

City of Oak Harbor City Council Agenda Bill

Bill No. d.
Date: May 21, 2024
Subject: Ordinance No. 1999: Update to
Oak Harbor Municipal Code
Section 1.30.010 Requirements
for sale or other disposition of
city real property

FROM: Ray Lindenburg, AICP, Senior Planner, Development Services

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

- Bob Severns, Mayor
- Blaine Oborn, City Administrator
- David Goldman, Finance Director
- Hillary J. Evans, City Attorney, as to form

RECOMMENDED ACTION

- Conduct Public Hearing
- Move to approve Ordinance 1999 adopting changes to OHMC 1.30.010 Requirements for sale or other disposition of city real property (Attachment 1)

BACKGROUND / SUMMARY INFORMATION

This agenda bill presents to the Council draft changes to Section 1.30.010 (see Attachment 2 – existing language) of the Oak Harbor Municipal Code (OHMC) describing the process by which certain City-owned properties may be sold or exchanged.

Background

Recently, City legal staff became aware of a potential impediment in code section 1.30.010 that would require the city to hold an election to sell, exchange or otherwise dispose of property owned by the City that was considered a public park, specifically in OHMC 1.30.010(1):

“Developed city park property shall not be disposed of in any manner without citizen approval in an election, except as provided in subsection (2) of this section.”

and the aforementioned subsection (2) – OHMC 1.30.010(2):

“No citizen approval at an election shall be required when the city council determines by resolution that some portion or all of a developed park property is required to accomplish a necessary public purpose including, but not limited to, water, sewer or roadway improvements. In such circumstances the fair market value of the park property dedicated to such necessary public purposes shall be determined by appraisal and the amount of the fair market value of such park

property shall be transferred to the city's accounts from the acquiring department's fund to the parks fund, and such proceeds shall be exclusively used to acquire replacement park property. When the language of any instrument by which any park property is acquired limits the use of said property to park purposes and contains a reservation of interest in favor of the grantor or any other person, the city shall obtain the consent of the grantor or such other person, his or her heirs, successors, or assigns. In any case where, owing to death or lapse of time, there is neither donor, heir, successor, or assignee to give consent, this consent may be executed by the city and filed for record with an affidavit setting forth all efforts made to locate people entitled to give such consent together with the facts which establish that no consent by such persons is attainable. All other requirements of this section shall also be applicable."

Analysis

Consultation with the City's legal team indicated that the requirement to hold an election to sell or exchange property is unique among Washington jurisdictions. City Attorney Hillary Evans stated, "I've never encountered another city requiring a vote to approve the sale of park property. I'd recommend eliminating that provision." She noted that after the original code section was adopted in 1997 (Ordinance 1110, see Attachment 3), relocated in the code in 2010 (Ordinance 1578, see Attachment 4), a revision was made in 2015 (Ordinance 1728, see Attachment 5).

The 2015 ordinance adopting the that most recent change recognized that, "*legislative intent behind this code when it was first adopted in 1997 was to ensure that developed park property would not be sold or transferred to private parties for private use or economic gain.*" Notably, that stated intent could be circumvented by having an election per that same code.

Further whereas statements for that ordinance included, "*from time to time developed park property, or portions of such park property, are required for necessary public purposes such as water, sewer or roadway improvements... and the requirement for citizen approval in such circumstances has the potential to impede or hinder accomplishment of necessary public purposes.*"

City staff believes "necessary public purposes" includes not only the important utility infrastructure mentioned in the code section above, but the economic development of the community as a whole.

The remaining sections within OHMC 1.30 allow for the following protections:

- the ability to hold a publicly-noticed hearing, where the presentation of staff analysis and testimony from citizens will allow the Council to make an informed determination of the need for such an exchange and the appropriate return for said exchange.
- A SEPA review is required by the code. This review may include but is not limited to aesthetic considerations, neighborhood access to park lands and environmental conditions.

Additionally, RCW 35.22.280(11) provides additional requirements for the disposal of park property including, when applicable, the consent of the dedicator or donor. City Attorney Evans notes that State Law includes standards by which transactions are handled, and most cities utilize those standards without further restrictions. Accordingly, she provided the revision to OHMC 1.30.010 found in Attachment 6.

Staff feels that these changes would allow the City to be more nimble in decision making when discussing the sale of property – including those designated as parks or recreation lands. This ability can impact economic development efforts City-wide through increased costs and time. Staff is confident in the ability of the City Council, with appropriate protections built into the OHMC and state statutes to make decisions that have the potential to affect necessary public purposes including the provision of utilities, safety concerns and economic development of the City as a whole.

The elimination of the election requirement may also reduce the influence of interest groups either as a proponent or opponent in such a decision. Placing the final determination in the hands of the Council allows direct citizen participation in a public hearing.

Conclusion

City staff believes that “necessary public purposes” includes the economic development of the community. That growth often pays for the infrastructure needs specified in the 2015 code amendment that authorized the City Council to make a decision on those specific transfers.

In essence, requiring an election for the transfer of park designated properties could constitute a barrier to economic development, either by stifling potential development through uncertainty of outcomes, opening important decisions to outside influences or simple denial of a potential transfer.

Because of those reasons, the fact that Oak Harbor is an outlier in the requirement, and the guardrails that exist in City Council consideration of transfer of lands, Staff recommends approval of Ordinance 1999, amending OHMC 1.30.010.

Process

Because this is not considered a development regulation, the City Council is presented with the proposed ordinance amendment without Planning Commission recommendation. Notice was given of this hearing per the standards found in the OHMC.

The process also included 10-day expedited review notification to the Department of Commerce. The City has received no comments from this process. As it is not a development regulation, this ordinance change did not require SEPA review.

LEGAL AUTHORITY

Legal authority for ordinance approval is provided by RCW 35.23.440.

FISCAL IMPACT

Removal of the election requirement would save the city costs associated with holding a special election in case of desired exchange or sale of park property.

PREVIOUS COUNCIL / BOARD / CITIZEN INPUT

A staff presentation was given to the City Council at the April 24, 2024 workshop meeting. A presentation was given to the Oak Harbor Parks and Recreation Advisory Commission on May 6, 2024.

ATTACHMENTS

1. [Ordinance No. 1999](#)
2. [Existing language OHMC 1.30.010](#)
3. [Ordinance No. 1110](#)
4. [Ordinance No. 1578](#)
5. [Ordinance No. 1728](#)
6. [Redline changes to OHMC 1.30.010](#)
7. [Presentation](#)

ORDINANCE NO. 1999

AN ORDINANCE OF THE CITY OF OAK HARBOR, WASHINGTON,
AMENDING SECTION 1.30.010 OF THE OAK HARBOR MUNICIPAL CODE;
PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE
DATE

WHEREAS, Chapter 1.30 of the Oak Harbor Municipal Code (“OHMC”), entitled “Sale or Exchange of Real Property” was adopted by Ordinance 1578 in 2010 and modified in Ordinance 1728 in 2015 with the intent of requiring voter approval by way of election prior to disposal of certain City property; and

WHEREAS, the requirement for voter approval has the potential to hinder or impede accomplishment of necessary public purposes; and

WHEREAS, the City Council wishes to remove the requirement for voter approval prior to disposal of developed park property to streamline the process and facilitate City transactions when it comes to disposal of developed city parks property;

NOW THEREFORE, the CITY COUNCIL OF THE CITY OF OAK HARBOR do ordain as follows:

Section One. OHMC 1.30.010, Amended. Section 1.30.010 of the OHMC, entitled Requirements for sale or disposition of city real property, is hereby amended to read as follows:

1.30.010 Requirements for sale or other disposition of city real property.

(1) No real property of the city shall be sold, released, leased, demised, traded, exchanged or otherwise disposed of unless the same is authorized by the city council after public hearing. Notice of such public hearing shall be given by publication of the notice in the city’s official newspaper at least 10 days prior to the hearing.

(2) The preferred timing for such a hearing is before the property is listed for sale, release, lease, demise, trade, exchange or other disposition. It is, however, recognized that this may not be possible especially in the case where there is litigation pending on the property in question.

(3) A State Environmental Policy Act (SEPA) analysis shall be done on such proposed action and available for public review at least 10 days prior to the hearing.

(4) The Mayor shall forward to the City Council a report on alternatives to the proposed action with the agenda.

(5) Nothing herein shall be construed as preventing the city from holding an executive session in accordance with Chapter 42.17 RCW as now in effect or hereafter amended.

(6) This section shall not apply to rental of property on a month-to-month basis or the rental of space at the marina, done in the normal course of business for storage.

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

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

ADOPTED by the City Council this _____ day of _____, 2024.

THE CITY OF OAK HARBOR

By: _____
Ronnie Wright, Mayor

Dated: _____

ATTEST/AUTHENTICATED:

Julie Nester, City Clerk

Approved as to Form:

Hillary J. Evans, City Attorney

Published: _____

1.30.010 Requirements for sale or other disposition of city real property.

(1) No real property of the city shall be sold, released, leased, demised, traded, exchanged or otherwise disposed of unless the same is authorized by the city council after public hearing. Notice of such public hearing shall be given by publication of the notice in the city's official newspaper at least 10 days prior to the hearing. Developed city park property shall not be disposed of in any manner without citizen approval in an election, except as provided in subsection (2) of this section.

(2) No citizen approval at an election shall be required when the city council determines by resolution that some portion or all of a developed park property is required to accomplish a necessary public purpose including, but not limited to, water, sewer or roadway improvements. In such circumstances the fair market value of the park property dedicated to such necessary public purposes shall be determined by appraisal and the amount of the fair market value of such park property shall be transferred to the city's accounts from the acquiring department's fund to the parks fund, and such proceeds shall be exclusively used to acquire replacement park property. When the language of any instrument by which any park property is acquired limits the use of said property to park purposes and contains a reservation of interest in favor of the grantor or any other person, the city shall obtain the consent of the grantor or such other person, his or her heirs, successors, or assigns. In any case where, owing to death or lapse of time, there is neither donor, heir, successor, or assignee to give consent, this consent may be executed by the city and filed for record with an affidavit setting forth all efforts made to locate people entitled to give such consent together with the facts which establish that no consent by such persons is attainable. All other requirements of this section shall also be applicable.

(3) The preferred timing for such a hearing is before the property is listed for sale, release, lease, demise, trade, exchange or other disposition. It is, however, recognized that this may not be possible especially in the case where there is litigation pending on the property in question.

(4) A SEPA analysis shall be done on such proposed action and available for public review at least 10 days prior to the hearing.

(5) The mayor shall forward to the city council a report on alternatives to the proposed action with the agenda.

(6) Nothing herein shall be construed as preventing the city from holding an executive session in accordance with Chapter 42.17 RCW as now in effect or hereafter amended.

(7) This section shall not apply to rental of property on a month-to-month basis or the rental of space at the marina done in the normal course of business for storage. (Ord. 1728 § 1, 2015; Ord. 1578 § 6, 2010).

original

AN ORDINANCE PROVIDING FOR A PUBLIC HEARING PRIOR TO THE SALE OR EXCHANGE OF REAL PROPERTY OWNED BY THE CITY. THIS ORDINANCE IS TO BE CODIFIED IN TITLE ONE OF THE OAK HARBOR MUNICIPAL CODE.

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

Section One. There is hereby added a new Section 1.04.030 entitled "Sale or exchange of real property" to Oak Harbor Municipal Code Title One to read as follows:

Section 1.04.030 Sale or exchange of real property.

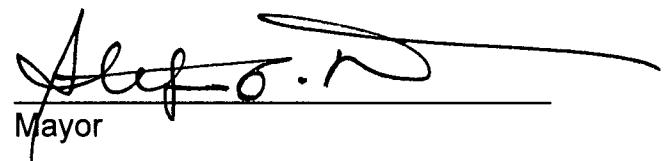
- (1) No real property of the City shall be sold, released, leased, demised, traded, exchanged or otherwise disposed of unless the same is authorized by the City Council after public hearing. Notice of such public hearing shall be given by publication of the notice in the City's official newspaper at least ten days prior to the hearing. Developed City park property shall not be disposed of in any manner without citizen approval in an election.
- (2) The preferred timing for such a hearing is before the property is listed for sale, release, lease, demise, trade, exchange or other disposition. It is, however, recognized that this may not be possible especially in the case where there is litigation pending on the property in question.
- (3) A SEPA analysis shall be done on such proposed action and available for public review at least ten days prior to the hearing.
- (4) The Mayor shall forward to the City Council a report on alternatives to the proposed action with the agenda.
- (5) Nothing herein shall be construed as preventing the City from holding an executive session in accordance with RCW 42.17 as now in effect or hereafter amended.
- (6) This section shall not apply to rental of property on a month-to-month basis or the rental of space at the Marina done in the normal course of business for storage.

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

Section Three. Effective Date. This Ordinance shall be in full force and effect five days after its passage and publication as required by law.

PASSED by the City Council and approved by its Mayor this 21st day of October, 19 97.

THE CITY OF OAK HARBOR



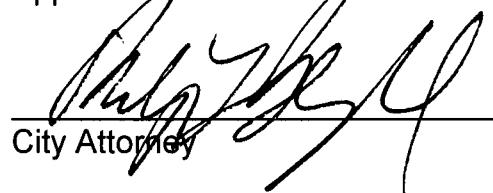
Mayor

Attest:



Rosemary Mairson
City Clerk

Approved as to Form:



City Attorney

Published: October 25, 1997

ORDINANCE NO. 1578

AN ORDINANCE OF THE CITY OF OAK HARBOR AMENDING OAK HARBOR MUNICIPAL CODE CHAPTER 1.04 ENTITLED "COUNCIL MEETINGS" TO ESTABLISH STANDING COMMITTEES OF THE COUNCIL, TO SET OUT PROCEDURES FOR STANDING COMMITTEE MEETINGS, TO AMEND THE NOTICE PROVISIONS, TO PROVIDE THAT COUNCIL-INITIATED AGENDA ITEMS SHALL BE STATED IN THE FORM OF A PROPOSED ACTION ITEM, REPEALING OHMC SECTION 1.04.030 AND READOPTING IT AS CHAPTER 1.30 OHMC

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

Section One. The table of contents of Oak Harbor Municipal Code Chapter 1.04 entitled "Council Meetings", last amended by Ord. 1559 in 2009, is hereby amended to read as follows:

**CHAPTER 1.04
COUNCIL MEETINGS**

Sections:

- 1.04.010 Time and place of full council meetings.
- 1.04.015 Standing Committees.
- 1.04.020 Public notice for full council agenda - Introduction of action.

Section Two. Oak Harbor Municipal Code Section 1.04.010 last amended by Ord. 1559 §1 in 2009 is hereby amended to read as follows:

1.04.010 Time and place of full council meetings.

- (1) The full council of the city of Oak Harbor shall meet on the first Tuesday of each month. There shall be a second regular full council meeting each month, except in the months of July and August, on the second Tuesday following the first monthly council meeting.
- (2) If the date of any of the full council meetings above scheduled falls on an official holiday, as set forth in the statutes of the state of Washington, or on a day on which a general election or a primary for a general election is to be conducted or on National Night Out, the regular full council meeting shall be held at the same time on the following day.
- (3) Regular full council meetings will be held at City Hall in the city of Oak Harbor and shall start at 6:00 p.m.

Section Three. A new section 1.04.015 entitled "Standing Committees" is hereby added to Ch. 1.04 OHMC to read as follows:

1.04.015 Standing Committees.

- (1) To facilitate the legislative functions of the city council, there shall be four standing committees of the Oak Harbor City Council:

- (a) Finance;
 - (b) Governmental Services;
 - (c) Public Safety; and
 - (d) Public Works.
- (2) Each standing committee shall meet in a regular open public meeting of the city council pursuant to the Open Public Meetings Act. The standing committees shall meet on the following dates and times and at the following locations:
- (a) Finance -- On the second Wednesday of the month at City Hall at 3:30 p.m.;
 - (b) Governmental Services -- On the second Tuesday of the month at City Hall at 8:00 a.m.;
 - (c) Public Safety -- On the third Thursday of the month at the Fire Department at 7:00 a.m.; and
 - (d) Public Works -- On the first Thursday of the month at the Public Works Department at 7:00 a.m.
- (3) Upon recommendation of the mayor, the city council shall assign a chair and two members of the city council to have primary responsibility for each committee annually.
- (4) Any city councilmember may attend any standing committee meeting and there shall be no quorum requirement for standing committee meetings.
- (5) Councilmembers assigned to standing committees are requested but not required to attend standing committee meetings. All councilmember absences from standing committee meetings are excused.
- (6) The purpose of the standing committees is to receive information for educational purposes or for preparation of matters to come before the city council. No final action shall be taken at a standing committee meeting.
- (7) Meetings of standing committees should be conducted with a prepared agenda which should be posted on the City's website at least two (2) business days prior to the meeting.
- (8) The committee chair may cancel a standing committee meeting at any time. In the event that a regular meeting of a standing committee is cancelled, cancellation shall be posted on the door of the location set by this section prior to the regular time of the meeting.

Section Four. Oak Harbor Municipal Code Section 1.04.020, last amended by Ord. 1115 §1 in 1997 is hereby amended to read as follows:

1.04.020 Public notice for full council agenda – Introduction of action.

(1) It is directed that:

- (a) The list of agenda items with abbreviated descriptions shall be completed and available by Thursday at 12:00 noon the week preceding a regular full council meeting. Additionally, this list shall be mailed by U.S. mail or electronic mail or faxed to newspapers, radio stations and television stations which request notice of public meetings.
- (b) The full agenda shall be available by noon on the Thursday before a regular full council meeting.

Nothing in this subsection shall be construed as requiring that only the items identified on the lists described in this subsection may be heard at the full council meeting or that agenda items cannot be deleted from the list. Thus, for example, but not as limitation, emergency matters, parade permit applications, amendments to the budget, and approval of contracts may be added to the agenda after preparation of the agenda is complete.

(2) An ordinance other than an emergency ordinance, budget amendment, moratorium ordinance or ordinance to be passed after a public hearing shall be introduced at least one full council meeting prior to the one it is considered for passage. After introduction and consideration, the ordinance shall then be continued to a scheduled subsequent full council meeting for additional consideration and for action such as passage, rejection or continuance to another hearing date.

The ordinance may be amended at any time prior to passage including at the time of introduction before the council. Amendment of a proposed ordinance shall not mandate delay of passage of the ordinance.

(3) Matters introduced by a councilmember which are seconded by another councilmember and not on the agenda shall be set over to another full council meeting for consideration and action, if any. Every councilmember-initiated agenda item shall be stated by the initiating councilmember for the agenda in the form of a proposed action item such as council discussion, a motion, resolution or ordinance. As an exception to the provision of this subsection, the following matters after motion and second may be considered and acted upon during the same meeting they are introduced:

- (a) Matters declared an emergency;
- (b) Directions to staff to prepare documents or reports or both for consideration; or
- (c) Scheduling of meetings.

Section Five. Oak Harbor Municipal Code Section 1.04.030, adopted by Ordinance 1110 §1 in 1997, is hereby repealed.

Section Six. A new Chapter 1.30 entitled "Sale or Exchange of Real Property" is hereby added to the Oak Harbor Municipal Code to read as follows:

CHAPTER 1.30

SALE OR EXCHANGE OF REAL PROPERTY

Sections:

1.30.010 Requirements for sale or other disposition of City real property.

1.30.010 Requirements for sale or other disposition of City real property.

- (1) No real property of the city shall be sold, released, leased, demised, traded, exchanged or otherwise disposed of unless the same is authorized by the city council after public hearing. Notice of such public hearing shall be given by publication of the notice in the city's official newspaper at least ten (10) days prior to the hearing. Developed city park property shall not be disposed of in any manner without citizen approval in an election.
- (2) The preferred timing for such a hearing is before the property is listed for sale, release, lease, demise, trade, exchange or other disposition. It is, however, recognized that this may not be possible especially in the case where there is litigation pending on the property in question.
- (3) A SEPA analysis shall be done on such proposed action and available for public review at least ten (10) days prior to the hearing.
- (4) The mayor shall forward to the city council a report on alternatives to the proposed action with the agenda.
- (5) Nothing herein shall be construed as preventing the city from holding an executive session in accordance with Chapter 42.17 RCW as now in effect or hereafter amended.
- (6) This section shall not apply to rental of property on a month-to-month basis or the rental of space at the marina done in the normal course of business for storage.

Section Seven. 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 Eight. Effective Date. This Ordinance shall be in full force and effect five days after publication.

PASSED by the City Council this 15th day of JUNE, 2010.

APPROVED by its Mayor this 21st day of JUNE, 2010.

THE CITY OF OAK HARBOR

John S. Davis
Mayor

Attest:

Lee G. Wilson
City Clerk

Approved as to Form:

Jeffrey A. White
City Attorney

Published: JUNE 19, 2010

ORDINANCE NO. 1728

AN ORDINANCE OF THE CITY OF OAK HARBOR AMENDING OAK HARBOR MUNICIPAL CODE CHAPTER 1.30 ENTITLED "SALE OR EXCHANGE OF REAL PROPERTY" AND PROVIDING FOR COUNCIL APPROVAL OF TRANSFER OF DEVELOPED PARK PROPERTY WITHOUT CITIZEN APPROVAL AT AN ELECTION WHEN DETERMINED TO BE REQUIRED FOR A NECESSARY PUBLIC IMPROVEMENT

WHEREAS, Chapter 1.30 of the Oak Harbor Municipal Code entitled "Sale or Exchange of Real Property" was adopted by Ord. 1578 (2010); and

WHEREAS, OHMC 1.30.010(1) provides that developed city park property shall not be disposed of in any manner without citizen approval in an election; and

WHEREAS, the legislative intent behind this code when it was first adopted in 1997 was to ensure that developed park property would not be sold or transferred to private parties for private use or economic gain; and

WHEREAS, from time to time developed park property, or portions of such park property, are required for necessary public purposes such as water, sewer or roadway improvements; and

WHEREAS, the requirement for citizen approval in such circumstances has the potential to impede or hinder accomplishment of necessary public purposes; and

WHEREAS, RCW 35.22.280(11) provides additional requirements for the disposal of park property including, when applicable, the consent of the dedicator or donor, and the use of the proceeds for acquisition of replacement park property; and

WHEREAS, RCW 43.09.210 provides that all property transferred from one department, public improvement, undertaking, institution, or public service industry to another, shall be paid for at its true and full value by the department, public improvement, undertaking, institution, or public service industry receiving the same; and

WHEREAS, it would promote the public health, safety and welfare to eliminate the requirement of citizen approval at an election of the transfer of developed park property to another city department for public purposes including, but not limited to, water, sewer or roadway improvements; NOW, THEREFORE,

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

Section One. Oak Harbor Municipal Code Chapter 1.30 entitled "Sale or Exchange of Real Property" is hereby amended to read as follows:

Chapter 1.30
SALE OR EXCHANGE OF REAL PROPERTY

Sections:

1.30.010 Requirements for sale or other disposition of city real property.

1.30.010 Requirements for sale or other disposition of city real property.

- (1) No real property of the city shall be sold, released, leased, demised, traded, exchanged or otherwise disposed of unless the same is authorized by the city council after public hearing. Notice of such public hearing shall be given by publication of the notice in the city's official newspaper at least ten (10) days prior to the hearing. Developed city park property shall not be disposed of in any manner without citizen approval in an election, except as provided in subsection (2) of this section.
- (2) No citizen approval at an election shall be required when the city council determines by resolution that some portion or all of a developed park property is required to accomplish a necessary public purpose including, but not limited to, water, sewer or roadway improvements. In such circumstances the fair market value of the park property dedicated to such necessary public purposes shall be determined by appraisal and the amount of the fair market value of such park property shall be transferred to the city's accounts from the acquiring department's fund to the parks fund, and such proceeds shall be exclusively used to acquire replacement park property. When the language of any instrument by which any park property is acquired limits the use of said property to park purposes and contains a reservation of interest in favor of the grantor or any other person, the city shall obtain the consent of the grantor or such other person, his or her heirs, successors, or assigns. In any case where, owing to death or lapse of time, there is neither donor, heir, successor, or assignee to give consent, this consent may be executed by the city and filed for record with an affidavit setting forth all efforts made to locate people entitled to give such consent together with the facts which establish that no consent by such persons is attainable. All other requirements of this section shall also be applicable.
- (3) The preferred timing for such a hearing is before the property is listed for sale, release, lease, demise, trade, exchange or other disposition. It is, however, recognized that this may not be possible especially in the case where there is litigation pending on the property in question.
- (4) A SEPA analysis shall be done on such proposed action and available for public review at least ten (10) days prior to the hearing.
- (5) The mayor shall forward to the city council a report on alternatives to the proposed action with the agenda.

- (6) Nothing herein shall be construed as preventing the city from holding an executive session in accordance with Chapter 42.17 RCW as now in effect or hereafter amended.
- (7) This section shall not apply to rental of property on a month-to-month basis or the rental of space at the marina done in the normal course of business for storage.

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

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

PASSED by the City Council this 5th day of May, 2015.

THE CITY OF OAK HARBOR

Veto
Approve

By Danny Daggas
for: Scott Dudley, Mayor
Dated: 5/5/2015

Attest:

Anna Thompson
Anna Thompson, City Clerk

Approved as to Form:

Nikki Esparza
Nikki Esparza, City Attorney

Published: _____

1.30.010 Requirements for sale or other disposition of city real property.

(1) No real property of the city shall be sold, released, leased, demised, traded, exchanged or otherwise disposed of unless the same is authorized by the city council after public hearing. Notice of such public hearing shall be given by publication of the notice in the city's official newspaper at least 10 days prior to the hearing. ~~Developed city park property shall not be disposed of in any manner without citizen approval in an election, except as provided in subsection (2) of this section.~~

~~(2) No citizen approval at an election shall be required when the city council determines by resolution that some portion or all of a developed park property is required to accomplish a necessary public purpose including, but not limited to, water, sewer or roadway improvements. In such circumstances the fair market value of the park property dedicated to such necessary public purposes shall be determined by appraisal and the amount of the fair market value of such park property shall be transferred to the city's accounts from the acquiring department's fund to the parks fund, and such proceeds shall be exclusively used to acquire replacement park property. When the language of any instrument by which any park property is acquired limits the use of said property to park purposes and contains a reservation of interest in favor of the grantor or any other person, the city shall obtain the consent of the grantor or such other person, his or her heirs, successors, or assigns. In any case where, owing to death or lapse of time, there is neither donor, heir, successor, or assignee to give consent, this consent may be executed by the city and filed for record with an affidavit setting forth all efforts made to locate people entitled to give such consent together with the facts which establish that no consent by such persons is attainable. All other requirements of this section shall also be applicable.~~

~~(3)(2)~~ The preferred timing for such a hearing is before the property is listed for sale, release, lease, demise, trade, exchange or other disposition. It is, however, recognized that this may not be possible especially in the case where there is litigation pending on the property in question.

~~(4)(3)~~ A SEPA analysis shall be done on such proposed action and available for public review at least 10 days prior to the hearing.

~~(5)(4)~~ The mayor shall forward to the city council a report on alternatives to the proposed action with the agenda.

~~(6)(5)~~ Nothing herein shall be construed as preventing the city from holding an executive session in accordance with Chapter 42.17 RCW as now in effect or hereafter amended.

~~(7)(6)~~ This section shall not apply to rental of property on a month-to-month basis or the rental of space at the marina done in the normal course of business for storage. (Ord. 1728 § 1, 2015; Ord. 1578 § 6, 2010).

ORDINANCE 1999 SALE OF CITY PROPERTY



City Council

May 21, 2024



BACKGROUND

- City staff identified a potential impediment to transfer of city-owned properties
- OHMC 1.30.010 (1) and (2) reference a need for an election to transfer park properties specifically



BACKGROUND

- “Developed city park property shall not be disposed of in any manner without citizen approval in an election, except as provided in subsection (2) of this section.”
- “No citizen approval at an election shall be required when the city council determines by resolution that some portion or all of a developed park property is required to accomplish a necessary public purpose including, but not limited to, water, sewer or roadway improvements. In such circumstances the fair market value of the park property dedicated to such necessary public purposes shall be determined by appraisal and the amount of the fair market value of such park property shall be transferred to the city’s accounts from the acquiring department’s fund to the parks fund, and such proceeds shall be exclusively used to acquire replacement park property. When the language of any instrument by which any park property is acquired limits the use of said property to park purposes and contains a reservation of interest in favor of the grantor or any other person, the city shall obtain the consent of the grantor or such other person, his or her heirs, successors, or assigns. In any case where, owing to death or lapse of time, there is neither donor, heir, successor, or assignee to give consent, this consent may be executed by the city and filed for record with an affidavit setting forth all efforts made to locate people entitled to give such consent together with the facts which establish that no consent by such persons is attainable. All other requirements of this section shall also be applicable.”



ANALYSIS

- Legal staff is not aware of an election requirement in any other Washington jurisdiction



ANALYSIS

- From 2015 Ordinance:
 - *“legislative intent behind this code when it was first adopted in 1997 was to ensure that developed park property would not be sold or transferred to private parties for private use or economic gain”*
 - However, that intent could be circumvented by an election



ANALYSIS

- From 2015 Ordinance:

- *“from time-to-time developed park property, or portions of such park property, are required for necessary public purposes such as water, sewer or roadway improvements... and the requirement for citizen approval in such circumstances has the potential to impede or hinder accomplishment of necessary public purposes.”*
- City staff believes that city-wide economic development is a “necessary public purpose”



ANALYSIS

- **Guardrails already built in:**
 - Staff analysis of proposal – including all relevant department input
 - Public hearing with notice and public comment
 - SEPA review – considers aesthetics, access to park lands and environmental conditions
 - RCW standards



ANALYSIS

- **More nimble decision-making**
 - Requiring an election would significantly increase the amount of time to come to a decision
- **Cost of election would be borne by city**
 - Election would be required for any transfer, including those that would be an equal value proposition, or of benefit to the city
- **Potential influence of special interests short-circuiting expertise of City staff and decision-makers**



RECOMMENDATION

- City staff believes that “necessary public purposes” includes the economic development of the community. That growth often pays for the infrastructure needs specified in the 2015 code amendment that authorized the City Council to make a decision on those specific transfers.



RECOMMENDATION

- In essence, requiring an election for the transfer of park designated properties could constitute a barrier to economic development, either by stifling potential development through uncertainty of outcomes, opening important decisions to outside influences or simple denial of a potential transfer.



RECOMMENDATION

- Because of those reasons, the fact that Oak Harbor is an outlier in the requirement, and the guardrails that exist in City Council consideration of transfer of lands, Staff recommends approval of Ordinance 1999, amending OHMC 1.30.010.