

City Council Meeting
Tuesday, May 4, 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 Dave Templin, Whidbey Presbyterian Church

ROLL CALL

Jim Slowik, Mayor	Paul Schmidt, City Administrator
Seven Members of the Council,	Margery Hite, City Attorney
Rick Almberg	Doug Merriman, Finance Director
Jim Campbell	Steve Powers, Development Services Director
Scott Dudley	Cathy Rosen, Public Works Director
Jim Palmer	Eric Johnston, City Engineer
Beth Munns	Rick Wallace, Chief of Police
Danny Paggao, Mayor Pro Tem	Mark Soptich, Fire Chief
Bob Severns	Mike McIntyre, Senior Services Director
	Jessica Neill-Hoyson, Human Resources Director
	Renée Recker, Executive Assistant to the Mayor

MINUTES

MOTION: Councilmember Palmer moved to approve the 4/20/10 meeting minutes. The motion was seconded by Councilmember Campbell and carried unanimously.

NON-ACTION COUNCIL ITEMS

Employee Introduction – Jessica Neill-Hoyson, Human Resources Director

City Administrator Paul Schmidt introduced Ms. Neill-Hoyson and talked about her ten years of experience and education. Ms. Neill-Hoyson came to Oak Harbor from the City of Bainbridge Island. She thanked the Mayor, Council, and staff for their warm welcome and complimented the City for being a well-run organization. Ms. Neill-Hoyson looks forward to her contributions to the City.

Employee Recognitions

Steve McCalmont, Oak Harbor Fire Department, ten years; Dean Faris, Oak Harbor Fire Department, twenty-five years. Mr. McCalmont and Mr. Faris were not present.

Otto Lawson, Oak Harbor Public Works, 10 years

Public Works Director Cathy Rosen introduced Mr. Lawson and talked about his continuing service to the City after a twenty-year Navy career. His contributions to Public Works and his assistance at City Hall are deeply appreciated. Mayor Slowik noted that Mr. Lawson is well-loved at City Hall and always available on a moment's notice. Mr. Lawson thanked Mayor and Council, appreciated the recognition, and talked about how much he enjoys working for the City.

Proclamation – National Public Works Week

Councilmember Severns presented this proclamation to Public Works Director Cathy Rosen. National Public Works Week is May 16 – 22, 2010 and this year's theme is, "Public Works: Above, Below, and All Around You." Ms. Rosen thanked Mayor and Council noting that all of the Public Works divisions appreciate this recognition and Public Works staff love their jobs and the Oak Harbor community. There are 52 Oak Harbor Public Works employees including the Engineering staff with seasonal employees helping through the busy summer season. Oak Harbor is a full service city.

Proclamation – Elks Youth Week

Mayor Pro Tem Paggao presented this proclamation to Art Sem, Oak Harbor Order of Elks. The Benevolent and Protective Order of Elks has designated the first full week in May as Elks National Youth Week in tribute to youth achievements and contributions to the community and nation. Mr. Sem thanked Mayor and Council and also talked about May as Elks Therapy Month which promotes assistance to physically impaired children. This is a major Elks endeavor and, in Washington State, the budget for this year was over one million dollars.

Proclamation – National Nurses Week

Councilmember Campbell presented this proclamation to Commander Craig Cooper, NASWI Director of Nursing Services. Cdr. Cooper also introduced Capt. Bulach. In recognition of the 2.9 million registered nurses in the United States, May 6 – 12, 2010 is declared National Nurses Week. Cdr. Cooper noted that nurses provide the first human touch and often the last human touch for those in hospice care. Cdr. Cooper thanked Mayor and Council for this recognition.

Public Comments

Mel Vance, P.O. Box 2882. With recent storm and wind activity on Whidbey Island, Mr. Vance noted that this serves as a reminder of how unpredictable the weather can be and recommended the excellent CERT training program for emergency preparation. Mr. Vance challenged the Mayor and Council to enroll in this beneficial course.

With no other public comments coming forth, Mayor Slowik closed this part of the meeting at 6:25 p.m.

Consent Agenda

- A. Excused Absence, Councilmember Beth Munns, from the 5/18/10 Council Meeting.
- B. Approval of Accounts Payable Vouchers.

MOTION: Councilmember Campbell moved to approve Consent Agenda Items A and B with Item B paying accounts payable check numbers 141258 – 141259 in the amount of \$366.27, accounts payable check numbers 141260 – 141268 in the amount of \$92,929.02, accounts payable check numbers 141269 – 141449 in the amount of \$561,766.65, and payroll check numbers 93766 – 93827 in the amount of \$952,437.37.

The motion was seconded by Councilmember Severns and carried unanimously.

**Public Hearing and Quasi-Judicial Proceeding – Nightclub License, Lava Lounge
Public Hearing and Quasi-Judicial Proceeding – Nightclub License, Off the Hook**

City Attorney Margery Hite explained the appearance of fairness and quasi-judicial procedure beginning with ex parte communications. As stated in RCW 42.36.060: During the pendency of any quasi-judicial proceeding, no member of a decision-making body may engage in ex parte communications with opponents or proponents with respect to the proposal which is the subject of the proceeding unless that person:

- Places on the record the substance of any written or oral ex parte communication concerning the decision of the action; and
- Provides that a public announcement of the content of the communication and of the parties' rights to rebut the substance of the communication shall be made at each hearing where action is considered or taken on the subject to which the communication related. This prohibition does not preclude a member of a decision-making body from seeking in a public hearing specific information or data from such parties relative to the decision if both the request and the results are a part of the record. Nor does such prohibition preclude correspondence between a citizen and his or her elected official if any such correspondence is made a part of the record when it pertains to the subject matter of a quasi-judicial proceeding.

Councilmember Severns was recused from discussion concerning Off the Hook since he is related to the property owners. Councilmember Severns' answers only concern the Lava Lounge nightclub license. All other Council Members answered in response to both Lava Lounge and Off the Hook nightclub licenses.

Ms. Hite then asked each Council Member to state, for the record, what ex parte contacts they have had, whether written or oral, concerning the matters to be decided. Each Council Member individually answered that they had no ex parte contacts. Ms. Hite continued to the appearance of fairness questions which were individually asked of each Council Member:

1. Do you have knowledge of having conducted business with either the proponents or opponents of this project?	Mr. Almberg	Mr. Campbell	Mr. Dudley	Ms. Munns	Mr. Paggao	Mr. Palmer	Mr. Severns
	No	No	No	No	No	No	No
2. Do you have either a pecuniary or a non-pecuniary interest in the outcome of this proceeding?	Mr. Almberg	Mr. Campbell	Mr. Dudley	Ms. Munns	Mr. Paggao	Mr. Palmer	Mr. Severns
	No	No	No	No	No	No	No

3. Do you know whether or not your employer has a financial interest in the land or area which will be impacted by the decision in this proceeding?	Mr. Almberg	Mr. Campbell	Mr. Dudley	Ms. Munns	Mr. Paggao	Mr. Palmer	Mr. Severns
	No	No	No	No	No	No	No
4. Do you live or own property within 300 feet of the area which will be impacted by the decision in this proceeding?	Mr. Almberg	Mr. Campbell	Mr. Dudley	Ms. Munns	Mr. Paggao	Mr. Palmer	Mr. Severns
	No	No	No	No	No	No	No
5. Do you have any special knowledge about the substance of the merits of this proceeding which would or could cause you to prejudge the outcome of this proceeding?	Mr. Almberg	Mr. Campbell	Mr. Dudley	Ms. Munns	Mr. Paggao	Mr. Palmer	Mr. Severns
	No	No	No	No	No	No	No
6. Do you believe that you <u>cannot</u> sit and hear this matter fairly and impartially, both as to the respective positions of the proponents and the opponents in this proceeding?	Mr. Almberg	Mr. Campbell	Mr. Dudley	Ms. Munns	Mr. Paggao	Mr. Palmer	Mr. Severns
	No	No	No	No	No	No	No
7. Is there any member of the audience who because of the "Appearance of Fairness Doctrine" wishes to disqualify any member of the Council from hearing this matter? If so, please state the name of the Council Member and the reason or reasons why you believe that Council Member should be disqualified.							
No audience members came forward.							

Public Hearing and Nightclub License for Lava Lounge

Chief of Police Rick Wallace presented this agenda bill and 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 determines what conditions should be imposed to mitigate noise, traffic and other similar public health and safety impacts on operation of the Lava Lounge Nightclub. 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. 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 related directly to the nature of the business at the nightclub. Chief Wallace discussed each of the 70 calls. The license applicant, Jason Youngsman, had been informed of the conditions that were recommended by the police department for the nightclub license and had expressed his opinion that he would be able to meet or exceed those conditions.

Mayor Slowik opened the public hearing at 6:30 p.m.

Todd Myers, 621 SW Third Avenue and Manager – Lava Lounge. Mr. Myers talked about the number of security staff at Lava Lounge: 20 bouncers, 6 on-call, (among which one is EMT certified) and 14 staff are outside at night.

James Cowan, Coupeville (no address given). Mr. Cowan had been asked to make Council aware of a pending civil lawsuit between Michael Tuller and Lava Lounge regarding assault, battery, and excessive force. Counsel representing this suit could not be present this evening.

Mel Vance, P.O. Box 2882. Mr. Vance spoke about parody with Element Nightclub for Lava Lounge's nightclub licensing conditions. He also asked that future presentations indicate whether the calls for police service had been made by the public or by the business.

With no other comments coming forth, the public hearing was closed at 6:40 p.m.

Council Discussion

Discussion followed about an annual report and if it would be presented in writing or before Council (before Council if a public hearing is warranted), whether background checks had been conducted (yes), and if applications could be completed under the business owner's name noting that the application's manager was not listed as Mr. Myers. Council asked who is liable and Chief Wallace responded that the owners are responsible but managers do assume some liability. Lava Lounge is facing liquor control board issues regarding ownership and that the liquor control board hearing has been repeatedly delayed and is still pending. Chief Wallace noted that that nightclub licensing conditions need to be in place to ensure the club's accountability and patrons' safety. If the liquor control board revokes their liquor license, Chief Wallace may return to Council to seek termination of the nightclub license. If the club's present owners have their liquor license suspended, or if the business is sold, these conditions would be a good foundation for the next club. Nightclub license conditions allow the police department to work with club security and assist in security efficiency. Council asked about Mr. Youngsman's status and whether this is presently the most active club for police calls now, and Chief Wallace responded that the club is very busy and licensing conditions will help the police department.

Mr. Myers was asked to return to the podium in response to questions regarding his relationship to Mr. Youngsman and to the club's management. Mr. Myers said he was a long-time friend of Mr. Youngsman and had assumed club management six months ago noting that Mr. Youngsman is trying to purchase the business. 250 – 300 people are served on Friday and Saturday nights. Chief Wallace noted that the process allows a manager to make the application and that Mr. Youngsman is still employed as the club's manager. Terry Suzuki is the club's owner. Council discussion continued about smoking areas, that assault and disorderly conduct complaints are the major complaints, and that closure time would be better defined at 2:30 a.m. A correction to 5a of the conditions will change closing time from 4:00 a.m. to 2:30 a.m. Discussion continued about the fire sprinkler system and occupancy. Since the sprinkler contractor is waiting on full payment, the dance floor size has been reduced to remain in compliance (below the size which needs sprinklers). Once payment is received and the sprinklers are fully installed, the dance floor will increase to the application's original size.

MOTION: Councilmember Munns moved to approve and issue the nightclub license to Lava Lounge 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. (changed to 2:30 a.m. per an amending motion), 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.

The motion was seconded by Councilmember Severns.

AMENDMENT TO THE ORIGINAL

MOTION: Councilmember Almborg moved to amend the original motion to correct Condition 5a to show a closing time of 2:30 a.m.
Councilmember Munns seconded the motion.

VOTING ON THE AMENDMENT TO THE

ORIGINAL MOTION: The amending motion carried unanimously.

VOTE ON THE ORIGINAL

MOTION: The original motion carried unanimously.

Public Hearing and Nightclub License for Off the Hook

Councilmember Severns was recused from this public hearing and presentation. Chief of Police Rick Wallace presented this agenda bill and application for Off the Hook. The applicant is Claude Johnston. Since no disqualifying restrictions prevent the issuance of a nightclub license to the applicant, the City Council determines what conditions should be imposed to mitigate noise, traffic and other similar public health and safety impacts on operation of Off the Hook. 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. It should be noted that Off the Hook is a follow-on business to TOCG's whose nightclub license was approved by Council action in January of 2010. TOCG's ceased operation in March of 2010. Since there is no current data for Off the Hook, information was 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. Chief Wallace discussed each of the 24 calls noting that the noise complaint was unfounded (between 5:30 p.m. and 6:00 p.m.) and from the upstairs tenant. TOCG's was not in violation of Council's noise conditions regarding noise after 2:00 a.m.

Mayor Slowik opened the public hearing at 7:20 p.m.

Mel Vance, P.O. 2882. Mr. Vance did not think that Off the Hook has its own parking lot and instead patrons use on-street parking or the City's lot behind the establishment. Mr. Vance also felt that four security personnel would be more appropriate than two security personnel.

With no other public comments coming forth, Mayor Slowik closed the public hearing at 7:22 p.m.

Council Discussion

Discussion followed about the low number of calls for police service, that this club is not as busy as other clubs, and that two security personnel would be sufficient. Discussion followed about the parking lot reference and that Chief Wallace referred to a lot further west. Ms. Jensen and Mr. Scelzi have made complaints about damage to their property and litter in this lot. The police department will work with this club, as the department has worked with other clubs to help alleviate these occurrences. Discussion also followed about changing the closing time reference from 2:00 to 2:30 a.m.

MOTION: Councilmember Dudley moved to approve and issue a nightclub license to Off the Hook with the following conditions and a correction to number 4 providing two security personnel until 2:30 a.m. instead of 2:00 a.m.:

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. (changed to 2:30 a.m. per the motion) 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.

VOTE ON THE

MOTION: The motion was seconded by Councilmember Palmer. Councilmembers Almberg, Campbell, Dudley, Palmer, Paggao, and Munns voted in favor of the motion. Councilmember Severns had recused. The motion carried.

Councilmember Severns returned to the meeting.

Public Hearing – Interim Ordinance, Adult Entertainment Facilities Overlay Zone

Development Services Director Steve Powers presented this agenda bill which proposed two separate actions. The first was the adoption of a resolution which states the City's public hearing requirement on the interim ordinance has been satisfied. The second was the adoption of a revised interim ordinance. This agenda bill requested that the City Council conduct a public hearing on Ordinance 1572, the Interim Adult Entertainment Facilities Overlay Zone Ordinance adopted on March 23, 2010, approved on an emergency basis on March 23, 2010, and required that a public hearing be held within sixty (60) days of adoption. This agenda bill also presented amendments to the interim ordinance for Council's consideration.

Mayor Slowik opened the public hearing at 7:35 p.m. on the interim ordinance and on amendments to the interim ordinance.

Barbara Cane, 925 Doyle Lane. I understand that you cannot ban adult entertainment, but I recommend that you do adopt to move this type of business as far away from other businesses as you can.

Mel Vance, P.O. 2882. The amendments are good, but I ask that you include planned business parks and zoning which allows growth as the City grows, whether in the interim or final ordinance.

With no other comments coming forth, Mayor Slowik closed the public hearing at 7:40 p.m.

Council Discussion

Discussion followed about the positive amendments to the ordinance, what number is considered sufficient for number of sites (factors such as market demand, what is going on in similar locations – an application is not pending at this time), and the buffer expansion.

MOTION: Councilmember Dudley moved to adopt the 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. The motion was seconded by Councilmember Severns and carried unanimously.

MOTION: Councilmember Dudley moved to adopt the amended Interim Adult Entertainment Facilities Overlay Zone ordinance. The motion was seconded by Councilmember Palmer and carried unanimously.

Final Consideration, Stormwater Management Ordinance OHMC 12.30

City Engineer Eric Johnston presented this agenda bill noting a change to agenda packet page number 97, number 7 (12.30.010 (7) of the ordinance text. 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. 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 clean 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. 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 reviews were completed with no comments.

Mayor Slowik re-opened the public hearing at 7:50 p.m. but there were no comments so the public hearing was closed.

Council Discussion

Discussion followed about the City Engineer as director regarding administrative procedures and enforcement, discussion about fish-bearing streams and exempted bodies of water, discharge to the Sound, and the financial and economic impact of this ordinance. Discussion continued regarding system development charges (no provision for storm drains), affordable housing and fee waivers, car-washing, and that the intent of this ordinance is public education with an understanding of public impact and minimization of pollution impact. The City's Environmental Coordinator, Maribeth Crandell, has been instrumental in taking this message to the community. Discussion continued about staffing to implement the ordinance and the sequence of revisions to OHMC 12.30 beginning in 2008 with the formal adoption of DOE's 2005 Stormwater Management Manual.

MOTION: Councilmember Palmer moved to adopt the ordinance amending Chapter 12.30 of the Oak Harbor Municipal Code entitled "Stormwater Management." The motion was seconded by Councilmember Paggao.

MOTION: Councilmember Almberg moved to recognize the revision to 12.30.010 (7) as presented. The motion was seconded by Councilmember Campbell.

The revision would read: The City of Oak Harbor is an owner of a MS4 and is subject to the requirements of the NPDES Phase II municipal stormwater permit issued by the Department of Ecology.

VOTE ON THE SECOND

MOTION: The second motion carried unanimously.

VOTE ON THE ORIGINAL

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

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

City Engineer Eric Johnston presented this agenda bill requesting approval of a loan application to the Public Works Trust Fund (PWTF) construction loan program for reconstruction of the 42-inch stormwater outfall in Windjammer Park. Mr. Johnston noted a change to the loan application amount: \$1,110,000 should be \$1,610,000. The current estimate for total project cost is \$1,910,000. 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. The application deadline is May 11, 2010. Mr. Johnston also noted that the \$500,000 DOE grant funds on page 9 of the PWTF loan application are not being requested so that raised the PWTF loan request to \$1,610,000.

Mayor Slowik asked City Administrator Schmidt to also talk about this loan application. Mr. Schmidt noted that the Association of Washington Cities and the Department of Commerce have urged cities to make application for these types of projects which then demonstrates to the legislature that the Public Works Trust Fund is important.

Mayor Slowik called for public comments but there were none.

Council Discussion

As a member of AWC's Board of Directors, Councilmember Munns also talked about AWC's strong encouragement to submit loan applications to the PWTF. Discussion continued regarding the \$500,000 which will not be included and if it could be submitted if PWTF grant monies are not obtained (there would be a significant gap between \$500,000 and the amount needed). Discussion continued about sending a Mayor's letter to our state senator and representatives asking for help toward speeding up this process. There was also question whether there is enough staff for both this project and the Pioneer Way Improvements project. There is an immediate need for two staff positions in the Engineering Department; a temporary administrative assistant has been hired. Project costs and engineering fees were discussed.

MOTION: Councilmember Paggao moved to approve submittal of a PWTF loan application in the amount of \$1,110,000. This motion was not seconded and died for lack of a second (the amount needed to be restated).

MOTION: Councilmember Paggao moved to approve submittal of a PWTF loan application in the amount of \$1,610,000 for reconstruction of the 42-inch outfall. The motion was seconded by Councilmember Palmer and carried unanimously.

Agreement – IntoLight for Street Lights on Oak Harbor Street

City Engineer Eric Johnston presented this agenda bill requesting 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 (this amount was corrected to \$528.62) 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. 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 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. Puget Sound Energy, through IntoLight, is the only supplier capable of designing, installing, 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. Contracting with IntoLight for installation and maintenance of lighting facilities is the most reliable and efficient way to incorporate street lighting into this project.

Mayor Slowik called for public comments.

Mel Vance, P.O. Box 2882. Mr. Vance spoke with concern about PSE's monopoly but felt the rate was not extravagant. Mr. Vance asked that light pole solar panels be researched.

Council Discussion

It was noted that the agenda bill monthly charge was incorrect, but the correct amount of \$528.62 was shown in the resolution attachment and sole source agreement. Discussion followed about installation costs and if that could be done by other contractors (not with this agreement), that IntoLight is cost-effective if not cheaper and

does the design work at no cost, and if a pole is damaged, IntoLight can efficiently pull other poles for replacement. Discussion continued about the solar panels atop school zone flashing lights and their cost efficiency. Mr. Johnston did not have a source for solar panel sales for light standards in Washington, questions of cost and the rate of return on the investment; no immediate answer for this meeting. Discussion followed regarding whether these lights should have been brought forward when the street improvement project was started. Mr. Johnston noted that this was not a purposeful omission but this project has a higher number of lights than other projects and the cost level warranted Council's approval. The construction contract was let in March of this year. LED lights were discussed but will not be a part of this PSE/IntoLight project; LEDs will be used on Pioneer Way since pole configuration there will accommodate hanging baskets and alternative power sources; design elements that IntoLight would not work well with or allow. The Pioneer Way light standards will be owned by the City; the N. Oak Harbor light standards will be owned by PSE.

MOTION: Councilmember Munns moved to adopt the sole source resolution. The motion was seconded by Councilmember Campbell and carried unanimously.

MOTION: Councilmember Munns moved 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 \$528.62 for street lighting with the N. Oak Harbor Street Improvements. The motion was seconded by Councilmember Campbell and carried unanimously.

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

Contract, Legal Services – Pioneer Way Right-of-Way Acquisition

City Attorney Margery Hite presented this agenda bill for a professional services agreement for legal services from the law firm of Langabeer and Tull, P.S. This follows Council's decision to take legal action to settle the City's title to the right-of-way for the Pioneer Way Improvement Project. 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. 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 significant number of hours of legal services that makes the City Attorney unable to represent the City on this matter. 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. The City Attorney's office selected a Bellingham law firm, specializing in land use and real property, with an expertise in municipal law – Langabeer and 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; a local real property lawyer would be likely to have already represented one or the other of the potential defendants and would have a conflict of interest in representing the City. The billing rates for Langabeer and 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. The agreement caps the compensation for legal services at \$40,000.

Mayor Slowik called for public comments.

Mel Vance, P.O. Box 2882. Mr. Vance objected to the manner in which this is being pursued and felt the City should have talked to the property owners first; jumping to legal action is not exhibiting good customer service.

Council Discussion

Discussion followed about cleaning up right-of-way issues as a positive move, the amount of the agreement and the Mayor's \$30,000, that quiet title allows the City to pursue this project, and that the property owners have been contacted and most are in agreement but some may wish to go to trial. Discussion continued regarding those who may not choose to accept quiet title and would then spend more contesting this action, and that this is not a hostile action; the City would be remiss if this action was not pursued. Discussion followed about the process for quiet title, possible misconceptions of what this means, and that the City needs proper title in order to move forward. City Attorney Hite also added that Mayor Slowik and City Administrator Schmidt will be personally talking to property owners as a follow-up to the mailed letters. Mayor Slowik noted that ninety percent of the property owners have been reached, no one has objected or accepted in this beginning phase, but property owners have been given advance notice. Discussion followed that it did not seem property owners have been given enough time to understand this action, that the City is assuming we will take legal action based on assumed rejections, and could there be more costs beyond the existing timeframe (yes). Continued discussion defended the City's actions in this matter. The City informed property owners in October, the City has paid for this investigation and property owners have not been charged, and that property owners have been treated fairly.

Mr. Schmidt noted that the appraiser told us in March that the City might have a prescriptive right. Last fall, the City had a specific schedule concerning right-of-way but this has now been changed to a prescriptive right. In reaching out to the property owners, it is a complicated issue, and we want to keep to the City's schedule. Mayor Slowik noted that the City did not want to use condemnation and condemnation was not discussed at the staff level. This is not a threat to property owners. Ms. Hite then talked again about quiet title, prescriptive easement – there is right-of-way that the public has maintained, and that most property owners agree that this is the case. Mayor Slowik added that that the public is the people of Oak Harbor who have been walking on those sidewalks. Discussion continued regarding how property owners were contacted, if the City would need to go to court since the property owners' response is not fully in place, how Langabeer and Tull will charge for legal fees, and that the City Attorney directs how these legal services will be used. The City is asking for an easement; maintenance and repair on these sidewalks will be the City's

responsibility. Discussion followed about the number of property owners (22) and that there are only slivers of property in the sidewalk right-of-way. If 21 of the 22 owners accept the \$1,290, and 1 does not, the City would still need to move this forward. Discussion returned to how the property owners were notified, if there could have been an all or nothing offer, and if the \$1,290 could be increased. Ms. Hite noted that the money spent on pre-trial information pinned down the City's prescriptive easement case and the work to date needed to be completed whether or not there was agreement; prescriptive easement needed to be pursued. Questions followed about the \$30,000 (has not been fully spent yet), and if combining Langabeer and Tull's \$40,000 with that \$30,000 would proffer more money for the property owners. Ms. Hite noted that the \$30,000 was used for the prescriptive easement information. Discussion returned to the City's offer and moving forward with legal action, if there could be a two-week delay to allow more time for the property owner's consideration, and that an engineering firm should not be troubled by a two-week delay.

MOTION: Councilmember Almberg moved to authorize the Mayor to sign the professional services agreement with Langabeer and Tull, P.S. The motion was seconded by Councilmember Munns.

VOTE ON THE

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

Ordinance Introduction – Council Standing Committees and Council Meetings

City Attorney Margery Hite presented this proposed ordinance which was for introduction only. The ordinance amendment would formalize the rules relating to standing committees and 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 then, additional questions have been raised concerning the status of standing committee meetings. In addition to standing committees, the ordinance will also clarify 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 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 website. This item will be brought back for final consideration at the June 1, 2010 Council meeting to allow review through the current standing committee format during the month of May. No action was requested at this evening's meeting.

Mayor Slowik called for public comments.

Mel Vance, P.O. Box 2882. Mr. Vance spoke with concern about the loss of the City Council agenda as a display ad in the newspaper since some citizens only have that option. Mr. Vance was also concerned about ordinating standing committee dates and times and if any change would then require a future ordinance amendment. All Council members can now attend all standing committees.

Council Discussion

Discussion followed about how Council would form an action to have a subject placed on the agenda, how the agenda is published in the newspaper (the summary agenda is deadlined to the paper by noon on Tuesday for publication on Wednesday), how to ask staff to research a subject if it is not necessarily an action item, and clarification by Ms. Hite that a standing committee date/time change can be done through a special meeting notice. Discussion continued regarding televising standing committee meetings with note that all meetings are open public meetings.

City Administrator's Comments

City Administrator Schmidt talked about upcoming meeting dates and the utility rates workshop on May 27th, 6:00 p.m., at City Hall. Mr. Schmidt also talked about the MRSC website as a good reference regarding committees, and gave preliminary Whidbey Island Marathon statistics (hard copies were given to Council) and a potential profit of \$37,000; the City has met its obligation three years ahead of paying for the Marathon.

Council Members' Comments

There were no standing committee reports since committees had not met since the last Council meeting. Councilmember Munns talked about County 2% funds, the AWC conference, the Mayor's exchange which Mayor Slowik attended in Sammamish, and the outstanding efforts, as lead by Scott Fraser, of the Oak Harbor High School culinary team – second in the nation. Councilmember Almberg talked about the ribbon-cutting for Maylor Point Trail and the beauty of this 3.5 mile no-bank waterfront trail. Staff was thanked for their hard work on this project. Councilmember Dudley talked about the recent Economic Development Commission annual membership luncheon noting that the economic outlook for Washington is very good.

Mayor's Comments

Mayor Slowik talked about the Health Heroes assembly he had attended as a Board of Health member and the significance of these awards. Of the sixteen awards, a number of recipients were from Oak Harbor; notably OHPD Officer Jennifer Porter for her work in tobacco prevention, and Scott Fraser for his work with the OHHS culinary team.

ADJOURN

With no further business coming before the Council, Mayor Slowik adjourned the meeting at 10:05 p.m.

Connie T. Wheeler
City Clerk