NO. 882287

IN THE COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

WHIDBEY ENVIRONMENTAL ACTION NETWORK,

Appellant,

v.

CITY OF OAK HARBOR,

Respondent.

BRIEF OF RESPONDENT CITY OF OAK HARBOR

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I. INTRODUCTION

The Oak Harbor City Council adopted Ordinance No. 1999 ("Ord. 1999") on August 13, 2024, changing the City's process for transferring park property. Appellant Whidbey Environmental Action Network ("WEAN") challenges the City's adoption of Ord. 1999 because the City did not perform a review under the State Environmental Policy Act, Chapter 43.21C RCW ("SEPA"). Ord. 1999 merely amends the process for transferring park land property, eliminating the requirement of a citizen vote in some circumstances. Ord. 1999 does not enact a regulation that controls the use or modification of the environment, and Ord. 1999 is categorically exempt from SEPA because it adopted purely procedural regulations. This case is not about a development or a development regulation – it is about the process by which the City transfers park property. Thus, environmental review was not required.

Further, Ord. 1999 reflects the City Council's exercise of its express statutory authority under RCW 35A.11.010 to buy,

sell, and otherwise dispose of real property "for the common benefit." The City Council's decision to recognize the common benefit by a process other than a popular vote is not subject to SEPA.

This Court should affirm the trial court's dismissal of this matter.

II. CITY'S RE-STATEMENT OF THE ASSIGMENTS OF ERROR

The Court correctly granted summary judgment in favor of the City.

III. CITY'S RE-STATEMENT OF THE ISSUES

No. 1. Whether the trial court correctly determined that Ord. 1999 does not constitute a regulation that controls the use or modification of the environment? Yes.

No. 2. Whether the trial court correctly determined that Ord. 1999 is categorically exempt from SEPA because it adopts procedural regulations? Yes.

No. 3. Whether the City Council's exercise of its express statutory authority under RCW 35A.11.010 to convey real property for the common benefit by an exchange of property rather than popular vote constitutes a procedural regulation that does not impact the use or modification of the environment? Yes.

IV. CITY'S RE-STATEMENT OF THE CASE

A. History of the Citizen Vote Provision.

The City Council first adopted a citizen vote requirement for the transfer of park land in 1997 through Ordinance No. 1110 ("Ord. 1110"), which created a then-new Oak Harbor Municipal Code ("OHMC") 1.04.030 entitled "Sale or exchange of real property":

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

> hearing. Developed City park property shall not be disposed of in any manner without citizen approval in an election.
>
> (2) The preferred timing for such a hearing is before the property is listed for sale, release, lease, demise, trade, exchange or other disposition. It is, however, recognized that this may not be possible especially in the case where there is litigation pending on the property in question.
>
> (3) A SEPA analysis shall be done on such proposed action and available for public review at least ten days prior to the hearing. …

CP 95.

In 2010, Ordinance No. 1578 recodified OHMC 1.04.030 to OHMC 1.30.010. CP 97-101.

In 2015, the City adopted Ordinance No. 1728, which amended OHMC 1.30.010 to exclude a citizen vote requirement for the transfer of park property under certain circumstances. CP 102-04. The City Council recognized there were circumstances where the requirement for citizen approval to transfer park land "has the potential to impede or hinder accomplishment of

necessary public purposes" such as when park property is "required for necessary public purposes such as water, sewer or roadway improvements." CP 102. Thus, OHMC 1.30.010 was amended to add a new subsection as follows:

> (2) No citizen approval at an election shall be required when the city council determines by resolution that some portion or all of a developed park property is required to accomplish a necessary public purpose including, but not limited to, water, sewer or roadway improvements. In such circumstances the fair market value of the park property dedicated to such necessary public purposes shall be determined by appraisal and the amount of the fair market value of such park property shall be transferred to the city's accounts from the acquiring department's fund to the parks fund, and such proceeds shall be exclusively used to acquire replacement park property. … All other requirements of this section shall also be applicable.

Id.

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In August 2024,[1] the City Council adopted Ord. 1999 amending OHMC 1.30.010 again. CP 105-07. Ord. 1999's proposed amendments to OHMC 1.30.010 were addressed at five public meetings of the City Council on April 24, 2024, May 21, 2024, July 9, 2024, July 24, 2024, and August 13, 2024, including a public hearing held on August 13, 2024. CP 47-48. The Council received numerous public comments at those meetings. CP 48, 210-67. The comments considered by the City Council included letters from WEAN's Executive Director, WEAN's Litigation Coordinator, and WEAN's Engagement Director. CP 558-68. City staff presented the Council with a wide range of choices, from no code changes to repealing that entire code section. CP 156-60, 173-80. City staff had worked with the City Attorney to draft a code amendment that complied

[1] While drafting a potential development agreement, on or around March 11, 2024, the City Attorney noted that OHMC 1.30.010 required a citizen vote before the City Council could approve any sale or swap of City park land to a private developer. CP 47-48.

with the Washington State Constitution and Revised Code of Washington. CP 46-47. A robust public process resulted in the City Council adopting Ord. 1999 on August 13, 2024. CP 47.

The City Council expressed its rationale for amending OHMC 1.30.010 to create additional exceptions from the citizen vote requirement:

> WHEREAS, a requirement for voter approval of the sale or transfer of public park lands has the potential to hinder cooperation between the City and private property owners, the development of park lands and the overall economic development of the community; and
>
> WHEREAS, community apprehension about the sale or loss of park lands has been considered and appropriate mitigations developed to address those concerns; and
>
> WHEREAS, the City Council wishes to remove the requirement for voter approval prior to sale or trade of developed park property under specific circumstances to streamline the process of potential disposal of developed city parks property when it is determined to benefit the city and its

citizens.

CP 105.

Ord. 1999, as adopted, amended OHMC 1.30.010 providing:

> (1) No real property of the city shall be sold, released, leased, demised, traded, exchanged or otherwise disposed of unless the same is authorized by the city council after public hearing. Notice of such public hearing shall be given by publication of the notice in the city's official newspaper at least 10 days prior to the hearing.
>
> (2) Developed city park property shall not be disposed of in any manner without citizen approval in an election, except when presented, reviewed, and approved at a public hearing that meets at least one of the following criteria:
>
> (a) The city council reviews a development agreement between the city and private entity and determines that: The property exchange is calculated at a one-to-one ratio of land area or greater in benefit to the city, the privately owned land offered in exchange is of equal or greater market value than the publicly owned land, and the private land offered is an

appropriate replacement for the public property to be granted. The city council shall determine that the property exchange is beneficial to the city based on park needs, location, environmental standards and accessibility to park users and in its discretion approve a development agreement.

(b) The city council reviews a development agreement between the city and private entity and determines that the value of physical infrastructure to city park land or improvements to city park land provided by the private entity is at least 150 percent of the market value of the land granted by the city to the private entity. Such values shall be determined by all parties in a mutually agreed development agreement approved by the city council.

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

> determined by appraisal and the amount of the fair market value of such park property shall be transferred to the city's accounts from the acquiring department's fund to the parks fund, and such proceeds shall be exclusively used to acquire replacement park property. … All other requirements of this section shall also be applicable.
>
> (3) The preferred timing for such a hearing is before the property is listed for sale, release, lease, demise, trade, exchange or other disposition. It is, however, recognized that this may not be possible especially in the case where there is litigation pending on the property in question. …

CP 105-07.

The above-referenced OHMC subsections 1.30.010(2)(a) - (b) were added by Ord. 1999. *Compare* CP 103 and 105-06. Notably, Ord. 1999 does not eliminate the citizen vote requirement for all sales or exchanges of park land. CP 106. It merely added new exceptions to the citizen vote requirement in situations (1) where through a development agreement the land exchanged is of equal or greater size and value in benefit to the

City, and the City Council deems the land the City receives is an "appropriate replacement" for the park land exchanged; or (2) where a development agreement is utilized wherein City park land is exchanged for improvements to other City park lands, and such improvements to park lands are at least 150 percent of the market value of the park land granted to the private entity by the City. Id. (as codified in OHMC 1.30.010(2)(a)-(b)).

B. Communications Between the City and Developers.

The City Council deliberations that resulted in the adoption of Ord. 1999 arose as a result of a preliminary inquiry about a proposed development. On September 6, 2023, Sound Development, based in Mount Vernon, Washington, submitted a proposed commercial and residential project on parcel(s) adjacent to Ramaley Park in downtown Oak Harbor for pre-application review under OHMC 18.20.310. CP 49-84.

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The City's initial pre-application review was not positive.[2] CP 45. Sound Development responded with a new pre-application site plan for a four-story, 107-room hotel with convention meeting spaces, branded as Home2 Suites by Hilton Hotels ("Hilton Hotel"). CP 85-87.

WEAN's attempt to link a pre-application, preliminary Hilton Hotel proposal to the adoption of Ord. 1999 misses the mark because Sound Development did not file a complete land use application. Under the plain terms of WAC 197-11-070(4), no SEPA threshold determination is required for "developing plans or designs, or performing other work necessary to develop an application for a proposal." Id.

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[2] City planners provided a preliminary review letter to Sound Development dated October 12, 2023, regarding the pre-application Pioneer Landing project. CP 78. That preliminary review letter included a comment that Pioneer Landing was inconsistent with the City's development code, and thus staff could not approve the proposed project as designed. CP 81-82.

The pre-application site plan submitted for the Hilton Hotel is not subject to SEPA; only completed development applications are subject to SEPA. Id. Because the City has not received a complete application for the proposed Hilton Hotel project, there is no project here that requires SEPA review. CP 48.

The proposed Hilton Hotel has not advanced beyond pre-application status – no project permit application has been submitted to the City, much less a complete project permit application. CP 48. Thus, no project yet exists here to which the permit review process under OHMC 18.20.350 through OHMC 18.20.550 applies. Id.

C. Procedural History.

WEAN filed its lawsuit on August 30, 2025, identifying the following causes of action in its prayer for relief:

> [1] An order declaring that … Ordinance 1999 … violated Washington's code of ethics for

> municipal officers at RCW 42.23.070.[3]
>
> [2] An order declaring that in passing and adopting Ordinance 1999, the City . . . violated Washington's State Environmental Policy Act at chapter 43.21C RCW.
>
> [3] An order finding that the City's passage and adoption of Ordinance 1999 was arbitrary, capricious, and contrary to law within the meaning of Article 4, Section 6 of the Washington Constitution.

CP 1, 7.

The City moved for Summary Judgment, seeking dismissal of all claims. Judge Carolyn Cliff ruled in favor of the City on May 17, 2025. CP 628. The trial court determined that WEAN was not entitled to a Constitutional Writ of Certiorari and the City's elected officials did not violate codes of ethics. The trial court's conclusions of law correctly provided:

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[3] Because WEAN has failed to offer any argument in its Brief of Appellant related to the Code of Ethics for Municipal Officers, those issues are waived on review. Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 809, 828 P.2d 549 (1992).

10. … the City Council's adoption of Ordinance No. 1999 was not a covered action subject to SEPA review because Ordinance No. 1999, and City Ordinance No. 1110 before it, are procedural only, with no standards controlling the use or modification of the environment. WAC 197-11-704(2)(b)(i).

11. … the City Council's adoption of Ordinance No. 1999 was categorically exempt from SEPA review because it resulted in no substantive changes to OHMC Chapter 1.30 with regard to the use or modification of the environment, and Ordinance Nos. 1999 and 1110 merely relate to procedures for the sale or other disposition of City-owned property. WAC 197-11-800(19)(a)-(b).

12. The Court was struck by the fact that Ordinance No. 1999 contains a provision that builds SEPA review into the process when it makes sense to do SEPA review – when the City is proposing to dispose of a specific piece of park property. If the City does end up considering disposal of any park property, there will be a SEPA checklist and panoply of SEPA review in three phases. WEAN wants the Court to conclude there will be a fourth lawyer [sic] of review, but that is not the law.

CP 627.

V. ARGUMENT

A. Standards of Review.

The standard of review on appeal of a summary judgment order is *de novo*, with the reviewing court performing the same inquiry as the trial court. McNabb v. Department of Corrections, 163 Wn.2d 393, 180 P.3d 1257 (2008); Ski Acres, Inc. v. Kittitas Cnty., 118 Wn.2d 852, 854, 827 P.2d 1000 (1992); Herron v. Tribune Pub'g Co., 108 Wn.2d 162, 169, 736 P.2d 249 (1987). Facts and reasonable inferences are considered in the light most favorable to the nonmoving party and questions of law are reviewed de novo. Coppernoll v. Reed, 155 Wn.2d 290, 296, 119 P.3d 318 (2005). An appeals court "may affirm [the trial court's order] on any basis supported by the record whether or not the argument was made below." Bavand v. OneWest Bank, 196 Wn. App. 813, 825, 385 P.3d 233 (2016).

The standard of review of a government action under constitutional writ of review is the illegal or arbitrary and

capricious test – in this context, the test refers to the agency's jurisdiction and authority to perform the challenged act. Saldin Securities., Inc. v. Snohomish County, 134 Wn.2d 288, 292, 949 P.2d 370 (1998); Washington Public Employees Ass'n v. Washington Personnel Resources Bd., 91 Wn. App. 640, 657, 959 P.2d 143 (1998) ("[i]llegality . . . refers to an agency's jurisdiction and authority to perform an act"); King County v. Board of Tax Appeals, 28 Wn. App. 230, 237, 622 P.2d 898 (1981) ("a constitutional writ of certiorari is an extraordinary remedy reserved for extraordinary situations"). Therefore, "an alleged error of law is insufficient to invoke the court's constitutional power of review." Washington Public Employees Ass'n, 91 Wn. App. at 658. A government's action is "arbitrary and capricious if it is willful and unreasoning and taken without regard to the attending facts or circumstances." Wash. Indep. Tele. Ass'n v. Wash. Utils. & Transp. Comm'n, 148 Wn.2d 887, 905, 64 P.3d 606 (2003). "Where there is room for two opinions, action is not arbitrary and capricious even though one may

believe an erroneous conclusion has been reached." Saldin Securities, 134 Wn.2d at 296 (quoting Pierce County Sheriff v. Civil Service Comm'n, 98 Wn.2d 690, 695, 658 P.2d 648 (1983)). "[D]eference to the agency's interpretation is particularly appropriate where its own regulations are concerned." Postema v. Pollution Control Hr'gs Bd., 142 Wn.2d 68, 86, 11 P.3d 726 (2000).

B. The Trial Court Properly Found Ordinance 1999 Does Not Enact a Regulation That Controls the Use or Modification of the Environment.

The trial court properly determined Ord. 1999 is not a regulation that controls the use or modification of the environment and, therefore, SEPA was not required. The procedural change to OHMC 1.30.010 adopted via Ord. 1999 is not subject to SEPA review. This is clear from a reading of the detailed requirements for the implementation of SEPA found in Washington Administrative Code ("WAC") Chapter 197-11 (SEPA Rules) adopted by the Washington Department of Ecology under authority of RCW 43.21C.110.

1. Ordinance 1999 is not an "action" requiring SEPA review.

Only project and nonproject "actions" of the City are subject to SEPA review. RCW 43.21C.110, RCW 43.21C.030, and RCW 43.21C.031. WAC 197-11-704(2)(b)(i) defines "nonproject actions" as:

> (b) … Nonproject actions involve decisions on policies, plans, or programs. (i) The adoption or amendment of legislation, ordinances, rules, or regulations that contain standards controlling use or modification of the environment.

(Emphasis added.)

WEAN incorrectly asserts that both Ord. 1110 and Ord. 1999 contain standards "controlling use or modification of the environment," and fails to specify how the text of Ord. 1999 would actually control the use or modification of the environment. Appellant's Opening Brief at 34-38. The plain text of these ordinances shows no standards "controlling use or modification of the environment." Those ordinances pertain to the sale or exchange of real property rather than the use or

modification of the environment.

Ord. 1110 plainly provides:

> Section 1.04.030 Sale or exchange of real property.
> (1) No real property of the City shall be sold, released, leased, demised, traded, exchanged or otherwise disposed of unless the same is authorized by the City Council after public hearing. Notice of such public hearing shall be given by publication of the notice in the City's official newspaper at least ten days prior to the hearing. Developed City park property shall not be disposed of in any manner without citizen approval in an election.

CP 47, 95. Identical language is found in Ord. 1999, and it also contains exceptions to citizen approval in an election. CP 105-06.

The above-quoted text describes a *procedure* for the *sale* of real property rather than for the *development* of property – nothing in the text constitutes a "standard[] controlling use or modification of the environment." The language describes the three-step *procedure* required before the sale of property: 1) a

public hearing is required before real property of the City can be "sold, released, leased, demised, traded, exchanged or otherwise disposed of"; 2) notice of the public hearing must be published in the newspaper; and 3) "citizen approval in an election." CP 95, 105-06.

A "decision about the process that will be used to make a decision" is not one for which SEPA review is required. International Longshore and Warehouse Union, Local 19 v. City of Seattle, 176 Wn. App. 512, 521-22, 309 P.3d 654 (2013).

In Ord. 1110 and Ord. 1999, "disposed of" refers to selling real property,[4] not physically modifying real property. Thus, Ord. 1110 and Ord. 1999 simply specify permissible processes to transfer park property. Id.

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[4] When used as a verb the definition of "dispose of" includes: "b. to transfer to the control of another" such as "disposing of personal property to a total stranger." *See* https://www.merriam-webster.com/dictionary/dispose%20 of (last visited December 18, 2025). It is also defined as "transfer or give away, as by gift or sale." *See* https://www.dictionary.com/browse/dispose (last visited December 18, 2025).

Ord. 1999 added several provisions to OHMC 1.30.010 to ensure the City obtains favorable terms regarding the *value* for any park land sold or traded.[5] Nothing therein constitutes standards controlling the use or modification of the environment. To put a finer point on it, code provisions addressing the *amount* of land sold or exchanged, the *value* of land sold or exchanged, and the *value* of physical infrastructure provided in exchange for land do not and cannot control the use or modification of that land.

WEAN, nevertheless, asserts that Ord. 1999 "does, in fact, contain substantive standards relating to the use of the park property." Appellant's Opening Brief at 44. The insurmountable

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[5] The new terms include 1) "[any] exchange is calculated at a one-to-one ratio of land area or greater in benefit to the city"; 2) "privately owned land offered in exchange [for park land] is of equal or greater market value than the publicly owned land"; 3) "the private land offered is an appropriate replacement for the public property to be granted"; and 4) the "value of physical infrastructure to city park land or improvements to city park land provided by the private entity is at least 150 percent of the market value of the land granted by the city to the private entity." CP 105-06.

hurdle for WEAN is that the sale of property and the physical modification of property are not the same. The sale of property, no matter who buys it, has no effect whatsoever on the environment.

WEAN relies on a slippery slope-type argument – arguing that a sale of property *could* lead to development. But transferring property does not necessarily lead to building on property. The City could transfer park property to a non-profit organization for preservation or maintenance, for example. WEAN cites no authority finding an environmental impact under SEPA due to the mere change in ownership of a parcel.

2. *Friends of Sammamish Valley* is distinguishable.

WEAN leans heavily on King County v. Friends of Sammamish Valley, 3 Wn.3d 793, 556 P.3d 132 (2024), citing to it no less than five times. That case is inapposite because the challenged ordinance there was King County's zoning ordinance. The entire purpose of zoning is to control the use of land; unsurprisingly zoning ordinances are specifically

designated as nonproject actions subject to review under SEPA. WAC 197-11-704(2)(b)(ii). WEAN argues that the adoption of Ord. 1999 constitutes a nonproject action requiring SEPA review,[6] citing Friends of Sammamish Valley, 3 Wn.3d 793. That case does nothing to help WEAN here.

In Friends of Sammamish Valley, the Supreme Court considered a King County ordinance which changed zoning and licensing regulations within agricultural and rural land. Id. at 797. As part of its adoption, County staff completed a SEPA checklist and made a threshold determination analyzing environmental impacts. Id. at 799. The Supreme Court upheld the Growth Management Board's finding that the SEPA checklist improperly "failed to address the full range of probable impacts of the future projects that the Ordinance would allow." Id. at 817-18. The record disclosed "current, specific developments and land use changes that are probable to result

[6] *See* Appellant's Opening Brief at 28-29.

from the proposed action." Id. at 821. This was based on the ordinance creating "opportunities" for new businesses to open and existing ones to expand, where, with existing businesses already operating, it was "entirely predictable" that under the ordinance, more would open. Id. at 821-22 and n. 22. The Supreme Court reiterated:

> [T]he rule we adopted [in King Cnty. v. Washington State Boundary Review Bd. for King Cnty., 122 Wn.2d 648, 655, 860 P.2d 1024, 1028 (1993)] was that an EIS must be prepared by the relevant agency when the agency determines that significant adverse environmental impacts are probable following the government action.

Id. at 821.

That case is distinguishable from the present case, as the King County ordinance in Friends of Sammamish Valley directly impacted zoning and *known* future land development, such that all parties knew the environment would inevitably be impacted by its adoption. Here, Ord. 1999 does not alter or amend land use development regulations – it simply provides a process for

the City to convey its park land.

3. No property is being developed.

Instead of recognizing the distinction between simply conveying property and actually developing it, WEAN conflates them, using as its vehicle for doing so an argument regarding the intent of Ord. 1110. Appellant's Opening Brief at 35-36.

WEAN declares "[i]t is plainly evident that the voting requirement of Ordinance 1110 was intended to be a substantive restriction on the use and development of City-owned parklands." Id. at 37. That is simply not the case, nor does WEAN cite to any portion of the record to support its contention. Ord. 1110, by its plain terms, regulates the process of the sale of park land.

Further, WEAN's arguments conflating the potential development of Hal Ramaley Park in the future with the City's adoption of Ord. 1999 are speculation and irrelevant to the code amendment contained in Ord. 1999. No sale or transfer of any portion of Hal Ramaley Park has occurred, and no development

application for a Hilton Hotel has been submitted to the City, much less been approved. Should the City consider sale of Hal Ramaley Park and/or should someone propose to develop Hal Ramaley Park, significant review will be mandated at that time – including SEPA review.[7]

WEAN similarly cites to an unpublished[8] opinion Clark Cnty. v. W. Washington Growth Mgmt. Hearings Bd., 33 Wn. App. 2d 1093 (2025). *See* Appellant's Opening Brief at 29, 47. There, Clark County issued a determination of nonsignificance in its SEPA analysis of an application to amend the County's comprehensive plan to add a surface mining overlay designation to four parcels. The environmental checklist submitted,

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[7] Before any environmental impact could occur to Hal Ramaley Park due to a possible sale and/or hotel construction project, the City must make three more decisions. Two of those decisions require public hearings and City Council votes, and two require SEPA review: 1) a public hearing, City Council vote, and SEPA review on whether to sell park land; 2) a public hearing and City Council vote on whether to approve a negotiated development agreement; and 3) the usual governmental approvals and SEPA review required before developing land in the City.

[8] Cited pursuant to GR 14.1.

however, indicated the proponents' "undisputed intent to mine the property." Id. at *4. The Court agreed the DNS was inadequate to recognize the "significant" environmental impacts of the "detailed" mining activity anticipated. Id. at *1.

These cases are clearly distinguishable in two critical ways. First, both cases involved development regulations – one being a zoning ordinance, and the other being an amendment to a comprehensive plan. Second, each case had clear evidence that development with significant environmental impact would arise from adoption of the regulations. Here, the City has simply amended the manner in which it transfers park land. No development regulation – zoning or otherwise – is at issue here, nor has a complete development application been filed impacting Hal Ramaley Park.

4. There is no need to analyze legislative history.

This Court need not delve into the legislative history of Ord. 1999 or Ord. 1110 for several reasons. First, courts only

look to legislative intent when a statute or code is ambiguous.[9] Here, the plain language of Ord. 1110 and Ord. 1999 is unambiguous. Second, Ord. 1110 has no recital that provides any indication of its legislative intent for this Court to review, even if it were to find the Ordinance's plain language ambiguous. CP 95.

The City respectfully asks the Court to decline WEAN's implicit invitation to read into Ord. 1110 code language that does not exist. WEAN suggests the outcome of citizen votes will always be against the sale of park land, but again fails to cite any support in the record. Appellant's Opening Brief at 41. It is only by employing that false assumption that the code's voting provision can be transformed into a prohibition rather than the

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[9] "To determine legislative intent, we first look to the statute's plain language." Howard v. Pinkerton, 26 Wn. App.2d 670, 675 528 P.3d 396, 399 (2023). "Only when a statute is ambiguous do we turn to statutory construction, legislative history, and relevant case law to determine legislative intent." Id. "A statute is ambiguous only if 'it is subject to more than one reasonable interpretation.'" Id. (quoting Winebrenner, 167 Wn.2d 451, 456, 219 P.3d 686 (2009)).

simple procedure that it reflects.

Finally, Ord. 1999 includes recitals that address the code provisions established by Ord. 1110 and that actually refute WEAN's argument – specifically, a recital that "a [code] requirement for voter approval of the sale or transfer of public park lands has the potential to hinder cooperation between the City and private property owners, the development of park lands and the overall economic development of the community." CP 105. In Ord. 1999, the City Council exercised its express authority to modify the then-existing procedure to eliminate the citizen voting requirement when sufficient direct or indirect value is provided to the City in exchange for property. Those provisions were added to make sure the City does not run afoul of the constitutional prohibition on gifts of public funds. *See* Washington State Constitution, Art. 8, Sec. 7. Like Ord. 1110, Ord. 1999 contains no standards controlling use or modification of the environment. Neither of these ordinances reflect "nonproject actions." Rather, the ordinances are procedural, and

thus not subject to SEPA. WAC 197-11-704(2)(b)(i); RCW 43.21C.110, RCW 43.21C.030, RCW 43.21C.031; WAC 197-11-800(19).

Similarly, WEAN's constitutional writ of review claim fails because the City Council's action in adopting these ordinances is within "its jurisdiction and authority to perform." Saldin, at 292.

C. The Trial Court Properly Found Ordinance 1999 Is Categorically Exempt From SEPA.

Even if this Court believes that Ord. 1999 was a "nonproject action" as defined by SEPA, its adoption was exempt from SEPA review because it is plainly a "procedural action," with no substantive changes to the use or modification of the environment. WAC 197-11-800(19). Ord. 1999 is of the type of procedural action that is categorically exempt from SEPA review:

> Procedural actions. The proposal, amendment or adoption of legislation, rules, regulations, resolutions or ordinances, or of any plan or program shall be exempt if they are:

> (a) Relating solely to governmental procedures, and containing no substantive standards respecting use or modification of the environment.
> (b) Text amendments resulting in no substantive changes respecting use or modification of the environment.

WAC 197-11-800(19).

As described above, Ord. 1999 relates solely to governmental procedures and results in no substantive changes respecting the use or modification of the environment. Ord. 1999 simply amends the procedure by which the City may sell park land.

WEAN's arguments actually concede this fact, acknowledging that the City had been able to sell park land without an election, then later adopted the election provision, then chose to remove the election provision by passing Ord. 1999 – effectively describing the changing *process* over the years to effectuate park land sales.[10] Similarly, the property exchange

[10] Appellant's Opening Brief at 40–41.

provided for in Ord. 1999 is nothing more than a means or *process* to transfer park land property.

D. The City Council Holds Express Power to Transfer Property.

WEAN claims that the City Council in Ord. 1110 "effectively gave up its right [to the electorate] to sell or otherwise transfer public parklands to private commercial interests."[11] Every city council, however, retains the authority to amend or even repeal any ordinance that it has ever adopted. Even if WEAN's claim was true, Ord. 1999 reflects the Oak Harbor City Council's parallel decision to return to itself the authority to transfer real property in described instances.

The City Council's decision reflected in Ord. 1999 is grounded in the plain terms of state law. In RCW 35A.11.010, the Legislature gave the power to convey real property to the City Council:

> [B]y and through its legislative body, such municipality may contract and be

[11] Appellant's Opening Brief at 1.

> contracted with; may purchase, lease, receive, or otherwise acquire real and personal property of every kind, and use, enjoy, hold, lease, control, convey or otherwise dispose of it for the common benefit.

RCW 35A.11.010 (emphasis added).

The City Council accordingly has the authority – but not the obligation – to allow for a public vote on the transfer of real property. The Council can *choose* to provide for voter input, but it cannot "effectively give up its right" to transfer real property, as WEAN argues. Once the Legislature grants defined authority to the legislative body, that authority cannot be taken away by the electorate.[12]

Under RCW 35A.11.010, only the City Council has the authority to "purchase, lease, receive, or otherwise acquire real and personal property of every kind, and use, enjoy, hold, lease,

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[12] This principle is explained in several cases, including City of Sequim v. Malkasian, 157 Wn.2d 251, 265, 138 P.3d 943 (2006), and Mukilteo Citizens for Simple Government v. City of Mukilteo, 174 Wn.2d 41, 51-53, 272 P.3d 227 (2012).

control, convey or otherwise dispose of it."

The City Council had the authority to adopt a citizen vote regarding the procedure for selling or exchanging City park properties by adopting Ord. 1110; the City undoubtedly retains the power to eliminate that same provision whenever it chooses. No state or federal constitutional or statutory provision requires a vote before selling City-owned land. Whether and how to sell City-owned land is entirely at the discretion of the City Council. The City Council has the authority to adopt and repeal ordinances and code provisions as it chooses.

VI. CONCLUSION

The City Council's adoption of Ord. 1999 changed the City's process for transferring park property. Because the adoption of Ord. 1999 has no environmental impact, environmental review was not required. This Court should affirm the trial court's dismissal of this matter.

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*This document contains 5,699 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 22nd day of December, 2025.

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By */s/Hillary J. Evans*

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DECLARATION OF SERVICE

I, Margaret C. Starkey, declare and state:

1. I am over the age of 18 years, not a party to this action, and competent to be a witness herein.

2. On the 22nd day of December, 2025, I sent for service a true copy of the foregoing BRIEF OF RESPONDENT CITY OF OAK HARBOR on the following counsel of record by e-mail as indicated below:

> Bryan Telegin - bryan@teleginlaw.com
> Abigail McCeney - abigail@teleginlaw.com
> *Attorneys for Appellant Whidbey Environmental Action Network*

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 22nd day of December, 2025, at Palm Coast, FL.

/s/ *Margaret C. Starkey*
Margaret C. Starkey