

City Council Meeting
Tuesday, March 23, 2010, 6:00 p.m.
(Lack of a quorum on March 16, 2010)
City Hall – Council Chambers

CALL TO ORDER Mayor Slowik called the meeting to order at 6:00 p.m.

INVOCATION David Lura, First United Methodist Church

ROLL CALL

Jim Slowik, Mayor

Six Members of the Council,

Rick AlMBERG

Scott Dudley

Jim Palmer

Beth Munns

Danny Paggao, Mayor Pro Tem

Bob Severns (arrived at 6:15 p.m.)

Jim Campbell was absent and formally excused from this meeting.

Paul Schmidt, City Administrator

Margery Hite, City Attorney

Bill Hawkins, Prosecuting Attorney and Law and Justice Coordinator

Doug Merriman, Finance Director

Steve Powers, Development Services Director

Cathy Rosen, Public Works Director

Eric Johnston, City Engineer

Rick Wallace, Chief of Police

Mark Soptich, Fire Chief

Mack Funk, Harbormaster

Mike McIntyre, Senior Services Director

Renée Recker, Executive Assistant to the Mayor

MINUTES

MOTION: Councilmember AlMBERG moved to approve the 2/27/10 Council retreat minutes and the 3/2/10 regular meeting minutes. The motion was seconded by Councilmember Palmer and carried unanimously. Councilmember Severns was not present for this vote.

NON-ACTION COUNCIL ITEMS

Introduction of “Caught in the Act” Youth Award Winners

The Island County Children’s Commission recognizes youth who make a significant contribution to their community such as a Good Samaritan act, being a positive role model, random acts of kindness, assisting others, or any positive contribution to our community. Lt. John Dyer, Ann Murphy, and Peggy Dyer presented awards to:

Rebecca Moeai – For her work collecting canned foods outside of Safeway for the Ronald McDonald House. Becca made the contacts with the Ronald McDonald House people, set up the event, did the advertisements, and insured that the food was delivered to Seattle.

Chad Merrill – For organizing a group of youths at the Library who play a particular card game and creating a club called EDIT (Every Duelist In Town). The club has rules and officers, is self-regulating, and has grown to 20 youth who enjoy the social network and welcoming environment of the library.

Paul Derting – For being a positive role model to two young boys through the Big Brothers Big Sisters mentoring program. As a young boy, Paul was mentored, matched with a big brother at the age of 11, and remained matched with his big brother for 6 ½ years until he turned 18. Paul learned the value of having a role model and chose to become one.

Mayor Slowik congratulated the recipients and encouraged them to keep serving the community.

Employee Recognition – Rhonda Severns and Butch Reinstra, 30 years

Ms. Severns was not able to attend this meeting. Public Works Director Cathy Rosen talked about Mr. Reinstra's employment with the City beginning in 1980 in the Solid Waste Division, transferring to Streets in 1985 and, when Streets and Water Divisions separated in 1995, working in the Water Division and now holding the title of Water Specialist II. His responsibilities include specialized and advanced water system maintenance, troubleshooting, and repair. His knowledge of specialized equipment operation, such as track-hoes and bulldozers, has been put to use on special projects throughout the City. Mr. Reinstra has a high aptitude for fabrication and anything mechanical. Mayor Slowik congratulated Mr. Reinstra for his 30 years of faithful and loyal service to the City.

Proclamation – United States 2010 Census

Councilmember Dudley read this proclamation encouraging the citizens of Oak Harbor to participate in the U.S. 2010 census.

Proclamation – Lions Club Day

Councilmember AlMBERG read this proclamation declaring March 26th as Lions Clubs International Day and presented it to Lions Club members who talked about upcoming and ongoing projects in the community along with zone projects with five other clubs.

Public Comments

Frank Scelzi, P.O. 2249, Oak Harbor. Mr. Scelzi is the newly elected president of the Harborside Merchants Association and spoke with concern about the Pioneer Way Street Improvements Project. Mr. Scelzi talked about the Windjammer Project, historical renovation, and concern over a one-way design on Pioneer Way citing cities who are now returning to two-way traffic flow. Mr. Scelzi felt that Oak Harbor is not a business-friendly city and downtown businesses are facing bankruptcy.

Gerry Oliver, 947 NW Prow. Mr. Oliver spoke in support of the one-way design for Pioneer Way. As a local realtor, he noted that 15 businesses were on the market prior to the discussions about one-way and two-way street designs and pointed out that a new storefront was in place last week. Mr. Oliver does not believe that businesses fail because of the City; they fail on their own merits. Entrepreneurship succeeds.

Helen Chatfield-Weeks, 1415 SE 9th. Ms. Chatfield-Weeks thanked the Police Department, Public Works Department, Mayor Pro Tem Paggao, Pastor Lura, and Councilmember Palmer for supporting this year's St. Patrick's Day Parade and Celebration. Everyone had a wonderful time.

Mel Vance, P.O. 2882, Oak Harbor. In reference to the 2/27/10 retreat minutes, Mr. Vance spoke with concern about electronic media, time limits, and asked for reconsideration of time limitations. Mr. Vance felt that City staff are allowed as much time as they need for agenda presentations and the same should be true for the public. Mr. Vance also objected to combining items 7 and 8 of this evening's agenda.

With no other comments coming forth, Mayor Slowik closed public comments.

COUNCIL CONSIDERATION AND ACTION ON THE FOLLOWING MATTERS

Consent Agenda

- A. Noise Permit – Holland Happening
- B. Noise Permit – Whidbey Island Tea Party
- C. Noise Permit – Filipino Christian Fellowship
- D. Change Fund Resolution
- E. Sale of Boat, Vessel ID# WN 0971 RG, a 1974 American Sailboat
- F. Sale of Boat, Vessel ID# WN 2961 P, a 1969 Fairliner Powerboat
- G. Sale of Boat, Vessel ID# CF 457 CU, a Powerboat
- H. Bid Award – Regenerative Sweeper
- I. Approval of Accounts Payable Vouchers

Councilmember Palmer asked that Consent Agenda items B and F be removed for discussion.

MOTION: Councilmember Palmer moved to approve Consent Agenda items A, C, D, E, G, H, and I with item I paying accounts payable check numbers 140674 – 140844 in the amount of \$642,587.83, and payroll check numbers 93688 – 93694 in the amount of \$83,490.00. The motion was seconded by Councilmember Severns and carried unanimously.

Consent Agenda Item B, Noise Permit for Whidbey Island Tea Party

Councilmember Palmer had been contacted by a citizen who made negative comments and Mr. Palmer asked that police be available for this event. Councilmember Almberg asked about the applicant since personal information is redacted from the packet's application.

Consent Agenda Item F, Sale of Boat, Vessel ID# WN 2961 P, a 1969 Fairliner Powerboat

Discussion followed about the recent boatowner's letter to Council asking that the sale be delayed. Council felt that consideration should be given to this request since this is a responsive Oak Harbor owner who is trying to sell the Fairliner for \$7,000. City Attorney Hite noted that this is a statutory procedure. The owner has not been paying their

Marina charges, has had an opportunity to pay, and that is the basis for auctioning the boat in order to collect unpaid moorage charges. Harbormaster Funk also concurred that the normal procedure had been followed. No moorage payments have been made since June 2009. A letter was sent to the owner advising that if moorage payments were not brought current, the boat would be secured and not released until payment was made. The boat was secured in October 2009 by authorized personnel of Oak Harbor's Marina. A notice was attached to the boat advising of the seizure. A letter was sent in October 2009 by both regular mail and registered mail with return receipt requested along with notice that if the Marina charges were not paid within 90 days, the boat would be sold at public auction, leading to this request for Council action. Council discussion continued about costs to hold the boat, lost revenue if the slip has a waiting list, that these owners have at least responded and this not an abandoned boat, if partial payment could be accepted (that would begin the lengthy collection process again), if this would set a precedence, and if Council can modify and defer this decision to show leniency.

MOTION: Councilmember Palmer moved to give the owners of the 1969 Fairliner sixty (60) days to pay their moorage charges in full. The motion was seconded by Councilmember Severns.

AMENDMENT TO THE ORIGINAL

MOTION: Councilmember Almberg moved to amend the original motion to allow the City to lease the slip if requested or available to other boats, whichever comes first. The amendment to the motion was seconded by Councilmember Munns.

City Attorney Hite noted that the statute just allows notice on abandonment.

Councilmember Almberg and Councilmember Munns withdrew the amending motion and second to that motion.

Councilmember Dudley asked if this matter will return to Council if payment is not made. Mr. Powers and Ms. Hite noted that the statute requires Council to make a decision and it would return to Council.

SECOND AMENDMENT TO THE ORIGINAL

MOTION: Councilmember Paggao moved to amend the original motion to afford the same leniency to the other two boats to be sold at auction (Consent Agenda items E and G).

City Attorney Hite asked if this motion's intent is to recind the decision of abandonment.

Councilmember Paggao withdrew this second amendment to the original motion.

VOTE ON THE ORIGINAL

MOTION: Councilmembers Almberg, Palmer, Munns, and Severns voted in favor of the original motion. Councilmembers Paggao and Dudley opposed. The motion carried.

MOTION: Councilmember Paggao moved to recind the vote on Consent Agenda Items E and G. The motion was seconded by Councilmember Dudley.

Discussion followed about the lengthy process to bring these proposed vessel sales before Council, that there has been no communication on behalf of these boats except a partial payment with a check that had insufficient funds and has since gone to collection, and that ownership is unknown for the other boat.

VOTE ON THE

MOTION: Councilmembers Paggao and Dudley voted in favor of the motion. Councilmembers Almberg, Palmer, Munns, and Severns opposed. The motion did not carry.

Consent Agenda Item B, Noise Permit – Whidbey Island Tea Party

MOTION: Councilmember Palmer moved to approve the noise permit for the Whidbey Island Tea Party. The motion was seconded by Councilmember Munns and carried unanimously.

Public Hearing – Proposed Ordinance banning Public Nudity

Public Hearing – Proposed Ordinance for Adult Entertainment Licensing and Regulation

City Attorney Hite explained that the two proposed ordinances for public hearing both have to do with nude expression and were combined for comments so the public does not have to comment twice. Comments will be included on both. Ms. Hite talked about the effective dates for each of these ordinances as well as the third ordinance which is not set for public hearing but will be open to public comment.

1. Ordinance banning Public Nudity: This Ordinance shall be in full force and effect five days after publication.
2. Ordinance for Adult Entertainment Licensing and Regulation: Having found that an emergency exists, OHMC 5.20.020 of this ordinance shall be in full force and effect immediately. The remaining sections of this ordinance shall be in full force and effect five days after publication.
3. Interim Ordinance – Adult Entertainment Facilities Overlay Zone: Having found that adoption of this Ordinance as an emergency is necessary for the protection of the public welfare, public safety and the public peace, this interim ordinance shall be in full force and effect immediately.

Ms. Hite also explained that this last ordinance must be adopted by a majority plus one of the whole membership of the Council and there must be a public hearing on the interim ordinance within 60 days of adoption. The hearing would be set for May 4, 2010. The interim ordinance must also come before the Planning Commission, undergo SEPA review and review by the Department of Commerce. It may remain in effect for six months subject to an extension of up to a year to allow for this review process.

Prosecuting Attorney / Law and Justice Coordinator Bill Hawkins gave the presentation for the proposed ordinance banning public nudity and the proposed ordinance for adult entertainment licensing and regulation. Mr. Hawkins began his presentation by noting that Oak Harbor will be celebrating its centennial in five years and has done without this type of adult entertainment establishment through all of these years. This has changed within the last couple of months and we have been asked to address legal principles. This is a heavily regulated area. Why can't we ban it? The answer is that you cannot ban it legally but you can regulate it extensively. Total bans on nude dancing have been invalidated. Municipalities may regulate protected expression. We do not start from scratch; we are allowed by law to consider the collective weight of studies and communities from Washington and around the country. Council must find that regulations are specific to address the impact of an establishment and curb the harmful secondary effects without limiting expressive conduct. Negative secondary effects: Those that are found inside the establishment (prostitution, involvement of minors, alcohol and drugs, licensing violations) and then outside of the establishment through impact on neighborhoods, the business community, lifestyles, property values, churches, schools, parks, increased criminal activity, increased traffic problems, and increased need for police protection and response. Mr. Hawkins gave examples of other communities and the problems experienced with adult entertainment establishments and cited Palm Beach, FL as a helpful example for Oak Harbor's proposed ordinance language.

Proposed Ordinance Banning Public Nudity

The proposed ordinance would ban public nudity, with appropriate exemptions for any child under age ten (10) years of age, breastfeeding, nudity within a locker room or other similar facility used for changing clothing in connection with athletic or exercise activities, nudity within a hospital or other medical facility for health-related purposes, and for a licensed entertainer performing in an adult entertainment establishment upon a stage at least eighteen (18) inches above the immediate floor level and removed at least ten (10) feet from the nearest patron. For many years, public lewdness, obscenity and nudity have been regulated by Washington state statutes regarding moral nuisance, public nuisance, and indecent exposure. Until recently, these laws supported enforcement measures satisfactorily. However, in recent months, several Washington jurisdictions have experienced shortcomings with existing laws as applied to "bikini baristas" and similar forms of activity. Some jurisdictions have found it necessary and advisable to adopt local ordinances banning public nudity. Public nudity itself is conduct subject to regulation. *Erie v. PAP's AM*, 529 U.S. 277 (2000); *O'Day v. King County*, 109 Wn.2d 796 (1988); *Ino Ino, Inc., v. Bellevue*, 132 Wn.2d 103 (1997). A ban on public nudity is a content-neutral restriction that regulates conduct, not expression. *Id.* Oak Harbor has historically banned public nudity under existing laws. An ordinance specifically and expressly banning public nudity is not intended to prohibit conduct not already prohibited under existing laws or to be a stricter standard, but merely to facilitate enforcement.

Proposed Ordinance – Adult Entertainment Licensing and Regulation

The purpose of this ordinance is to address the appropriate licensing and regulation of the conduct and operation of a use not currently addressed in the Oak Harbor Municipal Code. Adult entertainment is a form of expression protected by the First Amendment to the U.S. Constitution and Article I, Section 5, of the Washington State Constitution. However, there are well documented negative secondary effects associated with adult entertainment in the form of impacts on crime, neighborhoods, property values and increased cost of municipal services. Local governments are authorized to impose licensing and conduct and operation regulations to address the associated negative secondary effects, as long as there remain sufficient "alternative avenues of communication" available for use after the imposition of the regulations. The proposed ordinance makes the following changes to the Oak Harbor Municipal Code:

- (1) It authorizes the City to investigate and in appropriate cases issue licenses to owners and operators of adult entertainment establishments, the managers of the establishments and the entertainers.
- (2) The ordinance imposes standards of conduct and operation and regulates adult entertainment concerning attire, minimum distance between entertainers and patrons, prohibits sexual contact between entertainers and patrons, prohibits direct tipping of entertainers and, imposes standards on the interior layout of adult entertainment establishments, imposes an age minimum for employees, entertainers and patrons, and prohibits the sale of alcoholic beverages in adult entertainment establishments.

The ten (10) foot separation is intended to mitigate the negative secondary effects of adult entertainment including prostitution and other illegal activity that has contributed to the profitability of adult entertainment and table dancing and lap dancing. The standards of conduct and operation are intended to mitigate the negative secondary effects of adult entertainment facilities, by addressing significant criminal activity that has historically and regularly occurred in adult entertainment establishments while still permitting the expressive aspect of stage dancing. The criminal activity associated with adult entertainment includes prostitution, narcotics transactions, breaches of the peace, and organized crime. If the City Council determines to regulate this use, it must do so in light of well settled decisions of the U.S. Supreme Court, other federal courts and the Washington appellate courts on the subject. Because of First Amendment considerations, the use is protected within established limitations. The City Council may regulate the use for negative secondary impacts. Many other jurisdictions have studied adult entertainment and determined that there are negative impacts upon neighborhoods, property values and increased municipal services associated with adult entertainment establishments, in addition to associated criminal activity. The City Council may rely on the experiences of other jurisdictions and on findings in appellate court decisions in determining the existence of negative secondary impacts. The proposed ordinance regulates and licenses adult entertainment establishments as a way of minimizing the negative secondary impacts of adult entertainment establishments.

Mayor Slowik opened the public hearing at 7:30 p.m.

Michelle O'Kelley, 1753 SE 4th. I am the person in the paper. I think that what City staff and City Council are doing is great. I believe in First Amendment rights. I believe that efforts can succeed. My opposition is to the zoning ordinance and I would like to talk about a modification to the public nudity and licensing ordinances: the 10 foot rule between patrons and the stage. I am asking for a physical barrier of no less than 4 feet to allow less distance between stage and patrons. I am hoping for the best, leniency, and sympathy for small business owners. I want to be at the top of the ladder of success.

Rev. Tim Geist, 1076 Landing Circle. Rev. Geist spoke in opposition to adult entertainment and his complete statement is attached to these minutes as Exhibit A.

Carolyn Pivarnik, 745 SE 8th Avenue. I am concerned with secondary effects. Dancers make their living dancing close. It puts them in a position of not making a living or breaking the law. Lap dances are the most lucrative source of tips. Ms. Pivarnik talked about an attorney's statement which was meant to elicit sympathy for the dancers which defined dancers as independent contractors. Ms. Pivarnik talked about the arrest of two dancers for prostitution which included a 16 year old. Rules can be posted, but those rules will not last long in order for dancers to make a living. Crime elements will take a foothold. The common denominator for sex trafficking of women in the U.S. is adult entertainment establishments including strip clubs.

Mel Vance, P.O. Box 2882. Mr. Vance felt that the public nudity ordinance should be sent back to committee and not passed this evening. The ordinance for adult entertainment licensing and regulation should also sent back to committee and a moratorium should be put in place while the City works on these proposals. There are exemptions that are very specific and do not include everything that we should be exempting. The ordinances do not include massage businesses, tattoo and piercing parlors, both of which can involve nudity. I found at least 30 separate language revisions that need to be made in the adult entertainment ordinance which include a broader range than strip clubs such as adult videos. This has been rushed through. It is legal to impost a temporary moratorium. These ordinances are not ready and need more work. Impose a moratorium.

Jim Kiesel, 1372 Orchard Loop. Mr. Kiesel thanked Council for their service to our City. We are approving adult entertainment in our community. Mr. Kiesel then talked about this evening's invocation. You have a hard decision to make and I encourage you to do what is right. We have a supreme God above the Supreme Court. I am sure there is an appetite for this type of entertainment and that there is money to be made. Pornography is a drug.

Kali Waldron, 1678 Zylstra Road. I want to see the next generation make a difference and these establishments will bring about the destruction of youth. This can ruin their lives.

Michele Sladko, 1199 SE 9th. I am against this. Do the ban on nudity. As far as adult entertainment, I am concerned with the effect on the community. I am awakened by the bars on Pioneer Way right now. If these businesses come in, it will adversely affect the area. I will not feel safe.

Brian Jones, 959 SW 3rd Avenue. As a father of two young ladies, I cringe at the thought of having this in our community. I have lived in larger areas, and chose to come back to Oak Harbor because these establishments don't exist here. If you can't ban it, I ask that you make it hard for a business like this to operate in our City.

Juan Palm, 2090 Crosswoods. As a former Minnesota resident, I know that these types of businesses look for areas that are ill-equipped to monitor them. Do not think that our long history without adult entertainment establishments will prevent this. I commend Mr. Hawkins and Council and ask that regulations be quickly put in place.

Nicole Brown, 1313 NW Falls Creek. I was a dancer for 4 years. This is difficult lifestyle and I moved back to Whidbey Island to get away from this lifestyle. Oak Harbor already has enough problems with drugs and violence.

Michael Harris, 590 Birch Street. I was in the Navy and was stationed in Oak Harbor after 20 years in the Navy. I love this town for its lifestyle. I was stationed in San Diego for the first 17 years and adult entertainment could be viewed there. As a Christian man, I find it distasteful. Think about what it can do to the sailors. I have seen, firsthand, the statistics that Mr. Hawkins mentioned; grief, brawls, murder, prostitution – it all happens. No alcohol – it doesn't matter, they will get drunk beforehand. The police department, hospitals, and mortuaries will all be involved.

Dan Renner, 950 SW Silverberry Street. I am the pastor of Calvary Chapel here in Oak Harbor. We don't want this to come to our community. I also grew up in San Diego and don't want to see this come here.

Dawn King, 549 SE Quaker Street. I have been an Oak Harbor resident for 29 years. I am a Christian, married, and have 4 young boys. I am against adult entertainment. The sex industry is a \$97.6 billion dollar industry; \$5 billion for strip clubs alone. How many more will be allowed in our community? The Seattle Times reported that police departments working the strip club beat find illegal sexual activity. Who will pay for the growing law enforcement need? Dancers are assaulted, threatened with weapons, sexually abused as children, use drugs, have sexually transmitted diseases, and many dancers feel desperately isolated and alone. Would you want this for your daughter? Would you encourage your son to frequent such an establishment?

Carley Knapp, 505 Grandview. I am very concerned about this. Why does Michelle want to do this to our town; degrade our town. Other cities would do anything to keep this from happening. We should not allow it. I am concerned about Michelle's children.

Wayne Knapp, 505 Grandview. Other speakers have done a good job. This is a cancer on our society. It denigrates our society. You have got to make the right decision. This industry breeds crime, death, and destruction of personal lives. We say the Supreme Court says it's alright, I don't think so. It is foolish to let this industry come into our town. I think it is wrong.

Jerry Pitsch, 2527 West Beach Road. Most of what I wanted to say has been covered. Whether the Supreme Court decision is right or wrong, we need to make a moral decision. I encourage you to challenge the First Amendment and do the right thing morally.

Mike Thelan, 1401 SE Dock Street. People's rights are usurped by governing bodies above us; the Supreme Court. The church building down the street is being challenged because it wants a steeple, yet we can allow this and have to protect a business of this nature. Sex sells. I find it interesting that this is a way to put children through school. I can't imagine the impact on existing businesses. You need to put this in the most remote place that you can to protect other businesses. What Mr. Hawkins said bothers me; that everything predicts more crime, problems, policing, yet we are at the edge of City budgets. We are volunteering to step up to something that we have no ability to provide for.

Kathleen Bourbeau, 976 NW Prow. My family has been here for over 50 years and my husband has been in the Navy for 15 years. I wanted to come back here to start a family. I love this town, I love this country. This is all about the Constitution. I am a card-carrying member of the NRA. I love our town and we need to save our small town. This terrifies me. Look at Lynden. Lynden is very creative about keeping things out.

Helen Chatfield-Weeks, 1415 se 9th. I never thought I would be present for such a suggestion for Oak Harbor, but I am not a bit worried about what the result will be. I depend on Mr. Hawkins' advice.

Ivan Lathrop, 2606 Airline Way. I am an ordained minister (retired) in the Church of Nazarene. My first pastorate was in Oak Harbor. Our son wanted to come back here and I told him what a great town this is. We can see that you are working hard on this situation. We are behind you and know that you will do everything you can. We will support and work with you. Yes, I am opposed to this and wish we could ban it, and I hope you can come close to that.

Dolly Griffith, 76 N. Oak Harbor Street. I have been a resident for 2 years. Protect the women if this is allowed. My best friend was sexually abused, was told she could end up as a dancer. It takes advantage of them. To get to top of ladder from people who are weak or who have lost their self worth, and then think that money is happiness is wrong. Life is full of problems; money won't make you happy without spiritual fulfillment. We will all be judged some day.

Gerry Oliver, 947 NW Prow. When I spoke of entrepreneurship to succeed earlier this evening, I don't believe that adult entertainment is right. I am a lifetime resident of Oak Harbor and it is obvious that this type of entertainment attracts the wrong kind of people. People come here for the beauty of this area and the community. Regulate this heavily and make it tough for this type of business to exist in Oak Harbor. How do I explain this to my daughters? I don't think this needs to only be a church issue; it needs to be a community issue.

Richard Felds, 547 SE 6th Avenue. I first came here in 1995 to visit. We moved here in 2003 from a city of over 200,000. This is heavy on everyone's mind and heart. It is just not right for this type of community. We went to a lot of work to promote Oak Harbor through the Windjammer Project.

Joel Geist, 1076 Landing Circle. My views have been expressed by most of the other speakers. This is a beautiful town and I would hate to see our reputation ruined.

Jeff Waldron, 1678 Zylstra Road. I am strongly opposed to this. Take a rotten piece of fruit and it will ruin the whole bowl.

Rev. David Jenkins, 2111 Pinewood Way. My church is in the same building that they want to move into. All that is required for evil to prevail is for good men to do nothing.

Don't change the flavor of this community. Where are the benefits to our community? We open the door if we don't regulate this out of our community. I have been here for over 20 years. Don't allow undesirable elements to come into our City.

Beatrice LaMay, P.O. Box 3014, Oak Harbor. Think about the children. Look at our playgrounds, parks, and your children. They can be easily reeled in. It is easy to say "adult," but think of children and what happens when patrons leave the clubs. People have to live in these environments. They are not operating on their own; an 18 year old does not say they want to be a stripper. The environment is already here.

Tina Bowman, 2461 Highpoint Lane. We moved here 9 years ago. I was born and raised in Escondido which used to be a cow town and is now a metropolis. We fell in love with Oak Harbor. I heard it was a wonderful place to raise your kids. Raise them according to good morals. I would hate to leave this town for the same reasons we left another. Make the choice for humanity and not the Supreme Court. Make the right decision.

With no other comments coming forth, Mayor Slowik closed the public hearing at 8:30 p.m.

Break

Mayor Slowik called for a five-minute break at 8:30 and the meeting reconvened at 8:35 p.m.

Response from Mr. Hawkins and Chief of Police Wallace

Mr. Hawkins noted that he had heard some moving and wise comments this evening even though they might not be legally correct. In answer: What are the City's chances if we fight this? If you choose to ban, your chance of winning that would be zero. The City would be hauled into court, sued for damages, and would lose. It is reckless to take on the Supreme Court. This is an emergency measure than can be tightened up. The interim zoning ordinance comes back for additional review. In response to the inclusion of tattoo parlors, tattooing does not exist in public so this would not be a factor. With regard to a theater being turned into adult entertainment, there is language in the adult entertainment ordinance addressing plays, operas, musicals, or other dramatic works which are not obscene. Changing the 10 foot barrier to 4 feet, as suggested by Ms. O'Kelley – the record documents clearly that 3 feet, 4 feet, was difficult to enforce; 6 feet and 8 feet are still within arms reach, and 10 feet is now the most aggressive ban in place. It is clear that shorter barriers do not work. A 10 foot distance does not stop prostitution, but it forces the club to be set up in a certain way, and I disagree strongly with going to a 4 foot distance. With regard to Rev. Geist's comments on public nudity and that the ordinance does not ban nude dancing. The U.S. Supreme Court does say that a locality can ban nude dancing. We have not gone to that type of a ban because the Washington State Supreme Court holds a conflicting opinion and we don't believe a ban on nude dancing would be tolerated. No other jurisdiction in Washington has attempted that and we would spend a great deal of money in expensive litigation. The City of Renton spent \$1 million in 1986. We are presenting the best ordinances that we believe can be sustained in court.

Mayor Slowik swore in Chief of Police, Rick Wallace for his testimony.

Chief Wallace:

This testimony is directed towards the ban on public nudity and not necessarily to the adult entertainment ordinance. We have used indecent exposure and lewd conduct, but there is no ordinance/language in place in our Municipal Code that regulates public nudity. Prior to 2008, it was determined that an existing ordinance was too vague and subsequently repealed. It was used toward amateur nights, wet T-shirt contests, but we were on weak ground. What could we do without an ordinance in place; especially addressing public nudity. This ordinance will fulfill that need.

Council Discussion

In response to a question about a majority plus one vote, City Attorney Hite explained that the vote is needed for the adult entertainment facilities overlay zone interim ordinance to be adopted on an emergency basis. The adult entertainment and licensing ordinance has a section explaining what is being talked about in the zoning ordinance. Discussion continued about citizen's rights and minimal/moderate government involvement and that what has been presented is the best direction, how to define morality (found in OHMC's nuisance language), and that larger cities, by size, have more areas to help with a buffer zone but Oak Harbor is a small and tightly developed community which limits the buffering area and zoning choices. Suggested changes to the public nudity ordinance:

On page one: The first Whereas, second sentence add the word "is" in front of the word "detrimental."

On page two: In Definitions, number 2 "person": say "any legal entity authorized to do business in the State of Washington" instead of corporation, partnership or association.

Discussion continued about wet T-shirt contests (covering must be fully opaque per the public nudity ordinance), how to keep 18 year olds from entering a club, the 5-year suspension/revocation term and if that is set by the state (a matter of case law), and the license application process. Discussion followed about conversation between dancers and patrons, cubical room size and doors, how bathrooms can be watched (cannot be electronically monitored), the use of uniformed PD officer inspections and undercover officers, and signage. Photography in a club (most likely monitored by club management), the 10 foot barrier, and use of moratoriums was also discussed. In the past, it was typical for cities to impose moratoriums, but the 30-day time limit is not enough of a study period and the City needs to move forward right now. The sale of alcohol brings a club under the strict enforcement and large staff of the Liquor Control Board and clubs usually avoid the potential for Liquor Control Board violations by not serving alcohol. This then allows 18 year olds to enter a club. Legislation was recently changed to allow local jurisdictions more local control. Discussion continued about "applicant control persons" in the definitions section of the adult entertainment ordinance which speaks to significant interest in the club and keeps silent partnership at bay. The application process was discussed again, the under the age of 10 years exemption in the public nudity ordinance was also discussed (uniformly used in other

jurisdiction's ordinances) and the finality of the first two ordinances – public nudity and adult entertainment. Ordinances can be amended; the zoning overlay ordinance is interim as discussed earlier. Ms. Hite had worked on these issues for Snohomish County and noted that this is an elaborate industry. The public is our strongest voice and it is the community that stands up and keeps the community true. Discussion continued about how quickly the license must be turned around along with discussion about the license fees. The City is allowed to charge enough to cover costs and, looking at other ordinances, these fees are the best estimate of actual costs. Discussion returned to the allowable age of patrons, 18 or 21 depending on alcohol or no alcohol, and that clubs would prefer to sell liquor even though they would lose a younger patron, but considering the nature of the club's activity, would not risk a Liquor Control Board violation and closure.

MOTION: Councilmember Munns moved to adopt the ordinance banning public nudity. The motion was seconded by Councilmember Palmer and carried unanimously.

MOTION: Councilmember Munns moved to adopt the ordinance regulating adult entertainment. The motion was seconded by Councilmember Sevens.

Council asked if a club can be forced to sell liquor (no) and Ms. Hite also clarified that OHMC 5.20.020 of the adult entertainment ordinance shall be in full force and effect immediately.

**VOTE ON THE MOTION TO ADOPT
THE ADULT ENTERTAINMENT ORDINANCE:**
The motion carried unanimously.

Interim Ordinance – Adult Entertainment Facilities Overlay Zone

Development Services Director Steve Powers presented this agenda bill. This ordinance is an interim measure to be adopted on an emergency basis to address the appropriate location for a use not currently addressed in the Oak Harbor Municipal Code. Adult entertainment is a form of expression protected by the First Amendment to the U.S. Constitution. However, there are well-studied negative secondary effects associated with this use in the form of impacts on crime, neighborhoods, and property values. Local governments are authorized to impose zoning regulations to address the associated negative secondary effects, as long as there remain sufficient "alternative avenues of communication" available for the use after the imposition of the regulations. The proposed interim ordinance makes the following changes to the OHMC:

1. It adopts a zoning ordinance which permits adult entertainment establishments to be located in an "Adult entertainment facilities overlay zone" within the C-3, Industrial and Planned Industrial Park zones. This overlay zone was drawn to create a buffer around incompatible uses.
2. The overlay draws a 750 ft. buffer around religious institutions, parks and schools.

3. It also draws a 100 ft. buffer between the overlay and residentially zoned neighborhoods.
4. It amends OHMC 18.20.250 to include extensions of time for non-conforming adult entertainment facilities.

The buffers are intended to mitigate the negative secondary effects of adult entertainment facilities upon sensitive uses such as schools, churches and parks and on residential neighborhoods and property values, while still retaining sufficient parcels for adult entertainment uses to be located within the City. The proposal is that the City Council adopt this interim ordinance on an emergency basis to address adult entertainment uses that may seek to locate within the City limits in the near future. City staff has received several inquiries about City regulations on the subject in recent months and notes that the absence of regulations creates an imminent risk that an inappropriate location could be chosen for an adult entertainment facility. Since there are no regulations specifically addressing this use in the Oak Harbor Municipal Code (OHMC), it is necessary to ensure that potential applicants are directed to the overlay zone rather than locating next to a church, school, park or residential zone. Adopting the interim ordinance on an emergency basis allows the City to take additional time to study and hone its zoning regulations, to create a public participation process and to permit the establishment of adult entertainment facilities, at the same time as restricting patently inappropriate locations in the immediate future. There are several requirements of the emergency ordinance:

1. It must be passed by a majority plus one of the whole membership of the Council.
2. The Council must make a finding that the ordinance is necessary for the protection of public health, public safety, public property or the public peace.
3. There must be a public hearing on the ordinance within 60 days of adoption. Staff recommends the hearing be set for May 4, 2010.

The interim ordinance may remain in effect for six months, subject to an extension of up to a year, so that the Planning Commission may make its recommendation, public participation may be encouraged, and so that any further studies deemed necessary be undertaken. During the period of the interim ordinance, the City will also undertake its obligations to perform a SEPA review and to provide 60 days' prior notification of the new zoning provision to the Department of Commerce. If the City Council determines to regulate this use, it must do so in light of well-settled U.S. Supreme Court decisions on the subject. Because of First Amendment considerations, the use is protected within established limitations. The City Council may regulate the use for negative secondary impacts. Many other jurisdictions have studied the use and determined that there are negative impacts upon schools, churches, parks, neighborhoods and property values, in addition to associated criminal activity, as a result of the activities and location of adult entertainment uses. The proposed ordinance lays out a zoning framework for addressing the negative secondary impacts of adult entertainment uses. It is intended to address those uses seeking to locate in the City until a final ordinance can be adopted. It is recommended that the City Council adopt this as an interim measure and direct that further study, public participation and Planning Commission recommendation go forward to be included in the ultimate decision on a final ordinance.

Mr. Powers also gave a summarizing PowerPoint presentation which is attached to these minutes as Exhibit B.

Mayor Slowik called for public comments at 10:20 p.m.

Michele Sladkow, 1199 SE 9th Avenue. Ms. Sladkow objected to the location by the Safeway parking lot since there are a lot of teenagers in this area.

Juan Palm, 2090 Crosswoods. How many proposed areas are occupied by existing businesses? At the intersection of SR-20 and 16th, there are multi-family homes directly across the street.

Jill Johnson, 1499 SE 9th. Highway 20 is designated a scenic byway and the Chamber of Commerce receives grant funds through that status. How would an adult entertainment business on the highway affect or impact the scenic byway status? I would hate to see Oak Harbor become the Amsterdam of Whidbey Island.

Tashia LaMay I work two jobs. I don't want to see this by Safeway. A lot of traffic goes by there, including teens.

Tim Geist, 1076 Landing Circle. I would like to see the sites out of sight; Goldie Road or Gun Club Road.

Mel Vance, P.O. Box 2882. I recall Mayor Cohen's administration addressing zoning for adult entertainment in industrial areas. I would like to see C-3 zoning taken off the table since there are established businesses there. Another area that should be included is the Hackney property at the end of Gun Club Road. That would be an out of sight area away from churches and businesses. The south edge of this property is clipped by proximity to a church and residential area, but the bulk of this property is out of the way.

With no other comments coming forth, Mayor Slowik closed comments on this subject at 10:30 p.m.

Mr. Powers noted that this is an interim ordinance which will be worked on over the next six months but the City does need to meet its obligation to provide a sufficient number of sites. Businesses are not an automatically excluding criteria. The Hackney property is designated as a planned business park. It was not excluded from consideration because of the buffer; it was excluded because it cannot be served by sewer at this time. We are challenged by where we have commercial property locations and the relationship to churches, schools, and the highway. As said earlier, we are a compact community and we are trying to handle a convergence of factors. The multi-family units near 16th and SR-20 were excluded because of the 100 foot buffer and properties on the west side of the highway are actually in commercial zoning. This matter has been before the Council two separate times in the last ten years, but was not adopted by Council. Mr. Powers also called attention to the thirteen separate findings of fact within the ordinance and that Oak Harbor is relying on the experience and findings done by other communities, as well. These studies are extensive and significant and document secondary impacts.

Ms. Hite referred to her legal memorandum noting that this is an interim ordinance that, if not adopted tonight, would not be available for consideration until the second meeting in April.

Council Discussion

Discussion followed about the urgency of this interim ordinance, the buffer zone size and whether it could match the 1,000 foot drug and gun free zones around schools or become uniformly a 750 foot radius for all buffers. Mr. Powers noted that staff worked toward balancing how the buffers work and that larger buffers covered more land area but then excluded any site provisions. It was also noted that the City would not redraw the buffer zone as uses move into the City. Definitions of churches and schools were discussed, Safeway Center was eliminated because of its proximity to Beeksma/Gateway Park, and the discrepancy between buffer zone radiuses continued to be discussed along with what a sufficient number of sites would be for a city the size of Oak Harbor. Adult entertainment cannot be zoned out of existence and the courts do not have a flat answer. Discussion continued about bringing utilities to a proposed property and why an undeveloped property could not be included. Oak Harbor will have greater flexibility at an interim stage but a property has to be part of the general commercial real estate market. Council felt there should be greater separation between residential areas and adult entertainment and returned to discussing planned business parks. If a 750 foot buffer was used around residential properties, the community would be covered with the exception of industrial and planned industrial on Goldie Road. Mr. Powers again commented on the issue of infrastructure: We cannot look at adult entertainment sites the way we look at regular development. With adult activity, by its very nature, we have a limited number of locations. Without infrastructure, other cities have run into trouble. Potential sites have to be reasonably served by infrastructure. Ms. Hite, responding to a question about annexations, noted that this is not a moving target; we are adopting a map and just this map and not addressing future annexations. This is written as its own overlay zone.

Mayor Slowik noted that this discussion had also been held on a staff level and he, too, had been uncomfortable with certain site selections. If we are creating an emergency ordinance on a temporary basis to allow a reasonable amount of site inventory, what if we flip that around, tightened this up tonight, and then allow the next six months to consider available areas. City Attorney Hite felt this would put the City in the realm of risk. If you reduce the number of available parcels, you are less likely to sustain. On the other hand, it is an interim ordinance; is there available opportunity in the other parcels. Mr. Powers added that the Goldie Road parcels, the PIP (Planned Industrial Park) include one developed and one undeveloped parcel. Ms. Hite noted that the industrially zoned parcels have general uses like C-3 parcels and this is not true for PIP.

Discussion continued about the Goldie Road parcels and if they are sub-dividable (yes for industrial, no for PIP which are 5-acres in size; the parcels have to be considered as they are today). Discussion continued about the impact of adult entertainment establishments on SR-20, how schools are defined (daycare centers and kindergarten

schools do not fall under the definition but could be covered by the residential buffer if they are in a residential area), and repeated discussion about the use of a 1,000 foot buffer instead of a 750 foot buffer for churches, schools, and parks. A 1,000 foot buffer would then include the Goldie Road properties, SR-20 locations, and some of the industrial area, but maybe not the PIP. It would decrease the number of available parcels and potentially create a ban. Cities that use 1,000 feet as a buffer zone have remaining space available for potential sites.

MOTION: Councilmember Munns moved to adopt the Interim Adult Entertainment Facilities Overlay Zone Ordinance. The motion was seconded by Councilmember Almberg.

Discussion continued about adopting this ordinance now and how it would affect a club six months from now that establishes on SR-20. Mr. Powers noted that, if it becomes a nonconforming condition, it then requires a nonconforming use to close in one year.

AMENDMENT TO THE

MOTION: Councilmember Dudley moved to amend the motion and add the same 750 foot buffer zone to residential zones as we allow for churches, parks and schools. The motion was seconded by Councilmember Paggao.

Discussion followed about the Goldie Road parcels and if they would be eliminated (possibly the industrial, but not PIP), if it is likely that properties on SR-20 are going to be used at this point, and the risk involved in eliminating potential properties for adult entertainment use. City Attorney Hite noted that this interim ordinance requires a public hearing in sixty days, and has to return to Council in six months following Planning Commission review, SEPA review, and notification to and review by the Department of Commerce. In the absence of this ordinance, an adult entertainment establishment can locate anywhere in C-3.

Councilmember Dudley spoke to the amendment: I do think there is a risk with that first parcel on the right coming down SR-20. Discussion included removing that one parcel (which would need a rationale) and how the Goldie Road parcels and SR-20 parcels would be measured (buffered).

VOTE ON THE AMENDMENT TO THE ORIGINAL

MOTION: Councilmembers Dudley and Paggao voted in favor of the amendment. Councilmembers Almberg, Munns, Palmer, and Severns opposed. The amendment to the original motion did not carry.

VOTE ON THE ORIGINAL

MOTION: Councilmembers Almberg, Munns, Paggao, Palmer, and Severns voted in favor of the original motion. Councilmember Dudley opposed. The original motion received a five to one vote in favor and carried.

Mayor Slowik thanked Ms. Hite, Mr. Hawkins, Mr. Powers, Mr. Schmidt and Mr. Wallace for their extensive work on these ordinances – it took a monumental effort.

Authorization to Negotiate Scope of Work with Carollo Engineers – Wastewater Treatment Facility

City Engineer Eric Johnston presented this agenda bill which summarized the engineering consultant selection process for the wastewater treatment facility project. During development of the Sewer Comprehensive Plan in 2006 and 2007, the need for additional wastewater treatment facilities began to emerge. The sewer plan identifies the need for additional capacity as early as 2017 depending on the level of growth that may occur within the City service area. The need for additional facilities is also driven by the condition of the existing plants and anticipated regulatory changes likely to occur in the next 5 years. Specifically, the RBC treatment plant near Windjammer Park has reached the end of its useful and practical life. Constructed in the early 1970's, the RBC plant utilizes an outdated process technology and equipment that is no longer supported by the industry. The condition of the existing treatment facilities and the capacity of the system are only part of the issues facing the City. The Puget Sound Partnership Action Agenda identifies a number of areas targeted for Puget Sound cleanup efforts. A key target of the cleanup effort is ensuring that dissolved oxygen levels are sufficient to sustain marine life. Dissolved oxygen levels drop as the nutrient loading increases. Municipal wastewater treatment plants are identified as significant contributors to nutrient loading in Puget Sound. The addition of nutrient removal from treated wastewater as a condition of discharge permits issued by the Department of Ecology is likely to occur in the near future as implementation of the Puget Sound Action plan gains momentum. Neither the RBC nor the SPB lagoon plants are capable of nutrient removal without significant investment. Finally, the recent conversion of the Crescent Harbor marsh area from freshwater to salt water habitat has resulted in a significant flooding risk to the SPB lagoon plant that threatens the long term viability of a treatment plant at that location. In following this prescribed process for selecting the most qualified firm, City staff issued a request for qualifications for the project in September of 2009. From the list of eight firms who submitted, four firms were short listed for further consideration. The short list was based on a staff review and ranking of the submitted statements of qualifications. Each of the four firms short listed were invited to a formal interview in February 2010. Councilmembers Paggao, Almberg and Munns together with Mayor Slowik and City staff formed the interview panel and based on the written proposal and the interviews, Carollo Engineers was selected as the most qualified engineering firm to assist the City with the development of the wastewater facility plan. It is worth noting at this point that the RFP document included goals for wastewater effluent quality that are significantly higher than the current permit

requirements. The intent was to develop a project that placed a priority on protecting the environment and planning for anticipated permitting requirements.

MOTION: Councilmember Munns moved to authorize staff to begin contract negotiations with Carollo Engineers for the wastewater treatment facility project. The motion was seconded by Councilmember Almberg and carried unanimously.

City Administrator's Comments

Due to the lateness of the hour, Mr. Schmidt mentioned meeting dates and Council and Mayor deferred their comments this evening.

Councilmembers' Comments

None this evening.

Mayor's Comments

None this evening.

ADJOURN

On motion from Councilmember Munns, Mayor Slowik adjourned the meeting at 11:50 p.m.

Connie T. Wheeler
City Clerk

Exhibit A

Tim Geist
Public Comment

- I. **MORAL:**
 - A. As a Minister in a church that's been serving this Community for over 35 years; and more simply as a Christian, a Husband, a Father of five children, and as a 20-year Navy Veteran and proud resident of Whidbey Island...
 1. I am in favor of the Proposed Ban on Public Nudity, but not its exemption for nude dancing, as that exemption is less restrictive than regulations that have been ruled constitutional by the U.S. Supreme Court;
 2. I am in favor of most provisions of the draft Adult Entertainment Licensing and Regulation Ordinance, but further desire to see a prohibition against complete nude dancing, vice the simple stage height and patron distance restrictions;
 3. I am in favor of a version of the zoning ordinance that in addition to the church, park, school, and neighborhood buffers, would keep any adult entertainment businesses out of sight from the main thoroughfares of our town.
- II. **CRIMINAL:**
 - A. For anyone to assert that their adult entertainment business in Oak Harbor would somehow be different than other similar establishments around the state and country, and not result in a rise in secondary criminal elements and activity, is to deny the scientific empirical data available in countless studies conducted by other states and municipalities similar to ours.
 - B. It's this type of documented criminal activity that would arrive with said establishments that would have a significant budgetary impact on our City in the area of a requirement for increased law enforcement resources – negating any tax revenues gained from such a business.
- III. **LEGAL:**
 - A. I keep hearing and reading quotes that The First Amendment covers nude dancing. That's certainly contrary to the intent of our Founding Fathers, and a misrepresentation of the actual Supreme Court decision that I presume is being referenced.
 - B. In the 1991 U.S. Supreme Court case, Barnes v. Glen Theatre, the Court ruled that the state has the constitutional authority to regulate this form of expression, as it furthers a substantial government interest in protecting the morality and order of society.
 - C. The decision ruled that the law preventing complete nudity in businesses open to the public was indeed constitutional!
 - D. It was erotic dancing as a form of expressive conduct that was found to fall under the First Amendment, but "only marginally so."
 - E. We as a City therefore have a constitutional right to prohibit nude dancing, and to further regulate erotic dancing in the interest of, and in obligation to the good order and morality of our Community.
- IV. Thank you Mayor Slowik, Council Members, City Attorneys, Engineers, Planners, and Administrators for your work to further these goals in an expeditious manner.

Adult Entertainment Facilities Overlay Zone

City Council
March 23, 2010



Adult Entertainment Facilities Overlay Zone

- Purpose
- Summary Statement
- Proposed Interim Ordinance
- Mapping Process
- Emergency Ordinance Procedures
- Policy Considerations
- Recommended Action

Adult Entertainment Facilities Overlay Zone

■ **Purpose**

- To establish an overlay district within which adult entertainment facilities may be located in such a way as to mitigate the adverse secondary effects associated with such facilities

Adult Entertainment Facilities Overlay Zone

■ **Summary Statement**

- Ordinance is an interim measure to be adopted on an emergency basis to address the appropriate location for a use not currently addressed in the Oak Harbor Municipal Code

Adult Entertainment Facilities Overlay Zone

■ **Summary Statement (cont.)**

- Adult entertainment is a form of expression protected by the First Amendment to the U.S. Constitution.
- Well-studied negative secondary effects associated with this use in the form of impacts on crime, neighborhoods and property values.
- In considering this ordinance the City enters into the record the court cases, experiences and studies of other communities

Adult Entertainment Facilities Overlay Zone

- **Summary Statement (cont.)**
 - Local governments are authorized to impose zoning regulations to address the associated negative secondary effects, as long as there remain sufficient "alternative avenues of communication" available for the use after the imposition of the regulations (i.e. sites available).

Adult Entertainment Facilities Overlay Zone

- **Proposed Interim Ordinance**
 - Adopts a zoning ordinance which permits adult entertainment establishments to be located in an "Adult entertainment facilities overlay zone" within portions of the C-3, Industrial and Planned Industrial Park zones. This overlay zone was drawn to create a buffer around sensitive uses.

Adult Entertainment Facilities Overlay Zone

- **Proposed Interim Ordinance (cont.)**
 - Overlay draws a 750 ft. buffer around churches, parks and schools.
 - Also draws a 100 ft. buffer between the overlay and residentially zoned neighborhoods.
 - Establishes parking lot and exterior lighting standards intended to reduce adverse effects

Adult Entertainment Facilities Overlay Zone

■ **Proposed Interim Ordinance (cont.)**

- Establishes a number of regulations for adult entertainment facilities if they become non-conforming uses or in non-conforming structures
- Requires non-conforming uses to close in one year
- Amends OHMC 18.20.250 to include extensions of time for non-conforming adult entertainment facilities

Adult Entertainment Facilities Overlay Zone

■ **Mapping Process**

- Tried buffers of 250, 500, 750 & 1,000 feet
- Buffers intended to mitigate the negative secondary effects of adult entertainment facilities upon sensitive uses (churches, schools, parks and neighborhoods)
- Buffers must leave sufficient parcels for adult entertainment uses to be located within the city to meet our legal needs

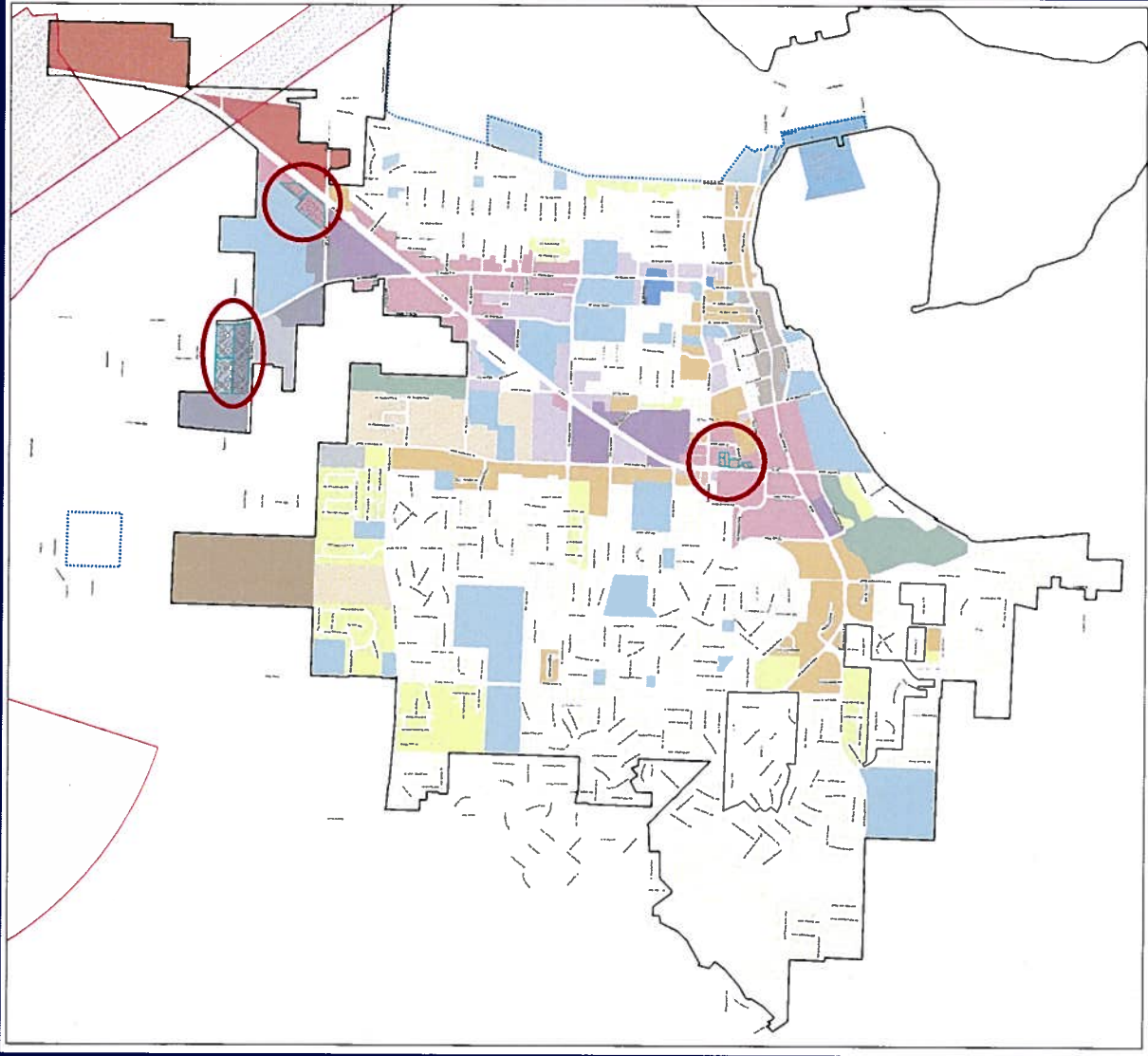
Adult Entertainment Facilities Overlay Zone

- **Mapping Process (cont.)**
- Reviewed commercial zoning districts:
 - C-1 & CBD: eliminated by buffers
 - C-4: eliminated by buffers and APZ
 - C-5: eliminated by buffers and highway development goals

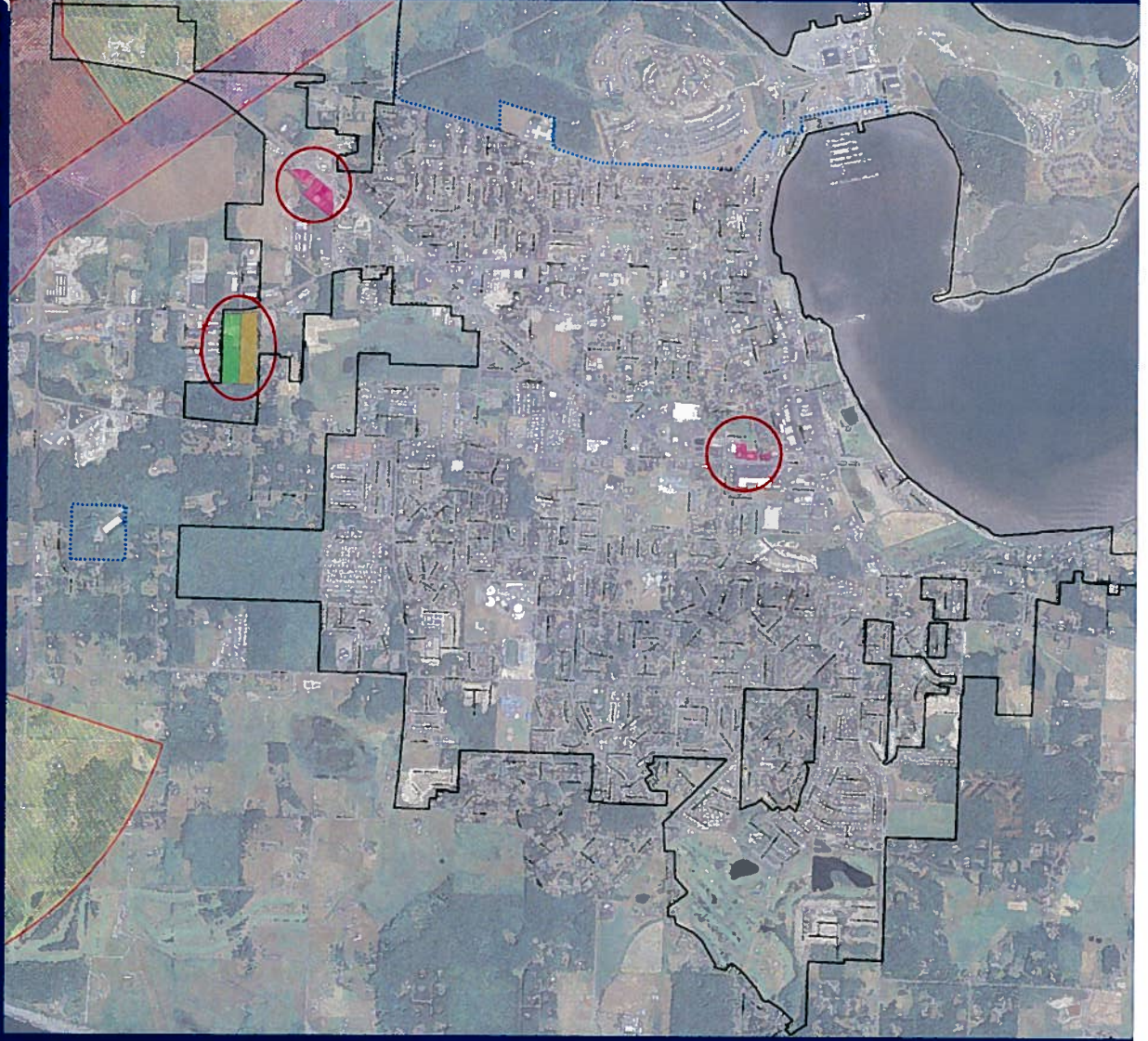
Adult Entertainment Facilities Overlay Zone

- **Mapping Process (cont.)**
- C-3, Industrial & Planned Industrial Park:
 - Only whole parcels considered
 - Eleven sites available outside of buffer zones
 - Includes developed and undeveloped sites
 - All served by water and sewer

Adult Entertainment Facilities Overlay Zone



Adult Entertainment Facilities Overlay Zone



Adult Entertainment Facilities Overlay Zone

■ **Emergency Ordinance**

- Adopt interim ordinance to address possibility of uses locating within city in near future
- No regulations presently exist to provide guidance
- Without regulations, an adult use could locate next to a sensitive use (e.g. church or school)
- Provides time for City to study issue and refine regulations

Adult Entertainment Facilities Overlay Zone

- **Emergency Ordinance (cont.)**
 - Must be passed by majority plus one
 - Council must find ordinance is necessary for protection of public health, safety, property or peace
 - Must be a hearing within 60 days of adoption (Staff recommends May 4, 2010)

Adult Entertainment Facilities Overlay Zone

■ **Policy Considerations**

- If the Council decides to regulate adult entertainment facilities, it must do so in light of U.S. Supreme Court decisions
- Due to First Amendment considerations the use is protected within established limitations
- City Council may regulate use for negative secondary impacts

Adult Entertainment Facilities Overlay Zone

- **Policy Considerations (cont.)**
 - Well studied negative impacts upon schools, churches, parks and neighborhoods
 - Associated criminal activity, too
 - Proposed ordinance establishes zoning framework for addressing negative secondary impacts

Adult Entertainment Facilities Overlay Zone

■ **Policy Considerations (cont.)**

- Interim ordinance provides regulations for applicant and staff use until a final ordinance can be adopted
- Council asked to adopt interim ordinance, direct further study, public participation and Planning Commission recommendation take place before adopting a final ordinance

Adult Entertainment Facilities Overlay Zone

■ **Recommended Action**

- Consider the record
- Allow public comment
- Adopt the interim Adult Entertainment Facilities Overlay Zone Ordinance

- With findings that an emergency exists, findings of fact substantiating the need to establish zones and setting a public hearing date for May 4, 2010