time as providing appropriate zoning and separation between adult entertainment facilities and potentially conflicting uses.

19.52.020 Application of chapter provisions. Adult entertainment facilities, as defined in OHMC 19.52.030(2), shall only be permitted within the Adult Entertainment Facilities Overlay Zone established herein. This chapter applies to all adult entertainment facilities located within the city of Oak Harbor.

19.52.030 Definitions. The following definitions shall apply to this chapter.

- (1) "Adult entertainment" shall have the meaning set out in OHMC 5.20.020.
- (2) "Adult entertainment facility" shall mean any commercial premises or club to which any patron is invited or admitted and where adult entertainment is provided on a regular basis or is provided as a substantial part of the premises activity.

- (3) "Overlay zone" shall mean that portion of the C-3 Community Commercial zone, the Industrial zone and the Planned Industrial Park zone in which adult entertainment establishments may be located.
- (4) "Potentially conflicting uses" shall mean schools, religious institutions, residential zones and parks established within the city of Oak Harbor as of the date of this ordinance. The term "potentially conflicting uses" shall also mean any such other uses which the city council shall determine require separation from adult entertainment facilities, provided that the addition of any such uses shall require a review of available lands to ensure sufficient alternative avenues of communication for adult entertainment uses are available.

19.52.040 Adult entertainment facilities overlay zone established. There is established an adult entertainment facilities overlay zone in the city of Oak Harbor. The adult entertainment facilities overlay zone shall overlay the C-3 Community Commercial zone, the Industrial zone and the Planned Industrial Park zone. It does not include certain portions of the C-3 zone, the Industrial zone and the Planned Industrial Park zone in which potentially conflicting uses were located at the time of adoption of this ordinance. The following exclusions from the C-3 zone, the Industrial zone and the Planned Industrial Park zones apply:

- (1) The adult entertainment facilities overlay zone removes a buffer of seven hundred fifty (750) feet around the existing potentially conflicting uses of schools, religious institutions, and parks.
- (2) A further buffer removes one hundred (100) feet around existing areas zoned exclusively for residential uses – R-1, Single-Family Residential; R-2, Limited Multiple-Family Residential; R-3, Multiple-Family Residential; and R-4, Multiple-Family Residential.

19.52.045 Overlay zone map adopted. The adult entertainment facilities overlay zone map as attached hereto in Exhibit A is adopted as a pictorial description of the sole geographic areas within the city of Oak Harbor in which adult entertainment facilities are permitted. A copy of the adult entertainment facilities overlay zone map is on file with the city clerk and shall be available for public inspection and copying.

19.52.050 Adult entertainment overlay zone use restrictions. To mitigate the adverse secondary effects associated with adult entertainment facilities, the following parking and lighting restrictions shall apply within the adult entertainment facilities overlay zone:

- (1) Parking requirements. For adult entertainment facilities constructed after the effective date of this ordinance all parking must be visible from the public right-of-way. For adult entertainment facilities located in buildings constructed prior to the effective date of this ordinance, all parking should be visible from the public right-of-way. In cases of adult entertainment facilities located in buildings constructed prior to the effective date of this ordinance where this is not feasible, access to the parking shall be in as direct a route as possible from the public right-of-way and the parking area shall remain free and clear of

visual obstructions at all times. Access to the exterior rear of the building shall be denied to any persons other than employees and public officials during the performance of their respective duties and tasks by means of a fence, wall or other device approved by the city building official. On-site parking shall be required and regulated in accordance with Chapter 19.44 OHMC. Parking shall be provided at a ratio of one (1) space for every three (3) seats, plus one (1) space for every two (2) employees on the largest shift.

- (2) Lighting requirements. All on-site parking areas and premises entries of adult entertainment facilities shall be illuminated from dusk until one (1) hour past closing hours of operation with a lighting system which provides an average maintained horizontal illumination of one (1) foot candle of light on the parking surface and/or walkways. In addition, all on-site lighting, including signs, shall comply with the shading and directional requirements of OHMC 19.28.010(4). An on-premises exterior lighting plan shall be presented to the city building official for approval prior to the operation of any adult entertainment.

19.52.060 Non-conforming uses. For purposes of this title, a “non-conforming adult entertainment facility” constitutes an adult entertainment facility which lawfully exists as an adult entertainment facility which receives non-conforming status by virtue of an order from a court of competent jurisdiction, or which lawfully existed as an adult entertainment facility prior to a change in the zoning which change does not permit an adult entertainment facility in its existing location and is maintained as an adult entertainment facility although it does not comply with the adult entertainment facility zoning requirements set forth in this chapter, or is an adult entertainment facility which lawfully existed prior to annexation by the city and is maintained after the effective date of annexation and does not comply with the adult entertainment facility zoning requirements set forth in this chapter.

- (1) The location of a newly-established public park, permanent religious institution, or school within seven hundred fifty (750) feet or the establishment of a residential district within one hundred (100) feet of an existing adult entertainment facility shall not cause the existing adult entertainment business to be deemed a non-conforming use unless the city council makes a determination that the newly-established park, religious institution or school requires separation from adult entertainment facilities, and further provided that the exclusion of any such areas from adult entertainment facility zoning overlay shall require a review of available lands to ensure sufficient alternative avenues of communication for adult entertainment uses are available.
- (2) Adult entertainment facilities which are non-conforming uses in the zone in which they are located and which are located within the city limits shall be discontinued within one year of the date of becoming a non-conforming adult use business or upon the expiration of the leasehold period in existence as of the date of becoming a non-conforming adult entertainment facility, or upon the sale of the non-conforming adult entertainment facility, whichever occurs first. Adult entertainment facilities which are non-conforming as a result of annexation to the city shall be discontinued within one year of the date of annexation. Such non-conforming adult entertainment facility shall not be extended,

expanded, enlarged or increased in intensity. Such prohibited activities (extend, expand, enlarge, increase in intensity) shall include:

- (a) Extension of a non-conforming adult entertainment facility to any building or other structure or land area other than one occupied by such use as of the date of becoming a non-conforming adult entertainment facility.
 - (b) Extension of any specific type of non-conforming adult entertainment facility, as separately defined in OHMC 19.52.030(2), within a building or other structure to any portion of the floor area that was not occupied by that same type of adult entertainment facility as of the date of becoming a non-conforming adult entertainment facility.
 - (c) Operation of a non-conforming use in such manner as to conflict with, or to further conflict with if already conflicting as of the date of becoming a non-conforming adult entertainment facility.
- (3) Any change in a non-conforming adult entertainment facility shall be to a use which is legally permitted within the zone in which it is located. In the event a non-conforming adult entertainment facility, or portion thereof, is changed to a use which is legally permitted within the zone in which it is located, then the structure or portion thereof which contained the adult entertainment facility cannot thereafter be used or reused for any type of adult entertainment facility. In the event a non-conforming adult entertainment facility building or structure is vacated, closed or abandoned for a period in excess of six (6) months, the structure shall not thereafter be used except in conformance with a use which is legally permitted within the zone in which it is located. A vacated, closed or abandoned non-conforming adult entertainment facility building or structure shall also be subject to the discontinuation provisions of OHMC 19.52.060(2).
- (4) Repairs and alterations to a non-conforming adult entertainment facility building or structure shall be limited to nonstructural repairs and incidental alterations for normal maintenance and shall only be permitted to the extent necessitated by normal wear and tear. No structural alterations shall be allowed.
- (5) A building or structure containing a non-conforming adult entertainment facility which is damaged or destroyed by fire, wind, earthquake or other natural disaster can be restored and the same use or occupancy continued or resumed provided the total cost of such restoration does not exceed fifty percent (50%) of the real valuation of the building or structure exclusive of foundations at the time of such damage provided that such restoration shall not extend the one (1) year discontinuation period established in OHMC 19.52.060(2). Restoration of a structure or building housing a non-conforming adult entertainment facility or moneys used therefore shall not be used as factors by the examiner when considering any request of a time extension made pursuant to subsection (6) of this section.

- (6) In the event the owner of a non-conforming adult entertainment facility determines that the period set forth in subsection (2) of this section does not provide the adult entertainment facility with a reasonable period of amortization, then no later than one hundred eighty (180) days prior to the expiration of the period, the owner of a non-conforming adult entertainment facility shall make application to the city land use hearing examiner for an extension of time. Accompanying the application shall be a fee in the amount of Seven Hundred Twelve Dollars (\$712.00) and detailed information addressing the below-listed factors to be considered by the hearing examiner. In determining whether or not to grant the extension, the hearing examiner shall determine whether or not the harm or hardship to the non-conforming adult entertainment facility outweighs the benefit to be gained from the public from termination of the use. Factors to be considered by the hearing examiner include the location of the business in relation to sensitive land uses such as schools, parks, churches, residential zone(s), etc., initial capital investment, investment realization to date, life expectancy of the investment, the existence or nonexistence of a lease obligation, as well as a contingency clause permitting termination of the lease, or whether a reasonable alternate use of the property exists. The action of the hearing examiner shall be in accordance with the review process as described in Chapter 18.40 OHMC for a Review Process III.
- (7) Within thirty (30) calendar days of becoming a non-conforming adult entertainment facility, the non-conforming adult entertainment facility shall provide the city's development services director with copies of its current leasehold document(s) which sets forth their existing leasehold time period or, in the case of a non-leasehold interest, the city's development services director shall be provided other documents which show record of ownership.

Section Three. OHMC 18.20.250 entitled "Review Process III", last amended by Ordinance 1376 §13 in 2004 is hereby amended to read as follows:

18.20.250 Review process III.

- (1) Review process III applies to all permit applications that require an open public hearing before the hearing examiner.
- (2) Review process III actions include the following decisions:
 - (a) Variances;
 - (b) Conditional uses;
 - (c) Wetland permits and variances designated to be decided at a predecision public hearing; and
 - (d) Applications for extensions of time for non-conforming adult entertainment facilities pursuant to OHMC 19.52.060(6).

Section Four: Public Hearing. In accordance with RCW 36.70A.390, a public hearing shall be held on this interim zoning ordinance on May 4, 2010 or such other date within sixty (60) days of the date of adoption of this interim ordinance as shall be publicly noticed.

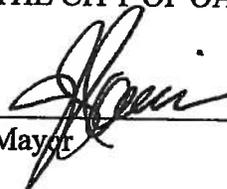
Section Five. Severability. If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the Ordinance or the application of the provision to other persons or circumstances is not affected.

Section Six. Effective Date. The City Council having found that adoption of this Ordinance as an emergency is necessary for the protection of the public welfare, public safety and the public peace, this Interim Ordinance shall be in full force and effect immediately.

PASSED by a majority plus one of the entire membership of the City Council this 23rd day of March, 2010.

APPROVED by its Mayor this 24th day of MARCH, 2010.

THE CITY OF OAK HARBOR



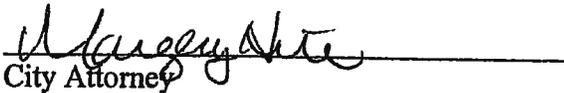
Mayor

Attest:



City Clerk

Approved as to Form:



City Attorney

Published: MARCH 27, 2010

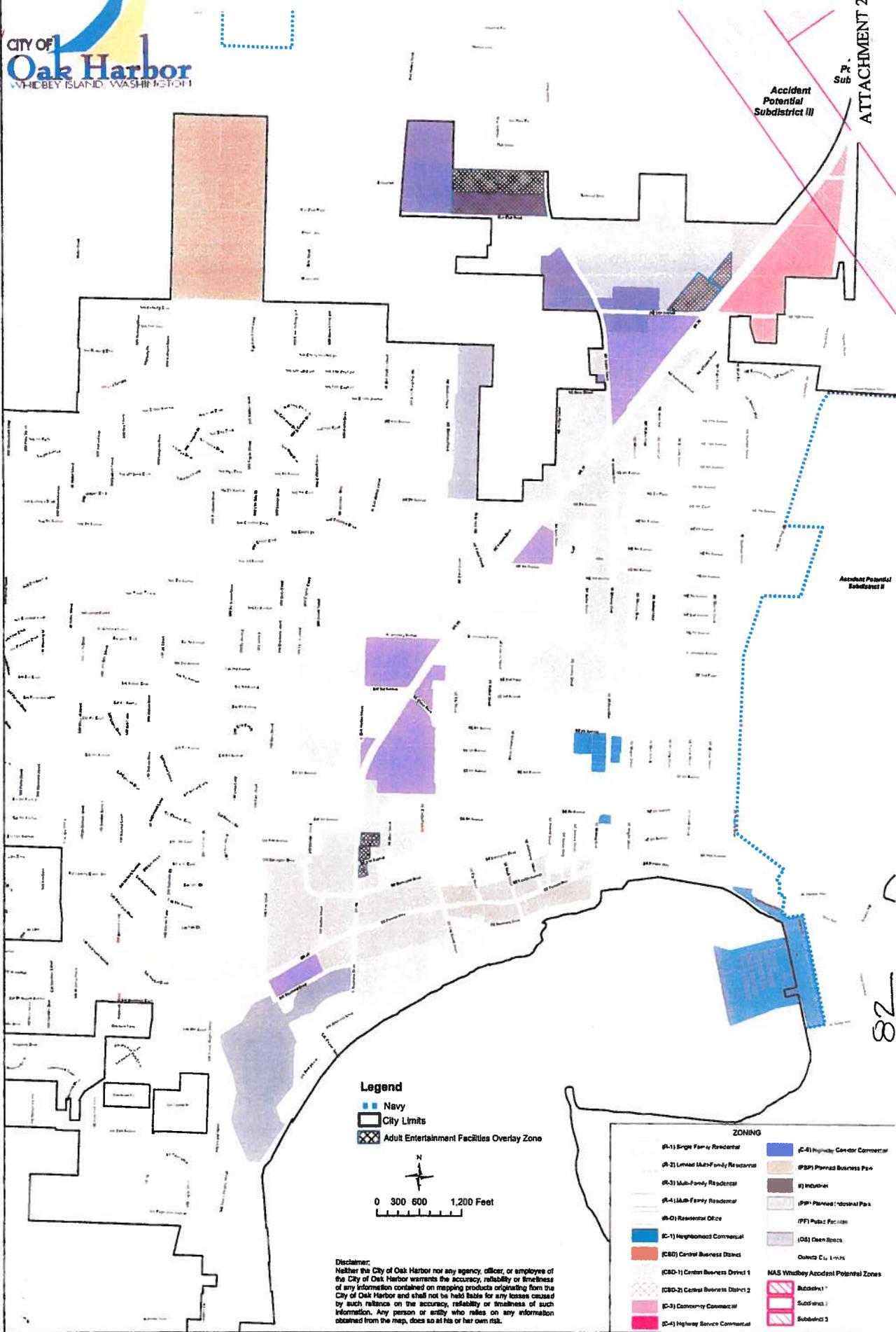
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Overlay Zone Ordinance - 8
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ATTACHMENT 2

EXHIBIT A Adult Entertainment Facilities Overlay Zone



ATTACHMENT 2

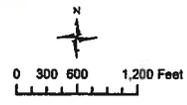
Accident Potential Subdistrict II

Accident Potential Subdistrict III

Pr. Sub

Legend

- Navy
- City Limits
- Adult Entertainment Facilities Overlay Zone



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 map, does so at his or her own risk.

ZONING

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| <ul style="list-style-type: none"> (R-1) Single Family Residential (R-2) Limited Multi-Family Residential (R-3) Multi-Family Residential (R-4) Multi-Family Residential (R-O) Residential Office (C-1) Neighborhood Commercial (CB0) Center Business District (CBD-1) Center Business District 1 (CBD-2) Center Business District 2 (C-3) Community Commercial (C-4) Highway Service Commercial | <ul style="list-style-type: none"> (C-4) Highway Center Commercial (PBP) Planned Business Park (I) Industrial (PPI) Planned Industrial Park (PF) Public Facilities (DS) Open Space (O) Office C, 1-4-15 NAS Whidbey Accident Potential Zones Subdistrict 1 Subdistrict 2 Subdistrict 3 |
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RESOLUTION NO. _____

A RESOLUTION AFFIRMING THE CITY OF OAK HARBOR'S COMPLIANCE WITH THE PROVISIONS OF RCW 36.70A.390 AS IT RELATES TO THE ADOPTION OF AN INTERIM ADULT ENTERTAINMENT FACILITIES OVERLAY ZONE

WHEREAS, the City of Oak Harbor adopted Ordinance 1572, an Interim Adult Entertainment Facilities Overlay Zone, on March 23, 2010 on an emergency basis such that a public hearing was not held prior to such adoption as allowed under RCW 36.70A.390; and

WHEREAS, on May 4, 2010 the City of Oak Harbor City Council as required by RCW 36.70A.300 conducted a public hearing within sixty (60) days of adoption of the interim ordinance, said hearing being duly advertised in the Whidbey News Times on April 17, 2010 and

WHEREAS, Findings of Fact were included with the adoption of Ordinance 1572; and

WHEREAS, the City of Oak Harbor City Council intends that the Interim Adult Entertainment Facilities Overlay Zone ordinance should be reviewed by the Oak Harbor Planning Commission, that the Commission should conduct their own public hearing and that the Commission should forward a recommendation to the City Council; and

WHEREAS, the City of Oak Harbor intends to develop a work plan for completing the review of the interim ordinance and hold another public hearing before the expiration of the six-month interim period allowed by RCW 36.70A.390.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Oak Harbor that:

1. The City of Oak Harbor has met the public hearing and findings of fact requirements of RCW 36.70A.390 for the Interim Adult Entertainment Facilities Overlay Zone ordinance.
2. The Interim Adult Entertainment Facilities Overlay Zone ordinance shall be forwarded to the Planning Commission for its review and recommendation.
3. The Development Services Director shall develop a schedule, which includes the necessary environmental and state department reviews, for completing work on the final ordinance within six (6) months of adoption of the interim ordinance or as expeditiously as is reasonable under the circumstances.
4. A public hearing shall be held on _____ or such other date as may be scheduled prior to the expiration of the six (6) month period of the interim ordinance.

PASSED and approved by the City Council this 4th day of May, 2010.

THE CITY OF OAK HARBOR

Jim Slowik
Mayor

Attest:

City Clerk

Approved as to form:

Margery Hite
City Attorney

ORDINANCE NO. _____

AN ORDINANCE AMENDING OAK HARBOR MUNICIPAL CODE CHAPTER 19.52, ADULT ENTERTAINMENT FACILITIES OVERLAY ZONE, BY INCREASING BUFFERS FROM RESIDENTIALLY ZONED PROPERTY AND DELETING C-3 ZONED PROPERTIES FROM THE OVERLAY ZONE

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

Section One. Findings of Fact. Based on the record created during the adoption of Ordinance 1572 and upon the further investigation and report of the Director of Development Services concerning an Interim Adult Entertainment Facilities Overlay Zone, the city council hereby enters the following additional findings of fact:

1. The city council finds that during the adoption of the interim ordinance on March 23, 2010 citizen testimony and city council discussion raised concern with two aspects of the interim ordinance: the 100-foot buffer from residentially zoned properties and the inclusion of C-3 zoned properties located on SR-20 as part of the available sites inventory.
2. That in response to these concerns and to sufficiently address the negative associated effects of adult entertainment establishments on residential neighborhoods it is necessary to increase the buffer from residential properties from 100 feet to 750 feet.
3. That by increasing the buffer from residentially zoned properties to 750 feet, the eleven (11) parcels included in the original adult entertainment facilities overlay zone are reduced to three (3) parcels: one (1) in the Industrial zone (9.08 acres) and two (2) in the Planned Industrial Park zone (9.78 acres).
4. The city council finds that the parcels listed above are sufficient to meet the short term demand for adult entertainment establishments for the duration of the interim ordinance because:
 - a. While presently there are three total properties, there is the potential that these properties can be further developed to create additional building sites.
 - b. All of the sites are capable of being served by city water and sewer.
 - c. One of the PIP sites is partially developed, has two building pads available for construction, common storm drainage facilities have already constructed to serve the site and it is in the closest proximity to city water and sewer services located in NE Goldie Street.
 - d. The minimum lot size for PIP development is 20,000 square feet and the remaining PIP site is approximately 4.99 acres in size which makes the subdivision and/or development of up to ten additional lots possible.

- e. The site with Industrial zoning is approximately 9.08 acres in size, has frontage on NE Goldie Street, may be subdivided to create individual building sites and has direct access to city water and sewer in NE Goldie Street
5. The city council further finds that providing three parcels (and their development potential) will not suppress or censor any expressive activities protected by the First Amendment of the United States Constitution or Article I, Section 5 of the Washington State Constitution, because sufficient locations are provided within the city where adult entertainment facilities may locate on an interim basis given the very limited demand for such locations anticipated for the duration of this interim ordinance.

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

Section Two: Oak Harbor Municipal Code Chapter 19.52 adopted by Ordinance 1572 §2 is hereby amended to read as follows:

**Chapter 19.52
ADULT ENTERTAINMENT FACILITIES OVERLAY ZONE**

Sections:

- 19.52.010 Purpose.
- 19.52.020 Application of chapter provisions.
- 19.52.030 Definitions.
- 19.52.040 Adult entertainment facilities overlay zone established.
- 19.52.045 Overlay zone map adopted.
- 19.52.050 Adult entertainment overlay zone use restrictions.
- 19.52.060 Non-conforming uses.

19.52.010 Purpose. The purpose of this chapter is to establish an overlay district within which adult entertainment facilities may be located in such a way as to mitigate the adverse secondary effects associated with such facilities. Because of the adverse secondary effects of adult entertainment facilities, restrictions on location are necessary: to protect residents, especially sensitive uses such as schools, religious institutions, parks and residential neighborhoods, from crimes, nuisances and disturbances of the public welfare, peace and safety; to preserve property values; and to respect the place of neighborhoods, schools, religious institutions and parks in the city of Oak Harbor. It is not the intention of this ordinance to suppress any constitutionally protected speech or expression, but to provide sufficient alternative avenues of communication for adult entertainment uses at the same time as providing appropriate zoning and separation between adult entertainment facilities and potentially conflicting uses.

19.52.020 Application of chapter provisions. Adult entertainment facilities, as defined in OHMC 19.52.030(2), shall only be permitted within the Adult Entertainment Facilities Overlay Zone established herein. This chapter applies to all adult entertainment facilities located within the city of Oak Harbor.

19.52.030 Definitions. The following definitions shall apply to this chapter.

- (1) "Adult entertainment" shall have the meaning set out in OHMC 5.20.020.
- (2) "Adult entertainment facility" shall mean any commercial premises or club to which any patron is invited or admitted and where adult entertainment is provided on a regular basis or is provided as a substantial part of the premises activity.
- (3) "Overlay zone" shall mean that portion of the C-3 Community Commercial zone, the Industrial zone and the Planned Industrial Park zone in which adult entertainment establishments may be located.
- (4) "Potentially conflicting uses" shall mean schools, religious institutions, residential zones and parks established within the city of Oak Harbor as of the date of this ordinance. The term "potentially conflicting uses" shall also mean any such other uses which the city council shall determine require separation from adult entertainment facilities, provided that the addition of any such uses shall require a review of available lands to ensure sufficient alternative avenues of communication for adult entertainment uses are available.

19.52.040 Adult entertainment facilities overlay zone established. There is established an adult entertainment facilities overlay zone in the city of Oak Harbor. The adult entertainment facilities overlay zone shall overlay the ~~C-3 Community Commercial zone, the~~ Industrial zone and the Planned Industrial Park zone. It does not include certain portions of ~~the C-3 zone, the~~ Industrial zone and the Planned Industrial Park zone in which potentially conflicting uses were located at the time of adoption of this ordinance. The following exclusions from ~~the C-3 zone, the~~ Industrial zone and the Planned Industrial Park zones apply:

- (1) The adult entertainment facilities overlay zone removes a buffer of seven hundred fifty (750) feet around the existing potentially conflicting uses of schools, religious institutions, and parks.
- (2) A further buffer removes ~~one hundred (100) feet~~ seven hundred fifty (760) feet around existing areas zoned exclusively for residential uses – R-1, Single-Family Residential; R-2, Limited Multiple-Family Residential; R-3, Multiple-Family Residential; and R-4, Multiple-Family Residential.

19.52.045 Overlay zone map adopted. The adult entertainment facilities overlay zone map as attached hereto in Exhibit A is adopted as a pictorial description of the sole geographic areas within the city of Oak Harbor in which adult entertainment facilities are permitted. A copy of the adult entertainment facilities overlay zone map is on file with the city clerk and shall be available for public inspection and copying.

19.52.050 Adult entertainment overlay zone use restrictions. To mitigate the adverse secondary effects associated with adult entertainment facilities, the following parking and lighting restrictions shall apply within the adult entertainment facilities overlay zone:

- (1) Parking requirements. For adult entertainment facilities constructed after the effective date of this ordinance all parking must be visible from the public right-of-way. For adult entertainment facilities located in buildings constructed prior to the effective date of this ordinance, all parking should be visible from the public right-of-way. In cases of adult entertainment facilities located in buildings constructed prior to the effective date of this ordinance where this is not feasible, access to the parking shall be in as direct a route as possible from the public right-of-way and the parking area shall remain free and clear of visual obstructions at all times. Access to the exterior rear of the building shall be denied to any persons other than employees and public officials during the performance of their respective duties and tasks by means of a fence, wall or other device approved by the city building official. On-site parking shall be required and regulated in accordance with Chapter 19.44 OHMC. Parking shall be provided at a ratio of one (1) space for every three (3) seats, plus one (1) space for every two (2) employees on the largest shift.
- (2) Lighting requirements. All on-site parking areas and premises entries of adult entertainment facilities shall be illuminated from dusk until one (1) hour past closing hours of operation with a lighting system which provides an average maintained horizontal illumination of one (1) foot candle of light on the parking surface and/or walkways. In addition, all on-site lighting, including signs, shall comply with the shading and directional requirements of OHMC 19.28.010(4). An on-premises exterior lighting plan shall be presented to the city building official for approval prior to the operation of any adult entertainment.

19.52.060 Non-conforming uses. For purposes of this title, a “non-conforming adult entertainment facility” constitutes an adult entertainment facility which lawfully exists as an adult entertainment facility which receives non-conforming status by virtue of an order from a court of competent jurisdiction, or which lawfully existed as an adult entertainment facility prior to a change in the zoning which change does not permit an adult entertainment facility in its existing location and is maintained as an adult entertainment facility although it does not comply with the adult entertainment facility zoning requirements set forth in this chapter, or is an adult entertainment facility which lawfully existed prior to annexation by the city and is maintained after the effective date of annexation and does not comply with the adult entertainment facility zoning requirements set forth in this chapter.

- (1) The location of a newly-established public park, permanent religious institution, or school within seven hundred fifty (750) feet or the establishment of a residential district within ~~one hundred (100) feet~~ seven hundred fifty (750) feet of an existing adult entertainment facility shall not cause the existing adult entertainment business to be deemed a non-conforming use unless the city council makes a determination that the newly-established park, religious institution or school requires separation from adult entertainment facilities, and further provided that the exclusion of any such areas from adult entertainment facility zoning overlay shall require a review of available lands to ensure sufficient alternative avenues of communication for adult entertainment uses are available.

- (2) Adult entertainment facilities which are non-conforming uses in the zone in which they are located and which are located within the city limits shall be discontinued within one year of the date of becoming a non-conforming adult use business or upon the expiration of the leasehold period in existence as of the date of becoming a non-conforming adult entertainment facility, or upon the sale of the non-conforming adult entertainment facility, whichever occurs first. Adult entertainment facilities which are non-conforming as a result of annexation to the city shall be discontinued within one year of the date of annexation. Such non-conforming adult entertainment facility shall not be extended, expanded, enlarged or increased in intensity. Such prohibited activities (extend, expand, enlarge, increase in intensity) shall include:
 - (a) Extension of a non-conforming adult entertainment facility to any building or other structure or land area other than one occupied by such use as of the date of becoming a non-conforming adult entertainment facility.
 - (b) Extension of any specific type of non-conforming adult entertainment facility, as separately defined in OHMC 19.52.030(2), within a building or other structure to any portion of the floor area that was not occupied by that same type of adult entertainment facility as of the date of becoming a non-conforming adult entertainment facility.
 - (c) Operation of a non-conforming use in such manner as to conflict with, or to further conflict with if already conflicting as of the date of becoming a non-conforming adult entertainment facility.
- (3) Any change in a non-conforming adult entertainment facility shall be to a use which is legally permitted within the zone in which it is located. In the event a non-conforming adult entertainment facility, or portion thereof, is changed to a use which is legally permitted within the zone in which it is located, then the structure or portion thereof which contained the adult entertainment facility cannot thereafter be used or reused for any type of adult entertainment facility. In the event a non-conforming adult entertainment facility building or structure is vacated, closed or abandoned for a period in excess of six (6) months, the structure shall not thereafter be used except in conformance with a use which is legally permitted within the zone in which it is located. A vacated, closed or abandoned non-conforming adult entertainment facility building or structure shall also be subject to the discontinuation provisions of OHMC 19.52.060(2).
- (4) Repairs and alterations to a non-conforming adult entertainment facility building or structure shall be limited to nonstructural repairs and incidental alterations for normal maintenance and shall only be permitted to the extent necessitated by normal wear and tear. No structural alterations shall be allowed.
- (5) A building or structure containing a non-conforming adult entertainment facility which is damaged or destroyed by fire, wind, earthquake or other natural disaster can be restored and the same use or occupancy continued or resumed provided the total cost of such restoration does not exceed fifty percent (50%) of the real valuation of the building or

structure exclusive of foundations at the time of such damage provided that such restoration shall not extend the one (1) year discontinuation period established in OHMC 19.52.060(2). Restoration of a structure or building housing a non-conforming adult entertainment facility or moneys used therefore shall not be used as factors by the examiner when considering any request of a time extension made pursuant to subsection (6) of this section.

- (6) In the event the owner of a non-conforming adult entertainment facility determines that the period set forth in subsection (2) of this section does not provide the adult entertainment facility with a reasonable period of amortization, then no later than one hundred eighty (180) days prior to the expiration of the period, the owner of a non-conforming adult entertainment facility shall make application to the city land use hearing examiner for an extension of time. Accompanying the application shall be a fee in the amount of Seven Hundred Twelve Dollars (\$712.00) and detailed information addressing the below-listed factors to be considered by the hearing examiner. In determining whether or not to grant the extension, the hearing examiner shall determine whether or not the harm or hardship to the non-conforming adult entertainment facility outweighs the benefit to be gained from the public from termination of the use. Factors to be considered by the hearing examiner include the location of the business in relation to sensitive land uses such as schools, parks, churches, residential zone(s), etc., initial capital investment, investment realization to date, life expectancy of the investment, the existence or nonexistence of a lease obligation, as well as a contingency clause permitting termination of the lease, or whether a reasonable alternate use of the property exists. The action of the hearing examiner shall be in accordance with the review process as described in Chapter 18.40 OHMC for a Review Process III.
- (7) Within thirty (30) calendar days of becoming a non-conforming adult entertainment facility, the non-conforming adult entertainment facility shall provide the city's development services director with copies of its current leasehold document(s) which sets forth their existing leasehold time period or, in the case of a non-leasehold interest, the city's development services director shall be provided other documents which show record of ownership.

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

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

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PASSED by the City Council this 4th day of May, 2010.

() APPROVED by its Mayor this _____ day of _____, 2010.

() Vetoed

THE CITY OF OAK HARBOR

Mayor

Attest:

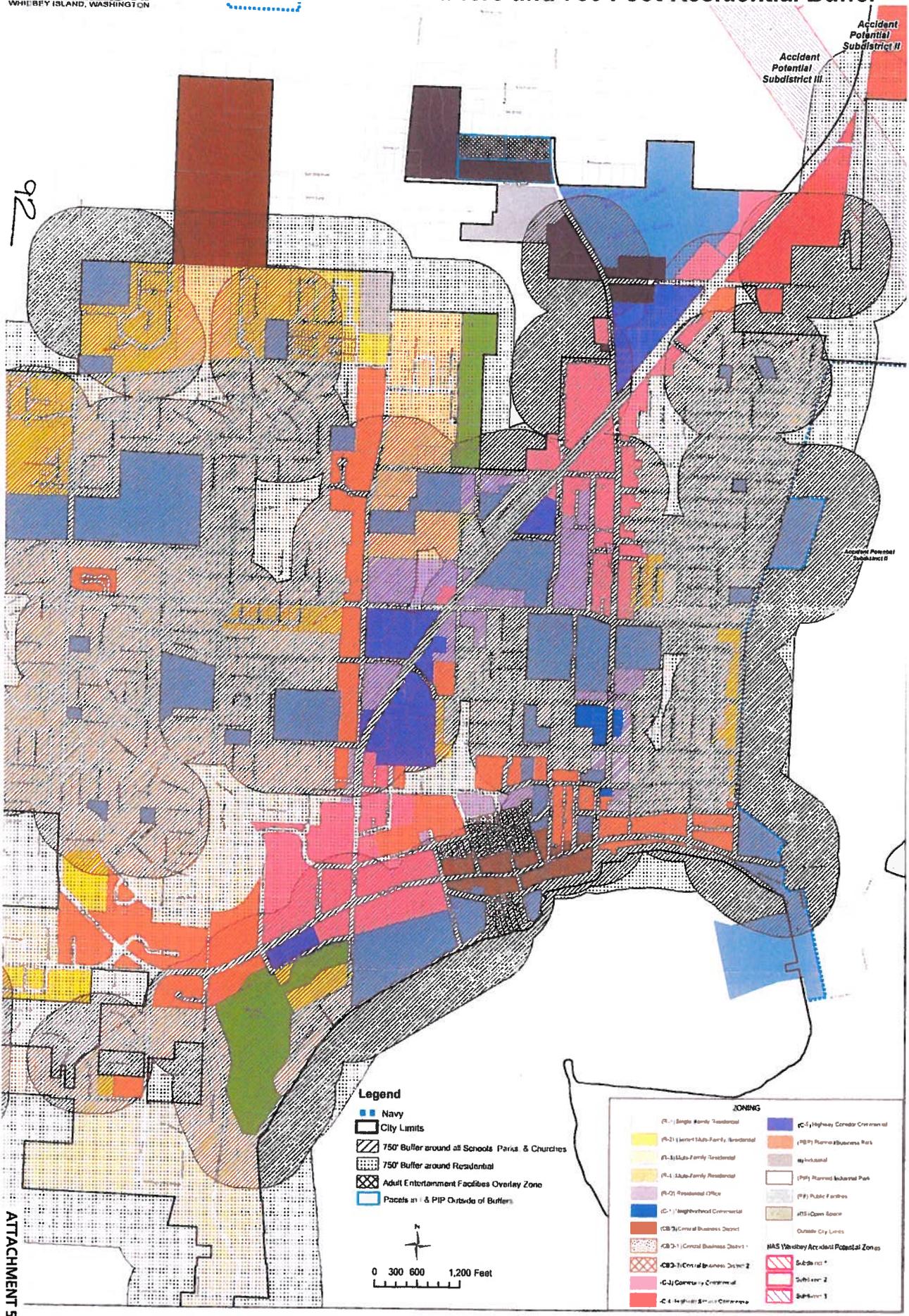
City Clerk

Approved as to Form:

City Attorney

Published: _____

DRAFT
Adult Entertainment Facilities Working Map
C-3, I, and PIP Zoning
Outside of 750 Foot Buffers and 750 Foot Residential Buffer

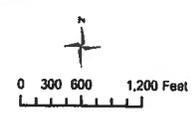


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Accident Potential Subdistrict II
Accident Potential Subdistrict III

Legend

- Navy
- City Limits
- 750' Buffer around all Schools Parks & Churches
- 750' Buffer around Residential
- Adult Entertainment Facilities Overlay Zone
- Parcels in I & PIP Outside of Buffers



ZONING

(R-1) Single Family Residential	(C-1) Highway Corridor Commercial
(R-2) General Multi-Family Residential	(PB-1) Planned Business Park
(R-3) Sub-Family Residential	(H) Industrial
(R-4) Multi-Family Residential	(P) Planned Suburban Park
(R-O) Residential Office	(P) Public Facilities
(C-1) Neighborhood Commercial	(OS) Open Space
(CB-1) Central Business District	Outside City Limits
(CB-2) Central Business District 2	HAS Whiskey Accident Potential Zones
(CB-3) Central Business District 3	Subdistrict 1
(C-4) Community Commercial	Subdistrict 2
(C-4) Highway Corridor Commercial	Subdistrict 3

ATTACHMENT 5

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

Bill No. 11
Date: May 4, 2010
Subject: Ordinance Final Consideration-
Stormwater Management OHMC
12.30

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

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

PURPOSE

This agenda bill is for final consideration of the ordinance amending Title 12 of the Oak Harbor Municipal Code related to stormwater management in the City of Oak Harbor. The proposed ordinance was introduced and a public hearing was opened during the February 16, 2010 City Council meeting. A motion was passed to continue the public hearing until the May 4, 2010 City Council meeting. The proposed code changes are required by the National Pollutant Discharge Elimination System (NPDES) Phase II Municipal Stormwater permit issued to the City of Oak Harbor by the Washington State Department of Ecology.

AUTHORITY

The City Council is granted authority under RCW 35A.11.020 to adopt and enforce ordinances of all kinds relating to and regulating its local or municipal affairs and appropriate to the good government of the City.

SUMMARY STATEMENT

In February of 2007 the City of Oak Harbor was formally issued an NPDES Phase II municipal stormwater permit by the Washington State Department of Ecology (DOE). The DOE is required to issue the NPDES stormwater permits under the terms of the Washington State Water Pollution Control Law and the Federal Water Pollution Control Act (the Clean Water Act). The NPDES permit requires the City of Oak Harbor to undertake a significant number of operational changes as well as policy and code changes in order to reduce or eliminate sources of pollution through the City stormwater drainage system. The regulations proposed will increase the City of Oak Harbor's effort to control prevent and cleanup up pollution of surface waters inside City limits.

It is important to note that the NPDES permit is issued to the City as the governmental jurisdiction but that much of the content of the NPDES is directed towards the actions of private

parties, businesses, developers and property owners with the City acting as the policing agent for the protection of water resources. The requirements for these changes are mandated by the NPDES permit with the intent being to minimize the damaging effects of stormwater. These and other changes to the City stormwater regulations are more stringent than similar regulations imposed by other jurisdictions in Island County.

The proposed amendments to OHMC 12.30 address the required changes to development regulations for stormwater.

OHMC 12.30 Stormwater Management

In October of 2008 the City Council adopted revisions to OHMC 12.30, formally adopting the Department of Ecology 2005 Stormwater Management Manual for Western Washington (SWMM) as the standard for stormwater runoff related to development and redevelopment projects. Adoption of the manual and the revisions to OHMC 12.30 were necessary to clarify the use of the most current version of the Ecology stormwater manual as the standard in the City of Oak Harbor.

The requirements of the NPDES Phase II permit related to development regulations vary slightly from the requirements of the SWMM. The proposed amendment to OHMC 12.30 will bring the City's stormwater regulations into conformance with the requirements of the NPDES Permit. Attached to this agenda bill is a legislative draft of the ordinance showing the proposed changes to OHMC 12.30. Deletions are shown as strikeout text with additions being indicated with underline text.

The majority of the changes include definitions of terms, clarification on submittal requirements and limitations on construction-related erosion control activities. There are two areas worthy of attention. The first relates to the economic impacts while the second relates to treatment thresholds.

The proposed amendments, as required by the NPDES permit, broaden the section on allowable exceptions (see OHMC 12.30.580) to the minimum requirements to include consideration of the economic effects of compliance with the code requirements compared to the regulations in existence prior to imposition of the NPDES permit.

There are two areas of the permit that do not apply to the City of Oak Harbor. The NPDES permit mandates that minimum requirement #6- Runoff Treatment, OHMC 12.30.540, include treatment thresholds for oils, phosphorous, enhanced treatment and basic treatment. The proposed amendments to OHMC 12.30 include the thresholds for oil and basic treatment but do not include the phosphorous or enhanced treatment requirements.

The language of the permit for phosphorous control is limited to municipalities with a local lake management plan or a DOE imposed waste load allocation. As the City of Oak Harbor does not have a phosphorous control, is not subject to a DOE waste load allocation and is not listed under section 305(b) or section 319(a) of the Clean Water Act, a phosphorous treatment threshold is not warranted at this time.

The threshold language of the permit for enhanced treatment is directed towards the reduction of dissolved metals for project sites discharging to fish-bearing streams. There are currently no streams within the jurisdiction of the City Oak Harbor classified as fish-bearing streams. Therefore, the inclusion of the Enhanced treatment threshold is not warranted at this time.

Should a phosphorous control or an enhanced treatment threshold become necessary, a modification to the code would be required.

Comment letters and inquiries were received from the Skagit Island County Builders Association (SICBA). Staff discussed the issues raised with SICBA staff, however, there are no recommended changes to the ordinance.

As the proposed ordinance is related to land development regulations, a review by the Washington State Department of Commerce (WADOC) and SEPA review was completed for consistency with the Growth Management Act. The WADOC and SEPA review was completed with no comment.

STANDING COMMITTEE REPORT

The recommended changes were presented to the Public Works Standing Committee on February 4, 2010 and April 1, 2010.

RECOMMENDED ACTION

1. Re-open the public hearing.
2. A motion adopting the ordinance as attached.

ATTACHMENTS

Draft ordinance.

MAYOR'S COMMENTS

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF OAK HARBOR AMENDING CHAPTER 12.30 OF THE OAK HARBOR MUNICIPAL CODE ENTITLED "STORMWATER MANAGEMENT"

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

Section One. Oak Harbor Municipal Code Chapter 12.30 entitled "Stormwater Management" is hereby amended to read as follows:

Chapter 12.30
STORM WATERSTORMWATER MANAGEMENT

Sections:

Subchapter 12.30.000 – Preliminary Provision

- 12.30.010 Findings of fact.
- 12.30.020 Need.
- 12.30.030 Purpose.
- 12.30.040 Definitions.

Subchapter 12.30.100 – General Provisions

- 12.30.110 Abrogation and greater restrictions.
- 12.30.120 Interpretation.
- 12.30.130 Applicability.

Subchapter 12.30.200 – Regulated Activities and Allowed Activities

- 12.30.210 Regulated activities.
- 12.30.220 Exemptions.

Subchapter 12.30.300 – General Requirements

- 12.30.310 ~~Storm Water~~Stormwater Management Manual for the ~~Puget Sound Basin~~Western Washington adopted.
- 12.30.320 ~~Storm water~~Stormwater best management practices (BMPs).
- 12.30.330 Illicit discharges.

Subchapter 12.30.500 – Minimum Requirements

- 12.30.510 New development.
- 12.30.515 Redevelopment.
- 12.30.520 Minimum Requirement #1 – Preparation of ~~storm water~~stormwater site plans.
- 12.30.525 Minimum Requirement #2 – Construction ~~storm water~~Stormwater ~~p~~Pollution ~~p~~Prevention (SWPP).
- 12.30.527 Minimum Requirement #3 – Source control of pollution.
- 12.30.530 Minimum Requirement #4 – Preservation of natural drainage systems and outfalls.
- 12.30.535 Minimum Requirement #5 – On-site ~~storm water~~stormwater management.
- 12.30.540 Minimum Requirement #6 – Runoff treatment.

- 12.30.545 Minimum Requirement #7 – Flow control.
- 12.30.550 Minimum Requirement #8 – Wetlands protection.
- 12.30.555 Minimum Requirement #9 – Basin/watershed planning.
- 12.30.560 Minimum Requirement #10 – Operation and maintenance.
- 12.30.565 Minimum Requirement #11 – Financial liability.
- 12.30.570 Minimum Requirement #12 – Off-site analysis and mitigation.
- 12.30.575 Adjustments.
- 12.30.580 Exceptions and variances.

Subchapter 12.30.600 – Administration

- 12.30.610 Director.
- 12.30.620 Review and approval.
- 12.30.625 Review process.
- 12.30.630 ~~Enforcement authority.~~
- 12.30.640 Inspection.

Subchapter 12.30.700 – Enforcement

- 12.30.710 General.
- 12.30.720 Stop work order.
- 12.30.730 ~~Civil penalty~~Penalties.
- 12.30.740 ~~Penalties due~~Enforcement.

Subchapter 12.30.000 – Preliminary Provision

12.30.010 Findings of fact. The city council of the city of Oak Harbor hereby finds that:

- (1) ~~Storm water~~Stormwater pollution is a problem associated with land utilization and development and the common occurrence of potential pollutants such as pesticides, fertilizers, petroleum products, pet wastes and numerous others.

Land utilization and development is also known to increase both the volume and duration of peak flows resulting in erosion, scouring, and deposition of sediment.

- (2) An expanding population and increased development of land may lead to possible consequences of water quality degradation through discharge of nutrients, metals, oil and grease, toxic materials, and other detrimental substances; drainage and storm and surface water runoff problems; and safety hazards posed by water runoff on streets and highways.
- (3) In the future, such problems and dangers associated with ~~storm water~~stormwater runoff will be reduced or avoided if existing properties and future developers, both private and public, provide for ~~storm water~~stormwater quality and quantity controls.
- (4) ~~Storm water~~Stormwater quality and quantity controls can be achieved when land is developed or redeveloped by implementing appropriate best management practices (BMPs).

- (5) Best management practices can be expected to perform as intended only when properly designed, constructed and maintained.
- (6) The Federal Clean Water Act and rules established by the Environmental Protection Agency require the Washington State Department of Ecology to issue permits to owners of municipal separate storm sewer systems (MS4).
- (7) As an owner of a ~~municipal separate storm sewer system (MS4)~~, the city of Oak Harbor is subject to the requirements of the NPDES Phase II municipal stormwater permit issued by the Department of Ecology.

12.30.020 Need. The city finds that this chapter is necessary in order to:

- (1) Minimize or eliminate water quality degradation;
- (2) Prevent erosion and sedimentation in creeks, streams, ponds, lakes and other water bodies;
- (3) Protect property owners adjacent to existing and developing lands from increased runoff rates which could cause erosion of abutting property;
- (4) Preserve and enhance the suitability of waters for contact recreation, fishing, and other beneficial uses;
- (5) Preserve and enhance the aesthetic quality of the water;
- (6) Promote sound development policies which respect and preserve city surface water, ground water and sediment;
- (7) Ensure the safety of city roads and rights-of-way;
- (8) Decrease ~~storm water~~stormwater-related damage to public and private property from existing and future runoff;
- (9) Protect the health, safety and welfare of the inhabitants of Oak Harbor; and
- (10) Comply with the requirements and minimum standards contained in the NPDES Phase II municipal stormwater permit for control of ~~storm water~~stormwater for review and permitting of all development, and related activities, inside city limits.

12.30.030 Purpose. The provisions of this chapter are intended to guide and advise all who conduct new development or redevelopment within the city. The provisions of this chapter establish the minimum level of compliance which must be met to permit a property to be developed or redeveloped within the city. This chapter is an exercise of the police power for the general public and not for protection of specific individuals.

Specifically, it is the purpose of this chapter to:

- (1) Minimize water quality degradation and sedimentation in streams, ponds, lakes, wetlands and other water bodies;
- (2) Minimize the impact of increased runoff, erosion and sedimentation caused by land development and maintenance practices;
- (3) Maintain and protect ground water resources;
- (4) Minimize adverse impacts of alterations on ground and surface water quantities, locations and flow patterns;
- (5) Decrease potential landslide, flood and erosion damage to public and private property;
- (6) Promote site planning and construction practices that are consistent with natural topographical, vegetational and hydrological conditions;
- | (7) Maintain and protect the city ~~storm water~~stormwater management infrastructure and those downstream; provided nothing herein shall be construed as providing a right to any individual, class or group of individuals;
- (8) Provide a means of regulating clearing and grading of private and public land while minimizing water quality impacts in order to protect public health and safety; and
- (9) Provide minimum development regulations and construction procedures which will preserve, replace or enhance, to the maximum extent practicable, existing vegetation to preserve and enhance the natural qualities of wetlands and water bodies and promote enhancement of critical lands.

12.30.040 Definitions. For the purpose of this chapter, the following definitions shall apply:

- (1) “American Public Works Association” or “APWA” means the adopted edition of the Washington State Chapter of the American Public Works Association.
- (2) “Approval” means the proposed work or completed work conforms to this chapter in the opinion of the director.
- (3) “Arterial” means a road or street primarily for through traffic. A major arterial connects an Interstate Highway to cities and counties. A minor arterial connects major arterials to collectors. A collector connects an arterial to a neighborhood. A collector is not an arterial. A local access road connects individual homes to a collector.
- (4) “As-graded” means the extent of surface conditions on completion of grading.

- (5) "Basin plan" means a plan and all implementing regulations and procedures including, but not limited to, land use management adopted by ordinance for managing surface and ~~storm water~~ stormwater management facilities and features within individual subbasins.
- (6) "Bedrock" means the more or less solid rock in place either on or beneath the surface of the earth. It may be soft, medium, or hard and have a smooth or irregular surface.
- (7) "Bench" means a relatively level step excavated into earth material on which fill is to be placed.
- (8) "Best management practice" or "BMP" means physical, structural, and/or managerial practices that, when used singly or in combination, prevent or reduce pollution of water. BMPs are listed and described in the Manual.
- (9) "Civil engineer" means a professional engineer licensed in the state of Washington in civil engineering who is experienced and knowledgeable in the practice of civil engineering.
- (10) "Civil engineering" means the application of the knowledge of the forces of nature, principles of mechanics and the properties of materials to the evaluation, design and construction of civil works for the beneficial uses of mankind.
- (11) "Certified Erosion and Sediment Control Lead (CESCL)" means an individual who has current certification through an approved erosion and sediment control training program that meets the minimum training standards established by the Washington State Department of Ecology (see BMP C160 in the Stormwater Management Manual for Western Washington (2005)). A CESCL is knowledgeable in the principles and practices of erosion and sediment control. The CESCL must have the skills to assess site conditions and construction activities that could impact the quality of stormwater and the effectiveness of erosion and sediment control measures used to control the quality of stormwater discharges.
- (~~11~~12) "Clearing" means the destruction and removal of vegetation by manual, mechanical, or chemical methods.
- (~~12~~13) "Commercial agriculture" means those activities conducted on lands defined in RCW 84.34.020(2), and activities involved in the production of crops or livestock for wholesale trade. An activity ceases to be considered commercial agriculture when the area on which it is conducted is proposed for conversion to a nonagricultural use or has lain idle for more than five years, unless the idle land is registered in a federal or state soils conservation program, or unless the activity is maintenance of irrigation ditches, laterals, canals, or drainage ditches related to an existing and ongoing agricultural activity.
- (~~13~~14) "Compaction" means densification of a fill by mechanical means.

- | (1415) "Critical areas" means, at a minimum, areas which include wetlands, areas with a critical recharging effect on aquifers used for potable water, fish and wildlife habitat conservation areas, frequently flooded areas, geologically hazardous areas, including unstable slopes, and associated areas and ecosystems.
- | (1516) "Design storm" means a prescribed hyetograph and total precipitation amount (for a specific duration recurrence frequency) used to estimate runoff for a hypothetical storm of interest or concern for the purposes of analyzing existing drainage, designing new drainage facilities or assessing other impacts of a proposed project on the flow of surface water. (A hyetograph is a graph of percentages of total precipitation for a series of time steps representing the total time during which the precipitation occurs.)
- | (1617) "Detention" means the release of ~~storm-water~~stormwater runoff from the site at a slower rate than it is collected by the ~~storm-water~~stormwater facility system, the difference being held in temporary storage.
- | (1718) "Detention facility" means an above or below ground facility, such as a pond or tank, that temporarily stores ~~storm-water~~stormwater runoff and subsequently releases it at a slower rate than it is collected by the drainage facility system. There is little or no infiltration of stored ~~storm-water~~stormwater.
- | (1819) "Drainage basin" means a geographic and hydrologic subunit of a water shed.
- | (1920) "Earth material" means any rock, natural soil or fill and/or any combination thereof.
- | (2021) "Ecology" means the Washington State Department of Ecology.
- | (2122) "Effective Impervious surface" means those impervious surfaces that are connected via sheet flow or discrete conveyance to a drainage system. Impervious surfaces on residential development sites are considered ineffective if the runoff is dispersed through at least one hundred feet of native vegetation.
- | (2223) "Engineering geologist" means a geologist experienced and knowledgeable in engineering geology.
- | (2324) "Engineering geology" means the application of geologic knowledge and principles in the investigation and evaluation of naturally occurring rock and soil for use in the design of civil works.
- | (2425) "Erosion" means the wearing away of the land surface by running water, wind, ice, or other geological agents, including such processes as gravitational creep. Detachment and movement of soil or rock fragments by water, wind, ice, or gravity.
- | (2526) "Excavation" means the mechanical removal of earth material.

(2627) "Existing site conditions" means:

- (a) For developed sites with ~~storm water~~stormwater facilities that have been constructed to meet the standards in the minimum requirements of this chapter, existing site conditions shall mean the existing conditions on the site.
- (b) For developed sites that do not have ~~storm water~~stormwater facilities that meet the minimum requirements, existing site conditions shall mean the conditions that existed prior to local government adoption of a ~~storm water~~stormwater management program. If in question, the existing site conditions shall be documented by aerial photograph records, or other appropriate means.
- ~~(c) For all sites in water quality sensitive areas as identified under Minimum Requirement #7, Water Quality Sensitive Areas, existing site conditions shall mean undisturbed forest, for the purpose of calculating runoff characteristics.~~
- ~~(d) For all undeveloped sites outside of water quality sensitive areas, existing site conditions shall mean the existing conditions on the site.~~

(2728) "Experimental BMP" means a BMP that has not been tested and evaluated by the Department of Ecology in collaboration with local governments and technical experts.

(2829) "Fill" means a deposit of earth material placed by artificial means.

(2930) "Forest practice" means any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber, including, but not limited to:

- (a) Road and trail construction;
- (b) Harvesting, final and intermediate;
- (c) Precommercial thinning;
- (d) Reforestation;
- (e) Fertilization;
- (f) Prevention and suppression of diseases and insects;
- (g) Salvage of trees;
- (h) Brush control.

(3031) "Frequently flooded areas" means the 100-year flood plain designations of the Federal Emergency Management Agency and the National Flood Insurance Program.

(32) "Full stabilization" means concrete or asphalt paving; quarry spalls used as ditch lining; or the use of rolled erosion products, a bonded fiber matrix product, or vegetative cover in a manner that will fully prevent soil erosion.

~~(3133)~~ "Geologically hazardous areas" means areas that because of their susceptibility to erosion, sliding, earthquake or other geological events are not suited to the siting of commercial, residential or industrial development consistent with public health or safety concerns.

~~(3234)~~ "Grade" means the slope of a road, channel, or natural ground. The finished surface of a canal bed, road bed, top of embankment, or bottom of excavation; any surface prepared for the support of construction such as paving or the laying of a conduit.

(a) "Existing grade" means the grade prior to grading.

(b) "Rough grade" means the stage at which the grade approximately conforms to the approved plan.

(c) "Finish grade" means the final grade of the site which conforms to the approved plan.

~~(3335)~~ "Gradient terrace" means an earth embankment or a ridge-and-channel constructed with suitable spacing and an acceptable grade to reduce erosion damage by intercepting surface runoff and conducting it to a stable outlet at a stable nonerosive velocity.

~~(3436)~~ (To) "grade" means to finish the surface of a canal bed, road bed, top of embankment or bottom of excavation.

~~(3537)~~ "Ground water" means water in a saturated zone or stratum beneath the surface of land or a surface water body.

~~(3638)~~ "Highway" means a main public road connecting towns and cities.

~~(3739)~~ "Hydroperiod" means the seasonable occurrence of flooding and/or soil saturation; it encompasses depth, frequency, duration, and seasonal pattern of inundation.

~~(3840)~~ "Impervious surface" means a hard surface area that either prevents or retards the entry of water into the soil mantle as under natural conditions prior to development. A hard surface area which causes water to run off the surface in greater quantities or at an increased rate of flow from the flow present under natural conditions prior to development. Common impervious surfaces include, but are not limited to, roof tops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and oiled, macadam or other surfaces which similarly impede the natural infiltration of stormwater. Open, uncovered retention/detention facilities shall not be considered as impervious surfaces for the purposes of determining whether the thresholds for application of minimum requirements

are exceeded. Open, un-covered retention/detention facilities shall be considered impervious surfaces for purposes of runoff modeling.

- (3941) “Illicit discharge” means all ~~non-storm water~~stormwater discharges to ~~storm water~~stormwater drainage systems that cause or contribute to a violation of state water quality, sediment quality or ground water quality standards, including but not limited to sanitary sewer connections, industrial process water, interior floor drains, car washing and greywater systems.
- (4042) “Interflow” means that portion of rainfall that infiltrates into the soil and moves laterally through the upper soil horizons until intercepted by a stream channel or until it returns to the surface, for example, in a wetland, spring or seep.
- (4143) “Land disturbing activity” means any activity that results in movement of earth, or a change in the existing soil cover (both vegetative and non-vegetative) and/or the existing soil topography. Land disturbing activities include, but are not limited to, demolition, construction, clearing, grading, filling and excavation. Compaction that is associated with stabilization of structures and road construction shall also be considered a land disturbing activity. Vegetation maintenance practices are not considered land disturbing activity.
- (4244) “Large parcel erosion and sediment control plan” or “large parcel ESC plan” means a plan to implement BMPs to control pollution generated during land disturbing activity.
- (4345) “Low Impact Development” means a stormwater management and land development strategy applied at the parcel and subdivision scale that emphasizes conservation and use of on-site natural features integrated with engineered, small-scale hydrologic controls to more closely mimic pre-development hydrologic functions.
- (4446) “Maintenance” ~~means activities or repairs conducted on currently serviceable structures, facilities, and equipment that involves no expansion or use beyond that previously existing and results in no significant adverse hydrologic impact. It includes those usual activities taken to prevent a decline, lapse, or cessation in the use of structures and systems.~~means activities or repairs conducted on currently serviceable structures, facilities, and equipment that involves no expansion or use beyond that previously existing and results in no significant adverse hydrologic impact. It includes those usual activities taken to prevent a decline, lapse, or cessation in the use of structures and systems. Those usual activities may include replacement of dysfunctional facilities, including cases where environmental permits require replacing an existing structure with a different type structure, as long as the functioning characteristics of the original structure are not changed.
- (4547) “Mitigation” means, in the following order of preference:
- (a) Avoiding the impact altogether by not taking a certain action or part of an action;

- (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;
- (c) Rectifying the impact by repairing, rehabilitating or restoring the affected environment;
- (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; and
- (e) Compensation for the impact by replacing, enhancing, or providing substitute resources or environments.

(4648) "Native vegetation" means vegetation comprised of plant species, other than noxious weeds, that are indigenous to the coastal region of the Pacific Northwest and which reasonably could have been expected to naturally occur on the site. Examples include trees such as Douglas Fir, western hemlock, western red cedar, alder, big-leaf maple, and vine maple; shrubs such as willow, elderberry, salmonberry, and salal; and herbaceous plants such as sword fern, foam flower, and fireweed.

(4749) "Natural location" means the location of those channels, swales, and other non-manmade conveyance systems as defined by the first documented topographic contours existing for the subject property, either from maps or photographs, or such other means as appropriate.

(4850) "New development" means the following activities: land disturbing activities, structural development, including construction, installation or expansion of a building or other structure; creation of impervious surfaces; Class IV general forest practices that are conversions from timber land to other uses; and subdivision and short subdivision of land and binding site plans as defined in RCW 58.17.020. All other forest practices and commercial agriculture are not considered new development.

(4951) "Permanent ~~storm water~~stormwater quality control (PSQC) plan" means a plan which includes permanent BMPs for the control of pollution from ~~storm water~~stormwater runoff after construction and/or land disturbing activity has been completed. For small sites, this requirement is met by implementing a small parcel erosion and sediment control plan. Guidance on preparing a PSQC plan is contained in the Manual.

(5052) "Person" means any individual, partnership, corporation, association, organization, cooperative, public or municipal corporation, agency of the state, or local government unit, however designated.

(5153) "Pollution" means contamination or other alteration of the physical, chemical, or biological properties of waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive or other substance into any waters of the state as will or is likely to create a

nuisance or render such waters harmful, detrimental or injurious to the public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

(5254) "Pollution-generating impervious surface (PGIS)" means those impervious surfaces considered to be a significant source of pollutants in stormwater runoff. Such surfaces include those which are subject to: vehicular use; industrial activities (as further defined in the glossary); or storage of erodible or leachable materials, wastes, or chemicals, and which receive direct rainfall or the run-on or blow-in of rainfall. Erodible or leachable materials, wastes, or chemicals are those substances which, when exposed to rainfall, measurably alter the physical or chemical characteristics of the rainfall runoff. Examples include erodible soils that are stockpiled, uncovered process wastes, manure, fertilizers, oily substances, ashes, kiln dust, and garbage dumpster leakage. Metal roofs are also considered to be PGIS unless they are coated with an inert, non-leachable material (e.g., baked-on enamel coating).

A surface, whether paved or not, shall be considered subject to vehicular use if it is regularly used by motor vehicles. The following are considered regularly-used surfaces: roads, unvegetated road shoulders, bike lanes within the traveled lane of a roadway, driveways, parking lots, unfenced fire lanes, vehicular equipment storage yards, and airport runways.

The following are not considered regularly-used surfaces: paved bicycle pathways separated from and not subject to drainage from roads for motor vehicles, fenced fire lanes, and infrequently used maintenance access roads.

(55) "Pollution-generating pervious surfaces (PGPS)" means any non-impervious surface subject to use of pesticides and fertilizers or loss of soil. Typical PGPS include lawns, landscaped areas, golf courses, parks, cemeteries, and sports fields.

(56) "Pre-developed condition" means the native vegetation and soils that existed at a site prior to the influence of Euro-American settlement. The pre-developed condition shall be assumed to be a forested land cover unless reasonable, historic information is provided that indicates the site was prairie prior to settlement.

(57) "Project site" means that portion of a property, properties, or right-of-way subject to land disturbing activities, new impervious surfaces, or replaced impervious surfaces.

(5358) "Redevelopment" means, on an already substantially developed (i.e., has thirty-five percent (35%) or more of existing impervious surface coverage) site, the creation or addition of impervious surfaces, structural development including construction, installation or expansion of a building or other structure, and/or replacement of impervious surface that is not part of a routine maintenance activity, and land disturbing activities associated with structural or impervious redevelopment.

- | (5459) “Regional retention/detention system” means a ~~storm-water~~stormwater quantity control structure designed to correct existing excess surface water runoff problems of a basin or subbasin. The area downstream has been previously identified as having existing or predicated significant and regional flooding and/or erosion problems. This term is also used when a detention facility is used to detain ~~storm-water~~stormwater runoff from a number of different businesses, developments or areas within a catchment.

- | (5560) “Replaced impervious surface” means for structures, the removal and replacement of any exterior impervious surfaces or foundation. For other impervious surfaces, the removal down to bare soil or base course and replacement.

- | (5661) “Retention/detention facility (R/D)” means a type of drainage facility designed either to hold water for a considerable length of time and then release it by evaporation, plant transpiration, and/or infiltration into the ground; or to hold surface and ~~storm~~waterstormwater runoff for a short period of time and then release it to the surface and ~~storm-water~~stormwater management system.

- | (5762) “Site” means the area defined by the legal boundaries of a parcel or parcels of land that is (are) subject to new development or redevelopment. For road projects, the length of the project site and the right-of-way boundaries define the site.

- | (5863) “Slope” means the degree of deviation of a surface from the horizontal, measured as a numerical ratio, percent, or in degrees. Expressed as a ratio, the first number is the horizontal distance (run) and the second is the vertical distance (rise), as 2:1. A 2:1 slope is a 50 percent slope. Expressed in degrees, the slope is the angle from the horizontal plane, with a 90-degree slope being vertical (maximum) and 45 degrees being a 1:1 or 100 percent slope.

- | (5964) “Small parcel erosion and sediment control plan” or “small parcel ESC plan” means a plan for small sites to implement temporary BMPs to control pollution generated during the construction phase only, primarily erosion and sediment. Guidance for preparing a small parcel ESC plan is contained in the Manual.

- | (6065) “Soil” means the unconsolidated mineral and organic material on the immediate surface of the earth that serves as a natural medium for the growth of land plants.

- | (6166) “Source control BMP” means a structure or operation that is intended to prevent pollutants from coming into contact with stormwater through physical separation of areas or careful management of activities that are sources of pollutants. This manual separates source control BMPs into two types. Structural Source Control BMPs are physical, structural, or mechanical devices, or facilities that are intended to prevent pollutants from entering stormwater. Operational BMPs are non-structural practices that prevent or reduce pollutants from entering stormwater.

- (6267) "~~Storm water~~Stormwater" means that portion of precipitation that does not naturally percolate into the ground or evaporate, but flows via overland flow, interflow, channels or pipes into a defined surface water channel, or a constructed infiltration facility.
- (6368) "~~Storm water~~Stormwater drainage system" means constructed and natural features which function together as a system to collect, convey, channel, hold, inhibit, retain, detain, infiltrate, divert, treat or filter ~~storm water~~stormwater.
- (6469) "~~Storm water~~Stormwater facility" means a constructed component of a ~~storm water~~stormwater drainage system, designed or constructed to perform a particular function, or multiple functions. ~~Storm water~~Stormwater facilities include, but are not limited to, pipes, swales, ditches, culverts, street gutters, detention basins, retention basins, constructed wetlands, infiltration devices, catch basins, oil/water separators, sediment basins and modular pavement.
- (6570) "~~Storm Water~~Stormwater Management Manual" or "Manual" means the Washington State Department of Ecology 2005 Stormwater Management Manual for Western Washington.
- (6671) "~~Storm water~~Stormwater site plan" means a plan which includes an erosion and sediment control (ESC) plan and/or a permanent ~~storm water~~stormwater quality control plan (PSQCP). For small sites, this plan is the equivalent of a small parcel erosion and sediment control plan. Guidance on preparing a ~~storm water~~stormwater site plan is contained in the Manual.
- (6772) "Threshold Discharge Area" means an onsite area draining to a single natural discharge location or multiple natural discharge locations that combine within one-quarter mile downstream (as determined by the shortest flowpath).
- (6873) "Toe of slope" means a point or line of slope in an excavation or cut where the lower surface changes to horizontal or meets the existing ground slope.
- (6974) "Top of slope" means a point or line on the upper surface of a slope where it changes to horizontal or meets the original surface.
- (7075) "Treatment BMP" means a BMP that is intended to remove pollutants from ~~storm water~~stormwater. A few examples of treatment BMPs are detention ponds, oil/water separators, biofiltration swales and constructed wetlands.
- (7176) "Unstable slopes" means those sloping areas of land which have in the past exhibited, are currently exhibiting, or will likely in the future exhibit mass movement of earth.
- (7277) "Water body" means surface waters including rivers, streams, lakes, marine waters, estuaries, and wetlands.

(7378) "Watershed" means a geographic region within which water drains into a particular river, stream, or body of water as identified and numbered by the state of Washington Water Resource Inventory Areas (WRIAs) as defined in Chapter 173-500 WAC.

(7479) "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adopted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from non-wetland sites including, but not limited to, ~~This includes wetlands created, restored or enhanced as part of a mitigation procedure. This does not include constructed wetlands or the following surface waters of the state intentionally constructed from sites that are not wetlands:~~ irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, agricultural detention facilities, farm ponds, and landscape amenities or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from non-wetland areas to mitigate the conversion of wetlands.

(7580) "Vegetation" means all organic plant life growing on the surface of the earth.

Subchapter 12.30.100 – General Provisions

12.30.110 Abrogation and greater restrictions. It is not intended that this chapter repeal, abrogate, or impair any existing regulations, easements, covenants, or deed restrictions. However, where this chapter imposes greater restrictions, the provisions of this chapter shall prevail.

12.30.120 Interpretation. The provisions of this chapter shall be held to be minimum requirements in their interpretation and application and shall be liberally construed to serve the purposes of this chapter.

12.30.130 Applicability.

- (1) When any provision of any other chapter of the city conflicts with this chapter, that which provides more environmental protection shall apply unless specifically provided otherwise in this chapter.
- (2) The director is authorized to adopt written procedures for the purpose of carrying out the provisions of this chapter. Prior to fulfilling the requirements of this chapter, the city shall not grant any approval or permission to conduct a regulated activity including, but not limited to, the following: building permit, commercial or residential; binding site plan; conditional use permit; franchise right-of-way construction permit; grading and clearing permit; master plan development; planned unit development; right-of-way permit; shoreline substantial development permit; shoreline variance; shoreline conditional use permit; unclassified use permit; variance; zone reclassification; subdivision; short

subdivision; special use permit; utility and other use permit; zone reclassification; or any subsequently adopted permit or required approval not expressly exempted by this chapter.

- (3) Regulated activities shall be conducted only after the director approves a ~~storm~~ waterstormwater site plan as required by this chapter.

Subchapter 12.30.200 – Regulated Activities and Allowed Activities

12.30.210 Regulated activities. Consistent with the minimum requirements contained in this chapter, the director shall approve or disapprove the following activities, unless exempted in OHMC 12.30.220:

- (1) New Development.
 - (a) Land disturbing activities;
 - (b) Structural development, including construction, installation or expansion of a building or other structure;
 - (c) Creation or replacement of impervious surfaces;
 - (d) Class IV general forest practices that are conversions from timber land to other uses;
 - (e) Subdivision, short subdivision and binding site plans, as defined in RCW 58.17.020.
- (2) Redevelopment. On an already developed site, the creation or addition of impervious surfaces, structural development including construction, installation or expansion of a building or other structure, land disturbing activity, and/or replacement of impervious surface that is not part of a routine maintenance activity, and land disturbing activities associated with structural or impervious redevelopment.

12.30.220 Exemptions.

- (1) ~~Road maintenance,~~ Commercial agriculture, and forest practices regulated under WAC Title 222, except for Class IV general forest practices that are conversions from timber land to other uses, are exempt from the provisions of this chapter.
- (2) Road Maintenance activities, including pothole and square cut patching, overlaying existing asphalt or concrete pavements with asphalt or concrete without expanding the area of coverage, shoulder grading, reshaping/regarding drainage systems, crack sealing, resurfacing with in-kind material (including bituminous surface treatments over existing asphalt) without expanding the road prism and vegetation managements are exempt from the provisions of this chapter.

- (3) Development undertaken by the Washington State Department of Transportation in state highway rights-of-way is regulated by Chapter 173-270 WAC, the Puget Sound Highway Runoff Program.
- (4) Underground utility projects that replace the ground surface with in-kind material or materials with similar runoff characteristics are exempt from the provisions of this chapter except for Minimum Requirement #2, Construction Stormwater Pollution Prevention.

All other new development and redevelopment is subject to the minimum requirements of this chapter.

Subchapter 12.30.300 – General Requirements

12.30.310 ~~Storm Water~~Stormwater Management Manual for Western Washington adopted. The 2005 Stormwater Manual for Western Washington issued by the Washington State Department of Ecology is hereby adopted by reference and is hereinafter referred to as "the ~~m~~Manual", a copy of which is filed with the city clerk. The director shall maintain a copy of the ~~m~~Manual in his/her office.

12.30.320 ~~Storm water~~Stormwater best management practices (BMPs).

- (1) General. BMPs shall be used to control pollution from ~~storm water~~stormwater. BMPs shall be used to comply with the standards in this chapter. BMPs are in the ~~m~~Manual; provided, that if there is a conflict with the Oak Harbor ~~storm water~~stormwater plan, the provision with the greatest environmental protection shall apply.
- (2) Experimental BMPs. In those instances where appropriate BMPs are not in the ~~m~~Manual, experimental BMPs should be considered. Experimental BMPs are encouraged as a means of solving problems in a manner not addressed by the ~~m~~Manual in an effort to improve ~~storm water~~stormwater quality technology. Experimental BMPs must be approved in accordance with the approval process outlined in the ~~m~~Manual.

12.30.330 Illicit discharges. Illicit discharges to storm water drainage systems are prohibited.

Subchapter 12.30.500 – Minimum Requirements

12.30.510 New development.

- (1) All new development shall be required to comply with Minimum Requirement #2.
- (2) The following new development shall comply with Minimum Requirements #1 through #5 for the new and replaced impervious surfaces and the land disturbed:
 - (a) Creates or adds 2,000 square feet, or greater, of new, replaced, or new plus replaced impervious surface area; or

) | |

- (b) Has land disturbing activity of 7,000 square feet or greater.
- (3) The following new development shall comply with Minimum Requirements #1 through #10 for the new impervious surfaces and the converted pervious surfaces:
 - (a) Creates or adds 5,000 square feet, or more, of new impervious surface area; or
 - (b) Converts three-quarters of an acre, or more, of native vegetation to lawn or landscaped areas; or
 - (c) Converts two and one-half acres, or more, of native vegetation to pasture.

12.30.515 Redevelopment.

- (1) All redevelopment shall be required to comply with Minimum Requirement #2. In addition, all redevelopment that exceeds certain thresholds shall be required to comply with additional minimum requirements as follows.
- (2) The following redevelopment shall comply with Minimum Requirements #1 through #5 for the new and replaced impervious surfaces and the land disturbed:
 - (a) The new, replaced, or total of new plus replaced impervious surfaces is 2,000 square feet or more; or
 - (b) Seven thousand square feet or more of land disturbing activities.
- (3) The following redevelopment shall comply with Minimum Requirements #1 through #12 for the new impervious surfaces and converted pervious areas:
 - (a) Adds 5,000 square feet or more of new impervious surfaces; or
 - (b) Converts three-quarters of an acre, or more, of native vegetation to lawn or landscaped areas; or
 - (c) Converts two and one-half acres, or more, of native vegetation to pasture.
- (4) If the runoff from the new impervious surfaces and converted pervious surfaces is not separated from runoff from other surfaces on the project site, the ~~storm-water~~ stormwater treatment facilities must be sized for the entire flow that is directed to them.
- (5) The director may allow the minimum requirements to be met for an equivalent (flow and pollution characteristics) area within the same site. For public roads' projects, the equivalent area does not have to be within the project limits, but must drain to the same receiving water.

- (6) For road-related projects, runoff from the replaced and new impervious surfaces (including pavement, shoulders, curbs, and sidewalks) shall meet all the minimum requirements if the new impervious surfaces total 5,000 square feet or more and total 50% percent or more of the existing impervious surfaces within the project limits. The project limits shall be defined by the length of the project and the width of the right-of-way.
- (7) Other types of redevelopment projects shall comply with all the minimum requirements for the new and replaced impervious surfaces if the total of new plus replaced impervious surfaces is 5,000 square feet or more, and the valuation of proposed improvements – including interior improvements – exceeds 50% percent of the assessed value of the existing site improvements.
- ~~(8) A local government may exempt or institute a stop-loss provision for redevelopment projects from compliance with minimum requirements for treatment, flow control, and wetlands protection as applied to the replaced impervious surfaces if the local government has adopted a plan and a schedule that fulfills those requirements in regional facilities.~~

12.30.520 Minimum Requirement #1 – Preparation of ~~storm-water~~stormwater site plans. All projects meeting the thresholds in OHMC 12.30.510 and 12.30.515 shall prepare and submit a ~~Storm-water~~stormwater ~~S~~site ~~P~~plan for review. ~~Storm-water~~Stormwater ~~S~~site ~~P~~plans shall be prepared in accordance with Volume I, Chapter 3, of the ~~m~~Manual.

12.30.525 Minimum Requirement #2 – Construction ~~Storm-water~~Stormwater Pollution Prevention (SWPP). All new development and redevelopment projects are responsible for preventing erosion and discharge of sediment and other pollutants into receiving waters. All new development and redevelopment shall comply with Construction SWPP Elements #1 through #12 below.

Projects in which the new, replaced, or new plus replaced impervious surfaces total 2,000 square feet or more, or disturb 7,000 square feet or more of land must prepare a construction ~~storm-water~~stormwater pollution prevention plan (SWPPP) as part of the ~~Storm-water~~stormwater ~~S~~site ~~P~~plan. The SWPPP shall include a narrative and drawings. All BMPs shall be clearly referenced in the narrative and marked on the drawings. The SWPPP narrative shall include documentation to explain and justify the pollution prevention decisions made for the project. Sediment and erosion control BMPs shall be consistent with the BMPs contained in Chapters 3 and 4 of Volume II of the Manual, and/or other equivalent BMPs contained in technical manuals approved by Ecology. Each of the 12 elements must be considered and included in the construction SWPPP unless site conditions render the element unnecessary and the exemption from that element is clearly justified in the narrative of the SWPPP.

Projects that add or replace less than 2,000 square feet of impervious surface or disturb less than 7,000 square feet of land are not required to prepare a construction SWPPP, but must consider all of the 12 elements of construction ~~storm-water~~stormwater pollution prevention and develop controls for all elements that pertain to the project site.

(1) Element #1: Mark Clearing Limits.

- (a) Prior to beginning land disturbing activities, including clearing and grading, all clearing limits, sensitive areas and their buffers, and trees that are to be preserved within the construction area shall be clearly marked, both in the field and on the plans, to prevent damage and off-site impacts.
- (b) Plastic, metal, or stake wire fence may be used to mark the clearing limits.
- (c) The duff layer, native top soil, and natural vegetation shall be retained in an undisturbed state to the maximum extent practicable. If it is not practicable to retain the duff layer in place, it should be stockpiled on-site, covered to prevent erosion, and replaced immediately upon completion of the ground disturbing activities.

(2) Element #2: Establish Construction Access.

- (a) Construction vehicle access and exit shall be limited to one route, if possible, or two for linear projects such as roadways where more than one access is necessary for large equipment maneuvering.
- (b) Access points shall be stabilized with a pad of quarry spalls or crushed rock prior to traffic leaving the construction site to minimize the tracking of sediment onto public roads.
- (c) Wheel wash or tire baths should be located on-site, ~~if applicable~~ if the stabilized construction entrance is not effective in preventing sediment from being tracked onto public roads.
- (d) If sediment is tracked off-site, public roads shall be cleaned thoroughly at the end of each day, or more frequently during wet weather, if necessary, to prevent sediment from entering waters of the state. Sediment shall be removed from roads by shoveling or pickup sweeping and shall be transported to a controlled sediment disposal area. Street washing will be allowed only after sediment is removed in this manner.
- (e) Street wash wastewater shall be controlled by pumping back on-site, or otherwise be prevented from discharging into systems tributary to state surface waters.

(3) Element #3: Control Flow Rates.

- (a) Properties and waterways downstream from development sites shall be protected from erosion due to increases in the volume, velocity, and peak flow rate of ~~storm~~ stormwater runoff from the project site, as required by local plan approval authority.

- (b) Downstream analysis is necessary if changes in flows could impair or alter conveyance systems, stream banks, bed sediment or aquatic habitat.
- (c) Where necessary to comply with Minimum Requirement #7, ~~storm-water~~ stormwater retention/detention facilities shall be constructed as one of the first steps in grading. Detention facilities shall be functional prior to construction of site improvements (e.g. impervious surfaces).
- (d) The director may require pond designs that provide additional or different ~~storm water~~ stormwater flow control if necessary to address local conditions or to protect properties and waterways downstream from erosion due to increases in the volume, velocity, and peak flow rate of ~~storm-water~~ stormwater runoff from the project site.
- (e) If permanent infiltration ponds are used for flow control during construction, these facilities should be protected from siltation during the construction phase.

(4) Element #4: Install Sediment Controls.

- (a) Prior to leaving a construction site, or prior to discharge to an infiltration facility, ~~storm-water~~ stormwater runoff from disturbed areas shall pass through a sediment pond or other appropriate sediment removal BMP. Runoff from fully stabilized areas may be discharged without a sediment removal BMP, but must meet the flow control performance standard of Element #3. "~~Full stabilization~~" means ~~concrete or asphalt paving; quarry spalls used as ditch lining; or the use of rolled erosion products, a bonded fiber matrix product, or vegetative cover in a manner that will fully prevent soil erosion.~~ The director shall inspect and approve areas stabilized by means other than pavement or quarry spalls.
- (b) Sediment ponds, vegetated buffer strips, sediment barriers or filters, dikes, and other BMPs intended to trap sediment on-site shall be constructed as one of the first steps in grading. These BMPs shall be functional before other land disturbing activities take place.
- (c) Earthen structures such as dams, dikes, and diversions shall be seeded and mulched according to the timing indicated in Element #5.
- (d) BMPs intended to trap sediment on-site must be located in a manner to avoid interference with the movement of juvenile salmonids attempting to enter off-channel areas or drainages, often during nonstorm events, in response to rain event changes in stream elevation or wetted area.

(5) Element #5: Stabilize Soils.

- (a) All exposed and unworked soils shall be stabilized by application of effective BMPs that protect the soil from the erosive forces of raindrop impact and flowing water, and wind erosion.
- (b) From October 1st through April 30th, no soils shall remain exposed and unworked for more than two days. From May 1st to September 30th, no soils shall remain exposed and unworked for more than seven days. This condition applies to all soils on-site, whether at final grade or not. These time limits may be adjusted by the local permitting authority if it can be shown that the average time between storm events justifies a different standard.
- (c) Soils shall be stabilized at the end of the shift before a holiday or weekend if needed based on the weather forecast.
- (d) Applicable practices include, but are not limited to, temporary and permanent seeding, sodding, mulching, plastic covering, soil application of polyacrylamide (PAM), the early application of gravel base on areas to be paved, and dust control.
- (e) Soil stabilization measures selected should be appropriate for the time of year, site conditions, estimated duration of use, and potential water quality impacts that stabilization agents may have on downstream waters or ground water.
- (f) Soil stockpiles must be stabilized from erosion, protected with sediment trapping measures, and when possible, be located away from storm drain inlets, waterways and drainage channels.
- (g) Linear construction activities, including right-of-way and easement clearing, roadway development, pipelines, and trenching for utilities, shall be conducted to meet the soil stabilization requirement. Contractors shall install the bedding materials, roadbeds, structures, pipelines, or utilities and restabilize the disturbed soils so that:
 - (i) From October 1st through April 30th, no soils shall remain exposed and unworked for more than two days; and
 - (ii) From May 1st to September 30th, no soils shall remain exposed and unworked for more than seven days.

(6) Element #6: Protect Slopes.

- (a) Cut and fill slopes shall be designed and constructed in a manner that will minimize erosion.
- (b) Consider soil type and its potential for erosion.

- (c) Reduce slope runoff velocities by reducing the continuous length of slope with terracing and diversions, reduce slope steepness, and roughen slope surface.
- (d) Off-site ~~storm water~~ stormwater (run-on) shall be diverted away from slopes and disturbed areas with interceptor dikes and/or swales. Off-site ~~storm water~~ stormwater should be managed separately from ~~storm water~~ stormwater generated on the site.
- (e) At the top of slopes, collect drainage in pipe slope drains or protected channels to prevent erosion. Temporary pipe slope drains shall handle the peak flow from a 10-year, 24-hour event assuming a Type 1A rainfall distribution to the developed condition. Alternatively, the 10-year and 25-year, one-hour flow rates indicated 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. If using the Western Washington Hydrology model to predict flows, bare soil areas should be modeled as "landscaped area".
- (f) Provide drainage to remove ground water intersecting the slope surface of exposed soil areas.
- (g) Excavated material shall be placed on the uphill side of trenches, consistent with safety and space considerations.
- (h) Check dams shall be placed at regular intervals within channels that are cut down a slope.
- (i) Stabilize soils on slopes, as specified in Element #5.

(7) Element #7: Protect Drain Inlets.

- (a) All storm drain inlets made operable during construction shall be protected so that ~~storm water~~ stormwater runoff shall not enter the conveyance system without first being filtered or treated to remove sediment.
- (b) All approach roads shall be kept clean. ~~All sediment and street wash water shall not be allowed to enter storm drains without prior and adequate treatment unless treatment is provided before the storm drain discharges to waters of the state.~~
- (c) Inlets should be inspected weekly at a minimum and daily during storm events. Inlet protection devices should be cleaned or removed and replaced when sediment has filled one-third of the available storage (unless a different standard is specified by the product manufacturer).

(8) Element #8: Stabilize Channels and Outlets.

- (a) All temporary on-site conveyance channels shall be designed, constructed and stabilized to prevent erosion from the expected peak 10-minute velocity of flow from a Type 1A, 10-year, 24-hour frequency storm for the developed condition. Alternatively, the 10-year, one-hour flow rate indicated by an approved continuous runoff model, increased by a factor of 1.6, may be used.
- (b) Stabilization, including armoring material, adequate to prevent erosion of outlets, adjacent stream banks, slopes and downstream reaches shall be provided at the outlets of all conveyance systems.

(9) Element #9: Control Pollutants.

- (a) All pollutants, including waste materials and demolition debris, that occur on-site shall be handled and disposed of in a manner that does not cause contamination of ~~storm water~~stormwater. Woody debris may be chopped and spread on-site.
- (b) Cover, containment, and protection from vandalism shall be provided for all chemicals, liquid products, petroleum products, and non-inert wastes present on the site (see Chapter 173-304 WAC for the definition of inert waste). On-site fueling tanks shall include secondary containment.
- (c) Maintenance and repair of heavy equipment and vehicles involving oil changes, hydraulic system drain down, solvent and de-greasing cleaning operations, fuel tank drain down and removal, and other activities which may result in discharge or spillage of pollutants to the ground or into ~~storm water~~stormwater runoff must be conducted using spill prevention measures, such as drip pans. Contaminated surfaces shall be cleaned immediately following any discharge or spill incident. Emergency repairs may be performed on-site using temporary plastic placed beneath and, if raining, over the vehicle.
- (d) Wheel wash or tire bath wastewater, shall be discharged to a separate on-site treatment system or to the sanitary sewer.
- (e) Application of agricultural chemicals, including fertilizers and pesticides, shall be conducted in a manner and at application rates that will not result in loss of chemical to ~~storm water~~stormwater runoff. Manufacturers' recommendations for application rates and procedures shall be followed.
- (f) BMPs shall be used to prevent or treat contamination of ~~storm water~~stormwater runoff by pH modifying sources. These sources include, but are not limited to, bulk cement, cement kiln dust, fly ash, new concrete washing and curing waters, waste streams generated from concrete grinding and sawing, exposed aggregate processes, and concrete pumping and mixer washout waters. Stormwater

discharges shall not cause or contribute to a violation of the water quality standard for pH in the receiving water.

- (g) Construction sites with significant concrete work shall adjust the pH of ~~storm water~~ stormwater if necessary to prevent violations of water quality standards. Construction site operators shall obtain written approval from Ecology prior to using chemical treatment, other than CO₂ or dry ice, to adjust pH.

(10) Element #10: Control De-Watering.

- (a) Foundation, vault, and trench de-watering water, which has similar characteristics to ~~storm water~~ stormwater runoff at the site, shall be discharged into a controlled conveyance system prior to discharge to a sediment trap or sediment pond. Channels must be stabilized, as specified in Element #8.
- (b) Clean, non-turbid de-watering water, such as well-point ground water, can be discharged to systems tributary to state surface waters, as specified in Element #8, provided the de-watering flow does not cause erosion or flooding of receiving waters. These clean waters should not be routed through a ~~storm water~~ stormwater sediment pond.
- (c) Highly turbid or otherwise contaminated de-watering water, such as from construction equipment operation, clamshell digging, concrete tremie pour, or work inside a cofferdam, shall be handled separately from ~~storm water~~ stormwater.
- (d) Other disposal options, depending on site constraints, may include: (i) infiltration, (ii) transport off-site in a vehicle, such as a vacuum flush truck, for legal disposal in a manner that does not pollute state waters, (iii) Ecology-approved on-site chemical treatment or other suitable treatment technologies, (iv) sanitary sewer discharge with local sewer district approval, if there is no other option, or (v) use of a sedimentation bag with outfall to a ditch or swale for small volumes of localized de-watering.

(11) Element #11: Maintain BMPs.

- (a) All temporary and permanent erosion and sediment control BMPs shall be maintained and repaired as needed to assure continued performance of their intended function. All maintenance and repair shall be conducted in accordance with BMP specifications.
- (b) All temporary erosion and sediment control BMPs shall be removed within 30 days after final site stabilization is achieved or after the temporary BMPs are no longer needed. Trapped sediment shall be removed or stabilized on-site. Disturbed soil areas resulting from removal of BMPs or vegetation shall be permanently stabilized.

(12) Element #12: Manage the Project.

- (a) Phasing of Construction. Development projects shall be phased where feasible in order to prevent soil erosion and, to the maximum extent practicable, the transport of sediment from the site during construction. Revegetation of exposed areas and maintenance of that vegetation shall be an integral part of the clearing activities for any phase.
- (b) For construction sites one acre or larger that discharge stormwater to surface waters of the state, a CESCL specialist shall be identified in the Construction SWPPP and shall be on-site or on-call at all times. Certification may be obtained through an approved training program that meets the erosion and sediment control training standards established by Ecology.
- (c) Whenever inspection and/or monitoring reveals that the BMPs identified in the construction SWPPP are inadequate, due to the actual discharge of or potential to discharge a significant amount of any pollutant, appropriate BMPs or design changes shall be implemented as soon as possible.
- (d) The construction SWPPP shall be retained on-site or within reasonable access to the site.
- (e) The SWPPP shall be modified whenever there is a significant change in the design, construction, operation, or maintenance at the construction site that has, or could have, a significant effect on the discharge of pollutants to waters of the state.
- (f) The SWPPP shall be modified, if during inspections or investigations conducted by the owner/operator, or the director, it is determined that the SWPPP is ineffective in eliminating or significantly minimizing pollutants in stormwater discharges from the site. The SWPPP shall be modified as necessary to include additional or modified BMPs designed to correct problems identified. Revisions to the SWPPP shall be completed within seven calendar days following the inspection.

(13)

- (b) Clearing and grading activities for developments shall be permitted only if conducted pursuant to an approved site development plan (e.g., subdivision approval) that establishes permitted areas of clearing, grading, cutting, and filling. When establishing these permitted clearing and grading areas, consideration should be given to minimizing removal of existing trees and minimizing disturbance/compaction of native soils except as needed for building purposes. These permitted clearing and grading areas and any other areas required to

preserve critical or sensitive areas, buffers, native growth protection easements, or tree retention areas, shall be delineated on the site plans and the development site.

(14)

(e) — Seasonal Work Limitations. From October 1st through April 30th, clearing, grading, and other soil disturbing activities shall only be permitted if shown to the satisfaction of the director that silt-laden runoff will be prevented from leaving the site through a combination of the following:

(a)

(i) — Site conditions including existing vegetative coverage, slope, soil type and proximity to receiving waters; and

(b)

(ii) — Limitations on activities and the extent of disturbed areas; and

(c)

(iii) — Proposed erosion and sediment control measures.

(15)

(13) — Based on the information provided and/or local weather conditions, the director may expand or restrict the seasonal limitation on-site disturbance. The director shall take enforcement action, such as a notice of violation, administrative order, penalty, or stop-work order, under the following circumstances:

(a) If, during the course of any construction activity or soil disturbance during the seasonal limitation period, sediment leaves the construction site causing a violation of the surface water quality standard; or

(b) If clearing and grading limits or erosion and sediment control measures shown in the approved plan are not maintained.

(14) (6) The following activities are exempt from the seasonal clearing and grading limitations:

(a) Routine maintenance and necessary repair of erosion and sediment control BMPs;

(b) Routine maintenance of public facilities or existing utility structures that do not expose the soil or result in the removal of the vegetative cover to soil; and

(c) Activities where there is 100% ~~percent~~ infiltration of surface water runoff within the site in approved and installed erosion and sediment control facilities.

(1517) (a) Coordination with Utilities and Other Contractors. The primary project proponent shall evaluate, with input from utilities and other contractors, the ~~storm water~~ stormwater management requirements for the entire project, including the utilities, when preparing the construction SWPPP.

(b) Inspection and Monitoring. All BMPs shall be inspected, maintained, and repaired as needed to assure continued performance of their intended function. Site inspections shall be conducted by a person who is knowledgeable in the principles and practices of erosion and sediment control. The person must have the skills to (i) assess the site conditions and construction activities that could impact the quality of ~~storm water~~ stormwater, and (ii) assess the effectiveness of erosion and sediment control measures used to control the quality of ~~storm water~~ stormwater discharges.

~~(16) For construction sites one acre or larger that discharge storm water to surface waters of the state, a certified erosion and sediment control specialist shall be identified in the Construction SWPPP and shall be on site or on call at all times. Certification may be obtained through an approved training program that meets the erosion and sediment control training standards established by Ecology.~~

~~(17) Whenever inspection and/or monitoring reveals that the BMPs identified in the construction SWPPP are inadequate, due to the actual discharge of or potential to discharge a significant amount of any pollutant, appropriate BMPs or design changes shall be implemented as soon as possible.~~

~~(18) The construction SWPPP shall be retained on site or within reasonable access to the site.~~

~~(19) The SWPPP shall be modified whenever there is a significant change in the design, construction, operation, or maintenance at the construction site that has, or could have, a significant effect on the discharge of pollutants to waters of the state.~~

~~(20) The SWPPP shall be modified, if during inspections or investigations conducted by the owner/operator, or the director, it is determined that the SWPPP is ineffective in eliminating or significantly minimizing pollutants in storm water discharges from the site. The SWPPP shall be modified as necessary to include additional or modified BMPs designed to correct problems identified. Revisions to the SWPPP shall be completed within seven calendar days following the inspection.~~

12.30.527 Minimum Requirement #3 – Source control of pollution. All known, available and reasonable source control BMPs shall be applied to all projects. Source control BMPs shall be selected, designed, and maintained according to the ~~m~~Manual.

~~An adopted and implemented basin plan (Minimum Requirement #9) may be used to develop source control requirements that are tailored to a specific basin; however, in all circumstances source control BMPs shall be required for all sites.~~

12.30.530 Minimum Requirement #4 – Preservation of natural drainage systems and outfalls. Natural drainage patterns shall be maintained, and discharges from the project site shall occur at the natural location, to the maximum extent practicable. The manner by which runoff is discharged from the project site must not cause a significant adverse impact to downstream receiving waters and down gradient properties. All outfalls require energy dissipation.

12.30.535 Minimum Requirement #5 – On-site storm water stormwater management. Projects shall employ on-site ~~storm water~~ stormwater management BMPs to infiltrate, disperse, and retain ~~storm water~~ stormwater runoff on-site to the maximum extent feasible without causing flooding or erosion impacts. Roof downspout control BMPs, functionally equivalent to those described in ~~Chapter 3 of Volume III of the mManual~~, and dispersion and soil quality BMPs, functionally equivalent to those in Chapter 5 of Volume V of the ~~mManual~~, shall be required to reduce the hydrologic disruption of developed sites. Use of low impact development practices and BMPs is encouraged and is consistent with the Manual.

12.30.540 Minimum Requirement #6 – Runoff treatment.

(1) The following require construction of ~~storm water~~ stormwater treatment facilities:

- (a) Projects in which the total of effective, pollution-generating impervious surface (PGIS) is 5,000 square feet or more in a threshold discharge area of the project; or
- (b) Projects in which the total of pollution-generating pervious surfaces (PGPS) is three-quarters of an acre or more in a threshold discharge area, and from which there is a surface discharge in a natural or manmade conveyance system from the site.

(2) Treatment-Type Thresholds.

(a) Oil Control: Treatment to achieve Oil Control applies to projects that have "high-use sites". High-use sites are those that typically generate high concentrations of oil due to high traffic turnover or the frequent transfer of oil. High-use sites include:

(i) An area of a commercial or industrial site subject to an expected average daily traffic (ADT) count equal to or greater than 100 vehicles per 1,000 square feet of gross building area;

(ii) An area of a commercial or industrial site subject to petroleum storage and transfer in excess of 1,500 gallons per year, not including routinely delivered heating oil;

(iii) An area of a commercial or industrial site subject to parking, storage or maintenance of 25 or more vehicles that are over 10 tons gross weight (trucks, buses, trains, heavy equipment, etc.);

(iv) A road intersection with a measured ADT count of 25,000 vehicles or more on the main roadway and 15,000 vehicles or more on any intersecting roadway, excluding projects proposing primarily pedestrian or bicycle use improvements.

(b) Basic Treatment: Basic Treatment generally applies to:

(i) Project sites that discharge to the ground, UNLESS:

(A) The soil suitability criteria for infiltration treatment are met; (see Chapter 3 of Volume III of the Manual for soil suitability criteria; or

(B) The project uses infiltration strictly for flow control - not treatment - and the discharge is within ¼ mile of the phosphorus sensitive lake (use a Phosphorus Treatment facility), or within ¼ mile of a fish-bearing stream, or a lake (use an Enhanced Treatment facility).

(ii) Residential projects not otherwise needing phosphorus control as designated by USEPA, Ecology, or by the City of Oak Harbor; and

(iii) Project sites discharging directly to salt waters, river segments, and lakes listed in Appendix I-C of the Manual; and

(iv) Project sites that drain to streams that are not fish-bearing, or to waters not tributary to fish-bearing streams; and

(v) Landscaped areas of industrial, commercial, and multi-family project sites, and parking lots of industrial and commercial project sites that do not involve pollution-generating sources (e.g., industrial activities, customer parking, storage of erodible or leachable material, wastes or chemicals) other than parking of employees' private vehicles. For developments with a mix of land use types, the Basic Treatment requirement shall apply when the runoff from the areas subject to the Basic Treatment requirement comprise 50% or more of the total runoff within a threshold discharge area.

(23) Treatment Facility Sizing. Water Quality Design Storm Volume: The volume of runoff predicted from a 24-hour storm with a six-month return frequency (a.k.a., six-month, 24-hour storm). Wetpool facilities are sized based upon the volume of runoff predicted through use of the Natural Resource Conservation Service curve number equations in Chapter 2 of Volume III of the Manual, for the six-month, 24-hour storm. Alternatively, the 91st percentile, 24-hour runoff volume indicated by an approved continuous runoff model may be used.

(34) Water Quality Design Flow Rate.

- (a) Preceding Detention Facilities or When Detention Facilities Are Not Required: The flow rate at or below which ~~91%~~ 91% percent of the runoff volume, as estimated by an approved continuous runoff model, will be treated. Design criteria for treatment facilities are assigned to achieve the applicable performance goal at the water quality design flow rate (e.g., ~~80%~~ 80% percent-TSS removal).
- (b) Downstream of Detention Facilities: The full two-year release rate from the detention facility.

Alternative methods can be used if they identify volumes and flow rates that are at least equivalent.

That portion of any development project in which the above PGIS or PGPS thresholds are not exceeded in a threshold discharge area shall apply on-site ~~storm-water~~ stormwater management BMPs in accordance with Minimum Requirement #5.

(45) Treatment Facility Selection, Design, and Maintenance.

- (a) ~~Storm-water~~ Stormwater treatment facilities shall be:
- (i) Selected in accordance with the process identified in ~~Chapter 4 of Volume I of the mManual~~;
 - (ii) Designed in accordance with the design criteria in ~~Volume V of the mManual~~ or the Low Impact Development Technical Guidance Manual for Puget Sound; and
 - (iii) Maintained in accordance with the maintenance schedule in ~~Volume V of the mManual~~ or the Low Impact Development Technical Guidance Manual for Puget Sound.

- (56) Additional Requirements. Direct discharge of untreated ~~storm-water~~ stormwater from pollution-generating impervious surfaces to ground water is prohibited, except for the discharge achieved by infiltration or dispersion of runoff from residential sites through use of on-site ~~stormwater~~ stormwater management BMPs.

12.30.545 Minimum Requirement #7 – Flow control.

- (1) Applicability. Projects shall provide flow control to reduce the impacts of ~~storm-water~~ stormwater runoff from impervious surfaces and land cover conversions. The requirements of this section apply to projects that discharge ~~storm-water~~ stormwater directly, or indirectly through a conveyance system, into a fresh water, except for projects

that discharge to a water in the ~~m~~Manual, Appendix I-E - Flow Control-Exempt Receiving Waters, in accordance with the following restrictions:

- (a) Direct discharge to the exempt receiving water does not result in the diversion of drainage from any perennial stream classified as Types 1, 2, 3, or 4 in the State of Washington Interim Water Typing System, or Types "S", "F", or "Np" in the Permanent Water Typing System, or from any Category I, II, or III wetland; and
 - (b) Flow-splitting devices or drainage BMPs are applied to route natural runoff volumes from the project site to any downstream Type 5 stream or Category IV wetland:
 - (i) Design of flow-splitting devices or drainage BMPs will be based on continuous hydrologic modeling analysis. The design will assure that flows delivered to Type 5 stream reaches will approximate, but in no case exceed, durations ranging from 50% ~~percent~~ of the two-year to the 50-year peak flow;
 - (ii) Flow-splitting devices or drainage BMPs that deliver flow to Category IV wetlands will also be designed using continuous hydrologic modeling to preserve pre-project wetland hydrologic conditions unless specifically waived or exempted by regulatory agencies with permitting jurisdiction; and
 - (c) The project site must be drained by a conveyance system that is comprised entirely of manmade conveyance elements (e.g., pipes, ditches, outfall protection, etc.) and extends to the ordinary high water line of the exempt receiving water; and
 - (d) The conveyance system between the project site and the exempt receiving water shall have sufficient hydraulic capacity to convey discharges from future build-out conditions (under current zoning) of the site, and the existing condition from non-project areas from which runoff is or will be collected; and
 - (e) Any erodible elements of the manmade conveyance system must be adequately stabilized to prevent erosion under the conditions noted above.
- (2) If the discharge is to a stream that leads to a wetland, or to a wetland that has an outflow to a stream, both this requirement and Minimum Requirement #8 apply.
 - (3) Thresholds. The following require construction of flow control facilities and/or land use management BMPs that will achieve the standard requirement for western Washington:
 - (a) Projects in which the total of effective impervious surfaces is 10,000 square feet or more in a threshold discharge area; or

- (b) Projects that convert three-quarters of an acre or more of native vegetation to lawn or landscape, or convert two and one-half acres or more of native vegetation to pasture in a threshold discharge area, and from which there is a surface discharge in a natural or manmade conveyance system from the site; or
 - (c) Projects that through a combination of effective impervious surfaces and converted pervious surfaces cause a 0.1 cubic feet per second increase in the 100-year flow frequency from a threshold discharge area as estimated using the Western Washington Hydrology Model or other approved model.
- (4) That portion of any development project in which the above thresholds are not exceeded in a threshold discharge area shall apply on-site ~~storm-water~~stormwater management BMPs in accordance with Minimum Requirement #5.
- (5) Standard Requirement. ~~Storm-water~~Stormwater discharges shall match developed discharge durations to pre-developed durations for the range of pre-developed discharge rates from 50% ~~percent~~ of the two-year peak flow up to the full 50-year peak flow. The pre-developed condition to be matched shall be a forested land cover unless:
- (a) Reasonable, historic information is provided that indicates the site was prairie prior to settlement (modeled as "pasture" in the Western Washington Hydrology Model); or
 - (b) The drainage area of the immediate stream and all subsequent downstream basins have had at least 40% ~~percent~~ total impervious area since 1985. In this case, the pre-developed condition to be matched shall be the existing land cover condition. Where basin-specific studies determine a stream channel to be unstable, even though the above criterion is met, the pre-developed condition assumption shall be the "historic" land cover condition, or a land cover condition commensurate with achieving a target flow regime identified by an approved basin study.

This standard requirement is waived for sites that will reliably infiltrate all the runoff from impervious surfaces and converted pervious surfaces.

- (5) Engineering Analysis Modeling Requirement. ~~Storm-water~~Stormwater runoff volumes and rates shall be determined using the Department of Ecology Western Washington Hydrology Model as required by the ~~m~~Manual or an equivalent continuous runoff model approved for use by the director. A discrete runoff model, such as the Santa Barbara Urban Hydrograph, may be authorized for use by the director when all of the runoff is conveyed to an exempt water body without affecting an wetland, classified stream or other critical area.

12.30.550 Minimum Requirement #8 – Wetlands protection.

- (1) Applicability. The requirements below apply only to projects whose ~~storm-water~~ stormwater discharges into a wetland, either directly or indirectly through a conveyance system. These requirements must be met in addition to meeting Minimum Requirement #6, Runoff treatment.
- (2) Thresholds. The thresholds identified in Minimum Requirement #6, Runoff treatment, and Minimum Requirement #7, Flow control, shall also be applied for discharges to wetlands.
- (3) Standard Requirement. Discharges to wetlands shall maintain the hydrologic conditions, hydrophytic vegetation, and substrate characteristics necessary to support existing and designated uses. The hydrologic analysis shall use the existing land cover condition to determine the existing hydrologic conditions unless directed otherwise by a regulatory agency with jurisdiction. A wetland can be considered for hydrologic modification and/or ~~storm-water~~ stormwater treatment in accordance with guide of the ~~m~~Manual.
- (4) Additional Requirements. The standard requirement does not excuse any discharge from the obligation to apply whatever technology is necessary to comply with state water quality standards, Chapter 173-201A WAC, or state ground water standards, Chapter 173-200 WAC. Additional treatment requirements to meet those standards may be required by federal, state, or local governments. ~~Storm-water~~Stormwater treatment and flow control facilities shall not be built within a natural vegetated buffer, except for:
 - (a) Necessary conveyance systems as approved by the local government; or
 - (b) As allowed in wetlands approved for hydrologic modification and/or treatment in accordance with Guidesheet 1B.

An adopted and implemented basin plan (Minimum Requirement #9), or a total maximum daily load (TMDL, also known as a water clean-up plan) may be used to develop requirements for wetlands that are tailored to a specific basin.

12.30.555 Minimum Requirement #9 – Basin/watershed planning.

- (1) Projects may be subject to equivalent or more stringent minimum requirements for erosion control, source control, treatment, and operation and maintenance, and alternative requirements for flow control and wetlands hydrologic control as identified in basin/watershed plans. ~~Basin/watershed plans shall evaluate and include, as necessary, retrofitting urban storm water BMPs into existing development and/or redevelopment in order to achieve watershed wide pollutant reduction and flow control goals that are consistent with requirements of the Federal Clean Water Act. Standards developed from basin plans shall not modify any of the above minimum requirements until the basin plan is formally adopted and implemented by the local governments within the basin.~~ Basin planning may be used to support alternative treatment, flow control, and/or wetland

protection requirements to those contained in this Chapter, the Manual or the requirements of the City of Oak Harbor NPDES Phase II stormwater permit. Basin planning may also be used to demonstrate an equivalent level of treatment, flow control, and/or wetland protection through the construction and use of regional stormwater facilities.

(2) In order for a basin plan to serve as a means of modifying the minimum requirements, the following conditions must be met:

(a) The plan must be formally adopted by all jurisdictions with responsibilities under the plan; and

(b) All ordinances or regulations called for by the plan must be in effect; and

(c) The basin plan must be reviewed and approved by Ecology.

12.30.560 Minimum Requirement #10 – Operation and maintenance. An operation and maintenance manual consistent with the provisions in ~~Volume V of the m~~Manual shall be provided for all proposed ~~storm water~~stormwater facilities and BMPs. The party (or parties) responsible for maintenance and operation shall be identified. At private facilities, a copy of the mManual shall be retained on-site or within reasonable access to the site, and shall be transferred with the property to the new owner. A record or log of all maintenance activities shall be kept and be available for inspection by the city. Operation and maintenance of all public private ~~storm water~~stormwater facilities shall be in accordance with Chapter 12.20 OHMC.

12.30.565 Minimum Requirement #11 – Financial liability. Performance bonding in the amount of 112% ~~percent~~ of the cost to construct, or other performance surety acceptable to the director, may be required by the director for projects to ensure compliance with these standards. When required by the director, performance sureties shall be posted prior to issuance of the development permit.

12.30.570 Minimum Requirement #12 – Off-site analysis and mitigation. Development projects that discharge ~~storm water~~stormwater off-site shall submit an off-site analysis report that assesses the potential off-site water quality, erosion, slope stability, and drainage impacts associated with the project and that proposes appropriate mitigation of those impacts. An initial qualitative analysis shall extend downstream for the entire flow path from the project site to the receiving water or up to one mile, whichever is less. If a receiving water is within one-quarter mile, the analysis shall extend within the receiving water to one-quarter mile from the project site. The analysis shall extend one-quarter mile beyond any improvements proposed as mitigation. The analysis must extend upstream to a point where any backwater effects created by the project cease. Upon review of the qualitative analysis, the local director may require that a quantitative analysis be performed.

The existing or potential impacts to be evaluated and mitigated shall include: conveyance system capacity problems, localized flooding and upland erosion impacts, including landslide hazards.

12.30.575 Adjustments. An adjustment to the minimum requirements is a minor modification meeting the purpose and intent of the requirements, but does not lift or waive any specific requirement. Adjustments to the minimum requirements may be granted prior to permit approval and construction. The director may grant an adjustment; provided, that a written finding of fact is prepared that addresses the following:

- (1) The adjustment provides substantially equivalent environmental protection.
- (2) The objectives of safety, function, environmental protection and facility maintenance, based upon sound engineering, are met.

12.30.580 Exceptions and Variances.

(1) An exception or variance to the minimum requirements either lifts or waives any of the minimum requirements whether in whole or in part. Exceptions or variances to Minimum Requirements #1 through #12 may be granted by the director prior to permit approval and construction. An exception or variance may be granted following legal public notice of an application for an exemption, legal public notice of the director's decision and the director's written finding of fact that documents the following:

- (1a) The exception provides equivalent environmental protection ~~is not injurious to other properties in the vicinity,~~ and is in the overriding public interest; and that the objectives of safety, function, environmental protection and facility maintenance, based upon sound engineering, are ~~fully~~-met;
- (2b) That there are special physical circumstances or conditions affecting the property such that the strict application of these provisions would deprive the applicant of all-reasonable use of the parcel of land in question, ~~and every effort to find creative ways to meet the intent of the minimum standards has been made;~~
- (3) That the granting of the exception will not be detrimental to the public health and welfare, ~~nor injurious to other properties in the vicinity and/or downstream, and to the quality of waters of the state;~~ and
- (4c) The exception is the least possible exception that could be granted to comply with the intent of the minimum requirements.

(2) The director is further authorized to grant an exception or variance to the minimum requirements if strict application imposes a severe and unexpected economic hardship.

(3) In determining the economic hardship, the director shall consider the following:

- (a) The current (pre-project) use of the site; and
- (b) How the application of the minimum requirement(s) restricts the proposed use of the site compared to the stormwater regulations in effect prior to 2007; and

- (c) The possible remaining uses of the site if the exception were not granted; and
 - (d) The uses of the site that would have been allowed prior to 2007; and
 - (e) A comparison of the estimated amount and percentage of value loss as a result of the minimum requirements versus the estimated amount and percentage of value loss as a result of requirements that existed prior to 2007; and
 - (f) The feasibility for the owner to alter the project to apply the minimum requirements.
- (4) The director is authorized to establish application procedures and requirements for consideration of all requests for exceptions or variance to the minimum requirements of this section. Application for an exception to these requirements shall be made on forms provided by the director. In all cases the burden of demonstrating through analysis and supporting documentation that an exception or variance is justified rests with the applicant.

Subchapter 12.30.600 – Administration

12.30.610 Director. The director or his/her designee shall administer this chapter. The director shall have the authority to develop and implement administrative procedures to administer and enforce this chapter. The city engineer or designee is hereby assigned the duty of director under this chapter.

12.30.620 Review and approval. The director may approve, conditionally approve or deny an application for activities regulated by this chapter.

12.30.625 Review process. Reviews under this chapter are considered Type I as defined in Chapter 18.20 OHMC.

~~**12.30.630 Enforcement authority.** The director shall enforce this chapter.~~

12.30.640 Inspection. All activities regulated by this chapter, except those exempt in OHMC 12.30.220, shall be inspected by the director. The director shall inspect projects at various stages of the work requiring approval to determine that adequate control is being exercised. Stages of work requiring inspection include, but are not limited to, preconstruction; installation of BMPs; land disturbing activities; installation of utilities, landscaping, retaining walls and completion of project. When required by the director, special inspection and/or testing shall be performed.

Subchapter 12.30.700 – Enforcement

12.30.710 General. Enforcement action shall be in accordance with this chapter whenever a person has violated any provision of this chapter. The choice of enforcement action and the severity of any penalty shall be based on the nature of the violation, the damage or risk to the

public or to public resources, and/or the degree of bad faith of the person subject to the enforcement action.

12.30.720 Stop work order. The director shall have the authority to serve a person a stop work order if an action is being undertaken in violation of this chapter.

- (1) Content of Order. The order shall contain:
 - (a) A description of the specific nature, extent, and time of violation and the damage or potential damage; and
 - (b) A notice that the violation or the potential violation shall cease and desist, and, in appropriate cases, the specific corrective action to be taken within a given time. ~~A civil penalty under OHMC 12.30.730 below may be issued with the order.~~
- (2) Notice. A stop work order shall be imposed by a notice in writing, either by certified mail with return receipt requested, or by personal service, to the person incurring the same.
- (3) Effective Date. The stop work order issued under this section shall become effective immediately upon receipt by the person to whom the order is directed.
- (4) Compliance. Failure to comply with the terms of a stop work order shall result in enforcement actions including, but not limited to, the issuance of a notice of civil penalty, infraction pursuant to Ch. 1.28 OHMC and/or a criminal citation or complaint in accordance with CrRLJ 2.1, as applicable.

~~**12.30.730 Civil penalty.** A person who fails to comply with the requirements of this chapter, who fails to conform to the terms of an approval or order issued, who undertakes new development without first obtaining city approval, or who fails to comply with a stop work order issued under these regulations shall be subject to a civil penalty.~~

- ~~(1) Amount of Penalty. The penalty shall not be less than One Hundred Dollars (\$100.00) or exceed Two Hundred Fifty Dollars (\$250.00) for each violation. Each day of continued violation or repeated violation shall constitute a separate violation.~~
- ~~(2) Aiding or Abetting. Any person who, through an act of commission or omission, aids or abets in the violation shall be considered to have committed a violation for the purposes of the civil penalty.~~
- ~~(3) Notice of Penalty. A civil penalty shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the same from the city. The notice shall describe the violation, approximate the date(s) of violation, and shall order the acts constituting the violation to cease and desist, and, in appropriate cases, require necessary corrective action within a specific time.~~

- (4) ~~Application for Remission or Mitigation. Any person incurring a penalty may apply in writing within 10 days of receipt of the penalty to the city for remission or mitigation of such penalty. Upon receipt of the application, the city supervisor/administrator may remit or mitigate the penalty only upon a demonstration of extraordinary circumstances, such as the presence of information or factors not considered in setting the original penalty. The decision may be appealed to the city council within 10 days of the decision.~~
- (5) ~~Appeal of Civil Penalty. Persons incurring a penalty imposed by the director may appeal to the city supervisor/administrator, in writing, within 10 days of the receipt of the penalty. The city supervisor/administrator's decision may be appealed to the city council within 10 days of the decision. Penalties.~~

(1) The failure to comply with the provisions of this chapter is a civil offense, classified as a Class 1 infraction pursuant to Ch. 1.28 OHMC. Each day of violation shall be a separate offense. This is an absolute liability offense. No mental element as defined in law is required for proof of violation.

(2) The knowing or intentional failure or refusal to comply with a stop work order under the provisions of this chapter is a misdemeanor which shall be punishable by the maximum penalty established by RCW 9.92.030 as now or hereafter amended.

(3) An intentional or repeated violation of this chapter by the person responsible shall be a misdemeanor.

~~12.30.740 Penalties due. Penalties imposed under this section shall become due and payable 30 days after receiving it unless application for remission or mitigation is made or an appeal is filed. Whenever an application for remission or mitigation is made, penalties shall become due and payable 30 days after receipt of the decision regarding the remission or mitigation. Whenever an appeal of a penalty is filed, the penalty shall become due and payable after all review proceedings and a final decision have been issued confirming all or part of the penalty. If the amount of a penalty owed the city is not paid within the time specified, the city may take actions necessary to recover such penalty. Enforcement.~~

(1) Provisions of this chapter will be enforced for the benefit of the health, safety and welfare of the general public, and not for the benefit of any particular person or class of persons.

(2) Civil Infraction Procedures Applicable. If a civil offense is filed against any person, the civil infraction procedures of Ch. 1.28 OHMC shall be followed.

(3) Criminal Prosecution. A criminal complaint may be brought by the City Attorney or a citation may be issued by a duly commissioned law enforcement officer for violation of the misdemeanor provisions of this chapter, in accordance with CrRLJ 2.1.

(4) Nothing in this section shall limit the authority of the City to take any action, including emergency actions, civil infractions, criminal prosecutions or any other enforcement action, to enforce the provisions of this chapter.

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

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

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

THE CITY OF OAK HARBOR

Attest:

Mayor

City Clerk

Approved as to Form:

City Attorney

Published: _____

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

Bill No. 12
Date: May 4, 2010
Subject: 42-Inch Outfall Reconstruction – Public
Works Trust Fund Loan Application

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

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

SUMMARY STATEMENT:

This agenda bill requests approval of a loan application to the Public Works Trust Fund (PWTF) construction loan program for reconstruction of the 42-inch storm water outfall in Windjammer Park.

AUTHORITY

The City has had a standing policy requiring City Council authorization for all financial obligations in excess of \$30,000. The City has authority under RCW 35A.11.020 to submit a loan application subject to constitutional debt limitation, Article VIII, Section 6. This Public Works Trust Fund loan application amount of \$1,110,000 is well within the City's debt limitation.

DESCRIPTION:

The project to reconstruct the 42-inch outfall began on June 16, 2008 with Council approval of an engineering design services agreement with the firm of Moffat & Nichol. A design for the replacement outfall has been developed and permitting for construction is progressing. The current estimate of total project cost is \$1,910,000 (see attached application). The Loan application is in the amount of \$1,110,000. The balance required to complete the project will be paid with storm water utility funds. The City has also applied for a grant from the Department of Ecology. The PWTF loan application reflects this grant application.

There is a significant measure of uncertainty in acquiring funding from the PWTF for this project. Although outfall reconstruction is expected to score well in the application ranking process, the Washington State Legislature has not yet approved funding for this loan cycle. It is not known if this loan cycle will be funded or not. The application deadline is May 11, 2010.

Oak Harbor must submit an application prior to May 11, 2010 in order to be eligible for a loan if the Legislature and Governor approve funding.

STANDING COMMITTEE REVIEW:

This proposal was presented at the April 1, 2010 Public Works and Utilities Standing Committee meeting.

RECOMMENDED ACTION:

It is recommended that Council approve submittal of a PWTF loan application in the amount of \$1,110,000 for reconstruction of the 42-inch outfall.

ATTACHMENTS:

Graphic figure
Draft loan application

MAYOR'S COMMENTS:



STORMWATER OUTFALL REPLACEMENT PROJECT

WINDJAMMER PARK

SW BEEKSMA DR.

RECONSTRUCT PARKING AREA PER OHMC 49.44

EAST OUTFALL
WEST OUTFALL

TRAIL CLOSED SIGN. ALTERNATE ROUTE TO LEFT.

SIGN INDICATING TRAIL IS CLOSED AHEAD. ALTERNATE ROUTE TO THE RIGHT.

CONSTRUCTION FENCING

EXTEND EXISTING OUTFALL PIPE

INSTALL NEW OUTFALL PIPE

REMOVE EXISTING OUTFALL PIPE

LEGEND	
	EXISTING 42" CORRUGATED STEEL PIPE
	EXISTING 42" PORTLAND CEMENT PIPE
	NEW 42" HDPE PIPE
	NEW 42" CORROSION RESISTANT STEEL PIPE (WEST OUTFALL & EAST OUTFALL EXTENSION)





Washington State Public Works Board
 Public Works Trust Fund
 Construction Loan Application

FUNDS AVAILABLE ONLY UPON GOVERNOR AND
 2011 LEGISLATIVE APPROVAL FOR THE 2011-2013
 FISCAL YEARS STARTING:

JULY 1, 2011

Eligible Jurisdictions	<ul style="list-style-type: none"> ▪ Counties, Cities, and Towns ▪ Water Districts ▪ Sewer Districts ▪ Public Utility Districts ▪ Other Districts (excluding Ports and School Districts)
Eligible Systems	<ul style="list-style-type: none"> ▪ Bridges ▪ Roads and Streets ▪ Domestic Water Systems ▪ Sanitary Sewer Systems ▪ Storm Water Systems ▪ Solid Waste and Recycling Systems
How to Apply	<ul style="list-style-type: none"> ▪ Hardcopy application (this Word file) – submit this form, also found at www.pwb.wa.gov/FORMS.HTM (see more details below) ▪ AVAILABLE after March 15, 2010 Web-based online application form – accessed at https://fortress.wa.gov/cted/pwbloantracking/ (contact your Client Service Representative for assistance on how to access PWeB, our database system)

	Due Date: Postmarked or Delivered on or before	Maximum Amount per Jurisdiction per Biennium	Hardcopy Application Submittals	Online Application Submittals (Available after 3/15/10)
Construction	May 11, 2010	\$10,000,000	Submit one signed original and a CD with the application in Microsoft Word format	After the online submittal, the PWeB-generated application form needs to be printed, signed, and delivered or postmarked on or before the due date

Mail/Ship/Hand Deliver to:

Public Works Board
 906 Columbia St SW
 PO Box 48319
 Olympia WA 98504-8319
 360.725.3150

For more information on the P WTF loan programs and for the **P WTF Application Guidelines**, please visit the Public Works Board's website at www.pwb.wa.gov.

APPLICATION REQUIREMENTS/CHECKLIST

Items that will cause the application to be rejected

- If the applicant municipality is planning under the Growth Management Act (GMA) RCW 43.155.070, has compliance, as of May 11, 2010, with GMA been verified?
 Yes No Don't Know Verify with your Planning Department
- Has the Applicant Certification form been read and signed by the appropriate authority?
Attach original signed document.
This must be signed in order for the application to be accepted for review.
- Has the Preparer Certification form been read and signed by the appropriate authority?
Attach original signed document.
This must be signed in order for the application to be accepted for review.
- Has the applicant adopted a policy to reduce greenhouse gas emissions?
 Yes No **SEE GUIDELINES FOR DETAILS**
TITLE OF POLICY: City of Oak Harbor Anti-Idling Policy
DATE OF ADOPTION: July 1, 2008

NOTE! The Governor will be releasing a statewide approach to implementing the Greenhouse Gas Reduction Bill (ESSSB 5560). This requirement may be adjusted to comply with the Governor's direction. Please check the website for updates: www.pwb.wa.gov

Items/Actions to ensure a complete application

- Have you read the PWTF Application Guidelines?
This document contains all the necessary information to assist you in applying for a PWTF loan.
To download the current PWTF Application Guidelines go to www.pwb.wa.gov/FORMS.HTM.
- If you are applying as a distressed community, have you read the distressed criteria described in the PWTF Application Guidelines?
To download the current PWTF Application Guidelines go to www.pwb.wa.gov/FORMS.HTM.
- Have all questions applicable to your type of system been answered?
Unanswered questions receive no points.
- Have all questions been answered completely?
Submitted information will be verified by Public Works Board staff.
- Have you verified the accuracy of the Project Cost sum and the Project Funding sum?
These figures must match and accurately reflect the sum of the costs and the sum of the funding.
- Is all relevant documentation (i.e., proof of other funding sources, regulatory orders, moratoriums, etc) attached?
- Has the application been reviewed by someone other than the person who completed the application?
- Have you made a copy, including all attachments, of the final, signed application package for your records?
- Applications and modifications (additions, removals, and substitutions) are allowed until:

6PM PST, MAY 11, 2010

After that time, no further changes will be accepted

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SECTION 1: GENERAL APPLICANT INFORMATION

TYPE OF LOAN **Public Works Trust Fund Construction**

PRIMARY SYSTEM AFFECTED BY THIS PROJECT (check only one)

- Domestic Water
 Sanitary Sewer
 Storm Water
 Solid Waste/ Recycling
 Road/ Street or Bridge

GENERAL APPLICANT INFORMATION

1.1	Applicant (Legal Name)	City of Oak Harbor									
1.2	Municipal Corporation Agency # (MCAG)	0	3	6	1	http://www.pwb.wa.gov/macg_listing.asp					
1.3	Federal Tax ID #	9	1	-	6	0	0	1	4	7	6
1.4	Administrative office – Street Address	865 SE Barrington Dr.									
	Mailing Address – (if different from street)	Same as above									
	City	Oak Harbor									
	State	WA	Zip	9	8	2	7	7	-		
1.5	County										
1.6	Legislative District http://apps.leg.wa.gov/DistrictFinder/Default.aspx	10th				Congressional District http://apps.leg.wa.gov/DistrictFinder/Default.aspx			2nd		
	Client's Contact Person	Arnold Peterschmidt									
1.7	Title	Project Engineer									
	Mailing Address –	865 SE Barrington Dr.									
	City	Oak Harbor									
	State	WA	Zip	9	8	2	7	7	-		
	Telephone	360-279-4525									
	Email	apeterschmidt@oakharbor.org									
1.8	Project Title	42-Inch Outfall Reconstruction Project									
1.9	PWTF Loan Request	\$1,110,000									
1.10	Total Project Cost	\$1,907,437									

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LEGISLATIVELY REQUIRED INFORMATION:

<p>1.11 Does applicant jurisdiction (cities and counties only) have guidelines to process development permit requests? AND Does applicant jurisdiction abide by the guidelines set for processing permits? The guidelines should include:</p> <ul style="list-style-type: none"> •The length of time between permit application submission and permit decision •The information necessary to make a complete permit application •A written explanation for denying a permit application, if applicable 	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
<p>Review section 1(2), Chapter 231, 2007 Laws of 2007: http://www.leg.wa.gov/pub/billinfo/2007-08/Pdf/Bills/Session%20Law%202007/5508.SL.pdf</p>			
<p><i>(Not a scored question, but the Board may take this into consideration during deliberation of the construction loan list as a balancing factor.)</i></p>			

MEASURES OF FISCAL CAPACITY

<p>The next series of questions is intended to establish the level of the applicant's fiscal capacity to incur debt.</p>	
<p>1.12 Has the applicant experienced severe fiscal distress resulting from a natural disaster (e.g., Governor declared emergency) or emergency public works need in the past 12 months? If Yes, describe below. <i>(Not a scored question, but the Board may take this into consideration during deliberation of the construction loan list as a balancing factor.)</i></p>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<p>The event(s)</p>	
<p>When occurred</p>	
<p>Fiscal distress caused</p>	
<p>1.13 Describe short- and long-term fiscal management strategies, which the applicant jurisdiction uses to maximize its ability to finance the system described in this application. The response must address the primary system identified at the top of this application. (Max 1 point) The stormwater utility rate structure is designed to meet the expenses of operation, maintenance and capital projects. Stormwater rates are reviewed and adjusted every-other year in conjunction with the City budget.</p>	

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RATE BASED SYSTEMS ONLY (i.e., Sanitary Sewer, Storm Water, Domestic Water, Solid Waste/Recycling)

THE RESPONSE MUST ADDRESS THE PRIMARY SYSTEM IDENTIFIED AT THE TOP OF THE APPLICATION. This information will assist the Board in evaluating the applicant system's financial capacity to incur debt. Please use system specific financial data to complete this section. This information may be found in the applicant's balance sheet as submitted to the State Auditor's Office (www.sao.wa.gov).

The data will be used to calculate the ratio of debt, cash, and capital per capita. **(Max 10 points)**

1.14	Number of people in jurisdiction: 23,360	Number of people served by the system in 2009. 21,000	Percentage of people in the system affected by this project 90
	Total outstanding debt for the system in 2009.		\$0
	Cash and cash equivalents (deposits and all cash investments including restricted assets) for the system in 2009.		\$749,331
	Land and capital assets, net of depreciation (construction in progress, building, machinery and equipment, infrastructure, and other improvements) for the system in 2009. (For those using Asset Management, not depreciation, enter annual value.)		\$1,390,385

THE RESPONSE MUST ADDRESS THE PRIMARY SYSTEM IDENTIFIED AT THE TOP OF THE APPLICATION. This information will assist the Board in evaluating the applicant system's source of revenue.

The data will be used to calculate the percent of monthly household income dedicated to utility services. **(Max 4 points)**

1.15	List the average monthly Equivalent Residential Unit (ERU) rates per 1,000 cubic feet for the last five years. (1 cubic foot = 7.48 gallons)	Year	Rate	% of increase	
		2009	\$9.14	0%	
		2008	\$9.14	19%	
		2007	\$7.70	42%	
		2006	\$5.44	13%	
	2005	\$4.81	0%		
	If rates have not changed over the last five years, why not?	n/a			
	What is the average monthly rate charged per 1,000 cubic feet to a single-family residence for this system? (1 cubic foot = 7.48 gallons)	Year	Monthly Utility Rate	Median Household Income (MHI)	Yearly Utility Rate (or monthly rate x 12) Divided by MHI
2009		\$9.14	\$50,435 http://www.ofm.wa.gov/economy/hhinc/medinc.pdf	0.0022	
2008		\$9.14	\$52,132 http://www.ofm.wa.gov/economy/hhinc/medinc.pdf	0.0021	

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ROADS/STREETS AND BRIDGES ONLY

THE RESPONSE MUST ADDRESS THE PRIMARY SYSTEM IDENTIFIED AT THE TOP OF THE APPLICATION. This information will assist the Board in evaluating the applicant system's financial capacity to incur debt. Please use system specific financial data to complete this section. This information may be found in the applicant's balance sheet as submitted to the State Auditor's Office (www.sao.wa.gov). The data will be used to calculate the ratio of debt, cash, and capital per capita. **(Max 10 points)**

1.16	Number of people in jurisdiction: na	Number of people served by the system in 2009. na	Percentage of people in the system affected by this project: na%
	Population served by the system in 2009.		na
	Total outstanding debt for the system in 2009.		na
	Cash and cash equivalents (deposits and all cash investments including restricted assets) for the system in 2009.		na
	Land and capital assets, net of depreciation (construction in progress, building, machinery and equipment, equipment rental and revolving fund, infrastructure and other improvements) for the system in 2009. (For those using Asset Management, not depreciation, enter annual value.)		na

THE RESPONSE MUST ADDRESS THE PRIMARY SYSTEM IDENTIFIED AT THE TOP OF THE APPLICATION. This information will assist the Board in evaluating the applicant system's source of revenue. The data will be used to evaluate the impact of system costs on the applicant system's population. **(Max 4 points)**

1.17	How much of the applicant's General Fund has been budgeted for the maintenance and operation of roads/streets and/or bridges?	Year	\$ Amount	%
		2009	\$na	%
		2008	\$na	%
		2007	\$na	%
		2006	\$na	%
		2005	\$na	%
	If roads and/or streets have not been budgeted for in the last five years, why not?			
	If a road/street is added (including the extension of an existing road/street), what mechanism is used to "connect" customers to the new road/street and at what cost? (e.g., impact fees, system development charges)? See the Guidelines for further details.	Mechanism		Cost
		na		\$na
		Monthly Impact Fee for 2009 (\$)	Median Household Income (MHI) for 2009	Yearly Impact Fee (or monthly fee x 12) Divided by MHI
		\$na	\$50,435 http://www.ofm.wa.gov/economy/hhinc/medinc.pdf	na

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SECTION 2: PROJECT INFORMATION

PROJECT DESCRIPTION

2.1 In 150 words or less, please describe the project to be completed. **(Not scored)**

The project is reconstruction of a 42-inch diameter storm drain outfall pipe that is structurally and functionally failing.

PROJECT'S SCOPE OF WORK

2.2 Describe in detail all the activities required to complete this project.

This should include only the contract deliverables, e.g., number of feet and size of pipe to be laid, etc. The activities listed here will be incorporated into the loan contract should this project be selected for funding. Do not use this section to explain the problem.

The activities listed here must correspond with the 1) project schedule, 2) project costs, and 3) project funding. (Maximum of 4,000 characters including letters, spaces, and punctuation –

1 page with 1 inch margins and 61 lines is approximately 4,000 characters. SEE GUIDELINES)

(Not scored. Used as reference material in conjunction with schedule, costs, funding, and permitting.)

This project replaces an existing storm drain outfall and includes removal of approximately 320 feet of 42-inch diameter corrugated steel storm drain pipe, installation of approximately 300 feet of 42-inch HDPE pipe, 200 feet of 42-inch diameter AWWA C-200 steel pipe and one Type 3 storm drain manhole. Addition items include approximately 70 feet of 42-inch AWWA C-200 steel pipe added to an existing storm drain outfall, installation of approximately 700 square yards of paved pedestrian trail, reconstruction of approximately 4500 square yards of paved parking, approximately 700 square yards of landscaping, site restoration, erosion control measures and lighting.

REQUIRED PERMITS (LOCAL, STATE, AND FEDERAL)

2.3 List permits required for the proposed project and indicate status of each permit (e.g., applied for, pending, issued, etc.) If no permits are required, explain why not. Needs to correspond with Question 4.1 Readiness-to-Proceed.

Attach additional pages if more than five (5) permits are needed for the project. For assistance with permitting requirements, contact the Office of Regulatory Assistance or go to <http://www.ora.wa.gov>.

(Required Permits is not scored, but will be cross-referenced with Readiness-to-Proceed and may impact scoring associated with Readiness-to-Proceed.)

Permit	Expected Date Submitted	Expected Date Issued or Received	Status
1. SEPA	Aug 4, 2009	Oct 10, 2009	Issued
2. Shoreline Substantial Development Permit	Aug 4, 2009	Feb 18, 2010	Issued
3. Hydraulic Project Approval	Aug 4, 2009	Nov 23, 2009	Issued

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4. Joint Aquatic Resources Permit Application	Aug 4, 2009	June 2010	Pending
5.			
If no permits are required, please explain why not.			

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PROJECT SCHEDULE

2.4 Indicate the month and year when the activities were or will be completed. Schedule should clearly correspond to Question 4.1 Readiness-to-Proceed in the Local Management Effort section.
(Project Schedule is not scored, but will be cross-referenced with Readiness-to-Proceed and may impact scoring associated with Readiness-to-Proceed.)

Activity	Current Status	% Complete	Completion Date (Mo/Yr)
Engineering Report	Complete	100%	Jan 9, 2009
Cultural and Historical Resources Review (Section 106 or Executive Order 05-05) ¹	Pending	0%	Dec 2010
Environmental Review	Complete	100%	Feb 18, 2010
Land/Right-of-Way Acquisition	N/A	100%	Decades ago
Permits	In Progress	80%	June 2010
Public Involvement/Information	Complete	100%	Jan 9, 2010
Bid Documents	In Progress	15%	March 2011
Award Construction Contract	Pending	0%	June 2011
Construction Start	Pending	0%	July 2011
Construction Complete	Pending	0%	October 2011
Project in Use	Pending	0%	September 2011
Other:			
Other:			
Other:			

PROJECT COSTS

2.5 The Total Estimated Project Cost must equal the Total Project Funding in Question 2.6. The Project Costs table will become a part of the loan contract, should this project be approved for funding.
(Project Costs is not scored, but will be cross-referenced with Readiness-to-Proceed and may impact scoring associated with Readiness-to-Proceed.)

Cost Category	Amount
Engineering Report	\$164,415
Cultural and Historical Resources Review (Section 106 or Executive Order 05-05) ¹	\$11,108
Environmental Review	\$0
Land/Right-of-Way Acquisition	\$0
Permits	\$38,020
Public Involvement/Information	\$0
Bid Documents	\$169,493
Construction	\$1,100,738
Other Fees (Sales or Use Taxes)	\$98,386
Contingency (30%)	\$325,277
Other:	\$

¹ The EO 05-05 requires recipients of state funds to consult with interested parties (i.e., Department of Archaeology and Historic Preservation, and Indian Tribes) prior to starting project construction. For PWTF construction loans, this consultation should take place as early as possible, in order to avoid delays in starting the project construction. If you have questions regarding this process, please contact Stephen Dunk at (360) 725-3157 or email him at Stephen.Dunk@pwb.wa.gov.

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Other:	\$
Other:	\$
TOTAL ESTIMATED PROJECT COST	\$1,907,437

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PROJECT FUNDING

2.6 The Total Project Funding must equal the Total Estimated Project Cost in Question 2.5. Construction applicants must have local matching funds. The minimum local match is 5% of the total project funding unless they qualify as a distressed jurisdiction. Refer to the PWTF Application Guidelines for more information on distressed jurisdictions criteria. List the local matching funds in the **Loans** and **Local Revenue** sections below. Please state the status of the project's funding sources as follows:

- Funds are **Planned** for if they are found in a formally adopted Capital Facilities Plan.
- Funds are **Applied** for if a formal application has been submitted to a funding source, and the funding source considers that application or funding request as having been submitted (attach notification from funder that application has been received).
- Funds are considered **Awarded** if a formal notice of approval for the funds is in place from the funding source (attach letter from funder or contract number). Local revenue must be in an approved budget to be considered in-hand.

The Project Funding table will become a part of the loan contract, should this project be approved for funding. (Project Funding is not scored but will be checked for accuracy and cross-referenced with Readiness-to-Proceed.)

Type of Funding	Identify Source ²	Amount	Status (Planned, Applied for, Awarded, etc.)	Contract/Reference Number
Grants (State/Federal Agency or Organization) – Non Match				
Grant #1	<i>WSDOE Stormwater Retrofit and Low-Impact Development Grant</i>	\$500,000	Applied for	NA
Grant #2		\$		
Grant #3		\$		
Total Grants		\$		
Prior PWTF PreConstruction Loans – Non Match				
Non-Match Loan #1	None	\$		
Non-Match Loan #2		\$		
Total Prior PWTF PreConstruction Loans		\$		
Loans (State, Federal, Private Agency or Organization) – Local Match				
This PWTF Request	Public Works Board	\$1,100,000	Applied for	
Other Loan #1		\$		
Other Loan #2		\$		
Total Loans		\$		
Local Revenue (Rates, General Fund, Levies, Reserves, Assessments, ULID, LID, etc.) – Local Match				
Local Revenue #1	Rates	\$307,437	Planned	NA
Local Revenue #2		\$		
Local Revenue #3		\$		
Total Local Revenue		\$		
Other Funds				
Other Funds #1		\$		
Total Other Funds		\$		
TOTAL PROJECT FUNDING		\$1,907,437		

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² If federal funds are included in the project funding package, the project is subject to the federal Section 106 Cultural Historic Requirements. If you have questions regarding this process, please contact Stephen Dunk at (360) 725-3157 or email him at Stephen.Dunk@pwb.wa.gov.

2.7	Are there any constraints on the identified funding sources in Question 2.6 Project Funding? If yes, please explain. (Not scored)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Project must improve water quality			
2.8	Please describe what attempts have been made to secure resources for funding this project other than applying for this PWTF loan (e.g., applied for other grants and loans, issued bonds, etc.). Please be specific. (Not scored)		
Attempt Description		Date	Outcome
Stormwater Retrofit and Low-Impact Development Grant		Dec 1, 2009	Pending
Utility Rate Study and Adjustment		In progress	Pending
If no attempts have been made, please explain why not.			

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SECTION 3: PROJECT NEED AND SOLUTION

This section includes a series of questions related to the need for the project and the proposed solution to the problem. Have thorough and complete responses.

Attach any verifying information if necessary to clarify the degree of the problem (i.e., regulatory orders, negotiated letters of agreement, etc.).

This is the applicant's opportunity to state the problem and its impact on the community.

The information below states the Program's priorities, which are used to recommend projects for funding.

- The program priority in which they fall,
- Need assessment,
- How well the situation is documented, and
- How well the proposed solution addresses the problem.

Program Priorities:	1. Public health and safety	
	2. Environmental health	
	3. System performance (Repair/Replacement)	
	4. Growth / Economic Development	
Assessing Need:	SEVERE SITUATION – or – CHANCE OPPORTUNITY	<ul style="list-style-type: none"> • Project is to fix systems that have failed, are in imminent danger of failing, and/or are currently out of regulatory compliance (under an active regulatory order); • An economic opportunity has presented itself provided that the local government improves infrastructure to enable the opportunity.
	MODERATE	<ul style="list-style-type: none"> • The project is being done to meet emerging regulatory requirements and/or the project is being done to bring a non-compliant (but not under regulatory order) system up to existing standards; • Local government is improving the local business climate for future business expansion
	POTENTIAL/ PREVENTATIVE	<ul style="list-style-type: none"> • Project is necessary for the repair or replacement (end of lifecycle) • Project is being done to enable potential opportunities for growth and/or economic development
Supporting Documentation:	SEVERE SITUATION – or – CHANCE OPPORTUNITY	<ul style="list-style-type: none"> • Court orders • Official regulatory orders • Negotiated agreement with an external agency • A letter of commitment/intent from a business
	MODERATE	<ul style="list-style-type: none"> • External agency is driving the project/timeline • Project specific formal studies and/or reports (either from an internal or external source) • A letter of interest from a business
	POTENTIAL/ PREVENTATIVE	<ul style="list-style-type: none"> • Internal monitoring • Awareness of a problem
Proposed Solution	SEVERE SITUATION – or – CHANCE OPPORTUNITY	<ul style="list-style-type: none"> • Solution clearly solves the problem • Solution clearly meets the need
	MODERATE	<ul style="list-style-type: none"> • Solution does not solve the entire problem or fully address the need
	POTENTIAL/ PREVENTATIVE	<ul style="list-style-type: none"> • Solution does not meet the problem or the need

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PROJECT CATEGORY

3.1 For the applicant's primary system, as selected at the top of this application, identify the sub-category that is most affected by the proposed project. **Check only one.**
(Max 8 points; the Board may take this into consideration during deliberation of the construction loan list as a balancing factor.)

	8 points	6 points	4 points	2 points	1 point	1 point	1 point	1 point
Domestic Water	<input type="checkbox"/> Treatment	<input type="checkbox"/> Primary Supply or Source	<input type="checkbox"/> Secondary Supply or Source	<input type="checkbox"/> Storage or Reservoir	<input type="checkbox"/> Transmission	<input type="checkbox"/> Distribution	<input type="checkbox"/> Telemetry or Equipment	<input type="checkbox"/> Conservation or Other
	8 points	6 points	4 points	2 points	1 point	1 point		
Sanitary Sewer	<input type="checkbox"/> Treatment/ Reclamation	<input type="checkbox"/> Interceptor or Trunk Line	<input type="checkbox"/> Pump Lift Station	<input type="checkbox"/> Collector	<input type="checkbox"/> Telemetry or Equipment	<input type="checkbox"/> Conservation or Other		
	8 points	6 points	4 points	2 points	1 point			
Storm Water	<input type="checkbox"/> Treatment	<input type="checkbox"/> Storage or Detention	<input checked="" type="checkbox"/> Interceptor or Trunk Line	<input type="checkbox"/> Collector	<input type="checkbox"/> Other			
	8 points	6 points	4 points	2 points	1 point			
Solid Waste/ Recycling	<input type="checkbox"/> Remedial Action	<input type="checkbox"/> Final Disposal	<input type="checkbox"/> Transfer Station	<input type="checkbox"/> Waste Reduction or Recycling	<input type="checkbox"/> Other			
	8 points	6 points	4 points	2 points	1 point			
Road/Street or Bridge	<input type="checkbox"/> Principal Arterial	<input type="checkbox"/> Minor Arterial	<input type="checkbox"/> Major Collector	<input type="checkbox"/> Minor Collector	<input type="checkbox"/> Local/Other			

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GENERAL PROJECT NEED QUESTIONS

The answers to Questions 3.2 through 3.11 must relate to the **primary system** as identified at the top of the application. Be thorough and complete when responding.

(Max 52 points; scoring will be derived from the responses to Questions 3.2-3.31.)

- 3.2** Please describe the current age, condition, and materials which make up the components of the system being corrected by the project (example: 40-year old AC pipes that are deteriorating, 10-year old crack seal).
The existing stormwater outfall is comprised of 42-inch diameter corrugated steel pipe that was installed more than 40 years ago. The pipe is deteriorating due to corrosion and wave action in the marine environment. The deterioration has resulted in the outfall terminating approximately 100 feet closer to shore than the original design and installation.
- 3.3** What are the impacts the existing situation has, or will have, on the system's operation and expenses, if this project is not completed?
The terminal end of the outfall pipe is receding into the upper part of the beach as it becomes ever shorter (see attached photo). With the end of the pipe now below the level of the surrounding beach, the pipe is constantly clogged by sand and gravel that is washed into the pipe by the wave action of Oak Harbor bay. The outfall must be cleared of sand and gravel almost daily through the wet season in order to maintain function. Clearing the outfall requires city staff to frequently operate heavy equipment on the beach at night and in bad weather. Clearing the outfall can be hazardous to city staff. The hazards are working at night in bad weather, operating heavy equipment on unstable soil and exposure to contaminated water. The time and expenses of maintaining the existing outfall is expected to continue increasing as deterioration continues. Some time relatively soon it will not be possible to keep the existing outfall open.
- 3.4** What are the impacts the existing situation has, or will have, on the environment and/or endangered species, if this project is not completed?
The existing situation is a potential health hazard to beach users along with City staff. The outfall discharges storm water contaminated with fecal coliform bacteria on the most popular public beach in Oak Harbor. The existing pipe terminates in the intertidal zone at an elevation such that outfall maintenance has created a pool which is exposed at low tide. Some beach users wade and play in the pool and are thereby directly exposed to contaminated water (see attached letter from Island County Health Dept). The outfall replacement project includes extending the outfall pipe 100 feet further off shore significantly reducing opportunity for human exposure to storm water. Without this project, some park users will continue to be directly exposed to contaminated storm water.

The outfall in need of replacement is the western of two large storm water outfalls approximately 250 feet apart in Windjammer Park. Both outfalls require that beach sediments be excavated from the ends of the pipe in order to maintain a free flowing condition. As previously stated in this application, the outfall that is being replaced requires clearing most days from mid-fall through mid-spring to keep the pipe open and regular but less frequent maintenance for the balance of the year. The east outfall requires regular but less frequent maintenance. The replacement design calls for a new alignment which will place the west outfall pipe adjacent to the existing east outfall. This will result in the replacement outfall being located where maintenance requirements are less and, additionally, maintenance will occur at a single location rather than two separate locations. The project will result in much less beach disturbing maintenance activity over all.

The upper portion of the beach at the outfall site is sand and pebbles and there is naturally occurring transport of beach materials from west to east. Both existing outfall pipes are protected by large piles of rip-rap rock. The rip-rap piles act as groins. Beach materials build up on the west side and scour away on the east side of the structures. This groin effect has significantly altered the contours of the beach. The replacement design includes an auger type soil anchor system which will eliminate the pile of rip-rap on both outfall pipes and reduce the groin effects on the beach contour. The outfall site is known to be spawning habitat for sand lance, a small forage fish that salmon prey upon. Sand lances spawn high in the intertidal zone, the area most affected by the existing outfall groins. Reconstructing the outfall will allow the beach to return to more natural contours and is expected to improve sand lance spawning habitat.
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- 3.5** What will happen, not already answered above, if this project is not completed?

	Outfall clearing maintenance will continue to increase as the pipe continues to deteriorate and become shorter. At some point in the next year or two it will not be possible to keep the end of the outfall clear and flooding at the intersection of SR-20 and Pioneer Way will become a regular event.	
3.6	What are the community/regional/statewide benefits of this project? The outfall provides stormwater conveyance and discharge for approximately 0.7 miles of SR-20 and the core commercial area of Oak Harbor. SR-20 is a transportation facility of community, regional and statewide significance. The highway is the link between Whidbey Island, the Clinton and Keystone ferry terminals and the Deception Pass Bridge and I-5 corridor. The highway will be flooded at the intersection with Pioneer Way with increasing frequency without this project.	
3.7	Is this project being done in partnership with any other organizations/agencies? If Yes, please identify the partner(s) and describe the roles of each partner. See Guidelines for details. www.pwb.wa.gov/FORMS.HTM <i>(The Board may take this into consideration during deliberation of the construction loan list as a balancing factor.)</i>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
3.8	Are there any barriers or time constraints restricting or delaying the completion of this project? If Yes, please describe. The conditions of the WSDFW Hydraulic Project Application include a 2-month construction window, July 15 through September 15 for work in the intertidal zone to minimize impacts to endangered species and marine life in general. The project has also been delayed by a lack of funds for construction.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
3.9	Is this project being done to meet emerging regulatory requirements or economic opportunities? If yes, please describe.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
3.10	Have any other measures/activities been undertaken to address the problem/situation/opportunity? If Yes, please describe. If No, why not? Operational changes to the stormwater conveyance system have been made to divert flow away from the outfall. A project to divert more drainage away from the outfall is in the planning stages. These actions help reduce flooding but do nothing for maintaining the existing outfall pipe. A significant effort was made to develop an optimal solution to this problem. Replacement and realignment of the outfall was determined to be the best available solution.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
3.11	What is the system's current capacity level? 37 Cubic Feet per Second when unobstructed. This flow rate corresponds to the statistical 10-year rainfall event.	What is the system's maximum capacity? 37 Cubic Feet per Second
		What is the system's remaining capacity at the time of this application? 37 Cubic Feet per Second

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SYSTEM-SPECIFIC QUESTIONS

Please answer only those questions that relate to the primary system as selected at the top of the application.

Domestic Water Projects ONLY (in the last five years)					
3.12	What is the current status of the applicant's operating permit? http://www.doh.wa.gov/ehp/dw/sentry.htm	Red	Yellow	Blue	Green
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3.13	Does the applicant have sufficient water rights for the project? If no, explain the status of the situation including a time when the water rights will be acquired. NA	<input type="checkbox"/> Yes		<input type="checkbox"/> No	
3.14	Is the applicant taking over a failing water system? <i>(The Board may take this into consideration during deliberation of the construction loan list as a balancing factor.)</i>	<input type="checkbox"/> Yes		<input type="checkbox"/> No	
		Identify system:		Date taken over:	
3.15	Has the system had any boil water orders? If yes, indicate when, for how long, and how (or if) the issue was corrected. NA	<input type="checkbox"/> Yes		<input type="checkbox"/> No	
		Date(s):		Duration(s):	
3.16	Have there been any connection moratoriums? If yes, indicate when, for how long, and how (or if) the moratorium was lifted. NA	<input type="checkbox"/> Yes		<input type="checkbox"/> No	
		Date(s):		Duration(s):	
3.17	Has there been more than 10% unaccounted for water loss? If yes, please describe the current situation including whether or not the water loss has been stopped or decreased. NA	<input type="checkbox"/> Yes		<input type="checkbox"/> No	

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Sanitary Sewer/Storm Water Projects (in the last five years)

3.18	Is the applicant currently meeting National Pollutant Discharge Elimination System (NPDES) permit and/or State Waste Discharge Permit (SWDP) limits?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
3.19	Has the applicant had violation(s) of NPDES and/or SWDP permit(s)? If yes, indicate the type of violation, when it occurred, and how (or if) it was resolved.	<input checked="" type="checkbox"/> Yes Violation(s): Administrative	<input type="checkbox"/> No Date(s): Aug 2009
Adoption of new municipal stormwater codes was late under the terms of the Oak Harbor NPDES permit conditions. Code in conformance with the permit was adopted May 4, 2010			
3.20	Has the applicant had any Combined Sewer Overflows (CSO)? If yes, indicate the type of violation, when it occurred, the volume of the violation, and how (or if) it was resolved.	<input type="checkbox"/> Yes Violation(s):	<input checked="" type="checkbox"/> No Date(s): Volume(s):
3.21	Has the applicant's system caused any environmental degradation (i.e., shellfish bed closures, water temperature increase, 303(d) list water body, etc.)? If yes, indicate the type of degradation, when it occurred, and how (or if) it was resolved.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
The stormwater system discharges urban stormwater runoff into Oak Harbor bay. The runoff is known to be contaminated with fecal coliform bacteria. Coliform test results of stormwater have resulted in health warnings to beach users posted by the Island County Health Department at the outfall site. Oak Harbor bay has been closed for shellfish harvest for many years because of water pollution. There are no known plans for lifting the closure.			
3.22	Has the applicant's system had hookup moratoriums? If yes, indicate when, for how long, and how (or if) the moratorium was lifted.	<input type="checkbox"/> Yes Date(s):	<input checked="" type="checkbox"/> No Duration(s):

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Solid Waste/Recycling Projects ONLY (in the last five years)

3.23	Has the applicant's system caused negative impacts on ground water? If yes, please explain the impact and, if resolved, what was done to solve the problem.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
NA			
3.24	Is the applicant's system currently under a consent decree or any other order? If yes, please identify the consent decree(s) and/or order(s) and, if lifted, what was done to lift the decree(s)/order(s).	<input type="checkbox"/> Yes	<input type="checkbox"/> No
NA			
3.25	Has the applicant's system caused any environmental degradation (i.e., shellfish bed closures, water temperature increase, 303(d) list water body, ground water, etc.)? If yes, indicate the type of degradation, when it occurred, and how (or if) it was resolved.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
NA			
3.26	Is the solid waste or recycling facility consistent with, and necessary for, the implementation of local government's adopted comprehensive solid waste management plan? If no, please clarify.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
NA			

Road/Street or Bridge Projects ONLY (in the last five years)

3.27	What is the project area's current Level of Service (LOS). Please mark the appropriate LOS. http://www.wsdot.wa.gov/maintenance/mgmt/service.htm	LOS A	LOS B	LOS C	LOS D	LOS E	LOS F
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	What is the project area's adopted LOS? Please mark the appropriate LOS. http://www.wsdot.wa.gov/maintenance/mgmt/service.htm	LOS A	LOS B	LOS C	LOS D	LOS E	LOS F
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Upon project completion, what is the project area's anticipated LOS? Please mark the appropriate LOS. http://www.wsdot.wa.gov/maintenance/mgmt/service.htm	LOS A	LOS B	LOS C	LOS D	LOS E	LOS F
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
If the proposed project will not achieve the minimum locally adopted LOS, please explain why not.							
NA							
3.28	Describe existing hazard(s) within the project limits and how this project mitigates the hazard(s), or why the project will not resolve the hazard(s).						
NA							
3.29	Provide the project area's vehicle accident history (in percent of events per vehicular mile).	% of property damage accidents per vehicular mile	% of injury accidents per vehicular mile	% of fatality accidents per vehicular mile	Total number of accidents		
3.30	Does the project area have any officially imposed weight limits or road/street restrictions? If Yes, list the restrictions and attach supporting documentation (resolution, moratorium, etc.).	<input type="checkbox"/> Yes		<input type="checkbox"/> No			
NA							
3.31	For road/street projects only: What is the project area's current pavement rating using the Pavement Condition Index scale of 0-100? http://training.ce.washington.edu/WSDOT/state_information/11_pavement_management/wsdot_pms.htm						
NA							
For bridge projects only: What is the bridge's current rating?							
NA							

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NEED AND SOLUTION NARRATIVE STATEMENT

3.32 Please include a Problem-Solution-Result narrative about the problem being solved. This is the applicant's opportunity to state the problem or possibility, its impact on the community, and the benefits to be achieved through this project. Attach relevant documents (i.e., regulatory orders, negotiated letter of agreements, resolutions, moratoriums, etc.) to clarify the degree of the problem or opportunity. The project need will be evaluated on:

- Clarity of the need, including whether it is substantiated by data and documentation
- A comparison of the relative hardship or possibility and the frequency of the identified need
- The level of urgency required to address the need.

Please use a maximum of 4,000 characters in each response box: Problem, Solution, and Result (including letters, spaces, and punctuation).
1 page with 1 inch margins and 61 lines is approximately 4,000 characters. SEE GUIDELINES

Problem/Opportunity: Please describe the problem, or opportunity, facing the community.

The existing stormwater outfall is an essential facility to the Oak Harbor stormwater drainage system. The existing stormwater outfall pipe has physically deteriorated to the extent that it is functioning poorly, requires constant maintenance and exposes city staff and the public to contaminated stormwater. The pipe is likely to fail in the next year or two which will result in chronic flooding of SR-20 and part of the commercial core of Oak Harbor.

Solution: Please describe the solution proposed to address the **Problem** or develop the **Opportunity**.

The proposed solution is to replace the existing outfall pipe with new pipe and also shift the alignment of the outfall.

Result: Please describe the results or benefits anticipated with the proposed **Solution**.

The anticipated benefits are improved outfall function, greatly reduced maintenance, reduced impacts to the beach environment and reduced exposure of the public and city staff to contaminated stormwater.

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SECTION 4: LOCAL MANAGEMENT EFFORT

Local Management Effort responses are system specific and should be based on the primary system identified at the top of the application.

READINESS-TO-PROCEED

4.1	All responses are based on "at the time of application." If the applicant is not required to do a particular task, list N/A in "% completed at time of application" box <u>and</u> explain why the task is not required. In order to receive points for a task marked "N/A," an explanation must be included in the box below.	% completed at time of application (or N/A)
	Applicant certifies that the status of engineering and design is complete. (Max 5 points) Name and license number of certified engineer <u>assigned</u> to the project: Name: Arnold B. Peterschmidt License #: 41855	30%
	Applicant certifies that all applicable permits are in hand (Max 4 points)	50%
	Applicant certifies that bid documents are ready (Max 4 points)	15%
	Applicant certifies that right-of-way/easement for project is acquired (Max 3 points)	100%
	Applicant certifies that cultural and historic and environmental reviews are complete. Please attach verification that consultation with both Department of Archeological and Historic Preservation (DAHP) and concerned tribe(s) has been completed. <u>SEE GUIDELINES</u> (Max 2 points)	20%
	Applicant certifies that project is in a current and adopted Capital Facilities Plan (the plan should meet the Board's criteria as described in the PWTF Application Guidelines) (Max 1 point)	100%
If "N/A" is listed for any of the above tasks explain why the activity is not required.		

*These items must match the project's Scope of Work as identified in Question 2.2 in this application, as well as the Project Schedule (Question 2.4).

LOCAL MANAGEMENT EFFORT (In the last 5 years)

4.2	<p>What is the applicant's process for establishing the project system's maintenance schedule? How frequently is the system's maintenance schedule reviewed and updated? Give two specific examples of maintenance or operations activities performed on this system. If unable to give two examples from the prior five years, please explain why not. (Max 1 point)</p> <p>Existing stormwater utility facilities in general are inspected and cleaned on a 3-year rotating schedule and as needed. Maintenance records of each facility are maintained. The maintenance schedule is reviewed when a change in conditions occurs such as NPDES permit revisions or if facilities prove to need more or less frequent maintenance.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; padding: 5px;">Maintenance/ Operations Activity Example 1:</td> <td style="padding: 5px;">Clearing maintenance of the outfall is determined by visual inspection taking into consideration local tide and weather conditions. The outfall is cleared during low tide any time there is rain in the weather forecast. Weekly inspections occur during fair weather conditions with clearing done as needed.</td> </tr> <tr> <td style="padding: 5px;">Maintenance/ Operations Activity Example 2:</td> <td style="padding: 5px;">Oak Harbor has implemented a proactive street sweeping program. The goal is to reduce cleaning maintenance and stormwater pollution by collecting contaminants before they get into the stormwater collection system.</td> </tr> </table>	Maintenance/ Operations Activity Example 1:	Clearing maintenance of the outfall is determined by visual inspection taking into consideration local tide and weather conditions. The outfall is cleared during low tide any time there is rain in the weather forecast. Weekly inspections occur during fair weather conditions with clearing done as needed.	Maintenance/ Operations Activity Example 2:	Oak Harbor has implemented a proactive street sweeping program. The goal is to reduce cleaning maintenance and stormwater pollution by collecting contaminants before they get into the stormwater collection system.
Maintenance/ Operations Activity Example 1:	Clearing maintenance of the outfall is determined by visual inspection taking into consideration local tide and weather conditions. The outfall is cleared during low tide any time there is rain in the weather forecast. Weekly inspections occur during fair weather conditions with clearing done as needed.				
Maintenance/ Operations Activity Example 2:	Oak Harbor has implemented a proactive street sweeping program. The goal is to reduce cleaning maintenance and stormwater pollution by collecting contaminants before they get into the stormwater collection system.				
4.3	<p>List two distinct and separate capital improvements, other than <u>this</u> project, made to the system. If unable to give two examples from the prior five years, please explain why not. (Max 1 point)</p>				

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Capital Improvements Example 1:	Purchase of a new "regenerative air" type street sweeper. The new sweeper will significantly improve collection of dust, dirt, litter and other stormwater contaminants from City streets before they enter the stormwater collection system thereby reducing pollution of receiving waters.
Capital Improvements Example 2:	A Downstream Defender® vortex separator type stormwater treatment device was installed on the Barrington Drive extension completed in 2007. The system removes oil, floatable debris and sediment from stormwater conveyed by the Barrington Drive collection system.

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4.4	Describe the planning and public involvement activities performed that identify and/or prioritize local public works maintenance and capital needs for the applicant system. Give two specific examples of planning activities performed on this system in the last five years. If unable to do so, please explain why not. (Max 1 point)	
	The Oak Harbor Capital Improvement Plan (CIP) was developed through a multi-step process that included input from City staff, elected officials, private and public stakeholders, and a Citizen Advisory Committee. Details of this process are described in Appendix A (attached) of the CIP	
	Planning Activity Example 1:	Inventory of existing capital facilities
	Planning Activity Example 2:	Establishment of appropriate Level of Service standards for City utilities.

STEWARDSHIP OF WASHINGTON'S NATURAL RESOURCES (ESSSB 5560, SECTION 9) (In last 12 months)

4.5	During the last 12 month period, what three things have been done with the applicant system to demonstrate good stewardship of Washington State's natural resources such as the reduction of greenhouse gas emissions? If nothing has been done, please explain why not. SEE GUIDELINES (Max 3 points)	
	Good stewardship activity Example 1:	Storm water utility staff have developed and provide a car wash "kit" for local fund raising car washes. Use of the "kit" prevents soap and dirt laden wash water from entering the storm drainage system. The kit is provided free of charge.
	Good stewardship activity Example 2:	Oak Harbor Municipal Storm Water code was updated in November 2009. The code changes implement a significant number of operational and policy changes intended to reduce or eliminate sources of pollution through the City stormwater drainage system.
	Good stewardship activity Example 3:	Oak Harbor employs a full time Environmental Educator. The primary focus of this position is public outreach and education in the prevention of stormwater pollution. The work includes speaking at local schools and public events, publishing articles in the newspaper, providing educational displays and materials at public places and events and communication with stakeholders and individual citizens.

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APPLICANT CERTIFICATION

WHEREAS, **The City of Oak Harbor** (name of local government) is applying to the Washington State Public Works Trust Fund program for a low-interest loan for an eligible project; and

WHEREAS, RCW 43.155.070 requires that applicants planning under RCW 36.70A.040 must have adopted comprehensive plans in conformance with the requirements of chapter 36.70A RCW, and must have adopted development regulations in conformance with the requirements of chapter 36.70A RCW; and

WHEREAS, RCW 70.95 requires a comprehensive Solid Waste Management plan be adopted by the city or county; and

WHEREAS, RCW 43.155.070(10) requires that solid waste or recycling facility is consistent with and necessary to implement the comprehensive solid waste management plan adopted by the city or county under chapter 70.95 RCW.

WHEREAS, the applicant certifies that it has a currently adopted plan for each and every one of the systems it owns and operates and that these plans fully conform to the specifics within this application; and

WHEREAS, RCW 43.155.070 requires that county and city applicants must have adopted the local optional one-quarter of one percent Real Estate Excise Tax, as described in Chapter 82.46 RCW; and

WHEREAS, the applicant states that their Capital Facility Plan is consistent with the Comprehensive Land Use Plan of the jurisdiction in which they provide service; and

WHEREAS, the local governing body has approved submission of this application for a Public Works Trust Fund loan; and

WHEREAS the applicant certifies that if they have permitting authority (Counties and Cities) that they have developed and are adhering to guidelines regarding their permitting process for those applying for development permits consistent with section 1(2) of Chapter 31, 2007 laws.

WHEREAS the applicant certifies that it has adopted and this project adheres to policies to reduce greenhouse gas emissions in accordance with RCW 70.235.070. POLICY TITLE: City of Oak Harbor Anti-Idling Policy DATE ADOPTED: July 1, 2008

WHEREAS the applicant certifies that, there is currently no litigation in existence seeking to enjoin the commencement or completion of the above-described public facilities project or to enjoin the applicant from repaying the Public Works Trust Fund loan extended by the Public Works Board with respect to such project. The applicant is not a party to litigation, which will materially affect its ability to repay such loan on the terms contained in the loan agreement.

WHEREAS, the applicant recognizes and acknowledges that the information in the application forms is the only information, which will be considered in the evaluation and/or rating process. Incomplete responses will result in a reduced chance of funding. In order to ensure fairness to all, the Public Works Board does not accept any additional written materials or permit applicants to make presentations before the Board; and

WHEREAS, it is necessary that certain conditions be met as part of the application process; and

WHEREAS, RCW 43.155.060 requires that the project will be advertised for competitive bids and administered according to standard local procedure; and

WHEREAS, the loan will not exceed the maximum amount allowed by the Board of eligible costs incurred for the project; and

WHEREAS, the applicant certifies that the improvement has a minimum life expectancy of at least the number of years of the loan term for which they are applying; and

WHEREAS, any loan arising from this application constitutes a debt to be repaid, and **Doug Merriman, Finance Director** (person/title) has reviewed and concluded it has the necessary capacity to repay such a loan; and

WHEREAS, the information provided in this application is true and correct to the best of the government's belief and knowledge and it is understood that the state may verify information, and that untruthful or misleading information may be cause for rejection of this application or termination of any subsequent loan agreement(s); and

NOW THEREFORE, **City of Oak Harbor** (name of local government) certifies that it meets these requirements, and further that it intends to enter into a loan agreement with the Public Works Board, provided that the terms and conditions for a Public Works Trust Fund loan are satisfactory to both parties.

Signed:

Name: Jim Slowik

Title: Mayor

Phone Number: (360) 279-4502

Date: _____

Attest: _____

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CERTIFICATION BY PREPARER OF APPLICATION

To Be Completed by Staff Member or Consultant

WHEREAS, **Arnold Peterschmidt** has prepared this application for a Washington State Public Works Trust Fund loan; and

WHEREAS, the preparer recognizes and acknowledges that the information in this application is the only information that will be considered in the evaluation and/or rating process. Incomplete responses will result in a reduced chance of funding, and that in order to ensure fairness for all, the Public Works Board does not accept any additional written materials or permit applicants to make presentations before the Board; and

WHEREAS, the information provided in this application is true and correct to the best of the preparer's belief and knowledge; and

NOW THEREFORE, **Arnold Peterschmidt** recognizes and acknowledges the above declarations and certifies that this application meets the above requirements.

Signed:

Name:

Arnold Peterschmidt

Title:

Project Engineer

Phone Number:

(360) 279-4525

Date:

Attest:

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

Bill No. 13
Date: May 4, 2010
Subject: N. Oak Harbor Street
Improvements – Lighting Agreement

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

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

PURPOSE

This agenda bill requests authorization by resolution to enter into an installation and service agreement with Intolight for installation and maintenance of new street lights on N. Oak Harbor Street as a sole source purchase. The costs are; \$133,743.15 for installation and \$524.65 per month for energy and maintenance. The street lighting is part of the N. Oak Harbor Street Improvement Project and provides lighting from Whidbey Avenue through Crosby Avenue.

AUTHORITY

The authority to enter into agreements for improvements or use of real property is granted the City under RCW 35A.11.020.

SUMMARY STATEMENT

The North Oak Harbor Street Improvement Project is intended to reconstruct and improve the street from Whidbey Avenue through Crosby Avenue. The existing street is substandard as an arterial street because it lacks shoulders, sidewalks, turn lanes, lighting and facilities compliant with the Americans with Disabilities Act. The improvement project will remedy these deficiencies; provide a center lane for left turns over the length of the project, and improve the form and function of the street to be consistent with a vital urban arterial street and City standards. The street lighting facilities included in this proposal are a key element of the N. Oak Harbor Street Improvement project.

In the City of Oak Harbor, most street lights are owned and maintained by Intolight, a division of Puget Sound Energy. The City pays a monthly bill per light for both power costs and maintenance. For public street projects, the City contracts with a private construction company to install conduits, do the necessary trenching, and install the lighting bases in conjunction with the street improvements. Once the underground work is complete, Intolight (PSE) will come and install the light poles and circuitry.

A separate contract between Intolight and the City is needed to install the lights and establish the monthly service charges. The contract and rates are established through the electrical rate tariffs

approved by the Washington State Utilities Commission, WUTC. The terms and conditions for street lighting agreements are contained in PSE's schedule 52, a copy of which is attached. From time to time the WUTC approves rate increases to the approved tariff schedules. A copy of current rate schedule (effective January 1, 2010) is also attached.

Puget Sound Energy, through Intolight, is the only supplier capable of designing, installation, operating, maintaining and supplying power for street lights in the City of Oak Harbor. As the franchise holder for electrical power distribution, PSE has a natural monopoly for street lighting. Consequently, a sole source resolution authorizing the street lighting contract is required. The authorizing resolution is attached.

Contracting with Intolight for installation and maintenance of lighting facilities is the most reliable and efficient way to incorporate street lighting into this project. A copy of both the street lighting order and the lighting authorization letter are attached.

Funding for the initial cost is available from funds authorized for the N Oak Harbor Street Improvements. Funding for the continuing monthly charges will be budgeted by the Streets Division fund.

STANDING COMMITTEE REPORT

This proposal was presented at the Public Works and Utilities Committee meeting held on April 1, 2010.

RECOMMENDED ACTION

Adopt the sole source resolution.

A motion to authorize the Mayor to sign a Custom Street Lighting Order and Street Lighting Authorization Letter obligating the City to a one time charge of \$133,743.15 and continuing monthly charges of \$524.65 for street lighting with the N. Oak Harbor Street Improvements.

ATTACHMENTS

Sole source resolution
Sole source justification
Custom Lighting Order
Street Light Authorization Letter
Schedule 52
Current street lighting rate sheet

MAYOR'S COMMENTS

RESOLUTION NO. _____

RESOLUTION DECLARING PUGET SOUND ENERGY A SOLE SOURCE FOR PURPOSES OF PURCHASING STREET LIGHTING FOR THE NORTH OAK HARBOR STREET PROJECT.

WHEREAS, the City is interested in purchasing certain property described in Exhibit "A" hereto attached; and

WHEREAS, after investigation, it is determined that there is only one source for the items specified in Exhibit "A" - Puget Sound Energy, Inc (PSE).

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Oak Harbor as follows:

1. That the supplier above-named is the sole source supplier of the property identified in Exhibit "A" hereto attached;
2. That the City is authorized to purchase the same without proceeding to secure competitive bids.

PASSED and approved by the City Council this 4th day of May, 2010.

THE CITY OF OAK HARBOR

Mayor

Attest:

City Clerk

Approved as to Form:

City Attorney

Resolution Exhibit A

INTOLIGHT

Lighting Services from Puget Sound Energy

PROJECT NAME: North Oak Harbor Street improvement project

Order #: 105060021

LOCATION: N. Oak Harbor St from Whidbey Ave North to Crosby Ave.

CUSTOM STREET LIGHTING ORDER- REVISION 1

This order dated April 1, 2010, to PUGET SOUND ENERGY, Inc. (PSE) from City of Oak Harbor, covers the installation of custom lighting authorized by this order. Billing will be on a Monthly basis and in accordance with the terms and conditions contained in PSE's Schedule 52, and any future modifications of such Schedule as may be approved by the Washington Utilities and Transportation Commission. Ownership of all conductors, poles, fixtures, lamps and accessory equipment installed as a result of this order shall remain with PSE. The number, size and type of lights ordered are described below.

The installation charge of the listed lighting units is estimated to be **\$133,743.15**. Value of the system used to determine the monthly facilities charge is the estimated cost less applicable taxes.

Description:

- (30) 200W – Cobra Flat Lens HPS 240V luminaires
- (1) 150W – Cobra Flat Lens HPS 120V luminaires
- (30) 25' Concrete Octagonal Exposed Grey W/AMS Mast arm pole
- (1) SPECIAL ORDER 20' Concrete Octagonal Exposed Grey W/AMS Mast arm pole
- (31) 6' AL Bracket arms
- (15) 12"x17" #10-350 3 Position fiberglass handholes and secondary connectors
- (5) 13"x24" #12-350 4 Position fiberglass handholes and secondary connectors
- (6) Riser, 2" Conduit sys Standoff
- 40' Underground 1/0 600V Triplex service wire
- 4,445' Underground #6 Triplex service wire
- Includes labor to install circuitry (wire), handholes and streetlights.

Notes:

- 1) Customer to do trenching, install conduit and bends in trench, backfill, dig pole holes and stub-up conduit at handhole locations.
- 2) Please provide PSE 3 days notice to inspect trench before backfilling.

The basis of the monthly facilities charge under Rate Schedule 52, is as follows:

- Full payment of installation will be billed to city upon completion of project.
Monthly facilities charge is equal to 0.26 % x value of the system.
 $0.0026 \times \$109,160.26 = \283.82

The basis of the monthly energy charge under Rate Schedule 52 is as follows:

(30) - 200 Watt high pressure sodium units x \$7.96 =	\$238.80
(1) – 150 Watt high pressure sodium units x \$6.00=	<u>\$ 6.00</u>
Total Energy Cost	\$244.80

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Resolution Exhibit A

CUSTOM STREET LIGHTING ORDER REVISION 1 – (Continued)

Monthly facilities charge	\$283.82
Monthly energy charge	<u>\$244.80</u>
Total monthly charge:	\$528.62

To transfer the energy and maintenance monthly billing, the new billing party must contact PSE in writing.

Non-standard facilities are not kept in PSE inventory for the purpose of maintenance; therefore replacement of non-standard components may not be within the same time as replacement of standard components.

If non-standard components are included in this order, enter "X" here X .

This order, executed by customer's duly authorized representative as of the date first written above is for service, as described above, under PSE's Schedule 52.

The monthly billing party will be the **City of Oak Harbor**, account number _____.

Customer: City of Oak Harbor

By: _____

Date: _____

Print Name

Title: _____

Company: Puget Sound Energy

By: _____

Date: _____

Title: _____ Account Manager _____



REQUEST FOR SOLE SOURCE

To: City Council

From: Cathy Rosen / Public Works/Streets
Name of Department Head Department/Division

Subject: Sole Source Request for street lighting on N. Oak Harbor Street

Requested Supplier: Puget Sound Energy-- IntoLight

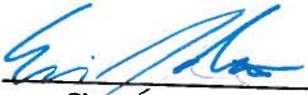
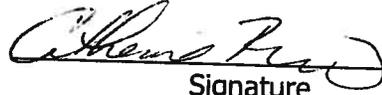
Cost Estimate: \$133,743.15 for installation plus \$528.62/month in facilities and energy charges

Sole source purchases are defined as clearly and legitimately limited to a single supplier. Sole source purchases are normally not allowed except when based upon strong technological ground such as operational compatibility with existing equipment and related parts or upon a clearly unique and cost effective feature requirement. The use of sole source purchases shall be limited only to those specific instances which are totally justified to satisfy compatibility or technical performance needs.

STATEMENT OF NEED:

My department's recommendation for sole source is based upon an objective review of the product/service required and appears to be in the best interest of the City. I know of no conflict of interest on my part or personal involvement in any way with this request. No gratuities, favors or compromising action have taken place. Neither has my personal familiarity with particular brands, types of equipment, materials or firms been a deciding influence on my request to sole source this purchase when there are other known suppliers to exist.

Refer to the attached sole source justification as prepared by our department, to the attached review of available products/services and to my completed Purchase Requisition.

Requestor  Signature <u>04/26/2010</u> Date	Department Head  Signature <u>4/26/10</u> Date
--	---

Finance Director Signature / Date	City Administrator Signature / Date
---	---

SOLE SOURCE JUSTIFICATION

Requisition Item: Street lighting order

Requisition Number: PSE # 105060021

1. Please describe the item and its function:

Street lighting for N. Oak Harbor Street from Whidbey Avenue to Crosby Avenue in accordance with PSE Schedule 52. The street lights provide for basic street lighting for safety. Please see the attached street lighting order.

2. This is a sole source* because:

- X sole provide of a licensed or patented good or service
- X sole provider of items that are compatible with existing equipment, inventory, systems, programs or services
- X sole provider of goods and services for which the City has established a standard"
 - o sole provider of factory-authorized warranty service sole provider of goods or services that will meet the specialized needs of the City or perform the intended function (please detail below or in an attachment)
 - o the vendor/distributor is a holder of a used item that would represent good value and is advantageous to the City (please attach information on market price survey, availability, etc.)

3. What necessary features does this vendor provide which are not available from other vendors?

Puget Sound Energy is the franchise supplier for electrical power in Island County under a franchise granted by the Washington State Utilities Commission and the City of Oak Harbor. PSE by virtue of its franchise has a natural monopoly in the City of Oak Harbor and as such is the only entity capable of furnishing, installing, maintaining, operating and providing power for the street lights.

4. What steps were taken to verify that these features are not available elsewhere?

PSE is the electrical power franchise holder. There is no other source or vendor capable of providing the design, installation, operation and power supply for street lights as part of a single service contract.

**Sole Source: only one vendor possesses the unique and singularly available capability to meet the requirement of the solicitation. Procurements of items for which the City has established a standard by designating a brand or manufacturer or by pre-approving via a testing shall be competitively bid if there is more than one vendor of the item.*

**INTOLIGHT
Lighting Services from Puget Sound Energy**

PROJECT NAME: North Oak Harbor Street improvement project

Order #: 105060021

LOCATION: N. Oak Harbor St from Whidbey Ave North to Crosby Ave.

CUSTOM STREET LIGHTING ORDER- REVISION 1

This order dated April 1, 2010, to PUGET SOUND ENERGY, Inc. (PSE) from City of Oak Harbor, covers the installation of custom lighting authorized by this order. Billing will be on a Monthly basis and in accordance with the terms and conditions contained in PSE's Schedule 52, and any future modifications of such Schedule as may be approved by the Washington Utilities and Transportation Commission. Ownership of all conductors, poles, fixtures, lamps and accessory equipment installed as a result of this order shall remain with PSE. The number, size and type of lights ordered are described below.

The installation charge of the listed lighting units is estimated to be **\$133,743.15**. Value of the system used to determine the monthly facilities charge is the estimated cost less applicable taxes.

Description:

- (30) 200W – Cobra Flat Lens HPS 240V luminaires
- (1) 150W – Cobra Flat Lens HPS 120V luminaires
- (30) 25' Concrete Octagonal Exposed Grey W/AMS Mast arm pole
- (1) SPECIAL ORDER 20' Concrete Octagonal Exposed Grey W/AMS Mast arm pole
- (31) 6' AL Bracket arms
- (15) 12"x17" #10-350 3 Position fiberglass handholes and secondary connectors
- (5) 13"x24" #12-350 4 Position fiberglass handholes and secondary connectors
- (6) Riser, 2" Conduit sys Standoff
- 40' Underground 1/0 600V Triplex service wire
- 4,445' Underground #6 Triplex service wire
- Includes labor to install circuitry (wire), handholes and streetlights.

Notes:

- 1) Customer to do trenching, install conduit and bends in trench, backfill, dig pole holes and stub-up conduit at handhole locations.
- 2) Please provide PSE 3 days notice to inspect trench before backfilling.

The basis of the monthly facilities charge under Rate Schedule 52, is as follows:

- Full payment of installation will be billed to city upon completion of project.
Monthly facilities charge is equal to 0.26 % x value of the system.
 $0.0026 \times \$109,160.26 = \283.82

The basis of the monthly energy charge under Rate Schedule 52 is as follows:

(30) - 200 Watt high pressure sodium units x \$7.96 =	\$238.80
(1) – 150 Watt high pressure sodium units x \$6.00=	\$ 6.00
Total Energy Cost	\$244.80

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CUSTOM STREET LIGHTING ORDER REVISION 1 – (Continued)

Monthly facilities charge	\$283.82
Monthly energy charge	<u>\$244.80</u>
Total monthly charge:	\$528.62

To transfer the energy and maintenance monthly billing, the new billing party must contact PSE in writing.

Non-standard facilities are not kept in PSE inventory for the purpose of maintenance; therefore replacement of non-standard components may not be within the same time as replacement of standard components.

If non-standard components are included in this order, enter "X" here X .

This order, executed by customer's duly authorized representative as of the date first written above is for service, as described above, under PSE's Schedule 52.

The monthly billing party will be the **City of Oak Harbor**, account number _____.

Customer: City of Oak Harbor

By: _____

Date: _____

Print Name

Title: _____

Company: Puget Sound Energy

By: _____

Date: _____

Title: _____ Account Manager _____

STREET LIGHT AUTHORIZATION LETTER

February 23, 2010

Russ Pabarcus
Project Engineer
City of Oak Harbor
(360) 279-4525

Project Name: North Oak Harbor Street Improvement
Project Location: N. Oak Harbor St. From Whidbey Ave North to Crosby St.

Thank you for your request for a street/area lighting service at the above location. Your cost for this installation is \$133,743.15 based on the description in the "Custom Street Lighting Order" (attached). This estimate is valid for 90 days.

After reviewing the enclosed "Street Light Authorization Letter" and "Custom Street Lighting Order" please sign and return, billing and payment of \$133,743.15 will be made upon completion of the above mentioned project. **Return the original of each document in the self-addressed, envelope provided, and retain the other copies for your file.**

The following contingencies must be completed before construction of the system:

1. In the area where we are placing our cables and equipment, it is necessary that area be within four (4) inches of final grade. If not, you may be required to pay the cost of relocating or reburying our facilities.
2. The customer will be responsible for marking all privately-owned facilities (septic systems, waterlines, landscape or service wire, etc.). If such facilities are not marked and are subsequently damaged by the installation crew, the customer will be responsible for repairing damages. Sign here if private facilities are not marked _____.
3. Right-of-way and/or Easements may also be required from you or adjacent property owners.
4. Provide trenching, back filling of trench and dig pole holes to the depth necessary to accommodate the different mounting height of each pole and install a corrugated plastic culvert pipe or equivalent (see PSE "Joint Utility Mainline Trench and Street Light Installation" standard).

Other Items:

5. Restoration work or removal of excavated materials is not included.
6. Streetlight design might not meet IES minimum recommended lighting levels.
7. Customer responsible for street light design, pole locations and pole and fixture type.
8. If unforeseen soil conditions result in added costs, it is your responsibility to reimburse PSE.
9. To transfer the energy and maintenance monthly billing to a city, HOA, etc., the new billing party must contact PSE in writing.
10. If site is not ready on scheduled install date, customer will be responsible for crew remobilization costs.
11. Streetlights will be installed and energized after plat is energized. Approximate energize date: _____.
Requested date for lighting installation is: _____.

By signing this letter and returning it you are stating that you will comply with these requirements and authorize us to do the work. When the contingencies have been met, poles and fixtures will be ordered and project will be released to construction for scheduling. If you have any questions, please call me at 425-456-2558.

Sincerely,

Bryan Waters, Account Manager INTOLIGHT

The above contingencies are accepted and authorization is given:

By: _____ Date: _____

Print Name: _____ Title: _____

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CUSTOM STREET LIGHTING ORDER – (Continued)

Monthly facilities charge	\$279.85
Monthly energy charge	<u>\$244.80</u>
Total monthly charge:	\$524.65

To transfer the energy and maintenance monthly billing, the new billing party must contact PSE in writing.

Non-standard facilities are not kept in PSE inventory for the purpose of maintenance; therefore replacement of non-standard components may not be within the same time as replacement of standard components.

If non-standard components are included in this order, enter "X" here X .

This order, executed by customer's duly authorized representative as of the date first written above is for service, as described above, under PSE's Schedule 52.

Customer: City of Oak Harbor

By: _____

Date: _____

Print Name

Title: _____

Company: Puget Sound Energy

By: _____

Date: _____

Title: _____ Account Manager _____

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PUGET SOUND ENERGY
Electric Tariff G

SCHEDULE 52
CUSTOM LIGHTING SERVICE
COMPANY OWNED

AVAILABILITY:

1. This schedule is available to all Customers contracting for Company owned and maintained sodium vapor or metal halide lighting service for illumination of streets, highways, and other areas.
2. Service under this schedule may be pursuant to a service agreement, which shall be consistent with this schedule and shall be of a standard form provided by and satisfactory to the Company.
3. All non-standard equipment is subject to approval by the Company prior to installation.
4. Service under this schedule is effective for a minimum period of fifteen (15) years for lights installed by the Company on or after August 1, 2000, unless
 - (a) a subsequent customer requests service or;
 - (b) the facilities are removed, whereupon appropriate removal charges shall be paid.After expiration of such term, service shall continue on a year-to-year basis until terminated upon one (1) year's notice in writing.
5. Where necessary, the Customer shall obtain for, or grant to, the Company necessary permits and/or operating rights to place and/or maintain lighting facilities on public streets, highways, and public areas without expense to the Company. In conditions where it is necessary to place any lighting facilities on private property, the customer shall obtain and furnish suitable easements without expense to the Company.
6. Service under this schedule is available only for newly constructed Company owned lighting systems utilizing underground circuitry, decorative or custom lighting systems utilizing overhead circuitry, or existing lighting systems upon purchase by the Company. The Company will furnish all necessary labor, material and supplies for the installation, servicing and maintenance of lights under this schedule, except as provided in paragraph 8 of the Special Terms and Conditions herein.

TYPE OF SERVICE:

Service under this schedule applies to dusk-to-dawn lighting of streets, alleys, and other areas which can be served from the Company's distribution system.

MONTHLY RATES:

The sum of Lamp and Facilities charges:

Issued: June 26, 2000
Advice No. 2000-10

Effective: August 1, 2000

Issued By Puget Sound Energy

By: _____



Steve Secrist

Director, Rates & Regulation

PUGET SOUND ENERGY
Electric Tariff G

SCHEDULE 52
CUSTOM LIGHTING SERVICE
COMPANY OWNED
 (Continued)

Lamp Charges:

Sodium Vapor Lamp Wattage	Rate per Month per lamp
50	\$1.99
70	\$2.90
100	\$4.09
150	\$5.94
200	\$7.87
250	\$9.78
310	\$13.33
400	\$15.25

(l)

 (l)

Metal Halide Lamp Wattage	Rate per Month per lamp
70	\$3.15
100	\$4.02
150	\$5.78
175 ⁽¹⁾	\$6.83
250	\$9.29
400	\$14.57
1000	\$34.87

(l)

 (l)

(1) Limited availability – see section 9 of Special Terms And Conditions.

Facilities Charge:

Options A and B Terms:

1. **Estimated Installed Cost:** The Estimated Installed Cost is the estimated installed cost of the lighting system, including but not limited to, luminaires, poles, distribution facilities, labor, overheads and includes the effect of applicable taxes (when applicable).
2. **Estimated System Cost:** The Estimated System Cost is the estimated installed cost of the lighting system including, but not limited to, luminaires, poles, distribution facilities, labor, overheads but excludes the effect of applicable taxes.

Amounts of the facilities charges:

Option A:

1.50% times the Estimated System Cost per month.

Under Option A the Customer makes no payment up-front. The monthly facilities charge covers taxes, depreciation, insurance, return and routine maintenance. At any time, upon notice to the Company, the Customer may pay the unamortized balance of the Estimated Installed Cost and thereafter pay the monthly facilities charge under Option B for the remainder of the term.

Issued: October 20, 2008

Effective: November 1, 2008

Advice No.: 2008-25

By Authority of the Washington Utilities and Transportation Commission in Docket Nos. UE-072300, UG-072301

Issued By Puget Sound Energy

By: Tom DeBoer Tom DeBoer

Title: Director, Rates & Regulatory Affairs

PUGET SOUND ENERGY
Electric Tariff G

SCHEDULE 52
CUSTOM LIGHTING SERVICE
COMPANY OWNED
(Continued)

3. Removal, Relocation or Modification of Lighting Facilities: Lighting facilities will be removed, turned off, relocated or modified by the Company only after receipt of a letter signed by the Customer or its assignee who is in authority to order such action. Only the Company may remove, relocate or modify Company owned lighting facilities. Modification includes changes in type of lighting fixture or changes in bracket length or mounting height due to Customer, city, county or state requests or requirements. Relocation includes relocation of supporting poles and conversion of the serving distribution facilities to underground due to Customer, city, county or state request or requirement. In advance of any removal, relocation or modification, the Customer shall pay an amount equal to the estimated cost of such removal, relocation or modification. This estimated charge shall include the cost of removal of facilities that now serve lighting load only. All facilities installed or removed remain the sole property of the Company. The cost of removal, relocation or modification also includes any costs of traffic control or other associated costs. At the time when no Customer is taking service for lights under this schedule, the Company, at its sole option, may remove all facilities used in providing service. Lights that are removed because there is no longer a Customer to accept service will be considered removals requested by the last Customer of record for the purposes of assessing the charges contained in this schedule.
4. Additional Removal Charges: In addition to the charge for the cost of the removal, relocation or modification the following charges apply:
- If a light to be removed has been installed for less than ten (10) years and was installed prior to August 1, 2000; or a light installed after July 31, 2000, has been installed for less than fifteen (15) years, a charge equal to the total original estimated installed cost less (i) any up-front customer contribution toward the cost of salvageable items and (ii) estimated salvage value of the facilities removed.
 - If lights to be removed were transferred to Company ownership for nominal compensation, there will be no additional charge upon removal.

Issued: June 26, 2000
Advice No. 2000-10

Effective: August 1, 2000

Issued By Puget Sound Energy

By: _____

Steve Secrist

Director, Rates & Regulation

PUGET SOUND ENERGY
Electric Tariff G

SCHEDULE 52
CUSTOM LIGHTING SERVICE
COMPANY OWNED
(Continued)

5. Other Loads on Lighting System: Where unmetered lighting circuits include provisions for other or additional usage such as electric outlets (festoon outlets) the Company may require that service be metered and billed under the appropriate general service schedule.
6. Billing Information to be Provided by the Company: For each type and wattage of light the Company shall provide the total number of lights billed and the total dollar amount for the month by lamp size and type.
7. Ownership of Facilities: The Company shall own, operate, and maintain all facilities installed under this schedule.
8. Non-Standard Equipment: Non-Standard Equipment ("Non-Standard Equipment") is defined herein as: equipment which is not standard to the Company and not included in the Company's inventory for maintenance. Non-Standard Equipment (including but not limited to poles, arms and luminaires) installed under this Schedule is subject to the following conditions.
 - a. Non-Standard Equipment will not be kept in the Company's inventory for the purpose of maintenance. The Customer may choose to keep an inventory of such Non-Standard Equipment and make it available to the Company. If the Customer inventory is made available to the Company at costs that the Company would otherwise pay for such equipment, the Company will use the Customer inventory and reimburse the Customer for materials used within thirty days after receipt of a bill therefore.
 - b. If Non-Standard Equipment is not available for maintenance from the Customer as described in 8.a. above, and it is necessary to provide temporary lighting service, when requested by the Customer in writing, the Customer shall be responsible for all costs the Company incurs for such temporary facilities. The Customer shall reimburse the Company for such costs within thirty (30) days after receipt of a bill therefore. If Non-Standard Equipment is not available for maintenance the Company will not be obligated to comply with paragraphs 1 and 2 of the Special Terms and Conditions section of this schedule.

Issued: June 26, 2000
Advice No. 2000-10

Effective: August 1, 2000

Issued By Puget Sound Energy

By: _____

Steve Secrist

Director, Rates & Regulation

**PUGET SOUND ENERGY
Electric Tariff G**

**SCHEDULE 52
CUSTOM LIGHTING SERVICE
COMPANY OWNED
(Continued)**

- c. Should the Non-Standard Equipment become unavailable for purchase and require custom fabrication or special ordering, the Facilities Charge shall be adjusted to reflect any increase in cost.
9. Limited Availability: No new luminaries of the following type and wattage of are to be installed under this schedule. Existing luminaries may remain until replaced.
175 Watt Metal Halide

INDEMNIFICATION:

The Customer shall indemnify and hold harmless the Company, its successors and assigns, from and against all claims, actions, liability, cost and expense by reason of injury to or death of persons or damage to property arising or resulting from (a) any interruption of modification of service requested or caused by the Customer; (b) any defects in any Non-Standard Equipment; (c) a failure or inability of the Customer to provide necessary Non-Standard Equipment components in a timely fashion that allows Company to meet its obligations under paragraph 1. of the Special Terms And Conditions of this schedule when so requested by the Company; or (d) any lighting, requested or approved by Customer or third party, which does not conform to the Illuminating Engineering Society (IES) Standards.

TREE TRIMMING:

It shall be the responsibility of the Customer to provide tree trimming services in areas that are below the height of luminaires installed under this schedule except when luminaires are installed within the area of energized electrical wires that is restricted to qualified utility workers. The Company shall be responsible for tree trimming within this restricted area.

ADJUSTMENTS:

Rates in this schedule are subject to adjustment by such other schedules in this tariff as may apply.

THIRD PARTY DAMAGE:

If Custom lighting facilities experience malicious and/or recurring damage caused by actions of third parties the Company may remove such facilities or, alternatively, such facilities may remain in place upon payment by the Customer for such damage.

(M)
(M)

(M) Transferred to Sheet No. 52-f

Issued: June 11, 2008

Effective: July 12, 2008

Advice No. 2008-13

Issued By Puget Sound Energy

By: Tom DeBoer Tom DeBoer

Title: Director, Rates & Regulatory Affairs

**PUGET SOUND ENERGY
Electric Tariff G**

**SCHEDULE 52
CUSTOM LIGHTING SERVICE
COMPANY OWNED
(Continued)**

ADDITIONAL COSTS:

The manner and type of construction, maintenance and outdoor lighting standards are subject to applicable governmental authority or law. Where a Customer or a government body makes a request or requires a change that increases the Company's cost of providing service or maintenance under this Schedule and that increased cost is not reimbursed by an agency of the government or other person or entity, the increased cost shall be paid by the Customer. For example, where a permit is required to be purchased which increases costs for maintenance of street lighting, the cost of the permit plus Company costs and overheads shall be paid by the Customer.

(N)

Where the applicable governmental authority or law has the effect of, or results in, the Company not being able to respond within seventy-two (72) hours to a notification of an inoperable light, the Company shall not be responsible to credit the Customer's billing as provided in the "Notification of Inoperable Lights" section above. For example, if the Company has to obtain a permit prior to responding, there shall not be any credit to the Customer's billing.

(N)

GENERAL RULES AND PROVISIONS:

Service under this schedule is subject to the General Rules and Provisions contained in this tariff.

(K)

(K)

(K) Transferred from Sheet No. 52-e

Issued: June 11, 2008

Effective: July 12, 2008

Advice No. 2008-13

Issued By Puget Sound Energy

By:

Tom DeBoer

Tom DeBoer

Title: Director, Rates & Regulatory Affairs

Puget Sound Energy / INTOLIGHT Street Lighting Rates

Schedule 52 - Metal Halide	
Metal Halide Lamp Wattage	Rate per Month per Lamp
70	\$3.07
100	\$4.04
150	\$6.66
175	*NOT AVAIL*
250	\$9.55
400	\$14.96
1000	\$35.58

Schedule 52 - Sodium Vapor	
Sodium Vapor Lamp Wattage	Rate per Month per Lamp
50	\$2.00
70	\$2.94
100	\$4.15
150	\$6.00
200	\$7.96
250	\$9.90
310	\$13.49
400	\$15.41

Schedule 53 - Pole Owned & Maintained	
Sodium Vapor Lamp Wattage	Rate per Month per Lamp
50	\$8.93
70	\$10.29
100	\$11.56
150	\$13.74
200	\$16.45
250	\$18.53
310	\$21.44
400	\$25.18
1000	\$55.60

Schedule 53 - Customer Owned & Maintained	
Sodium Vapor Lamp Wattage	Rate per Month per Lamp
50	\$4.06
70	\$5.07
100	\$6.26
150	\$8.17
200	\$10.10
250	\$12.11
310	\$14.60
400	\$17.62
1000	\$42.67

Schedule 53 - Metal Halide Customer Owned & Maintained	
Metal Halide Lamp Wattage	Rate per Month per Lamp
70	\$9.01
100	\$9.89
150	\$12.01
175	*NOT AVAIL*
250	\$15.98
400	\$18.00

Schedule 54 - Customer Owned & Maintained	
Sodium Vapor Lamp Wattage	Rate per Month per Lamp
50	\$2.00
70	\$2.94
100	\$4.14
150	\$5.99
200	\$7.95
250	\$9.87
310	\$13.14
400	\$15.39
1000	\$38.78

Schedule 55 Commercial - Metal Halide	
Metal Halide Lamp Wattage	Rate per Month per Lamp
175	*NOT AVAIL*
250	\$19.63

Schedule 56 Residential - Metal Halide	
Metal Halide Lamp Wattage	Rate per Month per Lamp
175	*NOT AVAIL*
250	\$19.59

Schedule 55 Commercial - Sodium Vapor	
Sodium Vapor Lamp Wattage	Rate per Month per Lamp
<i>cobra flat</i> 70	\$10.32
<i>area light</i> 100	\$11.62
<i>cobra flat</i> 150	\$13.65
<i>area light</i> 200	\$16.62
<i>cobra flat</i> 250	\$18.75
<i>area light</i> 400	\$25.31

Schedule 56 Residential - Sodium Vapor	
Sodium Vapor Lamp Wattage	Rate per Month per Lamp
<i>cobra flat</i> 70	\$10.31
<i>area light</i> 100	\$11.60
<i>cobra flat</i> 150	\$13.82
<i>area light</i> 200	\$16.58
<i>cobra flat</i> 250	\$18.71
<i>area light</i> 400	\$25.24

Pole Rental = \$7.48/mo

Schedule 58 Commercial - Metal Halide	
Directional Lamp Wattage	Rate per Month per Lamp
175	*NOT AVAIL*
250	\$20.65
400	\$25.72
1000	\$47.73

Horizontal Lamp Wattage	
Lamp Wattage	Rate per Month per Lamp
175	*NOT AVAIL*
250	\$24.87
400	\$31.57

Schedule 59 Residential - Metal Halide	
Directional Lamp Wattage	Rate per Month per Lamp
175	*NOT AVAIL*
250	\$20.61
400	\$25.65
1000	\$47.55

Horizontal Lamp Wattage	
Lamp Wattage	Rate per Month per Lamp
175	\$0.36
250	\$24.83
400	\$31.50

Schedule 59 Commercial - Sodium Vapor	
Directional Lamp Wattage	Rate per Month per Lamp
70	\$12.32
100	\$13.53
150	\$15.44
200	\$18.05
250	\$20.11
400	\$25.55

Horizontal Lamp Wattage	
Lamp Wattage	Rate per Month per Lamp
100	\$15.43
150	\$17.28
200	\$20.09
250	\$20.93
400	\$27.37

Schedule 59 Residential - Sodium Vapor	
Directional Lamp Wattage	Rate per Month per Lamp
70	\$12.31
100	\$13.51
150	\$15.41
200	\$18.01
250	\$20.07
400	\$25.48

Horizontal Lamp Wattage	
Lamp Wattage	Rate per Month per Lamp
100	\$15.41
150	\$17.23
200	\$20.04
250	\$20.89
400	\$27.30

Effective January 1st, 2010

Rates subject to WUTC tariff changes

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City of Oak Harbor
City Council Agenda Bill

Agenda Bill No. 14
Date: May 4, 2010
Subject: Pioneer Way Right-of-Way
Acquisition -- Legal Fees

FROM: Margery Hite, City Attorney

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

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

PURPOSE

This agenda bill follows the Council's decision to take legal action to settle the City's title to the right-of-way for the Pioneer Way Improvement Project. A Professional Services Agreement is submitted for Council approval for legal services from the law firm of Langabeer & Tull, P.S. The law firm will take the immediate legal actions necessary to secure the City's easement over the undedicated portions of sidewalk in the project area.

AUTHORITY

The City Council has the authority to exercise its municipal powers in regard to the acquisition, sale, ownership, improvement, maintenance, protection, restoration, regulation, use, leasing, disposition, vacation, abandonment or beautification of public ways. RCW 35A.11.020. As part of the Pioneer Way Improvement Project, attorney services are required to pursue the quiet title action for undedicated right-of-way on portions of the sidewalks along Pioneer Way. Under City code, the city attorney may appoint other counsel when the city attorney is unable to represent the City. OHMC 2.06.010. In this case, it is the immediate need for a dedication of a significant number of hours of legal services that makes the city attorney unable to represent the City on this matter.

To date, the law firm has been performing pre-trial litigation services under a contract within the Mayor's authority (OHMC 2.390.020) but it is anticipated that the expenses of actual litigation of the quiet title action shall exceed that authority (\$30,000) and require Council approval.

SUMMARY STATEMENT

The City Attorney's Office is staffed for the regular workload of the City in both criminal and civil matters. When civil litigation arises, however, the City Attorney's Office is not ordinarily able to handle the normal workload as well as civil litigation since litigation requires meeting

demanding court deadlines with immediate resources; unlike other legal work, litigation demands cannot be managed to fit into the existing workload.

In this case, the City Attorney's Office has selected a Bellingham law firm, specializing in land use and real property, with an expertise in municipal law – Langabeer & Tull, P.S. It was judged best not to seek the services of an Island County lawyer because of the large number of property owners holding a property interest in the project area; a local real property lawyer would be likely to have already represented one or the other of the potential defendants and thus have a conflict of interest in representing the City.

The billing rates for the attorneys in Langabeer & Tull, P.S., are competitive with other Whatcom County law firms doing municipal work, and slightly less than comparable Island County law firm billing rates. Both are significantly less than rates for Seattle law firms with comparable expertise. This agreement caps the compensation for legal services at \$40,000.00.

STANDING COMMITTEE REPORT

This item was not taken to a standing committee because of the press of time in instituting legal proceedings.

RECOMMENDED ACTION

A motion authorizing the Mayor to sign the attached Professional Services Agreement with Langabeer & Tull, P.S.

ATTACHMENTS

Professional Services Agreement

MAYOR'S COMMENTS

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into in duplicate this _____ day of _____, 2010, by and between the CITY OF OAK HARBOR, a Washington municipal corporation, hereinafter referred to as the "CITY" and Richard J. Langabeer, Langabeer & Tull, P.S., attorneys at law, hereinafter referred to as the "SERVICE PROVIDER".

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

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

WHEREAS, the SERVICE PROVIDER represents the SERVICE PROVIDER is qualified, a member in good standing of the Washington State Bar Association, and possesses sufficient skills and the necessary capabilities, including technical and professional expertise, where required, to perform the services and/or tasks set forth in this Agreement.

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

1. Scope of Services. The SERVICE PROVIDER shall perform legal services on behalf of the City at the request of City officials pertaining to the acquisition of rights-of-way for the Pioneer Way Improvement Project, including instituting a quiet title action for undedicated portions of the right-of-way along Pioneer Way in the Island County Superior Court at the direction of the City Attorney. SERVICE PROVIDER shall apprise the City Attorney of the legal services requested and provided under this Agreement on a bi-weekly basis.
2. Term. The Project shall begin on May 5, 2010 and shall be completed no later than December 30, 2010, unless sooner terminated according to the provisions herein or extended at the request of the City.
3. Compensation and Method of Payment.
 - 3.1 Payments for services provided hereunder shall be made following the performance of such services, unless otherwise permitted by law and approved in writing by the CITY.
 - 3.2 No payment shall be made for any service rendered by the SERVICE PROVIDER except for services identified and set forth in this Agreement.
 - 3.3 The CITY shall pay the SERVICE PROVIDER for work performed under this Agreement as follows: Legal services at the rate of One Hundred Eighty-five Dollars (\$185.00) an hour. SERVICE PROVIDER is also authorized to utilize his associate, Christina Farnham, in the performance of the Agreement under his

direction and supervision. Her time shall be billed at the rate of One Hundred Eighty-five (\$185.00) an hour. SERVICE PROVIDER is also authorized to utilize the legal services of Mark Lee, attorney at law. Mr. Lee's time shall be billed at the rate of One Hundred Eighty-five Dollars (\$185.00) an hour.

- 3.4 SERVICE PROVIDER shall also be reimbursed for actual litigation expenses incurred in the prosecution of a quiet title action in the City's name, such expenses to be pre-approved by the City Attorney where practicable.
- 3.5 Compensation and litigation expense reimbursement under this Agreement shall not exceed Forty Thousand Dollars (\$40,000.00) without prior written approval by the City Council.

4. Reports and Inspections.

- 4.1 The SERVICE PROVIDER at such times and in such forms as the CITY may require, shall furnish to the CITY such statements, records, reports, data and information as the CITY may request pertaining to matters covered by this Agreement.
- 4.2 The SERVICE PROVIDER shall at any time during normal business hours and as often as the CITY or State Auditor may deem necessary, make available for examination all of its records and data with respect to all matters covered, directly or indirectly, by this Agreement and shall permit the CITY or its designated authorized representative to audit and inspect other data relating to all matters covered by this Agreement. The CITY shall receive a copy of all audit reports made by the agency or firm as to the SERVICE PROVIDER's activities. The CITY may, at its discretion, conduct an audit at its expense, using its own or outside auditors, of the SERVICE PROVIDER's activities that relate, directly or indirectly, to this Agreement.

5. Independent Contractor Relationship.

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

the performance of the details of the work, however, the results of the work contemplated herein must meet the approval of the CITY and shall be subject to the CITY's general rights of inspection and review to secure the satisfactory completion thereof.

6. Hold Harmless/Indemnification.

- 6.1 SERVICE PROVIDER shall defend, indemnify and hold the CITY, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the SERVICE PROVIDER in performance of legal services required by this Agreement except for injuries and damages caused by the negligence of the CITY.
- 6.2 For purposes of this indemnification and hold harmless agreement, the SERVICE PROVIDER waives any immunity that may be granted to it under the Washington State Industrial Insurance Act, Title 51 RCW. The parties expressly agree that this waiver of workers' compensation immunity has been negotiated.
- 6.3 No liability shall attach to the CITY by reason of entering into this Agreement except as expressly provided herein.

7. Insurance. The SERVICE PROVIDER shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the SERVICE PROVIDER, its agents, representatives, or employees.

- 7.1 Minimum Scope of Insurance. SERVICE PROVIDER shall obtain insurance of the types described below:
- a. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
 - b. Professional Liability Insurance appropriate to the SERVICE PROVIDER's profession.
- 7.2 Minimum Amounts of Insurance. SERVICE PROVIDER shall maintain the following insurance limits:
- a. Professional Liability insurance shall be written with limits no less than One Million Dollars (\$1,000,000) per claim and One Million Dollars (\$1,000,000) policy aggregate limit.
- 7.3 Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability and Commercial General Liability insurance:

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

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

8. Treatment of Assets. Title to all property furnished by the CITY shall remain in the name of the CITY and the CITY shall become the owner of the work product and other documents, if any, prepared by the SERVICE PROVIDER pursuant to this Agreement except that SERVICE PROVIDER reserves the right to use any templates or formats or research that SERVICE PROVIDER produces during the course of work for the City in the future on other matters.

9. Compliance with Laws.

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

9.2 The SERVICE PROVIDER specifically agrees to pay any applicable business and occupation (B&O) taxes that may be due on account of this Agreement.

10. Nondiscrimination.

10.1 The CITY is an equal opportunity employer.

10.2 Nondiscrimination in Employment. In the performance of this Agreement, the SERVICE PROVIDER will not discriminate against any employee or applicant for employment on the grounds of race, creed, color, national origin, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental or physical disability, or the use of a trained guide dog or service animal by a person with a disability; provided, that the prohibition against discrimination in employment because of disability, or the use of a trained guide dog or service animal by a person with a disability, shall not apply if the particular disability prevents the proper performance of the particular worker involved. The SERVICE PROVIDER shall ensure that applicants are

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

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

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

11. Assignments/subcontracting.

11.1 The SERVICE PROVIDER shall not assign its performance under this Agreement or any portion of this Agreement without the written consent of the CITY. The CITY reserves the right to reject without cause any such assignment.

11.2 Any work or services assigned hereunder shall be subject to each provision of this Agreement.

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

13. Maintenance and Inspection of Records.

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

State Auditor, or other governmental officials authorized by law to monitor this Agreement.

- 13.2 The SERVICE PROVIDER shall retain all books, records, documents and other material relevant to this Agreement, for six (6) years after its expiration. The SERVICE PROVIDER agrees that the CITY or its designee shall have full access and right to examine any of said materials at all reasonable times during said period.
14. Termination for Cause. If the SERVICE PROVIDER fails to perform in the manner called for in this Agreement, or if the SERVICE PROVIDER fails to comply with any other provisions of the Agreement and fails to correct such noncompliance within five (5) days' written notice thereof, the CITY may terminate this Agreement for cause. Termination shall be effected by serving a notice of termination on the SERVICE PROVIDER setting forth the manner in which the SERVICE PROVIDER is in default. The SERVICE PROVIDER will only be paid for services performed in accordance with the manner of performance set forth in this Agreement through the date of termination.
15. Notice. Notice provided for in this Agreement shall be sent by certified mail, return receipt requested, to the addresses designated for the parties on the last page of this Agreement.
16. Attorney Fees and Costs. If any legal proceeding is brought for the enforcement of this Agreement, or because of a dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover from the other party, in addition to other relief to which such party may be entitled, reasonable attorney's fees and other costs incurred in that action or proceeding.
17. Jurisdiction and Venue.
- 17.1 This Agreement has been and shall be construed as having been made and delivered within the State of Washington, and it is agreed by each party hereto that this Agreement shall be governed by laws of the State of Washington, both as to interpretation and performance.
- 17.2 Any action at law, suit in equity, or judicial proceeding for the enforcement of this Agreement or any provisions thereof shall be instituted and maintained only in any of the courts of competent jurisdiction in Island County, Washington.
18. Severability.
- 18.1 If, for any reason, any part, term or provision of this Agreement is held by a court of the United States to be illegal, void or unenforceable, the validity of the remaining provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.

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

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

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

CITY:

City of Oak Harbor
865 SE Barrington Drive
Oak Harbor, WA 98277

SERVICE PROVIDER:

Richard J. Langabeer
Langabeer & Tull, P.S.
P O Box 1678
Bellingham, WA 98227-1678

APPROVED BY THE CITY COUNCIL:

Jim Slowik, Mayor

Richard J. Langabeer, Attorney
WSBA #3171

ATTEST:

Connie Wheeler, City Clerk

Approved as to form:

Margery Hite, City Attorney
WSBA # 8450

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Professional Services Agreement
Richard J. Langabeer - 7

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City of Oak Harbor
City Council Agenda Bill

Bill No. 15
Date: May 4, 2010
Subject: Council Standing Committees and Council Meetings

FROM: Margery Hite, City Attorney

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

PURPOSE

This agenda bill introduces an ordinance amending Ch. 1.04 OHMC to formalize the rules relating to standing committees and to establish regular public meeting dates. The rules relating to standing committees were discussed at the Council Retreat on February 27, 2010, but no action was taken at that time. Since that time, additional questions have been raised concerning the status of standing committee meetings. This agenda bill proposes changes to Ch. 1.04, "Council Meetings", which will clarify the nature of standing committee meetings and establish regular meeting dates, times and locations. This ordinance also clarifies that agenda items added by council members shall be in the form of an action item. Since staff does not present council-initiated agenda items, it is important for the council member(s) to give notice of the action sought to be taken when the item is reached on the agenda. The proposed ordinance also updates the notice requirements in OHMC 1.04.020 to address electronic mail and use of the City's web-site.

AUTHORITY

The Council has the authority to determine its own rules and order of business, and establish rules for the conduct of Council meetings and the maintenance of order pursuant to RCW 35A.12.120.

SUMMARY STATEMENT

Standing committees are organized to help the Council perform its legislative functions. They allow each council member to develop in-depth knowledge of some aspects of city government which, in turn, allows the Council to use its resources more effectively. The standing committees also allow City staff to prepare for full Council meetings more thoroughly and to focus on expressed council member concerns.

Under the Open Public Meetings Act, meetings of "any committee thereof when the committee acts on behalf of the governing body, conducts hearings, or takes testimony or public comment" are meetings of the "governing body", in this case, the city council. RCW 42.30.020(2). For that reason, standing committee meetings are noticed and held as open public meetings.

However, there has been some confusion about the nature of standing committees. The proposed amendment would clarify important points about standing committees:

- There are four standing committees – Finance, General Government, Public Safety and Public Works.
- Standing committees are not separate from the council but are established to facilitate the legislative functions of the council. (Standing committees are distinguished from the “full council”.)
- Three council members are assigned to each committee.
- While there are assigned members of each committee, any council member may attend any standing committee meeting.
- Standing committees are acting on behalf of the city council and thus their meetings must comply with the Open Public Meetings Act. This also permits the standing committees to take public comment.
- No final action may be taken in a standing committee meeting.
- Attendance at committee meetings is voluntary. Council member absences from standing committee meetings are excused and committee members are requested but not required to attend them.
- Regular meeting dates, times and locations are established for standing committee meetings.
- Standing committee meetings are directed to have a prepared agenda, made available on the City’s web-site at least two days before the meeting.

The ordinance also proposes two other areas for change in Ch. 1.04 OHMC:

- It provides that council member-initiated agenda items should be stated in the form of a final action, such as a motion, resolution or ordinance adoption.
- It updates the notice provisions of OHMC 1.04.020 to allow for electronic notice, and deletes the requirement for newspaper publication of the list of agenda items, which are available in electronic form instead.

STANDING COMMITTEE REPORT

This item was discussed by the Council as a whole on February 27, 2010, at the open, public Council Retreat.

RECOMMENDED ACTION

This is an ordinance introduction. No action is recommended for this meeting. This item will be brought back for final consideration on the June 1, 2010 City Council meeting, to allow ample City Council review through the current Standing Committee format during the month of May.

ATTACHMENTS

Ordinance Amending Chapter 1.04 of the Oak Harbor Municipal Code “Council Meetings”.

MAYOR'S COMMENTS

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF OAK HARBOR AMENDING OAK HARBOR MUNICIPAL CODE CHAPTER 1.04 ENTITLED "COUNCIL MEETINGS" TO ESTABLISH STANDING COMMITTEES OF THE COUNCIL, TO SET OUT PROCEDURES FOR STANDING COMMITTEE MEETINGS, TO AMEND THE NOTICE PROVISIONS AND TO PROVIDE THAT COUNCIL-INITIATED AGENDA ITEMS SHALL BE STATED IN THE FORM OF A PROPOSED FINAL ACTION

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

Section One. Oak Harbor Municipal Code Chapter 1.04 entitled "Council Meetings", last amended by Ord. 1559 in 2009, is hereby amended to read as follows:

**CHAPTER 1.04
COUNCIL MEETINGS**

Sections:

- 1.04.010 Time and place of full council meetings.
- 1.04.015 Standing Committees.
- 1.04.020 Public notice for full council agenda - Introduction of action.
- 1.04.030 Sale or exchange of real property.

1.04.010 Time and place of full council meetings.

- (1) The full council of the city of Oak Harbor shall meet on the first Tuesday of each month. There shall be a second regular full council meeting each month, except in the months of July and August, on the second Tuesday following the first monthly council meeting.
- (2) If the date of any of the full council meetings above scheduled falls on an official holiday, as set forth in the statutes of the state of Washington, or on a day on which a general election or a primary for a general election is to be conducted or on National Night Out, the regular full council meeting shall be held at the same time on the following day.
- (3) Regular full council meetings will be held at City Hall in the city of Oak Harbor and shall start at 6:00 p.m.

1.04.015 Standing Committees.

- (1) To facilitate the legislative functions of the city council, there shall be four standing committees of the Oak Harbor City Council:
 - (a) Finance;
 - (b) General Government;
 - (c) Public Safety; and

- (d) Public Works.
- (2) Each standing committee shall meet in a regular open public meeting of the city council pursuant to the Open Public Meetings Act. The standing committees shall meet on the following dates and times and at the following locations:
- (a) Finance -- On the second Wednesday of the month at City Hall at 3:30 p.m.;
- (b) General Government -- On the second Tuesday of the month at City Hall at 8:00 a.m.;
- (c) Public Safety -- On the third Thursday of the month at the Fire Department at 7:00 a.m.; and
- (d) Public Works -- On the first Tuesday of the month at the Public Works Department at 7:00 a.m.
- (3) Upon recommendation of the Mayor, the city council shall assign a chair and two members of the city council to have primary responsibility for each committee annually.
- (4) Any city councilmember may attend any standing committee meeting and there shall be no quorum requirement for standing committee meetings.
- (5) Councilmembers assigned to standing committees are requested but not required to attend standing committee meetings. All councilmember absences from standing committee meetings are excused.
- (6) The purpose of the standing committees is to receive information for educational purposes or for preparation of matters to come before the city council. No final action shall be taken at a standing committee meeting
- (7) Meetings of standing committees should be conducted with a prepared agenda which should be posted on the City's website at least two (2) business days prior to the meeting.
- (8) The committee chair may cancel a standing committee meeting at any time. In the event that a regular meeting of a standing committee is cancelled, cancellation shall be posted on the door of the location set by this section prior to the regular time of the meeting.

1.04.020 Public notice for full council agenda – Introduction of action.

- (1) It is directed that:
- (a) The list of agenda items with abbreviated descriptions shall be completed and available by Thursday at 12:00 noon the week preceding a regular full council meeting. Additionally, this list shall be mailed by U.S. mail or electronic mail or

faxed to newspapers, radio stations and television stations which request notice of public meetings. ~~In addition, the list shall be published in the city's official newspaper at least five days before the council meeting.~~

- (b) The full agenda shall be available by noon on the Thursday before a regular full council meeting.

Nothing in this subsection shall be construed as requiring that only the items identified on the lists described in this subsection may be heard at the full council meeting or that agenda items cannot be deleted from the list. Thus, for example, but not as limitation, emergency matters, parade permit applications, amendments to the budget, and approval of contracts may be added to the agenda after preparation of the agenda is complete.

- (2) An ordinance other than an emergency ordinance, budget amendment, moratorium ordinance or ordinance to be passed after a public hearing shall be introduced at least one full council meeting prior to the one it is considered for passage. After introduction and consideration, the ordinance shall then be continued to a scheduled subsequent full council meeting for additional consideration and for action such as passage, rejection or continuance to another hearing date.

The ordinance may be amended at any time prior to passage including at the time of introduction before the council. Amendment of a proposed ordinance shall not mandate delay of passage of the ordinance.

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

- (a) Matters declared an emergency;
- (b) Directions to staff to prepare documents or reports or both for consideration; or
- (c) Scheduling of meetings.

1.04.030 Sale or exchange of real property.

- (1) No real property of the city shall be sold, released, leased, demised, traded, exchanged or otherwise disposed of unless the same is authorized by the city council after public hearing. Notice of such public hearing shall be given by publication of the notice in the city's official newspaper at least 10 days prior to the hearing. Developed city park property shall not be disposed of in any manner without citizen approval in an election.

- (2) The preferred timing for such a hearing is before the property is listed for sale, release, lease, demise, trade, exchange or other disposition. It is, however, recognized that this may not be possible especially in the case were there is litigation pending on the property in question.
- (3) A SEPA analysis shall be done on such proposed action and available for public review at least 10 days prior to the hearing.
- (4) The mayor shall forward to the city council a report on alternatives to the proposed action with the agenda.
- (5) Nothing herein shall be construed as preventing the city from holding an executive session in accordance with Chapter 42.17 RCW as now in effect or hereafter amended.
- (6) This section shall not apply to rental of property on a month-to-month basis or the rental of space at the marina done in the normal course of business for storage.

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

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

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

THE CITY OF OAK HARBOR

Attest:

 Mayor

 City Clerk

Approved as to Form:

 City Attorney

Published: _____

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