



PLANNING COMMISSION

AGENDA

November 23, 2010

CITY OF OAK HARBOR
PLANNING COMMISSION
REGULAR MEETING
CITY HALL – COUNCIL CHAMBERS

AGENDA
November 23, 2010
7:30 P.M.

ROLL CALL: NEIL _____ JENSEN _____ FAKKEMA _____
 WASINGER _____ DALE _____ OLIVER _____
 WALLIN _____

1. **Approval of Minutes – October 26, 2010**

2. **Public Comment** – Planning Commission will accept public comment for items not otherwise on the agenda for the first 15 minutes of the Planning Commission meeting.

3. **ADULT ENTERTAINMENT INTERIM ORDINANCE – Public Hearing**
 Planning Commission will conduct a public hearing to consider finalizing the Interim Adult Entertainment Ordinance. The Public Hearing was opened on July 27th. The Planning Commission is expected to close the hearing and make a recommendation to the City Council.

MINUTES

October 26, 2010

**PLANNING COMMISSION
REGULAR MEETING
CITY HALL – COUNCIL CHAMBERS
OCTOBER 26, 2010**

ROLL CALL: **Present:** Bruce Neil, Keith Fakkema, Gerry Oliver and Jeff Wallin
 Absent: Kristi Jensen, Julie Dale and Greg Wasinger
 Staff Present: Development Services Director, Steve Powers; Senior
 Planners, Cac Kamak and Ethan Spoo; and Associate Planner; Melissa
 Sartorius

Commissioner Neil called the meeting to order at 7:30 p.m.

MINUTES: **MR. FAKKEMA MOVED, MR. OLIVER SECONDED, MOTION CARRIED
 TO APPROVE THE SEPTEMBER 28, 2010 MINUTES AS PRESENTED.**

PUBLIC COMMENT

Mel Vance (PO Box 2882) reminded members of the Planning Commission to take steps to be prepared for weather associated with La Niña.

CHAIRPERSON AND VICE-CHAIRPERSON ELECTION

Mr. Neil opened nominations for Chairman.

Mr. Fakkema nominated Mr. Neil.

Mr. Oliver seconded the nomination.

ACTION: **MR. FAKKEMA MOVED, MR. OLIVER SECONDED, MOTION CARRIED TO
 ELECT BRUCE NEIL AS CHAIRMAN.**

Mr. Neil opened nominations for Vice-Chairman.

Mr. Oliver nominated Mr. Fakkema for Vice-Chairman.

Mr. Neil seconded the nomination.

ACTION: **MR. OLIVER MOVED, MR. NEIL SECONDED, MOTION CARRIED TO ELECT
 KEITH FAKKEMA AS VICE-CHAIRMAN.**

ADULT ENTERTAINMENT INTERIM ORDINANCE – Public Hearing

Mr. Kamak reviewed previous actions by the City Council to adopted ordinances that address public nudity and licensing of adult entertainment and as part of adopting these regulations, the City also adopted an interim zoning control to restrict such uses to an overlay district. Mr. Kamak noted that the interim ordinance expired in September and staff submitted a work plan which extended the interim ordinance for six months so that staff could continue research as to whether the properties covered by the interim overlay zone was sufficient to legally cover the needs of locating such facilities in Oak Harbor.

Mr. Kamak provided a Power Point presentation (Attachment 1) to the Planning Commission detailing information regarding the legal framework regulating Adult Oriented Businesses,

accepted zoning methodology for locating such uses in a community, the locations suitable for such uses in Oak Harbor, land use distribution that impacts the location of such uses and determining whether the properties identified in the Interim Adult Entertainment Facilities Overlay District are sufficient to meet the needs of the community and the adult industry.

Mr. Kamak concluded the presentation by summarizing staff's findings as follows:

- Adult Oriented Businesses are entitled to some protection under the State and Federal constitution.
- The courts have upheld regulations that are tailored to regulate the secondary effects (crime, property values, blight) of such businesses.
- Regulations cannot completely eliminate these uses from a municipality.
- The dispersed approach and concentrated approach have both been held to be constitutionally permissible as legitimate "time, place, and manner" of protected speech.
- The dispersed approach is not suitable for Oak Harbor since it eliminates almost all properties.
- Concentrated approach may be the best method for Oak Harbor to regulate adult entertainment facilities.
- There is more industrial land available for development than commercial lands.
- Properties identified in the interim overlay district, referred to as subject properties, fall outside the buffers of sensitive areas.
- Subject properties are located in a developing area and can be served by all utilities.
- Area of subject properties is more than all available community commercial lands.
- Since there have been no applications for the development of adult entertainment facilities in Oak Harbor and Island County the land identified in the interim ordinance will provide an ample supply of properties and will be augmented by properties identified by the county in and around the same area.

Mr. Kamak reasoned that based on the analysis, staff believes that the Interim Adult Entertainment Facilities Overlay District can be adopted as the Final Adult Entertainment Facilities Overlay District. Since studies indicate that the concentrated approach can have increased crime rates over the dispersed approach, specific site development conditions can be considered for inclusion in the development codes.

Mr. Kamak recommended that the Planning Commission take public comment and continue the public hearing to its November 23, 2010 meeting.

Commission Discussion

Commissioners asked the following questions:

Are there any other areas available? Mr. Kamak stated that the area selected was the only area located outside of sensitive buffer areas.

What if additional UGA land is absorbed by the City and it is zoned Industrial or PIP would adult entertainment uses be allowed there as well? Mr. Kamak said no, and explained that an overlay zone is a line that is drawn on certain properties that stays there.

What if at a later date there is more Industrial or PIP property available shouldn't we be expanding the overlay zone? Mr. Kamak explained that the overlay zone should only be expanded if our supply becomes less than our demand.

How would this affect a company's decision to expand in this area? Mr. Kamak explained that adult entertainment uses are located throughout the country in many areas so we are trying to find the best location in Oak Harbor and we hope that by identifying this location, a developer will know ahead of time that this is where adult uses can locate and the developer can plan for it.

Is the City allowed to add other types of restrictions on how the business is run? Mr. Kamak stated that the two ordinances that address public nudity and licensing of adult entertainment have regulations and restrictions concerning how the business is run. Mr. Powers added that the business regulations address some of the internal design characteristics and the personnel side of things in an effort to lessen the opportunity for those crimes that have been identified in the nationwide studies.

Chairman Neil opened the public hearing at 8:24 p.m.

Mel Vance (PO Box 2882) stated that he was not necessarily in favor of strip clubs in Oak Harbor and he was not in favor of the overlay method but was in favor of allowing adult uses through zoning by allowing adult uses in Industrial and Business Park zoning districts. Mr. Vance said the City should consider that once an adult entertainment facility is established in a particular location that a protected use should not be allowed to locate any closer than the established buffer area for that use. Mr. Vance also stated that the existing ordinances have existing grounds for a legal challenge. Mr. Vance encouraged being as flexible as possible to avoid any legal issues.

ACTION: MR. OLIVER MOVED, MR. WALLIN SECONDED, MOTION CARRIED TO CONTINUE THE ADULT ENTERTAINMENT INTERIM ORDINANCE PUBLIC HEARING TO THE PLANNING COMMISSION'S NOVEMBER 23, 2010 MEETING.

Mr. Kamak asked the Planning Commission to hold on to the materials that were provided in their agenda packet because they would need them at the November 23rd meeting.

2010 COMPREHENSIVE PLAN AMENDMENTS – Public Hearing

Chairman Neil opened the public hearing for the 2010 Comprehensive Plan amendments and asked staff to present the staff report.

Mr. Kamak reviewed the 2010 Comprehensive Plan amendment process that began in October of 2009 with a call for applications. No sponsored applications were received. The deadline for all applications was December 1, 2009. Although no private sponsored applications were received, there were city-owned properties that needs land use changes. Therefore, a preliminary docket that included three city-owned properties, an update to the Capital Improvement Plan and an analysis on the City's UGA capacity was reviewed by the Planning Commission and the City Council for the 2010 Comprehensive Plan Amendments. The docket was recommended by the Planning Commission and approved by City Council on March 2, 2010.

Mr. Kamak summarized the Planning Commission meetings that included discussions on the 2010 Comprehensive Plan Amendments as follows:

- April 28, 2010 – UGA Capacity Analysis – Initial data collection
- May 25, 2010 – UGA Capacity Analysis – Continued discussion of data collection and methodologies
- June 22, 2010 – Discussion on the three proposed land use changes

- July 27, 2010 – Review and recommendation of the Transportation Improvement Plan that will be included in the Capital Improvement Plan
- August 24, 2010 – UGA Capacity Analysis – Preliminary findings

Mr. Kamak noted that the work done on the UGA capacity analysis will not result in any amendments this year and that this is the first phase of the project. The scope of this year's work was to determine if there is capacity within the current UGA. Results from the analysis will require further discussion to determine how the 20 year growth should be accommodated. This may or may not result in expansion of the UGA. Therefore the work on the UGA capacity analysis will continue into the next Comprehensive Plan Amendment cycle.

Mr. Kamak summarized the updates to the Capital Improvement Plan as follows:

- Updates to the current and projected revenues
- Removal of projects that have been complete (eg. Oak Harbor Street improvements)
- Updating the list of street projects to reflect the adopted Transportation Improvement Plan
- Updated project list for the water, sewer and the wastewater system
- Updates to project schedules

Mr. Kamak summarized the three land use changes as follows:

- Scenic Heights Trailhead site - Low Density Residential to Public Facilities
- Water Reservoir Site near Gun Club Road –Planned Business Park to Public Facilities
- SE corner of SR 20 and Fakemma Road –Auto/Industrial Commercial to Open Space

Mr. Kamak also noted the reviewed criteria in accordance with OHMC 18.15.080 is reviewed in detail in the Planning Commission's agenda packet. The proposed amendments will not adversely affect the public health, safety and welfare in any significant way. The proposed amendments are consistent with the overall goals and intent of the comprehensive plan and are in compliance with the Growth Management Act and the Countywide Planning Policies.

Mr. Kamak closed his presentation by stating that the 2010 Amendments meet the evaluation criteria for Comprehensive Plan Amendments. The update to the Capital Improvements Plan was done with input from the various departments within the City of Oak Harbor. Project updates and changes have their basis on already adopted Plans by the City Council. The financial information is based on the most recent information available and the adopted budget. Therefore, he recommended that the Planning Commission hold the public hearing and forward a recommendation to the City Council to approve the:

- 2010-2015 Capital Improvements Plan.
- Amend the Future Land Use Map to reflect the following changes:
 - Scenic Heights Trailhead site - Low Density Residential to Public Facilities
 - Water Reservoir Site near Gun Club Road –Planned Business Park to Public Facilities
 - SE corner of SR 20 and Fakkema Road –Auto/Industrial Commercial to Open Space

Commission Discussion

Commissioners asked the following questions:

What will happen to the remaining 5 acres for the well site? Mr. Kamak stated that the property will go back to the property owner. Mr. Powers added that the result of a court settlement a number of years ago the City acquired 5 acres of a 10 acre parcel that had not yet been subdivided. Once we have completed this process the property owner is responsible for

subdividing that property creating the 5 acres for the City and then the City will deed back the other 5 acres.

What is the tax status of the property on the SE corner of SR 20 and Fakkema Road? Mr. Powers stated that the property is owned by the City of Oak Harbor so it is not a taxable property.

Chairman Neil closed the public hearing.

ACTION: MR. FAKKEMA MOVED, MR. WALLIN SECONDED, MOTION CARRIED TO FORWARD A RECOMMENDATION TO THE CITY COUNCIL TO ADOPT THE 2010 COMPREHENSIVE PLAN AMENDMENTS AS PRESENTED.

BEING NO FURTHER BUSINESS BEFORE THE PLANNING COMMISSION, THE MEETING WAS ADJOURNED AT 8:48 P.M.

DRAFT

Adult Entertainment Overlay Zone

Zoning for Adult Entertainment Facilities

Ordinances Adopted

- Ordinance Banning Public Nudity: 6.70 entitled “Nudity in Public Places” to Title 6 Public Peace, Safety and Morals
- Ordinance adopting Adult Entertainment Licensing and Regulations: 5.20 entitled “Adult Entertainment” in Title 5 Business Licenses and Regulations
- 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”

Regulating Adult Entertainment

- Expressive Conduct – protected under Federal and State Constitution
- Regulations to address secondary effects are “content neutral”*
 - Increased crime
 - Decreased property values
 - Urban blight
- Evidence may be borrowed from other cities

* *Young v. American Mini Theaters, Inc.*, (1976) and *City of Renton v. Playtime Theaters, Inc.*, (1986)

Regulating AEF through Zoning

- Dispersion zoning
- Concentration zoning
- Both methods have been upheld to be constitutional as a legitimate “time, manner, and place” restriction of protected speech
- The regulations should be:
 - Unrelated to speech
 - Narrowly tailored to serve a substantial governmental interest
 - Permit reasonable alternative channels of communication

What zoning cannot do

- Completely eliminate Adult Entertainment Facilities from the municipality
- Exclusively permit it in an area that is “commercially unavailable”
- Force preexisting Adult Entertainment Facilities to cease operation and relocate.

Dispersed vs. Concentrated

- Concentrated
 - New York City, Boston, Oak Harbor's current interim overlay district
 - Advantages
 - Like uses are treated alike
 - Lower administration costs
 - Control over the total growth
 - Easier evaluation of public services impact
 - Disadvantages
 - Studies indicate more crime
- Dispersed
 - Detroit, many other cities
 - Advantages
 - Less crime
 - Disadvantages
 - Higher administration costs
 - No upper limit

Location Suitability for Oak Harbor

- Dispersion method – modest buffers would eliminate most commercial properties
 - Community input on larger than 100 ft buffer from residential
- Concentration method – Goldie Road area consistently outside buffers
 - May be the ideal location for AEF since sensitive areas are restricted due to proximity to Ault Field operations

Land Use Distribution

Zoning Category	City Limits			% of Total Acreage
	# of Parcels	Acreage	% of Total Parcels	
R1, Single Family Residential	4084	1292	70.20	40.74
R2, Limited Multifamily Residential	752	192	12.93	6.06
R3, Multifamily Residential	89	101	1.53	3.19
R4, Multifamily Residential	180	181	3.09	5.71
RO, Residential Office	187	77	3.21	2.43
C1, Neighborhood Commercial	12	6	0.21	0.20
CBD, Central Business District	144	41	2.48	1.28
C3, Community Commercial	203	164	3.49	5.17
C4, Highway Service Commercial	25	98	0.43	3.08
C5, Highway Corridor Commercial	45	69	0.77	2.18
PIP, Planned Industrial Park	11	37	0.19	1.15
PBP, Planned Business Park	3	80	0.05	2.52
I, Industrial	10	50	0.17	1.58
PF, Public Facilities	61	360	1.05	11.35
OS, Open Space	12	94	0.21	2.96
TOTALS	5818	2841	100	90

Total Land Area 3170.4
 ROW 329.5 10%

Developability of properties

- 90% threshold – When the assessed land value is 90% or greater of the total value.
- Considered the most highly developable properties in the city
 - Land that is undeveloped
 - Vacant
 - Very small structure compared to the land

Zoning Classifications	Land Available (acres)	Total land in zoning classification	% of land available of total zoning classification
C3, Community Commercial	16.7	164	10%
I, Industrial	29.1	50	58%
PIP	22.5	36.5	62%

Value of properties

- Large industrial land > 5 acres = \$1 per sq. ft.
- Improved industrial land = \$3 - \$4 per sq. ft.
- Commercial properties \$8 - \$20 based on location
 - Highway = \$17 - \$20
 - Downtown = \$10 - \$15
 - Midway Corridor = \$8 - \$10

North Whidbey and the Goldie Road Corridor

- Largest inventory of industrial lands in Island County
- Most properties are in the UGA
- Inter-local Agreement provides consistent zoning and land use regulations
- Area is under an enterprise zone that provides development and annexation incentives
- Goldie Road area has consistent development and will continue to be developed in the future
- Utilities available along Goldie Road

Properties in the interim ordinance



Properties in the interim ordinance

- Total acreage = 18.7
 - PIP, Planned Industrial Park = 9.7
 - I, Industrial = 9 acres
- Parcel 1 is partially developed and has room for further development
- Parcel 2 is likely to develop last due to poor access
 - Access can be obtained through Parcel 1 or Parcel 2
- Parcel 3 is largest parcel and can be subdivided into several lots based on user needs
 - Will require construction of Gun Club Road
 - Survey for Wetlands (critical area report)
- Area slopes to the west
- Soils suitable for infiltration, low impact development
- Utilities available on Goldie Road

Supply and Demand

- Currently no adult uses located in Oak Harbor or Island County
- No application have been filed with the City or the County
- No applications equates to “No Demand”
- Amount of land in Overlay Zone can be considered substantial when compared to the demand
- 18.7 acres is approximately .66 acres of total zoned land in City and 22% of PIP and I zoning combined
- County is also considering development regulations for AOB in this area
- Staff believes that it is an ample supply for the demand

Summary of Findings

- Adult Oriented Businesses are entitled to some protection under the State and Federal constitution
- The courts have upheld regulations that are tailored to regulate the secondary effects (crime, property values, blight) of such businesses
- Regulations cannot completely eliminate these uses from a municipality
- The dispersed approach and concentrated approach have both been held to be constitutionally permissible as legitimate "time, place, and manner" of protected speech
- The dispersed approach is not suitable for Oak Harbor since it eliminates almost all properties
- Concentrated approach may be the best method for Oak Harbor to regulate adult entertainment facilities
- There is more industrial land available for development than commercial lands.
- Properties identified in the interim overlay district, referred to as subject properties, fall outside the buffers of sensitive areas
- Subject properties are located in a developing area and can be served by all utilities.
- Area of subject properties is more than all available community commercial lands
- Since there have been no applications for the development of adult entertainment facilities in Oak Harbor and Island County the land identified in the interim ordinance will provide an ample supply of properties and will be augmented by properties identified by the county in and around the same area.

Planning Commission Action

- Public Input
- Continue the hearing to November 23, 2010

Adult Entertainment
Ordinance

Public Hearing

PLANNING COMMISSION

TO: CITY OF OAK HARBOR PLANNING COMMISSIONERS
FROM: CAC KAMAK, AICP, SENIOR PLANNER
SUBJECT: ADULT ENTERTAINMENT FACILITIES OVERLAY ZONE – PUBLIC HEARING
DATE: 11/18/2010
CC: STEVE POWERS, AICP, DEVELOPMENT SERVICES DIRECTOR

Introduction: This memo presents a recommendation on the Adult Entertainment Facilities Overlay District. Staff has provided information on the legal framework that regulates adult uses, several studies on the effects of adult uses in communities and an analysis regarding the location of such uses in Oak Harbor. The information was presented at several meetings of the Planning Commission since a public hearing on this issue was opened on July 27, 2010 and continued at each meeting to provide an opportunity for early and continuous public input. The Planning Commission is recommended to close the public hearing on November 23, 2010 and make a recommendation to the City Council.

Background: The Planning Commission received a report on locating Adult Entertainment Facilities in Oak Harbor at its last meeting on October 26, 2010¹. The summary of the findings in the report are listed below:

- Adult Oriented Businesses are entitled to some protection under the State and Federal constitution
- The courts have upheld regulations that are tailored to regulate the secondary effects (crime, property values, blight) of such businesses
- Regulations cannot completely eliminate these uses from a municipality
- The dispersed approach and concentrated approach have both been held to be constitutionally permissible as legitimate “time, place, and manner” of protected speech
- The dispersed approach is not suitable for Oak Harbor since it eliminates almost all properties
- Concentrated approach may be the best method for Oak Harbor to regulate adult entertainment facilities
- There is more industrial land available for development than commercial lands.

¹ Please bring the material provided at the last meeting for Adult Entertainment Facilities Overlay District. If you need a copy please let us know.

- Properties identified in the interim overlay district, referred to as subject properties, fall outside the buffers of sensitive areas
- Subject properties are located in a developing area and can be served by all utilities.
- Area of subject properties is more than all available community commercial lands
- Since there have been no applications for the development of adult entertainment facilities in Oak Harbor and Island County the land identified in the interim ordinance will provide an ample supply of properties and will be augmented by properties identified by the county in and around the same area.

The report concluded that the Interim Adult Entertainment Facilities Overlay District can be adopted as the Final Adult Entertainment Facilities Overlay District. In order to finalize the overlay district, the code language (OHMC Chapter 19.52) of the interim ordinance will need to be readopted as the final ordinance. A copy of the ordinance is attached to this memo.

Recommendation: Staff recommends closing the public hearing and making a recommendation to the City Council that the interim Adult Entertainment Facilities Overlay District be adopted as the final Adult Entertainment Facilities Overlay District.

Chapter 19.52
ADULT ENTERTAINMENT FACILITIES OVERLAY ZONE

Sections:

- 19.52.010 Purpose.
- 19.52.020 Application of chapter provisions.
- 19.52.030 Definitions.
- 19.52.040 Adult entertainment facilities overlay zone established.
- 19.52.045 Overlay zone map adopted.
- 19.52.050 Adult entertainment overlay zone use restrictions.
- 19.52.060 Non-conforming uses.

19.52.010 Purpose. The purpose of this chapter is 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. Because of the adverse secondary effects of adult entertainment facilities, restrictions on location are necessary: to protect residents, especially sensitive uses such as schools, religious institutions, parks and residential neighborhoods, from crimes, nuisances and disturbances of the public welfare, peace and safety; to preserve property values; and to respect the place of neighborhoods, schools, religious institutions and parks in the city of Oak Harbor. It is not the intention of this ordinance to suppress any constitutionally protected speech or expression, but to provide sufficient alternative avenues of communication for adult entertainment uses at the same time as providing appropriate zoning and separation between adult entertainment facilities and potentially conflicting uses.

19.52.020 Application of chapter provisions. Adult entertainment facilities, as defined in OHMC 19.52.030(2), shall only be permitted within the Adult Entertainment Facilities Overlay Zone established herein. This chapter applies to all adult entertainment facilities located within the city of Oak Harbor.

19.52.030 Definitions. The following definitions shall apply to this chapter.

- (1) "Adult entertainment" shall have the meaning set out in OHMC 5.20.020.
- (2) "Adult entertainment facility" shall mean any commercial premises or club to which any patron is invited or admitted and where adult entertainment is provided on a regular basis or is provided as a substantial part of the premises activity.
- (3) "Overlay zone" shall mean that portion of the Industrial zone and the Planned Industrial Park zone in which adult entertainment establishments may be located.
- (4) "Potentially conflicting uses" shall mean schools, religious institutions, residential zones and parks established within the city of Oak Harbor as of the date of this ordinance. The term "potentially conflicting uses" shall also mean any such other uses which the city council shall determine require separation from adult entertainment facilities, provided that the addition of any such uses shall require a

review of available lands to ensure sufficient alternative avenues of communication for adult entertainment uses are available.

19.52.040 Adult entertainment facilities overlay zone established. There is established an adult entertainment facilities overlay zone in the city of Oak Harbor. The adult entertainment facilities overlay zone shall overlay the Industrial zone and the Planned Industrial Park zone. It does not include certain portions of the Industrial zone and the Planned Industrial Park zone in which potentially conflicting uses were located at the time of adoption of this ordinance. The following exclusions from the Industrial zone and the Planned Industrial Park zones apply:

- (1) The adult entertainment facilities overlay zone removes a buffer of seven hundred fifty (750) feet around the existing potentially conflicting uses of schools, religious institutions, and parks.
- (2) A further buffer removes seven hundred fifty (750) feet around existing areas zoned exclusively for residential uses – R-1, Single-Family Residential; R-2, Limited Multiple-Family Residential; R-3, Multiple-Family Residential; and R-4, Multiple-Family Residential.

19.52.045 Overlay zone map adopted. The adult entertainment facilities overlay zone map as attached hereto in Exhibit A is adopted as a pictorial description of the sole geographic areas within the city of Oak Harbor in which adult entertainment facilities are permitted. A copy of the adult entertainment facilities overlay zone map is on file with the city clerk and shall be available for public inspection and copying.

19.52.050 Adult entertainment overlay zone use restrictions. To mitigate the adverse secondary effects associated with adult entertainment facilities, the following parking and lighting restrictions shall apply within the adult entertainment facilities overlay zone:

- (1) Parking requirements. For adult entertainment facilities constructed after the effective date of this ordinance all parking must be visible from the public right-of-way. For adult entertainment facilities located in buildings constructed prior to the effective date of this ordinance, all parking should be visible from the public right-of-way. In cases of adult entertainment facilities located in buildings constructed prior to the effective date of this ordinance where this is not feasible, access to the parking shall be in as direct a route as possible from the public right-of-way and the parking area shall remain free and clear of visual obstructions at all times. Access to the exterior rear of the building shall be denied to any persons other than employees and public officials during the performance of their respective duties and tasks by means of a fence, wall or other device approved by the city building official. On-site parking shall be required and regulated in accordance with Chapter 19.44 OHMC. Parking shall be provided at a ratio of one (1) space for every three (3) seats, plus one (1) space for every two (2) employees on the largest shift.

- (2) Lighting requirements. All on-site parking areas and premises entries of adult entertainment facilities shall be illuminated from dusk until one (1) hour past closing hours of operation with a lighting system which provides an average maintained horizontal illumination of one (1) foot candle of light on the parking surface and/or walkways. In addition, all on-site lighting, including signs, shall comply with the shading and directional requirements of OHMC 19.28.010(4). An on-premises exterior lighting plan shall be presented to the city building official for approval prior to the operation of any adult entertainment.

19.52.060 Non-conforming uses. For purposes of this title, a “non-conforming adult entertainment facility” constitutes an adult entertainment facility which lawfully exists as an adult entertainment facility which receives non-conforming status by virtue of an order from a court of competent jurisdiction, or which lawfully existed as an adult entertainment facility prior to a change in the zoning which change does not permit an adult entertainment facility in its existing location and is maintained as an adult entertainment facility although it does not comply with the adult entertainment facility zoning requirements set forth in this chapter, or is an adult entertainment facility which lawfully existed prior to annexation by the city and is maintained after the effective date of annexation and does not comply with the adult entertainment facility zoning requirements set forth in this chapter.

- (1) The location of a newly-established public park, permanent religious institution, or school within seven hundred fifty (750) feet or the establishment of a residential district within seven hundred fifty (750) feet of an existing adult entertainment facility shall not cause the existing adult entertainment business to be deemed a non-conforming use unless the city council makes a determination that the newly-established park, religious institution or school requires separation from adult entertainment facilities, and further provided that the exclusion of any such areas from adult entertainment facility zoning overlay shall require a review of available lands to ensure sufficient alternative avenues of communication for adult entertainment uses are available.
- (2) Adult entertainment facilities which are non-conforming uses in the zone in which they are located and which are located within the city limits shall be discontinued within one year of the date of becoming a non-conforming adult use business or upon the expiration of the leasehold period in existence as of the date of becoming a non-conforming adult entertainment facility, or upon the sale of the non-conforming adult entertainment facility, whichever occurs first. Adult entertainment facilities which are non-conforming as a result of annexation to the city shall be discontinued within one year of the date of annexation. Such non-conforming adult entertainment facility shall not be extended, expanded, enlarged or increased in intensity. Such prohibited activities (extend, expand, enlarge, increase in intensity) shall include:

- (a) Extension of a non-conforming adult entertainment facility to any building or other structure or land area other than one occupied by such use as of the date of becoming a non-conforming adult entertainment facility.
 - (b) Extension of any specific type of non-conforming adult entertainment facility, as separately defined in OHMC 19.52.030(2), within a building or other structure to any portion of the floor area that was not occupied by that same type of adult entertainment facility as of the date of becoming a non-conforming adult entertainment facility.
 - (c) Operation of a non-conforming use in such manner as to conflict with, or to further conflict with if already conflicting as of the date of becoming a non-conforming adult entertainment facility.
- (3) Any change in a non-conforming adult entertainment facility shall be to a use which is legally permitted within the zone in which it is located. In the event a non-conforming adult entertainment facility, or portion thereof, is changed to a use which is legally permitted within the zone in which it is located, then the structure or portion thereof which contained the adult entertainment facility cannot thereafter be used or reused for any type of adult entertainment facility. In the event a non-conforming adult entertainment facility building or structure is vacated, closed or abandoned for a period in excess of six (6) months, the structure shall not thereafter be used except in conformance with a use which is legally permitted within the zone in which it is located. A vacated, closed or abandoned non-conforming adult entertainment facility building or structure shall also be subject to the discontinuation provisions of OHMC 19.52.060(2).
- (4) Repairs and alterations to a non-conforming adult entertainment facility building or structure shall be limited to nonstructural repairs and incidental alterations for normal maintenance and shall only be permitted to the extent necessitated by normal wear and tear. No structural alterations shall be allowed.
- (5) A building or structure containing a non-conforming adult entertainment facility which is damaged or destroyed by fire, wind, earthquake or other natural disaster can be restored and the same use or occupancy continued or resumed provided the total cost of such restoration does not exceed fifty percent (50%) of the real valuation of the building or structure exclusive of foundations at the time of such damage provided that such restoration shall not extend the one (1) year discontinuation period established in OHMC 19.52.060(2). Restoration of a structure or building housing a non-conforming adult entertainment facility or moneys used therefore shall not be used as factors by the examiner when considering any request of a time extension made pursuant to subsection (6) of this section.
- (6) In the event the owner of a non-conforming adult entertainment facility determines that the period set forth in subsection (2) of this section does not

provide the adult entertainment facility with a reasonable period of amortization, then no later than one hundred eighty (180) days prior to the expiration of the period, the owner of a non-conforming adult entertainment facility shall make application to the city land use hearing examiner for an extension of time.

Accompanying the application shall be a fee in the amount of Seven Hundred Twelve Dollars (\$712.00) and detailed information addressing the below-listed factors to be considered by the hearing examiner. In determining whether or not to grant the extension, the hearing examiner shall determine whether or not the harm or hardship to the non-conforming adult entertainment facility outweighs the benefit to be gained from the public from termination of the use. Factors to be considered by the hearing examiner include the location of the business in relation to sensitive land uses such as schools, parks, churches, residential zone(s), etc., initial capital investment, investment realization to date, life expectancy of the investment, the existence or nonexistence of a lease obligation, as well as a contingency clause permitting termination of the lease, or whether a reasonable alternate use of the property exists. The action of the hearing examiner shall be in accordance with the review process as described in Chapter 18.40 OHMC for a Review Process III.

- (7) Within thirty (30) calendar days of becoming a non-conforming adult entertainment facility, the non-conforming adult entertainment facility shall provide the city's development services director with copies of its current leasehold document(s) which sets forth their existing leasehold time period or, in the case of a non-leasehold interest, the city's development services director shall be provided other documents which show record of ownership.