ORDINANCE NO. 1273

AN ORDINANCE AMENDING OAK HARBOR MUNICIPAL CODE SECTIONS 3.63.050, 3.63.060, 3.63.085, 3.63.090, 3.64.040, 3.64.090, 5.02.070, 17.30.135 BY CHANGING THE NAME OF THE RESPONSIBLE OFFICIAL TO CARRY OUT DUTIES SET OUT IN THE SECTIONS TO DIRECTOR OF DEVELOPMENT SERVICES

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

Section One. Section 3.63.050 of the Oak Harbor Municipal Code is hereby amended and readopted to read as follows:

3.63.050 Dedication suitability. Dedication of land that is improved for public parks, recreation facilities and open spaces is one method of mitigating the impacts on such facilities caused by property subdivision or development proposals within the city. Every property subdivision or development proposal will be reviewed by the Director of Development Services for determination of suitable lands for dedication for parks, recreation facilities and open spaces in accordance with the standards set forth herein. Dedication shall generally not be a suitable alternative for providing parks, recreation facilities and open spaces in the following cases:

(1) Where the area that would be dedicated for said purpose would be less than one acre in any one location;

(2) Where the property subdivision development is in close proximity to public land already dedicated for park purposes; and

(3) Where dedication would not be consistent with the city’s comprehensive plan, parks plan or capital improvement plan.

Section Two. Section 3.63.060 of the Oak Harbor Municipal Code is hereby amended and readopted to read as follows:

3.63.060 Dedication standards.

(1) The Director of Development Services shall determine the suitability and location of lands for dedication. Dedications shall be considered suitable which best serve the public interest in providing a variety of lands for parks, recreation facilities and open spaces. The Director of Development Services shall determine, in concert with the developer, if dedicated lands shall be improved and the specific improvements to be installed.

(2) Dedications allowed shall be completed at the earliest applicable date as a condition of
approval of a building permit, conditional use permit, mobile home park, mobile home subdivision, planned unit development, short plat or final plat involving a residential or potential residential use.

(3) Any party may appeal the decision of the planning director which concerns dedications to the park board for final determination of the issue.

Section Three. Section 3.63.085 of the Oak Harbor Municipal Code is hereby amended and readopted to read as follows:

3.63.085 Exemption or reduction for low-income housing.

(1) Low-income housing projects being developed by public housing agencies or private nonprofit housing developers may apply to be exempt from the payment of impact fees. The amount of the impact fees not collected from low income household development shall be paid from public funds other than impact fee accounts. The impact fees for these units shall be considered paid for by the city through its other funding sources, without the city actually transferring funds from its other funding sources into the impact fee account. The Director of Development Services shall review proposed developments of low income housing by such public or nonprofit developers that apply pursuant to criteria and procedures adopted by administrative rule, and shall advise the building official and finance director as to whether the project qualifies for the exemption.

(2) The Director of Development Services is hereby instructed and authorized to adopt administrative rules to implement this section. Such rules shall provide for the administration of this program and shall:

(a) Encourage the construction of housing for low-income households by public housing agencies or private nonprofit housing developers participating in publicly sponsored or subsidized housing programs;

(b) Ensure that housing that qualifies as low-cost meets appropriate standards regarding household income, rent levels or sale prices, location, number of units and development size.

Section Four. Section 3.63.090 of the Oak Harbor Municipal Code is hereby amended and readopted to read as follows:

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3.63.090 Appeals.

(1) Any property owner may pay an impact fee imposed by this chapter under protest in order to obtain a building permit or any other approval, and after such payment may file an appeal with the city clerk with the amount of such impact fee and in accordance with this section.

(2) The determination of the Director of Development Services for subdivision approval or building official for permit approval regarding the applicability of the impact fee to a given development activity within the city shall be final. The city council shall have the power to hear and decide appeals where it is alleged there is error in the Director of Development Services or building official’s determination of the impact fee imposed upon a development activity under this chapter.

(3) Appeals to the city council regarding the amount of the impact fee imposed on any development activity may only be taken by the owner of the property where such development activity will occur. No appeal shall be permitted unless and until the impact fee at issue has been paid. Such appeals shall be taken within a reasonable time, not to exceed 10 days from the date of decision, by filing with the city clerk a notice of appeal specifying the grounds thereof, and depositing a fee of $400.00. The city clerk shall forthwith transmit to the city council all papers constituting the record upon which the amount of the impact fee was determined.

(4) The city council shall fix a reasonable time for the hearing of appeal, give public notice thereof as well as due notice to the parties in interest, and decide the same within a reasonable time. At the hearing, any party may appear in person or by agent or attorney.

(5) In exercising the above-mentioned powers, the city council may, so long as such action is in conformity with the terms of this chapter, reverse or affirm, wholly or partly, or may modify the determination of the amount of the impact fee appealed from only upon a determination that it is proper to do so based on principles of fairness, and may make such order, requirements, decision or determination as ought to be made, and to that end shall have the powers with respect to the determination of the impact fees as are granted the Director of Development Services or building official by this chapter.

(6) To decide in favor of the applicant on any matter upon which it is required to pass under this chapter, or to effect any variation in the application of this chapter, a simple majority of those present and constituting a quorum, as determined by the city council, shall suffice.

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(7) Any person or persons, or any board, taxpayer, department or bureau of the city aggrieved by any decision of the city council may seek review by a court of record of such decision, in the manner provided by the laws of the state.

(8) The deposit required under subsection (3) of this section shall be used to pay the costs of the hearing unless the city council makes a determination that the applicant is the prevailing party and is not liable for the costs of the hearing.

Section Five. Section 3.64.040 of the Oak Harbor Municipal Code is hereby amended and readopted to read as follows:

3.64.040 SEPA.

(1) SEPA (State Environmental Policy Act) Project Review.

(a) Written confirmation of exemption: $50.00.

(b) Threshold determination of an environmental checklist:

(i) The base fee for submittal of an environmental checklist: $200.00.

(ii) An additional fee of $150.00 shall be charged if a DNS is issued that requires public notice. The additional fee shall be paid when the posting notices are picked up.

(iii) Additional costs, if any, incurred by the city shall be billed directly to the applicant; no additional costs may be charged for existing studies or general information already in the possession of the city. See subsection (2) on SEPA review for permit reviews which require additional staff needs or special expertise as determined by the Director of Development Services.

(c) Environmental impact statement:

(i) Submittal of preliminary draft EIS: $2,500.

(ii) Additional costs, if any, incurred by the city shall be billed directly to the applicant; no additional costs may be charged for existing studies or general information already in the possession of the city. See subsection (2) on SEPA review for permit reviews which require additional staff needs or special expertise as determined by the Director of Development Services.
(iii) In the event that a proposal is modified so that an EIS is no longer required, the responsible official shall refund any costs collected for costs not incurred.

(d) Detailed environmental study review (review of additional studies) e.g., detailed soils, traffic, wetland, view/solar analysis, drainage, air or water quality studies or other detailed environmental studies required to supplement an environmental checklist: $250.00 in addition to environmental checklist fee.

(e) The base fee for a threshold determination and/or an EIS shall be paid by the private applicant prior to the circulation of an EIS or environmental checklist by the city.

(f) No fee shall be collected by the city for performing its duties as a consulted agency.

(2) Additional Costs for SEPA Review. For SEPA reviews which require additional staff needs, unusual or expedited review, or special technical expertise by the city as determined by the Director of Development Services, hereinafter referred to as “director,” the applicant will be required to execute an agreement with the city and pay in addition to the fees set forth in this chapter, all additional costs incurred by the city to process the SEPA review which exceed those nominally associated with the processing of a SEPA review which costs include, but are not limited to, additional staff time, materials, and consultants’ fees. The agreement shall stipulate that the city staff and consultants will be under the sole direction of the city. The agreement shall require that the applicant assume full responsibility for paying the city for said costs and will also require that the applicant waive any time limitation which may be exceeded as a result of the applicant’s failure to timely pay the city the additional costs. The applicant will pay the city the estimated costs calculated by the director to cover the additional costs associated with said review. The director may require the payment of additional costs if it is determined that the initial estimated cost does not or will not adequately cover the expenses incurred by the city.

Unless otherwise indicated in the agreement, the estimated cost shall be paid to the city at the time the agreement is executed. Prior to any final action by the city’s Development Services Department related to the SEPA review, the actual charges and estimates paid shall be reconciled and all outstanding balance shall be due and payable upon demand and the city will refund any money collected for costs not incurred by the city. Failure to pay, including the required estimates, upon demand will result in the city withholding any further action on said SEPA review until the required estimate(s) or payment(s) is made. Notwithstanding any language herein, the applicant will be liable to the city for all costs incurred by the city.

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Section Six. Section 3.64.090 of the Oak Harbor Municipal Code is hereby amended and readopted to read as follows:

3.64.090 Land use and development fees.

(1) Purpose. The purpose of the section is to provide a consolidated and consistent set of filing fees for all land use development permit applications which will best satisfy the following needs:

(a) Provide a single convenient listing of all land use development permit application fees for the general public and city staff;

(b) Provide a greater degree of consistency and equity in setting fees for similar types of land use development permits;

(c) Collect sufficient revenues to offset a reasonable share of the costs incurred by the city in reviewing and approving each type of land use development permit application.

(2) Fees. At the time of application for a land use action or an appeal of such action, each applicant or appellant shall pay to the finance department the fee set forth as follows and provide proof of payment to the Development Services Department:

(a) Additional notice: Whenever the Development Services Department is required to post or mail additional notices for land use projects because of change or additions to the project initiated by the applicant or where improper notice has been posted by the applicant, an additional fee of $50.00 plus the cost of publishing shall be charged. If additional publication is required, a fee of $50.00 in addition to the above shall be charged.

(b) Appeals:

(i) Appeals of administrative decisions made by any nonelected city official under the provisions of city land use regulatory ordinances: $100.00;

(ii) Appeals of determinations made by the city engineer under the provisions of the city street and sidewalk improvement ordinance for sidewalk waiver: $100.00.

(c) Alternate security approval in lieu of a bond: $100.00.
(d) Binding site plan:
   (i) Binding site plan application: $1,000 plus $35.00 per lot;
   (ii) Final binding site plan: included in above.

(e) Boundary line adjustment:
   (i) Applications: $250.00.

(f) Comprehensive plan change:
   (i) All sizes: $1,000.

(g) Home occupation permit: no fee.

(h) Floodplain development permit: $100.00.

(i) LID agreement approval: $150.00.

(j) Penalty permit fee: Two times the normal fee if a permit fee when a permit is
    applied for after a temporary or permanent stop work order has been issued for
    the project in question prior to payment of the permit fees required or part of them
    have not been paid.

(k) Planned unit development (PUD):
   (i) Preliminary approval: $1,000 plus $50.00 per acre;
   (ii) Final approval: one-half original fee.

(l) Preapplication fee: $250.00. (This fee shall be applied to any subsequent
    application on the same project within six months of the preapplication fee
    payment.)

(m) Rezones:
   (i) Up to one-half acre in size or to correct split zoning on individual parcels:
       $500.00; provided the costs of publication shall be reimbursed if not used;
       and further provided, that the cost of publishing the rezone ordinance need
       not be paid until the council passes the ordinance;

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(ii) Up to 10 acres in size: $1,000 plus $100.00 per acre together with payment of costs of publishing all notices required and publication costs of the final ordinance which is passed; provided the costs of publication shall be reimbursed if not used; and further provided, that the cost of publishing the rezone ordinance need not be paid until the council passes the ordinance;

(iii) Over 10 acres in size: $1,500 plus $100.00 per acre; provided the costs of publication shall be reimbursed if not used; and further provided, that the cost of publishing the rezone ordinance need not be paid until the council passes the ordinance.

(n) Shoreline master program amendment: $2,500.

(o) Shoreline substantial development permit, conditional use or variance:

(i) Administrative review: $250.00;

(ii) Project value of up to $100,000 as determined by the building official: $1,000;

(iii) Project value of over $100,000 as determined by the building official: $1,000 plus $500.00 for every $1,000,000 over $1,000,000 or portion thereof increase in value. However, the amount of the fee may be reduced if the applicant executes an agreement with the city agreeing to pay such an amount determined by the Director of Development Services, hereinafter referred to as "director," as deemed necessary to cover all costs incurred by the city to process the application. In determining the amount of the fee, the director shall consider the complexity of the application, the need for special studies and the amount of staff time required to process the application. The agreement shall require that the applicant assume full responsibility for paying the city for said costs and will also require that the applicant waive any time limitation which may be exceeded as a result of the applicant's failure to timely pay the city.

Unless otherwise indicated in the agreement, the city shall be paid at the time the agreement is executed. Failure to pay upon demand in accordance with the terms of this agreement will result in the city withholding any further action on said shoreline review until the required payment is made.

(p) Shoreline permit revision: $250.00.
(q) Shoreline permit exemption letter: $50.00.

(r) Short subdivision:

(i) Short subdivision application for preliminary approval: $500.00 plus $35.00 per lot;

(ii) Final short subdivision approval: included in above fee;

(iii) Variance, administrative: $75.00;

(iv) Variance, requiring public hearing: $250.00;

(v) Alterations: $250.00.

(s) Site plan: One percent of the value of the proposed development increase as determined by the building department up to and including a total increase valuation of $500,000. For increases in valuations greater than $500,000, the fee shall be $75.00 per person per hour that staff spends on the project in excess of 60 hours along with a minimum fee of $5,000.

(t) Subdivisions:

(i) Subdivision application for preliminary approval: $2,000 plus $35.00 per lot, together with costs of publishing notices, if any;

(ii) Final subdivision approval: included in above fee;

(iii) Alteration: $500.00.

(u) Time extensions for land use development permits under OHMC Titles 16, 18, 19, 20, 21 and 22:

(i) Administrative action: $100.00;

(ii) Final plat approval: $250.00 plus costs of publishing notices;

(iii) Other actions requiring council or board of adjustment action: $250.00 plus costs of publishing notices.
Use permits:

(i) Temporary use: $15.00.

Variance from zoning code requirements:

(i) Residentially zoned property and single-family use in other zones: $250.00;

(ii) All other zones unless use is single-family: $500.00.

Zoning code text change: $1,000.

Other unspecified land use permits required under OHMC Titles 16, 18, 19, 20, 21, or 22: $200.00 or such other fee as established by the director based on the most closely related land use permit listed.

Zoning code: Determination on interpretation of land use codes as required under Chapter 36.70B RCW: $250.00.

Zoning code requirements review: Letters requested by an applicant regarding zoning requirements for a specific site: $20.00.

Street vacation: $500.00.

Vacation of a plat: $500.00 plus costs of publishing notice.

Condominium plat: $500.00.

Annexations: $1,500 and $100.00 per acre for every acre, or part thereof, over one acre in size; provided, the council may waive this fee.

Development agreements: $250.00 and $50.00 per hour of staff time over six hours.

(3) Waiver for Low Income Housing. Notwithstanding any language in this chapter, the Development Services Department, upon notification to the mayor, shall waive, either partially or in total, the fees established in this chapter, except sewer and water connection charges, and waive, partially or in total, the system development charges for sewer and water for projects submitted for review to the city’s Development Services Department which projects involve the construction of low income housing. The extent of the waiver is dependent on the proportion of the project dedicated to low income housing.

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(i.e., the greater portion of the project dedicated exclusively to low income housing will result in a greater portion of the fees being waived.) For purposes of this chapter, "low income housing" includes only those housing units which are subsidized either privately or publicly for the purpose of making them more affordable for the low income residents.

The amount of the fee waived shall be a percentage proportionate to the amount of the project that is low income; i.e., if the project is 20 percent low income housing, 20 percent of the total fee would be waived.

(4) Time of Payment and Concurrent Applications. Fees shall be paid at the time of application. Concurrent applications requiring land use development fees established by this chapter shall be subject to each fee cumulatively. There shall be no reduction in fees where more than one type of fee is charged for a project. For example, a rezone application will also be charged a fee for SEPA review.

(5) Annual Permit Fee Review.

(a) Annually, on the first of January, the Director of Development Services shall adjust the fees in this chapter by the cost of living change (CPI) for the Seattle area.

(b) On a biannual basis, the mayor shall direct the review of all land use development permit application fees included in this chapter to determine whether adjustments in fee schedules should be recommended to city council for consideration. Proposed fee adjustments shall be made with the intent of meeting the purpose of subsection (1) above.

(6) Additional Rules and Interpretation. The Director of Development Services or his or her designee may adopt such additional rules as are necessary to carry out the provisions of this chapter; provided, that the rules so adopted shall be filed with the city clerk and copies given to the city council and made available for public inspection.

Section Seven. Section 5.02.070 of the Oak Harbor Municipal Code is hereby amended and readopted to read as follows:

5.02.070 Determination of significant impact – Hearing.

(1) Such hearing shall be before a committee composed of the chief of police, the Director of Development Services and the fire chief and shall be held within 45 days of the filing of the impact statement. Such hearing shall be advertised in the city newspaper for the city of Oak Harbor. At such hearing evidence and public comment shall be taken concerning the matter on the issues enumerated above. At the conclusion of the hearing, the
committee shall grant the business occupancy permit if there is a finding that there is no significant impact on the factors listed above. If there is a significant impact that cannot be mitigated by modification of the proposed business, council shall deny the business a license. Alternatively, the business license or occupancy permit can be granted subject to the business being conducted under conditions which would be designed to mitigate adverse impacts.

(2) The applicant may appeal the decision of the City Administrator and the committee to the city council by filing an appeal request within 10 days of the date of such written decision by the city clerk. The council must have a public hearing on the matter no later than 30 days after the filing of the appeal request. After hearing the appeal, the decision of the council shall be final.

Section Eight. There is hereby added a new Section 11.12.050 entitled "Permit required for sidewalk relocation" to Chapter 11.12 of the Oak Harbor Municipal Code to read as follows:

11.12.050 Permit required for sidewalk relocation. Any person desiring to change or relocate any sidewalk in front of and abutting their property shall make application in writing to the Engineering Department of the City and such application shall contain, among others, the exact location of such proposed change or relocation, the location of any new sidewalk to be laid and the connections and locations of other sidewalks upon such street. No change or relocation of any sidewalk shall be made until the issuance of an appropriate permit therefor.

Section Nine. Section 17.30.135 of the Oak Harbor Municipal Code is hereby amended and readopted to read as follows:

17.30.135 Designated noise zones.

(1) Noise-determined construction requirements detailed in this sound transmission building code shall be applied to new construction and additions of structures, except for not normally inhabited portions of storage buildings, garages and similar structures as determined by the building official, within the designated noise zones.

(2) These contours are shown on the Oak Harbor Noise Zone Map, a copy of which is on record in the office of the Director of Development Services and by this reference is made a part of this regulation.

(a) A 25 dB noise level reduction shall be required in the 60 to 65 Ldn noise-exposure zone as defined on the Oak Harbor Noise Zone Map.

(b) A 30 dB noise level reduction shall be required in the 65 to 75 Ldn noise-exposure zone as defined on the Oak Harbor Noise Zone Map.
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 and effect five days after its passage and publication as required by law.

PASSED by the City Council and approved by its Mayor this 16 day of October, 2001.

THE CITY OF OAK HARBOR

[Signature]
Mayor

Attest:

[Signature]
City Clerk

Approved as to Form:

[Signature]
City Attorney

Published: October 24, 2001