



PLANNING COMMISSION

AGENDA

April 24, 2012

ROLL CALL: NEIL _____ JENSEN _____ FAKKEMA _____
WASINGER _____ OLIVER _____
WALLIN _____ JOHNSON-PFEIFFER _____

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1. **Approval of Minutes – March 27, 2012**
2. **Public Comment** – Planning Commission will accept public comment for items not otherwise on the agenda for the first 15 minutes of the Planning Commission meeting.

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3. **Adoption of Official Zoning Map – Public Hearing**
The Planning Commission will hold a public hearing on adoption of the Official Zoning Map for the City of Oak Harbor. The Planning Commission shall forward a recommendation to City Council for their May 1, 2012 meeting. Shall City Council decide to approve this item, the ordinance shall be adopted and the zoning map made official by the signatures of the Mayor and City Clerk.

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4. **Nightclub Ordinance – Public Meeting**
The Planning Commission will hold a public meeting to gather public input on whether nightclubs in Oak Harbor should be restricted by size based on the zoning district that they are located within. The basis for the request is to minimize the impacts that large nightclubs have on surrounding properties especially residential uses.

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5. **Sign Code – Public Hearing**
The Planning Commission will consider revisions to OHMC 19.36.080 “Temporary and Special Signs.” These revisions are meant to address political signs. It is anticipated that Planning Commission will form a recommendation to City Council on the draft code.

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6. **Shoreline Master Program Update – Public Meeting**
The City of Oak Harbor is required by the State of Washington to update its Shoreline Master Program (SMP). Staff will give an introductory presentation to Planning Commission on this topic, as well as discuss Chapters 1-3 of the draft document with the Commission. Staff expects that this will be the first of a series of five discussions on this topic.

MINUTES

March 27, 2012

**PLANNING COMMISSION
REGULAR MEETING
CITY HALL – COUNCIL CHAMBERS
March 27, 2012**

ROLL CALL: Present: Keith Fakkema, Kristi Jensen, Jeff Wallin, Gerry Oliver, Jill Johnson-Pfeiffer and Greg Wasinger.

Absent: Bruce Neil.

Staff Present: Development Services Director, Steve Powers; Senior Planners, Ethan Spoo and Cac Kamak and Associate Planner, Melissa Sartorius.

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

MINUTES: MR. OLIVER MOVED, MR. WALLIN SECONDED, MOTION CARRIED TO APPROVE THE FEBRUARY 28, 2012 MINUTES AS PRESENTED.

PUBLIC COMMENT:

No comments.

SIGN CODE UPDATE – Public Hearing

Mr. Spoo reported that that there have been three previous meetings of the Planning Commission on this topic. Mr. Spoo noted that staff is recommending that Planning Commission not conduct a public hearing and make a recommendation tonight but to take public comment.

Mr. Spoo explained that the interim code was initially adopted in July of 2011 for a period of six months. The City Council extended the interim sign code for another 6 months in December of last year which made the interim code valid until July of 2012. Last month, staff and Planning Commission discussions led to an expanded scope for this project. Rather than just talking about political signs on public property, we began talking about both political and non-political signs on public and private property which to lead to discussion about necessary public involvement which will be done tonight. Because of the expanded scope of the project, staff suggests that the City adopt the interim code this July, while at the same time continuing to work on this draft sign code. We recognize that with the expanded scope of this project it's unlikely that we can conclude discussions with Planning Commission and City Council by July of this year.

Mr. Spoo discussed the three basic sections of the draft code in section 19.36.080:

- Permits for temporary signs
- Temporary signs on private property
- Temporary signs on public property

Permits for Temporary Signs

Mr. Spoo explained that the draft code proposes a permit system based on comments we received from Planning Commission and it is an effort to address comments Planning Commission made about the prevalence of these types of signs. The permit system would be the most simple permit system available under Oak Harbor code, a Review Process I, staff compliance review. There would be no cost to applicants for staff to review these permits. Provided that complete information is submitted, the review would be a 2-day process. The

point is to inform applicants about appropriate placement of temporary signs prior to placement of the sign. It's a proactive approach, rather than relying on enforcement.

Temporary signs on private property

Proposed changes:

- (1) Time limits for temporary signs. The existing code does not define temporary by any specific timeframe. Some types of temporary signs can stay up indefinitely. The draft code proposes that 6 months in a calendar year be the limit, except for real estate and political signs which are subject to more specific timeframes. Real estate signs generally can stay up during the time the property/unit is for sale or rent. Political signs don't have a pre-election time limit, but are required to be removed 7 days after an election.
- (2) Responding to Planning Commission's comments about the quality of A-frame signs, the draft code requires that there be no hand-drawn letters or graphics.

Temporary signs on public property

Proposed changes:

- (1) A limit on the type of signs that can happen on public property to four types: political signs, real estate open house signs, portable A-frame signs and garage sale signs.
- (2) A limit on the location of these signs to planter strips and sidewalk of the right-of-way, with exceptions for Windjammer Park Little League fields, Gateway-Beeksma Park, and the City's solid waste vehicle.
- (3) Limits on the size and height of temporary signs within the public right-of-way for safety reasons. There are provisions addressing the quality of these signs, no hand-drawn letters or graphics. And there are provisions allowing City staff to remove these signs for maintenance purposes.
- (4) More specific standards for political, open house, A-frames, garage sale signs.
Garage sale signs – exception for hand-drawn letters and graphics.

Mr. Spoo summarized the issued addressed:

- Location: not allowed in parks, vehicles, buildings w/ certain exceptions
- Timeframes – 6 mos./year w/ exceptions
- Permit system
- Quality – no hand-drawn or hand-painted signs
- Limits on number of signs

Mr. Spoo noted that since the scope has expanded to look at temporary signs on both public and private properties it is necessary to target involvement with the following groups and possibly attending a merchant's meeting in downtown.

- Stakeholders: merchants/business owners, political candidates, general public
- More specific merchant involvement.
- General public: important stakeholders. Looking for more targeted ways to involve them.

Ms. Jensen commented that she would like expand the list of parks that temporary signs are allowed i.e. Ft. Nugent Park, because that is where the temporary signs are put to remind parents it is time to sign up for soccer etc.

Ms. Jensen commented that the City of Edmonds sign ordinance states that off-premises campaign signs shall be posted and displayed no earlier than upon declaration of candidacy. In accordance with RCW 29.15. Mr. Spoo said staff would look in to the RCW but thought that it might not be legal to limit political speech.

Mr. Fakkema opened the meeting for public comment.

Bob Olsen (1371 NE 7th Place and Pioneer Way business owner) commented that he heard and was concerned that banners, flags and kites might not be allowed on Pioneer Way.

Karen Muller (Wind and Tide Book Shop) was concerned about not being allowed to have hand painted signs or any artistic graphic signs. Mr. Powers said that it is possible to make a distinction between less than neatly done (i.e. spray paint on a piece of plywood) and artistic professional quality.

Being no further public comment the Planning Commission began their discussion.

Ms. Jensen commented that she didn't think the size limits were adequate because cars block the view of the A-frame signs and flags. Mr. Spoo noted that there are only the four types of signs allow in the public right-of-way currently (political, garage sale, real estate and A-frames). But if the Commission believes that flag banners should be added to the list of allowed signs that could be done and it is local preference. Mr. Spoo suggested deferring the question until there is further public input. Mr. Powers added that the Commission could consider whether or not all street environments should be treated equally for those types of signs. It may make sense in the Pioneer Way area but not make as much sense in a more car oriented environment along the highway.

Mr. Wallin asked if Mr. Powers meant that the Commission could specify certain section of the City that flag banners could be allowed. Mr. Powers said it could be done by zoning district.

Mr. Wallin stated that he preferred the flag banners be kept near the curb and the poles should not be made of PVC and should be regulated as far as the structure of the flag banners for safety reasons.

Ms. Johnson-Pfeiffer asked if content couldn't be regulated on the flag banners. Mr. Powers said that language could be crafted to say that no message would be allowed on flag banners and would only be decorative in nature.

Ms. Jensen asked what if the flag banner said "Open". Mr. Powers said there may be a way to craft a sign which provides the "open" idea without getting into the idea of a message.

Ms. Johnson-Pfeiffer said that she had general concerns about getting into a situation where staff is asked to make determination on what is aesthetically pleasing and what isn't. She wondered how enforceable interpreting style can be. Everyone has a different opinion and will not agree on style. Mr. Spoo said that it is possible to address aesthetics of commercial signs (i.e. Coupeville) as long as you are not disadvantaging a certain type of speech, especially political speech. Mr. Powers read an excerpt from the current code that addresses A-frame

signs which says, "All artistic embellishments and lettering shall have the appearance of professionalism."

Ms. Jensen suggested adding guidelines that say not sun faded, not tattered etc. She didn't believe there would be 50 people putting up 50 different flags and she liked seeing different things because it makes it fun. Mr. Powers said he appreciated Ms. Jensen's confidence in people being able to police themselves but from experience that isn't always the case and sometimes it takes nudging from the City to remind folks that their signs or banners have gone past their useful life. The vast majority would change the sign or banner because they want to make a good impression but that is not always the case. This is a particularly difficult area for code enforcement because when we approach businesses and say that your sign has gone past its life or the banner is tattered, it is sometimes viewed as an affront on that business.

Ms. Johnson-Pfeiffer commented that the permit process is a no fee permit but there is a cost to the City to issue some type of permitting. She said she wasn't a big fan of fees but asked if the City was going to implement a permitting process that it has no revenue stream for. Mr. Spoo acknowledged that was correct and it is more of an information transfer process. There would be some staff time dedicated to reviewing permits for temporary signs and we don't think it will be very much time because it is a one page application that asks for a description or a picture of the sign and shows where the temporary sign will be placed. We are trying not to discourage temporary signs but to find a friendly way of getting compliance with the regulations.

Ms. Johnson-Pfeiffer asked what the communication process would be to let people know that they have to get a permit and what would be the consequences to businesses that didn't get a permit. Mr. Powers said one of the avenues of communication would be to work with the sign companies that produce A-frame signs. The City would also reach out to the business community. This would be a phased implementation. On the code compliance side, we would start with a healthy length of time where it is all about the message. The permit process was a response to what staff thought were the Planning Commission's concerns about the proliferation of temporary signs throughout the community. There may be another way to get at that issue besides a permit process and another important point is that even if the Planning Commission recommends approval of it the Council has the final determination.

Ms. Johnson-Pfeiffer commented that she wasn't completely comfortable with the permitting process. She preferred more than an educational process versus a regulation mechanism like permits.

Mr. Wasinger asked if the permit process was aimed at temporary signs on both public and private property. Mr. Spoo confirmed that was correct and the one exception would be window signs. Mr. Wasinger asked if a back board for a banner that changes every month would be a temporary sign. Mr. Spoo said that would fall under the temporary sign code and would be allowed for six months of the calendar year.

Mr. Oliver asked about the dancing sign holder signs. Mr. Spoo said that those were not one of the four listed types of signs that are allowed in the public right-of-way. But it was unlikely that the City would force a person with a sign to leave the public right-of-way.

Mr. Oliver asked about the A-frame real estate open house signs. Mr. Oliver commented that the goal was to drive people to the property and open house signs are up between two to four hours and then removed. Mr. Oliver suggested that the number of real estate signs allowed be more than three. Mr. Spoo said that was something that could be looked at.

Ms. Jensen suggested that five real estate open house signs be allowed.

Mr. Oliver asked if there was some sort of guarantee that the permit would be ready in two days. Mr. Powers said that the City could not offer a flat guarantee. The City would be reasonable in the application of the standard. Mr. Powers suggested that the permit system is perhaps more problematic than the Planning Commission's concern about how we control the number of the signs in the community. Mr. Powers said that rather than using the permit process, the educational process could be used as well as the enforcement process. Mr. Powers reminded the Commission that the City's enforcement process is by complaint only.

Ms. Johnson-Pfeiffer said that her concern about permitting was that there will be people that don't get the permit and are out of compliance and the City will have to enforce the non-compliance of getting a permit. It doesn't solve the City's enforcement problem so what will happen is the people that follow the rules will get permits and the people don't play by the rules won't get the permit and the City will have to enforce non-permitted signs. She didn't think that adding the permitting layer would address the bigger concerns because it still comes down to enforcement. If that is where the breakdown is we are just adding another layer.

Ms. Jensen said that she liked the education side of the permit process.

Ms. Jensen commented that she didn't like the last sentence of (3)(b)(B) on page 35 which states: "Prior to placement of temporary signs in the public right-of-way, permission of the adjacent and nearest property owner must first be obtained."

Ms. Johnson-Pfeiffer said she liked the requirement because the sign in front of a business implies endorsement of what the sign says which could be and endorsement of a political candidate or a type of speech that they may or may not be comfortable with. Business should have some control of how their business is politicized.

Ms. Jensen asked about the area on SR20 and asked if someone wanted to put a sign there would they have to get permission from all the individual rental units adjacent to the area. Mr. Spoo noted that the highway right-of-way falls under the Washington State Department of Transportation and they may have rules against political signs within the State right-of-way.

Mr. Wasinger asked if business owners have the right to determine what goes into the public easement in front of their properties. Mr. Spoo said the reason that statement was put into the code was partly about the issue that Ms. Johnson-Pfeiffer raised. Mr. Spoo indicated that the way right-of-way is defined as that it is an easement for public travel so the underlying land is still owned by an adjacent property owner on title so you would still need permission from the property owner. Mr. Powers added that there was still the basic prohibition on off-premise commercial signage so as an example, Safeway could not put a temporary sign in the grass strip in front of the Seven-Eleven because that would be considered an off-premise commercial sign.

Mr. Oliver asked if it would be improper to get input from some of our political figures i.e. Mayor and City Council. Mr. Spoo said that they would automatically have input as part of the approval process and they will want to know what the general public and business owners think.

Mr. Powers added that if Planning Commission wanted to talk to past candidate for elected office that would be good to find out what they struggle with when it comes to signage. That input could only help to balance the issues. Mr. Spoo suggested input be put in writing in a letter addressed to the Planning Commission.

Ms. Johnson-Pfeiffer suggested that the 2-day time limit on removing community event and fundraiser signs is too short. It usually takes a week because volunteers are used to remove the signs. She also thought that seven days for political sign removal was too short given the size of some of the districts. She suggested two weeks. Mr. Spoo said that was the typical range.

Ms. Jensen commented that special events need to have more than two signs. Cost of producing the signs needs to be a consideration as well. For the community pig roast they usually just attach a paper over real estate signs. Mr. Powers said that the last two comments demonstrate exactly what the struggle is in crafting the temporary sign code. There were suggestions that we need to have more signage for civic events and that the standards should not apply to civic events and that is our struggle because we can't treat a non-profit activity substantially different than we treat for-profit groups and we can't treat political speech and commercial speech substantially different either. If the Commission has concerns about the number of signs that a permanent business has you are going to struggle by say one sign for that business and seven signs for the great non-profit that we have. That is not to say that they have to be identical because you may be able to establish some rational reasons as to how they are different but that is the challenge we are going to have.

Mr. Oliver asked about video signage not being allowed in any zoning district and asked if that applied to inside the window or just outside. Mr. Spoo said that language was focused on permanent signage and it is not in the context of temporary signage. Mr. Powers added that the reason that you see the definition of "video" and "video board" is that they work with other definitions specifically electronic message center signs. A few years ago the community went through a process to decide if they wanted to allow the electronic message center/reader board signs. As part of that review process it was determined that the community did not want to see the flashing video signs like the signs you see around Fife on I-5 and like the Angel of the Winds Casino sign on I-5.

Ms. Johnson-Pfeiffer went back to the discussion about community events. She felt that community events were different. It isn't commercial speech or political speech and falls into a unique niche. These events are for community branding and identity and to create that sense of community and it is important to let the community know that these events are going on. Signage may be expensive in the initial creation of them but they can be re-used and she felt that the signage was particularly limited for community events. She asked staff for more research on how other communities handle signage for community events.

Mr. Fakkema noted a correction that should be made on page 34 number (3)(a) (ii) through (vii) should say "shall not".

Mr. Fakkema suggested saying that if a 2-day approval is not given the permit is assumed to be approved. Mr. Spoo said that was not something the City should do and the challenge is that if an applicant does not submit all the information you can't approve the permit in 2 days.

Ms. Johnson-Pfeiffer indicated that she was comfortable with the temporary political signage language.

Mr. Wallin asked if there should be language included about how many signs are allowed and that the City regulates the number allowed in parks as well as the City's solid waste collection vehicle. Mr. Powers acknowledged that more work is necessary and that internal legal review is still being done. Mr. Powers added that staff is proposing to adopt the interim ordinance while also continuing work on the draft code with the Planning Commission. Staff will return to the Planning Commission with the interim code in May.

Mr. Spoo outlined the next steps as follows:

- March – Draft code/changes/recommendation
- April – recommendation to City Council
- May-June – Council Discussion/Adoption

Planning Commission had no further questions or comments.

ADJOURN: 8:50 p.m.

DRAFT

Adoption of Official Zoning Map

Public Hearing

**City of Oak Harbor
Planning Commission Report**

Date: April 11, 2012

Subject: Adoption of Official Zoning
Map

FROM: Melissa Sartorius
Associate Planner

PURPOSE

This report presents a draft ordinance that would adopt the Official Zoning Map for the City of Oak Harbor. The adoption process requires Planning Commission to hold a public hearing. At the conclusion of the public hearing it will be necessary for the Planning Commission to forward a recommendation to the City Council.

AUTHORITY

The Washington State Growth Management Act (RCW 36.70A) requires that counties and cities adopt zoning and other development regulations that are consistent with their adopted Comprehensive Plans. Cities are authorized by RCW 35A.63 to adopt appropriate regulations complying with state law for the regulation of property in the city, including adopting zoning codes and official zoning maps per RCW 35A.63.100(1). Adoption of the zoning map with signatures of the Mayor and City Clerk with the City's seal affixed is required by Oak Harbor Municipal Code 19.16.010¹.

SUMMARY STATEMENT

The City of Oak Harbor Official Zoning Map is a vital tool in conveying the locations and boundaries of the zoning districts of the City. The City of Oak Harbor updates its Comprehensive Plan and Future Land Use Map by taking action on Comprehensive Plan amendments annually in December with subsequent amendments to zoning and the Official Zoning Map following in the spring.

BACKGROUND

Since the City's first zoning map adoption on August 6, 1968, the zoning map has been adopted several times in combination with the City's Comprehensive Plan. The official zoning map for the city has been amended over the years with numerous zoning changes occurring. Most notably, many changes occurred in 1997 in order to implement land use changes from the 1995 Comprehensive Plan. Since that time, zoning changes to individual properties have occurred annually as a result of sponsored, mandated, or discretionary land use changes to the Comprehensive Plan.

¹ 19.16.010 Official zoning map.

The locations and boundaries of the zoning districts shall be as shown on the map accompanying this title and made a part of this title, entitled, "Official Zoning Map – Oak Harbor, Washington." The official zoning map and all the notations, references and amendments thereto and other information shown thereon are made a part of this title, just as if such information set forth on the map were fully described and set out herein. The official zoning map, attested by the signature of the mayor and the city clerk, with the seal of the municipality affixed, shall be kept on file in the office of the planning director, and shall be available for inspection by the public. (Ord. 1555 § 6, 2009).

DISCUSSION

Adoption of the City's official zoning map is linked inextricably to the City's Comprehensive Plan cycle and is required for consistency with the Growth Management Act. Updating the zoning map for the City normally occurs every year after the land use amendments are adopted in December by City Council. The individual zoning changes are also adopted by City Council a few months after the December land use changes; typically around February or March. This year, the City is formalizing the process by adopting the official zoning map separate from the individual land use and zoning amendments and is hoping to continue this process every year. Adoption of the zoning map separate from the land use and zoning amendments will also allow the City to make minor changes such as Scribner's errors on an annual basis. All changes will be documented and presented with the adoption of the map.

Should the Planning Commission decide to forward a recommendation of approval to City Council, the ordinance attached to this agenda bill shall be adopted and the zoning map made official by the signatures and date by the Mayor and City Clerk.

RECOMMENDATIONS

1. Conduct the public hearing.
2. Recommend adoption of the ordinance and the attached official zoning map to City Council.

Attachments:

Attachment 1: Draft Ordinance with Exhibit A - Official Zoning Map

ORDINANCE NO. _____

AN ORDINANCE ADOPTING THE OFFICIAL ZONING MAP OF THE CITY OF OAK HARBOR AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, pursuant to RCW Chapter 35A.63, cities are authorized to adopt appropriate regulations complying with state law for the regulation of property in the city, including adopting zoning codes and official zoning maps, and

WHEREAS, the following ordinance is necessary for the public health, safety and general welfare;

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

Section One. That certain map, identified as the "City of Oak Harbor Official Zoning Map", dated May 1, 2012, one copy of which has been and is on file in the office of the City Clerk for use and examination by the public is hereby incorporated in full by this reference and is hereby adopted as the official zoning map for the City of Oak Harbor.

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

Section Three. Effective Date. This Ordinance shall be in full force (5) five days following publication.

PASSED by the City Council this 1st day of May, 2012.

() APPROVED by its Mayor this _____ day of _____, 2012.

() Vetoed

THE CITY OF OAK HARBOR

Mayor

Attest:

City Clerk

Approved as to Form:

City Attorney

Published: _____

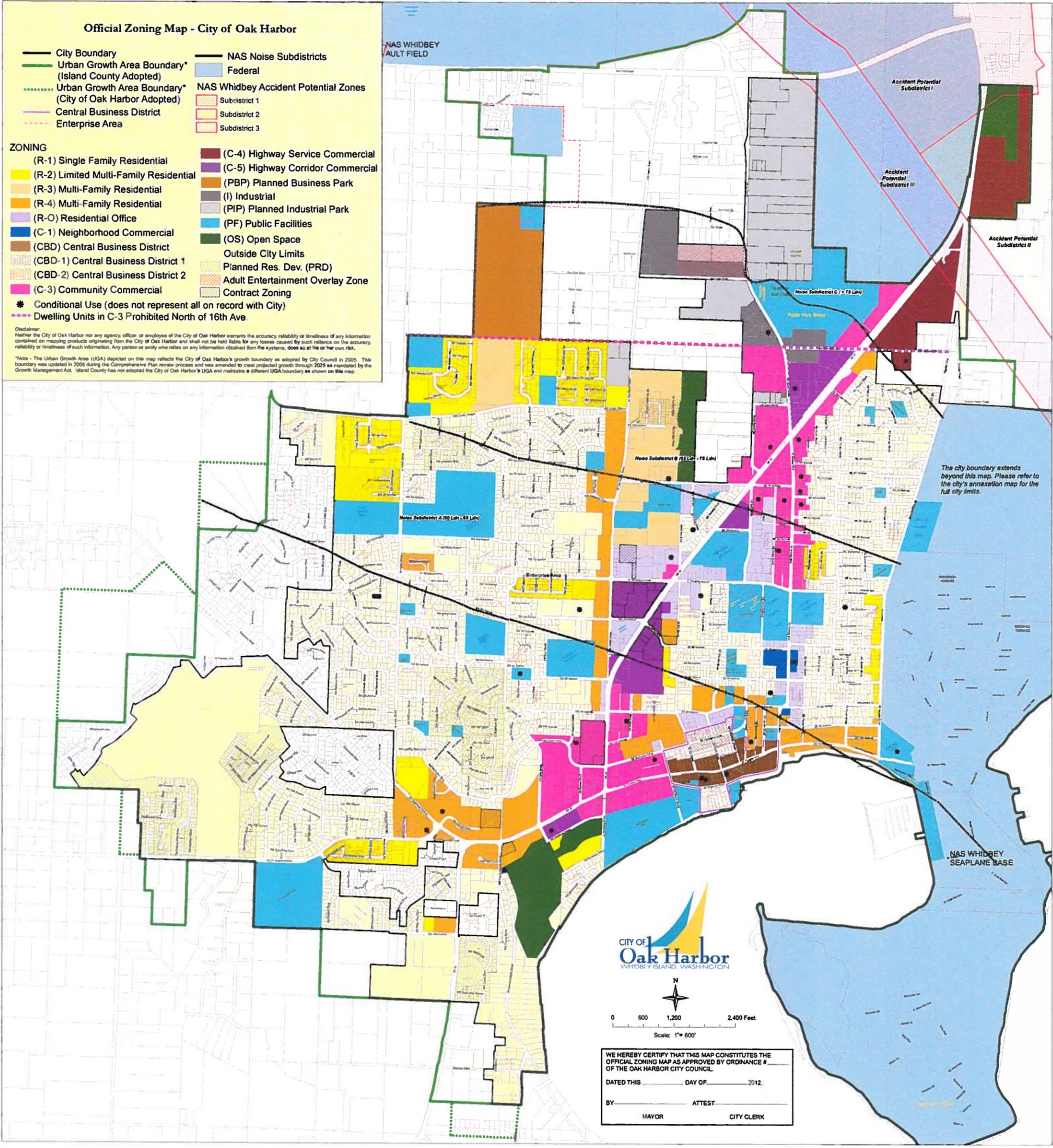


EXHIBIT A

Nightclub Ordinance

Public Meeting

**City of Oak Harbor
Planning Commission Memo**

Date: April 13, 2012

Subject: Restricting size of Nightclubs
by zoning districts

FROM: Cac Kamak, AICP
Senior Planner

PURPOSE

The City has received a request to consider restricting Nightclubs based on size. The request is based on impacts (noise, loitering, etc) that large nightclubs are having on surrounding uses. The purpose of this memo is to provide the Planning Commission with information on current codes and regulations regarding Nightclubs¹.

Since the request originated from the public, it is appropriate for the Planning Commission to consider this item and take public comment. Comments and discussions at the meeting can help frame the problem and also provide options/amendments to pursue.

BACKGROUND

The City Council has received several complaints about the impact of large nightclubs on surrounding uses. Most of them originate from residences around the nightclub Element, however, a few comments have also originated from residences along SE Hathaway Street and SE Ireland Street that are in proximity to nightclubs along Pioneer Way. The most common complaint is noise from parking lots adjacent to these uses, but other impacts such as loitering, trespassing, public urinations and lewd conduct are also significant impacts.

The City does have ordinances against excessive noise in OHMC Chapter 6.56 (Exhibit A). The Police Department is aware of these impacts and respond to or provides their presence at these locations when resources are available. However, police presence alone may not fully address the noise problem since the voice and sounds of a large group of patrons leaving the nightclub is still high even though individuals are well within the public nuisance noise levels.

The nightclub business owners have also instituted various strategies in curbing the noise and impacts by implementing security and by providing options for the patrons so that the mass exodus from the club at closing can be regulated. These measures have had minimum effects on the impacts.

Since the impacts from nightclubs have been continuous with little to no relief, citizens impacted by the use have requested a change to the code to restrict nightclubs by size as a way to reduce the number of people that can congregate or exit a nightclub with the hope

¹ The term Nightclub is being used loosely in this report to uses that have a Nightclub License. The Oak Harbor Municipal Code (OHMC) defines Nightclubs only in the Business License and Regulations Chapter. Nightclub is not specifically defined or listed as a use in any of the zoning districts.

that it will help reduce noise impacts and also prevent other impacts associated with large groups.

DISCUSSION

Nightclubs are regulated by OHMC Chapter 5.22 under the Business Licenses & Regulation section (Exhibit B). As defined in OHMC 5.22.010, any use such as but not limited to a restaurant, bar, tavern, cocktail lounges etc, that will provide music, singing, dancing or a combination of these activities past 10 pm is required to obtain a “Nightclub” license. The regulations exempt establishments from obtaining a “Nightclub” license for music if the food sales contribute to 75% or more of the gross business income. Therefore, it is important to note that currently the term “Nightclub” in the OHMC is used only in reference to the license and is not listed as a “Use” in any of the zoning districts because any use can get a “Nightclub” license if they are going to provide for activities as defined above.

Currently six establishments have obtained “Nightclub” licenses in Oak Harbor. They are Elements, Seven West, Off the Hook, Oak Harbor Tavern, El Cazador and Mi Pueblo. These six establishments can be categorized as bars, taverns or restaurants. These are all permitted uses in the CBD, Central Business District, C3, Community Commercial District and C5, Highway Corridor Commercial District.

There are several questions that arise in considering the request to reduce the size of uses that have “Nightclub” licenses.

- Should the size restriction that is being requested apply only to uses that apply for a “Nightclub” license? - since a “Nightclub” license is required only if activities defined above are past 10pm, this may address the late night impacts, however, it may not apply to other potential large establishments such as Brew Pubs, Billiards and Pool Hall, Theatre, Conference Center etc., that can generate similar impacts.
- Should a size restriction for “Nightclub” license applicants apply to only certain districts? – Most of today’s complaints on impacts are originating in the CBD district.
- If the restrictions should apply to only certain districts (CBD) and if the impacts are related to large groups exiting uses after 10 pm, should there be a general size limitation on uses in that district? – Even though many of today’s complaints originate from “Nightclub” license holders, similar impacts can be caused by other uses. Restricting general size requirements may have other impacts such as redevelopment and economic vitality.
- One of the suggestions made was to limit the occupancy load for “Nightclub” license holders. This is not a practical solution and is difficult to review, regulate, monitor and enforce. It may also not be legally defensible. Occupancy limits are national or state adopted standards and the City cannot arbitrarily pick a limit less than those standards for a particular use. Restrictions by area are more practical and achievable. However, picking the area/size of these uses that will achieve the desired result will be the challenge.

It is natural for the community to focus on the current impacts based on the layout of uses today. Uses change over time and so will the impacts. It would be wise to consider changes, if any, in the larger context of the zoning district and all the permitted and

conditional uses that can potentially develop in the future. The zoning regulations for the CBD district (Exhibit C) have been attached for your reference.

RECOMMENDATIONS

This memo is to provide the Planning Commission with information on this issue. The item has been placed on the agenda and advertised so that the Planning Commission can provide an opportunity to the public, impacted citizens and business owners to give input and comments on the issue. No action is required on the item at this time. Any direction that comes out of this public input process will be used to present changes for consideration. Those changes will go through a formal approval process that will include public hearings at the Planning Commission.

Attachments:

Exhibit A – OHMC 6.56 Public Nuisance Noise

Exhibit B – OHMC 5.22 Nightclubs

Exhibit C- OHMC 19.20 Article VIII CBD Central Business District

Chapter 6.56
PUBLIC NUISANCE NOISES

Sections:

- 6.56.010 Findings and declaration of necessity.
- 6.56.020 Unnecessary noise prohibited.
- 6.56.030 Specific noises prohibited.
- 6.56.040 Further relief under the law.

6.56.010 Findings and declaration of necessity.

The making, creation or maintenance of excessive, unnecessary or unusual loud noises which are prolonged and unusual in their time, place and use affect and are a detriment to public health, comfort, convenience, safety, welfare and prosperity of the people of the city of Oak Harbor. The necessity in the public interest for the provisions, controls and prohibitions of this chapter is declared to be a matter of legislative determination and public policy; and it is further declared that the provisions, controls and prohibitions of this section are in pursuance of and for the purpose of securing and promoting the public health, comfort, convenience, safety, welfare and prosperity and the peace and quiet of the city of Oak Harbor and its inhabitants. (Ord. 597 § 1, 1981).

6.56.020 Unnecessary noise prohibited.

It is unlawful for any person to make, continue, or cause to be made or continued any excessive, unnecessary or unusual loud noise or any noise which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others, within the city of Oak Harbor. (Ord. 597 § 2, 1981).

6.56.030 Specific noises prohibited.

(1) The following acts, among others, are declared to be loud, disturbing and unnecessary noises in violation of this chapter, but the following enumeration shall not be deemed to be exclusive, namely:

(a) Horns, Signaling Devices, Etc. The sounding of any horn or signaling device on any automobile, motorcycle or other vehicle on any street or public place of the city, except as a danger warning; the creation by means of any such horn or signaling device of any unreasonably loud or harsh sound; and the sounding of any such horn or signaling device for any unnecessary and unreasonable period of time. The use of any horn or signaling device, except one operated by hand or electricity; the use of any horn, whistle or other device operated by engine exhaust; and the use of any such horn or signaling device for any purpose when traffic is delayed, except as a danger warning;

(b) Radios, Phonographs, Sound Systems. The using, operating or permitting to be played, used or operated any machine or device such as a radio receiving set, musical instrument, phonograph, CD player, tape player or recorder, sound system, or other machine or device used for the producing or reproducing of sound in such a manner so as to disturb the peace, quiet and comfort of the neighboring inhabitants or at any time with louder volume than is necessary for convenient hearing of the person or persons who are in the room, vehicle or chamber in which such machine or device is operated

and who are voluntary listeners thereto;

(c) Operation of Radios, Phonographs and Sound Systems in the Night. The playing, using, operating or permitting to be played, used or operated any such radio receiving set, musical instrument, phonograph, CD player, tape player or recorder, sound system machine or device between the hours of 9:00 p.m. and 7:00 a.m., the next morning, in such a manner as to be plainly audible at a distance of 75 feet from the building, apartment, condominium, structure, vehicle or other location where the machine or device is located;

(d) Loudspeakers, Amplifiers for Advertising. The using, operating or permitting to be played, used or operated any radio receiving set, musical instrument, phonograph, CD player, tape player or recorder, loudspeaker, sound amplifier, sound system or other machine or device for the producing or reproducing of sound which is cast upon the public streets for the purpose of commercial advertising or attracting the attention of the public to any building or structure;

(e) Yelling, Shouting, Etc. Yelling, shouting, hooting, whistling or singing on the public street, particularly between the hours of 9:00 p.m. and 7:00 a.m., the next morning, or at any time or place so as to annoy or disturb the quiet, comfort or repose of persons in any office, or in any dwelling, hotel or other type of residence, or any persons in the vicinity;

(f) Animals, Birds, Etc. The keeping of any animal or bird which by causing frequent or long continued noise shall disturb the comfort or repose of any persons in the vicinity;

(g) Noisy Operation of a Vehicle. Operating or using any automobile, truck, motorcycle, or other vehicle in such a manner as to create the squealing or chirping of tires, loud and unnecessary grating, grinding, rattling or other noise, except as deemed necessary by those operating or using a vehicle for emergency response. It shall be unlawful for a vehicle to emit excessive loud exhaust or other operating noises. Mufflers shall be in such condition so that they will not create unreasonably loud noises;

(h) Construction, Demolition or Repairing of or on Buildings, Structures or Other Property. The erection (including excavation), demolition, alteration or repair of or on any buildings, structures or other property other than between the hours of 7:00 a.m. and 9:00 p.m., on weekdays, except in the case of urgent necessity in the interests of public health and safety, and then only with a permit from the building official, which permit may be granted for a period not to exceed three days or less while the emergency continues and which permit may be renewed for a period of three days or less while the emergency continues. If the building official should determine that the public health and safety will not be impaired by the erection, demolition, alteration or repair of or on any building, structures or other property on weekends and/or within the hours of between 8:00 a.m. and 5:00 p.m., and if he/she shall further determine that substantial loss or inconvenience would not result to any party in interest, the building official may grant permission for such work to be done within the hours of 8:00 a.m. and 5:00 p.m., upon application being made at the time the permit for the work is issued or during the progress of the work;

(i) Vehicle Stereos, Radios, Etc. Operating a motor vehicle which produces, creates, generates, amplifies, continues or causes to be produced, created, generated or

amplified any excessive noise or sound, when such vehicle is being driven or is parked on public property, public ways, or public rights-of-way. For the purpose of this section, the term "excessive noise" shall mean noise or sound which injures or endangers the comfort, repose, peace, safety or health of a human being, or annoys or disturbs a reasonable person and which is produced, created, generated, or amplified by radios, stereos, television equipment, electronic audio equipment, musical instruments and similar devices which is plainly audible to any person 30 feet or more from the motor vehicle which produces, creates, generates, amplifies, continues or causes to be produced, created, generated or amplified the excessive noise or sound and the term "plainly audible" means any person who can hear the content of the sound produced by the noise source including, but not limited to, musical rhythms, spoken words, and vocal sounds.

(2) Noise Permit and Parade Permit as Exceptions.

(a) Noise Permit. The city council may grant a permit to make noise or perform acts otherwise controlled or prohibited by this chapter upon application by a person specifying the nature and extent of noise to be made or continued, or the act to be performed, upon a determination by the city council that to deny the permit under the circumstances surrounding the making of the application would create undue hardship upon the applicant, and upon a further determination by the city council that to grant the permit would not create an undue and prolonged hardship on others, for whose benefit and protection the noise or act is prohibited by this chapter. Any permit so granted may contain conditions or requirements upon which it is granted as the city council deems necessary to minimize the adverse effect upon the people of the community or surrounding neighborhood which may be affected by granting the permit, and the permit shall specify a reasonable time for which it is to be effective. In addition to the basis of undue hardship as a standard for granting such a permit, the city council may grant such a permit upon determination that:

(i) The granting of the permit is necessary to allow applicant to modify his customary activities so as to comply with this chapter, if the city council determines that such customary activity of the applicant was not originally undertaken or performed under circumstances and in a manner evidencing a disregard for the rights of others; or

(ii) The activity, operation or noise source will be of temporary duration and cannot reasonably be performed or controlled in such a manner so as to comply with the provisions of this chapter; or

(iii) 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.

(b) Parade and Motorcade Permits. The provisions, controls and prohibitions of this section shall not apply to noise made by acts performed by bona fide participants in a parade or motorcade authorized by a permit issued pursuant to the provisions of OHMC 5.36.010 through 5.36.030.

(3) Additional Remedies – Injunction and Summary Abatement.

(a) Injunction. The making or continuing of noise or the performing of acts in violation of this chapter which causes discomfort or annoyance to reasonable persons of normal sensitiveness or which endangers the comfort, repose, health or peace of residents in the area affected by the unlawful act or noise is a public nuisance subject to abatement by a restraining order or injunction issued by a court of competent jurisdiction.

(b) Abatement. Any unlawful act or noise prohibited by this chapter shall be subject to abatement as provided by law. (Ord. 1511 § 1, 2007; Ord. 1329 § 1, 2002; Ord. 939 § 1, 1992; Ord. 597 § 3, 1981).

6.56.040 Further relief under the law.

Nothing in this chapter shall be construed to limit the city's or any person's rights or powers to obtain relief applicable under state or federal law. (Ord. 597 § 5, 1981).

This page of the Oak Harbor Municipal Code is current through Ordinance 1604, passed May 17, 2011.

Disclaimer: The City Clerk's Office has the official version of the Oak Harbor Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

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Chapter 5.22 NIGHTCLUBS

Sections:

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

5.22.010 Definitions.

(1) "Nightclub" means any "premises" as defined herein on which any music, singing, dancing or other combination of these activities is permitted as entertainment after 10:00 p.m., on one or more days per week. The playing of incidental music on any premises where the receipts for the sale of food constitute 75 percent or more of the gross business income of the establishment shall not be considered a "nightclub" for purposes of this chapter, unless an opportunity for social dancing is provided on the premises.

(2) "Premises" means any room, place, or space whatsoever in the city of Oak Harbor which is open to the general public in connection with any hotel, restaurant, cafe, club, tavern or eating place directly or indirectly selling, serving, or providing the public liquor, with or without food.

(3) "Liquor" means all beverages defined in RCW 66.04.200.

(4) "Person" means one or more natural persons of either sex, firms, copartnerships and corporations; whether acting by themselves or by servant, agent or employee.

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

5.22.020 License required.

It is declared to be unlawful for any person to conduct, manage or operate a nightclub unless such person is the holder of a valid license from the city of Oak Harbor so to do, obtained in the manner provided in this chapter. A first violation of the requirement to obtain a license shall be a civil infraction filed pursuant to Chapter 1.28 OHMC, punishable by a fine of \$250.00. A second violation shall be a civil infraction punishable by a fine of \$500.00. A first or second violation of the requirement to obtain a license shall be a civil offense subject to the procedures of Chapter 1.28 OHMC. Thereafter, further violation of the requirement to obtain

a license of this chapter shall be a misdemeanor punishable by a fine not exceeding \$1,000, up to 90 days in jail, or both such fine and jail time. (Ord. 1544 § 1, 2008; Ord. 321 § 2, 1972).

5.22.030 Issuance restrictions.

No license shall be issued to:

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

5.22.040 Filing of application.

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

5.22.045 License conditions.

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

traffic control. Periodic review of the efficacy of the imposed conditions may also be a condition of the nightclub license.

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

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

5.22.050 Annual license fee.

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

5.22.060 Proration of license fee.

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

5.22.065 Violation of license conditions.

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

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

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

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

5.22.070 Revocation of license.

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

- (1) The license was procured by fraud or false representation of fact; or
- (2) The applicant is barred from holding a nightclub license due to violation of any of the restrictions of OHMC 5.22.030; or

(3) The conditions imposed upon the license pursuant to OHMC 5.22.045 were knowingly and willfully violated by the person holding such license or at his/her direction; or

(4) A crime or offense involving moral turpitude is committed on the premises in which the nightclub is conducted with knowledge of the licensee.

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

5.22.080 License – Compliance required.

In addition to the conditions imposed pursuant to OHMC 5.22.045, all nightclub licensees shall comply with the rules or regulations of the Washington State Liquor Control Board relating to the sale of intoxicating liquor. A finding of violation by the Washington State Liquor Control Board shall also constitute a violation of license conditions pursuant to OHMC 5.22.065. (Ord. 1544 § 1, 2008; Ord. 321 § 8, 1972).

5.22.090 Revision of license conditions.

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

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

5.22.100 Appeal to court.

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

Article VIII. CBD – Central Business District

19.20.300 Purpose and intent.

The central business district (CBD) is intended to preserve and enhance the unique harbor location of the city's heritage with the character of the traditional center of social, cultural and retail activity. Mixed use developments, combining retail and visitor-oriented activities on the ground floor with office, retail and residential uses above, are required. Within the district, pedestrian-oriented activity is encouraged. Standards and design guidelines are adopted to enhance and maintain a pedestrian-friendly environment. Incentives are also provided to encourage the development of mixed use projects. Subdistricts CBD-1 and CBD-2 are created in order to provide for flexibility of residential development within specific areas of the central business district. Large surface parking lots are not encouraged. Shared clustered parking areas in the middle of blocks are allowed away from street frontages. Access driveways are to be kept at a minimum to promote safety and convenience of pedestrians. (Ord. 1573 § 1, 2010; Ord. 1555 § 8, 2009).

19.20.305 Principal permitted uses.

In a central business district (CBD, CBD-1 or CBD-2), the following are principal permitted uses (for the purposes of this district only, uses considered to be "retail" are denoted with an (R)):

- (1) Antique shop (R);
- (2) Artist's studios and supplies (R);
- (3) Bakery, retail only (R);
- (4) Bank;
- (5) Barber and beauty shops;
- (6) Bars (R);
- (7) Bicycle shop (R);
- (8) Billiards and pool hall (R);
- (9) Blueprinting;
- (10) Bookstore (R);
- (11) Brew pub (R);
- (12) Camera and supply shop (R);

- (13) Clothes and apparel shop (R);
- (14) Cocktail lounge (R);
- (15) Coffee house (R);
- (16) Confectionery store (R);
- (17) Conference center;
- (18) Data processing facility;
- (19) Delicatessen (R);
- (20) Department store (R);
- (21) Dry cleaners;
- (22) Furniture shop (R);
- (23) Florist shop (R);
- (24) Gift shop (R);
- (25) Grocery store, neighborhood, provided gross floor area shall not exceed 12,000 square feet (R);
- (26) Hardware store (R);
- (27) Hobby shop (R);
- (28) Hotel and motel;
- (29) Ice cream shop (R);
- (30) Interior decorator studio (R);
- (31) Jewelry store (R);
- (32) Leather goods store (R);
- (33) Music store (R);
- (34) Offices;
- (35) Office supply and equipment store (R);

- (36) Pet shop (R);
- (37) Pharmacy and drug store (R);
- (38) Photographic film processing and associated retail sales (R);
- (39) Photographic studio and supplies;
- (40) Photocopying;
- (41) Post office;
- (42) Printing shop;
- (43) Residential uses, provided:
 - (a) In the CBD district: mixed use sites with multiple street frontages may locate dwelling units on the ground level on any street frontages other than Pioneer Way;
 - (b) In subdistricts CBD-1 or CBD-2: dwelling units may be the primary use of the site;
- (44) Restaurant, including sidewalk cafe (R);
- (45) Schools for the fine arts;
- (46) Shoe repair shop (R);
- (47) Shoe store (R);
- (48) Sporting goods shop (R);
- (49) Tailor shop (R);
- (50) Tavern (R);
- (51) Taxi service;
- (52) Theater;
- (53) Tobacco shop (R);
- (54) Toy store (R);
- (55) Travel agencies;
- (56) Trophy shop (R);

(57) Upholstery shop;

(58) Variety store (R);

(59) Visitor information center;

(60) Other uses similar to those identified above and having equal or less impact on the purposes of this section. (Ord. 1573 § 1, 2010; Ord. 1555 § 8, 2009).

19.20.310 Accessory permitted uses.

In a central business district (CBD, CBD-1, or CBD-2), the following are accessory permitted uses:

- (1) A use customarily incidental and subordinate to a principal use permitted outright;
- (2) On-site hazardous waste treatment and storage facilities as an accessory use to any activity generating hazardous waste and lawfully allowed in this zone; provided, that such facilities meet the state siting criteria adopted pursuant to the requirements of RCW 70.105.210;
- (3) Television satellite dish reflectors, roof-mounted and within building setback lines not to exceed the height limitations and other standards as set out in OHMC 19.20.320; provided said height limitation may be increased when such height is permitted per OHMC 19.28.040 and 19.28.050. (Ord. 1573 § 1, 2010; Ord. 1555 § 8, 2009).

19.20.315 Conditional uses permitted.

The following principal uses and their accessory uses may be permitted in a central business district (CBD, CBD-1, or CBD-2) when authorized by the hearing examiner:

- (1) Coffee kiosk;
- (2) Dancehall;
- (3) Governmental buildings for administrative or protective services;
- (4) Health club;
- (5) Land reclamation with water-dependent marine development;
- (6) Parking lots or garages not in conjunction with permitted uses;
- (7) Places of entertainment and amusement, if conducted within a wholly enclosed building;
- (8) Private nursery school, kindergarten, or child day care center not qualifying as a home occupation on a legal lot; provided, there is established in connection therewith an outdoor play

area having a minimum area of 1,000 square feet plus an additional 50 square feet for each child in excess of eight;

(9) Public utility and communications facility;

(10) Transit terminals;

(11) Swimming pools or beaches, public or private;

(12) Other uses similar to uses permitted or conditionally permitted and normally located in the central business district; provided, that there shall be no manufacturing, compounding, processing or treatment of products other than that which is essential to the retail store or business where all such products are sold on the premises. (Ord. 1573 § 1, 2010; Ord. 1555 § 8, 2009).

19.20.320 Density provisions.

In CBD, CBD-1 and CBD-2, the following density provisions apply:

(1) Allowable density:

District	Minimum	Maximum
CBD	None	None
CBD-1	9 du/ac	None
CBD-2	13 du/ac	None

(2) Minimum lot area, no limitation;

(3) Minimum lot width, no limitation;

(4) Minimum lot depth, no limitation;

(5) Minimum front yard, no limitation, except when opposite a residentially zoned property, then a 10-foot front yard is required. Front yard setback may also be increased to 10 feet if needed for traffic safety; front yard setback shall be provided so as to maintain a 12-foot sidewalk measured from the existing curb or future curb line;

(6) Minimum side yard, no limitation except when abutting a residentially zoned property, then 10 feet each. For corner lots, side yard may also be increased to 10 feet if needed for traffic safety;

(7) Minimum rear yard, no limitation except when opposite a residentially zoned property, then 10-foot rear yard is required or except when abutting a public street where the setback may be increased to 10 feet if needed for traffic safety;

(8) Maximum building height; 35 feet; except:

(a) In CBD: building height may be increased to 45 feet if ground floor retail space (as defined in OHMC 19.20.300) is developed in conjunction with a residential use;

(b) In CBD-2: building height may be increased to 45 feet for residential development (without a retail component);

(c) In CBD: building height may be increased to 45 feet for nonresidential uses or mixed use projects upon approval of the design review board and by providing additional urban amenities as defined in the Oak Harbor commercial and industrial design guidelines;

(d) In CBD: building height may be increased to 55 feet for nonresidential uses or mixed use projects upon approval of the design review board and by providing additional urban amenities as defined in the Oak Harbor commercial and industrial design guidelines. The design review board shall specifically review the proposed project and building height for its impacts on waterfront and mountain views and require reasonable mitigation as necessary;

(9) Maximum lot coverage, no limitation;

(10) Parking.

(a) Nonresidential Uses. There shall be no required parking for nonresidential uses; except, however, if parking is provided, it shall meet the parking space size and access requirements of OHMC 19.44.110;

(b) Residential uses shall provide parking per Chapter 19.44 OHMC, except that guest parking need not be provided. If guest parking is provided it shall meet the parking space size and access requirements of OHMC 19.44.110;

(c) Any parking provided beneath a permitted residential use shall be enclosed;

(d) No more than 50 percent of the gross floor area along pedestrian-oriented streets may be used for residential parking;

(11) Design Standards.

(a) Development shall be in accordance with the provisions of the Oak Harbor commercial and industrial design guidelines;

(b) Residential development shall have ground level access independent of nonresidential uses from an inside lobby, elevators and/or corridors, from an enclosed interior court, or from other separate access provisions;

(c) Nonresidential development along Pioneer Way, between SE City Beach Street and SE Midway Boulevard, shall meet the following standards:

- (i) Ground-floor, nonretail development shall not comprise more than 50 percent of the lineal street frontage of the lot;
- (ii) Window areas for nonresidential portions of a building's facades shall not be less than 40 percent or greater than 60 percent of the total facade area;
- (iii) Conformance with the above standards shall be determined by using the design guideline applicability standards established under OHMC 19.48.040;
- (d) Residential development in subdistrict CBD-1 or CBD-2 shall be under a planned residential development per Chapter 19.31 OHMC;
- (e) Nonresidential development with building heights greater than 45 feet, as approved by the design review board, shall provide a minimum of 450 square feet of pedestrian-oriented space (as defined in the Oak Harbor commercial and industrial design guidelines) plus an additional 25 square feet for each vertical foot of building height above 45 feet;
- (f) All buildings in the CBD greater than three stories must set back upper stories by at least 10 feet. (Ord. 1573 § 1, 2010; Ord. 1555 § 8, 2009).

19.20.325 Conditions governing permitted uses.

All principal uses permitted outright in a CBD, CBD-1, or CBD-2 district shall meet the following conditions:

- (1) All business, service, repair, storage, or merchandise display shall be conducted within a wholly enclosed building, except for the following:
 - (a) Off-street parking and loading;
 - (b) Food and drink service in connection with cafes, restaurants or other eating establishments.
- (2) The use of property must not result in the creation of offensive odors or offensive or harmful quantities of dust, smoke, exhaust fumes, noise or vibration.
- (3) Landscaping and buffers shall be constructed and maintained in accordance with the provisions of Chapter 19.46 OHMC. (Ord. 1573 § 1, 2010; Ord. 1555 § 8, 2009).

19.20.330 Site plan and design review required.

Site plan and design review shall be required as per Chapter 19.48 OHMC. (Ord. 1573 § 1, 2010; Ord. 1555 § 8, 2009).

Sign Code

Public Hearing

Memo

To: Members of the Planning Commission
Cc: Steve Powers, Interim City Administrator
From: Ethan Spoo, Senior Planner
Date: 4/17/12
Re: Sign Code Update – Interim Sign Code Extension

Purpose

In order that Planning Commission can continue its discussion on the draft temporary sign code, staff will be recommending that City Council extend the interim sign code. Authority to extend the interim sign code is granted by RCW 36.70A.390 which says that an “interim zoning ordinance...may be renewed for one or more six-month periods if a subsequent public hearing is held and findings of fact are made prior to each renewal.” The authority to renew the interim code rests with City Council. This agenda item is simply a notification to Planning Commission that staff will be requesting that City Council renew the interim sign code for another six-month period. Staff will return to Planning Commission with the draft temporary sign code in May. The draft temporary sign code will include comments voiced at the March Planning Commission meeting.

Recommendation

Staff recommends that Planning Commission hold a public hearing to take testimony regarding extending the interim sign code for an additional six-month period. Any public testimony will be included in information forwarded to the City Council. Another public hearing will be conducted before the City Council when extension of the interim sign code is considered.

Shoreline Master Program Update

Public Meeting

Memo

To: Members of the Planning Commission
Cc: Steve Powers, Interim City Administrator
From: Ethan Spoo, Senior Planner
Date: 4/17/12
Re: Shoreline Master Program Update - Introduction

Purpose

This memorandum introduces the shoreline master program update project to the Planning Commission. The project has been an ongoing since 2010. Staff have provided several updates to the Planning Commission in pre-meetings and at the regular meeting since 2010. This introduction marks the formal start of discussions and consideration of the shoreline master program update by Planning Commission.

Please note that the draft SMP document will be delivered to Planning Commission at the meeting. In advance of the meeting staff are requesting that Planning Commission focus on the introduction to the SMP update project provided by this memorandum.

Introduction and Background

The Shoreline Management Act

In 1971, the State adopted the Shoreline Management Act (SMA) to address the “uncoordinated and piecemeal development” of the state’s shorelines. The legislature realized that most of the shoreline was under private ownership and was a unique and limited resource worth protecting. As such, legislation was needed to address development and activity along the shoreline. The three main objectives of the SMA were to (1) protect the shoreline environment, (2) promote and enhance public access, and (3) Give priority to uses which require a shoreline location. It is important to note that the SMA emphasizes all three of these objectives, not just protecting the shoreline environment. The SMA also required local jurisdictions (cities and counties) to adopt a shoreline master program to address these three objectives.

What is a shoreline master program?

A shoreline master program (SMP) is a local plan for managing the shoreline which implements the SMA. SMPs contain goals, policies, and regulations for shoreline protection, use, and development. SMPs are unique because they serve as both a comprehensive plan and development regulations in the same document. SMPs are also unique amongst local regulations, because they require state approval. The City’s comprehensive plan and zoning codes are approved locally, but state approval is not required. This is a noteworthy distinction, because the State has the ultimate authority to approve an SMP for a jurisdiction in compliance with the SMA if the local jurisdiction fails to act or adopts an insufficient SMP.

Shoreline planning, is therefore, a joint City-state responsibility. The City writes, adopts and administers the SMP. Administering the SMP means that the City reviews developments for conformance with the plan and issues permits, or exemptions as necessary. The State, for its part, reviews the SMPs, provides funding in the form of a grant to update the SMP, and provides final approval. The state also has the final approval authority for certain permits such as conditional uses and variances.

The new state Guidelines and “no net loss.”

In the 1990s, there was a push to update the SMPs with science. When the SMPs were originally written in the early 1970s, they included very little science. Environmental interests wanted to see new Guidelines adopted which would prohibit any further impacts to the shoreline environment and its functions (hydrology, vegetation, habitat, etc.). Businesses and property owners took a slightly different view. Rather than prohibit impacts, they pointed out that the SMA was also about providing for economic use of the shoreline in the form of water-oriented and water-dependent uses (piers, ports, view restaurants, etc). If development of the shoreline with water-oriented/water-dependent uses was to be promoted, allowance for some impacts to the shoreline environment would be necessary. After years of negotiation and conflict, the interest groups settled on a compromise known as “no net loss” in 2003.

No net loss means that the existing quality of shoreline functions is maintained over time. It does not mean that there cannot be impacts to these functions, only that impacts should be avoided wherever possible, and mitigated when it is not possible to avoid impacts. There are some common misperceptions about what no net loss means for property owners. No net loss does not mean any of the following:

- No development is allowed in the shoreline,
- The government is going to take away shoreline property,
- The government is going to require that you relocate or discontinue existing uses within the shoreline

In addition, it is important to note that no net loss does not apply retroactively; existing uses can be kept and maintained as is, and even improved or expanded in some cases. Only new development and major redevelopment are subject to the no net loss standard. Having said that, there is no doubt that no net loss does place restrictions on the use of property within the shoreline.

In 2003, the state adopted new Guidelines for SMPs which incorporated the no net loss requirement. These new Guidelines also require that the City of Oak Harbor update its SMP by December 1, 2012. Hence, the City’s current effort to update its SMP. The Guidelines are very specific as regards certain topics like shoreline stabilization, offering little leeway for the City to insert its local preference. For other topics, however, the Guidelines are much less specific and the City has options in how it meets the Guidelines. However, even on topics where the City has more flexibility, the City is still required to show that it is meeting no net loss of shoreline ecological functions.

Project history and outline

The State gave a \$125,000 non-competitive grant to the City of Oak Harbor in 2010 to update our shoreline master program. As is common in many other jurisdictions across the state, the City chose to use the grant money to hire a shoreline consultant. The consultant contract and the project began in August of 2010.

The State has a standard scope of work and contract which guides updates to SMPs according to five distinct project phases described below. Oak Harbor is near the very end of Phase 3 and is beginning work on both Phases 4 and 5.

- **Phase 1: Preliminary Assessment of Shoreline Jurisdiction and Public Participation Plan.** In this phase, the City determined where shoreline jurisdiction would apply and created a public participation plan.
- **Phase 2: Shoreline Inventory and Characterization.** The City's consultant created an "inventory and characterization report" which is an existing conditions document for the City's shoreline. This report documented the existing land uses and environmental characteristics within the City's shoreline and is important because it sets the baseline against which no net loss will be measured in the future. The City must maintain the level of environmental function in its shoreline described in this report.
- **Phase 3: Draft SMP Goals, Policies, Regulations; Preliminary Cumulative Impacts Analysis.** Project staff worked with the ad hoc "Shoreline Advisory Committee" to draft the SMP. There were a total of eight meetings of this committee. The consultant also prepared what is called a "cumulative impacts analysis" which measures whether the no net loss standard is being met by the draft SMP.
- **Phase 4: Restoration Planning; Revisit Phase 3 products.** In this phase, project staff will create a restoration plan which will identify opportunities where the shoreline can be restored. This is a non-binding plan.
- **Phase 5: Local Adoption.** Staff will work with Planning Commission and City Council to review, modify, and adopt the draft SMP.

At the time of this staff report, staff had submitted the draft SMP document and the cumulative impacts analysis to DOE for their initial review. DOE typically takes between 30 and 60 days to review the document. Some cities have chosen to wait to begin Planning Commission meetings until DOE has completed their review, while others have proceeded with Planning Commission discussions. Staff are recommending that Planning Commission begin its review of the draft SMP, with the knowledge that some parts of the SMP could change subject to DOE comment. Staff will apprise Planning Commission of changes requested by DOE.

Public Involvement

There have been a number of opportunities for the public to be involved with this project. Staff have sought to create an open, transparent and accessible process for the SMP update. Up to this point, the major public involvement activities for this project have been:

- **Standing committee reports.** Multiple updates to the Public Works and Governmental Services standing committees all of which were open and advertised to the public.
- **Community visioning meeting.** Staff conducted a visioning meeting in July, 2011 briefing the public on the project and seeking their input on issues of concern as regards the shoreline. A summary of the community visioning meeting is available on the project website at <http://www.oakharbor.org/shoreline> .
- **Shoreline Advisory Committee meetings.** Staff facilitated eight meetings of the Shoreline Advisory Committee which met from July, 2011 – April 2012. Key issues for the committee included public access, views, shoreline setbacks, vegetation, and non-conforming development, among others. Staff will brief Planning Commission on each of these topics over the coming months. Summary notes from each of these meetings are posted on the project website at <http://www.oakharbor.org/shoreline> . All meetings were advertised publicly and included public comments periods.
- **Shoreline property owner's meeting.** On April 11, 2012, staff briefed property owners on the draft SMP and those provisions which affect property owners most directly.

- **Planning Commission meetings.** Staff anticipate that there will be four or five Planning Commission meetings on this topic as well as a few City Council meetings.

Organization of the draft SMP

The draft SMP is organized into seven chapters. Certain chapters apply to all areas within shoreline jurisdiction, while other chapters apply to specific areas or uses within jurisdiction. Below is a brief description of each chapter of the document.

- **Chapter 1: Introduction-** This chapter sets up the context for the rest of the document by discussing purpose of the SMA and SMP, where and when the SMP applies.
- **Chapter 2: Environment Designations-** Environment designations are equivalent to shoreline zones. There are seven different proposed environment designations where different intensities of uses are allowed: (1) maritime (2) urban mixed use (3) residential (4) residential bluff conservancy (5) urban public facility (6) conservancy, and (7) aquatic.
- **Chapter 3: General Provisions-** The general provisions apply to all areas within shoreline jurisdiction. Topical areas in this Chapter are generally prescribed by the state Guidelines.
- **Chapter 4: Shoreline Use Provisions-** This chapter applies to specific uses within the shoreline. For instance, all commercial uses are required to adhere to the “commercial” use section in this chapter. The use topics in this chapter are specified in the state Guidelines.
- **Chapter 5: Shoreline Modification Provisions-** modifications are activities or structures which prepare a property for a use. For instance, fill or stabilization for a new use. Modifications generally modify the shoreline environment in some way. This chapter only applies to shoreline modifications including stabilization; dredging and disposal; fill; overwater structures; boat launches; shoreline restoration and ecological enhancement; breakwaters, jetties, and groins. The modification topics in this chapter are specified in the state Guidelines.
- **Chapter 6: Administration-** This chapter deals with administration of permits and exemptions for the SMP. This is the process section of the SMP. Non-conforming development is also discussed in this chapter.
- **Chapter 7: Definitions.**

Staff will be discussing each of these chapters individually with Planning Commission and expect the following schedule for discussion, subject to change depending upon the nature of discussions and changes requested by DOE.

- May – Chapters 1 – 3
- June – Chapter 4
- July – Chapter 5
- August – Chapters 6 and 7.



April 4, 2012

Re: Shoreline Master Program Update

Dear Planning Commission,

We are pleased to inform you that the Shoreline Advisory Committee has completed its work. The Committee is an ad hoc committee formed for the purposes of reviewing and discussing the draft Shoreline Master Program. The Committee met a total of eight times to discuss a variety of topics in Chapters 1-7 of the draft document. Each meeting lasted two hours so each Committee member volunteered 16 hours of their time toward this project, in addition to time spent reviewing materials in advance of meetings.

A few of the topics which garnered the most attention of the Committee include public access, views, vegetation conservation, the potential for pier improvements at Flintstone Park, and non-conforming development. At this point, we are comfortable in recommending the draft SMP to Planning Commission for their review.

Sincerely,



Keith Fakkema



Jill Johnson-Pfeiffer

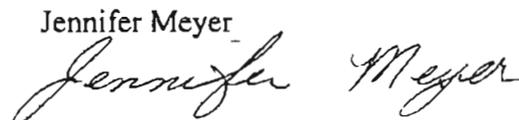


Mahmoud Abdel-Monem

Helen Chatfield Weeks



Jennifer Meyer



Rick Almberg





Introduction to Washington's Shoreline Management Act (RCW 90.58)

Washington's Shoreline Management Act (SMA) was passed by the Legislature in 1971 and adopted by the public in a 1972 referendum. The goal of the SMA is "to prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines."

The Act establishes a broad policy giving preference to uses that:

- protect the quality of water and the natural environment,
- depend on proximity to the shoreline ("water-dependent uses"), and
- preserve and enhance public access or increase recreational opportunities for the public along shorelines.

The SMA establishes a balance of authority between local and state government. Cities and counties are the primary regulators but the state (through the Department of Ecology) has authority to review local programs and permit decisions.

Shoreline master programs

Under the SMA, each city and county adopts a shoreline master program that is based on state guidelines but tailored to the specific needs of the community. More than 200 cities and all 39 counties have shoreline master programs.

Local shoreline master programs combine both plans and regulations. The plans are a comprehensive vision of how shoreline areas will be used and developed over time. Regulations are the standards that shoreline projects and uses must meet.

Local governments may modify master programs to reflect changing local circumstances, new information, or improved shoreline management approaches. All changes to master programs require public involvement. At a minimum, local governments must hold public

hearings. Substantial revisions are usually written with help from citizen advisory committees.

Ecology provides technical assistance to all local governments undertaking master program amendments. Ecology also provides grants (approx-

mately \$425,000 per year) to local governments within the state's Coastal Zone (jurisdictions within the 15 counties with saltwater shorelines).

Most shoreline master programs were originally written between 1974 and 1978. Since then, approximately 25% of these

Where does the Shoreline Management Act apply?

The Shoreline Act applies to:

- all marine waters;
- streams with a mean annual flow greater than 20 cubic feet per second;
- water areas of the state larger than 20 acres;
- Upland areas called "shorelands" 200 feet landward from the edge of these waters;

and the following areas when they are associated with one of the above:

- biological wetlands and river deltas; and
- some or all of the 100-year floodplain including all wetlands within the entire floodplain.

Shorelines of State-wide Significance

The Shoreline Act also states that "the interests of all the people shall be paramount in the management of shorelines of statewide significance."

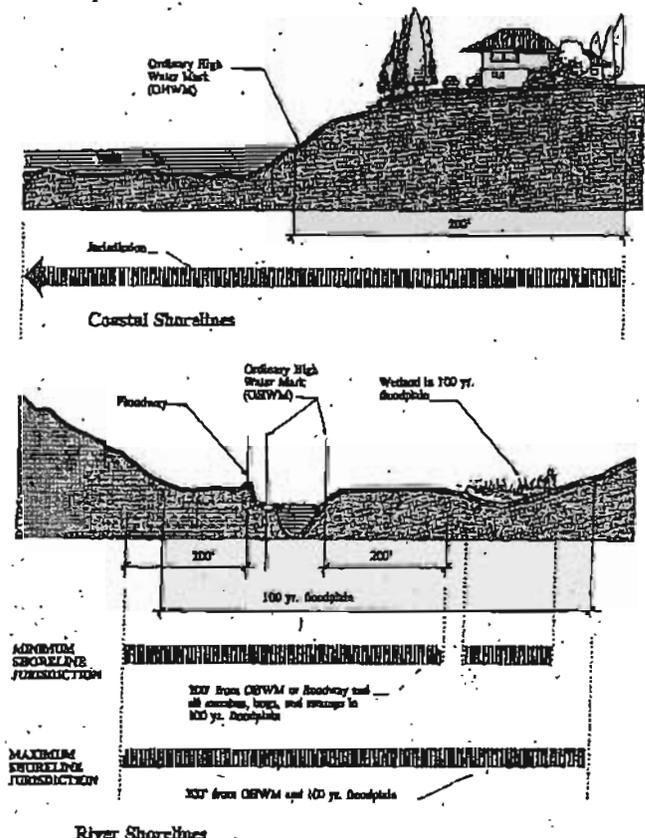
These shorelines are defined in the Act as:

- Pacific Coast, Hood Canal and certain Puget Sound shorelines;
- all waters of Puget Sound and the Strait of Juan de Fuca;

- lakes or reservoirs with more than 1,000 surface acres;
- larger rivers (1,000 cubic feet per second or greater for rivers in Western Washington, 200 cubic feet per second and

greater east of the Cascade crest); and

- wetlands associated with all the above.



The Shoreline Management Act applies to more than 20,000 miles of shorelines: 2,300 miles of lake shores, 16,000 miles of streams, and 2,400 miles of marine shoreline.

programs have been significantly updated; 50% have only had minor amendments, and 25% have never been amended.

Master program amendments are effective after Ecology's approval. In reviewing master programs, Ecology is limited to a decision on whether or not the proposed changes are consistent with the policy and provisions of the Act and state master program guidelines.

Shoreline permits

Each local government has established a system of permitting for shoreline development.

Substantial Development Permits are needed for projects costing over \$5,000; or those which materially interfere with the public's use of the waters.

Some projects and activities are simply prohibited by local master programs or under the policy of the Act. However, it is far more common that the issue is *how* a development should be done - not whether or not it should be done.

Local governments may also issue Conditional Use or Variance permits to allow flexibility and give consideration to special circumstances. Ecology must approve all conditional use and variance permits.

Local governments issue approximately 750 permits every year.

Permit exemptions

The Shoreline Management Act exempts certain developments from the need to obtain a substantial development permit. Among other things, permits are not needed for:

- Single family residences
- Normal protective bulkheads for single family residences
- Normal maintenance and repair of existing structures
- Docks worth less than \$5,000 (salt water) or \$10,000 (fresh water).

- Normal farming activities
- Emergency construction needed to protect property

Activities exempted from the need to acquire a permit must still comply with all substantive policies and regulations of the local master program.

Public involvement and appeals

The Act strongly supports public involvement in shoreline decision making. Citizens participate on advisory boards preparing local master programs, and public comment is required for individual permits.

The Shorelines Hearings and Growth Management Boards are quasi-judicial bodies whose members representing citizen interests. Any aggrieved party may appeal a shoreline permit to the Shorelines Hearings Board. Master program amendments or adoptions may be appealed to a Growth Management Hearings Board (for GMA jurisdictions) or the Shorelines Hearings Board (for non-GMA jurisdictions).

Ecology's role

Most of Ecology's work involves providing technical assistance prior to a local decision.

- Ecology shoreline specialists work with local planners on the phone, at pre-application meetings, and through site visits.
- Ecology works with applicants to make sure the project does not harm shorelines - in many cases the project can be redesigned so that it meets the policies and regulations of the local master program.
- Ecology often receives early notice of a project through SEPA, and works with applicants and local governments before the permit is filed.

After local government issues its permits, Ecology has 21 days to review substantial development permits and 30

Federal Coastal Zone Management Act

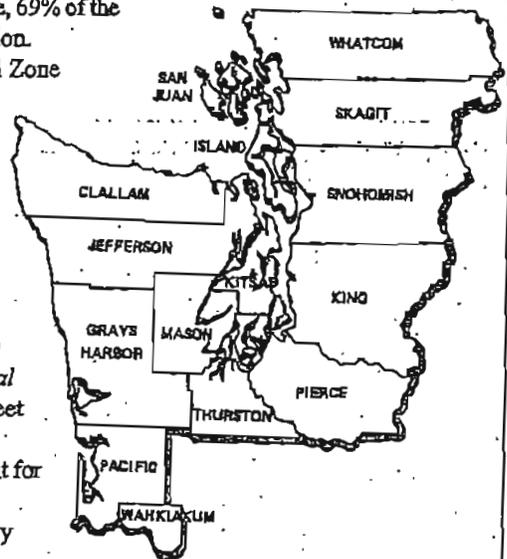
In 1976, Washington became the first state to develop an approved coastal management program under the federal Coastal Zone Management Act, a voluntary federal program that fosters active state involvement in managing the nation's coastal zones. The Shoreline Management Act is the basis of Washington's CZM program.

The coastal program benefits jurisdictions within the fifteen counties bordering Washington's 2,337 miles of saltwater shorelines. The coastal zone is home to almost 4 million people, 69% of the state's population.

The Coastal Zone program gives the state legal muscle over federal projects. The state can require federal projects (and private projects that need federal approval) to meet state standards. This requirement for "federal consistency" is in many

cases the only leverage that the state has to influence federal projects.

The CZM program also provides money to Washington State. Since 1976, the state has received \$2 million every year. This grant pays for Ecology's review of shoreline permits, enforcement, technical assistance, and education. Ecology also awards grants (\$425,000 annually) to local governments for shoreline master program updates, waterfront revitalization plans, education programs, and public access.



days to review conditional use and variance permits. Ecology's role is to determine if the local action is consistent with the local master program and the policy of the Act.

If Ecology disagrees with a local decision on a substantial development permit, Ecology may appeal the decision to the Shoreline Hearings Board.

Ecology must approve or deny all conditional use or variance permits.

Ecology's decisions on conditional use or variance permits may be appealed to the Shorelines Hearings Board.

From 1993 - 2002, local governments issued 7,733 substantial development permits. Of those Ecology appealed 36 to the Shorelines Hearings Board and 453 were appealed by other parties. During those same years local governments issued 2,626 conditional use permits and variances of which 101 were denied by Ecology.

While the primary responsibility to enforce the SMA rests with local governments, Ecology has a duty to insure compliance. This is done through permit review, technical assistance, orders, and penalties.

Shoreline master programs: Making sense of tough issues

Introduction

To promote a healthy dialogue with the public and our local government partners, the Washington Department of Ecology (Ecology) has crafted this document to help answer an array of tough questions that have come up as we work together to manage Washington's shorelines for future generations. The state Shoreline Management Act, adopted by voters in 1972,



ensures that all of us – the public, interest groups, local, state and tribal governments – work together to ensure our shorelines:

- Are kept safe and unpolluted.
- Are developed and managed fairly.
- Give our children and future generations that special "sense of place" we cherish in Washington.

The mechanism for putting new shoreline development regulations and policies in place is called a "shoreline master program." Many people have questions and concerns about how changes to a local shoreline program might affect their homes, the environment, access to public waters and shorelines, and future development in their community.

With more than 30 updated shoreline master programs now in place, we have some on-the-ground experience regarding many issues people are concerned about – and how cities and counties have dealt with them including:

- Home repair and expansion within shoreline buffers and setbacks.
- The impacts of "no net loss of shoreline ecological functions" requirements.
- Shoreline erosion and potential impacts to property and the shoreline environment.

WHY IT MATTERS

Across Washington, about 260 local governments have or soon will be crafting new shoreline development policies and regulations that may affect you.

Many people have raised questions and concerns about how changes to their local "shoreline master program" might affect them, their homes, and future shoreline development in their community.

Ecology and local governments work together to update each shoreline program under an open public process. We want to help address some of the tough issues citizens have raised about shoreline master programs and the updating process.

Contact Information

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Special accommodations

To ask about the availability of this document in a version for the visually impaired, call the Shorelands and Environmental Assistance Program at 360-407-6600.

Persons with hearing loss, call 711 for Washington Relay Service. Persons with a speech disability, call 877-833-8341.

Focus on Shorelines

Shoreline master programs benefits

Shoreline master programs contribute to local and statewide economic vitality by:

- Protecting lives and property by keeping development out of unstable or unsafe areas.
- Helping communities fulfill their vision for future waterfront development and uses in our shoreline areas.
- Providing more certainty to the development community through more consistent shoreline building ordinances and permitting requirements.
- Providing for public access and recreational opportunities in shoreline areas.
- Giving preference to water-dependent uses that rely on shorelines for economic viability.



Master programs also contribute to local and statewide environmental vitality by:

- Helping protect our marine waters, lakes, and stream systems from pollution.
- Protecting the overall health and functions of shorelines and public waters for both public and private use.
- Protecting critical fish and wildlife habitat.
- Restoring unhealthy shorelines and increasing the health of public waters.

Roles and responsibilities: Shoreline master programs

Under the comprehensive shoreline master program update process currently under way, local governments:

- Provide shoreline planning leadership within their jurisdictions and ensure all interests are brought to the table.
- Prepare, adopt, oversee, and enforce their locally-crafted shoreline master programs.
- Send minor and comprehensive shoreline master program updates to Ecology for approval.
- Periodically review and keep their shoreline master programs current.

Under the shoreline program update process, Ecology:

- Provides state guidelines outlining the essential elements that local shoreline master programs must address.
- Provides grants and technical assistance to local governments.
- Reviews and approves local shoreline master programs to confirm consistency with state law and rules.
- Once approved, individual local shoreline master programs become part of the overall state shoreline master program.

Focus on Shorelines

Issue 2: Protecting a house from erosion by armoring the shoreline is no longer allowed

In the past, shoreline erosion threatening a home or business was fought by armoring the shoreline with concrete bulkheads and seawalls, riprap and “revetments” such as sandbags or cement, and other structures designed to harden a shoreline. We now know that hardening a shoreline can endanger neighboring properties and threaten valuable resources, such as salmon, and is best used as a last resort.

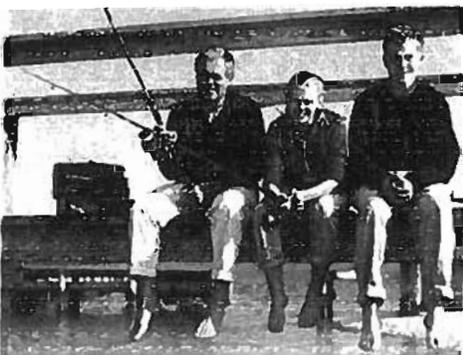


The best way to safeguard homes and businesses is to leave enough room between the shoreline and new structures. That way if erosion occurs, it doesn't threaten those structures. During the past 40 years, we've learned that shoreline erosion is much more a process of nature we need to learn to live with. Eroding marine bluffs feed the growth of beaches that protect existing homes. When we try to stop erosion in these places, it robs existing homes of their natural protection. In some cases, armoring pushes the force of waves and water to nearby properties, hastening erosion there. Our approach to managing shoreline erosion needs to be done thoughtfully and carefully.

Important things to know about shoreline armoring and new shoreline master programs:

- Armoring is expensive and may only provide a short-term solution. We need to have a better set of policies and regulations that don't put properties and homes in harm's way.
- Updated shoreline programs are designed to reduce the need for armoring.
- Private property owners can protect their houses or business structures but are asked to use approaches that respect other people's properties and the natural shoreline.

Issue 3: What “no-net-loss of ecological functions” means to homeowners



It's clear that development along our beaches and shorelines can affect their long-term health and prevent people from using and enjoying them. To insure this doesn't happen in the future, new shoreline policies and regulations must meet a standard of “no net loss of ecological functions.”

This means existing shoreline functions should be protected and maintained over time while properly sited shoreline development goes on. This is accomplished by modifying development designs to avoid the loss, or making up for – or “mitigating” - adverse impacts.

The no-net-loss standard doesn't mean that your house needs to be removed. You can continue to live in, maintain and repair your house. The no-net-loss of ecological functions goal helps ensure one person's shoreline development doesn't decrease the overall benefits of our shorelines for everyone – while still allowing development to move forward.

Focus on Shorelines

Issue 5: What shoreline buffers and setbacks mean to homeowners



Shoreline property owners have voiced concern about new buffer and setback standards under updated shoreline master programs. Some worry they will have to tear out existing landscaping or their garden, or lose waterfront views because they'll be

forbidden from pruning their trees and shrubs. Ecology has adopted more than 30 shoreline programs under the 2003 guidelines. All have included allowances for tree trimming and maintaining natural views, as well as provisions for accessing the water. New shoreline master programs do not require homeowners to remove their existing landscaping.

Buffers are intended to protect homes from erosion, filter polluted run-off, provide shade, and protect other ecological functions. They protect our water quality by helping filter out toxic and other pollutants in stormwater runoff, help stabilize slopes, and provide organic material to both the land and water food webs. Buffers also provide shade and habitat for critical fish and wildlife species.

Shoreline setbacks are the minimum distance between a structure and the shoreline, or the structure and the buffer. They are not retroactive so they won't affect existing homes. Setbacks keep new homes and developments out of harm's way and prevent the future need for shoreline armoring. Setting a new home back from the shoreline in a low bank area can reduce the need for armoring when sea levels rise over time or unusual floods come. Setbacks also keep homes from being built too close to the water's edge, making our residences safer and less expensive to maintain.

Important things you should know about shoreline buffers and setbacks:

- Shoreline master programs do not necessarily set rigid "one-size-fits-all" standards. Buffer and setback sizes can be tailored based on environmental conditions, current development patterns, and future planned development.
- Buffers and setbacks help protect environmental and economically important shoreline resources.
- Shoreline buffers and setbacks offer opportunities for unique landscaping, screen nearby developments from view, and block noise and glare from adjacent properties and water-based activities.

Issue 6: Science and shoreline master program updates

It's important to remember that at the core, shoreline master programs are a planning process informed by community input, science and many other factors. It is not a process driven solely by science.

In some areas, shoreline homeowners have questioned whether Ecology uses credible science to help local jurisdictions update their shoreline master programs. On the surface, it may be difficult to assess the quality of the methods and statistics reported in a document. Technical documents that Ecology uses include a clear description of the methods used and undergo a rigorous review by reputable experts in the field. This ensures that proper scientific methods, research procedures, and review protocols were used.

Shoreline Master Programs

Until about 40 years ago, development along Washington’s shorelines tended to be piecemeal and uncoordinated. To improve and protect shoreline values and benefits, the state Legislature passed the state Shoreline Management Act in 1971. The public adopted the Act in a 1972 referendum vote.

To manage shoreline development and uses, the state law established a cooperative relationship between local governments and the Washington Department of Ecology (Ecology). The Shoreline Management Act applies to most streams, lakes greater than 20 acres, and marine waters as well as associated shorelands, wetlands, and floodplains. The law has three main purposes:

- Encourage reasonable and orderly development of shorelines, with an emphasis on water-dependent and related uses that control pollution and prevent damage to the natural environment.
- Protect the natural character of Washington shorelines, the land, vegetation, wildlife, and shoreline environment.
- Promote public access and provide opportunities to enjoy views and recreational activities in shoreline areas.

“Shoreline master programs” are the cornerstone for carrying out the Shoreline Management Act. Under state law, more than 260 towns, cities, and counties with shorelines covered by the Act must develop locally-tailored programs to guide shoreline use, development and public access.



Dungeness Spit in the Strait of Juan de Fuca.

Q: What do shoreline master programs do?

A: Shoreline master programs help local communities plan for the future. They are a combination of policies, regulations, and permits that guide shoreline use within a town, city or county. They balance shoreline development with environmental protection, and provide for access to public shores and waters.

Shoreline programs:

- Plan for water-dependent uses based on current conditions and long-term needs.
- Identify areas appropriate for public access.
- Maintain the current state of the natural environment into the future.
- Plan for restoration and preservation of shorelines where it makes sense.
- Balance statewide interests with local interests.

Q: Why are shoreline master programs important?

A: Shorelines are where the land and water meet. If we ever hope to restore and protect state shorelines – including Puget Sound – as we accommodate necessary new uses and development, we must be sure to manage these areas wisely. Whenever we build in our shorelines, we transform a unique and precious aspect of our natural environment. We clear native vegetation, build bulkheads, and put in driveways, roads, roofs and other impervious surfaces. These actions can have negative effects on our valuable fish and shellfish industries, nearby property owners, and other interests. Shoreline master programs establish each community's goals for its shoreline areas and implement policies and regulations to:

- Protect water quality for our marine waters, lakes and streams.
- Protect private property by siting new development safely away from flood, landslide, erosion hazard, and wetland areas.
- Help avoid or lessen environmental damage as shorelines are developed.
- Protect critical habitat as well as fish and wildlife.
- Promote recreational opportunities in shoreline areas.

Local Governments: Roles and responsibilities**Q: Why do local governments have to update their shoreline master programs?**

A: In 2003, the state Legislature set up a timetable for local governments to update local shoreline master programs. Most haven't updated their programs



comprehensively since the mid 1970s. Since voters passed the Act in 1972, Washington's statewide population nearly doubled from 3.4 million to 6.5 million people. The old shoreline programs need to address current conditions, consider new science, and be aligned with current laws. An effective comprehensive update will reduce unsustainable development and provide shoreline land owners with a clearer set of standards.

Q: How does a community benefit from updating their shoreline program?

A: Each community is unique so the benefits from updating a shoreline program will be unique. Most communities benefit economically and legally because shoreline programs:

- Protect lives and property by directing development away from flood, landslide, and other hazard areas.
- Help towns, cities, and counties to realize their vision for future waterfront development and public access.
- Provide more certainty to the development community and water-dependent uses through shoreline building ordinances and permitting requirements.
- Avoid costly restoration of degraded shorelines in the future.

Q: What is the role of local governments in shoreline management?

A: Local governments are responsible for starting shoreline master program planning by deciding which areas are in shoreline jurisdiction, analyzing the present uses and long-term needs for shorelines, and locally adopting a shoreline master program. Local governments must consult with other agencies, tribal governments, and all individuals interested in developing their shoreline master programs. Once adopted, local government is the shoreline master program administrator. The local government reviews new development proposals and uses the permit system to decide what is consistent with state law and the local program.

Q: Is the public involved in developing shoreline master programs?

A: Yes. The Shoreline Management Act requires local governments to involve all interested parties in the creation or update of shoreline master programs, and provide public notice about permit decisions. Interested parties include shoreline property owners, developers, businesses, recreationists, environmental and conservation groups, Indian tribes, farmers and agricultural interests, tourists, other shoreline users, and local and state government agencies. Among the first steps a local government must take in a comprehensive update is developing a public participation plan and submitting it to Ecology for approval.

Q: Who approves local shoreline master programs?

A: Each local government approves its program after a period of public review and comment. Then the local government sends its approved program to Ecology, who reviews it for

consistency with state law. Ecology must approve the locally approved and submitted program before it takes effect. To ensure respect for private property rights, local and state legal authorities are required to review a shoreline program before formal adoption.

Q: Who pays to have a local shoreline program updated?

A: The Shoreline Management Act requires the state to provide “reasonable and adequate” funding for shoreline master program updates. Ecology gives legislative appropriations to local governments in the form of grants. For the current budget cycle (from July 1, 2011, through June 30, 2013), state lawmakers authorized \$7.5 million in grants to complete shoreline updates in jurisdictions throughout Puget Sound and begin updates in Benton, Cowlitz, Grant, Kittitas, Lewis, Skamania, Spokane, and Yakima counties.



Houses destroyed in 1997 Perkasie Lane landside on Magnolia Blvd in Seattle

Q: How is each grant amount determined?

A: Ecology determines each jurisdiction’s grant award based on a number of factors. The department considers past levels of funding provided to local jurisdictions for shoreline master program updates. Ecology also looks at:

- Miles of shoreline in each jurisdiction
- Number and complexity of kinds of shoreline (marine, streams and rivers, and lakes)
- Population
- Area
- Growth rate

Q: What if a local government can’t meet the update deadline set by the state legislature, or chooses not to update its shoreline master program?

A: Once a local government receives a grant from the state to help them update their shoreline program, they have three years to locally adopt and submit the updated program to Ecology for approval. Ecology is required by law to prepare and adopt an updated shoreline program for any town, city, or county that misses the deadline set by law. In that case, much of the opportunity for local determination of how to regulate shorelines would be reduced.

Guidelines, Funding and Review: Ecology's role**Q: What is Ecology's role in the shoreline master program process?**

A: Lawmakers made Ecology responsible for ensuring local shoreline programs, when added together, protect the statewide public interest. Ecology does this by providing guidance to local governments about the essential elements a shoreline master program must contain, and reviewing and approving local programs. The agency may also join in appeals or lawsuits regarding the Shoreline Management Act or the guidelines that implement the Act. Finally, Ecology provides financial support, technical assistance, guidance materials, and regular training to support local governments.

Q: What is the purpose of Ecology's 2003 Shoreline Management Act guidelines?

A: The guidelines set minimum procedural and substantive standards for local governments updating their programs. The 2003 guidelines now in place resulted from a negotiated settlement between business interests, ports, environmental groups, shoreline user groups, cities and counties, Ecology, and the courts. Ecology and state Growth Management Hearings Boards use the guidelines to review and approve local shoreline program updates. Also in 2003, the state legislature provided funding and established a mandatory schedule for local shoreline program updates through 2014.

Q: What types of action can Ecology take when it receives an updated shoreline program?

A: After Ecology reviews the local program to determine if it complies with state requirements, the department can approve it as submitted by the local government, approve it with changes, or reject it. Once Ecology approves a local shoreline master program, it becomes part of the statewide shoreline "master" program. At that point, local governments are responsible for applying their locally-adopted shoreline policies and regulations to individual projects.

Q: Why is it important for local governments to get Ecology's approval?

A: The Legislature made Ecology responsible for ensuring statewide policies are upheld and implemented when local shoreline master programs are adopted. Under the Shorelines Management Act, a locally approved program must meet state guidelines. Once an updated program receives approval at the local and state levels, the state becomes a full partner in defending any legal challenges to the updated program.

Legal Issues

Q: Aren't requirements for shoreline vegetation buffers a "taking" of private property rights?

A: No. The U.S. Constitution allows state and local governments to limit private property activities provided it's for a legitimate public benefit and they do not deprive the landowner of all reasonable use of the property. For example, state and local governments can adopt regulations that prevent sediment from running off private property and entering a salmon-spawning stream. These regulations protect salmon, a public resource.

Buffers do not deprive landowners of all reasonable use of their property and, in fact, all property tends to benefit from reasonable setbacks and buffers. In those limited instances where the buffer precludes or significantly interferes with a reasonable use, the property owner may obtain a variance.

Q: Hasn't Whatcom County's Shoreline Master Program been challenged and overturned in court?

A: No. A local developer and the Building Industry Association of Whatcom County took Whatcom County and Ecology to court and lost on all issues except one. All other issues addressed by the Western Washington Growth Management Hearings Board, and in a separate Skagit County Superior Court case, were found in Whatcom County and Ecology's favor. The issue the Board found in the appellant's favor was "despite critical areas being originally approved through a county critical areas ordinance public process, they need to be revisited and justified if incorporated into an updated shoreline master program."

The Western Washington Growth Management Hearings Board ruled:

- Ecology's approval of the shoreline master program was valid as originally approved on August 8, 2009.
- The public process was proper and legally correct.
- The county's inventory and analysis supported the designation of all marine near shore areas, streams, and lakes as critical areas.
- The issue challenging the required 100 to 150 foot buffers was dismissed.

The Skagit County Superior Court found:

- The shoreline master program is not subject to certain statutory limitations on the regulation of development because shoreline master programs constitute state, not merely local, regulations.

Q: We keep hearing that “junk science” is being used, our property rights are being stolen, and that our land is being condemned. Is this true?

A: Unfortunately, some people are worried and angry at times based on misinformation about how buffer zones or shoreline regulations would affect their property values. Many claims have been made about how shoreline master programs will affect what people can and can't do on their property. The Shoreline Management Act requires local and state government to include the views of all interested persons in developing shoreline master program goals, policies, and regulations.

We encourage open and honest dialogue with all stakeholders to develop strong shoreline programs supported by the best, sound science. To ensure respect for private property rights, local and state legal authorities are required to review a shoreline program before being formally adopted by Ecology.

Scientific Information

Q: What kinds of information do local governments use to help modernize their shoreline master programs?

A: Ecology's 2003 guidelines require local governments to "make use of and, where applicable, incorporate all available scientific information." This includes reports, documents and materials including:

- Inventory data.
- Technical assistance materials.
- Manuals and services from reliable, scientific sources.
- Aerial photography.
- Other applicable information.

Q: What is scientific information?

A: Common sources of scientific information include:

- **Monitoring data** collected periodically over time to determine a resource trend or evaluate a management program.
- **Inventory data** collected from an entire population, such as individuals in a plant or animal species, or an ecosystem area.
- **Survey data** collected from a statistical sample from a population or ecosystem.
- **Assessment**, which entails the inspection and evaluation of site-specific information by a qualified scientific expert. An assessment may or may not involve collection of new data.
- **Research data** collected and analyzed as part of a controlled experiment, or other appropriate methodology, to test a specific hypothesis.
- **Modeling** which entails the mathematical or symbolic simulation or representation of a natural system. Models generally are used to understand and explain occurrences that can't be directly observed.

- **Synthesis**, which is a comprehensive review and explanation of pertinent literature and other relevant existing knowledge by a qualified scientific expert.

Q: How do we know if information is scientifically valid?

A: Scientific studies are generally expected to have the following characteristics:

- **Methods.** The methods that were used to obtain the information are clearly stated and able to be replicated. The methods are standardized in the pertinent scientific discipline or, if not, the methods have been appropriately peer-reviewed to assure their reliability and validity.
- **Logical conclusions and reasonable inferences.** The conclusions presented are based on reasonable assumptions supported by other studies and consistent with the general theory underlying the assumptions. The conclusions are logically and reasonably derived from the assumptions and supported by the data presented. Any gaps in information and inconsistencies with other pertinent scientific information are adequately explained.
- **Context.** The information is placed in proper context. The assumptions, analytical techniques, data, and conclusions are appropriately framed with respect to the prevailing body of pertinent scientific knowledge.
- **References.** The assumptions, analytical techniques, and conclusions are well referenced with citations to relevant, credible literature and other existing pertinent information.
- In addition, for research and modeling, an **appropriate quantitative analysis** is essential. The data must be analyzed using appropriate statistical or quantitative methods.

Moreover, **peer review** is a vital characteristic of research, modeling and synthesis of scientific information. Publication in a peer reviewed or “refereed” scientific journal usually indicates the information has been appropriately peer-reviewed.

Q: How do I know if a paper or a report has been credibly peer-reviewed?

A: Scientific publications are evaluated through a peer-review process administered by a scientific journal, public agency, consulting research firm, or scientific non-profit entity. Before the document is published, other researchers with appropriate areas of expertise evaluate the quality of the research and provide written reviews – and the document is improved as a result of the process. The document must include a complete citation showing where, when and by whom it was published. An example of an appropriately cited article is:

Diefenderfer HL, SL Sargeant, RM Thom, AB Borde, PF Gayaldo, CA Curtis, BL Court, DM Pierce, and DS Robison. 2004. “Demonstration Dock Designed to Benefit Eelgrass Habitat Restoration (Washington).” *Ecological Restoration* 22(2):140-141.

Two examples of peer-reviewed scientific journals are: *Estuaries & Coasts*, the journal of the Coastal and Estuarine Research Federation, and *Ecological Applications*, a journal of the Ecological Society of America. An example of an Ecology report that has gone through a documented peer review process is our synthesis of information on wetlands. To see a copy go to: www.ecy.wa.gov/biblio/0506006.html.

Q: If a document contains a lot of numbers and statistics, does this mean it is credible science?

A: No. On the surface, it may be difficult to assess the quality of the methods and statistics reported in a document. Technical documents should always include a clear description of the methods used and undergo a rigorous review by other experts in the field. This ensures proper scientific methods, research procedures, and review protocols were used.

Q: Can local governments accept technical comments and information from the public that has not gone through a formal peer-review or publication process?

A: Yes. Local governments have a process for receiving all kinds of comments, including anecdotal information, from the public regarding local shoreline master program updates. Information, experience, and anecdotal evidence provided by interested parties may offer valuable information to supplement scientific information. However, non-scientific information shouldn't be used as a substitute for valid and available scientific information. Where information collected by or provided to local governments conflicts with other data or is inconsistent, the local government is obligated to base its shoreline master program provisions on a reasoned, objective evaluation of the relative merits of the conflicting data.

Q: Where can I get more background on the use of science in city and county shoreline master program updates?

A: See Ecology's shoreline master program guidelines: Washington Administrative Code 173-26-201 (2) Basic Concepts or <http://apps.leg.wa.gov/wac/default.aspx?cite=173-26&full=true#173-26-201>.

The state Department of Commerce also has guidelines for "best available science" for critical areas ordinances at: <http://apps.leg.wa.gov/wac/default.aspx?cite=365-195-905>.

Property Issues

Q: Won't buffers and other shoreline regulations decrease my property values?

A: Property values are relatively unaffected by buffers. Waterfront property has skyrocketed in value in the past 30 years despite shoreline buffers of 25 to 125 feet being in place for the same period. Protecting native vegetation along the shoreline actually enhances property values by:

- Stabilizing slopes.
- Screening adjacent development from view.
- Providing attractive landscaping and habitat.
- Blocking noise and glare from adjacent properties.

Q: Is it true if my house burns down I can't rebuild it in the same location?

A: No. While each local jurisdiction can modify their approach, single-family homes are "grandfathered" under the state Shoreline Management Act. This means if your house burns down, it can almost always be re-built in the same footprint. The only exception would be if the existing location was dangerous or unsafe for building such as in a floodway or on a failing bluff.

Q: Whatcom County updated its shoreline master program in 2008. Have property owners applying for improvements such as new additions and garages run into any problems?

A: Since Whatcom County adopted its updated shoreline program, the county has received more than 20 applications to make building improvements. These building permits received approval and were issued in a timely manner. No decisions have been appealed.

Q: Could updating the local shoreline master program require me to tear down my existing shoreline structure?

A: No. Shoreline programs are not retroactive. They only apply to development occurring after adoption.

Q: Will waterfront property owners still be able to protect their property with a bulkhead under an updated shoreline master program?

A: If property owners can clearly demonstrate a need exists, they can use an approach that has the least impact on the natural shoreline.

Q: Will homeowners face more limits on building new docks?

A: That depends on the local circumstances and the choices made locally about how a community wants its future shoreline to look. If new docks can be shown not to harm the natural shoreline they can be allowed.

Q: Could there be limits on repairing houses, barns, fences, bulkheads, docks or other structures?

A: Provisions in state law allow the repair and maintenance of existing, lawful constructed structures. State shoreline guidelines allow repair and maintenance of existing structures, subject to any building requirements imposed separately by local jurisdictions.

Bulkheads, Sea Walls and Armoring**Q: What is hard armoring? What are its impacts on the shoreline?**

A: The natural character of shorelines and many organisms living there depend on a continuous and uninterrupted relationship between upland areas and the water. Beaches depend on erosion to supply sand and gravel. Hard armoring interrupts this natural relationship. Property owners use hard armoring to protect an owner's preference for how the waterfront edge should look or limit property loss by erosion. Armoring prevents the supply of new material for beach formation and disturbs other ecological functions.

Q: What is soft armoring? What are its impacts on the shoreline?

A: There are many ways to slow the rate of erosion that are less disruptive than hard armoring. Soft armoring approaches often use a combination of less rigid structural materials and native vegetation to stabilize the shoreline. Placing large logs or native vegetation along the shoreline, for example, can serve as a natural break for waves while simultaneously providing some habitat value.

No Net Loss and Restoration**Q: What is "no net loss" of ecological or environmental functions?**

A: The new environmental protection standard for updated shoreline master programs is "no-net-loss of shoreline ecological functions." While restoration of degraded areas is encouraged, this does not mean all shoreline areas are required to be made "pristine" or returned to pre-settlement conditions. Local governments are required to inventory current shoreline conditions – including identifying existing ecological processes and functions that influence physical and biological conditions. When a shoreline program is adopted, existing ecological conditions on the ground must be protected while development of shoreline areas is continued in accordance with adopted regulations. This is accomplished by avoiding or minimizing the introduction of impacts to ecological functions that result from new shoreline development.

Q: Do the new guidelines require restoration?

A: Local governments must plan for restoration in their shoreline master programs. Restoration is not a direct requirement for private development. Local government must consider its restoration needs, identify resources available to conduct restoration, prioritize restoration actions, and make sure development activities don't interfere with planned restoration efforts in the community and vice versa. A shoreline master program may include incentives for developers to invest in shoreline restoration.

Q: Why are some “conservancy” or “urban” shoreline areas being designated “natural?”

A: State guidelines establish criteria specifying that if an area meets those criteria, they should be designated as such. This is an important part of achieving the broad policy objective of “no net loss.”

Agricultural Issues**Q: How do Shoreline Master Programs apply to farms / agriculture?**

A: A 2002 state law requires when local shoreline programs are updated, the new standards, setbacks and buffers do not apply retroactively to existing agricultural development. Updated shoreline program requirements will however apply to new agricultural activities located in shoreline areas and where agricultural activities are converted to other uses. Local governments will need to be aware of this requirement when updating their master programs. Agricultural interests represented in the negotiations agreed with this approach.

Other Shoreline-Related Issues**Q: Why are critical areas ordinances often incorporated into local shoreline program updates?**

A: A recent state Supreme Court decision (*Futurewise v. Anacortes*) decided that the shoreline master program solely regulates the shorelines and critical areas covered by the program, once Ecology approves it. Many existing master programs contain buffer requirements but are based on outdated conditions and science. Rather than repeat the work local governments have already done developing their critical areas ordinances under the state Growth Management Act (GMA), relevant portions of existing critical areas ordinances may be placed in updated shoreline master programs under the Shoreline Management Act.

Q: What are differences between critical areas ordinances and shoreline master programs?

A: Local governments and Ecology implement the Shoreline Management Act using locally-tailored Shoreline Master Programs. Local governments implement critical areas ordinances under the authority of the state Growth Management Act. The two laws have many similar requirements for environmental protection but they are administered with different kinds of regulatory procedures. The two laws also have many similar and some different objectives for dealing with future land use and development. Integrating Growth Management and Shoreline Management Act goals, policies, and regulations is required but often difficult to accomplish.

Q: Do the rules surrounding “best available science” apply to shoreline master programs?

A: No. Current science is the basis for shoreline master programs while “best available science” is a term from the state Growth Management Act, and does not apply to shoreline master programs. Shoreline management requires use of the “most current, accurate and complete scientific and technical information” as the basis for decision making.

Q: What is Ecology’s role in developing and providing wetlands guidance to local governments?

A: Local governments implement the GMA. Ecology, however, has expertise in managing and protecting wetlands. We knew most local governments didn’t have the resources to develop a science-based standard for protecting wetlands. To help local governments meet GMA requirements without reinventing the wheel, Ecology got a federal grant in 2002 and spent three years crafting wetlands guidance. We scanned over 15,000 scientific articles and summarized another 1,000 related to protecting and managing wetlands. Ecology continues to provide this guidance and technical assistance, as applicable wetland regulations are updated all across the state.

Q: Where can I get more information?

A: There is an array of valuable information available at Ecology’s Shoreline Master Program Web site at <http://www.ecy.wa.gov/programs/sea/shorelines/smp/index.html>. The site includes:

- A citizen’s guide for shoreline master programs.
- Shoreline planners’ toolbox.
- Laws, rules, and legal cases related to shoreline management.
- Shoreline master program publications.

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Special accommodations:

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