

**PLANNING COMMISSION  
REGULAR MEETING  
CITY HALL – COUNCIL CHAMBERS  
September 25, 2012**

**ROLL CALL:** **Present:** Keith Fakkema, Jill Johnson-Pfeiffer, Greg Wasinger and Jeff Wallin.  
**Absent:** Bruce Neil, Kristi Jensen and Gerry Oliver.  
**Staff Present:** Development Services Director, Steve Powers; Senior Planners, Ethan Spoo and Cac Kamak and Associate Planner, Melissa Sartorius. Mike McIntyre, Senior Services Administrator.

Vice Chairman Fakkema called the meeting to order at 7:30 p.m.

**MINUTES: MR. WALLIN MOVED, MR. WASINGER SECONDED, MOTION CARRIED TO APPROVE THE AUGUST 28, 2012 MINUTES AS PRESENTED.**

**PUBLIC COMMENT:**

No comments.

**FAIRWAY POINT PRD MODIFICATION TO CONSIDER ADU'S** – Public Hearing

Mr. Fakkema recused himself from this item. Mr. Wasinger conducted the public hearing.

Mr. Powers reminded the Planning Commission that they closed the public hearing at the last meeting and therefore closed the public comment portion. Planning Commission will deliberate and make a recommendation to the City Council this evening

Mr. Wallin asked staff if they could limit the amount of people that reside in the accessory dwelling unit (ADU) to two and to clarify the parking requirements for an ADU. Mr. Powers said there isn't a Code basis to impose a limit as well as being a challenge to enforce such a limit. Mr. Sartorius indicated that the parking requirements are two per single-family unit plus at least one additional space for an ADU per Chapter 19.42.030(9).

Ms. Johnson-Pfeiffer asked if Planning Commission could reduce the number of ADU's. Mr. Powers said that the applicant has asked to have ADU's on up to six lots in this division of their project. It is within the Commission's purview to recommend to the Council something less than six if the Commission thinks that it addresses a compatibility issue.

Ms. Johnson-Pfeiffer said she thought that the parking for a five bedroom house and an ADU is more than that area can sustain. She also spoke about entering into a Planned Residential Development (PRD) that has been locked in for a long time and questioned whether the developer should be allowed to change the plan. She was also concerned that if you don't allow any change ever that this would discourage developers from using the PRD design. A compromise might be to allow ADU's on the lots that don't abut existing homes so there would be the flexibility and compatibility with the existing neighborhood.

Mr. Wasinger noted that allowing the developer the opportunity for including ADU's on up to six lots does not necessarily mean that all six lots will have ADU's and the living scenarios for those ADU's could vary from the worst case scenario of a family living in the ADU to just one caregiver living in the ADU.

**MOTION: MR. WALLIN MOVED TO RECOMMEND THAT THE ORDINANCE BE APPROVED AS PRESENTED. MS. JOHNSON-PHIEFFER SECONDED THE MOTION.**

Planning Commission Discussion

Ms. Johnson-Pfeiffer asked if was possible to allow ADU's in the four lots that do not abut existing homes.

Mr. Powers suggested adding "shall only occur on the four southern lots" to the end of Section Two. The lots would be identified by lot number.

**ACTION: MR. WALLIN WITHDREW HIS MOTION. MS. JOHNSON-PHIEFFER WITHDREW HER SECOND.**

**ACTION: MS. JOHNSON-PHIEFFER MOVED, MR. WALLIN SECONDED TO RECOMMEND THAT CITY COUNCIL APPROVE THE ORDINANCE WITH THE ADDED LANGUAGE THAT ADU'S SHOULD ONLY OCCUR ON THE FOUR SOUTHERN LOTS. MOTION CARRIED UNANIMOUSLY.**

Mr. Powers noted for the record that the four lots would be identified by lot number in the ordinance so that it is clear which lots the Planning Commission is referring to.

Mr. Fakkema returned for the remainder of the meeting.

**NIGHTCLUB ORDINANCE** – Public Meeting

Mr. Kamak reported that this is a continuing discussion that started in April of this year. Mr. Kamak presented the attached PowerPoint presentation (PC ATTACHMENT 1) which provided the information presented to-date, public input to-date and options considered. Planning Commission directed staff to pursue the option to license nightclubs by occupancy limit. Mr. Kamak presented the idea of licensing nightclubs by occupancy limit in the various zoning districts based on the intent of the zoning district as follows.

- CBD – pedestrian emphasis, mixed uses, residential – lowest occupancy limit (most restrictive)
- C3, - workhorse commercial, auto intensive, mixed uses, residential upper floors – same as CBD or higher (less restrictive)
- C5, - Highway Corridor, auto oriented, mixed uses, residential upper floors – same as CBD or higher (less restrictive)
- PIP, PBP – Planned Developments, no residential (less or no restrictions)
- I, - Industrial, no residential (less or no restrictions)

Mr. Kamak noted that there are no national standards or best solution and that the decisions are community driven.

Mr. Kamak displayed the occupancy limits of existing nightclub license holders to use as a starting point for considering what the occupancy limit should be in the various zoning districts:

- El Cazador – 291 – no impacts reported
- Oak Harbor Tavern – 108 – min impacts
- Mi Pueblo – 280 – less impacts

- 7 West – 165 – min impacts
- Off the Hook – 201 – min impacts
- Elements – 580 +219 (covered area) – most impacts

Mr. Kamak explained that occupancy limits are determined by the use and how the spaces in the building are allocated. Staff is proposing that if an occupancy limit is greater than the number that the Planning Commission selects tonight you cannot apply for a nightclub license. If a current business is more than the limit that the Planning Commission selects then they become non-conforming license holder. Specific language for dealing with non-conforming license holders would have to be written. Options are: allow them to continue to operating as they are in a non-conforming status as long as they remain under the same ownership or allow X number of years to become compliant (20 to 40 years). The specific language will require legal assistance and is not a land use issue and not under Planning Commission's review authority however, the Planning Commission can choose to make a recommendation or not to make a recommendation on this.

Mr. Fakkema asked for public input.

**Billie Cook** (651 SE Bayshore Drive) read her comments (PC ATTACHMENT 2).

**Vernon Meyers** (651 SE Bayshore Drive) said he received the staff report by mail and reviewed it and his first thoughts were that someone has really put a lot of work into this and he wanted to thank them for listening. He was happy that the City is aware of the situation and is responding to their concerns. He asked the Planning Commission, when making their decision, to think about how they would feel living next to the business.

#### Planning Commission Discussion

Mr. Fakkema asked if Industrial or Planned Industrial Park zoning districts are next to residential properties and if they are, should distance requirements be included. Mr. Kamak said that the zones are next to residential properties and that distance requirements could be included. The distance requirement can be tricky if there are several and whoever comes in last can't meet any of the distance requirements. This can be unfair. Many cities that have distance requirements are facing challenges.

Mr. Fakkema voiced concern about creating a situation where there will be an impact on residential uses. Mr. Kamak said that is the challenge, the fact that the property is zoned Industrial and that there are residential uses adjacent to it, that impact can happen whether we implement this code revision or not. Industrial properties exist with certain intensity or with the potential of certain intensity already so we are acting within that zoning intensity and classification.

Ms. Johnson-Pfeiffer asked if the Central Business District (CBD), C3 and C5 all allow mixed use. Mr. Kamak acknowledged that they do allow mixed use.

Mr. Kamak displayed the following table to give a starting point for setting a capacity limit for each zoning district

Zoning Districts	Starting Point	Planning Commission recommendation
Central Business District	300	?
C3, Community Commercial	300 or 30% increase to 400	?
C5, Highway Corridor Commercial	300 or $\pm$ 60% increase to 500	?
PBP, PIP	300 or $\pm$ 60% increase to 500 or No limitations	?
I, Industrial	300 or $\pm$ 60% increase to 500 or No limitations	?

Mr. Fakkema asked where the 30% was derived. Mr. Kamak explained that he increased it by 100 which equated to about 30%. From a gradation standpoint as you go higher in intensity that seems to be a reasonable increase between zoning districts.

Mr. Kamak displayed the zoning map to give the Commission an idea of where the zoning districts are located.

Mr. Powers asked Mr. Kamak if the Commissioners could assume that the numbers are a maximum number subject to the building to support that occupancy based upon the Building Code and the Fire Code. Mr. Kamak said that was true and the occupancy limits were not negotiable and are fixed by the Building Code and the Fire Code. This does not mean that just because we decide to set the maximum limit at 400 for a nightclub license that anyone that has a license can have up to 400 people, they are still limited by what the building occupancy load can support.

Ms. Johnson-Pfeiffer asked if there was a reason for recommending the incremental increases rather than setting at the same number anytime there is residential and commercial use mixed together. Mr. Kamak explained that the City of Oak Harbor zoning districts gradually increase in intensity so there is a natural understanding that the uses are also getting more intense and therefore it is logical to consider increasing intensity for such uses as well.

Commissioners discussed the commercial areas and the noise impacts on adjacent residential areas along Midway Boulevard. Mr. Kamak noted that if a business owner has an occupancy load of 600 in the CBD they won't qualify for a nightclub license if the City adopts a capacity limit of 300 in the CBD. Mr. Fakkema asked if that business owner were to split the building in half could he apply. Mr. Kamak said he could and the owner would have to submit the building plans, calculations and what the business is and then staff would calculate the new occupancy load based on the information provided and if that falls under 300 they can apply for a night club license.

Mr. Kamak also noted that the Planning Commission isn't obliged to use the progression and that they could choose another method.

Planning Commissioners discussed the police enforcement limitations if allowing a limit of 500 or no limitation. Mr. Kamak said that when we say no limitation we are not putting a restriction on the size of a business in the PBP, PIP and Industrial can apply. The size of a business will be market driven for a city of our size. Mr. Powers also noted that there are site development drivers such as parking and stormwater. The more parking the more stormwater will have to be handled. The number of parking spaces required is a function of the size of the building so there are more limitations than just what the occupant load is, there will be the economics of developing the site plus the economics of having a business.

Mr. Kamak also reminded the Planning Commission that the Code doesn't allow any new residential uses north of NE 16<sup>th</sup> Avenue.

Planning Commissioners settled on the following limitations and to not make a recommendation regarding dealing with non-conforming license holders:

Zoning District	Planning Commission Recommendation
Central Business District	300
C3, Community Commercial	300
C5, Highway Corridor Commercial	400
PBP, PIP	No limit
I, Industrial	No limit

**SHORELINE MASTER PROGRAM (SMP) UPDATE** – Public Meeting

Mr. Spoo explained that this is a continuing discussion of the SMP and the goal is to move toward making a recommendation to City Council tonight if Planning Commission is ready after the presentation and discussion.

Mr. Spoo asked Planning Commission what their preference was for a review of the chapters or to skip the review and go into the Department of Ecology (DOE) required changes and then to talk about chapters that the Commission may have questions on. Commissioners preferred a presentation of the DOE required changes.

Commissioners asked if the changes had to be made or could the City take a stand against something we don't agree with. Mr. Spoo said that other cities have taken a stand on some things and have been successful and unsuccessful at times but that DOE has final approval authority.

Mr. Spoo gave an overview of the Department of Ecology required changes. One of the changes regards how we are treating critical areas (wetlands, steep slopes, and fish and wildlife conservation areas along marine shorelines). DOE has requested that when we adopt the SMP to include our Critical Areas Ordinance (CAO) as an appendix. However there is one change. Initially DOE asked that a redline version be attached to the SMP but this creates confusion so staff is proposing to substitute the red-line version of the CAO with the CAO without the redline so there are not two versions of the CAO. So any planner or citizen can see that the CAO is adopted and attached to the SMP without any changes. If there are areas where the SMP and the CAO conflict, that will be called out in the body of the SMP. This occurs in Chapter 3, Section 4 of the SMP where the SMP talks about the CAO and how it relates to the SMP and item number 4 identifies exceptions in the CAO. Exceptions to applicability are:

- Marine buffers – per SMP
- Marine buffer reductions – no more than 25%
- Buffer averaging – per SMP
- Flexibility on steep slopes – CAO does not apply

There was discussion about the implementation issues involving the CAO and SMP.

Mr. Spoo said additional changes include technical changes to definitions, a change to the Shoreline Environment Designations Map in area of Freund Marsh due to better information available and the since the East ditch has a salinity percentage it is therefore considered tidal water so that means that anything within 200 feet of the ditch is within shoreline jurisdiction so that incorporates some of Dillard's Addition and they will be subject to the SMP. Staff sent a letter of notification last week to the properties impacted and have offered to hold a special neighborhood meeting with them to get their comment and to explain how they will be impacted.

Mr. Fakkema opened the public hearing.

**Ron Hancock** (Pioneer Way) said he has resided on Pioneer Way since 1966. He was concerned that he wouldn't be able to replace his private dock. He noted that in the 70's the City asked private property owners along Pioneer Way to relinquish their property to the City so the City could widen Pioneer Way and the property owners did. Mr. Hancock believed that at the very least they should have free access to their beach and opportunities to have docks as they have in the past. He asked that those property owners be "grandfathered".

Mr. Spoo said that Chapter 5 talks about shoreline modification and that private docks are considered a shoreline modification and under this chapter the Urban Mixed Use Environment, which is along Pioneer Way, would require that a private dock go through a conditional use permit which requires approval by City staff and then goes to DOE for final approval. One of the conditions would be that it be a joint use dock and would have to serve more than one single-family residence or public access would have to be allowed.

Mr. Spoo suggested that the SMP could be revised to allow private docks as a permitted use in the Urban Mixed Use Environment. The test for DOE is that it meets no net loss. Mr. Spoo said that mitigations could be to use smaller pilings, smaller over overwater deck structures or require grating in order to achieve no net loss.

Seeing no further public comment Mr. Fakkema closed the public hearing.

#### Planning Commission Discussion

Ms. Johnson-Pfeiffer asked what the difference would be in the process by changing private docks in the Urban Mixed Use Environment to a permitted use. Mr. Spoo said the permitting process would have applicants apply for a substantial development permit which would only require staff review with no DOE involvement but DOE could appeal staff's permit decision if they disagree with it. Mr. Powers added that a Hydraulic Project Approval (HPA) permit from the Department of Fish and Wildlife would be required which is a separate permit through the State but the permit wouldn't have to go through DOE.

**ACTION: MS. JOHNSON-PHEIFFER MOVED, MR. WALLIN SECONDED A MOTION TO RECOMMEND THAT THE CITY COUNCIL APPROVE THE SHORELINE MASTER PROGRAM AND APPENDIX WITH THE UNDERSTANDING THAT STAFF WILL ATTACH A NON REDLINE COPY OF THE CRITICAL AREAS**

**ORDINANCE TITLE 20 OHMC AND REVISED MAP TO THE DRAFT SMP FOR CITY COUNCIL CONSIDERATION.**

**VOTE ON**

**THE MOTION: MS. JOHNSON-PHEIFFER AND MR. FAKKEMA VOTED IN FAVOR, MR. WASINGER AND MR. WALLIN OPPOSED. MOTION FAILED.**

**ACTION: MS. JOHNSON-PHEIFFER MOVED, MR. WALLIN SECONDED A MOTION TO RECOMMEND THAT THE CITY COUNCIL APPROVE THE SHORELINE MASTER PROGRAM AND APPENDIX WITH THE UNDERSTANDING THAT STAFF WILL ATTACH A NON-REDLINE COPY OF THE CRITICAL AREAS ORDINANCE TITLE 20 OHMC AND REVISED MAP TO THE DRAFT SMP FOR CITY COUNCIL CONSIDERATION AND TO CHANGE PRIVATE DOCKS TO A PERMITTED USE IN THE URBAN MIXED USE ENVIRONMENT. MOTION CARRIED UNANIMOUSLY.**

Mr. Powers and the Planning Commission commended Mr. Spoo for his hard work on the draft SMP over the last 3 years.

**PERMIT EXTENSION FOR ADULT DAY CARE CONDITIONAL USE PERMIT** – Public Hearing

Mr. McIntire (Senior Services Administrator) explained that this conditional use permit is for a modular building that Senior Services uses to train over 350 State certified caregivers, as a foot clinic as well as some activities for seniors. All these things help satisfy the needs of the community. Mr. McIntyre asked that the Planning Commission approve the conditional use permit for another two years.

Mr. Fakkema opened the public hearing. Seeing none, the public hearing was closed.

**ACTION: MR. WALLIN MOVED, MR. WASINGER SECONDED A MOTION TO ADOPT THE FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION OF PLANNING COMMISSION AND APPROVE THE 2 YEAR EXTENTION FOR THE USE OF THE MODULAR STRUCTURE IN THE PUBLIC FACILITIES ZONING DISTRICT. MOTION CARRIED UNANIMOUSLY.**

**2012 COMPREHENSIVE PLAN AMENDMENT DISCUSSION** – Public Meeting

Mr. Kamak explained that this is the annual review of the Comprehensive Plan and the Capital Improvement Plan (CIP) is part of the Comprehensive Plan. The Capital Improvement Plan is updated to reflect the most recent revenues, projections, dates and schedules based on the budget. There are statistical changes that are updated in the initial chapter which provides an inventory of all the capital facilities such as the length of sewer lines, stormwater lines, miles of streets and the library portion. The Transportation Improvement Plan projects are reflected in the CIP and some of the numbers will updated. City Council's decision to locate the wastewater treatment plant at Windjammer Park has been included. The major projects over the next few years are: NE 7<sup>th</sup> Avenue improvements, North Reservoir and the 42" Outfall.

Mr. Kamak noted that a redline copy of the CIP was included with the agenda packet for the Planning Commission to review prior to the public hearing in October.

**Planning Commission Discussion**

Mr. Wasinger asked if the NE 7<sup>th</sup> Avenue improvements include NE 7<sup>th</sup> between SR-20 and Midway Boulevard. Mr. Kamak answered no it is the section west of SR-20. Mr. Wallin asked if it would include the intersection of SR-20. Mr. Kamak said we don't know that yet but believed there would be some improvements because of how the road will intersect with SR-20.

Mr. Fakkema asked if City Council voted to eliminate the Multimodal Project. Mr. Kamak said they didn't approve the Substantial Shoreline Development Project for the project but chose not to remove the project from the CIP.

There was some discussion about the revenue and the rate increases on page 34, 35 and tax revenues on page 36.

**ADJOURN: 9:52 p.m.**

## Nightclubs

- Regulated in Title 5 - Business Licenses and Regulation
- Defined - "Nightclub" means any "premises" as defined herein on which any music, singing, dancing or other combination of these activities is permitted as entertainment after 10:00 p.m., on one or more days per week. The playing of incidental music on any premises where the receipts for the sale of food constitute 75 percent or more of the gross business income of the establishment shall not be considered a "nightclub" for purposes of this chapter, unless an opportunity for social dancing is provided on the premises

## Nightclubs

- Currently six uses have obtained a Nightclub license
  - Element - CBD (Central Business District)
  - Seven West - CBD (Central Business District)
  - Off the Hook - CBD (Central Business District)
  - Oak Harbor Tavern - CBD (Central Business District)
  - Mi Pueblo - CBD (Central Business District)
  - El Cazador - C5, Highway Corridor Commercial
- These uses are classified as Bars, Taverns and Restaurants - all of which are permitted uses in their respective zoning districts
- Some of these uses can continue to exist without a Nightclub License

Request to restrict by size and zoning

## Nightclubs

## Nightclubs

- Nightclubs are specifically not listed as a use in Title 19 - Zoning
- Any permitted or conditional use can apply for a Nightclub license
- Nightclub License review process - Lead by the Chief of Police with a Public Hearing at the City Council
- License review is not a Land use review

## Nightclubs

- Public Input on April 24 at Planning Commission
  - New code may not change the operations of current nightclubs
  - Small scale nightclubs don't seem to be an impact
  - All complaints were related to Element nightclub
  - Noise created by large groups, loud cars, trespassing, lack of respect and poor business practices
  - Perceived lack of owner's cooperation, neighborliness and initiative
  - Preference for restricting nightclubs specifically as opposed to general uses

## Nightclubs

- Nexus
  - Scale of nightclub has direct relation to the negative impacts on adjacent properties
  - Options considered at the June 26<sup>th</sup> meeting
    - Regulate nightclubs as a land use
    - Licensing uses by area (sq. ft.)
    - Licensing by occupancy limit ✓

## Nightclubs

- Licensing nightclubs by occupancy limit in the various zoning districts?
  - Determine the districts where they should be prohibited
    - Primarily Residential – R1, R2, R3, R4
    - Mixed - RO, C1
    - Commercial – C4, Highway Service Commercial
    - Public – PF

## Nightclubs

- Licensing nightclubs by occupancy limit in the various zoning districts?
  - Regulate the zoning districts based on the intent of the zoning district
    - CBD – pedestrian emphasis, mixed uses, residential – lowest occupancy limit (most restrictive)
    - C3, - workhorse commercial, auto intensive, mixed uses, residential upper floors – same as CBD or higher (less restrictive)
    - C5, - Highway Corridor, auto oriented, mixed uses, residential upper floors – same as CBD or higher (less restrictive)
    - PIP, PBP – Planned Developments, no residential (less or no restrictions)
    - I1, - Industrial, no residential (less or no restrictions)

## Nightclubs

- So what should the occupancy limit be in the various zoning districts?
- Occupancy limits of existing nightclub license holders
  - El Cazador – 291 – no impacts reported
  - Oak Harbor Tavern – 108 – min impacts
  - Mi Pueblo – 280 – less impacts
  - 7 West – 165 – min impacts
  - Off the Hook – 201 – min impacts
  - Elements – 580 +219 (covered area) – most impacts

## Nightclubs

- So what should the occupancy limit be in the various zoning districts?

Zoning Districts	Starting Point	Planning Commission Recommendation
Central Business District	300	?
C3, Community Commercial	300 or 30% increase to 400	?
C5, Highway Corridor Commercial	300 or ± 60% increase to 500	?
PBP, PIP	300 or ± 60% increase to 500 or No limitations	?
I1, Industrial	300 or ± 60% increase to 500 or No limitations	?

## Nightclubs

- Nonconforming License Holders
  - Not a land use issue since primary use is permitted in the zoning district
  - Code can be adopted to allow nonconforming licenses to continue – options to consider
    - Remain under same ownership
    - Amortization period to become conforming – How long? Ownership changes during amortization -? (Legal assistance needed)
  - Planning Commission can choose to make a recommendation.

## Nightclubs

- Legal assistance
- Formal adoption process
  - SEPA checklist
  - Public Hearing at the Planning Commission
  - Standing Committees
  - Public Hearing at the City Council
  - Action by City Council

## Nightclubs

- ...

## Nightclubs

- 1. Regulating nightclubs as a land use
  - Introduce nightclub as a use into the zoning ordinance
  - Require it as a conditional use
  - Pros: Public process, notification, public hearing, place conditions for approval
  - Cons: Can meet all criteria and still have impacts, size of use will not be regulated, challenging legal process to revoke permit
  - Code can be confusing with the Business Licensing and Regulation chapter

## Nightclubs

- 2. Licensing uses by area
  - Limit the size of the use that can apply for a nightclub license based on area (eg. < 5000 sq. ft.)
  - Condition in the Business and License Regulation section of the code
  - Pros: Limits the size of use that can apply
  - Cons: limit the structures that can apply, may not address the actual impacts, occupancy varies for different uses (restaurant vs. bar)

## Nightclubs

- 3. Licensing uses by occupancy limit
  - Limit the size of the use that can apply for a nightclub license by occupancy limits (eg. < 300)
  - Condition in the Business and License Regulation section of the code
  - Pros: Size of building may not matter, will limit the concentration of people in nightclubs
  - Cons: Can create several small establishments that can still have cumulative impacts

I am glad that the process of drafting a nightclub ordinance is moving toward completion. What looks to be the end result is quite different from what I envisioned and in some ways much better. I feel this is due to the hard work of the Planning Department, especially Cac Kamak, Thank you. The original idea of addressing size limits for nightclubs in the CBD has expanded to a city wide definition of allowable size of "nightclubs" by zones. Since this issue is not addressed by the Nightclub Licensing Act, I am pleased this proactive approach be taken as Oak Harbor continues to grow.

The original idea to restrict proliferation of overly large nightclubs in the CBD would indeed be accomplished by the adoption of the material listed in the table: Occupancy Limits by Zoning District contained in the report. I am very pleased it allows a zone, for such establishments, with no restrictions; as well as graduated occupancy limits in other zones. This would protect all land users from problems that occur when a large business with a nightclub license is situated too close to a church, other businesses, or residences.

However, I suggest you do not include specific language concerning non-compliant licensees in the proposed draft amendment. Let the city council decide specifics.

I would like to address some assumptions being made that may not be appropriate.

One is that there will be only one non-compliant licensee and that they will be in the CBD. By the time this amendment might be enacted there may be others, in other zones, and may not be the Element owner. As I said, I hope you will use non-specific language in the proposed draft amendment.

Even I have assumed that non-compliant licensees would be grandfathered in and retain their status for as long as they wished to remain in business. Although this could be the case with a non-conforming land user there may be different procedures for licensees. I believe that in some cases license holders are given a time period in which they need become compliant, or are no longer eligible for

licensing. Unlike revocation, for cause, this is merely the inability to renew. There are arguments for this action.

1. It levels the playing field for license holders who come after an amendment. The non-compliant licensee has a continuing advantage over them, a monopoly of sorts.
2. Since the purpose of the amendment cannot be fully realized with non-compliant licensees operating, such a time frame may be a way to achieve the desired purpose.
3. Also having non-compliant licensees adds to administrative costs.

I believe the city might be able to take such a course of action since non-compliant license holders are not the same as non-conforming land users and are not governed by the same statutes. Were the city to follow this course, of requiring compliance within a time frame, the underlying land use business would be unaffected, and the decision to become compliant or not rests solely with the licensees.

Another assumption, I see being made, is that a "nightclub" is a business, under land use statutes when in fact it is not. This leads to the issue of possible transferability of non-compliant status so as to sell the "nightclub". In Oak Harbor, "Nightclubs" don't exist as a permitted land use and are therefore not bought or sold. Under Land Use the business owner can at any time sell their business, with an amendment to the nightclub licensing act this would not change. They could sell their underlying business. Under Land Use if they became non-conforming they might be allowed an amortization period within which transfer of ownership, of the business, is allowed. However, Business Licenses including the Nightclub License are not saleable or transferable. The assumption that the proposed amendment should address this issue and somehow allow a special privilege be given to non-compliant licensees is, I feel, incorrect, unfair, and possibly not legal. This question is a very complex issue which I feel should be left out of the language of your recommendation for amending the Nightclub Licensing Act. You might, however, include the suggestion that the city council

retain to itself the discretionary right to, upon request from a non-compliant licensee, convene a public hearing to consider requests for waivers from license provisions. This would allow the city council to take action on a case by case basis, not set a general precedent, and still allow non-compliant licensees an avenue to address their desires.

I propose the draft amendment be kept simple, containing the material in the Occupancy by Zone table. Suggest to the city council they decide separately if non-compliance be open-ended, or have a time frame for compliance, and how non-compliant licensees would renew their license. I hope you will also suggest the city council address questions about the Amended Nightclub Licensing Act by public hearings on a case by case basis, rather than build into your proposal language, addressing specific conditions, which the city may come to regret in the future.