

ADULT ENTERTAINMENT INTERIM ORDINANCE – Public Hearing

Mr. Kamak reported that this public hearing is part of the process to finalize the interim ordinance adopted by the City Council on March 23rd. Mr. Kamak summarized the actions taken to date by the City Council as follows:

The City adopted ordinances that address public nudity and licensing of adult entertainment based on a recently expressed interest to open an adult entertainment establishment in the area. As part of adopting these regulations, the City also adopted an interim zoning control to restrict such uses to an overlay district. The ordinances are summarized as follows:

- Ordinance Banning Public Nudity: The City Council adopted an ordinance creating a new chapter 6.70 entitled “Nudity in Public Places” to Title 6 Public Peace, Safety and Morals of the Oak Harbor Municipal Code. The purpose of this ordinance is to ban public nudity with appropriate exceptions. Since this is not a land use related ordinance it will not be necessary for Planning Commission to review this language.
- Ordinance adopting Adult Entertainment Licensing and Regulations: The Ordinance created a new chapter 5.20 entitled “Adult Entertainment” in Title 5 Business Licenses and Regulations of the Oak Harbor Municipal Code. The regulations adopted with this ordinance address how the business should operate and deals directly with the details of the how the business is run to mitigate the secondary impacts that are caused by such uses. Since this deals with the business licensing and related requirements and is not a land use related ordinance it will not be necessary for Planning Commission to review this language.
- Interim Ordinance adopting an Adult Entertainment Overlay Zone: This Ordinance created an interim zoning control by adopting an overlay zone that determines where such uses may locate. The interim ordinance created a new chapter 19.52 entitled “Adult Entertainment Facilities Overlay Zone”. The interim ordinance entered findings of fact concerning the negative secondary impacts of adult entertainment facilities and created an overlay districts that includes I-Industrial and PIP, Planned Industrial Park zoned property along Goldie Road.

The interim Adult Entertainment Overlay Zone requires further discussion and hearing by the Planning Commission since it is a land use related ordinance.

Mr. Kamak provided information on legal cases that support the regulation of adult entertainment land uses and also provided some options to consider when locating these facilities in Oak Harbor.

Mr. Kamak noted that the Supreme Court has issued a number of decisions upholding adult business regulations aimed at reducing “secondary effects” such as increased criminal activity, sexual related crime, increased blight, increased vacancy rates etc. Mr. Kamak also commented that the courts require that there must be a nexus between a municipality’s adult entertainment ordinance and the secondary effects evidence upon which it’s based. The Supreme Court has also held that this evidence may be borrowed from other cities where the secondary effects exist. Since Oak Harbor does not currently have any adult entertainment facilities to determine the secondary impacts, it will have to rely on studies performed elsewhere as long as whatever evidence the City relies upon is reasonably believed to be relevant to the problem it addresses. Summaries of such studies were included in the Planning Commission’s agenda packet.

Mr. Kamak explained that zoning that has distinguished Adult Entertainment Facilities from other commercial uses has been upheld by the courts provided it is done within certain constitutional constraints. There are two primary methods of zoning Adult Entertainment Facilities. One is the “dispersion zoning” that regulates the uses by distance separations such as “within 1000 feet of any other such establishment or within 500 feet of a residential area”. The second is the “concentration zoning” where a particular use, in this case the Adult Entertainment Facility, is prohibited from locating anywhere except in a specific portion of the municipality. Both methods have been held to be constitutionally permissible as legitimate. Both methods of regulation cannot do the following:

- Zoning cannot completely eliminate Adult Entertainment Facilities from the municipality
- Zoning cannot exclusively permit Adult Entertainment Facilities in an area that is “commercially unavailable”
- Zoning cannot force preexisting Adult Entertainment Facilities to cease operation and relocate.

Mr. Kamak noted that the interim ordinance adopted by the City Council on May 4, 2010 established an overlay zone over three properties on Goldie Road that are zoned I, Industrial and PIP, Planned Industrial Park. If this were to be adopted as the final overlay zone it would be “concentrated zoning”. However, it should be noted that Oak Harbor’s interim overlay zone properties were identified using a separation distance from sensitive areas such as schools, parks and religious institutions.

Mr. Kamak summarized the concentrated approach and the dispersion as follows:

Concentrated Approach

1. Like uses are treated alike – the same uniform district standards apply to all uses equally. Any changes to other districts will not have an effect upon the adult entertainment facilities within the special overlay district.
2. Lower administrative costs – once the district is established and development standards set; there is not need for costly case-by-case review of adult business requests other than the regular site development or building permit review.
3. Control over the total growth of these uses and the development of specific new uses – the limits of the area for these uses are defined. The dispersal method may have no upper limit of these uses provided that all separation requirements are met.
4. Easier evaluation of total public services impact – heavier traffic, limited parking space, higher police costs and other effects of the adult entertainment facilities can be easier to identify if they are concentrated into one area.

The drawbacks of this approach are documented in the land use case study summaries provided in the Planning Commission agenda packet. Studies, such as the ones done in Austin, TX indicate that the crime rate is 66% higher in areas where there is a concentration of such uses.

Dispersion Approach

The dispersion approach (also referred to as the Detroit Model) regulates adult entertainment facilities by separating them from each other and other sensitive uses. Cities typically will require that adult entertainment facilities be separated from each other by a distance that can

vary from 300 feet to 2000 feet. The regulation will also call out separations from sensitive areas such as schools, churches and parks. Some cities have also required separations from other establishments that serve alcohol. This is a more popular model since studies show that the secondary effects of these uses such as crime rates etc. are less when they are dispersed.

Mr. Kamak explained the various options available to Oak Harbor as follows:

1. Maintain the current properties in the interim ordinance: This would retain the properties identified in the interim ordinance in the overlay zone and will not add additional properties. This will be similar to the concentrated approach discussed earlier. If the City chooses this option, the properties must be studied to assure reasonable developability of the property for infrastructure and site development.
2. Dispersion method: This option will consider dispersing the Adult Entertainment Facilities in various locations within the city. The dispersion method is traditionally done by regulating the uses with separation distances from sensitive areas and similar uses. Due to the layout of Oak Harbor, this option will be challenging in identifying locations without reducing the separation distances significantly from some sensitive areas such as residential areas. Maps were attached to the Planning Commission's agenda packet showing some queries on different separation distances for the various uses. Different buffers can be used for the various sensitive areas. A few examples of the combination of different distances have been provided for study.
3. Establish a corridor: This option will consider adding property to the ones that are currently in the interim ordinance. An example would be the Goldie Road corridor. This will provide more options for the Adult Entertainment Facilities and may lessen the burden for the City to prove the availability of land for such uses. This option is also a concentrated approach.

Commission Discussion

Mr. Wiggins commented that he believed there were no redeeming factors in allowing adult entertainment facilities into the community. Property values go down, crime goes up and the administrative costs will go up dramatically.

Mr. Powers the stated that the Council had the same concerns during the public process in March and in May. The short answers from the City Attorney and the Prosecuting Attorney was that the decisions as to whether or not to allow these businesses into our community have been made for us at the State Supreme Court level and at the United States Supreme Court level. What still remains within the local choice is the opportunity to decide where those businesses can locate. Prior to Council action in March and May there were no regulations on the books therefore we did not have the level of protection from at least having the ordinances.

Mr. Fakkema asked what would happen if the City didn't allow the business to locate in Oak Harbor. Mr. Power indicated that a business owner's recourse would be through legal action.

Mr. Powers indicated that it is planning staff's responsibility to present the interim ordinance and ask for Planning Commission review, input and recommendation to the City Council. The Council will then have the responsibility of considering the recommendation as they decide what the final form of our adult entertainment facilities ordinances should look like.

Mr. Kamak added that we currently have the interim ordinance and before we had no ordinance. This is a proactive approach and doesn't mean that these businesses will flock to these areas. It is better to have well thought out regulations in place before hand.

Mr. Powers asked Planning Commission to provide input as to which of the options they would like staff to look at and provide more information on and to open the public hearing and then continue the public hearing until the August meeting.

Ms. Fey also agreed with Mr. Wiggin's sentiment but understood that the City has to face this issue and must go forward to find a place where adult entertainment facilities can locate, otherwise the City is hanging out there and will have a very hard time if and when someone does come to town specifically to establish this type of facility.

Mr. Wiggins noted that the Laser Tag business is in the vicinity of the properties where adult entertainment facilities can locate according to the interim ordinance and children use the Laser Tag Facility. Mr. Wiggins asked if other uses could be identified as sensitive and require a separation distance. Mr. Powers cautioned against having such a large number of sensitive areas requiring separation that there are no properties left for adult entertainment facilities inside the city limits.

Mr. Fakkema stated that he was leaning toward the Concentrated Approach. He asked if the city required to have a certain percentage set aside for these uses? Mr. Powers state that there are no rules of thumb such as a certain percentage of land use.

Mr. Fakkema asked if a plumbing contractor were to build a plumbing shop on that site zoned for adult uses, would that be allowed and could we possible fill up the designated area with other uses? Mr. Powers indicated that the City's obligation is to provide regulations as to where adult entertainment facilities can locate but we don't have the obligation to preserve those locations. The market forces are still at work.

The public hearing was opened.

Mel Vance PO Box 2882. Mr. Vance commented that there were no serious applications pending and no hints of applications for adult entertainment facilities in the future so the Planning Commission should take time and to be very careful when considering the regulations. Mr. Vance cautioned against going to the most extreme prohibitive regulations, many of which have not withstood serious Constitutional challenge in the Supreme Court. Oak Harbor cannot afford a court challenge and it could potentially bankrupt the City. Mr. Vance agreed that buffers between sensitive areas was a good idea and should be preserved in what ever final ordinance is brought forth. Mr. Vance also noted that there is more to the adult entertainment industry than strip clubs and peep shows and the ordinance adopting Adult Entertainment Licensing and Regulations only applies to strip clubs and peep shows.

The public hearing was continued to the August 24, 2010 Planning Commission meeting.

BEING NO FURTHER BUSINESS BEFORE THE PLANNING COMMISSION, THE MEETING WAS ADJOURNED AT 8:30 P.M.