

City of Oak Harbor  
City Council Agenda Bill

Bill No. 9 a  
Date: July 7, 2015  
Subject: Ordinance 1738: Wells Fargo  
Condemnation

**FROM: Grant Weed and Nikki Esparza**

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

- ⊙ Scott Dudley, Mayor
- ⊙ Larry Cort, City Administrator
- ⊙ Doug Merriman, Finance Director
- ⊙ Nikki Esparza, City Attorney, as to form

**RECOMMENDED ACTION**

Adopt Ordinance No. 1738 authorizing the condemnation, appropriation, taking and damaging of land and other property for purposes associated with construction of the wastewater treatment plant.

**BACKGROUND / SUMMARY INFORMATION**

The City has a need for temporary parking and access on the southernmost 88.40 feet of the Wells Fargo property at the corner of City Beach Street and Pioneer Way during construction of the Wastewater Treatment Facility. It also has a need for a permanent (subsurface) installation easement in the southernmost 25 feet of the property for tiebacks.

The City has provided Wells Fargo's legal counsel with the proposed easements and the appraised values of the easements. Staff has not yet secured an agreement, but fully intends to continue working toward an agreed upon resolution. In order to preserve construction timelines set for the Wastewater Treatment Plant, initiation of condemnation proceedings is necessary to ensure that construction is not delayed. Prior to filing a condemnation petition with the court, the Council must pass an ordinance authorizing condemnation.

If the City intends to maintain the current Wastewater Treatment Facility construction timeline, it is staff's recommendation that the Council adopt Ordinance 1738, authorizing the condemnation of the temporary parking and access easement and the permanent tieback easement. These easements are necessary to begin the deep excavation portion of construction, which is currently scheduled for September 2015.

Notice of this proposed action has been provided in accordance with RCW 8.25.290.

**LEGAL AUTHORITY**

RCW 35A.11.030 authorizes code cities to exercise eminent domain.

Chapter 8.12 RCW contains the procedural requirements applicable to cities utilizing condemnation.

**FISCAL IMPACT**

**PREVIOUS COUNCIL / BOARD / CITIZEN INPUT**

**ATTACHMENTS**

1. [Ordinance No. 1738](#)

ORDINANCE NO. 1738

AN ORDINANCE OF THE CITY OF OAK HARBOR AUTHORIZING THE CONDEMNATION, APPROPRIATION, TAKING AND DAMAGING OF LAND AND OTHER PROPERTY FOR PURPOSES ASSOCIATED WITH CONSTRUCTION OF THE WASTEWATER TREATMENT PLANT

WHEREAS, the City Council of the City of Oak Harbor (hereinafter the "City") finds as follows:

1. Public safety, convenience, use and necessity demand construction of a wastewater treatment plant for the purposes of serving the current and future needs of the public.
2. The City has conducted engineering studies and has determined that the best location for the wastewater treatment plant is adjacent to the existing wastewater treatment plant, on property located between SE City Beach Street (70<sup>th</sup> Southwest Street) and Windjammer Park.
3. The project construction plans require the installation of tiebacks under the south 25 feet of the property described in **EXHIBIT A**, attached hereto and incorporated herein by this reference, to support the treatment facility walls.
4. During construction, City employees, contractors and their employees will require parking in the vicinity of the project. The South 88.40 feet of the **EXHIBIT A** property has been determined to be the most convenient and practical location for such parking.
5. Access to the business located on City-owned property commonly known as Suite 102, 321 SE Pioneer Way, Oak Harbor, Washington, crosses the wastewater treatment plant construction site. Parking for said business is located within the wastewater treatment plant site. Such access and parking will no longer be available once construction is commenced. During construction alternate access to and parking for said business will be required. Such access and parking would be most conveniently located upon the South 88.40 feet of the **EXHIBIT A** property, which is the only location that would satisfy handicapped parking requirements for the business.
6. The entire cost of acquisition of the real property interests provided by this ordinance shall be paid by the following funds of the City:  

Fund #402 Wastewater Fund

or such other funds as may be provided by law.
7. The City may be unable to agree with the property owner upon the compensation to be paid for said real property interests.
8. Notice of the planned final action authorizing the condemnation of the property rights described in **EXHIBITS B** and **C** has been given to the owner of said property and published in the Whidbey News-Times in accordance with the provisions of RCW 8.25.290.

9. The City has authority pursuant to RCW Chapter 8.12 to acquire, if necessary, title to real property for public purposes. The construction of a wastewater treatment plant is a public purpose.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAK HARBOR DO ORDAIN AS FOLLOWS:

1. The City is hereby authorized to condemn, appropriate, take and damage the portions of the **EXHIBIT A** property described in **EXHIBITS B** and **C** attached hereto and incorporated herein by this reference, limited to the easement rights described in said **EXHIBITS B** and **C**.
2. The use of the described portions of the **EXHIBIT A** property is for purposes associated with construction of a wastewater treatment plant, which is a permanent public use and is reasonably necessary for the purposes for which it is sought.
3. All easement rights described in **EXHIBIT B** are hereby authorized to be condemned, appropriated, taken and damaged for the purpose of installing tiebacks to support the walls of the wastewater treatment plant to be constructed.
4. All easement rights described in **EXHIBIT C** are hereby authorized to be condemned, appropriated, taken and damaged for the purpose of providing temporary parking to City employees, contractors, agents, permittees and licensees engaged in construction of the wastewater treatment plant, and for temporary access to and public parking for the City-owned property commonly known as Suite 102, 321 SE Pioneer Way, Oak Harbor, Washington.
5. All lands, rights, privileges and other properties are to be taken, damaged and appropriated only after just compensation has been made, or paid into the court for the owners thereof in the manner provided by law.
6. The City is further authorized to amend the legal descriptions and rights contained in **EXHIBITS B** and **C** as may be necessary and appropriate to meet requirements of the project.
7. The cost of the acquisition provided for by this ordinance shall be paid by the following funds of the City:

Fund #402 Wastewater Fund

or such other funds as may be provided by law.

8. The City's attorneys should be and hereby are authorized and directed to begin and prosecute the actions and proceedings in a manner provided by law to carry out the provisions of this ordinance, and to enter into settlements to mitigate damages.

PASSED by the City Council and APPROVED by the Mayor this \_\_\_\_ day of July, 2015.

CITY OF OAK HARBOR

By \_\_\_\_\_  
SCOTT DUDLEY, Mayor

ATTEST:

By \_\_\_\_\_  
ANNA THOMPSON, Clerk

Approved as to form:

By \_\_\_\_\_  
NIKKI C. ESPARZA, City Attorney

Date of Publication: \_\_\_\_\_

Effective Date (5 days after publication): \_\_\_\_\_

## **EXHIBIT A**

### **WELLS FARGO BANK, N.A. PROPERTY LEGAL DESCRIPTION**

That portion of Reserve "B" of Ely's Addition to the Town of Oak Harbor, according to the plat thereof recorded in Vol. 2 of Plats, page 27, records of Island County, Washington, described as follows:

Beginning at the intersection of the South line of West Pioneer Way and the West line of 70<sup>th</sup> Southwest Street;  
Thence South 16°35' East 243.56 feet along said West line of 70<sup>th</sup> Southwest Street;  
Thence South 78°50' West 222.29 feet parallel with the South line of West Pioneer Way;  
Thence North 11°10' West 242.47 feet to said South line of West Pioneer Way;  
Thence North 78°50' East 200.00 feet along said South line to the Point of Beginning.

Situate in Island County, Washington.

**EXHIBIT B  
TIEBACK EASEMENT**

1. Easement Area Description:

The entire subsurface area of the South 25 feet of the following-described property:

That portion of Reserve "B" of Ely's Addition to the Town of Oak Harbor, according to the plat thereof recorded in Vol. 2 of Plats, page 27, records of Island County, Washington, described as follows:

Beginning at the intersection of the South line of West Pioneer Way and the West line of 70<sup>th</sup> Southwest Street;

Thence South 16°35' East 243.56 feet along said West line of 70<sup>th</sup> Southwest Street;

Thence South 78°50' West 222.29 feet parallel with the South line of West Pioneer Way;

Thence North 11°10' West 242.47 feet to said South line of West Pioneer Way;

Thence North 78°50' East 200.00 feet along said South line to the Point of Beginning.

Situate in Island County, Washington.

2. Temporary Construction Easement: A temporary underground construction easement for the purpose of installation, monitoring, adjustment and maintenance of wall support members and devices, including, but not limited to, tiebacks, anchors, cables and soil nails, hereinafter collectively referred to as the "tiebacks," together with the right to enter the Easement Area with such equipment and materials as may be required for said purposes. The surface of the Easement Area will not be impacted. This temporary construction easement will commence on the date this easement is taken, and shall terminate upon completion and final approval of City's construction project and restoration of Grantor's property, or on December 31, 2021, whichever occurs sooner.
3. Permanent Installation Easement: A perpetual easement and right to permanently keep in place and maintain within the Easement Area the tiebacks and other underground equipment installed in the Easement Area in connection with construction of the City's wastewater treatment plant, and the right at any time to monitor, tension, re-tension and de-tension, adjust, maintain, destroy, cut through or leave such abandoned tiebacks in place, at City's discretion.

## EXHIBIT C

### TEMPORARY PARKING AND ACCESS EASEMENT

1. Easement Area Description:

The South 88.40 feet of the following-described property:

That portion of Reserve "B" of Ely's Addition to the Town of Oak Harbor, according to the plat thereof recorded in Vol. 2 of Plats, page 27, records of Island County, Washington, described as follows:

Beginning at the intersection of the South line of West Pioneer Way and the West line of 70<sup>th</sup> Southwest Street;

Thence South 16°35' East 243.56 feet along said West line of 70<sup>th</sup> Southwest Street;

Thence South 78°50' West 222.29 feet parallel with the South line of West Pioneer Way;

Thence North 11°10' West 242.47 feet to said South line of West Pioneer Way;

Thence North 78°50' East 200.00 feet along said South line to the Point of Beginning.

Situate in Island County, Washington.

2. Temporary Parking Easement: An exclusive easement and right for the City, its employees, contractors, agents, permittees and licensees and the public, to park vehicles in the Easement Area, subject to sole regulation by the City, including, but not limited to, the right, but not the obligation, to limit public parking to patrons, owners and employees of the business located at Suite 102, 321 SE Pioneer Way, Oak Harbor, Washington.
3. Temporary Access: A temporary access easement to the business located on City-owned property commonly known as Suite 102, 321 SE Pioneer Way, Oak Harbor, Washington, including the right of ingress and egress by the public and the owners, employees, invitees and licensees of the business, and the right to make deliveries to and from the business.
4. Maintenance: The City shall have the sole right to maintain the Easement Area. City shall have the right to stripe the parking area as it deems suitable and to control traffic patterns and movements within the parking area.
5. Ingress and Egress: The City and its employees, contractors, agents, permittees, licensees and invitees, shall have the right of ingress to and egress from and on the Easement Area for the purposes stated herein, and for purposes of preconstruction surveying, engineering and similar activities, and activities associated with the tiebacks being installed in the construction of the wastewater treatment plant.
6. Term: The term of this easement shall run from the date of taking of this easement until completion and final approval of construction of the City wastewater treatment plant immediately south of the easement area and construction the parking area to serve the treatment plant has been completed, but in no event later than December 31, 2021.