City of Oak Harbor
City Council Meeting
7:00 p.m.

Agenda for
June 16, 2009

Oak Harbor City Council
7:00 p.m.
Tuesday, June 16, 2009

Welcome to the Oak Harbor City Council Meeting

*As a courtesy to Council and the audience, **PLEASE TURN YOUR CELL PHONES OFF** before the meeting begins. The City Council values your ideas, and sets aside time at the beginning of each meeting, from 6:45 p.m. to 7:00 p.m., to talk with citizens. During the meeting's Public Comments section, Council will listen to your input regarding subjects of concern or interest that are not on the agenda. For scheduled public hearings, please sign your name to the sign up sheet, located in the Council Chambers if you wish to speak. The Council will take all information under advisement, but generally will not take any action during the meeting. To ensure your comments are recorded properly, state your name and address clearly into the microphone. Please limit your comments to three minutes in order that other citizens have sufficient time to speak.*

Thank you for participating in your City Government!

CALL TO ORDER

PLEDGE OF ALLEGIANCE

INVOCATION **Brent Sorlein – Assembly of God**

ROLL CALL

MINUTES 6/2/09 Regular Meeting, 6/4/09 Special Meeting, 6/9/09 Special Meeting

NON-ACTION COUNCIL ITEMS:

1. Introduction of New Employees – None this evening.
2. Proclamation – AWO2 Christopher I. Halladey Day.
3. Public Comments.

COUNCIL CONSIDERATION AND ACTION ON THE FOLLOWING MATTERS:

4. Consent Agenda:

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a. Noise Permit – Oak Harbor Rotary Club – Car Show.

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b. Noise Permit – First Reformed Church.

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c. Noise Permit – Greater Oak Harbor Chamber of Commerce – 4th of July.

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d. Noise Permit – Living Word.

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e. Service Agreement - Janitorial Services.
f. Pay Bills.

5. ~~Public Hearing – Sale of Boat, Vessel ID# WN 86 AR~~ Will be continued.
6. ~~Public Hearing – Sale of Boat, Vessel ID# WN 189 FF.~~ Will be continued.

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7. Oak Harbor Fire Department – Interim Command Compensation.

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8. Resolution – Junior Naturalist Youth Programs in City Parks.

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9. Resolution – Island County Joint Tourism Agreement.
10. City Administrator's Comments.
11. Councilmembers' Comments.
    - Standing Committee Reports
12. Mayor's Comments.

ADJOURN

If you have a disability and are in need of assistance, please contact the City Clerk at (360)279-4539 at least two days before the meeting.

"Wisdom begins in wonder." - Socrates

City Council Regular Meeting
Tuesday, June 2, 2009, 7:00 p.m.
City Hall Council Chambers

CALL TO ORDER Mayor Slowik called the meeting to order at 7:00 p.m.

INVOCATION Councilmember James M. Campbell gave this evening's invocation.

ROLL CALL

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

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

Margery Hite, City Attorney was absent and formally excused from this meeting.

MINUTES

MOTION: COUNCILMEMBER MUNNS MOVED TO APPROVE THE MINUTES OF THE 5/19/09 REGULAR COUNCIL MEETING. THE MOTION WAS SECONDED BY COUNCILMEMBER CAMPBELL AND CARRIED UNANIMOUSLY.

NON-ACTION COUNCIL ITEMS

Introduction of New Employees – Neil Ketchum, Oak Harbor Marina

Harbormaster Mack Funk introduced Mr. Ketchum and his wife and Mayor and Council welcomed Neil as a full-time member of the Marina team.

Employee Recognition – Ron Hofkamp, OHPD, 20 years

Chief of Police Rick Wallace introduced Ron Hofkamp who is a life-long resident of Oak Harbor. Det. Hofkamp is a certified master diver and dive instructor and formerly owned Whidbey Island Dive Center. He worked as a canine officer with OHPD canine "Zeke," has worked as a police diver, and has an excellent memory for faces and events. Det. Hofkamp takes his community caretaking responsibilities very seriously. Mayor and Council congratulated Det. Hofkamp on his distinguished career and twenty years with the Oak Harbor Police Department.

Public Comments

Mel Vance 275 NW 8th Avenue. Mr. Vance had contacted churches in the community regarding mobile home park closures and setting up an assistance network for those people who are losing their residences. Mr. Vance encouraged the Mayor and Council to work closely with the church coalition.

With no other comments coming forth, Mayor Slowik closed the public comments portion of the meeting at 7:10 p.m.

COUNCIL CONSIDERATION AND ACTION ON THE FOLLOWING MATTERS
Consent Agenda

a. Planning Commission Reappointment – Keith Fakkema
b. Planning Commission Reappointment – Kristi Jensen
c. Noise Permit – Christ the King Community Church
d. Noise Permit – Clear Ahead Marine Productions, Race Week
e. Pay Bills

MOTION: COUNCILMEMBER CAMPBELL MOVED TO APPROVE CONSENT AGENDA ITEMS A, B, C, D, AND E WITH ITEM E PAYING ACCOUNTS PAYABLE CHECK NUMBERS 137255 – 137261 IN THE AMOUNT OF $42,919.41, ACCOUNTS PAYABLE CHECK NUMBERS 137262 – 137373 IN THE AMOUNT OF $155,810.29, PAYROLL CHECK NUMBER 92916 IN THE AMOUNT OF $17.45, AND PAYROLL CHECK NUMBERS 92917 – 92981 IN THE AMOUNT OF $936,508.48.THE MOTION WAS SECONDED BY COUNCILMEMBER MUNNS AND CARRIED UNANIMOUSLY.

Public Hearing – Final Ordinance for Proposed Changes to Chapter 19.25 OHMC pertaining to Manufactured Home Developments (continued from the May 5, 2009 City Council meeting)

Development Services Director Steve Powers gave a PowerPoint overview which chronicled this evening's presentation of final amendments to Oak Harbor Municipal Code Chapters 19.08, 19.20, and 19.25 as related to manufactured home parks and subdivisions. The City Council adopted interim regulations on April 21, 2009 intended to correct discrepancies in the existing code, help the City meet our Growth Management Act responsibility to provide opportunities for affordable housing, and facilitate the construction of the City's proposed affordable housing project. The interim regulations permitted manufactured home parks in all residential zones within the City (R-1, R-2, R-3, and R-4). Based on comments at the April 21st City Council public hearing and at the April 28th and May 26th Planning Commission public hearings, staff prepared a final ordinance for Council consideration this evening. The final ordinance differs from the interim ordinance in several ways:

Manufactured home parks not allowed in R-1.

The final ordinance allows manufactured home *subdivisions* in R-1, but not manufactured home *parks*. The park concept includes common parking, circulation and landscape areas. A manufactured home subdivision would look more like traditional residential developments already allowed in the R-1 with lots fronting on public streets and parking primarily on private lots. Common open space similar to that found in planned residential developments will be required in a manufactured home subdivision.

Defines when density bonuses apply in the R-1 zoning district.

The base density in the R-1 zoning district is 3 - 6 dwelling units per acre. A density bonus of up to two (2) additional dwelling units per acre is proposed for certain manufactured home subdivisions. Density bonuses are only available to projects which meet all of the following conditions: (1) are affordable to households with incomes of 80 percent or less of the area median family income known as "qualified affordable housing," (2) apply public funding to offset construction or operating expenditures, and (3) the land is owned by a public or non-

profit entity. The density bonus provides an incentive for development of publicly-funded affordable housing and optimizes tax-payer investments in these projects by narrowly defining when density bonuses are available. Public or non-profit entity ownership of the land provides a mechanism for long-term property and facility maintenance.
Makes clear that manufactured housing can include attached or detached structures.
The definition of "manufactured home" in the interim ordinance did not include attached housing products, such as townhouses, rowhouses, and other multifamily structures. Recognizing current market trends, the new definition in the final ordinance adds attached housing types to the definition of "manufactured home."

The final ordinance continues to accomplish many of the same objectives as the interim ordinance, such as:

- Provides opportunities for manufactured homes in all residential districts in the form of subdivisions in the R-1 and R-2 districts and in the form of parks in the R-2, R-3 and R-4 districts.
- Defining what constitutes a "qualified affordable housing project."
- Clarifying and simplifying the plan submittal and approval process.
- Establishing consistency between the different sections of the Municipal Code that pertain to manufactured homes.

The City was granted a 10-day expedited review from the Department of Community Trade and Economic Development (CTED) for the manufactured home park ordinance. Since the City has met its Growth Management Act (GMA) notice and review responsibilities, City Council approval of the final ordinance is the last step in the adoption process. This ordinance does not authorize construction of the City's affordable housing project.

Mayor Slowik opened the public hearing at 7:20 p.m.
Perry Harris, 1811 16th Avenue NE. It is most important to remember that the people in this housing category are not there by their own purpose and intent; they are there more by circumstance. We need places where we can afford to live. If a mobile home park is closed; don't shift the land use to some other purpose. Appreciated the support the City has given us through all of this.
Sabrina Clay, 1901 NE 16th Avenue NE. I live next to Perry. We are about to be homeless. We do not have money for credit checks or deposits toward other rentals. We have no where to go.
Karen LaMoine, I live in the same mobile home park: M and M Mobile Home Park. My son and daughter also live in this park. I was the park manager from 2008 till 2009. We were only given a 30-day notice to vacate. Our meters have been pulled. I have looked at the Landlord/Tenant Act and contacted the Attorney General, to no avail. We don't own the mobile homes, we rent them. These mobile homes are owned by one person and do not fall under the manufactured home definition. I am disabled and live on $674 a month. Renting elsewhere requires credit checks which can cost $70 for each check. We cannot afford this. We can't find help anywhere. The owner does not keep his mobile homes up to code.
Mel Vance, 275 NW 8th. Mr. Vance thanked staff for the work done on this ordinance and code chapters.

With no other comments coming forth, Mayor Slowik asked that the three people from M and M Mobile Home Park leave their phone numbers with Ms. Recker in order to research possible assistance for them.

Council Discussion

Discussion followed about the use of the word "site" and "unit" in the same sentence of Chapter 19.25.060 (the new chapter number), and an inconsistency in numbering in Chapter 19.08.895 (the new chapter number). The Planning Commission synopsis was discussed and Mr. Powers noted that the Planning Commission recommendation was unanimous. Density bonuses were discussed along with the statistical source/area used (state data), the definitions of manufactured home subdivisions and manufactured home parks were clarified, ownership of a City or non-profit sponsored affordable housing project was discussed (residents would own the unit but not the land), and the difference between a mobile home and manufactured home and the placement of each by an owner using their own land was discussed. Council thanked staff and the Planning Commission for their work on this amendment.

These are the specific minor changes:

1. On page 128 of the agenda packet (page 99 of the draft ordinance): Change the word "site" to the word "unit" in 19.25.060 (2), to be consistent in the sentence.
   (2) *No manufactured home unit within a park shall be located closer than 15 feet from any other manufactured home unit or permanent park building.*
2. On page 59 of the agenda packet (page 30 of the draft ordinance): Correct the number sequencing. There appear to be two 19.08.895s.

MOTION: **COUNCILMEMBER ALMBERG MOVED TO ADOPT THE ORDINANCE, WITH THE TWO MINOR CHANGES NOTED ABOVE, MAKING FINAL INTERIM ORDINANCE 1552 ADOPTED ON MAY 5, 2009, AND MAKING FINAL THE REVISED TITLE 19 ZONING AMENDING VARIOUS SECTIONS RELATED TO MANUFACTURED HOME PARKS AND SUBDIVISIONS, AND TO CLOSE THE PUBLIC HEARING. THE MOTION WAS SECONDED BY COUNCILMEMBER PALMER AND CARRIED UNANIMOUSLY.**

Annual Report – Greater Oak Harbor Chamber of Commerce

Jill Johnson, Executive Director of the Chamber of Commerce gave a PowerPoint presentation illustrating the Chamber's accomplishments and introduced members of her staff and board. A copy of this excellent presentation can be obtained from the City Clerk. Council Members and Mayor Slowik commended Ms. Johnson and the Chamber. Mayor Slowik presented the Community Service Award to Ms. Johnson and the Chamber of Commerce in recognition of many years of faithful service to the citizens of Oak Harbor and the Chamber's efforts in serving the City's business, military, and tourism industry along with Oak Harbor's many visitors and newcomers.

Mayor Slowik called for a five-minute break at 7:55 p.m. and the meeting reconvened at 8:00 p.m.

Tourism Services Agreement – Greater Oak Harbor Chamber of Commerce
City Administrator Paul Schmidt presented this agenda bill. The current tourism information and promotion services contract between the City and the Greater Oak Harbor Chamber of Commerce expires on July 14, 2009. That contract was executed ten years ago, with the City agreeing to pay an annual reimbursement of $52,320 or $4,360 each month. The Greater Oak Harbor Chamber of Commerce performs the commendable service of disseminating tourism information and promoting tourism in general. The draft tourism services agreement proposed an increase in the use of lodging tax proceeds for tourism promotion and marketing, thereby requiring review by the Lodging Tax Advisory Committee. On May 6, 2009, the Oak Harbor Lodging Tax Advisory Committee recommended approval of the proposed draft tourism services agreement by the City of Oak Harbor with the Greater Oak Harbor Chamber of Commerce. Preliminary discussions between the City and Chamber of Commerce regarding the basis for a new contract began late last year. It is common for cities in the State of Washington to have some sort of contractual relationship with their respective Chamber of Commerce to assist with tourism promotion. The source of funds to promote tourism is typically referred as the "2% Lodging Tax" that is authorized by the State and is locally generated through the sales tax revenue from lodging room transactions. The "2% Lodging Tax" we refer to is actually a total of 4% of lodging sales tax. Washington State credits the first 2% of lodging sales tax back to the cities from the State's share of the 6% sales tax. The second 2% tax is an additional tax imposed upon the local lodging business. The intent of the "2% Lodging Tax" is to utilize those tax proceeds generated by lodging room taxes to promote further tourism in the community which, in theory, causes more hotel/motel use. "2% Lodging Tax" funds are very restricted in application and are to be used solely for promotion of tourism. The City of Oak Harbor should realize annually approximately $160,000 of "2% Lodging Tax" proceeds. This proposed contract with the Greater Oak Harbor Chamber of Commerce would reimburse the Chamber up to $6,667 a month ($80,000 a year) for those eligible tourism activities approved by the City. The term of this proposed contract would be from July 1, 2009 until December 31, 2012. The end date of the proposed contract is meant to coincide with a new City biennium budget process and in anticipation of the State of Washington's plans to significantly revise the statute authorizing the "2% Lodging Tax."

Mayor Slowik called for public comments.
Mel Vance, 275 NW 8th. Mr. Vance talked about the Cascadia Marine Trail System which is intended for kayakers and canoers. Windjammer Park is part of that system. There could be an expanded opportunity for the Chamber and City to promote the Marine Trail.
Randy Bradford, President of the Greater Oak Harbor Chamber of Commerce and Manager of the Coachman Inn. Mr. Bradford supports this agreement.
Paul Neumiller, Secretary of the Greater Oak Harbor Chamber of Commerce. Mr. Neumiller talked about the agreement's 3 ½ year term which will put the Chamber's budget calendar on the same track as the City's budget calendar. Mr. Neumiller also urged acceptance of the agreement.

Council Discussion
Discussion followed about the City's budget and if the contract is budgeted (yes, with a budget amendment occurring later in the year), confirmation that the hotel/motel tax revenue stream supports this agreement, and that $160,000 is a conservative estimate of proceeds.

MOTION: **COUNCILMEMBER CAMPBELL MOVED TO ACCEPT THE OAK HARBOR LODGING TAX ADVISORY COMMITTEE'S RECOMMENDATION OF APPROVAL AND AUTHORIZE THE MAYOR TO ENTER INTO THE PROPOSED TOURISM SERVICES AGREEMENT WITH THE GREATER OAK HARBOR CHAMBER OF COMMERCE. THE MOTION WAS SECONDED BY COUNCILMEMBER MUNNS AND CARRIED UNANIMOUSLY.**

Marina Aquatic Lands Lease with Washington State Department of Natural Resources
Dave Roberts and Joanne Gustafson from the Department of Natural Resources were in attendance. Development Services Director Steve Powers presented this agenda bill which discussed the twenty-year aquatic lands lease between the City of Oak Harbor and the Washington State Department of Natural Resources (DNR) allowing the Marina to continue to operate in its present location at a reduced fee for ten years. In March of 2008, ESSB 6532 provided the City an opportunity to enter into a "reduced fee" lease with DNR for a period of ten years. The new law created RCW 79.105.620. Under our prior lease, the City was responsible for paying DNR approximately $50,000 per year for the aquatic lands portion of our leasehold. In order to take advantage of this law the City is required to enter into a new lease with DNR. The lease is for a ten-year period rent free with an option to renew for ten additional years with rent at State rates. Although the new law went into effect on June 12, 2008, the City did not receive a draft lease from DNR until November 3, 2008. The conditions of the draft lease were not acceptable to the City and we have been working since that time to negotiate a more favorable agreement. State law requires that the new lease be executed by June 12, 2009.

DNR Draft Lease

There are two primary documents associated with the lease: the lease itself and Exhibit B. The lease is DNR standard "boilerplate" and Exhibit B provides details about the Marina and the proposed redevelopment project. While the City has some minor objections with the lease, our real concerns are found in Exhibit B. The originally proposed lease included the following major areas of concern for City staff:

1. The lease provisions are "regulating" areas subject to regulatory authority of other agencies. Essentially, DNR is using the lease process to act as another permit agency even though our proposed redevelopment project has already gone through the full permitting process with agencies of jurisdiction. The most notable example of this is that the lease requires the City to provide new floats comprised of at least fifty-percent (50%) grating with sixty-percent (60%) openings for the entire Marina. DNR is seeking this improvement to meet ambient light transmission levels that will allow for 30 percent ambient light to reach the sediment or 90 percent of the light at the structure's surface to reach the water surface under the structures. DNR maintains that the addition of grating (or additional ambient light through other design alternatives) is important to improving the aquatic environment surrounding the Marina.

The City's Hydraulic Project Approval (HPA) issued by the Washington Department of Fish and Wildlife already requires measures to improve the ambient light conditions. The new ADA compliant aluminum gangway shall be fully grated. The two most waterward sections of the new public multi-use float shall be 8 foot wide floats with fish passageways 2 foot wide every 6 feet, covered with grating. Covered slips shall have a minimum of 60% open space

on the sides and their interiors shall be painted white to maximize the internal distribution of light. These permit conditions are already required of the City as it undertakes the project.

2. The lease provisions would require the City to undertake the mitigation required for our redevelopment project within the lease period whether or not we start or complete the project. Similarly, the City would be required to complete certain conservation measures within that same time period.
3. A number of other areas of concern were forwarded to DNR in a November 21, 2008 letter from City Attorney Hite to Ms. Janis Snoey, Assistant Attorney General, DNR Division.

City Draft Lease

After several months of work without making any noticeable progress, and keeping the June 12, 2009 deadline in mind, staff forwarded to DNR a revised lease. This version is one that we can recommend to the City Council for approval. The major areas of change in this version address the following topics:

1. The draft last sent by DNR required the City to undertake a major improvement project at the Marina. While the City has obtained permits which authorize such a project, the City Council has not appropriated funds for this purpose. The City's version removes the mandatory construction requirement.
2. The DNR draft also required the City to undertake certain "conservation measures," whether or not the City does the proposed project. These conservation measures are expensive. The City agrees that it will meet the conservation measures when it does repairs and renovations but cannot agree to lease requirements to make improvements if it does not change what is there now.
3. The City's version of Exhibit B removes the requirement for grating as a condition of the lease. Staff is of the opinion that requirements such as this should come through the project permitting process.

DNR Response (as of the agenda bill's preparation)

As of the date that this agenda bill was prepared, the City had not had a formal response from DNR on our proposed lease. Staff had informally heard that DNR staff members understood the City's concerns related to implementing conservation and mitigation measures in advance of building our redevelopment project. They have also forwarded to staff a revised Exhibit B which only requires the City to implement these measures if we undertake a reconstruction or new construction project. DNR staff has not, however, accepted the City's proposed changes with respect to the float/grating issue. While they have offered a design alternative, it would still require the City to implement what is believed to be a costly addition to the proposed project. DNR has shifted their focus from grating to what can be done to meet ambient light transmission levels that will allow for 30 percent ambient light to reach the sediment or 90 percent of the light at the structure's surface to reach the water surface under the structures. In some cases this can be met structurally with grating and in others a combination of several measures that will include grating but to a lesser degree. City staff is of the opinion that requirements such as this should come through the project permitting process rather than through the lease conditions.

DNR Response Letter presented during this June 2, 2009 City Council Meeting
The letter (Exhibit A) Mr. Roberts presented to Council and staff during this meeting was from Leonard Young, DNR Department Supervisor, and dated June 2, 2009. This letter referenced an agreement which had not yet been reviewed by Council and staff.

Budget Considerations
RCW 79.105.620 would allow the City to save $50,000/year over a ten-year period of time, for a total savings of $500,000. The City's consulting engineer for the marina redevelopment project (the firm of Reid Middleton) estimates that meeting DNR's grating/ambient light requirements could add between $1.8 to $4.3 million dollars to the cost of the full redevelopment project. From strictly a dollars and cents standpoint, the benefits of the new State law are outweighed by the costs associated with the proposed lease. Further more, the City has no ability to allocate and appropriate funds in an amount that is as yet, unknown.

City Staff Recommendations at the time of this Council Meeting
The City had negotiated in good faith with DNR agreeing to lease conditions that were believed could be reasonably met. At the time of this agenda bill's preparation, City staff did not recommend the City Council enter into a lease with DNR that included mandatory light passage maximization whenever the City might replace, renovate, repair existing improvements or construct new improvements without benefit of specific negotiation at the time permits are sought. The lease which was attached to the agenda bill represented the terms that City staff believed were appropriate for the Oak Harbor Marina. City staff had recommended that the City Council approve the lease as presented. It was City staff's intention to forward the signed lease to DNR for their consideration and approval.

Public Comments
Mayor Slowik asked for public comments.
Mel Vance, 275 NW 8th. Mr. Vance agreed with City staff's concern. Without seeing the contents of DNR's newest agreement, how could Council proceed. Further discussion is needed before signing.

Council Discussion
Discussion points included:

- *Where is DNR's offer? How could Council take action without review of this document?* Discussion continued regarding a special meeting to allow for review of this most recent agreement.
- *Title and Ownership*
  Discussion followed about the State's actual ownership, deeded ownership that was acquired from the Federal government in the 1970s, and how to resolve this issue. Discussion continued about the boundary line.
- *Ambient Light and Grating*
  Discussion followed that it seemed unusual to have such a detailed grating requirement in a lease agreement with comment that the State did not seem to have confidence in its other branches. Mr. Roberts talked about the habitat conservation plan and the detailed evaluation of what is needed by aquatic organisms. DNR's research revealed that other State agencies' standard practices should meet long-term needs and that the Department of Fish and Wildlife is using much of DNR's data. Mr. Roberts noted that DNR is a land owner and obligated to manage its properties in a sustainable fashion. Discussion followed about the requirements for port districts and that the City feels singled out with the

ambient light / grating requirements. Mr. Roberts responded that port districts are exempted from DNR's habitat conservation plan but there are many DNR leases in the Seattle area. He did not specifically reference a municipal facility facing similar DNR requirements. Discussion followed about ADA accessibility on grated docks for people using a walker or wheelchair.

- *Continued Discussion about Title and Ownership*
  Discussion followed about the State's ownership if the State does not hold title. The City does have title. The City is trying to conserve our natural resources for everyone. DNR keeps changing their requirements. DNR representatives, who had not been to the Marina, testified before the legislature without regard to the City's sensitivity to wildlife management and care for this harbor. We are not a taxing port and fall into a category only shared by the City of Des Moines.
- *Continued Discussion about Grating and Ambient Light*
  Discussion followed about costs, if grating was included in the newest draft of DNR's lease, orientation of piers and width of individual docks, the move away from grating to measurement of ambient light and ambient light percentages, the City's use of long-term and successive construction processing and permits which would address those requirements during the permitting process as opposed to DNR's requirement now.
- *Lease Terms and Payment*
  Lease payments have been satisfied through April 30, 2009. Ms. Gustafson talked about the history and timeline of payments and that a 60 percent reduction, allowing for public access, is less than what would normally be billed to a marina. $51,000 is sitting in cash on account in DNR's billing to the marina and a term date has been incorporated in DNR's new lease agreement. Mayor Slowik noted that he had approached the City Attorney regarding payment of funds owed so this would not be an issue. Senator Haugen also contacted DNR. We had not paid on DNR's direction, not the City's choice. This is not the issue; the issue is over-regulating beyond the permitting process acquired from other State agencies. The costs to meet ambient light issues will be more than the savings realized by this lease. It was also noted that there is not a termination clause in this lease and the City Attorney may want to add that clause.

MOTION: **COUNCILMEMBER CAMPBELL MOVED TO TABLE THIS ISSUE UNTIL THURSDAY, JUNE 4, 2009, AT 6:00 P.M., THE MOTION WAS SECONDED BY COUNCILMEMBER MUNNS. MAYOR SLOWIK CALLED FOR THE QUESTION.**

Further discussion is not allowed after a motion to table.

VOTE ON THE MOTION: **COUNCILMEMBERS CAMPBELL, GERBER, AND PAGGAO VOTED IN FAVOR OF THE MOTION. COUNCILMEMBERS SEVERNS, ALMBERG, PALMER, AND MUNNS OPPOSED THE MOTION. THE MOTION TO TABLE DIED TO ALLOW FOR FURTHER DISCUSSION.**

Discussion followed about a quiet title action and proceeding with a quiet title.

MOTION: COUNCILMEMBER ALMBERG MOVED TO TABLE THIS ISSUE UNTIL THURSDAY, JUNE 4, 2009 AT 6:00 P.M. THE MOTION WAS SECONDED BY COUNCILMEMBER PALMER AND CARRIED UNANIMOUSLY.

A special meeting notice for City Council will be posted for June 4, 2009, 6:00 p.m., City Hall Council Chambers. This special meeting will be also be taped.

Break
Mayor Slowik called for a recess at 9:00 p.m. and the meeting reconvened at 9:15 p.m.

Scenic Estates Preliminary Plat Request for Extension
Development Services Director Steve Powers presented this agenda bill seeking Council action on a request for an extension of the Scenic Estates Preliminary Plat which expired on April 18, 2009. The request was made by Mr. Karl Krieg of K and D Development on March 27, 2009, before the plat expired. Receipt of Mr. Krieg's letter prior to the expiration date ensures that the one-year extension can be considered as a timely request.

Mayor Slowik asked for public comments but there were none.

Council Discussion
Discussion followed about the extension – it is a single one-year extension, and if in one year K and D Development could bond for completion and record the plat in that manner (yes).

MOTION: COUNCILMEMBER PALMER MOVED TO APPROVE THE ORDINANCE FOR A ONE-YEAR EXTENSION OF THE SCENIC ESTATES PRELIMINARY PLAT. THE MOTION WAS SECONDED BY COUNCILMEMBER SEVERNS AND CARRIED UNANIMOUSLY.

Right-of-Way Acquisition – Oak Harbor Street Project
Eric Johnston, City Engineer presented this agenda bill requesting Council authorization for the Mayor to enter into purchase and sale agreements with those property owners who have agreed to sell rights of way for the improvement of Oak Harbor Street to the City. It also requests approval for a required payment to the property owners at the Woodside North Condominium Association for their actual costs in evaluating the City's offer for purchase of a right-of-way across their property, even though they rejected the City's offer. The City of Oak Harbor has several State and Federal grants for improvements to Oak Harbor Street between Crosby Road and Whidbey Avenue. The planned improvements generally consist of sidewalks, curbs, gutters, utility relocation, lighting and safety improvements. As originally scoped, the project included a new roundabout at the intersection of Oak Harbor Street and NE 7th Avenue. However, the property owners at the Woodside North Condominiums have rejected the City's offer to purchase right of way from them, necessitating re-design of the intersection. For the rest of the project, in order to construct the improvements, right-of-way acquisitions from a number of properties are necessary.

Mr. Johnston read the recommended action:
A motion, for the purpose of improvements to Oak Harbor Street between Crosby Road and Whidbey Avenue, to:

1. Authorize payment of the settlement of expenses actually incurred in evaluating the City's offer to Woodside North Condominium Association in the sum of $8,583.55 (not to exceed the statutory maximum of $750 per property owner).
2. Authorize the Mayor to sign a purchase and sale agreement with Muleskinners, Inc. to acquire 5,306 square feet of right-of-way appraised at $44,000 in exchange for the following City commitments with respect to the pending Crosby Trace site plan as now submitted or subsequently resubmitted for the same property:
    a. Waiver of the requirements for street improvements to Oak Harbor Street associated with the Crosby Trace site plan approval, and/or subdivision required by Chapter 11.16 OHMC (Required Street Improvements), OHMC 19.48.037(4)(e)(General evaluation criteria for site plan approval – street improvements), and Chapter 11.17 (corrected from 21.50) OHMC (Improvement Standards). The value of these street improvements, based on construction cost estimates, is $35,000.
    b. Agreement to include the 5,306 square feet of right-of-way for the Oak Harbor Street extension in the density calculations for the Crosby Trace site plan under OHMC 19.08.245.
    c. Agreement that the landscaping between the edge of Oak Harbor Street and the sidewalk for that street frontage on the Crosby Trace site plan shall be included as part of the required landscaping for the site plan pursuant to OHMC 19.46.030(1)(a)(vi) and OHMC 19.46.030(1)(c)(i).
3. Authorize the Mayor to sign a purchase and sale agreement for the acquisition of right-of-way from Puget Sound Energy in the amount of $5,100 for 512 square feet of right of way.
4. Authorize the Mayor to sign a purchase and sale agreement for the acquisition of right of way from Cove Apartments in the amount of $16,400 for 1,353 square feet of right of way.
5. Authorize the Mayor to sign a purchase and sale agreement for the acquisition of Right of way from Concordia Lutheran Church in the amount of $75,000 for 4,917 square feet of right of way.
6. Authorize the Mayor to sign a purchase and sale agreement for the acquisition of right of way from John Hoffelt in the amount of $9,800 for 813 square feet of right of way.

All purchase and sale agreements must be approved and signed by the City Attorney prior to execution.

Mayor Slowik asked for public comments.
Mel Vance, 275 NW 8th. All public comments were made based on roundabouts going in, and now this is a major departure. Should there be additional public comments now that the project has changed significantly?

Council Discussion
Discussion followed about funds and the effect on the 2009 – 2010 budget. Mr. Johnston noted that this project was carried forward from the 2006 budget, funds are coming forward from grants, and that this is not a general fund project. Discussion continued about the

Woodside cost breakdown and appraisal (Woodside's appraisal was significantly higher), and the higher monetary and time costs of condemnation. The roundabout's loss was discussed and another open house will be held at a future date to talk about its exclusion. All other features of the project will remain.

MOTION: **COUNCILMEMBER ALMBERG MOVED TO APPROVE THE RECOMMENDED ACTION AS PRESENTED TO CITY COUNCIL WITH THE CORRECTION TO NUMBER 2. a. IN THAT RECOMMENDATION. THE MOTION WAS SECONDED BY COUNCILMEMBER GERBER AND CARRIED UNANIMOUSLY.**

City Administrator's Comments

Mr. Schmidt talked about the upcoming standing committee meetings noting that the June 18th Public Safety Standing Committee meeting has been cancelled, and discussed the Special Meeting now scheduled for June 4, 2009, 6:00 p.m., to continue discussion of the DNR lease. He also mentioned the AWC Summer Conference and that Council and staff members will be leaving on June 22nd for that conference. Special arrangements are being made to tour a wastewater treatment facility. The summer youth work program is being coordinated through the Northwest Workforce Council and the City is in need of youth workers between the ages of 18 and 24 years, preferably with a driver's license. There are seventeen summer jobs available via the stimulus package and only four have been filled. Gerri Garcia at Northwest Workforce Council can be contacted at: 675-5966. The City has contacted school counselors at both Oak Harbor and Coupeville High Schools.

Council Members' Comments

Council Members gave their respective standing committee reports. Councilmember Munns talked about the Lodging Tax Advisory Committee meeting and this evening's recommendation from that committee. Mayor Pro Tem Paggao thanked Ms. Hite for her assistance in discussing the Bayshore Drive LID, thanked Ms. Recker for her assistance with the proclamation and information on Council Chamber's artwork and artist, and thanked Mr. Schmidt for the agenda bills' briefing

Mayor's Comments

Mayor Slowik noted that Scott Dudley had filed for Councilmember Gerber's Council seat and that Mr. Gerber is not seeking re-election. Mayor Slowik also talked about the Frisbee golf ribbon-cutting at Ft. Nugent Park and the beauty of Ft. Nugent Park. This is the only Frisbee golf course on Whidbey Island.

ADJOURN

With no other business coming before the Council, **Councilmember Campbell moved to adjourn; the motion was seconded by Councilmember Palmer and carried unanimously.** The meeting adjourned at 9:45 p.m.

_____

Connie T. Wheeler
City Clerk

Exhibit A

WASHINGTON STATE DEPARTMENT OF
Natural Resources
Peter Goldmark - Commissioner of Public Lands

Caring for
your natural resources
... now and forever

June 2, 2009

Jim Slowik, Mayor
City of Oak Harbor
865 S.E. Barrington Drive
Oak Harbor, WA 98277

Dear Mayor Slowik:

The Department of Natural Resources (DNR) is the proprietary manager of 2.6 million acres of aquatic bedlands, tidelands and shorelands. We manage these resources on behalf of the citizens of the state and in accordance with state law. In managing these important aquatic resources, and all public lands, we are strongly committed to ensuring environmental protection of the state's resources. All of our leases are written in a manner that reflects sustainable land management practices and sound science, and include a transparent process which allows for public input and review.

As you are aware, the legislature passed a law in 2008 granting the city of Oak Harbor free rent for their marina, for a ten year period, in exchange for structural improvements to the marina facility which will result in improved habitat in Oak Harbor. DNR staff has worked very hard over the past 11 months to develop site-specific recommendations which will ultimately improve the facilities and amenities of your marina as well as the health of the bay and Puget Sound. In developing the recommendations, staff has made multiple modifications to our original proposed lease to accommodate requests and concerns by the city.

The lease we are offering the city reflects many of the suggested changes by the city. The proposed improvements also directly support the important work of the Puget Sound Partnership and our commitment to restore and protect Puget Sound. DNR staff has been working hard to finalize a lease agreement for the city's signature and we have a final document ready.

We are pleased to offer the city this agreement in time to meet the legislative deadline of June 12th, which is the signature deadline in order for the city to qualify for the free rent provision. Time is of the essence, and the lease we offer today represents the final offer

1111 WASHINGTON ST SE ▮ MS 47001 ▮ OLYMPIA, WA 98504-7001
TEL (360) 902-1000 ▮ FAX (360) 902-1775 ▮ TTY (360) 902-1125 ▮ TRS 711 ▮ WWW.DNR.WA.GOV

from the agency. We look forward to receiving a signed copy back in my office before June 12th, so we can all move ahead and focus on other important priorities.

Sincerely,

L. S. Young

Leonard Young
Department Supervisor

cc: Senator Mary Margaret Haugen
Bridget Moran, Deputy Supervisor of Aquatics & Agency Resources
Heath Packard, Legislative Liaison
Rich Doenges, Aquatic Resources Division Manager

City Council Special Meeting
Thursday, June 4, 2009, 6:00 p.m.
City Hall Council Chambers

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

ROLL CALL

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

Paul Schmidt, City Administrator
Margery Hite, City Attorney
Steve Powers, Development Services Director
Mack Funk, Harbormaster
Renée Recker, Executive Assistant to the Mayor
Shannon Kinsella, P.E., Reid-Middleton, Inc.
Dave Roberts, Department of Natural Resources
Joanne Gustafson, Department of Natural Resources

Marina Aquatic Lands Lease with Washington State Department of Natural Resources
This topic was continued from City Council's June 2, 2009 regular business meeting. Development Services Director Steve Powers gave a Memorandum to the City Council which presented a staff recommendation on the State Aquatics Lands Lease proposed by the Washington State Department of Natural Resources (DNR) and is attached to these minutes as Exhibit A.

Shannon Kinsella, Reid-Middleton, Inc.
Mr. Powers introduced Shannon Kinsella from Reid-Middleton, Inc. Ms. Kinsella spoke to Council with concern about DNR's language regarding ambient light (Exhibit B to the DNR lease agreement): *A minimum of ninety (90) percent of ambient light must be available under the dock; or thirty (30) percent of ambient light must penetrate to a depth of minus (-) four (4) meters mean lower low water (MLLW). Structural elements used to achieve the specified level of light must be used consistently across the surface of each structure (e.g. dock, ell, finger pier) regardless of the water depth under the structure. Ambient light is measure as available light just above the water's surface at midday.* Her comments addressed the engineering needed to meet these requirements.

Ms. Kinsella talked about designing through the first phase and replacement of the landing float and gangway. As Director of Reid-Middleton's Waterfront Group, she has designed a number of marinas with consideration to environmental issues, and the balance of all aspects of marina design including ADA accessibility. Ms. Kinsella understands DNR's intent and requirements concerning aquatic organisms, and that eel grass is an affected substrate. Predator fish can also seek the cover of shaded docks and prey on salmon. The concern is how best to balance environmental, safety, and durability needs. Oak Harbor's Marina sits in fairly shallow saltwater and the engineering complexity is how to incorporate minimized shade. Shade is less important in deeper water which doesn't affect substrate. Adding grating adds costs to float systems. Underwater structure assures stability for floating docks.

Docks need floatation for stability, need to be ADA accessible, and grated with no more than a ½ inch gap. Ambient light requirements vary from agency to agency and project to project. A lot of variety can go into the design of any marina. In Oak Harbor's Marina, the landing float has added grading. We try to minimize widths to allow light into the water. DNR is now asking for 90 percent of ambient light below the structure. It is unclear how that could be designed. 30 percent of ambient light to a depth of minus 12 feet of water may be more workable. However, the shadow of a dock is not below the dock all day and can vary throughout the day and season. How to demonstrate the 30 percent at minus 12 feet since there is certain point that we need to have the floatation is still to be determined. The average depth of ambient light penetration is 5 meters. The initial cost estimate of 1.8 to 4.3 million additional dollars was not for these current 90/30 percentages and would require more analysis.

Council Questions and Discussion

Discussion followed about covered floats and their susceptibility to snow loads – would grating affect their stability? Ms. Kinsella felt the load capacity would depend on how much of the float is in the water and grating would have to be taken into account since it decreased load capacity. Discussion continued about the 90 percent ambient light requirement and if meeting that requirement is even feasible. Need clarification from DNR about light penetrating under the dock, down the side of the dock, or other definition of this percentage. Questions continued about the 30 percent ambient light definition and if it is an average number. This too is unclear. Ms. Kinsella presented several charts on sun movement and shadow on an average January day. Discussion followed about the two DNR options and associated costs. As mentioned in Council's regular business meeting, the 1.8 to 4.3 million dollar costs were based on the original requirement of 50 percent grading with 60 percent opening and not the new Exhibit B language from DNR. Council asked if, nationally, there are other cities that have had to meet these testing measures (no national statistics although NOAA does a lot of testing). Environmental issues are important, but these requirements are related to shading issues in Puget Sound. Water can be regional in terms of issues and standards, habitats and species. The associated costs may stay the same with the new percentage requirements. Ambient light discussion continued around water conditions, water clarity, rain events, water run-off, all of which affect ambient light. The lease is legislating an engineering problem, but another issue is long-term risk management. New criteria that has not been engineered in the past can drive up costs. Ms. Kinsella was asked about her professional qualifications: attended the University of Washington, holds a degree in Oceanography, is a Civil Engineer, and holds a graduate degree in Environmental Engineering. Council comments continued that DNR will allow the City to dredge which disturbs habitat and changes sedimentation; is the issue of ambient light more overblown compared to the impact of dredging. Ms. Kinsella is not involved with the permitting process, but habitat can recolonize quickly. Docks will be a long-term component of impact and ambient light penetration needs to be considered as a part of this improvement.

Mayor Slowik invited Mr. Powers back to the podium and then introduced Joanne Gustafson and Dave Roberts from DNR, Gina Bull from Senator Haugen's office, and Scott Smith from NASWI.

Continued Council Questions and Discussion

Council questions returned to long-term exposure and risk management, any terms or understanding that accompanies our current rent payments, and if the original lease has the same terms. It was clarified that the terms are different. Any discussion of not signing the lease led to questions of legal exposure. Legal exposure and litigation should be discussed in executive session. With reference to Chapter 3.3 – End of Term, questions followed about removal of improvements and if that implies substantial exposure by complying with this lease. Chapter 7 defines improvements and that tenant-owned improvements are subject to these terms. Mr. Roberts responded that this often comes up as a question with DNR's lease language, but the intent is to utilize these terms only with bad lessees. DNR does not want to become a facility manager. Chapter 7.4 (b) (1) and (2) talks about the State's discretion and, in the vast majority of cases, this is the clause that prevails.

Council felt that use of the word "discretion" is concerning. Discussion continued around the fill and ramp which was placed by the Navy years ago, if it would need to be removed, ownership and value of improvements, and whose obligation it becomes to remove improvements. Future City and DNR staff will have be able to interpret this language, but the issue of timing regarding the June 12th deadline is problematic and this is DNR's last lease offer. Discussion continued around marina ownership, what would happen with this ten-year lease if the Marina was sold (it would be assigned to the new owners of the Marina), and the terms of the lease. It was noted that the City made an unaccepted counter-offer to DNR regarding ambient light and the lease agreement has boiled down to the single issue of ambient light. The June 12th deadline to take advantage of rent-free status for ten years is imminent. It was the City's intent to meet a general statement about ambient light through the multi-phase permitting and project process. Council felt that the City has been backed into a corner, the State needs to have industry-wide requirements or a campaign to level the State requirements, and the whole development must be reviewed with the 1.8 to 4.3 million dollars that will be now be needed.

Council comments returned to ownership, that the ramp was built in the 1940s and may be historic, DNR came onboard in 1974 and their position is to protect the waterway, but this is still an active Naval base and the City reports to the Department of Interior regarding title. The City has been a good steward. We have a quick claim deed, National Parks receives a five-year report, the Department of the Interior holds title, and the City understands that the State has a reversionary interest. The result of that is in dispute and the Federal government has not changed its position from a year ago. The lease is rent-free for ten years and is a lease for the State's interest; only applicable to that portion that the State owns. The past lease ran from 1974 to 2004 with amendments and is in holdover since 2004. The terms of the old lease have expired. Council felt there was unclear language in the proposed lease, there are housekeeping items to be corrected in the document, and that neither Reid-Middleton nor DNR know how to measure the 90/30 percentage. It was again pointed out that the City already meets some ambient light requirements through the permitting and phase process and would continue to do that on a permit and phase by phase basis.

Executive Session
Mayor Slowik called for a five-minute break at 7:30 p.m. and a twenty-minute executive session began at 7:35 p.m. to discuss potential litigation affecting the City's financial situation. The executive session was extended at 7:55 p.m. for an additional five minutes and the special meeting reconvened at 8:00 p.m.

Council commented that there is not an automatic clear answer with so few days to make a decision, that Oak Harbor without its marina is unimaginable but a decision has to be the best choice for the City. Council is voting under duress. There should be some concession from DNR on this language since DNR's final document was just received on June 2, 2009.

MOTION: **COUNCILMEMBER ALMBERG MOVED TO TABLE THIS DECISION UNTIL JUNE 8, 9, OR 10, 2009. COUNCILMEMBER GERBER SECONDED THE MOTION.**

AMENDMENT TO THE MOTION: **COUNCILMEMBER ALMBERG MOVED TO TABLE THIS DECISION TO MONDAY, JUNE 8TH AT 5:30 P.M. WHICH WAS THEN CHANGED TO TUESDAY, JUNE 9TH AT 8:00 A.M. COUNCILMEMBER PALMER SECONDED THE AMENDED MOTION.**

VOTE ON THE MOTION AND AMENDMENT TO THE MOTION: **THE MOTION AND AMENDING MOTION SETTING THE SPECIFIC DATE AND TIME OF JUNE 9, 2009, 8:00 A.M., CARRIED UNANIMOUSLY.**

Notice for a City Council Special Meeting to be held on Tuesday, June 9, 2009, 8:00 a.m. will be posted. Councilmember Campbell offered to hand-deliver a signed lease agreement, if needed.

ADJOURN
With no other discussion coming forth, **Councilmember Campbell moved to adjourn. The motion was seconded by Councilmember Palmer and carried unanimously.** The meeting adjourned at 8:20 p.m.

_____
Connie T. Wheeler
City Clerk

Exhibit A

MEMORANDUM

TO: CITY COUNCIL
FROM: STEVE POWERS, DEVELOPMENT SERVICES DIRECTOR RSP
SUBJECT: DNR AQUATIC LANDS LEASE
DATE: 6/4/2009
CC: MAYOR SLOWIK, PAUL SCHMIDT, MARGERY HITE

PURPOSE

This memo presents a staff recommendation to the City Council on the State Aquatic Lands Lease proposed by Washington State Department of Natural Resources (DNR).

AUTHORITY

The authority to enter into a reduced fee lease for a public marina comes from RCW 79.105.620.

BACKGROUND

In March of 2008 ESSB 6532 provided the City an opportunity to enter into a "reduced fee" lease with DNR for a period of ten years. The new law created RCW 79.105.620. Under our prior lease, the City was responsible for paying DNR approximately $50,000 per year for the aquatic lands portion of our leasehold. In order to take advantage of this law the City is required to enter into a new lease with DNR. The lease is for a 10-year period rent free with an option to renew for ten (10) additional years with rent at State rates. Although the new law went into effect on June 12, 2008, the City did not receive a draft lease from DNR until November 3, 2008. The conditions of the draft lease were not acceptable to the City and we have been working since that time to negotiate a more favorable agreement. The State law requires that the new lease be executed by June 12, 2009.

On June 2, 2009 staff presented the City Council a draft lease that we believed best represented the City's interests. At the same meeting DNR staff presented the Council their version of the lease and recommended the City approve that version. Their draft lease was accompanied by a letter which, among other things, informed the City this was DNR's final offer.

The outstanding issue between the City and DNR is how best to address ambient light issues in the marina. Staff prefers a more general approach in the lease with specifics to be determined during the permit approval process. DNR staff originally proposed a specific requirement in the lease (the use of grating meeting certain standards) but has

now shifted to a different approach. Their new approach specifies what level of ambient light penetration must be achieved but leaves open the design solutions to implement the standard.

City Council tabled discussion on the matter until June 4th so as to provide an opportunity for staff and the Council to review DNR's proposal.

EXHIBIT B OF THE LEASE

Staff has reviewed DNR's lease (and Exhibit B) dated June 2, 2009. The only substantive difference between their proposal and staff's is found in Section IV A of Exhibit B as it addresses ambient light. Staff's version contains the following language:

> Maximize light passage through overwater structures.
> - Remove covered moorage whenever possible.
> - Renovated or replaced covered moorage shall have at least five (5) percent of the roof area in skylights.

DNR's version contains the following language:

> Maximize light passage through overwater structures as follows:
> - A minimum of ninety (90) percent of ambient light must be available under the dock; or thirty (30) percent of ambient light must penetrate to a depth of minus (-) four (4) meters mean lower low water (MLLW). Structural elements used to achieve the specified level of light must be used consistently across the surface of each structure (e.g., dock, ell, finger pier) regardless of the water depth under the structure. Ambient light is measured as available light just above the waters surface at midday.
> - Remove covered moorage whenever possible.
> - Renovated or replaced covered moorage shall have at least five (5) percent of the roof area in skylights.

DISCUSSION

The following items are offered for the Council's consideration:

1. The ambient light requirement is different than that already established by our permits for the Marina Redevelopment Project. These permits require certain measures (grating and covered moorage design) that address ambient light issues.
2. There is an unknown cost impact to the overall project cost. If the additional cost is significant it could jeopardize the redevelopment project and/or increase the timeframe for completion.
3. DNR has indicated that this is their last, best offer for the lease. It is highly unlikely that any additional negotiating will be successful.
4. The deadline for executing the lease is June 12, 2009.

5. Should the Council choose to authorize the Mayor to sign the City's lease DNR will most likely not sign the lease and the deadline for executing the lease will pass. It does not appear we can continue marina operations past 2010 at this location without a new lease.
6. Should the Council choose to authorize the Mayor to sign DNR's lease, DNR will sign and we will have a lease meeting the requirements of RCW 79.105.620 (including rent-free status for 10-years).
7. Should the Council choose to not authorize the Mayor to sign either lease, marina operations would most likely need to cease at this location in 2010.
8. If Council authorizes the Mayor to sign DNR's lease staff strongly recommends that prior to making additional financial commitments to the redevelopment project the City consider their long-term goals for the marina, its place in our overall waterfront and downtown redevelopment efforts and whether or not investing in a marina sited on DNR aquatic lands is in the community's best interest.

CONCLUSION

Staff acknowledges that the concessions made by DNR in the areas of mandatory reconstruction, mitigation and conservation measures are significant and have noticeably improved the lease in the City's favor. Staff believes that at this point we will not be able to negotiate any more favorable terms in the lease. Given the uncertainties associated with taking no action at all or approving only the City's preferred version, staff believes that it is prudent to authorize the Mayor to sign DNR's version. This action will preserve the City's ability to benefit from RCW 79.105.620 and provide us a ten-year window to evaluate what level of additional investment the City should make in its marina at this location.

RECOMMENDATION

Consider authorizing the Mayor to sign the DNR Aquatic Lands Lease dated June 2, 2009.

DNR - DRAFT

City of Oak Harbor
Aquatic Lands Lease Number 20-A10082
June 2, 2009

Exhibit B

EXHIBIT "B" – Maintenance and Operations Plan

I. DESCRIPTION OF PERMITTED USE:

Tenant owns and operates the Oak Harbor Marina, a public year-round, full service marina providing facilities and services for boaters and visitors. The marina has operated under an Aquatic Land Lease since 1974. Tenant intends to continue to operate substantially the same facility through the new lease period. The Permitted Use includes:

A. General

- 353 permanent moorage slips, ranging in size from 24 to 50 feet, both open and covered.
- 52 guest moorage slips, and an additional 600 lineal feet of side tie moorage.
- A full service fuel dock, providing gasoline, diesel, oils, additives and propane.
- Launching via an overhead sling hoist (capacity 6,500 lb.)
- Public boat ramp.
- Restrooms, showers, laundromat, ice and public telephone.
- Public park and picnic tables are available near the marina office. Additional public access and transient moorage with picnic tables that is available on a first come basis on the breakwater dock.
- High speed wireless internet service.
- Storage units (104), accommodation for boats on trailers, boating equipment, etc.
- Parking storage for boats on trailers; RV's and boat trailers are available on filled tidelands and the City's upland property.
- Public events and activities throughout the year are held on the leasehold.

B. Residential Use. Tenant may authorize up to ten percent (10%) of the marina's slips for residential use. Residential use is defined in Washington Administrative Code (WAC) 332-30-106(62). All residential uses shall conform to WAC Chapter 332-30 as now or hereafter amended and the following:

- All sewage waste, including treated waste from Marine Sanitation Devices (MSDs) Type I and II, shall be disposed of upland.
- Tenant shall verify that residential tenants are disposing of waste upland. Tenant shall provide records of verification to State upon request.
- Tenant shall provide a diagram, or a list of the slips with residential use of the marina.

- The diagram shall note the location of each residential slip, type of vessel, name of the occupant, the date the slip lessee initiated their slip agreement and the size of the slip.
- Tenant shall update the diagram or slip list every four years or upon request by State.

- Four months before the end of the initial term, Tenant shall provide a signed and dated list of all residential slips.

C. Upland Storage Units: Tenant has provided State a copy of the standard blank sublease for these units. Tenant shall provide State a new copy whenever Tenant makes changes to the standard. Tenant shall maintain executed subleases on file at the marina and supply a copy of each to State upon request.

II. EXISTING CONDITION:

The existing structures and improvements within the lease area were developed in three phases. The majority of in-water structures and all structures on the filled tidelands were built in 1974. In 2008, the condition of structures is as described below:

All floats are concrete, with wooden whalers and steel through rods providing structural integrity. Most pilings are wood/creosote. The condition of this portion of the marina is good, with some deterioration of wood whalers and piling hoops. Four docks contain some covered slips. Roofs/roof beams were rebuilt on D dock in 2001 and on E dock in 2002. Roof structures are in fair condition.

An outer breakwater dock provides outstanding guest moorage. The first 660 feet of this dock were installed in 1987, and an additional 250 feet in 1998. Again, all floats are concrete, with wood whalers. Pilings anchoring this breakwater float are steel. Breakwater walls are wood. Walls on the original 660 ft. of the breakwater dock were rebuilt in 2000, as a result of extensive storm damage. Condition of this portion of the marina is excellent.

There are two floating pumpouts in the marina; one at the fuel dock and the other tied to the breakwater dock. The last is known as the SS WATERLOO, a 30-foot aluminum barge that provides a restroom, pumpout and port-a-potty dump service to that portion of the marina. This facility is maintained and serviced by in-house staff. Sewage from the pumpouts is deposited directly into the City of Oak Harbor's sewer line that is connected to the sewer plant.

III. MANAGEMENT AND MAINTENANCE:

A. Sewage and Wastewater. Tenant shall manage sewage and wastewater in accordance with (1) Department of Ecology's Best Management Practices; and (2) the following:

- Tenant shall locate pumpouts to be accessible to all boats and clearly marked with signs at the waterward end of each pier and gangway.

- Tenant shall inspect pumpouts on a monthly basis and immediately make all necessary repairs. Upon State's request, Tenant shall verify inspections and repairs. Acceptable forms of verification include:
  - Receipts from pump-out services.
  - Copies of contracts from pump–out services.
  - Marina operator's recorded observation that vessel heads are wired shut while in marina.
  - Marina operator's recorded use of fluorescein dye tablets, placed in heads by marina operator on a regular basis.
- Tenant shall make every reasonable effort to prevent discharge of sewage in state waters, which is prohibited by state law.
- Tenant shall discourage discharge of gray water.
- Tenant shall encourage, inform, or direct boat owners and operators as follows:
  - Use "green" products inside and outside of boats, floats and other improvements.
  - Use harsher products only for spot cleaning followed by wipe down with absorbent material.
  - Do not discharge gray water overboard from decks.
  - Use strainers in sink drains.
  - Before washing plates, scrape into trash receptacles.
  - Do not use garbage disposal while in the marina.
- Tenant shall inform marina users about upland bathrooms, showers and laundry facilities by posting or handing out printed information.

B. Marina Dock Maintenance: Tenant shall maintain docks as follows:
- Frequently inspect dock for emergent problems or damage.
- Establish a systematic program of underwater inspection by divers, to check for damage from logs or debris, inspect piling zincs, and remove sea growth from utility service lines.
- Annually tighten throughrods that provide primary strength to the structure.
- Biennially (or as required) replace piling zincs.
- Maintain general cleanliness and appearance of dock.
- Inspect and replace wood whalers, rub boards, piling hoops as needed.

C. Use of Fuel and other Hazardous Substances. Tenant shall manage and direct others to manage, fuel and other hazardous substances in accordance with law, Section 8 of this Lease, and as follows:
- Store fuel tanks, lubricants and chemicals at upland locations (filled tidelands, off-site, or at any other location that is not over water).
- Inspect fuel storage tanks, fuel pumps and equipment on a monthly basis and make all necessary repairs immediately. Upon State's request, Tenant shall verify inspections and repairs.

- Provide and maintain clearly marked spill containment materials adequate to contain a spill from the largest boat that may use the facility.
- Post National and State oil and chemical spill hotlines at multiple locations.
- Require all employees to train for spill response and prevention as specified by the Washington Department of Ecology. Upon request by State, submit annual verification of the training dates and names of the employees who have completed the training.
- Dispose of all oil, hazardous substances and solid waste in accordance with federal, state and local laws.

D. Boat Maintenance and Repair. Tenant shall manage and direct others to manage boat repair and maintenance as follows:

- No underwater or outside hull scraping, sanding, grinding, or other removal of paints or finishes, and underwater refinishing work. Boats shall be removed from state waters and repaired on the uplands where proper tarps, dust drip and spill containment measures shall be used to prevent contamination.
- Only minor repairs or refinishing inside the hull may be conducted while the boat is in water. Care shall be taken to prevent solvents, cleaners, paint or dust from transferring outside of the hull. Workers shall use tarps, dust, drip cover and cloths and dispose of all materials in accordance with law at an upland location.

IV. RENOVATION, REPAIRS AND NEW CONSTRUCTION

A. Conservation Measures. Whenever replacing, renovating, or repairing improvements, regardless of whether under Section 7 or Section 11 of the Lease, or constructing new improvements, Tenant shall implement the following conservation measures:

- Install only flotation material that is encapsulated in a shell resistant to ultraviolet radiation and/or abrasion and which prevents breakup or release of flotation material to the water.
- Do not use vehicle tires as flotation material or as dock or float bumpers that come into contact with the water at any time.
- For floats with the potential to ground out (come in contact with the underlying tidelands), provide stoppers set to a height sufficient to keep the bottom of the floats at least twelve (12) inches above the substrate at all times. Minimize the number of pilings used in new construction, thereby minimizing changes to existing sediment transport.
- Maximize light passage through overwater structures as follows:
  - ~~Provide grating on structures (piers, finger docks, floats and gangways) so that at least fifty (50) percent of all structures are grated, with grating uniformly distributed throughout the marina and the grating having at least sixty (60) percent open space.~~ A minimum of ninety (90) percent of ambient light must be available under the dock; or thirty (30) percent of

ambient light must penetrate to a depth of minus (-) four (4) meters mean lower low water (MLLW). Structural elements used to achieve the specified level of light must be used consistently across the surface of each structure (e.g., dock, ell, finger pier) regardless of the water depth under the structure. Ambient light is measured as available light just above the waters surface at midday.

- Remove covered moorage whenever possible.
- Renovated or replaced covered moorage shall have at least five (5) percent of the roof area in skylights.

- Orient night lighting to minimize the amount of light shining directly onto the water.
- Make every reasonable effort to minimize noise during nighttime operations.
- Post no-wake signs throughout the leasehold to minimize noise and sediment re-suspension.
- Install storm drain filters on all storm drains that discharge directly into the bay.
- Inspect filters monthly and replace as needed. Annually submit verification of the inspections and filter replacements to State.
- Do not use treated wood timbers or pilings below the waterline. Use steel or concrete for new or replacement piles.
- When feasible, remove structures/fixtures that are no longer in operation or use.
- Maintain the dredge basin with a depth gradient shallower toward shore to avoid deep pockets that can act as unflushed holding basins.
- Before construction or replacement of covered storage, Tenant shall submit plans and specifications showing the location for State approval in accordance with Section 7.3 of the Lease.

B. Mitigation Measures. When conducting activities permitted under the Hydraulic Project Approval permit (HPA) from Washington State Department of Fish and Wildlife (WDFW) issued for Planned Marina Development, described below, install all required mitigation in accordance with the HPA and the following:

- Before initiating mitigation work, including placement of fill to soften shoreline, Tenant shall submit detail plans and specifications for State approval in accordance with Section 7.3 of the Lease. State agrees in principle with use of fill for mitigation purposes.
- Perform a beach survey five (5) years after completion of the beach enhancement required by the HPA. The survey shall include fish species, established vegetation and invertebrates. Tenant shall submit sampling protocols to State for approval before undertaking the survey. Tenant shall submit copies of any and all reports or surveys associated with the enhancement project to State within three months of completion of the report or survey. This includes reports and surveys completed by both regulatory agencies and non-governmental entities.

C. Planned Marina Redevelopment. As of the Commencement Date, Tenant secured permits for phased reconstruction and upgrading of the existing marina facilities. Tenant has not secured funding for this work and the City Council has not determined whether to implement the full scope of work.

Permits current as of the Commencement Date include Section 404 permit issued by the United States Army Corps of Engineers (Permit #: NWS-2007-951-NO, issued on October 31, 2008), [js1] Hydraulic Project Approval (HPA) from the Washington Department of Fish and Wildlife, (Permit #: 111469-1 issued on January 25, 2008), [js2] and a Shoreline Conditional Use Permit (Permit #:PLN-07-00010), issued on November 28, 2008), [js3] Department of Ecology Conditional Use or Variance Permit, issued on March 28, 2008, (collectively "Commencement Permits"). Tenant anticipates that the permits will expire before all of the authorized work is funded or completed.

~~Permits current as of the Commencement Date include Section 404 permit issued by the United States Army Corps of Engineers (Permit #:, issued on _____), Hydraulic Project Approval (HPA) from the Washington Department of Fish and Wildlife, (Permit #: issued on and a Shoreline Conditional Use Permit (Permit #: _____, issued on _____), (collectively "Commencement Permits"). Tenant anticipates that the permits will expire before all of the authorized work is funded or completed.~~

State grants its approval for work authorized under the Commencement Permits. Unless otherwise explicitly required under this Exhibit B, State does not require Tenant to submit plans and specifications as required by Section 7.3 of the Lease for work authorized under the Commencement Permits. For work not authorized under the Commencement Permits and if any Commencement Permit expires before the work described below is complete, Tenant shall submit plans and specification to State and obtain State's approval of work in accordance Section 7.3.

The following summarizes the proposed future improvements authorized under the- Commencement Permits ~~current permits and allowed under this Lease include~~If there is a conflict between the work described below and a Commencement Permit, the Commencement Permit prevails:

- Phased dredging of entire marina basin to depths of minus 9 feet, minus 12 feet, and minus14 feet Mean Lower Low Water *(MLLW)* to accommodate the various types and sizes of vessels that utilize the marina.
- Replacement of existing headwalk/approach float.
- Addition of a new F dock between existing E dock and existing wave barrier/transient moorage float *(current F dock to be renamed G dock)*. New dock/float will have space/slips for up to 82 vessels, primarily 40 to 50 feet in length, with space for five vessels up to 60 feet.

- Replacement of the non-ADA compliant gangway on the main approach pier with an ADA compliant gangway.
- Enhancement of up to 800 linear feet of marina shoreline through beach nourishment and planting of dunegrass.
- Removal of existing creosote timber boat grid.
- Replacement of existing docks A through E with five new docks. New docks will have slips for up to 259 vessels ranging from 21 feet to over 45 feet in length.
- Removal of five sunken timber barges and creosote timber log boom at the south perimeter of the marina and replace with a 1,020-foot long, public access, multi-use float with utilities.
- Donation of $50,000 to the Island County Marine Resources Committee *(MRC)* to allow them to construct and/or expand their partially funded restoration project in Cornet Bay ~~(see paragraph (4)(3) below)~~.

~~Unless otherwise required under A. Conservation Measures, State does not require Tenant to submit plans and specifications as required by Section 7.3 of the Lease for any Work for which Washington Department of Fish and Wildlife (WDFW) issued a permit (HPA) prior to the Commencement Date. Tenant shall will submit plans and specification in accordance with Section 7.3 of the Lease concurrently to State and WDFW for any Work requiring a new or revised HPA.~~

~~1) Description of Permit Authorized Dredging Operations~~

- ~~Approximately 208,000 total cubic yards of material will to be removed/dredged from the marina basin *(all phases)*. This will resulting in three distinct depth areas/contours with approximately 10.9 acres dredged to minus 14 feet MLLW, approximately 8 acres dredged to minus 12 feet MLLW, and approximately 3.3 acres dredged to minus 9 feet MLLW. The sediments to be removed *(excluding sunken barge debris)* were tested in accordance with PSDDA guidelines and found suitable for unconfined open water disposal. Two to three thousand (2,000 to 3,000) cubic yards of material associated with removal of 5 sunken timber barges will to be disposed of at an approved upland site.~~

  ~~The dredged basin will have at approximately 4H:1V side slopes to meet the existing shoreline profile. The majority of the dredging will to be performed via clamshell bucket, working off of a floating barge. The portion of dredging under floats and covered moorage will to be completed using a hydraulic dredge. The dredged material will to be placed on a barge and transported to either the Port Gardner or Rosario Strait PSDDA open water disposal sites.~~

- ~~Based on current depths in the marina, there will be an increase in basin area deeper than minus 10 feet MLLW of approximately 13 acres. However, based on 1974 depth data *(time of marina construction by the City)*, the increase is only~~

~~about 3.1 acres. Based on a 1946 U.S. Coast and Geodetic Survey (USC&GS) nautical chart, it appears the marina basin area was dredged by the Navy in 1942 to a minimum depth of minus 10 feet MLLW.~~

~~2) Description of Permit Authorized Floating Dock Replacement - New F dock, Headwalk/Approach dock, and A through E docks~~

- ~~As part of Phase 1, the existing headwalk/approach float will to be replaced, the connector float removed, and a new F dock will be constructed to accommodate primarily 40 to 60 foot vessels. The current F dock will to be renamed G and will to undergo only minimal upgrades. Phase 1 will also to include installation of a new ADA compliant gangway. Future phases of construction will to replace the existing A through E docks as well as replace the log boom and five sunken timber barges along the southern perimeter with a new multi use float. All new floats will to have fully encapsulated flotation.~~

- ~~Removal of existing floats and structures will to include the removal of a substantial number of creosote pilings *(estimated up to 152 for all phases of construction)*. New construction will utilizinge steel pilings *(estimated up to 198 for all phases of construction)*. Old timber pilings will to be pulled utilizing a barge mounted crane and vibratory device if necessary. Old pilings will to be placed on a barge for disposal at an approved upland disposal site. New float pilings will to be placed using a vibratory hammer. Should difficult driving conditions be encountered where sufficient pile penetration cannot be achieved with a vibratory hammer, an impact hammer may be utilized. Use of an impact hammer will to be kept to the minimum required by design and site conditions. An air bubble curtain or similar sound attenuation system will to be used to reduce sound pressures transmitted through the water column during impact pile driving.~~

- ~~In all, the new dock construction will to increase total over water coverage by approximately 32,800 square feet *(from 135,300 to 168,100)* with the important caveat that this increase in over water coverage will be placed deeper than minus10 feet MLLW. Following construction, over water coverage in areas shallower than minus10 feet MLLW will to decrease by approximately 3,700 square feet. Total roof area for covered slips will to decrease by approximately 1,200 square feet *(from 79,700 to 78,500)*. In general, new covered moorage will to be over larger double width slips and slightly higher off the water.~~

- ~~Following construction, 75% of the covered moorage will to be in water depths greater than minus10 feet MLLW. The total number of covered slips will to decrease by 50 to 55 slips.~~
  ~~Existing floats will to be disconnected from the piles and/or the pile will be pulled; the float will then be will be transported to the site by barge, truck, or floated in, placed in position, and the new pile will be driven through the hoop.~~

~~Piles may be driven prior to float placement when schedule pressures demand, but this is would not be the typical construction sequence. The new covered moorage structure(s) will to be erected on site after the new floats are positioned and secured.~~

~~3) Description of Permit-Authorized Sunken Barge and Log Boom Removal and Multiuse Float / Debris Barrier Construction~~

~~Tenant shallplan to remove the existing log boom and five sunken timber barges on the south end of the marina and construct a multi-use, public access float. The sunken barges and log boom will to be removed in conjunction with construction of the float. This public access float will to be approximately 1,020 feet long and supplied with utilities. It will accommodate and allow for a variety of activities including fishing, youth sailing programs, overflow and event moorage, and other public use elements. It will also The float also to provide additional transient side-tie moorage and act as a debris barrier.~~

~~Currently, the submerged barges are in a depth of approximately 0 to minus 8 feet MLLW. Removal of the sunken timber barges, log boom, and associated debris/material will to be accomplished with a clamshell dredge. Material wi to ll be placed on a barge for transport to a transfer location or disposal site. Care will be taken to prevent release of floating debris during the removal process. Debris from the removal will to be transported off-site for permanent disposal at an approved upland facility. The removal of the sunken barges will to revert approximately 0.3 acres of benthic habitat to pre-development conditions.~~

~~4) Description of Permit Required Mitigation and Shoreline Enhancement~~

~~Tenant shall mitigate according to the Corp of Engineers and Washington State Fish and Wildlife requirements for the unavoidable loss of littoral habitat due to dredge requirements, as follows:~~
~~a) Within the project area, a more natural beach profile will be restored in the intertidal zone between elevations of approximately +1 feet and +11 feet MLLW *(up to 800 linear feet of shoreline)*. Debris will be removed as necessary and disposed of at an approved upland site. A suitable substrate of "habitat mix" composed of coarse sands and pea gravels, will be placed over the area in a minimum 6-inch layer (up to 2,500 cy of material) at a slope of approximately 5.5H:1V. Intertidal area enhanced with habitat mix will be approximately 0.9 acres.~~
~~b) An existing creosote timber boat grid located in the intertidal zone between elevations 0 and +3 feet MLLW will be removed and disposed of at an approved upland site. This structure covers an area of approximately 16 by 40 feet.~~
~~c) Marina redevelopment *(all phases)* will include removal of up to 152 creosote pilings. All new pilings will be steel or other ecologically friendly material.~~
~~d) When the proposed public multi-use float is constructed along the southern perimeter of the marina, the five large sunken timber barges and log boom will be removed. This will restore~~

~~approximately 0.3 acres of benthos to predevelopment conditions. This new multiuse float/debris barrier would be a "fish friendly" structure providing for fish mobility along the nearshore corridor.~~

~~e) The City will donate a sum of $50,000 to the Island County Marine Resources Committee (MRC) to allow them to expand their partially funded restoration project in Cornet Bay. Specifically, this funding is expected to allow the MRC to expand the area of beach to be restored by several hundred feet to the north.~~

~~5) Schedule and Phasing of Permit Authorized Work~~

~~In-water work, including dredging shall will be conducted in accordance to the Copr of Engineers and Washington State Fish and Wildlife regulatory permits during appropriate work windows minimizing potential effects on ESA-listed species, other juvenile salmonids, and forage fish. Phasing of the project also will be driven by the need to minimize inconvenience to marina tenants, funding opportunities, and by the need to observe prescribed work windows for the protection of fish and wildlife. As such, more than one in-water work window is likely to be required with phases separated by two or more years. Phase 1 work could begin as early as September 2009~~8 ~~if permits and funding have been secured.~~

~~Phase 1 – Phase 1 will consists of dredging the majority of the marina basin, removal of the existing creosote timber boat grid, replacing the existing headwalk float, construction of new F dock, and replacing the existing gangway with an ADA compliant gangway. Shoreline enhancements in the form of restoring up to 800 linear feet of shoreline by beach nourishment and planting of dunegrass wouldill also occur during this phase.~~

~~Future Phase(s) – Future work will consists of replacement of docks A through E, sunken barge and log boom removal with construction of the multi-use float/debris barrier along the southern perimeter, and additional dredging along the southern perimeter.~~

~~L:\LGLA\WORK\CIV2009\Marina - Tidelands Lease Ex B April 22 '09 (3) version.doc~~

City Council Special Meeting
Tuesday, June 09, 2009, 8:00 a.m.
City Hall Council Chambers

CALL TO ORDER Mayor Slowik called the meeting to order at 8:00 a.m.

ROLL CALL

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

Paul Schmidt, City Administrator
Margery Hite, City Attorney
Steve Powers, Development Services Director
Mack Funk, Harbormaster
Renée Recker, Executive Assistant to the Mayor
Dave Roberts, Department of Natural Resources
Joanne Gustafson, Department of Natural Resources
Gina Bull, Office of Sen. Mary Margaret Haugen
Steve Williford, Oak Harbor Marina Committee
Debbie Skinner, Oak Harbor Marina Committee
Dr. Byron Skubi, Oak Harbor Yacht Club

Marina Aquatic Lands Lease with Washington State Department of Natural Resources

Development Services Director Steve Powers led this discussion beginning with the three documents presented to Council at this meeting:

1. Agenda Bill dated June 9, 2009, prepared by City Attorney Margery Hite. Subject: DNR Tidelands Lease. Attached as Exhibit A.
2. Email dated June 8, 2009, 3:47 p.m., from Shannon Kinsella, Reid-Middleton, Inc, sent to Steve Powers and Mack Funk. Attached as Exhibit B. Subject: DNR Suggested Language.
3. Email dated June 8, 2009, 5:47 p.m., from David Roberts – DNR, sent to Steve Powers and Mayor Slowik. Subject: Grating Language for DNR Lease. Attached as Exhibit C.

Mr. Powers presented the agenda bill. In response to City Council concerns, staff and the Department of Natural Resources (DNR) have negotiated changes to the Aquatic Lands Lease presented to Council during their June 2, 2009 regular meeting. Two of the concerns have been addressed directly:

1. Typographical errors in Section 3.2 (Renewal of the Lease)
2. Clarification that the City does not own the improvements placed by the Navy prior to the City taking possession in Sections 7.1 and Section 7.2 (Improvements)

And third:

3. Staff recommended that the third concern, ambient light at the Marina, be subject to subsequent negotiation and agreement by both parties.

Mr. Powers discussed the chronological background that led to this morning's special meeting which is detailed in Ms. Hite's agenda bill. This agenda bill was drafted at 5:00 p.m. on Monday, June 8, 2009, and at that point, no language on the issue of ambient light had been proposed by DNR, although the City did authorize its consulting engineer, Shannon Kinsella of Reid-Middleton to work with DNR in an attempt to come to a workable solution. See the agenda bill and its attachment, Exhibit A.

Since that time, the City and DNR have closed gaps toward a solution for grating. See Dave Roberts' email and attachment, Exhibit C. Ms. Kinsella had presented different language as an initial draft response prior to Mr. Roberts' emailed response. See Ms. Kinsella's email and attachment, Exhibit B. As of this morning's meeting, staff believes the City and DNR are close to resolving the language regarding ambient light.

Council Discussion and Questions

Council asked if new cost figures are available. Mr. Powers responded that Ms. Kinsella has not been tasked with developing an estimate which is still a large monetary spread since details have not been resolved. The cost range should narrow as the redevelopment design progresses and a range of costs could be available in the next week or so. The cost range should narrow as the redevelopment design progresses. The focus has been on DNR's biological concerns and the level of improvement regarding ambient light. The Council will have the ability to move forward or not with the project's various phases if they are found to be too expensive. Discussion followed about the differences between Ms. Kinsella's and DNR's recommendations. The disagreement is not with the percentage of grating, but is with the percentage of openings within the grating. Discussion continued about ownership and the delineation of State, City, and Federally-owned portions, and the obligation for improvements prior to 1974.

Break

Mayor Slowik called for a recess at 8:15 a.m. to allow Council Members time to read the documents presented this morning. The meeting reconvened at 8:25 p.m.

Mayor Slowik introduced these audience members: Dave Roberts, DNR; Joanne Gustafson, DNR; Gina Bull, representing Senator Mary Margaret Haugen; Steve Williford and Debbie Skinner, Oak Harbor Marina Committee; Dr. Bryon Skubi, Oak Harbor Yacht Club; and Mack Funk, Oak Harbor Marina Harbormaster.

Continued Council Discussion

Discussion continued about floatation and load capacity with a snowload; the City and DNR will be working on a reasonable plan to address engineering and safety. Mr. Powers noted that it is the City's expectation that DNR will understand the City's concerns for a structurally sound and safe marina, and that the City will understand DNR's biological concerns. There have been productive conversations between the City, DNR, and Ms. Kinsella and the language is very close to representing both concerns.

Discussion then returned to costs and if there are additional costs associated with the terms of the agreement, the second bullet point in Mr. Roberts' email concerning placeholders for finger piers and covered docks, and that, as of 6:00 p.m. on June 8th, there is a general understanding of how to handle grating. There is a broad range of costs associated with the percentages, but there is a possibility of different requirements faced five years from now as the City moves through the permitting process. Costs cannot be pinned down this morning. As Council is asked to authorize phases of the marina, there will be more cost details at that time. We believe the grating costs are inside the range we already have.

Mayor Slowik asked if Council had questions of Ms. Hite. Council asked about a trigger point regarding improvements and ambient light, dredging, if there is a provision to the lease that would require the City to make conditional improvements such as providing more ambient light to the marina facility. Dredging would not trigger other requirements as referenced in page 4 of Exhibit B to the lease agreement, Section 4, Paragraph A. Minor text clean-up was also mentioned; the word "on" on page 16 of the agreement. Discussion continued about ownership – State ownership, City ownership – and if the State could assist with costs if the City is improving property belonging to the State. Ms. Hite felt that this would become a policy question. Mayor Slowik reminded Council that ESSB 6532 which created RCW 79.105.620 allows for a rent-free lease for the first ten year period. There was discussion about ALEA grant funding being prohibited during the term of this lease period and that the City has not utilized ALEA funding in the past. Discussion followed about consideration during the second ten-year period with rent at State rates and anticipation of future costs. Final discussion followed about the failure to pay rent during the second ten years which would be considered a default, and that "financial security" does not mean that the State would ask for a bond. A bond has not been asked of Oak Harbor.

MOTION: **COUNCILMEMBER GERBER MOVED TO AUTHORIZE THE MAYOR TO SIGN THE AQUATICS LANDS LEASE WITH DNR AS PRESENTED TO THE CITY COUNCIL ON JUNE 2, 2009 WITH THE CHANGES TO SECTIONS 3.2, 7.1, AND 7.2 PROVIDED THE LEASE FURTHER ALLOWS THE PARTIES TO NEGOTIATE IN GOOD FAITH THE REQUIREMENTS FOR AMBIENT LIGHT FOR FISH IN MARINA IMPROVEMENTS. THE MOTION WAS SECONDED BY COUNCILMEMBER ALMBERG.**

Mayor Slowik asked Council for any final remarks, questions, or discussion.
Council Members remarked:

- We have been up against the wall and even though there had been a year, the lease was presented very late and there are still questions to be resolved. Hope this can be avoided in the future.
- Thanks to staff on both sides; this issue has taken a lot of time. The amount of effort seen at these meetings is the tip of the iceberg. We have a good opportunity to take

advantage of ten years of free rent. The permitting issues will remain the same regardless of the agency and we should be confident that staff can work this out.

- Consider the lease as a document separate unto itself, move forward with DNR, saving half a million in rent, and Council will be able to review costs phase by phase.
- The grating issue percentages: 40, 50, 60 percent. Are those surface percentages or size of grating? (Yes to all.) Mr. Powers noted there are practical expectations to meeting ADA requirements and both versions of the lease are cognizant of ADA requirements.
- Council needs to recognize that we have two separate issues: the lease and secondly, the marina's redevelopment. It is up to the City to review marina development and costs phase by phase. The additional costs associated with this lease will have an impact on phasing.
- Signing the lease gives us the power to move on with improvements. We will do this in phases, will do what we can, and do what is feasible as quickly as we can.
- The marina is integral to the City of Oak Harbor and is an important part of economic development.
- Concerned with the provision to continue negotiating this lease, but support the motion.

Mr. Powers noted, in reference to the final sentence of the motion (using the word "negotiate"), that the lease's language will be complete before asking the Mayor to sign it and this will be resolved today.

VOTE ON THE MOTION: THE MOTION CARRIED UNANIMOUSLY.

Mayor Slowik thanked the Commissioner of Public Lands, Senator Haugen for the bill, and DNR staff for their dedication to this issue. Mayor Slowik thanked Mr. Powers and City Attorney Hite for their diligent work on this lease, and also thanked City Administrator Schmidt, Harbormaster Funk, and the Marina Committee. Thanks were also given to Council for meeting three times on this issue. Finally, Mayor Slowik thanked the boat owners and tenants of the marina for their patience.

ADJOURN

With no other discussion coming forth, **Councilmember Munns moved to adjourn. The motion was seconded by Councilmember Palmer and carried unanimously.** The meeting adjourned at 8:55 a.m.

_____

Connie T. Wheeler
City Clerk

Exhibit A

City of Oak Harbor
City Council Agenda Bill

Agenda Bill No. _____
Date: June 9, 2009
Subject: DNR Tidelands Lease

FROM: Margery Hite, City Attorney

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

SUMMARY STATEMENT:

In response to City Council concerns, staff and Department of Natural Resources (DNR) have negotiated changes to the Aquatics Land Lease presented to the Council on June 2, 2009. Two of the areas of concern have been addressed directly – typographical errors in Section 3.2 (Renewal of the Lease) and clarification that the City does not own the improvements placed by the Navy prior to the City taking possession in Sections 7.1 and 7.2 (Improvements). Staff recommends that the City agree that the third area – ambient lighting at the Marina – be subject to subsequent negotiation and agreement by both parties.

BACKGROUND

At the regular June 2, 2009 City Council meeting, the Council was asked to consider the Aquatic Lands Lease prepared by DNR for the tidelands associated with the Oak Harbor Marina. Staff has been negotiating with DNR over the past year over the terms of the lease but not all the terms were satisfactory to the City because of financial impacts that are not quantifiable and exceed those imposed by the regulatory agencies that have issued the City permits for work at the Marina. Since the legislation giving the City a rent-free lease for ten years requires the City to enter the lease by June 12, 2009, the parties have been attempting to expedite this process. The Council wished to consider its options and set this matter over to June 10th to allow further research by legal counsel.

After that meeting, DNR representative David Roberts contacted the City staff and proposed several solutions to the issues of concern to the City Council. He proposed making corrections that Council members had raised with respect to Section 3.2 (Renewal of the Lease) and clarifying Section 7.2 to indicate that the improvements placed on the Property by the federal government prior to 1974 are State-owned Improvements rather than being Tenant-owned Improvements, attributable to the City. Both of these matters are set out in the attached lease revisions.

The third topic of concern was the shade or ambient light requirements in Exhibit B of the lease. These requirements have been of concern to staff because they potentially add a significant price tag to any improvements that might be made to the Marina – estimated between $1.8 – 4.3 million by the City's consulting engineer. As of 5:00 p.m. on Monday June 9, no language on this point has been proposed by DNR, although the City did authorize its consulting engineer (Shannon Kinsella of Reid Middleton) to work with DNR to attempt to come to some workable solution. Therefore, no new language on this point is suggested for Council review.

STANDING COMMITTEE REVIEW:
Not applicable.

RECOMMENDED ACTION:
Authorize the Mayor to sign the Aquatics Land Lease with DNR as presented to the City Council on June 2, 2009 with the changes to Sections 3.2, 7.1 and 7.2 set out in the attached document; provided the lease further allows the parties to negotiate in good faith the requirements for ambient light for fish in Marina improvements.

ATTACHMENTS:
Revisions submitted by DNR

MAYOR'S COMMENTS:

REVISIONS TO LEASE

3.2 Renewal of the Lease. Tenant may have the option to renew this Lease for one (1) additional term of up to ten (10) years. The total of the two terms shall not exceed twenty (20) years. Tenant must file with State a written request to renew at least one (1) year prior to the Termination date and State will respond with consent or denial within ninety (90) days. Renewal will be effective upon State's agreement. State may deny the renewal request if Tenant is in default at the time. The terms and conditions of any renewal term will be the same as this Lease, except that Tenant shall pay annual rent in accordance with Paragraph 4.1(b). In addition, State may require financial security and modify the provisions dealing with hazardous waste or impacts to natural resources. At the time of State's agreement to renew this Lease, State shall notify Tenant what the annual rent shall be as calculated pursuant to Section 4.1(b).

7.1 Improvements Defined.

(a) "Improvements," consistent with RCW 79.105 through 79.145, are additions within, upon, or attached to the land. This includes, but is not limited to, fill, structures, bulkheads, docks, pilings, and other fixtures.

(b) "Personal Property" means items that can be removed from the Property without (1) injury to the Property or Improvements or (2) diminishing the value or utility of the Property or Improvements.

(c) "State-Owned Improvements" are Improvements made or owned by State. State-Owned Improvements includes any construction, alteration, or addition to State-Owned Improvements made by Tenant. Improvements placed on the Property by the federal government before January 1, 1974 are State-owned Improvements, unless a court determines otherwise or the Parties agree otherwise.

(d) "Tenant-Owned Improvements" are Improvements made by Tenant with State's consent or acquired by Tenant from former tenant in accordance with RCW 79.125.300 or 79.130.040. Improvements placed on the Property by the Tenant on after January 1, 1974 are Tenant-owned Improvements unless a court determines otherwise or the Parties agree otherwise.

(e) "Unauthorized Improvements" are Improvements made on the Property without State's prior consent or Improvements made by Tenant that do not conform to plans submitted to and approved by the State.

7.2 Existing Improvements. On the Commencement Date, the existing improvements include both State-owned and Tenant-owned Improvements and are more fully described in Exhibit B.

Steve Powers

Exhibit B

From: Shannon Kinsella [skinsella@reidmiddleton.com]
Sent: Monday, June 08, 2009 3:47 PM
To: Mack Funk; Steve Powers
Subject: DNR - suggest language
Attachments: City of Oak Harbor Floatation .pdf; Oak Harbor Roof Load Flotation.xls

Steve,

I will call you regarding the attached. It is a draft response to DNR. I have not sent it to them yet.

Shannon

Shannon Kinsella, P.E.,
Waterfront Group Director, LEED A.P.

Reid Middleton
728 134th Street SW, Suite 200
Everett, WA 98204

(425) 741-3800 (main)
(425) 741-3900 (fax)
(425) 741-5012 (direct)
(206) 713-4854 (cell)

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City of Oak Harbor
Light Transmission Measures in Floats

The following is discussion on the use of grating or other light transmission measures in floating dock systems related to the City of Oak Harbor marina.

Light Transmission Measures

For floating docks, the amount of float volume is directly related to the capacity of the float system to support loads due to buoyancy. The amount of float volume in the water supports dead loads such as the weight of the float, weight of any roof structures, and weight of stationary equipment such as gangways and electrical transformers. The amount of float volume out of the water (i.e. between the deck of the float and the waterline) provides reserve capacity to support live loads such as people walking on the dock and snow loads on roof structures.

Light transmission in floating dock systems is typically provided by eliminating sections of floatation and replacing them with sections of open grating or other light transparent materials. As flotation is removed for light transmission the floats either have a reduced load capacity or must be designed deeper to increase the amount of floatation in the water to maintain load capacity. The overall buoyancy calculations are very complex and are related to selected dock system, freeboard, draft of float, and required dead and live load capacities.

Reduction in the amount of floatation also reduces the amount of dock volume above the water line resulting in a lower live load capacity for the dock system. This is of particular concern for covered moorage facilities that have a potential for a high live load from snow loads. Eliminating floatation in the covered moorage floats reduces the ability of the covered moorage floats to support the snow loads. The attached document provides some calculations of the required freeboard needed to support various snow loads under different grating percentages utilized on the dock. Providing 50% grating on the main laterals under the roof coverage and maintaining an operable freeboard (distance from the waterline to the deck of the float) on the docks of approximately two feet results in a reduced live load capacity for snow loads from 35 psf to 20 psf. Including 30% grating on the covered moorage float fingers would reduce the live load capacity even further to 15 psf. We strongly recommend that if 50% grating is required in the covered moorage main dock laterals that no grating be required in the finger floats under the covered moorage.

Per the previous letter dated February 6, 2009, we believe that grating up to 25% of the narrow finger floats (three to five feet in width) for the docks that are not covered is structurally feasible.

Percent of Openings in floats

We strongly recommend that all grating used on larger public marinas be ADA accessible. Based on ADA guidelines for Recreational Marinas approximately seven accessible slips would be required for the build out of just over 400 slips for the renovated Oak Harbor Marina. These floats must be distributed throughout the various slip sizes available within the marina. However, for safety, durability, and accessibility reasons we strongly recommend the use of ADA gratings throughout the marina particularly on the areas of high use including the main walkway and on the dock laterals. Allowing the use of gratings with an opening space percentage of 40% to 50% rather than the 60% openings would allow the City to select a durable ADA accessible grating product to be utilized throughout the marina. The higher percentage of openings at 60% could be specified for the finger floats since these floats have a much lower level of use than the main walkways.

Recommendation

The following language is suggested for the lease exhibit:

Grating or other light transmission measures should be provided in 50% of the surface area of the float structure for the main walkway, main dock laterals, and any other floats 8 feet in width or greater. Where dead loads such as gangways, electrical units, and other stationary loads are present, the maximum amount of grating (up to 50%) should be used in the float as is structurally feasible to support the required dead loads. Finger floats less than 8 feet in width in the uncovered moorage area should utilize grating on 25% of the float area. Finger floats in covered moorage areas are not required to have grating but shall incorporate grating if structurally feasible. Grating on the main walkways and laterals shall have a minimum of 40% open space in the grating. Grating on finger floats others than those designated as ADA Accessible shall have a minimum of 60% open space in the grating.

Steve Powers

Exhibit C

From: ROBERTS, DAVID (DNR) [DAVID.ROBERTS@dnr.wa.gov]
Sent: Monday, June 08, 2009 5:47 PM
To: Steve Powers; Jim Slowik
Subject: Grating language for DNR Lease

Mayor Slowik and Steve,

The language below was developed with the help of Shannon at Reid Middleton this afternoon. We propose that we no longer use the light penetration language in the latest proposal to the city and instead substitute the following:

Maximize light passage through overwater structures as follows:

- The main walkway and laterals shall be at least fifty (50) percent grated, with the grating having at least sixty (60) percent open space.

- PLACEHOLDER FOR FINGER PIERS AND COVERED DOCKS

- The areas of the gangway landing and the sections of dock where the electrical panels are located will not need to achieve light passage standards.

- According to the ADA Accessibility Guidelines for Buildings and Facilities (ADAAG) the Oak Harbor Marina is required to have a minimum of six (6) ADA accessible slips for a marina of their size (301-400 slips). ADA accessible slips must at a minimum meet the grating requirements defined in standard 4.5.4 of the ADAAG. ***(4.5.4 Gratings.*** *If gratings are located in walking surfaces, then they shall have spaces no greater than 1/2 in (13 mm) wide in one direction (see Fig. 8(g)). If gratings have elongated openings, then they shall be placed so that the long dimension is perpendicular to the dominant direction of travel.)*

As you see, there is a place holder for the finger piers and covered docks. Our folks in Olympia will attempt to send us this information first thing in the morning after discussions with Shannon. Shannon has been extremely helpful and I hope that we can make the connection tomorrow AM while we discuss the other contract options.

Unfortunately, Margery misinterpreted our attorney's message that we were planning to delay finishing this technical discussion. Shannon was told to stop work on this last piece of the discussion this afternoon. This was not our intention. We planned to have this all resolved for you by EOB tonight.

JoAnn and I will be at the Council meeting tomorrow AM and plan to bring the proposed contract documents in electronic form along with watermark paper to you pending council discussion and review. We sincerely hope that we can bring this to a close tomorrow morning.

David Roberts

City of Oak Harbor

OFFICE OF THE MAYOR
JIM SLOWIK
MAYOR

PROCLAMATION IN RECOGNITION OF

AWO2 CHRISTOPHER I. HALLADEY

WHEREAS, The City of Oak Harbor, Washington takes great pride as host to Naval Air Station Whidbey Island and in our support of the military personnel in our community, and;

WHEREAS, our military residents are community minded and in times of need, have gone above and beyond, demonstrating why they are the best in the world, and;

WHEREAS, AWO 2 Christopher I. Halladey is stationed at NAS Whidbey Island with Patrol Squadron 46, the Grey Knights, "the oldest and the best", and;

WHEREAS, on April 14, 2009 while driving on Whidbey Avenue, Petty Officer Halladey noticed a van rolling out of a residential driveway and heading directly toward the busy intersection of Whidbey Avenue and Midway Avenue, and;

WHEREAS, he was shocked to see that the only occupant of the van was a young girl standing up on the driver's seat, and;

WHEREAS, Petty Officer Halladey stopped his car, chased the van on foot and caught the van, jumped in the driver's side and stopped the van, and;

WHEREAS, by his quick thinking and actions, Petty Officer Halladey averted a possible tragic event, and;

WHEREAS, Petty Officer Halladey's response to this emergency is another instance of our Navy Heroes aiding those in need and exemplifying the Navy core values of honor, courage and commitment to the task at hand.

NOW, THEREFORE, WE, Jim Slowik, Mayor, and Councilmembers of the City of Oak Harbor do hereby designate **June 17, 2009** as **AWO2 Christopher I. Halladey Appreciation Day**.

Signed this 16th day of June, 2009

Jim Slowik, Mayor

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City of Oak Harbor
City Council Agenda Bill

Bill No. 3

Date: June 16, 2009

Subject: **PUBLIC COMMENTS**

FROM: **Jim Slowik, Mayor**

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

- Budgeted Item: Yes No N/A
- Budget Adjustment Required: Yes No N/A
- Funds Available for Appropriation: Yes No N/A
- Budget Strategy Approved: Yes No N/A

Margery Hite, City Attorney

SUMMARY STATEMENT

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

City of Oak Harbor
City Council Agenda Bill

Agenda Bill No. CA 4A
Date: June 16, 2009
Subject: Noise Permit – Oak Harbor Rotary Club Car Show

FROM: Paul Schmidt, City Administrator

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

Jim Slowik, Mayor

Doug Merriman, Finance Director

Margery Hite, City Attorney, as to form

PURPOSE

The purpose of this agenda bill is to forward to City Council for review and approval a Noise Permit request received from the Oak Harbor Rotary Club for amplified sound associated with an upcoming car show.

AUTHORIZATION:

Oak Harbor Municipal Code (OHMC) 5.50.040(3)(g) provisions relating to Special Events requires compliance with noise ordinance regulations and laws. OHMC 6.56.030(2)(a) requires Council approval for a noise permit for sound amplification. As this event will include amplified sound, Council approval is required.

The City Council may grant a Noise Permit to deviate from the provisions of OHMC 6.56.030 if it is determined the activity and associated noise: 1) will not disregard the rights of others, or; 2) is temporary, or: 3) the activity creating the noise constitutes a program of a temporary nature for the benefit of the entire municipality or for the benefit of a charitable purpose.

SUMMARY STATEMENT:

The Oak Harbor Rotary Club has submitted a Noise Permit request for amplified sound associated with a car show scheduled for August 8, 2009 from 7:00 a.m. – 5:00 p.m. The amplified sound will consist of a PA system and speakers for a DJ and announcements. The speakers will be directed to have the sound stay within the show area.

The Application was reviewed by Fire, Police, and Public Works Departments. No conditions of approval were requested.

STANDING COMMITTEE REVIEW:

Not required.

RECOMMENDED ACTION:

Grant a noise permit for amplified sound to the Oak Harbor Rotary Club.

ATTACHMENTS:

Special Event Permit/Noise Permit Application.
Noise Permit.

MAYOR'S COMMENTS:

4/8/09 / 4/16/09

CITY OF Oak Harbor

SPECIAL EVENT PERMIT/NOISE PERMIT

APPLICATION INFORMATION:
Please check the event type:

- ☐ **Athletic Event**
- ☐ **Carnival**
- ☒ **Car Show**
- ☐ **City Facility Reservation**
- ☐ **Marina Event**
- ☒ **Noise Permit**
- ☐ **Parade**
- ☒ **Park Event**
- ☐ **Other**

Name of Applicant/Organization: Oak Harbor Rotary Club

Person in Charge: Jim Woessner Address:

Phone Number: Daytime: Work Email:

Additional Authorized Individuals:

Phone Number: Daytime: Work: Email:

Emergency Contact:

Phone Number: Daytime: Work: Email:

Type of Activity Planned (describe event): Car Show

Is this an event involving political or religious activity intended primarily for the communication or expression of ideas? (Please circle) YES NO

Will Participants Pay a Fee or Make a Donation? (Please circle) YES NO

Will City Services/Street Closures/Equipment be required? If so, please describe:
City Parks to Supply Some Picnic Tables - Trash Cans and Cones

Date(s) of Proposed Event: 8/8/09

Hours of Operation: 7Am - 5pm

Set-up Date/Time: 8/7/09 - 8/8/09

Dismantling Date/Time: 8/7/09 5pm

Number of Staff/Volunteers: 6 / 25

Estimated Number of Participants: 300+

LOCATION/SHEET TO BE USED (describe area to be used, attach map/route plan): Windjammer Park - Including both huts and Gazebo in main Park Area - Also will need Access to Windmill

Special Considerations – Will there be:

Amplified sound indoors? _____ outdoors? YES
(*May require a noise permit, which is granted by the City Council**)

Alcohol? (Please circle) YES NO

Animals? (Please circle) YES NO number _____ species _____

Booths/Commercial Vendors: (Please circle) YES NO

Cooking/Food Service: (Please circle) YES NO

Fire/Fireworks/Pyrotechnics: (Please circle) YES NO

Mechanical Rides: (Please circle) YES NO (If yes, requires additional permit)

Portable Restrooms: (Please circle) YES NO How Many ? _____ Some restrooms must meet ADA requirements.

Signs: (Please circle) YES NO

Stage: (Please circle) YES NO

Other special considerations: _____

List any special signs/barricades/cones requested to be supplied by City. Signs to Post Above Pioneer and City Entrances Advertising Show Cones and barricades to be provided by City we will Coordinate Also Picnic Tables And Garbage Can/Recycle Cans

***NOISE PERMIT INFORMATION**

Oak Harbor Municipal Code Section 6.56.030 contains provisions which restrict or prohibit certain unnecessary noises, such as sound systems, loudspeakers and amplified music on any street or public place of the City.

The City Council may grant a Noise Permit to deviate from the provisions of OHMC 6.56.030 under the following circumstances if it is determined the activity and associated noise will: 1) not disregard the rights of others, or; 2) is temporary, or; 3) the activity creating the noise constitutes a program of a temporary nature for the benefit of the entire municipality or for the benefit of a charitable purpose.

To obtain a Noise Permit, please provide the activities you wish to carry out and the noise requirements of your event. PA System to be used from 10Am to 5pm Speakers will be directed to have sound stay within the Show Area

A copy of OHMC Section 6.56.030 may be obtained upon request.

****

Public Relation: Please state what efforts, if any, have occurred, or you intend to make, to notify residents or businesses that will likely be affected by your event. Please attach any letters of support. If permit is granted it will be the responsibility of event organizers to alert those likely to be impacted. (i.e. street closures, no parking zones, noise, etc.) N/A

ATTACH COPIES OF BROCHURES, POSTERS, FLYERS, OR MAILINGS ADVERTISING THIS EVENT

INSURANCE – The City does not maintain insurance that will respond to claims against the applicant arising out of the use of facilities by the applicant, its members, or those attending the event. Depending on the type of event you are planning, and the activity and risk level of your group, you may be required to obtain bodily injury and property damages liability insurance in accordance with City policy, name the City as an **additional insured** on the policy, and be responsible for obtaining said insurance. After reviewing this application, the City will determine whether you must obtain liability insurance. Mike McIntyre will provide Rotary club Policy

HOLD HARMLESS – Applicant/Permittee/User shall defend, indemnify and hold harmless the City of Oak Harbor, its agents, employees and officials, while acting within the scope of their duties, from all causes of action, demands and claims, including the cost of their defense, arising in favor of the organization, the organization's employees or third parties on account of personal injuries, bodily injuries, death, or damage to property arising out of the acts or omissions of the organization, its employees or representatives, concessionaires of the event or any other person or entity, except for liability caused due to the sole negligence of the City.

Date: 4/8/09

Signature of Applicant:

Organization/Title: O.H. Rotary club Car Show Co-chair

CITY OF OAK HARBOR

NOISE PERMIT

Name of Organization: Oak Harbor Rotary Club

Location of Event: Gazebo and surrounding areas at Windjammer Park

Date of Event: August 8, 2009

Hours of Operation: 10:00 a.m. to 5:00 p.m.

Permitted Noise: PA system and speakers for a DJ and announcements

Approval Conditions: None

Date of City Council Approval:

Issued this day of , 2009

Karen Crouch, Special Events Coordinator

This Noise Permit is limited to the date and time specified.

Please post this notice on site

City of Oak Harbor
City Council Agenda Bill

Agenda Bill No. CA 4B
Date: June 16, 2009
Subject: Noise Permit – First Reformed Church

FROM: Paul Schmidt, City Administrator

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

PURPOSE

The purpose of this agenda bill is to forward to City Council for review and approval a Noise Permit request received from First Reformed Church for amplified sound associated with three "Worship on Waterfront" events.

AUTHORIZATION:

Oak Harbor Municipal Code (OHMC) 5.50.040(3)(g) provisions relating to Special Events requires compliance with noise ordinance regulations and laws. OHMC 6.56.030(2)(a) requires Council approval for a noise permit for sound amplification. As this event will include amplified sound, Council approval is required.

The City Council may grant a Noise Permit to deviate from the provisions of OHMC 6.56.030 if it is determined the activity and associated noise: 1) will not disregard the rights of others, or; 2) is temporary, or: 3) the activity creating the noise constitutes a program of a temporary nature for the benefit of the entire municipality or for the benefit of a charitable purpose.

SUMMARY STATEMENT:

First Reformed Church has submitted a Noise Permit request for amplified sound associated with three separate events scheduled for June 21, 2009, July 26, 2009 and August 30, 2009. These outdoor worship services will be held from 6:00 p.m. to approximately 7:30 p.m. The amplified sound will consist of a sound system for a band which will be performing at each event.

The Application was reviewed by Fire, Police, and Public Works Departments. No conditions of approval were requested for the noise permit.

STANDING COMMITTEE REVIEW:

Not required.

RECOMMENDED ACTION:

Grant a noise permit for amplified sound to First Reformed Church for three separate events.

ATTACHMENTS:

Special Event Permit/Noise Permit Application.
Noise Permit.

MAYOR'S COMMENTS:

WORSHIP ON WATERFRONT

Karen Crouch
279-4544
5/29/09
6/1/09

CITY OF Oak Harbor
WHIDBEY ISLAND, WASHINGTON

SPECIAL EVENT PERMIT/NOISE PERMIT

APPLICATION INFORMATION:
Please check the event type:

- ☐ **Athletic Event**
- ☐ **Carnival**
- ☐ **Car Show**
- ☒ **City Facility Reservation**
- ☐ **Marina Event**
- ☒ **Noise Permit**
- ☐ **Parade**
- ☐ **Park Event**
- ☐ **Other**

Name of Applicant/Organization: First Reformed Church - Worship on Waterfront

Person in Charge: First Reformed Address: _____

Phone Number: Daytime: _____ Work: _____ Email: _____

Additional Authorized Individuals: _____

Phone Number: Daytime: _____ Work: _____ Email: _____

Emergency Contact: _____

Phone Number: Daytime: _____ Work: _____ Email: _____

Type of Activity Planned (describe event): This is a group of churches coming for an out door worship service (singing) w/ band and leaders. People will bring chairs & blankets. It takes place in evening from 6-7:30 pm or so :)

Is this an event involving political or religious activity intended primarily for the communication or expression of ideas? (Please circle) (YES) NO

Will Participants Pay a Fee or Make a Donation? (Please circle) (YES) NO → Donation of food or items to Help House or Pregnancy Care

Will City Services/Street Closures/Equipment be required? If so, please describe: NO

Date(s) of Proposed Event: June 21, July 26, Aug. 30

Hours of Operation: 4-8 pm @ Gazebo (including set up/take down)

Set-up Date/Time: 4-6 pm @ Gazebo

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Dismantling Date/Time: 7-8 pm ish

Number of Staff/Volunteers: 20 or so

Estimated Number of Participants: 200? (We are unsure of turn out)

LOCATION/SHEET TO BE USED (describe area to be used, attach map/route plan):

Gazebo @ city beach & surrounding grassy area

Special Considerations – Will there be:

Amplified sound indoors? _____ outdoors? Yes (band & sound system)
(May require a noise permit, which is granted by the City Council*)

Alcohol? (Please circle) YES (NO)

Animals? (Please circle) YES (NO) number _____ species _____

Booths/Commercial Vendors: (Please circle) YES (NO)

Cooking/Food Service: (Please circle) YES (NO)

Fire/Fireworks/Pyrotechnics: (Please circle) YES (NO)

Mechanical Rides: (Please circle) YES (NO) (If yes, requires additional permit)

Portable Restrooms: (Please circle) YES (NO) How Many ? _____ Some restrooms must meet ADA requirements.

Signs: (Please circle) (YES) NO Just ones we make to designate area of event

Stage: (Please circle) YES (NO)

Other special considerations: People will bring blankets & chairs of their own.

List any special signs/barricades/cones requested to be supplied by City. _____

***NOISE PERMIT INFORMATION**

Oak Harbor Municipal Code Section 6.56.030 contains provisions which restrict or prohibit certain unnecessary noises, such as sound systems, loudspeakers and amplified music on any street or public place of the City.

The City Council may grant a Noise Permit to deviate from the provisions of OHMC 6.56.030 under the following circumstances if it is determined the activity and associated noise will: 1) not disregard the rights of others, or; 2) is temporary, or; 3) the activity creating the noise constitutes a program of a temporary nature for the benefit of the entire municipality or for the benefit of a charitable purpose.

To obtain a Noise Permit, please provide the activities you wish to carry out and the noise requirements of your event. We are planning an outdoor worship service – music and singing event. There will be a live band and sound system brought in, including guitars, piano (electric), drums, microphones, etc...

A copy of OHMC Section 6.56.030 may be obtained upon request.

****

Public Relation: Please state what efforts, if any, have occurred, or you intend to make, to notify residents or businesses that will likely be affected by your event. Please attach any letters of support. If permit is granted it will be the responsibility of event organizers to alert those likely to be impacted. (i.e. street closures, no parking zones, noise, etc.)

We can inform nearby residents of the event and campers so they might be aware or even come participate.

ATTACH COPIES OF BROCHURES, POSTERS, FLYERS, OR MAILINGS ADVERTISING THIS EVENT

INSURANCE – The City does not maintain insurance that will respond to claims against the applicant arising out of the use of facilities by the applicant, its members, or those attending the event. Depending on the type of event you are planning, and the activity and risk level of your group, you may be required to obtain bodily injury and property damages liability insurance in accordance with City policy, name the City as an **additional insured** on the policy, and be responsible for obtaining said insurance. After reviewing this application, the City will determine whether you must obtain liability insurance.

HOLD HARMLESS – Applicant/Permittee/User shall defend, indemnify and hold harmless the City of Oak Harbor, its agents, employees and officials, while acting within the scope of their duties, from all causes of action, demands and claims, including the cost of their defense, arising in favor of the organization, the organization's employees or third parties on account of personal injuries, bodily injuries, death, or damage to property arising out of the acts or omissions of the organization, its employees or representatives, concessionaires of the event or any other person or entity, except for liability caused due to the sole negligence of the City.

Date: 5/27/09

Signature of Applicant: Kristin E. Brown

Organization/Title: First Reformed Church / Worship on the Waterfront

(FOR OFFICIAL USE ONLY)

APPROVED BY: _____Parks & Recreation Dept. _____Police Dept.
_____Planning Dept. _____Public Works Dept.
_____Fire Dept. _____Mayor/Designee

Permit Detained for the Following Reasons:_____
_____
_____
_____

Recommend Approval Under the Following Conditions_____
_____
_____
_____

CITY OF OAK HARBOR

NOISE PERMIT

Name of Organization:	First Reformed Church
Location of Event:	Windjammer Park Gazebo and surrounding area.
Dates of Event:	June 21, 2009, July 26, 2009 August 30, 2009
Hours of Operation:	4:00 p.m. to 8:00 p.m.
Permitted Noise:	PA system and speakers for live band consisting of guitars, electric piano, and drums.
Approval Conditions:	None
Date of City Council Approval:	

Issued this day of , 2009

_____

Karen Crouch, Special Events Coordinator

This Noise Permit is limited to the date and time specified.

Please post this notice on site

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City of Oak Harbor
City Council Agenda Bill

Agenda Bill No. O/A 4a
Date: June 16, 2009
Subject: Noise Permit – Chamber of Commerce – July 4th celebration

FROM: Paul Schmidt, City Administrator

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

PURPOSE

The purpose of this agenda bill is to forward to City Council for review and approval a Noise Permit request received from the Oak Harbor Chamber of Commerce for amplified sound associated with the upcoming July 4th celebration.

AUTHORIZATION:

Oak Harbor Municipal Code (OHMC) 5.50.040(3)(g) provisions relating to Special Events, requires compliance with noise ordinance regulations and laws. OHMC 6.56.030(2)(a) requires Council approval for a noise permit for sound amplification. As this event will include amplified sound, Council approval is required.

The City Council may grant a Noise Permit to deviate from the provisions of OHMC 6.56.030 if it is determined the activity and associated noise: 1) will not disregard the rights of others, or; 2) is temporary, or: 3) the activity creating the noise constitutes a program of a temporary nature for the benefit of the entire municipality or for the benefit of a charitable purpose.

SUMMARY STATEMENT:

The Chamber of Commerce has submitted a Noise Permit request for amplified sound associated with the 4th of July celebration parade. The amplified sound will consist of a PA system for use for announcements during the parade.

The Application was reviewed by Fire, Police, and Public Works Departments. No conditions of approval were required for the Noise Permit.

STANDING COMMITTEE REVIEW:

Not required.

RECOMMENDED ACTION:

Approve the request for amplified sound by granting the noise permit.

ATTACHMENTS:

Special Event Permit/Noise Permit Application.
Noise Permit.

MAYOR'S COMMENTS:

5/22/09 KC
5/22/09 dist.

CITY OF Oak Harbor
WHIDBEY ISLAND, WASHINGTON

SPECIAL EVENT PERMIT/NOISE PERMIT

APPLICATION INFORMATION:
Please check the event type:

- ☐ **Athletic Event**
- ☒ **Carnival**
- ☐ **Car Show**
- ☒ **City Facility Reservation**
- ☐ **Marina Event**
- ☐ **Noise Permit**
- ☒ **Parade**
- ☒ **Park Event**
- ☐ **Other**

Name of Applicant/Organization: Oak Harbor Chamber of Commerce

Person in Charge: Liz Wilson Address: 32630 SR20, O.H.

Phone Number: Daytime: _____ Work: 675-3755 Email: liz@oakharborchamber.com

Additional Authorized Individuals: Jill Johnson, Heather Johnson

Phone Number: Daytime: _____ Work: 675-3755 Email: info@oakharborchamber.co

Emergency Contact: Jill Johnson

Phone Number: Daytime: _____ Work: 675-3755 Email: jill@oakharborchamber.com

Type of Activity Planned (describe event): Carnival, parade, food and arts + crafts vendors, family games, fireworks displays

Is this an event involving political or religious activity intended primarily for the communication or expression of ideas? (Please circle) YES (NO)

Will Participants Pay a Fee or Make a Donation? (Please circle) YES (NO)

Will City Services/Street Closures/Equipment be required? If so, please describe: Pioneer Way Street Closure for parade, garbage cans and recycle bins, picnic tables, water for food vendors, fire services for fireworks

Date(s) of Proposed Event: Saturday, July 4, 2009

Hours of Operation: 10 am to 11 pm

Set-up Date/Time: Friday, July 3, 5 pm

Dismantling Date/Time: Sunday, July 5, 8am - Noon

Number of Staff/Volunteers: 6 Staff members. 20 volunteers

Estimated Number of Participants: 7,500

LOCATION/SHEET TO BE USED (describe area to be used, attach map/route plan): Parade will be on Pioneer Way from Maui Grate to Ace Hardware, fireworks will be set up by the foot bridge on the beach, vendors will line walkway on west side of lagoon. carnival will be on soccer fields

Special Considerations – Will there be:

Amplified sound indoors? no outdoors? no
(***May require a noise permit, which is granted by the City Council****)

Alcohol? (Please circle) YES (NO)

Animals? (Please circle) (YES) NO number 2 species horses + dogs in parade

Booths/Commercial Vendors: (Please circle) (YES) NO

Cooking/Food Service: (Please circle) (YES) NO

Fire/Fireworks/Pyrotechnics: (Please circle) (YES) NO

Mechanical Rides: (Please circle) (YES) NO (If yes, requires additional permit)

Portable Restrooms: (Please circle) (YES) NO How Many ? 10 Some restrooms must meet ADA requirements.

Signs: (Please circle) YES NO

Stage: (Please circle) YES (NO)

Other special considerations: _____

List any special signs/barricades/cones requested to be supplied by City. Barricades for Pioneer ~~St~~ closure, cones for in the park, barricades to ~~mark~~ close off fireworks set up area

***NOISE PERMIT INFORMATION**

Oak Harbor Municipal Code Section 6.56.030 contains provisions which restrict or prohibit certain unnecessary noises, such as sound systems, loudspeakers and amplified music on any street or public place of the City.

The City Council may grant a Noise Permit to deviate from the provisions of OHMC 6.56.030 under the following circumstances if it is determined the activity and associated noise will: 1) not disregard the rights of others, or; 2) is temporary, or; 3) the activity creating the noise constitutes a program of a temporary nature for the benefit of the entire municipality or for the benefit of a charitable purpose.

To obtain a Noise Permit, please provide the activities you wish to carry out and the noise requirements of your event. _____

_____

_____

_____

A copy of OHMC Section 6.56.030 may be obtained upon request.

****

Public Relation: Please state what efforts, if any, have occurred, or you intend to make, to notify residents or businesses that will likely be affected by your event. Please attach any letters of support. If permit is granted it will be the responsibility of event organizers to alert those likely to be impacted. (i.e. street closures, no parking zones, noise, etc.) _____

_____

_____

ATTACH COPIES OF BROCHURES, POSTERS, FLYERS, OR MAILINGS ADVERTISING THIS EVENT

INSURANCE – The City does not maintain insurance that will respond to claims against the applicant arising out of the use of facilities by the applicant, its members, or those attending the event. Depending on the type of event you are planning, and the activity and risk level of your group, you may be required to obtain bodily injury and property damages liability insurance in accordance with City policy, name the City as an **additional insured** on the policy, and be responsible for obtaining said insurance. After reviewing this application, the City will determine whether you must obtain liability insurance.

HOLD HARMLESS – Applicant/Permittee/User shall defend, indemnify and hold harmless the City of Oak Harbor, its agents, employees and officials, while acting within the scope of their duties, from all causes of action, demands and claims, including the cost of their defense, arising in favor of the organization, the organization's employees or third parties on account of personal injuries, bodily injuries, death, or damage to property arising out of the acts or omissions of the organization, its employees or representatives, concessionaires of the event or any other person or entity, except for liability caused due to the sole negligence of the City.

Date: May 14, 09

Signature of Applicant: Heather Johnson

Organization/Title: Oak Harbor Chamber of Commerce

(FOR OFFICIAL USE ONLY)

APPROVED BY: _____Parks & Recreation Dept. _____Police Dept.
_____Planning Dept. _____Public Works Dept.
_____Fire Dept. _____Mayor/Designee

Permit Detained for the Following Reasons:_____
_____
_____
_____

Recommend Approval Under the Following Conditions_____
_____
_____
_____

CITY OF OAK HARBOR

NOISE PERMIT

Name of Organization:	Oak Harbor Chamber of Commerce
Location of Event:	Pioneer Way – announcement stand
Date of Event:	July 4, 2009
Hours of Operation:	11:00 am – 1:00 p.m.
Permitted Noise:	Amplified sound associated with a PA system and microphone for announcements
Approval Conditions:	None
Date of City Council Approval:	

Issued this day of , 2009

_____

Karen Crouch, Special Events Coordinator

This Noise Permit is limited to the date and time specified.

Please post this notice on site

City of Oak Harbor
City Council Agenda Bill

Agenda Bill No. CA 4D
Date: June 16, 2009
Subject: Noise Permit – Living Word

FROM: Paul Schmidt, City Administrator

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

PURPOSE

The purpose of this agenda bill is to forward to City Council for review and approval a Noise Permit request received from Living Word for amplified sound associated with a church event entitled "Summer Deployment 2009".

AUTHORIZATION:

Oak Harbor Municipal Code (OHMC) 5.50.040(3)(g) provisions relating to Special Events requires compliance with noise ordinance regulations and laws. OHMC 6.56.030(2)(a) requires Council approval for a noise permit for sound amplification. As this event will include amplified sound, Council approval is required.

The City Council may grant a Noise Permit to deviate from the provisions of OHMC 6.56.030 if it is determined the activity and associated noise: 1) will not disregard the rights of others, or; 2) is temporary, or: 3) the activity creating the noise constitutes a program of a temporary nature for the benefit of the entire municipality or for the benefit of a charitable purpose.

SUMMARY STATEMENT:

Living Word has submitted a Noise Permit request for amplified sound associated with a church camp event entitled "Summer Deployment 2009". The event will take place between July 13th and 16th, 2009 from 3 p.m. – 5:00 p.m. The amplified sound will consist of a PA system and speakers for singing. Music will be played during activity time.

The Application was reviewed by Fire, Police, and Public Works Departments. No conditions of approval were requested.

STANDING COMMITTEE REVIEW:

Not required.

RECOMMENDED ACTION:

Grant a noise permit for amplified sound to Living Word.

ATTACHMENTS:

Special Event Permit/Noise Permit Application.
Noise Permit.

MAYOR'S COMMENTS:

5/21/09 KC
5/22/09 dist.

CITY OF Oak Harbor
WHIDBEY ISLAND, WASHINGTON

SPECIAL EVENT PERMIT/NOISE PERMIT

APPLICATION INFORMATION:
Please check the event type:

- ☐ **Athletic Event**
- ☐ **Carnival**
- ☐ **Car Show**
- ☐ **City Facility Reservation**
- ☐ **Marina Event**
- ☒ **Noise Permit**
- ☐ **Parade**
- ☒ **Park Event**
- ☐ **Other**

Name of Applicant/Organization: Living Word

Person in Charge: Janelle R. Ibaren Address: [illegible]

Phone Number: Daytime: [illegible] Work: [illegible] Email: [illegible]

Additional Authorized Individuals: [illegible]

Phone Number: Daytime: [illegible] Work: [illegible] Email: [illegible]

Emergency Contact: [illegible]

Phone Number: Daytime: [illegible] Work: [illegible] Email: [illegible]

Type of Activity Planned (describe event): Summer Deployment
music, snacks, crafts + games for ages 2yrs - 5th gr.

Is this an event involving political or religious activity intended primarily for the communication or expression of ideas? (Please circle) YES NO

Will Participants Pay a Fee or Make a Donation? (Please circle) YES NO

Will City Services/Street Closures/Equipment be required? If so, please describe:
NO!

Date(s) Proposed Event: July 13th - 11th 2009 of (July)

Hours of Operation: 3pm - 5pm

Set-up Date/Time: 1pm - ~~3pm~~ 2:30pm

Dismantling Date/Time: 5pm - 5:45

Number of Staff/Volunteers: 15 - 20 (background checked staff)

Estimated Number of Participants: 50 kids

LOCATION/SHEET TO BE USED (describe area to be used, attach map/route plan):
(gazebo) plus a 50x 30 area in front of gazebo area

Special Considerations – Will there be:

Amplified sound indoors? No outdoors? yes
(***May require a noise permit, which is granted by the City Council****)

Alcohol? (Please circle) YES NO

Animals? (Please circle) YES NO number _____ species _____

Booths/Commercial Vendors: (Please circle) YES NO

Cooking/Food Service: (Please circle) YES NO light premade snacks

Fire/Fireworks/Pyrotechnics: (Please circle) YES NO

Mechanical Rides: (Please circle) YES NO (If yes, requires additional permit)

Portable Restrooms: (Please circle) YES NO How Many ? _____ Some restrooms must meet ADA requirements.

Signs: (Please circle) YES NO → banner outside gazebo to be taken down daily after conclusion of daily event.

Stage: (Please circle) YES NO

Other special considerations:

_____

_____

List any special signs/barricades/cones requested to be supplied by City.

20 cones would be great.

_____

_____

_____

***NOISE PERMIT INFORMATION**

Oak Harbor Municipal Code Section 6.56.030 contains provisions which restrict or prohibit certain unnecessary noises, such as sound systems, loudspeakers and amplified music on any street or public place of the City.

The City Council may grant a Noise Permit to deviate from the provisions of OHMC 6.56.030 under the following circumstances if it is determined the activity and associated noise will: 1) not disregard the rights of others, or; 2) is temporary, or; 3) the activity creating the noise constitutes a program of a temporary nature for the benefit of the entire municipality or for the benefit of a charitable purpose.

To obtain a Noise Permit, please provide the activities you wish to carry out and the noise requirements of your event.

- amp for singing
- music to be played during activity time.

A copy of OHMC Section 6.56.030 may be obtained upon request.

****

Public Relation: Please state what efforts, if any, have occurred, or you intend to make, to notify residents or businesses that will likely be affected by your event. Please attach any letters of support. If permit is granted it will be the responsibility of event organizers to alert those likely to be impacted. (i.e. street closures, no parking zones, noise, etc.)

N/A
It's never been a problem in the past.

ATTACH COPIES OF BROCHURES, POSTERS, FLYERS, OR MAILINGS ADVERTISING THIS EVENT

INSURANCE – The City does not maintain insurance that will respond to claims against the applicant arising out of the use of facilities by the applicant, its members, or those attending the event. Depending on the type of event you are planning, and the activity and risk level of your group, you may be required to obtain bodily injury and property damages liability insurance in accordance with City policy, name the City as an **additional insured** on the policy, and be responsible for obtaining said insurance. After reviewing this application, the City will determine whether you must obtain liability insurance.

HOLD HARMLESS – Applicant/Permittee/User shall defend, indemnify and hold harmless the City of Oak Harbor, its agents, employees and officials, while acting within the scope of their duties, from all causes of action, demands and claims, including the cost of their defense, arising in favor of the organization, the organization's employees or third parties on account of personal injuries, bodily injuries, death, or damage to property arising out of the acts or omissions of the organization, its employees or representatives, concessionaires of the event or any other person or entity, except for liability caused due to the sole negligence of the City.

Date: May 21, 09

Signature of Applicant:

CITY OF OAK HARBOR

NOISE PERMIT

Name of Organization:	Living Word
Location of Event:	Windjammer Park Gazebo and surrounding area.
Dates of Event:	July 13th – 16th, 2009
Hours of Operation:	2:30 p.m. to 5:30 p.m.
Permitted Noise:	PA system and speakers for singing and music.
Approval Conditions:	None
Date of City Council Approval:	

Issued this day of , 2009

_____

Karen Crouch, Special Events Coordinator

This Noise Permit is limited to the date and time specified.

Please post this notice on site

City of Oak Harbor
City Council Agenda Bill

Bill No. 48
Date: June 16, 2009
Subject: Janitorial Service Agreement

FROM: Cathy Rosen, Public Works Director

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

PURPOSE

The purpose of this agenda item is to authorize the Mayor to sign the Professional Service Agreement for janitorial services.

AUTHORITY

Oak Harbor Municipal Code (OHMC) 2.390.010 states that unless otherwise authorized or directed by law, ordinance or Council resolution, all contracts over Thirty Thousand Dollars ($30,000) require Council approval.

SUMMARY STATEMENT

The City utilizes a professional janitorial service to provide general cleaning of the City Hall, the Police Department, Senior Center and the Public Works Department buildings. By contracting with one company the City has been able to lower the overall cost for these services.

The current contract with All In One has expired and the City requested bids from the local janitorial companies to provide janitorial services for City facilities.

Staff received the following five bids:

Vendor	Price per month
Covenant Janitorial	$3,465.40
All In One Plus	$3,533.00
All In One	$4,401.25
Service Master	$4,506.50
Cooks Carpet Cleaning	$6,113.00

Staff reviewed the bid prices, checked the qualifications, experience and references of the low bidder, Covenant Janitorial and found them to be satisfactory. It is recommended that a professional service agreement in the amount of $3,465.40 a month be approved for the remainder of the 2009-2010 biennial budget with the option to renew for an additional two years.

The bid from Covenant Janitorial will result in a savings of $935.85 per month from the previous contractor. Funds are available in the 2009-2010 biennial budgets to cover the cost of the agreement with Covenant Janitorial.

STANDING COMMITTEE REPORT

The Public Works Standing Committee reviewed this item at their meeting on June 5, 2009.

RECOMMENDED ACTION

Award the bid and authorize the Mayor to sign the professional service agreement with Covenant Janitorial in the amount of $3,465.40 a month for janitorial services for City Hall, the Police Department, Senior Center and the Public Works facility.

ATTACHMENTS

Professional Service Agreement

MAYOR'S COMMENTS

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, is made and entered into in duplicate this __16___ day of ____June_____, 2009, by and between the CITY OF OAK HARBOR, a Washington municipal corporation, hereinafter referred to as the "CITY" and __COVENANT JANITORIAL _____, 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 ___August 1_____, 2009, and shall be completed no later than ____December 31, 2010_____, unless sooner terminated according to the provisions herein.

3. Compensation and Method of Payment.

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

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

   3.3 The CITY shall pay the SERVICE PROVIDER for work performed under this Agreement as follows:_____$3,465.40 a month_____

4. Reports and Inspections.

4.1 The SERVICE PROVIDER at such times and in such forms as the CITY may require, shall furnish to the CITY such statements, records, reports, data, and information as the CITY may request pertaining to matters covered by this Agreement.

4.2 The SERVICE PROVIDER shall at any time during normal business hours and as often as the CITY or State Auditor may deem necessary, make available for examination all of its records and data with respect to all matters covered, directly or indirectly, by this Agreement and shall permit the CITY or its designated authorized representative to audit and inspect other data relating to all matters covered by this Agreement. The CITY shall receive a copy of all audit reports made by the agency or firm as to the SERVICE PROVIDER'S activities. The CITY may, at its discretion, conduct an audit at its expense, using its own or outside auditors, of the SERVICE PROVIDER'S activities that relate, directly or indirectly, to this Agreement.

5. Independent Contractor Relationship.

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

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

6. 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 out of or resulting from the acts, errors or omissions of the SERVICE PROVIDER in performance of this Agreement, except for injuries and damages caused by the sole negligence of the CITY.

7.2 For purposes of this indemnification and hold harmless agreement, the SERVICE PROVIDER waives any immunity that may be granted to it under the Washington State Industrial Insurance Act, Title 51 RCW. The parties expressly agree that this waiver of workers' compensation immunity has been negotiated.

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 coverage 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. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

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.

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 accreditation, 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 presence of any sensory, mental or physical disability or the use of a trained guide dog or service animal by a person with a disability. Such action shall include, but not be limited to: employment, upgrading, demotion or transfers, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and programs for training including apprenticeships. The SERVICE PROVIDER shall take such action with respect to this Agreement as may be required to ensure full compliance with local, state and federal laws prohibiting discrimination in employment.

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 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.

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 within the State of Washington, and it is agreed by each party hereto that this Agreement shall be governed by laws of the State of Washington, both as to interpretation and performance.

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. Entire Agreement.

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

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

CITY:	SERVICE PROVIDER:
CITY OF OAK HARBOR 865 SE Barrington Drive Oak Harbor, WA 98277	COVENANT JANITORIAL 316 SE Pioneer Way, #118 Oak Harbor, WA 98277
_____ Jim Slowik, Mayor	_____
Attest: _____ Connie Wheeler, City Clerk	

ATTACHMENT A

ADDENDUM TO BID

For City of Oak Harbor (the Client)
Including the Public Works Buildings, #B & #C,
The City Hall, the Senior Center, and the Police Department

According to the terms of the Bid/Contract Stipulations, the following items shall comprise the body of COVENANT Janitorial & Maintenance Svcs. bid to provide janitorial services to City of Oak Public Works buildings #b and #c, City Hall, the Senior Center, and the Police Department, all, naturally, located within the City of Oak Harbor, Washington:

1) COVENANT Janitorial & Maintenance Svcs. bids to perform the following janitorial services for **$ 3,465.40** per month for cleaning of premises. The Oak Harbor Senior Center shall be cleaned five (5) days per week on Sunday through Thursday evening. The Public Works building # c shall be cleaned three (3) times weekly on Monday, Wednesday, and Friday evenings, while Public Works building #b shall be cleaned twice (2) weekly on Tuesday and Thursday evenings. The Police Department and City Hall shall be cleaned three (3) times weekly on Monday, Wednesday, and Friday evenings. (COVENANT Janitorial & Maint. Svcs. employees scheduled to clean the Oak Harbor Police Department shall agree to undergo a thorough background check prior to the commencement of their employment.)

2) Included in this bid shall be the following:
   Daily/Weekly tasks shall include, but not be limited to:
   - a) Emptying and cleaning of all wastebaskets and trash receptacles;
   - b) Cleaning and damp wiping of all tables and rearranging them in a suitable manner (in meeting and conference areas);
   - c) Disposal of bulk trash items, such as boxes, etcetera, into the appointed dumpster;
   - d) Dusting of all furniture (tables, chairs, countertops, telephones, televisions, video monitors, file cabinets, and so on) and all other surfaces including window ledges, door frames, etcetera;
   - e) Sweeping/dust mopping, mopping, deep scrubbing of all tile and linoleum floor areas, especially rubber coated stairway steps;
   - f) Clean cove base at least weekly along VCT tile and linoleum tiled floors;
   - g) Vacuuming of all carpeted floors and spot clean where applicable;
   - h) Thorough cleaning, deodorizing, sanitizing, and disinfecting of sinks, toilets, plumbing fixtures in the restrooms, including mirrors, walls, countertops, floors, and ceilings, with detailed emphasis on the deep cleaning of the restroom walls, as well any other areas, as needed;
   - i) Restocking of all paper goods in the areas mentioned in (f), and any other areas so specified by the Client (with paper goods provided by Client);
   - j) Clean, deodorize, and sanitize all tabletop areas, counters, and service areas, as needed;
   - k) Spot clean entry door's glass nightly at all locations, being especially aware of fingerprints and smudges on both sides of the doors;
   - l) Vacuuming, cleaning, and dusting of chairs;
   - m) Weekly cleaning, deodorizing, and sanitizing of telephones

   Monthly tasks shall include, but not be limited to:
   - a) High dusting (e.g. the walls, ceilings, vents, grills, and louvers);
   - b) Dusting and cleaning of window coverings (blinds, shutters, curtains, etcetera).;
   - c) Cleaning of interior windows on a weekly basis, or more, if so needed.

Quarterly Task includes:

a) Stripping, cleaning, and sealing/waxing of VCT tile and linoleum floors

Tri – annual tasks include:

a) Washing of interior and exterior windows

3) Special Areas of consideration for cleaning shall be the C.S.T. room and the Fitness areas which need to be addressed only one time per week during a normal cleaning visit. Both locations are with the Police Department's parameter of work.
4) Carpeting in all areas will be cleaned quarterly as a part and parcel of the bid price. It will be the duty of the Client's employees to move as much of the furniture as possible prior to the day of the carpet cleaning being scheduled. Also, it will be the responsibility of the Client to replace the furniture once the carpet cleaning has been performed.
5) Invoicing shall be once a month at the end of each months work with payment to be received no later than the 10th of the following month.

City of Oak Harbor
City Council Agenda Bill

Bill No. 7
Date: **June 16, 2009**
Subject: **Fire Department Interim Command Compensation**

FROM: Mark Soptich, Fire Chief

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

PURPOSE

A primary goal, in the fire department re-organizational proposal, is implementing a plan which will incorporate command duty responsibilities and an economically feasible compensation plan that meets all Federal and State Laws. Until an approved plan is implemented, it is advisable to continue the interim compensation plan for the Battalion Chief position, in addition to his existing monthly salary, beginning July 1, 2009 through December 31, 2009; or for a shorter period of time if an approved plan is implemented earlier.

AUTHORITY

On December 16, 2008, City Council authorized the Mayor to sign Resolution No. 08-19 which provided an interim compensation plan for the Battalion Chief position in the amount of $2,010.66 in addition to his existing monthly salary of E-53 ($7,138) beginning January 1, 2009 through June 30, 2009; or for a shorter period of time if an approved plan is implemented earlier.

SUMMARY STATEMENT

The monthly interim amount of $2,010.66 is the 2008 twelve month average the Battalion Chief position had received for command duty and is equitably comparable to the compensation this position has received since the implementation of command duty compensation.

STANDING COMMITTEE REPORT

Updates on the reorganization have been discussed at Public Safety Committee meetings. On March 20, 2008, Command 8 pay was introduced to the Public Safety Committee. On July 17, 2008, the committee reviewed Command 8 pay and the re-organization proposal. On November 20, 2008, committee members supported the fire department re-organization proposal which included Command 8 pay.

RECOMMENDED ACTION

Authorize the Mayor to sign Resolution 09-14.

ATTACHMENTS

Resolution 09-14

MAYOR'S COMMENTS

RESOLUTION NO. 09-14

A RESOLUTION BY THE CITY OF OAK HARBOR PROVIDING ADDITIONAL MONTHLY PREMIUM FOR THE BATTALION CHIEF POSITION AS INTERIM COMMAND RESPONSE COMPENSATION

WHEREAS, on December 16, 2009, the City Council approved Resolution No. 08-19 to provide for an interim monthly salary premium for the Battalion Chief position to address command response duty; and

WHEREAS, Resolution 08-19 stipulated the interim monthly salary premium shall be effective from the months of January 2009 until June 2009 or if, an approved organizational plan is implemented, earlier; and

WHEREAS, the City Administration is continuing to review organizational plans for the Fire Department in order to provide a sound recommendation to the City Council; and

WHERES, the City Administration recommends continuing to provide interim monthly premium compensation to the Battalion Chief for command response duty until an organizational plan is implemented; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Oak Harbor, Washington, that an interim compensation plan be provided for the Battalion Chief position in the amount of $2,010.66 in addition to his existing monthly salary of E-53 ($7,138) effective beginning July 1, 2009 and ending December 31, 2009; or for a shorter period of time if an approved plan is implemented earlier.

PASSED by the City Council of the City of Oak Harbor and approved by its Mayor this 16th day of June, 2009.

CITY OF OAK HARBOR

_____
Jim Slowik, Mayor

ATTEST:

_____
Connie T. Wheeler, City Clerk

City of Oak Harbor
City Council Agenda Bill

Bill No. 8
Date: June 16, 2009
Subject: Proposed Junior Naturalist Youth Programs in City Parks

FROM: Cathy Rosen, Public Works Director

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

PURPOSE

This is a proposal for a new monthly environmental education program in our City parks. The goal is to raise awareness of critical environmental issues such as water and air quality, resource conservation and wildlife habitat. Working with children often leads to influencing their whole family. It will also increase appreciation of our parks system and the long range planning for connectivity and open space.

Offering a free outdoor program will boost healthy activity and teach children how to properly prepare for outdoor recreation. Programs like these will help kids feel more comfortable and confident in natural settings and encourage a healthier lifestyle for them and their families.

If this pilot project is approved and goes well this summer, we may offer more frequent environmental education programs next year.

AUTHORITY

Pursuant to RCW 35A.11.020, the City may "render local social, cultural, recreational, educational, governmental and corporate services."

SUMMARY STATEMENT

Freund Marsh and the woodland trail, otherwise known as the Frisbee Golf Course at Ft. Nugent Park, lend themselves to outdoor education. Maribeth Crandell, the City's Environmental Educator, is proposing to offer structured outdoor learning experiences for youth, ages 10-14, once a month this summer at Freund Marsh, as a Pilot Project. If these summer programs go well, Maribeth would like to offer more frequent programs next summer with the help of trained volunteers. Here are some of the specific activities Maribeth would like to offer a group of 6-20 kids with the help of a Beach Watcher volunteer (with a teaching certificate) who has expressed interest.

Salmon Game – Kids role play the life cycle of salmon running an obstacle course with "predators" and returning to their spawning ground. This is a very active game that heightens their awareness of the salmon's struggle to survive. This will be tied in with a brief talk on how salmon use our shoreline and the importance of water quality.

Each One Teach One – Students are each given a certain plant and a few facts about its use. One by one they teach every other student about their plant. Becoming the teacher increases their alertness to the subject and gives them a chance to repeat that information enough so it's well engrained. Learning from their fellow students makes studying other plants fun. This will be partnered with a talk on the importance of native plants and the campaign to increase the number of Backyard Wildlife Gardens in our community.

Wetland Grab Bag – A bag is filled with odds and ends with each having something to do with wetlands. For instance a baby doll would be a clue to how wetlands serve as nurseries to many species of fish and wildlife. A sponge would indicate how wetlands slow flooding and absorb toxins in our storm water. This would be partnered with a wetland scavenger hunt.

Fill the Bill – A picnic table would be adorned with different types of food on one side (like a piece of candy in a plaster shell or bits of orange floating in a bowl of water). The other side of the table would have various tools for getting the food, a straw, a hammer, a slotted spoon, etc. The kids have to match the food with the tool. This teaches about animal adaptations.

Maribeth has a current K-8 teaching certificate with a science endorsement and a Masters in human development. She has been an outdoor educator for K-8 and seniors for 20 years. Maribeth has filed with the Oak Harbor School District as a volunteer, with appropriate paper work filed with the State Patrol.

STANDING COMMITTEE REPORT

The agenda bill and resolution were presented and discussed at the Public Works and Utilities Standing Committee meeting on June 4, and at the Park Board meeting on June 8, 2009.

RECOMMENDED ACTION

It is recommended that the City Council approve the proposal to offer a pilot environmental education program for youth in City Parks and authorize the Mayor to sign the Resolution.

ATTACHMENTS

Resolution Establishing a Policy Offering Environmental Education Programs for Youth, Summer 2009.

MAYOR'S COMMENTS

RESOLUTION NO. 09-15

RESOLUTION ESTABLISHING A POLICY OF THE CITY OF OAK HARBOR TO OFFER ENVIRONMENTAL EDUCATION PROGRAMS FOR YOUTH IN OUR CITY PARKS, SUMMER 2009

WHEREAS, it is the belief of the City of Oak Harbor that our City parks and public lands should be accessible to all ages for recreation and learning activities; and

WHEREAS, it is government's responsibility to model and instruct how to work with natural systems to improve water quality, provide wildlife habitat, and enhance the quality of life of our citizens; and

WHEREAS, encouraging the public to visit natural areas will improve their physical, mental and psychological health; and

WHEREAS, offering guided walks and outdoor learning activities will cultivate an appreciation of our parks and a better understanding of their natural systems; and

WHEREAS, it has been established by the State Office of Public Instruction, that youth participating in outdoor learning activities get better grades on standardized tests; and

WHEREAS, introducing youth to natural systems in their City parks will encourage environmental stewardship in their daily lives which may influence other members of their family and community.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Oak Harbor, Washington, that the City of Oak Harbor staff is hereby authorized and directed to offer a pilot youth environmental education program in Oak Harbor's City Parks in the summer of 2009.

PASSED by the City Council of the City of Oak Harbor and approved by its Mayor this 16th day of June, 2009.

CITY OF OAK HARBOR

_____
MAYOR

ATTEST:

_____
CITY CLERK

City of Oak Harbor
City Council Agenda Bill

Bill No. 9
Date: June 16, 2009
Subject: Island County Tourism Agreement

FROM: **Paul Schmidt**
City Administrator

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:
Jim Slowik, Mayor
Doug Merriman, Finance Director
Margery Hite, City Attorney, as to form

PURPOSE

The purpose of this agenda bill is to propose reducing the City of Oak Harbor contribution to the Island County Joint Tourism Agreement effort.

AUTHORITY

Pursuant to RCW Chapter 39.34 the City Council of Oak Harbor is authorized to allow the Mayor to enter into cooperative agreements with other public agencies to jointly provide public services. Conversely, these agreements also allow the City Council to contemplate amendments, modifications or outright termination.

The Island County Joint Tourism Agreement effort is funded with 2% hotel/motel tax proceeds. RCW 67.28 and Oak Harbor Municipal Code Section 2.66.040(4), require the City Council to submit to the City's Lodging Tax Advisory Committee, for its review and comment, any proposals to; "change [in] the use of the revenue received from such a tax".

On May 6, 2009, the Oak Harbor Lodging Tax Advisory Committee made recommendation to decrease the City of Oak Harbor's current contribution of 1% (approximately $40,000) of the total hotel/motel tax to the Island County Joint Tourism Agreement effort down to a set annual amount of $20,000.

SUMMARY STATEMENT

The original Island County Joint Tourism agreement was executed by the City of Oak Harbor on September 5, 2000, between Island County, the City of Langley and the Town of Coupeville. This agreement came on the heels of the above noted entities approving imposition of the additional 2% hotel/motel tax authorized by the State Legislature in 1998. This newly authorized amount allowed the County, Cities and Town to impose a total of 4% hotel/motel tax if they wished. The intent of the Joint Tourism Interlocal was to impose the additional 2% and pool the funds for the dedicated purpose of a county wide tourism promotion effort. The annual hotel/motel tax generated by the 2% contribution from the City of Oak Harbor ranged from $73,391 in 2001 to $72,013 in 2004 (see Exhibit A). The amendment to the Interlocal Agreement in 2005 decreased the City's contribution to the County/Cities/Town Tourism Fund from the lodging tax from 2% to 1% resulted in a City contribution of $40,894 in 2005 (see Exhibit A).

It is noted that the savings from the decreased contribution to Island County Joint Tourism have since been dedicated to the purpose of promoting Windjammer Park.

Recent discussions within the City of Oak Harbor on how to best utilize the limited funds for tourism promotion have once again prompted a proposal to limit the contributions to the Island County-wide tourism effort in favor of providing more funds for direct local promotions. For example, it has been suggested that possibly a new banner program could be initiated for tourism promotion in the City or to further enhance events in Oak Harbor, such as the Whidbey Marathon. Furthermore, it has been suggested that maybe Oak Harbor's contribution to the Island County Joint Tourism effort need not be any more than that of the other city on Whidbey Island which is Langley. The question is if there is any measurable increase in tourism to the City of Oak Harbor commensurate with the greater contribution the City is making to the Island County Joint Tourism effort?

For these reasons, staff recommends that the City Council consider reducing the City's contribution to the County/Cities/Town Tourism Fund so that the City's share of the hotel/motel tax may be more productively used. However, this will require an amendment to the Interlocal Agreements. In order to initiate an amendment to the original Island County Tourism Promotion Agreement, at least a six month notice, prior to the end of the calendar year, must be given to the Joint Board and to each of the Legislative authorities of the Joint Board (see Exhibit B).

In addition, the original agreement requires a minimum of a one year notice before terminating participation in the Island County Joint Tourism Promotion Agreement. It might behoove the City Council to also give notice of intent to terminate participation in the event approval of the amendment to decrease the City's contribution from 1% to $20,000 is denied by the Joint Board. In that case, the City would save six months of contributions if termination notice was given concurrently with the notice of amendment. In the event the amendment is granted by the Joint Board, the City would have the option of then withdrawing the termination notice well before the effective date.

STANDING COMMITTEE REPORT

This item came in front of the entire City Council on March 24, 2009, to have the City Council submit the issue to the Lodging Tax Advisory Committee for their recommendation. In addition, this item was introduced to the Government Service Standing Committee on March 9, 2009 and further discussed on June 8, 2009.

RECOMMENDED ACTION

Authorize the Mayor to give notice to the Joint Board and the Legislative authorities of Island County, the City of Langley and the Town of Coupeville to amend the Interlocal Tourism Promotion Agreement to decrease the City of Oak Harbor's annual contribution to a set amount of $20,000, and to concurrently submit a notice of intent to terminate the City's participation in the Interlocal Tourism Agreement in the event the City's requested amendment is not granted.

ATTACHMENTS

Exhibit A
Exhibit B
Proposed Notice

MAYOR'S COMMENTS

Exhibit A

Island County Joint Tourism Board
Treasurer's Report
As of 11/01/07

www.dor.wa.gov
Statistical Reports - Tax Collections/Distributions
Local Sales and Use Tax Distr - View 2007

Tax Revenues as reported by State
As of 10/31/07

	2000	2001	2002	2003	2004	2005	2006	2007	
Island Count	$54,837.10	$77,351.72	$80,408.00	$79,776.75	$81,460.00	$91,419.11	$98,336.91	$82,993.69	$646,583.28
Coupeville	$10,690.44	$12,295.29	$11,639.00	$10,419.17	$12,601.00	$15,195.08	$14,485.32	$12,712.36	$100,037.66
Langley**	$17,890.18	$21,156.32	$20,756.00	$20,853.85	$23,297.00	$23,650.95	$23,943.00	$19,590.81	$171,138.11
Oak Harbor*	$65,669.53	$73,391.19	$76,804.00	$69,496.77	$72,013.00	$40,894.30	$41,980.00	$35,404.68	$475,653.47
Total Income	$149,087.25	$184,194.52	$189,607.00	$180,546.54	$189,371.00	$171,159.44	$178,745.23	$150,701.54	$1,393,412.52

Tax Revenues as reported by County
As of 10/31/07

	2000	2001	2002	2003	2004	2005	2006	2007	Interest	
Island Count	$54,837.10	$77,351.72	$80,407.63	$79,776.75	$81,460.06	$91,419.11	$98,176.19	$70,806.21	$49,105.99	$683,340.76
Coupeville	$10,561.98	$12,857.94	$13,119.07	$13,478.06	$14,230.29	$15,195.08	$15,764.39	$3,569.28	$0.00	$98,776.09
Langley**	$17,292.18	$21,200.36	$20,756.03	$21,059.90	$23,371.47	$23,784.46	$24,173.41	$4,647.37	$1,290.16	$157,575.34
Oak Harbor	$65,649.53	$73,391.19	$76,803.88	$69,496.77	$72,013.38	$40,894.29	$41,980.71	$29,517.74	$4,461.30	$474,208.79
Grant from 2% Hotel/Motel Tax (Part 1)										$5,000.00
Total Income	$148,340.79	$184,801.21	$191,086.61	$183,811.48	$191,075.20	$171,292.94	$180,094.70	$108,540.60	$54,857.45	$1,418,900.98

	Inv Amount
Payments	
Total 2002 Vouchers	($214,077.79)
Total 2003 Vouchers	($295,119.50)
Total 2004 Vouchers	($184,550.56)
Total 2005 Vouchers	($122,150.63)
Total 2006 Vouchers	($146,350.84)
YTD 2007 Vouchers (see Budget report for details)	($143,140.35)
Income less Expenses (Balance in Acct. 146 000 57391 14440)	$313,511.31

**Langley and O.H. (as of 1/05) are represented by 1% contribution only.

Comparison of Income YTD Oct 2006 vs 2007

	2006	2007	Change
Island County	$ 67,869.96	$ 82,993.69	22.3%
Coupeville	$ 10,539.80	$ 12,712.36	20.6%
Langley**	$ 27,687.89	$ 19,590.81	-29.2%
Oak Harbor**	$ 27,687.89	$ 35,404.68	27.9%
Totals	$ 133,785.54	$150,701.54	12.6%

Exhibit B

AMENDMENT NO. 1
ISLAND COUNTY, OAK HARBOR, LANGLEY AND COUPEVILLE
TOURISM PROMOTION AGREEMENT

THIS AGREEMENT AMENDMENT NO. 1 is made and entered into this 6th day of April, 2005, by and between Island County, a political subdivision of the State of Washington, hereinafter called the "County," the City of Oak Harbor, a municipal corporation of the State of Washington, hereinafter called "Oak Harbor," the City of Langley, a municipal corporation of the State of Washington, hereinafter called "Langley," and the Town of Coupeville, a municipal corporation of the State of Washington, hereinafter called "Coupeville," to amend the original Island County, Oak Harbor, Langley and Coupeville Tourism Promotion Agreement entered into on September 5, 2000.

The following sections shall substitute for the sections of like number/letter of the original agreement.

II. GENERAL PROVISIONS

B. **Pooled fund.** **Except for Langley and Oak Harbor, after adoption of the new two-percent (2%) lodging tax the revenues collected for all the parties, plus accrued interest from such tax revenues, shall be pooled in a fund held by the Island County Treasurer to be known as the "County-Cities/Town Tourism Fund." Because Langley has already committed a one-percent (1%) additional lodging tax for new public tourist restroom facilities, Langley will only contribute one-percent of the new lodging tax to the pooled fund. Beginning January 1, 2005, Oak Harbor will only contribute one-percent of the new lodging tax to the pooled fund.**

D. **Basic two-percent lodging tax not covered.** **This agreement does not cover the use of the basic two-percent (2%) lodging tax authorized by RCW 67.28.180 or the one-percent (1%) of the new lodging tax retained by Langley and Oak Harbor. The parties will continue to use those funds outside of the terms of this Agreement and any committee, board or other entity whose primary purpose is to promote economic development shall not be involved in any manner with the new fund referenced herein.**

V. MISCELLANEOUS PROVISIONS

E. Amendment. The provisions of this agreement may be amended by written agreement of all the parties. A party that wishes to negotiate an amendment to the Agreement shall give notice of the proposed amendment at least six (6) months prior to the end of a calendar year to the Joint Board and the legislative authority of each party.

The following section is added to V. MISCELLANEOUS PROVISIONS:

F. Annual Review. The Joint Board shall make an annual review and report on the countywide tourism program funded by this Agreement and the Joint Board shall submit the annual review report to the legislative authority of each party to this Agreement by May 1st of each year.

All other terms of the original Agreement not amended above remain in full force and effect. This Amendment is effective January 1, 2005.

ISLAND COUNTY — **Attest:**

By: _____ Date: 4-25-05 — Elaine Marlow

Chairman, Board of County Commissioners — Clerk of the Board

CITY OF OAK HARBOR — **Attest:**

By: _____ Date: 4-6-05 — _____

Mayor — City Clerk

CITY OF LANGLEY — **Attest:**

By: _____ Date: 4-15-05 — Marlyn Ray

Mayor — City Clerk

TOWN OF COUPEVILLE — **Attest:**

By: _____ Date: 4/4/05 — Linda Marsh

Mayor — Town Clerk

To: Island County Joint Tourism Board and Legislative Authorities of Island County, City of Langley and the Town of Coupeville.

NOTICE IS HEREBY GIVEN pursuant to Section V. Miscellaneous Provision (E) of the Island County, Oak Harbor, Langley and Coupeville Tourism Promotion Agreement entered on September 5, 2000 and amended on April 6, 2005 ("Agreement" hereafter) that the City of Oak Harbor does seek to negotiate an amendment to the Agreement. The City of Oak Harbor proposes to amend the Agreement to provide that the City of Oak Harbor's contribution shall be fixed at $20,000 per year. The City of Oak Harbor proposes to amend Section II. General Provisions, Paragraphs B (Pooled fund) and D (Basic two-percent lodging tax not covered) to read as follows:

B. Pooled fund. Except for those new lodging tax revenues generated by Langley and Oak Harbor, the revenues from the new two-percent (2%) lodging tax shall be pooled in a fund held by the Island County Treasurer to be known as the "County/Cities/Town Tourism Fund." Because Langley has already committed a one-percent (1%) additional lodging tax for new public tourist restroom facilities, Langley will only contribute one-percent of the new lodging tax to the pooled fund. Beginning January 1, 2010, Oak Harbor will not contribute a percentage of the new lodging tax revenues generated by Oak Harbor but instead will contribute a total of $20,000 annually from the new lodging tax to the pooled fund.

D. Basic two-percent lodging tax not covered. This Agreement does not cover the use of the basic two-percent (2%) lodging tax authorized by RCW 67.28.180 or the one-percent (1%) of the new lodging tax retained by Langley or any portion of the new lodging tax accruing to Oak Harbor over and above the $20,000 that Oak Harbor agrees to contribute annually. The parties will continue to use those non-covered lodging tax funds outside of the terms of this Agreement.

NOTICE IS FURTHER GIVEN pursuant to Section V. Miscellaneous Provision (D) of the Island County, Oak Harbor, Langley and Coupeville Tourism Promotion Agreement entered on September 5, 2000 and amended on April 6, 2005 ("Agreement" hereafter) that the City of Oak Harbor will terminate its participation in the Agreement effective July 1, 2010. This notice is given to meet the one year's notice requirement for termination. However, in the event that the proposed amendments to the Agreement are granted, City does not anticipate terminating its participation in the Agreement.

Dated this _____ day of _____, 2009.

CITY OF OAK HARBOR

_____

JIM SLOWIK, MAYOR