



October 1, 2013

CITY COUNCIL AGENDA

6:00 p.m.

1. CALL TO ORDER

Invocation/Pledge of Allegiance

HONORS AND RECOGNITIONS

- Proclamation – Community Planning Month
- Proclamation – International Day of the Girl Child
- Honoring Helen Chatfield Weeks for Service on the Parks Board

2. APPROVAL OF AGENDA

3. CITIZEN COMMENT PERIOD

4. CONSENT AGENDA

- a. Minutes of the Regular City Council meeting held September 17, 2013
- b. Approval of Accounts Payable Voucher Nos. 155605 through 155609 in the amount of \$702.91; and Nos. 155610 through 155762 in the amount of \$705,388.27
- c. Motion to confirm the appointment of Jeff Malmgren to the Marina Advisory Committee to fill an unexpired term ending December 2014

5. STAFF, MAYOR AND COUNCIL COMMENTS

- a. City Administrator
- b. Mayor
- c. Councilmembers

6. ORDINANCE AND RESOLUTIONS

- a. Ordinance 1671: Relating to Bed and Breakfast Establishments and Amending Sections 19.20.115, 19.20.140, 19.20.270, 19.20.305, 19.36.040, 19.36.070, 19.44.100 and Adding New Sections 19.08.061, 19.08.062 and 19.08.063 to the OHMC



October 1, 2013

CITY COUNCIL AGENDA

6:00 p.m.

7. PUBLIC HEARINGS/PUBLIC MEETINGS

- a. Ordinance 1669: Amending Chapter 5.50.020(6), Repealing Chapters 6.12 and 6.14, and Creating a New Chapter 6.12, Parks Code, of the Oak Harbor Municipal Code
- b. Ordinance 1666: Relating to Medical Marijuana Moratorium
- c. Ordinance 1665: Relating to Initiative 502 Moratorium

8. UNFINISHED BUSINESS

9. NEW BUSINESS

- a. Motion to approve an agreement with SPIN Café for the development of a permaculture food forest at 658 Bayshore Drive, adjacent to Hal Ramaley Park, with the understanding that the site will remain open to the public, that SPIN Café will not use the site as a for-profit enterprise, and that if the City needs to utilize the property for another purpose the Permaculture food forest may be removed
- b. Motion to approve and authorize the Mayor to sign the Settlement Agreement with Frontier Communications Northwest, Inc.
- c. Executive Session – Pending Litigation

10. ADJOURNMENT

As a courtesy to Council and the audience, PLEASE TURN YOUR CELL PHONES OFF before the meeting begins. During the meeting's Public Comments section, Council will listen to your input regarding subjects of concern or interest that are not on the agenda.

For scheduled public hearings, if you wish to speak, please sign your name to the sign-up sheet, located in the Council Chambers. The Council will take all information under advisement. To ensure your comments are recorded properly, state your name and address clearly into the microphone. Please limit your comments to three minutes in order that other citizens have sufficient time to speak.

Thank you for participating in your City Government!

City of Oak Harbor

OFFICE OF THE MAYOR
SCOTT DUDLEY
MAYOR



PROCLAMATION IN RECOGNITION OF

COMMUNITY PLANNING MONTH OCTOBER 2013

WHEREAS, Change is constant and affects all cities, town, suburbs, counties, boroughs, townships, rural areas, and other places; and

WHEREAS, community planning and plans can help manage this change in a way that provides better choices for how people work and live; and

WHEREAS, community planning provides an opportunity for all residents to be meaningfully involved in making choices that determine the future of their community; and

WHEREAS, the full benefits of planning requires public officials and citizens who understand, support, and demand excellence in planning and plan implementation; and

WHEREAS, the month of October is designated as National Community Planning Month throughout the United States and its territories; and

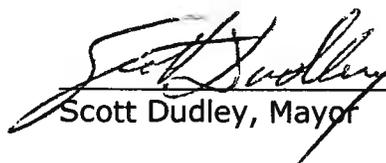
WHEREAS, the American Planning Association and its professional institute, the American Institute of Certified Planners, endorse National Community Planning Month as an opportunity to highlight the contributions sound planning and plan implementation make to the quality of our settlements and environment; and

WHEREAS, the celebration of National Community Planning Month gives us the opportunity to publicly recognize the participation and dedication of the members of the Planning Commission and other citizen planners who have contributed their time and expertise to the improvement of the City of Oak Harbor; and

WHEREAS, we recognize the many valuable contributions made by professional community and regional planners of the City of Oak Harbor and extend our heartfelt thanks for the continued commitment to public service by these professionals.

NOW, THEREFORE, WE, Scott Dudley, Mayor, and Councilmembers of the City of Oak Harbor do hereby designate the month of **October 2013** as **Community Planning Month** in the City of Oak Harbor in conjunction with the celebration of National Community Planning Month.

Signed this 1st day of October, 2013



Scott Dudley, Mayor

City of Oak Harbor

OFFICE OF THE MAYOR
SCOTT DUDLEY
MAYOR



PROCLAMATION IN RECOGNITION OF

INTERNATIONAL DAY OF THE GIRL CHILD

OCTOBER 11, 2013

WHEREAS, On December 19, 2011, the United Nations General Assembly adopted Resolution 66/170 to declare October 11th as the International Day of the Girl Child, to recognize girls' rights and the unique challenges girls face around the world; and

WHEREAS, for its second observance, this year's Day will focus on "Innovating for Girls' Education", and

WHEREAS, the fulfillment of a girl's right to education is first and foremost an obligation and moral imperative throughout the world, and

WHEREAS, there is overwhelming evidence that girls' education, especially at the secondary level, is a powerful transformative force for societies and girls themselves, and

WHEREAS, there is a global need for more science and technology courses targeted at girls in schools, universities and vocational education programs, and

WHEREAS, Soroptimist International of Oak Harbor joins with other local, state and national organizations to advocate for gender equality for girls, domestically and internationally, by improving girls' lives through educational opportunities, supporting anti-bullying and dating violence initiatives, and programs that help girls develop independence, self-esteem, respect for others and leadership skills, and

WHEREAS, the City of Oak Harbor joins Soroptimist International of Oak Harbor and other organizations, and supports increasing girls' participation in sports, science and math-related activities, high school graduation rates, and providing equal opportunities for all girls by speaking out against gender-based injustices, celebrating all girls' potential, and encouraging all girls to live their dreams.

NOW, THEREFORE, WE, Scott Dudley, Mayor, and Councilmembers of the City of Oak Harbor do hereby proclaim **October 11, 2013** as **Day of the Girl Child** in the City of Oak Harbor.

Signed this 1st day of October, 2013


Scott Dudley, Mayor

Oak Harbor City Council
Regular Meeting Minutes
September 17, 2013

CALL TO ORDER

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

INVOCATION/PLEDGE OF ALLEGIANCE

Councilmember Jim Campbell gave the Invocation and Mayor Dudley led the Pledge of Allegiance.

ROLL CALL

Present:

Mayor Scott Dudley
Mayor Pro Tempore Danny Paggao
Councilmember Rick Almberg
Councilmember Jim Campbell
Councilmember Tara Hizon
Councilmember Beth Munns
Councilmember Joel Servatius
Councilmember Bob Severns

Staff Present:

City Administrator Larry Cort
Finance Director Doug Merriman
Development Service Director Steve Powers
Public Works Director Cathy Rosen
Assistant City Attorney Nikki Esparza
City Engineer Joe Stowell
City Clerk Valerie J. Loffler
Chief of Police Ed Green
Deputy Fire Chief Mike Buxton

HONORS AND RECOGNITIONS

Employee Recognition

Keith Jameson was recognized for 15 years of service to the City of Oak Harbor Public Works Department. Public Works Director Cathy Rosen presented Mr. Jameson a fleece jacket.

Community Cheerleader Helen Chatfield-Weeks led a cheer for Keith.

APPROVAL OF AGENDA

Motion: Councilmember Munns moved to amend the Agenda by placing Item 9.b. after Staff, Mayor and Council Comments. The motion was seconded by Councilmember Almberg and carried unanimously.

Councilmember Munns moved to add 9.d., Executive Session to discuss potential litigation. The motion was seconded by Councilmember Campbell and carried unanimously.

Councilmember Hizon moved, seconded by Councilmember Campbell, to approve the Agenda as amended. The motion carried unanimously.

CITIZEN COMMENT PERIOD

Ernest Branigh, representing the North Whidbey Lions Club, expressed heartfelt thanks to Council for their support in awarding Lodging Tax Funds for the Car Show held in August. Mr. Branigh also expressed his appreciation to the Parks and Recreation Department for all their help.

CONSENT AGENDA

- a. Minutes of the Regular City Council meeting of September 3, 2013
- b. Approval of Accounts Payable Voucher Nos. 155286 through 155434 in the amount of \$1,186,510.92; Voucher Nos. 155435 through 155443 in the amount of \$905.39; Voucher Nos. 155444 through 155604 in the amount of \$467,846.13
- c. Motion to confirm Mayor Dudley's re-appointment of Bruce Freeman to the Planning Commission for a three-year term expiring September 2016
- d. Motion to confirm Mayor Dudley's re-appointment of Sandi Peterson to the Planning Commission for a three-year term expiring September 2016
- e. Motion to confirm Mayor Dudley's appointment of Cedric Niiro to the Oak Harbor Youth Commission to fill an unexpired term expiring October 2015
- f. Motion to authorize the Mayor to sign the Agreement with Island County regarding Solid Waste Management for a term of six years
- g. Motion to confirm Mayor Dudley's appointment of Brenda Kovach to the Oak Harbor Youth Commission to fill an unexpired term expiring November 2015

Motion: Councilmember Campbell moved to approve the Consent Agenda as presented. The motion was seconded by Councilmember Severns and carried unanimously.

STAFF AND COUNCIL COMMENTS

City Administrator Dr. Larry Cort reminded Council of the workshop meetings scheduled for Monday, September 23rd, at 6:00 p.m. to discuss employee health benefits; Wednesday, September 25th, at 3:30 p.m. for the regular monthly workshop meeting; and on Tuesday, October 1st, at 3:00 p.m. to discuss the archaeology recovery costs and how it affects the overall city budget.

Mayor Scott Dudley congratulated staff for receiving the Outstanding Wastewater Treatment Plant Award for Superior Performance from the Washington State Department of Ecology. Operations Manager Steve Bebee accepted the plaque on behalf of his crew members.

Mayor Dudley suggested standing committees be reinstated, especially the Finance Standing Committee.

Councilmember Almberg spoke in support of the Finance Standing Committee.

Councilmember Munns thanked the community for supporting the Military Appreciation Picnic, including the efforts of over 100 volunteers.

Mrs. Munns also provided information on the Oak Harbor Education Foundation Breakfast to be held on October 8, 2013, at 7:00 a.m.

Councilmember Severns also spoke in support of Finance Standing Committee meetings.

He also announced the annual business expo sponsored by the Economic Development Council is scheduled for October 5-6, 2013, from 10 a.m. to 4:00 p.m.

TOURISM SERVICES AGREEMENT

Chamber of Commerce Tourism Services Agreement

Finance Director Doug Merriman provided the staff report. Mr. Merriman explained 2% Lodging Taxes, including rules and processes for allocating funds, the logistics of the application process, and recent legislative changes.

Speaking in support of funding for the Chamber of Commerce were:

Terica Taylor, Deception Pass Tours
Peggy Burton
Greg Lanza, Bed and Breakfast Owner
Le Linder
James Johnson, Whidbey Taxi

Kathy Reed, Executive Director of the Chamber, provided a presentation outlining the financial overview and accomplishments of the Chamber. She also responded to questions from the Council.

All Councilmembers spoke in support of the Chamber contract extension, although Councilmember Campbell felt more coordination with the Island County Tourism Board was essential.

Mr. Merriman clarified issues for Council including the application process for 2% funds, the length of the Chamber contract, the Lodging Tax Advisory Committee, and percentage of sales tax generated from the Pioneer Way businesses.

Motion: Councilmember AlMBERG moved to direct the Chamber of Commerce to present their 2014 budget proposal at the October 15th regular meeting and to postpone to November 6, 2013, final review and possible approval of the Tourism Services Agreement, which may or may not include an increase in the City's contribution to the Chamber, and which may or may not include a time extension to the contract. The motion was seconded by Councilmember Servatius and carried unanimously.

ORDINANCES AND RESOLUTIONS

Ordinance 1670: Relating to Standing Committees

City Administrator Dr. Larry Cort provided the staff report.

Ordinance 1670 **An Ordinance of the City of Oak Harbor, Washington Amending Ordinance 1663 Suspending the Regular Meetings of City Council Standing Committees Established under OHMC 1.04.015; Authorizing Special City Council Workshop Meetings; and Providing for Sunset of this Ordinance**

Councilmembers Servatius, Paggao, Severns, and Hizon supported regular workshop meetings, specifically because all Councilmembers are present versus three in attendance at a standing committee meeting.

In response to Councilmember Servatius' question about what information Council wasn't getting without the Finance Standing Committee in place, Mayor Dudley expressed concern about the impact of the archaeological recovery effort on the overall city budget.

Councilmembers discussed ideas to address finance issues during regular workshop meetings.

Motion: Councilmember Alberg moved to adopt Ordinance 1670. The motion was seconded by Councilmember Paggao and carried unanimously.

At 8:05 p.m. Mayor Dudley announced a five-minute recess. The meeting reconvened at 8:12 p.m.

Ordinance 1669: Relating to the Parks Code - Introduction and Motion to Set a Public Hearing
Public Works Director Cathy Rosen provided the staff report.

Mrs. Rosen responded to questions from Council regarding vendors in the parks and allowing alcohol at special events in certain locations.

Motion: Councilmember Alberg moved to set a public hearing for October 1, 2013, to consider Ordinance 1669. The motion was seconded by Councilmember Munns and carried unanimously.

PUBLIC HEARINGS/PUBLIC MEETINGS

Wastewater Treatment Plant SEPA

Development Services Director Steve Powers and City Engineer Joe Stowell explained the SERP process for funding and new regulations for environmental review.

Mayor Dudley opened the public meeting at 8:54 p.m.

Jeff Trumbore recommended staff review the report before submission pointing out some disconnections relating to moderate and high risk items. He suggested they be tracked separately.

Helen Chatfield-Weeks spoke in support of the new wastewater treatment plant stating it is exciting and wonderful to hear how far Oak Harbor has come on the project.

The public hearing closed at 8:56 p.m.

Motion: Councilmember Servatius moved to suspend the Council Rules and extend the meeting to 10:15 p.m. The motion was seconded by Councilmember Hizon and carried unanimously.

Councilmember Servatius asked if the document was available online and if staff had other leads on grants.

Councilmember Munns suggested staff communicate well and often so that citizens could accept and plan for a rate increase.

Staff and Council discussed participation by the Navy and the different assumptions and methodologies used by different consultants and engineers.

NEW BUSINESS

Animal Recovery Services

Police Chief Ed Green provided the staff report.

Councilmember Severns asked Chief Green about the number of calls for animal control on Navy property, and Councilmember Almberg questioned what was included in the unit price.

Motion: Councilmember Munns moved to authorize the Mayor to sign a contract with Forest City for Animal Recovery Services in Base Housing. The motion was seconded by Councilmember Campbell and carried unanimously.

Assistant City Attorney - Prosecution

City Administrator Dr. Larry Cort provided the staff report.

Police Chief Ed Green provided a recommendation for Ms. Lewis, including a “thumbs up” from his staff.

Councilmembers expressed their support and welcomed Ms. Lewis.

Motion: Councilmember Munns moved to confirm the Mayor’s appointment of Erin Lewis as Assistant City Attorney-Prosecution and to authorize the Mayor to sign an Employment Contract. The motion was seconded by Councilmember Severns and carried unanimously.

EXECUTIVE SESSION

At 9:43 p.m. the Mayor announced an Executive Session to discuss potential litigation. The executive session would last approximately 25 minutes and no action would be taken.

At 10:12 p.m. the Mayor announced another five minutes would be necessary for the executive session.

The meeting reconvened at 10:17 p.m.

ADJOURNMENT

Motion: Councilmember Almberg moved, seconded by Councilmember Campbell, to adjourn the meeting. The motion carried unanimously.

The meeting adjourned at 10:18 p.m.

Valerie J. Loffler, City Clerk

City of Oak Harbor
City Council Agenda Bill

Bill No. C/A 4.b.
Date: October 1, 2013
Subject: Approval of Accounts Payable
Vouchers

FROM: Doug Merriman, Finance Director 

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

SUMMARY STATEMENT

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

RECOMMENDED ACTION

Motion to approve Accounts Payable Voucher Nos. 155605 through 155609 in the amount of \$702.91; and Nos. 155610 through 155720 in the amount of \$705,388.27.

ATTACHMENTS

Voucher Lists

Voucher List
City of Oak Harbor

Bank code : bank

Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
155605	9/20/2013	0007230 ANDERSON, JOTHAM OR AURIKA	Ref000208366		UB Refund Cst #00154206	135.00
			Ref000208367		UB Refund Cst #00154206	103.74
					Total :	238.74
155606	9/20/2013	0006374 BOBORI COAST	Ref000208364		UB Refund Cst #00121310	13.80
					Total :	13.80
155607	9/20/2013	0007231 REYES, JENNIFER	Ref000208368		UB Refund Cst #00159560	11.35
					Total :	11.35
155608	9/20/2013	0001391 WINDERMERE	Ref000208369		UB Refund Cst #00162389	406.11
					Total :	406.11
155609	9/20/2013	0007229 YAVELAK, WILLIAM OR GINA	Ref000208365		UB Refund Cst #00148120	32.91
					Total :	32.91
5 Vouchers for bank code : bank						Bank total : 702.91
5 Vouchers in this report						Total vouchers : 702.91

Bank code : bank

Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
155610	9/25/2013	0000018 ADS EQUIPMENT	34042		UPGRADE KIT	2,941.29
Total :						2,941.29
155611	9/25/2013	0002100 AKINS, MARIE	1		TRAVEL REFUND	30.00
Total :						30.00
155612	9/25/2013	0000424 ALL BATTERY SALES AND SERVICE	51161645		BATTERIES	93.43
Total :						93.43
155613	9/25/2013	0000028 ALL ISLAND LOCK & KEY	48161		LOCK REPAIR	78.81
Total :						78.81
155614	9/25/2013	0001609 ALL QUALITY STITCHES	282		UNIFORMS	1,367.39
Total :						1,367.39
155615	9/25/2013	0006984 AMERICAN PETROLEUM	3504090413		OIL	343.76
Total :						343.76
155616	9/25/2013	0000042 ANACORTES, CITY OF	900-9080-00		AUG 2013/WATER PURCHASED	93,630.00
			900-9080-00		JUL 2013/WATER PURCHASED	93,630.00
			900-9080-00		JUN 2013/WATER PURCHASED	93,630.00
			901-9080-01		AUG 2013/WATER PURCHASED	1,060.19
			901-9080-01		JUL 2013/WATER PURCHASED	1,754.26
			901-9080-01		JUN 2013/WATER PURCHASED	1,184.08
			901-9080-02		AUG 2013/WATER PURCHASED	15,752.49
			901-9080-02		JUL 2013/WATER PURCHASED	13,797.62
			901-9080-02		JUN 2013/WATER PURCHASED	11,510.57
Total :						325,949.21
155617	9/25/2013	0002044 ANACORTES.NET/HOW IT WORKS	33607		SEP 2013/WEB HOSTING	75.00
			33667		SEP 2013/WEB HOSTING	15.95
Total :						90.95
155618	9/25/2013	0004019 ASSOCIATED PETROLEUM PRODUCTS	0467973-IN		FUEL	34,121.62
			0473083-IN		FUEL	20,702.08
			0476283-IN		FUEL	4,678.35

Bank code : bank

Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
155618	9/25/2013	0004019 0004019 ASSOCIATED PETROLEUM PRODUCTS (Continued)				Total : 59,502.05
155619	9/25/2013	0000055 ASSOCIATION OF WASHINGTON	1053-40912		REGISTRATION/MERRIMAN	175.00
						Total : 175.00
155620	9/25/2013	0000065 AVOCET ENVIRONMENTAL TESTING	1303027-IN		TESTING SERVICES	100.00
						Total : 100.00
155621	9/25/2013	0000082 BAYSHORE OFFICE PRODUCTS, INC	0625594-001		PAPER	81.25
						Total : 81.25
155622	9/25/2013	0007233 BBQ JOINT	090913		LUNCH	130.33
						Total : 130.33
155623	9/25/2013	0007232 BEST WESTERN PLUS	082713		HOTEL ACCOMMODATIONS/ESPARZA	240.54
						Total : 240.54
155624	9/25/2013	0003980 BHC CONSULTANTS	0005294		PROF SVC/SEPTIC TO SEWERS	6,301.26
						Total : 6,301.26
155625	9/25/2013	0001558 BOUND TREE MEDICAL, LLC	81202289		RESUSCITATOR MASK	101.64
						Total : 101.64
155626	9/25/2013	0003097 BOYER, TALLIE	TRAVEL REIMB		TRAVEL REIMB	460.80
						Total : 460.80
155627	9/25/2013	0006769 BRAUN CONSULTING GROUP	1672		AUG 2013/RETAINER	2,650.00
						Total : 2,650.00
155628	9/25/2013	0000137 BRIM TRACTOR COMPANY	IM67342 IM67962		MUFFLER CAS SHOCK/CLIP	223.73 89.16
						Total : 312.89
155629	9/25/2013	0000131 BROADVIEW APPLIANCE	32253		DRYER REPAIRS	97.78
						Total : 97.78
155630	9/25/2013	0000139 BUXTON, MIKE	TRAVEL ADVANCE		TRAVEL ADVANCE	88.00
						Total : 88.00

Bank code : bank

Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
155631	9/25/2013	0000146 CAPITAL INDUSTRIES INC	086455		ARROW/BOTTOMS/PLASTIC/GRAVITY I	3,443.62
Total :						3,443.62
155632	9/25/2013	0000627 CAPITAL ONE COMMERCIAL	109176665211		SUPPLIES	483.13
			129894765211		SUPPLIES	1,738.66
			131077665211		SUPPLIES	869.47
			150731765211		SUPPLIES	528.03
			165006665211		SUPPLIES	553.07
Total :						4,172.36
155633	9/25/2013	0000160 CENTRAL WELDING SUPPLY	RN08130981		CENTRASHIELD	12.71
Total :						12.71
155634	9/25/2013	0001563 CHICAGO TITLE COMPANY	245357921/1		OWNER'S POLICY	271.75
Total :						271.75
155635	9/25/2013	0000197 CONCRETE NORWEST	905857		CRUSHED ROCK	166.98
Total :						166.98
155636	9/25/2013	0000220 CUMMINS NORTHWEST, INC	001-72532		COUPLER/CONNECTOR	165.01
			001-73302		CLAMPS/GASKETS	353.83
			001-74569		GASKETS/SEALS	65.33
			001-74734		GASKET/ISOLATOR/SEALS/SCREWS	62.73
Total :						646.90
155637	9/25/2013	0001974 DATEC, INC	30923		PRINTER/BARCODE READER	663.94
Total :						663.94
155638	9/25/2013	0000247 DIAMOND RENTALS	1-513048		FLOOR BUFFER	426.10
Total :						426.10
155639	9/25/2013	0000254 DON'S WELDING	1352		DRILL BASE	86.96
Total :						86.96
155640	9/25/2013	0007046 DUNCAN MCINTOSH CO, INC	05020463		ADVERTISING	375.00
Total :						375.00
155641	9/25/2013	0000175 DUNN-TERRY, ROXANN	EXP REIMB		EXP REIMB	480.00

Voucher List
City of Oak Harbor

Bank code : bank

Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
155641	9/25/2013	0000175 0000175 DUNN-TERRY, ROXANN			(Continued)	Total : 480.00
155642	9/25/2013	0000273 EDGE ANALYTICAL, INC	13-15463 13-17020 13-17026		TESTING SERVICES TESTING SERVICES TESTING SERVICES	28.00 300.00 1,068.00 Total : 1,396.00
155643	9/25/2013	0002900 FASTENAL	WAOAK14951 WAOAK14999 WAOAK15011 WAOAK15171		EXTENSION BAND NUTS/GALV TOILET PAPER/EARMUFFS	9.85 247.40 23.02 1,320.23 Total : 1,600.50
155644	9/25/2013	0000399 FIRE CHIEFS, INTERNATIONAL ASSOC OF	99070		MEMBERSHIP RENEWAL	254.00 Total : 254.00
155645	9/25/2013	0002057 FIRE MARSHALS, WASHINGTON STATE ASSI	1519		REGISTRATION/BUXTON	35.00 Total : 35.00
155646	9/25/2013	0007141 FREEDOM PROPERTIES, LLC	093013		OCT 2013/ANIMAL SHELTER	2,500.00 Total : 2,500.00
155647	9/25/2013	0000355 FRONTIER	279-0841 675-1669 679-5551		CURRENT PHONE CHARGES CURRENT PHONE CHARGES CURRENT PHONE CHARGES	71.21 59.70 182.91 Total : 313.82
155648	9/25/2013	0000326 FRONTIER BUILDING SUPPLY	82256 82343 82385 82442 82504 82505		TREATED PLYWOOD FIR/SIDING/SCREWS SIDING CEDAR CEDAR CEDAR	45.59 112.71 42.39 48.36 52.18 26.09 Total : 327.32
155649	9/25/2013	0001706 GARDNER, PAT	EXP REIMB		EXP REIMB	1,975.01 Total : 1,975.01

Bank code : bank

Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
155650	9/25/2013	0000349 GRAINGER	9222428634		FACESHIELD/RATCHET	60.34
			9224207341		WISE	277.19
			9231052086		CALIBRATION WEIGHT	-90.28
			9231052094		TOILET SEAT	-419.14
			9233726323		RET RING PLIER	42.88
			9234723840		LINER	88.59
			9240605817		CUTTING TORCH	485.89
					Total :	445.47
155651	9/25/2013	0002747 GUARDIAN SECURITY	444985		ALARM MONITORING	708.00
					Total :	708.00
155652	9/25/2013	0004126 HABEEB, HEATHER	1		TRAVEL REFUND	30.00
					Total :	30.00
155653	9/25/2013	0007236 HAMMOND, JACOB	EXP REIMB		EXP REIMB	195.88
					Total :	195.88
155654	9/25/2013	0000694 HD SUPPLY WATERWORKS	B374034		COUPLING/GASKETS	230.68
					Total :	230.68
155655	9/25/2013	0003095 HOME DEPOT CREDIT SERVICES	9084504A		UNDERPAYMENT	43.13
					Total :	43.13
155656	9/25/2013	0007235 HUBBARD, MARY	091313		KEY DEPOSIT REFUND	10.00
					Total :	10.00
155657	9/25/2013	0000417 INDUSTRIAL BOLT & SUPPLY	543092-2		STRAIGHT/TEE/HEX	30.64
			544046-1		ALLOY/SCREWS/RINGS/SLIDES	386.91
					Total :	417.55
155658	9/25/2013	0000401 ISLAND COUNTY AUDITOR	0067833		COPIES	4.00
					Total :	4.00
155659	9/25/2013	0000411 ISLAND COUNTY TREASURER	080713		2ND QTR 2013/MUNICIPAL COURT EXP	41,588.13
					Total :	41,588.13
155660	9/25/2013	0000415 ISLAND DISPOSAL	090213		AUG 2013/COLLECTION CHARGES	11,115.48

Bank code : bank

Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
155660	9/25/2013	0000415 ISLAND DISPOSAL	(Continued) 3344941		RECYCLING	43.00
					Total :	11,158.48
155661	9/25/2013	0000433 ISLAND DRUG	114508172388		INMATE MEDS	38.58
					Total :	38.58
155662	9/25/2013	0000438 ISLAND PAINT & GLASS	25521 25524 25533 25590		PAINT PAINT PAINT PAINT	33.86 259.02 54.24 17.86
					Total :	364.98
155663	9/25/2013	0000454 JET CITY EQUIPMENT RENTAL	19124		DUMPING	20.00
					Total :	20.00
155664	9/25/2013	0002933 JETER, DAVID	1		TRAVEL REFUND	30.00
					Total :	30.00
155665	9/25/2013	0004007 KAMAK, RAJESH	TRAVEL ADVANCE		TRAVEL ADVANCE	34.50
					Total :	34.50
155666	9/25/2013	0006362 KBA, INC	3001330		PROF SVC/OAK HARBOR NORTH RESE	24,797.84
					Total :	24,797.84
155667	9/25/2013	0000471 KCDA PURCHASING COOPERATIVE	3711248		PROF SVC/DRAINAGE SYSTEM INSTAL	75,992.82
					Total :	75,992.82
155668	9/25/2013	0007239 KLEIN, KARIN	7315		MOORAGE REFUND	216.50
					Total :	216.50
155669	9/25/2013	0001475 KOCH, MARGARET	1		TRAVEL REFUND	30.00
					Total :	30.00
155670	9/25/2013	0000494 LAKESIDE INDUSTRIES	5101926MB 5101935MB		ASPHALT ASPHALT	330.30 317.33
					Total :	647.63

Bank code : bank

Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
155671	9/25/2013	0000221 LN CURTIS & SONS	2107654-00		BLADE	221.32
Total :						221.32
155672	9/25/2013	0002623 LUEHR, BARBARA	1		TRAVEL REFUND	75.00
Total :						75.00
155673	9/25/2013	0000530 MAILLIARD'S LANDING NURSERY	75198		YARD WASTE	139.65
			75493		YARD WASTE	5.00
Total :						144.65
155674	9/25/2013	0004818 MICHAEL BOBBINK LAND USE SRVCS	091613		SEP 2013/HEARING EXAMINER SERVIC	1,500.00
Total :						1,500.00
155675	9/25/2013	0005445 MONTOYA, MATTHEW J	98		SEP 2013/PUBLIC DEFENSE	5,500.00
Total :						5,500.00
155676	9/25/2013	0000587 MOTOR TRUCKS, INC	MV56471		SWITCH	258.14
Total :						258.14
155677	9/25/2013	0000601 NATIONAL FIRE PROTECTION	5909561Y		MEMBERSHP DUES/BUXTON	165.00
Total :						165.00
155678	9/25/2013	0000608 NC MACHINERY COMPANY	MVCS0227140		GASKET	1.75
Total :						1.75
155679	9/25/2013	0000672 OAK HARBOR ACE	227637		DECKSL/BITS	33.00
			227737		BIT/GLUE/FASTENERS	58.14
			227857		CLEANER	0.83
			227886		TRAP/TWINE	21.70
			227902		BIT	-30.43
			227903		ANCHORS	2.50
			227919		SNAPS	18.97
			227953		ROPE/BULB/SNAP	69.52
			228016		COUPLE	23.90
			228032		CLEANER/CLAMP	13.02
			228045		PENCILS/ROPE/SNAPS	65.13
			228051		TAPE/HOOKS/ANCHORS/LNKS	138.51
			228087		FASTENERS	2.78

Bank code : bank

Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
155679	9/25/2013	0000672 OAK HARBOR ACE	(Continued)			
			228088		WIRE	9.23
			228099		CAULK	3.25
			228129		PIPE	46.73
			228154		SQUEEGE/ROLLER/PAINT TRAY	62.27
			228162		WINTERGUARD	49.99
			228173		ADAPTER	1.40
			228174		LIGHT/HANDLE/BATTERY	26.70
			228180		SPRAYER/ROUNDUP	123.89
			228250		NOZZLE	11.95
			228264		HANDLES	45.64
			228302		CLEANER/NIPPLE/COUPLE/TOOLS CAC	22.12
			228338		TIEDOWN/CEMENT/PRIMER/GLUE/ADA	30.93
			228402		FASTENERS/SPRAYPAINT	5.09
			228411		AUTOCUT	65.20
			228490		COUPLING/TAPE	7.91
					Total :	929.87
155680	9/25/2013	0000668 OAK HARBOR AUTO CENTER	001-178668		RELAY	12.71
			001-178850		SWITCH	57.97
			001-179359		IBS MTP65	155.89
			001-179374		HIGH PERFORMANCE	3.85
			001-179435		PLUG	8.79
			001-179476		IBS MTP65	155.89
			001-179611		BELTS/DISTRIBUTORS	49.79
			001-179619		FILTERS	107.47
			001-179790		FRONT BRAKE CALIPER	85.00
			001-179796		BRAKING LINING/ROTOR	45.46
			001-179834		ALTERNATOR	163.27
			001-179919		BEAM	15.84
			001-179927		FILTERS	39.22
			001-180056		TIRE WIPE	30.51
			001-180090		PINT PUMP	4.94
			001-180092		PINT PUMP	4.94
			001-180168		FILTERS	56.55
			001-180261		HEAVY DUTY	21.95

Bank code : bank

Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
155680	9/25/2013	0000668 0000668 OAK HARBOR AUTO CENTER	(Continued)			Total : 1,020.04
155681	9/25/2013	0003007 OFFICE DEPOT	673067092001		BINDERS	86.42
						Total : 86.42
155682	9/25/2013	0000665 OFFICEMAX, INC	076035 117155 364544		REBATE REBATE TONER	-0.65 -2.84 258.04
						Total : 254.55
155683	9/25/2013	0000666 OGDEN MURPHY WALLACE	707514		PROF SVC/SWINOMISH TRIBAL COMM	8,111.23
						Total : 8,111.23
155684	9/25/2013	0002985 PACIFIC TIRE CO. INC	0069565		TIRES	99.76
						Total : 99.76
155685	9/25/2013	0003164 PAINTERS ALLEY	20616A 20822 21354 21600 21657 21756 21797 21806 21874 21989 21994 22056		UNDERPAYMENT PAINT PAINT PAINT PAINT PAINT PAINT PAINT PAINT PAINT PAINT PAINT	56.46 130.44 102.18 1,058.23 46.64 195.53 54.48 40.22 130.44 59.75 -59.75 201.10
						Total : 2,015.72
155686	9/25/2013	0001615 PART WORKS, INC	365699		HYDRANT BOX	444.09
						Total : 444.09
155687	9/25/2013	0007237 PASTER, NIDA	091713		KEY DEPOSIT REFUND	5.00
						Total : 5.00
155688	9/25/2013	0000709 PERS	01006506		AUG 2013/UNFUNDED LIABILITY	26.98

Bank code : bank

Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
155688	9/25/2013	0000709 0000709 PERS	(Continued)			Total : 26.98
155689	9/25/2013	0007181 PICCONE, JOHN	EXP REIMB		MOVING EXP REIMB	5,016.56
						Total : 5,016.56
155690	9/25/2013	0000730 POWELL, JANIS	1		DRIVING SERVICES	126.00
						Total : 126.00
155691	9/25/2013	0000743 PUGET SOUND ENERGY	200000919684		ELECTRICITY/WINDMILL	10.30
			200000947859		ELECTRICITY/CITY SHOP	2,497.66
			200001097589		ELECTRICITY/E BATHROOM	11.94
			200001884218		ELECTRICITY/1888 NE 5TH AVENUE	13.33
			200002036719		ELECTRICITY/34777 STATE ROUTE 20	61.57
			200002037261		ELECTRICITY/1780 SW SPRINGFIELD C	11.01
			200002170617		ELECTRICITY/552 NW CLIPPER DR	10.21
			200002723381		ELECTRICITY/CMFTST	207.93
			200003267636		ELECTRICITY/1000 SE IRELAND STREE	19.35
			200004342099		ELECTRICITY/650 NE 7TH AVENUE	28.11
			200004562878		ELECTRICITY/800 SE MIDWAY BLVD	114.07
			200004856627		ELECTRICITY/1577 NW 8TH AVENUE	10.21
			200005263310		ELECTRICITY/950 SE JENSEN STREET	10.21
			200005461666		ELECTRICITY/W KITCHEN	15.50
			200006103952		ELECTRICITY/5941 STATE ROUTE 20	13.05
			200007702943		ELECTRICITY/700 AV W & MIDWAY	145.06
			200007824192		ELECTRICITY/75 SE JEROME STREET	10.30
			200008816189		ELECTRICITY/ANNEX	16.62
			200010499248		ELECTRICITY/1948 NW CROSBY AVE	93.55
			200010530240		ELECTRICITY/651 SE BAYSHORE DRIV	74.63
			200010530802		ELECTRICITY/CITY BEACH PARK	15.57
			200010531024		ELECTRICITY/940 SE PIONEER WAY	185.62
			200010531172		ELECTRICITY/1300 NE BIG BERRY LOC	10.77
			200010531354		ELECTRICITY/1500 S BEEKSMA DRIVE	139.84
			200010531941		ELECTRICITY/800 SE DOCK STREET	102.07
			200010699706		ELECTRICITY/BALLPARK	57.04
			200011316839		ELECTRICITY/SR 20 & 650 AV W	910.44
			200011551930		ELECTRICITY/ADULT CARE CENTER	11.97
			200011579964		ELECTRICITY/285 SE JEROME STREET	14.82

Bank code : bank

Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
155691	9/25/2013	0000743 PUGET SOUND ENERGY	(Continued)			
			200012220337		ELECTRICITY/128 E WHIDBEY AVE	10.16
			200012278087		ELECTRICITY/FIRE STATION	1,260.36
			200012425357		ELECTRICITY/TREATMENT PLANT	1,320.74
			200012838765		ELECTRICITY/PIONEER PARK	16.89
			200013370750		ELECTRICITY/MARINA	1,616.49
			200013968405		ELECTRICITY/1540 SE PIONEER WAY	101.05
			200014151886		ELECTRICITY/1370 SE DOCK STREET	60.53
			200014596478		ELECTRICITY/CITY HALL	901.37
			200015618321		ELECTRICITY/600 NE 7TH AVENUE	90.97
			200015685833		ELECTRICITY/287 SE CABOT DRIVE	60.74
			200017255619		ELECTRICITY/690 SW HELLER ROAD	320.16
			200017441482		ELECTRICITY/CITY BEACH	1,721.95
			200017575347		ELECTRICITY/1367 NW CROSBY AVE	96.19
			200017653656		ELECTRICITY/3300 OLD GOLDIE ROAD	66.83
			200017853025		ELECTRICITY/2081 NE 9TH AVENUE	11.31
			200017968427		ELECTRICITY/POLICE STATION	1,520.27
			200019043344		ELECTRICITY/90 SE PIONEER WAY LIG	39.68
			200019500517		ELECTRICITY/1137 NW KATHLEEN DR	48.84
			200020179194		ELECTRICITY/626 CHRISTIAN ROAD	12.34
			200020235012		ELECTRICITY/SENIOR CENTER	542.04
			200020308330		ELECTRICITY/KITCHEN	14.79
			200022441113		ELECTRICITY/980 SW MCCROHAN	37.79
			200023231067		ELECTRICITY/945 E WHIDBEY AVE	19.38
			200023360569		ELECTRICITY/700 W HELLER ROAD	53.22
			200024715845		ELECTRICITY/1285 NE TAFTSON ST	32.44
			200025075157		ELECTRICITY/33500 STATE ROUTE 20	197.93
			20008386993		ELECTRICITY/FABER ST & HARVEST D	10.77
			220000598098		ELECTRICITY/2725 NE GOLDIE STREE	21.79
			300000010458		ELECTRICITY/MIDWAY & NE 8TH AVE	232.29
			300000010516		ELECTRICITY/900 SE MIDWAY BLVD	114.98
					Total :	15,377.04
155692	9/25/2013	0006762 RAINIER ENVIRONMENTAL	1283		TESTING	600.00
					Total :	600.00
155693	9/25/2013	0003060 RED LION HOTEL YAKIMA CENTER	107048		HOTEL ACCOMMODATIONS/RILEY	438.10

Bank code : bank

Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
155693	9/25/2013	0003060 0003060 RED LION HOTEL YAKIMA CENTER	(Continued)			Total : 438.10
155694	9/25/2013	0000960 REVENUE, WASHINGTON STATE DEPT OF	091413		AUG 2013/SALES/USE TAX	55,009.32
						Total : 55,009.32
155695	9/25/2013	0000781 SAFEWAY	802616		CAKE	235.42
						Total : 235.42
155696	9/25/2013	0007238 SCHOPF, GERALD	5045		MOORAGE REFUND	68.68
						Total : 68.68
155697	9/25/2013	0005967 SEATTLE AUTOMOTIVE DIST	S3-91226 S6-88226		REGULATOR MOTOR	70.35 66.19
						Total : 136.54
155698	9/25/2013	0003782 SHARP ELECTRONICS CORPORATION	C-784102-701		AUG 2013/MAINTENANCE CONTRACT	3.04
						Total : 3.04
155699	9/25/2013	0007234 SHOCKEY, TERRY	1		TRAVEL REFUND	30.00
						Total : 30.00
155700	9/25/2013	0000822 SHRED-IT USA, INC	9402414903		SHREDDING	49.50
						Total : 49.50
155701	9/25/2013	0005444 SIERRA, GEORGINA D	092313		SEP 2013/PUBLIC DEFENSE	2,500.00
						Total : 2,500.00
155702	9/25/2013	0000831 SIX ROBBLEES', INC	14-274797 14-274812 14-274864 14-275521		JACK CAMERA JACK GLOVES	74.54 903.88 69.82 144.46
						Total : 1,192.70
155703	9/25/2013	0000853 SKAGIT RIVER STEEL & RECYCLING	34394		GA GALV	1,173.96
						Total : 1,173.96
155704	9/25/2013	0000846 SOUND PUBLISHING	575991 856301		AUG 2013/PUBLICATIONS-ACCT#80125 NOA SEPA COOH	643.65 205.59

Bank code : bank

Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
155704	9/25/2013	0000846 SOUND PUBLISHING	(Continued)			
			857234		BREAKFAST CODE	93.45
			857235		PC 8-27-13	143.29
			859301		ORD 1662	43.61
			862335		BERG MDNS	62.30
			876939		ORD 1664-1667	118.37
			876940		PUBLIC HEARING	130.83
					Total :	1,441.09
155705	9/25/2013	0003883 STAPLES BUSINESS ADVANTAGE	3207793963		FASTENERS/INK/FOLDERS	88.46
			3207793964		FOLDERS	-20.21
			3209205134		TONER	29.23
			3209624174		TONER	257.38
			3209624179		PADS/BAGS/FILING JACKETS/DIVIDER(S)	181.57
			3209624180		SPLS CD	6.41
					Total :	542.84
155706	9/25/2013	0000874 SURETY PEST CONTROL	375146		PEST EXTERMINATION	32.61
			377218		PEST EXTERMINATION	59.79
			377998		PEST EXTERMINATION	43.48
					Total :	135.88
155707	9/25/2013	0000897 TMG SERVICES, INC	0035325-IN		HEAD	240.42
					Total :	240.42
155708	9/25/2013	0000913 TYHUIS, RICHARD	EXP REIMB		EXP REIMB	38.80
					Total :	38.80
155709	9/25/2013	0000287 TYLER TECHNOLOGIES, INC	045-94617		PROJECT ACCOUNTING SUPPORT	15,594.10
					Total :	15,594.10
155710	9/25/2013	0000923 UNITED PARCEL SERVICE	000A0182W353		SHIPPING	25.28
					Total :	25.28
155711	9/25/2013	0000926 USABLUBOOK	142777		POLE	140.89
			147632		WEIGHTED FLOAT	-108.99
			148926		HOSE SHANK	235.29

Bank code : bank

Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
155711	9/25/2013	0000926 0000926 USABLUEBOOK	(Continued)			Total : 267.19
155712	9/25/2013	0000932 VERIZON WIRELESS	9711239089		CURRENT CELL CHARGES	4,123.18
						Total : 4,123.18
155713	9/25/2013	0006692 WASHINGTON FESTIVALS & EVENTS	032613		MEMBERSHIP RENEWAL	100.00
						Total : 100.00
155714	9/25/2013	0000969 WASHINGTON STATE FERRIES	*RK212073 *RK213553		FERRY FARES/ANNUAL FEE FERRY FARES	554.95 169.00
						Total : 723.95
155715	9/25/2013	0001052 WASHINGTON STATE PATROL	I14001512		BACKGROUND CHECKS	544.50
						Total : 544.50
155716	9/25/2013	0003486 WESTERN FACILITIES SUPPLY, INC	417777-01 417777-04		AIR FRESHENER AIR FRESHENER	352.24 70.45
						Total : 422.69
155717	9/25/2013	0001039 WESTERN PETERBILT, INC	S798779		GASKETS/CLAMPS/EXHAUST PIPE	764.19
						Total : 764.19
155718	9/25/2013	0001000 WHIDBEY AUTO PARTS, INC.	188015 188972		BULBS/PROTECTOR FILTERS	19.96 32.22
						Total : 52.18
155719	9/25/2013	0000675 WHIDBEY COMMUNITY PHYSICIANS	050913		PHYSICAL/NUCKOLS	225.00
						Total : 225.00
155720	9/25/2013	0001010 WHIDBEY TELECOM	3618147		CURRENT NET CHARGES	42.08
						Total : 42.08
111 Vouchers for bank code : bank						Bank total : 705,388.27
111 Vouchers in this report						Total vouchers : 705,388.27

City of Oak Harbor City Council Agenda Bill

Bill No. C/A 4.c.
Date: October 1, 2013
Subject: Marina Advisory Committee
Appointment – Jeff Malmgren

FROM: Scott Dudley, Mayor 

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

PURPOSE

The purpose of this agenda bill is for the Council to confirm Mayor Dudley's appointment of Jeff Malmgren to the Marina Advisory Committee.

SUMMARY STATEMENT

If confirmed, Mr. Malmgren will complete an unexpired term which will expire in December 2014.

Mayor Dudley recommends that Jeff Malmgren be confirmed to serve on the Marina Advisory Committee.

RECOMMENDED ACTION

Confirm Mr. Malmgren's appointment to the Marina Advisory Committee.

ATTACHMENTS

Mr. Malmgren's biography.

Biography Form

Recommended Board Appointment for: **Marina Advisory Committee**

Name: **Jeff Malmgren**

Date: **19 Sep 2013**

Address: 1231 SW Ingleside Court City, State, Zip: **Oak Harbor, WA 92877**
(No mail at this address)

Telephone Number: **360-969-6921**

Email Address: jeff@ohmotors.com

Mailing Address (if different from above): **P.O. Box 2715 Oak Harbor, WA 98277**

Resident of Oak Harbor/Whidbey Island for: **13 years**

Occupation and Place of Employment (if retired, reference previous occupation): **General Manager, Oak Harbor Motors**

Local Group or Civic Affiliations: **Northwest MOPAR Club, BMW Owner's Group**

Special Interests: **Sailing and cruising in the PNW, Hobby hydroplane building and racing, crabbing and fishing, restoration and collection of vintage pinball machines, on and off road adventure travelling.**

Other General Comments: **Would like to see the marina continue on in the newer trend of maintenance and upkeep showcasing this jewel as a focal point of attraction for Oak Harbor. Would like to be a part of the movement toward ensuring the patrons living onboard and using the marina adhere to policies and guidelines set in place to keep the marina, parking lot, storage sheds and fence line in a clean well groomed state. That people under contract using these facilities are held accountable to the standards set forth ensuring their assets do not become public liabilities and eyesores to the community. It would be rewarding to be a part of bringing new and innovative ideas to grow commerce and unite the boat owners to take more active roles in the community.**

City of Oak Harbor City Council Agenda Bill

Bill No. 6.a.
Date: October 1, 2013
Subject: Bed and Breakfast
Draft Code

FROM: Steve Powers, Development Services Director *SP*

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

PURPOSE

This agenda bill requests City Council approval of amendments to the Oak Harbor Municipal Code (OHMC) to more permissively allow bed and breakfast establishments ("B&Bs) in residential and select commercial zones. The proposed amendments affect OHMC Chapters 19.08 (Definitions), 19.20 (Zoning Districts), 19.36 (Sign Code), and 19.44 (Parking).

FISCAL IMPACT DESCRIPTION

Funds Required: \$ N/A

Appropriation Source: N/A

The proposed code amendments will not affect the receipt or outlay of City funds.

SUMMARY STATEMENT

The Mayor's Economic Development Committee requested that the City look at the locations where B&Bs are allowed and consider permitting these establishments in more locations. The Committee felt that more flexible regulations for bed and breakfast regulations would help create more opportunities for new businesses and tourism in Oak Harbor. Planning Commission began discussions on this topic in April of this year.

The existing city code allows for B&Bs through a conditional use permit in the R2 (Limited Multifamily Residential), R3 (Multifamily Residential), R4 (Multifamily Residential), and RO (Residential Office) zones. Comparative research for other jurisdictions including Langley, Coupeville, Anacortes, Friday Harbor, and Port Townsend showed that each of these jurisdictions is more lenient than Oak Harbor in where it allows B&Bs (see Attachment 2).

City of Oak Harbor City Council Agenda Bill

Using the regulatory framework from other jurisdictions, the draft bed and breakfast code (Attachment 1), allows B&Bs in a wider range of zones than currently permitted. The draft code, if adopted, would establish three different types of B&Bs:

- (1) bed and breakfast inns – facilities with up to ten guest rooms
- (2) bed and breakfast rooms (residential) – facilities with a limit of four rooms
- (3) bed and breakfast rooms (commercial) – facilities with a limit of four rooms

The following table shows where each of these types of B&Bs would be allowed under the draft code:

Type of B&B	R1 Low Density Residential	R2 Limited Multifamily Residential	R3 Multifamily Residential	R4 Multifamily Residential	RO Residential Office	C1 Neighborhood Commercial	CBD Central Business District
Inns	X	X	P	P	P	P	P
Residential Rooms	C	C	P	P	P	P	P
Commercial Rooms	X	X	X	X	X	P	P

Note: P = Permitted, C = Conditional, X = Prohibited.

The inherent philosophy reflected in the table is one of allowing B&Bs outright as permitted uses in higher density residential zones and appropriate commercial zones. At the same time, the code would protect the character of lower-density residential areas (R1 and R2) by prohibiting B&B Inns and B&B rooms (commercial), but allowing B&B rooms (residential) through a conditional use permit.

In addition to zoning controls, the draft code would also regulate the parking, signage, lighting, and operational characteristics of B&Bs to promote their compatibility with adjacent land uses, as follows:

- **Parking:** The draft code would require that B&Bs provide their own, off-street parking to meet their needs and limit the parking impacts on adjacent areas. Two spaces would be required for the owner/operator of the B&B plus one additional space per guest room.
- **Signage:** B&Bs would be permitted to have a single, four square-foot sign. Freestanding signs (pole or pylon) would be prohibited. Only building mounted or monument signs would be allowed. Signs would have to be of “non-reflective, non-flashing materials.”
- **Lighting:** Exterior lighting at the B&B must be downward directed so as not to impact adjacent uses.
- **Operations:** A manager or permanent resident would have to be domiciled onsite at the B&B at all times. No meals can be served to members of the general public at the B&B. In residential zones, only accessory commercial of 100 square feet or less is permitted for the sale of gifts, postcards, trinkets, etc. There is no limit on the amount of floor space devoted to commercial use in commercial zones.

City of Oak Harbor City Council Agenda Bill

PLANNING COMMISSION

Planning Commission discussed the draft bed and breakfast code on April 23, June 25, July 23, and August 27 of 2013 and recommended approval of the draft code to the City Council on August 27.

RECOMMENDED ACTION

Staff recommends that City Council approve the draft bed and breakfast code (Ordinance No. 1671).

ATTACHMENTS

- Attachment 1: Ordinance 1671 – Draft Bed and Breakfast Code
- Attachment 2: Comparison of Bed and Breakfast Code Regulations
- Planning Commission Minutes (April 23, June 25, July 23, and August 27 of 2013)

ORDINANCE NO. 1671

AN ORDINANCE OF THE CITY OF OAK HARBOR AMENDING CHAPTER 19.08 OF THE OAK HARBOR MUNICIPAL CODE ENTITLED "DEFINITIONS" AND ALSO AMENDING CHAPTER 19.20 ENTITLED "ZONING."

WHEREAS, the City's Comprehensive Plan, Economic Development Goal 6 says: "Ensure tourism with an emphasis on strengthening Oak Harbor as a tourist destination." and;

WHEREAS, the City's Comprehensive Plan, Land Use Element, Goal 5 says "To protect existing land uses as new development occurs" and;

WHEREAS, the City's Comprehensive Plan, Land Use Element Goal 6 says "To encourage land use opportunities for diversified economic development, and;

WHEREAS, the City's Comprehensive Plan, Land Use Element, Goal 8 says "to ensure that the location, situation, configuration, and relationship of the varied land uses within the UGA are consistent and compatible" and;

WHEREAS, the City's Comprehensive Plan, Land Use Element Goal 19 says "to create and maintain a balanced community that mixes residential and non-residential uses in a way that promotes environmental quality and community aesthetics."

WHEREAS, the City of Oak Harbor conducted a public hearing before the Planning Commission on August 27, 2013. A public meeting was held before the Planning Commission on April 23, 2013.

WHEREAS, the Oak Harbor Planning Commission recommended approval of the subject ordinance to the City Council and;

WHEREAS, the City of Oak Harbor issued Notice of Application on July 13, 2013 and a Mitigated Determination of Non-Significance (MDNS) on August 8, 2013 for a SEPA Environmental Checklist in accordance with Chapter 43.21 RCW and;

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

Section One. Chapter 19.08 of the Oak Harbor Municipal Code last amended by Ordinance 1555 section 4 in 2009 is hereby amended to read as follows:

Chapter 19.08 DEFINITIONS

Sections:

- 19.08.005 Definitions.
- 19.08.010 Accessory dwelling unit.
- 19.08.015 Accessory use.
- 19.08.020 Alley.
- 19.08.025 Alteration.
- 19.08.030 Assisted living facility.
- 19.08.035 Auto convenience market.
- 19.08.040 Automatic teller machine.
- 19.08.045 Automobile service station including self-service.
- 19.08.050 Aviation environs.
- 19.08.055 Banner.
- 19.08.060 Basement.
- [19.08.061 Bed and Breakfast Inns](#)
- [19.08.062 Bed and Breakfast Room \(residential\)](#)
- [19.08.063 Bed and Breakfast Room \(commercial\)](#)
- 19.08.065 Berm.
- 19.08.070 Binding site plan.
- 19.08.075 Hearing examiner.
- 19.08.078 Building code.
- 19.08.079 Fire code.
- 19.08.080 Brew pub.
- 19.08.085 Buffer.
- 19.08.090 Buildable area.
- 19.08.095 Building.
- 19.08.100 Building, accessory.
- 19.08.105 Building area.
- 19.08.110 Building, detached.
- 19.08.115 Building height.
- 19.08.120 Building line.
- 19.08.125 Building, multiple-occupancy.
- 19.08.130 Building, office.
- 19.08.135 Building, quasi-public.
- 19.08.140 Building, single-occupancy.
- 19.08.145 Building site.
- 19.08.150 Canopy.
- 19.08.155 Carport.
- 19.08.160 Certificate of occupancy.
- 19.08.165 Child day care center.
- 19.08.170 Church.
- 19.08.175 City.
- 19.08.180 City staff.

19.08.185	Club.
19.08.190	Coffee kiosk.
19.08.195	Commercial use.
19.08.200	Commercial vehicle.
19.08.205	Conditional use.
19.08.210	Condominium.
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19.08.225	Currency exchange.
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19.08.235	Day-night average sound level (Ldn).
19.08.240	Deciduous.
19.08.245	Density.
19.08.250	Design review board.
19.08.252	Director of development services.
19.08.255	Dock.
19.08.260	Dwelling, multifamily.
19.08.265	Dwelling, single-family.
19.08.270	Dwelling unit.
19.08.275	Electrical distribution substation.
19.08.280	Essential public facility.
19.08.285	Essential use.
19.08.290	Evergreen.
19.08.295	Extended stay motel.
19.08.300	Factory-built structure.
19.08.305	Family.
19.08.310	Floor area.
19.08.315	Fraternity, sorority or student cooperative.
19.08.320	Garage, commercial.
19.08.325	Gated community.
19.08.330	General promotions.
19.08.335	Grade (adjacent ground elevation).
19.08.340	Grand openings and anniversaries.
19.08.345	Greenbelt.
19.08.350	Ground cover.
19.08.355	Health club.
19.08.360	Home, family child day care.
19.08.365	Home, foster.
19.08.370	Home, group.
19.08.375	Home improvement center.
19.08.380	Home occupation.
19.08.385	Hospital.
19.08.390	Hospital, animal.
19.08.395	Hotel.
19.08.400	House, apartment.
19.08.405	House, boarding, lodging or rooming.

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19.08.435 Land clearing.
19.08.440 Landscape perimeter.
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19.08.465 Lot.
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19.08.485 Lot depth.
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19.08.505 Lot line.
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19.08.550 Mixed use.
19.08.555 Manufactured home.
19.08.560 Manufactured home park.
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19.08.570 Moorage.
19.08.575 Motel.
19.08.580 Multiple-occupancy complex.
19.08.585 Neighborhood convenience store.
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19.08.600 Nonconforming use.
19.08.605 Nonconforming use, land.
19.08.610 Occupant.
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- 19.08.640 Parking space.
- 19.08.645 Penthouse.
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- 19.08.700 Recreation facilities.
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- 19.08.710 Reside.
- 19.08.715 School, commercial.
- 19.08.720 Schools – Elementary, junior or senior high, including public, private
and parochial.
- 19.08.725 Screen.
- 19.08.730 Secondary use, incidental or accessory.
- 19.08.735 Setback and yard requirements.
- 19.08.740 Shelter station.
- 19.08.745 Shopping center.
- 19.08.750 Shrub.
- 19.08.755 Sign.
- 19.08.760 Sign, abandoned.
- 19.08.765 Sign, area or surface area.
- 19.08.770 Sign, billboard.
- 19.08.775 Sign, building-mounted.
- 19.08.780 Sign, canopy.
- 19.08.785 Sign, construction.
- 19.08.790 Sign, freestanding.
- 19.08.795 Sign, grade.
- 19.08.800 Sign, height of.
- 19.08.805 Sign, incidental.
- 19.08.810 Sign, low-profile.
- 19.08.815 Sign, noncommercial public service.
- 19.08.820 Sign, political.
- 19.08.825 Sign or signs, primary.
- 19.08.830 Sign, projection.
- 19.08.835 Sign, reader board.
- 19.08.840 Sign, roof.
- 19.08.845 Signs, subdivision.
- 19.08.850 Signs, temporary and special.
- 19.08.855 Sign, window.
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19.08.870	Sorority.
19.08.875	Story.
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19.08.900	Understory.
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19.08.960	Waste, hazardous – Off-site treatment and storage facility.
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19.08.985	Wireless communications facility, macro.
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19.08.1005	Xeriscape.
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19.08.1030	Yard, side.

19.08.061 Bed and Breakfast Inn

“Bed and Breakfast Inn” means a building or group of buildings on a lot which is designed or used for rental for transient lodging, where:

- (1) Not more than ten rooms are available for such rental;
- (2) No meals are served to members of the general public;
- (3) In residential zones, only accessory business, service, or commercial activity is allowed or provided on premises which shall not exceed 100 square feet in size. Such business shall only serve guests of the bed and breakfast establishment.
- (4) No room is rented to more than four persons.

19.08.062 Bed and Breakfast Rooms (residential)

“Bed and breakfast room (residential) means a room used for rental to not more than four persons for transient lodging situated in a building which is used primarily as the dwelling for a non-transient family, or in the case where there is an approved accessory dwelling unit on the same property, the principal dwelling is owner-occupied, and where:

- (1) Not more than four rooms are available for such rental
- (2) No meals are served to members of the general public; and
- (3) In the residential zones, only accessory business, service, or commercial activity is allowed or provided on premises which shall not exceed 100 square feet in size. Such business shall only serve guests of the bed and breakfast establishment.
- (4) If the principal dwelling ceases to be owner-occupied, the bed and breakfast use shall be terminated.

19.08.063 Bed and Breakfast Rooms (commercial)

“Bed and breakfast room (commercial)” means a room used for rental to not more than four persons for transient lodging situated in a building which is used primarily as a commercial establishment, where:

- (1) Not more than four rooms are available for such rental
- (2) No meals are served to members of the general public; and
- (4)(3) The room(s) are located above the first or street level or behind the street front side of the building.

Section Two. Sections 19.20.100 through 19.20.120 of the Oak Harbor Municipal Code last amended by Ordinance 1573 section 1 in 2010 are hereby amended to read as follows:

Article II. R-1 – Single-Family Residential

19.20.100 Purpose and intent.

The R-1 single-family residential district is intended for low-density, urban, single-family residential uses, while providing sufficient density to allow the city to effectively provide needed urban services. Manufactured home subdivisions are also allowed in this zone. The densities for this district range between a minimum of three units per gross acre and a maximum of six units per gross acre.

19.20.105 Principal permitted uses.

In an R-1 district, the following are principal permitted uses:

- (1) One single-family detached dwelling structure on each lot;
- (2) Development under a planned residential development as per Chapter 19.31 OHMC;
- (3) Manufactured home subdivisions as defined by OHMC 19.08.565 and in compliance with Chapter 19.25 OHMC.

19.20.110 Accessory permitted uses.

In an R-1 district, the following are accessory permitted uses:

- (1) Accessory uses and structures incidental to any permitted residential uses, such as servants' quarters, garages, greenhouses, or workshops, and barns; provided, that none shall be rented or occupied for gain;
- (2) All radio, television and microwave receiving antennas, whether variously described as a wire, dish, tower antenna, or otherwise, located within the setback lines of the lot.

19.20.115 Conditional uses permitted.

The following principal uses and their accessory uses may be permitted in an R-1 district when authorized by the hearing examiner:

- (1) All radio, television and microwave receiving antennas, whether variously described as a wire, dish, tower antenna, or otherwise, located outside of the setback lines of the lot when:
 - (a) Reception cannot be obtained when located within the setback lines;
 - (b) The location in a setback yard does not block the view of Oak Harbor Bay proposed from other property;
 - (c) The antenna does not cause a danger to adjacent properties;
 - (d) The antenna installation complies with all other zoning and building provisions of this code.
- (2) Assisted living facility.
- (3) Bed and breakfast rooms (residential only) subject to the following conditions:
 - (a) A resident is domiciled onsite;
 - (b) Parking of guest vehicles shall be accommodated on the premises and the number of spaces must meet OHMC 19.44.100. The size and dimensional requirements of OHMC 19.44 are not required to be met.
 - (c) Signs shall be permitted per OHMC 19.36.070.
 - (d) No commercial dining or other hospitality facilities are maintained for the entertainment of guests;
 - (e) Bed and breakfast rooms (residential) shall not be located in Noise Subdistrict C as that area is shown on the City of Oak Harbor's Official Zoning Map.
 - (f) If exterior lighting is proposed for the bed and breakfast room (residential) establishment, it shall be downward directed so as not to impact adjacent properties.
- (34) Cemetery, mausoleum, or crematorium, but only in connection therewith.
- (54) Churches and associated rectories, convents or other similar structures.

- | ~~(65)~~ Community center building.
- | ~~(76)~~ Excavations, other than simple foundation.
- | ~~(87)~~ Garages, for storage only of automobiles as an accessory to a public or quasi-public institution.
- | ~~(98)~~ Golf course, including club house, but not an independent pitch-and-putt course, golf driving range or miniature golf.
- | ~~(910)~~ Government buildings for administrative or protective services, government storage yards, treatment plants, well sites, pump stations and sanitary landfills.
- | ~~(4011)~~ Group home.
- | ~~(4112)~~ Home occupations as regulated in Chapter 19.34 OHMC.
- | ~~(4213)~~ Hospital.
- | ~~(4314)~~ Landfills, reclamation to improve steep, low or otherwise unusable land.
- | ~~(4415)~~ Mortuaries.
- | ~~(4516)~~ Nursery and landscape material, including greenhouses.
- | ~~(4617)~~ Private club, lodge, social or recreation building or community assembly hall (except those having a chief activity carried on for monetary gain); provided, that the buildings used for such purpose may require additional front, rear or side yard setback from an adjoining lot in any residential district beyond the established requirements in the parent zoning district.
- | ~~(4718)~~ Private nursery school, foster home, 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.
- | ~~(4819)~~ Private park or recreational area operated by a nonprofit community organization or association as a neighborhood playground, or local community recreational area, operated for the benefit of and exclusive use of members and their invited guests. Applications for a conditional use under this section shall state the specific use or uses to which the proposed neighborhood playground or local community recreational area shall be put. Conditional uses granted under this section shall be limited to one or more of the specific use or uses requested. Any use or uses in addition to or different from those specifically permitted by the hearing examiner hereunder shall require the separate approval of the hearing examiner. Included within the generality of the phrase "neighborhood playground, or local community recreational areas," but not limited thereto, are swimming pools, community beaches and tennis courts, together with appurtenances thereto.
- | ~~(4920)~~ Public school.
- | ~~(2021)~~ Public or private college.
- | ~~(2422)~~ Public, private or parochial school and supporting dormitory facilities.
- | ~~(2223)~~ Public or semi-public building serving as a library, museum or other similar purpose.
- | ~~(2324)~~ Public transportation shelter stations.
- | ~~(2425)~~ Public utility and communications facility, such as a branch telephone exchange, static transformer, booster station, or pumping station, provided there shall be no service or storage buildings or yards in connection therewith.
- | ~~(2526)~~ Radio and television broadcasting stations and towers.
- | ~~(2627)~~ Rapid transit terminals.

| (2728) Skilled nursing facility.

19.20.120 Density provisions.

For single-family dwelling structures, in an R-1 district, the following density provisions apply:

- (1) Minimum density, three DU/AC; maximum density, six DU/AC;
- (2) Minimum lot area, 7,200 square feet;
- (3) Minimum lot width, 60 feet;
- (4) Minimum lot depth, 90 feet;
- (5) Minimum front yard, 20 feet;
- (6) Minimum side yard setbacks are 12 feet and five feet; however, minimum side yard along the flanking street of a corner lot, 15 feet;
- (7) Minimum rear yard, 20 feet;
- (8) Maximum building height, 35 feet;
- (9) Maximum lot coverage, 35 percent of lot area;
- (10) A single-story accessory building containing less than 600 square feet of floor area may be constructed within five feet of either sideline or rear property line provided there is six feet of unencumbered space between the principal structure and the accessory building. Accessory buildings shall not have a metal finish except when the finish is listed by the manufacturer or approved by the building department as a nonglare finish. The maximum floor area of an accessory structure shall not exceed 50 percent of the floor area of the primary structure;
- (11) Development as a planned residential development may occur subject to Chapter 19.31 OHMC.

Section Three. Sections 19.20.125 through 19.20.155 of the Oak Harbor Municipal Code last amended by Ordinance 1573 section 1 in 2010 are hereby amended to read as follows:

Article III. R-2 – Limited Multiple-Family Residential

19.20.125 Purpose and intent.

The R-2 limited multiple-family residential district is intended for medium density residential housing. Manufactured home subdivisions and parks are allowed in this zone. The densities for this district range between a minimum density of three units per gross acre and a maximum density of 12 units per gross acre. The R-2 districts are intended only for those areas having safe and convenient access to improved collector or arterial streets and adequate public services.

19.20.130 Principal permitted uses.

In an R-2 district, the following are principal permitted buildings and uses:

- (1) Principal use permitted in an R-1 district;
- (2) Duplexes, two-family dwelling structures;
- (3) Multifamily dwellings;
- (4) Development under a planned residential development as per Chapter 19.31 OHMC;

- (5) Manufactured home subdivisions and parks in compliance with Chapter 19.25 OHMC.

19.20.135 Accessory permitted uses.

In an R-2 district, the following are accessory permitted uses:

- (1) Accessory uses and structures incidental to any permitted residential uses, such as servants' quarters, garages, greenhouses, or workshops; provided, that none shall be rented or occupied for gain;
- (2) Television satellite dish reflectors, ground-mounted within required building setback lines.

19.20.140 Conditional uses permitted.

The following principal uses and their accessory uses may be permitted in an R-2 district when authorized by the hearing examiner:

~~(1) (1) Any conditional use permitted in an R-1 district;~~

~~(2) Bed and breakfast rooms (residential only) subject to the following conditions:~~

~~(a) A resident is domiciled onsite;~~

~~(b) Parking of guest vehicles shall be accommodated on the premises and the number of spaces must meet OHMC 19.44.100. The size and dimensional requirements of OHMC 19.44 are not required to be met.~~

~~(c) Signs shall be permitted as per OHMC 19.36.060.~~

~~(d) No commercial dining or other hospitality facilities are maintained for the entertainment of guests;~~

~~(e) Bed and breakfast rooms (residential) shall not be located in Noise Subdistrict C as that area is shown on the City of Oak Harbor's Official Zoning Map.~~

~~(f) If exterior lighting is proposed for the bed and breakfast room (residential) establishment, it shall be downward directed so as not to impact adjacent properties.~~

~~(2) Bed and breakfast inns subject to the following conditions:~~

~~(a) There shall be no more than four guest rooms;~~

~~(b) Service of meals shall be to registered guests only;~~

~~(c) here shall be a full-time manager domiciled on the premises;~~

~~(d) Parking of guest vehicles shall be accommodated on the same site with the main building;~~

~~(e) Only one on-premises sign not exceeding four square feet in area shall be permitted. Maximum height of pole signs shall be 42 inches;~~

~~(3) Bed and breakfast rooms subject to the following conditions:~~

~~(a) A resident family is domiciled within the structure;~~

~~(b) No more than 50 percent of the existing bedrooms are devoted to bed and breakfast;~~

~~(c) Parking of guest vehicles shall be accommodated on the premises;~~

- ~~(d) Only one on-premises sign not more than four square feet in area shall be permitted. Maximum height of pole signs shall be 42 inches;~~
- ~~(e) No commercial dining or other hospitality facilities are maintained for the entertainment of guests;~~
- ~~(f) The use of the building as a dwelling is the predominant use.~~

19.20.145 Density provisions.

In an R-2 district, the following density provisions apply:

- (1) Minimum density, three DU/AC; maximum density, 12 DU/AC;
- (2) Minimum lot area: 6,000 square feet;
- (3) Minimum lot width, 60 feet;
- (4) Minimum lot depth, 90 feet;
- (5) Minimum front yard setback, 20 feet; see also subsection (6) of this section;
- (6) Minimum side yard setbacks are 20 feet, five feet on one side for duplexes and multiple-family dwellings while single-family detached dwelling structures must provide minimum 12-foot and five-foot side yard setbacks. For both single-family and multiple-family dwellings, side yard along the flanking street of a corner lot is 15 feet (see also subsection (7) of this section);
- (7) Minimum rear yard setbacks where distinguishable from side yards and where required for a platted lot shall not be less than 25 feet for duplexes and multiple-family dwellings, while for single-family detached dwelling structures they shall not be less than 20 feet. In addition to the above, any building of more than two stories in height must provide a minimum of two feet additional front, side and rear yard setback for each additional story;
- (8) Maximum building height, 35 feet;
- (9) Maximum lot coverage by buildings, 45 percent. A minimum of 20 percent of lot is to be kept free of impervious surfacing;
- (10) A single-story accessory building containing less than 600 square feet of floor area may be constructed within five feet of either sideline or rear property line; provided, there are six feet of unencumbered space between the principal structure and the accessory building. Accessory buildings shall not have a metal finish except when the finish is listed by the manufacturer or approved by the building department as a nonglare finish. The maximum floor area of an accessory structure shall not exceed 50 percent of the floor area of the primary structure;
- (11) Development may occur as a planned residential development subject to Chapter 19.31 OHMC.

19.20.150 Landscaping requirements.

Except for single-family dwellings and duplexes, landscaping and buffers shall be constructed and maintained in accordance with the provisions of Chapter 19.46 OHMC.

19.20.155 Site plan review required.

Site plan review shall be required as defined in Chapter 19.48 OHMC.

Section Four. Sections 19.20.160 through 19.20.190 of the Oak Harbor Municipal Code last amended by Ordinance 1573 section 1 in 2010 are hereby amended to read as follows:

Article IV. R-3 – Multiple-Family Residential

19.20.160 Purpose and intent.

The R-3 multiple-family residential district is intended to provide for and protect areas for medium- to high-density multiple-family residential development. The densities for this district range between a minimum density of six units per gross acre and a maximum density of 16 units per gross acre. The R-3 districts are intended only for those areas adjacent to arterials or collector streets, without generation of additional traffic upon residential streets, and with adequate public services.

19.20.165 Principal permitted uses.

In an R-3 district, the following are principal permitted buildings and uses:

- (1) Principal uses permitted in an R-2 district, except single-family uses;
- (2) Bed and breakfast inns subject to the following conditions:
 - (a) There shall be a full-time manager domiciled on the premises;
 - (b) Parking of guest vehicles shall be accommodated on the same site with the main building and shall meet the requirements of OHMC Chapter 19.44;
 - (c) Signs shall be permitted as per OHMC 19.36.060.
 - (d) Bed and breakfast inns shall not be located in Noise Subdistrict C as that area is shown on the City of Oak Harbor's Official Zoning Map.
 - (f) If exterior lighting is proposed for the bed and breakfast inn establishment, it shall be downward directed so as not to impact adjacent properties.
- (3) Bed and breakfast rooms (residential only) subject to the following conditions:
 - (a) A resident is domiciled onsite;
 - (b) Parking of guest vehicles shall be accommodated on the premises and the number of spaces must meet OHMC 19.44.100. The size and dimensional requirements of OHMC 19.44 are not required to be met.
 - (c) Signs shall be permitted as per OHMC 19.36.060.
 - (d) No commercial dining or other hospitality facilities are maintained for the entertainment of guests;
 - (e) Bed and breakfast rooms (residential) shall not be located in Noise Subdistrict C as that area is shown on the City of Oak Harbor's Official Zoning Map.
 - (f) If exterior lighting is proposed for the bed and breakfast room (residential) establishment, it shall be downward directed so as not to impact adjacent properties.
- ~~(2)~~(4) (42) Manufactured home park, subject to the provisions of Chapter 19.25 OHMC;
- ~~(3)~~(5) (53) Multifamily dwellings;
- ~~(4)~~(6) (64) Development under a planned residential development as per Chapter 19.31 OHMC.

19.20.170 Accessory permitted uses.

In an R-3 district, the following are accessory permitted uses:

- (1) Accessory uses and structures incidental to any permitted residential uses, such as servants’ quarters, garages, greenhouses, or workshops; provided, that none shall be rented or occupied for gain;
- (2) Television satellite dish reflectors, ground-mounted within required building setback lines.

19.20.175 Conditional uses permitted.

The following principal uses and their accessory uses may be permitted in an R-3 district when authorized by the hearing examiner:

- (1) Any conditional use permitted in an R-2 district;
- (2) Assembly hall;
- (3) Gymnasium or stadium in connection with public or private schools certified by the State of Washington Board of Education.

19.20.180 Density provisions.

In an R-3 district, the following density provisions apply:

- (1) Minimum density, six DU/AC; maximum, 16 DU/AC;
- (2) Minimum lot area: 6,000 square feet;
- (3) Minimum lot width, 60 feet;
- (4) Minimum lot depth, 90 feet;
- (5) Minimum front yard setback, 20 feet; see subsection (7) of this section;
- (6) Minimum side yard setbacks are 20 feet, five feet on one side. Minimum side yard along flanking street of a corner lot is 15 feet; see subsection (7) of this section;
- (7) Minimum rear yard setbacks, where distinguishable from side yards and where required for a platted lot, shall not be less than 25 feet. In addition to the above, any building of more than two stories in height must provide a minimum of two feet additional front, side and rear yard setback for each additional story;
- (8) Maximum building height, 35 feet;
- (9) Maximum lot coverage by buildings, 45 percent. A minimum of 20 percent of lot area is to be kept free of impervious surfacing;
- (10) A single-story accessory building containing less than 600 square feet of floor area may be constructed within five feet of either sideline or rear property line, provided there is six feet of unencumbered space between the principal structure and the accessory building. Accessory buildings shall not have a metal finish except when the finish is listed by the manufacturer or approved by the building department as a nonglare finish. The maximum floor area of an accessory structure shall not exceed 50 percent of the floor area of the primary structure;
- (11) Development as a planned residential development may occur subject to Chapter 19.31 OHMC.

19.20.185 Landscaping requirements.

Landscaping and buffers shall be constructed and maintained in accordance with the provisions of Chapter 19.46 OHMC.

19.20.190 Site plan review required.

Site plan review shall be required as defined in Chapter 19.48 OHMC.

Section Five. Sections 19.20.265 through 19.20.295 of the Oak Harbor Municipal Code last amended by Ordinance 1573 section 1 in 2010 are hereby amended to read as follows:

Article VII. C-1 – Neighborhood Commercial

19.20.265 Purpose and intent.

The C-1 neighborhood commercial district is intended to provide for limited commercial facilities serving residents of the surrounding residential district.

19.20.270 Principal permitted uses.

In a C-1 district, the following are principal permitted uses:

- (1) Principal uses permitted in an RO district;
- (2) Artist’s studios and supplies;
- (3) Auto convenience market;
- (4) Bakery, retail only;
- (5) Barber shop or beauty shop;

(6) Bed and breakfast inns subject to the following conditions:

- (a) There shall be a full-time manager domiciled on the premises;
- (b) Parking of guest vehicles shall be accommodated on the same site with the main building and shall meet the requirements of OHMC Chapter 19.44;
- (c) Signs shall meet the requirements of OHMC

19.36.040

- (d) Bed and breakfast inns shall not be located in Noise Subdistrict C as that area is shown on the City of Oak Harbor’s Official Zoning Map.
- (e) If exterior lighting is proposed for the bed and breakfast inn establishment, it shall be downward directed so as not to impact adjacent properties.

(7) Bed and breakfast rooms (residential or commercial) subject to the following conditions:

- (a) A resident or manager is domiciled onsite;
- (b) Parking of guest vehicles shall be accommodated on the premises and the number of spaces must meet OHMC 19.44.100. The size and dimensional requirements of OHMC 19.44 are not required to be met.
- (c) Signs shall meet the requirements of OHMC 19.36.
- (d) Bed and breakfast rooms (residential or commercial) shall not be located in Noise Subdistrict C as that area is shown on the City of Oak Harbor’s Official Zoning Map.

(e) If exterior lighting is proposed for the bed and breakfast room (residential or commercial), it shall be downward directed so as not to impact adjacent properties.

- (~~86~~) Book and stationery store;
- (~~97~~) Clothing store;
- (~~108~~) Confectionery;
- (~~119~~) Dairy products, retail only;
- (~~1240~~) Delicatessen;
- (~~1344~~) Dress and millinery shop;
- (~~1442~~) Drug store, including fountain;
- (~~1543~~) Dry cleaners;
- (~~1644~~) Florist shop;
- (~~1745~~) Garden supplies and horticultural nursery, not including greenhouses;
- (~~4186~~) Grocery store;
- (~~1947~~) Hardware store;
- (~~2048~~) Health club;
- (~~2149~~) Laundry, self-service;
- (~~2220~~) Library;
- (~~2324~~) Office supply and equipment store;
- (~~2422~~) Photographic studio and supplies;
- (~~2523~~) Private nursery school, child day care center or kindergarten, 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;
- (~~2624~~) Radio and television sales and service;
- (~~2725~~) Restaurant, including sidewalk cafes;
- (~~2826~~) Service station;
- (~~2927~~) Single-family residential uses when located on the second floor above a permitted use;
- (~~3028~~) Shoe repair shop;
- (~~3129~~) Variety store;
- (~~3230~~) Other uses as defined by the planning director to be similar to those identified above and having equal or less impact on the purposes of this section. .

19.20.275 Accessory permitted uses.

In a C-1 district, following are accessory uses permitted outright:

- (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 35-foot height limitations;
- (4) Outdoor storage as an accessory use is not permitted.

19.20.280 Conditional uses permitted.

The following principal uses and their accessory uses may be permitted in a C-1 district when authorized by the hearing examiner:

- (1) Church;
- (2) Excavations, other than simple foundation;
- (3) Garages, for storage only of automobiles as an accessory to a public or quasi-public institution;
- (4) Governmental buildings for administrative or protective service, government storage yards, treatment plants, well sites, pump stations and sanitary landfills;
- (5) Landfill, reclamation to improve steep, low or otherwise unusable land;
- (6) Nursery and landscape material including greenhouses;
- (7) Public transportation shelter stations;
- (8) Public utility and communications facility, such as a branch telephone exchange, static transformer, booster station, pumping station; provided, there shall be no service or storage building or yards in connection therewith, including microwave relay stations;
- (9) Rapid transit terminals;
- (10) Roller rink;
- (11) Swimming pools or beaches, public or private.

19.20.285 Density provisions.

In a C-1 district, the following density provisions apply:

- (1) Multifamily dwelling structures shall conform to the requirements of the R-4 district;
- (2) Other uses shall conform to the following standards:
 - (a) Minimum lot area, 5,000 square feet;
 - (b) Minimum lot width, 50 feet;
 - (c) Minimum lot depth, 90 feet;
 - (d) Minimum front yard, 15 feet;
 - (e) Minimum side yard, 10 feet each side;
 - (f) Minimum side yard along flanking street of corner lot, 15 feet;
 - (g) Minimum rear yard, 20 feet;
 - (h) Minimum rear yard abutting a public street, 15 feet;
 - (i) Maximum building height, 35 feet;
 - (j) Maximum lot coverage, 60 percent of lot area.

19.20.290 Conditions governing permitted uses.

Uses permitted in a C-1 district, except conditional uses and dwellings, shall be subject to the following conditions:

- (1) All business, service, repair, processing, storage, or merchandise display shall be conducted within a wholly enclosed building except for the following:
 - (a) Off-street parking or loading;
 - (b) Drive-in windows, but not including food or drink service;
 - (c) Food and drink service in connection with a delicatessen or confectionery;
 - (d) Sale of plant materials in connection with a florist shop;
- (2) Items produced or wares and merchandise handled shall be limited to those sold at retail on the premises;

- (3) The use shall not be objectionable because of odor, dust, smoke, cinders, exhaust fumes, noise, vibration, disturbance to television or radio reception or because of unsightly structure, facilities or use of land;
- (4) Design shall be in accordance with the provisions of the design guidelines;
- (5) Landscaping and buffers shall be constructed and maintained in accordance with the provisions of Chapter 19.46 OHMC.

19.20.295 Site plan and design review required.

- (1) Site plan and design review shall be required as defined in Chapter 19.48 OHMC.
- (2) The planning director, under site plan review, may impose the following conditions before a building permit will be issued for the proposed development:
 - (a) Limit or prohibit openings to structures on sides within 50 feet of a residential district if the openings will cause glare, excessive traffic, noise or other adverse effects on adjacent residential areas;
 - (b) Access shall be limited to streets designated as collector or arterial streets in the comprehensive plan;
 - (c) Require additional setbacks and landscaping or screening abutting a residential district if necessary to minimize the detrimental effects of commercial activity such as glare and noise.

Section Six. Sections 19.20.300 through 19.20.330 of the Oak Harbor Municipal Code last amended by Ordinance 1573 section 1 in 2010 are hereby amended to read as follows:

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.

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) Bed and breakfast inns subject to the following conditions:
 - (a) There shall be a full-time manager domiciled on the premises;
 - (b) Signs shall meet the requirements of OHMC 19.36.030.
 - (c) Bed and breakfast inns shall not be located in Noise Subdistrict C as that area is shown on the City of Oak Harbor's Official Zoning Map.
 - (d) If exterior lighting is proposed for the bed and breakfast inn, it shall be downward directed so as not to impact adjacent properties.
- (8) Bed and breakfast rooms (residential or commercial) subject to the following conditions:
 - (a) A resident or manager is domiciled onsite;—
 - (b) Signs shall meet the requirements of OHMC 19.36.030.
 - (c) Bed and breakfast rooms (residential or commercial) shall not be located in Noise Subdistrict C as that area is shown on the City of Oak Harbor's Official Zoning Map.
 - (d) If exterior lighting is proposed for the bed and breakfast room (residential or commercial), it shall be downward directed so as not to impact adjacent properties.
- (97) Bicycle shop (R);
- (108) Billiards and pool hall (R);
- (119) Blueprinting;
- (1210) Bookstore (R);
- (1311) Brew pub (R);
- (1412) Camera and supply shop (R);
- (1513) Clothes and apparel shop (R);
- (1614) Cocktail lounge (R);
- (1715) Coffee house (R);
- (1816) Confectionery store (R);
- (1917) Conference center;
- (2018) Data processing facility;
- (2119) Delicatessen (R);
- (2220) Department store (R);
- (2321) Dry cleaners;
- (2422) Furniture shop (R);
- (2523) Florist shop (R);
- (2624) Gift shop (R);
- (2725) Grocery store, neighborhood, provided gross floor area shall not exceed 12,000 square feet (R);
- (2826) Hardware store (R);
- (2927) Hobby shop (R);
- (3028) Hotel and motel;

- (3129) Ice cream shop (R);
- (3230) Interior decorator studio (R);
- (3334) Jewelry store (R);
- (3432) Leather goods store (R);
- (3533) Music store (R);
- (3634) Offices;
- (3735) Office supply and equipment store (R);
- (3836) Pet shop (R);
- (3937) Pharmacy and drug store (R);
- (4038) Photographic film processing and associated retail sales (R);
- (4139) Photographic studio and supplies;
- (4240) Photocopying;
- (4341) Post office;
- (44442) Printing shop;
- (4543) 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;
- (4644) Restaurant, including sidewalk cafe (R);
- (4745) Schools for the fine arts;
- (4846) Shoe repair shop (R);
- (4947) Shoe store (R);
- (5048) Sporting goods shop (R);
- (5149) Tailor shop (R);
- (5250) Tavern (R);
- (5351) Taxi service;
- (5452) Theater;
- (5553) Tobacco shop (R);
- (5654) Toy store (R);
- (5755) Travel agencies;
- (5856) Trophy shop (R);
- (5957) Upholstery shop;
- (6058) Variety store (R);
- (6159) Visitor information center;
- (6260) Other uses similar to those identified above and having equal or less impact on the purposes of this section.

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.

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.

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.

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.

19.20.330 Site plan and design review required.

Site plan and design review shall be required as per Chapter 19.48 OHMC.

Section Seven Section 19.36.040 of the Oak Harbor Municipal Code last amended by Ordinance 1553, Section 3 in 2009 is hereby amended to read as follows:

19.36.040 Residential/office district and neighborhood commercial district signs – RO and C-1 zones.

(1) General. ~~Subsections 1-4~~~~This section~~ applies only to office and apartment buildings in RO and buildings in C-1 zones of the city. Such buildings in other zones are governed by the sign regulations of the applicable zone. As the RO and C-1 zones are primarily placed as a buffer between CBD, C-3, C-4 and C-5 business district zones and residential zones, the permissible signs are scaled down from those allowed in business districts.

(2) Setback Limitations – Freestanding Signs. The size of any freestanding sign in an RO or C-1 district shall not exceed the following limits, based on the sign setback of the sign:

- Minimum Setback: 5 feet from front property line
- Maximum Area: 35 square feet (per side)

(a) Sign Height – Freestanding Signs. The height of any freestanding sign in an RO or C-1 district shall not exceed the following limits, based on the sign setback of the sign:

- Maximum Height: 15 feet

(b) Facade Limitations – Building-Mounted Signs, Roof and Canopy-Mounted Signs. The surface area of any building-mounted sign and roof or canopy-mounted sign in the RO and C-1 districts shall not exceed the figures derived from the following schedule:

Relevant Surface Area of Facade as Determined Pursuant to OHMC 19.36.020(40) (sq. ft.)	Maximum Sign Surface Area for That Facade
Below 100	20 percent of the sign area
100 – 199	21 sq. ft. + 9 percent of facade area over 100 sq. ft.
200 – 499	30 sq. ft. + 10 percent of facade area over 200 sq. ft.
500 – 999	60 sq. ft. + 9 percent of

	facade area over 500 sq. ft.
Over 1,000	105 sq. ft. maximum

In multiple-occupancy buildings the facade area for each occupant is derived by measuring only the surface area of the exterior facade of the premises actually used by the tenant or user, and the sign displayed by that tenant or user must be located on the facade used to determine the size of the sign, except as provided in this section.

Unused sign surface area for a facade may be used by any tenant or user within the same multiple occupancy building, if:

- (i) The applicant files with the city a written statement signed by the tenant or user permitted to utilize that sign area under this code permitting the applicant to utilize the unused sign surface area;
- (ii) The display of a sign on that facade by the nondependent sign user will not create a significant adverse impact on dependent sign users of that facade;
- (iii) The display of the nondependent sign is necessary to reasonably identify the use, and the provisions of this code do not provide the use with adequate sign display options.

In no case may the maximum sign surface area permitted on a building facade be exceeded.

- (c) Sign Height – Building-Mounted Signs. No building-mounted sign in the RO or C-1 district, regardless of type, shall exceed a height of 20 feet above grade, or above the height of the building to which it is attached, whichever is less.
 - (d) Limitation. Any freestanding or building-mounted sign located in these districts shall be limited in content and message to identify the building and the name of the firm, or the major enterprise, and the principal service or product of the business without references to prices or the characteristics of the product or services offered.
- (3) Number of Signs. In the RO and C-1 districts no more than two primary signs are permitted for buildings facing on one street, only one of which may be freestanding. Buildings or building complexes on street corner locations may have two freestanding signs only if they are located on two different streets and are separated more than 100 feet, measured in a straight line between the signs. Buildings or building complexes which extend a block to face on two parallel streets are permitted two primary signs on each street, only one of which may be freestanding for each street.

For purposes of determining the limit on number of signs for apartments, a single apartment complex, regardless of the number of buildings, shall be considered one building.

- (4) Types and Placement. Within RO and C-1 districts the permissible types of signs, their placement and other limitations are as follows:
- (a) Freestanding Signs. Requirements are identical to OHMC 19.36.030(5)(a), except that advertising shall not be permitted.
 - (b) Building-Mounted Signs. Requirements are identical to OHMC 19.36.030(5)(b), except that advertising shall not be permitted.
 - (c) Electronic Message Center Signs. These signs are allowed only in the C-1 district. Requirements are identical to OHMC 19.36.030(5)(g) except that brightness may not exceed 0.3 footcandles above ambient night-time lighting levels.
 - (d) Incidental Signs. In addition to the permitted primary signs, each building or complex of buildings is permitted the incidental signs as described and limited in OHMC 19.36.030(6).
 - (e) Street Address Identification. Each building or complex of buildings shall display and maintain on-premises street address number identification.
 - (f) Signs or portions of signs indicating premises for rent (e.g., "Apartment for Rent," "Apartment Available," "Vacancy," "Now Renting," "Free Rent," etc.) shall not exceed a surface area of six square feet and many remain up until the premises are sold or rented.
 - (g) The illumination of any sign in the RO and C-1 districts shall be shaded, shielded, directed or reduced so that it is not visible from a public street or adjoining residential property.
 - (h) Legal nonconforming signs same as OHMC 19.36.030(10) and (11).
 - (i) Monument signs shall not exceed six feet in height measured from the finished grade to top of the sign and not exceed 32 square feet in area. Monument signs shall be located within the center two-thirds of street frontage. Signs may be located up to the property line when there is no sight visibility obstruction from driveways or intersections caused by placement of the sign.
- (5) Bed and breakfast establishments. Only one on-premises monument sign or building mounted sign not more than four square feet in area shall be permitted. Such signs shall use non-flashing, non-reflective materials; and the legend shall show only the name of the facility and/or the operator and/or the address. Pole or pylon signs are prohibited.

Section Eight Section 19.36.070 of the Oak Harbor Municipal Code last amended by Ordinance 1640, Section 3 in 2012 is hereby amended to read as follows:

19.36.070 Single-family residential signs – R-1 zones.

- (1) General. Two categories of sign uses are covered by this section:
- (a) Existing, Legal Nonconforming Commercial Uses. The provisions herein for signs for commercial uses apply only to legal nonconforming uses which have been approved under applicable zoning ordinances prior to the enactment of this code.

- (b) Noncommercial uses such as schools, churches, fire stations and house number identification.
- (2) Signs for Existing Legal Nonconforming Uses. No more than one primary sign is permitted for each use in this category so long as the building remains legally nonconforming under the provisions of this title as follows:
 - (a) Such sign may be either freestanding or building-mounted.
 - (b) If freestanding, the sign shall conform to the requirements of OHMC 19.36.030(5)(a) in regard to placement and OHMC 19.36.040(2)(a) in regard to size and height.
 - (c) A building-mounted sign shall conform to the requirements of OHMC 19.36.030(5)(b); provided, however, that no sign shall exceed 20 square feet in surface area.
- (3) Signs for Noncommercial Uses.
 - (a) On-premises signs for churches, schools, golf courses, fire stations, police stations, noncommercial use or public service, or other similar noncommercial uses:
 - (i) Signs shall be unobtrusive, in keeping with the character of the neighborhood and constructed of quality materials, as approved in advance by the administrator of this code. No building-mounted signs shall exceed 20 feet in height and 50 square feet in surface area and no freestanding sign located between the building line and the property line shall exceed five feet in height and 25 square feet in surface area. A freestanding sign located at the building line or behind it shall not exceed 15 feet in height or 35 square feet in area. No more than one freestanding sign and one building-mounted sign is permitted from the above uses per street frontage.
 - (ii) Off-premises signs for nonconforming uses may be approved by the site plan review committee subject to the following conditions:
 - (A) The sign is to identify current events or activities;
 - (B) The sign or message is for a temporary period of time sufficient to inform the public of the event or activity with a maximum of two weeks;
 - (C) The sign shall not be located on street right-of-way except when a part of a permanent subdivision or neighborhood designation sign (see subsection (3)(d) of this section);
 - (D) The sign shall not exceed 15 square feet in area nor five feet in height;
 - (E) Not more than two such signs shall be permitted.
 - (b) Illumination. Illumination from or upon any signs in single-family residential districts shall be shaded, shielded, directed or reduced so that the light intensity or brightness does not affect the enjoyment of residential property in the vicinity in any substantial way.
 - (c) House Numbers. All houses in the single-family residential district shall display house numbers visible from the street and letters or numbers shall be a minimum of five inches in height.

(d) Permanent Subdivision or Neighborhood Designation Signs. Signs shall be unobtrusive, in keeping with the character of the neighborhood, and constructed of quality materials, as approved in advance by the administrator of this code. Signs shall not exceed five feet in height and 25 square feet in surface area, and shall be located between the building line and property line unless a location of excess city right-of-way is approved by the superintendent of public works. Responsibility for the future maintenance or removal of these signs must be determined prior to their construction. (Ord. 1553 § 5, 2009; Ord. 1307 § 8, 2002; Ord. 1221 § 1, 2000. Formerly 19.36.060).

(e) Bed and breakfast establishment signs. Only one on-premises monument sign or building mounted sign not more than four square feet in area shall be permitted. Such signs shall use non-flashing non-reflective materials; and the legend shall show only the name of the facility and/or the operator and/or the address. Pole or pylon signs are prohibited.

Section Nine. Section 19.44.100 of the Oak Harbor Municipal Code last amended by Ordinance 1614 section 1 in 2011 is hereby amended to read as follows:

19.44.100 Minimum parking space standards.

Use	Required Parking
Residential, single-family	Two per dwelling
Residential, duplex	Two per dwelling
Residential, multiple	One and one-half per dwelling unit
Three or more bedroom dwelling unit	Two per three or more bedroom dwelling unit. In addition, multifamily projects with eight or more units shall provide one visitor parking space for each eight units.
Banks	One per 400 square feet of gross floor area, plus employee parking
<u>Bed and breakfast inns and rooms</u>	<u>Two for primary resident or on-site manager plus one for each guest room</u>
Bowling alleys	Four per alley, plus employee parking
Churches, auditoriums and similar enclosed places of assembly	One per four seats and/or one per 30 square feet of assembly space without fixed seats
Skilled nursing facilities	One per five beds, plus owner and employee parking
College	One space per 200 square feet of classroom space
Assisted living facilities	Minimum of 0.8 spaces per unit, with a maximum of one and one-half spaces per unit
Food and beverage places with sales and consumption on premises	One per three seats, plus one space for every two employees on the largest shift
Furniture, appliance, hardware, clothing and shoe	One per 600 square feet gross floor area, plus

Use	Required Parking
stores, personal service stores such as beauty parlors, barbershops and physical fitness centers	employee parking
Gasoline stations	15 spaces, including pump and service area
Hospital	One per two beds, excluding bassinets
Hotels, motor hotels	One per sleeping room, plus owner and employee parking
Libraries and museums	One per 200 square feet gross floor area, plus employee parking
Manufacturing uses, research testing and processing, assembling, all industries	One per each two employees on maximum shift and not less than one per each 800 square feet gross floor area
Mortuaries	One per 100 square feet of gross floor area used for assembly or one per five seats, plus employee parking
Motels	One per unit, plus owner and employee parking
Motor vehicle, machinery, plumbing, heating, ventilating, building supplies stores and services	One per 1,000 square feet floor area, plus employee parking
Offices, medical and dental (including optometrists)	One per 200 gross square feet of floor area, plus employee parking
Offices not providing customer services	One per each employee
Offices of opticians, chiropractors and others licensed by the state of Washington to practice the healing arts	One per 400 square feet of gross floor area, plus employee parking
Offices, business and professional (other than medical and dental) with on-site customer service	One per 400 square feet of gross floor area, plus employee parking
Rooming houses, similar uses	One per dwelling unit
Schools, elementary and junior high	One per each employee and faculty member, plus 15 visitor parking
Schools, high	One per each 10 students, plus one per each employee and faculty member, plus 15 visitor parking
Shopping centers with over 30,000 square feet of gross floor area	Four and one-half spaces per 1,000 square feet gross floor area, but not to exceed five spaces per 1,000 square feet of gross floor area
Stadiums, sport arenas and similar open assemblies	One per four seats and/or one each 30 square feet of assembly space without fixed seats
Theaters	One per four seats, plus employee parking
Warehouses, storage and wholesale business	One per each employee, plus two additional spaces
Other retail	One per 300 square feet gross floor area, plus employee parking

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

PASSED by the City Council this 1st day of October 2013.

CITY OF OAK HARBOR

SCOTT DUDLEY, MAYOR

Attest:

Valerie J. Loffler, City Clerk

Approved as to Form:

Grant K. Weed, Interim City Attorney

Published:

Comparison of Bed and Breakfast Regulations

Characteristics	Oak Harbor	Langley	Coupeville	Anacortes	Friday Harbor	Port Townsend
How Defined?	Not defined	Two definitions: "B&B residential" and " B&B commercial." Residential is situated in same building as principal dwelling or an ADU. Commercial is situated in building primarily for commercial purposes.	Home or accessory structure and operator must live on premises	A single-family unit providing transient lodging...up to six rooms	A building which is primary residence for owner plus transient lodging	A building which is primary residence for owner plus transient lodging
Zones	Permitted: none. Conditional: Limited Multiple-Family Residential (R4), Multiple Family Residential (R3 and R4).	B&B residential is "secondary" use in RS5000, RS7200, RS15,000 zones. B&B commercial is conditional use in RS5000, RS7200, RS15,000, and Mixed Residential Zone. Principal use in Central Business and Neighborhood Business Zone.	Principal Use in: High Density Residential, Historic/Limited Commercial District, Town Commercial, and General Commercial. Conditional Use in: Residential Reserve, Low Density Residential, Medium Density Residential.	Permitted use in: CBD, Commercial, High Density Residential. Conditional Use in: Commercial Marine, Low Density Residential and Medium Density Residential	Permitted: professional service zone	Permitted Use in: C3 Historic Commercial. Conditional in: all residential zones
Room Limit	No more than 4 rooms for B&B inns; B&B rooms cannot have more than 50% of existing rooms as lodging	B&B residential = 2. B&B commercial = no limit.	Residential Reserve = 6 rooms. Low, Medium and High Density Residential = 2 rooms. Commercial uses, no limit.	6 rooms	5 rooms	No limit
Parking	Not specified, but all parking must be onsite	B&B commercial = "parking for all guest vehicles on premises"	0.7 spaces per guest room	2 for owner and 1 per guest room	2 plus 1 per sleeping room	1 space per room
Process	Conditional Use = Hearing Examiner Review	B&B residential = administrative review. B&B commercial = administrative or conditional use. Conditional use is reviewed by hearing examiner	Principal use = administrative review. Conditional Use = Town Council	Permitted use = administrative. Conditional = City Council	Permitted = administrative review	Permitted = administrative. Conditional = Hearing Examiner

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

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

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

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

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

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

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

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

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

BED AND BREAKFAST CODE – INTRODUCTION – Public Meeting

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

Planning Commission asked about a definition for “transient lodging”, parking requirements (tying parking spaces to physical space instead of people) and the possibilities for bed and breakfast uses between Midway Boulevard and the Marina.

2012 COMPREHENSIVE PLAN AMENDMENT – Scenic Views – Public Meeting

Mr. Kamak provided a Power Point presentation (Attachment 2) which presented the progress to date and further analysis of the nine views selected. The analysis included line of view, view zones and possible actions for preserving the views.

Planning Commission suggested staggering buildings to protect views and requiring low growing landscape to camouflage parking lots.

Mr. Powers talked about the competing goals within the Comprehensive Plan such as tree preservation and preserving of views. Mr. Kamak said that once the views are identified as scenic views the regulations will be area specific.

2016 COMPREHENSIVE PLAN UPDATE – Public Meeting

Mr. Kamak reported that staff has been working with the County on their plan update and the County has provided information on their schedule. The County has taken a similar approach to their update as the City has by dividing the update into two phases. Phase I will be to determine the scope of the update and Phase II will be addressing the deficiencies identified in Phase I. The County has initiated a discussion on these policies that will eventually determine policies and procedures related to Urban Growth Areas (UGA), population projections, growth allocations etc. Some of these policies and procedures will impact the City’s 2016 update to the Comprehensive Plan.

The Department of Commerce has produced a checklist for jurisdictions to use in evaluating comprehensive plans for consistency with the GMA. City planning staff has begun reviewing Oak Harbor’s Comprehensive Plan against this checklist. Staff will share the review with the Planning Commission over the next few meetings.

ADJOURN: 9:26 p.m.

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

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

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

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

BED AND BREAKFAST CODE – Public Meeting

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

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

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

Discussion

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

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

Mr. Fikse commented on the maximum duration of 5 seconds in Section 19.36.030 (5) (g) (vii) and displayed video clips of a flag in motion and a diamond ring rotating on his sign. He didn't think that the duration of the motion shown in the videos was a traffic distraction or a safety issue. Mr. Fikse said that the flag ran all day on the 4th of July. The proposed code is written so that there is only a 2 to 5 second window with a static time after 5 seconds. He stated that it would look silly running the flag 5 seconds and stopping, running for 5 seconds and stopping.

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

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

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

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

BED AND BREAKFAST CODE – Public Meeting

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

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

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

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

Mr. Spoo noted that the conditional use process in the R1 and the R2 zoning districts allows staff to access the impacts on a case-by-case basis and craft appropriate conditions.

Discussion

Commissioners discussed the conditional use process and agreed that B&B's should be a conditional use in the R1 and R2 districts. They also discussed parking in the CBD and agreed that parking is a management issue best left to downtown landlords and tenants to work out privately rather than having restrictions on specific uses in the zoning regulations. Commissioners asked staff to include a recommendation or a statement on the conditional use checklist advising the applicant to check their neighborhood covenants.

ECONOMIC DEVELOPMENT STRATEGY – Public Meeting

Mr. Spoo reported the Economic Development Committee is still reviewing the strategy and he hopes to have it for the Planning Commission soon.

2016 COMPREHENSIVE PLAN AMENDMENT – Public Meeting

Mr. Kamak reported that there are no items ripe for discussion yet and staff is still reviewing the checklist. Staff is continuing meeting with the County and discussing the county-wide planning policies and the Comprehensive Plan update.

ADJOURN: 9:50 p.m.

OHMC 21.80.180(2)(c) - Authority to submit alteration or vacation application. The alteration or vacation application shall contain the signatures of all those owners of lots who are directly affected by the proposed alteration or vacation.

The Planning Commission allowed public comment.

Sue Karahalios (1085 SE Regatta Drive) spoke with concern about the impact of the proposed code on the owners of the Pier Point Condominium. She also noted that there have been other decisions since the 2011 Planning Commission recommendation the City Council and only two members of the current Planning Commission voted in 2011.

Bob Severns (1085 SE Regatta Drive) disclosed that he is a member of the City Council and talked about the questions that were addressed in Superior Court regarding the Pier Point Condominiums. He believed that if the BSP amendment goes forward and is challenged in Superior Court again, the judge will ask why Pier Point was not excluded from the proposed BSP amendment. Mr. Severns asked that the Pier Point Condominiums be excluded from the proposed BSP amendment.

Discussion

Planning Commissioner's discussed whether the current Planning Commission would be able to consider the proposed BSP amendment again since the Planning Commission's recommendation has already been forwarded to the City Council. Mr. Powers said that an agenda bill will be prepared for Council action and that the agenda bill could indicate that that the Planning Commission would like to consider the code amendment again if that is what the Planning Commission wants to do. Mr. Powers noted that City Council could also decide that they will take up the issues themselves. Ms. Peterson wanted it on record that her strong desire was that the City Council be very aware of the issues.

BED AND BREAKFAST CODE – Public Meeting

Mr. Spoo displayed a Power Point presentation (Attachment 2) which presented changes since last month, a brief discussion of compliance and staff's recommendation.

Mr. Spoo reported one of the changes made resulted from a request from the Navy. The Navy asked that Bed and Breakfast (B&B) establishments be prohibited in Noise Subdistrict C. The second change requires that B&B lighting be directed downward so as not to impact adjacent uses. The last change was to move the sign language that was previously in Section 19.20 Zoning to Section 19.36 Sign Code.

Mr. Spoo reviewed how the propose code complies with the Oak Harbor Comprehensive Plan and recommended that the Planning Commission recommend approval of the B&B draft code to the City Council.

Discussion

Planning Commissioners discussed sign size allowance, lighting for B&B establishments and whether two B&B's under the same ownership would need to have a resident domiciled at each site. Mr. Power indicated that for two B&B's on the same property you could reasonable conclude that is a single entity and a resident manager in one or the other would suffice. In the case where there are two separate pieces of property in the R1 the conditional use permit and the Hearing Examiner could approve conditions which apply to both pieces of property.

The public hearing was opened at 8:30 p.m.

Billie Cook (651 SE Bayshore Drive) expressed concern that persons living in the R3 and R4 districts should be afforded the same protection as those in the R1 and R2 district by requiring B&B establishments get a conditional use permit for the R3 and R4 districts.

Mr. Spoo explained that there would be a site plan review process required for new B&B establishments and the review process requires public notice to the adjacent property owners. Adjacent property owners would have input during the public hearing. If there is a home that is converted in a residential neighborhood in the R3 and R4, a site plan review might not be required. Mr. Spoo indicated that mitigations could be placed in the code. Efforts have been made to allow B&B where staff believes is appropriate as well as including mitigations for some of the impacts they would have on neighborhoods.

Discussion

Planning Commissioners discussed the character of B&B's and the desire to be business friendly.

ACTION: MS. PETERSON MOVED, MR. FREEMAN SECONDED A MOTION TO RECOMMEND THAT CITY COUNCIL APPROVE THE BED AND BREAKFAST CODE AS PRESENTED. MOTION CARRIED.

ECONOMIC DEVELOPMENT STRATEGY – Public Meeting

Mr. Spoo displayed a Power Point presentation (Attachment 3) which presented a summary of key trends and an overview of the economic development strategy.

Discussion

Planning Commissioner Fakkema commented that he remembered hearing that the City always spends money planning but never did anything e.g. the amphitheater and the municipal pier. He was concerned that a couple of the action items require hiring someone to do additional studies and thought the City should look carefully at that.

Mr. Spoo indicated that the Planning Commission could make a motion to remove items or revise the language in the strategy in order to give staff direction.

Planning Commissioner Freeman was also concerned about the feasibility of a dock and that the sound from an amphitheater will carry to the surrounding residential developments. Mr. Freeman also noted that tourism only brings minimum wage jobs and we won't get to the \$50,000 to \$70,000 jobs with would be nice for the City. Mr. Freeman also questioned some of the data in the Economic Profile and Needs Assessment.

Mr. Spoo indicated that the Planning Commission will have this agenda item again next month.

Nancy Hakala (painting the mural on Pioneer Way) commented on how unique and patriotic Oak Harbor is compared to the other cities on the Island and that it is a little piece of Americana. She suggested that the City capitalize on that.

2016 COMPREHENSIVE PLAN AMENDMENT – Public Meeting

Mr. Kamak reported that staff is still assessing the scope. Staff is continuing meeting with the County and discussing the county-wide planning policies and the Comprehensive Plan update.

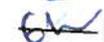
ADJOURN: 9:15 p.m.

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

Bill No. 7.a.
Date: October 1, 2013
Subject: Park Code Update
Public Hearing

FROM: Cathy Rosen, Public Works Director

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

PURPOSE

The purpose of this agenda bill is to repeal two Chapters of the Oak Harbor Municipal Code dealing with Conduct in Parks and Playgrounds, Chapter 6.12, and Park Code, Chapter 6.14, and adopt one new consolidated Park Code, Chapter 6.12.

FISCAL IMPACT DESCRIPTION

Funds Required: None

Appropriation Source: 001.70 Parks

SUMMARY STATEMENT

Many sections of the Oak Harbor Municipal Park Code were written in the 1960s and 1970s and do not adequately address current issues. Ordinance 1669 rescinds Chapters 6.12 and 6.14 and replaces them with a consolidated Chapter 6.12 which includes language that is more applicable to current times. This Ordinance also includes provisions to allow vendors in designated areas in the parks with approval of City Council and will allow the sale of alcohol in designated areas at certain special events that are approved by City Council.

The City of Oak Harbor Park Board approved the proposal to modify the OHMC to allow licensed vendors and concessions in Community Parks at their May 13, 2013 meeting, and they approved the proposal to allow the sale of alcohol at Council approved special events held at Windjammer, Ft. Nugent and Catalina Parks on a 12 month trial basis at their June 19, 2013 meeting. Ordinance 1669 was also distributed to the Park Board for their review at the September 16, 2013 meeting.

RECOMMENDED ACTION

- Open Public Hearing and receive public testimony.
- Adopt Ordinance 1669 repealing Oak Harbor Municipal Park Code Chapters 6.12 and 6.14, replacing them with newly updated and consolidated Chapter 6.12.

ATTACHMENTS

- Ordinance 1669
- Park Board Notes – May 13 and June 19, 2013

ORDINANCE NO. 1669

AN ORDINANCE OF THE CITY OF OAK HARBOR, WASHINGTON AMENDING OHMC 5.50.020 (6), REPEALING CHAPTER 6.12 OAK HARBOR MUNICIPAL CODE, “CONDUCT IN PARKS AND PLAYGROUNDS,” REPEALING CHAPTER 6.14 OAK HARBOR MUNICIPAL CODE, “PARK CODE,” AND ADOPTING A NEW CONSOLIDATED CHAPTER 6.12 PARKS CODE

The City Council of the City of Oak Harbor, Washington do ordain as follows:

Section 1. OHMC Section 5.50.020 (6) is hereby amended to read as follows:

(6) The city administrator or her/his designee shall coordinate review of the special events permit application and except for permits involving the sale, serving or consumption of beer, wine or liquor in a City park, approve, deny or approve the same subject to conditions. Permits involving the sale, serving of, or consumption of beer, wine or liquor in a City park shall be reviewed by the City administrator or his/her designee, who shall prepare a report concerning the same, and the City council shall approve, deny or approve the same subject to conditions.

Section 24. Chapter 6.12 Oak Harbor Municipal Code, “Conduct in Parks and Playgrounds” is hereby repealed.

Section 32. Chapter 6.14 Oak Harbor Municipal Code, “Park Code” is hereby repealed.

Section 43. A new Chapter 6.12 Oak Harbor Municipal Code, entitled “Parks Code” is hereby adopted reading as follows:

**Chapter 6.12
PARKS CODE**

Sections

- 6.12.010 Purpose**
- 6.12.020 Construction**
- 6.12.030 Definitions**
- 6.12.040 Rule Making Authority; Code of Conduct**
- 6.12.050 Closing Hours for Parks**
- 6.12.060 Vendors and Concessionaires in Parks**
- 6.12.070 Special Events under Permit**
- 6.12.080 Sale of Beer, Wine and/or Liquor in City parks**
- 6.12.090 Reservations for Camping in Selected Parks or Park Areas**
- 6.12.100 Offenses in Parks that are Gross Misdemeanors**

- 6.12.110 Offenses in Parks that are Misdemeanors**
- 6.12.120 Violations in Parks that are Infractions**
- 6.12.130 Park Exclusion**
- 6.12.140 Emergency Park Closings**
- 6.12.150 Discrimination Prohibited**
- 6.12.160 Reward Posting**
- 6.12.170 Severability**

Section 6.12.010 Purpose. The City of Oak Harbor finds as follows, and declares that this chapter is passed to address the following facts:

- (1) Unlawful and inappropriate behavior in the City’s parks diminishes these precious assets and deprives citizens of the full use and enjoyment of the natural beauty and amenities of the City’s parks;
- (2) A wide range of illegal disorderly behavior can transform a park into an unwelcoming, unattractive, and ultimately an unsafe public place requiring increased expenditures for public safety and maintenance;
- (3) To preserve the City’s parks in their desired condition for all citizens, the City needs a range of criminal sanctions and civil tools to deter illegal behavior, prevent its recurrence and provide for the removal of offenders from the City’s parks.

Section 6.12.020 Construction. This Chapter is hereby declared to be an exercise of the police power of the State of Washington and the City of Oak Harbor for the public peace, health, safety and welfare, and its provisions shall be liberally construed.

Section 6.12.030 Definitions. The terms used in this Chapter and other Chapters concerning or referring to parks, unless clearly contrary to or inconsistent with the context in which used, shall be construed and mean as follows:

- (1) “Administrator” means the public works superintendent or his or her designee in charge of the parks department except for the marina in which case, the harbormaster is the administrator. During absences from the City for whatever reason, the mayor may designate an alternative “administrator” to carry out the duties under this chapter. The person appointed need not be the same person as the one to take over other duties of the public works superintendent in charge of the Oak Harbor park system.
- (2) “Athletic facility in a park” shall be those open air facilities in a park prepared for a specific athletic activity, including but not limited to softball or baseball fields, soccer fields, football fields, tennis courts, and a running tract. Said athletic facilities shall be identified with a sign identifying them as an athletic facility.
- (3) “Chief of police” means the chief of police of the Oak Harbor police department or his or her designee.

(4) “Camp” means to remain overnight, to erect a tent or shelter, or to use sleeping equipment, a vehicle, or a trailer or camper for the purpose or in such a way as will permit remaining overnight.

(5) “Council” means the members of the city council of the City of Oak Harbor.

(6) “Felony violation” means the violation of a criminal law, the conviction of which would (a) carry a maximum sentence in excess of one (1) year’s imprisonment, or (b) constitute a felony in Title 9A of the Revised Code of Washington.

(7) “Park” or “Parks” means all parks and well sites maintained by the City, public squares, park drives, parkways in parks, boulevards in parks, bathing beaches, play and recreation grounds owned by or under the jurisdiction of the City, and marine facilities. Most but not necessarily all parks as defined herein are identified and described in the comprehensive plan as is now in effect or hereafter amended.

(8) “Park rule” means those particular rules or codes of conduct adopted in accordance with Section 6.12.040 of this Chapter.

(9) “Running at large” “ means a dog or animal off the premises of the owner and not under the immediate control of the owner or other competent person authorized by the owner by means of a leash, cord or chain except when in or on any vehicle and securely confined to such vehicle.”

(10) “Weapon violation” means possession or use of a weapon in violation of Chapter 9.41 Revised Code of Washington.

(11) Wherever consistent with the context of this chapter, words in the present, past or future tenses shall be construed to be interchangeable with each other and words in the singular number shall be construed to include the plural.

Section 6.12.040 Rule Making Authority; Code of Conduct. The Administrator and the Chief of Police or their designees shall have the power to enforce this Chapter. The Administrator and the Chief of Police or their designees shall have the power to draft, secure public input on, and present to the Council for final adoption rules and regulations consistent with this Chapter to manage and control the parks of the City. Such rules and regulations may:

- (1) Clarify, interpret or apply this Chapter;
- (2) Further regulate the use of City parks consistent with this Chapter;
- (3) Further regulate conduct in City parks consistent with this Chapter;
- (4) Designate restricted areas in City parks;

(5) Establish, change or alter opening and closing hours for particular parks, or particular facilities in a park, or the times and hours for entry of motor vehicles into parks;

(6) Regulate public or private recreation programs using City parks;

(7) If otherwise allowed by this Chapter, restrict and/or prohibit the use of any skateboard, roller skate, coaster or any other wheeled device in any park where necessary for the public safety or public convenience in using parks. This right to regulate shall not apply to a person with a disability who uses wheeled equipment in order to be ambulatory.

(8) Impose more restrictive speed limits on the use of all park paths, trails and walks, whether improved or unimproved, as required for public safety.

(9) Establish a permit system, consistent with law, for activities not requiring a lease or concessionaire agreement, or a special event permit under Chapter 5.50 OHMC but having unique or special effects on the parks, including reserving a room, area or facility in a park, posting notices of signs, any digging or excavating in any park, chaining any property to trees or improvements in the parks, making a use different in kind from the normal use of a park. No permits shall be required of City park employees, or City contractors acting in the scope and course of their duties. Any permits issued under the authority of rules or code of conduct under the authority of this section shall be temporary, and may be revoked at any time by the Administrator or the Chief of Police or their respective designees.

Section 6.12.050 Closing Hours for Parks. Unless a different closing hour has been established by a duly approved rule or regulation, all City parks, and all facilities in all City parks shall be closed between the hours of 10:00 p.m. and 5:00 a.m. of any day. Park and facility closing hours shall be clearly posted at main entrances to each park and on each park facility.

Section 6.12.060 Vendors and Concessionaires in Parks. Subject to activities allowed by the U.S. Constitution or comparable provision of the Washington State Constitution, and subject to activities allowed by either a lease with the City, a concession agreement with the City, or a special event permit issued pursuant to Chapter 5.50 OHMC, no person shall sell, rent, or offer to sell or rent any service or merchandise, including but not limited to any liquid, edible, or other tangible object, in a City park. Vendors and concessionaires in parks shall be authorized to sell or rent consistent with their lease or concession agreement with the City.

Section 6.12.070 Special Events under Permit. Where an activity in a park would be a special event under Chapter 5.50 OHMC, a special event permit consistent with that chapter shall be obtained. All activities in City parks under a special event permit shall

be conducted strictly in accordance with the terms of the special event permit issued under Chapter 5.50 OHMC.

Section 6.12.080 Sale of Beer, Wine and/or Liquor in City parks. Except as allowed by this section, there shall be no sale, use or consumption of beer, wine and/or liquor in any City park. The sale, use and consumption of beer, wine and/or liquor may be allowed in certain City parks under a lease, concession agreement or special event permit subject to the following conditions:

(1) The sale of beer, wine and/or liquor may be allowed only in Catalina, Fort Nugent and/or Windjammer parks for certain specific events upon application to and approval by the City. Applications for leases, concession agreements, or special event permits under this Chapter shall be decided by~~referred to the Parks Commission for action or recommendation to~~ the City Council. or City Administrator/designee as the case may be.

(2) The sale of beer, wine and/or liquor shall be subject to the conditions of the lease, concession agreement and/or special event permit.

The City Council or City Administrator/designee shall have the right to impose other and additional conditions related to the sale or consumption of beer, wine and/or liquor in the approval of a special event permit, lease and/or concession agreement as it/he deems necessary to protect the health, safety and welfare of the public.

Section 6.12.090 Reservations for Camping in Selected Parks or Park Areas. Camping is prohibited in City parks except at such places designated for camping and designated by signs for camping. Areas for camping may be reserved consistent with rules and regulations adopted under this Chapter or as allowed in Chapter 6.13 OHMC.

Section 6.12.100 Offenses in Parks that are Gross Misdemeanors. Each of the following actions or inactions, as the case may be, are unlawful and a gross misdemeanor. Any person convicted of such a crime may be punished by a fine in any sum not to exceed \$5,000 or by imprisonment not to exceed 364 days, or by both such fine and imprisonment.

(1) It is unlawful and a gross misdemeanor to knowingly or intentionally and unreasonably to interfere with any individual or group engaged in lawful use of a park or park facility.

(2) It is unlawful and a gross misdemeanor to willfully mark, mar, deface, disfigure, injure, tamper with, displace, remove, burn, cut, carve, dig up or damage any park property or attendant facility, statue, structure, monument, fountain, vase, wall, fence, railing, vehicle, bench, plant, tree, shrub or buried object.

(3) It is unlawful and a gross misdemeanor to urinate or defecate in any place in a park other than in a designated restroom, or where allowed in a port-a-potty or restroom of a recreational vehicle.

(4) Except because of the health condition of the person, it is unlawful and a gross misdemeanor to urinate or defecate on the floor or walls of a public restroom.

(5) Except in lawful self defense or defense of another, or except as part of an authorized activity in the park, it is unlawful and a gross misdemeanor to use or discharge a weapon in a park.

(6) Except for a City employee in the performance of his or her duties, or except for persons given permission by the Administrator or Chief of Police or their designee, it is unlawful and a gross misdemeanor for any person to enter or go upon an area of a park, building or structure in a park which has been designated and posted by the Administrator or Chief of Police or their designee as “no admittance” or “no trespassing” area by signage.

(7) It is unlawful and a gross misdemeanor for any person subject to a valid notice of exclusion to enter or go upon a park contrary to the terms of the notice of exclusion.

Section 6.12.110 Offenses in Parks that are Misdemeanors. Each of the following actions or inactions, as the case may be, are unlawful and a misdemeanor. Any person convicted of such a crime may be punished by a fine in any sum not to exceed \$1,000 or by imprisonment not to exceed 90 days, or by both such fine and imprisonment.

(1) It is unlawful and a misdemeanor to willfully attach a rope, wire or other contrivance to a tree, plant shrub or structure in a park.

(2) Except for a City employee in the performance of his or her duties, or except for persons given permission by the Administrator or Chief of Police or their designee, it is unlawful and a misdemeanor for any person to enter or go upon a park or part of a park when the park or the area of the park is closed.

(3) It is unlawful and a misdemeanor to operate any motor vehicle or motorcycle for the purposes of testing it, or ascertaining its fitness for service, along or upon any park drive, parkway or park boulevard in any park.

(4) It is unlawful and a misdemeanor for any person to use tobacco products within twenty five (25) feet of the entrance to any park facility or within twenty five (25) feet of any athletic facility in a park.

Section 6.12.120 Violations in Parks that are Infractions. Each of the following actions or inactions, as the case may be, is a violation and an infraction. Any person con-

victed of such violation shall be punished as set out in Chapter 1.20 OHMC, as now in effect or hereafter amended.

(1) It is a violation and an infraction to block any sidewalk or pathway in a park or adjacent to a park. “Blocking” means standing, sitting, or reclining on a sidewalk by oneself or in concert with others in such a way that more than half of the width of a sidewalk or walkway is blocked for normal use as a sidewalk or walkway.

(2) It is a violation and an infraction to unreasonably impede access to any restroom or restroom stall in a park. “Unreasonably impede” means impede by their person, or by the placement of personal property in such a fashion that a normal pathway into the restroom, or stalls in a restroom is not maintained.

(3) Except for a City employee in the performance of his or her duties, or except for persons given permission by the Administrator or Chief of Police or their designee, it is a violation and infraction to enter, remain in, rest, stand, or sit in any flower bed or landscaped area within a City park. A “landscaped area” shall not include an area where a bench is provided, or an area devoted only to planted lawn.

(4) It is a violation and an infraction to stand or walk or lay down on the table tops of any picnic table or counter-top in a kitchen area of a park.

(5) Except for persons given permission by the Administrator or Chief of Police or their designee or concessionaires or lessees consistent with their concession agreement or lease, it is a violation to throw, leave, tack, or post any poster, advertisement, or sign advertising for any good, service, meeting of people or otherwise within a City park.

(6) It is a violation and an infraction to aggressively solicit, interfere with, and/or accost other persons in City parks for the purposes of selling, begging or otherwise interfering with another’s use of the park or adjacent sidewalks or walkways.

(7) Except in areas allowed for concessionaires or lessees, or for areas under special use permit under Chapter 5.50 OHMC and under Section 6.12.080 of this chapter, it is a violation and an infraction to possess an open beer, wine and/or liquor container in a park.

(8) Except in areas allowed for concessionaires or lessees, or for areas under special use permit under Chapter 5.50 OHMC and under Section 6.12.080 of this chapter, it is a violation and an infraction to consume ~~intoxicating~~ beer, wine and/or liquor in a park.

(9) It is a violation and an infraction to dispose of or deposit any refuse or other material in a park, except in designated receptacles.

(10) It is a violation and an infraction to dump or dispose of garbage generated or created outside a park in a receptacle within a park. Wrappings for edibles purchased outside the park, but consumed within a park shall not be deemed to violate this subsection.

(11) It is a violation and an infraction to chain, lock, connect or store any item of tangible personal property, including but not limited to a bicycle, in any area of a park except for areas designated for such storage for such times as allowed by posted notice.

(12) It is a violation and an infraction to allow or permit any dog or other animal to run at large in any park, or enter any lake, pond, pool, fountain or stream therein, with the exception of areas designated as “off-leash.”

(13) It is a violation and an infraction to allow a dog or animal to defecate in a park and not clean up after the dog or animal and properly dispose of the dog or animal waste.

(14) Except for a service animal, it is a violation and an infraction to allow or permit any dog or other animal in any building in any park.

(15) It is a violation and an infraction to explode any fireworks, firecrackers, torpedo or any explosive of any kind in any park.

(16) For devices not weapons under state law, it is a violation and an infraction to discharge any air gun, paint ball gun, B.B. gun or any other type of gun or rocket (i.e. potato guns and the like) in any park.

(17) Except in conjunction with an activity authorized by the Administrator or Chief of police or designee, it is a violation and an infraction to shoot any slingshot or bow and arrow in any park.

(18) Except as allowed by properly adopted rules and regulations, it is a violation and infraction to take up collections as a strolling musician, organ grinder, street performer, or street artist in any park.

(19) Except at places set apart for such purposed use and so designated by signs, or in an emergency, it is a violation and infraction to have, keep or operate any boat, float, raft or other watercraft in or upon any bay, lake, slough, river or creek within the limits of any park or to land the same at any point upon the shores thereof bordering upon any park.

(20) Except in areas designated for such riding, and then only at speeds less than 15 miles per hour, it is a violation and infraction to ride or drive any motorcycle,

motor vehicle, motorized skateboard, motorized bicycle, motorized scooter, horse or pony over or through any park.

(21) Except in places designated for such use, it is a violation and infraction to practice, or play golf, baseball, cricket, lacrosse, polo, archery, hockey, tennis, badminton, football, soccer or other games of like character or to hurl any airborne or other missile, including the flying of model airplanes or rockets in any park. Playing catch with any type of ball or playing catch with a Frisbee shall not be deemed to violate this subsection.

(22) Except where permission has been obtained from the Administrator or Chief of Police or designee, it is a violation and an infraction to engage in, conduct or hold any trials or competitions for speed, endurance, or hill climbing involving any vehicles, power boat, aircraft or animal in any park.

(23) It is a violation and an infraction to build any fires in any park except in areas designated for such use and posted for such use by appropriate signage.

(24) Except as authorized by a Special Event Permit issued pursuant to Chapter 5.50 OHMC, it is a violation and an infraction to use any public address system, loudspeaker, or other sound amplifying device in any park.

6.12.130 Park Exclusion. The Administrator or the Chief of Police or designee may by delivering an exclusion notice in person to the offender exclude from a City park anyone who within a City park (1) violates any provision within this Chapter, (2) violates any park rule or code of conduct properly adopted under OHMC 6.12.040, or (3) violates any other provision of the Oak Harbor Municipal Code or the Revised Code of Washington. The offender need not be charged, tried, or convicted of any crime or infraction in order for an exclusion notice to be issued or effective. The exclusion may be based upon observation or upon reports that would ordinarily be relied upon by police officers in the determination of probable cause.

(1) If the offender:

(a) Has not been excluded from any City park by an exclusion notice issued within one (1) year prior to the violation and the current violation is not a felony or weapon violation, the Administrator or Chief of Police or designee may exclude the offender from the City park in which the current violation occurred for a period not exceeding seven (7) days from the date of the exclusion notice.

(b) Has been the subject of only one (1) prior exclusion notice issued within one (1) year prior to the current violation and neither the current nor the past violation was a felony or weapon violation, then the Administrator or Chief of Police or designee shall exclude the offender from the City park in which the current violation occurred for a period of ninety (90) days from the date of the exclusion notice.

(c) Has been the subject of two (2) or more prior exclusion notices issued within one (1) year prior to the current violation, all from the same City park in which the current violation occurred, or if the current violation is a felony or weapon violation, then the Administrator or Chief of Police or designee shall exclude the offender from the City park in which the current violation occurred for a period of one (1) year from the date of the exclusion notice.

(d) Has been the subject of two (2) prior exclusion notices within one (1) year prior to the current violation and, in combination, the current violation and those prior violations, and those prior violations took place in two (2) or more City parks, then the Administrator or Chief of Police or designee shall exclude the offender from all City parks for a period of one (1) year from the date of the exclusion notice.

(2) The exclusion notice shall be in writing and shall contain the date of issuance. The exclusion notice shall specify the length and places of exclusion. It shall be signed by the issuing individual. Warning of the consequences of failure to comply shall be prominently displayed on the notice.

(3) Only after a hearing may an exclusion notice be shortened or rescinded.

(4) An offender receiving an exclusion notice longer than seven (7) days may seek a hearing before the City Administrator to have the exclusion notice rescinded or the period of exclusion shortened. The request for a hearing shall be in writing and shall be delivered to the City Clerk, 865 SE Barrington Drive, Oak Harbor WA, 98277, or postmarked no later than ten (10) days after the issuance date of the exclusion notice. A copy of the exclusion notice shall be included with the request for hearing. The hearing shall occur within ten (10) days after the request for a hearing is received. The City shall take reasonable steps to notify the offender of the date, time and place of the hearing.

(5) At the hearing, the City must prove the violation by a preponderance of the evidence to uphold the exclusion notice. If the exclusion notice was issued because of the alleged violation of any criminal law, the offender need not be charged, tried or convicted for the exclusion notice to be upheld. The exclusion notice establishes a prima facie case that the offender committed the violation as described. The hearing officer may consider evidence that would not be admissible under the rules of evidence in a court of law, but must consider only relevant and trustworthy evidence.

(6) If the violation is proved, the exclusion notice shall be upheld, but upon good cause shown, the hearing officer may shorten the duration of the exclusion. If the violation is not proved by a preponderance of the evidence, the hearing officer shall rescind the exclusion. If the hearing officer rescinds the exclusion, the exclusion shall not be considered a prior exclusion for purposes of this Chapter.

(7) The decision of the hearing officer is final. An offender seeking judicial review of the hearing officer's decision must file an application for a writ of review in the Island County Superior Court within fourteen (14) days of the date of that decision.

(8) The exclusion shall remain in effect during the pendency of any administrative or judicial proceeding.

(9) No determination of facts made by a person conducting a hearing under this section shall have any collateral estoppel effect on a subsequent criminal prosecution or civil proceeding and shall not preclude litigation of those same facts in a subsequent criminal or civil proceeding.

(10) This section shall be enforced so as to emphasize voluntary compliance with laws and park rules, and so that inadvertent minor violations that would fall under this section can be corrected without resort to an exclusion notice.

6.12.140 Emergency Park Closing.

(1) The Administrator, with the approval of the mayor, may close areas of a park for the purpose of protecting the environment or for the purpose of protecting the public from conditions which constitute a potential hazard to life or physical well-being, or when it is in the interest of the public health, welfare and safety.

(2) The Administrator, with the approval of the mayor, may forbid a usually permitted activity when in the interest of public health, welfare or safety.

(3) As a method of controlling vandalism, criminal activity, riot or disorder, the administrator, with the approval of the mayor, may close a park or designated part of a park, or park facility for up to three months duration within any calendar year.

(4) The administrator may close buildings in City parks whenever he or she determines the same is for the best interest of the City.

(5) Upon making a decision to complete such a closure or restriction as authorized by this section, the administrator shall make written notice of the closure or restriction to the parks board and the city council setting forth the reasons for the closure or restriction. Such closure or restriction must be noticed by signs clearly demarking the closure or restriction made, the date of the closure or restriction and the duration.

6.12.150 Discrimination Prohibited. No person occupying or using any park for any event, activity or exhibition open to the public, may deny any other person the full use and enjoyment of such park because of race, creed, color, sex, marital status, sexual orientation, political ideology, age, religion, ancestry, national origin or the presence of any

sensory, mental or physical handicap. Any permit issued, in the event of violation of this section may be cancelled.

6.12.160 Reward Posting. The council may offer, post and pay a suitable reward not exceeding \$500.00 for information leading to the arrest and conviction of anyone violating the provisions of this chapter.

6.12.170 Severability. If any part, provision or section of this Chapter is held to be void or unconstitutional, all other parts not expressly so held shall continue in full force and effect.

Section [54](#). Sunset. Section 6.12.080 shall terminate and no longer be in effect on the 366th day after the effective date of this ordinance. Any lease, concession agreement or special use permit issued under Chapter 6.12 as adopted in this ordinance shall remain in effect for its stated term.

PASSED by the City Council this 1st day of October 2013.

CITY OF OAK HARBOR

Attest:

Scott Dudley, Mayor

Valerie J. Loffler, City Clerk

Approved as to Form:

Grant K. Weed, Interim City Attorney

Published: 10/05/13

City of Oak Harbor City Council Agenda Bill

Bill No. 7.b.
Date: October 1, 2013
Subject: Medical Marijuana
Moratorium: Public Hearing

FROM: Steve Powers *rsp*
Development Services Director

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

PURPOSE

The purpose of this agenda item is to provide for a public hearing on the medical marijuana moratorium ordinance adopted by the City Council on September 3, 2013 (Ordinance No. 1666, Attachment 1).

FISCAL IMPACT DESCRIPTION

Funds Required: N/A

Appropriation Source: N/A

SUMMARY STATEMENT

The Washington State Legislature, during its 2011 Legislative Session, adopted Engrossed Second Substitute Bill 5073 ("E2SSB 5073"), which was adopted with a partial veto of the Governor, became effective July 22, 2011, and amended RCW 69.51A and renamed the Medical Use of Marijuana Act to the "Washington State Medical Use of Cannabis Act." At this time the City of Oak Harbor does not have specific regulations addressing the facilities or uses allowed under RCW 69.51A, other than the requirement for a general business license. To respond to this situation, staff recommended the City Council impose a moratorium to preserve the status quo as necessary, until the City can study, draft, hold public hearings and adopt the appropriate land use and/or licensing regulations to address these new uses. The Council accepted that recommendation and on September 3, 2013 approved Ordinance No. 1666 imposing a six-month moratorium.

RCW 36.70A.390 allows cities to adopt a moratorium without first conducting a public hearing so long as one is conducted within 60 days of the adoption of the moratorium. Tonight's public hearing falls within the 60-day timeframe. State law also requires that findings of fact justifying the moratorium must be adopted by the City Council. Findings of Fact supporting the Council's action are included as Attachment 2 to this agenda bill.

City of Oak Harbor City Council Agenda Bill

RECOMMENDED ACTION

- Conduct public hearing and accept public testimony on Ordinance No. 1666
- Adopt Findings of Fact

ATTACHMENTS

1. Ordinance No. 1666
2. Findings of Fact

**CITY OF OAK HARBOR
OAK HARBOR, WASHINGTON**

ORDINANCE NO. 1666

AN INTERIM ORDINANCE OF THE CITY OF OAK HARBOR, WASHINGTON, ADOPTING A MORATORIUM ON THE ESTABLISHMENT OF MEDICAL MARIJUANA DISPENSARIES, COLLECTIVE GARDENS AND THE LICENSING AND PERMITTING THEREOF; DEFINING “MEDICAL MARIJUANA DISPENSARY”; PROVIDING FOR A PUBLIC HEARING; REFERRING THE MATTER TO THE PLANNING COMMISSION FOR REVIEW; ESTABLISHING AN EFFECTIVE DATE; AND PROVIDING THAT THE MORATORIUM, UNLESS EXTENDED, WILL SUNSET WITHIN SIX (6) MONTHS OF THE DATE OF ADOPTION.

WHEREAS, Initiative Measure No. 692, approved November 3, 1998, created an affirmative defense for “qualifying patients” to the charge of possession of marijuana; and

WHEREAS, the initiative and current Chapter 69.51A RCW are clear that nothing in its provisions are to be “construed to supersede Washington state law prohibiting the acquisition, possession, manufacture, sale or use of marijuana for non-medical purposes”; and

WHEREAS, the Washington State Department of Health opines that it is “not legal to buy or sell” medical marijuana and further opines that “the law [Chapter 69.51.A RCW] does not allow dispensaries”, leaving enforcement to local officials; and

WHEREAS, the City Council finds that the sale of marijuana, no matter how designated by dispensaries, is prohibited by federal and state law; and

WHEREAS, ESSB 5073 – Chapter 181, Laws of 2011 (“the bill”) was adopted with a partial veto of the Governor becomes effective July 22, 2011; and

WHEREAS, Section 404 of the bill effectively eliminates medical marijuana dispensaries as a legally viable model of operation under State law; and

WHEREAS, Section 403 of the bill provides that qualifying patients may create and participate in collective gardens for the purpose of producing, processing, transporting and delivering cannabis for medical use subject to compliance with specific statutory conditions; and

WHEREAS, the City acknowledges the right of qualified health care professionals to prescribe the medical use of marijuana as well as the right of patients to designate a “designated

provider” who can “provide” rather than sell marijuana to “only one patient at any one time”; and

WHEREAS, the City Council finds that the secondary impacts associated with marijuana dispensaries, and collective gardens include but are not limited to the invasion of the business, burglary and robbery associated with the cash and drugs maintained on the site; and

WHEREAS, pursuant to Section 1102 of the bill and under their general zoning and police powers cities are authorized to adopt and enforce zoning requirements, business licensing requirements, health and safety requirements and business taxes on the production, processing or dispensing of cannabis or cannabis products; and

WHEREAS, a public hearing will be held on October 1, 2013 at 6:00 p.m. before Oak Harbor City Council;

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

Section 1. Pursuant to the provisions of RCW 36.70A.390, a zoning moratorium is hereby enacted in the City of Oak Harbor prohibiting licensing, permitting, establishment, maintenance or continuation of any use consisting of or including the sale, provision and/or dispensing of medical marijuana to more than one person, the establishment of a medical marijuana dispensary or creation of or participation in a “collective garden” as referenced and defined in Section 403 of ESSB 5073 – Chapter 181, Laws of 2011.

Section 2. “Medical marijuana dispensary” is hereby defined as any person, business, corporation, partnership, joint venture, organization, association and/or other entity which: 1) sells, provides and/or otherwise dispenses marijuana to more than one “qualifying patient” in any thirty (30) day period or to any person who does not meet the definition of “qualifying patient” under the terms of Chapter 69.51A RCW , and/or 2) maintains and/or possesses more than one sixty-day supply of marijuana for one qualifying patient at any time. The receipt of cash or other legal tender in exchange for, contemporaneously with or immediately following the delivery of marijuana to a qualifying patient shall be presumed to be a sale. Any person, business, corporation, partnership, joint venture, organization, association and/ or entity which sells, provides and/or otherwise dispenses marijuana to more than one qualifying patient in any sixty (60) day period should be presumed to be a “medical marijuana dispensary.”

Section 3. Medical marijuana dispensaries and collective gardens are hereby designated as prohibited uses in the City of Oak Harbor, in accordance with the provisions of RCW 35A.82.020 and OHMC Title 19, OHMC Chapter 18.20, and/or OHMC Chapter 5.03, no business license, permit, zoning or development approval shall be issued to be a medical marijuana dispensary or collective garden.

Section 4. This ordinance shall be referred to the Oak Harbor Planning Commission for its review and recommendation for potential inclusion in the zoning and/or business and tax ordinances of the City of Oak Harbor.

Section 5. Ordinance to be Transmitted to Department. Pursuant to RCW 36.70A.106, a copy of this interim ordinance shall be transmitted to the Washington State Department of Commerce.

Section 6. Effective Date. This ordinance shall take effect five (5) days after passage and publication of an approved summary thereof consisting of the title, PROVIDED, HOWEVER, that unless extended by the act of the Oak Harbor City Council, this ordinance shall automatically expire six (6) months following its adoption.

PASSED by the City Council and APPROVED by the Mayor this 3rd day of September 2013.

CITY OF OAK HARBOR

By: _____
Scott Dudley, Mayor

ATTEST/AUTHENTICATED:

By: _____
Valerie J. Loffler, City Clerk

APPROVED AS TO FORM:

By: _____
Grant K. Weed, City Attorney

Date of Publication: 09/07/13

Effective Date: 09/12/13

**BEFORE THE CITY COUNCIL OF THE CITY OF OAK HARBOR
STATE OF WASHINGTON**

In Re Ordinance No.1666)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW
)	AND DECISION OF
)	CITY COUNCIL
Medical Marijuana Moratorium)	

THIS MATTER came before the City Council upon the recommendation of staff to adopt an ordinance imposing a six-month moratorium on uses and facilities related to medical marijuana. Having considered the evidence in the record, heard the arguments of the parties and any public comment, and being fully advised in the premises, the City Council hereby enters the following findings of fact, conclusions of law, and decision:

Findings of Fact

1. Initiative Measure No. 692, approved November 3, 1998, created an affirmative defense for “qualifying patients” to the charge of possession of marijuana.
2. The initiative and current Chapter 69.51A RCW are clear that nothing in its provisions are to be “construed to supersede Washington state law prohibiting the acquisition, possession, manufacture, sale or use of marijuana for non-medical purposes.”
3. The Washington State Department of Health opines that it is “not legal to buy or sell” medical marijuana and further opines that “the law [Chapter 69.51.A RCW] does not allow dispensaries”, leaving enforcement to local officials.
4. The City Council finds that the sale of marijuana, no matter how designated by dispensaries, is prohibited by federal and state law.
5. ESSB 5073 – Chapter 181, Laws of 2011 (“the bill”) was adopted with a partial veto of the Governor became effective July 22, 2011.
6. Section 404 of the bill effectively eliminates medical marijuana dispensaries as a legally viable model of operation under State law.
7. Section 403 of the bill provides that qualifying patients may create and participate in collective gardens for the purpose of producing, processing, transporting and delivering cannabis for medical use subject to compliance with specific statutory conditions.
8. The City acknowledges the right of qualified health care professionals to prescribe the medical use of marijuana as well as the right of patients to designate a “designated provider” who can “provide” rather than sell marijuana to “only one patient at any one time.”
9. The City Council finds that the secondary impacts associated with marijuana dispensaries, and collective gardens include but are not limited to the invasion of the business, burglary and robbery associated with the cash and drugs maintained on the site.

10. Pursuant to Section 1102 of the bill and under their general zoning and police powers cities are authorized to adopt and enforce zoning requirements, business licensing requirements, health and safety requirements and business taxes on the production, processing or dispensing of cannabis or cannabis products.
11. The foregoing findings were incorporated as “WHEREAS” statements in Ordinance No. 1666, which was adopted by the Oak Harbor City Council on September 3, 2013, and which imposed a six-month moratorium on medical marijuana related facilities and uses.
12. Ordinance No. 1666 was published in the Whidbey News Times on September 7, 2013.
13. RCW 36.70A.390 allows cities to adopt a moratorium without first conducting a public hearing so long as one is conducted within 60 days of the adoption of the moratorium.
14. A public hearing was held on October 1, 2013 at 6:00 p.m. before Oak Harbor City Council for the purposes of accepting public testimony on Ordinance No. 1666 and to consider the adoption of additional findings of fact if necessary.

Conclusions of Law

- A. The City Council has jurisdiction over this matter as established by RCW 36.70A.390.
- B. The City Council conducted a public hearing on this matter and proper notice of this hearing was given.
- C. The required public hearing was conducted within the 60-day timeframe as required by RCW 36.70A.390.

Decision

The City Council hereby adopts the above Findings of Fact in support of the approval of Ordinance No. 1666 which imposed a six-month moratorium on medical marijuana facilities and uses.

City of Oak Harbor City Council Agenda Bill

Bill No. 7.c.
Date: October 1, 2013
Subject: Initiative 502 Moratorium:
Public Hearing

FROM: Steve Powers *SP*
Development Services Director

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

PURPOSE

The purpose of this agenda item is to provide for a public hearing on the I-502 moratorium ordinance adopted by the City Council on September 3, 2013 (Ordinance No. 1665).

FISCAL IMPACT DESCRIPTION

Funds Required: N/A

Appropriation Source: N/A

SUMMARY STATEMENT

Initiative Measure No. 502 (I-502) was approved by Washington State voters on November 6, 2012. Its passage purported to legalize the production, sale and use of marijuana products purchased from State licensed stores for adults age twenty-one and over. At this time the City of Oak Harbor does not have specific regulations addressing the facilities or uses identified in I-502, other than the requirement for a general business license. To respond to this situation, staff recommended the City Council impose a moratorium to preserve the status quo as necessary, until the State Liquor Control Board definitively acts to establish a final and complete set of rules for the licensing of all of the new marijuana facilities and uses identified in I-502, and until the City can study, draft, hold public hearings and adopt the appropriate land use and/or licensing regulations to address these new uses. The Council accepted that recommendation and on September 3, 2013 approved Ordinance No. 1665 imposing a six month moratorium.

RCW 36.70A.390 allows cities to adopt a moratorium without first conducting a public hearing so long as one is conducted within 60 days of the adoption of the moratorium. Tonight's public hearing falls within the 60 day timeframe. State law also requires that findings of fact justifying the moratorium must be adopted by the City Council. With Section 1 of Ordinance 1665, the City Council adopted

City of Oak Harbor City Council Agenda Bill

preliminary findings of fact in support of the moratorium thereby meeting the statutory requirement.
The City Council may in its discretion adopt additional findings at the conclusion of this public hearing.

RECOMMENDED ACTION

- Conduct public hearing and accept public testimony on Ordinance No. 1665
- Adopt additional findings of fact if the Council deems them necessary

ATTACHMENTS

Ordinance No. 1665

**CITY OF OAK HARBOR
Oak Harbor, Washington**

ORDINANCE 1665

AN ORDINANCE OF THE CITY OF OAK HARBOR, WASHINGTON, ADOPTING A SIX (6) MONTH MORATORIUM WITHIN THE CITY OF OAK HARBOR ON THE ESTABLISHMENT, SITING, LOCATION, PERMITTING, LICENSING OR OPERATION OF MARIJUANA CULTIVATION, PRODUCTION OF MARIJUANA DERIVATIVES, AND THE SALE OF MARIJUANA OR MARIJUANA DERIVATIVES OR ANY OTHER ACTIVITIES ASSERTED TO BE AUTHORIZED OR ACTUALLY AUTHORIZED UNDER WASHINGTON STATE INITIATIVE NO. 502 OR ANY OTHER LAWS OF THE STATE OF WASHINGTON AND SETTING A DATE FOR A PUBLIC HEARING ON THE MORATORIUM, ADOPTING A WORK PLAN, PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, Initiative Measure No. 502 (I-502), approved by the voters of Washington state on November 6, 2012, purports to legalize the production, sale and use of marijuana products purchased from State licensed stores for adults age twenty-one (21) and over; and

WHEREAS, I-502 Section 1 (3) authorizes the state liquor control board to regulate and tax marijuana for persons twenty-one (21) years of age and older, and add a new threshold for driving under the influence of marijuana; and

WHEREAS, I-502 Section 4 (1) allows the Washington State Liquor Control Board to license marijuana to process, package and label usable marijuana and marijuana-infused products for sale at wholesale to marijuana retailer;

WHEREAS, I-502 Section 4 (3) allows the Washington State Liquor Control Board to license marijuana retailers to sell usable marijuana and marijuana-infused products at retail in retail outlets; and

WHEREAS, I-502 Section 6 (7) states that before the Washington State Liquor Control Board issues a new or renewed license to an applicant, it must give notice of the application to the chief executive officer of the incorporated city, and the city has the right to file its written objection to such licenses within 20 days after transmittal of the notice of application, but the Board makes the final decision whether to issue a license; and

WHEREAS, I-502 Section 6(8) establishes certain limitations on the Washington State Liquor Control Board's issuance of licenses for any premises that are within 1,000 feet of the perimeter of the grounds of any elementary school or secondary school, playground, recreation

facility, child care center, public park, public transit center or library, or any game arcade, admission to which is not restricted to persons aged twenty-one (21) years or older; and

WHEREAS, I-502 Section 9 contemplates that the Washington State Liquor Control Board will adopt rules to implement the provisions of I-502, which includes the equipment and management of retail outlets and premises where marijuana is produced and processed, and the inspection of same; methods of producing, processing, and packaging the marijuana and marijuana products; security requirements at such establishments; retail outlet locations and hours of operation; labeling requirements and restrictions on advertising of such products; licensing and licensing renewal rules; the manner and method to be used by licensees to transport and deliver marijuana and marijuana products (among other things); and

WHEREAS, I-502 Section 10 contemplates that the Washington State Liquor Control Board will adopt procedures and criteria by December 1, 2013 for issuing licenses to produce, process and sell marijuana (among other things) and

WHEREAS, I-502 Section 13 limits the number of retail outlets to be licensed in each county, for the purpose of making useable marijuana and marijuana-infused products available for sale to adults twenty-one (21) years of age or over; and

WHEREAS, I-502 decriminalizes, for purposes of state law, the production, manufacture, processing, packaging, delivery, distribution, sale or possession of marijuana, as long as such activities are in compliance with I-502; and

WHEREAS, at this point in time, the City of Oak Harbor does not have specific regulations addressing the facilities or uses identified in I-502, other than the requirement for a general business license; and

WHEREAS, I-502 prohibits anyone from engaging in the activities identified in I-502 without first obtaining a license from the Washington State Liquor Control Board; and

WHEREAS, the uses described in I-502 have never been allowed in any state or city in the United States, and the City needs time to study the secondary land use impacts of these marijuana uses and the various development standards that should be considered to mitigate these impacts before adoption of any regulatory ordinance or issuance of any business license; and

WHEREAS, the Oak Harbor City Council hereby finds that a moratorium to preserve the status quo is necessary, until the State Liquor Control Board definitively acts to establish a final and complete set of rules for the licensing of all of the new marijuana facilities and uses identified in I-502, and until the City can study, draft, hold public hearings and adopt the appropriate land use and/or licensing regulations to address these new uses; and

WHEREAS, RCW 36.70A.390 authorizes the City Council to adopt an immediate moratorium for a period of up to six months if a public hearing on the proposal is held within at least sixty days of its adoption; and

WHEREAS, the City Council desires to impose an immediate six month moratorium on the acceptance of any development permit application or business license or occupancy permit or application for the siting, location or operation of any marijuana processor, marijuana producer, or marijuana retailer; and

WHEREAS, RCW 69.51A.140 authorizes cities to adopt and enforce zoning requirements, business licensing requirements, health and safety requirements, and business taxes pertaining to the production, processing, or dispensing of marijuana or marijuana products within their jurisdiction; and

WHEREAS, RCW 36.70A.390 provides that, "A county or city governing body that adopts a moratorium, interim zoning map, interim zoning ordinance, or interim official control without holding a public hearing on the proposed moratorium, interim zoning map, interim zoning ordinance, or interim official control, shall hold a public hearing on the adopted moratorium, interim zoning map, interim zoning ordinance, or interim official control within at least sixty days of its adoption, whether or not the governing body received a recommendation on the matter from the planning commission or department. If the governing body does not adopt findings of fact justifying its action before this hearing, then the governing body shall do so immediately after this public hearing. A moratorium, interim zoning map, interim zoning ordinance, or interim official control adopted under this section may be effective for not longer than six months, but may be effective for up to one year if a work plan is developed for related studies providing for such a longer period. A moratorium, interim zoning map, interim zoning ordinance, or interim official control 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"; and

WHEREAS, RCW 35.63.200 provides a similar process as described above for adopting and extending land use moratoriums; and

WHEREAS, moratoriums enacted under RCW 36.70A.390 and/or RCW 35.63.200 are methods by which local governments may preserve the status quo so that new plans and regulations will not be rendered moot by intervening development; and

WHEREAS, the Oak Harbor Municipal Code does not currently have specific provisions addressing licensing, producing, processing or retailing of recreational marijuana; and

WHEREAS, in conformity with the responsibilities of the City of Oak Harbor to meet public health, safety and welfare requirements and provide zoning and land use regulations pursuant to state law, and the City's authority to regulate land use activity within its corporate limits, the City intends to develop appropriate public health, safety and welfare requirements and zoning and land use regulations for the establishment of facilities producing, processing and retailing of recreational marijuana; and

WHEREAS, the City Council has determined it needs additional time to conduct appropriate research to analyze the effects of the pending rules and regulations to be established by the Washington State Liquor Control Board pursuant to I-502; and

WHEREAS, a moratorium will provide the City with additional time to review and amend its public health, safety and welfare requirements and zoning and land use regulations related to the establishment of facilities producing, processing and retailing recreational marijuana as authorized by I-502; and

WHEREAS, the City Council concludes that the City does have authority to establish a moratorium and that the City must adopt a moratorium concerning the filing, acceptance, and processing of new land use applications or licensing or occupancy permit for the establishment of, or operation of, any facility, building or premises used for the production, processing or retailing of recreational marijuana, to protect the health, safety and welfare of the citizens of Oak Harbor; and

WHEREAS, in addition, the cultivation, possession or distribution of cannabis marijuana, and marijuana products has been and continues to be a violation of federal law through the Controlled Substances Act (“CSA”); and

WHEREAS, the activities purported to be legalized under Initiative Measure No. 502 remain violations of federal law through the Controlled Substances Act, and the United States Supreme Court in Gonzales v. Raich, 545 U.S. 1, (2005) which held that the CSA’s categorical prohibition of the manufacture and possession of marijuana as applied to the intrastate manufacture and possession of marijuana for medical purposes superseded a conflicting California State law; and

WHEREAS, two U.S. Attorneys (Federal Department of Justice) situated in Washington have gone on record stating that marijuana is a Schedule I controlled substance under federal law, and as such, growing, distributing and possessing marijuana in any capacity other than as part of a federally authorized research program is a violation of federal law, regardless of state laws permitting such activities, and also concluded publicly that local governmental employees who conducted marijuana regulatory activities under Washington State law are subject to prosecution under the CSA; and

WHEREAS, in 2012, the Board of Clark County Washington Commissioners requested a determination from the federal government whether such enforcement efforts would extend to local government activities implementing Washington state laws on marijuana, where those laws conflict with the CSA, and the responsive letter from Joseph T. Rannazzisi, Deputy Assistant Administrator, Office of Division Control, U.S. Department of Justice, Drug Enforcement Administration, states that anyone who knowingly carries out the marijuana activities contemplated by Washington state law which are inconsistent with the CSA, as well as anyone who facilitates such activities, or conspires to commit such violations of the CSA, is subject to criminal prosecution as provided in the CSA, including both local elected officials and local government staff; and

WHEREAS, the recently approved Initiative Measure No. 502 does not appear to change the basis for the analysis by the U.S. Attorneys, and any State or local officials who undertake marijuana regulatory activities remain subject to federal prosecution; and

WHEREAS, because prior to the passage of Initiative Measure No. 502, the possession or distribution of marijuana was a violation of both the Washington Uniform Controlled Substances Act and a violation of the federal CSA, the City has not studied or implemented zoning for uses involving the production or distribution of marijuana; and

WHEREAS, the City requires time to conduct appropriate research to understand the extent and validity of the changes provided in the new law to analyze impacts and potential liabilities under federal law and to determine an appropriate regulatory framework for the uses and activities that are allowed under Initiative Measure No. 502; and

WHEREAS, in addition to the legal issues, the City must study, without limitation, the impacts of the location of uses and facilities for the production, sale and use of marijuana products and the siting of marijuana cultivation facilities, facilities for the creation of marijuana products, and State licensed marijuana stores in commercial and residential zones, as well as impacts arising from the proximity of these uses, activities and facilities to schools, day cares, parks, religious and cultural facilities, and accordingly the City Council finds that a zoning, licensing and permitting moratorium should be established pending local review of appropriate locations and design requirements of these operations and impacts of the newly amended law and its interaction with federal law; and

WHEREAS, the City Council adopts the foregoing as its findings of facts justifying the adoption of this ordinance;

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

Section 1. Preliminary Findings.

The recitals and findings set forth above are hereby adopted as the City Council preliminary findings in support of the moratorium imposed by this ordinance in compliance with RCW 36.70A.390 and RCW 35.63.200. The City Council may in its discretion adopt additional findings at the conclusion of the public hearing referenced in Section 6 below.

Section 2. Moratorium Imposed.

Pursuant to Washington State law, a moratorium is hereby enacted prohibiting within the City of Oak Harbor the establishment, siting, location, operation, licensing, or maintenance of facilities, structures, businesses or any other activities involving the production, sale and use of marijuana and marijuana products asserted to be authorized or actually authorized under Washington State Initiative No. 502 or any other laws of the state of Washington (Marijuana Business). No building permit, occupancy permit, or other development permit or approval shall be issued for any of the purposes or activities listed above and no business license shall be granted or accepted while this moratorium is in effect. Any land use permits, business licenses, or other permits for any of these operations that are issued as a result of error or by use of vague or deceptive

descriptions in any license or development application during the moratorium are null and void and without legal force or effect.

Section 3. Definition of Marijuana Use.

As used in this ordinance the following list of terms shall have the meaning set forth below:

Marijuana Definitions.

“Marijuana Use” includes any store, agency, organization, dispensary, cooperative, network consultation, operation, or other business entity, group or person, no matter how described or defined, including any associated premises and equipment which has for its purpose or which is used to grow, select, measure, process, package, label, deliver, dispense, sell or otherwise transfer for consideration, or otherwise, marijuana in any form.

"Cannabis or Marijuana" means all parts of the plant Cannabis, whether growing or not, with a THC concentration greater than 0.3 percent on a dry weight basis; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. For the purposes of this Ordinance, "cannabis" or "marijuana" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, except the resin extracted therefrom, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

"Marijuana processor" means a person licensed by the State Liquor Control Board to process marijuana into useable marijuana and marijuana-infused products, package and label usable marijuana and marijuana-infused products for sale in retail outlets, and sell usable marijuana and marijuana-infused products as wholesale to marijuana retailers.

"Marijuana producer" means a person licensed by the State Liquor Control Board to produce and sell marijuana at wholesale to marijuana processors and other marijuana producers.

"Marijuana-infused products" means products that contain marijuana or marijuana extracts and are intended for human use. The term "marijuana infused products" does not include useable marijuana.

"Marijuana retailer" means a person licensed by the State Liquor Control Board to sell usable marijuana and marijuana-infused products in a retail outlet.

"Retail outlet" means a location licensed by the State Liquor Control Board for the retail sale of useable marijuana and marijuana-infused products.

"Usable marijuana" means dried marijuana flowers. The term "usable marijuana" does not include marijuana-infused products.

Section 4. No Nonconforming Uses.

No use that constitutes or purports to be a Marijuana Use as that term is defined in this ordinance that was engaged in that activity prior to the enactment of this ordinance shall be deemed to have been a legally established use under the provisions of the Oak Harbor Municipal Code and that use shall not be entitled to claim legal nonconforming status.

Section 5. Effective Period for Moratorium.

The moratorium set forth in this ordinance shall be in effect for a period of six (6) months from the date this ordinance is passed and shall automatically expire at the conclusion of that six (6) month period unless the same is extended by the City as provided in State law or unless terminated sooner by ordinance.

Section 6. Public Hearing.

The City Council will hold a public hearing at the regular City Council meeting of October 1, 2013 at 6:00 p.m. or as soon thereafter as the business of the City Council shall permit and which date is no more than sixty (60) days after the date of adoption herein in order to take public testimony and to consider adopting further findings.

Section 7. Study of Issues.

The City Administrator and other responsible staff are hereby authorized to study and address issues related to determining the legality of Marijuana Uses as defined herein, including but not limited to review of the pending dispute between State and federal law enforcement authorities regarding the legality of Marijuana Uses under any circumstances and notwithstanding the adoption of Initiative Measure No. 502. In the event that such uses are ultimately determined to be legal, the work program should also develop appropriate land use regulations pursuant to the newly amended law, for review and recommendation for inclusion in the zoning regulations or other provisions of the Oak Harbor Municipal Code, including business licensing and other regulations for review for inclusion in the Oak Harbor Municipal Code.

Section 8. Severability. If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance or its application to any person or situation should be held to be invalid or unconstitutional for any reason by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this ordinance or its application to any other person or situation.

Section 9. Effective Date.

This ordinance shall take effect five (5) days after passage and publication of an approved summary thereof consisting of the title, PROVIDED, HOWEVER, that unless extended by the act of the Oak Harbor City Council, this ordinance shall automatically expire six (6) months following its adoption.

PASSED by the City Council and APPROVED by the Mayor this 3rd day of September 2013.

CITY OF OAK HARBOR

By _____
Scott Dudley, Mayor

ATTEST:

By _____
Valerie J. Loffler, City Clerk

Approved as to form:

By _____
Grant Weed, City Attorney

Date of Publication: _____

Effective Date : _____

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

Bill No. 9.a.
Date: October 1, 2013
Subject: SPIN Café's Proposal for a
Permaculture Food Forest

FROM: Cathy Rosen, Public Works Director

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

PURPOSE

The purpose of this agenda bill is to consider entering into an agreement with SPIN (Serving People In Need) Café to allow the use of City owned property adjacent to Hal Ramaley Park to develop a permaculture food forest.

FISCAL IMPACT DESCRIPTION

Funds Required: \$100 per year for extra water to irrigate plants until established
Appropriation Source: 001.70 Parks utility funds

SUMMARY STATEMENT

SPIN Café is requesting permission to use the property located at 526 SE Bayshore Drive adjacent to Hal Ramaley Park for the purpose of developing a permaculture food forest on the site. A permaculture food forest is a sustainable, edible garden utilizing varieties of trees and plants that bear fruits, berries and nuts on an annual basis. The proposed garden will be planted with apple trees, plum trees, grapes, currants and filberts, to name a few. All landscape beds will be developed above the existing surface to eliminate the need for any digging into native soils. The garden will be designed to catch and collect rainfall in bioswales that are routed to water the plants. Potable water usage will be minimal once the plants are established. SPIN Café intends to design, develop and maintain the garden as a vocational training program for at-risk teens. Students will be involved with each step of the process from the initial design phase, construction and long term maintenance of the site. Students will also learn about plant species, proper planting techniques and making and using compost materials in landscapes. It is also the intention of SPIN Café to use produce collected at the site in their meal planning to be served at their Café location.

The garden will be open to the public with the intention of providing education regarding permaculture and composting. The public will be free to go into the garden and pick produce for their own use if they so desire.

The City's Comprehensive Park Plan (page 62) references the expansion of Hal Ramaley Park in the area of the proposed permaculture food forest. The Oak Harbor Garden Club, who has adopted and maintains Hal Ramaley Park, has reviewed the proposal by SPIN Café for a permaculture food forest adjacent to the park, and is in support of it.

CITY COUNCIL WORKSHOP REPORT

The SPIN Café's proposal for a permaculture food forest was presented at the City Council Workshop on July 24, 2013. The Park Board approved the proposal at their August 12, 2013 meeting.

RECOMMENDED ACTION

Approve an agreement with SPIN Café for the development of a permaculture food forest at 658 Bayshore Drive, adjacent to Hal Ramaley Park, with the understanding that the site will remain open to the public, that SPIN Café will not use the site as a for-profit enterprise, and that if the City needs to utilize the property for another purpose that the permaculture food forest may be removed.

ATTACHMENTS

- Comprehensive Park Plan (page 62)
- Exhibit A
- Agreement with Spin Café

**City of Oak Harbor
COMPREHENSIVE PARK PLAN**

HAL RAMALEY PARK



Community Park

.5

Picnic sites
Seasonal Gardens

Level of Attention

	Turf Care	Fertilizer	Irrigation	Pruning	Disease Control	Repairs	Surface	Inspection	Floral	Average LOA
Hal Ramaley	2	2	2	1	1	2	2	2	1	1.67

Improvements needed

Upgrade the lighting fixtures	Repair and resurface the hard surfaces
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Other Improvements

Build a gazebo	Expand park to the west
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City of Oak Harbor
COMPREHENSIVE PARK PLAN

dredged. The lagoon bridge was replaced and other improvements were completed during 1993. Local service organizations have donated money, time and equipment for Windjammer Park improvements.

Volunteer Park, E. Whidbey Avenue & SE Jerome Street.

This Park includes the Oak Harbor Senior Center, John Vanderzicht Pool (operated by the North Whidbey Parks and Recreation District) and a six (6) acre community park with three Little League fields and a skateboard park.

Flintstone Park., SE Bayshore Dr., 1.5 acres.

This is considered a community park with covered picnic facilities, a mini-pier for small visiting boats, rest rooms and approximately 500 lineal feet of Oak Harbor Waterfront Trail. The park also includes a concrete "play" car modeled after the Flintstones cartoon. The proposed Municipal Pier Project takes its access from this park. The upland improvements for the Municipal Pier Project will be built in Flintstone Park and is expected to begin in 2010.

Hal Ramaley Memorial Park, SE Bayshore Dr. & SE City Beach, 0.5 acres.

This is a community park with picnic sites and seasonal gardens; contains approximately 0.5 acres additional undeveloped land on an irregularly shaped parcel, located across from the little league fields at Windjammer Park.

Neil Park, SE 6th Ave. and SE Ireland St., 3.5 acres.

This is Neighborhood park with one tot lot, Holland Gardens and one half court basketball court.

Oak Harbor Waterfront Trail. (not shown on map)

The current trail extends from Scenic Heights Road to the Oak Harbor Marina. The trailhead at Scenic Heights is being improved to include restrooms and public art display. The trail extends through Fruend Marsh and Windjammer Park. The trail is being connected along the waterfront between Windjammer Park and Flintstone Park. The trail follows along the Pioneer Way to the Marina. Future plans include extending this trail to Maylor Point. The total length of the trail on completion to Maylor point will be 2+ miles

Pocket Parks/Picnic Sites, Pioneer Way 0.3 acres.

There are three landscaped pocket parks with benches and/or picnic tables between Harborside Shops and the Marina

**LEASE AGREEMENT
FOR
SPIN CAFÉ FOOD FOREST**

WHEREAS, SPIN CAFÉ is a nonprofit charitable corporation of the State of Washington; and

WHEREAS, SPIN CAFÉ desires to develop a permaculture food forest site in the vicinity of the City of Oak Harbor for the purposes of providing vocational training for at-risk teens and to grow produce for use in meals served at their café location; and

WHEREAS, the CITY OF OAK HARBOR owns and maintains Hal Ramaley Park; and

WHEREAS, the City's comprehensive plan proposes the expansion of Hal Ramaley Park in the area SPIN CAFÉ proposes to develop as a permaculture food forest site; and

WHEREAS, SPIN CAFÉ's proposed use of the area in which the food forest is developed would remain open to the public, and members of the public would be permitted to garden and harvest produce for their own use; NOW, THEREFORE,

THIS LEASE, is made by and between the CITY OF OAK HARBOR, a municipal corporation of the State of Washington, hereinafter "City," and SPIN CAFÉ, a Washington nonprofit corporation, hereinafter "Spin Café."

1. **DESCRIPTION OF PREMISES.** City hereby leases to Spin Café and Spin Café leases from City on the terms, covenants and conditions set forth herein, the following-described premises:

That portion of the property depicted on that certain Survey recorded in Volume 5, page 454, File No. 422999, records of Island County Washington, described as follows:

That property lying West of the West boundary of Parcel C, South of the South Boundary of Parcel B, and East of the southerly prolongation of the West line of Parcel B as depicted on the above-described survey, and North of the currently existing northerly right-of-way line of 200th Avenue SW, now known as SE Bayshore Drive.

Being a portion of Reserve B, Ely's Addition to Town of Oak Harbor, Washington, as per plat recorded in Volume 2, page 27, records of Island County, Washington.

hereinafter the "Leased Premises." The Leased Premises appear as the shaded area on the map attached hereto as **Exhibit A**.

2. **TERM.**

- (a) Initial Term: The initial term of this Lease shall be for TEN (10) years, commencing on October, 2013, and ending September 30, 2023;
- (b) Renewal: This Lease shall automatically be renewed for additional 10-year terms unless terminated by either party;
- (c) Notwithstanding the above, this Lease may be terminated at any time upon ninety (90) days advance written notice by either party to the other, or upon twenty (20) days advance written notice from City in the event of Spin Café's breach of any term or provision of this Lease.

3. **CONSIDERATION.** So long as Spin Café uses the property as provided below, the consideration for this Lease shall be the benefit to the public, and there shall be no rent charged. In the event that Spin Café fails to use the property as provided below, rent shall be due and payable at the then applicable market rate.

4. **LEASEHOLD EXCISE TAX.** During any month when Spin Café does not qualify for exemption from leasehold excise tax pursuant to Chapter 82.29A RCW, Spin Café shall pay to City as monthly rent, or as additional monthly rent, a sum equal to 12.84% of the then current market rental value of the lease premises, or such greater amount as reflects the then current leasehold excise tax rate. Upon City's request, as may be made from time to time, Spin Café shall provide City with proof and documentation demonstrating Spin Café's exemption from leasehold excise tax.

5. **USE OF PREMISES.**

- (a) The Leased Premises shall be used and occupied solely for development and maintenance of a permaculture food forest, and for no other purpose or purposes, without City's prior written consent. A permaculture food forest is defined as a sustainable, edible garden utilizing varieties of trees and plants that bear fruits, berries and nuts on an annual basis. Spin Café agrees to use the property for the design, development and operation of a permaculture food forest. Spin Café shall erect no structures other than those required for the development of the permaculture food forest without the prior written consent of City. The permaculture food forest will be constructed and developed in strict compliance with plans approved in advance by City.
- (b) The food forest is part of Hal Ramaley Park, a community park, and shall remain open to the public. It shall not be fenced. Members of the public shall be permitted to establish their own garden plots. Produce and fruits grown in the food forest shall not be considered exclusive properties of the Spin Café. The public shall be allowed to pick fruit and harvest produce if they so desire.
- (c) Spin Café may use the food it harvests in its nonprofit kitchens or other charitable meal service activities, but shall not sell food grown on the premises or gain any financial benefits from activities occurring within the food forest located on the Leased Premises.

- (d) All planter areas are to be developed by creating raised beds. Spin Café agrees not to dig into the existing soils on the site. Spin Café shall be provided with water from the existing water service located in Hal Ramaley Park solely for establishment of the food forest, but shall develop the garden to catch and collect rainfall in bioswales that are routed to water the plants in order to eliminate the long-term need to use water from the park to sustain the garden. Spin Café's use of water from Hal Ramaley Park shall be subject to City's control.
- (e) Spin Café agrees not to develop or plant any trees or bushes within the easement area as identified in Exhibit A.
- (f) The food forest will be developed in accordance with good safe agricultural practices and best known practices for development of permaculture food forests. Spin Café will not engage in any activity or practice which jeopardizes the public safety, and shall be solely responsible for the safety of any food planted or otherwise produced by Spin Café on the Leased Premises. Any substances applied as fertilizer or for pest or weed control, and all pest and weed control methods shall be subject to City's advance written approval.
- (g) Spin Café will not store any materials, supplies or other objects on the Leased Premises except by prior permission and in locations designated by City.
- (h) Spin Café shall not park any motor vehicles on the Leased Premises. Spin café shall not bring any heavy equipment onto the Leased Premises without the prior written permission of City.
- (i) Throughout the term of this Lease Spin Café agrees to be solely responsible for all costs associated with the development, long-term maintenance and operation of the food forest, and shall maintain the food forest in good, attractive, healthy condition.
- (j) Any persons or companies employed, contracted with or volunteering to assist with the activities of Spin Café shall be the employees, contractors or volunteers of Spin Café, and shall not be deemed to be the employees, contractors or volunteers of the City. City shall have no responsibility, whatsoever, for said persons, companies, volunteers or contractors.
- (k) Spin Café shall promptly comply with all laws, ordinances, orders, and regulations now in effect, or as hereafter amended, affecting the Leased Premises and their cleanliness, safety, occupation and use. Spin Café will not use or permit the use of the premises in any manner that will tend to create a nuisance, or unnecessarily or unreasonably disturb other users of the Leased Premises or the adjacent park property.
- (l) Spin Café shall not use any machinery or equipment on the Leased Premises that might be injurious to the property or dangerous to the public. Spin Café will not perform any act or carry on any practices that may damage the Leased Premises or be a nuisance to or menace or injure the public or City's employees, contractors or agents. Spin Café shall not commit or suffer any waste upon the Leased Premises.

- (m) Upon termination of the Lease, Spin Café shall quit and surrender the Leased Premises in as good a state and condition as they were at the commencement of the Lease, reasonable wear and tear or other actions not caused by Spin Café, its employees, agents, customers or invitees, excepted. At City's option, all permaculture food forest improvements shall become the property of the City upon termination of the Lease.
- (n) Spin Café's occupancy of the Leased Premises and its activities thereon shall be subject to regulation by the City including opening and closing times, if City so elects. City shall be entitled to erect fencing and any other security features that it deems necessary to protect the Leased Premises.

6. **SPIN CAFÉ'S FAILURE TO MAINTAIN.** If Spin Café refuses or neglects to maintain the Leased Premises as required herein to the reasonable satisfaction of City as soon as reasonably possible after written demand, City may make such repairs and/or do required maintenance without liability to Spin Café for any loss or damage that may accrue to Spin Café's property, and upon completion thereof, Spin Café shall pay City's costs for such work, plus 15% for overhead, together with 12% per annum interest from the date City tenders Spin Café an invoice for such work to the date of payment.

7. **UTILITIES.** City shall pay the expense of water service to the Leased Premises. Spin Café shall exercise prudent conservation practices. City shall not be liable for any loss, injury, or damaged property caused by or resulting from any variation, interruption, or failure of any utility service beyond City's reasonable control.

8. **ACCEPTANCE OF PREMISES/INITIAL IMPROVEMENTS.** Spin Café acknowledges that Spin Café has examined the Leased Premises and accepts the same in their condition on the date of Spin Café's execution of this Lease.

9. **ALTERATIONS, LIENS.** Except as specifically permitted above:

- (a) No alterations shall be made to the Leased Premises without prior written consent of City. Any alterations to the Leased Premises shall, at City's option, become part of the realty and belong to City.
- (b) In the event the Leased Premises shall at any time during the term of this Lease become subject to any suit brought to enforce a lien, or any statement or claim of lien is filed to enforce a lien resulting from the furnishing of materials or labor to the Leased Premises contracted for or agreed to by Spin Café, Spin Café may contest such lien by legal proceedings, but shall nevertheless cause such lien, at its sole cost, to be discharged within thirty (30) days after notice thereof by the substitution therefor of a mechanic's lien release bond, by posting of adequate security for the payment thereof (including all expenses incident thereto), or by such other method as shall be reasonably satisfactory to City. Spin Café's obligations to observe or perform this covenant shall survive the expiration or the termination of the term of this Lease.

10. **RISK OF LOSS.** All personal property of Spin Café kept or maintained at the Leased Premises shall be at the risk of Spin Café.

11. **INSURANCE: INSURANCE/CASUALTY.** Each party hereto waives any and every claim which arises, or may arise, in its favor and against the other party hereto during the term of this Lease for all loss of, or damage to, any of its property located within or upon, or constituting a part of the Leased Premises, which loss or damage is covered by valid and collectible fire and extended coverage insurance policies to the extent such loss or damage is recoverable under said insurance policies. Said mutual waivers shall be in addition to and not a limitation or derogation of any other waiver or release contained in this Lease with respect to any loss of or damage to property of the parties hereto. Inasmuch as the above mutual waivers will preclude the assignment of any such claim by way of subrogation to an insurance company (or any other person), each party hereby agrees immediately to give each insurance company which has issued to it policies of fire and extended coverage insurance written notice of the terms of said mutual waivers, and to have said insurance policies properly endorsed, if necessary, to prevent invalidation of said insurance coverages by reason of said waivers.

12. **INSURANCE/LIABILITY.** During the entire term of this Lease, Spin Café shall keep in full force and effect a policy, or policies, of public liability and property damage insurance with respect to the Leased Premises and the activities of Spin Café, in which the limits of public liability shall be not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate, and in which the property damage liability shall be not less than \$500,000, excluding perils of flood and earthquake, with a \$1,000 deductible. City shall be named as an additional insured under said policy(ies). Notwithstanding any other provisions contained herein, the insurance carrier shall endeavor to give City thirty (30) days prior notice of cancellation or modification of said policy(ies). Spin Café shall give written notice to City within three (3) business days of receipt of any notice of cancellation or modification from insurer and shall not request any modification to insurance which reduces any coverage without advance written approval of City.

13. **CITY'S INSURANCE.** Spin Café acknowledges that insurance carried by City is solely for City's benefit and provides no coverage for benefit of Spin Café.

14. **INDEMNIFICATION.**

- (a) City shall protect, hold harmless, indemnify, and defend, at its own expense, the Spin Café, its officers, employees, and agents from any loss or claim for damages of any nature whatsoever, including claims by third parties or by City's employees from which it would otherwise be immune under Title 51 RCW or other law, arising out of any act or omission on or about the Leased Premises or relating to this Lease by City, its appointed or elected officials, officers, assignees, agents, employees, invitees, contractors or subcontractors. If a loss or claim is caused by or results from the concurrent negligence of City, its appointed or elected officials, officers, employees, or agents and the Spin Café, its officers, employees, or agents, this clause shall be valid and enforceable only to the extent of the negligence of the City, its appointed or elected officials, officers, employees, or agents.

(b) Spin Café shall protect, hold harmless, indemnify, and defend, at its own expense, the City, its appointed or elected officials, officers, employees, and agents from any loss or claim for damages of any nature whatsoever, including claims by third parties or by the Spin Café's employees from which it would otherwise be immune under Title 51 RCW or other law, arising out of any act or omission on or about the Leased Premises or relating to this Lease by the Spin Café, its officers, employees, or agents. If a loss or claim is caused by or results from the concurrent negligence of the Spin Café, its officers, employees, or agents and the City, its appointed or elected officials, officers, employees, or agents, this clause shall be valid and enforceable only to the extent of the negligence of the Spin Café, its officers, employees, or agents.

The parties acknowledge that the foregoing indemnity provisions were mutually negotiated and survive the termination of this Lease.

15. **HAZARDOUS SUBSTANCES.** As used in this Lease, the term "Hazardous Substance" means any substance or material, the storage, use or disposal of which is or becomes regulated under any law now or hereafter in effect, including, but not limited to any flammable explosives, radioactive materials, asbestos, petroleum and related byproducts and hydrocarbons, organic compounds known as polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxins, pollutants, contaminants, hazardous wastes, toxic substances or related materials.

Without City's prior written consent, Spin Café shall not receive, store or otherwise allow any Hazardous Substance on the Leased Premises and shall not allow any Hazardous Substance to be used in the development or maintenance of the permaculture food forest, including, but not limited to, any material or thing that has been permeated with any Hazardous Substance. In the event of any release or presence of any Hazardous Substance on or about the Leased Premises occurring on or after the commencement date of this Lease, Spin Café agrees to immediately, fully and completely remove all of such Hazardous Substance from the Leased Premises and to dispose of such in accordance with applicable law, even if the quantity or concentration of such Hazardous Substance would not require remediation under the provision of law. Spin Café further agrees to defend, indemnify, and hold harmless City, its elected officials, officers, employees, agents and contractors from and against any and all losses, claims, liabilities, damages, demands, fines, costs and expenses, including reasonable attorneys' fees, arising out of or resulting from any release or presence of any Hazardous Substance on or about the Leased Premises; the provisions of this sentence shall survive and be enforceable after the termination or expiration of the Lease and the surrender of the Leased Premises by Spin Café. If Spin Café becomes aware of the release or presence on the Leased Premises of any Hazardous Substance, Spin Café shall immediately notify City in writing of such release or presence, and Spin Café shall promptly provide City with copies of any reports, studies, recommendations or requirements received by Spin Café from any third person, including a governmental agency.

16. **SIGNS.** Spin Café shall not erect any signs at the Lease Premises without the prior written approval of City. If City gives its approval, City shall have the right to control and approve the location, size, quality, appearance and content of the sign. Spin Café shall be required to maintain Spin Café's signs in good, safe, attractive condition. Any signs not in conformity with this Lease may be removed and destroyed by City.

17. **NONDISCRIMINATION.** Spin Café, for itself, its successors in interest and assigns, as part of the consideration hereof, does hereby agree that it shall maintain and operate the activities and facilities permitted under this Lease in compliance with all requirements imposed pursuant to Title 49, Code of Federal Regulations. No person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities or activities. In the construction of any improvements in, over or under such land and the furnishing of services thereon, no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination. Spin Café shall use the Leased Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations.

18. **ENTRY.** City shall have the right to enter the Leased Premises at any time. The public shall have the right to enter the Leased Premises at all times when the City shall permit public entry to the Leased Premises. City and City's agents shall have the right to maintain the Leased Premises, and make repairs, alternations, or additions to any portion of the Leased Premises.

19. **TAXES.**

- (a) City shall be responsible for all real property taxes and assessments levied or assessed against the Leased Premises by any governmental entity, including any special assessments imposed on or against the Leased Premises for the construction or improvement of public works in, on or about the Leased Premises; provided, however, that the Spin Café shall conduct no activity on the Leased Premises nor place any articles on the Leased Premises that will increase the real property taxes levied or assessed against the Leased Premises.
- (b) Spin Café shall pay before delinquency any and all taxes, assessments, license fees, and public charges levied, assessed or imposed and which become payable during the Lease upon Spin Café's fixtures and personal property installed on or located in the Leased Premises.
- (b) Spin Café agrees to pay the amount of all taxes levied upon or measured by the rent payable hereunder, whether as a sales tax, transaction privilege tax, leasehold excise tax, or otherwise. Except as provided in paragraph 4 above, such taxes shall be due and payable at the time the same are levied or assessed.

20. **CONDEMNATION.** If any part of the Leased Premises shall be taken by public or quasi-public authority under any power of eminent domain or condemnation, Spin Café shall have no claim or interest in or to any award of damages for such taking. If such taking materially reduces usefulness of the Leased Premises for the purposes for which it is leased, then Spin Café shall have the option of terminating this Lease.

21. **ASSIGNMENT AND SUBLETTING.** Spin Café shall not sublease, sublet or assign the Leased Premises, or any portion thereof, except by the written permission and consent of City, in City's sole discretion. This Lease shall not be assignable by operation of law.

22. **INSOLVENCY OF SPIN CAFÉ.** (a) the appointment of a receiver to take possession of all or substantially all of the assets of Spin Café, or (b) a general assignment by Spin Café for the benefit of creditors, or (c) any action taken or suffered by Spin Café under any insolvency or bankruptcy act shall, if any such appointments, assignments or action continues for a period of thirty (30) days, constitutes a breach of this Lease by Spin Café, and City may at its election without notice, terminate this Lease, and in that event be entitled to immediate possession of the Leased Premises and damages as provided below.

23. **SPIN CAFÉ DEFAULT.**

- (a) If Spin Café shall fail to perform any of the covenants and agreements herein contained (and regardless of the pendency of any bankruptcy, reorganization, receivership, insolvency, or other legal or equitable proceedings that have or might have the effect of preventing the Spin Café from complying with the terms of this Lease), then City may cancel this Lease upon giving the notice required by law, and re-enter said premises.
- (b) In the event of any entry in, or taking possession of, the Leased Premises, City shall have the right, but not the obligation, to remove from the Leased Premises all personal property located thereon, and may place the same in storage at a public warehouse, at the expense and risk of the owners.
- (c) If at any time City waives any breach or default, or any right or option, such waiver shall not be construed to be a waiver of any other right or option, or any other past, existing or future breach or default.
- (d) In the event Spin Café is in default on any provision of this Lease and City seeks the services of an attorney to enforce such provision in default, City shall be entitled to recover all attorney's fees and costs expended in such enforcement, including the cost of preparation and service of all notices, and such fees, costs and expenses shall constitute additional rent due hereunder.

24. **CITY DEFAULT.** In the event City shall neglect or fail to perform or observe any of the covenants, provisions or conditions contained in this Lease on its part to be performed or observed within 30 days after Spin Café's written notice to City (or if more than 30 days shall be required because of the nature of the breach, if City shall fail to proceed diligently to cure such breach after notice), then, in that event, City shall be in default under the provisions of this Lease and shall be responsible to Spin Café for any and all damages sustained by Spin Café as a result of City's default. Further, after such default and upon giving City ten (10) days advance written notice of intent to do so, Spin Café shall have the right to cure any such default at City's expense, including in such expenditure all costs and attorney's fees incurred to cure such default, and may offset the costs of curing such default against rents next due. In the event City fails and refuses to cure its default and Spin Café is unable to remedy City's default, Spin Café shall have the option of terminating this lease upon 30 days written notice to City.

25. **ATTORNEY FEES.** In the event of any legal action or proceeding between the parties hereto to enforce or interpret this Lease, the substantially prevailing party shall be entitled to collect, in addition to any judgment awarded by a court, a reasonable sum as attorneys' fees,

and all costs and expenses incurred in connection with such a lawsuit, including attorneys' fees, costs, and expenses of any appeal of a judgment, and if the substantially prevailing party shall recover judgment in any such action or proceeding, such costs, expenses and attorney's fees shall be included in and as a part of such judgment. This Lease shall be governed by the laws of the State of Washington. The venue for any dispute related to this Lease shall be Island County, Washington. Should City be named as a defendant in any suit brought against Spin Café in connection with or arising out of Spin Café's occupancy hereunder, Spin Café shall pay to City its cost and expenses incurred in such suit, including a reasonable attorney fee.

26. **NOTICES.** All notices, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments, or designations under this Lease by either party to the other shall be in writing and shall be sufficiently given and served upon the other party, if sent by certified mail, return receipt requested, postage prepaid, and addressed as follows:

SPIN CAFÉ
526 SE Bayshore Dr
Oak Harbor WA 98277

CITY OF OAK HARBOR
865 S.E. Barrington Drive
Oak Harbor, WA 98277

or at such other address as either party designates by written notice to the other party. All notices shall be effective upon the earlier of personal delivery or three (3) days after being mailed.

27. **NO WAIVER OF COVENANTS.** No waiver shall be implied from an omission by either party to take any action related to breach of any covenant, term, or condition of this Lease. The acceptance by City of rent with knowledge of the breach of any of the terms, conditions, or covenants of this Lease by Spin Café shall not be deemed a waiver of any such breach. One or more waivers of any breach of any covenant, term, or condition of this Lease shall not be construed as a waiver of any subsequent breach of the same covenant, term, or condition.

28. **DELAYED POSSESSION.** In the event of the inability of City to deliver possession of the Leased Premises for any reason whatsoever at the time of the commencement of the term of this Lease, neither City nor its agents shall be liable for any damage caused thereby, nor shall this Lease thereby become void or voidable, nor shall the term herein specified be in any way extended, but in the event that possession is delayed over ninety (90) days, Spin Café shall have the right to terminate this Lease.

29. **SUCCESSORS AND ASSIGNS.** The rights, liabilities, and remedies provided for herein shall extend to the heirs, legal representatives, successors and, so far as the terms of this Lease permit, assigns of the parties hereto. The words "City" and "Spin Café" and their accompanying verbs or pronouns, wherever used in this Lease, shall apply equally to all persons, firms or corporations which may be or become parties to this Lease.

30. **RULES.** Spin Café agrees to abide by the rules and regulations governing the operation of the Leased Premises which may be made by City from time to time, and will use reasonable methods to induce its employees, volunteers, members, clients and all persons invited by Spin Café onto said Premises to observe the same.

31. **SUBORDINATION.** Spin Café agrees that this Lease shall be subordinate to any mortgages or deeds of trust that are now or may hereinafter be placed upon the Leased Premises, and to any and all advances to be made thereunder, and to the interest thereon, and all renewals, replacements and extensions thereof; provided the mortgagee or beneficiary named in said mortgages or deeds of trust shall agree to recognize this Lease in the event of foreclosure if Spin Café is not in default. Within fifteen (15) days after written request from City, Spin Café shall execute any documents that may be necessary or desirable to effectuate the subordination of this Lease to any such mortgages or deeds of trust.

32. **TIME.** Time is of the essence of this Lease.

33. **ENTIRE AGREEMENT AND AMENDMENTS.** This Lease contains all of the agreements between the parties with respect to any matter covered or mentioned in the Lease, and no prior agreement, letter of intent, or understanding relating to any such matter will be effective for any purpose. No provision in this Lease may be amended or added to except by an agreement in writing signed by the parties or their respective successors in interest and using the same formalities as are required by the execution of this Lease.

IN WITNESS WHEREOF City and Spin Café have executed this Lease as of the day and year first above written. Individuals signing on behalf of a principal warrant that they have the authority to bind their principals.

DATED October 1, 2013

DATE _____, 2013

CITY OF OAK HARBOR

SPIN CAFÉ

SCOTT DUDLEY, Mayor

Vivian Rogers Decker, Board President

City of Oak Harbor City Council Agenda Bill

Bill No. 9.b.
Date: October 1, 2013
Subject: Frontier Communications
Northwest Settlement Agree-
ment

FROM: Doug Merriman, Finance Director 

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

PURPOSE

Authorization to settle claim with Frontier Communications Northwest (formerly Verizon) for reimbursement of utility taxes previously paid in the amount of \$201,924.81.

SUMMARY STATEMENT

On December 31, 2009, Verizon Northwest Inc petitioned the City of Oak Harbor for a refund of utility tax paid by Verizon on its sales of digital subscriber line (“DSL”) service during the period of January 1, 2005, through June 30, 2008, in the amount of \$155,887, plus statutory interest. Verizon made similar petitions to a large number of cities in Washington State as a result of a successful litigation in *Quest Corp vs. City of Bellevue* and *Vonage America, Inc vs. City of Seattle* addressing the issue of interstate telecommunications services being exempt from municipal utility taxes under RCW 35.21.714(1) and 35A.82.060(1). Since the date of the claim, the City has been working with legal counsel, both individually and as a member of a group of interested cities, to determine the validity and applicability of Verizon’s claim against the City of Oak Harbor.

Even though the Oak Harbor Municipal Code (OHMC) 3.70.050 does not specifically require telecommunication providers to pay utility tax on its interstate DSL services, Verizon erroneously included this revenue source in its calculation of utility tax due to the City of Oak Harbor. Regardless, the Washington State Supreme Court has held that the sale of telecommunication services that are part of a taxpayers FCC tariff are not subject to city taxation. Accordingly, Verizon’s claim for a refund is deemed to be valid.

The City has negotiated a proposed settlement with Frontier Communications Northwest in the amount of \$207,924.81. This amount represents a revised original claim of \$147,309.05, plus one half of the statutorily allowed accrued interest of \$60,615.76.

FISCAL IMPACT

Payment to be charged against the General Fund #001, Judgment and Settlements BARS #001.45.518.090.4900.

RECOMMENDED ACTION

Authorize Mayor to sign settlement agreement with Frontier Communication Northwest for the amount of \$207,924.81.

ATTACHMENTS

Settlement Agreement

SETTLEMENT AGREEMENT

Frontier Communications Northwest, Inc. ("Frontier") and the City of Oak Harbor, Washington ("City") hereby enter into the following Settlement Agreement (the "Agreement").

RECITALS

A. At all times relevant hereto, Frontier has provided a variety of telecommunications services within the boundaries of the City.

B. A dispute has arisen between Frontier and the City as to whether certain of the services on which Frontier paid City utility tax to the City are exempt from taxation pursuant to RCW 35A.82.060(1) and other state and federal laws, the amount of such payments, and Frontier's entitlement to a refund.

C. The parties now desire to resolve all disputes and move forward in a spirit of mutual cooperation.

AGREEMENT

1. Upon execution of this Settlement Agreement by all authorized parties, the parties agree that Frontier's claims for the refund of Oak Harbor city utility taxes paid during the period from January 1, 2005 through July 31, 2008 will be fully and finally settled and agreed upon.

2. Before execution by an authorized representative for the City, this Agreement will be presented to the Oak Harbor City Council with a recommendation from appropriate personnel from the City that the Agreement is in the best interests of the City and Frontier and should be approved. The City shall advise Frontier of the City Council's action, and upon the City Council's approval of this Agreement and execution by an authorized City official, Frontier shall promptly thereafter execute and deliver a signed copy of this Agreement to the City or to the City's counsel.

3. In settlement of the disputed claim, the City will pay Frontier the total sum of \$207,924.81, to be paid no later than October 15, 2013.

4. In consideration of the foregoing promises and commitments, both Frontier and the City do hereby release, disclaim and further discharge any or all claims related to any Oak Harbor city utility tax arising from or pertaining to the period from January 1, 2005 through July 31, 2008, together with any interest or tax penalties pertaining to any such tax.

5. In the event of any dispute over the implementation or application of this Agreement, the prevailing party in such dispute shall be allowed to recover all costs incurred in such dispute, including all reasonable attorneys' fees, expert witness fees, and related litigation costs.

Frontier Communications Northwest, Inc.

Date _____

City of Oak Harbor

SCOTT DUDLEY, MAYOR

Date 10/01/13