April 15, 2014 **CITY COUNCIL AGENDA** **6:00 p.m.**

1. CALL TO ORDER
Invocation/Pledge of Allegiance

HONORS AND RECOGNITIONS
Proclamation in Recognition of National Day of Prayer – May 1, 2014

Recognition of Oak Harbor High School students Kathryn Martinez and Christopher Stolmeier as ex-officio members to the Arts Commission

PRESENTATION
Presentation of Wildcats Sailing for Oak Harbor School District

2. APPROVAL OF AGENDA

3. CITIZEN COMMENT PERIOD

4. CONSENT AGENDA

a. Minutes of the Regular City Council meeting held April 1, 2014
b. Approval of *Accounts Payable Voucher Numbers:*
   - Voucher Numbers 157840 through 157883 in the amount of $76,798.10

   Approval of *Payroll Check Numbers:*
   - Direct Deposit Numbers 30791 through 30916
   - EFT Numbers 605 through 607
   - Payroll Check Numbers 97111 through 97124
c. Motion to authorize the Mayor to sign a Professional Services Agreement with Riney Production Services for videography services
d. Motion to authorize the Mayor to sign a Professional Services Agreement with ERCI for the Scenic Heights Outfall Project
e. Motion to authorize the Mayor to sign a Professional Services Agreement with Davido Consulting for Engineering Services for the Scenic Heights Outfall Project
f. Motion to authorize the Mayor to sign an Interlocal Agreement with Oak Harbor School District School Resource Officer Program

5. STAFF, MAYOR AND COUNCIL COMMENTS

a. City Administrator
b. Mayor
c. Councilmembers

To assure disabled persons the opportunity to participate in or benefit from City services, please provide 24-hour advance notice to the City Clerk at (360) 279-4539 for additional arrangements to reasonably accommodate special needs.

6. ORDINANCE AND RESOLUTIONS

a. Resolution 14-14: Authorizing the sale of a vessel and shed contents for unpaid moorgage and rent

7. PUBLIC HEARINGS/PUBLIC MEETINGS

a. Resolution 14-13: Declaring City Property at SW Sixth Street and SW Fairhaven surplus
b. Ordinance 1700: Budget Amendment to Fund the Associate Planner
c. Ordinance 1674: Electronic Message Center Signs

8. UNFINISHED BUSINESS

9. NEW BUSINESS

a. Motion to authorize Call for Bids for the 42-Inch Outfall Project
b. Appoint a Mayor Pro Tem to Chair the May 6, 2014 City Council meeting

10. EXECUTIVE SESSION

a. Pending Litigation

11. ADJOURNMENT

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, if you wish to speak, please sign your name to the sign-up sheet, located in the Council Chambers. The Council will take all information under advisement. 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!

To assure disabled persons the opportunity to participate in or benefit from City services, please provide 24-hour advance notice to the City Clerk at (360) 279-4539 for additional arrangements to reasonably accommodate special needs.

City of Oak Harbor

OFFICE OF THE MAYOR
SCOTT DUDLEY
MAYOR

PROCLAMATION IN RECOGNITION OF

NATIONAL DAY OF PRAYER
MAY 1, 2014

WHEREAS, on April 17, 1952 the Congress of the United States approved the Joint Resolution to provide for setting aside an appropriate day when all citizens could unite in prayer; and

WHEREAS, the history of our nation is permanently marked with the role that prayer has played in the lives of individuals and our great nation; and

WHEREAS, historically our greatest leaders have prayed for comfort in a time of grief, for understanding in a time of anger, and for protection in a time of uncertainty; and

WHEREAS, the virtues of prayer reflect a common bond; hopes and aspirations, sorrows and fears, remorse and renewed resolve, thanks and joyful praise.

NOW, THEREFORE, I, Scott Dudley, Mayor, and Councilmembers of the City of Oak Harbor do hereby proclaim **May 1, 2014** as the **National Day of Prayer** in the City of Oak Harbor in keeping with the wishes of the Congress of the United States, and urge all citizens to join in this special observance.

Signed this 15th day of April, 2014

Scott Dudley, Mayor

Oak Harbor City Council
Regular Meeting Minutes
April 1, 2014

CALL TO ORDER

Mayor Scott Dudley called the meeting to order at 6:00 p.m.

Mayor Dudley announced that Councilmember Hizon was absent and asked that the Council entertain a motion to excuse her absence.

Motion: Councilmember Almberg moved to excuse Councilmember Hizon. The motion was seconded by Councilmember Severns and carried unanimously.

ROLL CALL

Present**:**
Mayor Scott Dudley
Mayor Pro Tempore Danny Paggao
Councilmember Beth Munns
Councilmember Rick Almberg
Councilmember Joel Servatius
Councilmember Bob Severns
Councilmember Jim Campbell

Staff Present:
City Administrator Larry Cort
Public Works Director Cathy Rosen
City Attorney Nikki Esparza
City Clerk Anna Thompson
Chief of Police Ed Green
Police Detective Terry Gardner
Police Officer Ronald Esparza
Fire Chief Ray Merrill
Deputy Fire Chief Mike Buxton
Fire Lieutenant Paul Schoer
Administrative Assistant Angela Braunstein
Several Career Fire Fighters in attendance

Councilmember Tara Hizon was excused.

PLEDGE OF ALLEGIANCE/INVOCATION

Councilmember Campbell gave the invocation. Mayor Dudley led the pledge of allegiance.

PRESENTATION

Removal of the Post Office Oak Tree on March 23, 2014 – Background on the Decision, Report on the Operation and Future Steps.

Dr. Court opened the presentation with a brief history of the Post Office Oak Tree. He then introduced Public Works Director Cathy Rosen and Shawn Dugan of Tree Solutions.

Public Works Director Cathy Rosen presented detailed analysis and report of the Oak Tree's health issues since April 1995 on a power point presentation.

Shawn Dugan of Tree Solutions spoke on the research performed on the Post Office Oak Tree beginning in April of 2012.

Dr. Cort provided additional information with respect to action taken by City staff and City Council which lead to the decision to remove the Post Office Oak Tree.

Cathy Rosen returned to describe the removal details of the Post Office Oak Tree which took place on March 23, 2014. Tree Solutions was contacted on Monday, March 24th to exam post-mortem remains.

Shawn Dugan explained their findings of the post-mortem analysis. Mr. Dugan provided photographs of the decay and cracks found in the truck and limbs of the tree.

Mayor Dudley turned to the Councilmembers for questions.

Councilmember Munns asked about insurance complications with the City in relation to the decaying Oak Tree.

Councilmember Servatius asked about the comparison of basal tomography of the tree trunk after removal as presented on the power point.

Councilmember Severns asked additional questions regarding the decay of the Post Office Oak Tree as depicted on the basal tomography photograph post-removal. He then asked about the weight of the two branches that fell in 2013. Mr. Dugan answered that the limbs were very dense and very heavy.

APPROVAL OF AGENDA

Mayor Dudley explained that no Executive Session would be held and asked that the Councilmembers make a motion to remove the item from the Agenda.

Motion: Councilmember Almberg motioned to remove Consent Agenda item 10, seconded by Councilmember Campbell and carried unanimously.

Motion: Councilmember Severns moved to approve the agenda as amended. The motion was seconded by Councilmember Munns and carried unanimously.

CITIZEN COMMENT PERIOD

Mayor Dudley opened the comment period at 6:57 p.m.

Those speaking in opposition to the removal of the Post Office Oak Tree were:

Mary Pierzchal
Helen Chatfield-Weeks
Earle Darst
Gary Piazzon
Isle Williams
Steve Erickson of Whidbey Environmental Action Network
Pat Wallace

Motion: Councilmember Almberg made a motion extended public comment period for an additional 15 minutes, Councilmember Severns seconded, and carried unanimously.

Those speaking in opposition to the removal of the Post Office Oak Tree were:

Martha Yount
Carol LaFond
Melissa Duffy
Dr. Michael Ratray
Angie Homola
Wendy Campbell-DeWinter

Mayor Dudley closed the public comment period at 7:30 p.m.

CONSENT AGENDA

Councilmember Munns asked to pull Consent Agenda Item d, the Employee Contract for Kellye Mazzoli as the proposed Executive Assistant to the Mayor.

Motion: Councilmember Severns moved to approve Consent Agenda Items a, b, c, and e, Councilmember Almberg seconded, unanimously approved.

a. Minutes of the Regular City Council meeting held March 18, 2014 and Minutes of the Workshop meeting held March 26, 2014
b. Approval of *Accounts Payable Voucher Numbers:*
   - Voucher Numbers 157677 through 157688 in the amount of $804.07
   - Voucher Numbers 157689 through 157839 in the amount of $682,667.36

   Approval of *Payroll Check Numbers:*
   - Direct Deposit Numbers 30643 through 30790
   - EFT Numbers 600 through 604
   - Payroll Check Numbers 97056 through 97110
c. Motion to approve re-appointment of Greg Wasinger to the Planning Commission
d. Motion to sign Employment Contract for the Executive Assistant to the Mayor
e. Motion to authorize purchase of Traffic Paint

Mayor Dudley introduced Kellye Mazzoli to the Council.

Motion: Councilmember Munns moved to approve the motion to sign the Mayor's Executive Assistant employee contract for Kellye Mazzoli. The motion was seconded by Councilmember Campbell and carried unanimously.

STAFF, MAYOR AND COUNCIL COMMENTS

<u>City Administrator</u>

Dr. Cort proudly announced that the City successfully closed on the Whidbey Island Bank property. Dr. Cort then mentioned that a Workshop will be opened on April 17, 2014 at the Elk's Lodge at 6:00 p.m. to provide the public an opportunity share comments, ideas, and priorities with the Councilmembers regarding the new Waste Water Treatment Facility.

Dr. Cort introduced the public hearings to be held at the April 15, 2014 Council Meeting.

Councilmember Almberg asked to reschedule the Workshop to April 16, 2014 at 6:00 p.m. and the proposed date was confirmed by the remaining Councilmembers.

Mayor Dudley discussed upcoming projects and stated that he would like to provide the Councilmembers with details on these future developments at the April 23 Workshop.

Councilmembers

Councilmember Paggao spoke on the Deborah Palmer homicide which took place 17 years ago and the monetary award for individuals who produce information regarding this unsolved mystery.

Councilmember Almberg cleared up some of the misunderstandings regarding the decision to remove the Post Office Oak Tree. He apologized that the issue to bring this decision to the citizens beforehand was not addressed.

Councilmember Munns thanked the food bank volunteers for their efforts and support.

Councilmember Severns echoed Councilmember Almberg's concern regarding the decision to remove the Oak Tree and was very interested in the public's comments to improve the integrity of the City and the Garry Oak Trees of Oak Harbor.

Councilmember Severns thanked the staff for the thorough presentation and stated that the Councilmembers need to be more proactive going forward and execute City decisions in a better fashion.

Mayor Dudley announced a five-minute recess at 7:48 p.m.

Mayor Dudley reconvened the Council meeting at 7:53 p.m.

ORDINANCE AND RESOLUTIONS

PUBLIC HEARINGS/PUBLIC MEETINGS

UNFINISHED BUSINESS

NEW BUSINESS

Fire Department Annual Report
Chief Merrill provided the staff report on the 2013 Annual Fire Department Report.

Chief Merrill provided the Council with a personnel update and announced Paul Schoer as the Fire Department's new lieutenant.

Chief Merrill presented video footage of an actual structure fire that took place in Canada.

Councilmember Almberg asked about the standard distance from water hydrants.

Chief Merrill provided a power point presentation to the Council.

Mayor Dudley opened the meeting for public comment at 8:29 p.m., no comment, closed the public comment period at 8:29 p.m.

Councilmembers Almberg, Munns and Mayor Pro Tem Paggao asked Chief Merrill several follow-up questions.

Councilmembers Severns and Campbell thanked Chief Merrill for the detailed report and the department's sincere diligence in serving Oak Harbor.

Councilmember Servatius thanked the Fire Department for their superior services with the budget that they had been given.

Mayor Dudley thanked Chief Merrill for the great presentation and the excellent services rendered by the Fire Department.

ADJOURNMENT

Councilmember Severns moved, seconded by Councilmember Almerbg, to adjourn, and unanimously carried.

The meeting adjourned at 8:43 p.m.

Anna M. Thompson, City Clerk

City of Oak Harbor
City Council Agenda Bill

Bill No. C/A 4.b
Date: April 15, 2014
Subject: Approval of Payroll and Accounts Payable Vouchers

FROM: Doug Merriman, Finance Director

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

Scott Dudley, Mayor
Larry Cort, City Administrator
Grant Weed, Interim City Attorney, as to form

SUMMARY STATEMENT

Oak Harbor Municipal Code Chapter 3.72 establishes procedures for claims (vouchers) payment. The documentation that regularly supports the signature coversheets is attached. Claim coversheets will be provided prior to the City Council meeting for appropriate Council signatures.

RECOMMENDED ACTION

I move to approve:
Accounts Payable Vouchers and Payroll Checks, see Voucher Numbers listed in the attachments and Check Numbers listed in the April 15, 2014 Regular Agenda.

ATTACHMENTS

Voucher List(s)

Voucher List

City of Oak Harbor

Bank code : bank

Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
157840	3/28/2014	0007329 DEAN, LEE ANN	Ref000211136		UB Refund Cst #00163499	9.35
					Total :	**9.35**

1 Vouchers for bank code : bank **Bank total : 9.35**

1 Vouchers in this report **Total vouchers : 9.35**

Bank code : bank

Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
157841	4/10/2014	0000005 A-1 TOWING	031314		REBUILD	193.49
					Total :	**193.49**
157842	4/10/2014	0000424 ALL BATTERY SALES AND SERVICE	837252		BATTERY BUCKET	76.09
					Total :	**76.09**
157843	4/10/2014	0007407 AMERICAN TACTICAL ADVANTAGE	2138		BATTERY/GLOVE/ETC	264.95
					Total :	**264.95**
157844	4/10/2014	0000045 ANDERSON PAPER & PACKAGING	052996		TWIST TIES	225.66
			F003237		FINANCE CHARGE	3.38
					Total :	**229.04**
157845	4/10/2014	0004019 ASSOCIATED PETROLEUM PRODUCTS	0547016-IN		UNL REG	4,358.27
			0549591-IN		ULSD	5,690.41
			0552950-IN		UNL REG	3,697.78
			055366-IN		ULSD	5,976.76
					Total :	**19,723.22**
157846	4/10/2014	0000109 BLUMENTHAL UNIFORMS	49532		PARKA	166.31
					Total :	**166.31**
157847	4/10/2014	0000150 CASCADE NATURAL GAS	08793000004		NATURAL GAS	444.82
			18583000007		NATURAL GAS	10.00
			36624000000		NATURAL GAS	1,312.65
			40661045647		NATURAL GAS	239.78
			5879300009		NATURAL GAS	553.97
			80434000008		NATURAL GAS	1,747.47
			8219300005		NATURAL GAS	76.21
			90134000000		NATURAL GAS	126.31
					Total :	**4,511.21**
157848	4/10/2014	0001860 CORT, LARRY	TRAVEL REIMB		TRAVEL REIMB	437.43
			TRAVEL REIMB		TRAVEL REIMB	177.50
			TRAVEL REIMB		TRAVEL REIMB`	42.71
			TRAVEL REIMB		TRAVEL REIMB	106.50

Bank code : bank

Voucher	Date	Vendor		Invoice	PO #	Description/Account	Amount
157848	4/10/2014	0001860	0001860 CORT, LARRY	(Continued)		**Total :**	**764.14**
157849	4/10/2014	0003065	COVENANT JANITORIAL	1336007		MAR 2014/JANITORIAL SERVICES	3,751.15
						Total :	**3,751.15**
157850	4/10/2014	0000220	CUMMINS NORTHWEST, INC	001-99029		GASKET	41.98
				001-99461		GASKET	75.69
				001-99559		EXHAUST OUTLET	143.32
						Total :	**260.99**
157851	4/10/2014	0000222	CUSTOM ENGRAVING	14-230		COIN MEDALLIONS	326.10
						Total :	**326.10**
157852	4/10/2014	0001815	DEPARTMENT OF RETIREMENT	1036961		ADMIN FEE	59.65
						Total :	**59.65**
157853	4/10/2014	0005840	DUDLEY, SCOTT	04072013		TRAVEL REIMB	270.00
						Total :	**270.00**
157854	4/10/2014	0005009	ERGOMETRICS	118112		SGT ASSESSMENT	4,500.00
						Total :	**4,500.00**
157855	4/10/2014	0006276	EXPRESS SERVICES, INC	13798878-8		OFFICE SUPPORT	1,257.29
				13827281-0		SUPPORT SERVICES	1,241.37
						Total :	**2,498.66**
157856	4/10/2014	0005086	EZINE INDUSTRIES, INC	853748		SUPPORT	9.75
						Total :	**9.75**
157857	4/10/2014	0002900	FASTENAL	WAOAK16586		THREAD STRIP	92.73
				WAOAK16623		WRENCH/BOLTS/NUTS	364.31
				WAOAK16628		HEXNUTS	-11.22
				WAOAK16702		T-ROD	4.75
						Total :	**450.57**
157858	4/10/2014	0000355	FRONTIER	007-9244		CURRENT PHONE CHARGES	239.74
				675-1568		CURRENT PHONE CHARGES	215.08
				675-1572		CURRENT PHONE CHARGES	62.16

Bank code : bank

Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
157858	4/10/2014	0000355 FRONTIER	(Continued)			
			675-1669		CURRENT PHONE CHARGES	62.16
			675-2111		CURRENT PHONE CHARGESQ	62.60
			675-3121		CURRENT PHONE CHARGES	56.83
			675-6794		CURRENT PHONE CHARGES	57.25
			675-6858		CURRENT PHONE CHARGES	56.83
			679-0500		CURRENT PHONE CHARGES	61.52
			679-1640		CURRENT PHONE CHARGES	56.98
			679-1651		CURRENT PHONE CHARGES	56.83
			679-1789		CURRENT PHONE CHARGES	56.98
			679-2628		CURRENT PHONE CHARGES	336.51
			679-3902		CURRENT PHONE CHARGES	61.78
			679-8477		CURRENT PHONE CHARGES	81.64
			679-8702		CURRENT PHONE CHARGES	93.05
			770-2694		CURRENT PHONE CHARGES	40.11
			770-2715		CURRENT PHONE CHARGES	31.50
					Total :	**1,689.55**
157859	4/10/2014	0000345 GREATER OAK HBR CHAMBER OF COM	030157		MARCH TOURIST COSTS	6,666.67
					Total :	**6,666.67**
157860	4/10/2014	0000394 HUMAN RESOURCE SERVICES	0324214		MAR 2014/UNEMPLOYMENT SERVICES	110.00
					Total :	**110.00**
157861	4/10/2014	0000417 INDUSTRIAL BOLT & SUPPLY	557176-1		WHEEL/WEDGE/ETC	387.19
					Total :	**387.19**
157862	4/10/2014	0004355 LEAVITT MACHINERY	I81512		FILTER/HOSE/ETC	280.70
					Total :	**280.70**
157863	4/10/2014	0004502 LEXISNEXIS RISK DATA MANAGE	140464520140331		DATA MANAGEMENT	54.35
					Total :	**54.35**
157864	4/10/2014	0000660 MARKET PLACE FOOD & DRUG	618890		FOOD	263.95
			730555		FOOD	426.65
					Total :	**690.60**
157865	4/10/2014	0006072 MASTER'S TOUCH, LLC	34304		MAILING SERVICES MARCH	258.92

Bank code : bank

Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
157865	4/10/2014	0006072 MASTER'S TOUCH, LLC	(Continued)			
			M141154		ENVELOPES	1,565.28
			N131717		PROGRAMMING	239.14
			P34304		POSTAGE	444.06
					Total :	**2,507.40**
157866	4/10/2014	0006028 MCI COMM SERVICE	679-3902		LONG DISTANCE	37.25
					Total :	**37.25**
157867	4/10/2014	0003074 NICHOLS, DINA	040714		TEMPORARY MARATHON FUND	1,000.00
					Total :	**1,000.00**
157868	4/10/2014	0000672 OAK HARBOR ACE	236754		CLAMP	1.95
			237059		NTRL	76.06
			237442		KEY	12.96
			237503		KEY	12.96
					Total :	**103.93**
157869	4/10/2014	0000673 OAK HARBOR MOTORS	109965		REPROGRAM CAB AND ABS	86.96
					Total :	**86.96**
157870	4/10/2014	0000681 OAK HARBOR SCHOOL DISTRICT	0000130369		MAR 2014/COMPUTER NETWORK SUP	6,708.33
					Total :	**6,708.33**
157871	4/10/2014	0005069 PROFORCE LAW ENFORCEMENT	199621		TSR CART	2,822.62
					Total :	**2,822.62**
157872	4/10/2014	0000746 PUGET SAFETY EQUIPMENT	0018315-IN		BOOTS	1,269.04
					Total :	**1,269.04**
157873	4/10/2014	0000743 PUGET SOUND ENERGY	200002036164		ELECTRICITY	230.82
			200002037097		ELECTRICITY	22.32
			200002037501		ELECTRICITY	111.97
			200002511539		ELECTRICITY	10.21
			200003131170		ELECTRICITY	13.03
			200003459654		ELECTRICITY	164.10
			2000103229895		ELECTRICITY	37.06
			200010499446		ELECTRICITY	27.29

Bank code : bank

Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
157873	4/10/2014	0000743 PUGET SOUND ENERGY	(Continued)			
			200010549943		ELECTRICITY	13.03
			200015399153		ELECTRICITY	10.21
			200017654415		ELECTRICITY	196.18
			200017968427		ELECTRICITY	1,736.36
			200022988147		ELECTRICITY	26.55
			3000000010458		ELECTRICITY	311.46
			3000000010516		ELECTRICITY	198.25
			300000007421		ELECTRICITY	3,063.39
			300000009906		ELECTRICITY	28.08
					Total :	**6,200.31**
157874	4/10/2014	0006335 SKAGIT BUSINESS & STAFFING LLC	16618		EMPLOYMENT TESTING	302.50
					Total :	**302.50**
157875	4/10/2014	0000843 SOLID WASTE SYSTEMS, INC	0067958-CM		PUMP	-434.43
			0068479-IN		YOKE/DRIVE SHAFT	486.27
					Total :	**51.84**
157876	4/10/2014	0000846 SOUND PUBLISHING	608475		ADVERTISING	348.00
			615666		ADVERTISING	458.85
			622210		ADVERTISING	501.18
					Total :	**1,308.03**
157877	4/10/2014	0000851 SPRINT	140239187		CURRENT PHONE CHARGES	8.86
			182311697		LONG DISTANCE	5.76
					Total :	**14.62**
157878	4/10/2014	0003883 STAPLES BUSINESS ADVANTAGE	3225766512		TONER	86.63
			3225766523		INK	33.07
					Total :	**119.70**
157879	4/10/2014	0000986 TRANSPORTATION, WASHINGTON STATE DE	RE 41 JA8351 L001		PROF SVC/WATER SYSTEM IMPROVEM	242.31
					Total :	**242.31**
157880	4/10/2014	0006249 TRUCK SHOP	69118		HOSE/BELT.GASKET	163.19
					Total :	**163.19**

Bank code : bank

Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
157881	4/10/2014	0004903 US BANK	4485591000611990		CREDIT CARD PURCHASES	5,248.52
					Total :	**5,248.52**
157882	4/10/2014	0005064 WHATCOM COUNTY AS FINANCE	20797		1Q MINI CHAIN	387.75
					Total :	**387.75**
157883	4/10/2014	0001017 WHIDBEY PRINTERS	46465		BUSINESS CARDS PICCONE	55.71
			46796		AP ENVELOPES	233.71
					Total :	**289.42**

43 Vouchers for bank code : bank **Bank total : 76,798.10**

43 Vouchers in this report **Total vouchers : 76,798.10**

City of Oak Harbor
City Council Agenda Bill

Bill No. C/A 4.c
Date: April 15, 2014
Subject: **Videography Services PSA – Riney Production Services**

FROM: **Larry Cort, City Administrator**

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

___ Scott Dudley, Mayor
___ Doug Merriman, Finance Director
___ Grant Weed, Interim City Attorney, as to form

PURPOSE

This agenda bill presents a Professional Services Agreement between the City of Oak Harbor and Riney Production Services for services associated with video recording of City business. The scope of work is inclusive of videography, staging for videography, equipment rental and consultation on system enhancement. Services will be provided on-call at the rate of $50 per hour.

FISCAL IMPACT DESCRIPTION

Funds Required: Varies According to Need; Monthly Average for 2013 was $2,547
Appropriation Source: Source Fund Varies According to Nature of Meeting

SUMMARY STATEMENT

Since 2004, the City has contracted with Riney Production Services for videography associated with public meetings, special productions and specialized equipment rental. Since the last contract was approved on October 4, 2005, Mr. Riney has performed with distinction and the administration proposes to replace the existing agreement with a new agreement for the term beginning May 1, 2014 and concluding December 31, 2016. Key differences between the 2005 agreement and the proposed agreement are noted below:

1. The hourly compensation rate is increased from $45.00 to $50.00.
2. The not-to-exceed maximum payment amount of $6,000.00 has been removed. To provide adequate cost control, the term of the agreement is established to dovetail with the biennial budget when the Council will allocate the amount of money to be spent on videography.
3. The Professional Services Agreement is the standard form now in use by the City.

RECOMMENDED ACTIONS

Authorize the Mayor to sign the Professional Services Agreement between the City of Oak Harbor and Riney Production Services for on-call videography-related services.

ATTACHMENTS

Draft Professional Services Agreement

PROFESSIONAL SERVICES AGREEMENT BETWEEN CITY OF OAK HARBOR AND RINEY PRODUCTION SERVICES FOR CONSULTANT SERVICES

THIS AGREEMENT ("Agreement') is made and entered into by and between the City of Oak Harbor, a Washington State municipal corporation ("City"), and Riney Production Services, a Washington Sole Proprietorship ("Consultant").

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

ARTICLE I. PURPOSE

The purpose of this Agreement is to provide the City with consultant services regarding technical support for videography as described in Article II. The general terms and conditions of the relationship between the City and the Consultant are specified in this Agreement.

ARTICLE II. SCOPE OF SERVICES

The Scope of Services is attached hereto as **Exhibit "A"** and incorporated herein by this reference ("Scope of Services"). All services and materials necessary to accomplish the tasks outlined in the Scope of Services shall be provided by the Consultant unless noted otherwise in the Scope of Services or this Agreement. All such services shall be provided in accordance with the standards of the Consultant's profession.

ARTICLE III. OBLIGATIONS OF THE CONSULTANT

III.1 **MINOR CHANGES IN SCOPE**. The Consultant shall accept minor changes, amendments, or revision in the detail of the Scope of Services as may be required by the City when such changes will not have any impact on the service costs or proposed delivery schedule. Extra work, if any, involving substantial changes and/or changes in cost or schedules will be addressed as follows:

Extra Work. The City may desire to have the Consultant perform work or render services in connection with each project in addition to or other than work provided for by the expressed intent of the Scope of Services in the scope of services. Such work will be considered as extra work and will be specified in a written supplement to the scope of services, to be signed by both parties, which will set forth the nature and the scope thereof. All proposals for extra work or services shall be prepared by the Consultant at no cost to the City. Work under a supplemental agreement shall not proceed until executed in writing by the parties.

III.2 **WORK PRODUCT AND DOCUMENTS**. The work product and all documents produced under this Agreement shall be furnished by the Consultant to the City, and upon completion of the work shall become the property of the City, except that the Consultant may retain one copy of the work product and documents for its records. The Consultant will be responsible for the accuracy of the work, even though the work has been accepted by the City.

In the event that the Consultant shall default on this Agreement or in the event that this Agreement shall be terminated prior to its completion as herein provided, all work product of the Consultant, along with a summary of work as of the date of default or termination, shall become the property of the City. Upon request, the Consultant shall tender the work product and summary to the City. Tender of said work product shall be a prerequisite to final payment under this Agreement. The summary of work done shall be prepared at no additional cost to the City.

Consultant will not be held liable for reuse of documents produced under this Agreement or modifications thereof for any purpose other than those authorized under this Agreement without the written authorization of Consultant.

III.3 **TERM.** The term of this Agreement shall commence on May 1, 2014 and shall terminate at midnight, December 31, 2016. The parties may extend the term of this Agreement by written mutual agreement.

III.4 **NONASSIGNABLE**. The services to be provided by the Consultant shall not be assigned or subcontracted without the express written consent of the City.

III.5 **EMPLOYMENT**. Any and all employees of the Consultant, while engaged in the performance of any work or services required by the Consultant under this Agreement, shall be considered employees of the Consultant only and not of the City, and any and all claims that may or might arise under the Workman's Compensation Act on behalf of any said employees while so engaged, and any and all claims made by any third party as a consequence of any negligent act or omission on the part of the Consultant or its employees while so engaged in any of the work or services provided herein shall be the sole obligation of the Consultant.

III.6 **INDEMNITY**.

a. Indemnification / Hold Harmless Consultant shall defend, indemnify and hold the City, its officers, officials, em-ployees 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 Consultant in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

b. Should a court of competent jurisdiction deter-mine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the City, its officers, of-ficials, employees, and volunteers, the Consultant's liability, including the duty and cost to defend, hereunder shall be only to the extent of the Consultant's negligence.

c. The provisions of this section shall survive the expiration or termination of this agreement.

d. For the purposes of the indemnity contained in subpart "A" of this paragraph 3.6, Consultant hereby knowing, intentionally, and voluntarily waives the immunity of the Industrial Insurance Act, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

_____(initials) _____(initials)

III.7 **INSURANCE**.

a. **Minimum Limits of Insurance**. The Consultant 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 and services hereunder by the Consultant, its agents, representatives, employees or subcontractors. The Consultant shall, before commencing work under this agreement, file with the City certificates of insurance coverage and the policy endorsement to be kept in force continuously during this Agreement, in a form acceptable to the City. Said certificates and policy endorsement shall name the City, its officers, elected officials, agents and/or employees as an additional named insured with respect to all coverages except professional liability insurance and workers' compensation. The minimum insurance requirements shall be as follows:

(1) Comprehensive General Liability. $1,000,000 combined single limit per occurrence for bodily injury personal injury and property damage; $2,000,000 general aggregate.

(2) Automobile Liability. $300,000 combined single limit per accident for bodily injury and property damage.

b. **Notice of Cancellation**. In the event that the Consultant receives notice (written, electronic or otherwise) that any of the above required insurance coverage is being cancelled and/or terminated, the Consultant shall immediately (within forty-eight (48) hours) provide written notification of such cancellation/termination to the City.

c. **Acceptability of Insurers**. Insurance to be provided by Consultant shall be with a Bests rating of no less than A:VII, or if not rated by Bests, with minimum surpluses the equivalent of Bests' VII rating.

d. **Verification of Coverage**. In signing this agreement, the Consultant is acknowledging and representing that required insurance is active and current. Further, throughout the term of this Agreement, the Consultant shall provide the City with proof of insurance upon request by the City.

e. **Insurance shall be Primary**. The Consultant's insurance coverage shall be primary insurance as respect the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.

f. **No Limitation**. Consultant's maintenance of insurance as required by this Agreement shall not be construed to limit the liability of the Consultant to the coverage provided by such insurance or otherwise limit the recourse to any remedy available at law or in equity.

g. **Claims-made Basis**. Unless approved by the City all insurance policies shall be written on an "Occurrence" policy as opposed to a "Claims-made" policy. The City may require an extended reporting endorsement on any approved "Claims-made" policy.

III.8 **DISCRIMINATION PROHIBITED AND COMPLIANCE WITH EQUAL OPPORTUNITY LEGISLATION**. The Consultant agrees to comply with equal opportunity employment and not to discriminate against client, employee, or applicant for employment or for services because of race, creed, color, religion, national origin, marital status, sex, sexual orientation, age or handicap except for a bona fide occupational qualification with regard, but not limited to, the following: employment upgrading; demotion or transfer; recruitment or any recruitment advertising; layoff or terminations; rates of pay or other forms of compensation; selection for training, rendition of services. The Consultant further agrees to maintain (as appropriate) notices, posted in conspicuous places, setting forth the provisions of this nondiscrimination clause. The Consultant understands and agrees that if it violates this nondiscrimination provision, this Agreement may be terminated by the City, and further that the Consultant will be barred from performing any services for the City now or in the future, unless a showing is made satisfactory to the City that discriminatory practices have been terminated and that recurrence of such action is unlikely.

III.9 **UNFAIR EMPLOYMENT PRACTICES**. During the performance of this Agreement, the Consultant agrees to comply with RCW 49.60.180, prohibiting unfair employment practices.

III.10 **LEGAL RELATIONS**. The Consultant shall comply with all federal, state and local laws and ordinances applicable to work to be done under this Agreement. The Consultant represents that the firm and all employees assigned to work on any City project are in full compliance with the statutes of the State of Washington governing activities to be performed and that all personnel to be assigned to the work required under this Agreement are fully qualified and properly licensed to perform the work to which they will be assigned. This Agreement shall be interpreted and construed in accordance with the laws of Washington. Venue for any litigation commenced relating to this Agreement shall be in Snohomish County Superior Court.

III.11 **INDEPENDENT CONTRACTOR**.

a. The Consultant and the City understand and expressly agree that the Consultant is an independent contractor in the performance of each and every part of this Agreement. The Consultant expressly represents, warrants and agrees that his status as an independent contractor in the performance of the work and services required under this Agreement is consistent with and meets the six-part independent contractor test set forth in RCW 51.08.195 or as hereafter amended. The Consultant, as an independent contractor, assumes the entire responsibility for carrying out and accomplishing the services required under this Agreement. The Consultant shall make no claim of City employment nor shall claim any related employment benefits, social security, and/or retirement benefits.

b. The Consultant shall be solely responsible for paying all taxes, deductions, and assessments, including but not limited to federal income tax, FICA, social security tax, assessments for unemployment and industrial injury, and other deductions from income which may be required by law or assessed against either party as a result of this Agreement. In the event the City is assessed a tax or assessment as a result of this Agreement, the Consultant shall pay the same before it becomes due.

c. The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work that the Consultant performs hereunder.

d. Prior to commencement of work, the Consultant shall obtain a business license from the City.

III.12 **CONFLICTS OF INTEREST.** The Consultant agrees to and shall notify the City of any potential conflicts of interest in Consultant's client base and shall obtain written permission from the City prior to providing services to third parties where a conflict or potential conflict of interest is apparent. If the City determines in its sole discretion that a conflict is irreconcilable, the City reserves the right to terminate this Agreement.

III.13 **CITY CONFIDENCES.** The Consultant agrees to and will keep in strict confidence, and will not disclose, communicate or advertise to third parties without specific prior written consent from the City in each instance, the confidences of the City or any information regarding the City or services provided to the City.

III.14 **SUBCONTRACTORS/SUBCONSULTANTS**.

a. The Consultant shall is responsible for all work performed by subcontractors/subconsultants pursuant to the terms of this Agreement.

b. The Consultant must verify that any subcontractors/subconsultants they directly hire meet the responsibility criteria for the project. Verification that a subcontractor/subconsultant has proper license and bonding, if required by statute, must be included in the verification process.

c. The Consultant may not substitute or add subcontractors/subconsultants without the written approval of the City.

d. All Subcontractors/Subconsultants shall have the same insurance coverages and limits as set forth in this Agreement and the Consultant shall provide verification of said insurance coverage.

ARTICLE IV. OBLIGATIONS OF THE CITY

IV.1 **PAYMENTS**.

a. The Consultant shall be paid by the City for services rendered under this Agreement as described in the Scope of Services and as provided in this section. Such payment shall be full compensation for work performed and services rendered and for all labor, materials, supplies, equipment and incidentals necessary to complete the work. In the event the City elects to expand the scope of services from that set forth in Exhibit A, the City shall pay Consultant a mutually agreed amount**.**

b. The Consultant shall submit a monthly invoice to the City in a format acceptable to the City once all services scheduled to be performed for the month are completed. The Consultant shall maintain time and expense records and provide them to the Cities upon request.

c. The City will pay timely submitted and approved invoices received before the 20th of each month within thirty (30) days of receipt.

IV.2 **CITY APPROVAL**. Notwithstanding the Consultant's status as an independent contractor, results of the work performed pursuant to this Agreement must meet the approval of the City, which shall not be unreasonably withheld if work has been completed in compliance with the Scope of Services and City requirements.

IV.3 **MAINTENANCE/INSPECTION OF RECORDS**. The Consultant shall maintain all books, records, documents and other evidence pertaining to the costs and expenses allowable under this Agreement in accordance with generally accepted accounting practices. All such books and records required to be maintained by this Agreement shall be subject to inspection and audit by representatives of the City and/or the Washington State Auditor at all reasonable times, and the Consultant shall afford the proper facilities for such inspection and audit. Representatives of the City and/or the Washington State Auditor may copy such books, accounts and records where necessary to conduct or document an audit. The Consultant shall preserve and make available all such books of account and records for a period of three (3) years after final payment under this Agreement. In the event that any audit or inspection identifies any discrepancy in such financial records, the Consultant shall provide the City with appropriate clarification and/or financial adjustments within thirty (30) calendar days of notification of the discrepancy.

ARTICLE V. GENERAL

V.1 **NOTICES**. Notices to the City shall be sent to the following address:

Larry E. Cort, City Administrator
865 SE Barrington Drive
Oak Harbor, WA 98277

Notices to the Consultant shall be sent to the following address:

James T. Riney, Owner
Riney Production Services
1645 NW Outrigger Loop
Oak Harbor, WA 98277

Receipt of any notice shall be deemed effective three (3) days after deposit of written notice in the U.S. mail with proper postage and address.

V.2 **TERMINATION**. The right is reserved by the City to terminate this Agreement in whole or in part at any time upon ten (10) calendar days' written notice to the Consultant. In the same manner, the right is reserved by the Consultant to terminate this Agreement in whole or in part at any time upon ten (10) calendar days' written notice to the City.

If this Agreement is terminated in its entirety by the City for its convenience, the City shall pay the Consultant for satisfactory services performed through the date of termination in accordance with payment provisions of Section VI.1.

V.3 **DISPUTES**. The parties agree that, following reasonable attempts at negotiation and compromise, any unresolved dispute arising under this Agreement may be resolved by a mutually agreed-upon alternative dispute resolution of arbitration or mediation.

V.4 **EXTENT OF AGREEMENT/MODIFICATION**. This Agreement, together with attachments or addenda, represents the entire and integrated Agreement between the parties and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended, modified or added to only by written instrument properly signed by both parties.

V.5 **SEVERABILITY**

a. If a court of competent jurisdiction holds any part, term or provision of this Agreement to be illegal or invalid, in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.

b. If any provision of this Agreement is in direct conflict with any statutory provision of the State of Washington, that provision which may conflict shall be deemed inoperative and null and void insofar as it may conflict, and shall be deemed modified to conform to such statutory provision.

V.6 **NONWAIVER**. A waiver by either party hereto of a breach by the other party hereto of any covenant or condition of this Agreement shall not impair the right of the party not in default to avail itself of any subsequent breach thereof. Leniency, delay or failure of either party to insist upon strict performance of any agreement, covenant or condition of this Agreement, or to exercise any right herein given in any one or more instances, shall not be construed as a waiver or relinquishment of any such agreement, covenant, condition or right.

V.7 **FAIR MEANING**. The terms of this Agreement shall be given their fair meaning and shall not be construed in favor of or against either party hereto because of authorship. This Agreement shall be deemed to have been drafted by both of the parties.

V.8 **GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

V.9 **VENUE.** The venue for any action to enforce or interpret this Agreement shall lie in the Superior Court of Washington for Island County, Washington.

V.10 **COUNTERPARTS**. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Agreement.

V.11 **AUTHORITY TO BIND PARTIES AND ENTER INTO AGREEMENT**. The undersigned represent that they have full authority to enter into this Agreement and to bind the parties for and on behalf of the legal entities set forth below.

DATED this _____ day of _____, 2014.

CITY OF OAK HARBOR	RINEY PRODUCTION SERVICES
By_____ D. Scott Dudley, Mayor	By _____ James T. Riney, Owner

Approved as to form:

_____
Grant Weed, Interim City Attorney

EXHIBIT A
SCOPE OF SERVICES

Riney Production Services

Contractor shall provide professional videography and staging services, along with specialized equipment, as requested by the City of Oak Harbor, including but not necessarily limited to the following:

1. Operate video and audio equipment at regular and special Oak Harbor City Council meetings in the City Hall Council Chambers;

2. Operate video and audio equipment at regular meetings of the Oak Harbor Planning Commission in the City Hall Council Chambers;

3. Operate video and audio equipment in support of special productions on issues of City business, including remote locations;

4. Upload and schedule programming to Channel 10 and, as requested, arrange live web streaming of City productions.

5. Provide troubleshooting services of Channel 10 programming playout during City business hours or when otherwise scheduled for support of City business.

6. Consultation as needed with City officials on equipment purchases related to the delivery of videography services.

For these services, Contractor shall be compensated at the rate of $50.00 per hour. Contractor may also seek reimbursement for rental of specialized equipment not otherwise available to the City. The rate for equipment rental shall not exceed $1,000 per month unless approved by the City Administrator.

If troubleshooting services of Channel 10 programming playout are requested on weekends (defined as the period between Friday starting at 6:00 pm through Monday ending at 8:00 am) the compensation rate is set at $75 per hour.

City of Oak Harbor
City Council Agenda Bill

Bill No. C/A 4.d
Date: April 15, 2014
Subject: Scenic Heights Stormwater Outfall – Professional Services Agreement with ERCI for Archaeology Services

FROM: Cathy Rosen, Public Works Director
Joe Stowell, City Engineer

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

Scott Dudley, Mayor
Larry Cort, City Administrator
Doug Merriman, Finance Director
Grant Weed, Interim City Attorney, as to form

PURPOSE

The purpose of this agenda bill is to request approval for the Mayor to sign a professional services agreement with ERCI. The professional services include archaeology related assitance for construction of the stormwater outfall on Scenic Heights across the Liszak property.

FISCAL IMPACT DESCRIPTION

Funds Required: $5,406.25
Appropriation Source: Stormwater Fund

SUMMARY STATEMENT

In 2005 the City hired Cane Engineering to investigate stormwater runoff issues at the Liszak property located at 2870 SW Scenic Heights St. The property owner, Ann Liszak, reported erosion to the shoreline bluff area of her property reportedly caused by runoff from a City storm drain system. The report concluded that an increase in runoff has occurred over time. It recommended the City monitor the bluff for erosion and/or modify the upland drainage facility. Mrs. Liszak has continued to report erosion issues since that time.

The proposed project consists of extending the current outfall near Scenic Heights across the Liszak property and over the bluff to a diffuser near the shore below. This is a known area of buried cultural resources.

Total project costs based on the attached planning level estimate are expected to be $155,275.00

The proposed scope of services includes:

- Carry out shovel testing of approximately 20 holes
- Provide analysis of field data
- Provide a report to state and federal standards

Schedule:

The scope of services described above are planned to begin in May of 2014 and conclude in the fall of 2014.

WORKSHOPS

The Professional Services Agreement with ERCI has not been presented at a City Council Workshop

RECOMMENDED ACTION

A motion authorizing execution of a Professional Services Agreement with ERCI for the scope of services described herein in for a not to exceed amount of $5,406.25.

ATTACHMENTS

- Professional Services Agreement & Consultants Scope of Services
- Planning Level Project Cost Estimate

CONSULTANT/PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, is made and entered into in duplicate on 4/7/2014, and between the CITY OF OAK HARBOR, a Washington municipal corporation, hereinafter referred to as the "CITY" and ERCI hereinafter referred to as the "SERVICE PROVIDER".

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

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

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

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

1. Scope of Services.

   The SERVICE PROVIDER shall perform such services and accomplish such tasks, including the furnishing of all materials and equipment necessary for full performance thereof, as are identified and designated as SERVICE PROVIDER responsibilities throughout this Agreement and as detailed in Exhibit "A" attached hereto and incorporated herein (the "Project").

2. Term.

   The Project shall begin on 4/7/2014, and shall be completed no later than 12/31/2014 unless sooner terminated according to the provisions herein.

3. Compensation and Method of Payment.

   3.1 Payment 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: set forth in Scope of Work at $5,406.25

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. As required by CITY, SERVICE PROVIDER will cooperate to respond to public record requests under the laws of the State of Washington.

4.3 The SERVICE PROVIDER shall keep in strict confidence, and will not disclose, communicate or advertise to third parties, without the express written consent of CITY the confidences of CITY or any information regarding the CITY or services provided to the CITY under this Agreement.

5. Independent Contractor Relationship.

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

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

6. Service Provider Employees/agents.

The CITY may at its sole discretion require the SERVICE PROVIDER to remove an employee(s), agent(s) or servant(s) from employment on this Project. The SERVICE PROVIDER may, however, employ that (those) individual(s) on other non-CITY related projects.

7. Hold Harmless/Indemnification.

7.1 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 of or resulting from the acts, errors or omissions of the Consultant in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

7.2 For purposes of this indemnification and hold harmless agreement, the Contractor 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.

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

8. 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.

8.1 Minimum Scope of Insurance. SERVICE PROVIDER shall obtain insurance of the types described below:

a. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

b. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The CITY shall be named as an insured under the SERVICE PROVIDER'S Commercial General Liability insurance policy with respect to the work performed for the CITY.

c. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

d. Professional Liability Insurance appropriate to the SERVICE PROVIDER'S profession.

8.2 Minimum Amounts of Insurance. SERVICE PROVIDER shall maintain the following insurance limits:

a. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of One Million Dollars ($1,000,000) per accident.

b. Commercial General Liability insurance shall be written with limits no less than One Million Dollars ($1,000,000) each occurrence, Two Million Dollars ($2,000,000) general aggregate.

c. Professional Liability insurance shall be written with limits o less than One Million Dollars ($1,000,000) per claim and One Million Dollars ($1,000,000) policy aggregate limit.

8.3 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 overage shall be primary insurance with respect to the CITY. Any insurance, self-insurance, or insurance pool coverage maintained by the CITY shall be 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.

8.4 Acceptability of Insurers and policies. Insurance is to be placed with insurers with a current A.M. Best rating of not less and A: VII. Unless otherwise agreed by CITY all insurance policies shall be written on an "occurrence" policy and not a "claims-made" policy.

8.5 Verification of Coverage. SERVICE PROVIDER shall furnish the City with original certificates and a copy of the amendatory endorsements including, but not necessarily limited to, the additional insured endorsement, evidencing the insurance requirements of the SERVICE PROVIDER before commencement of the work.

9. 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. The SERVICE PROVIDER may keep one copy of the work product and documents for its records.

10. Compliance with Laws.

10.1 The SERVICE PROVIDER, in the performance of this Agreement, shall comply with all applicable federal, state or local laws and ordinances, including regulations for licensing,

certification and operation of facilities, programs and accreditations, and licensing of individuals, and any other standards or criteria as described in this Agreement to assure quality of services.

10.2 The SERVICE PROVIDER specifically agrees to pay any applicable business and occupation (B&O) taxes that may be due on account of this Agreement.

11. Nondiscrimination.

11.1 The CITY is an equal opportunity employer.

11.2 Nondiscrimination in Employment. In the performance of this Agreement, the SERVICE PROVIDER will not discriminate against any employee or applicant for employment on the grounds of race, creed, color, national origin, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental or physical disability, or the use of a trained dog guide or service animal by a person with a disability; provided that the prohibition against discrimination in employment because of disability, or the use of a trained dog guide or service animal by a person with a disability, shall not apply if the particular disability prevents the proper performance of the particular worker involved. The SERVICE PROVIDER shall ensure that applicants are employed, and that employees are treated during employment without discrimination because of their race, creed, color, national origin, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the present 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.

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

11.4 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.

12. Assignment/subcontracting.

12.1 The SERVICE PROVIDER shall not assign its performance under this Agreement or any portion of this Agreement without the written consent of the CITY, and it is further agreed that said consent must be sought in writing by the SERVICE PROVIDER not less than thirty (30) days prior to the date of any proposed assignment. The CITY reserves the right to reject without cause any such assignment.

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

12.3 Any technical/professional service subcontract not listed in this Agreement, must have express advance approval by the CITY.

13. 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.

14. Maintenance and Inspection of Records.

14.1 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.

14.2 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.

15. Other Provisions.

The following additional terms shall apply: It is agreed between the parties that pursuant to changes in state law necessitating that services hereunder be expanded, the parties shall negotiate an appropriate amendment. If after thirty (30) days of negotiation, agreement cannot be reached, the CITY may terminate this Agreement no sooner than sixty (60) days thereafter.

16. Termination.

16.1 Termination for Convenience. The CITY may terminate this Agreement, in whole or in part, at any time, by giving at least thirty (30) days' written notice to the SERVICE PROVIDER. Upon such termination for convenience, the CITY shall pay the SERVICE PROVIDER for all services provided under this Agreement through the date of termination.

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

16.3 Work Product. In the event of any termination whether for convenience or cause, all work product of the SERVICE PROVIDER, along with a summary of the work to the date of termination shall become the property of CITY.

17. Notice.

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

18. Attorneys Fees and Costs.

If any legal proceeding is brought for the enforcement of this Agreement, or because of a dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover from the other party, in addition to any other relief to which such party may be entitled, reasonable attorney's fees and other costs incurred in that action or proceeding.

19. Jurisdiction and Venue.

19.1 This Agreement has been and shall be construed as having been made and delivered with 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.

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

20. Severability.

20.1 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.

20.2 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.

21. Addenda.

21.1 This Agreement is subject to additional terms as set out in Addenda as follows:

22. 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 provision 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

_____

Scott Dudley, Mayor

Attest:

_____

Valerie Loffler, City Clerk

SERVICE PROVIDER:

_____

Kelly R. Bush
Equinox Research and Consulting
(ERCI)

ERCI
41507 South Skagit Hwy Concrete, WA 98237 Tel.360-826-4930 Fax. 360-826-4830 www.equinoxerci.com

March 25, 2014

John Piccone
City of Oak Harbor Public Works
1400 NE 16th Avenue
Oak Harbor, WA 98277

Re: Initial Field Survey for the Scenic Heights Drainage Project, Oak Harbor, Washington

Dear Mr. Piccone:

Thank you for the considering Equinox Research and Consulting International Inc. (ERCI) for your cultural resource management needs. ERCI provides a full service cultural resource management program and we look forward to providing you timely and professional fieldwork and reporting.

Section 106 of the National Historic Preservation Act (NHPA), SEPA and Executive Order 05-05 requires agencies to consider the effects of their actions on historic properties and to consult with others in carrying out historic preservation activities. The State of Washington also has a series of RCWs and associated WACs concerning cultural resources that we are guided by. In providing cultural resource management services for clients, Equinox Research and Consulting International Inc. (ERCI) works in accordance with all applicable laws and regulations.

We are providing this scope and budget for approximately 20 shovel test holes in the attached APE. We understand that the proposed development is about managing surface water. The data we collect during this field testing will be used as the identification and evaluation phase of the project for cultural resources. Should any cultural material be encountered, we will provide recommendations on how to proceed with regard to cultural resources.

The Scope activities include:

- Carry out shovel testing of approximately 20 shovel test holes.
- Provide a preliminary analysis of the field data
- Provide report to state and federal standards

Assumptions:

- Human remains will not be encountered during the testing program.
- No additional plans or protocols are included in this scope.
- Costs associated will completing an HPIF (historic property inventory form) for any existing buildings is outside this scope.

Qualifications:

- Experience working in Puget Sound and on projects associated with infrastructure projects.
- Principal investigator meets the Secretary of Interior's professional qualification standards for archaeology
- Expertise on prehistoric and historic archaeology of Western Washington

- Experience in Executive Order 05-05 and NHPA Section 106 work and in working with additional state laws related to historic preservation and human remains.
- Positive working relationship with federally recognized Tribes in and adjacent to the project area and experience in tribal consultation.
- Experience in processes that balance competing resource needs
- Strong record of completing work on time within budget

We expect the field work to take 1 day to complete. The report will be available 3 weeks after completion of the field work.

The team at ERCI is comprised of individuals with strong personal research specialties who pride themselves on efficiency, performance and integrity. We provide the highest quality product in a timely fashion. Please check out our web site for additional details www.equinoxerci.com

Thank you for the opportunity to provide excellent heritage planning services for the City of Oak Harbor.

Regards,

Kelly R. Bush
Equinox Research and Consulting International Inc. (ERCI)

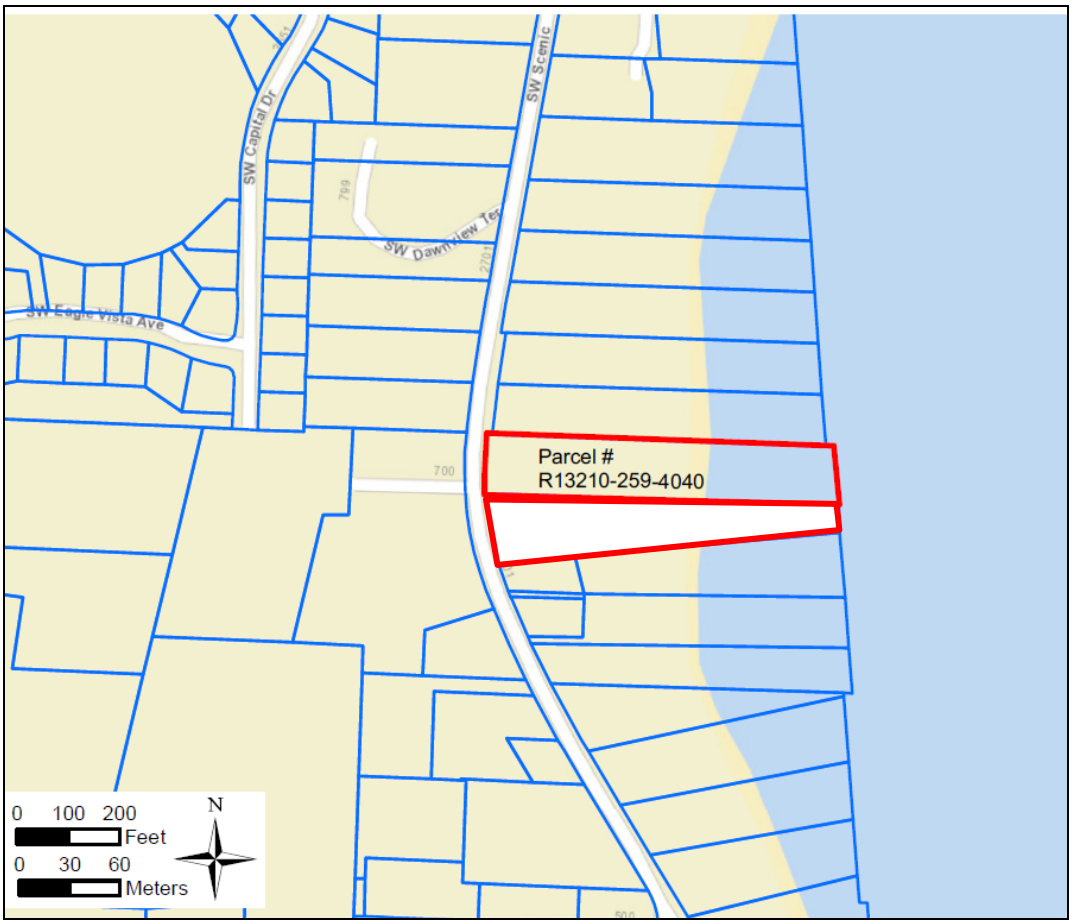

Figure 1: APE

Description	Units	Rate/HR	Sub Total
Project Orientation, meetings and project management	1.00	143.25	143.25
Archival background research	1.00	97.75	97.75
Coordinate with governments of affected Tribes regarding cultural resource issues including the cultural heritage value of sites within the vicinity of the Area of Potential Effect (APE).	1.00	143.25	143.25
Determine eligibility of identified historic properties for listing in the National Register of Historic Places.	2.00	143.75	287.50
Consider the effects of Project alternatives on all cultural resources and provide recommendations about how to avoid, minimize, or mitigate the adverse effect.	4.00	143.75	575.00
Consultation with SHPO and agencies	1.00	143.25	143.25
Document control, transcriptions, site forms	4.00	63.75	255.00
Report editing	2.00	143.25	286.50
Report writing	10.00	97.75	977.50
Report Production	2.00	63.75	127.50
Report printing and postage	0.00	23.00	0.00
Graphics, layout	8.00	97.75	782.00
SUB TOTAL			**3,818.50**
Field Work: Survey, identification and evaluation of historic properties within the APE.			
DESCRIPTION	**Units**	**Rates Daily**	**Sub Total**
Principal Investigator	1.00	143.75	143.75
Senior Archaeologist	8.00	97.75	782.00
Archaeological Field Technician	8.00	74.75	598.00
Archaeological Field Technician	0.00	74.75	0.00
Archaeological Field Technician	0.00	74.75	0.00
Equipment Rental Backhoe and operator	0.00	1,050.00	0.00
Travel (.5 hours R/T per person per day)	1.00	40.00	40.00
Mileage	40.00	0.60	24.00
SUB TOTAL			**1,587.75**
GRAND TOTAL			**5,406.25**

LISZAK DRAINAGE OUTFALL

Planning Level Estimate - Based on Nov. 4, 2013 meeting with Todd Graves, Mayor and Administration

High Density Polyethylene Pipe Slope Drain and Energy Diffuser

Item no	Description	Unit	Quantity	Unit Cost	Total
1	**Mobilization**	LS	1	$3,000	$3,000
2	**Road Crossing including labor and materials from CB to CB***	LS	1	$15,000	$15,000
3	**Inlet Pipe and Apron**	LS	1	$600	$600
4	**Traffic Control**	LS	1	$5,000	$5,000
5	**HDPE Storm Sewer Pipe 18 in. (S.H. Street to Anchor Block)**	LF	320	$107	$34,240
6	Trash Rack 18 in.	EA	1	$500	$500
7	Catch Basin Type 2	EA	1	$4,000	$4,000
8	Catch Basin Type 1	EA	2	$1,750	$3,500
9	Plug Existing Pipes	LS	1	$150	$150
10	Reinforced Concrete Anchor Block	EA	1	$4,500	$4,500
11	Wall Flange	EA	1	$300	$300
12	CDF or Bentonite Pipe Dams	EA	7	$150	$1,050
13	**HDPE Storm Sewer Pipe 18 in. (Anchor Block to bluff edge)**	LF	60	$95	$5,700
14	**HDPE Storm Sewer Pipe 18 in. (Over bluff)**	LF	50	$75	$3,750
15	Elbow	EA	1	$350	$350
16	Mech Joints	EA	2	$1,000	$2,000
17	HDPE Diffuser Tee, 18 in.	EA	1	$3,500	$3,500
18	**Erosion and Water Pollution Control**	EST.	1	$2,000	$2,000
19	**Landscape Restoration**	LS	1	$2,000	$2,000

Total estimated construction cost provided by Todd Graves	$75,000
Tax (8.7%)	$6,525
Contingency (25)%	$18,750
Subtotal for construction	**$100,275**
Archeology	$18,000
Design and permitting (consultant)	$18,000
Geotech Report (sub consultant)	$3,000
Construction Management	$10,000
Survey and Easements (5%)	$6,000
Subtotal for Overhead	**$55,000**
Total Project Costs	**$155,275**

City of Oak Harbor
City Council Agenda Bill

Bill No. C/A 4.e
Date: April 15, 2014
Subject: Scenic Heights Stormwater Outfall – Professional Services Agreement with Davido Consulting for Engineering Services

FROM: Cathy Rosen, Public Works Director
Joe Stowell, City Engineer

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

Scott Dudley, Mayor
Larry Cort, City Administrator
Doug Merriman, Finance Director
Grant Weed, Interim City Attorney, as to form

PURPOSE

The purpose of this agenda bill is to request approval for the Mayor to sign a professional services agreement with the Engineering firm of Davido Consulting Group. The professional services include design engineering, bidding assistance and engineering services during construction for construction of the stormwater outfall on Scenic Heights across the Liszak property.

FISCAL IMPACT DESCRIPTION

Funds Required: $32,300.00
Appropriation Source: Stormwater Fund

SUMMARY STATEMENT

In 2005 the City hired Cane Engineering to investigate stormwater runoff issues at the Liszak property located at 2870 SW Scenic Heights St. The property owner, Ann Liszak, reported erosion to the shoreline bluff area of her property reportedly caused by runoff from a City storm drain system. The report concluded that an increase in runoff has occurred over time. It recommended the City monitor the bluff for erosion and/or modify the upland drainage facility. Mrs. Liszak has continued to report erosion issues since that time.

The proposed project consists of extending the current outfall near Scenic Heights across the Liszak property and over the bluff to a diffuser near the shore below. Davido Consulting has significant experience designing this type of outfall on several Island County projects aimed at reducing erosion in similar cases.

Total project costs based on the attached planning level estimate are expected to be $155,275.00

The proposed scope of services includes:

- Permitting assistance
- Project surveying for an easement
- Geotechnical Engineering
- Stormwater system design
- Preparation of construction documents ready for bidding
- Preparation of construction cost estimates
- Assistance during bidding and construction administration

Schedule:
The schedule is highly dependent upon the permitting process and regulatory agency review time and requirements.

- Design services are planned to begin in April, 2014 and concluded by fall 2014,
- Permitting assistance is planned to begin in April, 2014 and concluded by fall 2014,
- Construction period services are anticipated between fall 2014 and spring 2015.

WORKSHOPS
The Professional Services Agreement with Davido Consulting has not been presented at a City Council Workshop

RECOMMENDED ACTION
A motion authorizing execution of a Professional Services Agreement with Davido Consulting for the scope of services described herein in for a not to exceed amount of $29,364.00. Additionally, a motion authorizing a management reserve of $2936.00 (10%) to allow the City Engineer the ability to authorize minor contract changes should they occur.

ATTACHMENTS

- Professional Services Agreement
- Consultants Scope of Services
- Planning Level Project Cost Estimate

CONSULTANT/PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, is made and entered into in duplicate this 4/16/2014, and between the CITY OF OAK HARBOR, a Washington municipal corporation, hereinafter referred to as the "CITY" and Davido Consulting Group, Inc. hereinafter referred to as the "SERVICE PROVIDER".

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

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

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

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

1. Scope of Services.

   The SERVICE PROVIDER shall perform such services and accomplish such tasks, including the furnishing of all materials and equipment necessary for full performance thereof, as are identified and designated as SERVICE PROVIDER responsibilities throughout this Agreement and as detailed in Exhibit "A" attached hereto and incorporated herein (the "Project").

2. Term.

   The Project shall begin on 4/16/2014, and shall be completed no later than 8/31/2015 unless sooner terminated according to the provisions herein.

3. Compensation and Method of Payment.

   3.1 Payment 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: In accordance with Davido Consulting Group fee proposal dated March 31, 2014.

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. As required by CITY, SERVICE PROVIDER will cooperate to respond to public record requests under the laws of the State of Washington.

4.3 The SERVICE PROVIDER shall keep in strict confidence, and will not disclose, communicate or advertise to third parties, without the express written consent of CITY the confidences of CITY or any information regarding the CITY or services provided to the CITY under this Agreement.

5. Independent Contractor Relationship.

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

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

6. Service Provider Employees/agents.

The CITY may at its sole discretion require the SERVICE PROVIDER to remove an employee(s), agent(s) or servant(s) from employment on this Project. The SERVICE PROVIDER may, however, employ that (those) individual(s) on other non-CITY related projects.

7. Hold Harmless/Indemnification.

7.1 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 of or resulting from the acts, errors or omissions of the Consultant in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

7.2 For purposes of this indemnification and hold harmless agreement, the Contractor 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.

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

8. 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.

8.1 Minimum Scope of Insurance. SERVICE PROVIDER shall obtain insurance of the types described below:

a. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

b. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The CITY shall be named as an insured under the SERVICE PROVIDER'S Commercial General Liability insurance policy with respect to the work performed for the CITY.

c. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

d. Professional Liability Insurance appropriate to the SERVICE PROVIDER'S profession.

8.2 Minimum Amounts of Insurance. SERVICE PROVIDER shall maintain the following insurance limits:

a. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of One Million Dollars ($1,000,000) per accident.

b. Commercial General Liability insurance shall be written with limits no less than One Million Dollars ($1,000,000) each occurrence, Two Million Dollars ($2,000,000) general aggregate.

c. 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.

8.3 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 overage shall be primary insurance with respect to the CITY. Any insurance, self-insurance, or insurance pool coverage maintained by the CITY shall be 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.

8.4 Acceptability of Insurers and policies. Insurance is to be placed with insurers with a current A.M. Best rating of not less and A: VII. Unless otherwise agreed by CITY all insurance policies shall be written on an "occurrence" policy and not a "claims-made" policy.

8.5 Verification of Coverage. SERVICE PROVIDER shall furnish the City with original certificates and a copy of the amendatory endorsements including, but not necessarily limited to, the additional insured endorsement, evidencing the insurance requirements of the SERVICE PROVIDER before commencement of the work.

9. 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. The SERVICE PROVIDER may keep one copy of the work product and documents for its records.

10. Compliance with Laws.

10.1 The SERVICE PROVIDER, in the performance of this Agreement, shall comply with all applicable federal, state or local laws and ordinances, including regulations for licensing,

certification and operation of facilities, programs and accreditations, and licensing of individuals, and any other standards or criteria as described in this Agreement to assure quality of services.

10.2 The SERVICE PROVIDER specifically agrees to pay any applicable business and occupation (B&O) taxes that may be due on account of this Agreement.

11. Nondiscrimination.

11.1 The CITY is an equal opportunity employer.

11.2 Nondiscrimination in Employment. In the performance of this Agreement, the SERVICE PROVIDER will not discriminate against any employee or applicant for employment on the grounds of race, creed, color, national origin, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental or physical disability, or the use of a trained dog guide or service animal by a person with a disability; provided that the prohibition against discrimination in employment because of disability, or the use of a trained dog guide or service animal by a person with a disability, shall not apply if the particular disability prevents the proper performance of the particular worker involved. The SERVICE PROVIDER shall ensure that applicants are employed, and that employees are treated during employment without discrimination because of their race, creed, color, national origin, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the present 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.

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

11.4 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.

12. Assignment/subcontracting.

12.1 The SERVICE PROVIDER shall not assign its performance under this Agreement or any portion of this Agreement without the written consent of the CITY, and it is further agreed that said consent must be sought in writing by the SERVICE PROVIDER not less than thirty (30) days prior to the date of any proposed assignment. The CITY reserves the right to reject without cause any such assignment.

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

12.3 Any technical/professional service subcontract not listed in this Agreement, must have express advance approval by the CITY.

13. 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.

14. Maintenance and Inspection of Records.

14.1 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.

14.2 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.

15. Other Provisions.

The following additional terms shall apply: It is agreed between the parties that pursuant to changes in state law necessitating that services hereunder be expanded, the parties shall negotiate an appropriate amendment. If after thirty (30) days of negotiation, agreement cannot be reached, the CITY may terminate this Agreement no sooner than sixty (60) days thereafter.

16. Termination.

16.1 Termination for Convenience. The CITY may terminate this Agreement, in whole or in part, at any time, by giving at least thirty (30) days' written notice to the SERVICE PROVIDER. Upon such termination for convenience, the CITY shall pay the SERVICE PROVIDER for all services provided under this Agreement through the date of termination.

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

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

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If any legal proceeding is brought for the enforcement of this Agreement, or because of a dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover from the other party, in addition to any other relief to which such party may be entitled, reasonable attorney's fees and other costs incurred in that action or proceeding.

19. Jurisdiction and Venue.

19.1 This Agreement has been and shall be construed as having been made and delivered with 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.

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

20. Severability.

20.1 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.

20.2 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.

21. Addenda.

21.1 This Agreement is subject to additional terms as set out in Addenda as follows: Not Applicable.

22. 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 provision 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

_____
Scott Dudley, Mayor

Attest:

_____
Valerie Loffler, City Clerk

SERVICE PROVIDER:

DAVIDO CONSULTING GROUP, INC.
P.O. Box 1132
Freeland, WA 98249

Quin Clements
Quin Clements, Principal/Vice-President

Davido Consulting Group
civil | structural | land use

March 31, 2014

John Piccone
City of Oak Harbor Public Works – Engineering Div.
865 SE Barrington Drive
Oak Harbor, WA 98277

Re: Scenic Heights Drainage Project

Davido Consulting Group, Inc. (DCG) is pleased to submit a proposal for the project noted above. In this proposal, we have summarized the project description and DCG's scope of work, deliverables, assumptions, schedule, payment method and insurance.

Project Description

The proposed project involves permitting preparation, engineering design, and construction support for the installation of a stormwater drainage conveyance and outfall system off of SW Scenic Heights Street, just south of SW 29th Place in Oak Harbor, WA. The proposed system will extend from SW Scenic Heights Street, across portions of Parcel R13210-259-4040 and R13210-248-4030, down to Oak Harbor Bay.

Scope of Work

Engineering services will be provided as outlined in the following tasks:

Task 1 – Project Management/Admin

DCG has set aside time for Client and archaeological correspondence, team meetings and general project management.

Task 2 – Project Permitting Assistance

DCG will work with the Client to prepare all necessary shoreline, critical areas, grading, and work in the Right-of-Way related permit documents and will submit completed permits to the Client. The Client will review and submit the completed permits to the appropriate agencies to conclude the permitting assistance task.

Task 3 – Project Surveying

Project surveying services will be provided by Frazier Surveying, LLC. Services will include completion of necessary survey control work, deed research, and verification of existing boundaries and topography, as shown on the preliminary topographic map previously prepared by others. Deliverables will include 1 (one) proposed drainage easement land description with recordable sketch.

Task 4 – Geotechnical Engineering

Geotechnical engineering services will be provided by GeoEngineers, Inc. Services will include review of City of Oak Harbor Critical Areas Ordinance, review of available area geologic maps, and evaluation of site conditions/slope stability and anchor block location and design parameters. Deliverables will include a letter report describing site geologic characteristics, conclusions regarding slope stability, and potential impacts of the proposed stormwater improvements on slope stability and geotechnical conclusions and recommendations.

Task 5 – Stormwater System Design
DCG will prepare a basin delineation to determine the contributing area sizing and characteristics. Based on this, DCG will complete hydrologic/hydraulic modeling and will prepare a design memorandum to outline design parameters and facility sizing requirements.

Task 6 – Civil Plan Preparation
DCG will prepare TESC, clearing, grading, and drainage plans to meet City of Oak Harbor design standards. Deliverables will include a 60% and 90% plan set for review followed by a 100% construction plan set. In addition, DCG will complete project specifications, including integrating any archaeological requirements, and will prepare a bid manual for project bidding.

Task 7 – Construction Cost Estimate
Following construction plan completion, DCG will prepare a construction cost estimate for project budgeting and for use during the bidding process.

Task 8 – Project Bid Phase
DCG has budgeted time to assist the City during project bidding. Bid phase services will include assistance with resolving contractor's questions and assistance with Addendum preparation as needed.

Task 9 – Construction Phase Assistance
Following project award, DCG will provide construction support to ensure drainage system construction is completed per plan, permit and City of Oak Harbor standards. Upon construction completion, DCG will assist with the completion of an as-built plan set for City of Oak Harbor records.

Deliverables
DCG will provide the following deliverables:

Description	Copies	Description/Format/Size
Project Permit Documents	As Necessary	Permit Agency
Storm Drainage Design Memorandum	As Necessary	8-1/2"x11" report format (Word)
TESC, Clearing, Grading, Drainage & Outfall Plan	As Necessary	22"x34" AutoCAD format on Bond
Construction Cost Estimate	As Necessary	8-1/2"x11" Excel spreadsheet
Project Bid Manual	As Necessary	8-1/2"x11" City of Oak Harbor format
Project Specifications	As Necessary	8-1/2"x11" WSDOT format
Project Bid Tabulation	As Necessary	8-1/2"x11" Excel spreadsheet
Record Drawings	As Necessary	22"x34" AutoCAD format on Bond

Assumptions
This proposal assumes the following:

1. All pertinent site information/reports will be provided to DCG upon request.
2. An electronic version of the site survey in AutoCAD format will be provided upon request.
3. All project related permit/review fees will be paid by the Client.
4. An estimate has been provided for surveying services. The cost of construction staking services may be added by the Client; however, it is not included in this current scope.
5. Any additional services required and approved by the Client will be billed at the hourly rates specified in the Engineering Services Estimate. No additional work will be completed without prior Client approval.

Schedule
DCG will begin work immediately following notice to proceed. A specific project schedule will be developed with the Client following formal City of Oak Harbor project approval.

Payment of Fees

The cost of work shall be on a time and expense basis per Attachment A, our engineering services estimate spreadsheet. In summary, our labor fees and expenses are calculated at a maximum of Twenty Nine Thousand Three Hundred and Sixty Four Dollars ($29,364.00) including estimates for outside surveying and geotechnical consulting services.

Insurance

DCG agrees that it now carries, and will continue to carry during the performance of this Contract, the applicable insurance policies indicated below with limits not less than those specified. Any insurance on a "claims made" basis shall be maintained for at least one year after completion of the Work.

(1) General Liability	**$1,000,000 per occurrence**	**(2) Automobile Liability**	**$1,000,000 per occurrence**
	$2,000,000 general aggregate	**(3) Professional Liability**	**$1,000,000 per occurrence**

Conclusion

We appreciate the opportunity and look forward to working with you towards the successful completion of the project. Please do not hesitate to contact us if you have any questions.

Sincerely,
Davido Consulting Group, Inc.

Quin Clements, P.E.
Principal/Vice-President

DAVIDO CONSULTING GROUP, INC.
PROFESSIONAL ENGINEERING SERVICES ESTIMATE - Civil Engineering Services

Project: Scenic Heights Drainage Project
Client: City of Oak Harbor
DCG PM: Quin Clements

TASK NO.	TASK DESCRIPTION	Notes	LABOR CATEGORIES: PRINCIPAL ENGINEER	ENGINEER CIVIL III	ENGINEER CAD/TECH III	GEOTECH ENGINEER	PROJECT SURVEYOR	TOTAL HOURS	TOTAL FOR EACH TASK
1	Project Management/Admin		8	6				14	$1,984.00
2	Project Permitting Assistance	1							
2a	Prepare City Shoreline Substantial Development, Critical Area, & SEPA Checklist		2	12				14	$1,714.00
2b	Prepare City Grading Permit		1	2				3	$393.00
2c	Prepare City/County Right of Way Permit		1	2				3	$393.00
2d	Prepare WA State Dept. of Fish & Wildlife Hydraulic Project Approval		2	4				6	$786.00
3	Surveying	2							
3a	Coordinate and Prepare Utility Easement Legal Descriptions	3	2	4			$ 2,900.00	6	$3,686.00
4	Geotechnical Engineering	4							
4a	Prepare Geotechnical Engineering Report		2	2		$ 3,500.00		4	$4,054.00
5	Stormwater System Design								
5a	Prepare Basin Delineation		1	2	4			7	$865.00
5b	Prepare Hydrologic/Hydraulic Model - Stormwater System Design		1	8	2			11	$1,325.00
5c	Prepare Project Storm Drainage Design Memorandum		1	8				9	$1,089.00
6	Civil Plan Preparation								
6a	Prepare Temporary Erosion & Sediment Control Plan			1	2			3	$352.00
6b	Prepare 60% Drainage & Outfall Plan Set		2	10	8			20	$2,426.00
6c	Prepare 90% Drainage & Outfall Plan Set		1	2	6			9	$1,101.00
6d	Prepare Final Construction Plan Set		1	2	2			5	$629.00
6e	Prepare Project Specifications/Bid Manual		8	20				28	$3,608.00
7	Construction Cost Estimate								
7a	Prepare Construction Cost Estimate		2	8	2			12	$1,486.00
8	Project Bid Phase								
8a	Provide Project Bid Phase Assistance		2	4				6	$786.00
9	Construction Phase Assistance								
9a	Provide Construction Phase Assistance		4	8				12	$1,572.00
9b	Prepare Record Drawings		1	2	4			7	$865.00
	TOTAL ESTIMATED HOURS BY LABOR CATEGORY		42	107	30	LS	LS	179	$29,114.00
	HOURLY RATE		$161.00	$116.00	$118.00	LS	LS		
	TOTAL ESTIMATED CHARGES BY LABOR CATEGORY		$6,762.00	$12,412.00	$3,540.00	$3,500.00	$2,900.00		

Notes:
1. All permits will be deliviered to the City of Oak Harbor Engineering Division for submittal to the appropriate permit agency.
2. A electronic copy of the site topographic survey will be provided for use in the preparation of the site civil plans.
3. Surveying services will include preparation of all required utility easement legal descriptions which will be delivered to City for final easement document preparation.
4. Anchor block design & setback recommendations will be provided by project geotechnical engineer.

Expenses (reproduction, plots, etc.): Cost + 10%
Mileage: $0.565 per mile

ESTIMATED TOTAL LABOR: $29,114.00

ESTIMATED EXPENSES & MILEAGE: $250.00

ESTIMATED TOTAL FEES & EXPENSES: $29,364.00

LISZAK DRAINAGE OUTFALL

Planning Level Estimate - Based on Nov. 4, 2013 meeting with Todd Graves, Mayor and Administration

High Density Polyethylene Pipe Slope Drain and Energy Diffuser

Item no	Description	Unit	Quantity	Unit Cost	Total
1	**Mobilization**	LS	1	$3,000	$3,000
2	**Road Crossing including labor and materials from CB to CB***	LS	1	$15,000	$15,000
3	**Inlet Pipe and Apron**	LS	1	$600	$600
4	**Traffic Control**	LS	1	$5,000	$5,000
5	**HDPE Storm Sewer Pipe 18 in. (S.H. Street to Anchor Block)**	LF	320	$107	$34,240
6	Trash Rack 18 in.	EA	1	$500	$500
7	Catch Basin Type 2	EA	1	$4,000	$4,000
8	Catch Basin Type 1	EA	2	$1,750	$3,500
9	Plug Existing Pipes	LS	1	$150	$150
10	Reinforced Concrete Anchor Block	EA	1	$4,500	$4,500
11	Wall Flange	EA	1	$300	$300
12	CDF or Bentonite Pipe Dams	EA	7	$150	$1,050
13	**HDPE Storm Sewer Pipe 18 in. (Anchor Block to bluff edge)**	LF	60	$95	$5,700
14	**HDPE Storm Sewer Pipe 18 in. (Over bluff)**	LF	50	$75	$3,750
15	Elbow	EA	1	$350	$350
16	Mech Joints	EA	2	$1,000	$2,000
17	HDPE Diffuser Tee, 18 in.	EA	1	$3,500	$3,500
18	**Erosion and Water Pollution Control**	EST.	1	$2,000	$2,000
19	**Landscape Restoration**	LS	1	$2,000	$2,000

Total estimated construction cost provided by Todd Graves	$75,000
Tax (8.7%)	$6,525
Contingency (25)%	$18,750
Subtotal for construction	**$100,275**
Archeology	$18,000
Design and permitting (consultant)	$18,000
Geotech Report (sub consultant)	$3,000
Construction Management	$10,000
Survey and Easements (5%)	$6,000
Subtotal for Overhead	**$55,000**
Total Project Costs	**$155,275**

City of Oak Harbor
City Council Agenda Bill

Bill No. C/A 4.f
Date: April 15, 2014
Subject: Approval of Inter local with OHSD

FROM: Edgar J. Green, Chief of Police

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

____Scott Dudley, Mayor
____Larry Cort, City Administrator
____Doug Merriman, Finance Director
____Grant Weed, Interim City Attorney, as to form

PURPOSE

The Oak Harbor Police Department participates with the Oak Harbor School District providing a School Resource Officer for it various campuses. This Interlocal Agreement formalizes that relationship, protecting each of the entities exposure to liability and establishes requirements and expectations on behalf of both parties.

FISCAL IMPACT DESCRIPTION

The position is in the existing 2013-2014 budgets; will again be budgeted for in 2015-2016 budgets.

SUMMARY STATEMENT

The School Resource Officer is an invaluable tool. There is no other officer in the police department that is responsible for such a large segment of the population on any given day. The benefits we receive from an officer being assigned to the schools district to work with 5,600 students; 650 employees; and 9 campuses are immeasurable.

Inclusive in this agreement are stipulations that the Oak Harbor School District pay for the training/conferences a School Resource Officer should attend; 1) Basic School Resource Officer Training; 2) Washington State School Resource Officer Conference; 3) National School Resource Officer Conference

RECOMMENDED ACTION

It is staff's recommendation that the council approve Mayor Dudley to sign the Inter Local Agreement with the Oak Harbor School District allowing the Oak Harbor Police Department to continue this program.

ATTACHMENTS

Copy of Inter-Local Agreement

OAK HARBOR SCHOOL DISTRICT No. 201

Dr. Lance Gibbon, Superintendent

"A Caring Community Educating Every Student for Success"

March 13, 2014

City of Oak Harbor
Office of the Mayor
865 SE Barrington Drive
Oak Harbor WA 98277

Re: SRO Interlocal Agreement

To Whom It May Concern:

Please find enclosed the City of Oak Harbor Oak Harbor School District School Resource Officer Program Interlocal Agreement. Would you please obtain the necessary signatures and return a signed-around copy to me? An additional three copies have been included for your convenience.

Thank you for your assistance in this matter.

Sincerely,

Eva M. Nienhuis
Executive Assistant
Office of the Assistant Superintendent

Enc/en

350 S. Oak Harbor St., Oak Harbor WA 98277 ph: 360.279.5000 fax: 360.279.5070

www.ohsd.net

CITY OF OAK HARBOR
OAK HARBOR SCHOOL DISTRICT
SCHOOL RESOURCE OFFICER PROGRAM
INTERLOCAL AGREEMENT

This Interlocal Agreement (hereinafter "ILA") is made and entered into by and between Oak Harbor School District #201 (hereinafter "OHSD") and the City of Oak Harbor Police Department (hereinafter "OHPD/CITY"). Nothing in this ILA should be construed as limiting or impeding the basic spirit of cooperation, which exists between the participating entities, listed above.

I. Purpose of Interlocal Agreement

The ILA formalizes the relationship between the participating entities in order to foster an efficient and cohesive program that will build a positive relationship between law enforcement officer and the youth of our community, with the goal of reducing crime committed by juveniles and young adults. This ILA delineates the mission, organizational structure, and procedures of the School Resource Officer Program (hereinafter the "SRO Program") as a joint cooperative effort between OHSD and OHPD/CITY. The success of this program relies upon the effective communication between providing agency's employees, the principal of each individual, OHSD, school, and other key staff members of each organization.

II. Duration of Agreement

The term of this ILA shall be effective immediately upon approval by both parties and shall be for a duration of three (3) years unless terminated earlier as provided herein. The parties may renew this ILA only by separate written agreement or addendum hereto, which must be executed by both parties.

III. Mission, Goals and Objectives

The mission of the SRO Program is the reduction and prevention of school-related violence and crime committed by juveniles and young adults. The SRO Program aims to create and maintain safe, secure and orderly learning environments for students, teachers and staff. This is accomplished by assigning Law Enforcement Officers employed by the City to OHSD school facilities.

Goals and objectives are designed to develop and enhance rapport between youth, police officers, school administrators and parents. Goals of the SRO Program include but are not limited to:

1. Reduce incidents of school violence;
2. Reduction of criminal offenses committed by juveniles and young adults;
3. Establish a rapport between the SRO's and the student population;
4. Establish rapport between the SRO's and parents, faculty, staff, and administrators
5. Work with all of the schools within the school district with an emphasis on Oak Harbor High School; North Whidbey Middle School and Oak Harbor Middle School.

Moreover, SRO's will establish a trusting channel of communication with students, parents and teachers. SRO's will serve as a positive role model to instill in students good moral standards, good judgment and discretion, respect for other students, and a sincere concern for the school community. SRO's will promote citizen awareness of the law to enable students to become better-informed and effective citizens, while empowering students with the knowledge of law enforcement efforts and obligations regarding enforcement as well as consequences for violations of the law. SRO's can serve as a source of counseling for students and parents concerning problems they face as well as providing information on community resources available to them.

IV. Organizational Structure

A. Composition

OHPD/CITY will assign one full time law enforcement officer to serve as SRO in the program. The SRO will be a certified police officer in the State of Washington and will meet all requirements as set forth' by the Washington State Criminal Justice Training Commission.

No separate legal entity is created by this Agreement. The administrators of this Agreement, for purposes of RCW 39.34.030(4) (a), shall be the Superintendent of OHSD and the Chief of Police.

No real or personal property is expected to be jointly acquired for purposes of administering this Agreement. If OHPD/CITY or OHSD acquires items for use by the SRO in the performance of his or her duties, the agency that purchased or acquired the property shall retain ownership upon termination of this Agreement.

B. Supervision

The day-to-day operation and administrative control of the SRO Program will be the responsibility of the OHPD/CITY. Responsibility for the conduct of SRO's, both personally and professionally, shall remain with the OHPD/CITY. SRO's are employed and retained by the City and in no event shall any employee of the City be considered an employee of OHSD.

As required by RCW 28A.400.330, OHPD/CITY will prohibit any employee of OHPD/CITY from working at OHSD who has contact with children during the course of his or her employment and who has pled guilty to or been convicted of any felony crime specified under RCW 28A.400.322. Any failure to comply with this section shall be grounds for the school district immediately terminating the contract. Any OHPD/CITY employee who may have unsupervised access to students under this Agreement will have been subject to a criminal records background check that meets or exceeds the requirements of RCW 28A.400.303.

V. Procedures

A. Selection

SRO positions will be filled at the direction of the OHPD/CITY. OHPD/CITY shall allow OHSD the Superintendent (or their designee) to be involved in the interview process. OHPD/CITY will take input and consideration from OHSD during the selection process but OHPD/CITY reserves the right to make the final selection of any SRO vacancies.

B. SRO Program Structure

The SRO Program shall utilize the SRO Triad concept as set forth by NASRO (National Association of School Resource Officers); "*The triad concept divides the SRO's responsibilities into three areas: Teacher, Counselor, and Law Enforcement Officer*".

Under this framework, SRO's are first and foremost law enforcement officers for OHPD/CITY. As such SRO's shall be armed and shall be responsible for carrying out all duties and responsibilities of a law enforcement officer and shall remain at all times under the control, through the chain of command, of OHPD/CITY. School officials should ensure that non-criminal student disciplinary matters remain the responsibility of school staff and not the SRO. Enforcement of the code of student conduct is the responsibility of teachers and administrators. The SRO shall refrain from being involved in the enforcement of disciplinary rules that do not constitute violations of law, except to support staff in maintaining a safe school environment. SRO's are not formal counselors or educators, and will not act as such. However, SRO's may be used as a resource to assist students, faculty, staff, and all persons involved with the school. SRO's can be utilized to assist in instructing students and staff on a variety of subjects, ranging from alcohol and drug education to formalized academic classes. SRO's may use these opportunities to build rapport between the students and the staff. OHPD/CITY recognizes, however, that OHSD shall maintain full, final, and plenary authority over curriculum and instruction in the OHSD, including the instruction of individual students. OHPD/CITY and OHSD recognize and agree that classroom instruction is the responsibility of the classroom teacher, not OHPD/CITY or its employees, and OHPD/CITY and its employees shall not attempt to control, influence, or interfere with any aspect of the school curriculum or classroom instruction except in emergency situations.

C. Duties and Responsibilities

The responsibilities of the SRO will include but not be limited to:

1. Enforce criminal law and protect the students, staff, and public at large against criminal activity. The SRO shall follow the chain of command as set forth in the policies and procedures manual of OHPD/CITY. The SRO shall notify school

authorities and the parents of any child involved as quickly as possible when the SRO takes any direct law enforcement action involving a student, on-campus or off-campus, during school hours.

2. Complete reports and investigate crimes committed on campus.

3. Coordinate, whenever practical, investigative procedures between law enforcement and school administrators. The SRO shall abide by all applicable legal requirements concerning interviews or searches should it become necessary to conduct formal law enforcement interviews or searches with students or staff on property or at school functions under the jurisdiction of the OHSD. The SRO will not be involved in searches conducted by school personnel unless a criminal act is involved or unless school personnel require the assistance of the SRO because of exigent circumstances, such as the need for safety or to prevent flight. Formal investigations and arrests by law enforcement officials will be conducted in accordance with applicable legal requirements.

4. Take appropriate enforcement action on criminal matters as necessary. The SRO shall, whenever practical advise the principal or vice principal before requesting additional enforcement assistance on campus and inform the principal or vice principal of any additional law enforcement responsibilities that may need to be undertaken.

5. Wear an issued OHPD/CITY uniform at all times or other apparel approved by OHPD/CITY.

6. Confer with the principal or vice principal to develop plans and strategies to address and/or minimize dangerous situations on or near the campus or involving students at school-related activities.

7. Comply with all laws, regulations, and school board policies applicable to employees of OHSD, including but not limited to laws, regulations and policies regarding access to confidential student records and/or the detention, investigation, and searching of students on school premises. OHSD shall provide the OHPD/CITY and all SRO's copies of all relevant regulations and school board policies necessary to fulfill this obligation. Provided, that SRO's shall under no circumstances be required or expected to act or in a manner inconsistent with their duties as law enforcement officers. The use of confidential school records by the SRO shall be done only with the principal's approval and as allowed under the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. §1232g. Any information protected by FERPA that may be disclosed to the SRO in the course of this Agreement will not be re-disclosed except as allowed by FERPA or other applicable laws. The parties further intend that any records maintained solely by the SRO for law enforcement purposes shall be considered records of a "law enforcement unit" for the School District and not student records for purposes of 34 C.F.R § 99.8.

8. When feasible the SRO shall notify the school principal or his/her designee if it is necessary for the SRO to be off campus during regular school hours non-emergency situations.

9. When feasible the SRO shall notify the school principal or his/her designee if it is necessary for the SRO to be off campus because of vacation, training, or due to illness.

10. Provide information concerning questions about law enforcement topics to students and staff.

11. Develop expertise in presenting various subjects, particularly in meeting federal and state mandates in drug abuse prevention education, and provide these presentations at the request of the school personnel in accordance with the established curriculum.

12. Prepare lesson plans necessary for approved classroom instruction as it relates to the position of SRO.

13. Provide supervised classroom instruction on a variety of law related education and other topics deemed appropriate and approved by the SRO's OHPD/CITY supervisor and school administrator.

14. Provide advice to students, staff, and faculty on a limited basis as it relates to law enforcement matters.

15. Attend school special events as needed and/or set by agency.

16. Attend law enforcement agency in-service training as required.

17. Attend OHSD in-service training as required (and paid for) by OHSD.

18. Attend meetings of parent and faculty groups as required by OHSD to solicit their support and understanding of the school resource program and to promote awareness of law enforcement functions.

19. Be familiar with all community agencies which offer assistance to youths and their families such as mental health clinics, drug treatment centers, etc., and may make referrals when appropriate. Responsibilities of the SRO supervisor will include but will not be limited to:

    a. Coordinate work assignments of the SRO's between various campuses.
    b. Ensure SRO compliance with OHPD/CITY directives.
    c. Coordinate scheduling and work hours of the SRO's (Vacation requests, sick leave, etc.).

D. OHSD Obligations

OHSD shall provide the SRO of each campus the following materials, facilities, and access, which are deemed necessary to the performance of the SRO's duties:

a. Private office space that can be secured and is acceptable to OHPD/CITY standards as they pertain to records confidentiality. The office shall contain a telephone, desk, chair, computer and a filing cabinet.

b. Reasonable opportunity to address students, teachers, school administrators, and parents about the SRO program, goals and objectives. OHSD Administrators shall seek input from the SRO's regarding criminal justice problems relating to students and site security issues.

c. OHSD shall pay for all in service SRO Training as it relates specifically to SRO duties. These training shall include, and additional trainings if approved by OHSD:

   Basic School Resource Officer Training
   Washington State School Resource Officer Conference
   National School Resource Officer Conference

E. Enforcement

Although SRO's have been placed in a formal educational environment, they are not relieved of the official duties as a law enforcement officer. The SRO shall intervene when it is necessary to address any criminal act or maintain a safe school environment.

OHPD/CITY, in its sole discretion, will reserve the right to temporarily remove the SRO from responsibilities under this Agreement in the event that additional officers are needed during a critical incident, emergency or natural disaster. In return OHPD/CITY recognizes that it will make every effort to return the SRO to their respective position once the critical incident, emergency or natural disaster has subsided.

VI. Termination

This Agreement may be terminated by either party, with or without cause, with thirty (30) day's written notice to the other party.

VII. Hold Harmless/Indemnification

OHSD shall defend, indemnify and hold harmless the City of Oak Harbor, OHPD/CITY, its officers, officials, employees and volunteers 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 OHPD/CITY in performance of this agreement, except for injuries and damages caused by the sole negligence of the City of Oak Harbor,

OHPD/CITY, its officers, officials, employees and volunteers. No liability shall attach to OHSD by reason of entering into this Contract except as expressly provided herein.

OHPD/CITY shall defend, indemnify and hold harmless OHSD, its officers, officials, employees and volunteers 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 OHSD in performance of this agreement, except for injuries and damages caused by the sole negligence of OHSD, its officers, officials, employees and volunteers. No liability shall attach to OHPD/CITY by reason of entering into this agreement except as expressly provided herein.

VIII. Survival

Upon the expiration or termination of this Agreement, the obligations of the City and OHSD to each other shall come to an end, except the provisions of Section VII: Hold Harmless and indemnification. They will be applicable to any event / incident that had taken place during the term of the Agreement and once each party has fulfilled their obligations this Agreement and all the obligations of each party will terminate.

IX. Notice

Any notice, consent or other communication in connection with this Agreement shall be in writing and may be delivered in person, by mail or by facsimile transmission (provided sender confirms notice by written copy). If hand-delivered, the notice shall be effective upon delivery. If by facsimile copy, the notice shall be effective when sent. If served by mail, the notice shall be effective three (3) business days after being deposited in the United States Postal Service by certified mail, return receipt requested, addressed appropriately to the intended recipient as follows:

City of Oak Harbor Police Department
c/o: Edgar J. Green, Chief of Police
860 SE Barrington Dr
Oak Harbor, WA 98277

Oak Harbor School District #201
c/o: Lance Gibbon, PhD Superintendent
350 South Oak Harbor Street
Oak Harbor, WA 98277

X. Notice of Non-discrimination

Both the OHSD and the City attest that they do not discriminate on the basis of race, color, religion (creed), gender, gender expression, age, national origin (ancestry), disability, marital status, sexual orientation, or military status, in any of its activities or operations. These activities include, but are not limited to, hiring and firing of staff, selection of volunteers and vendors, and provision of services. Both parties agree they

are committed to providing an inclusive and welcoming environment for all members of their respective students, staff, clients, volunteers, subcontractors, vendors, and patrons.

XI. Entire Agreement

This document comprises the entire agreement between parties and supersedes any provision not contained herein. This agreement may not be modified or amended in any manner except by a written document signed by the party against whom such modification is sought to be enforced. It witness whereof, the parties have executed this agreement

XII. Severability

The invalidity or unenforceability of any provisions of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.

XIII. Filing

Pursuant to RCW 39.34.040 upon the execution of this agreement by both Parties, the City shall file a copy of the executed agreement with the Island County Auditor or in the alternative this agreement may be listed by subject on the City web site or other electronically retrievable public source.

APPROVED:

OAK HARBOR SCHOOL DISTRICT

Superintendent	3-10-14 Date
President, Board of Directors	3-10-14 Date

CITY OF OAK HARBOR

Scott Dudley, Mayor City of Oak Harbor	Date

Approved as to form:

Grant Weed, Interim City Attorney	Date

Accepted for City of Oak Harbor

~~Valerie Loffler~~, City Clerk Anna Thompson	Date

City of Oak Harbor
City Council Agenda Bill

Bill No. 6.a
Date: April 15, 2014
Subject: Authorization to sell Vessel with ID WN7353NH and the contents of Shed 4-02

FROM: Steve Powers, Director of Development Services
Chris Sublet, Harbormaster

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

Scott Dudley, Mayor
Larry Cort, City Administrator
Doug Merriman, Finance Director
Grant Weed, Interim City Attorney, as to form

PURPOSE

This agenda bill requests City Council approval of a resolution authorizing the sale of a vessel and the contents of a storage shed in order to collect unpaid moorage and shed rental charges.

SUMMARY STATEMENT

RCW 53.08.320 and Oak Harbor Municipal Code Section 6.36.040 authorize the City to secure vessels for non-payment of charges. Following proper notice to the owner, 90 additional days without payment and subsequent City Council action, the Marina is authorized to conduct a sale of the vessel to recover its costs.

RCW 19.150 authorizes the City to secure storage sheds for non-payment of charges. Following proper notice to the owner, 14 additional days without payment and subsequent City Council action, the Marina is authorized to conduct a sale of the storage shed contents to recover its costs.

The owners of the vessel (James Mathis) and storage shed contents (Carl Lord) have not made any moorage or rental payments since being sent proper notice and the accounts are delinquent. The owners have been notified of the delinquent account status via letters. As a result of this non-payment, this vessel and storage shed have been secured by the Marina as provided for by OHMC 6.36.040(1) and RCW 19.150.060. The owners were notified by registered mail of this action. Please see Attachments A1-A4 and B1-B6 for the various notification letters.

After securing the vessel, the City must wait for 90 days before seeking authorization to sell the vessel as provided for by OHMC 6.36.040(5). The 90 day waiting period has now elapsed. Similarly, after sending the "Notice of Lien Sale/Notice of Disposal," the City must wait for 14 days before seeking authorization to sell the storage shed contents as provided for by RCW 19.150.060(3). The 14 day waiting period has now elapsed.

The vessel and storage shed content owners were notified of the April 15, 2014 Council meeting. A memo summarizing the above actions was sent to the Mayor and City Council as required by City policy (Attachment C). The next step in the process requires City Council authorization for the Harbormaster to conduct an auction for sale of the vessel and storage shed contents. A resolution directing the Harbormaster to take this action is included as Attachment D.

The table below summarizes the information associated with the two delinquent accounts.

In Marina	Owners	Address	Item	Monthly Cost	Unpaid Since	Delinquent Account Letter sent on	Secured On	Secured Letter Sent On	Current Amount Owed
10/07/11	James Mathis	1690 SE 8th Ave. Oak Harbor WA 98277	Boat	$268.66	05/01/13	09/25/13	10/15/13	10/15/13	$2740.10
02/22/10	Carl Lord	23348 W Shadow Dr. Buckeye AZ 85326	Storage Shed	$106.64	01/15/12	02/24/12	05/16/12	05/16/12	$3422.40

COUNCIL WORKSHOP

As this item is of routine nature the City Council was not briefed on it at their monthly workshop.

RECOMMENDED ACTION

Conduct a public meeting and approve Resolution No. 14-14 authorizing the sale of the one vessel with ID WN7353NH and the contents of storage shed 4-02.

ATTACHMENTS

A: Mathis letters (Attachments A1 – A4)
B: Lord letters (Attachments B1 – B6)
C: Memo to Mayor and Council from the Harbormaster
D: Resolution No. 14-14

CITY OF
Oak Harbor
WHIDBEY ISLAND, WASHINGTON

Marina

September 25, 2013

James Mathis
1690 SE 8th Ave
Oak Harbor, WA 98277

REGISTERED MAIL AND FIRST CLASS MAIL
RETURN RECEIPT REQUESTED

RE: Past Due Moorage—Oak Harbor Marina
Account No. 3315
Vessel No. **, DENJIM, E-66

Dear Mr. Mathis,

This account is again more than sixty (60) days past due. The amount owed as of September 25, 2013 is $958.82.

You should be aware that if this amount is not paid within fifteen (15) days of the date of this letter, your vessel, described above, is subject to seizure by the City of Oak Harbor. You have a right to a hearing to adjudicate whether the amount owed is correct or the securing of the vessel is proper by filing a lawsuit in a court of competent jurisdiction within fifteen (15) days from the date of this letter.

If the full payment is not made or no such lawsuit is filed, the City will seize the vessel and hold it until payment is made and, if payment is not made, may sell the vessel. The city will not accept partial payment.

We hope this will not be necessary. If you have any questions regarding your account please contact the marina office at (360) 279-4575.

Sincerely,

CITY OF OAK HARBOR

By _____
Oak Harbor Marina Harbormaster, Chris Sublet

Attachment A1

CITY OF
Oak Harbor
WHIDBEY ISLAND, WASHINGTON

Marina

October 15, 2013

REGISTERED AND FIRST CLASS MAIL
RETURN RECEIPT REQUESTED

James Mathis
1690 SE 8th Ave
Oak Harbor, WA 98277

RE: Past Due Moorage—Oak Harbor Marina
Account No. 3315
Vessel No. **, DENJIM, E-66

Dear Mr. Mathis:

The above-referenced vessel has been secured at the Oak Harbor Marina for non-payment of Marina charges. Enclosed is a copy of the Notice fastened to your vessel.

Your vessel will be released at such time as all outstanding fees and charges, including legal fees incurred as a result of the seizure, have been paid in full. Alternatively, if you contest the amount of charges owing, you can post a cash bond or other acceptable security with the City in an amount sufficient to cover all Marina charges owing, including costs of collection. Such bond or security will be held by the City until agreement is reached or disposition is made by a court. You have a right to a hearing to contest these charges. In order to obtain that hearing, you must commence legal proceedings against the City of oak Harbor for the return of your vessel.

The amount owing to date is $1287.05. Failure to pay this amount ***in full*** or to commence legal proceedings for the return of your vessel within ninety (90) days of the above-stated date may result in your vessel being offered for sale at public auction.

Because of the ongoing delinquency of your account, partial payment will no longer be accepted. Your vessel will remain secured and procedures for sale of your boat will continue until and unless the balance owing on your account is paid in full.

We look forward to the prompt payment of outstanding charges and satisfactory resolution of the issues.

Yours truly,

CITY OF OAK HARBOR

By _____
Chris Sublet, Harbor Master

Attachment A2

NOTICE

THIS VESSEL HAS BEEN SECURED FOR NON-PAYMENT OF MARINA CHARGES, AND IS SUBJECT TO SALE BY THE CITY OF OAK HARBOR IF CHARGES ARE NOT PAID IN FULL.

THIS VESSEL MAY BE SOLD AT PUBLIC AUCTION NINETY DAYS FROM THE DATE HEREOF TO SATISFY PAYMENT OF MARINA CHARGES OWED. THE OWNER OF THIS VESSEL CAN OBTAIN INFORMATION CONCERNING ITS RELEASE AT:

CITY OF OAK HARBOR
865 SE BARRINGTON DRIVE
OAK HARBOR, WA 98277
360-279-4575

VESSEL ID _____DENJIM_____
SLIP / LOCATION ___E-66_____
ATTACHED: DATE 10/15/2013 TIME 9:00AM

BY: _____Chris Sublet_____
Representative, City of Oak Harbor

Any attempt to remove this vessel as secured will result in the
CITY OF OAK HARBOR
filing charges of
BURGLARY - THEFT - CRIMINAL TRESPASS
or other crimes

Attachment A3

CITY OF
Oak Harbor
WHIDBEY ISLAND, WASHINGTON
Marina

March 28, 2014

VIA First Class and REGISTERED MAIL
RETURN RECEIPT REQUESTED

James Mathis
1690 SE 8th Ave.
Oak Harbor, WA 98277

Re: Vessel ID WN 7353 NH & Documentation #1020108

Dear Mr. Mathis:

The public meeting of the City Council has been scheduled for April 15, 2014, so that the City Council can consider selling the above-referenced boat at public auction to recover "Marina charges".

Very truly yours,

Chris Sublet
Harbormaster

Attachment A4

CITY OF
Oak Harbor
WHIDBEY ISLAND, WASHINGTON
Marina

Preliminary Lien Notice

To: Carl Lord
23348 W. Shadow Dr.
Buckeye, AZ 85326

You owe and have not paid rent and/or charges for the use of storage space no. 4-02 at the Oak Harbor Marina.

Charges that have been due for more than fourteen (14) days and accruing on or before August 28, 2013 are itemized as follows:

Description	Amount	Due Date
Storage rent, late fees & mailing fees	$2413.45	September 28, 2013

If this sum is not paid in full before September 28, 2013, your right to use the storage shed will terminate, you may be denied or continued to be denied, access and an owner's lien on any stored property will be imposed. You may pay the sum due and contact the owner at:

City of Oak Harbor Marina
865 SE Barrington Dr.
Oak Harbor, WA 98277
360-279-4575

Dated this 28th day of August 2013

CITY OF OAK HARBOR

By: Chris Sublet
Chris Sublet
Harbormaster

Attachment B1

CITY OF
Oak Harbor
WHIDBEY ISLAND, WASHINGTON

Marina

Date: September 29, 2013

Carl Lord
23348 W. Shadow Dr.
Buckeye, AZ 85326

Storage Unit No. 4-02
Account No. 5100

VIA FIRST CLASS AND CERTIFIED MAIL

Dear Mr. Lord,

The above referenced storage unit has been secured at the Oak Harbor Marina for non-payment of city charges. Enclosed is a copy of the Notice fastened to your storage unit.

Your storage unit will be released at such time as all outstanding fees and charges, including legal fees incurred as a result of the seizure, have been paid in full. Alternatively, if you contest the amount of charges owing, you can post a cash bond or other acceptable security with the City in an amount sufficient to cover all Marina charges owing, including costs of collection.

The amount owing to date is $2542.70. Failure to pay this amount or to commence legal proceedings for the return of your storage unit within fourteen (14) days of the above stated date may result in the contents of your storage unit being offered for sale at public auction.

We look forward to the prompt payment of the outstanding charges and satisfactory resolution of the issues.

Sincerely,

By _____
Chris Sublet, Harbormaster

Attachment B2

NOTICE OF LOCKING

PLEASE TAKE NOTICE **DS 4-02**

This self service storage shed has been locked by Order of the Harbormaster because the storage shed rent and/or other associated charges have remained unpaid for more than six days.

The occupant may contact the Harbormaster's office for information as to making payment.

ENTRY INTO THIS SHED WITHOUT PERMISSION IS A CRIMINAL OFFENSE AND WILL BE PROSECUTED ACCORDINGLY.

Date access was denied: September 29, 2013

CITY OF OAK HARBOR

By _____
Chris Sublet, Harbormaster

Attachment B3

CITY OF
Oak Harbor
WHIDBEY ISLAND, WASHINGTON

Marina

October 15, 2013

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
AND FIRST CLASS MAIL

Carl Lord
23348 W. Shadow Dr.
Buckeye, AZ 85326

Re: Notice of Lien Sale/Notice of Disposal
Past Due Dry Storage – Oak Harbor Marina
Space No. 4 -2

Dear Mr. Lord,

This letter is to advise you that your right to use the above-described storage shed is hereby terminated and to advise you of your rights as is requested by RCW 19.150.120(2):

a. **Termination.** Your right to use the storage space has terminated and that you no longer have access to the stored property in the above-described space.
b. **Lien.** The stored property in the storage space is subject to a lien (1) for charges in the amount of $2673.64 accrued to date and; (2) for charges accruing prior to the date of sale. Such charges will include the costs of sale.
c. **Lien.** The property, other than personal papers and personal effects, may be sold to satisfy the lien after October 30, 2013. This is at least (14) days after the date of this letter and at least forty-two (42) days after the account became delinquent.
d. **Alternate to Sale.** If the total value of the property in the storage space is less than three hundred dollars ($300.00), the owner may, instead of sale, dispose of the property in any reasonable manner, subject to the restrictions of RCW 19.150.080(3).
e. **Excess Proceeds of Sale.** Any excess proceeds of the sale or other disposition under RCW 19.150.080(2) over the lien amount and costs and any personal papers and personal effects will be retained by the City and may be reclaimed by you, or claimed by another person, at any time for a period of six (6) months from

Attachment B5

CITY OF
Oak Harbor
WHIDBEY ISLAND, WASHINGTON

Marina

the sale and that thereafter the proceeds and personal papers and effects will be turned over to the State as abandoned property as provided in RCW 63.129.165.

f. **No Right to Redeem if Notice was by Personal Service.** If this property is sold, you will have no right to repurchase any property sold at the lien sale.

Yours truly,

Chris Sublet
Harbormaster

865 SE Barrington Drive
Oak Harbor, WA 98277
(360) 279-4576

Attachment B5

CITY OF
Oak Harbor
WHIDBEY ISLAND, WASHINGTON

Marina

March 28, 2014

VIA First Class and REGISTERED MAIL
RETURN RECEIPT REQUESTED

Carl Lord
23348 W. Shadow Dr.
Buckeye, AZ 85326

Re: Storage Shed 4-02

Dear Mr. Lord:

The public meeting of the City Council has been scheduled for April 15, 2014, so that the City Council can consider selling the contents of the above-referenced storage shed at public auction to recover "Marina charges".

Very truly yours,

Chris Sublet
Harbormaster

Attachment B6

CITY OF
Oak Harbor
WHIDBEY ISLAND, WASHINGTON

Marina

MEMORANDUM

TO: Mayor and City Council

FROM: Chris Sublet, Harbormaster

RE: **Delinquent Accounts**

The vessel and shed described below are at the Oak Harbor Marina, by agreement with the owners. Rent for the shed and moorage for the vessel has been unpaid.

In Marina	Owners	Address	Item	Monthly Cost	Unpaid Since	Delinquent Account Letter sent on	Secured On	Secured Letter Sent On	Current Amount Owed
10/07/2011	James Mathis	1690 SE 8th Ave. Oak Harbor WA 98277	Boat	$268.66	05/01/2013	09/25/2013	10/15/2013	10/15/2013	$2740.10
02/22/2010	Carl Lord	23348 W Shadow Dr. Buckeye AZ 85326	Shed	$106.64	01/15/2012	02/24/2012	05/16/2012	05/16/2012	$3422.40

A letter was sent by both regular and registered mail, return receipt requested, to the owners at the above address advising that if the moorage or shed account was not brought current, the vessel or shed would be secured and not released until payment was made.

This vessel and the shed have been secured by authorized personnel of the Oak Harbor Marina. A Notice was attached to the vessel and the shed advising of the seizure. A letter was sent by both regular mail and certified mail, return receipt requested, with a copy of the Notice advising that if the Marina charges were not paid within ninety (90) days the vessel and the shed contents would be sold at public auction.

More than ninety (90) days have elapsed since the date of mailing the Notice and the owners have not paid the Marina charges and the vessel and shed are now presumed to be abandoned. Therefore, I will be requesting at a future City Council meeting, that you authorize the sale of the vessel and shed contents at auction so that the City may recover the "Marina charges".

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct:

03/27/2014 Oak Harbor Marina
Date and Place of Signing

Chris Sublet, Harbormaster

Attachment C

RESOLUTION No. 14-14

RESOLUTION AUTHORIZING SALE OF A BOAT FOR "MARINA CHARGES"

WHEREAS, the City Council duly held a public meeting on April 15, 2014, wherein the City Council considered whether or not a vessel and storage shed located in the Oak Harbor Marina are abandoned; to wit:

- Vessel ID WN 7353 NH & Documentation #1020108
- Storage Shed 4-02

and having found that:

- The vessel was moored at the Oak Harbor Marina;
    1. Charges owing on the vessel were not paid in full within 90 days from the time the owner of the vessel was notified by registered mail:
- The owner of the shed contents rented a storage shed from the Oak Harbor Marina;
    1. Charges owing on the storage shed were not paid in full within 14 days from the time the owner of the shed contents was notified by registered mail:
- that charges were owing;
- of the owner's right to commence legal proceeding to contest that such charges are owing; and
- the owner has not commenced legal proceedings; and
- the vessel and shed contents are presumed to have been abandoned by the owner;

and the procedures required by RCW 53.08 and 19.150 have been complied with; now, therefore,

BE IT RESOLVED by the City Council of the City of Oak Harbor that the vessel and storage shed contents above-described which has been abandoned by its owner shall be sold at public auction at a time and place to be fixed by the Harbormaster after giving due notice to the listed owner at the last known address and listing the same in a newspaper of general circulation in Island County at least ten (10) days and not more than twenty (20) days before the sale.

PASSED and approved by the City Council this 15th day of April, 2014.

THE CITY OF OAK HARBOR

_____

Scott Dudley

Mayor

Attest:

_____
City Clerk

Approved as to form:

_____
Grant Weed, Interim City Attorney

Attachment D

City of Oak Harbor
City Council Agenda Bill

Bill No. 7.a.
Date: April 15, 2014
Subject: Public Hearing- Surplus City Real Property

FROM: **Cathy Rosen, Public Works Director**

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

Scott Dudley, Mayor
Larry Cort, City Administrator
Doug Merriman, Finance Director
Grant Weed, Interim City Attorney, as to form

PURPOSE

The purpose of this agenda bill is to hold a public hearing, receive public testimony and consider adopting resolution 14-13 declaring the surplus and sale of real property parcel # R132203-400-3430.

FISCAL IMPACT DESCRIPTION

Funds Required: N/A

Appropriation Source: N/A

SUMMARY STATEMENT

During a City Council workshop on October 28, 2013, staff recommended the surplus and sale of multiple pieces of real property belonging to the City. This real property is no longer of use to the City and has never been developed. Staff is prepared to move forward with the surplus and sale of parcel # R132203-400-3430 located at the corner of SW Fairhaven Dr. and SW 6TH Ave.

Staff has obtained a fair market value for the land in the amount of $50,000 to $55,000 from Coldwell Banker Koetje Real Estate. Per City Ordinance 1.30.010 the City is required to complete a ten day public notice followed by a public hearing and a SEPA report prior to listing the property to be sold. The SEPA report has been completed as of February 25, 2014. Therefore, all that remains is the public hearing and adoption of resolution 14-13. Staff will continue to work on the other properties and will be bring them forward at a later date.

STANDING COMMITTEE REPORT

This item was discussed at the March 26, 2014 City Council Workshop

RECOMMENDED ACTION

1. A motion to set a Public Hearing date of April 15, 2014 to adopt Resolution 14-13.

ATTACHMENTS

- Resolution 14-13

- Exhibit A

RESOLUTION NO. 14-13

A RESOLUTION OF THE CITY OF OAK HARBOR, WASHINGTON, DECLARING CERTAIN REAL PROPERTY SURPLUS AND AUTHORIZING DISPOSAL

WHEREAS, pursuant to Oak Harbor Municipal Code 1.30.010, the City Council may authorize the sale of real property; and

WHEREAS, after consideration of possible uses, it has been determined that the City has no further use of real property parcel # R132203-400-3430; and

WHEREAS, a SEPA analysis was completed on February 25, 2014; and

WHEREAS, the City Council has determined that this property is surplus and is no longer required; and

WHEREAS, the fair market value will be determined by a realtor for the surplus property and its disposal will be for the common benefit;

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

1) Based upon the findings and the recommendations of the City Council, the real property parcel #R132203-400-3430 belonging to the City of Oak Harbor, as shown in Exhibit A, attached hereto, is declared to be surplus to the foreseeable needs of the City.

2) It is deemed to be for the common benefit of the residents of the City to dispose of said property.

3) The Mayor or his designee is authorized to dispose of City owned real property parcel # R132203-400-3430, in a manner that will be to the best advantage and in a manner which will net the greatest amount to the City of Oak Harbor.

PASSED and approved by the City Council this 15th day of April, 2014.

CITY OF OAK HARBOR

_____

SCOTT DUDLEY, MAYOR

Attest:

_____

Anna Thompson, Esq., City Clerk

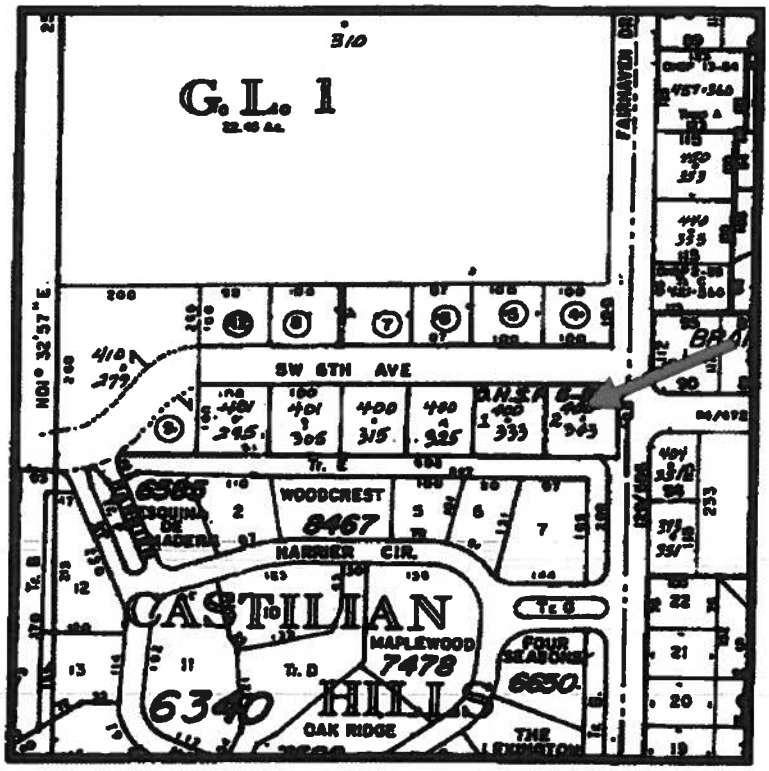
Approved as to Form:

_____

Grant Weed, City Attorney

Exhibit "A"

This sketch is furnished for information purposes only to assist in property location with reference to streets and other parcels. It is not guaranteed as to accuracy and the company assumes no liability for any loss occurring by reason of reliance thereon



N THIS MAP IS INSERTED FOR INFORMATIONAL PURPOSES ONLY AND IS NOT GUARANTEED AS TO ACCURACY

City of Oak Harbor
City Council Agenda Bill

Bill No. 7.b
Date: April 15, 2014
Subject: Development Services Dept. Staffing – Budget Amend.

FROM: Steve Powers
Development Services Director

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

_____ Scott Dudley, Mayor
_____ Larry Cort, City Administrator
_____ Doug Merriman, Finance Director
_____ Grant Weed, Interim City Attorney, as to form

PURPOSE

This agenda bill presents a budget amendment request to City Council. Council adoption of the budget amendment ordinance will approve funding for the existing Associate Planner position within the Development Services Department.

FISCAL IMPACT DESCRIPTION

Funds Required: The Associate Planner position has an annual salary range of $54,456 to $66,972 plus benefits. For purposes of the budget amendment ordinance a mid-point salary was chosen and a hire date no sooner than May 1, 2014 was selected.
Appropriation Source: General Fund

SUMMARY STATEMENT

The Development Services Department consists of the following positions: Director, Senior Planner (2), Associate Planner (vacant), Building Official, Plans Examiner, Permit Coordinator and an Administrative Assistant

The Associate Planner position was created in 2005. The position has many responsibilities, but one of its main roles is as the project review planner. In this capacity it:

- Reviews parcel and subdivision maps and building plans for compliance with appropriate regulations; work with property owners and the development community on acceptable property development and land use.
- Processes land use permits such as shoreline, zoning, conditional use, variances, rezones, and comprehensive plan amendments, site plans, subdivisions and short plats; prepare reports and

recommendations; may conduct public hearings before the Planning Commission and Hearing Examiner.

- Responds to inquiries from builders, developers, real estate professionals, engineers, architects and the public regarding the use and development of property.

The position was funded as part of the Department through 2012. As a result of the economic recession and as part of the 2013-2014 Budget, the position was not able to be funded in the Department and the staff person was transferred to Public Works/Engineering.[1] It is important to note that the Council did not eliminate the position from the Development Services Department. The position is still authorized and appears on the organizational chart. It simply was not funded. As a result of the funding limitations the Development Services Department has been without this position since January 2013.

Also in January 2013, the City began dedicating staff time to economic development. This is an important function for the City and the dedication of staff time to this endeavor is critical to its success. Because the budget would not allow for the creation of a new position the function was partially staffed with an existing employee. Fifty percent of the time of one of the Senior Planner positions was allocated to economic development. As a result of these changes in staffing, the start of 2013 saw the City attempting to manage both its current and long range planning projects with half the planning staff it had in 2012.

Current Need for Position

As was previously noted the Associate Planner position is responsible for the majority of current planning activities. These activities include subdivision review, site plan review, SEPA review, responding to questions from the development and business community as well as other related tasks. The position also assists the Senior Planners with their projects (such as Comprehensive Plan updates).

Staff believes it is time to reconsider funding this position as part of the Development Services Department. This belief is based on the following factors:

- Permit activity has steadily increased since 2011. Permit revenues have also increased since that time (see Attachments 1 and 2).
- Actual permit revenue exceeded budgeted permit revenue in 2013 by $61,238 (see Attachment 3).
- Island County's projections show an increase of 3,739 persons within in Oak Harbor's UGA over the next twenty years. Additional residential and commercial development will occur to support this increase.
- It is estimated that as many as 2,530 persons may relocate here as a result of increased operations at NASWI. This population increase is not distributed over the 20-year planning horizon; it is expected to happen by 2017. New development will occur in support to this increase. The City will best be

[1] As a side note, the Associate Planner's departure from the Department (and eventually the City) eliminated the City's ability to undertake mapping and data analysis with GIS.

able to respond to the increase in development applications if the Development Services Department is fully staffed.

- The number of current planning projects is steadily increasing. For the first time in at least six years, the City has new preliminary plats to review[2].
- The number of commercial tenant improvement projects is also on the rise. These applications require a planner's review as well as that of the plans examiner and building official.
- The City is required by the Growth Management Act to complete a major update to its Comprehensive Plan by June 30, 2016. This is a significant undertaking. The increase in current planning projects is drastically affecting the staff time available to work on this project. It will not be possible to meet the deadline with the current staffing level.[3]

Conclusion

For the reasons noted above staff seeks City Council approval to once again fund the Associate Planner position in the Development Services Department. An ordinance approving the necessary budget amendment is attached for Council's consideration (Attachment 4).

COUNCIL WORKSHOP REPORT

This item was presented to the City Council at their March 26, 2014 workshop.

RECOMMENDED ACTION

- Conduct public hearing
- Adopt Ordinance No. 1700

ATTACHMENTS

1. Summary of Building Permits and Permit Revenue 2011-2013
2. Summary of Building Permits and Permit Revenue January 2014- March 2014
3. General Fund DSD Permit Revenue 2013
4. Ordinance No. 1700

[2] The single-family permits currently being issued are on pre-existing lots. These lots were created before the recession.
[3] Even if the Department is fully staffed it may not be possible to meet the deadline without consultant assistance.

ATTACHMENT 1: SUMMARY OF BUILDING PERMITS AND PERMIT REVENUE 2011-2013

	YTD 2011	YTD 2012	YTD 2013
TOTAL BUILDING PERMITS ISSUED	92	130	147
TOTAL OTHER PERMITS ISSUED	425	516	595
TOTAL BUILDING PERMIT FEES	$ 81,907.64	$ 109,067.75	$ 136,978.53
TOTAL OTHER PERMIT FEES *	$ 58,159.94	$ 61,809.01	$ 65,367.90
TOTAL PLAN CHECK FEES	$ 45,450.82	$ 67,308.55	$ 90,186.40
HEARING EXAMINER FEES	$ 922.00	$ 1,468.00	$ 1,619.00
GRADING PERMIT FEES	$ 559.50	$ 961.50	$ 305.50
SITE PLAN REVIEW FEES	$ 6,074.00	$ 11,118.00	$ 1,157.00
OCCUPANCY PERMIT FEES	$ 897.00	$ 955.00	$ 600.00
TOTAL	**$ 194,487.90**	**$ 253,333.81**	**$ 296,956.33**
Increase from previous year		$ 58,845.91	$ 43,622.52

*Includes demolition, mechanical, plumbing, sewer, street opening, mobile homes, flagpoles, antennas and sign permits; waterline inspection and water meter installations

ATTACHMENT 2: SUMMARY OF BUILDING PERMITS AND PERMIT REVENUE JANUARY 2014 - MARCH 2014

	Jan 2014	Jan 2013	**Feb 2014**	Feb 2013	**March 2014**	March 2013	**YTD 2014**	YTD 2013
TOTAL BUILDING PERMITS ISSUED	10	10	6	13	23	8	39	31
TOTAL OTHER PERMITS ISSUED	31	46	45	51	97	54	173	151
TOTAL BUILDING PERMIT FEES	7,029.70	8,438.60	6,857.55	6,709.40	18,877.66	8,138.95	32,764.31	23,286.95
TOTAL OTHER PERMIT FEES*	2,500.99	4,320.54	6,295.40	4,427.71	20,230.40	4,856.73	29,026.79	13,604.98
TOTAL PLAN CHECK FEES	3,082.91	5,619.83	4,441.16	4,344.85	12,372.19	5,515.33	19,896.26	15,480.01
HEARING EXAMINER FEES	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
GRADING PERMIT FEES	179.00	0.00	0.00	0.00	287.25	0.00	466.25	0.00
SITE PLAN REVIEW FEES	384.00	0.00	0.00	0.00	384.00	0.00	768.00	0.00
OCCUPANCY PERMIT FEES	100.00	75.00	75.00	50.00	25.00	25.00	200.00	150.00
TOTAL	13,276.60	18,453.97	17,669.11	15,531.96	52,176.50	18,536.01	**83,121.61**	**52,521.94**

*Includes demolition, mechanical, plumbing, sewer, street opening, mobile homes, flagpoles, antennas and sign permits; Waterline inspection and water meter installations.

Attachment 3: General Fund Revenues - Development Services - Permits
For the Year Ended December 2013

				Budget	Year-to-Date	Difference
001.00	.322	.010.0000	BUILDING PERMITS	$190,000.00	$238,764.49	$48,764.49
001.00	.345	.081.0000	ZONING AND SUBDIVISION FEES	$10,000.00	$1,243.00	-$8,757.00
001.00	.345	.083.0000	PLAN CHECK FEES	$5,000.00	$21,132.69	$16,132.69
001.00	.345	.089.0000	OTHER PLANNING/DEVELOPMENT FEE	$5,000.00	$10,098.00	$5,098.00
						$61,238.18

ORDINANCE NO. 1700

AN ORDINANCE OF THE CITY OF OAK HARBOR TO AMEND THE 2013-2014 BIENNIAL BUDGET TO INCREASE EXPENDITURE AUTHORITY TO FUND THE HIRING OF AN ASSOCIATE PLANNER POSITION

WHEREAS, the City has determined that a budget amendment is needed for the fiscal year 2014 of the 2013-2014 Biennial Budget for required increases in appropriation authority; and

WHEREAS, the City has determined that a budget amendment is needed to increase the 2014 General Fund #001 expenditure authority in the amount of $53,000.00 for funding the hiring of an Associate Planner position in the Development Services Department, and

WHEREAS, the development activity within the municipal boundaries of Oak Harbor has increased significantly over the last 24 months, requiring additional staff to meeting workload demands, and

WHEREAS, the funding for the position will be obtained from the projected increases in development related revenues.

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

Section One: The revenues and expenditures for all funds requiring a mid-biennial change are hereby amended for the budget year 2014 as set forth below:

Fund #	Name	Amended
001	General Fund	$53,000

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 take effect five days after publication as provided by law.

Adopted by the City Council this 15th day of April, 2014.

THE CITY OF OAK HARBOR

_____

SCOTT DUDLEY, MAYOR

Attest:

_____

Anna Thompson, City Clerk

Approved as to Form:

_____

Grant L. Weed, Interim City Attorney

Published: _____

City of Oak Harbor
City Council Agenda Bill

Bill No. 7.c
Date: April 15, 2014
Subject: Electronic Message Center Draft Sign Code

FROM: Steve Powers RSP
Development Services Director

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

_____ Scott Dudley, Mayor
_____ Larry Cort, City Administrator
_____ Doug Merriman, Finance Director
_____ Grant Weed, Interim City Attorney, as to form

PURPOSE
This agenda bill presents the draft Electronic Message Center (EMC) sign code amendments to the City Council for their consideration.

FISCAL IMPACT DESCRIPTION
Funds Required: $ Up to $5,000
Appropriation Source: General Fund

The adoption of the draft code itself does not have any fiscal impact. Enforcement of the brightness standards in the proposed code will require the purchase of a 'nit' gun. Staff estimates this purchase to be no more than $5,000. This is an unbudgeted expense.

BACKGROUND
The draft EMC sign code was originally scheduled for City Council review and discussion on November 6, 2013. Please see Attachment 1 for the agenda bill from that meeting. At that meeting Council was presented a letter from Mr. James Carpentier of the International Sign Association (ISA) detailing his concerns with the draft code. Based on those concerns, staff recommended that City Council refer the draft EMC code back to Planning Commission to address issues raised by ISA. Planning Commission discussed issues raised by ISA at their regular meeting on February 25, 2014. Please see the Planning Commission section of this agenda bill for additional information.

SUMMARY STATEMENT
EMC signs are a fast-evolving technology. The City's sign code has periodically been updated to reflect changes in sign technology. The first update for EMCs was in 2003 to allow public uses, such as schools, the ability to display public service messages on EMCs. The code was updated again in 2009 to accommodate EMCs in the C3 (Community Commercial), C4 (Highway Service Commercial), and C5 (Highway Corridor Commercial) zones.

The proposed code amendments represent another effort to update the code to reflect current technology. If adopted, the amendments will offer businesses more flexibility to utilize the digital capabilities of EMCs. These signs would be permitted in the C1 (Neighborhood Commercial), C3 (Community Commercial), C4 (Highway Service Commercial), C5 (Highway Corridor Commercial), I (Industrial), PIP (Planned Industrial Park), PBP (Planned Business Park), and PF (Public Facilities) zones, thereby expanding the areas where digital signs could locate as compared with the existing code.

The following table compares the physical and operational features of the existing and proposed codes:

	FEATURE	EXISTING CODE	PROPOSED CODE
Physical Features	**Number of EMCs per development**	1	1
	Size	Pole= 50 SF, Monument = 16 SF, Pylon = 24 SF. 50% of building mounted	Pole = 50 SF, *Monument = 24 SF*, Pylon = 24 SF, building = 100 SF
	Construction	Must be integral part of primary sign	Must be integral part of primary sign, *except building mounted*
Operational Features	**Animation & Video**	No	*Yes*
	Minimum Duration Of Graphics, Images, Text, Videos	2 seconds	2 seconds
	Maximum Duration	12 seconds for segmented messages	*None*
	Transitions/Changes	1 second or less	**1 second or less (first draft: 0.5s - 1.0s)**
	Color	Yes, but static	*Yes*
	Sensitive Use Offset	None	100 feet from residential and open space properties
	Hours of operation	Adjacent to residential, 10 pm - 6 am	*W/I 100 feet of residential 11 pm - 6 am*
	Brightness	Autodim, certification of no tamper	**Day: 90% of sign's maximum output. Night: 7% of sign's maximum output, but no greater than 1,000 nits**

Note: Italics represent features/aspects of the proposed code which offer greater flexibility than the existing code. Bold items represent changes from the code since the first draft.

PLANNING COMMISSION REPORT

The Planning Commission began their work on this item in November 2012. The item was discussed at every meeting in 2013 with the exception of August. After Council's referral back to the Planning Commission in November of 2013, the Planning Commission discussed this topic for one additional meeting in February 2014. At that meeting the Commission conducted a public hearing to accept testimony on the topics raised in the November 2013 letter from the ISA. At the conclusion of the hearing, the Commission considered a series of five motions. Through these motions the Planning Commission reaffirmed their previous recommendation to the City Council on four of the five topics (duration of videos; animation and videos; scrolling and moving text; and brightness). For the fifth item the Planning Commission recommended a change to the draft code language for time of transition between images on the screen. They recommend the City adopt a maximum of 1 second for transition time (rather than the previously recommended range of 0.5 to 1 seconds)[1]. Please see Attachment 2 for the minutes and Attachment 3 for the staff reports from the various Planning Commission meetings.

Staff Comment on a Technical Note:

In preparing this agenda bill, staff noted that a portion of the draft code is inconsistent with the recommended brightness measurement standard based on nits. Section 19.36.030(5)(g)(xiii) requires that the brightness of signs be measured first with the sign turned off and then with the sign turned on. This measurement method is appropriate when using a footcandle system, but not a nit system to measure brightness and, thus, should be deleted. Staff recommends the language shown on page 14 of the draft with double strikethroughs be deleted.

Attachment 4 presents the draft code as recommended by the Planning Commission with the two technical corrections recommended by staff. Draft code language that was revised based on the Commission's latest review is highlighted in yellow.

RECOMMENDED ACTION

- Conduct the public hearing
- Approve Ordinance 1674 as recommended by the Planning Commission with the technical corrections recommended by staff.

ATTACHMENTS

- Attachment 1: City Council agenda bill dated November 6, 2013 (w/o attachments)
- Attachment 2: Planning Commission meeting minutes from November 27, 2012; January 22, February 26, March 26, April 23, May 28, June 25, July 23, September 24, 2013 and February 25, 2014.
- Attachment 3: Staff memorandums to Planning Commission from November 27, 2012; January 22, February 26, March 26, April 23, May 28, June 25, July 23, September 24, 2013, and February 25, 2014. Please note that attachments to the staff memorandums are not included, but can be found at: http://www.oakharbor.org/page.cfm?pageId=261
- Attachment 4: Ordinance 1674, Draft electronic message center sign code.

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[1] Planning Commission's actual motion resulted in the striking of the entire sentence rather than the portion related to 0.5 seconds. Based on their discussion, staff believes the Commission's intent was to approve the language as noted above and as in the draft ordinance.

INTERNATIONAL SIGN ASSOCIATION

November 6, 2013

City Council
Oak Harbor City Hall
865 S.E. Barrington Drive
Oak Harbor, WA 98277

Re: Ordinance 1674: Relating to Electronic Message Centers (EMC) and Amending Chapter 19.36, Sign Code, of the Oak Harbor Municipal Code

Dear Honorable City Council:

I am contacting you on behalf of the Northwest Sign Council and the International Sign Association. Both Associations assist jurisdictions throughout the northwest to create effective and enforceable sign regulations. I did get the opportunity to attend and testify at a Planning Commission meeting on May 28th. We want to acknowledge the work done by staff and the Planning Commission with the proposed draft of the electronic message center ordinance. Some of the regulations will be beneficial for enhancing commerce in the City of Oak Harbor. However, we wanted to make you aware that the proposed EMC ordinance has several technical issues.

Due to these technical issues we respectfully request that the City Council refer Ordinance 1674 back to the Planning Commission for additional review and consideration of these technical issues.

Here is a summary of the technical issues with the proposed code:

- Section (vi) of the EMC section of the code allows for animation and videos. Section (vii) of the EMC section of the code requires a two second duration or hold time for a message or video. This is contradictory since a video cannot be subject to duration or hold time. It appears that the intent is to require a message to be subject to a hold time of two seconds. This section also does not allow for "movement or action faster than real life." We believe that this section would be difficult to administer and should be deleted.
- Section (viii) of the EMC section includes language that is not clear as to the required transition time for messages, since the transition time needs to be a discrete number. Due to this ambiguity, this section would be difficult to administer.
- Section (vix) does not allow for scrolling or moving text. It is contradictory to allow for animation yet not allow scrolling or moving text.
- Section (vii) allows for EMCs to have a nighttime brightness level of 1,500 nits and a daytime brightness of 13,000 nits in Zones C-3, C-4 and C-5. We have a number of concerns with brightness levels as proposed: this exceeds the industry standard recommended levels of nighttime brightness by several hundred percent; we are not aware of any jurisdiction that has recently adopted nighttime or daytime illumination levels in this range; with the proposed automatic dimming the daytime limitations are not necessary; we recommend the industry standard science based footcandle approach, which has been successfully adopted and administered by numerous jurisdictions throughout the country, the methodology stated for measuring EMC illumination levels is not appropriate for measuring nits.

www.signs.org • info@signs.org 1001 N. Fairfax Street, Suite 301 • Alexandria, VA 22314 • (703) 836-4012 TEL • (703) 836-8353 FAX

INTERNATIONAL SIGN ASSOCIATION

We appreciate your consideration of our recommendations. If you have any questions do not hesitate to contact me.

Sincerely,

James B. Carpentier AICP
Manger of State & Local Government Affairs
480-773-3756

C. Mayor Scott Dudley
Valerie J. Loffler, City Clerk
Steve Powers, AICP, Development Services Director

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INTERNATIONAL SIGN ASSOCIATION

March 31, 2014

ATTACHMENT 2

City Council
Oak Harbor City Hall
865 S.E. Barrington Drive
Oak Harbor, WA 98277

Re: Ordinance 1674: Relating to Electronic Message Centers (EMC) and Amending Chapter 19.36, Sign Code, of the Oak Harbor Municipal Code

Dear Honorable City Council:

I am contacting you on behalf of the Northwest Sign Council and the International Sign Association. Both Associations assist jurisdictions throughout the northwest to create effective and enforceable sign regulations. We did get the opportunity to attend and testify at a Planning Commission meeting on February 25, 2014. We also had a demonstration with an electronic message center for the Commission at this meeting to demonstrate various illumination levels and operational modes. We want to acknowledge the work done by staff and the Planning Commission with the proposed draft of the electronic message center ordinance. Some of the regulations will be beneficial for enhancing commerce in the City of Oak Harbor. <u>However, we wanted to make you aware that the proposed EMC ordinance has an issue with the most important aspect of electronic message center regulations, the proposed brightness standards.</u>

The Planning Commission has recommended the following to the Council, "THE BRIGHTNESS STANDARDS TO 90%BRIGHTNESS IN NITS DURING THE DAYTIME AND NO GREATER THAN 7% BRIGHTNESS IN NITS AT NIGHT WITH A MAXIMUM CAP OF 1000 NITS AT NIGHT."

<u>We strongly recommend that the Council not approve the proposed brightness regulations due to the following issues:</u>

- We are not aware of any jurisdiction in the country that has adopted EMC brightness regulations that includes a percentage as a part of the regulations. This is due to a number of issues with this approach; a percentage of the possible brightness is not enforceable by the jurisdiction (no practical way for staff to determine compliance with percentages); each sign would have a different brightness level since different signs have varied brightness capabilities; some types of EMCs such as monochrome may not be at proper illumination levels with this approach.
- The proposed maximum brightness level at 1,000 nits will be too bright for many if not all locations in Oak Harbor. During our demonstration on February 25th it was evident that the proposed 1,500 nits was too bright, and the recommended foot-candle approach had an illumination level that was around 300 nits which was very functional and not too bright. Therefore, the proposed 1,000 nits by the Commission would be at least 100% brighter that what is needed for EMCs signs to be safely and effectively viewed by motorists.

INTERNATIONAL SIGN ASSOCIATION

Therefore, we recommend that the Council consider the following language for the illumination of EMC signs:

No electronic message center shall exceed a brightness level of 0.3 foot candles above ambient light as measured using a foot candle (Lux) meter at a preset distance depending on sign area. The measurement distance shall be calculated with the following formula: The square root of the product of the sign area and one-hundred.

Example using a 12 square foot sign:

Measurement Distance = √(12 Sq. Ft. x 100) = 34.6

This standard has been adopted by jurisdictions throughout the country with great success since it is enforceable and allows for illumination levels that are not too bright.

We appreciate your consideration of our recommendations. Do hesitate to contact me with any questions.

Sincerely,

James B. Carpentier
Manager State & Local Government Affairs
480-773-3756

c. Mayor Scott Dudley
Valerie J. Loffler, City Clerk
Steve Powers, AICP, Development Services Director

ELECTRONIC MESSAGE CENTER SIGNS CODE UPDATE – Public Meeting
Mr. Powers explained that Municipal Code assigns the responsibility for the sign code to the building official. The building official has the responsibility to issue sign permits and decisions as to whether the requested sign is allowed by the ordinance. The building official was in attendance to listen to the discussion and answer any questions. The goal of tonight's meeting is to initiate conversation with the Planning Commission.

Mr. Powers reported that the Mayor's Economic Development Committee has asked the City to consider amending this section of the sign code for the purposes of providing language that reflects current technology.

Mr. Powers reported that the current code, electronic message center signs are considered to be primary signs. The zoning district, size of the building etc. dictates the number of primary signs that a business is allowed to have. Electronic message center signs are not in addition to the base number of primary signs allowed. Only one electronic message center sign is allowed and the sign should not exceed 50 percent of the sign area for that sign. Electronic message center signs are allowed in the C3, C4, and C5 business districts. There are also standards embedded within the definitions which may be an area that can be improved upon.

Planning Commission Discussion
Planning Commission had questions about why the colors were limited to white, red or amber in OHMC 19.36.030(5)(g)(vii). Mr. Powers responded that community members who participated in the 2009 electronic message board discussions when these standards were added to the code were concerned about video boards. This is a subsection could be clarified.

Mr. Fikse commented that currently the City allows for scrolled text on message center signs. The problem is that the sign requires a video board for the scrolling text. The code doesn't account for that so there are irregularities in the sign code because the technologies are different than they were three years ago. Correct definitions such as designating the differences between live video versus animation can be a big benefit to the businesses of Oak Harbor. The concern at the Economic Development Committee was whether everyone at the City level could interpret the code the same way. The answer was no. The Economic Development Committee's key concerns were, they didn't want the signs to look bad which is difficult to legislate and safety. The letter from the Economic Development Committee proposed the following:

1. All electronic signs (LED Signs) shall refrain from all strobe or rapid flashing effects that could be considered a distraction to traffic flow.
2. No electronic sighs (LED Signs shall e turned "brighter than the factory settings". Reducing the brightness is allowed.
3. No Live Video allowed, with the exception of RSS feeds for time, temperature and the emergency broadcast system.

Ms. Johnson-Pfeiffer recalled that there was a lot of community pushback in 2009 and it wasn't technology driven but more about being as conservative as we can for the first step. There was a desire to not have video signs like Fife, Washington, light pollution and too much ambient light in neighborhoods. Ms. Johnson-Pfeiffer also commented that she liked the video signs that are inset and flush with the façade and asked if the code would allow freestanding video signs. She wondered if it was possible to say that this technology can be used in one fashion but not in another. Mr. Powers said free standing video signs are allowed and regulations could be

drafted to say that when it is a pole mounted that only a certain amount of the sign can be electronic message, if it is building mounted it could be by itself.

Ms. Jensen asked what the stumbling point was when interpreting the code. Mr. Anderson said that it was the technology, the term "video" and the color definitions. Mr. Powers added that staff's task has been to look at how the technology is utilized to display the message and not the message itself.

Mr. Fikse added that it is easy to address the concern about the brightness of the sign because there is a very good photo cell that self adjusts brightness and that can be very easily written into the code to require and active photo cell. Mr. Fikse also pointed out that the current code says that no RGB technology is allowed but white is allowed and electronic signs require RGB technology to get white. He also pointed out that if the electronic sign has a white background it will look bad and a dark background will look much better. He wasn't sure how the City could discourage the white backgrounds. The look of the signs will determine the community's reaction.

Mr. Powers concluded the meeting by noting that this item would not be on the December business meeting agenda but would be on the January agenda for further discussion.

Ms. Jensen asked staff to provide a list of the existing electronic message boards and notate the conflicting code language/technology that apply to each sign.

ADJOURN: 9:00 p.m.

2016 Comprehensive Plan Update (Mandated Amendment)
This item is a requirement for local governments such as Oak Harbor that are fully planning under the Growth Management Act. The original deadline for this requirement in accordance to RCW 36.70A.130 was 2012, but legislation was passed to extend the deadline to 2016. This item will revisit all the elements of the Comprehensive Plan such as Land Use, Housing, Capital Facilities, Utilities, Transportation, Economic Development, Parks and Recreation, Public Facilities etc. This item will span multiple years leading up to adoption in 2016. The scope of work for this item in 2013 will be to review the current policies and identify the scope and process for the update.

Mr. Fakkema opened the public hearing for comment seeing none the public hearing was closed.

ACTION: MS. JENSEN MOVED, MR. WALLIN SECONDED A MOTION TO RECOMMEND THAT THE CITY COUNCIL APPROVE THE 2013 COMPREHENSIVE PLAN AMENDMENT DOCKET AS PRESENTED. MOTION CARRIED.

ELECTRONIC MESSAGE CENTER SIGNS CODE UPDATE – Public Meeting
Mr. Spoo presented a Power Point presentation (Attachment 1) which introduced information on the new sign technology available, the most recent update to the code for sign technology, how other cities treat digital signs, basic policy choices presented by digital signs for Oak Harbor and criteria to help decide how to make decisions about policy choices.

Planning Commission Discussion
Mr. Fikse commented that digital signs are the newest technology and the old City Code doesn't address the modern technologies. The quality of digital LED signs varies greatly and the question is what can we do with the code to ensure that digital signs are visually pleasing. Mr. Fikse suggested banning solid white backgrounds, requiring light sensitive photocells that will dim the signs in low light conditions which will take care of the brightness issues. An advantage to the new technology is that it allows the sign to be altered.

Mr. Wasinger asked his fellow Commissioners if the size restrictions in the existing regulations were adequate. The consensus was that the size limits were fine.

Mr. Freeman commented that stand alone businesses are one thing but what happens when you have a business center and they all have digital signs of varying brightness competing for attention.

Ms. Schlecht asked staff to provide photographs of the situation that Mr. Freeman spoke of as well as photos from small towns that have done the digital LED signs well.

Mr. Fakkema commented that he would like to explore the issue of pole signs as opposed to storefront signs and pixel size. He believed that the pole signs were already a blight on the visual landscape. Do we want to increase the proliferation or manage the proliferation and are we going to address the changing technology every two years?

Mr. Fikse said that he believed the immediate issue is the less caliber LEDs. The size LED's in his sign are 5.5 millimeters in diameter. Most LED signs use 6.5 to 8 millimeter. LEDs come in different strengths. The question is how can we regulate the small LED versus less expensive larger LED's or should we even try.

Mr. Fikse believed that is was important to look at allowing digital LED signs and do it the right way in order to help businesses be successful and encourage other businesses to come to Oak Harbor.

Mr. Fikse noted that whether you call the signs video, animation or transition; they are all video and that is something that the City needs to come to grips with. RSS feed is currently not allowed by the current code. RSS feed is live video. "Amber Alerts" and emergency broadcasts are RSS feed. Mr. Fikse indicated that he would like those types of RSS feeds allowed.

Mr. Spoo said that he would provide photos of digital signs in centers, more guidance on free standing versus storefront signs and draft code language.

Ms. Schlecht asked Mr. Spoo to check whether the Scenic Highway regulations would allow digital signs. Mr. Spoo said that most of the scenic highway corridor deals with public signs and guidance through the scenic corridor and doesn't talk too much about commercial signage. Mr. Powers added that there is acknowledgment that the City has a different character than the areas north and south of us and we are an urban portion of the scenic byway. Mr. Powers also noted for the new members of the Commission that when the City updates any of its development regulations the draft code has to be sent to the Washington Department of Commerce and they send it out to other member agencies (Department of Ecology, Department of Transportation, Department of Natural Resources etc.). Then those agencies will offer comments if they feel so inclined.

2012 COMPREHENSIVE PLAN AMENDMENTS – SCENIC VIEWS – Public Meeting
Mr. Kamak recapped the Planning Commission's activities on this item. In 2012 the Planning Commission placed a study of the City's scenic view on the 2012 Comprehensive Plan Docket. There was a public outreach done in the summer of 2012 asking for photographs of scenic views. In December 2012 the Planning Commission reviewed criteria for evaluating scenic views within Oak Harbor (view from public property, streets, pedestrian trail, views of specific land marks, do we need to buy property, is there a need for special zoning regulations, is it an entryway view, is there waterfront connectivity). Since not all scenic views have the same public interest and value, the Planning Commission also weighted the criteria to help narrow down the selection and focus on the views that preserves the community's interests.

At the end of December's meeting Commissioners were asked to rank the views on their own. Page 34 of the Planning Commission packet shows the results of the scoring.

Mr. Kamak displayed each view and scoring sheet to do the final scoring. The results of the Planning Commission's second round of scoring are shown below.

	Views	Rating Score (First round)	Qualified (Y/N) (Second round)	Reason
1	Northbound SR 20 – Scenic Heights to Erie	350	Y	View from public highway (SR20)
2	Northbound SR 20 – Swantown to Scenic Heights	300	N	Private property zoned R-4 would only be a peek-a-boo even with new zoning regs for landscaping & setbacks
3	Scenic Heights Trailhead	325	N	View is already across public property so view already preserved

PLANNING COMMISSION
REGULAR MEETING
CITY HALL – COUNCIL CHAMBERS
February 26, 2013

ROLL CALL: **Present:** Keith Fakkema, Greg Wasinger, Jeff Wallin, Kristi Jensen, David Fikse and Bruce Freeman
Absent: Ana Schlecht
Staff Present: Development Services Director, Steve Powers

Chairman Fakkema called the meeting to order at 7:35 p.m. and reported that the Planning Commission had agreed to reorder the items on the agenda to place the Digital Signs Code Update before the Draft Zoning Regulations for Maritime Zone.

MINUTES: **MS. JENSEN MOVED, MR. WALLIN SECONDED, MOTION CARRIED TO APPROVE THE JANUARY 22, 2013 MINUTES AS PRESENTED.**

PUBLIC COMMENT:
None present for comment.

DIGITAL SIGNS CODE UPDATE – Public Meeting
Mr. Powers noted that this item was mistakenly advertised as a public hearing and is actually a public meeting. Mr. Powers presented a Power Point presentation (Attachment 1) which introduced four scenarios for regulating digital signs as follows:

Scenario 1 "Least Restrictive"
The digital signs would be allowed in all commercially and industrially zoned areas of the City with the exception of Pioneer Way. Digital signs would be allowed both as building mounted and on freestanding signs. Digital sign size could not be more than 50% of the total sign area for the site, and could comprise up to 100% of a single sign with 100 square feet being the maximum size of a sign. Electronic motion and video would be allowed on the signs. Signs would have to remain 100 feet away from residentially zoned areas. Autodim technology, within limits of 500 nits nighttime and 5,000 nits daytime, would be required.

Scenario 2-"Medium Restriction"
The digital signs would be allowed in all commercial and industrial districts except for C1 and CBD, excluding along Pioneer Way. Movement would be allowed on the signs, but each graphic/text frame would need to remain for a minimum of two seconds. The best practices literature recommends a minimum display time ranging from 1-8 seconds depending on location. Signs would have to remain 100 feet away from residentially zoned areas. Digital signs could not be more than 50% of the sign allocation for the site and 50% of any single sign, as well as no more than 50 square feet in size. Signs could only be building mounted. Autodim technology, within limits of 500 nits nighttime and 5,000 nits daytime, would be required.

Scenario 3-"Most Restrictive"
The digital signs would be allowed only in C-3, C-4, and C-5 zones, excluding Pioneer Way and could only be building mounted. No motion would be allowed on the sign and minimum frame time would be 20 seconds. Signs would be limited to 25 square feet in size. The frame duration and size restrictions in this scenario match what the City of Anacortes has adopted. Signs would have to be 200 feet away from a residentially zoned property. Autodim technology, within limits of 500 nits nighttime and 5,000 nits daytime, would be required. The digital signs would only be

allowed to operate from 8:00 a.m. to 8:00 p.m. during Fall and Winter and 8:00 a.m. to 10:00 p.m. during the Spring and Summer.

Scenario 4-"Prohibited"
This scenario is essentially the "no action alternative." The consideration of such a scenario is common practice when undertaking a planning study. Under this scenario, the existing code language code remains as is or it could be modified to specifically exclude digital signs. Staff's understanding is that digital signs can legally be prohibited outright, as long as ample alternative channels of commercial speech are available such as other sign types, internet, and newspaper.

Mr. Powers stressed that the scenarios are not staff recommendations but are provided as a starting point for the Planning Commission.

The tentative schedule for the digital sign code update is to open the public hearing in March. In April staff will draft the code and issue the SEPA Determination. In May the SEPA comment period is closed, the public hearing is closed and Planning Commission makes a recommendation to City Council.

Mr. Powers noted that Planning Commission requested further research at the previous meeting and staff has provided that research in the staff report provided for this meeting.

Planning Commission Discussion
Mr. Fikse commented on each of the items as follows:

Display Change: Supports not allowing flashes of light, blinking or chasing lights; but under Scenario 1, portrayal of explosions and fireworks should be allowed on the 4th of July.

Motion: Slides can be distracting as well. Smooth motion video should be allowed versus "jerky" motion of slides.

Color: Supports prohibition of white background but not in favor of trying to regulate near white background since there is no standard of how much white. Stark white is awful, off-white is not. White background are not bad in the LCD (upcoming technology) but awful in the LED. We need to be mindful that we don't put something in the code that will hamper future technology.

In case of sign malfunction: The requirement that the display go dark should depend on the malfunction. "Malfunction" should be defined. If one block goes bad the sign can be set to stay on one solid color. There are other things that can be done other than having the display go dark to mitigate a malfunction depending on what the malfunction is.

Mr. Powers asked Mr. Fikse if it was necessary to address sign malfunction and leave it to the business owners discretion. Mr. Fikse and Ms. Jensen believed that business owners would not want their sign on if it wasn't working. Mr. Powers suggested looking at the section of the code that applies to the state of repair for all signs, there may be general language that could address the problem if it is not self-correcting. Mr. Fikse agreed.

Brightness: Supports the autodimming requirement but the 500 nits darkness and 5000 nits daylight should be changed because light bulbs are different sizes and wattages. The diameter of the LED and the tightness of the cluster of the LED all affect nits. As the proposed regulation

scenario is written currently, his sign wouldn't meet the requirement. His sign if running at 100% power runs at 14,260 nits, at 90% it runs at 12,384 nits in full sun. At 10% power at night it is running at 1,426 nits. Mr. Fikse provided a handout (Attachment 2) that shows how brightness is affected by the tightness of the cluster of the LEDs. Mr. Fikse suggested using a percentage. 75% should be the starting point with the understanding that if you have a sign that glares at night that would have re-examined because 75% may not work with all of the technology.

Mr. Powers asked if it would be acceptable to set the bottom limit to 10% at night. Mr. Fikse said he had no problem setting the max brightness of 90% but suggested making it 10% at night with the understanding if that percentage is not right for the type of sign, a waiver could be granted on an individual basis. These percentages should be specifically for LED signs.

Mr. Powers said that staff would need to outline the process for a waiver so that it is not subjective.

Mr. Wasinger suggested that having this flexibility would allow business owners to purchase an LED sign that is less expensive and still be able to meet the brightness requirements.

Ms. Jensen commented that she preferred Scenario 1 "Least Restrictive" but she wanted to limit having a mounted LED sign or a freestanding LED sign but not both. She also suggested changing the Zone Area/Restrictions language to say CBD instead of Pioneer Way.

Planning Commission agreed that the hours of operation should be 8 a.m. to 10 p.m. where visible from residential but the term "where visible from residential" should be defined. Mr. Powers suggested using a certain number of feet or using the term "adjacent" to residentially zoned property. The distinction between residentially zoned and residentially used property should be made because there are some houses in that are non-conforming in commercial districts. The idea is that they will transition out over time, but residentially zoned property with stay residential.

Mr. Freeman raised The Element night club which is adjacent to a residential area and suggested the code should be written to address the worst case scenario.

Mr. Powers said that the code needs to be written to address where the sign is, how to deal with residentially used properties that are within a certain distance, how to deal with certain properties that are residentially zoned and how to deal with commercial zoning with residential uses.

Mr. Fakkema was concerned about increasing the signage in Oak Harbor. Mr. Powers pointed that when the code was revised to allow electronic message board signs there wasn't a rush for these types of signs and typically business owners will replace old signs with new signs. This change to the code does not affect the number of signs a business is allowed to have.

There was discussion about the ratio between the LED portion and the non-LED portion of the three types of freestanding signs. Planning Commission talked about addressing the three types of freestanding signs separately. Mr. Fikse commented that the code needs to be consistent for all signs whether it is an LED sign or not. Mr. Powers suggested that if the Planning Commission wanted to propose language to the Council that would limit the amount of sign area that could be LED, the simplest way would be to have a fixed percentage. Mr. Powers said he wouldn't suggest unique standards for each type of freestanding signs.

Mr. Powers said that staff would show the Planning Commission options for the three types of freestanding signs at the next meeting.

Mr. Fikse pointed out Comprehensive Plan policy Economic Development Goal 3 which states: "increase Oak Harbor's market share of retail sales to reduce the economic leakage off island." Mr. Fikse said it is difficult to do business in Oak Harbor and business need every tool to help them be as successful as they can while keeping Oak Harbor looking attractive as possible.

DRAFT ZONING REGULATIONS FOR MARITIME ZONE – Public Meeting
Mr. Powers reported that the 2012 Comprehensive Plan amendments considered adding a new land use category to the Comprehensive Plan to capture the potential of maritime industrial and commercial uses for land that is currently adjacent to the marina. After incorporation of the new land use category into the Comprehensive Plan, zoning regulations have to be adopted to implement the intent of the new land use category.

Some of the key elements that the land use designation is intending to achieve can be derived from the key words and phrases found within the adopted intent statement for the Maritime designation. They are listed below:

- Accommodate high intensity water-related and water-dependent uses
- Clean industrial uses
- Commercial uses similar to uses permitted in the Central Business District
- Flexible standards for streets and parking
- Sufficient screening between industrial and commercial uses

Water-related and water-dependent uses are defined in the City's Shoreline Master Program (SMP) that was recently adopted by the City.

Since the intent statement makes a strong connection to the CBD district and the SMP, development regulations for the Maritime District can be adapted for this district from these documents.

The staff report presents some water-dependent uses and some of the uses to consider under the Conditional Use category.

Mr. Powers concluded by asking for Planning Commission feedback.

Planning Commission Discussion
Planning Commission discussed the challenges of the land ownership land the development challenges in the area of the Marina.

Mr. Powers indicated that a good way to start the conversation is to get the right mix of uses.

Mr. Freeman commented that conference center, hotel and motel listed in the conditional use category are parking intensive.

Ms. Jensen stated that she wanted to avoid creating another shopping district in that area because the shopping districts are already established.

PLANNING COMMISSION
REGULAR MEETING
CITY HALL – COUNCIL CHAMBERS
March 26, 2013

ROLL CALL: **Present:** Keith Fakkema, Greg Wasinger, Kristi Jensen, David Fikse, Bruce Freeman, Ana Schlecht and Sandi Peterson
Staff Present: Development Services Director, Steve Powers, Senior Planners, Ethan Spoo and Cac Kamak.

Chairman Fakkema called the meeting to order at 7:32 p.m.

MINUTES: **MS. JENSEN MOVED, MR. WASINGER SECONDED, MOTION CARRIED TO APPROVE THE FEBRUARY 26, 2013 MINUTES AS PRESENTED.**

PUBLIC COMMENT:
Garrett Newkirk commented on the City expanding its current city limit boundaries without diversifying its economy to justify that expansion. He asked where the $590,000,000 that the military claims they contribute to the Island economy goes. He also commented that the City encouraged the County to place an APZ zone on only North Whidbey Island residents which blocks economic and quality of life improvements with no compensation.

2012 COMPREHENSIVE PLAN AMENDMENT – Scenic Views – Public Meeting
Mr. Kamak reported that staff is continuing to work on this Comprehensive Plan Amendment and will present information for discussion at the next meeting.

DIGITAL SIGNS CODE UPDATE – Public Meeting
Mr. Spoo explained that the goal of tonight's meeting is to get direction from the Planning Commission as to whether they prefer Scenario 1 "Least Restrictive", Scenario 2 "Medium Restriction", Scenario 3 "Most Restrictive" or Scenario 4 "Prohibited" for drafting the digital signs code. Mr. Spoo displayed a Power Point presentation (Attachment 1) which presented changes to the four scenarios presented at last month's meeting as well as the source for the standards presented in February, interviews with other cities, the enforcement issue and the proposed schedule for the code update.

Mr. Fakkema asked if anyone wanted to provide public comment.

Garrett Newkirk commented that digital signs are a detriment to the town. Digital signs might be beneficial for public safety types of issues but not for businesses. Since we are such a small community there is no reason for them.

Planning Commission Discussion
Mr. Fikse thanked Mr. Spoo for his work and commented follows:

Color: Prohibition of a white background directly affects brightness and will help alleviate the brightness issue.

Motion: Consider putting in a separate section of live video pertaining to public services features such as "Amber Alerts and the Emergency Broadcast System.

Smooth motion video should be allowed.

Hours of Operation: Need to revisit the hours of 8 a.m. to 10 p.m. because it is too restrictive.

Mr. Wasinger raised an issue about businesses that are open 24-hours a day and the perception that the business is closed if the digital sign is turned off.

Ms. Jensen suggested having different hours of operation depending on the zoning district that the business is located and hours of operation would be more restrictive for business that are located adjacent to and across the street from residential zones.

There was some discussion about whether it was a function of brightness or hours of operation.

Ms. Schlecht and Ms. Peterson suggested setting a range for brightness to allow some flexibility for the business owner and code enforcement. Mr. Spoo indicated that there could be different brightness ranges for different zones.

Mr. Freeman expressed concern about digital signs on multi-tenant buildings. There could be five businesses in the same building each with a digital sign with competing information. Mr. Powers directed attention to page 26 of the agenda packet which is the portion of the sign code that applies to commercial properties. Letters "c" and "d" address occupants in multi-occupancy buildings and says that each storefront has the opportunity to have their own sign but there is a single free-standing sign which works for the entire center. Similar language could be crafted for digital signs to control the number of signs.

Commissioners Fikse, Freeman, Peterson, Wasinger and Jensen recommended that staff draft language that follows Scenario 1 "Least Restrictive". Commissioners Fakkema and Schlecht recommended Scenario 2 "Medium Restriction".

ECONOMIC DEVELOPMENT UPDATE – Public Meeting
Mr. Spoo reported that the City has an economic development committee that has been meeting for about a year. Mr. Fikse and Ms. Peterson are on the committee. The committee meets every first Thursday of the month. Mr. Spoo displayed a Power Point presentation (Attachment 2) showing the City's economic profile and needs assessment information. Copies of the Economic Profile and Needs Assessment Report is available upon request. Mr. Spoo and noted that this information is going to form the foundation for the City's economic development strategy that should come out of the committee in June. The Planning Commission will be asked to give recommendations on the economic development strategy.

YEARLY REPORT TO CITY COUNCIL – Public Meeting
Mr. Powers reported that the Planning Commission recommendations to the City Council have been added to the report and asked if the Planning Commission had any other recommendations. Mr. Fakkema asked Mr. Powers to add the Planning Commission's appreciation of staff's professionalism with which the staff has supplied the Planning Commission. Mr. Powers said that this closing comment would be added to the report.

Mr. Powers said the report would go to the City Council at their April 16th meeting and that having one or more members of the Planning Commission in attendance at the City Council meeting would be welcomed.

ATTACHMENT 3

PLANNING COMMISSION
REGULAR MEETING
CITY HALL – COUNCIL CHAMBERS
April 23, 2013

ROLL CALL: **Present:** Keith Fakkema, Greg Wasinger, David Fikse, Bruce Freeman, Ana Schlecht and Sandi Peterson
Absent: Kristi Jensen
Staff Present: Development Services Director, Steve Powers, Senior Planners, Ethan Spoo and Cac Kamak.

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

MINUTES: **MR. FIKSE MOVED, MR. WASINGER SECONDED, MOTION CARRIED TO APPROVE THE MARCH 26, 2013 MINUTES AS PRESENTED.**

PUBLIC COMMENT:
None

Chairman Fakkema reported that the Planning Commission had agreed to reorder the agenda to place the Bed and Breakfast Code agenda item after the Digital Signs Code Update agenda item.

DIGITAL SIGNS CODE UPDATE – Public Meeting
Mr. Spoo displayed a Power Point presentation (Attachment 1) providing an overview of the draft code. Mr. Spoo also reported that the legal review of the code was in process so the language may change.

Planning Commission Discussion
Mr. Freeman expressed concern about digital signs being in close proximity to one another. Mr. Spoo noted that the draft code says that one digital sign is allowed per shopping complex. Mr. Powers expressed concern about one property owner having a privilege that a similarly situated property owner does not have if distance restrictions between signs were put in the code. Mr. Powers indicated that staff could ask the City's legal counsel whether or not a spacing requirement could be employed along the highway and it may make more sense to set limits by zoning districts and only allowing monument signs or building mounted signs in certain zoning districts.

Mr. Fikse noted that there are already limitations on existing signs that limit size and placement of signs. The limitations are adequate without taking away business opportunities. Bigger cities are moving in the direction of digital signs and smaller cities are falling behind and are at a disadvantage.

Mr. Fikse also commented that he was pleased with the video motion language that says "speed cannot be quicker than what occurs in real life". This eliminates the concerns about the look of digital signs.

Ms. Schlecht commented that her initial concern was that digital signs would look like the TV isle at Costco with the TV's all set on different channels. Since then she has driven around in different cities she has come to the conclusion that they actually look nice.

Ms. Peterson commented on 19.36.030(5)(h)(v). It says, "...which are bright and distracting to traffic". Ms. Peterson said the language is subjective and should be taken out. Staff concurred and will delete the language.

Ms. Peterson asked why signs could not be located within 100 feet of open space zoned properties. Mr. Spoo explained that people go there for solitude and for recreation and the function of an open space zoned area is a low impact sensitive area and should be guarded from the effect of the light that digital signs may have on those areas..

Ms. Peterson also noted that there is no exception for a 24-hour business in 19.36.030(5)(h)(x). Staff and Planning Commission agreed that the language should be changed to say "Digital sign displays must be turned off between the hours of 10:00 p.m. and 6:00 a.m. when located within 100 feet of a residentially zoned property."

Mr. Fikse pointed out that 19.36.020(52) should be completely eliminated because RGB technology in electronic signs is required for any form of color including white so the problem is a video board with any color including white, it doesn't meet code. Staff concurred and will delete this section.

Mr. Fakkema pointed out that 19.36.030(5)(vi) is unclear and should be change to say "when the sign is transitioning it must be within one second and no less than 0.5 seconds." Staff concurred and will change the language.

Mr. Fakkema opened the public hearing at 8:13 p.m.

Billie Cook (651 SE Bayshore Drive) questioned turning off the signs between 6:00 a.m. and 10 p.m. She asked if businesses could have their sign on at 6:00 a.m. if they are only open between 9:00 a.m. and 5:00 p.m. Ms. Cook asked that there be some mechanism for a resident to take action if they were negatively affected by a digital signs.

ACTION: MR. FREEMAN MOVED, MS. PETERSON SECONDED A MOTION TO CONTINUE THE PUBLIC HEARING TO THE PLANNNIG COMMISSION'S MAY 28, 2013 BUSINESS MEETING, MOTION CARRIED.

There was further discussion about the digital signs hours of operation. Staff noted that enforcement tied to individual business hours would be impractical for staff to enforce and also noted that the language in 19.36.00(5)(h)(ii) limits the digital portion of a pole or pylon primary sign to 50% and the portion of the sign that is not digital would still be lit. Mr. Fikse noted that the nits drop at night so the signs would not be as bright.

BED AND BREAKFAST CODE – INTRODUCTION – Public Meeting

Mr. Spoo reported that the ad hoc Economic Development Committee suggested loosening up the restrictions on where a bed and breakfast could be located and possibly create opportunities for lodging and tourism for businesses in Oak Harbor. The Committee looked at other jurisdictions to see how they compared to Oak Harbor and found that Oak Harbor is more restrictive. The new draft code provides definitions for three different types of bed and breakfast establishments and allows them outright in more zones. Mr. Spoo asked the Planning Commission to review the draft code and to be prepared to discuss it next month.

PLANNING COMMISSION
REGULAR MEETING
CITY HALL – COUNCIL CHAMBERS
May 28, 2013

ROLL CALL: **Present:** Keith Fakkema, Greg Wasinger, David Fikse, Bruce Freeman, and Sandi Peterson
Absent: Ana Schlecht and Kristi Jensen
Staff Present: Development Services Director, Steve Powers, Senior Planner, Cac Kamak and Project Engineer Arnie Peterschmidt.

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

MINUTES: **MS. PETERSON MOVED, MR. FREEMAN SECONDED, MOTION CARRIED TO APPROVE THE APRIL 23, 2013 MINUTES AS PRESENTED.**

PUBLIC COMMENT:
None

DIGITAL SIGNS CODE UPDATE – Public Hearing
Mr. Powers reported that this item is a continuation of the public hearing that was opened in April. Staff is recommending that this item be continued to the June hearing. Staff has received an e-mail from Mr. James Carpenter of the International Sign Association and the Northwest Sign Council suggesting some changes to the draft code (ATTACHMENT 1). Staff will review the e-mail and incorporate an analysis in the June staff report.

Mr. Powers reviewed the changes to the draft code, impacts of multiple digital signs in close proximity, compliance with review criteria and the schedule.

Planning Commission Discussion
Planning Commission discussed possible inconsistencies between the distance offset from residentially zoned properties of 200 feet as stated in the "orientation" bullet point on page 21 of the staff report, and on page 36 item (xi) which says 100 feet from a residentially zoned property. Mr. Powers flagged the possible inconsistency for further review.

Planning Commission questioned the 10 second limit on page 36 item (v). Mr. Powers directed attention to page 20 of the staff report which states a provision was added limiting video and message lengths to occupy no more than 10 second periods for safety reasons based upon additional research. Mr. Powers also stated that he would look into this further.

Mr. Fakkema asked if there was additional public comment at 7:52 p.m.

James Carpenter (1001 N Fairfax, Alexandria, VA) said he was with the International Sign Association and was speaking on behalf of the Northwest Sign Council. Mr. Carpenter made the following comments:

- Need to add a purpose statement for the sign code i.e. safety concerns/enhance economic opportunities.
- Content restriction may be in conflict with court established first amendment rights.
- Video and video board refers to the operation modes of an electronic message center (EMC). The definition for animation covers this type of operational mode for an EMC.

Recommended that EMC sings not be defined by the operational mode since this is driven by software.
- Full color or RGB technology should be allowed for EMC's.
- Regulate EMC's under one section for EMC's and regulate by district rather than how the sign operates.
- Recommended the City adopt the foot-candle methodology, which is more consistent and less expensive for jurisdictions to enforce.
- Allow any geometric shape, this will encourage more creativity.

Planning Commission asked staff for more information on foot-candle methodology versus nits.

ACTION: MR. FREEMAN MOVED, MR. FIKSE SECONDED A MOTION TO CONTINUE THE PUBLIC HEARING TO THE PLANNNIG COMMISSION'S June 25, 2013 BUSINESS MEETING, MOTION CARRIED.

SIX-YEAR TRANSPORTATION IMPROVEMENT PROGRAM (TIP) – Public Hearing
Mr. Peterschmidt reported that the City is required by State law to submit an approved six-year Transportation Improvement Program. The primary purpose of the TIP is to facilitate use of Federal transportation funds awarded to the City. The submittal process is accomplished in conjunction with the Regional Transportation Planning Organization (RTPO). Once approved by the Council, the City's TIP is submitted to the RTPO. In turn, the RTPO submits a regional TIP to the State by October of each year. The State then prepares a statewide TIP in January of each year. The incorporation of the City's projects into this statewide TIP is what enables the City to spend Federal funds on local transportation projects.

The projects listed on the TIP are coordinated with those listed in the Transportation Element of the Comprehensive Plan. Coordinating projects in the Transportation Comprehensive Plan, the Six-Year TIP and the Capital Facilities Plan improve our communication and coordination with other agencies and help the City remain focused on a manageable list of transportation projects.

The six-year TIP form includes a number of codes and symbols used in the statewide management of the regional TIP documents. A symbol in the status column of "S" means funding is secured while a symbol of "P" indicates the project is not funded.

Mr. Peterschmidt indicated that a new project to install a mid-block pedestrian crossing on Whidbey Avenue between SR20 and Oak Harbor Street has been added to this year's TIP.

Mr. Peterschmidt added that the recommendation to the Planning Commission is to conduct a public hearing and make a recommendation to the City Council to adopt the 2014-2019 Six-Year Transportation Improvement Program.

Planning Commission Discussion
Planning Commissioners asked if the turn lane on Whidbey Avenue would be affected by the new pedestrian crossing. Mr. Peterschmidt acknowledged that it would. Planning Commissioners also discussed how projects move forward on priority list when funding becomes available. Mr. Powers indicated that there are other factors that may move a project up on the priority list.

Mr. Fakkema opened the public hearing at 8:15 p.m.

PLANNING COMMISSION
REGULAR MEETING
CITY HALL – COUNCIL CHAMBERS
June 25, 2013

ROLL CALL: **Present:** Keith Fakkema, Greg Wasinger, Ana Schlecht, Kristi Jensen, Bruce Freeman and Sandi Peterson
Absent: David Fikse
Staff Present: Development Services Director, Steve Powers, Senior Planners, Cac Kamak and Ethan Spoo.

Chairman Fakkema called the meeting to order at 7:35 p.m.

MINUTES: **MS. PETERSON MOVED, MR. FREEMAN SECONDED, MOTION CARRIED TO APPROVE THE May 28, 2013 MINUTES AS PRESENTED.**

PUBLIC COMMENT:
None

DIGITAL SIGNS CODE UPDATE – Public Hearing
Spoo reported that this item is a continuation of the public hearing that was opened in April. Mr. Spoo displayed a Power Point presentation which summarized the changes to the draft code that resulted from the public input and Planning Commission discussion at the May 28th meeting (Attachment 1).

Discussion
Planning Commission discussed the difference between the nits and foot-candle standard of measurement. Mr. Spoo explained that the foot-candle and nits are used to measure two different conditions so it is not possible to convert nits to foot-candles. Foot-candle measures illuminance which is the amount of light intersecting an object at a given distance and nit measures luminance which is a measure of the absolute amount of light emitted from an object (not measured from a distance). The International Sign Association (ISA) recommends using foot-candles to measure brightness and set the limit of an electronic message center sign at 0.3 foot-candles above ambient light levels at night. So the code will only regulate brightness of signs at night except for during the day when the auto dim function of the sign would be working.

Mr. Spoo also noted that since the proposed code talks about regulating existing electronic messages center signs and will require existing electronic message center signs the be in conformance within one year, it is appropriate to notify those affected. This will take another month, so staff is recommending that the hearing be continued to next month's meeting.

Mr. Spoo reported that Planning Commissioner Fikse is requesting that the hearing be continued so that he can discuss his concerns about the latest draft code. Mr. Fikse prefers the nit standard over the foot-candle standard.

Planning Commission questioned staff about non-conforming signs based on the new code. Mr. Powers commented that from the brightness perspective, it is not clear that there would be any non-conforming electronic message center signs.

Mr. Spoo also provided a handout from the ISA with additional information about how to measure foot-candles and why ISA recommends it (Attachment 2).

Mr. Fakkema asked if anyone wanted to offer public comment.

Billie Cook (651 SE Bayshore Drive) thanked everyone for their hard work and was glad that the Planning Commission is addressing duration and brightness of electronic message center signs.

ACTION: MS. PETERSON MOVED, MS. JENSEN SECONDED A MOTION TO CONTINUE THE PUBLIC HEARING TO THE PLANNNIG COMMISSION'S JULY 23, 2013 BUSINESS MEETING, MOTION CARRIED.

BED AND BREAKFAST CODE – Public Meeting

Mr. Spoo explained that the Economic Development Committee has request that Planning Commission consider more permissive regulations for bed and breakfast (B&B). Mr. Spoo displayed a Power Point presentation that provided a summary of the existing code and the proposed code (Attachment 3). In the current code there are only two type of B&B's, which are B&B Inns (4 rooms) and B&B Rooms (50% of existing rooms). B&B Inns & B&B rooms are conditional uses in R-2, R3, R-4, & R-O, require parking on premises, resident/manager domiciled, signs can be no greater than 4 SF and no commercial dining is allowed.

The propose code suggests three types of B&B's, they are B&B Inns, Residential B&B and Commercial B&B with the following restrictions:

	Inns	Residential	Commercial
Max # Rooms	10	4	4
Room Capacity	4	4	4
Commercial Meals	No	No	No
Other Business	No	No	No
Resident/Manager	Full-time Mgr domiciled onsite	Resident in primary dwelling	Mgr onsite
Parking	Onsite/2+ 1 per room. Meet dimensions.	Onsite/2+ 1 per room. No dimensions.	Onsite/2+ 1 per room. No dimensions.
Signs	Per OHMC 19.36	4 SF monument/building	4 SF monument/building

Discussion

Planning Commission questioned staff about the restriction regarding other business being conducted on site within the B&B, the conditional use process, the on-site parking requirement as it relates to the Central Business District (CBD) and whether it makes sense to have B&B's in R1 zoning districts. Mr. Powers indicated that there is no prohibition on having more than one home occupation and we may have to consider whether that makes sense with a B&B and whether there is a land use impact on the surrounding neighborhood that should be of concern. The conditional use permit can take between 60 and 90 days depending on the submittal and the public process. Staff will look at that the parking requirement for the CBD and the possibility of allowing B&B's in only certain R1 zoning districts.

PLANNING COMMISSION
REGULAR MEETING
CITY HALL – COUNCIL CHAMBERS
July 23, 2013

ROLL CALL: **Present:** Greg Wasinger, David Fikse, Kristi Jensen, Bruce Freeman and Sandi Peterson
Absent: Keith Fakkema and Ana Schlecht
Staff Present: Senior Planners, Cac Kamak and Ethan Spoo

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

MINUTES: **MS. PETERSON MOVED, MR. FREEMAN SECONDED, MOTION CARRIED TO APPROVE THE JUNE 25, 2013 MINUTES AS PRESENTED.**

PUBLIC COMMENT:
Ron Nelson (resident of Oak Harbor and member of the Island County Economic Development Council) commented that as the Planning Commission proceeds with developing policies, it is critical that the permitting process does not take longer than the building process and permit fees should be reasonable enough to encourage growth.

DIGITAL SIGNS CODE UPDATE – Public Hearing
Mr. Spoo displayed a Power Point presentation (Attachment 1) which summarized additional research on brightness, a review of brightness, an inventory of current Electronic Message Centers (EMC's) and recommended actions. The recommended actions are to give staff direction on: desired brightness standards, whether to have a two-standard system (nits & foot-candles) or a one-standard system (nits OR foot-candles) and what level of brightness should be used. Staff also recommended the Planning Commission give staff direction on the treatment of non-conforming signs, whether to "grandfather" them in (vested under old code) or to require that they meet brightness and hours of operation standards within one year.

Discussion
Planning Commission discussed "grandfathering" existing signs until the sign owner replaced the old sign with a new sign or is operating the sign in a manner that wasn't allowed under the old code.

Mr. Fikse questioned whether the .3 foot candle criteria recommended by the International Sign Association was correct. Mr. Fikse reported that he purchase a foot-candle meter and conducted his own tests on brightness levels by taking measurements under different conditions on his sign. He provided a handout with the results of those measurements (Attachment 2). Mr. Fikse recommended raising .3 foot-candle criteria to .8 as some other jurisdictions have done. He believed .3 foot-candles was too low. He also recommended more testing using normal content instead of all-white backgrounds.

Planning Commission expressed their wishes that the code be very clear about the criteria, be right the first time and not done in haste.

The public hearing was opened at 8:05 p.m.

Aaron Syring owner of Island Drug said his main concern was the 10 second duration cited in section19.36.030 (5) (g) (vii) of the draft code. He asked that the duration be decreased to 8

seconds. He wanted more information on whether the 10 second duration is common. Mr. Syring said his experience with his sign was that 2 seconds was acceptable and it did not appear to be strobing or pulsating. He believed that a 10 second transition was too long. Mr. Syring also noted that 9.36.030 (5) (g) (xv) which requires that EMC's located 300 feet from a residentially zone property must turn the EMC off between the hours of 10 p.m. and 6 a.m. He believed 100 feet from residentially zoned properties was more reasonable.

Jason Trit owner of Flyers Restaurant commented that purchasing an EMC is a big investment of between $30,000 and $50,000 and there should be less regulation so that the signs can be used to their full capacity. Mr. Trit stated that charities, Chamber of Commerce and other business call him regularly to request that he advertise their events on his sign so he believes EMC signs also benefit the community. He also agreed that the 10 second duration is not reasonable. Mr. Trit said EMC's are the wave of the future and we need to grow if we are going to be a destination tourist town.

Mark Duncan (3145 Shadowbrook Drive) said he was part owner of the Blue Heron Professional Business Park (the lot directly behind the drug store) and he is 1/3 owner of the sign. He noted that Section 9.36.030 (5) (g) (iii) of the draft code allows only one sign per property for multitenant buildings on a single property. He was concerned that he would have to surrender his right to put a sign on Ely Street and hoped that the Planning Commission would amend that section.

Mel Vance Oak Harbor resident pointed out that Island Drug's sign is at a 90 degree angle to the residential property and is not shining in anyone's windows but if Element were to mount a sign on their building it would shine directly into the condos across the street and even 300 feet wouldn't be enough. He recommended that the requirements for EMC's adjacent to residential properties be flexible and be considered on a case-by-case basis.

Jason Trit owner of Flyers Restaurant added that his restaurant is opened until 11 p.m. on weekends and the requirement that EMC's located adjacent to residential areas be turned off from 10 p.m. to 6 a.m. will make it look like he is closed for business at 10 p.m.

Planning Commission and staff discussed the issues raised during the public comment period. Staff noted that Planning Commission could choose to adjust the durations, hours, distances or have no hours of operation if they chose.

MOTION: MR. FIKSE MOVED, MS. PETERSON SECONDED GRANDFATHERING ALL EXISTING SIGNS AS ORGINALLY PERMITTED.

Discussion:
Planning Commissioners discussed what would trigger a "grandfathered" sign to become regulated under the new code and were concerned that all businesses may not want to be "grandfathered". Mr. Kamak said that businesses could be given the choice to be "grandfathered" and be give a date e.g. one year from the date of adoption of the new code to respond with their preference. Mr. Kamak noted that the current motion is only to give staff direction.

ACTION: MOTION CARRIED UNANIMOUSLY.

Mr. Fikse commented that he wanted more research on the brightness issue before making a motion on whether to have a two-standard system (nits and foot-candles) vs. one-standard

system (nits OR foot-candles). **Commissioners agreed to table this item until the August meeting.**

Mr. Fikse commented on the maximum duration of 5 seconds in Section19.36.030 (5) (g) (vii) and displayed video clips of a flag in motion and a diamond ring rotating on his sign. He didn't think that the duration of the motion shown in the videos was a traffic distraction or a safety issue. Mr. Fikse said that the flag ran all day on the 4th of July. The proposed code is written so that there is only a 2 to 5 second window with a static time after 5 seconds. He stated that it would look silly running the flag 5 seconds and stopping, running for 5 seconds and stopping.

MOTION: MS. PETERSON MOVED, MR. FIKSE SECONDED A MOTION TO REMOVE THE MAXIMUM DURATION OF 5 SECONDS, MOTION CARRIED UNANIMOUSLY.

Aaron Syring owner of Island Drug asked the Planning Commission to change the duration restriction for static images to 2 seconds instead of 10 seconds. **Planning Commission agreed to table this issue until the August 27th meeting.**

Planning Commission also agreed to table the hours of operation restriction when EMC's are within 300 feet of residentially zoned property until the August 27th meeting.

ACTION: MR. FREEMAN MOVED, MR. FIKSE SECONDED A MOTION TO CONTINUE THE PUBLIC HEARING TO THE PLANNNIG COMMISSION'S AUGUST 27, 2013 BUSINESS MEETING, MOTION CARRIED.

BED AND BREAKFAST CODE – Public Meeting

Mr. Spoo displayed a Power Point presentation (Attachment 3) and reviewed the changes since last month's meeting. At last month's meeting there was discussion about the ability for bed and breakfast (B&B) establishments to have some sort of accessory commercial on site to sell items like trinkets, mugs or t-shirts. The proposed code has been revised to allow accessory commercial in residential zones but the area is limited to 100 SF and is for patrons only. On-site parking will not be required in the Central Business District (CBD) and the sign size in commercial districts should be the same as any other commercial use in that zone but in residential there is a 4 sq. ft. restriction as well as a restriction on the appearance of the sign in residential areas. The proposed code also clarifies that a resident or manager has to be domiciled onsite.

Mr. Spoo reviewed the zones where B&B's are permitted or where a conditional use permit is required show in the table below.

Type of B&B	R1	R2	R3	R4	R0	C1	CBD
Inns	X	X	P	P	P	P	P
Residential	C	C	P	P	P	P	P
Commercial	X	X	X	X	X	P	P

Note: P = permitted, C = conditional use permit required, X = prohibited

PLANNING COMMISSION
REGULAR MEETING
CITY HALL – COUNCIL CHAMBERS
September 24, 2013

ROLL CALL: **Present:** Keith Fakkema, Kristi Jensen, David Fikse, Bruce Freeman and Sandi Peterson
Absent: Greg Wasinger and Ana Schlecht
Staff Present: Development Services Director, Steve Powers; Senior Planners, Cac Kamak and Ethan Spoo

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

MINUTES: **MS. PETERSON MOVED, MR. FIKSE SECONDED, MOTION CARRIED TO APPROVE THE AUGUST 27, 2013 MINUTES AS PRESENTED.**

PUBLIC COMMENT:
Bob Wall (1537 SE 8th Avenue) spoke as a member of the Oak Harbor Sister City Committee and was interested in the Economic Development Strategy as the Sister City Committee has an interest in economic development and cultural exchange.

DIGITAL SIGNS CODE UPDATE – Public Hearing
Mr. Spoo displayed a Power Point presentation (Attachment 1) which provided a recap of what prompted the sign code update as well as draft code changes to require signs to be turned off within 100 feet of sensitive land uses from 11:00 p.m. – 6:00 a.m., changing the minimum duration for graphics, images and text to 2 seconds and presented three options for regulating brightness (see table below).

	Option A	**Option B**	**Option C**
Brightness Level	1,000 nits (night)/8,000 nits (day) for **C1, I, PIP, PBP & PF**. 1,500 nits (night)/13,000 nits (day) for **C3, C4, C5**. With autodim	0.3 foot-candles above ambient with autodim	0.3 FC above ambient for **C1 and PF**. 0.8 above ambient for **C3, C4, C5, I, PIP, PBP**. With autodim.
Standard Type	Absolute – does not take into account ambient	Relative – takes into account ambient	Relative – takes into account ambient light
Measurement Occurrence	Day & night	Night	Night

Mr. Fakkema opened the public hearing.

Richard Everett (651 SE Bayshore Drive) spoke about the dark-sky movement, a campaign by people who want to reduce light pollution. He asked that light pollution be considered with respect to signs and offered to provide more information on the dark-sky movement.

Aaron Syring (32170 SR20) expressed concern about the hours of operation requirement on page 38 of the Planning Commission packet. Since his business is located near an apartment complex, Mr. Syring asked that the 100 foot distance from residentially zoned property language be change to say 100 feet from residential structures rather than the property line. Mr. Syring also stated that his preference was Option A.

Seeing no further comments, the public hearing was closed.

Mr. Powers addressed Mr. Syring's concern about the residentially zoned property language. Mr. Powers explained that Mr. Syring's business and the apartment complex is located in the Residential/Office zone and is considered a commercial district.

Planning Commission Discussion
Mr. Fikse believed that Option A was the simplest and easiest option for managing the brightness levels and enforcement since the LED signs can be set to a certain nits level. He believed Options B and C would open another level of enforcement against businesses in Oak Harbor. He also raised the scenario in which a non-LED sign was actually brighter than an LED sign. Brightness level enforcement on LED signs and not the other type of sign could lead to litigation.

Mr. Powers noted that enforcement is complaint driven and staff doesn't see a different level of enforcement with Option B and C but they do have different methodologies for measurement. Staff's original hesitancy for Option A was the cost of the nits gun to do the nits measurement. Regarding the non-LED signs, the community hasn't chosen to set limits on them and Mr. Powers said that he wouldn't propose that we should. Initially the Planning Commission was worried about brightness and the impact on residential/open space areas which is how we got on the issue of brightness. Staff's goal is to have a code which is simple for the user and simple for the staff.

Mr. Freeman indicated that he tended to believe the experts and what the industry is doing nation-wide. Based on what the experts say he preferred Option C which is based on the industry standard.

Ms. Peterson said she looked at the date of the information that was provided by the experts and it was two year old information on technology that is quickly advancing. She stated that the ordinance needs to be clear, concise, easy to understand, business friendly and easy for enforcement.

MOTION: MS. PETERSON MOVED, MR. FIKSE SECONDED RECOMMENDING OPTION A TO THE CITY COUNCIL.

Discussion
Mr. Fikse said his second choice was Option C. Originally, .3 foot-candles was brought forth as a recommendation from the International Sign Association (ISA). Mr. Fikse said he bought a foot-candle gun and tested the value and found the value to be too restrictive. More verification is needed on Option C to make sure ISA got it right, we don't know what ISA's information is and from when it was etc. He stated he believed Option A is the easiest.

VOTE ON:
THE MOTION: MOTION CARRIED BY A VOTE OF FOUR IN FAVOR AND ONE OPPOSED TO RECOMMENDING OPTION A TO THE CITY COUNCIL.

ACTION: MS. PETERSON MOVED, MS. JENSEN SECONDED A MOTION TO RECOMMEND THAT THE CITY COUNCIL ADOPT THE DRAFT ELECTRONIC MESSAGE CENTER SIGN CODE. MOTION CARRIED BY A VOTE OF FOUR IN FAVOR AND ONE OPPOSED.

AMENDMENTS TO OHMC 5.22 – NIGHTCLUBS – Public Hearing
Mr. Kamak displayed a Power Point presentation (Attachment 2) which reviewed previous discussions with the Planning Commission, options considered during the 2012 discussion which included licensing nightclubs by occupancy limit in the various zoning districts and the occupancy limits recommended by Planning Commission. Mr. Kamak concluded his presentation by recommending that the Planning Commission hold a public hearing and make a recommendation to the City Council.

Mr. Fakkema opened the public hearing.

Kathy Harbour (Bayshore Drive) spoke in favor of the proposed amendments and asked the Planning Commission to forward the Nightclub Ordinance to the City Council for immediate approval.

Bill Christens (651 SE Bayshore Drive) spoke in favor of the proposed amendments and asked the Planning Commission to forward the Nightclub Ordinance to the City Council for approval.

Billie Cook (651 SE Bayshore Drive) read her comments (Attachment 3).

Deana Royal (920 SE Pioneer Way) stated that she is a Pioneer Way business owner directly between Oak Harbor Tavern and Off the Hook. She spoke in favor of recommending approval to the City Council. She also stated that she would like to see a moratorium on future nightclub licenses in the Central Business District (CBD) due to vandalism and fights. The behavior is not conducive for families in the evening and nightclubs should be more restrictive in the CBD.

Richard Everett (651 SE Bayshore Drive) spoke in favor of recommending approval to the City Council and suggested a modification to delete the term "other similar health and safety impacts" which is repeated throughout the ordinance and replace it with "public health or safety, noise and traffic impacts". At a minimum delete the "other similar" language.

Seeing no further public comment the public hearing was closed.

Mr. Freeman commented that large businesses can be run with minimal impact to their neighbors and that it has always been his feeling that it is a management issue.

ACTION: MR. FREEMAN MOVED, MS. PETERSON SECONDED A MOTION TO MAKE A RECOMMENDATION TO THE CITY COUNCIL TO APPROVE THE AMENDMENTS TO THE NIGHTCLUB ORDINANCE. MOTION CARRIED.

ECONOMIC DEVELOPMENT STRATEGY – Public Hearing
Mr. Spoo displayed a Power Point Presentation (Attachment 4) which addressed questions and comments from the Planning Commission at the August 27th meeting which included the make-

PLANNING COMMISSION
REGULAR MEETING
CITY HALL – COUNCIL CHAMBERS
February 25, 2014

ROLL CALL: **Present:** Keith Fakkema, Sandi Peterson, David Fikse, Greg Wasinger, Kristi Jensen and Bruce Freeman
Absent: Ana Schlecht
Staff Present: Development Services Director, Steve Powers; Senior Planners, Cac Kamak and Ethan Spoo

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

PUBLIC COMMENT:
No one came forth for comment.

MINUTES: **MR. FREEMAN MOVED, MR. FIKSE SECONDED, MOTION CARRIED TO APPROVE THE JANUARY 28, 2014 MINUTES AS PRESENTED.**

ELECTRONIC MESSAGE CENTERS CODE UPDATE – Public Hearing
Mr. Spoo introduced James Carpentier of the International Sign Association and the Northwest Sign Council. Mr. Carpentier was present to speak about the letter he provided to the City Council on November 6, 2013 regarding technical issues with the proposed electronic message centers (EMC) code.

Mr. Carpentier spoke about his experience assisting approximately 50 jurisdictions in crafting their electronic message center codes. Mr. Carpentier's suggestions for Oak Harbor were:

- Delete the white color-based restriction
  - Could be a 1st amendment issues related to content neutrality
  - Lanham Act/Trademark infringement issue
  - Recommended illumination standards addresses overly bright signs

- Utilize the industry standard for night time illumination of .3 footcandles vs. NITs
  - Much easier to enforce

- If Oak Harbor wants to allow animation then 2 second hold time is not needed
- If a hold time is desired then frame effects could be allowed that allows for animation (motion) at transition only
- Daytime limitations are not needed with automatic dimming – if desired he suggested 7,500 nits
- The transition between messages should be no greater than 1 second

Planning Commission questioned Mr. Carpentier about his suggestions asked him to expand on the 1st amendment issues and Lanham Act/Trademark infringement issue, daytime limitations, and transition between messages not greater than 1 second.

Mr. Spoo presented the staff report to the Planning Commission and displayed a presentation (Attachment 1). Mr. Spoo explained that the staff report presents a series of recommended

motions based on the November 6, 2013 letter from Mr. Carpentier to the City Council. Motions related to duration, animation, transition time, scrolling or moving text and brightness.

Mr. Fakkema opened the public hearing for public comment.

Billie Cook (Oak Harbor resident) stated that she attended the EMC demonstration said it was very good. She disagreed with not having a restriction on white backgrounds because a white background is too distracting. She asked that the restriction on white background be kept as well as the limitation on hours of operation.

Following Mr. Spoo's presentation the Planning Commission had a lengthy discussion mostly centered on the method for measuring and enforcing brightness standards. Mr. Fikse provided two hand-outs (Attachment 2). At the conclusion of their discussion the Planning Commission took the following actions.

DURATION

ACTION: MS. JENSEN MOVED, MR. PETERSON SECONDED A MOTION TO LEAVE THE DRAFT CODE LANGUAGE AS IS - "MESSAGES, TEXT, GRAPHICS, IMAGES, AND *VIDEOS*, MUST REMAIN ON-SCREEN FOR A MINIMUM OF TWO SECONDS."

VOTE: 4 IN FAVOR AND 1 OPPOSED (WASINGER)

ANIMATION

ACTION: MS. PETERSON MOVED, JENSEN SECONDED A MOTION TO LEAVE THE DRAFT CODE LANGUAGE AS IS - "ANIMATION AND VIDEO CANNOT PORTRAY ACTION OR MOVEMENT AT SPEEDS FASTER THAN WHAT OCCURS IN REAL LIFE."

VOTE: 4 IN FAVOR AND 1 OPPOSED (FREEMAN)

TRANSITION TIME

ACTION: MR. FIKSE MOVED, MR. WASINGER SECONDED DIRECT STAFF TO REVISE THE LANGUAGE IN SECTION 19.36.030 (5)(G)(VIII) TO DELETE "WHEN THE SIGN IS TRANSITIONING BETWEEN COLORS, GRAPHICS, IMAGES OR TEXT THE TRANSITION TIME MUST OCCUR WITHIN ONE SECOND AND NO LESS THAN .5 SECONDS."

VOTE: 4 IN FAVOR 1 OPPOSED (PETERSON)

SCROLLING OR MOVING TEXT

ACTION: MS. JENSEN MOVED, MR. FREEMAN SECONDED A MOTION TO: LEAVE THE DRAFT CODE LANGUAGE AS IS - "SCROLLING OR MOVING TEXT IS PROHIBITED."

VOTE: UNANIMOUS

BRIGHTNESS

ACTION: FIKSE MOVED, JENSEN SECONDED A MOTION TO: DIRECT STAFF TO REVISE THE LANGUAGE IN SECTION 19.36.030 (5)(G)(XII) SO THAT THE SECOND SENTENCE READS "DIGITAL SIGNS SHALL COME EQUIPPED WITH PHOTO CELL AUTOMATIC DIMMING TECHNOLOGY."

VOTE: UNANIMOUS

ACTION: PETERSON MOVED FREEMAN SECONDED A MOTION TO: DIRECT STAFF TO REVISE THE BRIGHTNESS STANDARDS TO 90% BRIGHTNESS IN NITS DURING THE DAYTIME AND NO GREATER THAN 7% BRIGHTNESS IN NITS AT NIGHT WITH A MAXIMUM CAP OF 1000 NITS AT NIGHT.

VOTE: UNANIMOUS

PUBLIC PARTICIPATION PLAN – Public Hearing
Mr. Kamak noted that the agenda packet was missing his report which he handed out at the meeting (Attachment 3). Mr. Kamak reported that the Public Participation Plan (PPP) was presented to the Planning Commission in October 2013 and again at the January 28, 2014 meeting for discussion. The Planning Commission had no additions or recommendations so staff is asking the Planning Commission to forward a recommendation to the City Council to adopt the PPP. The PPP identifies procedures for providing "early and continuous public participation" in the amendment of the Comprehensive Plan and development regulations.

Mr. Fakkema opened the public hearing for public comment. Seeing none the public hearing was closed.

ACTION: MS. PETERSON MOVED, MR. WASINGER SECONDED A MOTION TO FORWARD THE PUBLIC PARTICIPATION PLAN TO THE CITY COUNCIL WITH A RECOMMENDATION FOR APPROVAL. MOTION CARRIED.

ANNUAL REPORT TO CITY COUNCIL – Public Meeting
Mr. Powers reported that the City Council reviewed the annual report at the January 28, 2013 meeting and Ms. Schlecht volunteered to write a statement for Section 3 General Recommendations. Mr. Powers recommended that Planning Commission forward the report to the City Council for their information.

ACTION: MR. FIKSE MOVED, MR. FREEMAN SECONDED A MOTION TO FORWARD THE ANNUAL REPORT TO THE CITY COUNCIL. MOTION CARRIED.

ADJOURN: 9:49 p.m.

Minutes submitted by: Katherine Gifford

ATTACHMENT 4

City of Oak Harbor
Development Services Dept.

Memo

To: Planning Commission

From: Steve Powers, Director RSP

CC:

Date: 11/19/12

Re: Electronic Message Center Sign Code Update

Electronic message center (EMC) signs are regulated in general by the Oak Harbor Municipal Code chapter governing business district signs (OHMC 19.36.030). The standards unique to EMC signs are found at OHMC 19.36.030(5)(g). These standards were added to the code in 2009.

The Mayor's Economic Development Committee has asked the City to consider amending this section of the sign code for the purposes of providing language that reflects current technology. Their request came via a memo dated October 4, 2012.[1]

Staff mentioned this item at the October Planning Commission pre-meeting briefing during the discussion of the pending items agenda. At the November 27th meeting staff will review the existing code language and the Economic Development Committee's request with the Planning Commission. In preparation for that discussion the following materials are attached to this memo:

- A copy of the existing EMC code.
- A copy of the sign code definitions most relevant to EMC signs
- A copy of the Economic Development Committee memo of October 4, 2012.

The complete sign code may be viewed by visiting the City's website (http://www.oakharbor.org) and following the link to the Municipal Code.

This item is for discussion only; no formal action is requested of the Planning Commission at this time.

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[1] The memo was submitted by Mr. David Fikse on behalf of the Economic Development Committee. Please note that the letter was submitted prior to Mr. Fikse being appointed as a member of the Planning Commission.

P:\PlanCom\PC12\11-27-12\EMC sign code amend.docx

Memo

To: Members of the Planning Commission

Cc: Steve Powers, Development Services Director

From: Ethan Spoo, Senior Planner

Date: 1/15/13

Re: Digital Signs Discussion

PURPOSE

The purpose of this memorandum is to discuss digital signs and the policy choices that those signs bring to the community. The memorandum is organized into the following sections:

- **Background :** discusses the new sign technology available, the most recent update to the code for sign technology, and how other cities treat digital signs.
- **Policy choices:** discusses the basic policy choices presented by digital signs for Oak Harbor.

BACKGROUND

DIGITAL SIGN TECHNOLOGY

Digital signs are one of the newer sign technologies. Electronic message centers are the prior generation of sign technology. Digital signs have capabilities, such as high quality video and animation that far exceed the capabilities of electronic message centers. As digital signs have been introduced, communities have raised questions about if and how these signs should be allowed. Like all other sign technologies, digital signs are designed to direct a passer-by's attention to a business.

Because of digital signs graphic, video, and animation capabilities, these signs offer business owners more choices for changing messages and images to attract attention to their business. At the same time, some research has found that these signs create potential safety issues. Signs with video or scrolling text attract twice as many glances as static signs and the drivers glance longer.[1]

This research on driver safety has been vehemently contested by the billboard and sign industry and retailers; they have their own studies showing that such signs are safe and lead to increased sales for retailers.[2]

2008-2009 ELECTRONIC MESSAGE CENTER CODE UPDATE

The City last updated its code pertaining to sign technologies in 2008-2009 when it discussed electronic message centers. In response to requests from the business community, Planning Division staff drafted language allowing for electronic message centers within the C-3, C-4, and C-5 commercial zones. At the time, Planning Commission was concerned about the aesthetic impacts of these signs, the impact of allowing them

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[1] For studies on driver safety and signs, see Beijer and Smiley, University of Toronto (2004), and the Texas Transportation Institute (2005).
[2] See Tantala, Albert Martin Sr., and Michael Walter Tantala, Tantala Associates. 2007. "A Study of the Relationship between Digital Billboards and Traffic Safety in Cuyahoga County, Ohio." July 7. See also Lee, Suzanne E. et al. 2007. "Driving Performance and Digital Billboards: Final Report." Virginia Tech Transportation Institute Center for Automotive Safety Research. March 22.

along the scenic byway, the size of the sign, animation, and video. The code was crafted to prohibit flashing, animation, and video.

EXISTING CODE

Oak Harbor's code does not address digital signs because of their relatively recent introduction. The code addresses electronic message center signs by placing restrictions on the signs characteristics such as size of the sign, the time of the message, the colors used in the sign, the ability to use animation and video, the brightness of the sign, and hours the sign may be turned on when adjacent to residential areas. As previously mentioned, flashing, animation, and video are prohibited on electronic message center signs and the images or text must remain for a minimum of two seconds.

HOW OTHER CITIES TREAT DIGITAL SIGNS

There are a variety of ways that cities treat digital signs ranging from prohibiting them outright to allowing them with few restrictions. Planning Division staff looked at the codes of some cities in Washington, including near to Oak Harbor to sample the ways in which these signs are treated with the following findings:

- **Federal Way** – Federal Way's code does not address digital signs specifically, but allows electronic message center signs for certain types of land uses and in certain zones. The code prohibits animated or moving signs and electronic message center signs near the freeway.
- **Everett** – Everett prohibits video boards, but allows electronic message center signs with no geographic limits. All messages or images must remain for a minimum of two seconds.
- **Burlington** – Burlington prohibits animated, moving, or flashing signs. Animation is defined as "a sign employing actual motion or the illusion of motion" and this prohibition applies to "electrically activated signs." Electronic message center signs are allowed, but only for multiple tenant complexes over 20 acres in size. Burlington requires that the sign be within 100 feet of the freeway. Messages must remain for at least two seconds. "Displays shall not appear to move toward or away from the viewer, expand or contract, bounce, rotate, spin, twist, or otherwise portray graphics or animation as it moves onto, is displayed on, or leaves the signboard."
- **Anacortes** – Anacortes specifically allows digital message signs, including TV, computer and video screens, but requires that the image or message remain for 20 seconds and limits size of the sign to 24 square feet. Digital electronic signs are prohibited in the central business district.
- **Mt. Vernon** – Mt. Vernon's code does not reference digital or video signs specifically, but instead uses the term "electronically controlled." These signs are not allowed in residential districts, but are allowed in commercial, industrial, and public districts subject to certain restrictions such as hours of operation and location near arterial streets. Animation and video are not specifically prohibited.
- **Bellingham** – Bellingham regulates digital, video, and electronic signs by district. The signs are permitted in some districts and prohibited in others depending upon the character of the district.

LEGAL BOUNDARIES

The City has broad legal authority to regulate the time, place, and manner of digital signs. It can do anything from prohibit all digital signs to allow them with few restrictions.

POLICY QUESTIONS

Before staff can draft a code pertaining to digital signs, we need guidance from the Planning Commission. First and foremost, we must answer whether the City will prohibit or allow these signs. The signs may be an important new technology that retailers and businesses can use to draw customers to their establishments. On the other hand, as discussed above these signs raise some questions about safety and community character. If the City wants to allow these digital sign technologies, it can choose to place restrictions on the characteristics of these signs which address their impacts. Staff requests Planning Commission guidance on the following policy questions:

1. Size? Should there be limits on the size of these signs? The existing code restricts the size of electronic message center signs to 50% of the size of the commercial sign in which the message centers are incorporated. Overall sign size is required to be proportional to the size of the building façade.

2. Animation and video? Animation may be prohibited or allowed. Animation is usually defined as movement or the appearance of movement. Many jurisdictions require that images or text remain on screen for a minimum specified time. Generally, the less time the image is on the screen, the more distracting it could be for drivers. For electronic message centers, the code uses two seconds as the minimum display time for messages. Are there some aspects of animation or video acceptable and others that are unacceptable?

3. Site Location? Should digital signs be located on freestanding sign structures or only on the building face or both? Generally speaking, the closer the sign is to the road, the more visible it is and the greater potential for driver distraction.

4. Location within City? Many cities restrict digital signs to commercial districts and discourage their placement near highways or freeways. In Oak Harbor's case, the primary commercial areas in town are along Highway 20, Midway Boulevard and Pioneer Way. Highway 20 has been designated as a state "scenic byway." Island County has adopted the "Whidbey Scenic Isle Way Corridor Management Plan" to preserve the scenic qualities of the scenic byway. If digital signs are allowed on Highway 20, it is possible that Island County and the Washington Department of Transportation (WSDOT) may have concerns about the aesthetic impacts of these signs. In the worst-case scenario, the state might revoke the scenic byway designation in Oak Harbor, which could have adverse economic impacts if it discourages tourists and motorist from visiting the City. Should there be different regulations for different commercial areas or zoning districts?

5. Hours of operation? Should these signs be turned off during nighttime hours? What about if adjacent to or visible from residential areas?

6. Brightness? Is it necessary to regulate this type of sign different from other types of illuminated signs? Should there be limits on the sign's brightness during daytime and nighttime hours?

ATTACHMENTS

1. "Digital Signs: Context Matters", Zoning Practice, April 2008, Issue Number 4, American Planning Association.

2. Existing code

Memo

To: Members of the Planning Commission

Cc: Steve Powers, Development Services Director

From: Ethan Spoo, Senior Planner

Date: 2/20/13

Re: Digital Signs Continued Discussion

PURPOSE

The purpose of this memorandum is to outline options for regulating digital signs in the City of Oak Harbor. Additionally, this memorandum answers questions posed by the Planning Commission in January, 2013.

DESCRIPTION OF SCENARIOS

To aide the Planning Commission in its policy decision, staff has developed four scenarios ranging from allowing digital signs with few restrictions to prohibiting them outright. These scenarios were developed in part based on the P.C. questions from January. The details of these policy options are listed on Attachment 1 and summarized in this memo. The scenarios were formed using other city's codes as examples, as well as looking at "best practice" literature.

Please note that there are many possible scenarios that could be developed to address the topic of digital signs. The ones presented in this memorandum are only intended to provide a starting point for the Planning Commission's discussion of this topic. None of these scenarios should be interpreted as a staff recommendation.

SCENARIO 1– "LEAST RESTRICTIVE"

This scenario allows digital signs under few restrictions. The digital signs would be allowed in all commercially and industrially zoned areas of the City with the exception of Pioneer Way. Digital signs would be allowed both as building mounted and on freestanding signs. Digital sign size could not be more than 50% of the total sign area for the site, and could comprise up to 100% of a single sign with 100 square feet being the maximum size of a sign. Electronic motion and video would be allowed on the signs. Signs would have to remain 100 feet away from residentially zoned areas. Autodim technology, within limits of 500 nits nighttime and 5,000 nits daytime, would be required.

SCENARIO 2-"MEDIUM RESTRICTION"

This scenario allows digital signs with some restrictions. The digital signs would be allowed in all commercial and industrial districts except for C1 and CBD, excluding along Pioneer Way. Movement would be allowed on the signs, but each graphic/text frame would need to remain for a minimum of two seconds. The best practices literature recommends a minimum display time ranging from 1-8 seconds depending on location. Signs would have to remain 100 feet away from residentially zoned areas. Digital signs could not be more than 50% of the sign allocation for the site and 50% of any single sign, as well as no more than 50 square feet in size. Signs could only be building mounted. Autodim technology, within limits of 500 nits nighttime and 5,000 nits daytime, would be required.

SCENARIO 3-"MOST RESTRICTIVE"
This scenario allows digital signs subject to narrower restrictions. The digital signs would be allowed only in C-3, C-4, and C-5 zones, excluding Pioneer Way and could only be building mounted. No motion would be allowed on the sign and minimum frame time would be 20 seconds. Signs would be limited to 25 square feet in size. The frame duration and size restrictions in this scenario match what the City of Anacortes has adopted. Signs would have to be 200 feet away from a residentially zoned property. Autodim technology, within limits of 500 nits nighttime and 5,000 nits daytime, would be required. The digital signs would only be allowed to operate from 8:00 a.m. to 8:00 p.m. during Fall and Winter and 8:00 a.m. to 10:00 p.m. during the Spring and Summer.

SCENARIO 4-"PROHIBITED"
This scenario is essentially the "no action alternative." The consideration of such a scenario is common practice when undertaking a planning study. Under this scenario, the existing code language code remains as is or it could be modified to specifically exclude digital signs. Staff's understanding is that digital signs can legally be prohibited outright, as long as ample alternative channels of commercial speech are available such as other sign types, internet, and newspaper.

DISCUSSION

The digital signs issue is inherently a policy question. Staff requests Planning Commission's guidance on the restrictions for allowing digitals signs and whether to allow them. As alluded to in the January, 2013 memo to Planning Commission on this topic, this is a new and emerging sign technology and many communities have not formally dealt with this issue. Communities which have dealt with digital signs approach the issue in different ways ranging from prohibiting them to allowing them in specific areas of their city subject to controls on size, brightness, movement, etc. The options presented to Planning Commission this month fall within the norms of regulations in other cities and what is recommended by the literature.

This month, staff request that Planning Commission review the scenarios and ask questions as appropriate. The anticipated schedule for the project is as follows:

- February – discuss scenarios with Planning Commission
- March – open public hearing and accept comments on scenarios. Planning Commission selects scenario with changes, if requested.
- April – Staff drafts code and issues SEPA. Public hearing remains open for citizen comment.
- May – Staff closes SEPA comment period. Planning Commission closes public comment period and makes a recommendation to City Council.

ANSWERS TO PLANNING COMMISSION QUESTIONS

Planning Commission requested that staff further research examples of digital signs in other communities and the impact of multiple digital signs in proximity to one another. Unfortunately, because the digital sign issue is so new, staff was unable to find adequate examples.

Planning Commission also requested that staff provide more guidance on free standing versus building mounted digital signs. Staff believe that the scenarios provided give more guidance in these areas. Cities have taken different approaches to this issue, as well with some cities favoring free standing digital signs located next to major arterials and other cities prohibiting digital signs next to roadways for traffic safety reasons. Prohibiting free standing digital signs has the effect of making them less visible to drivers since, in most cases, the signs would be setback from the road.

There was also significant discussion about the quality of digital signs at the January Planning Commission meeting. Quality of digital signs is related to the size of the LED used in the sign; the smaller the LED, the smaller the pixel size and the better the graphic quality of the sign. Staff did not address this issue in the

scenarios. Lower quality, larger LED signs are less expensive. Regulating the size of the LED might have the effect of only making the signs available to a very limited number of businesses who could afford them.

Finally, staff reviewed the "Whidbey Scenic Isle Way Corridor Management Plan" for discussion of commercial signs along Highway 20. Staff believe that provisions for onsite digital signs would not conflict with the Scenic Isle Way Corridor Management Plan. In fact, RCW 47.42, which is the State Scenic Vistas Act, specifically allows onsite commercial signage.

ATTACHMENTS

1. Digital Signs Regulation Scenarios
2. OHMC 19.36.030 "Business district signs – Zones CBD, CBD-1, CBD-2, C-3, C-4 and C-5."

RECOMMENDED ACTION

Discuss scenarios and provide feedback to staff.

Memo

To: Members of the Planning Commission

Cc: Steve Powers, Development Services Director

From: Ethan Spoo, Senior Planner

Date: 3/19/13

Re: Digital Signs Continued Discussion

PURPOSE

The purpose of this memorandum is to further refine regulatory scenarios for digital signs in Oak Harbor. Last month, the Planning Commission began discussing these alternatives. This month, staff will discuss changes to these scenarios. In preparing this memorandum, staff reviewed the audio recording and minutes from the February Planning Commission meeting and revised the scenarios. Staff has attempted to present balanced scenarios which consider the range of comments made. This month, staff anticipates that Planning Commission will direct staff to prepare a draft code corresponding to the chosen alternative.

DESCRIPTION OF SCENARIOS

Since last month, there have been revisions to the regulatory scenarios based upon the comments received from Planning Commission at the February Commission meeting. Those changes are described here and reflected in Attachment 1. As with last month, none of these scenarios should be interpreted as a staff recommendation.

SCENARIO 1– "LEAST RESTRICTIVE"

Description

This scenario allows digital signs under few restrictions. The digital signs would be allowed in all commercial, industrial, and public facilities (PF) zoned areas of the City with the exception of CBD zones. Digital signs would be allowed as building mounted or freestanding signs, but not both. Digital signs could not be more than 50% of the total sign square footage allotted to each business/building and in no case could be larger than 100 square feet. Building mounted and freestanding signs are treated differently in this scenario. Digital signs can comprise 100% of a building mounted sign, 75% of a monument sign, and 50% of a pole or pylon sign. Electronic motion and video would be allowed on the signs, with prohibitions on distracting effects such as flashing, pulsing, blinking, etc. Signs would have to remain 100 feet away from residentially zoned areas. No objective brightness standard would be set, but the code would rely upon a general statement which says "signs cannot be unreasonably bright so as to cause glare", with the exception of adjacent to residential areas where an objective standard would be set. The sign proponent would be required to submit factory setting demonstrating compliance with sign permit. The brightness option would give the business owner maximum flexibility and independent judgment in determining what is too bright.

Changes since February

- **Size:** Building mounted and freestanding signs are treated differently in this scenario based upon Planning Commission input. Digital signs are allowed to comprise 100% of building mounted signs, 75% of monument signs, and 50% of pole and pylon signs under the theory that freestanding signs are more visible to traffic and therefore more distracting.

- **Color:** Color has been changed to prohibit white backgrounds in accordance with Planning Commission comment.

- **Site Location Restrictions:** Building mounted or freestanding digital signs are allowed in this scenario, but not both on the same site.

- **Zone/Area Restrictions.** This scenario would allow digital signs in all commercial, industrial and public facilities zoned areas except in the central business district.

- **Compatibility:** Additional protections for residential areas are included by defining "adjacent" to include "across a public right-of-way". See also bullet related to brightness below.

- **Brightness:** Staff have changed the brightness standard in this scenario to reflect Planning Commissions comments. The standard now says that: "signs cannot be unreasonably bright so as to cause glare." In addition, there is a brightness limit of 1,000 nits nighttime and 8,000 nits daytime where adjacent to residential areas.

SCENARIO 2-"MEDIUM RESTRICTION"

Description

This scenario allows digital signs with some restrictions. The digital signs would be allowed in the C3, C4, and C5 commercial districts and the Public Facilities (PF) zone. Movement would be allowed on the signs, but each graphic/text frame would need to remain for a minimum of two seconds. The best practices literature recommends a minimum display time ranging from 1-8 seconds depending on location. Signs would have to remain 150 feet away from residentially zoned areas. Digital signs could not be more than 50% of the square footage allotment for the business/building and 50% of any single sign size, as well as no more than 50 square feet in size. Signs could only be building mounted. Autodim technology, within limits of 1,000 nits nighttime and 8,000 nits daytime, would be required.

Changes since February

- **Color.** Color has been changed to prohibit white backgrounds in accordance with Planning Commission comment.

- **Zone/Area Restrictions.** This scenario would allow digital signs in the more auto-oriented commercial zones such as C3, C4, and C5, as well as the Public Facilities (PF) zone.

- **Brightness.** Brightness has been changed in response to Planning Commission comments and further research on the issue to be 1,000 nits nighttime and 8,000 nits daytime.

SCENARIO 3-"MOST RESTRICTIVE"

Description

This scenario allows digital signs subject to narrower restrictions. The digital signs would be allowed only in C-3, C-4, and C-5 zones and could only be building mounted. No motion would be allowed on the sign and minimum frame time would be 20 seconds. Signs would be limited to 25 square feet in size. The frame duration and size restrictions in this scenario match what the City of Anacortes has adopted. Signs would have to be 200 feet away from a residentially zoned property. Autodim technology, within limits of 500 nits nighttime and 5,000 nits daytime, would be required. The digital signs would only be allowed to operate from 8:00 a.m. to 8:00 p.m. during Fall and Winter and 8:00 a.m. to 10:00 p.m. during the Spring and Summer.

Changes since February

- **Size:** Building mounted digital signs cannot be more than 33% of any individual sign area.

- **Color:** Prohibition on white background.

- **Zone/Area:** Auto-oriented commercial zones only C3, C4, C5.

SCENARIO 4-"PROHIBITED"

Description

This scenario is essentially the "no action alternative." The consideration of such a scenario is common practice when undertaking a planning study. Under this scenario, the existing code language code remains as is or it could be modified to specifically exclude digital signs. Staff's understanding is that digital signs can legally be prohibited outright, as long as ample alternative channels of commercial speech are available such as other sign types, internet, and newspaper.

Changes since last February

None.

DISCUSSION

BRIGHTNESS

Due to the amount of discussion and questions about the brightness issue, staff peformed further research and interviews for this issue.

There are a number of different measures of luminance or brightness including: nits, foot candles and lux. These units can be converted back and forth using formulas. At February's meeting, staff suggested an objective standard of 500 nits nighttime and 5,000 nits daytime for digital signs. These limits came from research literature about current practice in cities across the country.[1] The literature notes that there is no truly objective standard for measuring brightness, because it depends heavily upon the context in which the sign is operating. For instance, a digital sign set at 1,000 nits on a totally dark night with no other light sources around would seem very bright. On the other hand a digital sign set at 1,000 nits in the context of many other light sources would not seem so bright. This fact, means that it is important to set limits for the context, especially near sensitive land uses such as residential areas.

Staff also interviewed two sign contractors and manufacturers. First, staff interviewed Jeffery Rossi of Oak Harbor Signs who indicated that they have installed several digital signs in Oak Harbor, including those for Island Café, Flyer's Restaurant, and the Seventh-Day Adventist Church. Flyer's sign is set to 10,000 nits daytime and 800 nits nighttime. Each of these signs has video and motion capabilities, but does not currently use them.

Staff also interviewed Jacob Tilton of Watchfire Signs which is an American manufacturer of digital signs. Mr. Tilton is the regional representative for Watchfire Signs. Staff questioned Mr. Tilton about the brightness of signs and what he thought was "too bright." Mr. Tilton indicated that it is difficult to measure brightness, because it depends upon the context in which it occurs and there can be interference from other light sources. He also indicated that it is simple to set the brightness of the digital signs both before and after installation. The brightness is controlled using the computer software program that comes with the sign. The manufacturer can preset the brightness level of the sign prior to installation. Or, the brightness level can be set after installation if the sign owner requests by Watchfire with a password to access the software at no cost. Due to the subjectivity of measuring brightness, Mr. Tilton recommended that we have a subjective standard which says that "the sign cannot be unreasonably bright." He also mentioned that Spokane, Tacoma, and Boise are examples of cities where digital signs are located in close proximity to each other. Mr. Tilton stated his belief that there is no factual information or studies to indicate that sign brightness causes traffic accidents.

Finally, staff spoke with the City of Monroe Planning Director, Paul Popelka, who is updating their sign code, including language pertaining to digital signs. The City of Monroe has a draft code which places maximum brightness limits on digital signs by zone. Digital signs in commercial areas are allowed the highest limit of 0.8 foot candles (2,546 nits); office, and downtown commercial areas are permitted a brightness of 0.5 foot candles (1,592 nits); and open space areas are permitted a brightness of 0.3 foot candles (955 nits). The City of Monroe

[1] See "The Regulation of Signange: Guidelines for Local Regulation of Digital On-Premise Signs", Triantafillou, Menelaos, University of Cincinnatie and Weinstein, Alan C., Cleveland State University.

used brightness standards recommended to them by their consultant, Tom Beckwith. Mr. Popelka stated that he felt brightness limits were important for driver safety and to protect the character of their city. At the same time, the city recognizes that digital and video signs are an emerging technology which needs to be permitted under regulations, which are not overbearing.

ENFORCEMENT

Any objective, numerical standard of brightness, such as nits or foot candles, would require an enforcement procedure. The City of Oak Harbor currently enforces its codes on a complaint-only basis. Light meters are inexpensive instruments ranging in price from $15 to $500.

There are practical difficulties with regard to brightness standards. Ideally, there should be an objective standard so that each business or property owner is measured against the same standard. However, in the case of brightness, it is difficult to be completely objective because there can be interference from other light sources. So, while the City may be able to purchase a light meter, it may not be able to tell the brightness of any specific sign because of the surrounding light conditions. This is one drawback in adopting a specific standard and measuring compliance with that standard.

On the other hand, not having an objective standard could make enforcement even more difficult and legally problematic. How does the City enforce a standard such as "the sign cannot be unreasonably bright so as to cause glare"? What is "unreasonably bright"? Also, what role should the context in which the digital sign is located play? Should the City adopt regulations which are different by zone?

Staff requests planning commission guidance on whether to have an objective or subjective standard given the practical difficulties involved. Scenario 1, "Least Restrictive" proposes a subjective standard, except adjacent to residentially zoned areas.

SIZE

Staff reviewed Planning Commission comments from February regarding size limitations for digital signs. In Scenario 1 (Least Restrictive), signs are limited by the type of sign proposed. Building mounted digital signs can comprise 100% of the individual sign size. Monument digital signs can be 75% of the individual sign size, and pole/pylon digital signs can be 50% of the individual sign size. The theory behind the sign size limitations is that freestanding signs (monument, pole, or pylon) are customarily located closer to the road where they are more attention-getting and therefore more distracting. Thus, more restrictive limits are proposed for freestanding digital signs. Once again, the proposed size restrictions were made based upon Planning Commission comment from February.

SCHEDULE

- February – discuss scenarios with Planning Commission
- March – Conclude discussion on scenarios. Planning Commission gives staff formal direction on scenarios.
- April – Staff drafts code and issues SEPA. Public hearing remains open for citizen comment.
- May – Staff closes SEPA comment period. Planning Commission closes public comment period and makes a recommendation to City Council.

ATTACHMENTS

1. Digital Signs Regulation Scenarios
2. OHMC 19.36.030 "Business district signs – Zones CBD, CBD-1, CBD-2, C-3, C-4 and C-5."

3. "The Regulation of Signage: Guidelines for Local Regulation of Digital On-Premise Signs", Triantafillou, Menelaos, University of Cincinnati and Weinstein, Alan C.

4. Example Graphics for Signs

RECOMMENDED ACTION

Select scenario and direct staff to prepare draft code based on selected scenario.

Memo

To: Members of the Planning Commission

Cc: Steve Powers, Development Services Director

From: Ethan Spoo, Senior Planner

Date: 4/8/13

Re: Digital Signs Draft Code

PURPOSE

Based on prior discussions, staff are forwarding a draft of the proposed digital sign code to Planning Commission for review and comment. This memorandum summarizes the draft code which is Attachment 1 to this memorandum.

DRAFT CODE SUMMARY

DEFINITION

First and foremost, it is important to have a definition of digital signs. City staff need to distinguish between these signs and electronic message centers since these two types of signs will be regulated differently. Staff have created a definition for digital signs in OHMC 19.36.020. The definition refers to the "video, motion, graphic, and text capabilities of these signs. Electronic message centers also have graphic and text capabilities, thus, digital signs are primarily distinguished by their video capabilities. One consequence of this definition will be that some existing signs, originally permitted as electronic message centers and having video capability, may now be able to operate under the digital sign code provisions, once adopted.

ZONES/WHERE ALLOWED

The draft code proposes that digital signs be allowed in the C1 (Neighborhood Commercial), C3 (Community Commercial), C4 (Highway Service Commercial), C5 (Highway Corridor Commercial), I (Industrial), PIP (Planned Industrial Park), PBP (Planned Business Park), and PF (Public Facilities) zones. Digital signs are not allowed in the central business district (CBD) zone, because they are not compatible with the historic character of and residential uses in this zone.

CODE CONFORMANCE

Digital signs are considered to be one type of primary signage on a site and must adhere to the quantity, size, height, and setback requirements in 19.36.030(2-5) except where further specified in the digital sign code provisions. For instance, 19.36.030(2-5) says that a freestanding sign cannot be more than 25 feet tall and this provision would also apply to freestanding digital signs. On the other hand, 19.36.030(2-5) also says that buildings with a façade of 999 square feet or less may have three primary signs. The proposed digital sign code is more specific, limiting the number of digital signs to only one per property. Therefore, digital signs must meet all requirements of 19.36.030(2-5), as well as the proposed digital sign provisions which may be more specific.

SIZE

In keeping with the direction from Planning Commission to use the "least restrictive" scenario to write the code, staff are proposing size regulations for digital signs allowing for a 100-square foot digital sign. The sign may be

either building mounted or freestanding. If a freestanding sign is proposed, no more than 75 percent of a monument sign can be a digital display and no more than 50 percent of a pole or pylon sign may be a digital display. Building mounted signs can have 100 percent of their area as a digital display.

VIDEO AND MOTION

Per Planning Commission input, video and motion are allowed on digital signs. "Shaking, trembling, quavering, or quaking" videos and motion graphics are prohibited so as not to constitute a traffic distraction based upon Planning Commission input regarding allowing "smooth video." In addition video speed cannot be quicker than what occurs in real life. Flashing, undulating, pulsing, portrayal of explosions, fireworks, flashes of light, or blinking, or chasing lights and scrolling or moving text are prohibited.

COLOR

White backgrounds are prohibited in accordance with Planning Commission comment.

DISPLAY CHANGES

So as to avoid distracting effects, instantaneous display changes are prohibited.

NUMBER

The code limits the number of digital signs per property. The proposed code requires multitenant properties to share a single digital sign.

ORIENTATION

Freestanding digital signs must be directed away from adjacent residential areas. Adjacent areas include properties across a public right-of-way from the property where the digital sign is proposed.

HOURS OF OPERATION

Digital signs must be turned off between the hours of 10:00 a.m. to 6:00 a.m., but only where adjacent to residentially zoned areas. Digital signs not adjacent to residentially zoned properties may operate their signs 24-hours a day.

LUMINANCE/BRIGHTNESS

There has been a range of Planning Commission comment on the brightness issue. The draft code proposes that brightness levels be set by zone in which the digital sign is located, a suggestion proffered by Planning Commission. A subjective standard of "not unreasonably bright so as to cause glare" is proposed for C3, C4, and C5 zoned areas. For C1 (Neighborhood Commercial), all industrial, business park, and the Public Facilities (PF) zone, the proposed brightness standard is 1,000 nits during the night and 8,000 nits during the day. The proposed system of regulating brightness allows maximum flexibility for businesses in most commercially zoned areas, while setting a specific standard in other areas where light impacts may be greater.

SCHEDULE

The proposed schedule for the remainder of the project is as follows:

- April – Staff drafts code and issues SEPA. Public hearing remains open for citizen comment.
- May – Staff closes SEPA comment period. Planning Commission closes public comment period and makes a recommendation to City Council.

ATTACHMENTS

1. Digital Signs Draft Code –Amendments to OHMC Sections 19.36.020 and 19.36.030.

Memo

To: Members of the Planning Commission

Cc: Steve Powers, Development Services Director

From: Ethan Spoo, Senior Planner

Date: 5/21/13

Re: Digital Signs – Further Discussions on Draft Code

PURPOSE

This month, Planning Commission will continue the public hearing that was opened in April and accept additional comments on the draft digital signs code. This memorandum has the following sections:

- **Changes to the Draft Code.** This section highlights changes to the draft code since last month based upon Planning Commission and public input, as well as input from the City's legal counsel.
- **The Impacts of Multiple Digital Signs in Close Proximity.** This section briefly discusses the impacts of multiple digital signs in close proximity and alternatives for Planning Commission consideration.
- **Compliance with Review Criteria.** Finally, staff are providing a summary analysis of how the proposed code changes comply with the criteria for text amendments in OHMC 19.80 to assist Planning Commission.
- **Schedule.** Outlines the schedule for the remainder of the project up until Planning Commission recommendation.
- **Attachment.** Lists attachments for this memorandum.

CHANGES TO THE DRAFT CODE

The following changes were made to the draft code since the last version was presented to the Planning Commission in April. These changes reflect comments made by the Planning Commission, public, and the City's legal counsel.

- A definition was added for "public service information." Digital signs are allowed to display public service information, in addition to advertising a business or its products.
- The definition of "video board" in 19.36.020 was deleted because it is now redundant with the definition for "digital sign."
- A provision was added limiting video and message lengths to occupy no more than 10 second periods for safety reasons based upon additional research.
- Color. The phrase "White backgrounds, which are bright and distracting to traffic, are prohibited" was thought to be subject to interpretation. Thus, the phrase has been modified to read simply... "white backgrounds are prohibited."
- Display changes. Staff have modified the language regarding display changes. The language now emphasizes that the time limits apply only to display changes, not the total time a graphic, text, video, or color can be on the screen.

- Orientation. At Planning Commission request, staff added language specifying that distance is measured from the digital sign location to the nearest property line of a residential or open space zoned property. Also, based on what other jurisdictions are doing, the distance offset from residential and open space zones was increased to 200 feet.
- Luminance/Brightness. Staff have replaced the subjective brightness standard in the code for signs in the C3, C4, and C5 zones. This standard said that digital signs shall "not be unreasonably bright so as to cause glare." The City's legal counsel expressed concerns that this was too vague, likely unenforceable, and recommended the City consider a numerical standard. The standard was replaced with an objective standard of 1,500 nits during the night and 13,000 nits during the day to allow for greater flexibility for businesses in more intense commercial zone. Additionally, the code permits the City to approach a sign owner/operator and request that they voluntarily reduce the luminance and brightness level for signs meeting technical standards, but which are perceived to be too bright for their context.
- Shielding...The proposed language requires that signs be oriented perpendicular to the ground so that they do not project light upwards and create light impacts for aircraft.

THE IMPACTS OF MULTIPLE DIGITAL SIGNS IN CLOSE PROXIMITY

Planning Commissioners raised questions in April about the impact of having multiple digital signs in close proximity to one another. During the April meeting, Planning Commission raised the possibility of having a spacing standard which would require digital signs to be separated by a minimum distance. A spacing standard might preclude some businesses from having digital signs, if a neighboring business had a digital sign that was closer than the required spacing standard. Extending certain rights to some property/business owners, but not others may be legally difficult to justify. Thus, staff recommend that Planning Commission focus on extending the same rights to all business/property owners within the same zone. Any perceived or actual negative impacts of digital signs should be controlled by applying the same standards to each property or business owner.

Staff attempted to research the impacts of having multiple digital signs in close proximity to one another. Because digital signs are an emerging technology and not yet widely used, staff was unable to find any information on this topic.

Given potential legal issues with applying a spacing standard, Planning Commission may want to consider other alternatives that help limit the negative impacts of multiple digital signs in close proximity. More specifically:

- Limit the format for digital signs.
    - Planning Commission could recommend that digital signs be building mounted only. In this scenario, digital signs could not be placed on monument, pole, or pylon signs and would, therefore, generally be located further away from roads and be less visible.
    - Alternatively, Planning Commission could recommend that digital signs be located on buildings, monument signs, and pylon signs, but prohibit them from locating on pole signs. This alternative would ensure that digital signs are not placed on signs taller than ten feet. Pole signs can be up to 25 feet tall, have a higher profile, and are therefore usually more visible.
- Further limit the characteristics of digital signs such as size, brightness, distance from sensitive land uses, etc. If Planning Commission believes there are objectionable characteristics of digital signs that need to be addressed and which create negative impacts when located near other digital signs, it can further restrict the characteristics of digital signs to an acceptable level.

If Planning Commission chooses one of the above alternatives, staff request that the Commission make a motion to direct staff to draft code accordingly.

COMPLIANCE WITH REVIEW CRITERIA

Zoning code text amendments are subject to the criteria in OHMC 19.80. Here, staff provide a brief written analysis of how these criteria are met in the draft code and for Planning Commission discussion.

OHMC 19.80.020 REVIEW CRITERIA

1. The amendment must be consistent with the Oak Harbor comprehensive plan.

Response: *The Oak Harbor Comprehensive Plan contains many goals and policies. The most pertinent goals and policies pertaining to digital signs are: Land Use Goal 1; Land Use policies 1(d and e); Urban Design policies 2f and 5c; and Economic Development Goal 3. A further response is provided to each of the pertinent goals and policies below.*

a) *Land Use Goal 1: "To respect the "small town" heritage of Oak Harbor while enhancing the unique character of its neighborhoods and districts with development that is fitting with the City's future as a regional center."*

Further Response: *Oak Harbor's downtown is its historic center and focus of its small town heritage. The downtown continues to maintain a historic feel in its building architecture. Downtown commercial retail properties have narrow lot widths as compared with those along the highway. Lots which have commercial/retail land uses on them in downtown are typically much more narrow than commercial properties elsewhere in the City. In addition, commercial buildings are located near front property lines. Buildings reflect architecture from the early to mid 1900s. For these reasons, digital signs are incompatible with the small town heritage of downtown and the draft code proposes language which prohibits digital signs in the Central Business District. This prohibition will respect Oak Harbor's small town heritage.*

Oak Harbor is a growing community which is the largest commercial center on Whidbey Island. Digital signs are an advertising medium for Oak Harbor businesses which will likely be an important type of signage for businesses outside of downtown in the future. The draft code proposes restrictions on the size, brightness, hours of operation, distance from sensitive land uses, and color which will help make digital signs compatible with their context.

b) *Land Use 1.d: "Business-related signs, both temporary and permanent, should serve the needs of the business owner and public to identify business locations but should not proliferate in a manner whereby the sum of all signs detracts from a positive aesthetic experience of the City's commercial areas."*

Further response: *Digital signs can be an important medium for advertising and identifying businesses. The overall quantity of signs allowed for a property/business is not proposed to be changed with the digital signs draft code. Digital signs will be considered to be one more alternative sign type from which business/property owners can choose, but the overall amount of signage allowed for a given property will not increase with this proposal. In addition, staff are proposing restrictions on the size, brightness, hours of operation, distance from sensitive land uses, and color to help control aesthetic impacts of signs in commercial areas.*

c) *Land Use 1.e: "Signage standards should promote design sensitivity to the context in which signs are placed and scaled to both the mass of the building and the location of the sign on the lot."*

Further response: *As with all other types of commercial signs, the quantity and size is of digital signs is primarily controlled by the size of the building façade as outlined in OHMC 19.36.030(2): larger building facades are permitted larger and more signs. The size of digital signs is further controlled by the proposed digital signs code language which limits building mounted digital signs to 100 square feet in area, digital pole signs to 50 square feet, digital monument signs to 24 square feet, and digital pylon signs to 24 square feet. In addition, no more than one digital sign is allowed per property. Thus, digital signs are scaled to the mass of the building. Moreover, the digital sign code places contextual limitations on digital signs whereby brightness varies by zoning district, and signs must maintain a minimum distance of 200 feet from residential or open space zoned areas.*

d) *Urban Design 2.f: "Consideration should be given to revising the sign ordinance in order to encourage signage more in keeping with the unique character of Oak Harbor."*

Further response: *The proposed code will constitute a revision to the sign ordinance. It will be Planning Commission's discretion as to whether digital signs are "in keeping with the unique character of Oak Harbor."*

e) *Urban Design 5.c: "Free standing business signs should be consistent with the speed limit of roadways, and the character of land use districts."*

Further response: *The speed limit on SR-20 is 35-40 miles per hour and 30 miles per hour along Midway. The posted speed along Goldie Road is 35 miles per hour. Together these three streets constitute the vast majority of areas where digital signs could be placed if the proposed ordinance is adopted. The proposed digital sign ordinance contains a provision requiring that digital signs have distinguishable letters and graphics from adjacent roadways and relate to the speed limit of the adjacent road.*

f) *Economic Development Goal 3: "Increase Oak Harbor's market share of retail sales to reduce the economic leakage off island."*

Further response: *Signs have been posited to contribute positively to the financial performance of retail businesses according to a study conducted by the University of San Diego between 1995 and 1997, which was sponsored by the sign industry[1]. "On average, one additional sign installed on a site would result in an increase in annual sales in dollars of 4.75 percent at the site"[2] To the degree that digital signs help Oak Harbor businesses advertise and get additional attention from potential patrons, they are likely to contribute positively to the businesses' financial performance.*

2. The amendment must substantially promote the public health, safety and welfare.

Response: *As previously mentioned, studies have indicated that signs can contribute positively to the economic welfare of the community. Aside from the studies pertaining to traffic safety, there is no information that staff is aware of that digital signs negatively affect public health.*

The topic of safety is more difficult to address. Several studies have been conducted; their results taken as a whole are inconclusive. The majority of studies regarding digital signs address digital billboards along highways, rather than on-site digital signs and therefore may not be applicable to on-site digital signage. However, there are a few studies which have applicable findings for on-site digital signs including a 2004 study by the University of Toronto which found that drivers make twice as glances at video signs than they do at static signs. In addition, video signs and scrolling text signs received the longest average maximum glance duration[3]. The only study which deals specifically with onsite digital signs which staff is aware of found that there is no significant relationship between onsite digital signage and automobile accidents and was sponsored by the sign industry.[4] Therefore, the available information to staff indicates that there are inconclusive studies with regard to the safety impacts of digital signage.

SCHEDULE

The proposed schedule for the remainder of the project is as follows:

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[1] Ellis, Seth R. and Robert Johnson. 1997. "Research on Signage Performance." In *The Economic Value of On-Premise Signage.* Malibu, Calif. And Alexandria, Va.: California Electric Sign Association and the International Sign Association.

[2] Morris, Mayra; Henshaw, Mark L; Mace, Douglas and; Weinstein, Alan. "The Economic Context of Signs." In *Context Sensitive Signage Design.* American Planning Association, page 84.

[3] University of Toronto, 2004. "Observed Driver Glance Behavior at Roadside Advertising Signs. Beijer & Smiley.

[4] Texas A&M University. December, 2012. "Statistical Analysis of the Relationship between On-Premise Digital Signage and Traffic Safety."

- May – Continue public hearing.
- June – Staff finalizes SEPA and Planning Commission closes public hearing, makes recommendation to City Council.

ATTACHMENTS

1. Digital Signs Draft Code –Amendments to OHMC Sections 19.36.020 and 19.36.030.
2. "The Economic Context of Signs", American Planning Association.

Memo

To: Members of the Planning Commission

Cc: Steve Powers, Development Services Director

From: Ethan Spoo, Senior Planner

Date: 6/18/13

Re: Digital Signs – Further Discussions on Draft Code and Public Hearing

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PURPOSE

The purpose of the memorandum is to highlight changes to the draft digital signs code since the May Planning Commission meeting. Please note that this code has been combined with the electronic message center (EMC) code for reasons explained below.

CHANGES TO THE DRAFT CODE

Previously, the draft code treated EMCs and digital signs as two distinctly different types of signs and the code had a section to address each sign type. After further thought and public comment offered by the International Sign Association, staff have moved the digital sign code provisions and incorporated them into the EMC provisions. Having a single code section will streamline the code and eliminate any future confusion that may have arisen in distinguishing between EMCs and digital signs. Please note that, although the two code sections have been combined, Planning Commission's language and intent of the draft code worked out over the past several months has been preserved. Only the location of that language regarding digital capable signs has been changed. For these reasons, this memorandum will now refer to digital signs as EMCs.

The following additional changes were made to the draft code since the last version was presented to the Planning Commission in May. These changes reflect comments made by the Planning Commission and the public:

- The definition for "digital signs" has been deleted based upon the above discussion.
- The definition for "electronic message center" has been updated to include signs which display graphics, images, and video.
- A definition was added for "transition."
- Duration. Previously, the proposed code language said that "dynamic messages, text, or video segments must not exceed ten seconds in duration." The intent of this provision was to limit moving objects on the EMC screen to ten seconds at which time they must become static or exit the screen. Planning Commission indicated this language was confusing and staff reworded this section to specify a *minimum* duration time of ten seconds for graphics, text, messages, and images. Videos must have a minimum duration of two seconds and a maximum duration of five seconds.
- Brightness/Illumination. Staff have revised the code to reflect comments made by the International Sign Association. The code now sets a standard which limits brightness to 0.3 foot candles above ambient light levels during the night and relies on auto dimming technology during the day. Please note that there would be no set brightness limit during the day for electronic message centers, although autodimming technology would reduce the brightness of the sign on cloudy or dark days.

- Hours of operation and distance. Previously, the code indicated that EMCs (then referred to as "digital signs") within 100 feet of residential zones must not operate at night. Subsequently, staff recommended that all EMCs be located at least 200 feet from residential properties, making the 100-foot provision moot since the code would not have allowed these type of signs within 200 feet of residential properties. To continue to protect residential properties from night time light impacts of these signs, the code now proposes that any EMC sign located within 200 feet of residentially zoned property must not operate between 10:00 p.m. and 6:00 a.m. Please note that this provision will primarily apply to non-conforming electronic message center signs since the draft code, if adopted, will not allow these signs to be placed closer than 200 feet from a residentially zoned property.
- Shielding. The proposed language requires that EMCs be oriented perpendicular to the ground so that they do not project light upwards and create light impacts for aircraft.
- A provision was added indicating that all existing electronic message center signs which are non-conforming with regard to brightness and hours of operation must be brought into conformance with the brightness and hours of operation standards herein within one year of the adoption of this code.

BRIGHTNESS

Last month, Planning Commissioners received public testimony from Mr. James Carpentier of the International Sign Association (ISA). Among other comments he made, Mr. Carpentier recommended measuring brightness using foot-candles rather than nits. In addition, Mr. Carpentier recommended that the City use a relative brightness standard which would link the brightness level of an EMC sign to ambient light levels. EMCs would be limited to no more than 0.3 foot-candles above ambient light conditions. Thus, under this scenario, the brighter the ambient light levels, the brighter the EMC would be permitted to be and vice versa.

The existing draft code contains language for a fixed brightness standard not linked to ambient light levels. EMCs would be allowed a specific level during the day and a separate standard for the night, with no relationship to ambient light levels. For most commercial and industrial zones (C1, I, PIP, PBP, PF) the draft code language sets brightness limits at 1,000 nits during the night and 8,000 nits during the day. For more intense commercial zones (C3, C4, C5), the level would be 1,500 nits during the night and 13,000 nits during the day. Paraphrasing comments made by the ISA in a phone call with staff on June 13, 2012, these brightness levels are excessive and the City would likely receive many complaints if signs were allowed to achieve these levels

Planning Commission requested that staff provide more information regarding using foot-candles rather than nits. There are at least two ways to measure luminance, foot-candles and nits are two of those ways. *Iluminance* is a measure of the amount of light intersecting an object (a light meter) at a given distance. Whereas, *luminance* is a measure of the absolute amount of light emitted from an object (not measured from a distance). Foot-candles are a measure of *illuminance*, whereas nits are a measure of *luminance*. Therefore, it is not possible to convert from nits to foot-candles. However, according to the ISA, the 0.3 foot-candles maximum standard over ambient lighting conditions, will be much dimmer than what the draft code now proposes. The ISA asserts that using foot-candles is the preferred approach because foot-candle meters are much less expensive ($100-$1,000) than nit meters ($3,000) and the standard is easier to measure and enforce. Based on these comments, staff have revised the draft to take into account the ISA's recommendation to use foot-candles to measure brightness and sets the limit of an electronic message center sign at 0.3 foot-candles above ambient light levels.

COMPLIANCE WITH REVIEW CRITERIA

Zoning code text amendments are subject to the criteria in OHMC 19.80. Here, staff provide a brief written analysis of how these criteria are met in the draft code and for Planning Commission discussion.

OHMC 19.80.020 REVIEW CRITERIA

1. The amendment must be consistent with the Oak Harbor comprehensive plan.

Response: *The Oak Harbor Comprehensive Plan contains many goals and policies. The most pertinent goals and policies pertaining to electronic message center signs are: Land Use Goal 1; Land Use policies 1(d and e); Urban Design policies 2f and 5c; and Economic Development Goal 3. A further response is provided to each of the pertinent goals and policies below.*

a) *Land Use Goal 1: "To respect the "small town" heritage of Oak Harbor while enhancing the unique character of its neighborhoods and districts with development that is fitting with the City's future as a regional center."*

   Further Response: *Oak Harbor's downtown is its historic center and focus of its small town heritage. The downtown continues to maintain a historic feel in its building architecture. Downtown commercial retail properties have narrow lot widths as compared with those along the highway. Lots which have commercial/retail land uses on them in downtown are typically much narrower than commercial properties elsewhere in the City. In addition, commercial buildings are located near front property lines. Buildings reflect architecture from the early to mid 1900s. For these reasons, electronic message center signs are incompatible with the small town heritage of downtown and the draft code proposes language which prohibits electronic message center signs in the Central Business District. This prohibition will respect Oak Harbor's small town heritage.*

   Oak Harbor is a growing community which is the largest commercial center on Whidbey Island. Electronic message center signs are an advertising medium for Oak Harbor businesses which will likely be an important type of signage for businesses outside of downtown in the future. The draft code proposes restrictions on the size, brightness, hours of operation, distance from sensitive land uses, and color which will help make electronic message center signs compatible with their context.

b) *Land Use 1.d: "Business-related signs, both temporary and permanent, should serve the needs of the business owner and public to identify business locations but should not proliferate in a manner whereby the sum of all signs detracts from a positive aesthetic experience of the City's commercial areas."*

   Further response: *Electronic message center signs can be an important medium for advertising and identifying businesses. The overall quantity of signs allowed for a property/business is not proposed to be changed with the draft code. Electronic message center signs will be considered to be one more alternative sign type from which business/property owners can choose, but the overall amount of signage allowed for a given property will not increase with this proposal. In addition, staff are proposing restrictions on the size, brightness, hours of operation, distance from sensitive land uses, and color to help control aesthetic impacts of electronic message center signs in all areas where they would be allowed.*

c) *Land Use 1.e: "Signage standards should promote design sensitivity to the context in which signs are placed and scaled to both the mass of the building and the location of the sign on the lot."*

   Further response: *As with all other types of commercial signs, the quantity and size is of electronic message center signs is primarily controlled by the size of the building façade as outlined in OHMC 19.36.030(2): larger building facades are permitted larger and more signs. The size of electronic message center signs is further controlled by the proposed code language limiting building mounted electronic message center signs to 100 square feet in area, EMC pole signs to 50 square feet, EMC monument signs to 24 square feet, and EMC pylon signs to 24 square feet. In addition, no more than one EMC is allowed per property. Thus, EMC signs are scaled to the mass of the building. Moreover, the EMC sign code places contextual limitations on EMCs whereby brightness varies by zoning district, and signs must maintain a minimum distance of 200 feet from residential or open space zoned areas.*

d) *Urban Design 2.f: "Consideration should be given to revising the sign ordinance in order to encourage signage more in keeping with the unique character of Oak Harbor."*

Further response: *The proposed code will constitute a revision to the sign ordinance. It will be Planning Commission's discretion as to whether EMCs are "in keeping with the unique character of Oak Harbor."*

e) *Urban Design 5.c: "Free standing business signs should be consistent with the speed limit of roadways, and the character of land use districts."*

Further response: *The speed limit on SR-20 is 35-40 miles per hour and 30 miles per hour along Midway. The posted speed along Goldie Road is 35 miles per hour. Together these three streets constitute the vast majority of areas where EMCs could be placed if the proposed ordinance is adopted. The proposed EMCs ordinance contains provisions prohibiting scrolling or moving text, thereby helping to ensure that digital signs are readable from the adjacent roadway.*

f) *Economic Development Goal 3: "Increase Oak Harbor's market share of retail sales to reduce the economic leakage off island."*

Further response: *Signs have been posited to contribute positively to the financial performance of retail businesses according to a study conducted by the University of San Diego between 1995 and 1997, which was sponsored by the sign industry[1]. "On average, one additional sign installed on a site would result in an increase in annual sales in dollars of 4.75 percent at the site"[2] To the degree that EMCs help Oak Harbor businesses advertise and get additional attention from potential patrons, they are likely to contribute positively to the businesses' financial performance.*

2. The amendment must substantially promote the public health, safety and welfare.

Response: *As previously mentioned, studies have indicated that signs can contribute positively to the economic welfare of the community. Aside from the studies pertaining to traffic safety which are inconclusive, there is no information that staff is aware of that EMCs negatively affect public health.*

The topic of safety is more difficult to address. Several studies have been conducted; their results taken as a whole are inconclusive. The majority of studies regarding EMCs with digital capabilities address digital billboards along highways, rather than on-site EMCs with digital capabilities and therefore may not be particularly applicable to this discussion. However, there are a few studies which have applicable findings for on-site EMCs with digital capabilities including a 2004 study by the University of Toronto which found that drivers make twice as many glances at video signs than they do at static signs. In addition, video signs and scrolling text signs received the longest average maximum glance duration[3]. The only study which deals specifically with onsite EMCs with digital capabilities which staff is aware of found that there is no significant relationship between these signs and automobile accidents and was sponsored by the sign industry.[4] Therefore, the information available to staff indicates that there are inconclusive studies with regard to the safety impacts of EMCs with digital capabilities.

SCHEDULE

The proposed schedule for the remainder of the project is as follows:

- June – Staff finalizes SEPA and Planning Commission continues the public hearing.

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[1] Ellis, Seth R. and Robert Johnson. 1997. "Research on Signage Performance." In *The Economic Value of On-Premise Signage.* Malibu, Calif. And Alexandria, Va.: California Electric Sign Association and the International Sign Association.

[2] Morris, Mayra; Henshaw, Mark L; Mace, Douglas and; Weinstein, Alan. "The Economic Context of Signs." In *Context Sensitive Signage Design.* American Planning Association, page 84.

[3] University of Toronto, 2004. "Observed Driver Glance Behavior at Roadside Advertising Signs. Beijer & Smiley.

[4] Texas A&M University. December, 2012. "Statistical Analysis of the Relationship between On-Premise Digital Signage and Traffic Safety."

- July – Possible conclusion of public hearing.

ATTACHMENTS

1. Electronic Message Center Draft Code –Amendments to OHMC Sections 19.36.020 and 19.36.030.

Memo

To: Members of the Planning Commission

Cc: Steve Powers, Development Services Director

From: Ethan Spoo, Senior Planner

Date: 7/23/13

Re: Electronic Message Centers – Further Discussion of Draft Code and Public Hearing

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PURPOSE

At Planning Commission's request, this memorandum provides more information regarding how other jurisdictions around the state regulate the brightness of electronic message center (EMC) signs.

SUMMARY OF RESEARCH ON BRIGHTNESS STANDARDS IN THE NORTHWEST

At the June Planning Commission meeting, staff offered to perform additional research to explore how other jurisdictions around Washington regulate the brightness of EMCs. At the outset of this project, staff did research the codes of other jurisdictions to see how they regulate EMCs, especially with regard to their digital capabilities. At that time, staff found very few jurisdictions which had codes in place regulating digital-capable EMCs.

The focus of the most recent round of research was on the issue of brightness and how this is regulated in other jurisdictions. Staff found four jurisdictions (Jefferson County, SeaTac, Monroe, and Burlington) and one additional jurisdiction in Idaho (Moscow) which regulate the brightness of EMCs. Staff also sampled three other jurisdictions near to Oak Harbor (Everett, Anacortes, Bellingham) and two other jurisdictions (Federal Way and Shoreline) to see how they address EMCs. Attachment 2 highlights how these jurisdictions approach brightness. In addition, in the course of doing our research on brightness, staff also noted how these jurisdictions address video/animation, and the duration of messages/images on the screen. The following bullet points summarize the findings of this research:

- Of the five jurisdictions which regulate brightness, two use exclusively nits, two use exclusively footcandles, and one uses both.
- Brightness limits for nits range from 500-1,000 nits during the night and up to 8,000 nits during the day. Of the jurisdictions using footcandles, limits range from 0.3 to 0.8 above ambient lighting conditions.
- Three of the five jurisdictions which regulate brightness require the use of autodim technology.
- Of the ten jurisdictions researched, 30 percent allow for video or animation. Jefferson County, Monroe, Moscow, and Shoreline appear to have updated their codes recently to account for digital technology and have specifically prohibited video and animation.
- Most of the jurisdictions researched regulate the minimum amount of time graphics or text can be on the screen and some have specific provisions for the length of videos. For graphics or text, the most common standard is an eight second minimum. Jefferson County and Monroe require that videos be at least two seconds in duration.

In addition to researching brightness standards in other jurisdictions, staff contacted the Illumination Engineering Society of North America (IES) which claims to be "the recognized authority on illumination." In a conversation on July 16, 2013 with Ms. Pat McGillicuddy, a technical expert on illumination, IES stated that it does not have recommended standards for EMCs at this time, but an internal committee is working on such a standard. Ms. McGillicuddy indicated that she may be able to share some of the results of the committee's work, if they deem appropriate. Those results were not available at the time this memorandum was written. However, Monroe and Jefferson County both use an illumination standard which they source to IES measured in footcandles above the ambient lighting level.

REVIEW OF BRIGHTNESS DISCUSSIONS SINCE JANUARY

Attachment 3 is a table reviewing the various brightness standards discussed with Planning Commission since January, summarized as follows:

- **A. Original Proposal:** was for 500 nits (night)/ 5,000 nits (day) based upon a technical paper called ""The Regulation of Signage: Guidelines for Local Regulation of Digital On-Premise Signs."
- **B. Modified Proposal:** was for 1,000 nits (night)/8,000 nits (day) for the C1, I, PIP, PBP, and PF zones and 1,500 nits (night)/13,000 nits (day) for the C3, C4, and C5 zones and was based upon Planning Commission Discussion.
- **C. Input from the ISA Proposal:** was for 0.3 footcandles above ambient light levels at night with autodim technology and was based upon a technical document from the International Sign Association called "Recommended Night Time Brightness Levels for On-Premise Electronic Message Centers (EMCs)."
- **D. The Further Research Proposal:** is a summary of the findings of various codes around the Northwest with jurisdictions using both nits and footcandles, and one jurisdiction using both. Nit ranges are from 500-1,000 during the night and limited to 8,000 during the day in these jurisdictions with autodim required.

With the discussions to date in mind and the additional research staff performed, staff are requesting that Planning Commission give direction on which proposal they would like to see used. Staff notes that there may be a benefit in using a dual standard (nits and footcandles) so that sign owners would have targets to set their brightness at and the City would have a way to measure and enforce (footcandles), if a complaint were received.

INVENTORY OF EXISTING EMC SIGNS

Staff also performed an inventory of all existing EMC signs within City limits (see Attachment 4). There are 18 existing EMC signs within City limits, most of those occurring along SR 20 and Midway Boulevard. The signs range in size from three square feet to approximately 70 square feet.

COMPLIANCE WITH REVIEW CRITERIA

Zoning code text amendments are subject to the criteria in OHMC 19.80. Here, staff provide a brief written analysis of these criteria for Planning Commission discussion.

OHMC 19.80.020 REVIEW CRITERIA

1. The amendment must be consistent with the Oak Harbor comprehensive plan.

Response: *The Oak Harbor Comprehensive Plan contains many goals and policies. The most pertinent goals and policies pertaining to electronic message center signs are: Land Use Goal 1; Land Use policies 1(d and e); Urban Design policies 2f and 5c; and Economic Development Goal 3. A further response is provided to each of the pertinent goals and policies below.*

a) *Land Use Goal 1: "To respect the "small town" heritage of Oak Harbor while enhancing the unique character of its neighborhoods and districts with development that is fitting with the City's future as a regional center."*

Further Response: *Oak Harbor's downtown is its historic center and focus of its small town heritage. The downtown continues to maintain a historic feel in its building architecture. Downtown commercial retail properties have narrow lot widths as compared with those along the highway. Lots which have commercial/retail land uses on them in downtown are typically much narrower than commercial properties elsewhere in the City. In addition, commercial buildings are located near front property lines. Buildings reflect architecture from the early to mid 1900s. For these reasons, electronic message center signs are incompatible with the small town heritage of downtown and the draft code proposes language which prohibits electronic message center signs in the Central Business District. This prohibition will respect Oak Harbor's small town heritage.*

Oak Harbor is a growing community which is the largest commercial center on Whidbey Island. Electronic message center signs are an advertising medium for Oak Harbor businesses which will likely be an important type of signage for businesses outside of downtown in the future. The draft code proposes restrictions on the size, brightness, hours of operation, distance from sensitive land uses, and color which will help make electronic message center signs compatible with their context.

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d) *Urban Design 2.f: "Consideration should be given to revising the sign ordinance in order to encourage signage more in keeping with the unique character of Oak Harbor."*

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RECOMMENDED ACTION

Staff requests that Planning Commission provide staff direction on desired brightness standards.

SCHEDULE

The proposed schedule for the remainder of the project is as follows:

- July – Complete discussion on brightness
- August - Conclude public hearing.

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[1] Ellis, Seth R. and Robert Johnson. 1997. "Research on Signage Performance." In *The Economic Value of On-Premise Signage.* Malibu, Calif. And Alexandria, Va.: California Electric Sign Association and the International Sign Association.

[2] Morris, Mayra; Henshaw, Mark L; Mace, Douglas and; Weinstein, Alan. "The Economic Context of Signs." In *Context Sensitive Signage Design.* American Planning Association, page 84.

[3] University of Toronto, 2004. "Observed Driver Glance Behavior at Roadside Advertising Signs. Beijer & Smiley.

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ATTACHMENTS

1. Electronic Message Center Draft Code –Amendments to OHMC Sections 19.36.020 and 19.36.030.
2. Summary of EMC Regulations in Washington and the Northwest
3. Inventory of Existing Electronic Message Center Signs in Oak Harbor
4. Review of Brightness Discussion Since January

Memo

To: Members of the Planning Commission

Cc: Steve Powers, Development Services Director

From: Ethan Spoo, Senior Planner

Date: 9/24/13

Re: Electronic Message Centers – Further Discussion of Draft Code and Public Hearing

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PURPOSE

In response to public and Planning Commission input offered in July, this memorandum highlights changes to the draft electronic message center (EMC) code (Attachment 1). The draft code presented with this memo reflects input from the public and Planning Commission, as well as additional staff research since the last meeting.

SUMMARY OF CHANGES TO THE DRAFT CODE

Staff made the following changes to the draft code based on additional public and Planning Commission input at the July Planning Commission meeting and in response to motions made by the Planning Commission:

- **"Grandfathering" of non-conforming signs:** Planning Commission directed staff to include a provision in the draft code which would "grandfather" all existing EMC signs. Staff drafted new language to address this issue.
- **Maximum duration of videos/animation:** Planning Commission approved a motion to remove the maximum duration restriction of five seconds for videos. Accordingly, staff removed this provision from the draft code.
- **Multitenant buildings language deleted.** Staff deleted the provision regarding limiting multitenant buildings to one electronic message center sign. The code already contains language regarding "multi-occupancy buildings" in 19.36.030(1)(c & d), which limits these types of buildings to one freestanding sign. Staff believes this language is sufficient to address Planning Commission's expressed concern regarding the potential for proliferation of freestanding EMCs along Highway 20 or other locations.

In addition, the definition for EMCs has been revised to exclude gas/service station reader boards as the character and operation of these signs are different than those primarily discussed as part of this code amendment process.

OUTSTANDING ITEMS FOR DISCUSSION

BRIGHTNESS

Over the past few months, Planning Commission has had a number of discussions on the issue of EMC brightness. At the July meeting, Planning Commission continued the discussion for brightness until this meeting. As part of the July meeting packet, staff provided Planning Commission a summary of the brightness standards used in other jurisdictions in the Northwest. Staff is doing so again in September as Attachment 2 to this memorandum for ease of Planning Commission review of this information. As has been previously stated, brightness levels in the jurisdictions researched ranged from 500-1,000 nits at night and no more than 8,000 nits

during the day for those jurisdictions measuring in nits. For those jurisdictions using footcandles, the range was 0.3 to 0.8 footcandles above night-time ambient lighting levels, depending on the zone. Whether nits or footcandles were used, nearly all jurisdictions required the use of autodim technology.

Background

When discussions first began on EMCs in January of 2013, staff's research showed that many jurisdictions used a standard of 500 nits during the night and 5,000 nits during the day to regulate brightness based on an issue paper called "The Regulation of Signage: Guidelines for Local Regulation of Digital On-Premise Signs." This standard has the advantage of simplicity, applies the same standard to all digital signs, and is an absolute standard not tied to the ambient light level.

After Planning Commission discussion indicating that 500 nits night/5,000 nits day was too restrictive, a revised proposal emerged linking the brightness level to the zone. The brightness levels were set to 1,000 nits night/8,000 nits day in the C1 (Neighborhood Commercial), I (Industrial), PIP (Planned Industrial Park), PBP (Planned Business Park), and PF (Public Facilities) zones. In the C3 (Community Commercial), C4 (Highway Service Commercial), and C5 (Highway Corridor Commercial) zones, the level would be 1,500 nits night/13,000 nits day. These are absolute standards not dependent on the ambient light level. For purposes of this memo this approach is identified as Option A.

In May, 2013 Planning Commission accepted comments from Mr. James Carpentier of the International Sign Association (ISA) an advocacy group for signs. Mr. Carpentier provided staff with a publication called "Recommended Night-time Brightness Levels for On Premise Electronic Message Centers (EMCs)." The publication recommended a maximum brightness level of 0.3 footcandles above night-time ambient lighting levels based upon the research of a scientist, Dr. Ian Lewin, of Lighting Sciences. For purposes of this memo this approach is identified as Option B.

Due to additional public and Planning Commission questions in August, staff contacted the Lighting Design Lab (LDL), a research organization operated by Seattle City Light, with support from utilities across the Northwest and the Northwest Energy Efficiency Alliance. Staff spoke with Mr. Jeff Robbins who is a certified lighting specialist (LC) and a member of the Illuminating Engineering Society of North America (MIES). Mr. Robbins reviewed the ISA publication and provided staff verbal comments in a telephone conversation on August 13, 2013. Mr. Robbins commented that the ISA publication is "excellent" and said that Dr. Lewin is one of the "most well-respected" individuals in the lighting industry. Mr. Robbins went on to say that he would "lean heavily on the ISA document" as a basis for formulating code and he recommended using footcandles, rather than nits as a measurement. Mr. Robbins also provided a letter as Attachment 3 in support of using the ISA document "both for measuring and regulating brightness levels."

Staff also had a discussion with Dr Lewin of Ian Lewin PhD Consulting, LLC whose research formed the basis of the ISA "Recommended Night-time Brightness Levels for On-Premise Electronic Message Centers (EMCs)" document. Staff and Dr. Lewin discussed the ISA document, as well as his background research and the appropriate level of brightness for digital signs in Oak Harbor. Dr. Lewin indicated that his research had been simplified in the ISA document to be 0.3 footcandles above ambient light levels for all environments (rural or urban). Dr. Lewin, recommended that as a suburban community with a commercial highway corridor, a standard of 0.8 footcandles above ambient light levels may be appropriate for EMCs in Oak Harbor.

The brightness limits in this option are consistent both with the research of industry experts and Planning Commission comments received to date. Comments made by Planning Commission in July indicated that brightness levels should be set higher than 0.3 footcandles in some areas and be consistent with the regulations in Monroe and Jefferson County which both have limits of up to 0.8 footcandles above ambient levels in the more intense commercial zones.

This approach recognizes that ambient lighting levels are higher along Highway 20 and the Midway Commercial corridor where there are many C3 zoned properties, with reduced brightness limits proposed in less the Public Facilities (PF) and Neighborhood Commercial (C1) zones. For purposes of this memo this approach is identified as Option C.

Summary of Brightness Options
The following table summarizes the three brightness options.

	Option A	Option B	Option C
Brightness Level	***C1, I, PIP, PBP, PF:*** 1,000 nits (night)/8,000 nits (day). ***C3, C4, C5:*** 1,500 nits (night)/13,000 nits (day).	0.3 footcandles above ambient (for all zoning districts).	***C1:*** 0.3 footcandles above ambient. ***C3, C4, C5, I, PIP, PBP, PF:*** 0.8 footcandles above ambient.
Standard Type	Absolute – does not take into account ambient light	Relative – takes into account ambient light	Relative– takes into account ambient light
Measurement Occurrence	Day or night	Night	Night

As was previously noted, different jurisdictions allow different brightness levels and use either nits or footcandles as the means of measurement. The options shown above are in-line with those used by other jurisdictions.

Draft Ordinance Language
Staff has prepared draft language for each of the options listed above. This approach allows the Planning Commission to choose the option and the draft language that, in their opinion, best meets the needs and values of the community. In light of the most recent Planning Commission discussions, staff suggests Option C may best meet the community's needs. The Commission is of course free to suggest revisions to the options.

Option A
Brightness/Luminance. The brightness of electronic message center signs shall not exceed the standards specified herein.

Zone	*Luminance/brightness Level*
C1	*1,000 nits night/8,000 nits day*
I	*1,000 nits night/8,000 nits day*
PIP	*1,000 nits night/8,000 nits day*
PBP	*1,000 nits night/8,000 nits day*
PF	*1,000 nits night/8,000 nits day*
C3	*1,500 nits night/13,000 nits day*
C4	*1,500 nits night/13,000 nits day*
C5	*1,500 nits night/13,000 nits day*

Digital signs shall come equipped with automatic dimming technology. Owners of digital signs shall include a signed letter accompanying their permit application certifying that they will not tamper with the settings of the sign so as to exceed the brightness standards specified herein. The brightness of the sign shall be measured with the electronic message center turned off and then again with the sign turned on displaying a white image for a full color sign or a solid message for a monochrome sign.

Option B

Brightness/Illuminance. During the night, the sign shall not exceed a maximum illumination of 0.3 foot-candles above ambient light as measured using a foot-candle meter at a preset distance depending on sign size. The measuring distance shall be determined by the square root of the product of the sign area and one-hundred. In addition, electronic message center signs shall come equipped with automatic dimming technology which automatically adjusts brightness because of ambient light conditions. The owners of electronic message center signs shall include a signed letter accompanying their permit application certifying that they will not tamper with the manufacturer preset automatic brightness levels on such sign so as to exceed the standard specified herein. The brightness of the sign shall be measured with the electronic message center turned off and then again with the sign turned on displaying a white image for a full color sign or a solid message for a monochrome sign.

Option C

Brightness/Illuminance. During the night, electronic message center signs shall not exceed the following maximum brightness standards above the ambient light as measured using a foot-candle meter at a preset distance depending on the sign size.

Zone	***Brightness Limit***
C1 (Neighborhood Commercial)	*0.3 footcandles above ambient*
C3 (Community Commercial)	*0.8 footcandles above ambient*
C4 (Highway Service Commercial)	*0.8 footcandles above ambient*
C5 (Highway Corridor Commercial)	*0.8 footcandles above ambient*
I (Industrial)	*0.8 footcandles above ambient*
PIP (Planned Industrial Park)	*0.8 footcandles above ambient*
PBP (Planned Business Park)	*0.8 footcandles above ambient*
PF (Public Facilities)	*0.8 footcandles above ambient*

The measuring distance shall be determined by the square root of the product of the sign area and one-hundred. The brightness of the sign shall be measured with the electronic message center turned off and then again with the sign turned on displaying a white image for a full color sign or a solid message for a monochrome sign. Electronic message center signs shall come equipped with automatic dimming technology which automatically adjusts brightness because of ambient light conditions. The owners of electronic message center signs shall include a signed letter accompanying their permit application certifying that they will not tamper with the manufacturer preset automatic brightness levels on such sign so as to exceed the standard specified herein.

HOURS OF OPERATION:

The existing code requires that EMCs "adjacent to a residential use or district...be turned off between the hours of 10:00 p.m. and 6:00 a.m." There are two distance offset requirements in the draft code: (1) a requirement that

no EMC signs be located within 200 feet of a residentially zoned property and (2) a requirement that all EMC signs within 300 feet of residentially zoned property be turned off between the hours of 10:00 p.m. and 6:00 a.m.

In an effort to better define "adjacent" and in response to Planning Commission discussion, staff inserted a provision in the draft code in May indicating that EMCs within 100 feet of residentially zoned property must turn their sign off between 10:00 p.m. and 6:00 a.m. Planning Commission noted in May that the 100 feet for hours of operation conflicted with the 200–foot outright prohibition. Following the Planning Commission discussion in May, staff's intent was to change the draft code so that EMCs within 200 feet of residentially zoned property would need to be turned off between the hours of 10:00 p.m. and 6:00 a.m. At that time, however, a clerical error led to the insertion of 300 feet, although 200 feet is what was always intended as evidenced by the memo to Planning Commission in June.

Based on public testimony received in July, the draft code now contains a standard requiring that EMCs located within 100 feet of residentially zoned property be turned off between the hours of 11:00 p.m. and 6:00 a.m. Staff also reduced the outright prohibition on EMCs from residential uses to 100 feet.

MINIMUM DURATION OF GRAPHICS, IMAGES AND TEXT

Staff researched the relationship between the duration of *moving* graphics, images, and text on the EMC screens and driver distraction and suggested a maximum of 10 seconds in May. The 10-second rule was taken from a 2001 report prepared for the City of Seattle. In addition, the report "The Regulation of Signage: Guidelines for Local Regulation of Digital On-Premise Signs"[1] indicates that many jurisdictions around the country have adopted an 8-second minimum static image requirement.

Planning Commission indicated that the 10-second *maximum* was confusing because they thought it applied to all graphics, text, and images, not just *moving* elements. Staff subsequently changed the rule to be a 10-second *minimum* that *all* graphics, text, and images had to remain on the EMC screen and a 2-5 second duration for videos. The 2-5 second duration for videos comes from the April, 2008 *Zoning Practice* publication from the American Planning Association.

The research is still ongoing and inconclusive as to how the duration of elements on an EMC screen affects traffic safety. The City of Seattle study and the University of Toronto study both indicate that animated and video billboards are potentially distracting. On the other side of the debate, a 2012 University of Texas study sponsored by the sign industry indicated that EMCs do not significantly contribute to auto accidents.

Planning Commission has discretion to recommend a duration limit which will provide sign owners flexibility while also considering possible distracting effects of these signs on traffic. As was previously stated, many communities have adopted an 8-second minimum duration. Public comments provided to the Planning Commission in July recommended that 2 seconds was more appropriate and this is the standard used in the draft code.

CONCLUSION

Over the last several months, staff has assisted the Planning Commission identify and address a variety of size, placement, location and operational issues associated with electronic message center signs. With the Commission's guidance, new code language has been drafted to respond to these issues. This staff memorandum presents revised and/or fine-tuned language of the following issues: sign brightness, hours of operation, and minimum duration of graphics, images and text.

[1] Menelaos Triantafillou, University of Cincinnati and Weinstein, Alan C., Cleveland State University. "The Regulation of Signage: Guidelines for Local Regulation of Digital On-Premise Signs."

Revisions to the hours of operation and minimum duration sections are already incorporated in the draft.[2] To complete the draft the Commission is asked to select the standard and method of measurement for brightness they believe best meets the community's needs and values. Once this selection is made, the Commission can then direct staff which option to include in the draft code. Staff will incorporate the option into the existing code structure as appropriate.

Staff recommends the Planning Commission conclude the public hearing process and forward a recommendation to the City Council.

RECOMMENDATION

- Conclude public hearing.
- Select option for brightness standard and measurement.
- Make a recommendation to the City Council to approve the draft electronic message center (EMC) sign code.

ATTACHMENTS

1. Electronic Message Center Draft Code –Amendments to OHMC Sections 19.36.020 and 19.36.030.
2. Summary of EMC Regulations in Washington and the Northwest
3. Letter from Mr. Jeff Robbins, Lighting Design Lab.
4. Recommended Night-time Brightness Levels for On-Premise Electronic Message Centers (EMCs).
5. Report to International Sign Association by Dr. Ian Lewin regarding Electronic Message Center Sign Luminance
6. Compliance with Review Criteria

[2] Please note that the draft code has also been updated to be consistent with the draft bed and breakfast code previously forwarded to the City Council by the Planning Commission.

Memo

To: Members of the Planning Commission

Cc: Steve Powers, Development Services Director

From: Ethan Spoo, Senior Planner

Date: 2/25/14

Re: Electronic Message Centers – Planning Commission Consideration of ISA Comments

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PURPOSE

This memorandum outlines options for Planning Commission to consider and take action on regarding comments submitted by the International Sign Association (ISA) to the City Council on November 6, 2013.

BACKGROUND

Planning Commission recommended approval of a draft electronic message center (EMC) code to the City Council on September 24, 2013. The draft code was scheduled for a discussion and possible vote by the City Council on November 6, 2013. Mr. James Carpentier of ISA submitted comments on November 6, 2013 to the City Council on five issues in the draft code. In light of the significance of these comments, staff recommended that City Council refer the draft EMC code to Planning Commission for consideration of these issues.

Planning Commission was also present at the EMC sign code demonstration on February 25, 2014 prior to the regularly scheduled meeting. Staff anticipates that Planning Commission may have questions and comments about the EMC demonstration.

DISCUSSION OF ISA COMMENTS

ISA's comment letter is Attachment 1 to this memorandum. In their letter, ISA identifies five issues with the draft electronic message center code. This section offers context and staff explanation of each of those comments.

DURATION OF VIDEOS

The draft EMC code requires that messages, videos, images, and graphics remain on screen for a minimum of two seconds. ISA commented that it is "contradictory" to allow for video, yet require a minimum two second duration since videos are a series of images portraying movement.

The reason videos were included in the two second duration was to ensure that the total play time of a video from start to finish was not less than two seconds. However, as ISA notes, it could be confusing to future sign users and code enforcement officers. A two second duration might imply that each frame within the video must remain onscreen for two seconds.

If Planning Commission prefers the draft code language as written, it could make a motion affirming the draft language (See motion 1.A). If Planning Commission believes that the duration issue should not apply to videos and lacks clarity, Planning Commission could make a motion directing staff to delete videos from the duration requirement (See motion 1.B). If Planning Commission believes that the total time from beginning to end of a video should not be less than two seconds, then it could make a motion directing staff to change the code to refer to "video segments" rather than just videos (See motion 1.C).

SPEED OF ANIMATION AND VIDEO

The draft EMC code says that "animation and video cannot portray action or movement at speeds faster than what occurs in real life." ISA commented that this provision would be difficult to administer. Staff acknowledges that it would be difficult to measure the speed of a video.

If Planning Commission prefers the draft code as it earlier recommended, it could make a motion affirming the draft language (See motion 2.A). If Planning Commission believes that the subject provision would be difficult to enforce, it could make a motion directing staff to delete this provision (See motion 2.B).

TRANSITION TIME

The draft EMC code requires that new messages, videos, graphics, text, or images enter the screen in a time exceeding ½ second and less than 1 second. As Planning Commission may recall, the range was selected to prohibit instantaneous changes which might be distracting. For instance, comments offered by Planning Commission at the time indicated that an instantaneous change from a dark color to a bright color was thought to be distracting. ISA commented that the transition number should be a discrete number (i.e. within 1 second) rather than a range.

If Planning Commission prefers the draft language as written regarding transition time, it could make a motion affirming the draft language (See motion 3.A). If Planning Commission prefers a discrete number, it could direct staff to revise the code to require transitions to occur within 1 second (See motion 3.B).

SCROLLING AND MOVING TEXT

The draft code prohibits scrolling or moving text. The ISA commented that it is contradictory to allow for animation yet not allow for scrolling or moving text. The intent behind this code provision was to prohibit a subcategory of animation (scrolling and moving text) under the premise that it was more distracting according to research.[1]

If Planning Commission prefers the code as drafted, it can make a motion affirming (See motion 4.A). If Planning Commission agrees that scrolling and moving text should be allowed, it can make a motion to delete this language (See motion 4.B).

BRIGHTNESS

The draft code sets brightness standards of 1,500 nits during the night and 13,000 nits during the day. ISA commented that "this exceeds the industry standard recommended levels of nighttime brightness by several hundred percent" and recommends using the "industry standard science based footcandle approach."

If Planning Commission prefers the draft code language, it can make a corresponding motion (See motion 5.A). If Planning Commission prefers to use the standard recommended by ISA, it can direct staff to revise the code in accordance with ISA's recommendations for brightness (0.3 footcandles at night with autodim) (See motion 5.B).

In terms of how brightness is measured, the draft code requires that the sign first be turned off and a measurement taken and then be turned on displaying a white image. The ISA comments that this is not an appropriate way to measure nits. Nits are an absolute measurement and do not take into account ambient lighting levels and therefore a measurement does not need to be taken with the sign turned off to measure ambient lighting levels. Staff agrees. Should Planning Commission recommend that a nit standard be used, it should direct staff to revise the way sign brightness is measured so as not to require that a measurement be taken when the sign is turned off (See motion 5.C).

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[1] Zoning Practice, April 2008, issue number 4 "Practice Smart Sign Codes", page 4. American Planning Association

RECOMMENDATION

Staff recommends that Planning Commission proceed by selecting appropriate motions reflecting their preferences as regards the issues revised by ISA in their November 6, 2013 letter and as discussed in this memorandum. The alternative motions for each of the issues are as follows:

Duration of videos (Select One)

Motion 1.A: Direct staff not to alter the language regarding duration of videos

Motion 1.B: Direct staff to revise the code language regarding duration to delete the word "videos."

Motion 1.C: Direct staff to revise the code to refer to "video segments" rather than just "videos."

Speed of Animation and videos (Select One)

Motion 2.A: Direct staff not to alter the language regarding the speed of animation and videos

Motion 2.B: Direct staff to delete the draft language referring to animation and video not portraying action or movement at speeds faster than what occurs in real life.

Transition Time (Select One)

Motion 3.A: Direct staff not to alter the language regarding transition time of messages, videos, graphics, text, or images.

Motion 3.B: Direct staff to revise the language regarding transition time to be one second or less.

Scrolling and Moving Text (Select One)

Motion 4.A: Direct staff not to alter the language prohibiting scrolling and moving text.

Motion 4.B: Direct staff to delete the language prohibiting scrolling and moving text.

Brightness (Select either 5.A or 5.B. Select 5.C if a nit standard is preferred)

Motion 5.A: Direct staff not to alter the language regarding brightness levels

Motion 5.B: Direct staff to revise the brightness standards to agree with ISA's recommended standards (0.3 footcandles at night, and rely on autodim during the day).

Motion 5.C. Direct staff to revise the brightness measurement method for nits so that a measurement does not need to be taken with the sign turned off.

ATTACHMENTS

1. Letter from James Carpentier, International Sign Association, to City Council dated November 6, 2013.
2. Electronic Message Center Draft Code –Amendments to OHMC Sections 19.36.020 and 19.36.030 as referred to Planning Commission by City Council on November 6, 2013.

ORDINANCE NO. 1674

AN ORDINANCE OF THE CITY OF OAK HARBOR AMENDING CHAPTER 19.36 OF THE OAK HARBOR MUNICIPAL CODE ENTITLED "SIGN CODE" TO ALLOW FOR ELECTRONIC MESSAGE CENTER SIGNS WITH VIDEO, ANIMATION, GRAPHIC AND IMAGE CAPABILITIES.

WHEREAS, the City of Oak Harbor desires to amend their sign code to reflect current technology for electronic message center (EMC) signs and to provide businesses greater flexibility to utilize the digital capabilities of EMCs; and

WHEREAS, when undertaking an amendment to the zoning code it is appropriate for the City to look to the Comprehensive Plan for applicable goals and policies; and

WHEREAS, the City's Comprehensive Plan, Land Use Element, Goal 1 states: "To respect the "small town" heritage of Oak Harbor while enhancing the unique character of its neighborhoods and districts with development that is fitting with the City's future as a regional center;" and

WHEREAS, the City's Comprehensive Plan, Land Use Element, Policy 1(d) states: "Business-related signs, both temporary and permanent, should serve the needs of the business owner and public to identify business locations but should not proliferate in a manner whereby the sum of all signs detracts from a positive aesthetic experience of the City's commercial areas;" and

WHEREAS, the City's Comprehensive Plan, Land Use Element, Policy 1(e) states "Signage standards should promote design sensitivity to the context in which signs are placed and scaled to both the mass of the building and the location of the sign on the lot;" and

WHEREAS, the City's Comprehensive Plan, Urban Design Element, Policy 5(c) states "Free standing business signs should be consistent with the speed limit of roadways, and the character of land use districts;"and

WHEREAS, the City of Oak Harbor Comprehensive Plan, Economic Development Element, Goal 3 states: "Increase Oak Harbor's market share of retail sales to reduce the economic leakage off island;" and

WHEREAS, the City of Oak Harbor issued Notice of Application on April 27, 2013 and a Determination of Non-Significance (DNS) on June 5, 2013 for a SEPA Environmental Checklist in accordance with Chapter 43.21 RCW and;

WHEREAS, all public meetings and public hearings before the Planning Commission and City Council were properly noticed; and

WHEREAS, public meetings were held before the Planning Commission on January 22, February 26, and March 26, 2013; and

WHEREAS, the Planning Commission conducted a public hearing on April 23, May 28, June 25, July 23, August 27 and September 24, 2013; and

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

WHEREAS, on November 6, 2013 after receiving additional written public comment the City Council referred the matter back to the Planning Commission for additional review; and

WHEREAS, on February 25, 2014 the Planning Commission conducted a public hearing to consider the additional written public comment and after having reviewed said comments modified the draft ordinance and recommended its approval to the City Council; and

WHEREAS, on April 15, 2014 the City Council conducted a public hearing; and

WHEREAS, amendments to the zoning code must meet the review criteria established by Oak Harbor Municipal Code Section 19.80.020, namely consistency with the Comprehensive Plan and the promotion of the public health, safety and welfare; and

WHEREAS, proposed amendments were determined to meet these criteria; and

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

Section One. Section 19.36.020 of the Oak Harbor Municipal Code last amended by Ordinance 1640 section 1 in 2012 is hereby amended to read as follows:

19.36.020 Definitions.

(1) "Abandoned sign" means a sign which no longer identifies or advertises a bona fide business, lessor, service, owner, product, or activity, and/or for which no legal owner can be found.

(2) "Animation" means the use of movement or some element thereof, to depict action or create a special effect or scene.

(3) "Area or surface area of sign" means the greatest area of a sign on which copy or artwork can be placed and not just the portion of which is covered by letters or symbols, enclosed within not more than three circles, rectangles or squares, or any combination of these forms which produces the smallest area. Sign structure, architectural embellishments, framework and decorative features which contain no written or advertising copy and are not internally lighted shall not be included.

(4) "Architectural blade" means a projecting sign with no exposed legs or braces, designed to look as though it could have been part of the building structure rather than something suspended from the building.

(5) "Banner" means a flexible material (i.e., cloth, paper, vinyl, etc.) on which a sign is painted or printed.

(6) “Billboard” means outdoor advertising signs containing a message, commercial or otherwise, unrelated to any use or activity on the property on which the sign is located, but not including directional signs as defined herein.

(7) “Building line” means a line established by ordinance defining the limits of buildings in relation to streets. A building line in some instances may coincide with the property line. “Building line” is sometimes referred to as “required setback line.”

(8) “Building-mounted sign” means a single- or multiple-faced sign attached to the face of a building or marquee.

(9) “Campaign sign” means a sign which exclusively and solely advertises a candidate or candidate’s public elective office, a political party, or promotes a position on a ballot issue.

(10) “Canopy” means a freestanding structure affording protection from the elements to persons or property thereunder.

(11) “Canopy sign” means any sign erected upon, against or directly above a canopy.

(12) “Commercial sign” means a sign containing expression related to the economic interests of the advertiser and its audience or a sign proposing a commercial transaction.

(13) “Construction sign” means an information sign which identifies the architect, engineers, contractors and other individuals or firms involved with the construction of a building, or announcing the character of the building or enterprise, which is erected during the building construction period.

(14) “Electronic message center” means a sign capable of displaying words symbols, graphics, images, or video that can be electronically or mechanically changed by remote or automatic means. An electronic message center is considered a primary sign and may be either freestanding or building-mounted. For the purposes of this chapter, electronic message center signs do not include gasoline price signs.

(15) “Flashing” means pattern of changing light illumination where the sign illumination alternates suddenly between fully illuminated and fully non-illuminated for the purpose of drawing attention to the sign. Flashing is not permitted in any zoning district.

(16) “Frame effect” means a visual effect on an electronic message center applied to a single frame to transition from one message to the next. Such usage must comply with the 2-1-2 provision.

(17) “Freestanding sign” means a single- or multiple-faced sign supported from the ground by one or more columns, uprights or braces. Freestanding signs include monument, pylon and pole signs.

(18) “Gasoline price signs” means any sign displaying the price of gasoline or other fuel at a gasoline or service station by electronic or mechanical means.

(19) “General promotions” means events which occur on a regular basis in retail business for the purpose of boosting sales, attracting new business, selling of certain items (i.e., year-end, seasonal sales, civic events, etc.).

(20) “Grade” means the elevation or level of the street closest to the sign to which reference is made, as measured at the street’s centerline, or the relative ground level in the immediate vicinity of the sign.

(21) “Grand openings and anniversaries” means events that are held on a once-per-year basis for the purpose of advertising grand openings, ownership changes, or anniversaries.

(22) “Height” or “height of sign” means the vertical distance from the grade to the highest point of a sign or any vertical projection thereof, including its supporting columns, or the vertical distance from the relative ground level in the immediate vicinity of the sign.

(23) “Incidental sign” means a single- or double-faced sign not exceeding four square feet in surface area of a noncommercial nature, intended primarily for the convenience of the public. Included are signs designating restrooms, address numbers, hours of operation, public telephone, etc. Also included are signs designed to guide pedestrian or vehicular traffic to an area or place on the premises of a business, building or development. Also included are building directories with the letters not to exceed four inches in height. (See OHMC 19.36.100.)

(24) “Marquee” means a covering structure projecting horizontally from and attached to a building, affording protection from the elements to persons or property thereunder.

(25) “Monument sign” means a primary freestanding sign, generally mounted on a solid base. Monument signs shall not contain or include reader boards.

(26) “Multiple-occupancy building” means a single structure housing more than one type of retail business office or commercial venture.

(27) “Multiple-occupancy complex” means a group of structures housing more than one type of retail business, office or commercial venture and generally under one ownership and control.

(28) “Nit” means a luminance unit equal to one candle per square meter measured perpendicular to the rays from the source.

(29) “Noncommercial public service sign” means noncommercial signs devoted to religious, charitable, cultural, governmental or educational messages, including, but not limited to, the advertising of events sponsored by a governmental agency, a school, church, civic or fraternal organization or other organizations engaged in activities for profit.

(30) “Occupant” means the person, firm or corporation that occupies the land or building.

(31) “Office building” means an office building in the commercial and residential-office land use districts as defined by the Oak Harbor zoning ordinance.

(32) “Parapet” means that portion of a building wall which extends above the roof of the building.

(33) “Penthouse” means a structure on top of a building roof such as houses an elevator shaft or similar form.

(34) “Pole sign” means a primary freestanding sign where the sign is supported by a pole or other similar structural element that is substantially narrower than the width of the sign.

(35) “Political free speech sign” means a sign which promotes a position on a public or social issue.

(36) “Primary sign or signs” means all signs, including freestanding signs, of a user which are not exempt (see OHMC 19.36.100), or which do not come within the category of incidental signs (see OHMC 19.36.030 and subsection (22) of this section) or temporary or special signs (see 19.36.080). The term “primary sign” is intended to include virtually all signs of a commercial nature.

(37) “Property line” means the line denoting the limits of legal ownership of property.

(38) “Pylon sign” means a primary freestanding sign other than a pole sign with the appearance of a solid base. The base of a pylon sign shall be distinctive in appearance from the sign area.

(39) “Public service information” means amber alerts or information about community events.

(40) “Reader board” means a sign or part of a sign on which the letters are readily replaceable such that the copy can be changed from time to time at will.

(41) “Right-of-way” means either a publicly owned fee, an easement or privilege to traverse over land. A right-of-way is for public travel. Rights-of-way may be opened or unopened, and when open usually contain street improvements.

(42) “Roof sign” means any sign erected upon, against or directly above a roof or on top of or above the parapet of a building, including a sign affixed to any structure erected upon a roof, including a structure housing building equipment.

(43) “Sign” means any letters, figures, design, symbol, trademark or device intended to attract attention to any activity, service, place, subject, person, firm, corporation, public performance, article, machine or merchandise whatsoever. Sources of light used primarily to illuminate a sign, or a building, or ground surrounding the building, shall not be considered signs themselves; provided, however, that sources of light used primarily to attract attention to the light itself or as a decorative feature of the display shall be considered as part of the sign. Lighted canopies, with the exception of the signed portion, shall not be considered signs themselves. Excluded from the definition are official traffic signs or signals, sheriff’s notices, court notices or official public notices and the flag of a government or noncommercial institution, and signs not visible from the street or sidewalk (see OHMC 19.36.100 for more detailed treatment of exempt signs), and religious symbols.

(44) “Single-occupancy building” means a commercial building or structure with one major enterprise, generally under one ownership. A building is classified as single-occupancy only if:

(a) It has only one occupant;

(b) It has no wall in common with another building;

(c) No part of its roof in common with another building.

(45) Special Signs. See “Temporary and Special Signs.”

(46) “Special projection sign” means a sign no larger than six square feet projecting out from the side of a building.

(47) “Street” means any automobile thoroughfare so designated by city ordinance. “Street” includes portions thereof used for parking.

(48) “Subdivision signs” means signs used to identify a land development which is to be or was accomplished at essentially one time.

(49) Surface Area. See “Area or surface area of sign.”

(50) “Surface area of facade” means the area of that front, side or back elevation, including doors and windows, but excluding any roof area and structures or elevators or air conditioning equipment thereon; provided, that in the case of a roof sign, the surface area of facade shall be the area of that front, side or back immediately beneath the roof, including doors and windows, but excluding the roof area and structures for elevators or air conditioning thereon.

(51) Temporary and Special Signs. “Temporary and special signs” are those which are not defined as “primary signs” or “incidental signs” by this chapter. Different types of temporary and special signs include, but are not limited to, construction signs, grand opening displays, real estate signs, open house signs, residential land subdivision signs, subdivision directional signs, A-frame signs, political signs, and campaign signs (see OHMC 19.36.080).

(52) Transition. “Transition” means the time interval between display changes of graphics, text, messages, or images on electronic message center signs.

(53) Transitory signs. Transitory signs, also known as “human signs,” are those carried by or worn by a human being usually for the purposes of a protest, demonstration, rally, or other similar event.

(54) “Video” means the use of live action footage shot with a video camera or similar device which is sized to fit and be displayed by an electronic message center or similar device.

(55) “Way open to public” means any paved or unpaved area on private property open to the general public for driving or parking.

(56) “Window sign” means all signs located inside and affixed to or within three feet of windows of a building, whether temporary or permanent, except lighted signs of a commercial advertisement nature which may be viewed from the exterior of the building. The term does not include merchandise located within three feet of a window. Lighted window signs shall be included in determining the number of primary signs and in determining the permissible sign area for each facade. Does not include incidental signs. (See OHMC 19.36.030.)

Section Two. Section 19.36.030 of the Oak Harbor Municipal Code last amended by Ordinance 1553 section 3 in 2009 is hereby amended to read as follows:

19.36.030 Business district signs – Zones CBD, CBD-1, CBD-2, C-3, C-4 and C-5.

(1) General.

(a) In general, this city takes the view that signs should be scaled to the building to which the sign is related. Accordingly, in the following sections will be found regulations on the area, number and height of signs, which are a function of the size of the building to which the sign is related.

(b) Any single-occupancy building in the business district shall be permitted the primary signs described in subsections (2) through (6) of this section. No more than one freestanding sign is permitted per single-occupancy building unless the building faces on more than one street (see subsection (4) of this section), and is not a part of a multiple-building complex.

(c) Each occupant in a multiple-occupancy building in the business district shall be permitted the primary signs described in subsections (2) through (5) of this section and the incidental signs described in subsection (6) of this section except that no more than one freestanding sign is permitted per multiple-occupancy building unless the building faces more than one street (see subsection (4) of this section), and is not part of a multiple-building complex.

(d) Each occupant in a multiple-building complex in the business districts, which is composed of single- and/or multiple-occupancy buildings, shall be permitted the primary signs described in subsections (2) through (5) of this section and the incidental signs described in subsection (6) of this section except that no more than one freestanding sign is permitted per multiple-building complex, unless the building faces on more than one street. (See subsection (4) of this section.)

(e) Each enterprise shall display and maintain on-premises street address number identification. (See subsection (6) of this section.)

(f) A multiple-building complex encompassing at least five acres may display one complex identification sign along with each right-of-way which provides direct access to the complex. Each sign may not exceed 75 square feet in surface area and 25 feet in height. Each sign is subject to the sight distance requirements of the zoning ordinance.

(2) Setback Limitations – Freestanding Signs. Except as otherwise provided in this section, the size of any freestanding sign shall not exceed the following limits, based on the setback of the sign from the front property line:

Minimum Setback:	5 feet from front property line
Maximum Area:	100 square feet (per side)

(a) Sign Height – Freestanding Signs. Except as otherwise provided in this section, the height of any freestanding sign shall not exceed the following limits, based on the sign setback of the sign:

Maximum Height: 25 feet

A minimum height of eight feet from grade to the bottom of the sign is required, for signs greater than 48 square feet, to ensure adequate sight lines for signs closer than 10 feet to the front property line.

(b) Facade Limitations, Building-Mounted Signs, Roof or Canopy-Mounted Signs. The surface area of any building-mounted sign and roof or canopy-mounted sign shall not exceed the figures derived from the following schedule:

Relevant Surface Area of Facade as Determined Pursuant to OHMC 19.36.020(40) (sq. ft.)	**Maximum Sign Surface Area for That Facade**
Below 100	25 percent of facade
100 – 199	26 sq. ft. + 11 percent of facade area over 100 sq. ft.
200 – 499	38 sq. ft. + 12 percent of facade area over 200 sq. ft.
500 – 999	75 sq. ft. + 11 percent of facade area over 500 sq. ft.
1,000 – 1,499	131 sq. ft. + 7.5 percent of facade area over 1,000 sq. ft.
1,500 – 2,999	169 sq. ft. + 2.5 percent of facade area over 1,500 sq. ft.
Over 3,000	206 sq. ft. + 1.5 percent

	of facade area over 3,000 sq. ft. to a maximum of 300 sq. ft.

In multiple-occupancy buildings the facade area for each occupant is derived by measuring only the surface area of the exterior facade of the premises actually used by the occupant, and the sign displayed by the occupant must be located on the facade used to determine the size of the sign, except as provided in this section.

Unused sign surface area for a facade may be used by any tenant or user within the same multiple-occupancy building, if:

(i) The applicant files with the city a written statement signed by the tenant or user permitted to utilize that sign area under this code permitting the applicant to utilize the unused sign surface area;

(ii) The display of a sign on that facade by the nondependent sign user will not create a significant adverse impact on dependent sign users of that facade;

(iii) The display of the nondependent sign is necessary to reasonably identify the use, and the provisions of this code do not provide the use with adequate sign display options.

In no case may the maximum sign surface area permitted on a building facade be exceeded.

(c) Sign Height – Building-Mounted Signs. The height of any building-mounted sign shall not extend above the highest exterior wall of the building to which the sign relates.

(3) Number of Primary Signs. The permissible number of signs for each occupant is dependent upon the surface area of the largest single facade of the building that is under his control. The permitted number of signs is as follows (not including incidental signs):

Surface Area of Largest Facade	Maximum Number of Signs
Less than 999 sq. ft.	3
1,000 – 2,999	4
3,000 and over	5

Buildings or occupants with more than 3,000 square feet on any face, with several clearly differentiated departments, each with separate exterior entrances, are permitted one sign for each different department with a separate exterior entrance, in addition to the five allotted.

(4) Buildings on More Than One Street. Buildings facing on more than one street are entitled to a bonus in primary signage, depending on whether the building is on two intersecting streets or whether it extends through a block so as to face on two different parallel streets, as defined in subsections (4)(a) and (4)(b) of this section.

(a) Buildings on Intersecting Streets. When a building is located on intersecting streets, two freestanding signs are permitted if they are located on two different streets and are separated more than 100 feet measured in a straight line between signs. Otherwise, only one freestanding sign is permitted and must meet the setback limitation under subsection (2) of this section.

(b) Buildings Facing on Two Parallel Streets. Single-occupancy buildings that extend through a block to face on two parallel streets with customer entrances on each street are permitted the sign area allowed under subsections (2)(a) and (2)(b) of this section, and the sign number under subsection (3) of this section for each end of the building facing on a street; provided, however, that no more than one freestanding sign is permitted per building unless such signs are located on two different streets and are separated more than 100 feet measured in a straight line between the signs. No more than two freestanding signs are permitted in such case.

(5) Types and Placement of Primary Signs. The permissible types of primary signs, their placement and other limitations are as follows:

(a) Freestanding Signs.

(i) Freestanding signs shall be wholly located within the center two-thirds of the frontage of the property on the street or 15 feet from the adjacent property line, whichever provides the longer distance from the closest part of the sign to the adjacent property line; provided, however, that a freestanding sign may be located within five feet of the property line with

the written consent of the title holder of the adjacent property. If such consent is obtained, the consenting party or his successors or assigns may not place a freestanding sign on his property within 20 feet of the first freestanding sign.

(ii) A freestanding sign located five feet from the property line shall be wholly behind the five-foot setback, and a freestanding sign located at the building line shall be wholly behind the building line.

(iii) Any freestanding sign must be integrated. That is, all elements of the sign must be incorporated in a single design. Auxiliary projections or attachments not a part of a single design are prohibited.

(b) Building-Mounted Signs.

(i) Any building-mounted sign shall not project more than five feet from the face of the building to which the sign is attached. Any structural supports shall be an integral part of the design or concealed from view.

(ii) Any building-mounted signs shall be limited in content and message to identifying the building and the name of the firm, or the major enterprise, and principal product and/or service information.

(iii) Special projection signs are permitted within the CBD and are allowed in addition to permitted signage. Special projection signs are limited to one per business and shall be attached to the building. The bottom of the sign shall be at least seven feet above the sidewalk.

(c) Roof Signs.

(i) All such signs must be manufactured in such a way that they appear as an architectural blade or penthouse and are finished in such a manner that the visual appearance from all sides is such that they appear to be a part of the building itself.

(ii) All roof signs shall be installed or erected in such a manner that there shall be no visible angle-iron support structure.

(d) Canopy Signs.

(i) All such signs shall be manufactured in such a way that they appear as an architectural blade or penthouse and are finished in such a manner that the visual appearance from all sides is such that they appear to be part of the building itself.

(ii) All canopy signs shall be installed or erected in such a manner that there shall be no visible angle-iron support structure.

(e) Monument Signs. Monument signs shall not exceed eight feet in height measured from the finished grade to top of the sign and not exceed 32 square feet in area. Monument signs shall be located within the center two-thirds of street frontage. Signs may be located up to the front property line when there is no sight visibility obstruction from driveways or intersections caused by placement of the sign.

(f) Pylon Signs.

(i) Pylon signs shall not exceed 10 feet in height measured from the finished grade to top of the sign and not exceed 48 square feet in area. Pylon signs shall be located within the center two-thirds of street frontage. Signs may be located up to the property line when there is no sight visibility obstruction from driveways or intersections caused by placement of the sign.

(ii) If a pylon sign is used instead of a pole sign an additional 15 percent of wall signage area over that than otherwise permitted shall be allowed. The additional square footage may be used on any facade that permits wall signage.

(g) Electronic Message Center Signs. Stationary electronic message center signs and other changeable copy signs may be incorporated in the permanent signage for a business or development in the C-3, C-4 and C-5 zoning districts. Said signs shall meet the following standards:

(i) Electronic message center signs shall follow the standards established in subsections (2) through (5) of this section above except where further modified by the specific provisions in this subsection entitled "Electronic Message Center Signs."

(ii) Only one such sign shall be used in a development

(iii) Size. Electronic message center signs shall be included in the maximum sign area allowed for the business or development under 19.36.030(2 and 3). However, in no case shall an electronic message center sign exceed 100 square feet in size. Additionally, electronic message center signs can comprise 100 percent of a building mounted primary sign, no more than 75 percent of a monument primary sign, and no more than 50 percent of a pole or pylon primary sign.

(iv) Freestanding electronic message center signs shall be constructed as an integral part of a permanent sign constructed on site, except as permitted under subsection (5)(g)(xvi) of this section. "Integral" shall be considered to be incorporated into the framework and architectural design of the permanent sign;

(v) Electronic message center signs may be used only to advertise activities or goods or services available on the property on which the sign is located, or to present public service information;

(vi) Animation and video. Animation and video are permitted on electronic message center signs. Animation and video must be steady and avoid shaking, trembling, quavering, or quaking effects. Animation and video cannot portray action or movement at speeds faster than what occurs in real life. Displays shall not appear to flash, undulate, or pulse, or portray explosions, fireworks, flashes of light, or blinking or chasing lights.

(vii) Duration. The entirety of a message, text, graphic, image or video, including message segments, must remain on-screen for a minimum of two seconds. There is no maximum duration for messages, text, graphics, images, or video.

(viii) Transitions. When the sign is transitioning between colors, graphics, images, or text the transition must occur in one second or less. This provision shall not be interpreted to prohibit video.

(ix) Scrolling or moving text is prohibited.

(x) Color. Color may be used in electronic message center signs. However, white backgrounds are prohibited.

(xi) Orientation. Freestanding electronic message center signs must be directed away from adjacent residentially zoned or open space zoned properties including properties across a public right-of-way. No electronic message center sign may be located closer than 100 feet from residentially zoned or open space zoned properties as measured from the sign location to the nearest property line of the residential or open space zoned property.

(xii) Brightness/Luminance. The brightness of electronic message center signs shall not exceed ninety percent (90%) of the maximum output of the sign during the day. During the night, brightness shall not exceed seven percent (7%) of the maximum output of the sign, with a maximum of 1,000 nits. Maximum output shall be measured in nits.

Digital signs shall come equipped with photocell automatic dimming technology. Owners of digital signs shall include a signed letter accompanying their permit application certifying that they will not tamper with the settings of the sign so as to exceed the brightness standards specified herein.

(xiii) Hours of operation. Electronic message center sign displays must be turned off between the hours of 11:00 p.m. and 6:00 a.m. when located 100 feet or less from a residentially zoned property.

(xiv) Angle. Electronic message center signs shall be mounted perpendicular to the ground.

(xv). Malfunction. If the electronic message center sign malfunctions so as to affect the normal function and display of the sign, the sign is required to be turned off until function has been restored.

(xvi) A single, portable (nonstationary) electronic message center sign may be located in the window of a business subject to the provisions of subsection (5)(g) of this section. The portable sign shall comply with the provisions of subsections (5)(g)(v) through (xvi) of this section.

(xvii). Non-conforming electronic message centers must be brought into conformance with brightness and hours of operation standards within one year of the adoption of this code.

(6) Incidental Signs. “Incidental signs” means signs less than four square feet in surface area, of a noncommercial nature, intended primarily for the convenience of the public. Included are signs designed to guide or direct pedestrian or vehicular traffic to an area, place or convenience; designating restrooms, address numbers, hours of operation, entrances to a building, directions, help wanted, public telephone, etc. Also included in this group of signs are those designed to guide or direct pedestrians or vehicular traffic to an area or place on the premises of a business, building or development by means of a directory designating names and addresses only.

(7) Directional Signs. Directional signs to give the traveling public specific information as to gas, food or lodging available on a crossroad with the state highway may be erected in accordance with RCW 47.42.046 and 47.42.047.

(8) Gasoline Price Signs. Gasoline price signs shall be located greater than five feet from the property line and must be permanently anchored. Such signs may be freestanding, may be attached to marquees or canopy columns, or may be reader boards. The sign area shall not exceed 20 square feet, and no more than one such sign for each street frontage is permitted. Gasoline price signs shall not be included in determining the number of primary signs, nor in determining the permissible number of freestanding signs.

(9) Window Signs. The total surface area of all window signs excluding lighted signs shall not exceed 50 percent of the window area. Such signs shall not be included in determining the number of primary signs, nor in determining the permissible sign area for each facade. Window signs do not require permits.

(10) Signs for Nonconforming Buildings or Uses. There remain in the city some buildings which were built prior to enactment of Oak Harbor’s present zoning ordinance. Generally, under the city zoning ordinances, these legal nonconforming buildings or uses are allowed to remain unless they are altered or improved. As few of these nonconforming buildings are located behind the building line as determined by ordinances currently in effect, almost no signing would be possible under the foregoing sign code provisions. Therefore, this section provides for a partial relaxation of the standard sign requirements for signs on legal nonconforming buildings, only so long as the buildings or uses remain legally nonconforming under provisions of the Oak Harbor zoning code.

(11) Permitted Signs on Legally Nonconforming Buildings. All provisions of the sign code for business district signs apply to signs on nonconforming buildings or uses with the following exceptions:

(a) Building-mounted signs may project over the building line, but shall not approach a street closer than five feet. Such signs may extend five feet from the face of the

building to which attached and shall have a maximum clearance over sidewalk below of eight feet, six inches.

(b) Legally nonconforming buildings are allowed the same sign area as other buildings zoned as commercial districts, as per this section.

Section Three. Section 19.36.040 of the Oak Harbor Municipal Code last amended by Ordinance 1671 section 7 in 2013 is hereby amended to read as follows:

19.36.040 Residential/office district and neighborhood commercial district signs – RO and C-1 zones.

(1) General. Subsections 1-4 of this section apply only to office and apartment buildings in RO and buildings in C-1 zones of the city. Such buildings in other zones are governed by the sign regulations of the applicable zone. As the RO and C-1 zones are primarily placed as a buffer between CBD, C-3, C-4 and C-5 business district zones and residential zones, the permissible signs are scaled down from those allowed in business districts.

(2) Setback Limitations – Freestanding Signs. The size of any freestanding sign in an RO or C-1 district shall not exceed the following limits, based on the sign setback of the sign:

Minimum Setback:	5 feet from front property line
Maximum Area:	35 square feet (per side)

(a) Sign Height – Freestanding Signs. The height of any freestanding sign in an RO or C-1 district shall not exceed the following limits, based on the sign setback of the sign:

Maximum Height:	15 feet

(b) Facade Limitations – Building-Mounted Signs, Roof and Canopy-Mounted Signs. The surface area of any building-mounted sign and roof or canopy-mounted sign in the RO and C-1 districts shall not exceed the figures derived from the following schedule:

Relevant Surface Area of Facade as Determined Pursuant to OHMC 19.36.020(40) (sq. ft.)	Maximum Sign Surface Area for That Facade
Below 100	20 percent of the sign area
100 – 199	21 sq. ft. + 9 percent of facade area over 100 sq. ft.
200 – 499	30 sq. ft. + 10 percent of facade area over 200 sq. ft.
500 – 999	60 sq. ft. + 9 percent of facade area over 500 sq. ft.
Over 1,000	105 sq. ft. maximum

In multiple-occupancy buildings the facade area for each occupant is derived by measuring only the surface area of the exterior facade of the premises actually used by the tenant or user, and the sign displayed by that tenant or user must be located on the facade used to determine the size of the sign, except as provided in this section.

Unused sign surface area for a facade may be used by any tenant or user within the same multiple occupancy building, if:

(i) The applicant files with the city a written statement signed by the tenant or user permitted to utilize that sign area under this code permitting the applicant to utilize the unused sign surface area;

(ii) The display of a sign on that facade by the nondependent sign user will not create a significant adverse impact on dependent sign users of that facade;

(iii) The display of the nondependent sign is necessary to reasonably identify the use, and the provisions of this code do not provide the use with adequate sign display options.

In no case may the maximum sign surface area permitted on a building facade be exceeded.

(c) Sign Height – Building-Mounted Signs. No building-mounted sign in the RO or C-1 district, regardless of type, shall exceed a height of 20 feet above grade, or above the height of the building to which it is attached, whichever is less.

(d) Limitation. Any freestanding or building-mounted sign located in these districts shall be limited in content and message to identify the building and the name of the firm, or the major enterprise, and the principal service or product of the business without references to prices or the characteristics of the product or services offered.

(3) Number of Signs. In the RO and C-1 districts no more than two primary signs are permitted for buildings facing on one street, only one of which may be freestanding. Buildings or building complexes on street corner locations may have two freestanding signs only if they are located on two different streets and are separated more than 100 feet, measured in a straight line between the signs.

Buildings or building complexes which extend a block to face on two parallel streets are permitted two primary signs on each street, only one of which may be freestanding for each street.

For purposes of determining the limit on number of signs for apartments, a single apartment complex, regardless of the number of buildings, shall be considered one building.

(4) Types and Placement. Within RO and C-1 districts the permissible types of signs, their placement and other limitations are as follows:

(a) Freestanding Signs. Requirements are identical to OHMC 19.36.030(5)(a), except that advertising shall not be permitted.

(b) Building-Mounted Signs. Requirements are identical to OHMC 19.36.030(5)(b), except that advertising shall not be permitted.

(c) Electronic Message Center Signs. These signs are allowed only in the C-1 district. Requirements are identical to OHMC 19.36.030(5)(g) and brightness is restricted to 1,000 nits during the night and 8,000 nits during the day.

(d) Incidental Signs. In addition to the permitted primary signs, each building or complex of buildings is permitted the incidental signs as described and limited in OHMC 19.36.030(6).

(e) Street Address Identification. Each building or complex of buildings shall display and maintain on-premises street address number identification.

(f) Signs or portions of signs indicating premises for rent (e.g., “Apartment for Rent,” “Apartment Available,” “Vacancy,” “Now Renting,” “Free Rent,” etc.) shall not exceed a surface area of six square feet and many remain up until the premises are sold or rented.

(g) The illumination of any sign in the RO and C-1 districts shall be shaded, shielded, directed or reduced so that it is not visible from a public street or adjoining residential property.

(h) Legal nonconforming signs same as OHMC 19.36.030(10) and (11).

(i) Monument signs shall not exceed six feet in height measured from the finished grade to top of the sign and not exceed 32 square feet in area. Monument signs shall be located within the center two-thirds of street frontage. Signs may be located up to the property line when there is no sight visibility obstruction from driveways or intersections caused by placement of the sign.

(5) Bed and breakfast establishments. Only one on-premises monument sign or building mounted sign not more than four square feet in area shall be permitted. Such signs shall use non-flashing, non-reflective materials; and the legend shall show only the name of the facility and/or the operator and/or the address. Pole or pylon signs are prohibited.

Section Four. Section 19.36.050 of the Oak Harbor Municipal Code last amended by Ordinance 1553 section 4 in 2009 is hereby amended to read as follows:

19.36.050 Industrial, planned industrial park and planned business park district signs – I, PIP, and PBP zones.

Permissible signs and their limitation in the industrial district (Zone I) shall be identical to those in the commercial districts CBD, CBD-1, CBD-2, C-3, C-4 and C-5 (OHMC 19.36.030). Electronic message center signs are permitted in the I, PIP, and PBP zones and shall meet the requirements of 19.36.030 for business district signs except that brightness shall be limited to 1,000 nits during the night and 8,000 nits during the day.

Section Five. Section 19.36.060 of the Oak Harbor Municipal Code last amended by Ordinance 1640 section 2 in 2012 is hereby amended to read as follows:

19.36.060 Multifamily residential district and public facilities district signs – Zones R-2, R-3, R-4 and PF.

Requirements for signs in multifamily residential districts and public facilities districts shall be identical to those for the R-O residential office district and the C-1 neighborhood commercial district zones as set forth in OHMC 19.36.040.

(1) Exceptions for signs in the PF zone. Electronic message center signs in the PF zone are allowed and shall meet the requirements of 19.36.030 for business district signs except that brightness is limited to 1,000 nits during the night and 8,000 nits during the day.

Section Six. 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 Seven. Effective Date. This Ordinance shall be in full force (5) five days following publication.

PASSED by the City Council this 15th day of April 2014.

CITY OF OAK HARBOR

_____

SCOTT DUDLEY, MAYOR

Attest:

_____

Anna Thompson, City Clerk

Published:

Approved as to Form:

_____

Grant K. Weed, Interim City Attorney

City of Oak Harbor
City Council Agenda Bill

Bill No. 9.a
Date: April 15, 2014
Subject: Stormwater Outfall Repair – Authorization to Bid

FROM: Cathy Rosen, Public Works Director
Joe Stowell, City Engineer

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

Scott Dudley, Mayor
Larry Cort, City Administrator
Doug Merriman, Finance Director
Grant Weed, Interim City Attorney, as to form

PURPOSE

The purpose of this agenda bill is to request authorization to advertise for construction bids for repair of the 42" stormwater outfall in Windjammer Park.

FISCAL IMPACT DESCRIPTION

Funds Required: Not to exceed $2000
Appropriation Source: Stormwater Fund

SUMMARY STATEMENT

The west stormwater outfall in Windjammer Park has been in a state of failure for many years due to 40 years of exposure to the harsh marine environment. The failing outfall results in high maintenance costs associated with dredging and unplugging by City crews. Additionally, the current condition exacerbates flooding on SR-20 between SW Barlow and Pioneer Way. This repair project involves replacing the existing west outfall and relocating it next to the east outfall. Both outfalls will be extended the same distance into Oak Harbor to help minimize plugging from sand and debris.

Bid Opening and Permit Schedule:

Due to a relatively small in-water construction window each year for this type of work staff is recommending advertisement for bids prior to securing all final environmental permits. Unfortunately, if we wait until all permits are secured before we begin advertising it will become necessary to delay construction until 2015 which will likely result in increased project costs. Bids will not however be opened until all final permits are secured; this will ensure contractors include any final requirements in their bids and avoid related change orders.

Applications have been submitted for all required environmental permits and most permits have now been secured. Copies of secured permits will be included in the construction bid documents. The shoreline substantial development permit and the US Army Corps permit are pending with agencies and

expected in late April and early May respectively. Draft copies of the key anticipated requirements for these permits will also be included in the bid documents and final approved permit copies will be distributed via an addendum to the bid documents once secured. Contractors will be given ample time to consider the final copies of all environmental permits prior to submitting their bids.

With approval the advertisement period will begin by April 18th and bid opening will be between May 20th and June 3rd dependent on receipt and distribution of all final environmental permits. The City has been informed by the agencies that we may expect permits in time for the dates above however, if permits are not received by the end of May it will not be possible to construct the project until 2015. If this occurs the City will issue a notice to bidders that the project has been canceled until next year and bids will not be received or opened.

Construction Cost:

The anticipated cost of construction for the project is $1,034,000, a detailed copy of the construction cost estimate is included with this agenda bill for information. Funding for the project will be through a combination of the Stormwater Cumulative Reserve Fund and a Public Works Trust Fund loan.

WORKSHOPS

Advertising this project has not been presented at a City Council Workshop.

RECOMMENDED ACTION

A motion authorizing staff to proceed with advertising for bids on the 42" outfall construction project.

ATTACHMENTS

- Construction Cost Estimate

Oak Harbor Outfall Replacement
--- 100% Design Level ---
Opinion of Probable
Construction Cost (OPCC)

moffatt & nichol

Bid Item No.	Description	Approx. Quantity	Unit	Unit Cost ($)	Extended Cost	Extended Cost, Subtotal	Notes
1	MOBILIZATION	1	LS	$ 80,700	$ 80,700	$ 81,000	Assumes 10% of construction subtotal
2	TESC/ SITE PREP	1	LS	$ 19,350	$ 19,350	$ 19,000	
3	SAWCUT EXISTING PAVEMENT	20	LF	$ 110	$ 2,200	$ 2,000	Includes sawcut, removal and disposal
4	TRENCH DEWATERING	50	DAYS	$ 2,900	$ 145,000	$ 145,000	Assumes rental of equipment and discharging to city sewer. Wellpoints
5	TRENCH SHORING SYSTEM	1	LS	$ 50,000	$ 50,000	$ 50,000	Assumes standard trench box shoring, up to 14ft deep x 30ft long. Assume rental of 10 weeks
6	EXCAVATION	1,100	CY	$ 27	$ 29,420	$ 29,000	Assumes depths up to 16ft deep. Includes excavation for manhole. Includes trucking and disposal at offsite location. Does not include excavation for removal of existing outfall. Does not include shoring.
7	PIPEZONE BEDDING (GRAVEL BACKFILL)	475	CY	$ 30	$ 14,256	$ 14,000	Material and delivery cost only. Installation and compaction under separate bid item
8	PROCURE 48" HDPE PIPE	350	LF	$ 250	$ 87,500	$ 88,000	
9	INSTALL 48" HDPE PIPE	350	LF	$ 370	$ 129,500	$ 130,000	Includes installation and compaction of bedding and backfill
10	PROCURE 42" CONC. PIPE	245	LF	$ 141	$ 34,594	$ 35,000	
11	INSTALL 42" CONC. PIPE	245	LF	$ 370	$ 90,650	$ 91,000	Includes installation and compaction of bedding and backfill
12	BACK FILL MATERIAL	426	CY	$ 20	$ 8,518	$ 9,000	Material and delivery cost only. Installation and compaction under separate bid item
13	PROCURE AND INSTALL TYPE 3 MANHOLE - 84"	1	LS	$ 16,100	$ 16,100	$ 16,000	Includes subgrade compaction, concrete slab, and backfill. Shoring, dewatering, and excavation provided separately.
14	ABANDON EXISTING OUTFALL	1	LS	$ 8,000	$ 8,000	$ 8,000	Includes plugging ends of outfall and filling with CDF
15	REMOVE EXISTING OUTFALL	172	LF	$ 121	$ 20,733	$ 21,000	Includes asbestos mitigation
16	SHORELINE RESTORATION	1	LS	$ 3,000	$ 3,000	$ 3,000	

Oak Harbor Outfall Replacement
--- 100% Design Level ---
Opinion of Probable
Construction Cost (OPCC)

moffatt & nichol

Bid Item No.	Description	Approx. Quantity	Unit	Unit Cost ($)	Extended Cost	Extended Cost, Subtotal	Notes
17	**PAVEMENT RESTORATION**	50	SY	$ 90	$ 4,500	$ 5,000	Includes subgrade, compaction, and joint sealant
18	**REMOVE EXISTING ROCK PILES**	100	CY	$ 20	$ 2,000	$ 2,000	Assumes disposal of rocks onsite
19	**PROCURE AND INSTALL TRASH RACK**	2	EA	$ 3,000	$ 6,000	$ 6,000	Allowance
20	**DOUBLE PIPE SADDLE**	10	EA	$ 9,500	$ 95,000	$ 95,000	Allowance for material and install. Excavation is included under separate bid item.
21	**SINGLE PIPE SADDLE**	1	EA	$ 7,300	$ 7,300	$ 7,000	Allowance for material and install. Excavation is included under separate bid item.
22	**CONTRACTOR STANDBY**	80	HR	$ 400	$ 32,000	$ 32,000	Includes labor and equipment cost to allow for City enforced project shutdowns in the event of archeological findings
							Assumes 1 day (8-hrs) for every 20-ft segment of pipe installed
							Unit Price assumes 5-man crew plus equipment
				Subtotal		**$ 888,000**	
				Contingency	(10%)	$ 88,800	
				Sales Tax	(8.7%)	$ 7,726	
				Project Subtotal		**$ 984,526**	
	Survey, Planning, Permitting, Design and Bid Documents					$ -	See Note 2 Below
	Contract Administration, Inspection & Other Indirects				(5%)	$ 49,226.28	See Note 3 Below
		Total Project Cost (Rounded)				**$ 1,034,000**	(Rounded)

Notes:
1. All costs shown are in 2014 USD and are rounded to the nearest one thousand dollar.
2. Cost for Survey, Planning, Permitting, Design and Bid Documents is not included in the total cost shown above.
3. Contract Admin, Inspection, and other indirect costs are provided for Engineer/Owner involvement during construction.