

ORDINANCE NO. 1936

AN ORDINANCE OF THE CITY OF OAK HARBOR AMENDING OAK HARBOR MUNICIPAL CODE TITLE 5 “BUSINESS LICENSES AND REGULATIONS”; AMENDING SECTION 6.12.060 “VENDORS AND CONCESSIONAIRES IN PARKS”; AMENDING SECTION 19.34.020 “CRITERIA”; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, the City Council authorized the Mayor to sign the business licensing services agreement with the Washington Department of Revenue (DOR) on August 17, 2021 for the purpose of partnering with the DOR to have business licenses issued and renewed through the businesses licensing service in accordance with RCW Chapter 19.02; and

WHEREAS, the City Council provided direction to staff at the October 27, 2021 City Council Workshop regarding updating the City’s business license structure to conform with Washington business licensing service requirements; and

WHEREAS, the DOR has informed the City that, in order to keep on track with the transition process, they would need the Oak Harbor Municipal Code updated and a decision on business license fee structure by the middle of December 2021;

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

Section One. Title 5 OHMC, Amended. Oak Harbor Municipal Code Title 5 “Business License and Regulations”, last amended by Ordinance No. 1844 (2018), is hereby amended as Exhibit A.

Section Two. OHMC Section 6.12.060, Amended. Oak Harbor Municipal Code Section 6.12.060 “Vendors and Concessionaires in Parks”, last amended by Ordinance No. 1861 (2018), is hereby amended as Exhibit A.

Section Three. OHMC Section 19.34.020, Amended. Oak Harbor Municipal Code Section 19.34.020 “Criteria”, last amended by Ordinance No. 1555 (2009), is hereby amended as Exhibit A.

Section Four. Conflict. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section Five. 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 Six. Effective Date. This Ordinance shall take effect on March 10, 2022 after publication as provided by law.

Adopted by the City Council this 14th day of December 2021.

THE CITY OF OAK HARBOR

Veto ()
Approve (✓)



Robert Sevens, Mayor

ATTEST:



Julie Lindsey, City Clerk

APPROVED AS TO FORM:



Hillary J. Evans, Interim City Attorney

Title 5

BUSINESS LICENSES AND REGULATIONS

Chapters:

- 5.01 Business Licenses, Regulatory Licenses, and Permits
- 5.05 Entertainment Establishment Licenses
- 5.10 Adult Entertainment License
- 5.15 Pawnbroker License
- 5.21 Taxicab and For Hire Vehicle License
- 5.25 Transportation Network Company License
- 5.29 Mobile Food Vendor License
- 5.35 Horse Drawn Carriage, Cart or Conveyance License
- 5.40 Fireworks Sale Permit
- 5.45 Peddler, Solicitor and Canvasser Permits
- 5.51 Filming Permit
- 5.55 Special Events Permits

Chapter 5.01

BUSINESS LICENSES, REGULATORY LICENSES, AND PERMITS

Sections:

- 5.01.010 Purpose.
- 5.01.020 Definitions.
- 5.01.030 Exemptions.
- 5.01.040 Administration.
- 5.01.050 Business license or permit required.

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- 5.01.080 Application for regulatory licenses.
- 5.01.090 Display of license.
- 5.01.100 Business relocation.
- 5.01.110 Expiration and renewal of business licenses and regulatory licenses.

Article II. Permits

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5.01.010 Purpose.

This chapter is intended to simplify and regularize procedures associated with the issuance, renewal and revocation of business licenses, regulatory licenses, and permits which are administered through the finance department. It is intended to apply to business licenses, regulatory licenses, and permits codified in this title as now in effect or hereafter amended, and other licenses and permit activities for business.

This chapter is not intended to apply to occupation permits, building permits, utility hookup permits, alarm ordinance permits, fire code permits and other code permits now administered directly through the building and fire departments. The provisions of this chapter shall be deemed an exercise of the police power of the city for

the protection of the public, economic and social welfare, health and peace, and all of its provisions shall be liberally construed for the accomplishment of that purpose.

(Ord. 1844 § 3, 2018).

5.01.020 Definitions.

In construing the provisions of this chapter, except when otherwise declared or clearly apparent from the context, the following definitions shall be applied:

- (1) “Business” includes all activities engaged in with the object of gain, benefit or advantage to the licensee or to another person or class, directly or indirectly.
- (2) “Director” means the Oak Harbor finance director or designee.
- (3) Engaging in Business.
 - (a) The term “engaging in business” means commencing, conducting or continuing in business and also the exercise of corporate or franchise powers as well as liquidating a business when the liquidators thereof hold themselves up to the public as conducting such business.
 - (b) This section sets forth examples of activities that constitute engaging in business in the city, and establishes safe harbors for certain of those activities so that a person who meets the criteria may engage in de minimis business activities in the city without having to pay a business license fee. The activities listed in this section are illustrative only and are not intended to narrow the definition of “engaging in business” in subsection (3)(a) of this section. If an activity is not listed, whether it constitutes engaging in business in the city shall be determined by considering all the facts and circumstances and applicable law.
 - (c) Without being all-inclusive, any one of the following activities conducted within the city by a person, or its employee, agent, representative, independent contractor, broker or another acting on its behalf, constitutes engaging in business and requires a person to register and obtain a business license:
 - (i) Owning, renting, leasing, maintaining, or having the right to use, or using, tangible personal property, intangible personal property, or real property permanently or temporarily located in the city.
 - (ii) Owning, renting, leasing, using, or maintaining an office, place of business, or other establishment in the city.
 - (iii) Soliciting sales.
 - (iv) Making repairs or providing maintenance or service to real or tangible personal property, including warranty work and property maintenance.
 - (v) Providing technical assistance or service, including quality control, product inspections, warranty work, or similar services on or in connection with tangible personal property sold by the person or on its behalf.
 - (vi) Installing, constructing, or supervising installation or construction of real or tangible personal property.
 - (vii) Soliciting, negotiating, or approving franchise, license, or other similar agreements.
 - (viii) Collecting current or delinquent accounts.
 - (ix) Picking up and transporting tangible personal property, solid waste, construction debris, or excavated materials.

(x) Providing disinfecting and pest control services, employment and labor pool services, home nursing care, janitorial services, appraising, landscape architectural services, security system services, surveying, and real estate services including the listing of homes and managing real property.

(xi) Rendering professional services such as those provided by accountants, architects, attorneys, auctioneers, consultants, engineers, professional athletes, barbers, baseball clubs and other sports organizations, chemists, psychologists, court reporters, dentists, doctors, detectives, laboratory operators, teachers, and veterinarians.

(xii) Meeting with customers or potential customers, even when no sales or orders are solicited at the meetings.

(xiii) Training or recruiting agents, representatives, independent contractors, brokers or others, domiciled or operating on a job in the city, acting on its behalf, or for customers or potential customers.

(xiv) Investigating, resolving, or otherwise assisting in resolving customer complaints.

(xv) In-store stocking or manipulating products or goods sold to and owned by a customer, regardless of where sale and delivery of the goods took place.

(xvi) Delivering goods in vehicles owned, rented, leased, used, or maintained by the person or another acting on its behalf.

(d) If a person, or its employee, agent, representative, independent contractor, broker or another acting on the person's behalf, engages in no other activities in or with the city but the following, it need not register and obtain a business license:

(i) Meeting with suppliers of goods and services as a customer.

(ii) Meeting with government representatives in their official capacity, other than those performing contracting or purchasing functions.

(iii) Attending meetings, such as board meetings, retreats, seminars, and conferences, or other meetings wherein the person does not provide training in connection with tangible personal property sold by the person or on its behalf. This provision does not apply to any board of director member or attendee engaging in business such as a member of a board of directors who attends a board meeting.

(iv) Renting tangible or intangible property as a customer when the property is not used in the city.

(v) Attending, but not participating in, a "trade show" or "multiple vendor events." Persons participating at a trade show shall review the city's trade show or multiple vendor event ordinances.

(vi) Conducting advertising through the mail.

(vii) Soliciting sales by phone from a location outside the city.

(e) A seller located outside the city merely delivering goods into the city by means of common carrier is not required to register and obtain a business license; provided, that it engages in no other business activities in the city. Such activities do not include those in subsection (3)(d) of this section. The city expressly intends that engaging in business include any activity sufficient to establish nexus for purposes of applying the license fee under the law and the Constitutions of the United States and the state of Washington. Nexus is presumed to continue as long as the taxpayer benefits from the activity that constituted the original nexus-generating contact or subsequent contacts.

(4) “Person” means any individual, receiver, assignee, trustee in bankruptcy, trust, estate, firm, co-partnership, joint venture, club, company, joint stock company, business trust, corporation, association, society or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, non-profit or otherwise.

(5) “Business Licensing Service” or “BLS” means the office within the Washington State Department of Revenue providing business licensing services to the city.

(Ord. 1844 § 3, 2018).

5.01.030 Exemptions.

The business license and/or business license fee provisions of this chapter do not apply as described in this section:

(1) For purposes of the license by this chapter, any person or business whose annual value of products, gross proceeds of sales, or gross income of the business in the city is equal to or less than \$2,000 and who does not maintain a place of business within the city must obtain a city business license, but be exempt from the city license fee therefor. The threshold does not apply to regulatory license requirements or activities that require a specialized permit.

(2) Newspaper carriers under the age of 18 are exempt from the license requirement.

(3) Any nonprofit organization holding a current IRS 501(c) exemption certificate issued by the Internal Revenue Service must still obtain a business license from the city, but is exempt from the license fee. Such nonprofit organization must submit a copy of the certificate along with the application to be exempt from the city business license fees.

(4) The nonbusiness activities of religious organizations. These nonbusiness activities of religious organizations are exempt from the business licensing provisions of this chapter; provided, that any religious organization which engages in business for which it may be required by federal law to file a federal income tax return shall, to that extent only, be subject to the business license and city license fee requirements of this chapter.

(Ord. 1844 § 3, 2018).

5.01.040 Administration.

The finance department shall administer the requirements of OHMC Title 5, with the exception of Chapter 5.55 OHMC entitled “Special Events Permits.” The finance department shall perform the following:

(1) The determination for issuing of business licenses, regulatory license, and the applicable OHMC Title 5 permits, is under the administrative control of the finance director who has all necessary administrative powers to carry out the work of issuing business licenses, regulatory licenses, and permits, including, but not limited to, those powers provided to a department head in the personnel policies of the city. In addition, the director may:

(a) Make interpretation of ordinances, resolutions involving the issuance of business licenses, regulatory licenses, and OHMC Title 5 permits;

(b) Promulgate rules and regulations for the operation of the processing and issuing of business licenses, regulatory licenses, and OHMC Title 5 permits and other matters related to this chapter;

(c) Develop plans, policies and reports regarding budget proposals to carry out the work of issuing business licenses, regulatory licenses, and permits;

(d) Control expenditures to remain within budget;

- (e) Designate others to carry out duties of the director;
- (f) Develop and provide applications for business licenses, regulatory licenses, and OHMC Title 5 permits, with the exception of Chapter 5.55 OHMC or when such operations are delegated to an external service; and
- (g) Collect and process all fees related to business licenses, regulatory licenses, and OHMC Title 5 permits, including Chapter 5.55 OHMC.

(2) Prior to approving issuance of a license or permit, the finance director may require the development services department, and other departments as necessary, to assure that the business is located in a land use zone appropriate to the business to be carried on and that the building meets the applicable building and fire code standards.

(3) Upon change of location for a license, the director may require that the development services department assure the new location is in compliance with building and zoning codes.

(4) The director will keep full and accurate records of all funds received under the provisions of this chapter. Upon receipt of any city license fee and/or city-imposed penalties collected under the provisions of this chapter, the director will deposit the same to the current expense fund.

(Ord. 1844 § 3, 2018).

5.01.050 Business license or permit required.

Any person or entity engaging in or carrying on business, trade, profession or calling, within the city of Oak Harbor, must obtain an annual business license or permit as provided herein.

(Ord. 1844 § 3, 2018).

Article I. Business Licenses and Regulatory Licenses

5.01.060 Business license application.

Application for a city business license is made to the Business Licensing Service (BLS), and must include all information required for each license requested, the total fees due for all licenses, and the application handling fee required by RCW 19.02.075. BLS will make the application information available to the city for review to determine whether to approve issuance of the business license.

(Ord. 1844 § 3, 2018).

(Ord. 1844 § 3, 2018).

5.01.080 Application for regulatory licenses.

(1) Any person or entity required to obtain a business license per OHMC 5.01.050 who operates the following activities must also apply to and obtain from the city directly the respective regulatory license provided by the city finance department:

- (a) Entertainment establishment license per Chapter 5.05 OHMC.
- (b) Adult entertainment license per Chapter 5.10 OHMC.
- (c) Pawnbroker license per Chapter 5.15 OHMC.
- (d) Taxicab and for hire vehicle license per Chapter 5.21 OHMC.

(e) Transportation network company license per Chapter 5.25 OHMC.

(f) Mobile food vendor license per Chapter 5.29 OHMC.

(g) Horse drawn carriage, cart or conveyance license per Chapter 5.35 OHMC.

(2) Regulatory License Application Process.

(a) Regulatory license application requirements are set forth in the applicable regulatory license chapters under this title.

(b) Regulatory license fees are in addition to city business license.

(c) Application fees for regulatory licenses are referenced in the applicable regulatory license chapters of this title, and contained in the master fee schedule, adopted by resolution of the city council.

(d) Regulatory license fees must be submitted at the time of regulatory license application and may not be prorated.

(e) Upon approval of the regulatory license application, the application fee serves as the first-year annual fee.

(f) Regulatory license fees must be paid in full with the application, and are nonrefundable.

(Ord. 1844 § 3, 2018).

5.01.090 Display of license.

(1) When the activity or business is licensed and is carried out at specified premises, the license shall be conspicuously posted in a public area in the place of business for which it is issued.

(2) Business transacted with the public at two or more separate locations within the city limits must display a separate license for each location.

(3) When the business or activity is carried on by vehicle, the license shall be displayed in the vehicle.

(Ord. 1844 § 3, 2018).

5.01.100 Business relocation.

(1) Unless otherwise provided, a business may relocate within the city provided notice is given to the finance department at least 10 days prior to the move of the business or activity and so long as the new location complies with building, fire and zoning codes in effect at the time of relocation. Notice of the change for the city business license is made through the Business Licensing Service (BLS) sufficiently prior to the intended move to allow timely notification to the city. In the case of the city business license, BLS will make the information of a request to relocate available to the city. In the case of regulatory licenses, notice of an intended relocation must be given directly to the city. In either case, business, including any regulated activity, may not commence at the new location until approved by the city.

(2) The relocating licensee must return any regulatory license to the finance department and, after approval of the relocation, a new regulatory license will be issued for the new place of business without charge. In the case of the general business license, a new business license will be issued through the Business Licensing Service.

(Ord. 1844 § 3, 2018).

5.01.110 Expiration and renewal of business licenses and regulatory licenses.

(1) Business Licenses.

- (a) The city business license expires on the date established by the Business Licensing Service (BLS) and must be renewed on or before that date to continue to engage in business in the city after that date.
- (b) Application for renewal of the business license is made through the Business Licensing Service (BLS), and must include all information required to renew all licenses involved, the total fees due for all licenses, and the renewal application handling fee required by RCW 19.02.075.
- (c) The business license term and respective city fee amount may be prorated as needed to synchronize the license expiration with the expiration of the business license account maintained by the BLS.
- (d) Failure to complete the business license renewal by the expiration date will incur the late renewal penalty fee required by RCW 19.02.085, in addition to all other fees due.
- (e) Failure to complete the business license renewal within 120 days after expiration will result in the cancellation of the business license, and will require applying for and obtaining a new city business license as provided in this chapter to continue to engage in business in the city. The city is authorized to require payment of all past due amounts prior to approving issuance of a new license.

(2) Regulatory Licenses.

- (a) All regulatory licenses expire at the end of the calendar year for which it is issued and a new license will be required for each calendar year.
- (b) The finance department will mail a notice for renewal of the regulatory license to the address of record at least three weeks before December 31st each year.
 - (i) The application for renewal of the regulatory license must be submitted directly to the city by January 31 of the year following the expiration to be considered a timely renewal filing.
 - (ii) The renewal application will require making changes to a copy of the original application as needed.
 - (iii) The regulatory license renewal fee is due in full with the renewal application.
- (c) Failure to receive such notice will not excuse the licensee from the duty to renew a license, and will not be a defense to operate without a license.
- (d) In addition to the required annual regulatory license fee, any renewal application received therefor after January 31st will be assessed a delinquency charge by the city of 18 percent of the annual regulatory license fee for each month or part of month accruing between the time such license is procured and the time when the same should have been procured under this chapter.

(Ord. 1844 § 3, 2018).

Article II. Permits

5.01.130 Permit application and fees.

(1) Form. Applications for all permits shall be in writing on forms provided by the finance department. The required application contents shall be described in Chapter 5.40 OHMC entitled “Fireworks Sale Permit” and Chapter 5.45 OHMC entitled “Peddler, Solicitor, and Canvasser Permits.”

(2) Permit Fees. Application and permit fees are contained in the applicable OHMC Title 5 chapters and are nonrefundable.

(3) No Business License Required. Permit holders operating business activities under permits issued pursuant to Chapters 5.40 and 5.45 OHMC shall not be required to obtain a business license.

(Ord. 1844 § 3, 2018).

5.01.140 Expiration of permits.

Permits are nonrenewable. Upon the expiration of a valid permit issued under this title, a new permit application must be submitted and approved in order to conduct the permitted business activities.

(Ord. 1844 § 3, 2018).

Article III. Regulations for Business Licenses, Regulatory Licenses, and Permits

5.01.150 Limitation of issuance.

No license or permit shall be issued which will authorize a business or activity contrary to building, fire or zoning codes of the city of Oak Harbor in effect at the time of the application for the license or permit.

(Ord. 1844 § 3, 2018).

5.01.160 Business licenses, regulatory licenses, and permits cannot be transferred or shared.

(1) Business licenses, regulatory licenses, and permits may not be transferred to another person or entity.

(2) Any person or entity licensed or permitted pursuant to this chapter may not allow any other person, for whom a separate license is required, to operate under or display such license or permit, nor may any other person operate under or display such license.

(Ord. 1844 § 3, 2018).

5.01.170 Revocation of business license, regulatory license, or permit.

(1) Any business license, regulatory license, or permit may be revoked by the finance director at any time during the life of such license or permit for any violation of the licensing and permitting requirements or of the conditions or restrictions under which were imposed upon issuance, or the license, regulatory license, or permit was procured by fraud or misrepresentation, or of the pertinent ordinance provisions relating to the license or permit, or of the ordinances relating to the premises occupied. Such revocation may be in addition to any penalty imposed pursuant to OHMC 5.01.200. Upon revocation of a license or permit, the business or activity must cease operations immediately.

(2) Additional revocation regulations codified in Chapters 5.05 through 5.55 OHMC also apply.

(Ord. 1844 § 3, 2018).

5.01.180 Appeals.

Appeal from the decision of the finance director shall be in accordance with the provisions of Chapter 1.24 OHMC as now in effect or hereafter amended.

(Ord. 1844 § 3, 2018).

5.01.190 Enforcement.

The building official or designee and the director or designee will have vested authority to check any person in conduct of business in the city for proper business license, regulatory license or permit, and in case of a violation will have authority to issue a citation for violation of this chapter.

(Ord. 1844 § 3, 2018).

5.01.200 Violations.

Violations of this chapter shall constitute a civil offense and shall be governed by the procedures of Chapter 1.28 OHMC.

(Ord. 1844 § 3, 2018).

Chapter 5.05
ENTERTAINMENT ESTABLISHMENT LICENSES

Sections:

- 5.05.010 Purpose.**
- 5.05.020 Definitions.**
- 5.05.030 Business license and regulatory license required – Reference to Type 1 or 2.**
- 5.05.040 Application fee.**
- 5.05.050 Application for Type 1 entertainment license – Process – Conditions of approval.**
- 5.05.060 Application for Type 2 entertainment license – Process – Conditions of approval.**
- 5.05.070 Annual renewals.**
- 5.05.080 Liquor and Cannabis Board compliance for Type 2.**
- 5.05.090 Revision of license conditions.**
- 5.05.100 Revocation.**
- 5.05.110 Notice and hearing prior to revocation.**
- 5.05.120 Enforcement.**
- 5.05.130 Violations.**

5.05.010 Purpose.

The purpose of this chapter is to regulate the operation of entertainment for the protection of the public welfare, health, and safety of those that attend and patronize these establishments by requiring licenses for establishments providing entertainment only, or for establishments providing both entertainment and liquor. (Ord. 1845 § 7, 2018).

5.05.020 Definitions.

- (1) “Amusement devices” means any machine or device which provides recreation or entertainment only, for which a charge is made for use or play, and includes, but is not limited to, pool tables, video games, pinball, shuffleboards, mechanical music machines, flipper games, bowling games, riding devices for not more than two persons, or other games operated by insertion of a coin or credit/debit card or operated by remote control or with a timing device, but shall not mean or include any machine or device used exclusively for the vending of merchandise or washing machines or similar devices.
- (2) “Type 1 entertainment license” means a license issued to an establishment that provides entertainment but does not provide entertainment in connection with the business of directly or indirectly selling liquor for consumption on or within the premises.
- (3) “Type 2 entertainment license” means a license issued to an establishment that provides entertainment in connection with the business of directly or indirectly selling liquor for consumption on or within the premises.
- (4) “Dancing” means guests, patrons, entertainers or other persons engaged in the activity of dancing.
- (5) “Director” means the Oak Harbor finance director or designee.

(6) "Entertainment" means singing, dancing, performing, or otherwise engaging in musical entertainment, presentation of recorded music played on equipment which is operated by an agent or contractor of the establishment, commonly known as a "DJ" or "disc jockey," the presentations by single or multiple performers, such as hypnotists, mimes, comedians; musical song or dance acts, concerts, any type of contest; demonstrations of talent; pool or billiard tables, card tables, and amusement devices, or similar amusements to which the guests or members are invited or allowed to watch, listen, or participate or that is conducted for the purposes of holding the attention of, gaining the attention of, or diverting or amusing guests or members. "Entertainment" in this chapter does not include theatrical performances, shows, or acts that are regularly performed in a theater.

(7) "Establishment" means a business that provides "entertainment."

(8) "Liquor" has the same meaning as in RCW 66.04.010.

(9) "Musical entertainment," as used in this chapter, does not apply to phonographs, radios, or mechanical devices used for the reproduction of music for the listening enjoyment of the members or patrons only.

(10) "Security personnel" means a security guard, bouncer, door person, or any person performing similar duties who is present at an entertainment establishment to provide crowd control; protect persons or property from harm or unlawful activity; deter, observe, and detect unlawful or unauthorized activity; or supervise entry and exit at the establishment.

(11) "Written safety plan" means a written document submitted with an application for a Type 2 entertainment license. The plan must include:

- (a) Procedures for checking identification and admitting patrons;
- (b) Procedures for ensuring that only persons 21 years or older are served liquor or allowed in areas restricted to persons over 21 years;
- (c) Provide procedures for handling violent incidents, other emergencies, and calling the Oak Harbor police department;
- (d) The number of security personnel and where they will be/are located throughout the establishment;
- (e) Description of the training provided or completed by the security and other personnel, including conflict deescalation training;
- (f) Procedures for crowd control and preventing overcrowding;
- (g) Procedures for preventing or managing disturbances outside the premises from patrons leaving the establishment, i.e., loitering, vandalism, crowd noise, vehicle noise, and crowd dispersal;
- (h) Current hours of operation and anticipated hours of operation;
- (i) Current contact information for the person or position responsible for addressing complaints related to safety, security, or non-compliance with the entertainment endorsement conditions of approval;
- (j) A fire evacuation and fire safety plan for the building, as required in Section 404 of the International Fire Code; and
- (k) A plan for quarterly fire drills by employees, as required in Section 405 of the International Fire Code.

(Ord. 1845 § 7, 2018).

5.05.030 Business license and entertainment license required – Reference to Type 1 or 2.

- (1) It is a violation of this chapter for any individual or entity to operate an entertainment establishment in the city of Oak Harbor without a current and valid city of Oak Harbor business license.
- (2) It is unlawful for any person to operate or engage in the business of operating an establishment that provides entertainment in the city without first obtaining an entertainment license pursuant to the provisions of this chapter.
- (3) This chapter governs requirements for Type 1 and 2 entertainment licenses. When only one type is specified in a section or heading, the terms are applicable to only that type.

(Ord. 1845 § 7, 2018).

5.05.040 Application fee.

The applicant for either a Type 1 or Type 2 entertainment license must pay the nonrefundable license application fee per the master fee schedule adopted by resolution of the city council.

- (1) If the application is approved, the application fee will serve as the first-year license fee.
- (2) Type 2 entertainment establishment applicants must also pay the cost of WATCH and local criminal background checks in full per the master fee schedule adopted by resolution of the city council in addition to the license fee.

(Ord. 1845 § 7, 2018).

5.05.050 Application for Type 1 entertainment license – Process – Conditions of approval.

- (1) Application Contents. An application for a Type 1 entertainment license must include the following:
 - (a) Identification of the business, as for issuance of a business license under Chapter 5.01 OHMC;
 - (b) A description of the primary business purpose and/or activities of the business, zoning district and the business location upon which the entertainment activities will be conducted; and
 - (c) Hours of operation.
- (2) Location Restrictions. Applications can be submitted for the following zoning districts:
 - (a) Central business district (CBD);
 - (b) Central business district 1 (CBD-1);
 - (c) Central business district 2 (CBD-2);
 - (d) Community commercial district (C-3) and highway corridor commercial district (C-5) only if the occupancy limit for said building or use is less than 400 as determined by the building official and the fire chief;
 - (e) Highway service commercial (C-4); or
 - (f) Any building and use in the planned business park (PBP), planned industrial park (PIP), industrial (I), or maritime zones.
- (3) Application Process and Conditions of Approval. The applicant must file a complete application with the finance department and pay applicable fees. Incomplete applications will not be accepted. Application fees are nonrefundable. The director will transmit the application to the city administrator for further review.

- (a) The city administrator or designee will review the application and may require investigation by the police chief, fire chief, or building official.
- (b) After the application review has been finalized, the city administrator may impose conditions of approval to reduce noise, traffic or other similar public health and safety impacts.
- (c) Allowable conditions may include, but are not limited to, restrictions upon the hours of operation, structural improvements to the premises to reduce noise impacts on neighboring uses, limitations on the numbers of patrons at any one time, requirements for sufficient lighting, landscaping or other screening, and requirements for traffic control. Periodic review of the efficacy of the imposed conditions may also be a condition of the entertainment license.
- (d) The city administrator or designee will approve, approve subject to conditions, or deny the Type 1 entertainment license application.

(Ord. 1845 § 7, 2018).

5.05.060 Application for Type 2 entertainment license – Process – Conditions of approval.

- (1) Application Contents. An application for a Type 2 entertainment license must include the following:
 - (a) Identification of the business, as for issuance of a business license under Chapter 5.01 OHMC;
 - (b) Approval letter/certificate from Washington State Liquor and Cannabis Board;
 - (c) A written safety plan;
 - (d) Building information regarding square feet and number of exits; and
 - (e) Operational plan and scope of event or business activities.
- (2) Application Process and Conditions of Approval. The applicant must file the application with the finance department and pay applicable fees. Incomplete applications will not be accepted and application fees are nonrefundable.
 - (a) Upon receipt of the complete application, the director will transmit copies of the application to the director of development services, city administrator, fire chief, police chief and the building official for further review.
 - (b) The director of development services or designee will determine if the application meets the location requirements and will submit findings, including any recommended conditions of approval, in a written report to the city administrator.
 - (c) The fire chief and the building official will determine if the application meets the applicable fire and building code provisions of the OHMC. The fire chief and building official will submit their findings, including any recommended conditions of approval, in a written report to the city administrator.
 - (d) The police chief will conduct WATCH and local criminal background checks of the applicant. The police chief will also:
 - (i) Investigate the business location to determine whether there are any features of the establishment which pose noise, traffic or other similar public health or safety concerns for the operation of an entertainment. The police chief may request the assistance of other city departments, including the fire department and/or the building official, in assessing the impacts of the proposed business location.
 - (ii) Determine how many security personnel, if any, are required to provide adequate safety for the patrons and operation of the establishment.

(iii) Submit a written report to the city administrator that includes findings of the investigation and make recommendations concerning any conditions that should be placed upon the entertainment license to reduce noise, traffic or other similar public health and safety impacts.

(e) Allowable conditions may include, but are not limited to, security personnel, restrictions upon the hours of operation, structural improvements to the premises to reduce noise impacts on neighboring uses, limitations on the numbers of patrons at any one time, landscaping or other screening, and requirements for traffic control. Periodic review of the efficacy of the imposed conditions may also be a condition of the entertainment license.

(f) Final Decision. City administrator or designee will approve, approve subject to conditions, or deny the Type 2 entertainment license application.

(Ord. 1845 § 7, 2018).

5.05.070 Annual renewals.

(1) Process. Entertainment license renewals will be processed directly through the city pursuant to OHMC 5.01.110 (2).

(2) Fees. Entertainment license renewal fees per the master fee schedule adopted by resolution of the city council must be paid in full.

(3) Informational Changes. At the time of renewal, an entertainment license holder must submit informational changes, as required by the Type 1 or 2 entertainment establishment license application, to the director.

(4) Annual Reports for Type 2 Renewals. If conditions of approval for a Type 2 entertainment license require annual reports, the reports must be submitted to the city administrator along with the license renewal payment. The annual report must document the steps taken by the applicant to comply with the items listed in the written safety plan and with any conditions of approval of the entertainment license.

(Ord. 1845 § 7, 2018).

5.05.080 Liquor and Cannabis Board compliance for Type 2.

In addition to the conditions imposed pursuant to OHMC 5.05.050(2), all entertainment license holders who serve liquor must comply with the rules or regulations of the Washington State Liquor and Cannabis Board relating to the sale of intoxicating liquor. A finding of violation by the Washington State Liquor and Cannabis Board constitutes a violation of license conditions pursuant to OHMC 5.05.050(2).

(Ord. 1845 § 7, 2018).

5.05.090 Revision of endorsement conditions.

(1) The city reserves unto itself the power to revise the conditions of a Type 1 or 2 entertainment license upon written reports from the police chief, fire chief, building official or other city official indicating that the existing conditions are not sufficient to mitigate the noise, traffic and public health and safety impacts associated with the entertainment business location.

(2) The license holder will be sent a copy of the written reports and proposed conditions of approval. The revised conditions of approval will be effective 10 days after the date of issuance.

(Ord. 1845 § 7, 2018).

5.05.100 Revocation.

Type 1 or 2 entertainment licenses may be revoked by the director, upon written recommendation from the police, fire, or development services department, subject to notice and hearing pursuant to OHMC 5.05.110. Licenses may only be revoked for good cause including, but not limited to:

- (1) Fraud, misrepresentation, or false statement contained in the application for license;
- (2) Any felony, misdemeanor or traffic conviction directly related to fitness to operate an entertainment establishment;
- (3) Any violations of the provisions of this chapter; or
- (4) Convicted of a felony, gross misdemeanor, assault or sexual offense as defined under state law or an offense which is similar to those defined in Chapter 9A.44 RCW.

(Ord. 1845 § 7, 2018).

5.05.110 Notice and hearing prior to revocation.

- (1) Notice and Hearing. Before revoking a Type 1 or 2 entertainment license, the city will provide at least 10 days' written notice to the license holder of its intent to seek revocation and the grounds for the same and schedule and hold a public hearing concerning such revocation before the city's hearing examiner.
- (2) Hearing Examiner. The jurisdiction of the office of land use hearing examiner under Chapter 18.40 OHMC is hereby expanded to include jurisdiction over any revocation hearing under this section. The decision of the examiner will be a Type I final decision, pursuant to OHMC 18.40.100(1).
- (3) Hearing Process. The hearing process will be conducted pursuant to the procedures set forth in Chapter 18.40 OHMC.

(Ord. 1845 § 7, 2018).

5.05.120 Enforcement.

The director or designee has administrative authority to implement and enforce this chapter. The director may adopt rules and regulations for its administration, consistent with this chapter.

(Ord. 1845 § 7, 2018).

5.05.130 Violations.

Violations of this chapter constitute a civil offense and will be governed by the procedures of Chapter 1.28 OHMC.

(Ord. 1845 § 7, 2018).

Chapter 5.10
ADULT ENTERTAINMENT LICENSE

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5.10.010 Findings of fact.

Based on evidence concerning the adverse secondary effects of adult uses on the community presented in hearings and in reports made available to the council, and on findings incorporated in the cases of *City of Renton v. Playtime Theaters, Inc.*, 475 U.S. 41 (1986), *Young v. American Mini Theatres*, 426 U.S. 50 (1976), *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991), *City of Erie v. Pap's A.M.*, TDA "Kandyland," 529 U.S. 277 (2000), *City of Los Angeles v. Alameda Books, Inc.*, 121 S.Ct. 1223 (2001), *Wise Enterprises, Inc. v. Athens-Clarke County Georgia*, No. 99-8265 (11th Circuit Court of Appeals 2000), *Sammy's v. City of Mobile*, No. 96-7073 (11th Circuit Court of Appeals 1998), *Ino Ino, Inc. v. Bellevue*, 132 Wn.2d 103 (1997), *World Wide Video v. Tukwila*, 117 Wn.2d 382 (1991), *Kitsap County v. Kev, Inc.*, 106 Wn.2d 135 (1986), *Colacurcio v. City of Kent*, 163 F. 3d 545 (1998), *DCR, Inc. v. Pierce County*, 92 Wn.App. 660 (1998), and on studies in other communities including, but not limited to, Bellevue, Burien, Everett, Shoreline, Lynnwood, Tukwila, SeaTac, Federal Way, Tacoma, and Seattle, the council hereby adopts the following findings of fact:

- (1) The city council has determined that locational criteria alone do not adequately protect the health, safety and general welfare of the people of Oak Harbor.
- (2) The secondary effects of the activities defined and regulated in this chapter are detrimental to the public health, safety, morals, and general welfare of the citizens of the city and, therefore, such activities must be regulated.
- (3) Regulation of the adult entertainment industry is necessary because, in the absence of such regulation, significant criminal activity has historically and regularly occurred. This history of criminal activity in the adult entertainment industry has included prostitution, illegal employment of minors, narcotics, alcoholic beverage law violations, breaches of the peace, tax evasion, and the presence within the industry of individuals with hidden ownership interests and outstanding arrest warrants.
- (4) Proximity between entertainers and patrons during adult entertainment performances can facilitate sexual contact, prostitution, and related crimes. Concerns about crime and public sexual activity are legitimate and compelling concerns of the city which demand reasonable regulation of adult entertainment establishments in order to protect the public health, safety, and general welfare of its citizens, including a prohibition against direct contact between entertainers and patrons, a 10-foot minimum distance between entertainers and patrons, restricting nude dancing to a stage raised 18 inches above the floor, and a ban on direct tipping of entertainers, as evidenced in Pierce County, the city of Kent, the city of Bellevue and San Diego County in particular.
- (5) Licensing is a legitimate and reasonable means of accountability to ensure that operators of adult entertainment establishments comply with reasonable regulations and to ensure that operators don't knowingly allow their establishments to be used as places of illegal sexual activity or solicitation.
- (6) It is necessary to endorse entertainers in the adult entertainment industry to prevent the exploitation of minors, to ensure that each entertainer is an adult, and to ensure that such entertainers have not assumed a false name which would make regulation of the entertainer difficult or impossible.
- (7) It is necessary to have an endorsed manager on the premises of establishments offering adult entertainment at such times as such establishments are offering adult entertainment, so there will at all necessary times be an individual responsible for the overall operation of the adult entertainment establishment, including the actions of patrons, entertainers, and other employees, and to ensure a design, layout and sufficient lighting to permit a manager to effectively monitor activity at all times, as evidenced in Burien, Spokane, Tukwila and Garden Grove in particular.
- (8) The license fees required in this chapter are necessary as nominal fees imposed as necessary regulatory measures designed to help defray the substantial expenses incurred by the city in regulating the adult entertainment industry, as evidenced in Burien in particular.

(9) Hidden ownership interests for the purpose of skimming profits and avoiding the payment of taxes have historically occurred in the adult entertainment industry in the absence of regulation. These hidden ownership interests have historically been held by organized and white-collar crime elements. In order for the city to effectively protect the public health, safety, morals, and general welfare of its citizens and effectively allocate its law enforcement resources, it is important that the city be fully apprised of the actual ownership of adult entertainment establishments and the identities and backgrounds of persons responsible for management and control of the adult entertainment establishments, as evidenced in Tukwila and Burien in particular.

(10) Removal of doors on adult booths and requiring sufficient lighting on premises with adult booths advances a substantial governmental interest in the illegal and unsanitary sexual activity from occurring in adult entertainment establishments, as evidenced in *U.S. v. Colacurcio, et al.*, CR09 0209 RAJ, and in Garden Grove.

(11) Requiring licenses of adult entertainment establishments to keep information regarding current employees and certain past employees will help reduce the incidence of certain types of criminal behavior by facilitating the identification of potential witnesses or suspects and by preventing minors from working in such establishments as evidenced in Burien in particular.

(12) The general welfare, health, morals and safety of the citizens of Oak Harbor will be promoted by the enactment of the ordinance codified in this chapter.

(13) It is not the intent of this chapter to suppress or censor any expressive activities protected by the First Amendment of the United States Constitution or Article I, Section 5 of the Washington State Constitution, but rather to enact content-neutral reasonable time, place, and manner regulations which address the compelling interests of the city in mitigating the secondary effects of adult entertainment establishments.

(Ord. 1846 § 2, 2018).

5.10.020 Definitions.

For the purposes of this chapter, the words and phrases used in this section shall have the following meanings, unless context indicates otherwise:

(1) "Adult entertainment" shall mean any of the following:

(a) Any exhibition, performance, or dance of any type conducted in a premises where such exhibition, performance, or dance involves a person who is unclothed or in such costume, attire, or clothing as to expose any portion of the female breast with less than a fully opaque covering of any part of the nipple or areola or any portion of the pubic region, anus, buttocks, vulva, or genitals, or wearing any device or covering exposed to view which simulates the appearance of any portion of the female breast with less than a fully opaque covering of any part of the nipple or areola or any portion of the pubic region, anus, buttocks, vulva, or genitals, or human male genitals in a discernibly turgid state, even if completely and opaquely covered.

(b) Any exhibition, performance, or dance of any type conducted on a premises where such exhibition, performance, or dance is distinguished or characterized by a predominant emphasis on the depiction, description, simulation, or relation to the following specified sexual activities:

(i) Human genitals in a state of sexual stimulation or arousal;

(ii) Acts of human masturbation, sexual intercourse, or sodomy;

(iii) Fondling or other erotic touching of human genitals, pubic area, buttocks, or female breast.

(2) “Adult entertainment establishment” shall mean any commercial premises or club to which any patron is invited or admitted and where adult entertainment is provided on a regular basis or is provided as a substantial part of the premises.

(3) “Applicant” means the individual or entity seeking an adult entertainment establishment license, adult entertainment manager’s license or adult entertainer’s license in the city of Oak Harbor.

(4) “Applicant control persons” shall mean all partners, corporate officers, and directors, and any other individuals in the applicant’s business organization who hold a significant interest in the adult entertainment establishment, based on responsibility for management of the adult entertainment business.

(5) “Director” shall mean the city of Oak Harbor finance director or designee.

(6) “Employee” shall mean any and all persons, including managers, entertainers, and independent contractors who work in or at or render any services directly related to the operation of any adult entertainment establishment.

(7) “Entertainer” shall mean any person who provides live adult entertainment, whether or not a fee is charged or accepted for such entertainment.

(8) “Manager” shall mean any person who manages, directs, administers, or is in charge of the affairs and/or the conduct of any portion of any activity involving adult entertainment occurring at any adult entertainment establishment.

(9) “Operator” shall mean any person operating, conducting, or maintaining an adult entertainment establishment.

(10) “Picture machine” shall mean any machine, instrument, or device showing moving pictures, slides, plain, colored or three-dimensional pictures, or any picture device of a similar nature depicting sexual conduct or specified anatomical areas, the operation of which is made possible by the insertion or placing of any coin, plate, disc, or slug into the slot or other receptacle, or by the payment directly or indirectly of any consideration to another for such purpose.

(11) “Sexual conduct” shall mean acts of:

(a) Sexual intercourse within its ordinary meaning and occurs upon any penetration, however slight; and also means any penetration of the vagina or anus, however slight, by an object, when committed on one person by another, whether such persons are of the same or opposite sex, except when such penetration is accomplished for medically recognized treatment or diagnostic purposes;

(b) Any contact between persons involving the sex organs of one person and the mouth or anus of another;

(c) Masturbation, manual or instrumental, of oneself, or of one person by another.

(12) “Specified anatomical areas” shall mean and include any of the following:

(a) Human genitals, pubic region, buttocks, anus, or female breasts with less than a fully opaque covering of any part of the nipple or areola; or

(b) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.
(Ord. [1846](#) § 2, 2018).

5.10.030 Business license and adult entertainment establishment license.

(1) It is unlawful for any person to operate or maintain an adult entertainment establishment in the city of Oak Harbor unless the owner, operator or lessee thereof has obtained a business license pursuant to Chapter 5.01 OHMC.

(2) It is unlawful for any person to operate or maintain an adult entertainment establishment in the city of Oak Harbor unless the owner, operator or lessee thereof has obtained from the director a license to do so, to be designated an “adult entertainment establishment license.”

(3) It is unlawful for any person to knowingly allow the use of his or her property for the operation of an adult entertainment establishment that is not licensed under this chapter.

(4) It is unlawful for any entertainer, employee or manager to knowingly work in or about, or to knowingly perform, any service or entertainment directly related to the operation of a licensed adult entertainment establishment.

(Ord. 1846 § 2, 2018).

5.10.040 Licenses for managers and entertainers.

(1) It is unlawful for any person to work as a manager at an adult entertainment establishment without first having obtained from the director a license to do so, to be designated as an “adult entertainment manager’s license.”

(2) It is unlawful for any person to work as an entertainer at an adult entertainment establishment without having first obtained from the director a license to do so, to be designated as an “adult entertainer’s license.”

(Ord. 1846 § 2, 2018).

5.10.050 Application and renewal process – Fees.

(1) Application Process. Upon submission of the application, the applicant shall pay the nonrefundable application fee in full per the master fee schedule adopted by resolution of the city council.

(a) If the applicant is approved, the application fee shall serve as the first-year license fee.

(b) The application fee includes the cost of local records and WATCH criminal background checks.

(c) Incomplete applications will not be accepted.

(2) Annual Renewals and Fees.

(a) Process. License renewals will be processed pursuant to OHMC 5.01.110 (2).

(b) Fees. License renewal fees shall be paid in full per the master fee schedule adopted by resolution of the city council.

(c) Other Requirements. Any other information or documentation as required by the Oak Harbor police department.

(Ord. 1846 § 2, 2018).

5.10.060 License prohibited to certain persons.

No license authorized under this chapter may be issued to:

- (1) A natural person who has not attained the age of 18 years;
- (2) A partnership, unless all of the members thereof are individually qualified to obtain a license as provided by this chapter. Such license will be issued to the manager of the partnership; or
- (3) A corporation, limited liability company, trust, incorporated or unincorporated association, marital community, joint venture, or other entity or group of persons however organized unless all of the officers and directors thereof are individually qualified to obtain a license as provided by this chapter.

(Ord. 1846 § 2, 2018).

5.10.070 License applications.

(1) Adult Entertainment Establishment License. All applications for an adult entertainment establishment license must be submitted in the name of the person proposing to conduct such adult entertainment on the establishment and must be signed by such person and notarized or certified as true under penalty of perjury. All applications must be submitted on a form supplied by the finance department and must contain the following information:

- (a) The name, residence address, home telephone number, date and place of birth, and Social Security number of the applicant;
- (b) The business name, address and telephone number of the establishment;
- (c) The names, residence addresses, residence telephone numbers, Social Security numbers and dates of birth of any partners, members, corporate officers and directors;
- (d) The applicant must supply an acceptable set of fingerprints to undergo a fingerprint-based state and national background check;
- (e) Two two-inch by two-inch color passport-quality photographs of the applicant taken within six months of the date of application showing only the full face, and such information as the finance department, by rule, may require concerning the identity of corporate or other business or entity shareholders;
- (f) Addresses of the applicant for the five years immediately prior to the date of application;
- (g) Whether the applicant has had a license under this chapter or an adult entertainment-related license issued by another jurisdiction denied, suspended or revoked within the five years immediately preceding the date of the application; and, if so, the name and location of the adult entertainment business to which the denied, suspended or revoked license pertained, the date of the action, the jurisdiction that took such action, the reason for the action, and the status of any appeal of the action;
- (h) A description of the business, occupation, or employment of the applicant for the five years immediately preceding the date of application;
- (i) The name of at least one natural person whose name and mailing address, which shall be an address located within the state of Washington, will appear on the adult entertainment establishment license and who will receive notices from the finance department;
- (j) Whether the applicant has been the subject of a bail forfeiture, adverse finding or conviction with local, state or federal criminal law, other than a parking offense or traffic infraction, within

the five years preceding the date of the application; and, if so, the nature of the crime and the date, location and nature of the judicial action taken.

A failure to provide information required by this subsection will constitute an incomplete application, which will not be processed.

(2) Adult Entertainment Manager's or Adult Entertainer's License. All applications for an adult entertainment manager's license or adult entertainer's license must be signed by the applicant and notarized or certified as true under penalty of perjury. All applications must be submitted on a form supplied by the finance department and must include the following information:

(a) The applicant's name, home address, home telephone number, date and place of birth, Social Security number, proof of U.S. citizenship or of legal residency and the right to work in Washington State, and any stage names or nicknames used in entertaining;

(b) The name and address of each adult entertainment establishment at which the applicant intends to work as a manager or entertainer;

(c) The applicant must present documentation that he or she has attained the age of 18 years. Any of the following will be accepted as documentation of age:

(i) A motor vehicle operator's license issued by any state bearing the applicant's photograph and date of birth;

(ii) A state-issued identification card bearing the applicant's photograph and date of birth;

(iii) An official passport issued by the United States of America or another country;

(iv) An immigration card issued by the United States of America;

(v) Any other picture identification bearing the applicant's photograph and date of birth issued by a governmental agency; or

(vi) Two two-inch by two-inch color passport-quality photographs of the applicant taken within six months of the date of application showing only the full face, and such other form of identification as the finance department deems, by rule, to be acceptable;

(d) The applicant must provide an acceptable set of fingerprints to undergo a fingerprint-based state and national background check;

(e) Whether the applicant has had a license under this chapter or an adult entertainment-related license issued by another jurisdiction denied, suspended or revoked within the five years immediately preceding the application; and, if so, the name and location of the adult entertainment business to which the denied, suspended or revoked license pertained, the jurisdiction that took such action, the reason for the action, the date of the action and the status of any appeal of the action; and

(f) Whether the applicant has been the subject of a bail forfeiture, adverse finding or conviction in connection with local, state or federal criminal law, in this country or another country, other than a parking offense or traffic infraction, within the five years immediately preceding the date of the application; and if so, the nature of the crime and the date, location, and nature of the judicial action taken.

Failure to provide information required by this subsection will constitute an incomplete application which will not be processed.

(3) Duty to Supplement. Each applicant for, or holder of, a license issued under this chapter must modify or supplement application information on file with the finance department, within 10 days of a change, if the information changes materially from what is stated on the applicant's or holder's license application.

(4) Renewals. License renewals will be processed pursuant to OHMC 5.01.110 (2).

(Ord. 1846 § 2, 2018).

5.10.080 License – Applicant investigation.

- (1) The director must investigate an application for an adult entertainment establishment license by requesting criminal records and a confirmation of zoning compliance from appropriate city, state, and/or federal agencies.
- (2) The director must investigate an application for an adult entertainment manager's or adult entertainer's license by requesting criminal records from appropriate city, state, and/or federal agencies.

(Ord. 1846 § 2, 2018).

5.10.090 Issuance of licenses.

(1) Adult Entertainment Establishment License. Within 30 days of receipt by the finance department of a complete application for an adult entertainment establishment license, including all submittals and information required by this chapter, the director must issue or deny the adult entertainment establishment license. If the director fails to issue or deny the license within the 30-day period, the license is deemed issued on the last day of the 30-day period and the applicant may operate the adult entertainment establishment for which the license was sought, subject to all other provisions of this chapter.

(a) The director must deny the adult entertainment establishment license for any of the following reasons, and must notify the applicant in writing of the reasons for the denial and the opportunity to appeal if the director finds:

- (i) The application does not meet the requirements of this chapter;
- (ii) The applicant, his or her employee, agent, partner, director, officer, or manager has knowingly made any false, misleading or fraudulent omission or statement of material fact in the application for a license, or in any report or record required to be filed with the director;
- (iii) The applicant, and all employees, agents, partners, directors, officers, or managers of the applicant have not attained the age of 18 years, as provided by OHMC 5.10.060;
- (iv) The applicant or his or her partner, director, or officer is currently the subject of a final adult entertainment establishment license revocation order issued pursuant to this chapter which became final less than one year prior to the pending application.

(b) If the director denies an adult entertainment establishment license authorized by this chapter, and if the applicant files a timely notice of appeal pursuant to this chapter, the director must, upon receipt of a copy of such notice of appeal, immediately issue the applicant a temporary license which authorizes the applicant to operate the establishment to the same requirements as if the license had been granted, pending the final outcome of the appeal. A license applicant must pay the fee for an adult entertainment establishment license as set forth in OHMC 5.10.050 at the time the temporary license is issued. The holder of a temporary license is subject to all requirements, standards and penalty provisions of this chapter. Nothing in this section is intended to authorize activities that do not comply with other requirements of the Oak Harbor Municipal Code or other applicable law.

(2) Adult Entertainment Manager's and Adult Entertainer's Licenses. The director must issue or deny an adult entertainment manager's license or an adult entertainer's license by the close of the second business day after the complete application, which must include all submittals and information required by this chapter, is received.

(a) The director must deny an application for an adult entertainment manager's license or an adult entertainer's license for any of the following reasons, and must notify the applicant in writing of the grounds for the denial and the opportunity to appeal, if the director finds:

- (i) The applicant is less than 18 years old;
- (ii) The applicant has failed to provide any of the submittals or information required to be supplied according to this chapter;
- (iii) The applicant has knowingly made any false, misleading or fraudulent statement or omission of material fact in the application for a license; or
- (iv) The applicant is currently the subject of a final license suspension order issued pursuant to this chapter or is the subject of a license revocation order issued pursuant to this chapter which became final less than one year before the pending application.

(b) If the director denies an adult entertainment manager's license or an adult entertainer's license authorized by this chapter, and if the applicant files a timely notice of appeal pursuant to this chapter, the director must, upon receipt of a copy of such notice of appeal, immediately issue the applicant a temporary license which authorizes the applicant to perform as a manager or entertainer in the same manner and subject to the same requirements as if the license had been granted, pending the final outcome of the appeal. A license applicant must pay the fee for an adult entertainment manager's license or an adult entertainer's license as set forth in OHMC 5.10.050 at the time the temporary license is issued. The holder of a temporary license is subject to all requirements, standards and penalty provisions of this chapter. Nothing in this section is intended to authorize activities that do not comply with other requirements of the Oak Harbor Municipal Code or other applicable law.

(Ord. 1846 § 2, 2018).

5.10.100 Additional license requirements.

(1) **Duty to Supplement.** Applicants for a license under this chapter have a continuing duty to promptly supplement application information required in the event that said information changes in any way from what is stated in the application. The notice must include the information required to be provided for the original adult entertainment license. Failure to supplement the application on file with the director regarding such change in ownership or interest within 30 days from the date of such change is grounds for suspension or revocation of a license.

(2) **License Nontransferable.** No license or permit issued pursuant to this chapter is assignable or transferable. For purposes of this chapter, "assignable" or "transferable" means and includes any of the following:

- (a) Transfer with the sale, lease or sublease of a business; or
- (b) The transfer of securities which constitute a controlling interest in the cabaret, whether by sale, exchange or similar means; or
- (c) Transfer with the establishment of a trust, gift or other similar legal device which transfers the ownership or control of the cabaret.

(3) Every adult entertainer must post his or her license in his or her work area so it is readily available for inspection by city authorities responsible for enforcement of this chapter.

(4) Every person, corporation, partnership, limited liability company, trust, incorporated or unincorporated association, marital community, joint venture, or other entity or business group of persons however organized or association licensed under this chapter as an adult entertainment

establishment or adult entertainment manager must post such license in a conspicuous place and manner on the licensed premises.

(5) Each manager and/or operator is responsible for maintaining a daily log, on a form provided by the director, of all employees, entertainers, and managers working at the adult entertainment establishment each day. The log must list the employee's, entertainer's and manager's name as it is listed on his/her license, the license number, stage name, if any, the time he/she arrived at the adult entertainment establishment, and the time he/she left the adult entertainment establishment. Each employee, entertainer and manager must sign his/her name in the daily log each time he/she arrives and leaves the adult entertainment establishment.

(6) It is unlawful for any person to violate any of the provisions of this section.

(Ord. 1846 § 2, 2018).

5.10.110 License – Denial, revocation, or refusal to renew – Grounds.

(1) Licenses expire one year from the date of issue.

(2) A license may be denied, suspended, revoked, or not renewed for violation of any ordinance or law that regulates licensed activity in order to further the public interest in public health, safety, and welfare. A license may also be denied, suspended, revoked, or not renewed upon a finding that any applicant or license holder, or any owner, officer or agent thereof:

(a) Has omitted to disclose any material fact necessary to make a statement not misleading, in any application for the license; or

(b) Has charges pending against her/him or has been convicted of a crime or offense that directly relates to the activity for which the license is required, and the time elapsed since the date of conviction or release from jail or prison, whichever is more recent, is less than 10 years; or has been convicted of several crimes including at least one within the last 10 years; provided, however, that any license holder whose license is revoked because of charges pending against her/him may engage in the activity for which the license is required, pending a final decision on the charges; "crimes or offenses that directly relate to the activity for which the license is required" include Chapter 9A.44 RCW, Sex Offenses; Chapter 9A.88 RCW, Indecent Exposure – Prostitution; Chapter 9.68 RCW, Obscenity and Pornography; Chapter 9.68A RCW, Sexual Exploitation of Children; Chapter 69.50 RCW, Washington Uniform Controlled Substances Act; or violations of similar city ordinances; or

(c) Has been subject to an adverse finding in any judgment or order that directly relates to the activity for which the license is required, in any judicial or administrative proceeding in which fraud, deceit, coercion, breach of trust, unfair method of competition, unfair or deceptive trade act or practice, or assertion of unconscionable contractual provisions, or other similar act, practice, or conduct, on the part of the license holder applicant is proven, and the time elapsed since the judgment or order is less than 10 years; or

(d) Has violated or failed to comply with any applicable provisions of the OHMC or rule or regulation prescribed under this chapter; provided, that failure to obtain a license is not grounds for license denial; or

(e) Is in default in any payment of any fee or tax required under the Oak Harbor Municipal Code; or

(f) Has been subject to an adverse finding in any judgment or order, in any judicial or administrative proceeding for violation of any provision of a city ordinance or rule or regulation prescribed thereunder pertaining to fire, building, health, sanitation, zoning, weights and

measures, consumer protection, environmental protection, or any other ordinance or law and that is applicable to the licensed activity or licensed establishment; or

(g) Has been determined to have discriminated against any person because of race, color, age, sex, marital status, sexual orientation, gender identity, political ideology, creed, religion, ancestry, national origin, or the presence of any sensory, mental, or physical handicap, in the course of licensed activity, in violation of a city ordinance, law, rule or regulation prescribed thereunder; or

(h) Has violated or failed to comply with any final order of the director or hearing examiner; or

(i) Has failed to complete the application for a license as required by the OHMC; or

(j) Has failed to obtain a license or permit required by state or other law necessary to engage in the licensed activity; or

(k) Has failed to comply with Chapters 49.12 and 26.28 RCW, and rules and regulations promulgated pursuant thereto, regarding employment of minors; or

(l) Has permitted or authorized his/her agent to violate or fail to comply with any provision of the OHMC; or

(m) Has allowed the property at which the business is located to be determined by a court to be a chronic nuisance property as provided by law.

(Ord. 1846 § 2, 2018).

5.10.120 Additional grounds for suspension or revocation of establishment license.

As now or hereafter amended, an adult entertainment establishment license may be suspended or revoked upon a finding that:

(1) The license holder permitted or authorized his or her employees, agents, entertainers or managers to violate any of the provisions of this chapter; or

(2) The adult entertainment manager permitted or authorized any violation of any of the provisions of this chapter by any person;

(3) The license holder is convicted of any crime or offense involving prostitution, promoting prostitution, or transactions involving controlled substances (as that term is defined in Chapter 69.50 RCW) committed on the premises, or there has been a conviction of any of the license holder's servants, agents, or employees of any crime or offense involving prostitution, promoting prostitution or transactions involving controlled substances (as that term is defined in Chapter 69.50 RCW) committed on the license holder premises when the license holder knew or should have known of the violations committed by the license holder's servants, agents, or employees;

(4) The Oak Harbor fire department, Oak Harbor police department, Oak Harbor public works department or the Island County health department finds that any condition exists upon the premises of an adult entertainment establishment which constitutes a threat of immediate serious injury or damage to persons or property, said official may immediately suspend any license issued under this chapter, pending a hearing in accordance with this chapter. The official must issue a notice setting forth the basis for the action and the facts that constitute a threat of immediate serious injury or damage to persons or property, and informing the license holder and the director of the right to appeal the suspension to the city council under the same appeal provision set forth in this chapter; provided, however, that a suspension based on threat of immediate serious injury or damage may not be stayed during the pendency of the appeal.

(Ord. 1846 § 2, 2018).

5.10.130 Filing of application.

(1) Application for an adult entertainment establishment license, adult entertainment manager's license or adult entertainer's license must be made to the director, together with a receipt from the director or designee for the amount of the license fee in full. The license application must include all personal identification information requested by the city including date of birth and Social Security number. The application must also specify the business location upon which the adult entertainment establishment license, adult entertainment manager's license or adult entertainer's license will be conducted. The application fee includes the fee to cover the cost of a WATCH criminal background check, as provided in OHMC 3.64.100. Upon filing of the application and fees, the applicant(s) will be issued a temporary license which will expire upon the city council determination as set forth in this chapter, unless stayed by filing of a judicial appeal within 30 days of the city council decision.

(2) If the director denies an adult entertainment establishment license, adult entertainment manager's license or adult entertainer's license authorized by this chapter, and if the applicant files a timely notice of appeal pursuant to this chapter, the director must, upon receipt of a copy of such notice of appeal, immediately issue the applicant a temporary license which authorizes the applicant to continue as an adult entertainment establishment or to continue to perform as a manager or entertainer in the same manner and subject to the same requirements as if the license had been granted, pending the final outcome of the appeal. A license applicant must pay the fee for an adult entertainment establishment license, adult entertainment manager's license or adult entertainer's license as set forth in this chapter at the time the temporary license is issued. The holder of a temporary license is subject to all requirements, standards and penalty provisions of this chapter. Nothing in this section is intended to authorize activities that do not comply with other requirements of the Oak Harbor Municipal Code or other applicable law.

(Ord. 1846 § 2, 2018).

5.10.140 License conditions for adult entertainment establishment license.

(1) Upon receipt of an application for an adult entertainment establishment license, the director must transmit the application to the chief of police, who must immediately conduct a WATCH criminal background check of the applicant(s).

(2) The chief of police must also investigate the business location to determine whether there are any features of the establishment which pose noise, traffic or other similar public health or safety concerns for the operation of an adult entertainment establishment. The chief of police may request the assistance of other city departments, including the fire department and/or the building official, in assessing the impacts of the proposed business location if used as an adult entertainment establishment.

(3) The chief of police must report to the city council the result of his/her investigation and make recommendations concerning any conditions that should be placed upon the adult entertainment establishment license to reduce noise, traffic or other similar public health and safety impacts. Allowable conditions may include, but are not limited to, restrictions upon the hours of operation, structural improvements to the establishment to reduce noise impacts on neighboring uses, limitations on the numbers of patrons at any one time, landscaping or other screening, and requirements for traffic control. Periodic review of the efficacy of the imposed conditions may also be a condition of the adult entertainment establishment license.

(4) The city council must hold a public hearing with respect to the issuance of the adult entertainment establishment license. The applicant(s) will be entitled to respond to any findings of the police chief or other city officials and any proposed conditions on the adult entertainment establishment license. Unless the applicant is restricted from holding an adult entertainment establishment license pursuant to this

chapter, the city council will then determine whether the noise, traffic and other similar public health and safety impacts of the adult entertainment establishment require mitigation through specified conditions and, if so, shall impose such conditions on the license. In no event may the expressive content of any music, singing or dancing be the basis for denial of an adult entertainment establishment license or any conditions placed thereon.

(5) The decision of the city council will be the final decision of the city.

(Ord. 1846 § 2, 2018).

5.10.150 Violation of license conditions.

(1) A license holder who violates any license condition of his/her adult entertainment establishment license, adult entertainment manager's license or adult entertainer's license will be subject to civil penalties and to a license suspension or revocation as follows:

(a) First violation of a license condition: \$500.00 fine and/or a license suspension for 30 days per violation;

(b) Second violation of same license condition: \$750.00 fine and a license suspension for 90 days per violation;

(c) Third violation of same license condition: \$1,000 fine and revocation for a third violation within any 24-month period.

(2) Time spent serving a suspension will not be counted in determining the 24-month period referred to in this section.

(3) For an adult entertainment establishment license holder, a violation for which an adult entertainment establishment license may be suspended or revoked includes a violation of this chapter by a manager, employee, agent, entertainer or any other person, occurring on the premises when the adult entertainment establishment license holder knew of or should have known of the violation.

(4) For an adult entertainment manager's license, a violation for which an adult entertainment manager's license may be suspended or revoked includes a violation of this chapter by an adult entertainer or other person when the adult entertainment manager knew of or should have known of the violation.

(5) If a license holder is convicted of committing a crime or offenses involving one of the following occurring on the premises of an adult entertainment establishment, the license must be revoked:

(a) A violation of RCW 9A.88.030, 9A.88.070, 9A.88.080 or 9A.88.090;

(b) A violation of OHMC 6.05.270;

(c) A transaction involving a controlled substance as defined in Chapter 69.50 RCW or OHMC 6.05.470; or

(d) A violation of Chapter 9A.44 RCW, Sex Offenses; Chapter 9.68 RCW, Obscenity and Pornography; Chapter 9.68A RCW, Sexual Exploitation of Children; or OHMC 6.05.430.

(6) For an adult entertainment establishment license holder, a conviction for which the adult entertainment establishment license may be revoked includes the conviction of a manager, employee, agent or entertainer for a crime or offense listed in this section occurring on the premises of the adult entertainment establishment when the adult entertainment establishment license holder knew of or should have known of the crime or offense.

(7) For an adult entertainment manager's license, a conviction for which the adult entertainment manager's license may be revoked includes the conviction of an employee or entertainer for a crime or offense listed in this section occurring on the premises of the adult entertainment establishment when the adult entertainment manager license holder knew of or should have known of the crime or offense.

(8) A license holder whose license has been revoked is not eligible to reapply for any license authorized by this chapter for one year following the date the decision to revoke is final.

(9) On receipt of a notice of suspension or revocation, the license holder must promptly deliver the license to the director unless an appeal is pending under this chapter. Upon expiration of a license suspension, the director must return the license to the license holder.

(10) For purposes of this section, a person “should have known” of a crime or offense or violation of this chapter when the person has information which would lead a reasonable person to believe that a crime or offense or violation of this chapter was occurring or would occur.

(11) If the director determines that a condition exists on an adult entertainment establishment which constitutes a threat of immediate serious injury or damage to a person or property, the director may immediately suspend an adult entertainment establishment license. The director must issue a notice setting forth the basis for the action and the facts that constitute a threat of immediate serious injury or damage to a person or property.

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

(13) The fourth or greater violation of the same license condition constitutes a misdemeanor punishable by a fine not exceeding \$1,000, up to 90 days in jail, or both such fine and jail time.

(Ord. 1846 § 2, 2018).

5.10.160 Revision of adult entertainment establishment license conditions.

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

(2) In the event that such investigative report is filed, the license holder must be sent a copy of the complaint and/or report and provided at least 10 days’ notice of a hearing to determine whether the conditions of the license will be modified. At a public hearing before the city council, the license holder will have the opportunity to respond to the complaint or investigative report, and to present any evidence in opposition to a modification of conditions. The city council must base any change in conditions placed on the license upon noise, traffic or other similar public health and safety impacts. In no event may the expressive content of any music, singing or dancing be the basis for denial of an adult entertainment establishment license or any conditions placed thereon. The decision of the city council, after a public hearing on the proposed change in conditions, will be final.

(Ord. 1846 § 2, 2018).

5.10.170 Appeal to Court.

Appeal of any final decision of the city under this chapter shall be to the Island County superior court. The city’s decision shall be stayed, upon appeal filed within 30 days of the city council decision, pending judicial review. (Ord. 1846 § 2, 2018).

5.10.180 Continuation of business while complaint hearing decision pending.

(1) Except in the case of summary suspension or revocation, whenever a timely request for hearing on a complaint is filed, a license holder or an applicant for license renewal may engage in the activity for

which the license is required, pending decision by the city council. An applicant not licensed in the preceding license year may not engage in the activity for which the license is required pending decision by the city council. Nothing in this section is intended to authorize activities that do not comply with other requirements of the Oak Harbor Municipal Code or other applicable law.

(2) If the director denies an adult entertainment establishment license governed by this chapter, and if the license applicant files a notice of appeal with the city council, the director must immediately issue the license applicant a temporary license. The temporary license authorizes the license applicant to operate an adult entertainment establishment or perform as a manager or entertainer, in the same manner as if the license had been granted, pending the city council's decision.

(a) If the city council affirms the director's license denial, the temporary license will remain in effect pending a motion for reconsideration before the city council and, in addition:

(i) If the license applicant does not timely file for judicial review, then only until the expiration of the time allowed to file an application for a writ of review under Chapter 7.16 RCW; or

(ii) If the license applicant does timely file an application for a writ of review, then only until the court either issues a writ or denies the writ application.

(b) If the city council dismisses the adult entertainment establishment license denial with prejudice, the director must immediately issue an adult entertainment license.

(c) If the city council dismisses the adult entertainment establishment license denial without prejudice, the temporary license will remain in effect for five additional business days, at the end of which time the director must either reissue a denial or issue an adult entertainment establishment license. If the director reissues the denial, then the temporary license will continue in effect according to the procedures set forth in subsection (2) of this section.

(d) If a license applicant is issued a temporary license, the license applicant must pay the fee charged for an adult entertainment establishment license under this chapter.

(Ord. 1846 § 2, 2018).

5.10.200 Physical layout of premises.

(1) Performance Area at Adult Entertainment Establishments. Every place offering adult entertainment shall be physically arranged in such a manner that the performance area where adult entertainment is provided shall be a stage or platform at least 18 inches in elevation above the level of the patron seating areas, and shall be separated by a distance of at least 10 feet from all areas of the premises to which patrons have access. The stage and the entire interior portion of cubicles, rooms, or stalls wherein adult entertainment is provided must be visible from the common areas of the premises and at least one manager's station. Visibility shall not be blocked or obstructed by doors, curtains, drapes, or any other obstruction whatsoever.

(2) Picture Machines Must Be Visible and Publicly Accessible. Every booth, cubicle, or partition utilized or maintained at a picture machine location at the area from which the screen of any picture machine is to be viewed shall be arranged so that any person viewing such picture machine screen shall be visible from the waist down to the floor without obstruction by the viewing booth, cubicle, or partition. The endorsement holder shall not permit any doors to any publicly accessible area on the premises to be locked during business hours. Every room or area on such premises which is open to the public shall be readily accessible at all times for inspection by any public officer charged with the enforcement of the provisions of applicable city ordinances or regulations. The license holder must maintain sufficient illumination generally distributed in all parts of the premises at all times when the

picture machine area is open or when the public is permitted to enter or remain on the picture machine premises.

(3) No activity or entertainment occurring on the premises shall be visible at any time from outside the facility or from any other public place.

(4) No alteration in the configuration or location of a manager's station may be made without the prior approval of the city.

(5) It is the duty of the license holder of the premises to ensure that at least one licensed manager is on duty and situated in each manager's station at all times that any patron is present inside the premises.

(Ord. 1846 § 2, 2018).

5.10.210 Permission to inspect.

An adult entertainment establishment license holder and its manager must permit the director and the personnel from the Oak Harbor police department to conduct announced inspections, during hours that the adult entertainment establishment is open to the public, of all exterior and interior areas of the premises open to and used by members of the public and of all books and records required to be kept under this chapter. The purpose of such inspections is to determine whether the premises are being operated in compliance with the provisions of this chapter. (Ord. 1846 § 2, 2018).

5.10.220 Public nuisance.

An adult entertainment premises operated, conducted or maintained in violation of laws of the state of Washington shall be, and the same is, declared to be unlawful and a public nuisance. The city attorney may, in addition to, or in lieu of, any other remedies set forth in this chapter, commence an action to enjoin, remove or abate such nuisance and may take such other steps and apply to such court or courts as may have jurisdiction to grant such relief as will abate or remove such public nuisance, and restrain and enjoin any person from operating, conducting or maintaining an adult entertainment premises contrary to the provisions of this chapter. (Ord. 1846 § 2, 2018).

5.10.230 Nonpublic areas.

No member of the public shall be permitted to enter into any of the nonpublic portions of the adult entertainment establishment, which shall include, but are not limited to: the dressing rooms of entertainers or other rooms provided for the benefit of employees, and the kitchen and storage areas; except that persons delivering goods and materials, food and beverages or performing maintenance or repairs to the premises or equipment on the premises may be permitted into nonpublic areas to the extent required to perform their job duties. (Ord. 1846 § 2, 2018).

5.10.240 Additional requirements for adult entertainment establishments.

At any adult entertainment establishment, the following are required:

(1) Admission must be restricted to persons of the age of 18 years or older.

(2) No adult entertainment shall be visible outside the adult entertainment establishment, nor shall any photograph, drawing, sketch, or other pictorial or graphic representation, which includes lewd matter as defined in Chapter 7.48A RCW, or display of sexually explicit material in violation of RCW 9.68.130.

(3) Sufficient lighting shall be provided in and equally distributed in and about the parts of the premises which are open to patrons so that all objects are plainly visible at all times. A minimum lighting level of 30 lux horizontal measured at 30 inches from the floor on 10-foot centers is hereby established for all areas of the adult entertainment establishment where members of the public are admitted. It shall be the duty of the license holder and the manager to ensure that the illumination described above is maintained at all times that any patron is present in the premises.

(4) No viewing room may be occupied by more than one person at a time.

(5) No license holder may allow openings of any kind to exist between viewing rooms or booths.

(6) No person may make or attempt to make an opening of any kind between viewing booths or rooms. The manager must, during each business day, regularly inspect the walls between the viewing booths to determine if any openings or holes exist.

(7) The license holder must cause all wall coverings, floor coverings, and ceiling coverings in viewing booths to be non-porous, easily cleanable surfaces with no rugs or carpeting. (Ord. 1846 § 2, 2018).

5.10.250 List of entertainments – Fees.Share

There shall be posted and conspicuously displayed in the common areas of each place offering adult entertainment a list of any and all entertainment provided on the premises. Such list shall further indicate the specific fee or charge in dollar amounts for each entertainment listed. (Ord. 1846 § 2, 2018).

5.10.260 Notice to customers.Share

A sign shall be conspicuously displayed in a common area of the premises which shall read as follows:

This adult entertainment establishment is regulated by the city. Entertainers are:

- (1) Not permitted to engage in any type of sexual conduct;
- (2) Not permitted to appear semi-nude or nude, except on stage;
- (3) Not permitted to accept tips or gratuities in advance of their performance; and
- (4) Not permitted to accept tips or gratuities directly from patrons while performing upon any stage area. (Ord. 1846 § 2, 2018).

5.10.270 Activities not prohibited.Share

(1) This chapter shall not be construed to prohibit:

- (a) Plays, operas, musicals, or other dramatic works which are not obscene; or
- (b) Classes, seminars, and lectures held for serious scientific or educational purposes that are not obscene; or
- (c) Exhibitions, performances or dances which are not obscene.

(2) Whether or not activity is obscene shall be judged by consideration of the following factors:

- (a) Whether the average person, applying contemporary community standards, would find that the activity taken as a whole appeals to a prurient interest in sex;
- (b) Whether the activity depicts or describes in a patently offensive way, as measured against community standards, sexual conduct as described in RCW 7.48A.010(2)(b);
- (c) Whether the activity taken as a whole lacks serious literary, artistic, political, or scientific value. (Ord. 1846 § 2, 2018).

5.10.280 Manager on premises.

- (1) A license holder manager must be on duty at an adult entertainment establishment during the adult entertainment establishment's hours of operation. The name of the manager on duty must be prominently posted during business hours.
- (2) Any adult entertainment establishment found to be operating without a manager on duty will be immediately closed until a license holder manager arrives for duty at the adult entertainment establishment pursuant to subsection (1) of this section.
- (3) The manager must verify that each entertainer performing while the manager is on duty possesses a current and valid entertainer's license, as required by this chapter. The manager must verify that such adult entertainment license is posted in the manner required by this chapter.
- (4) A manager may not perform as an entertainer on days during which he or she acts as a manager on duty at an adult entertainment establishment.

(Ord. 1846 § 2, 2018).

5.10.290 Hours of operation.

It is unlawful for any adult entertainment establishment to be conducted, operated, or otherwise open to the public between the hours of 2:00 a.m. and 10:00 a.m. (Ord. 1846 § 2, 2018).

5.10.300 Persons under 18 years of age prohibited.

- (1) It is unlawful for any person under the age of 18 years to be in or upon any premises for which an adult entertainment establishment license is required. Only the following types of identification will be accepted as proof of age:
 - (a) A motor vehicle operator's license issued by any state, bearing the applicant's photograph and date of birth;
 - (b) A state-issued identification card bearing the applicant's photograph and date of birth;
 - (c) An official passport issued by the United States of America;
 - (d) An immigration card issued by the United States of America;
 - (e) Any other picture identification bearing the applicant's photograph and date of birth issued by a governmental agency.
- (2) It is unlawful for any owner, operator, manager, or other person in charge of an establishment for which an adult entertainment establishment license is required, to knowingly permit or allow any person under the age of 18 years to be in or upon such premises. (Ord. 1846 § 2, 2018).

5.10.310 Locking entrance unlawful.

It is unlawful for any person or persons in charge of or having the management of, or being in the employment of, or a member of or guest in, any adult entertainment establishment, either incorporated or unincorporated, to lock, bar, or in any manner obstruct, or to suffer or permit to be locked, barred or in any manner obstructed, the entrance or entrances leading to any room or place in such adult entertainment establishment open to a member or members of the public, at any time when any person is present therein with one or more persons. (Ord. 1846 § 2, 2018).

5.10.320 Alarm system at entrance – Unlawful.

It is unlawful for any person to construct or cause to be constructed, or to suffer or permit to continue or be maintained, any alarm or system of alarms in connection with the entrance or entrances leading to any room or place in any adult entertainment establishment. (Ord. 1846 § 2, 2018).

5.10.330 Warning of approach of police – Lookouts.

It is unlawful for the owner or any person having the management or control or charge of, or in the employment of the owner of, any place in the city of Oak Harbor, or where an adult entertainment establishment is maintained, to employ, station, post, keep, maintain, suffer or permit any person or persons at or near the entrance or entrances thereto, or in any place so as to command a view of the approach thereto, for the purpose or with the object of giving any advice, information or warning in any manner whatsoever that police officers are approaching, are about to enter, are entering, or have entered such place. (Ord. 1846 § 2, 2018).

5.10.340 Warning that police are approaching – Unlawful.

It is unlawful for any person to give any advice, information or warning, in any manner whatsoever, that police officers are approaching, are about to enter, are entering or have entered, any place in the adult entertainment establishment. (Ord. 1846 § 2, 2018).

5.10.350 Presence in place where warning given.

It shall be unlawful for any person to be with one or more other persons in any adult entertainment establishment, when, with the knowledge of such person at such time any person is employed, stationed, kept, maintained, suffered or permitted at or near the entrance or entrances thereto or in any place so as to command a view of the approach thereto, for the purpose or with the object of giving any advice, information or warning in any manner whatsoever that police officers are approaching, or are about to enter, are entering, or have entered, such place. (Ord. 1846 § 2, 2018).

5.10.360 Locking rooms.

It shall be unlawful for the owner of, or any agent or other person or persons having the charge or rental of, any premises occupied by any adult entertainment establishment, to knowingly suffer or permit to be locked, barred, or in any manner obstructed, the entrance or entrances leading to any room or place in such adult entertainment establishment. (Ord. 1846 § 2, 2018).

5.10.370 Presence in locked rooms.

It shall be unlawful for any person to be with one or more other persons in any room or place in any adult entertainment establishment at any time when the entrance or entrances leading thereto are locked, barred or obstructed or in any manner equipped with any alarm or system of alarms. (Ord. 1846 § 2, 2018).

5.10.380 Permitting alarm system unlawful.

It shall be unlawful for the owner of, or any agent or other person or persons having the charge or rental of, any premises occupied by any adult entertainment establishment to knowingly suffer or permit to be constructed, or to be continued or maintained, any alarm or system of alarms in connection with the entrance or entrances leading to any room or place in such adult entertainment establishment. (Ord. 1846 § 2, 2018).

5.10.390 Exemption from chapter.

No person holding an adult entertainment establishment license, and no manager or employee of any such person, and no entertainer, may allow alcohol on the premises except for those adult entertainment establishments properly licensed therefore by the Washington State Liquor and Cannabis Board.

Any license issued pursuant to this chapter is subject to any applicable rules or regulations of the Washington State Liquor and Cannabis Board relating to the sale of intoxicating liquor. In the event of a conflict between the provisions of this chapter and the applicable rules and regulations of the Washington State Liquor and Cannabis Board, the rules and regulations of the Washington State Liquor and Cannabis Board shall control.

(Ord. 1846 § 2, 2018).

Chapter 5.15
PAWNBROKER LICENSE

Sections:

- 5.15.010 Pawnbroker, secondhand dealer defined.**
- 5.15.020 Definitions.**
- 5.15.030 Business license and regulatory license required.**
- 5.15.040 Application – Contents.**
- 5.15.050 Application fee and renewals.**
- 5.15.060 Police investigation.**
- 5.15.070 Issuance or denial.**
- 5.15.080 Records required.**
- 5.15.090 Pledger information.**
- 5.15.100 Daily report to police chief.**
- 5.15.110 Records available for inspection.**
- 5.15.120 License suspension or revocation.**
- 5.15.130 Appeals.**
- 5.15.140 Enforcement.**
- 5.15.150 Violations.**

5.15.010 Pawnbroker, secondhand dealer defined.Share

For the purpose of this chapter, the term “pawnbrokers and secondhand dealers” means every person who takes or receives by way of pledge or pawn goods, wares, merchandise, or any kind of personal property thereon, or who loans money on deposit of personal property, or anyone who, as a business, primarily engages in the purchase or sale of secondhand goods, or who keeps any store, shop, room or place where secondhand goods of any kind or description are bought, sold, bartered, pledged or pawned. This shall not include used car dealers. (Ord. 1847 § 2, 2018).

5.15.020 Definitions.

For the purpose of this chapter, the following definitions shall apply:

- (1) “Director” shall mean the Oak Harbor finance director or designee. (Ord. 1847 § 2, 2018).

5.15.030 Business license and regulatory license required.

Every person, firm or corporation, who is termed a pawnbroker, as used in this chapter, must first obtain a business license issued under Chapter 5.01 OHMC, and a pawnbroker license as required by this chapter to do so. (Ord. 1847 § 2, 2018).

5.15.040 Application – Contents.

In order to obtain a pawnbroker license, an applicant must file a written application with the finance department containing the following:

- (1) Identification of the business, as for issuance of a business license under Chapter 5.01 OHMC;
- (2) Bond in the amount of \$10,000; and
- (3) Any other information as required by the Oak Harbor police department. (Ord. 1847 § 2, 2018).

5.15.050 Application fee and renewals.

(1) Application. Upon submission of the application, the applicant must pay the nonrefundable application fee in full per the master fee schedule adopted by resolution of the city council.

- (a) If the applicant is approved, the application fee serves as the first-year license fee.
- (b) The application fee includes the cost of local records and WATCH criminal background checks.
- (c) Incomplete applications will not be accepted.

(2) Annual Renewals.

- (a) Process. Pawnbroker license renewals will be processed pursuant to OHMC 5.01.110 (2).
- (b) Fees. Pawnbroker license renewal fees per the master fee schedule adopted by resolution of the city council must be paid in full.
- (c) Informational Changes. The pawnbroker license holder must submit any changes of the information required per OHMC 5.15.030 to the city simultaneously with the license renewal fee. (Ord. 1847 § 2, 2018).

5.15.060 Police investigation.

- (1) Upon receipt of a completed application for a pawnbroker license, a copy of the original will be referred to the police department for investigation of the applicant.
- (2) The investigation must include review of any felony, misdemeanor, and traffic convictions which have occurred in the last 10 years by conducting local records and Washington Access to Criminal History (WATCH) background checks. The investigation must also list any discrepancies which may prevent the approval of the applicant including, but not limited to, unsatisfactory criminal history of felony, misdemeanor, or traffic convictions that are directly related to fitness for a pawnbroker license.
- (3) The applicant must show that he or she has and will maintain a permanent place of business in the city of Oak Harbor, and that the applicant understands the rules and regulations pertaining to the pawnbroker business. This includes the place or places where identifying marks are on items of property. Prior suspension or revocation of a license may be grounds for refusal of a pawnbroker license.
- (4) The police department must forward its findings to the director as soon as reasonably possible. (Ord. 1847 § 2, 2018).

5.15.070 Issuance or denial.

The director must issue or deny the license based on the review of the police department findings. In the event of a denial, the director must notify the applicant of the denial and the procedures for appeal pursuant to Chapter 1.24 OHMC. (Ord. 1847 § 2, 2018).

5.15.080 Records required.

(1) It shall be the duty of every pawnbroker to maintain at the place of business books or other permanent records. Records shall be legibly written in the English language at the time of any loan, purchase or sale, a record thereof containing:

- (a) The date of the transaction;
- (b) The name, printed and written, age, address of the person with whom the transaction was made;
- (c) Driver's license number or other appropriate identification;
- (d) The complete description of the property bought or received in pledge shall be entered legibly in the record by the pawnbroker; the complete description of the property bought or received in pledge which, in the case of watches, shall contain the name of the maker and the number of both the works and the case; and in the case of jewelry, a description of all letters and marks inscribed thereon, type of stone, and color of items, such as white gold, type of setting, etc.; and
- (e) The number of any pawn tickets issued therefor.

(2) It is unlawful for any pawnbroker and every clerk, agent or employee of such pawnbroker to fail, neglect or refuse to make entry of any material matter in his or her records, as required by this section, or to make any false entry therein, or to obliterate or remove from his or her place of business such record. (Ord. 1847 § 2, 2018).

5.15.090 Pledger information.

Anyone who pledges, sells or consigns any property to or with a pawnbroker must sign the records required to be kept by such dealer with his or her true name and must include the license holder's correct residence address. (Ord. 1847 § 2, 2018).

5.15.100 Daily report to police chief.

It shall be the duty of every pawnbroker, before 12:00 noon of every business day, to report to the chief of police on a form to be furnished by the police department, a full, true and correct transcript of the record of all transactions made the preceding day. (Ord. 1847 § 2, 2018).

5.15.110 Records available for inspection.

All books and other records of any pawnbroker, relating to purchase, pledge, exchange, barter or receipt of any goods, wares, merchandise or other articles or things of value, shall at all times be open for inspection by the chief of police, or any law enforcement detailed for that purpose, and all articles or things received, purchased or left in pledge with the pawnbroker shall at all times be open for inspection. (Ord. 1847 § 2, 2018).

5.15.120 License suspension or revocation.

A pawnbroker license may be revoked by the finance department, upon recommendation of the police department, subject to appeal pursuant to OHMC 5.15.130. Pawnbroker licenses may only be revoked for good cause including, but not limited to:

- (1) Fraud, misrepresentation, or false statement contained in the application for license;

- (2) Any felony or misdemeanor conviction directly related to the fitness of permittee to carry on the business of pawnbroker;
- (3) Any violations of the provisions of this chapter; or
- (4) Conviction of a felony, gross misdemeanor, assault or sexual offense as defined under state law or an offense which is similar to those defined in Chapter 9A.44 RCW.

(Ord. 1847 § 2, 2018).

5.15.130 Appeals.

Appeal from the decision of the finance director shall be in accordance with the provisions of Chapter 1.24 OHMC as now in effect or hereafter amended. (Ord. 1847 § 2, 2018).

5.15.140 Enforcement.

The chief of police shall have the administrative authority to implement and enforce this chapter. The chief of police or finance department, or both, may adopt rules and regulations for its administration not inconsistent with this chapter. (Ord. 1847 § 2, 2018).

5.15.150 Violations.

Violations of this chapter shall constitute a civil offense and shall be governed by the procedures of Chapter 1.28 OHMC. (Ord. 1847 § 2, 2018).

Chapter 5.21
TAXICAB AND FOR HIRE VEHICLE LICENSE

Sections:

- 5.21.010 Purpose – Immunity.**
- 5.21.020 Definitions.**
- 5.21.030 Business license required.**
- 5.21.040 Taxicab and for hire vehicle endorsement required.**
- 5.21.050 Endorsement requirements and fitness standards.**
- 5.21.060 Insurance required.**
- 5.21.070 Application – Contents.**
- 5.21.080 Application fees and renewals.**
- 5.21.090 Police investigation.**
- 5.21.100 Issuance or denial.**
- 5.21.110 Subsequent taxicab driver application, fees, investigation, and results.**
- 5.21.120 Revocation.**
- 5.21.130 Appeals.**
- 5.21.140 Enforcement.**
- 5.21.150 Violations.**

5.21.010 Purpose – Immunity.

It is expressly the purpose of this chapter to provide for and promote the safety and welfare of the general public. Nothing contained in this chapter is intended nor shall be construed to create any liability on the part of the city or its employees for any injury or damage resulting from the failure of the licensee to comply with the provisions of this chapter, or by reason or in consequence of any act or omission in connection with the implementation or enforcement of this chapter on the part of the city or its employees. (Ord. 1848 § 2, 2018).

5.21.020 Definitions.

For the purpose of this chapter, the following definitions shall apply:

- (1) “Compensation” means any payment received by the driver of a vehicle for transportation of passengers, including, but not limited to, fares, salary, wages, gratuities, or donations.
- (2) “Director” means the Oak Harbor finance director or designee.
- (3) “Driver” means a person who drives a taxicab or for hire vehicle being used to convey passengers for compensation.
- (4) “For hire vehicle” means a vehicle used for the transportation of passengers for compensation, except auto stages, school buses operating exclusively under a contract to a school district, ride sharing vehicles, transportation network company vehicles, and public transportation benefit area vehicles operated pursuant to Chapter 36.57A RCW.

- (5) "Owner" means the legal entity, person, firm, association or corporation owning, managing or otherwise carrying on a business of conveying passengers for hire in taxicabs or for hire vehicles.
- (6) "Taxicab" means a taxicab or for hire vehicle operated to a destination determined by the passenger, with the fare based upon the amount recorded and indicated on a taximeter.
- (7) "Taxicab driver" means an individual who is the endorsement holder of the taxicab or for hire vehicle approved pursuant to this chapter, or his/her employee, regardless of the person's internal revenue status for income tax purposes.
- (8) "Taximeter" means a permanently mounted instrument or device by which the charge for hire of a taxicab is calculated either for distance traveled by the vehicle, or for waiting, or for both, and upon which such charges shall be indicated by means of dollars and cents. (Ord. 1848 § 2, 2018).

5.21.030 Business license required.

It is unlawful for an owner to engage in or carry on any taxicab or for hire vehicle business without first procuring a business license as provided in Chapter 5.01 OHMC. Taxicab drivers are permitted to operate in the city under their affiliated license holder's business license issued under this chapter. Business licenses are not issued to taxicab drivers affiliated with an individual or entity licensed under this chapter.

(Ord. 1848 § 2, 2018).

5.21.040 Taxicab and for hire vehicle license required.

It is a violation of this chapter for any person to operate a taxicab or for hire vehicle in the city of Oak Harbor without a current and valid city of Oak Harbor taxicab and for hire vehicle license.

(Ord. 1848 § 2, 2018).

5.21.050 License requirements and fitness standards.

All license applicants must meet the following minimum conditions in subsections (1) through (3) of this section.

- (1) Maintain the following:
 - (a) Current state vehicle license and registration;
 - (b) State-issued business license endorsed for the for hire business permit, for hire vehicle certificate, and taxi meter; and
 - (c) Insurance requirements as per Chapter 46.72 RCW, and for all vehicles providing service under this chapter as required by OHMC 5.21.060.
- (2) Confirm under penalty of perjury of the laws of the state of Washington that each vehicle providing service pursuant to this chapter complies with the following:
 - (a) Is in compliance with Chapter 46.72 RCW, Title 204 WAC, and Chapter 308-89 WAC, and Oak Harbor municipal vehicle ordinances at all times;
 - (b) Is equipped with an operable and accurate taximeter; and
 - (c) Displays a schedule of fare rates so it can be clearly read by passengers.
- (3) Fitness Standards. No person may receive a taxicab or for hire vehicle license if the person has been convicted of assault within the last 10 years, a felony in the last seven years, a gross misdemeanor in the

last five years, or who has ever been convicted of sexual offenses as defined under state law or an offense which is similar to those as defined in Chapter 9A.44 RCW.

(Ord. 1848 § 2, 2018).

5.21.060 Insurance required.

(1) Prior to the issuance of any taxicab or for hire vehicle license, every applicant must file with the finance department the policy or policies of public liability insurance, approved as to sufficiency by the finance department, issued by an insurance company or companies authorized to do business in the state of Washington, providing indemnity for or protection to the city, as well as providing public liability insurance coverage for each and every taxicab or for hire vehicle owned, operated and/or leased by the applicant, for injury to or death of persons, passengers, or otherwise, in accidents resulting from any cause by which the owner of the vehicle would be liable on account of any liability imposed upon him by law, regardless of whether the taxicab or for hire vehicle was being driven by the owner or his agent. Such insurance shall be in the sum of \$100,000 for the injury or death of one person, or \$300,000 for the injury or death of more than one person in any one accident, and \$50,000 for property damage.

(2) Every such policy of insurance shall continue to the full amount thereof notwithstanding any recovery thereon and shall provide that the liability of the insurer shall not be affected by the insolvency or bankruptcy of the insured. Each insurance policy required under this section shall extend for the period covered by the license applied for and the insurer shall be obliged to give not less than 10 days' written notice to the finance department in the event of change or cancellation.

(Ord. 1848 § 2, 2018).

5.21.070 Application – Contents.

Applicants for a taxicab or for hire vehicle license must file a complete application with the finance department and shall include the following:

- (1) Identification of the business, as for issuance of a business license under Chapter 5.01 OHMC;
- (2) List of all drivers operating vehicles controlled by the applicant;
- (3) Copies of all required state for hire vehicle licensing requirement documentation; and
- (4) Confirmation of compliance with fitness standards in OHMC 5.21.050.

(Ord. 1848 § 2, 2018).

5.21.080 Application fees and renewals.

(1) Application. Upon submission of the application, the applicant must pay the nonrefundable application fee in full per the master fee schedule adopted by resolution of the city council.

- (a) If the applicant is approved, the application fee serves as the first-year license fee.
- (b) The application fee includes the cost of local records and WATCH criminal background checks.
- (c) Incomplete applications will not be accepted.

(2) Annual Renewals.

- (a) Process. Taxicab or for hire vehicle license renewals will be processed pursuant to OHMC 5.01.110 (2).

(b) Fees. Taxicab or for hire vehicle license renewal fees must be paid in full per the master fee schedule adopted by resolution of the city council.

(c) Other Requirements. Any other information or documentation as required by the Oak Harbor police department.

(Ord. 1848 § 2, 2018).

5.21.090 Police investigation.

(1) Upon receipt of a completed application for a taxicab or for hire vehicle license, a copy of the original must be referred to the police department for investigation of the applicant.

(2) The investigation must include review of any felony, misdemeanor, and traffic convictions which have occurred in the last 10 years by conducting local records and Washington Access to Criminal History (WATCH) background checks. The investigation must also list any discrepancies which may prevent the approval of the taxicab applicant, including but not limited to unsatisfactory criminal history of felony, misdemeanor, or traffic convictions that are directly related to fitness for a taxicab or for hire vehicle license.

(3) The police department must forward its findings to the director as soon as reasonably possible.

(Ord. 1848 § 2, 2018).

5.21.100 Issuance or denial.

The director shall issue or deny the endorsement based on the review of the police department findings. In the event of a denial, the director shall notify the applicant of the denial and the procedures for appeal pursuant to Chapter 1.24 OHMC.

(Ord. 1848 § 2, 2018).

5.21.110 Subsequent taxicab driver application, fees, investigation, and results.

(1) Taxicab Driver Application and Fees. When an existing taxicab or for hire vehicle license holder hires a taxicab driver to provide services under this chapter, the proposed taxicab driver must submit a complete taxicab driver application to the finance department. The application must include the following:

(a) Applicant's name, date of birth, and social security number;

(b) Driver license number;

(c) Contact phone number;

(d) All aliases used, including maiden name(s), if applicable;

(e) Associated taxicab or for hire vehicle license holder and company name; and

(f) Pay the nonrefundable application fees to cover administrative costs and the WATCH and local background checks at the time of the application submittal. These fees are per the master fee schedule adopted by resolution of the city council.

(2) Investigation. The finance department will forward the completed taxi driver application to the police department and the police department will conduct a review of the application. The review will include a local records and Washington Access to Criminal History (WATCH) background check under all names and aliases provided on the application. Upon completion of the investigation of the applicant, the police department must forward its findings to the director. The police department findings must

include any discrepancies which may prevent the approval of the applicant including, but not limited to, unsatisfactory criminal history of felony, misdemeanor, or traffic convictions that are directly related to fitness for a taxicab or for hire vehicle license per OHMC 5.21.050(3).

(3) Approval. The director has the authority to approve or deny the driver application. If the application is denied, the director must provide an explanation of such denial. Approval of any taxicab driver application under this section does not vest any license privileges provided under this chapter to any taxicab driver hired by the license holder.

(4) Results Sent to the Taxicab Driver Applicant. The director will send a copy of the police department findings to the applicant and approve or deny the application. It is the responsibility of the license holder to obtain the results from the taxicab driver.

(5) License Holder Obligations. The license holder is obligated to ensure all employees providing services subject to this chapter maintain the same fitness to drive a taxicab pursuant to the standards in OHMC 5.21.050(3). A knowing violation of this subsection may result in revocation of the taxicab or for hire vehicle license.

(Ord. 1848 § 2, 2018).

5.21.120 Revocation.

A taxicab or for hire vehicle license may be revoked by the director, subject to appeal. Licenses may only be revoked for good cause including, but not limited to:

- (1) Fraud, misrepresentation, or false statement contained in the application for license;
- (2) Any felony, misdemeanor or traffic conviction directly related to fitness to drive a taxicab;
- (3) Conviction of a felony, gross misdemeanor, assault or sexual offense as defined under state law or an offense which is similar to those defined in Chapter 9A.44 RCW; or
- (4) Any violations of the provisions of this chapter.

(Ord. 1848 § 2, 2018).

5.21.130 Appeals.

Any person aggrieved by the denial or revocation of a taxicab and for hire vehicle license may file a notice of appeal with the city administrator. The appeal under this section will be governed by Chapter 1.24 OHMC.

(Ord. 1848 § 2, 2018).

5.21.140 Enforcement.

The director shall have the administrative authority to implement and enforce this chapter. The director may adopt rules and regulations for its administration not inconsistent with this chapter. This provision shall not be construed to abrogate or limit the jurisdiction of the Oak Harbor police department to enforce any provisions of this chapter or of any other city ordinance relating to motor vehicles or the operation of taxicabs or for hire vehicles. (Ord. 1848 § 2, 2018).

5.21.150 Violations.

Violations of this chapter shall constitute a Class 1 civil infraction and shall be governed by the procedures of Chapter 1.28 OHMC. (Ord. 1848 § 2, 2018).

Chapter 5.25

TRANSPORTATION NETWORK COMPANY LICENSE

Sections:

- 5.25.010 Purpose.**
- 5.25.020 Definitions.**
- 5.25.030 Business license required.**
- 5.25.040 TNC license required.**
- 5.25.050 TNC license requirements.**
- 5.25.060 TNC driver requirements.**
- 5.25.070 TNC requirements.**
- 5.25.080 Vehicle inspection and maintenance.**
- 5.25.090 Insurance requirements.**
- 5.25.100 TNC license application – Contents.**
- 5.25.110 Application fees and renewals.**
- 5.25.120 Registered agent required.**
- 5.25.130 Audit.**
- 5.25.140 Operational requirements.**
- 5.25.150 Issuance or denial.**
- 5.25.160 Revocation, suspension, or denial of TNC license.**
- 5.25.170 Appeals.**
- 5.25.180 Enforcement.**
- 5.25.190 Violations.**

5.25.010 Purpose.

The purpose of this chapter is to provide for and promote the safety and welfare of the general public. Nothing contained in this chapter is intended nor shall be construed to create any liability on the part of the city or its employees for any injury or damage resulting from the failure of the endorsement holder to comply with the provisions of this chapter, or by reason or in consequence of any act or omission in connection with the implementation or enforcement of this chapter by the city or its employees. (Ord. 1849 § 1, 2018).

5.25.020 Definitions.

For the purpose of this chapter, the following definitions apply:

- (1) “Digital network” means an internet-enabled platform or application used to connect passengers with TNC drivers.
- (2) “Director” means the city of Oak Harbor finance director or designee.

- (3) “Operate a TNC in the city of Oak Harbor” means a TNC uses its digital network to connect a TNC driver to a passenger for a trip originating or terminating in the city of Oak Harbor.
- (4) “Operate as a TNC driver in the city of Oak Harbor” means a TNC driver accepts a trip request over a TNC’s digital network that originates or terminates in the city of Oak Harbor.
- (5) “TNC driver” means an individual who uses a personal vehicle to provide transportation services arranged through a TNC’s digital network.
- (6) “TNC vehicle” means a personal vehicle used by a TNC driver to provide transportation services arranged through a TNC’s digital network.
- (7) “Transportation network company” or “TNC” means an entity that uses a digital network to connect passengers to TNC drivers who use personal vehicles to transport passengers for compensation between geographical points chosen by the passenger. (Ord. 1849 § 1, 2018).

5.25.030 Business license required.

- (1) It is a violation of this chapter for any TNC to operate in the city of Oak Harbor without a current and valid city of Oak Harbor business license.
- (2) It is a violation of this chapter for any driver, who is an independent contractor affiliated with a TNC, to operate as a TNC driver in the city of Oak Harbor without a current and valid Oak Harbor business license. It is the responsibility of the TNC to communicate this requirement to TNC drivers.
- (3) TNC drivers must keep a copy of their business license in their vehicle when logged on and accepting rides from the TNC’s digital network. It is the responsibility of the TNC to communicate this requirement to TNC drivers.
- (4) Except as described in subsections (2) and (3) of this section, the TNC shall have no obligations as to TNC driver business license requirements. (Ord. 1849 § 1, 2018).

5.25.040 TNC License required.

- (1) It is a violation of this chapter for any TNC to operate in the city of Oak Harbor without a current and valid city of Oak Harbor TNC license.
- (2) The director or designee may issue a TNC license provided that the TNC applicant submits an affidavit sworn under penalty of perjury, on a form provided by the city, that to the best of the applicant’s knowledge, formed after a diligent inquiry into the facts, the TNC is in full compliance with this chapter, including, but not limited to, all driver, vehicle, insurance, and operational requirements.
- (3) TNC drivers are permitted to operate in the city under their affiliated TNC’s current TNC license issued under this chapter. TNC licenses are not issued to TNC drivers.
- (4) The TNC license is effective for one year.

(Ord. 1849 § 1, 2018).

5.25.050 TNC license requirements.

- (1) The TNC or its agent must maintain accurate and up-to-date records for all TNC drivers accessing its digital network to provide TNC services in the city of Oak Harbor. Said records must include the driver’s name, age, address, social security number, criminal history, driver’s license, motor vehicle registration, vehicle safety inspection records, and proof of at least the minimum automobile liability insurance coverage required by the state of Washington, including insurance for use of the vehicle for

transportation of passengers for-hire as required by Chapter 48.177 RCW as enacted or subsequently amended.

(2) Prior to permitting a person to act as a TNC driver on its digital network, and annually thereafter, the TNC must obtain and review a criminal background check report for such person. The criminal background check must include a search of no less than five years of database history, unless prohibited by law, in which case the span of the search will be for the maximum number of years permitted by law. The criminal background check must include local, state, and national criminal history databases and national and state sex offender registries. Any person who is on a sex offender registry or who has a criminal conviction, within the past five years, of crimes involving driving under the influence of alcohol or controlled substances, felony fraud, sexual offenses, felony property damage or theft, acts of violence, acts of terror, reckless driving or negligent driving, or use of a motor vehicle to commit a felony, shall not be permitted to act as a TNC driver on the TNC's digital network. The TNC or its agents must maintain records of such criminal background checks for a period of two years. For purposes of this section, the term "criminal conviction" includes a "conviction or other disposition adverse to the subject" as defined under RCW 10.97.030, and bail forfeitures.

(3) The TNC may only permit an individual to act as a TNC driver on its digital network if it finds that the standards set forth in this section are met by such individual. The TNC must revoke a driver's authority to act as a TNC driver on its digital network if the standards set forth in this section are not met.

(Ord. 1849 § 1, 2018).

5.25.060 TNC driver requirements.

(1) TNC drivers shall certify that they have no known physical or mental infirmity which jeopardizes their ability to safely operate as a TNC driver transporting the public.

(2) TNC drivers shall be at least 21 years of age.

(3) TNC drivers shall possess a valid Washington State driver's license and shall have been continuously licensed as a driver by the state of Washington and/or another state for at least one year immediately prior to operating as a TNC driver in Oak Harbor. A home state driver's license with active military ID or student ID with proof of full-time enrollment and nonresident status may be an acceptable alternative, subject to review and approval.

(4) TNC drivers shall certify that they have insurance that meets the minimum liability requirements for the state of Washington, including insurance coverage for use of the vehicle for transportation of passenger for hire as required by Chapter 48.177 RCW as enacted or subsequently amended.

(5) TNC drivers shall not have been convicted or found to have committed three or more moving violations during any 12-month period during the three years prior to operating as a TNC driver in Oak Harbor.

(6) TNC drivers shall possess proof of motor vehicle registration and proof of current automobile liability insurance. The TNC shall certify that all drivers have insurance that meets the requirements of this chapter, including insurance coverage for use of the vehicle for transportation of passengers for hire as required by Chapter 48.177 RCW as enacted or subsequently amended. (Ord. 1849 § 1, 2018).

5.25.070 TNC requirements.

(1) The TNC or its agent shall maintain accurate and up-to-date records for all TNC drivers accessing its digital network to provide TNC services in the city of Oak Harbor. Said records shall include the driver's name, age, address, social security number, criminal history, driver's license, motor vehicle registration, vehicle safety inspection records, and proof of at least the minimum automobile liability

insurance coverage required by the state of Washington, including insurance for use of the vehicle for transportation of passengers for hire as required by Chapter 48.177 RCW as enacted or subsequently amended.

(2) Prior to permitting a person to act as a TNC driver on its digital network, and annually thereafter, the TNC shall obtain and review a criminal background check report for such person. The criminal background check shall include a search of no less than five years of database history, unless prohibited by law, in which case the duration of the search shall be the maximum number of years permitted by law. The criminal background check shall include local, state, and national criminal history databases and national and state sex offender registries. Any person who is on a sex offender registry or who has a criminal conviction, within the past five years, of crimes involving driving under the influence of alcohol or controlled substances, felony fraud, sexual offenses, felony property damage or theft, acts of violence, acts of terror, reckless driving or negligent driving, or use of a motor vehicle to commit a felony, shall not be permitted to act as a TNC driver on the TNC's digital network. The TNC or its agents shall maintain records of such criminal background checks for a period of two years. For purposes of this section, the term "criminal conviction" includes a "conviction or other disposition adverse to the subject" as defined under RCW 10.97.030, and bail forfeitures.

(3) The TNC shall only permit an individual to act as a TNC driver on its digital network if it finds that the standards set forth in this section are met by such individual. The TNC shall revoke a driver's authority to act as a TNC driver on its digital network if the standards set forth in this section are not met.

(Ord. 1849 § 1, 2018).

5.25.080 Vehicle inspection and maintenance.

(1) TNC vehicles operating in the city of Oak Harbor shall be no more than 15 years old.

(2) The TNC shall inspect or cause to be inspected annually, and every year thereafter, every motor vehicle used by a TNC driver before allowing the driver to use the motor vehicle to provide transportation services.

(3) The inspection required in subsection (2) of this section must include, without limitation, an inspection of the foot and emergency brakes, steering, windshield, rear window, other glass, windshield wipers, headlights, tail lights, turn indicator lights, braking lights, front seat adjustment mechanism, doors, horn, speedometer, bumpers, steering system, muffler, exhaust, tires, rear view mirrors, and safety belts. The inspection must ensure that all of the components listed are in proper functioning order.

(4) The TNC shall maintain vehicle safety inspection records for a minimum of three years. (Ord. 1922 § 1, 2021; Ord. 1849 § 1, 2018).

5.25.090 Insurance requirements.

The TNC shall comply with the automobile liability insurance requirements contained in Chapter 48.177 RCW as enacted or subsequently amended. (Ord. 1849 § 1, 2018).

5.25.100 TNC license application – Contents.

In order to obtain a TNC license, an applicant shall file a complete application with the finance department.

(1) All requirements pursuant to identify the business as per issuance of a business license under Chapter 5.01 OHMC.;

(2) Declaration of compliance with OHMC 5.25.050 and 5.25.070;

- (3) Declaration to enforce TNC driver compliance with OHMC 5.25.060, 5.25.080, and 5.25.140; and
- (4) Insurance requirements pursuant to OHMC 5.25.090.

(Ord. 1849 § 1, 2018).

5.25.110 Application fees and renewals.

(1) **Application and First-Year Fee.** Upon submission of the TNC license application, the applicant shall pay the nonrefundable application fee per the master fee schedule adopted by resolution of the city council. If the applicant is approved, the application fee shall serve as the first-year license fee.

(2) **Annual Renewals.**

(a) **Process.** TNC license renewals will be processed pursuant to OHMC 5.01.110 (2).

(b) **Fees.** TNC license renewal fees must be paid in full per the master fee schedule adopted by resolution of the city council.

(c) **Submit Changes with License Renewal.** The TNC must submit any changes of the information to the finance department required in OHMC 5.25.050 along with the annual TNC license fee.

(Ord. 1849 § 1, 2018).

5.25.120 Registered agent required.

The TNC shall maintain a registered agent for service of process in the state of Washington. The name, telephone number, and physical address of the registered agent shall be submitted to the city of Oak Harbor at the time of the license application. The TNC shall notify the city of Oak Harbor in writing of any changes to its registered agent during the term of the license.

(Ord. 1849 § 1, 2018).

5.25.130 Audit.

(1) No more than twice per license year, the city may audit the TNC's records to review compliance with this chapter. Each audit will be limited to records relating to no more than 20 randomly selected TNC drivers operating in the city of Oak Harbor.

(2) The audit will occur at Oak Harbor City Hall; provided, that the city may, in its discretion, agree to an alternate location.

(3) Notwithstanding the foregoing, the city may require the TNC to produce records at any time to investigate a specific complaint regarding compliance with this chapter.

(Ord. 1849 § 1, 2018).

5.25.140 Operational requirements.

(1) TNC drivers shall accept only rides arranged through a TNC's digital network and shall not solicit or accept street hails.

(2) While in service in the city, each TNC vehicle shall display removable trade dress, marks or decals which are visible from 50 feet and clearly associate the vehicle with a licensed and endorsed TNC company.

(3) The TNC's software application or website shall display for the passenger the first name and photograph of the TNC driver as well as the make, model, and license plate number of the TNC vehicle.

(4) The TNC's software application or website shall display for the passenger the applicable rates being charged and the option to receive an estimated fare before the passenger enters the TNC vehicle.

(5) The TNC shall implement a zero tolerance policy on the use of drugs or alcohol applicable to any TNC driver on its digital network. The TNC shall provide notice of the zero tolerance policy on its website, as well as the procedures to report a complaint about a driver with whom the passenger was matched and for whom the passenger reasonably suspects was under the influence of drugs or alcohol during the course of the ride. The TNC shall immediately suspend a driver upon receipt of a passenger complaint alleging a violation of the zero tolerance policy. The suspension shall last the duration of the investigation. (Ord. 1849 § 1, 2018).

5.25.150 Issuance or denial.

The finance department shall issue a license upon satisfactory completion of the TNC license application and payment of all fees.

(Ord. 1849 § 1, 2018).

5.25.160 Revocation, suspension, or denial of TNC license.

(1) A TNC license may be revoked, suspended, or denied by the director for any of the following reasons:

(a) Failure to meet or maintain any of the requirements or qualifications set forth in this chapter for obtaining a TNC license.

(b) A materially false statement contained in the application for the license.

(c) Any violation of this chapter.

(2) Prior to any revocation, suspension or denial of any TNC license, the city must inform the TNC of their right to a hearing thereon. Such hearing, if requested, must be conducted before the city prior to the implementation of any revocation, suspension or denial. (Ord. 1849 § 1, 2018).

5.25.170 Appeals.

Any person aggrieved by the denial or revocation of a TNC license may file a notice of appeal with the city administrator. The appeal under this section will be governed by Chapter 1.24 OHMC.

(Ord. 1849 § 1, 2018).

5.25.180 Enforcement.

The director shall have the administrative authority to implement and enforce this chapter. The director may adopt rules and regulations for its administration, not inconsistent with this chapter. This provision shall not be construed to abrogate or limit the jurisdiction of the Oak Harbor police department to enforce any provisions of this chapter or of any other city ordinance relating to motor vehicles or the operation of taxicabs or TNC vehicles. (Ord. 1849 § 1, 2018).

5.25.190 Violations.

Violations of this chapter constitute a Class 1 offense and shall be governed by the procedures of Chapter 1.28 OHMC. (Ord. 1849 § 1, 2018).

Chapter 5.29
MOBILE FOOD VENDOR LICENSE

Sections:

- 5.29.010 Definitions.**
- 5.29.020 Scope.**
- 5.29.030 Activities requiring a business license and regulatory license.**
- 5.29.040 Exemptions.**
- 5.29.050 Application – Contents.**
- 5.29.060 Application fees and renewals.**
- 5.29.070 Locations.**
- 5.29.080 Issuance or denial.**
- 5.29.090 License display.**
- 5.29.100 Health regulations.**
- 5.29.110 Food vehicle standards.**
- 5.29.120 Design and operation.**
- 5.29.130 Revocation.**
- 5.29.140 Appeals.**
- 5.29.150 Enforcement.**
- 5.29.160 Violations.**

5.29.010 Definitions.

- (1) “City” means the city of Oak Harbor.
- (2) “Director” means the director of development services or designee.
- (3) “Food vehicle” means a licensed and operable motor vehicle or trailer used to serve, vend, or provide ready to eat food or nonalcoholic beverages for human consumption from a fixed location or along a route on public or private property.
- (4) “Food vendor” means any business operator or vendor who conducts business from a motor vehicle or trailer upon public streets or private property and who has been endorsed under this chapter.
- (5) “Food zone” means a designated portion of public space that is reserved for the exclusive use of food vehicles endorsed under this chapter. (Ord. 1850 § 1, 2018).

5.29.020 Scope.

The provisions of this chapter apply to mobile food vehicles engaged in the business of cooking, preparing, and distributing food or beverages with or without charge upon or in public and private restricted spaces. This chapter does not apply to vehicles that dispense food and that move from place to place and are stationary in the same location for no more than 15 minutes at a time, such as ice cream trucks, or food vending pushcarts, or stands located on sidewalks, nor does it apply to food vehicles associated with special events that are licensed or approved by the city. (Ord. 1850 § 1, 2018).

5.29.030 Activities requiring a business license and regulatory license.

(1) It is unlawful for any person to operate within the city a food vehicle, as defined in this chapter, without having obtained a city business license and regulatory license for that purpose. Business licenses are issued pursuant to Chapter 5.01 OHMC. No person shall then sell or offer food products at any location until the food vendor has been duly licensed as such.

(2) A mobile food vendor license, issued under this chapter, must be obtained to operate any food vehicle, as defined in this chapter. Licenses are valid for one year. (Ord. 1850 § 1, 2018).

5.29.040 Exemptions.

The provisions of this chapter shall not be applied to:

- (1) Lemonade stands;
- (2) Delivery or distribution of food, goods or products ordered or purchased by customers from a source or point of sale other than a mobile vehicle operated for the purpose of soliciting customers while located on city streets or property;
- (3) Temporary business activities in accordance with OHMC Title 19;
- (4) Peddler, solicitor and canvasser activities regulated by Chapter 5.45 OHMC; and
- (5) Food vehicles associated with special events that are permitted by the city per Chapter 5.55 OHMC. (Ord. 1850 § 1, 2018).

5.29.050 Application – Contents.

(1) A person desiring to operate a food vehicle must make written application for such license to the finance department. Upon receipt of a complete application, the finance department will forward a copy to the director for review.

(2) The application for a mobile food vendor license must include the following:

- (a) All requirements as to identify the business as pursuant to the issuance of a business license under Chapter 5.01 OHMC.;
- (b) A description of the preparation methods and food product to be offered for sale, including the intended menu, display, and distribution containers;
- (c) Information on the food vehicle to include year, make, and model of the vehicle and dimensions;
- (d) The preferred location of the food vehicle, consistent with OHMC 5.29.070;
- (e) A photo or drawing of the proposed food vehicle, showing the business name;
- (f) Proposed awnings, if applicable;
- (g) Written consents from businesses or private property owners, if necessary;
- (h) The proposed hours of operation;
- (i) Copy of Washington State business license with a tax registration endorsement;
- (j) Copies of all necessary licenses or permits issued by Island County health department;

(k) Copies of all additional licenses or permits that may be required by the Island County health department, the Washington State Department of Labor and Industries, and the city of Oak Harbor;

(i) This requirement must be met within 30 days of approval of a mobile food vehicle endorsement by the city of Oak Harbor.

(ii) However, no mobile food vehicle may locate or operate within the city until such city, county and state licenses or permits have been issued.

(l) Provide evidence of general liability insurance in amounts acceptable to the city attorney's office and designating the property owner as additional insured.

(3) Fire Chief Inspection – Effective August 1, 2019.

(a) The fire chief or designee must inspect the proposed food vehicle for fire safety and code compliance.

(b) All recommendations by the fire chief or designee must be implemented by the food vendor applicant before the application may be approved. (Ord. 1850 § 1, 2018).

5.29.060 Application fees and renewals.

(1) Application Fees. Upon submission of the application, the applicant must pay the nonrefundable application fee in full per the master fee schedule adopted by resolution of the city council.

(a) Incomplete applications will not be accepted.

(b) If the applicant is approved, the application fee serves as the first-year license fee.

(2) Annual Renewals and Fees.

(a) Process. Mobile food vendor license renewals will be processed pursuant to OHMC 5.01.110 (2).

(b) Fees. Mobile food vendor license renewal fees must be paid in full per the master fee schedule adopted by resolution of the city council.

(c) Information. Food vendors are required to update contact information requested in subsection (2)(a) of this section at the time of renewal. (Ord. 1850 § 1, 2018).

5.29.070 Locations.

(1) Private Property. Food vehicles may operate on private property in any zone in which restaurants are permitted (RO with conditional use permit, C-1, CBD, C-5, PBP, PIP and I), with the written consent from the property owner and subject to the city's site plan review requirements. Evidence of such written consent and approval must be provided to the city prior to the on-site location of the food vehicle.

(2) Public Property. Food vehicles may be located OS – Open space, recreation and agriculture and PF – Public facilities.

(3) Special Event Permit Locations. Special event permits issued under Chapter 5.55 OHMC take precedence over mobile food vendor license locations.

(4) Excise Tax on Public Property. Mobile food vehicles operating on public property are subject to leasehold excise taxes pursuant to Chapter 82.29A RCW and Chapter 3.60 OHMC. License holders operating on public property will be billed for excise taxes and finance department will remit the tax to the Washington State Department of Revenue. (Ord. 1850 § 1, 2018).

5.29.080 Issuance or denial.

The finance department must issue a license upon a recommendation by the director to approve the applicant. In the event the director denies the application, the finance department must notify the applicant of the denial and the procedures for appeal pursuant to OHMC 5.29.140. (Ord. 1850 § 1, 2018).

5.29.090 Endorsement display.

A license issued under this chapter must be posted conspicuously on the mobile food vehicle. (Ord. 1850 § 1, 2018).

5.29.100 Health regulations.

All food vendors shall comply with all laws, rules and regulations regarding food handling, and all vehicles, equipment, and devices used for the handling, storage, transportation and/or sale of food shall comply with all laws, rules and regulations respecting such vehicles, equipment and devices as established by the Island County health department. (Ord. 1850 § 1, 2018).

5.29.110 Food vehicle standards.

All mobile food vendors licensed under this chapter must conform to the following standards:

- (1) Food vehicles stationed on public rights-of-way using external signage, seating or any other equipment not contained within the vehicle shall not reduce or obstruct the sidewalk to less than five feet.
- (2) Exterior, freestanding signage used in relation to a mobile food vendor license must comply with Chapter 19.36 OHMC.
- (3) Vendor must obey any lawful order of a police officer to move to a different permitted location to avoid congestion or obstruction of a public way or to remove the vehicle entirely from the public way if necessary to avoid such congestion or obstruction.
- (4) Any auxiliary power required for the food vehicle must be self-contained; provided, that such auxiliary power does not result in excessive noise. No use of public or private power sources are allowed without providing written consent from the owner. No power cable or equipment may be extended at grade across any city street, alley, or sidewalk. The use of compressors or loudspeakers is prohibited.
- (5) Any exterior lighting used by the food vehicle must be designed and placed in such a manner that it does not result in glare or light spillage onto other properties or interfere with vehicular traffic. Lighting must be directed in a downward manner, so as to minimize light pollution.
- (6) All identifying information, logos, advertising, or other displays on the exterior of a food vehicle must conform to the purposes set forth in Chapter 19.36 OHMC regulating commercial signage.

(Ord. 1850 § 1, 2018).

5.29.120 Design and operation.

Food vendors and food vehicles must conform to the following:

- (1) No parking in such a manner as to create a traffic hazard.
- (2) Sales in curbside food zones must be made on the curbside only, and the vehicle must be parked within one foot of the curb.

(3) No waste liquids, litter or solid waste shall be dumped on city sidewalks, streets, or lawn areas, or in city gutters or drains. When leaving a sales area, food vendors or employees shall pick up all waste, litter and solid waste resulting from the business's sales. License holders are responsible for all waste, litter and solid waste left by customers.

(4) Supply garbage, recycling, and composting receptacles for the public use. Such receptacles must be capable of accommodating all solid waste generated by the vending activity. The containers must be maintained and emptied regularly. The containers must not be left at any location after operation of the food vehicle ceases for the day.

(5) Utilize an absorbent pad or cardboard under outside food preparation area to avoid grease and other ingredient spills.

(6) Conform to all applicable city ordinances regarding noise control and vehicle identification.

(7) Comply with all Island County public health requirements and fire department requirements if propane or a combustible fuel is used.

(8) Only sell food and beverages that are capable of immediate consumption.

(9) Maintain the food vehicle in good repair, and free of graffiti.

(Ord. 1850 § 1, 2018).

5.29.130 Revocation.

The license for a food vehicle may be revoked at the discretion of the director at any time for failure to comply with the provisions of this chapter, or for violation of any other provision of the Oak Harbor Municipal Code. Notice of revocation must be served personally 24 hours prior to the date such revocation becomes effective. (Ord. 1850 § 1, 2018).

5.29.140 Appeals.

The appeal procedures will be governed by Chapter 1.24 OHMC. During the appeal period, no activity shall be conducted until the final decision is ordered. (Ord. 1850 § 1, 2018).

5.29.150 Enforcement.

The director or designee will have vested authority to check any person in conduct of business in the city for proper business license, regulatory license, or permit, and in case of a violation will have authority to issue a citation for violation of this chapter. (Ord. 1850 § 1, 2018).

5.29.160 Violations.

Violations of this chapter constitute a civil offense and shall be governed by the procedures of Chapter 1.28 OHMC. (Ord. 1850 § 1, 2018).

Chapter 5.35

HORSE DRAWN CARRIAGE, CART OR CONVEYANCE LICENSE

Sections:

5.35.010 Business license and regulatory license required.

5.35.020 Application – Contents.

5.35.030 Application fee and renewals.

5.35.040 Operator, horse and carriage requirements.

5.35.050 Route requirements.

5.35.060 Suspension or revocation of license.

5.35.070 Denial of a license.

5.35.080 Appeals.

5.35.090 Enforcement.

5.35.100 Violations.

5.35.010 Business license and regulatory license required.

Any person or entity operating a business or engaging in a social/recreational activity that involves a horse drawn carriage, cart, or similar conveyance used to transport people on the public roadways, rights-of-way, and/or parks of the city of Oak Harbor must first obtain a city business license and a horse drawn carriage, cart or conveyance license pursuant to Chapters 5.01 and 5.35 OHMC.

Operating a horse drawn carriage, cart, or similar conveyance used to transport people on the public roadways, rights-of-way, and/or parks of the city of Oak Harbor is a privilege, not a right.

The submission of an application does not create a right to a license under this chapter. No business license or regulatory license required by Chapters 5.01 and 5.35 OHMC will be required of a person operating a horse drawn carriage, cart or similar conveyance as an entry in a parade, or specific event pursuant to OHMC 5.35.020(2), or as temporary free entertainment on private property if permission of the landowner has been obtained.

(Ord. 1851 § 2, 2018).

5.35.020 Application – Contents.

- (1) In order to obtain a horse drawn carriage, cart or conveyance license, an applicant must file the application with the police department.
- (2) Applicants seeking a horse drawn carriage, cart or conveyance license for a specific event must submit an application at least seven days in advance of the event that contains the information found within subsections (3)(a) through (d), (e) (if applicable), (g) and (h) (if applicable) of this section.
- (3) Application contents are as follows:
 - (a) All information to identify the business as required for issuance of a business license pursuant to Chapter 5.01 OHMC.;
 - (b) Evidence of commercial general liability insurance in amounts acceptable to the city attorney's office. The insurance policy must be written on an occurrence basis, name the city as

an additional insured, be written for a period not less than 24 hours prior to the start of operations and extending for a period not less than 24 hours following the completion of the operations, and must contain a provision prohibiting cancellation of the policy, except upon 30 days' written notice to the city.

(c) Narrative description of the carriage, cart, or conveyance to be utilized by the applicant to include:

(i) Installed safety devices, as well as any other proposed safety measures the applicant plans to implement as part of its operations;

(ii) Passenger limit for the carriage; not to exceed manufacturer's specifications.

(d) Narrative description of the training of the operator to include the operator's experience in operating such a mode of transportation, emergency procedures, animal commands and controls in handling unruly or uncontrollable animals.

(e) Narrative description of how equipment and animals will be inspected each day of operations, how animals will be provided with potable drinking water at least once per hour, access to food once every four hours and how animal waste will be collected and disposed of.

(f) Applicants must file their schedule of rates and charges, and all amendments thereto, with the police department.

(g) Proposed routes of operation with city streets.

(h) A copy of a certificate of health issued within the last three months from a licensed veterinarian certifying that the animal to be used is fit to draw the carriage, cart, wagon, etc. In addition, the veterinarian statement must include proof of current vaccinations including, but not limited to, tetanus, rabies, equine influenza, strangles, eastern/western encephalomyelitis and rhino pneumonitis. If vaccinations are administered by someone other than a veterinarian, the applicant may submit a certification signed under the penalty of perjury by the person who administered the vaccinations when those were administered, and what was administered.

(i) A written safety plan to keep patrons a safe distance from the horse.

(j) Proof of ownership of the horse(s) intended to be used in the conduct of business.

(4) The chief of police shall have the right to request additional information of the applicant, determine if an application is complete and providing sufficient information in which to review and make a decision regarding the awarding of a license, and to approve or deny an application for a license. If the chief approves a license, the chief will provide a license/ID badge to the applicant. The applicant must wear the license/ID badge on the outermost exterior of their clothing, visible to patrons of their service.

(5) If the license is denied by the chief, the applicant may request a meeting with the chief to discuss the denial and may resubmit their application one time without charge within a month of the date of the denial for the chief to consider. If the applicant still is not satisfied they may file an appeal in accordance with OHMC 5.35.080.

(6) A license will be granted upon a reasonable determination by the chief that the proposed activities of the applicant will be operated in the best interests of the public's safety, with adequate consideration given for the safety and comfort of the passengers and animal(s); and with adequate safety measures associated with the operations to protect the passengers, operator(s), animals, and motor vehicles traveling along the same public rights-of-way.

(Ord. 1851 § 2, 2018).

5.35.030 Application fee and renewals.

(1) Upon submission of the application, the applicant must pay the nonrefundable application fee in full per the master fee schedule adopted by resolution of the city council.

- (a) If the applicant is approved, the application fee serves as the first-year license fee.
- (b) The application fee includes the cost of a WATCH criminal background check.
- (c) Incomplete applications will not be accepted.

(2) Annual Renewals.

- (a) Process. Horse drawn carriage, cart or conveyance license renewals will be processed pursuant to OHMC 5.01.110 (2).
- (b) Fees. Horse drawn carriage, cart or conveyance license renewal fees must be paid in full per the master fee schedule adopted by resolution of the city council.
- (c) Informational Changes. The license holder must submit any changes of the information required per OHMC 5.35.020 to the city along with the annual license fee. (Ord. 1851 § 2, 2018).

5.35.040 Operator, horse and carriage requirements.

(1) Operator Requirements. The operator of the carriage, cart or conveyance shall be required to:

- (a) Be at least 18 years of age with a valid Washington State driver's license in their possession while operating the carriage, cart or conveyance;
- (b) Have proof of insurance in their possession for the operation of the carriage, cart or conveyance;
- (c) Have information in their possession as to who is the owner/operator of the business to include business name, contact phone number and address;
- (d) Have been trained in emergency procedures to include, but not be limited to: fixing equipment that has malfunctioned and handling unruly or uncontrollable animals via reasonably appropriate commands; and
- (e) Have necessary equipment needed to collect and dispose of animal waste, as well as being able to provide water and feed to the animal while operating.

(2) Animal Requirements. The horse utilized to draw the carriage, cart or conveyance shall:

- (a) Be a mare or gelding; stallions are not permitted;
- (b) Be in good health and clean condition;
- (c) Be vaccinated at least annually to include, but not be limited to, tetanus, rabies, equine influenza, strangles, eastern/western encephalomyelitis and rhino pneumonitis;
- (d) Be seen by a licensed veterinarian at least twice per year to certify that the animal can, in fact, pull and/or draw a carriage, cart, or conveyance when being used for that purpose pursuant to the requirements found herein;
- (e) Be outfitted in such a manner as to have proper protection of its feet as recommended by a farrier; and
- (f) Have teeth floated at least once per year.

(3) Cease Operations. If horse becomes lame at any time, use of the horse to draw a carriage, cart, or conveyance must cease until a licensed veterinarian clears the animal to return.

(4) Carriage Requirements. The carriage, cart, or conveyance shall be:

- (a) In good, serviceable condition with a record of maintenance and repair kept by the owner and/or operator in a location where inspection of said records can quickly occur;
- (b) Able to be slowed or stopped by using a manual breaking system;
- (c) Outfitted with the necessary slow vehicle placards and safety reflectors of sufficient size to be seen by any vehicle following or coming upon the carriage. Some of the reflectors are to be located on the rear of the carriage and at height readily visible by approaching traffic; and
- (d) Either outfitted with lighting or, in the alternative, be paired with a vehicle that can act as a support/chase vehicle with lights on, if being operated after dusk and before dawn in areas not well lit by existing street lights. (Ord. 1851 § 2, 2018).

5.35.050 Route requirements.

When approving a license under this chapter, the chief of police must consider the proposed route(s) of operations for any license and work with the applicant to reduce the potential for safety concerns, vehicular delays, adverse vehicular interactions with the carriage, cart, or other such conveyance, and utilization of roadways where insufficient road width exists for safe travel of the horse drawn carriage, cart or other such conveyance and automobiles. The applicant will be required to make reasonable alterations to their route when requested by the chief in the application review process. Any proposed change associated with safety must be accepted by the applicant. However, nothing within the license requirements associated with a designated route will override the ability of the owner, and/or operator, if applicable, to deviate from said route in those situations where there is an immediate need to avoid harm to passengers, operators, and/or animals; or to address a reasonably perceived threat of harm to passengers, operators, and/or animals; or to address other emergencies that could result in or be reasonably perceived to harm passengers, operators, and/or animals. (Ord. 1851 § 2, 2018).

5.35.060 Suspension or revocation of license.

(1) The chief may summarily suspend the license of any operator of a horse drawn cart, carriage or other such conveyance licensed to operate within the city of Oak Harbor pursuant to this chapter prior to any hearing in the following situations:

- (a) The chief has, in writing, determined that there is reasonable cause to believe that grounds for suspension are necessary to prevent a clear, substantial and imminent hazard to life, animal health, safety, or property; or
- (b) The chief has reason to believe that the owner and/or operator, if applicable, does not possess a valid Washington State driver's license; or
- (c) The chief has reason to believe that the owner and/or operator, if applicable, has failed to maintain their insurance coverage.

(2) Suspensions.

(a) In addition to the reasons for which a license may be summarily suspended, the chief may suspend any license issued pursuant to this chapter:

- (i) For two or more violations by the owner and/or operator of OHMC 5.35.040 within a 12-month period. In such a situation, the chief may suspend the license up to 60 days.
- (ii) If, in the course of operations, the owner and/or operator is witnessed by a law enforcement officer as being engaged in activities that are potentially dangerous to passengers, the operator, and/or the horse being utilized. Such suspensions may be for a

period no longer than 48 hours and are to be aimed at ensuring the correction of the behavior witnessed.

(iii) If, in the course of operations, the carriage, cart, or other such conveyance is found to have mechanical problems amounting to either a real or reasonably potential safety concern.

(b) The chief must suspend a license issued pursuant to this chapter, in writing, articulating the reason(s) for the suspension and the necessary remedial actions required to terminate the suspension. Notice of the suspension must be delivered either in person or by first class mail to the mailing address of the license holder.

(c) Suspensions not timely appealed will be final. Suspensions become effective upon the date of any notice of suspension if not appealed, or upon the date an order on appeal affirms such a notice. Suspensions will be for a period of five days; however, if the suspension was issued in association with specific safety, licensing, or administrative issues that could be cured by the license holder, and are subsequently cured by the licensee, the chief may reduce or terminate the suspension period. Except in the case where a timely appeal is filed by the licensee pursuant to this chapter, a license holder may continue to operate pursuant to this chapter pending a final decision on appeal.

(3) Revocations.

(a) A license may be revoked under this chapter if it is determined that:

(i) The application for the license contained a material misstatement or omission of fact;

(ii) The license holder, and/or operator if applicable, has a conviction, bail forfeiture or other adverse finding of animal cruelty under the laws of any state or governmental subdivision thereof;

(iii) The license holder, and/or operator if applicable, is convicted of a felony, gross misdemeanor, assault or sexual offense as defined under state law or an offense which is similar to those defined in Chapter 9A.44 RCW.

(iv) The license holder, and/or operator if applicable, has had his or her license suspended pursuant to this chapter for failure to comply with licensing requirements, safety concerns, or animal-related safety concerns and has continued to operate during that suspension period; or has returned to operations following the suspension period and has failed to address the identified issues that resulted in the suspension;

(v) The license holder, and/or operator if applicable, has had this or her Washington State driver's license suspended or revoked;

(vi) The license holder, and/or operator if applicable, has had a bail forfeiture, conviction, or other adverse finding for a crime that would include, but not be limited to, a crime involving driving or vehicular safety in association with alcohol and/or narcotics, reckless endangerment, fraud, theft, or other felonious behavior.

(b) The license holder will be notified of the revocation by delivery in person or by first class mail to the mailing address of the license holder. The notice of revocation will articulate the reason(s) for the revocation and the effective date of the revocation.

(Ord. 1851 § 2, 2018).

5.35.070 Denial of a license.

(1) The chief of police must deny a license application if it is determined that:

- (a) The application submitted is incomplete with regard to required information, associated fees, or inadequate in the information provided;
- (b) The application contains a material misstatement or omission of fact;
- (c) The applicant has received a prior suspension of a license and the time for suspension has not expired, or the reason for the suspension has not been cured;
- (d) The applicant had a prior license issued under this chapter that was revoked and not reinstated;
- (e) The applicant had within a two-year period prior to applying for a license a bail forfeiture, conviction or adverse finding for a crime involving a horse drawn carriage, cart, or other conveyance, animal cruelty, or criminal traffic offense associated with a mandatory suspension of the applicant's driver's license.

(2) The chief of police may deny a license application if it is determined that:

- (a) Within the past two years prior to applying for a license, the applicant has engaged or exhibited past driving or operating a horse drawn carriage, cart, or other conveyance which would lead the chief of police to reasonably conclude that the applicant will not comply, comport and/or conduct their activities with the requirements found within this chapter;
- (b) Within one year prior to applying for a license, the applicant operated a horse drawn carriage business without the required licenses established within this chapter, and did so after receiving notice to correct that deficiency and continued to operate in spite of such notice;
- (c) Within the last 10 years been convicted of assault, a felony in the last seven years, a gross misdemeanor in the last five years, or who has ever been convicted of sexual offenses as defined under state law or an offense which is similar to those as defined in Chapter 9A.44 RCW;

(3) Notice of a denial of a license must be done in writing indicating the reason for the denial and any period of time in which the applicant is permitted to attempt to cure the problems identified in the denial. After the expiration of that cure period, the denial becomes final unless the applicant appeals that determination in the manner described above with regard to suspensions and revocations. The appeal of a denial must be filed within 10 days of the expiration of the cure period found within the notice of denial. As noted elsewhere, if the applicant resubmits their application within 30 days of the date of the denial, the applicant need not resubmit the application fee.

(Ord. 1851 § 2, 2018).

5.35.080 Appeals.

Any notice of a denial of a license, violation, suspension or revocation must include a statement that the license holder, owner, and/or operator is entitled to a hearing upon their making a written request for such a hearing to the chief of police within 10 days of the date of the notice. The hearing will be conducted in accordance with Chapter 1.24 OHMC. (Ord. 1851 § 2, 2018).

5.35.090 Enforcement.

The Oak Harbor police department shall have the administrative authority to implement and enforce this chapter. The chief of police may adopt rules and regulations for its administration, consistent with this chapter. (Ord. 1851 § 2, 2018).

5.35.100 Violations.

Violations of this chapter shall constitute a civil offense and shall be governed by the procedures of Chapter 1.28 OHMC. (Ord. 1851 § 2, 2018).

Chapter 5.40
FIREWORKS SALE PERMIT

Sections:

- 5.40.010 Purpose.**
- 5.40.020 Permit required for fireworks sale.**
- 5.40.030 Application – Contents.**
- 5.40.040 Permit fee.**
- 5.40.050 Issuance or denial of permit.**
- 5.40.060 Duration of retail fireworks sale permits.**
- 5.40.070 Revocation.**
- 5.40.080 Enforcement.**
- 5.40.090 Appeals.**
- 5.40.100 Violations.**

5.40.010 Purpose.

The intent of this chapter is to provide permit requirements and procedures for the sale of fireworks at retail pursuant to Chapter 70.77 RCW and Chapter 212-17 WAC. (Ord. 1852 § 2, 2018).

5.40.020 Permit required for fireworks sale.

- (1) Permit Required. Any person seeking to sell any fireworks at retail within the city must apply for and obtain a fireworks sale permit issued pursuant to the provisions of this chapter.
- (2) No Business License Required. Applicants only operating business activities under permits issued pursuant to this chapter shall not be required to obtain a business license. (Ord. 1852 § 2, 2018).

5.40.030 Application – Contents.

Applications shall be made not less than 14 business days prior to the date of the proposed sale. Applicants for a fireworks sale permit must file a complete application with the finance department and shall include the following:

- (1) Information as required to identify a business for issuance of a business license pursuant to Chapter 5.01 OHMC.;
- (2) The name, address and phone number of the person responsible for the operation of the fireworks sale;
- (3) A statement by the applicant that he or she is over the age of 18 years;
- (4) The location for the proposed sale, subject to conformance with WAC 212-17-21509, and if applicable, a signed permission by the owner for use of the proposed area;

- (5) Proposed structure, in compliance with WAC 212-17-21505;
- (6) Proposed dates of the sale of fireworks, subject to RCW 70.77.395;
- (7) The place and manner of storage and amount of pyrotechnics to be stored, in compliance with WAC 212-17-446;
- (8) State-issued fire marshal permit, required pursuant to WAC 212-17-185; and
- (9) A certificate of insurance evidencing coverage in an amount and type acceptable to the city attorney. Such insurance policy shall name the city as an additional named insured and must be in full force and effect for the duration of the permit. (Ord. 1852 § 2, 2018).

5.40.040 Permit fee.

Upon approval of the application, the applicant shall pay the permit fee per the master fee schedule adopted by resolution of the city council. (Ord. 1915 § 1, 2021; Ord. 1852 § 2, 2018).

5.40.050 Issuance or denial of permit.

The fire chief or designee shall have the power to grant or deny the application, subject to such reasonable conditions, if any, as prescribed.

(1) The fire chief or designee shall deny the permit if the applicant does not meet the requirements in OHMC 5.40.030. If the application is denied, the fire chief or designee shall notify the applicant of such action stating the reasons for the permit denial, including the right to appeal the decision pursuant to Chapter 1.24 OHMC.

(2) Upon approval of the fireworks sale permit application, the applicant shall be issued the fireworks sale permit. (Ord. 1915 § 2, 2021; Ord. 1852 § 2, 2018).

5.40.060 Duration of retail fireworks sale permits.

All retail fireworks sales permits issued shall be for the period requested in the application and in compliance with RCW 70.77.395. Fireworks sale permits are not subject to renewal. (Ord. 1852 § 2, 2018).

5.40.070 Revocation.

A fireworks sale permit may be revoked by the fire chief, subject to appeal under Chapter 1.24 OHMC, only for good cause, including but not limited to:

(1) A materially false statement contained in the application for the permit; and

(2) Any violation of this chapter. (Ord. 1852 § 2, 2018).

5.40.080 Enforcement.

The Oak Harbor fire department shall have the administrative authority to implement and enforce this chapter. (Ord. 1852 § 2, 2018).

5.40.090 Appeals.

Any person aggrieved by the denial or revocation of a fireworks sale permit may file a notice of appeal with the city administrator. The appeal under this section shall be governed by Chapter 1.24 OHMC. (Ord. 1852 § 2, 2018).

5.40.100 Violations.

Violations of this chapter constitute a civil offense and shall be governed by the procedures of Chapter 1.28 OHMC. (Ord. 1852 § 2, 2018).

Chapter 5.45
PEDDLER, SOLICITOR AND CANVASSER PERMITS

Sections:

- 5.45.010 Purpose.**
- 5.45.020 Definitions.**
- 5.45.030 Permit required – Exceptions.**
- 5.45.040 Application – Contents.**
- 5.45.050 Investigation and fees.**
- 5.45.060 Issuance or denial of permit.**
- 5.45.070 Display.**
- 5.45.080 Restrictions on place and time of peddling, soliciting or canvassing.**
- 5.45.090 Revocation.**
- 5.45.100 Enforcement.**
- 5.45.110 Appeals.**
- 5.45.120 Violations.**

5.45.010 Purpose.

The city council finds that public health, safety and welfare requires that the citizens of the city be provided with information relating to persons and organizations who peddle, solicit and canvass within the city, that such activities be regulated and that the citizens of the city be protected from deceptive and dishonest practices. (Ord. 1853 § 2, 2018).

5.45.020 Definitions.

- (1) “City” means the city of Oak Harbor.
- (2) “Director” means the city of Oak Harbor finance director or designee.
- (3) A “peddler,” “solicitor,” or “canvasser” is defined as any person, either a principal or agent, who goes from place to place within the city, and who:
 - (a) Sells, takes orders for, or offers to sell any goods, wares or merchandise whether or not collecting in advance for such goods, wares or merchandise; and/or
 - (b) Sells, takes orders for, or offers to sell services, whether or not collecting in advance for such services; and/or
 - (c) Seeks contributions or donations to private causes, as opposed to tax-exempt charities; and/or
 - (d) Seeks opinions, preferences or other information for commercial purposes.
- (4) “Peddling” means and includes all activities ordinarily performed by a peddler as indicated under subsection (3) of this section.
- (5) “Person” means a natural person or any firm, corporation, association, club, society or other organization.

(6) "Solicitation" means and includes all activities ordinarily performed by a solicitor as indicated under subsection (3) of this section. (Ord. 1853 § 2, 2018).

5.45.030 Permit required – Exceptions.

(1) Permit Required. Any person seeking to engage in business as a peddler, solicitor or canvasser must apply for and obtain a peddler, solicitor or canvasser permit as provided for in this chapter.

(2) No Business License Required. Applicants only operating business activities under permits issued pursuant to Chapter 5.45 OHMC shall not be required to obtain a business license.

(3) Exceptions. No person shall be required to obtain a permit or pay a fee:

(a) For the peddling of local newspapers;

(b) For the peddling of fruits, vegetables, berries, butter, eggs, fish, milk, poultry, meats, or any farm produce or edibles raised, caught, produced or manufactured by such person in any place in this state;

(c) When that person, after having been specifically requested by another to do so, calls upon that other person for the purpose of displaying goods, literature or giving information about any article, thing, product or service;

(d) When that person is acting in his or her capacity as a member of a charitable, religious or nonprofit organization or corporation which has received tax exempt status under 26 U.S.C. 501(c) or other similar civic, charitable or nonprofit organizations;

(e) When a person is engaged in political or other First Amendment speech or solicitation; or

(f) When that person's peddling or solicitation consists exclusively of the solicitation of order(s) to be filled solely by interstate shipment on behalf of businesses that do not maintain a place of intrastate business in the state of Washington. (Ord. 1853 § 2, 2018).

5.45.040 Application – Contents.

Applicants for a peddlers, solicitors and canvassers permit must file a complete application with the finance department and shall include the following:

(1) Information as required to identify a business for issuance of a business license pursuant to Chapter 5.01 OHMC;

(2) A brief description of goods to be sold;

(3) Place of manufacture or production of goods to be offered for sale, the present location of such goods, and the proposed method of delivery;

(4) Length of time required to conduct business;

(5) Signature of the applicant authorizing the police department to take fingerprints and conduct an investigation of the applicant;

(6) Description and license plate number of the vehicle used by the applicant when peddling, soliciting or canvassing; and

(7) Any other information as requested by the finance director or his/her designee. (Ord. 1853 § 2, 2018).

5.45.050 Investigation and fees.

(1) Investigation.

(a) The director shall refer a copy of the application to the police chief or designee, who shall conduct an investigation of the applicant. The investigation shall include a local records and Washington Access to Criminal History (WATCH) background checks, and review of felony and misdemeanor convictions and traffic offenses which have occurred in the past 10 years.

(b) Upon completion of investigation of the applicant, the police chief or designee shall make a recommendation of approval or disapproval based on the findings of the investigation to the finance department. Any recommendation of disapproval must be for good cause including, but not limited to, unsatisfactory criminal history of convictions for offenses, criminal and/or traffic, directly related to fitness for a permit; discovery of facts supporting lack of business responsibility; or any legitimate reason that the applicant presents a risk to the citizens if permitted to engage in peddling, soliciting or canvassing.

(2) Fees.

(a) Upon submission of the application, the applicant shall pay the nonrefundable investigation fee per the master fee schedule adopted by resolution of the city council to cover the costs of the investigation. Veterans who present a certificate of honorable discharge to the finance director or his/her designee shall be exempt from payment of the fee as provided in RCW 73.04.050 through 73.04.060.

(b) Upon approval of the investigation per subsection (1) of this section, the applicant shall pay the permit fee per the master fee schedule adopted by resolution of the city council. (Ord. 1853 § 2, 2018).

5.45.060 Issuance or denial of permit.

(1) The director shall review the recommendations of the police chief and approve or deny the permit application.

(2) The director shall deny the permit if the applicant is found to have:

(a) Committed any act consisting of fraud or misrepresentation;

(b) Committed any act which, if committed by a permit holder, would be grounds for suspension or revocation of a permit;

(c) Within the previous 10 years, been convicted of a felony directly relating to his or her fitness to engage in the occupation of peddler, and including, but not limited to, those felonies involving fraud or misrepresentation;

(d) Been charged with a felony of the type defined in subsection (2)(c) of this section, and disposition of that charge is still pending;

(e) Been refused a permit under the provisions of this chapter; provided, however, that any applicant denied a permit under the provisions of this chapter may reapply if and when the reasons for denial no longer exist; or

(f) Made any false or misleading statements in the application.

(3) The director must inform the applicant of a denial, including information regarding the right to appeal the decision pursuant to Chapter 1.24 OHMC. (Ord. 1853 § 2, 2018).

5.45.070 Display.

Every peddler, solicitor or canvasser shall be required to carry the peddler's, solicitor's or canvasser's permit and display it along with photo identification upon request by a prospective customer or law enforcement officer. (Ord. 1853 § 2, 2018).

5.45.080 Restrictions on place and time of peddling, soliciting or canvassing.

(1) No peddler, solicitor or canvasser shall engage or attempt to engage in the business of peddling, soliciting or canvassing at any home, residence, apartment complex or business that prominently displays a “No Peddlers” or “No solicitors” sign or any other similar sign that communicates the occupants’ desire to not be contacted by peddlers, solicitors or canvassers.

(2) No peddler, solicitor or canvasser shall engage in the business of peddling, soliciting or canvassing between the hours of 9:00 p.m. and 9:00 a.m. (Ord. 1853 § 2, 2018).

5.45.090 Revocation.

Permits issued under this chapter may be denied or revoked by the finance department subject to appeal pursuant to Chapter 1.24 OHMC. Permits may only be revoked for good cause including, but not limited to:

- (1) Fraud, misrepresentation or false statement contained in the application for permit;
- (2) Fraud, misrepresentation or false statement made in the course of carrying on the business of peddling, soliciting or canvassing;
- (3) Any violation of this chapter;
- (4) Any felony or misdemeanor conviction directly related to the fitness of permittee to carry on the activities of peddling, soliciting or canvassing; or
- (5) Conducting business in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety or general welfare of the public. (Ord. 1853 § 2, 2018).

5.45.100 Enforcement.

(1) Any person seen peddling, soliciting or canvassing shall be required to produce his/her peddler’s, solicitor’s or canvasser’s permit if requested to do so by any law enforcement officer as required in OHMC 5.45.070. In the absence of a permit, the person shall be required to provide information reasonably necessary to verify a claim of exemption from this chapter.

(2) Any law enforcement officer shall enforce the provisions of this chapter against any person found to be violating the same, and failure to produce a permit or information necessary to verify a claimed exemption shall constitute probable cause for enforcement action. (Ord. 1853 § 2, 2018).

5.45.110 Appeals.

Any person aggrieved by denial or revocation of a permit may file an appeal with the city administrator. The appeal under this section shall be governed by Chapter 1.24 OHMC. (Ord. 1853 § 2, 2018).

5.45.120 Violations.

Violations of this chapter shall constitute a Class 1 civil infraction and shall be governed by the procedures of Chapter 1.28 OHMC. (Ord. 1853 § 2, 2018).

Chapter 5.51
FILMING PERMIT

Sections:

- 5.51.010 Definitions.**
- 5.51.020 Permit and filming agreement required.**
- 5.51.030 Application contents and process – Fees.**
- 5.51.040 Standards for issuance.**
- 5.51.050 Issuance or denial of permit.**
- 5.51.060 Hold harmless agreement.**
- 5.51.070 Duties of permittee.**
- 5.51.080 Revocation.**
- 5.51.090 Enforcement.**
- 5.51.100 Appeals.**
- 5.51.110 Violations.**

5.51.010 Definitions.

- (1) “City” means the city of Oak Harbor, Washington.
- (2) “Director” means the finance director of the city of Oak Harbor or designee.
- (3) “Film production” means the making of feature films, documentaries, television movies, series and commercials and commercial still photography which impedes the flow of traffic or pedestrians.
- (4) “Permit to film” means a permit as required by this chapter.
- (5) “Person” means any person, firm, partnership, association, corporation, company or organization of any kind. (Ord. 1854 § 1, 2018).

5.51.020 Permit and filming agreement required.

- (1) Permit and Filming Agreement Required. Any person seeking to engage in, participate in, aid, form or start any film production intended for commercial sale or distribution shall first obtain a permit under this chapter and execute a filming agreement with the city. Permit fees are charged on a daily basis.
- (2) No Business License Required. Applicants only operating business activities under permits issued pursuant to this chapter shall not be required to obtain a business license. (Ord. 1854 § 1, 2018).

5.51.030 Application contents and process – Fees.

A person seeking a filming permit shall file a complete application with the finance department on the forms provided by the city.

- (1) Filing Period. An application for a filming permit shall be filed with the finance department not less than 30 days before film production is to take place. Exemptions to the 30-day requirement may be

made by the director, in limited circumstances, depending on the scope and impact of the intended project.

(2) Multi-Department Review. The finance department shall transmit copies of the application to the city administrator, director of public works, police chief, city engineer, building official and the fire chief for review.

(3) Contents. The application for a permit to film shall set forth the following information:

(a) Information as required to identify a business for issuance of a business license under Chapter 5.01 OHMC;

(b) The project title, the name, permanent and local address and phone number of the production company seeking to conduct such film production;

(c) The name, address and phone number of the authorized and responsible person for the film production;

(d) The name and phone numbers of the production manager, location manager and publicist for the project;

(e) The date(s) and times the preparation, filming and cleanup are to take place;

(f) The approximate number of persons and vehicles involved in the production;

(g) The exact locations to be used for filming, staging, and preparation;

(h) The type and nature of any firearms, dangerous materials, animals, special effects or low flying aircraft required for the project;

(i) A traffic control plan or pedestrian control plan, if necessary; and

(j) Any other information or documentation required by the director.

(4) Certificate of Insurance. No permit to film shall be issued until the permittee files with the city clerk a certificate of insurance naming the city of Oak Harbor as an additional insured, and an endorsement for general liability in the amount acceptable to the city attorney. The city of Oak Harbor, its corporate authorities, elected officials, officers, attorneys, employees and agents shall be made additional insured with respect to any and all claims which arise out of or are in any way related to the operations of the film production company while present in the city of Oak Harbor.

(5) Fees. An application fee per the master fee schedule adopted by resolution of the city council shall be paid at the time of filing the application for a permit to film. A deposit of the daily permit fee per the master fee schedule adopted by resolution of the city council for the estimated time of filming and the estimated cost of services by city forces, if applicable, shall also be paid prior to issuance of the permit. (Ord. 1854 § 1, 2018).

5.51.040 Standards for issuance.

The director may issue a filming permit under the following conditions:

(1) The conduct of the film production project will not substantially interrupt the safe and orderly movement of traffic and pedestrians within the city;

(2) As determined by the director, the film production project may require city personnel as to properly assist as needed at location of filming;

(3) The concentration of persons, animals, vehicles and equipment for operation of the film production project will not interfere with proper police and fire protection or ambulance and medical services within the city;

(4) The proposed time, date and location of the film production project are reasonable, considering the health, safety and general welfare of all persons residing in, working in, or visiting the city; and

(5) Any conditions required by the director due to the scope of the project will be implemented by the applicant. (Ord. 1854 § 1, 2018).

5.51.050 Issuance or denial of permit.

(1) The director shall review the recommendations of police, fire and development services departments and approve or deny the permit application subject to reasonable conditions of approval.

(2) If the application is denied, the director shall inform the applicant a notice of such action stating the reasons for the permit denial, including the right to appeal the decision pursuant to Chapter 1.24 OHMC. (Ord. 1854 § 1, 2018).

5.51.060 Hold harmless agreement.

The permittee shall indemnify and hold harmless the city of Oak Harbor, its officers, elected officials, agents, employees and volunteers from and against any and all claims, actions, suits, proceedings, costs, expenses (including attorney's fees), damages and liabilities claimed by any person, organization, association or otherwise arising from or relating to any act or omission of the permittee, its agents, contractors or employees under this agreement. The permittee further waives, with respect to the city of Oak Harbor only, its immunity under RCW Title 51, Industrial Insurance. The indemnification provided for in this permit shall survive any termination or expiration of this agreement. Failure of the permittee to comply with the terms of the city of Oak Harbor's permit as described may result in revocation of the permit. (Ord. 1854 § 1, 2018).

5.51.070 Duties of permittee.

A permittee hereunder shall comply with all permit directions and conditions and with all applicable laws and ordinances. (Ord. 1854 § 1, 2018).

5.51.080 Revocation.

The director shall have the authority to revoke a permit issued hereunder upon application of the standards for issuance as herein set forth, or for violation of any condition of such permit or violation of any law or ordinance. (Ord. 1854 § 1, 2018).

5.51.090 Enforcement.

The Oak Harbor police department shall have the administrative authority to implement and enforce this chapter. (Ord. 1854 § 1, 2018).

5.51.100 Appeals.

Any person aggrieved by denial or revocation of a permit may file an appeal with the city administrator. The appeal under this section shall be governed by Chapter 1.24 OHMC. (Ord. 1854 § 1, 2018).

5.51.110 Violations.

Violations of this chapter shall constitute a civil offense and shall be governed by the procedures of Chapter 1.28 OHMC. (Ord. 1854 § 1, 2018).

Section 6.12.060

Vendors and concessionaires in parks

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 [5.55](#) 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. This section is not applicable to activities covered under Chapter [5.29](#) OHMC entitled "Mobile Food Vendor License."

Section 19.34.020

Criteria

19.34.020 Criteria.

All home occupations shall meet the following criteria:

- (1) Such home occupations shall be conducted in such a manner as not to give any outward appearance nor manifest any characteristics of a business in the ordinary meaning of the term that would infringe upon the right of neighboring residents to enjoy a peaceful occupancy of their homes and shall not infringe upon or change the intent of the residential zone;
- (2) The activity is conducted in a manner that will not alter the normal residential character of the premises and in no way be a nuisance to adjoining residences. This means there should be no outside storage or window display and no noise, dust, odors, noxious fumes or vibrations emanating from the premises which would exceed that normally produced by a single residence. Mechanical or electronic equipment which is incidental to the home occupation may be used provided it will not create visible or audible interference in radio or television receivers or cause fluctuations in the line voltage off the premises;
- (3) The home occupation does not generate greater traffic volumes than would normally be expected in a residential neighborhood. This means that delivery of materials or commodities to and from the premises by commercial vehicle shall not normally exceed two per week. Only one commercial vehicle owned by the practitioner and related to the occupation may be parked on street near the premises at any time;
- (4) Any materials used in conducting the business shall be stored entirely within the residence or in an accessory building;
- (5) The home occupation does not increase water or sewer use so that combined total use for the dwelling and home occupation is significantly more than the average for residences in the neighborhood;
- (6) The home occupation shall be conducted only by members of the family residing in the dwelling plus no more than one nonresident assistant or employee; provided, that additional nonresident assistants may be permitted but shall require a conditional use permit. Persons in building trades or similar fields using their homes or apartments as an office for business activities carried on off the premises may have other employees provided they are not employed on the premises and they do not routinely visit the residence during the normal course of business;
- (7) A family child day care home as defined herein may have up to eight children at any one time including the children living in the dwelling. The care of additional children shall require a conditional use permit;
- (8) If the home occupation is a type in which classes are held or instruction given, there shall be no more than four students or pupils at any one time. The planning director may approve up to six students if he finds that the additional students will not generate additional automobile traffic. More than six students shall require a conditional use permit; provided, that this requirement shall not be construed to prohibit occasional exceptions (for example, recitals) which are in no way a nuisance to adjoining residences. All classes with four or more students shall be scheduled at least 30 minutes apart to mitigate traffic congestion;
- (9) The total number of home occupations conducted within a dwelling unit shall not be regulated. However, the cumulative impact of all home occupations conducted within the dwelling unit shall not be greater than for one home occupation;

(10) Home occupations shall comply with all other local, state or federal regulations pertinent to the activity pursued and the requirements or permission granted or implied by this chapter shall not be construed as an exemption of such regulations.

(11) Home occupations must obtain a city business license issued under the provisions of Chapter 5.01 OHMC.

(Ord. 1555 § 14, 2009).

