



# City of Seattle

Gregory J. Nickels, Mayor

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## SEATTLE PLANNING COMMISSION MAY 11, 2006 APPROVED MEETING MINUTES

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### **Commissioners in Attendance**

Steve Sheehy – Chair, Jerry Finrow – Vice-Chair, Linda Amato, George Blomberg, Mahlon Clements, Tom Eanes, Chris Fiori, Martin Kaplan, Kay Knapton, M. Michelle Mattox, Kevin McDonald, Kirsten Pennington, Carl See, Tony To

### **Commissioners Absent**

Hilda Blanco, Valerie Kinast

### **Commission Staff**

Barbara Wilson – Director, Scott Dvorak – Planning Analyst, Robin Magonegil – Admin Assistant

### **Guests**

John Skelton, DPD; Martha Lester, Council Central Staff; Tommy Booth; Gary Gayton; David Wolbeck; Mike Perringer; Jack Burns; Gil Levy; Macabe Mooney; Neil Powers, Legislative Aide to Council member Peter Steinbrueck

*Please Note: Seattle Planning Commission meeting minutes are not an exact transcript but instead represent key points and the basis of the discussion.*

### **CALL TO ORDER**

The meeting was called to order at 3:03 pm by Chair Steve Sheehy.

### **COMMISSION BUSINESS**

#### ▪ **Chair's Report**

##### – **Upcoming Events and Meetings**

Chair Sheehy noted that the Commissioner Retreat went well and thanked the Commissioners and the Commission Staff for their participation. He asked the Commissioners to review the upcoming events and noted that there are a number of events related to the Viaduct and Seawall replacement project.

##### – **Announcements and Reports**

Chair Sheehy thanked Commissioners Tony To, Valerie Kinast, Carl See, Kevin McDonald and Michelle Mattox who, along with Chair Sheehy helped facilitate the Multifamily Code Open House. He also thanked Commissioner Kay Knapton for attending the Transportation Choices Coalition forum on the Viaduct replacement options.

Chair Sheehy noted that Commissioner Chris Fiori is taking the lead on drafting a joint Commission op-ed piece on the Viaduct replacement options with the Design Commission.

Chair Sheehy mentioned that the Commission has received a request from Council member Tom Rasmussen to participate on the Housing Inventory Advisory Committee. He added that someone will be appointed at the next Executive Committee meeting and that if any Commissioners are interested they should let Director Barbara Wilson know.

- **April 13, 2006 Minutes Approval**

**ACTION: Commissioner Kay Knapton moved that the April 13, 2006 minutes be approved. Vice-Chair Jerry Finrow seconded the approval. The motion passed unanimously.**

- **Update: Ethics for advisory committees**

Chair Sheehy updated the Commission on the ethics legislation status. He noted that the Mayor's office convened an advisory group last week to review the proposed legislation. The advisory group was made up of the three advisory commissions (Planning Commission, Seattle Center Advisory Committee and Housing Levy Oversight Committee) who have raised issues about the new rules, plus some representatives from 'good government' groups, the Ethics Commission, and the City Attorney's office. He noted that the group will meet one more time to finalize the legislation that is to be sent to City Council. Chair Sheehy added that the moratorium on application of the new rules has been extended until August.

- **ACTION ITEM: Ethics Management Plan**

Director Wilson noted that the Ethics Management Plan (EMP) included in the Commissioner folder contains sections on Transparency, Disclosure of Interests, Conflict of Interests and Recusal, representing the Planning Commission and the Planning Commission membership composition. She stated that the purpose of EMP is to supplement the rules we currently adhere to by clearly articulating, in one place, the operating procedures and administrative policies as they apply to ethical standards for the Commission.

Chair Sheehy asked for discussion. Commissioner Tom Eanes questioned if the Commission is adopting this with the assumption that Section 416 of SMC is going to be legislatively modified. Chair Sheehy responded that when the Ethics Commission issued its interpretative rule it concluded that 416 applied to all advisory committees. The amendment would not change that conclusion but would change how the code applies to advisory committees. Ms. Wilson added that how she would explain it as that the changes we are seeking are going to be done within the framework of 416.

Commissioner Mahlon Clements asked why the Commission is not waiting on the legislation. Chair Sheehy responded that we could however it is a sign of good faith on the Commission's part and will help support the adoption of the new legislation.

**ACTION: Vice-Chair Jerry Finrow moved that the Ethics Management Plan be approved. Commissioner Kay Knapton seconded the approval. The motion passed unanimously.**

## **PUBLIC COMMENT**

Chair Sheehy noted that The Commission has changed its agenda to accommodate public comment earlier in the agenda. He noted that two people have signed up to make public comment and asked if there was anyone else who wished to make public comment. There were no additional sign up's.

**Mike Perringer, President of the Sodo Business Association**, shared his concerns over the Mayor's proposed Adult Cabaret Legislation. He noted that he does not have any quarrel with adult cabarets having the right to do business, but he is very concerned about the SODO area becoming a "red light district". Mr. Perringer noted that there are 199 businesses in that zone with 10,000 employees.

Mr. Perringer stated that he did not like the way that the Mayor brought this proposal together and did not work with the community. He noted that it makes many feel as if this area is a dumping ground for undesirable uses. He also noted that the people he has talked to at the Seattle Police department had concerns about a strip club zone in this area.

Commissioner Eanes asked about the shift times of the employees in the area. Mr. Perringer replied about he would estimate that about 1/3 of the employees are second or third shifts

**Gil Levy, an attorney representing Rick's Night Club on Lake City Way**, noted that he has represented these types of businesses for 25 years. He stated that he does not favor or disfavor any particular legislation but objects to the findings that clubs like Rick's have a negative impact on the surrounding neighborhoods. He added that the opinion that adult nightclubs need greater restrictions than other clubs is false. He noted that business such as bars and night clubs often have more nuisance calls and problems generally. He also noted that the available properties in the area not many and would cost prohibitive and that the industrial area is not hospitable for these types of businesses.

Commissioner Eanes asked whether there is statistical evidence of the number of police calls correlated to the type of establishment. Mr. Levy noted that they are working on pulling that information together and hoping to present a social scientific study based upon the Seattle experience that specifically addresses these issues. Commissioner Eanes noted that any statistics would have to be normalized in some way based on the number of customers, etc.

Chair Sheehy asked what the square footage of Rick's is. Mr. Levy responded that it is approximately 4500 square feet. Chair Sheehy noted that the Mayor's proposal has a 5000 square foot limit.

Mr. Levy stated that the interest of Rick's ownership is to make sure that the Commission understands that a lot of the bad things that are said about these types of clubs just are not true. Commissioner Finrow reminded Mr. Levy that the Planning Commission will not be making a decision on this issue but will merely be offering advise to City Council.

Chair Sheehy requested that any written information that Mr. Levy and his client would like to share should be directed to Ms. Wilson.

Chair Sheehy asked if there was any more public comment. There was none offered.

## COMMISSION DISCUSSION

### ▪ Briefing – Mayor’s Proposed Adult Cabaret Legislation

- John Skelton, Department of Planning & Development
- Martha Lester, Council Central Staff

Chair Sheehy introduced John Skelton from DPD and Martha Lester from Council Central staff who will brief the Commission on the proposed legislation relating to zoning for adult cabarets. Before beginning the briefing Chair Sheehy took a moment to ask if any of the Commissioners were aware of any financial or private interest that they may have, or a family member may have, in this particular legislation based on what they know it to be at this time. If so, he noted, they need to disclose that now.

**Note for the Record: No Commissioners present identified a potential conflict about which should be disclosed and no member present disclosed any known conflict of interest, private or financial, perceived or real on the issue of proposed adult cabaret legislation.**

Chair Sheehy added that as the Commissioners learn more about the legislation and become aware of a private or financial interest that may require them to not participate, then they should disclose that on the record and not be involved in the conversation after that point

Chair Sheehy gave the floor to Mr. Skelton and Ms. Lester. Mr. Skelton shared some background and history of the legislation. He noted that in 2005 a moratorium that was placed on the licensing on new adult cabarets was overturned. He noted that the Mayor was interested in looking at the best place to accommodate this particular adult use while mitigating for potential negative impacts on public safety and welfare and property values. He noted the Mayor also wished to minimize the proximity of adult cabarets in areas where children are frequently present.

He stated that currently there are two adult uses defined in code; adult panoramas and adult motion pictures but that strip clubs (a.k.a adult cabarets) are not currently a defined use in the code. Adult cabarets fall under codes related to performing arts centers and are prohibited in residential zones and permitted in all commercial (except NC1), industrial (except for the Duwamish Manufacturing and Industrial Center) and downtown zones. He noted that there are currently 4 existing adult cabarets; one in the DMC, 2 in NC2, and one in C1. Two are located in Ballard/Crown Hill, one downtown and one in Lake City.

The proposed legislation would define the use; create certain development standards including a size limit of 5000 sq feet, and limit on on-premise signs restricting roof signs that are visible from highways and interstates. It would also allow the use only in a certain portion of the Duwamish Manufacturing and Industrial Center where there would be a separation from sensitive uses.

Mr. Skelton stated that the proposal grew out of an issue that goes back several years. He explained that the term “adult cabaret” is a term that is used in many places to identify this particular type of adult use and that the City of Seattle doesn’t currently define adult cabaret separately – instead they are considered the same as other performing arts theaters. Vice-Chair Finrow asked if the adult cabaret zone was all located within one land use zone designation. Mr. Skelton answered that it is IG1 and IG2.

Commissioner Eanes questioned the rationale behind limiting the size. Mr. Skelton replied that it is the industrial zones policy to limit non-industrial uses. He added that this size is consistent with other non industrial businesses in this zone and is also consistent with the size of other adult cabarets in the city.

Commissioner Clements asked if licensed childcare centers were allowed in this zone. Mr. Skelton answered that they were allowed. Commissioner Clements questioned what would happen if someone opens a licensed day care after the adult cabarets were there. Mr. Skelton responded that the existing Adult Cabaret would then become a non-conforming use and would be treated like any other non-conforming use. He added that it would affect expansion of an existing business or location of new businesses.

Commissioner Clements noted that someone who disagreed with the adopted legislation could open strategically located businesses, like licensed child care facilities, and effectively shut down the area to adult cabarets.

Chair Sheehy stated that Councilmember Steinbrueck asked the Commission some questions and one of those questions was to evaluate restricting these uses to a sub-area versus allowing them city-wide with other types of limitations. Chair Sheehy wanted to know the rational basis for why the industrial zone and specifically why this particular area. Mr. Skelton reiterated that the impacts are believed to be less in industrial areas especially in relation to children. He also noted that industrial areas share a greater compatibility with these uses and would have less of an impact on property values and pedestrian uses. He added that the reason that the Duwamish area was chosen over other industrially zoned areas, was because it is larger, more separated by both natural and man-made boundaries, while, for example, the Ballard Interbay area is not. Mr. Skelton continued that the specific area within the Duwamish was chosen based on several factors, including; the size of property parcels and the location of freight corridors. He added that they avoided unrealistic areas such as the Port and the northern end of the Duwamish industrial area near the stadiums because they did not meet the Mayor's criteria. He again stated the primary rationale was to maintain separation from residential neighborhoods and to give ideal separation from places like schools, community centers, parks, daycares and, generally, places where children are likely to frequent.

Chair Sheehy asked if there were restrictions on hours of operation. Mr. Skelton answered that in regard to land use code there were no restrictions. Mr. Levy responded that Rick's is required to close at 2 am and could not open before noon. Ms. Wilson noted that the land use code does not regulate business operations such as hours of operation and other recent issues such as the four foot rule restrictions and the restrictions on alcohol sales on the premises. Those operations are regulated by other doctrine.

Commissioner Tony To pointed out that under current zoning adult cabarets are allowed anywhere performing arts centers are allowed but not in the Duwamish, and he questioned what the history is behind this. Mr. Skelton responded that, many years ago, there was an option on the table to allow adult cabarets in a portion of the Duwamish, as is presently contemplated. That proposal was one of two before the City Council that preceded the imposition of the aforementioned moratorium on adult cabarets. The opposition to the industrial option from local property owners developed into legislation prohibiting performing arts theaters in the Duwamish Manufacturing and Industrial Center.

Commissioner Linda Amato wondered how the leap was made from analysis to the recommendations. She also asked if staff had created an evaluation matrix that weighed things out. Mr. Skelton responded that in cities where the approach is to concentrate adult uses, sometimes known as a "combat zone" or

“red light district” it pertained to all adult uses, not just adult cabarets. He pointed out that the Mayor is not advocating this. He is only proposing this one type of use (adult cabarets) to be allowed in this area. He noted that there has only been 1 application for a new adult cabaret in the past 17 years. Mr. Skelton noted that the reason this issue arose was that there were approximately 7 or 8 clubs after two or three new ones opened in a short period of time, 17 years ago. Public reaction at the time motivated the City to act and regulate these new uses appropriately, which ultimately led to placing a moratorium on new establishments until further study could be completed.

Commissioner Amato asked Mr. Skelton if he knows if there was any research done in New York since Disney and other developers bought much of Times Square to see what has happened since all those adult uses were dispersed. Mr. Skelton replied that he was unaware of any specific research.

Vice-Chair Finrow asked about existing clubs being grandfathered and if they went away could new clubs be allowed to come into those areas. Mr. Skelton stated that new clubs would not be able come into the space if the owner sold the location or the use was vacant for more than 12 months.

Vice-Chair Finrow questioned what the long term implications of this proposal were from a public safety perspective, and whether there had been any detailed analysis for the Seattle area. Mr. Skelton answered that the City had not conducted a specific study of criminal activity associated with adult cabarets. It had, instead, relied upon other city’s studies that had concluded that public safety was a secondary impact that must be addressed. Mr. Skelton noted that, anecdotally, in Seattle there is testimony from nearby residents that there are issues with noise, litter, and criminal activities witnessed, etc.

Vice-Chair Finrow noted that what seems odd to him is that if we are proposing this zone and we do not have good data that shows what is going on then shouldn’t we be collecting this data. He added that if we are not going to collect this data then he questions why we are doing this. He continued that it seems we are venturing down a road where we don’t know what will happen. Mr. Skelton noted that they have chosen to rely on studies that have been done elsewhere and these studies don’t lead them to conclude that circumstances would necessarily be different here.

Vice-Chair Finrow stated that one of the issues that the Commission grapples with is the unintended affects of zone changes. He added that the Commission has a very clear position for industrial lands and this proposal creates more pressure on industrial lands. He also noted that he did not see the data arguing for putting these uses here.

Commissioner George Blomberg noted that one of the things that concerns the Commission about industrial lands is how support services employees feel about adult cabarets being there. He added that this proposal could have consequences of affecting support functions.

Commissioner Martin Kaplan said that he was surprised to hear that it wasn’t the four existing clubs that inspired the zone. He wondered if concentrating these types of uses has really been evaluated and what would happen if they get a very high demand for new clubs. Mr. Skelton replied that if circumstances changed, elected officials could always revisit the rules.

Ms. Wilson asked about buffers and the rationale and criteria behind the size of the buffers. She also questioned the need for buffers and special protections for religious institutions and light rail stations. Mr. Skelton noted that the light rail station was chosen because it is a place where people congregate. He added that in relation to the size of a buffer, they questioned how far can you be before you are “far enough” to effectively reduce the impact. Mr. Skelton continued that too far could effectively eliminate

any areas where the uses could locate. He noted that some studies suggest that at 600 or 1000 feet there is a reduction in impact on property values. Mr. Skelton mentioned that as far as religious institutions were concerned, the buffers were there as many religious institutions have schools and family activities.

Commissioner Kevin McDonald stated that he was interested in hearing about what was actually happening outside of these uses that would be considered offensive. He added that the only thing he thought could be offensive that would be unique to an Adult Cabaret would possibly be the signage – otherwise, the other impacts such as noise, garbage, glare, etc. could be true of many other types of businesses such as convenience stores. He asked what the specific threat of the outside of an adult cabaret that the City is trying to protect people from. Mr. Skelton stated that he could direct the Commission to studies of secondary impacts adult uses and the suggestion that adult activities have a negative influence on children– generally, the studies suggest the more that they are separated the better.

Commissioner To wondered if we have to do something to provide legal relief once the moratorium is lifted. Mr. Skelton replied that the moratorium has already been lifted.

Chair Sheehy asked if Adult Cabarets have to be 1000 feet away from schools, then do schools have to be 1000 feet away from an Adult Cabaret. Mr. Skelton noted that the school does not have to be 1000 feet away and that the Adult Cabaret would then be non-conforming.

Commissioner Carl See asked about bars and other adult uses opening in the vicinity of an adult cabaret, as a secondary impact and wondered if there were any restrictions on these types of establishments opening up in the area. He added that he did not see this addressed and wondered whether there was any information. Mr. Skelton replied that there were not. He also added that there was no information he has seen to suggest that a person who was inclined to go to an adult cabaret was any more likely to go to any other adult establishment, such as an adult bookstore, thus negating the suggestion that other adult businesses would be attracted to the area.

Commissioner Eanes wondered about the maps and noted that one of our charges is to evaluate a specific zone vs. a city-wide approach to regulate this use. He added that he thought we need a series of mapping exercises that could show how a city-wide policy would impact different areas.

Vice-Chair Finrow asked if the Commission could get maps that show us where these uses could be located in the city with no change in regulation. He also asked if there were other ideas proposed other than this one. Mr. Skelton noted that alternatives to allow adult cabarets were reviewed in many zones and areas of the city. However, in almost every case the Mayor was concerned that there would be negative impacts on those neighborhoods and steps to mitigate those impacts with greater buffers, rendered many areas as unavailable for opening an establishment.

Vice-Chair Finrow wondered if it were possible to have an evaluation of the other options. Mr. Skelton noted that he would be happy to make whatever resources they had available to the Commission staff.

Commissioner Kaplan wondered why 1000 feet was chosen as a buffer size. Mr. Skelton reiterated his previous answer to this question.

Commissioner Blomberg stated the term “adequacy” was not defined. The City is required to provide for adequate opportunity for these businesses to locate. He wondered if there was any test that shows that this proposal provides adequate opportunity. Mr. Skelton responded that there was no simple test

and that, in reviewing the area, they found properties available, an active real estate market, and parcels and structures that could be converted for this use or other retail or entertainment uses permitted in the area.

Vice Chair Finrow asked if they could build an economic model to evaluate this. Mr. Skelton noted that there have been studies done to evaluate economic impacts. He added that they did not do a property value study in Seattle but instead are looking at models that could be applicable here.

Commissioner Clements expressed his concern about the Commission's role in manipulating land values. Mr. Skelton responded that a fundamental premise in zoning is the preservation of property values and the impact that locating inappropriate uses next to each other may have on the value of that property. He noted that this is one the reasons the Commission has wanted an industrial lands policy. Commissioner Chris Fiori noted that he concurred with Commissioner Clements. He added that he feels that public safety issues are one angle that should be investigated thoroughly. He mentioned a recent article that speaks to the lack of police resources already available in this area.

Commissioner Eanes asked whether SEPA would be required for this proposal. Mr. Skelton said that it was and that it had been completed. Mr. Eanes asked for a copy of the decision.

Commissioner Kaplan stated that we have been talking about perception and it would be nice to relate that perception to some hard numbers. He added that he would rather deal with it from a foundation of fact rather than just perception.

Martha Lester added information about the current 4-foot rule and other limitations on the functioning of an adult cabaret. It is a new regulation, just recently enacted and its repeal may possibly be voted on in November. Among other things, the new rules state that nude dancers have to be on a stage and that the stage has to be 18 inches above the seating area. She added that the stage has to be 6 feet away from the seating area. Dancers can leave the stage and approach the audience, but not any closer than 4 feet. These rules did not go into effect, pending the outcome of the public referendum.

Chair Sheehy thanked Martha Lester and John Skelton. He asked the Commission to look over the materials provided and get their questions to Barbara Wilson noting that the Commission ad hoc committee will continue to review, analyze and begin creating a response to Council for further Commission review.

## **ADJOURNMENT**

Chair Sheehy adjourned the meeting at 5:25 pm.