A decorative border with a repeating floral and scrollwork pattern in white on a dark blue background, framing the central text.

**City of Oak Harbor
Council Meeting**

Agenda for

**Tuesday
February 3, 2009
7:00 p.m.**

Oak Harbor City Council
7:00 p.m.
Tuesday, February 3, 2009

Welcome to the Oak Harbor City Council Meeting

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

Thank you for participating in your City Government!

CALL TO ORDER

PLEDGE OF ALLEGIANCE

INVOCATION

ROLL CALL

MINUTES

NON-ACTION COUNCIL ITEMS:

1. Introduction of New Employees – none this evening.
2. Employee Recognition – Lt. John Dyer, Police Department, 25 years.
3. Employee Recognition – Bob Williams, Public Works, 15 years.
4. Public Comments.

COUNCIL CONSIDERATION AND ACTION ON THE FOLLOWING MATTERS:

Page 16

5. Consent Agenda:

- a. Excused Absence – Councilmember Jim Campbell, three consecutive meetings
- b. Excused Absences – Mayor and Council Absences on February 17, 2009.
- c. Pay Bills.

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6. Pioneer Way Water Main Replacement – Contract Close-out.

Page 24

7. Waterloo Road Waterline – Contract No. ENG 08-09, Accept as Complete.

8. City Administrator's Comments.

9. Councilmembers' Comments.

- Standing Committee Reports

10. Mayor's Comments.

ADJOURN

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

"There is a past which is gone forever, but there is a future which is still our own work."

- Anonymous

City of Oak Harbor
City Council Agenda Bill

Agenda Bill No. 8
Date: March 3, 2009
Subject: Element Nightclub License

FROM: Rick Wallace, Chief of Police

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

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

PURPOSE:

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

AUTHORITY:

OHMC 5.22.045(4) states:

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

DESCRIPTION:

In December 2007, Element Nightclub applied for and received authorization to open for business under the provisions of the now revised Cabaret License under Ch. 5.22 OHMC, for calendar year 2008.

In November 2008, the Cabaret License ordinance was modified to reflect a more comprehensive ordinance, (now known as the Nightclubs Ordinance), still codified as Ch. 5.22 OHMC, in order to overcome the regulatory shortcomings of the Cabaret License ordinance, both in the ability of the City staff to attach reasonable conditions to each license and take enforcement action against the licensee, if necessary.

In late January 2009, Mike Kummerfeldt, owner of Element Nightclub, applied for and received a temporary Nightclub License and as required under the ordinance, a police investigation was conducted. (See Lt. John Dyer's attached investigative report). The following is a summary of that investigation:

The business format has been changed from a nightclub and restaurant, (although in mid-2008 the restaurant service was reduced considerably), to a business made up of four separate parts -- a nightclub, restaurant, (full service has been reportedly resumed), a sports bar with arcade games and pool tables, and a separate card table room.

The size of the smoking area and beer garden has been reduced in size to about one half. This area was typically the cause when noise complaints were actually coming from the nightclub as opposed to the parking lot area. In most cases, the exterior door in this area had been propped open by a customer allowing loud talking and, in some cases where the interior door to this area was also propped open, allowing music from the nightclub to also be heard. The stated purpose of this reduction in size is to reduce the number of people at any one time by half with a resulting decrease in the potential for noise to be heard outside the building.

Additional sound proofing material has been added to walls facing the front of the business to further reduce sound coming from the building.

The business owner reported that he changed the music format from "Hip Hop" to more of a "Pop/Rock" format.

In 2008, the Oak Harbor Police Department responded to a total of 186 calls for police service to the nightclub, 54 of those calls have no significant bearing on this issue and should not be viewed as having a negative connotation towards the nightclub as these types of calls for police service could occur at any business or private residence.

The remaining 132 calls for service do relate directly to the nature of the business at the nightclub:

- (1) Assault with a Handgun
- (17) Assault 4th Degree (includes 1 domestic violence complaint)
- (13) Disorderly Conduct
- (1) Minor in Tavern

- (2) Minor Frequenting a Tavern (The above three cases resulted in action taken against Element by the Washington State Liquor Control Board.)
- (83) Noise Complaints
- (3) Sex Offense Complaints
- (4) Lewd Conduct (Urinating in public)
- (8) Verbal Disputes

In Chief Wallace's view, the primary area of concern regarding this license application is the 83 noise complaints made against the nightclub in 2008. While it is not his intention to minimize in any way the other types of calls listed above, he does believe that use of the provisions in the new Nightclubs Ordinance could effectively manage these types of calls to within reasonable levels of activity for a business of this nature. The noise complaints are an altogether different situation. In his opinion, these noise complaints are the most problematic hurdle that Element Nightclub has to overcome in order to remain licensed under the provisions of the Nightclubs Ordinance.

Accordingly, the breakout of the details of the 83 noise complaints made against Element Nightclub last year is set out below. Of the 83 complaints made:

26 complaints made indicated that the noise was coming from the business itself (in most of these cases from the smoking area/beer garden).

54 complaints made indicating the noise was coming from the parking lot area.

3 complaints were filed as having occurred a day or more prior to the time of the report.

Of the 83 noise complaints made:

27 were settled by contact.

15 were gone on arrival.

10 were closed with some type of enforcement (either to the business or to individuals in the parking lot area).

28 were closed as unfounded.

While this breakout shows a degree of unfounded noise complaints, there is still an unacceptable number of noise complaints at the nightclub. However, it certainly shows that the clear majority of these complaints stem from noise being generated by customers located in the parking lot at the time of the complaint.

It should be noted that the Cabaret License which was in effect at the time of these complaints did not contain any provision for holding the business accountable for the conduct of the

customers, in the business or outside, where the business might well have reasonably been held accountable for this conduct. From the perspective of the police department, this is the most valuable provision of the new Nightclubs Ordinance.

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

STANDING COMMITTEE REVIEW:

The Public Safety Standing Committee reviewed this agenda item on February 12, 2009.

RECOMMENDED ACTION:

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

The nightclub license-holder shall:

1. Adhere to all laws, regulations, ordinances and zoning conditions of the State of Washington and the City of Oak Harbor applicable to the nightclub business located at 656 SE Bayshore Drive, Suite #1, Oak Harbor, Washington.
2. With the exception of ingress and egress to and from the building, ensure that doors and windows remain closed at all times while any type of music or entertainment is playing.
3. Fully shield all new and/or existing site and building mounted lighting so that light is directed downward and stays on-site.
4. Ensure that the parking lot, sidewalk and the adjacent city park are kept clean of litter, daily by 6:00 a.m.
5. Provide designated and visible security personnel and security measures sufficient to reduce the potential for illegal activity, noise violations or any other public health and safety violation as described in the Oak Harbor Municipal Code, inside and outside the business to include the parking lot and adjacent properties. This will include:
 - o A minimum of four designated and visible security personnel within the building, while open for business as a nightclub.
 - o On Friday and Saturday nights, a minimum of four designated and visible security personnel will be in the parking lot between 0115 and 0230. Security shall monitor the parking lot during business hours to prevent or report to police, as appropriate, any potentially illegal activity occurring in the parking lot or visible in adjacent properties.

- The license-holder shall implement and enforce a ban policy, that will ban patrons from the club, for a three month period, who:
 - Engage in activities in the business and/or parking lot which either result in arrest or would constitute probable cause for arrest.
 - Create noise violations in the business and parking lot.
 - Loiter in the parking lot for more than ten minutes.
 - Engage in illegal activity immediately adjacent to the business property, after leaving the club.
 - The license-holder will provide the Oak Harbor Police Department with a copy of the list of banned patrons on a weekly basis.
 - The license-holder shall implement and enforce a policy which requires club employees to call the police, as soon as possible, when they witness potentially criminal activity in the business, in the parking lot, and adjacent to the club property.
6. Provide Oak Harbor Police Department monthly with a list of current security employees.
 7. On a monthly basis, provide OHPD with the current hours of operation for each of the three different types of businesses at this location: nightclub, card room and sports bar.
 8. Meet with the Chief of Police, or his designee, on a six-month basis, to review the efficacy of the conditions of this license in meeting the goals of the Nightclubs Ordinance, Ch. 5.22 OHMC. The Chief of Police shall submit an investigative report to the City Council at least annually to report upon the efficacy of the conditions of this license in preventing or mitigating the noise, traffic and public health and safety impacts of the nightclub. This investigative report shall lead to a City Council hearing pursuant to OHMC 5.22.090.
 9. The license-holder acknowledge that the Chief of Police or other city official may, pursuant to OHMC 5.22.090, submit an investigative report to the City Council at any time if, in that official's opinion, the license conditions have not been sufficient to mitigate the noise, traffic and public health and safety impacts of the nightclub. In the event that such report is submitted to the City Council, the license-holder may be subject to new or additional conditions as provided in OHMC 5.22.090.

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

ATTACHMENTS:

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

MAYOR'S COMMENTS:

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**Element Nightclub License
Agenda Bill - 6**



INTEROFFICE MEMORANDUM

To: Chief Wallace
From: Lt Dyer
Date: 01-21-09
Subject: Element Night Club Permit

Chief,

In order to give yourself and City Council as much information as possible, I will break down my report into three sections.

1. Background
2. Preparation of this report
3. Recommendations

Background

The Element Night Club opened on Dec 31st, 2007. The club was marketed as a Hip-Hop club, and marketed both within the community and in Whatcom, Snohomish, and King County. The club capacity is 517. On any Friday or Saturday night, between 10PM and 2AM, the club routinely has between 200 and 400 people. Special events can see well in excess of 400.

The club was opened in a mixed residential/commercial district. Right across the street from the Element are several large condominium buildings. There are no natural or man made barriers between the Element and the condos.

From the very beginning, the effects of noise from the Element were felt by the condo owners. In 2008, the Oak Harbor Police Department received 183 calls for service to Element night club. A vast majority of these calls were nuisance complaints. This was caused by a combination of a large amount of people in one area and alcohol being served. On top of the nuisance complaints we also saw other complaints usually associated with alcohol consumption, to include public urination, indecent exposure, disorderly conduct, assaults (from simple assault to assault with a firearm). Most of the noise complaints were not a result of the noise from the club, but resulted from people being loud in both the smoking area and in the parking lot. The noise came from people yelling, people fighting, people playing car stereos too loud, and people both revving engines and aggressive driving.

The Oak Harbor Police responded to all calls for service made to ICOM. There is some frustration in this because in the 3 to 4 minutes it might take for ICOM to receive the call, dispatch the call, and for our officers to get to the club, in most cases the cause of the noise was gone. In cases where we could take enforcement, we did, giving Warnings and Infractions to both individuals and to the club (by issuing the infraction to the on site owner). As stated, a majority of the calls were cleared as

- Gone on Arrival – If the officer arrived and there was no noise (we are required to witness an infraction to be able to take enforcement action)
- Settled by Contact – If the officer arrived and was able to get voluntary compliance from an individual

- Unfounded – If the officer was present at the time of the call, and in his or her opinion, no violation was taking place

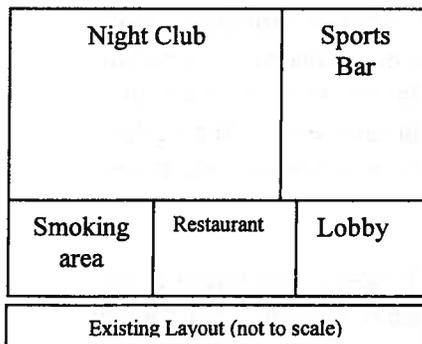
Because we were not able to take enforcement on a majority of the calls, this led to frustration on the part of the condo owners. That is not to say that we have not taken enforcement action. We have cited the business for noise ordinance violations, as well as citing individuals. We have also worked closely with Washington State Liquor Control. Through us, they cited the club for both minors being in the club and for over service. This action led to the club being closed for 5 days. We will continue to work with WSLCB in monitoring activity in Element, as well as other nightclubs in Oak Harbor.

See addendum for a breakdown of the actual numbers and types of calls for service responded to at Element from 1-1-08 through 12-31-08.

In addition to enforcement action, the OHPD has worked with the owners of Element to suggest changes that might mitigate the noise. The owners have made some structural changes. We also have met with the Condominium Association several times to listen to their concerns. We have responded as well as we can, instructing officers to spend as much time at Element as is permissible, given other responsibilities.

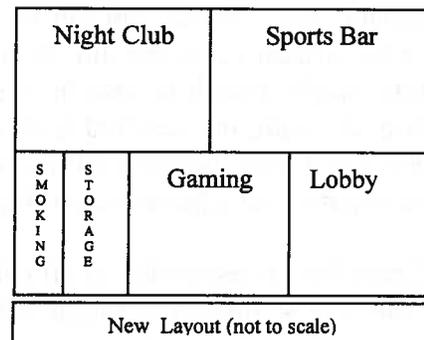
In the past several months, the owner of the club, Mike Kummerfeldt, has been petitioning to change the nature of the club. He wishes to bring the gambling business from Bayside Lounge down to Element. His goal is to move from a Hip-Hop club to a combination nightclub/sports bar/card room establishment. He believes that:

- The changing clientele, which would be attracted to the gambling aspect of Element, will be a less disruptive crowd.
- By staying open until 4AM, he will be able to contain and mitigate the nuisance calls by not having to push everyone out at 2AM. His goal will be to encourage them to stay and eat, gamble, wait inside for rides, or make plans while waiting inside.
- The residents of the condominiums are concerned that the noise will now start at 2AM and continue until past 4AM
- Below are the general layout of the club before/after the change, and the hours of operation before/after the change.



Existing hours
 Night Club
 Fri & Sat from 10PM-2AM
 Sports Bar
 Tue – Sun from 7PM – 2AM

Proposed Hours
 Night Club
 Fri & Sat from 10PM – 2AM
 Sports Bar
 Tue – Sun from 4PM – 2AM
 Card Room
 Tue – Sun from 4PM – 4AM



- The smoking area is being made smaller, with added insulation and a double door
- The night club portion is smaller (eliminate VIP room)
- Added insulation between Night Club and Gaming room
- Gaming Room expanded from original restaurant
- Full menu added

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

no

NOTE: Per OHMC Chapter 5.22.030 (3):

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

8. Is this business a corporation?

yes

NOTE: Per OHMC Chapter 5.22.030 (4):

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

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

Donna Kummerdeloh

La Donna Kummerdeloh

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

DJ music on ~~every~~ Friday + SAT nights 10 pm till 1:45 am

on 8

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

Tues - Thurs 4pm - 4am early att. 20 late att. 50

Friday - Sat 4pm - 10pm att 40 10pm - 2am att. 200 2am - 4am att. 25

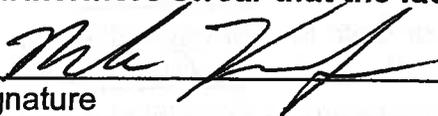
Sunday 4pm - 2am att. 25

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

Building has adequate area, exits, parking for 517 patrons as per City of OH.

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

Signature



Date

12/28/08

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

Background Check Information

DRIVER'S CHECK – Run each state listed on the application and enter state name below.

STATE _____ STATE _____ STATE _____ STATE _____ STATE _____

VEHICLE REGISTRATION/CHECK STOLEN

WATCH _____ WACIC/NCIC _____ LOCAL RECORDS _____

POLICE DEPT. APPROVAL _____ DATE _____

Received by City Clerk and forwarded to Chief of Police, Oak Harbor Police Department
on: DECEMBER 30, 2008 [Signature]
Date City Clerk's Signature

Oak Harbor Police Department

Date Received: _____

Attach investigation report and recommendations and any reports requested of other City departments.

City Council Action

Date: _____

Decision/Findings (show below or attach report):

License Conditions:

Review Date (if any scheduled):

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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

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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.

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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).

**Regular City Council Meeting
Tuesday, January 20, 2009, 7:00 p.m.**

CALL TO ORDER

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

INVOCATION

Pastor Randy Beumer, Oak Harbor Christian Reformed Church

ROLL CALL

Mayor Jim Slowik

Five members of the Council,

Rick Almberg

James M. Campbell

Beth Munns

Jim Palmer

Bob Severns

Paul Schmidt, City Administrator

Margery Hite, City Attorney

Doug Merriman, Finance Director

Cathy Rosen, Public Works Director

Rich Tyhuis, Public Works Operations Manager

Sandra Place, Equipment and Purchasing Coordinator

Gene Sieffert, Chief Mechanic

Steve Powers, Development Services Director

Mark Soptich, Fire Chief

Rick Wallace, Chief of Police

Mike McIntyre, Senior Services Director

Mack Funk, Harbormaster

Renée Recker, Executive Assistant to the Mayor

Mayor Pro Tem Danny Paggao and Council Member Eric Gerber were formally excused from this meeting.

MINUTES

MOTION:

COUNCILMEMBER CAMPBELL MOVED TO APPROVE THE MINUTES OF THE 1/6/09 REGULAR MEETING. THE MOTION WAS SECONDED BY COUNCILMEMBER PALMER AND CARRIED UNANIMOUSLY.

NON-ACTION COUNCIL ITEMS

Introduction of New Employees – none this evening.

Introduction of Exchange Student, Kate Kapitonova

Mayor Slowik introduced Kate Kapitonova, who had shadowed the Mayor for a business day at City Hall, attended a Board of Health meeting with Mayor Slowik, and toured the police and fire departments. Ms. Kapitonova is sixteen years old and was born in Cheboksary which is 700 km from Moscow. Last year, she participated in the international contest FLEX (Future Leaders Exchange) sponsored by the U.S. State Department's Bureau of Educational and Cultural Affairs. Kate was one of the 300 finalists from Russia. The goal of this program is to provide an opportunity for high school students from the countries of the former Soviet Union to experience life in a democratic society in order to promote democratic values and institutions in Eurasia. Finalists are chosen based on English ability, personality factors, social skills, academic achievement, and leadership potential. Kate lives with her host family, Michael and Betty Jo McCutcheon and is a senior at Oak Harbor High School. In addition to making straight A's, she is also very busy with her work for the World Heritage Organization (a student exchange program) where she makes presentations about her country, does community work, and has

assigned projects such as her day with Mayor Slowik. She was recently elected to go to Washington D.C. and study American Government for a week.

Proclamation – Interfaith Coalition of Whidbey Island Food Drive Day

Councilmember AlMBERG read this proclamation and presented it to Hap Fakkema. The Interfaith Coalition of Whidbey Island will be holding a food drive to benefit the North Whidbey Help House on Saturday, January 24, 2009, from 8:00 a.m. to 4:30 p.m. at the corner of SR-20 and Pioneer Way. The Coalition is a partnership of local congregations working together to provide basic necessities to local people in need. More information can be found at: www.oakharborcrc.org

Proclamation – Big Brothers Big Sisters of Island County Mentoring Appreciation Day

Councilmember Palmer read the proclamation and presented it to Peggy Dyer, Executive Director of Big Brothers Big Sisters of Island County. January 20, 2009 was recognized as Mentoring Appreciation Day and notes the importance of mentoring in the lives of youngsters.

Citizen Recognitions – Kristi Jensen, Bruce Guy, Pastor David Lura, and Jack Stiltz

Mayor Slowik presented leadership award plaques to:

Kristi Jensen and Frank Scelzi

In recognition of your outstanding efforts to beautify and upgrade Old Town Mall in downtown Oak Harbor, the people of Oak Harbor appreciate your sense of style and design, and your commitment to excellence. Kristi and Frank own various buildings in downtown and Ms. Jensen also sits on the City's Planning Commission. Old Town Mall has recently been re-named Harborside Village.

Bruce Guy

In recognition of your generous contribution of talent and time at various events in our Community, thank you for sharing your music with the City of Oak Harbor. Bruce Guy has given freely of his musical talents, and as example, brought music to the Fidalgo Street Pig Roast which only added to the success of this event.

Pastor David Lura

We gratefully acknowledge your years of service to the people of the City of Oak Harbor. Your overwhelming generosity of time in nurturing the people of our community, especially our public servants, underprivileged and infirmed, will never be forgotten. In over twenty years of service, Pastor Lura has been the Chaplain to the Oak Harbor Police Department and Navy League, and single-handedly re-established the Veterans Day celebration in Oak Harbor. As Pastor of the First United Methodist Church, this award is shared with Pastor Lura's wife, Colleen Lura.

Jack Stiltz

We gratefully acknowledge your efforts in establishing and leading the Community Harvest Celebration. Your vision to feed the underprivileged has blossomed to include our entire community, where we not only share a meal but we share ourselves. Back in 2003, Keith Bartlett and Jack Stiltz wanted to feed the homeless. With the help of 200 volunteers, 750 people were fed that first year. This year, with the help of 440 volunteers, 4,800 people were fed turkey, ham, mashed potatoes and gravy, sweet potatoes, stuffing, vegetables and pie.

Mayor Slowik called for a five-minute recess so Council could greet those who had been honored this evening. The meeting reconvened at 7:30 p.m.

PUBLIC COMMENTS

John Solin, Whidbey Seatac Shuttle. Mr. Solin spoke with concern about the Small Airport Services Shuttle Grant, Kenmore Air, and Whidbey Seatac's Shuttle Service. Mr. Solin's complete comments are attached to these minutes as Exhibit A.

COUNCIL CONSIDERATION AND ACTION ON THE FOLLOWING MATTERS

Consent Agenda:

- a. Excused Absence – Mayor Pro Tem Danny Paggao
- b. Pay bills

MOTION: COUNCILMEMBER SEVERNS MOVED TO APPROVE CONSENT AGENDA ITEMS A AND B WITH ITEM B PAYING ACCOUNTS PAYABLE CHECK NUMBERS 135595 – 135710 IN THE AMOUNT OF \$266,350.96, ACCOUNTS PAYABLE CHECK NUMBERS 135711 – 135808 IN THE AMOUNT OF \$173,121.11, AND PAYROLL CHECK NUMBERS 92629 – 92637 IN THE AMOUNT OF \$88,675.00. THE MOTION WAS SECONDED BY COUNCILMEMBER CAMPBELL AND CARRIED UNANIMOUSLY.

Element – Application for Card Table License

Chief of Police Rick Wallace presented this agenda bill. Element Nightclub applied for and received a business license, a cabaret license, and a billiards license from the City of Oak Harbor in November of 2007. The Element Nightclub is located at 656 SE Bayshore Drive, Suite No. 1, Oak Harbor, Washington, in the Central Business District (CBD). During 2007 and 2008, the nightclub operated as a restaurant, cocktail lounge, bar, and billiards hall which are all uses permitted within the CBD (OHMC 19.20.305). The CBD does not specifically include gaming tables as either a permitted or conditional use. In September of 2008, Mr. Mike Kummerfeldt, the owner of the Element Nightclub, submitted an application for a Conditional Use Permit under OHMC 19.20.315(7) to establish gaming tables as a part of his new business plan. The application was received by City staff and formal comments were discussed and provided to Mr. Kummerfeldt on November 20, 2008. In accordance with OHMC 18.20.250(2)(b), the City of Oak Harbor Hearing Examiner conducted a public hearing on December 12, 2008 and granted Mr. Kummerfeldt a Conditional Use Permit under OHMC 19.20.315(7). In addition to the conditional use approval, an annual card table license must be approved by the Oak Harbor City Council under OHMC 5.08.010. Meeting the conditions of the Conditional Use Permit, Mr. Kummerfeldt now seeks a card table license and approval from the City Council pursuant to OHMC 5.08.010.

City Attorney Hite noted that this issue is a quasi-judicial proceeding. Mayor Slowik read the following statement:

During the pendency of any quasi-judicial proceeding, no member of a decision-making body may engage in ex parte communications with opponents or proponents with respect to the proposal which is the subject of the proceeding unless that person:

1. Places on the record the substance of any written or oral ex parte communication concerning the decision of the action; and
2. Provides that a public announcement of the content of the communication and of the parties' rights to rebut the substance of the communication shall be made at each hearing where

action is considered or taken on the subject to which the communication is related. This prohibition does not preclude a member of a decision-making body from seeking in a public hearing specific information or data from such parties relative to the decision if both the request and the results are a part of the record. Nor does such prohibition preclude correspondence between a citizen and his or her elected official if any such correspondence is made a part of the record when it pertains to the subject matter of a quasi-judicial proceeding.

Mayor Slowik then asked each Councilmember to state for the record what ex parte contacts they have had, whether written or oral, concerning the matter to be decided.

Councilmember Severns – Two conversations with residents in Waterside Condominiums and the other condominium.

Councilmember AlMBERG – A conversation with Hank Koetje about noise, and someone (name not stated) at Waterside Condominiums.

Councilmember Palmer – None

Councilmember Campbell – None

Councilmember Munns – None

City Attorney Hite asked Councilmember Severns about the two conversations. The conversations concerned the business (Element) and the card table application. Ms. Hite wanted to ensure that the applicant could rebut.

Councilmember AlMBERG noted that the events at Element have been well-publicized in the Whidbey News Times. Ms. Hite asked Mr. AlMBERG if he had read the articles (yes).

Mayor Slowik then asked the following questions of each Council Member:

1. Does any member of this Council have knowledge of having conducted business with either the proponents or opponents of this project?

Councilmember Severns – Chicago Title has done title insurance work for Waterside Condominiums. Nothing specific which would affect his deliberation.

Councilmember AlMBERG – Real estate and insurance with Koetje Agency. Hank Koetje has an interest in the agency.

Councilmember Palmer – No

Councilmember Campbell – No

Councilmember Munns – No

2. Does any member of this Council have either a pecuniary or a non-pecuniary interest in the outcome of this proceeding?

Councilmember Severns – No

Councilmember AlMBERG – No

Councilmember Palmer – No

Councilmember Campbell – No

Councilmember Munns - No

3. Does any member of this Council know whether or not their employer has a financial interest in the land or area which will be impacted by the decision in this proceeding?

Councilmember Severns – No

Councilmember AlMBERG – No

Councilmember Palmer – No

Councilmember Campbell – No

Councilmember Munns - No

4. Does any member of this Council live or own property within 300 feet of the area which will be impacted by the decision in this proceeding?

Councilmember Severns – Owns 33 percent of a commercial building within 300 feet.

Councilmember Almberg – No

Councilmember Palmer – No

Councilmember Campbell – No

Councilmember Munns - No

5. Does any member of this Council have any special knowledge about the substance of the merits of this proceeding which would or could cause the councilmember to prejudge the outcome of this proceeding?

Councilmember Severns – No

Councilmember Almberg – No

Councilmember Palmer – No

Councilmember Campbell – No

Councilmember Munns - No

6. Is there any member of this Council who believes that he or she cannot sit and hear this matter fairly and impartially, both as to the respective positions of the proponents and the opponents in this proceeding?

Councilmember Severns – No

Councilmember Almberg – No

Councilmember Palmer – No. Councilmember Palmer had ridden in an OHPD patrol vehicle and was aware of the incidents at Elements.

Councilmember Campbell – No

Councilmember Munns - No

7. Is there any member of the audience who because of the “Appearance of Fairness Doctrine” wishes to disqualify any member of the Council from hearing this matter? If so, please state the name of the Councilmember and the reason or reasons why you believe that Councilmember should be disqualified.

Mel Vance, 275 NW 8th. Mr. Vance asked Councilmember Severns to recuse himself because of his property ownership within 300 feet of Element.

City Attorney Hite noted that this is a consideration, not a disqualification. Councilmember Severns responded that he is a landlord and the building’s businesses operate during an 8:00 a.m. to 5:00 p.m. business work day. City Attorney Hite asked if this proceeding would impact the building and Councilmember Severns responded that it would not. Councilmember Campbell added the he had also read the newspaper articles but they would not impact his decision. Mayor Slowik, City Attorney Hite, and Councilmember Severns felt that Mr. Severns could sit impartially regarding Element’s card table license application.

Chief Wallace noted that he could not provide an incident or reasoning to deny the card table application per OHMC 5.08.010. The card table application does not afford an opportunity to attach additional conditions, but would provide for violation. Mayor Slowik added that this is an old ordinance (1943).

Mayor Slowik opened the meeting for public comments at 7:40 p.m.

Gray Giordan, 651 SE Bayshore, Waterside Condominiums. In reference to the quasi-judicial process, Mr. Giordan asked if any Council Member had been to Element since this application had been received. He asked if any Council Member had requested copies of OHPD's reports related to Element. The residents of Waterside, Dockside, and Harbor View Condominiums are opposed to this application and overwhelmingly oppose an increase in operating hours to 4:00 a.m. Residents are still awakened at 2:00 a.m. every weekend. Nothing changes even though the police respond. The parking lot is a mess with noise, urination, and activity in the park. Nothing has changed. The residents will be disenfranchised by your decision to approve this application.

Mayor Slowik noted that this evening's agenda bill and discussion is for a card table license application. Element's application for a nightclub license is under investigation and will come before Council at a later date. The nightclub application and license allows Council more latitude and restrictions can be added to a nightclub license.

Billie Cook, 651 SE Bayshore, Waterside Condominiums. Ms. Cook said she understood the two parts (two applications), but objected to operations continuing until 4:00 a.m. She is awakened on weekend nights, the police are called, but this goes on and on. As Mr. Giordan said, we are discouraged and feel the City does not care about us.

Mayor Slowik asked Mr. Kummerfeldt to address the noise issue.

Mike Kummerfeldt, Element, 656 SE Bayshore. Mr. Kummerfeldt said he was trying to change the scope of Element to emphasize the card room. He wants to focus on how Bayside Lounge is operated (until 4:00 a.m.) without loud music from 2:00 a.m. to 4:00 a.m. and felt that most of Bayside's business occurred between 2:00 a.m. and 4:00 a.m.

Council Discussion

Council asked Mr. Kummerfeldt about music and proposed hours of operation, that Bayside Lounge does not have the number of noise complaints that Element experiences but Bayside Lounge does not sit next to residences, that the addition of a card room will not necessarily make Element a quieter venue even though different patrons will exit Element at 4:00 a.m. (you still have autos and their headlights moving out of the parking lot), and that Element should voluntarily consider a 2:00 a.m. rather than 4:00 a.m. closing for the card room.

Mike Kummerfeldt, Element, 656 SE Bayshore. I don't want to be the bad neighbor. If I am wrong and it is worse and there are more problems at 4:00 a.m. than 2:00 a.m., then we could move to that. Mr. Kummerfeldt felt there would be a more leisurely file-out of patrons if departures are staggered rather than a mass exit of 200 people at 2:00 a.m. Element is zoned correctly and the City Council approved Element when we opened. He felt that a downtown atmosphere brings downtown noise and that a reduction in operating hours should be addressed under the nightclub license application. The Bayside Lounge shuttle van will become available to take people home.

Council Discussion Continued

Council discussion continued concerning amplified music in Element, that what is before Council this evening is a card table license which cannot hold conditions but does allow for revocation based on law violation, that it is an annual license, and that this application and license is separate from the upcoming nightclub application which will allow for conditions based on

patterns or use. Council will have the authority for conditions with the nightclub application. City Attorney Hite also talked about the language from the Hearing Examiner's findings of fact as a land use determination. Discussion continued about the number of Element's security personnel in the parking lot (six to eight), that nightclubbers will not be interested in cards and may still disburse all at once, the hours of food service, that loitering is not allowed, and that this evening's agenda bill is addressing only the card table license application which, under present municipal code language, is an administrative process. The nightclub license application is expected to be part of Council's March 3, 2009 meeting agenda.

With no other public comments coming forward, Mayor Slowik closed this portion of the meeting at 8:30 p.m.

Council discussion continued regarding gambling laws and DUIs or other mishaps, and that a card table license could only be revoked for a gambling regulation violation. Council still expressed concern with a 4:00 a.m. closure and discussion continued about complaints occurring at Bayside Lounge being unrelated to noise, and that if the police department receives noise complaints between 2:00 a.m. and 4:00 a.m., those complaints could be related to gambling. At this point, the police department has no such causal information.

MOTION: COUNCILMEMBER ALMBERG MOVED TO DIRECT THE MAYOR TO APPROVE MR. MIKE KUMMERFELDT'S APPLICATION FOR CARD TABLE LICENSE DATED DECEMBER 18, 2008, FOR THE ADDRESS LOCATION OF 656 SE BAYSHORE DRIVE, SUITE NO. 1 (ELEMENT NIGHTCLUB), OAK HARBOR, WASHINGTON, BASED UPON THE CONDITIONAL USE PERMIT REQUIREMENTS FROM CITY OF OAK HARBOR CUP-08-00005 AND HEARING EXAMINER FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION. THE MOTION WAS SECONDED BY COUNCILMEMBER CAMPBELL.

VOTE ON THE

MOTION: THE MOTION CARRIED UNANIMOUSLY.

Mayor Slowik called for a break at 8:35 p.m. and thanked Mr. Crouch's American Government class for attending this evening's meeting. The meeting reconvened at 8:45 p.m.

2009 Vehicle Replacements / Purchase

Public Works Director Cathy Rosen presented this agenda bill. During the 2009-2010 biennial budget process, Equipment Rental and the Wastewater Division budgeted to purchase two Toyota Prius 4-door sedans. One Toyota Prius would replace a 1995 S-10 pick up that is currently used in the Motor Pool. This Toyota Prius would remain in the Motor Pool to support the Engineering staff that will be moving to Public Works as well as other staff for travel in and out of town. The second Toyota Prius would be an addition to the fleet and be used by the Wastewater Treatment Plant staff to do grease trap inspections and for travel to and from the treatment plant and other City facilities. The treatment plant staff currently uses two ¾ ton pick-ups. However, with six employees it has been a challenge meeting job duties with only two vehicles. The City currently owns one Toyota Prius and has found it to be very reliable and economical. Staff has obtained pricing from the state contract and also notified local dealers to

see if they could provide the City with two Toyota Prius sedans. The City did not receive a response from the local dealers. The state contract price for a 2009 Toyota Prius is \$23,600.00. Per OHMC 2.320.110, the City may purchase supplies, material and equipment from surplus supplies, material and equipment from the United States, State of Washington or other municipality and through state contract without going out to bid. (Ord. 1470 § 3, 2006). In review of the state contract requirements, City staff has confirmed that the state contract procedures are in compliance with OHMC 2.320.040. The Department of General Administration develops and administers contracts for goods and services with an estimated term value of approximately \$900 million, on behalf of state agencies, colleges and universities, select nonprofit organizations, and local governments.

There were no public comments on this agenda item.

Council Discussion

Council discussion followed about the use of a pick-up truck vs. a Prius and whether the price was all-inclusive (yes).

MOTION: COUNCILMEMBER CAMPBELL MOVED TO AUTHORIZE THE SURPLUS OF THE 1995 S-10 PICK UP, AND AUTHORIZE THE PURCHASE OF TWO TOYOTA PRIUS SEDANS OFF OF THE STATE CONTRACT NUMBER 04408 IN THE AMOUNT OF \$47,200.00. THE MOTION WAS SECONDED BY COUNCILMEMBER PALMER AND CARRIED UNANIMOUSLY.

Bid Award – Craftco Asphalt Crack Sealer

Public Works Director Cathy Rosen presented this agenda bill. In 1998, the City purchased a used 1996 Craftco crack sealer that was trailer-mounted. This crack sealer has been used to put down 2 to 2.5 tons of rubberized crack sealant annually. During the life of this crack sealer, there have been some significant repairs due to its old technology and the wear and tear that is normal for this type of equipment. The replacement crack sealer being considered has more advanced technology and a better designed pump and heated applicator hose. Per OHMC 2.320.040 and RCW 39.04, bidding process requirements were met. On December 19, 2008, formal bids were received and opened. Only one bid was received prior to the published deadline and public bid opening. A second bid was received on December 22, 2008 after the bid opening and cannot be considered. This second non-qualifying bid was higher than the qualified received bid.

There were no public comments on this agenda item.

MOTION: COUNCILMEMBER MUNNS MOVED TO AUTHORIZE THE SURPLUS OF NUMBER E-31, A 1996 CRAFTCO CRACK SEALER, AND AUTHORIZE THE PURCHASE OF ONE ASPHALT CRACK SEALER MACHINE TO PARTNER CONSTRUCTION PRODUCTS, INC., IN THE AMOUNT OF \$47,587.60. THE MOTION WAS SECONDED BY COUNCILMEMBER PALMER AND CARRIED UNANIMOUSLY.

2009 Purchase of Radio Read Water Meters

Public Works Director Cathy Rosen presented this agenda bill. In May 2005, the City Council approved the purchase of a Radio Read Water Meter Reading System by Master Meter as part of an eight year program to change out all of the existing water meters in the City with radio read meters. The Water Division is requesting authorization to purchase 600 Model 50 DIALOG 3G Drive-by Radio Read Water Meters as a continuation of the ongoing replacement program. The radio read meters by Master Meter will be purchased under a previously approved Sole Source determination (RCW 39.04.280 (1) (a) and City Resolution #07-07), as these meters are compatible with the existing water meters and meter reading system. Ms. Rosen noted that Rich Tyhuis had received information from the vendor that the 600 meters would be sold to the City at last year's price which will save the City \$15,000. The purchase order will be revised.

Mayor Slowik opened the meeting to public comments.

Mel Vance, 275 NW 8th. Mr. Vance asked about new meters that have been installed in his neighborhood and if this is a different technology.

Ms. Rosen clarified that he had a touch read meter and there are warranty problems with these meters. Public Works has worked with the radio read vendor and is installing radio read meters at a significant savings. Touch read meters use a wand; radio read meters are read through a laptop and then the information is downloaded into the utility billing system. This is both an upgrade in technology and timesaver for staff (two to three days for radio read metering where it used to take two weeks). Monthly billing cycles are expected this year.

MOTION: COUNCILMEMBER MUNNS MOVED TO AUTHORIZE THE PURCHASE OF 600 MODEL 50 DIALOG 3g DRIVE-BY RADIO READ WATER METERS AT A COST LESS THAN \$142,379.06. THE MOTION WAS SECONDED BY COUNCILMEMBER CAMPBELL AND CARRIED UNANIMOUSLY.

Public Hearing, Resolution No. 09-01 – Surplus Property for Affordable Housing

Development Services Director Steve Powers presented this agenda bill and a PowerPoint presentation that showed aerials of the property. The agenda bill proposed adoption of a resolution declaring approximately 3.29 acres on NE Goldie Street, adjacent to the old land fill, to be surplus. Following such a determination by the City Council, the property could then be sold, exchanged or otherwise disposed of at fair market value. The resolution further indicates the City Council's intention that the property and/or the proceeds of sale of the property be used for an affordable housing project if sufficient grant funds can be secured for the remaining costs of the project. The property under consideration was purchased in 1938 with the intention of using it for public works' purposes. The original parcel was much larger and portions of it were used for the old land fill. The 3.29 acres now described in Assessors' Parcel No. R13326-009-2990 has been vacant for many years and is not needed for any anticipated City project. For that reason, the first proposed finding is that the property is surplus to the City's needs and may be sold or otherwise disposed of for fair market value. Once the Council finds that the property is surplus, the staff may proceed to develop a recommendation as to the best method for disposing of it, so long as at least fair market value is obtained for it. Final disposition of the property will subsequently be made by the City Council, upon a staff recommendation. A professional appraisal has been prepared of the property but the appraisal has not yet been made public to protect the City's financial interest in obtaining the best value for the property.

The second finding of the proposed resolution is that the City Council intends that the property and/or the proceeds from the sale of the property be used for purposes of an affordable housing project. This finding is conditioned upon the City's ability to obtain adequate grant funding to finance the remainder of the affordable housing project costs. The City would like to meet the Department of Community, Trade and Economic Development (CTED) deadline for affordable housing grant proposals to be considered in the Spring 2009 round. That deadline is January 26, 2009. While the specifics of the City's project proposal require further development, the City will not be eligible to compete for funding until Fall 2009 if it cannot meet the January 26, 2009 deadline. A companion resolution authorizes the Mayor to enter into an interlocal agreement with the Housing Authority of Snohomish County to assist the City in the funding process, project design and ultimate development and management of the project.

Mayor Slowik opened the public hearing at 9:15 p.m.

Mel Vance, 275 NW 8th Avenue. Mr. Vance asked what the designation would be on the property.

Gary Robinson, 1361-8 NE Goldie Street. This is immediately north of Sean Byrne's property. Is there any communication with Sean Byrne about a property exchange which could exclude Evergreen Mobile Home Park.

With no other comments coming forth, Mayor Slowik closed the public hearing at 9:29 p.m.

Council Discussion

Discussion followed about use and location of the 3.29 acres and why it could not be used for affordable housing (within the noise zone and zoned industrial), its landfill location, the timeline for a grant application, and who had done the appraisal (Gregor Strohm). This acreage is in the City's limits. At Council's request, Mr. Powers noted that he was not aware of any interest by Mr. Byrne to shift his development to the north, and that this surplus is what affects the property's availability.

MOTION: COUNCILMEMBER CAMPBELL MOVED TO ADOPT RESOLUTION 09-01 FINDING THE PROPERTY TO BE SURPLUS AND EXPRESSING THE COUNCIL'S INTENTION THAT THE PROPERTY OR PROCEEDS FROM THE SALE OF THE PROPERTY BE USED FOR AN AFFORDABLE HOUSING PROJECT. THE MOTION WAS SECONDED BY COUNCILMEMBER MUNNS AND CARRIED UNANIMOUSLY.

Resolution No. 09-02 – Undertake an Affordable Housing Project with HASCO

Development Services Director Powers presented this agenda bill. This resolution sets out the City Council's intention to establish an affordable housing project and to work with the Housing Authority of Snohomish County (HASCO) to finance, develop and manage (initially) a manufactured home community for residents 55 years of age and older. It authorizes the Mayor to enter into a cooperative agreement with HASCO and its partner, HomeSight, to proceed with the grant applications and project development for the affordable housing project. The City of Oak Harbor has long been home to mobile home parks that provide an affordable, positive living experience for many of its residents. However, development pressures have led to the closure of a number of those parks and threaten the future of many more, as private property owners are electing to close the parks and use the land for other purposes. Many of the park residents

are distressed by the closure of the parks and have asked the City to take action. The City, through the Council and the Mayor, is exploring means by which the City could ensure the survival of an affordable manufactured home community for lower income seniors in Oak Harbor. The model which has been discussed is one in which the City would donate land for the manufactured home park, to be held in perpetuity as a land trust. The residents would own their own manufactured homes and pay an affordable monthly rent for the use of the pad and utilities, under the management of an affordable housing agency. On November 18, 2008, the City Council heard a presentation from HASCO and its partner, HomeSight, on a potential affordable housing project for the City of Oak Harbor. Based on its extensive experience with this sort of affordable housing development, HASCO believes that if the City contributes the land, the rest of the cost of developing the manufactured home community could be obtained through grants and affordable housing state loans. This may be an especially good time for the City's project to go forward. The Washington State Department of Community, Trade and Economic Development (CTED) has been allocated money specifically for manufactured home projects. While the economic forecast for the State budget is not good, there is a priority on creating jobs with public money. A housing project that is "shovel ready" would be a desirable use of State housing funds. To meet the Spring round of CTED funding, the City must submit a proposal for Stage I review no later than January 26, 2009. This resolution establishes the City's intention to create an affordable housing project and authorizes the Mayor to enter into a cooperative agreement with HASCO to finance, develop and manage (initially) the project in accordance with the parameters set out in the resolution. It also authorizes the Mayor to sign a grant application for CTED funding to meet the January 26th deadline. The prior agenda bill and Resolution 09-01 declares the City-owned property located at NE Goldie Street, Oak Harbor, Washington, 3.29 acres (Assessor's Parcel No. R13326-009-2990) surplus to the City's needs and declares an intention to utilize it for affordable housing purposes.

Mayor Slowik opened the meeting to public comments.

Steve Gulliford, 2159 Boulder Meadow Lane. Mr. Gulliford talked about his involvement with the Housing Authority of Island County and his continuing involvement with Saratoga Community Housing. He spoke about his recommendation, for this particular project, to use the considerable expertise of Snohomish County instead of our local Housing Authority.

Gary Robinson, 1361-8 NE Goldie Street. Mr. Robinson asked about residents who are under 55 and if they would be grandfathered into an affordable housing project or taken into consideration.

For the record, Mayor Slowik noted that this evening's meeting is not meant to set terms for a project's restrictions.

Terry Anania, 1242 Rickover Drive, Coupeville. Ms. Anania is the Executive Director of the Housing Authority of Island County and supported using Snohomish County's experience but Island County's Housing Authority is willing to help.

Mel Vance, 275 NW 8th. Mr. Vance felt that housing for over 55 residents is a good start, but affordable housing is also needed for younger people and working-class families.

Mayor Slowik closed public comments at 9:30 p.m.

MOTION: COUNCILMEMBER PALMER MOVED TO ADOPT RESOLUTION 09-02 AND AUTHORIZE THE MAYOR TO ENTER INTO A COOPERATIVE AGREEMENT WITH HASCO AND HOMESIGHT TO PROCEED WITH THE AFFORDABLE HOUSING PROJECT, AND SUBMIT A GRANT FUNDING APPLICATION TO CTED FOR THE SPRING 2009 ROUND. THE MOTION WAS SECONDED BY COUNCILMEMBER SEVERNS AND CARRIED UNANIMOUSLY.

Mayor Slowik noted the incredible amount of work that City Attorney Margery Hite had done on behalf of this project.

City Administrator's Comments

Mr. Schmidt asked that the minutes be checked regarding Council's vote on the Radio Read Water Meter agenda bill. Mr. Schmidt also talked about Council's workshop scheduled for January 29, 2009 at City Hall. Other meetings: There will be a tech team meeting on January 30, 2009 at Public Works. CTED and other agencies will be touring Pioneer Way. Council Members will be leaving for AWC's Legislative Conference in Olympia on February 17, 2009. There will be an agenda bill addressing Council Member's excused absences and lack of a quorum for the February 17, 2009 City Council meeting.

Councilmembers' Comments

Standing Committee reports were given, and Councilmember Almberg gave a report on the Waterfront Walkway and recognized and thanked the twenty-two businesses and individuals who had volunteered on this project including City Engineer Eric Johnston. The Council thanked all for a job well done. Councilmember Munns noted Mayor Slowik's upcoming birthday.

Mayor's Comments

Mayor Slowik talked about the Waterfront Walkway and his enjoyment of the Walkway, the Martin Luther King, Jr. Celebration that he had attended at House of Prayer which was uplifting and themed on "yes, we can." Mayor Slowik talked about this day's historical inauguration, President Obama's 80 percent approval rating, and the hopes and expectations of our country on his first day in office.

ADJOURN

With no other business coming before Council, Councilmember Palmer moved to adjourn. The motion was seconded by Councilmember Campbell and carried unanimously. The meeting adjourned at 10:00 p.m.

Connie T. Wheeler
City Clerk

CITY COUNCIL REMARKS-JANUARY 20, 2009

AS WE BEGIN THIS NEW YEAR IT IS TIME FOR ME TO COMMENT ON WHAT HAS BEEN A VERY FRUSTRATING AND DISAPPOINTING YEAR RELATING TO THE KENMORE AIR SAGA, SPECIFICALLY THE GRANT AND ULTIMATELY THEIR CEASING OF OPERATIONS LAST MONTH.

AS WE HAVE BEEN STATING FOR OVER A YEAR AND A HALF THE CITY PURSUED A GRANT AND LATER WAS AWARDED A GRANT BASED ON ERRONEOUS INFORMATION AND FLAWED ASSUMPTIONS. SEVERAL TIMES WE CAME TO THE COUNCIL AND STAFF AND TOLD YOU OF THESE ERRORS. **YOU IGNORED** THE WARNING SIGNS BACK THEN.

YOU SPENT CITY FUNDS, \$5000 ACCORDING TO THE GRANT APPLICATION, IN ADDITION TO HUNDREDS OF MAN-HOURS BY CITY STAFF AND THE COUNCIL IN A FLAWED PROGRAM.

WE CAME TO THE COUNCIL SEVERAL TIMES AND ADVISED THE MEMBERS THAT THE AIR SERVICE BEING PROVIDED WAS OPERATING UNDER AN UNREALISTIC ECONOMIC AND PROFITABILITY SCHEME AS WELL AS ON UNSOUND LEGAL FOOTING . COUNCIL WAS TOLD THAT WE DID NOT EXPECT IT TO SURVIVE INTO 2009. **YOU IGNORED** OUR WARNINGS.

WE ADVISED THE COUNCIL AND STAFF BOTH BEFORE AND AFTER THE AWARDING OF THE GRANT THAT YOU WERE ATTEMPTING TO PROVIDE A SHUTTLE SERVICE THAT YOU HAD NO LEGAL RIGHTS TO OFFER AND **YOU IGNORED** OUR WARNGING. WE OWNED THOSE RIGHTS PRIOR TO THE GRANT, AND WE OWN THOSE RIGHTS NOW. YOU CONTACTED THE WUTC AT THE TIME AND THEY ADVISED YOU THAT YOU CANNOT TAKE A PRIVATE BUSINESS ROUTE WITHOUT COMPENSATION. **YOU IGNORED** THEIR WARNING AND THE STATE LAW.

WE ASKED FOR AN EXPLANATION OF THE LACK OF A FORMAL AND ENFORCEABLE CONTRACT. WE ASKED HOW SUCH A SITUATION COULD EXIST. WE WERE REFUSED. YOUR CITY ATTORNEY REFUSED TO ELABORATE AT ALL FIRST CLAIMING OUR QUESTIONS WERE MOOT AS COUNCIL HAS APPROVED THE AGREEMENT AND SECOND CITING ATTORNEY/CLIENT PRIVILEGE. **YOU, THE ADMINISTRATION, IGNORED** A 3RD REQUEST FOR FOLLOW-UP INFORMATION.

THE CITY RECEIVED AN INVOICE FROM US REQUESTING PAYMENT FOR THE SEIZURE OF OUR PROPERTY, NAMELY OUR OWNED AND STATE APPROVED ROUTE FROM NAS TO OAK HARBOR TO LUPIEN FIELD. YOU HAVE NEVER ACKNOWLEDGED RECEIPT OF THE INVOICE OR CONTACTED US AS TO THE TERMS AND CONDITIONS THEREIN. THE BALANCE OWED CONTINUES TO GROW WITH INTEREST. THIS ISSUE IS NOT GOING AWAY. IT WILL BE PURSUED. **PLEASE DO NOT IGNORE US.**

THE ADMINISTRATION, STAFF AND THE COUNCIL, BOTH PRESENT AND PAST HAVE DONE LITTLE DUE DILIGENCE IN THIS ENTIRE MATTER. **YOU IGNORED** ALL THE FACTS AND OUR WARNINGS. **YOU IGNORED** BOTH STATE AND FEDERAL LAWS AND HAVE REFUSED TO TAKE ANY RESPONSIBILITY FOR THE SEIZURE OF OUR BUSINESS PROPERTY.

AS MAYOR SLOWIK AND OTHER BUSINESS PEOPLE ON THE COUNCIL SURELY KNOW, ANY BUSINESS THAT TREATS ITS CUSTOMERS LIKE WE HAVE BEEN TREATED FOR THE PAST YEAR AND A HALF WOULD BE OUT OF BUSINESS. IT IS TIME TO TAKE A CLOSE LOOK AT HOW THE CITY OF OAK HARBOR DOES BUSINESS AND HOW THEY TREAT THEIR BUSINESSMEN AND WOMEN. BUSINESS IS THE LIFE BLOOD OF ANY CITY. WITHOUT BUSINESSES A CITY DIES. PLEASE TAKE MY COMMENTS AS CONSTRUCTIVE SUGGESTIONS AND PROVIDE FULL DISCLOSURE TO THOSE CITIZENS WHO ELECTED YOU TO OFFICE AND COMPLETE DUE DILIGENCE ON ALL PROJECTS, GRANTS AND PROPOSALS THAT COME BEFORE THE CITY IN THE FUTURE. THANK YOU VERY MUCH.

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

Bill No. 2

Date: February 3, 2009

Subject: Employee Recognition

FROM: Jim Slowik
Mayor



INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

SUMMARY STATEMENT

The Mayor and City Council will recognize the following employee for his years of service with the City:

- Lt. John Dyer / OHPD – 25 years

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

Bill No. 3

Date: February 3, 2009

Subject: Employee Recognition

FROM: Jim Slowik
Mayor

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

SUMMARY STATEMENT

The Mayor and City Council will recognize the following employee for his years of service with the City:

- Bob Williams / Public Works – 15 years

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

Bill No. 4

Date: FEBRUARY 3, 2009

Subject: PUBLIC COMMENTS

FROM: Jim Slowik, Mayor

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:



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

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

 Margery Hite, City Attorney

SUMMARY STATEMENT

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

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

Bill No. CA 5A
Date: February 3, 2009
Subject: Excused Absence Request
James M. Campbell

FROM: Jim Slowik, Mayor

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

SUMMARY STATEMENT

Councilmember Jim Campbell has submitted an Excused Absence Request Form as he will be unable to attend the following City Council meetings:

1. April 7, 2009
2. April 21, 2009
3. May 5, 2009

Per RCW 35A.12.060, three consecutive absences would create a vacancy if not excused by the Council.

RCW 35A.12.060. In addition, a council position shall become vacant if the councilmember fails to attend three consecutive regular meetings of the council without being excused by the council.

RECOMMENDED ACTION

Pursuant to RCW 35A.12.060, approve Councilmember Campbell's three excused absence requests.

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

Bill No. CJA 5B

Date: February 3, 2009

Subject: Excused Absences for Mayor
and Council Members'
Attendance at AWC City
Legislative Action Conference

FROM:


Jim Slowik
Mayor

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

SUMMARY STATEMENT

Mayor Jim Slowik, and Council Members Jim Campbell, Beth Munns, Jim Palmer and Bob Severns will be attending the Annual Association of Washington Cities (AWC) Legislative Action Conference in Olympia, Washington from February 17, 2009 through February 19, 2009. Councilmember Rick Almberg and Councilmember Eric Gerber have approved excused absences in place (10/21/08 and 6/16/08 respectively) so there will not be a quorum for City Council's February 17, 2009 regular meeting.

Per RCW 35A.12.120: At all meetings of the council a majority of the councilmen shall constitute a quorum for the transaction of business...

RECOMMENDED ACTION

Pursuant to RCW 35A.12.120 approve the excused absences and deem the February 17, 2009 regular City Council meeting cancelled due to lack of a quorum.

City of Oak Harbor
City Council Agenda Bill

Bill No. 6
Date: February 3, 2009
Subject: Pioneer Way Water Main
Replacement Contract close-out

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

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

SUMMARY STATEMENT: This agenda bill seeks Council approval to increase the contract amount for Contract No. 08-01 by \$3,726.33, and for closeout for Contract No. 08-01 with Interwest Construction, Inc., for construction of the new water main on Pioneer Way.

BACKGROUND: At the March 18, 2008 regular business meeting, the City Council awarded a contract to Interwest Construction, Inc., of Burlington, Washington, in the amount of \$307,347.90 to replace the water main in Pioneer Way between Midway Blvd. and Ely Street. The award was made pursuant to RCW 39.04 and OHMC 2.330 in that an invitation for bids was made, public notice was given by publication, the bids received were publicly opened and evaluated in accordance with the bid specifications.

DESCRIPTION: At the March 18, 2008 meeting, the Council also authorized the City Engineer to administratively approve changes up to \$30,752.10. During the course of construction, three formal Change Orders were necessary. Change Order 1 was a no cost change to the specified contract duration. A number of minor changes necessary to complete the work were approved by staff during the course of construction. The changes included side sewer service repairs, additional water service installations and changes to the design depth of water main installation to accommodate unknown underground utilities not included in the original design documents. Also included is the work necessary to relocate a fire hydrant from the design location to accommodate an adjacent business. These changes are detailed in Change Order 2 and resulted in a net contract price increase of \$18,323.39.

In addition to the formal change orders, minor variations in quantities also occurred that affect the final price. The original contract amount is based on estimates of the amount of material needed to build the project. The actual quantities used typically vary, both up and down, from

Pioneer Way Water Main
Replacement Contract Completion
Agenda Bill - 1

the estimated quantities. As specified in the contract documents, quantities that vary less than 25% from the estimated amount are paid at the bid unit price. Minor variations in quantities on this project total \$2,694.35.

After the work was physically completed, staff began verifying final quantities in order to closeout the contract. As the final quantities were being determined it was determined that two bid item quantities exceeded the contract amount by more than 100%. The two items are Bid Item 6, "Crushed Surfacing Top Course" and Bid Item 8, "Temporary Cold Mix Asphalt Concrete". The additional materials were necessary for temporary and permanent street repairs to Pioneer Way. The Contractor placed the material at the direction of City staff and in accordance with the design plans.

The contract specifications allow the City to request a renegotiated contract price for material quantities in excess of 1.25 times the original Contract amount. Staff initiated renegotiation of prices for Bid Items 6 and 8. Interwest Construction, Inc., stated that they did not realize any unit cost savings due to the increased quantities of materials and provided documentation to that affect. Staff reviewed the information provided by the contractor, the contract specifications and comparable costs from similar projects. Staff is of the opinion that the unit costs are reasonable, that the contractor provided sufficient justification to prove that the unit prices are valid and that no unit price reduction is warranted. Therefore, staff is recommending that the proposed Change Order 3 be approved with payment at the contract unit price for 306 additional tons of "Crushed Surfacing Top Course" and 60 additional tons of "Temporary Cold Mix Asphalt."

Change Orders 1, Change Order 2 and the minor quantity changes increased the contract total to \$328,365.64 which is within the authorized amounts approved by the Council for staff approval. Change Order 3 in the amount of \$13,460.69 would increase the contract total to \$341,826.33. This amount exceeds the total amount of \$338,100.00 authorized by Council on March 18, 2008 for the Contract by \$3,726.33. Therefore, Council authorization to increase the contract amount by \$3,726.33 is necessary. Funds are available for this increase in the Water Division budget. Contract cost changes are summarized in the following table:

Item	Cost	Status
Original Contract	\$307,347.90	Awarded by Council
Minor Quantity Changes	\$ 2,694.35	Approved by staff
Change Order 1	\$ 0.00	Approved by staff
Change Order 2	\$ 18,323.39	Approved by staff
Change Order 3	\$ 13,460.69	Pending Council authorization.
Total	\$341,826.33	
Total authorized with contract award	\$338,100.00	Authorized in March 2008
Additional authorization request	\$3,726.33	Pending Council authorization.

Interwest Construction, Inc., has completed the work in accordance with the terms of the contract. City staff has inspected the finalized product and found that the work has been satisfactorily completed and is in compliance with the terms of the contract.

This agenda bill requests Council authorization of \$3,726.33 added to Contract 08-01, and the acceptance of the contract work as complete under OHMC 2.330.010, in order to authorize contract closeout including the standard 45-day claims and lien period and final payments.

RECOMMENDED ACTION:

Consider accepting as completed Contract No. 08-01 with Interwest Construction, Inc., as amended in the amount of \$341,826.33 and begin the 45-day claims and lien period.

ATTACHMENTS:

None

MAYOR'S COMMENTS:

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

Bill No. 7
Date: February 3, 2009
Subject: Waterloo Road Waterline, Contract No. ENG-08-09 Acceptance as Complete

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

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

SUMMARY STATEMENT:

At the October 21, 2008 regular business meeting the City Council awarded a contract to C. Johnson Construction, Inc. of Oak Harbor, WA in the amount of \$115,034.08 including sales tax, to construct the Waterloo Road Waterline Extension Project. In addition, Council authorized funds in the amount of \$10,000.00 as a contingency for contract changes. The Contractor has completed the work in accordance with the terms of the contract.

After completing the work, making minor adjustments for unknown conditions, and tabulating the final quantities, the final contract amount, including sales tax, is \$111,528.15. This agenda bill is to accept the contract work as complete and to authorize contract closeout including the standard 45-day claims and lien period and final payment.

RECOMMENDED ACTION:

A motion for the City Council to accept Contract ENG-08-09 with C. Johnson Construction Inc. in the amount of \$111,528.15 as completed and begin the 45-day claims and lien period.

ATTACHMENTS:

NONE

MAYOR'S COMMENTS:

