

**Regular Meeting of the Mayor and City Council held Tuesday, December 27, 2005, 7:00 PM, Mayor Eva Galambos presiding.**

**Call to Order**

Mayor Galambos called the Special Called Meeting to order.

**Roll Call**

City Clerk Marchiafava called roll.

**Councilmembers Present:** Councilmember Tibby DeJulio, Councilmember Dianne Fries, Councilmember Dave Greenspan, Councilmember Ashley Jenkins, Councilmember Karen Meinzen McEnery, and Councilmember Rusty Paul

**Invocation**

Reverend Kelly Barge presided over the invocation.

**Pledge of Allegiance**

The audience recited the Pledge of Allegiance.

**Approval of the Meeting Agenda**

Acting City Manager Bovos requested removal of Item Number 12, Executive Session regarding pending litigation and potential land acquisition. This item will be deferred until the Work Session on Thursday, December 29, 2005. Mr. Bovos also requested the December 13, 2005 Minutes be removed from the Consent Agenda and moved to the January 3, 2006 Regular Meeting. Lastly, he would like to add to the agenda the Martin Luther King proclamation that was distributed earlier today.

**Motion and Vote:** Councilmember Fries moved to approve the Meeting Agenda removing the Executive Session and adding the Martin Luther King proclamation. Councilmember Jenkins seconded the motion. There was no Council discussion. The motion passed unanimously.

**Consent Agenda**

Approval of Minutes:

- a) November 30, 2005 Inauguration
- b) November 30, 2005, 11:00 PM (Work Session)
- c) December 1, 2005, 12:01 AM
- d) December 1, 2005, 7:00 PM
- e) December 12, 2005 9:00 AM

**Motion and Vote:** Councilmember DeJulio moved to remove the December 13, 2005 Minutes from the Consent Agenda. Councilmember Jenkins seconded the motion. There was no Council discussion. The motion passed unanimously.

Acting City Manager requested that Council approve the remaining items on the Consent Agenda.

**Motion and Vote:** Councilmember DeJulio moved to approve the Consent Agenda. Councilmember Greenspan seconded the motion. There was no Council discussion. The motion passed unanimously.

**Reports and Presentations**

**Mayor and Council Reports**

Councilmember DeJulio stated that, on behalf of the Citizens for Sandy Springs, Incorporated and the Committee for Sandy Springs, Incorporated, and on behalf of all of the residents of Sandy Springs, he has a check to present to the City. Many have been so generous to our committees over the past several years. He had promised a check for \$50,000, but the good news is that we have a check in the amount of \$70,000 which is surplus funds from our organizations which led the way for the incorporation of Sandy Springs. We would like to donate this check to the City of Sandy Springs so that we will be definitely in the black for this year and hopefully for every year to come. He presented the check in the amount of

\$70,000 to Mayor Galambos. Mayor Galambos added her thanks to Councilmember DeJulio and to the community that supported us throughout the years. She stated that the reason we still have \$70,000 is because she was so chintzy with the money.

### **Staff Reports**

#### **Introduction of Gene Wilson, Chief of Police**

**Acting City Manager Bovos** stated that Chief Wilson is here tonight and certainly a part of the team. We are looking forward to having him on board starting January 3, 2006.

Mr. Bovos stated that the City Clerk has provided the Mayor and Council with campaign disclosure information. That information is due by December 31, 2005. Councilmember Fries stated that Fulton County had a ten (10) day grace period beginning on the 31<sup>st</sup> and asked if that continued for the Council. Mr. Bovos replied yes.

Mr. Bovos stated that the business card proofs have been distributed and requested that any changes be turned in to Judy Parker.

The Mayor and Council Sandy Springs e-mails are operational. If anyone needs assistance with their e-mail, please contact the IT staff.

He stated that Al Crace passed out some information regarding the retreat on January 5<sup>th</sup> and 6<sup>th</sup>. Please let us know if you have any questions. Documents and supporting information will be handed out at the work session on Thursday regarding many of those topics.

### **Unfinished Business**

**Approval of an Ordinance to Amend to Chapter 7, Alcoholic Beverages, Article 3, Section 3, Subsections (a) and (d) of the Code of Ordinances of the City of Sandy Springs, GA.** (First Reading on December 20, 2005)  
**(Second Reading)**

#### **Ordinance No. 2005-12-16**

Mayor Galambos stated that the first item is approval of an ordinance to amend Chapter 7, alcoholic beverages. She requested that the City Clerk read the ordinance for consideration.

**City Clerk Marchiafava** conducted a reading of An ordinance amending Chapter 7, alcoholic beverages, Article 2, Section 5, subsections (a) and (b), hours, Article 3, Section 3, hours and days of sale, subsections (a), (b), and (c), and Article 6, Section 5, hours and days of sale, subsections (a), (b), and (c) of the Code of Ordinances of the City of Sandy Springs. This is the second reading.

Mayor Galambos stated that she believed this was the action taken with the first reading when we changed the hours back to what they had been for quite some time in Fulton County. We are really reenacting the status quo.

Mayor Galambos asked if there was any public comment regarding this ordinance. There was no public comment.

**Motion and Vote:** Councilmember Fries moved to adopt an Ordinance Amending Chapter 7, Alcoholic Beverages, Article 2, Section 5, subsections (a) and (b), hours, Article 3, Section 3, hours and days of sale, subsections (a), (b), and (c), and Article 6, Section 5, hours and days of sale, subsections (a), (b), and (c) of the Code of Ordinances of the City of Sandy Springs. Councilmember Meizen McEnery seconded the motion. There was no Council discussion. The motion passed unanimously.

**Approval of an Ordinance to Adopt procedures consistent with the Zoning Procedures Acts of the State of Georgia as amended.** (First Reading on December 20, 2005)

**(Second Reading)**

**Ordinance No. 2005-12-17**

Mayor Galambos stated that the next item is an Ordinance to Adopt Procedures Consistent with the Zoning Procedures Acts of the State of Georgia, as amended. She requested that the City Clerk read the ordinance for consideration.

City Clerk Marchiafava conducted the Second Reading of An Ordinance of the City of Sandy Springs Mayor and City Council to Adopt Zoning Procedures consistent with the Zoning Procedures Act of the State of Georgia. This is the second reading.

Mayor Galambos asked Ms. Leathers if she would like to comment on this item.

Community Development Director Nancy Leathers answered that she had no comment except to indicate that these are procedures that are in line with what we have used in the past with Fulton County and they are consistent with State law.

**Motion and Second:** Councilmember Paul moved to adopt an Ordinance of the City of Sandy Springs Mayor and City Council to Adopt Zoning Procedures consistent with the Zoning Procedures Act of the State of Georgia. Councilmember DeJulio seconded the motion.

Mayor Galambos asked if there was any public comment regarding this ordinance. There was no public comment.

**Vote:** There was no Council discussion. The motion passed unanimously.

**Approval of an Ordinance to Adopt the City of Sandy Springs Interim 2025 Comprehensive Plan Map. (Second Reading)** (First Reading on December 20, 2005)

**Ordinance No. 2005-12-18**

Mayor Galambos stated that the next item is the Approval of an Ordinance to Adopt the Sandy Springs Interim 2025 Comprehensive Plan Map. She requested that the City Clerk read the ordinance for consideration.

City Clerk Marchiafava conducted the Second Reading of an Ordinance to Adopt the Interim 2025 Comprehensive Land Use Plan Map for the City of Sandy Springs, Georgia. This is the second reading.

Mayor Galambos asked Ms. Leather is she would like to add any comments.

Community Development Director Nancy Leathers stated that this is the plan that was worked on over an extended period of time with members of the community, and staff recommends approval.

Mayor Galambos asked if there was any public comment regarding this ordinance. City Clerk Marchiafava stated that a Public Comment Card was submitted by Jo Elliott.

Jo Elliott, 5051 Lake Forrest Drive stated that she is requesting that the Comprehensive Land Use Plan be changed for a small section of property, which is Belle Isle to Mount Paran to the east side of Lake Forrest. She asked that it be changed to a less dense category of R-1 to R-2, which is more in keeping with on-ground density, and it also maintains the character of the neighborhood. That is the reason why many of them purchased homes in that area. If approved as is, she thinks it would be a magnet for redevelopment in that area and would destroy the character of the neighborhood.

William Clay, 27 Spruell Springs Road stated that he lives in that same area, and agrees with what Ms. Elliott said. They have already fought two meetings in the last year on Lake Forrest Drive where they have been trying to come in with multiple housing and change the zoning. The plan that is there now is what works. It is why they all moved into the area and there are a lot of nice houses there. They do not need newer houses. A lot of the older houses have been remodeled and look very nice, and they are sturdy. They are older houses, but they are good houses. In this area there is R-3 and R-4 zoning. It needs to stay the same. One to two units for the R-3 and the two to three units for the R-4 is exactly what they have been fighting for. They had to rally all of the neighbors and won on this with Fulton County, which was very hard to do. He has old facts and figures where everybody in the neighborhood has fought for this. Please keep this one little section the way it is - west side of Roswell Road, which is east of Lake Forrest between these two areas.

**Jai Sandalen** at 126 Spruell Springs stated that he would like to support his two other neighbors and many other neighbors. He is making the same request that his previous neighbors have said, please help them to correct it. There is a lot of construction going on in the area. He asked is there any way that they can keep it clean while construction goes on? Please help.

Mayor Galambos asked if there were any other comments regarding this requested change in the Comprehensive Land Use. There were no other comments and she stated that she would entertain a motion regarding the adoption and any amendments.

Councilmember Meinzen McEnerny stated that she would like to propose that we accept the Ordinance with an amendment. The amendment would be in deference to the neighbors that have just spoken.

**Motion to Amend and Vote:** Councilmember Meinzen McEnerny amended the Comprehensive Plan Map that if any of the lots meeting the following five criteria in the general location east of Lake Forrest Drive, south of Mount Paran and Osner, and north of Long Island Drive, that those lots be granted a changed designation from residential two to three units per acre to residential one to two units per acre in the City of Sandy Springs interim 2025 Comprehensive Plan Map and that the lot must exceed one half acre in size, which is 21,780 square feet. It must be east of Lake Forrest Drive, south of Mount Paran Road and Osner Road, north of Long Island Drive, and be currently zoned as of December 1, 2005 at R-3. Councilmember Paul seconded the amendment. There was no Council discussion. The motion passed unanimously.

Mayor Galambos stated that she would now entertain a motion for the Comprehensive Land Use Plan as amended.

**Motion and Vote:** Councilmember DeJulio moved to approve the 2025 Comprehensive Land Use Plan as amended. Councilmember Greenspan seconded the motion. There was no Council discussion. The motion passed unanimously.

**Approval of an Ordinance to Adopt Amendments to the Fulton County Zoning Resolution, Thereby Adopting and Establishing the Zoning Ordinance and Official Zoning Maps of the City of Springs, GA. First Reading on December 20, 2005. (Second Reading)**

Mayor Galambos next item is approval of an ordinance to adopt amendments to the Fulton County Zoning Resolution. She requested that City Clerk read the ordinance for consideration.

**City Clerk Marchiafava** conducted the Second Reading of An Ordinance Dividing the City of Sandy Springs, Georgia into Zones or Districts consistent with those Zones or Districts previously utilized by Fulton County, Georgia for the same geographical area, regulating and restricting the location of trades and industries, and the location, erection, alteration and repair of buildings designed for specific uses and the use of lands within each of said Zones or Districts and relating thereto; regulating signage and billboards; adopting a base geographical map and thirty-five sectional maps as previously created by Fulton County, and defining the boundaries of said Zones or Districts that is incorporated by this reference in its entirety; requiring use and occupancy permits in said Zones or Districts; establishing a board of zoning appeals and fixing the powers and duties thereof; establishing a City Planning Commission and fixing the powers and duties thereof; and providing for the adjustment, enforcement, amendment and penalties for violation of this ordinance: including the existing Sandy Springs Overlay and Perimeter Community Improvement Districts. This is the second reading.

Mayor Galambos asked Ms. Leathers if she wished to make any comments at this time.

**Community Development Director Nancy Leathers** stated that she would indicate that as opposed to the number of the others, that there were two major changes from the Fulton County Ordinance. The first relates to the appeals process for signage, which was based on the advice of counsel in looking at the ordinance. The second issue is dealing with the adult entertainment provisions of the ordinance and that was brought into compliance with what will be heard later in terms of the adult entertainment ordinance.

Mayor Galambos asked for public comment at this time. There was no public comment.

**Motion and Vote:** Councilmember Paul moved to approve an Ordinance to Adopt Amendments to the Fulton County Zoning Resolution, Thereby Adopting and Establishing the Zoning Ordinance and Official Zoning Maps of the City of Springs, GA. Councilmember Meinzen McEnery seconded the motion. There was no Council discussion. The motion passed unanimously.

Mayor Galambos stated that we are now moving into another part of our public hearing in which we first will have a disclaimer.

#### **Disclaimer**

**Acting City Manager Aaron Bovos** stated that tonight's public hearing relating to adult entertainment will contain or may contain graphic examples which may not be suitable for all listening audiences. Please understand that you will be hearing a wide range of views, opinions, and value statements. As in any public hearing, all sides must be heard.

**Assistant City Attorney Fred Bentley** stated that this evening we will have continued comments with respect to the various ordinances. He reminded the Mayor and Council that they are considering information with respect to the Adult Entertainment Ordinance with respect to Section 19.4 of the ordinance relating to land use permits as well as Section 42 of Article 2 of the Alcohol Ordinance. This Council will actually receive evidence on all of those items this evening.

At our last setting, there was a request by Alan Begner for some additional time to address the adult bookstore issue. He thinks that will be dealt with this evening by all sides. There will be mixed comments, but most of those will be involving the bookstore issues. He warned everyone again that very sensitive and graphic comments will be made this evening - not the type that you would normally consider in council chambers. However, due to the requirements of the United States Supreme Court, we believe it is a necessary and important part that Council considers and weighs all the evidence. Each of you have had a variety of evidence to consider, and he knows that each of you have diligently read that information. It is important tonight as you consider it later that you make that note for the record that you did, in fact, consider the information. He reminded the Council that at the end, he will stand up and provide a series of options in terms of things that you may do with respect to the passage or non-passage of any or all portions of this ordinance.

With that he will move forward and assumes the same rules will be suspended regarding time. That suspended time remains in place. City Attorney Willard replied that is right. Assistant City Attorney Bentley stated that we will continue with the same format.

**Assistant City Attorney Fred Bentley** stated that the first speaker is Chris Howard. As she came forward, he entered into the record copies of reports dated December 23rd, 2005 and December 26th, 2005 filed by Business Consulting Investigations. There are two more reports that he will be filing into the record and Council will be receiving formal testimony with respect to those issues.

In addition, he placed into the record a certified copy of the Adult Entertainment Ordinance and Sections 19.4.1 and 19.4.2 of the Fulton County Ordinances that were in effect during this particular time.

Finally, he placed into the record an affidavit from a Robert Fifer. Mr. Fifer could not be here, but he signed a sworn affidavit dated December 24th, 2005, which was read into the record.

#### **Sworn Affidavit of Robert Fifer**

"I have been served with a subpoena to appear before the Sandy Springs City Council on December 27th, 2005 to testify in an adult entertainment inquiry. I had previously planned a vacation for that day and will not be able to appear to testify. I desire that my testimony be received by council in the form of this affidavit. "I am a warehouse manager for a store that's situated directly next to Maxims, the former Coronet Club, in Sandy Springs, Georgia. I have observed our property and their property when I come into work in the mornings. In the last several weeks, there has been an incident where the club left our lot unblocked and a car was found the next morning with its tires slashed. On occasions I have found condoms laying between the club and our business. And on one occasion club employees put the club's garbage at our back door."

Deponent sayeth not further. This 24th day of December, 2005, Robert Fifer.

Finally, information will be heard with respect to Insurrection in Sandy Springs, and there is a Google search that we will tender into the record that indicates Gay Universe cruise spot, highly recommended, 4/26/2003. Insurrection in Sandy Springs has larger glory holes in booths five, six, seven, eight, 24 hours on Friday and Saturday. He tendered that into the record. Some evidence will be received with respect to this particular Google.

#### **Testimony of Chris Howard**

Ms Howard: My name is Chris Howard, 1395 South Marietta Parkway. I'm a little nervous on an embarrassing subject. Can you hear me okay? I work for Business Consulting Investigations. I'm an investigator with them, have been with them off and on for ten years. And our company was hired to go into several of the adult entertainment nightclubs in the area to observe violations for giving you-all. On November 25th, myself and one of our representatives entered -- traveled to Mardi Gras at 6300 Powers Ferry Road. As we entered the club, we immediately sat at a table in the main stage area where we could view at least 90 percent of the club except for the upstairs. At the first table next to us, there were two dancers sitting there with three young men and a young lady. And their table dance/lap dance did involve quite a bit more than just dancing, fingers touching their vaginal area. One girl actually took her fingers and wiped the lips of the young lady sitting at the table. I observed at least 50 or more violations that evening. The dancers would -- as they were giving a lap dance, per se, they would face away from the gentleman and rub their crotch area against theirs. They were close enough to be able to reach underneath their legs and pull their shirts and pull them to them. When they would be facing them, their breasts would be this close to them definitely making a sexual connotation move. I went to the restroom several times to see if there were any violations happening in there, and I overheard two waitresses in the stall next to me discussing a hostess that evening who had burned her hair on a candle that was on the table and that she was going to be let off of work early due to this incident. They then included the fact that there was a swingers club they had been in recently. And one of the ladies in the swingers club, not actually a dancer at the club, but as a patron, had burned her pubic hair while dancing on the table and that they had taken her over to Crown Plaza across the street to take care of her injury and that she immediately was able to be taken to a room without management or checking into the hotel. We were there I would say from 11:00 until about 3:30. At approximately 2:00 a.m., where I was sitting I could see the hostess station and the front door, and there was a Fulton County officer that arrived. He could see the whole area because I was sitting, say, where you are. And if he could see me and I was all the way in the club, he could see what was going on. As I left the club, I passed by -- there were two dancers in the club who were talking to him, a white male about my height, black hair. And as we left the club, there was a Fulton County cruiser sitting right outside the front door. Again, throughout the evening, the dances, and that was mainly the girls who were on stage, but every dance that I saw happening for an individual, there were violations consistently throughout. And that's my testimony.

Assistant City Attorney Fred Bentley called Carla Moore.

#### **Testimony of Carla Moore**

Ms. Moore: My name is Carla Moore, and I'm employed by Business Consulting Investigations. I am a former law enforcement officer and a detective in sex crimes. On November 25th, 2005, another undercover agent and I went in an undercover capacity to the Maxim Club, formerly known as the Cornet Club. And after leaving that establishment, we went to Flashers located on Roswell Road where I'm going to focus. We went in and immediately joined another BCI representative at a table by the stage. A dancer was on the stage, and she was simulating a sex act on the stage while exposing her internal orifice to the customers. This violation occurred while we were walking to our table immediately after entering. We sat down at a table, and we were immediately asked for drinks. As each dancer took the center stage, there were at least three to five violations that occurred immediately as they were beginning to dance, probably about five minutes. Each dancer would simulate sex acts while nude and exposing their vaginal openings to the customers while dancing. This seemed to be a pattern with each dancer. I observed several doors next to our table leading to separate rooms to the right. I subsequently learned that these rooms were rented for money in exchange for sexual favors. I observed men entering these rooms and employees bringing drinks to the rooms and entire bottles of alcohol as going into the rooms. I was not there personally probably about 30 minutes. So I did not see many men leave the room. I learned from another BCI representative that had been there for several hours that this behavior was a pattern and continuous throughout the evening. We were asked several times to order drinks while sitting there. Women would walk around nude and ask if we wanted to order a drink. A female came to our table asking again if we wanted a drink, and she began to get

undressed while standing at the table. She was talking to another BCI representative and then began dancing in front of him. There were many violations during this dancing. She was totally nude, and I observed her rubbing his crotch area with her nude body while simulating sex acts and placing her breasts directly in his face. After the dance, the female dancer came to where I was sitting. I had my legs crossed, and she pushed my legs apart and began dancing nude in front of me. There were also numerous violations during this dance as well. She danced nude with her back to me and grabbed my hands and placed them on her and guided them toward her crotch area. She was moving her body up and down on my legs and in my crotch area. She turned and placed her breasts in my face and rubbed herself on me while whispering in my ear that we should get together. This dance lasted about five minutes. I observed numerous dances around us in the same manner as customers were sitting. There were many, many violations that kept occurring with only 30 minutes of me being there, and we left at approximately quarter till 4:00 a.m.

Assistant City Attorney Fred Bentley called Bill Craig and stated that he is not here not to talk about this, but to talk specifically about a visit that he made to Insurrection and some other massage parlors.

### **Testimony of Bill Craig**

Mr. Craig: Madam Mayor, City Council. We had the pleasure of meeting you last week. As stated before, my name is Bill Craig. I'm the director of operations for Business Consulting Investigations. Our company was also tasked with the undercover investigation in reference to the adult bookstores, Insurrection. On the 23rd of December of 2005, I went to the Insurrection location at 6400 Roswell Road, Sandy Springs, Georgia. As I entered the front entrance, I observed several video displays, some on the wall, some in the middle of the aisle. And they had signs above them stating either gay or straight or lesbian or transsexual. They were displayed in open view. To the right of the store was what I call sex toys, dildos, other types of toys on display. To the right of the store was an open area which led into a hallway, which is basically a very narrow breezeway. And as you go into the hallway, you'll see booths that are numbered. Prior to getting to that, you will look and see right above you where a surveillance camera is as you enter, and there are a number of videos displayed on a rack with the number of the booth. For example, there would be - number five booth would be a gay video. That video was playing in booth number five. As I observed to my right, there were a number of males standing up against a wall as they were waiting for one of the booths to be unoccupied. I then kind of joined that particular section of the wall waiting for any particular booth to become unoccupied. As the males began to enter the booths, they seemed to enter mainly from five to nine. I had been informed and had done some research on a thing called the glory hole. The definition of a glory hole, if I may read it, a glory hole is generally defined as a small fist-sized hole between private video booths in an adult bookstore. It is placed above - about hip high for the average guy and is just large enough to place a man's penis through to let the person on the other side perform whatever sexual activity he pleases on him. Mayor, I'd like to hand out something if that's possible to the council. What you have before you in that particular handout is not only a definition of a glory hole but other definitions and particular definitions of what some of the video stores and some of the moves or some of the ways that patrons may utilize the video booths in an adult bookstore. So if you want to refer to that, and it gives some pretty definite definitions. As I was in the booth area, I went into booth number five. And I automatically noticed a jagged hole to my left about hip high, just below the waist. There was no stool or anything to sit on. There is a video monitor where you placed either 1, 5, or \$10 denomination bills to watch any segment of the video. After a few minutes, I left that booth, and I entered the next booth, booth number six. In that particular booth, there was a small, red, metal stool very low to the ground. If you sit on that particular stool, you could look to your left, and there was another glory hole about face high for the mouth area. And on to your right going in adjoining booth number five was another glory hole. After staying in booth number six for a few minutes, I went back out into the hallway and observed males cruising the area. Now, when I use the word cruising, I refer to the males that come into this particular part of the adult bookstore will cruise looking for another male, maybe using some type of nonverbal communication. Like if one goes into the booth, then the other one, if they like each other, will have some kind of communication. He may go into the next booth and do whatever they plan to do in there. At this particular time, I left the premises. I then returned on the 26th of December 2005, which was last night, on a Monday. I went into the bookstore from the rear entrance this time near the rear parking lot. I went back to the booth area near the hallway and observed more males just like I did on the 23rd standing against the wall as they're waiting for a booth to become unoccupied. Some males would look into a booth to see if anybody was there. Some would just open the door and look for a few minutes and come right back out. It appeared to me that they were looking to see if the person who went into the booth adjoining that booth was doing something, or it's just hard to say, taking note that the door to the booth will lock when you go inside. Also if you're watching the video, a light outside the door will come on. And once that video clip or whatever is

done, then the light will go out. As I was standing out in the hall observing, I heard one male tell another male that "I don't particularly like that booth because I can't position myself on my knees well enough." I then proceeded down to the booth number eight. I went down to booth number eight and entered, and to my left and to my right were glory holes. As I looked down on the floor to my immediate left front, there was what appeared to be a wrapper of some kind. I retrieved the wrapper, and it is a condom wrapper. I retrieved that as evidence and would like to submit that as evidence. And as I looked into the floor area of the booth to the right side, it appeared to be some type of clear liquid or fluid, what I suspect to be semen. I left that particular booth and went back out into the hallway, and the place began to be, you know, more crowded or a lot busier at that particular time. I went back into booth five once it became unoccupied and trying to, you know, observe any other activity. If I may mention, Madam Mayor, is that going back to the 23rd, which was my first visit, when I was in booth number five, is that a person had come into booth number six adjoining five and looked directly through the glory hole. It was a white male with a mustache. I couldn't describe any other characteristics. Which to me that means that he's looking for solicitation for sodomy, which as you know is a violation of the state law. Going back to the 26th, I went into booth five. There was essentially no activity. I went back out, and I seemed to think that number six, booth number six, was the most popular booth, if you will. I went into booth number six, sat down on the stool. I saw a male or appeared to be a male come to my right, which is booth number five. I looked through the hole, the glory hole, and the white male was masturbating. Eventually there was a male that came into booth number seven, which is adjoining six. And as I looked through the hole to see what kind of activity was being displayed, the male was in a frontal position against the wall adjoining number eight, booth number eight, up against the glory hole, that appeared to me to be he was receiving oral sex. As I continued to stay in booth number six, the male in booth number five eventually left. Then the booth number seven where I saw the male receiving oral sex kind of milled around for a little while, and I'd say about five minutes later he stuck his penis through the glory hole, solicitation for sodomy. And at that particular time, I left the booth number six, and then I exited the premises. That was my investigation on 6400 Roswell Road, the Insurrection, on those two particular dates. As my investigation continued as I was instructed, I went to the Insurrection right across the street from us at 7580, excuse me, 7555 Roswell Road. I went in there this evening to get a -- do what I call a recon of the area. And they had an upper level which had different types of paraphernalia that type of thing. As you go downstairs, that's where the videos and magazines and so forth are displayed. I went to the rear of the store, and they have the same type of setup as the one at 6400 where they have booths designated by number. This particular section of booths seems to be a little bit cleaner, if you will, in the sense that it may have glory holes, but they seem to be of more of a circular -- professionally done as opposed to the ones at 6400, a kind of jagged manmade type holes. There was no activity at the time that I went into that particular area of the store. No one was standing back there. It seems to be a little more cared for. One other thing to point out about the one at 6400 is that they had signs displayed that said "at your own risk" or "enter at your own risk." Now, that can be taken in several different ways. But there were signs posted in various areas of the -- on the booth doors themselves. So at that particular time, I left the 7588 (sic) Roswell Road, and here we are now. Mayor, I would also like to bring up another business which is in that same strip called Ocean Sauna, which is a massage parlor, which is, you most likely know, at one end of the strip and Insurrection is at the other. Approximately two years ago, I was contracted to do or act as an undercover agent and go into the Ocean Sauna. Once you go into that particular establishment, you pay like, I believe it was a \$40 fee. You're taken back to a room and asked to undress, and then most likely a Korean girl would take you back to a bath area where she would give you a bath. And that means scrubbing you from head to toe front and back. After that particular bath, she will take you back to the room and put you on the table and begin to do a frontal or back massage, most likely a back massage. Taking into consideration that the female is partially clothed, most likely not wearing any underwear, maybe some kind of upper garment, she becomes very aggressive particularly in the frontal area making the person become aroused. And at that particular time, it was, you know, said for how much as far as indicating sex for sale. The young lady told me \$200. I asked her, I said, is that for oral sex or is that for both? She said, that's for both. At that particular time, because the police were involved at that time, an arrest was made. During the other part of that -- well, at the same time period, there was another massage parlor. I believe it was in the 6100 block of Roswell Road right next to Starbucks, same type of operation. I went in, was given a shower or a bath, approached by one of the girls during the massage, and she wanted to sell sex. I think it was -- at that particular time, it was \$150 for oral and straight sex. Again, Madam Mayor and City Council, it is my opinion from doing a number of vice investigations that you could without any doubt associate a massage parlor on one end of the strip mall, then you have Insurrection, guys going there and getting aroused and wanting to go to a massage parlor which is two doors down, and it could tie in reference to all kinds of illegal activity. But, again, this particular Insurrection across the street here at 7588, I did purchase a magazine which I would like to submit as evidence. This particular magazine is a -- "Just 18" is the title of it, and I would characterize it as young teenagers having sex. And that is obviously amongst the other type of magazines,

anything from Penthouse to Hustler to other explicit magazines. That concludes my most recent investigation involving the adult bookstores. I hope this has been informative to you, and I'll leave you with that. Thank you.

Assistant City Attorney Fred Bentley called J. William Holland.

#### **Testimony of J. William Holland**

MR. HOLLAND: Good evening, Madam Mayor, Members of the City Council. I was asked to review a report prepared by Fulton County, actually a series of reports, about crime statistics and analysis. To give you a little bit of my background, I retired from the Georgia Bureau of Investigation as an assistant deputy director in the Crime Information Center on October the 1<sup>st</sup> of this year. So after 34 years of service, I designed the first uniform crime reporting statewide system for the State of Georgia, and I was involved in implementation. I've also designed and I was involved in the implementation of the fingerprint systems that are there, the Criminal History System, served as the chairman for the State's Criminal Justice Records Improvement Program from its inception to my retirement, served as a State director of the National Criminal History Improvement Program until my retirement, and also served on the daily gathering and analysis committee for Governor Barnes' Certainty in Sentencing Commission. That is by way of giving you some idea about my background. I hold a PhD, but my PhD is not in criminology or statistics. It's in history, so we'll get that out of the way upfront. Having read the study, and actually it's a series of studies built onto each other all using the same methodology, I'd like to split my comments into really two different areas. The first thing to start with, though, is the information in the studies, even the most recent, is over four years old. So these studies are, in fact, stale. They're not contemporaneous. They're not recent. They are a picture at a point in time that ends in December 31st of 2000. Within the studies themselves and in fairness to Fulton County, they make this up -- the Fulton County Police Department was asked to do this by the then County Commission of Fulton County. They make it very plain that they're looking at calls for service and incidents of crimes reported to police. They are not looking for anything else. They make that plain. They make it very plain that they're not trying to explain any deviants or differences of secondary consideration of changes between one class of analysis and another -- one class of numbers and another. That said, within the actual study, there was apparent -- no real basis that I could determine for the selection of the clubs that were used in the study except for the fact that some were adult, some were non-adult, and there was some kind of graphical relationship. What is missing is some analysis of the size of the clubs. For example, if you have one club that is, say, seating 75 people and another club that seats maybe 150 people and then, furthermore, the turnover in clientele, how many people do you have there, this is an important consideration. You have to have some kind of independent variable to normalize out these things. In the Uniform Crime Reporting Program, they use a crime rate which is so much crime per hundred thousand so that you can get some kind of basis of comparison. Without that, you basically oftentimes can end up comparing a very, very small club which may have small numbers relative to a larger club. But when you look at them in the context of some kind of normative, the fact is the smaller club may create a much bigger problem for you in that area. None of that was there. There was no consideration that I could see about policies that the club had adopted, including such things as cover charges or non-cover charges, which has a lot to do with the open access to the public. Ideally you should try to either get clubs of similar sizes or put some kind of variables in there that allow you to make some kind of waiting scheme to do this. There was no information about hours of operation. There was no information in the numbers that told us when the calls were made so that we have no idea. If you have a club that is open 17 hours a day and one that is open eight hours a day, obviously the numbers are going to be skewed. The calls for service that were used included both calls for criminal and non-criminal service. I noticed that a large number of the calls in some of the clubs with higher numbers were from what I call ADT alarms. There was no notation as to whether those were false alarms or anything of that kind. So it makes it very difficult to really make any determination based upon the calls for service in that. Those are within the actual study itself. Outside of the study, calls for service and crimes reported to police is a very tough thing to deal with to look at if you're trying to determine actual criminal activity that goes unreported. And it seems so simple, it should not be a problem to think about, but oftentimes it gets left. If anybody can remember what the UCR says, you're always told crime is up, Atlanta's the murder capital, so-and-so's crime rate is up. Those are only crimes reported to police. It's known in the criminal justice community and has been known for a number of years there is a large reservoir of unreported crimes. In the 1970s, the federal government, the Law Enforcement Assistance Administration, funded a series of studies called victimization surveys which found out that many crimes were not reported by victims. They actually sent surveys to people which said, have you or members of your family been a victim of a crime? And they found out that numerous times these victims did not report their crimes. The other problem that comes in here is the assumption is made in this study that all clubs have the same motivation that they're going to report crimes that occur. They're going to report and

call the police for help. That's an assumption. I don't know whether you can make that assumption without some further validation. Based upon the activity, and I was allowed to read the summaries from the private investigators who went into the clubs, based upon that activity, there appears based upon what they say to be a large amount of criminal activity that goes on in these clubs. This kind of study will never reveal that kind of activity. If that activity is reported as being engaged in by employees of the clubs and is as widespread as what is in these undercover investigations, it is very unlikely that you will see these clubs reporting that kind of activity. So some sort of control has to be put in if this study is going to actually do this. Finally, all three studies are based on the exact same methodology. They added at one point one caveat which was unannounced visits for, quote, crime prevention purposes. But I notice that one of the clubs, the one that seems to have generated the most activity and interest, received no such visits in the report. Other than that, they're all exactly the same so that if there are flaws in the original studies, those flaws will come up again and again. Before I would be willing to say to anybody that this study reflects an accurate reflection of criminal impact or activity, that activity in an adult club versus non-adult club, I would like to see some study that came from a different angle with a different set of parameters, a different set of variables. And if it validated what this study said and involved some way to determine the unreported crime and criminal activity that's allegedly not being reported, then I think that this study would have greater validity. As it is, this study stands by itself as nothing other than these are the calls to service that we received and these are, in fact, the crimes that were reported to police. And, in fact, they are more of the consequences for the calls of service that they received. And that's my testimony.

Councilmember Paul inquired if Mr. Holland took into account in his analysis of the studies any input of the senior officers of the Fulton County Police Department who were subsequently indicted for crimes of corruption associated with their employment in the adult entertainment industry. Mr. Holland answered that could not determine their input because the authors are not clearly identified except for the certification unit. He has read the indictment of the individuals subsequently tried in federal court and if police officers were in fact given advanced notice for unannounced raids, then those raids are for all intents and purposes useless regardless of whatever enterprise is going on, whether this is an adult club, whether this is Mafia, whether this is drug dealing, whatever it may be. The whole thing behind such raids was not to have people know they were coming. Beyond that, the fact that an individual in this case was involved in some activity with club employees leads him to believe that it is a great deal likely, particularly in considering his stated concerns about being discovered, that there probably was such information being passed, and he was apparently high enough in the office to have some understanding and knowledge of what was going on. Mr. Holland could not determine that from the report because he was not listed as an author.

Councilmember Paul asked Mr. Holland in his analysis of this report, if it covered the time period when this particular senior officer was involved with the police department and was subsequently indicted and it covered the time when the report was compiled. Mr. Holland answered and stated that it appears to cover the time -- some of this activity appears to cover the time that's involved there.

Councilmember Paul asked Mr. Holland based on his experience as a law enforcement officer, if that would cast some credibility problems on that report. Mr. Holland answered and stated it would cause him questions. Like he stated earlier, before he would be willing to accept this report in that way that it apparently has been accepted in certain cases, he would like to see some other report coming from a different angle that would validate this. But since the data is four years old, and that in and of itself in crime statistics and in crime data in criminal activity itself raises serious questions. Four-year-old data by itself is very suspect for which you are trying to look at today. At the very least, the report is dated.

Councilmember DeJulio asked if it even plausible to get correct figures when dealing with an industry that does not report. He asked was there a way to go around them to actually figure out what the incident rates are in that type of a business. Mr. Holland answered and stated that it is very difficult. To get that kind of an analysis going and that kind of study going, there are some people in both the academic arena and also out in the private sector who do detailed statistical analysis and criminal justice studies who could look at how you could construct such a scenario, but even surveys would be very difficult. People who might be involved in certain kinds of activity and he wanted to keep this not just focused particularly on the adult clubs but in general. Surveys are very difficult to deal with as LEA found out. They did discover a lot of information, but the surveys also had a very large not reported component, as well as the Georgia State Criminal Justice Department. There is a company that he knows of that he worked with when he was at GBI that comes to mind.

However, you would need somebody that really knew that and knew how to do it. His experience has been from police and law enforcement and data systems and computer systems. It is very difficult to conceive how a law enforcement entity would be able to uncover criminal activity based on routine calls for service and crimes reported to police if criminal activity was actively being hidden. Based on the undercover investigations that kind of activity stated in those investigations were not the kind of activity you would see in a report that is based on calls for service or crimes reported to police. It is just not going to happen.

Councilmember Meinzen McEnery asked Mr. Holland if a survey designed by a specialized company would design a survey that would be able to uncover the criminal activities. Mr. Holland answered and stated that he feels much more comfortable when dealing with a specialized company or specialized in academia who had done this. They have a lot of experience. Law enforcement statistics are good, and, as a matter of fact, Fulton County in their report made it very plain and they stated very clearly upfront that this study concluded that adult establishments that serve alcohol, "did not have a significant impact on the police department as it relates to an increase in calls for police service nor an increase in crime as a secondary effect." That is what police statistics are capable of doing. The impact is on the police department. That is all they can really measure in here. Anybody who listens to a chief whose crime has gone up -- and UCR will tell you very quickly the first thing the chief is going to tell you is that crime is not just a law enforcement issue -- it is an issue for the community. Well, it cuts both ways too. Crime statistics are only a reflection of what the police department has to deal with, and that is a very different situation from just actual criminal activity.

Assistant City Attorney Fred Bentley stated that Deputy Director of Community Development would be entering into evidence some of the documents that were discussed last week by Nancy Leathers.

#### **Testimony of Tom Wilson**

Mr. Wilson: Madam Mayor and City Council, what I have for you tonight are four maps. I have a map that illustrates those properties that are zoned C-1, C-2, M-1, or M-2 which are greater than 400 feet from residential properties. I believe you have seen that map, probably last week. I also have a map that illustrates those properties that are zoned C-1, C-2, M-1, or M-2 which are greater than 1,000 feet from residential property. The third map that I have for you tonight is one that I believe you have not seen before, and that is public facilities map, which locates all the public facilities in Sandy Springs. The fourth map, which I'd like to enter into the record tonight, is the recently or just adopted Sandy Springs zoning map. Lastly, I have a set of documents here which are site visits, photographs, narratives, and site plans of the properties, the 14 sites, which are greater than 400 feet from residential property. I'd like to enter those things into our record. There's one last thing that I would like to mention to you, and that is I believe previously you were given some documents, specifically the use permit documents for the adult entertainment and adult bookstores. That is Article 19.4.1 and 19.4.2. In both cases, the documents that you received did not include M-2 as a district, and I would like to make that correction. M-2 should be there. Specifically on page 231, we should add M-3 zoning district to the required districts. And on page 233, we should also add M-2 as a prior district. Thank you.

Assistant City Attorney Fred Bentley asked Mr. Wilson to make sure the clerk gets those in the official record.

Assistant City Attorney Bentley called Richard Clark.

#### **Testimony of Richard Clark**

MR. CLARK: Good evening. My name is Richard Clark. I work for the Atlanta Police Department, and I've also been asked to review the studies that Dr. Holland referred to. I've been with the police department for 30 years starting out as a member of the crime analysis team. I've had occasion over those 30 years to analyze crime and calls for service. Currently I'm in charge of the planning research accreditation unit with this department. I have a lot of the same concerns as Dr. Holland, but I want to address a few other issues. In reviewing the analyses of crime and calls for service, I was amazed by the consistent pattern that was demonstrated in that the activity was lower in the adult entertainment clubs than non-adult entertainment clubs. This pattern holds true for north Fulton County; for south Fulton County for two periods, '95 to '97 and '98 to the year 2000. And I wonder what might explain that kind of pattern. Were these clubs better run? Did they have better clientele? Different policies? There would be a couple of ways to run, in fact, a clean club that we would recommend. One is to hire off-duty police officers to patrol and to provide security for the club and to handle any fight that broke out, to screen the patrons and the workers, to screen out people who are prone to violence or drugs or vice,

and to design the facility and instruct the employees to minimize the presence of drugs or vice or other violations of the license requirements on that club. The secluded rooms we talked about, the booths with the glory holes, seem to not be along that line. Negative ways a club manager might try to keep his club clean is to use his bouncers and employees to discipline patrons, to avoid having a crime reported. And I believe your undercover investigators saw incidence of that. They could pay police officers to keep callers from turning in crimes to avoid having to make a crime report. And there's evidence of this in the conviction of a Fulton County officer some years ago. Basically do whatever is necessary to keep undercover surveillance out of your clubs. Dr. Holland recommended an analysis of the crime data. My sense is that calls for service data will not reflect the kind of crimes that are seen in the clubs because no one in the club, the patrons or employees or the managers, has any motivation to report those crimes. The undercover business you've heard about would be the best way to do it. If you're going to have such clubs in the community, have them visited on a regular basis. Plant a number of officers who are in a position to report the crimes and to deal with them. In the City of Atlanta, we have policies on extra jobs officers can take. They could work at an establishment with a liquor license. They may not work in an establishment with adult entertainment because of the appearance of conflict of interest or actual conflict of interest, actually corrupting influence of what goes on there. That is my testimony this evening. Are there any questions?

Councilmember Paul asked Mr. Clark if he said that he had 30 years in law enforcement and asked is that correct. Mr. Clark answered and stated that he had 30 years with the Atlanta Police Department as a civilian analyst in government policies. Councilmember Paul stated that we heard testimony on two different occasions that in these establishments were, your uniformed officers, not undercover officers, but uniformed officers, with their cruisers in plain site, and that at the same time these officers witnessed these violations going on and did nothing at all to try and enforce the law. He asked in his experience in more than 30 years as a law enforcement officer, why would an officer on duty not take steps to enforce the law in that situation? Mr. Clark answered and stated that he would have found the extra time very convenient, very lucrative, and his personal interest is not to get involved in the reporting of the crimes. He may be more actively involved in a corrupt fashion. Councilmember Paul asked Mr. Clark in his opinion in that situation, would it be right to infer that an officer in that situation would be corrupted by his presence, whether on duty, off duty, or in whatever capacity, by being in that club and not enforcing the law, that a reasonable person could assume that there was some form of corruption, personal, moral, professional, involved? Mr. Clark answered and stated that if he were that officer's police chief, he would have grave doubts about that situation for those very reasons. Councilmember Paul asked Mr. Clark if he had a certain number of law enforcement officers or a limited number of police officers in this community serving this community, and had two different officers on two different occasions witnessing that activity and did nothing, what inference as a law enforcement professional would he draw from that. Mr. Clark answered and stated that he would have to look into the policies and procedures and the discipline of that police department. Councilmember Paul asked if he would suspect that they were lacking. Mr. Clark answered, yes, he would. Councilmember Paul asked Mr. Clark would he suspect that it would trigger, if you were a police chief, an internal investigation into corruption in your force. Mr. Clark replied that he would certainly do that.

Assistant City Attorney Fred Bentley called Dillon Fries.

Councilmember Fries disclosed that this is her husband. He has voluntarily and independently taken on this study, and she will be hearing the information for the first time as you will.

#### **Testimony of Dillon Fries**

Mr. Fries: I have copies of a report that I have just recently completed that I'd like to get distributed to the mayor and council and one to tender to the clerk. It is my understanding that you-all have received on a CD recently some documents, one of them being the economic impact study of six locations of adult entertainment businesses in Fulton County prepared by Terry Love with LDA. I have been asked to review both this document as well as a review of this document that was prepared by another MAI, Russell Dabney. Terry is an MAI. Russell Dabney is also an MAI, which stands for Member of the Appraisal Institute. Let me tell you a little bit about myself. I majored in real estate and finance at Georgia State. I've been appraising for over 30 years. I have served on numerous committees. I've been on numerous industry-related boards. I've been on the board of an organization called Relocation Appraisers and Consultants. I've been on the board of the Metro Atlanta Relocation Council and served as its treasurer. I have been on the Editorial Advisory Committee for the Employee Relocation Council. I often speak at their conferences. I have also been a representative from ERC to the Appraisal Foundation, which oversees appraisal standards and appraisal qualifications and is a basis for

the state licensing boards. This study was a bit disappointing. And I know you-all have an awful lot to listen to tonight. I was hoping to verbally hit more highlights than I plan on. I'm sorry. That just means you have a lot more reading to do. In a nutshell, the appraisal report was identified -- and let me back up. It's not an appraisal report. It's an economic impact study. The purpose of the study was to make an evaluation of the economic detriment, if any, of the six subject entertainment businesses on the surrounding areas. It was prepared as a complete self-contained narrative appraisal report. And that's very important because according to the Uniform Standards of Professional Appraisal Practices, it must meet certain standards, which it does not. I have listed that on the first page of my letter. I just want to point out the third one in particular. That requires you to describe the information analyzed, the appraisal procedures followed, and the reasoning that supports the analysis, opinions, and conclusions. This is probably where this report fails the most. It provides an overview of these districts or the areas in which these properties are located, but they're almost like the Chamber of Commerce reports that you might get. They indicate how the economic activity is very strong, yet when you look at it a little bit deeper, that isn't necessarily the case. Dr. Love presents data. He presents land sales. He presents improved property sales, rents. Yet he does not draw any conclusions. Let me back up a little bit. The self-contained appraisal report is supposed to be able to provide the use of that report with all the information that would draw them to the same conclusion as the author of that report. He fails to provide any information regarding his methodology. He fails to provide an analysis. The data that's provided is nothing short of being shoddy and inaccurate, and I will cover some of those instances. The first area that I covered was those out by the Fulton Industrial district. The properties out there are in an industrial area. They're clumped together. There is no adjacent residential development there. It just isn't pertinent to the issues that we have here in Sandy Springs. He indicates that the businesses there are thriving, that the hotels are -- a recently renovated hotel is getting \$100 per night. My research shows that it's getting \$65 a night. Another one of the hotels that he mentioned, \$50 a night; another hotel, \$39 a night. It appears that the rates have been falling over there. There was one posting on, I believe it was Travelocity. And I have mentioned on page number two, Super Eight Hotel on Travelocity that reads the following in quotes, "The neighborhood is in XXX Land. There are strip clubs and adult shops all around the hotel. The area does not inspire a feeling of safety or security." Now, if I were running around town showing a prospective buyer a hotel, and he read something like that, do you think that would have an impact on what he might be willing to pay for such a property? I think he would have great concerns there if he feels that his potential customers have concern of their safety and security. Moving on around the perimeter from that property, those properties there, to the Mardi Gras area, he indicates that there are what's called the Brick Stone Heights cluster homes that backed up to that property. He provides a long list of sales that have taken place in that development. None of them backed up to Mardi Gras. There were only about four properties in that development that actually backed to Mardi Gras. While he lists these properties as comparables, he has performed no analysis on them. He also indicates that another town home development, Heritage Oaks, he indicates backed up to or are near the subject club. They're located several blocks down the street. They do not back up to Mardi Gras. There are only approximately four properties that back directly to Mardi Gras. He's making erroneous statements in here. He's presenting data that you cannot draw conclusions from. He's not providing a methodology and analysis, and the data just is incomplete. He provides -- in his economic impact study, he provides information on rents, some building sales. The problem is some of these properties are far removed from this area. He provided two building sales that were located at I-75 and Northside Drive. They don't serve any basis for an analysis. The conclusion in this section is just basically unsupported and not substantiated. No methodology or analysis was provided. He did speak to the sales agents at the town home developments that backed up to it, and they concluded along with him that these properties do not affect value. No evidence, no paired sales analysis, no support, just a comment from agents. Moving on along to Roswell Road south of the perimeter, we have the Coronet Club down there. Dr. Love asserts that properties listed on Green Hill, Beachland, and also outside the perimeter on Chaseland next to Flashers were all priced at 300 and \$400,000. Well, those were list prices. At that point in time, no property had sold for anywhere close to that. The most expensive property had sold for \$275,000 on Beachland, \$247,500 on Green Hill, \$229,000 on Chaseland up until that time that he made that statement. He continues again with his economic study. He indicates that Carriage Gate Town Homes should sell out within 18 months but actually took three years longer than he estimated. He mentioned Blue Stone Condos actually outside the perimeter as being near Flashers. They're over half a mile away. He provides ten properties that have purportedly sold down on Beachland for consideration. The information on those properties is very limited. He reports a sales date, a sales price, a square footage, and I believe a year built, and that's about it. That's not an analysis. Now, these properties had sold I believe from 1992 to 1999. There was no -- he never addressed paired sales within the same time frame. He never considered the extent of basement area, basement finish, condition, whether a property had a two-car garage or open parking, whether it's been renovated. None of that was ever considered in any of the analyses that he purportedly performed in the self-contained appraisal report. He didn't

make an attempt. I researched each of the properties that he used on this street. There are several data sources that appraisers can go to for square footage information, one of them being the tax records. Limited reliability there. Often the tax assessors lump in basement finish into the total gross living area. That can distort the outcome. Another data source is what used to be called SREA market data. The Society of Real Estate Appraisers developed a market data system back in 1969. Terry Love is very familiar with that product. They submit entries into that particular data source. That data source comes from information that comes off of appraisals. It's the most accurate source of physical data that we can have in terms of square footage, basement area, basement finish, and some other details. That was a source that was available to him. In this situation in this particular case, Dr. Love chose to mix and match his square footage sources. I don't know exactly why. But in seven instances, if he did, in fact, perform an analysis, it would have favored his analysis. For instance, his comparable number one at 235 Beachland, he indicated that the property was 2,174 square feet versus 2,416. Another property he indicated as being 1,553 square feet. It actually was 1,977 square feet with a full finished basement, and it goes on and on. Two properties he did not use -- let me back up. Two properties, the most accurate data source was similar to that of the tax records. It would not have had an impact, seven others it would have an impact. One of them would have worked against him had he, in fact, done an analysis, which if he had done should have been in the self-contained appraisal report. I honestly don't think he was trying to fool anybody here. I think it was maybe some information that was prepared by some associate of his. He did not provide an analysis. So I can't see anyplace where that information was actually used. He does not provide how he got from point A to point B in the appraisal report. He indicates that none of the homes back up to the subject, the Coronet Club, or can see the club. And he contradicts that a little bit further down and says that 250 Beachland Drive backs up to the deep parking lot. Now, maybe he doesn't consider the parking lot part of the club. And I'm actually going on longer on this part of it than I really planned to because what I thought was really interesting was the second half of my charge, which was reviewing the review. But I do want to go ahead and cover a little bit more before we move on to that, and I'd like to move out to the section outside the perimeter. Some important issues there is that he made note of the Sandy Springs Revitalization Group and made note that it was the intent of the community to upgrade sidewalks, enhance the landscaping projects, put in new street lights, make it a walking district, improve the quality of life. All of these are things he actually stated in the report. There's on Chaseland a sidewalk and new street lights coming almost up to Roswell Road. They terminated it. I'm assuming they did not want to make that section of Roswell Road a walking district, at least not at present. He indicates how that section of Sandy Springs has such economic vitality. He mentions places like Honey Baked Ham. Closed. He mentions Johnny Rockets. Closed. He mentions an antique store across the street. Currently on the market. He mentions how well Cromwell Square is doing. It's fully occupied. They have a Mexican grocer there and a rent-to-own store. He mentions how the development across the street is 100 percent occupied. Well, it may have been back then. There are two vacancies in there right now. And the building up in front, which was the former home of Peachtree Federal Savings and Loan, it's been an office building, it's been a medical center, it's vacant. It's on the market. He also provides evidence that shows the rents in those -- development in those shopping centers that are closer to Flashers have lower rents than those at Sandy Springs Plaza, yet he fails to draw any type of analogy out of that relationship. I ask you to read this report, and don't judge it from what I say. Judge it from the content. In summary, before we move on to Russell Dabney's report, I would like to read my conclusion here.

At this time Mayor Galambos asked Fries to move on to the conclusions.

#### **Continued Testimony of Dillon Fries**

Mr. Fries: Yes, we will. He basically failed to consider all of the salient features, which are those that affect value. He -- well you-all can read that. The conclusion is that he does not have any support for his analysis there. I would like to read -- there are about ten quotes out of Dabney's analysis, and he ends up agreeing with Dr. Love somehow. Yet he first says, Dr. Love does not describe the process or procedure that he used to reach his conclusions. He says, lack of any presentation of demographic data weakens the conclusions. The data falls short of optimal in terms of adequacy and relevance. The data failed to consider an opportunity cost associated with the proximity to an adult entertainment establishment. An optimum study would establish controlled neighbors. Failure of the report to acknowledge that the appearance of the various properties and the kind of neighborhood in which they exist affect their acceptance in their neighborhood stand as another weakness. And, again, there are a dozen items listed there where he indicates that the proper job has not been done, that the methodology and the analysis was not performed. And I feel that his conclusion that agrees with Dr. Love's is seriously flawed by that as well. The final part of what I prepared were two properties on Chaseland Drive. I believe their addresses are 144 Chaseland and 165 Chaseland. Those are the two most recent sales on

Chaseland Drive and are the properties that are closest in proximity to Flashers. Those are the controlled properties that Russell Dabney spoke about that a valid report should have. I used those because they are recent. There's good data available on those. I have FMLS data with the on-line photos and thoroughly adjusted, completely adjusted those properties. And they show that there is a --

Councilmember Paul commented that we have got most of this information in the report, which we can read, and asked are Mr. Dabney and Dr. Love considered within the profession reputable appraisers or real estate experts? Mr. Fries replied they are. Councilmember Paul asked as a professional real estate appraiser and professional who is evaluating their work, what conclusion has he drawn as to why they may have been so erroneous? Mr. Fries answered that he would hate to say. Councilmember Paul stated that you must have drawn some conclusions in the process of your research as to why they overlooked all the things that he saw. Mayor Galambos stated that she believes Mr. Fries stated earlier that he thought it could have been some associate who did the work. Mr. Fries commented that it could have been. He thinks the important part is that there was a failure to comply with the Uniform Standards of Professional Appraisal Practice. Mr. Dabney did not relate to that, but he did point out that those were weaknesses in the analysis or lack of analysis. Councilmember Paul asked could the report have been hurriedly done to meet some kind of deadline and asked if he had an explanation as to why? Mr. Fries replied that it should have involved an analysis that would lead you, the user of that report, to the same conclusion that he drew. He did not do that. Councilmember Paul stated that there are certain procedures for doing this kind of analysis that were not followed and asked is that correct? Mr. Fries answered and stated that is a requirement of the USPAP regulations. Councilmember Paul commented and those are significant deviations from the normal process of conducting these kinds of analyses? Mr. Fries replied that is correct.

#### **Five Minute Recess**

Mayor Galambos called for a five-minute recess at this point.  
(Meeting in Recess, 8:40 p.m. to 8:50 p.m.)

Assistant City Attorney Fred Bentley stated that two others had signed up for public comment. After that will be Mr. Begner, Mr. Wiggins, and Mr. Sechler. Mayor Galambos asked that the next two witnesses try to please be concise.

Assistant City Attorney Fred Bentley called Garrett Phillips who turned in a public comment card.

#### **Testimony of Garrett Phillips**

Mr. Phillips: Thank you. I come before you as an ordinary citizen, although occasionally I do dress as an adult baby. First of all, I'd like to address the situation, just -- it seems to me the ultimate goal here is to outlaw adult entertainment establishments in general here, and I'd just like to make some basic observations that may not be brought up otherwise. First of all, this could be looked at as a Johnson Ferry revenge, if you will, in that Cobb County people come over here and use the roads and clog up Johnson Ferry. And this would be a way -- since Cobb County has already outlawed these establishments, we're getting flower shop guys and so forth coming here and spending money, and it would be just cutting off our nose to spite our face if we were to outlaw adult establishments and the revenue that they bring. And the legal costs I think that would ensue from lawsuits brought against Sandy Springs if we were to outlaw them would be prohibitive not to mention the lost tax revenue. Also pornography has already moved primarily to the Internet, which eliminates the human contact aspect of shopping for accessories. Whereas you can go to stores and consort with like-minded people. And there's a human touch aspect of that that would be lost. In addition, there's another aspect that perhaps nobody has thought of. The danger to our citizens via traffic hazards. If we were to outlaw pornography here, that would mean viewing booth patrons would certainly go somewhere else, drive to another part of the city. And after they visit, they're going to be more fatigued and they travel back here on additional business, and they may be in something less of an alert condition when they drive, and that could be a hazard to the entire metro area as they might fall asleep at the wheel. In closing, I'd just like to say local citizens have chosen a lifestyle that includes pornography. They will practice this whether Sandy Springs keeps it legal or not. They'll just pay someone else to do it. And the likes of the glory holes, Dirty Sanchez, Rusty Trombones, and Cleveland Steamers will never be legalized out of existence, legislated out of existence, rather, no matter how hard some may try. They're just going to get it somewhere. It might as well be here where we can make revenue from it. Thank you.

Assistant City Attorney called Tim Andrews who turned in a public comment card.

### **Testimony of Tim Andrews**

Mr. Andrews: Good evening. Thank you. I just want to say a few things, and I'll be really brief. First of all, they're talking about crime statistics and what's scary and supposedly all these visions of trench-coated men in front of bookstores, which just doesn't exist. I'd like to say what's scarier, an adult bookstore or the outside of Flashers or the day laborers who are lounging around the Sunoco at all hours of the night? Another thing, if these so-called crimes are unreported, I'd just like to say because there's no victim. Really, if you think about it, who's being harmed? Nobody. If you're not going to go to the establishment, you're not going to go there. So what do you care if there's two people in a booth fooling around? I don't care. Look, pornography isn't for everyone, but it's fun. It makes a hell of a lot of money for people. It's the top grossing business on the Internet. It's the top grossing rental product in the country. It creates a lot of revenue. And I bet you if you looked around and took a poll, although no one would answer it honestly, there isn't one person in this room who hasn't used pornography to some degree. I recommend that you keep people like me, even if you don't like me, in mind. Because I'm just a regular guy, and I'd like to know what's so bad about stopping after work, having a beer, and looking at a naked woman who's attractive, and giving her a dollar to come up to you. I've been to strip clubs a lot. Never ever have I been approached for prostitution, and much to my chagrin. I've even been in the back rooms. Never had anything offered or happen to me. I've never seen a glory hole, nor would I partake in it because it's disgusting. But still there's nothing wrong with renting a legal video from a legitimate business for my own pleasure or for the pleasure of me and my fiancée. Why not spend the money here in Sandy Springs and keep filling your potholes? You know, it's going to save you from having to raise taxes. And for every guy using a glory hole, there are 100 people come in and out of the store, renting the video, taking it home, watching the movie, and bringing it back. They don't go into glory holes. They don't participate. And this is my first city council meeting, and it's the first time I've ever heard an official use the word glory hole.

Assistant City Attorney Fred Bentley called Cary Wiggins.

### **Testimony of Cary Wiggins**

Mr. Wiggins: Thank you, Madam Mayor, Members of the City Council. My name is Cary Wiggins, and I'm here speaking on behalf of four establishments which will be affected in some degree or some fashion or another. Those four are Mardi Gras, Flashers, and two Insurrection locations on Roswell Road. I will be very brief mainly because a lot of the testimony, if not all of it, I have not seen or heard before tonight. I believe that Mr. Howard, Mr. Holland, Mr. Craig, Mr. Fries all raised issues that need to be looked at, that need to be addressed. And some of their points may very well be valid. Some of them may not be quite so valid. We are asking you, really pleading with you, that you keep in mind that we are citizens too. They are corporate citizens. I know that at the last meeting on December 20th, there was some reference to let's give us an hour, let's give them an hour, but I think it should be all us. These businesses contribute a lot to the city. They contributed to Fulton County. Four federal judges agreed with us. The issue -- two things I want you to walk away with tonight. One is common sense. There is no question that the licenses that are issued to these establishments, whether it is an alcohol license or it is an adult entertainment license, is a valuable commodity. And for that reason, these businesses employ security, videos, bouncers. They have house rules, policies that are above and beyond what other comparable businesses offer, and it's for one simple reason. They know that if they get caught violating any of these ordinances, they can lose their license. It's that simple. And that might explain why we've had to go into the -- raise the specter of unreported crime in order to actually find crime. Those are issues I'd like to explore with the city's experts. We could be proven wrong, but we might be proven right. The second issue really is one about the code in general. It is -- as so many cities and counties do nowadays, they adopt adult entertainment legislation. We have reviewed that legislation. We've even met with some city officials and attorneys. And to be candid, 95 percent, 98 percent of the legislation is not problematic. There are just a few issues that we would like the opportunity to discuss with the city. My clients have been there, some of them for 30 years, certainly all of them the last 15 years in their current format. And we have been through waves of litigation, but that's not where I'd like to go. We would like to talk about what the city's concerns are. Is it that some place is obnoxiously painted? Does some place have neon signs that are uncomfortable or distasteful? Could they be relocated to more industrial areas and off the main corridor? Those are issues we'd like to talk to you about. We don't want to be forced out of business in a violent fashion after being good corporate citizens for so long. And as for tonight, again, I would just ask that before you do anything to enforce the ordinances that you're contemplating adopting that you give us an opportunity to speak with and question the experts that you have presented and learn a little bit more about their methodology. And that's all I have to say. Thank you very much.

Assistant City Attorney Fred Bentley called Thomas Sechler.

**Testimony of Thomas Sechler**

Mr. Sechler: Thank you, Madam Mayor and City Council. I'm a resident of Sandy Springs here at 1512 Cimarron Parkway. It's an apartment I plan on buying here in Spalding Woods. I come before you today on a certain concern I have concerning the ordinance you have on adult entertainment. What seems to concern me is the due process. There are already ordinances in place. I've heard people speak about violations. Those were not law enforcement officials. Those were private individuals or companies. We need to have law enforcement in there if there are violations going on, citations written, and then a judge determine whether the evidence is there and that a violation has been made. Due process, that's something this country is founded on. I think with the ordinances that Fulton County has, if they're enforced, you would find out who are good corporate citizens and who are not, who is going to be a good business and who isn't. I've been to Flashers 20, 25 times in the last six months. I have not seen -- I don't know what the violations are, but I've never been solicited for sex. I actually -- they noted on November 25th. I was actually there on that date. I have seen certain things I think that may be violations, but, again, I'm not familiar with code. I think that if the city council would work with these businesses on their concerns, you would find out that they'd be more than willing to work with you on taking care of these concerns. So it's twofold here. How will the city council handle existing businesses and working with them, and how is due process going to be followed? Thank you.

Assistant City Attorney Bentley called Allen Begner.

**Testimony of Allen Begner**

Mr. Begner: A bit earlier I gave to Wendell Willard a package, and I ask, if you have not, please, to submit it to the board. The package has a cover letter on it that is signed by both Cory and I, and in pertinent part it has included in it Bruce McLaughlin, one of the leading experts in adult uses in America's introduction to his summary of the secondary effects analysis involving take-home-only adult video stores. I also have included, Mayor, the transcript of the September '97 hearing that you and I both spoke at in which I said you had given glowing terms to Coronet, which you did, but you thought that they did not have alcohol when you said it. It's in your package also. And, of course, they did have alcohol and do have alcohol all of those 12 years. For a time it was bring your own bottle and not sale of alcohol, and that was true when you made your comments, but they are glowing. My clients, as you know, include only Maxim of the three clubs that have been talked about before you. And as to the stores, I represent Love Shack at 5674 to 5680 Roswell Road inside the perimeter, and Starship, which is located at 8590 Roswell Road, but it's not yet open. I, again, ask you to consider that Maxim in day two of the testimony of bad acts at adult clubs has not again been mentioned for any bad acts, never an instance of any of the things said to have occurred as at the others. The one slight exception being the affidavit of a Mr. Fifer next door who says that on one occasion the parking lot to his warehouse next door may have had Maxim cars and the tires were slashed in the parking lot and they found a condom. Other than that, Maxim, who has been here since 1991 or so as the Coronet Club or Maxim, has been an excellent steward of its licensing and an excellent citizen. And they should not be punished by a blanket taking of their business. And I've said to you before the taking of alcohol from a club destroys the business. It is not a mere inconvenience. And Maxim deserves the right to consider operating in that regard. Similarly, you have heard testimony about Insurrection stores, two of them. I don't represent Insurrection stores before you. And you have heard nothing about Love Shack. And, of course, Love Shack has no booths at all. It has no glory holes at all. It has no customers who stay there and view movies. It is a take-home business. And that's also true of the Starship when it opens, when it's allowed to open. It is similarly -- it has 15 or more stores in Metro Atlanta, none of which have booths or glory holes or sex or anything improper or masturbation and, again, who have nothing but a history of being a good steward of their licensing and a good corporate citizen. Starship has filed in late or early 2005 a lawsuit against Fulton County that I know you know about, in US District Court, a civil rights action, 42 USC 1983 action, which hopes to punish Fulton County for its year and a half long denial of a certificate of occupancy. They gave them a business license but not a certificate of occupancy, using the pretext that because they wanted to be full adult, the use permit law would not allow them to operate there. We had a hearing December 19th for preliminary injunction. And at that time, Fulton County's lawyers, that is, Steven Rosenberg and Valerie Ross, said, well, they're going into Sandy Springs. So they're the ones who should be made a party to this. And Judge Forrester suggested that you be a party, and you now face a motion to add you as a party to that civil rights case for injunction purposes to determine whether or not on the narrow issue Starship should be allowed to open immediately and be grandfathered as an adult store. And Judge

Forrester also has indicated, and you have a copy of the motion, not only the motion to add but a motion for expedited injunction hearing, which was also filed on December 20th, the next day after the hearing. And Judge Forrester has promised that he will try to set the TRO hearing, which I think will include or the injunction in which I think will include Sandy Springs as a party since you at least at some point will control the decision, if not yet. And I think that -- Anyway, so get ready for that, please. That will be coming up in January. Ultimately if Judge Forrester finds that Starship was wrongly denied, the right to operate will be grandfathered. The Sandy Springs ordinance relevant to adult stores are, as I understand it, amendments to the old zoning code of Fulton County, Article 19, the use permit under the Fulton County code. And now under your proposed ordinance, an adult store needs a special use permit even if they meet the other requirements for distance zoning and such to operate an adult store. You didn't adopt the old Article 19 use permits because, as you know, Judge Arrington had struck them in May of 2005 in the case of Maxim versus Fulton County as unconstitutional. That is, he found that the use permit scheme of Fulton County insofar as it sought to limit the locations or control the locations of adult stores was unconstitutional with the result being that any store between May and December that is in Sandy Springs could have begun selling adult material and then grandfathered. He also, Judge Arrington, in May of 2005 struck the business licensing provisions relative to adult stores finding them additionally unconstitutional for the reason that there had not been secondary effects evidenced to show that there was increased crime or decreased property values. All of my store clients, that is, Love Shack and the Starship to be, are take-home-only stores. Again, there are no viewing on premises by customers, and they do not generate any of the alleged secondary or, excuse me, alleged crimes that have been spoken about by witnesses both today and last week. And that is because they do not generate crime when they do not have booths.

Councilmember Paul stated that he needed to make sure he understood and asked Mr. Begner if he was saying that Love Shack and Starship do not have viewing booths. Mr. Begner replied no. Starship is not open. Councilmember Paul asked if Love Shack had any viewing booths. Mr. Begner replied that he does not think it does and, to the best of his knowledge, it does not. Councilmember Paul stated if indeed that it did, would he concede that it is probable that the same activities going on at Insurrection would be also occurring at Love Shack. Mr. Begner replied no. He further stated that viewing booths exist at Blockbusters and other kinds of stores for viewing of videos you may want to buy. Councilmember Paul asked if the existence of glory holes were present, would that suggest that the same sort of activity were occurring? Mr. Begner replied no, not necessarily and asked if there was evidence of glory holes. Councilmember Paul answered that he was just posing questions at this point. Mr. Begner stated that all we are getting is surprise testimony one after another that we know nothing about. Councilmember Paul stated that his question concerned his testimony. He asked Mr. Begner's if it is his testimony that there are no viewing booths and no glory holes at Love Shack? Mr. Begner replied that was his understanding.

Councilmember Jenkins asked if he referred to the proposed Starship property and Mr. Begner replied yes. Councilmember Jenkins commented that is a very long building, and it is only the front 15 feet that are dedicated to sale of material. She asked what is in the back. She asked are they proposing to put more of these viewing booths in the back. Mr. Begner replied no. Starship has no plan for viewing booths at all. They have no viewing booths in any of their stores. They sell stuff like swords, like fantasy, new-age swords. Councilmember Jenkins commented that was not what was coming off the truck the other day. Mr. Begner replied right. Well, we are thinking about opening. He knows that they are stocking it because he is thinking about opening it. But the answer is they sell sexually explicit material. They sell tobacco products. They sell lots of novelty stuff, lotions, clothes, T-shirts. Councilmember Jenkins asked percentage-wise, what part of the building are you using for sale in that Starship location. Mr. Begner replied that he had not been in the building, and did not know what percentage was to be used for sales and storage.

Councilmember Fries stated that two-thirds of that building is behind that first screen. She agreed with Councilmember Jenkins and stated that she does not understand. She lives next to that property and two-thirds is probably generous. It was probably three-quarters of that building is not being utilized in the front for their sales. She is concerned not only as a councilmember but also as a very close resident. It is in front of a retirement home. She asked what are they possibly going to do with the other three-quarters of that building. Mr. Begner replied they had not been open to operate. Councilmember Fries asked what other Starship buildings. She knew that there is one in Roswell. Mr. Begner replied there are a lot of them. But was not sure he understood the question. He stated that we are not going to have booths. He just knows that. Councilmember Fries asked does the Starship property in Roswell on Holcomb Bridge have booths. Mr. Begner replied that he does not believe any of their stores have booths. He may be mistaken. There are a lot of stores.

Councilmember Fries stated that she wondered about their businessman mentality when they are leasing these large buildings and they are only utilizing one-quarter of the building. She does not quite understand that. Mr. Begner replied well, they make money or they would not be doing it. But they do intend -- Starship and Love Shack both, and those are the only two he is speaking for tonight, have not ever -- no Starship that he knows of has ever had a booth. Their stores have been around for 15 or 20 years throughout Atlanta. He thinks some Love Shack stores may have booths, but he does not think the one here does. And he does not know of any problems they have had with booths. He does not think having a booth automatically makes you troublesome or a violator of the law. He thinks it depends on how you regulate it. A lot of people have booths that are not adult oriented just to see videos they want to buy.

Councilmember Paul asked Mr. Begner to go back to this subject of glory holes again. If there were glory holes at Love Shack, what would be their intended purpose? Mr. Begner replied "I don't know. He stated that he thinks to be candid, you have heard some testimony about glory holes. He does not think glory holes are a good idea, and he does not know of another purpose for them, but there may be -- Councilmember Paul stated if they existed in his clients' facilities, would he recommend that they probably seal those breaches and Mr. Begner replied absolutely.

#### **Continuation of Allen Begner testimony**

Mr. Begner: Let me just say, I don't believe anything good can come out of the adult industry -- who I have been proud to represent for many years. I represent over half of the adult clubs in Atlanta and almost all the stores. And the sex business is not what we have in mind. We make money in the store business.

Councilmember Paul asked one last question. If, indeed, those glory holes did exist, and he would advise his client that they should be sealed up, then would he have no problem with this Council passing an ordinance to that effect and asked if that was correct? Mr. Begner clarified to what - sealing up glory holes and Councilmember Paul replied yes. Mr. Begner replied absolutely. He would have no trouble with that. He thinks they should be sealed up whether you order it or not, if they exist.

Councilmember Jenkins asked what if we removed these viewing booths altogether. Mr. Begner answered that is a solution he would recommend. He thinks we just want to be in the store business.

Councilmember DeJulio asked if that was his recommended solution and Mr. Begner replied it is. Councilmember DeJulio stated that he thought in one of the cases he was reading - in DeKalb County or Gwinnett County - where there was a Love Shack and one of the things that they talked about was the booths and the glory holes. He asked Mr. Begner if he would recommend that his client remove those. Mr. Begner replied yes. Councilmember DeJulio asked as their legal representative, why has this not been done. Councilmember DeJulio stated you have known about these glory holes for years because it is in part of the legal briefings that they have been reading. Mr. Begner replied the DeKalb County -- Love Shack has not been open in DeKalb County for a year and a half. They closed the Memorial Drive store, and they had one also on, he thinks, Moreland and they closed them both. Councilmember DeJulio stated that he thinks the one he is referring to was Jimmy Carter and it was Gwinnett County. Mr. Begner replied they have two Gwinnett stores, and to his knowledge have not had issues about glory holes, but he is not sure about that. He said there is no place for glory holes in adult businesses. They are not in the sex business. His clients are not in the sex business and he would recommend that they take them out. If he is mistaken, Love Shack has one and he did not realize it, he would recommend the booths go.

Councilmember Greenspan commented so you have no objection to the ordinance removing booths. Mayor Galambos commented that he said that already. Councilmember Greenspan wanted to be clear because he heard Mr. Begner going back and forth. Mr. Begner replied that is right. He has no objection -- well, in the context of are you going to do other bad stuff to them -- if you look at it just in the singular context, he thinks it is reasonable to ask the booths to go and to pass legislation to require them to be removed. He would support it.

Councilmember Jenkins stated that she had one more question and asked would that apply also to the strip clubs and Maxim and Flashers and other places? Mr. Begner clarified did she mean the VIP rooms and Councilmember Jenkins replied yes. She stated that if you are not in the sex industry, then why do you need them there? Mr. Begner replied that he thinks Maxim -- and no one said Maxim is in the sex business or ever has been, and the VIP rooms exist now in almost

all Atlanta clubs. Some of them exist without any -- many of them -- most of them -- Atlanta clubs are not in the sex business. They are too valuable a license and they have VIP rooms, and he has not seen a single arrest in Atlanta in many years for that kind of violation. Councilmember Jenkins stated that if you do not need them in the movie stores, why do you need them in the strip clubs? Mr. Begner replied that they are different. In strip clubs -- most of them -- first of all, in the strip clubs, Maxims has no doors. They have some VIP rooms, but you can see through the door. He cannot speak for the other clubs. He has not been in the other two in many years, Flashers or Mardi Gras. But the ones at Maxim have wide-open doors. You can see in them from a large range of area around the front of them, and they are meant for some customers to have some privacy, not sex, but privacy with a dancer or several in terms of dances for a period of time. Some customers just like to spend a lot of money and that is how it goes, and they just want a VIP room. Councilmember Jenkins clarified privacy - is what you are saying. Mr. Begner that he would not necessarily agree that club VIP rooms should be removed for the same reason as the booths. He thinks they are separate issues. Councilmember DeJulio asked he agreed that the door should be gone. Mr. Begner replied that he thinks so. He thinks the door should be gone.

Councilmember Meinzen McEnerny asked if she heard him say that the VIP rooms at Maxim were too valuable, or was he relating to the license? Mr. Begner replied no, the license. Adult licenses are very valuable. They are limited in number and generally speaking aside from the anecdotal evidence he has heard tonight, he knows of no Atlanta clubs that he knows of that are accused of this kind of behavior. Atlanta police come in regularly to make cases, as well as licenses and permit detectives, and there is no touching in Atlanta clubs. There are VIP rooms. But this is an industry that, again, existed since at least 1967. Atlanta made Atlanta a convention center. If you go to an Atlanta club, he thinks you will see there is no touching. Councilmember Meinzen McEnerny asked if he could elaborate on why he thinks that the licenses in the Sandy Springs locations are so valuable. What makes them valuable to your client? Mr. Begner stated the combination of adult entertainment and alcohol is a draw to conventioners and to locals alike. It draws a wide spectrum of folks both to come visit and also to work there. But, yes, the licenses are valuable, and that is why.

Councilmember DeJulio stated on that particular comment, Mr. Begner, it was earlier established that Maxims, which was formerly the Coronet Club, was opened without a liquor license. It seems like it was able to prosper for many -- he does not remember when it got its liquor license but thinks in the last two or three years. It was able to prosper for close to ten years without serving alcohol with just having the adult entertainment. Mr. Begner replied no, it did serve alcohol, but it was bring your own bottle. Customers still came to visit because they could drink. They could bring their own bottle actually and drink more than they would have if they bought it since it would cost less. But they have always had alcohol and nude dancing and they always served it. Councilmember DeJulio confirmed that they served your liquor, and they charged you for serving your liquor to yourself? Mr. Begner replied yes - you bought a setup. Councilmember DeJulio stated that it was profitable enough for them to maintain and stay in business all those years without having liquor because his limited understanding of this is that the real profit margin in here is the liquor. Mr. Begner stated that it was more valuable to sell the liquor. He agreed with Councilmember DeJulio. There is no question. But on the other hand, if you have just juice and nude dancing, the only place that has that is Marietta, and it has one club. You still make money, but you do not make as much. What ends up happening is you draw 18, 19, and 20-year-old customers and stay open 24 hours if you want. It is not good for the city. It is not good for the client either. They want to be in the liquor business. That is what nude dance clubs are - they are in the liquor business.

Councilmember Greenspan asked Mr. Begner if it was his testimony that the absence of alcohol will not shut down these businesses. Mr. Begner replied no. He thinks a juice bar. There is only one of the three Marietta clubs that went nude and juice are still open. He was mistaken if he said that. It will end the club, any club, in Sandy Springs if its a juice and nude dancing establishment. Councilmember Greenspan commented that he is confused how the Maxim/Coronet Club stayed in business so long without a liquor license. Councilmember Fries commented that they bring their own. Councilmember Greenspan stated that he understood, but we are talking about the revenue being derived from -- Mr. Begner stated that the difference being that it drew customers to see nude dancing who could drink. They just brought their own and paid a setup price which is probably a little less but similar to if they had bought alcohol. So they made some money, but more importantly is they drew the kind of people who want to drink and watch adult entertainment.

#### **Continued Testimony of Allen Begner**

Mr. Begner: And I have more to say, though, if you're finished, Madam Mayor. And so I think I left you with that the stores that do not have booths but only sell to take home are a whole different category of analysis as Mr. McLaughlin's

report indicates. And, again, you have no evidence in the studies or elsewhere that take-home stores cause secondary effects in Sandy Springs. One other matter. Article 19 is a zoning law. And as such, it grandfather the locations. And I suggest to you that you have no choice but to grandfather the locations, the adult store locations. I'm still not sure what, if anything, you intend to do with the law you're considering. Are you intending to make stores move to other locations? Are you intending to make them reduce their stock in trade or floor space to five percent? I think you have no right to do that. An adult store is an adult store. I say to you that if it is your intention to make the stores move to other locations -- well, let me back up. Since I must make constitutional arguments about the enactment or waive them, I will go on to say that to my knowledge you have not properly advertised the zoning law modification of Article 19 under the requirements for zoning law advertisement and adoption and insofar as you have amended zoning laws, you must re-advertise them. It just came to my understanding today that you may have more than one zoning law to consider tonight and more than one alcohol law. As has been the case throughout, I have not been able to see these things. I was shown one alcohol law only after I was refused it to begin with and filed a Freedom of Information request. And I did not see -- and I saw the one zoning law when the clerk was kind enough to give it to me last week. Insofar as you have other laws that I have not seen, I object to that. In any event, you apparently intend, I presume, to make the stores move to other locations. If that is true, I bring out these other constitutional challenges. One, you have not provided an amortization period. I'm aware of no adult law that demanded that legal businesses who are made to change their rules of operation have not been given an amortization period in which to recoup the investment of moving their location. And notwithstanding Nancy Leathers' superb written analysis, you have insufficient locations for adult stores to move to and clubs, for that matter, assuming that is your intent, as is required by Renton. Renton versus Playtime Theaters is a Supreme Court of the United States case which says that depending on the size of your city and the size of your -- you have to have a certain number of locations to move to. Although not all of them have to be commercially the best, at least some of them do. And there must be infrastructures in place to be used. Your law, your permit law, although similar to old Article 19 that was stricken by Judge Arrington is even more restrictive. And no use permit had ever and has ever been issued by Fulton County government to an adult business because no one has ever been able to meet the requirements. And to have a map that shows potential sites does not answer any of the real questions about whether or not there's alternative avenues of communication. There must, for instance -- as part of your proposed rules, there must be 50 feet between the building and the side of the property. These are things that are almost impossible to meet usually. The use permit law and your other laws described on December 20th are also unconstitutional for these additional reasons. They violated FWPBS versus Dallas, Texas. Those requirements are not met, similarly Shuttlesworth versus Birmingham, Alabama, US Supreme Court cases; Alameda Books versus Los Angeles; Encore Video versus San Antonio, which I'm thinking is just 5th Circuit and did not make it to the US Supreme Court. And in addition, your laws are vague and overbroad in violation of Article 1, Section 1, paragraph 1 of the Georgia Constitution and the 14th and 15th Amendments of the US Constitution. And the laws violate and are a prior restraint under the First Amendment. Next, the anecdotal testimony of witnesses hired by you to find trouble to support secondary effects fails for an additional reason besides the language in Flannigan, which you may remember was that local statistics, crime statistics, are the most relevant measure of whether or not there are secondary effects created by a so-called combination of nude and alcohol or I guess booths and glory holes. But, in addition, the concept of secondary effects is inapplicable to the anecdotal testimony of your witnesses today. They are not talking about secondary effects at all. They're talking about what goes on inside. Lastly -- well, not lastly but I'm near the end. When I told you last week my DeKalb story that there had grown from four to nine adult clubs after I won a case in 1992, it struck DeKalb's first attempt to ban nude and alcohol, there are only eight of those clubs left, not nine. And the reason is that DeKalb County went after one of them, Jazzy T's, for repeated violations of the law, arrested the owners, revoked the license, and then sued to un-grandfather the location so that others might not have a club there afterwards, and succeeded. That is what I again ask you to consider and to do. That is, do not ruin Maxim, Love Shack, and Starship who committed no problems in Sandy Springs, but, of course, make it known that if they from this minute on do not act in a proper manner, they face all of those things, the loss of their business and the possibility you will move to un-grandfather the location. I just want to briefly comment about tonight's testimony. I think that Mr. DeJulio was right. What he said -- the question he posed was something to the effect of, don't you think we need some favorable results first? What I heard is a list of witnesses who have questioned the methodology of reports that were upheld as accurate by both Fulton County's expert at the time -- Dr. Love's report was found accurate by Fulton County's expert. But not only that, US Supreme Court in a footnote has upheld that at least inferentially the 11<sup>th</sup> Circuit once, a District Court judge once, and a Fulton County court judge too. One last thing, and then I'm through, and I thank you for your patience. It's easy for governments -- I've been doing this a long time. It's easy for local governments to bash the adult entertainment industry. But I'll tell you something. Governments ought to be slow to destroy the business and property of its citizens which were legal before

you got here. The whole notion of this country from the Revolutionary War to today to the outraged sparked by the US Supreme Court's ruling that eminent domain could be used for private use have a deep basis in the belief by many, some of whom do not like our industry, that what America is about is the right to peaceful use of their property which should not be taken by the government in this fashion, especially when Maxim and Love Shack and Starship have done nothing to deserve it. So I ask you to not pass these laws, to either seek -- put it on hold, seek further information, further secondary effects results, let us challenge them -- as Cary Wiggins said, we couldn't even have cross-examined these folks if we had been given the right to because we didn't know anything about what they were going to say -- and not pass the law. Now, that's what I ask you, and thank you.

**Assistant City Attorney Fred Bentley** stated that concludes the individuals that have signed up in connection with speaking, and we would then close the public hearing at this time.

### **Public Hearing Closed**

Assistant City Attorney Bentley stated as we advised when this Council started on this little journey about a week ago in terms of the consideration of testimony, that it is incumbent upon the Mayor and Council to determine whether or not there are secondary effects with respect -- Councilmember DeJulio stated that he had a question. He thinks we have been notified that there has been a lawsuit already filed against the City Council. Assistant City Attorney Bentley stated that Mr. Begner just indicated that we are sought to be added as a party in connection with the Starship, which is one piece of litigation. He believes there was also a letter from Mr. Wiggins' client indicating their intention to move forward with litigation. Councilmember DeJulio stated that with that being known, would it be appropriate for us to move into executive session. Assistant City Attorney Bentley recommended an Executive Session to determine the potential impact of the consideration that you have.

**Motion and Vote:** Councilmember DeJulio moved to adjourn into Executive Session to consider this item for possible litigation. Councilmember Jenkins seconded the motion. There was no Council discussion. The motion passed unanimously.

Mayor Galambos stated that she would like for the audience to know that no decisions are going to be made in Executive Session. This is for considering the effects of a new city being sued or a lawsuit. So we will be doing our decision-making here in public.

### **Meeting in Recess**

(Meeting in Recess, 9:40 p.m. to 10:03 p.m.)

### **Reconvene**

Mayor Galambos stated that we need a motion regarding the affidavit of what was handled in the Executive Session.

**Motion and Vote:** Councilmember Paul moved to authorize the Mayor to sign an affidavit attesting that all the activities in Executive Session were those which are limited by law. Councilmember Meinzen McEnery seconded the motion. There was no Council discussion. The motion passed unanimously.

Assistant City Attorney Bentley asked the City Clerk read the caption of both this, and as you'll recall -- Councilmember Paul had an inquiry. He asked do we need to make a motion to go back into regular session. Assistant City Attorney replied no. He thinks you have actually gone back into it making an assumed motion. But he deferred to the City Attorney. City Attorney Willard stated that you can proceed.

Assistant City Attorney Bentley stated that he reminds the Council as the City Clerk reads this that you also are taking information with respect to 19.4.1 and 19.4.2 as well as Article 2, Section 42 of the alcohol ordinance. So I want to remind council of that.

**City Clerk Marchiafava** stated that this is an Ordinance Relating to the Licensing and Rules of Operation of Adult Entertainment Establishments and Providing for Legislative Findings and Intent. This will be the second reading.

Mayor Galambos asked Assistant City Attorney Bentley he if could give them some more information regarding the action they are about to take.

Assistant City Attorney Bentley addressed the Council and stated before this Council received – he believes it was the 13<sup>th</sup> - copies of several studies and then a supplement of certain studies that you received following that. In addition, you have received evidence presented by Mr. Begner. And he believes he is the only one that actually submitted any written information. You also then received information from witnesses as well as both materials that came from the adult entertainment establishments. Then you received several reports from experts with respect to the issues before this Council. As we started again on this journey, you were to determine whether or not there were secondary effects that were a direct result of the use of alcohol and adult entertainment on the issues of crime and on issues of property values and general welfare of your community. In connection with that, we believe you heard that type of evidence over the past two weeks, first on December 20<sup>th</sup> and December 27<sup>th</sup>. And, therefore, it is up to you to make that final determination as to how that effects it. We have prepared -- not knowing which direction the Mayor and Council would want to go this evening, roughly six options that you may consider. We did have a work session that each of you attended. At that time, we were instructed to put together language with respect to changing the distance from 500 feet to 400 feet for the location adjacent to the parks, residences, and institutional – referring to city institutional type uses. We wrote definitions with respect to removing private rooms, what is commonly called the VIP lounges, private booths, from areas he guesses to address the issue concerning glory holes. And finally as you have heard this evening, there was a request that M-2 also be added as a category along with C-1, M-1, C-2, and M-2. Now, that is not in any of the ordinances, and he thinks staff came up with that this evening. As it relates specifically to that, he has just been handed by staff and, of course, you considered that this evening in connection with your zoning ordinance relating to 19.4.2, and you would also -- the required districts would also need to be amended to reflect the M-2 district, to have that added in both. That is in 19.4.2(a), and that would also be in 19.4.1(a). So those are the two sections relating to adult bookstores of the land use permits and adult entertainment establishments. In addition, staff has also requested, and he has just received this from Ms. Leathers, a request that we remove item number seven, building shall be located a minimum of 50 feet from all property lines. They have requested that we remove that and we would concur with that request. And that would be under 19.4.2(b)7 and it would be removed. And we would have asked that anything that you consider this evening would include that particular section. We have also -- in anticipation of addressing the issues before you tonight and us having at least some previous knowledge of the information to be provided, we have attempted to also prepare a new Section 8 that deals with some of the evidence that you received this evening, and we have furnished that to you for your consideration as amending what he will call the final section with respect to this. So those are the specific changes that you have requested.

He thinks it also deals with the distance requirements. He thinks there were requests involving the ten feet and the four feet. There were questions about how close dancers can get to the stage. The options that you have given have those specific changes. He pointed out one more change that we were asked subsequently, and that is a change with respect to the time issue in terms of when may these establishments be open. The original proposal was a midnight closing. It is our recommendation to you that you make the timing consistent with what is provided for all alcohol places. So that would be a 4:00 o'clock a.m. for each of the weekdays and on Sunday mornings they would close at 2:55, which would make that consistent with the alcohol establishments. He thinks that has been one of the things that the Council has determined to try to do.

The specific options that you may consider would be, first, you may consider and adopt norms and determine that there is no need for regulation. Number two, you can use the ordinance with the highlighted changes he has just gone over, and that would be what he would call option T-2 in the materials that you have been provided. And, of course, that would remove alcohol under that particular proposal. Under T-2(b), and, again, these are just for the numbering system with the information that you were furnished, that would be with alcohol being allowed. Basically you would not have locations. There would be certain locations that would be prohibited as they currently exist, and they would not be grandfathered, and they would have to deal with those locations, and there would be a determination with respect to it. Of course, you have already heard counsel indicate that they intend to sue over that particular issue, but he wants to make sure you were aware that that is what we were talking about. That is really a location issue. It was intended to allow alcohol. T-3 would be grandfathered as to location status and that would just simply say any existing location as of December 1, because as

you recall it, you put in a moratorium as of that date. So anything that was lawfully existing as of that particular date, December 1, 2005, that location would continue to remain as grandfathered. And so that would be any location. Now, you have received, and there are 14 packets that detailed in great detail the 14 locations. It is our understanding that none of those locations would allow any of the three adult entertainment clubs in their present location. He asked Ms. Leathers if that was correct. Ms. Leathers replied yes it is.

As it relates to T-4, which is another option, is you could grandfather a location and amortize the time period. We have looked diligently through the laws as they currently exist, and most amortization periods include a five-year amortization period. That they provide is it looks at a figure of about 90 percent. If they have recouped 90 percent or more of their original investment, at that point they may not be grandfathered. So they have to come in, and there's a proof period. There's 120 days that they can prove and amortize a use for a location. And that could apply to any adult business. Please understand that is not limited to one or the other business.

T-5 would be grandfathered as to the location and the alcohol. Now, understand as it relates to alcohol, each alcohol license is re-licensed each year under the ordinance as you have adopted it. And given that particular setup, then as long as they continue to meet all the alcohol licensing issues and met – and did not sell to minors, did not otherwise violate the alcoholic beverage laws, then they could apply for a new permit each year, and they would be grandfathered so long as they met those laws. Again, this would relate only or exclusively to the three venues that currently exist. So this piece really only applies to the adult entertainment, what he will call adult dance or adult entertainment establishments: Maxims, Flashers, and Mardi Gras.

Finally, there is a T-6 which allows for an amortization period for both the location and alcohol. Of course, that would be amortized again over a five-year period and would allow the same recoupment as he has described. We have furnished you a copy of an amortization schedule that was approved by a court from a neighboring jurisdiction. He thinks what that does is gives you the various options for your consideration. He asked are there any questions that you have with respect to that. There were no questions. That would include amending the 19.4 as he previously described. Under any scenario, it would include that. We would recommend strongly that it include the same parallel closing times that you have dealt with or are dealing with the alcoholic beverage establishments here.

Councilmember Fries asked is that what Ms. Leathers has stated about changing the 50-foot. Assistant City Attorney Bentley replied yes. That was in 19.4.2, and that is number 7, (b)7, and the actual language says, building shall be located a minimum of 50 feet from all property lines. As you know, you have on the agenda this evening the Zoning Ordinance. That was properly advertised. You had the full required time period under the zoning procedures law. All of that is before you. This particular section is included within that section. He said we were pulling out that particular section for your consideration so that you could consider evidence with respect to that and the alcohol issue that related to that as well.

Councilmember Meinzen McEnerny stated that Mr. Bentley indicated that the options before us are in the form of amendments to the Zoning Ordinance and that the Zoning Ordinance had indeed been properly advertised. She asked if he could give his perspective on why an amendment does not need to be properly advertised if we do make a change. Assistant City Attorney Bentley stated under the Zoning Procedures Act, you are simply required to provide notice of an intention that you intend to deal with that area of the law. So for due process purposes, the fact that it was duly advertised in your legal organ, which is the Fulton Daily Report, then that is all that is required. Remember he is only dealing with the zoning procedures portion. So that is the Zoning Act feature of this only. The adult entertainment is part of the business licensing section and, therefore, does not require the same type. It merely has to be read -- the title read twice at two meetings. You went over and above by offering the community additional opportunities to be heard with respect to it. As far as what he would refer to as the due process issue, the Council went well beyond what is even required for the passage of the business license ordinance. Now, again, it would boil down to your determination of whether or not those secondary effects exist. He would go on and ask the question, does the Council feel like you had the opportunity to review the material that has been presented? First, he would ask each of you that question when you consider your vote this evening, that it is important for the record that you advise the court whether or not you felt like you had that opportunity to consider the information that is presented at these hearings.

Mayor Galambos asked if there is anybody on the Council that has any feelings about not having had enough time to absorb the material. There was no Council discussion.

Mayor Galambos stated that she believes the time has come for this Council to consider what it wants to do regarding this ordinance. The caption has been read.

City Attorney Willard stated he believes that at this point to proceed and a motion to adopt what was previously given as an ordinance. And once that is on the floor with a second, then the Council can go into considering whatever amendments, if any, it wishes to consider. Mayor Galambos asked if that included the places that we cleaned up like the 50-foot, the M-2 – and City Attorney Willard replied yes. Each one of those should be done by a separate proposed amendment to what was given earlier tonight.

**Motion and Second:** Councilmember Greenspan moved to adopt the Adult Entertainment Ordinance. Councilmember Jenkins seconded the motion.

**Amendment No. 1 to Motion:** Councilmember DeJulio moved to amend the motion adding the 400-foot setback from private property.

City Attorney Willard suggested that the amendments be done one at a time.

**Second and Vote:** Councilmember Paul seconded Amendment No. 1 to the Motion. There was no Council discussion. The motion passed unanimously.

**Amendment No. 2 to Motion and Second:** Councilmember DeJulio moved to amend the motion which stated that there be no private rooms allowed in adult entertainment. Councilmember Jenkins seconded the motion. There was no Council discussion. The motion passed unanimously.

Assistant City Attorney Bentley stated that they have specific wording on each of these. He then read the language that they have proposed for the record.

For the private rooms prohibited, “it shall be unlawful for any employee to engage in entertainment or to expose any specified anatomical areas or engage in any specified sexual activities in the presence of a customer in any separate area, included but not limited to any room or booth, within an adult entertainment establishment to which entry or access is blocked or obscured by any door, curtain, or other barrier separating entry to such area from any other area of the establishment.”

Mayor Galambos stated the aforementioned is full wording of the amendment.

**Vote:** There was no Council discussion. The motion passed unanimously.

**Amendment No. 3 to the Motion:** Councilmember DeJulio moved to amend the motion prohibiting viewing booths.

Assistant City Attorney Bentley provided suggested language for prohibiting viewing booths. “This will be letter number (g) just beyond page 17 of the ordinance under the private booths prohibited. Any adult entertainment business having available for customers, patrons, or members any booth, room, or cubicle for the private viewing of any video or motion picture must comply with the following requirements: (1) Access: Each booth, room, or cubicle shall be totally accessible to and from aisles and public areas of the video store and shall be unobstructed by any curtain, door, lock, or other control type or view-obstructing devices or materials. (2) Instruction: Every booth, room, or cubicle shall meet the following instruction requirements. (a), each booth, room, or cubicle shall be separated from adjacent booths, rooms, and cubicles and any non-public areas by a wall. (b), each booth, room, or cubicle shall have at least one side totally open to a public lighted area or aisle so that there is an unobstructed view of anyone occupying the booth from the area in which the cash register of the video store is located. All walls shall be solid and without openings extended from the floor to the

height of not less than six feet and be light colored, nonabsorbent, smooth textured, and easily cleanable. The floor must be light colored, non-absorbable, smooth textured, and easily cleaned. The lighting level of each booth, room, and cubicle not in use shall be a minimum of ten candles at all times as measured from the floor. (3) Occupants: Only one individual shall occupy a booth, room, or cubicle at any time. No occupant of the same sex shall engage in any type of sexual activity. Excuse me. I'm sorry. No occupant of same sex shall engage in any type of sexual activity, cause any bodily discharge, or litter while in the booth, room, or cubicle. No individual shall damage or deface any portions of the booth, room, or cubicle.

**Vote:** There was no Council discussion. The motion passed unanimously.

**Amendment No. 4 to the Motion:** Councilmember DeJulio moved to separate adult entertainment from liquor sales.

Assistant City Attorney Bentley stated that the recommended language for Separate Adult Entertainment from Liquor Sales "is set up as T-4, and that would include then the findings of Section 8. So there will be a couple sections related to that: The Mayor and City Council have received extensive evidence of secondary effects which are currently occurring within Sandy Springs in adult entertainment establishments. Such evidence consisting of direct testimony of undercover agents and citizens which detailed in explicit terms that violations of law are occurring within the existing adult entertainment establishments located within Sandy Springs, further that at last one uniform Fulton County police officer was observing these violations and failed to act on such blatant violations. The Mayor and City Council have considered the affidavit and guilty plea involving former Fulton County Police Department Captain Mark Lance wherein he pled guilty to extorting protection money from an adult entertainment establishment located in Sandy Springs. The Mayor and City Council have considered the testimony in contrast with the studies and precedence offered by the adult entertainment business. The Mayor and City Council have considered live testimony from Dr. Bill Holland, former Deputy Director of the Georgia Bureau of Investigation over the Georgia Crime Information Center, GCIC, and Dr. Richard Clark, Director of Planning for the City of Atlanta Police Department, and Dillon Fries, certified real estate appraiser, former member of the Appraisal Foundation Advisory Council and the Metro Atlanta Relocation Council and has testified in states and federal courts across the country. The testimony of such witnesses and the weight, if any, of the Mayor and City Council is that the studies proffered by the adult entertainment industry are not credible on balance given the presence of the undesirable effects which are currently existing, including alcohol abuse, fights, sex for hire, prostitution, diminished property values, and deterioration of neighborhoods. Moreover, based on the evidence presented on balance, it appears that the lack of police reports in adult entertainment establishments are the result of Fulton County's failure to enforce such laws. Moreover, the Mayor and City Council notes that the studies prepared by Fulton County in the early 1990s coincided with the time period Captain Lance was providing police protection for adult entertainment establishments, therefore condemning the validity of such studies. Mayor and City Council further received direct testimony involving adult bookstores, explicit media outlets, and adult novelty stores wherein one such establishment used glory holes and private booths and considered direct testimony from an undercover law enforcement or former law enforcement agent detailing the activities or, excuse me, illegal activities occurring at one of the adult bookstores. And that would conclude that.

Assistant City Attorney Bentley stated in addition it also then would leave the removal of adult entertainment, and that is provided already in Section 17 and that excludes the alcoholic beverages. That would be the new Section 17, and there would be a new Section 16 that would be entitled Nonconforming Uses. Now, does the Council want to include with that an amortization period or not? Councilmember DeJulio asked would that be separate. Assistant City Attorney replied that we can do that at one time as opposed to separately.

**Amendment to Amendment No. 4:** Councilmember DeJulio moved to amend Amendment No. 4 to a five-year amortization.

Assistant City Attorney Bentley offered some language with respect to a Five Year Amortization. "Any adult entertainment establishment lawfully existing under the laws of Fulton County, Georgia as of December 1, 2005, which becomes a nonconforming use as a result of the enactment of this ordinance as to location shall be a grandfathered nonconforming use and may not be expanded or otherwise altered outside the scope of the nonconforming currently existing. Such nonconforming adult entertainment establishment as to location shall terminate within five years of the

effective date of this section or from such later date, and that would be all adult entertainment businesses. And that the adult entertainment establishment becomes nonconforming except that such establishment may be continued for a limited time period by the Mayor and City Council provided that (1) an application is made by the owner of such establishment to the Mayor and City Council at least 120 days prior to the date on which such establishment became nonconforming; and, (2) the Mayor and City Council shall find in connection with such establishment that, (a), the applicant had made prior to the nonconformity his financial expenditures related to the nonconformity; and (b) the applicant had not recovered 90 percent of the financial expenditures related to the nonconformity; and (c) the period for which such establishment may be permitted to continue is the minimum period sufficient for the applicant to recover substantially all of the financial expenditures incurred related to the nonconformity but not more than five years. So that allows them to recoup their money for that location. For the purpose of this section, financial expenditures shall mean the capital outlay made by the applicant to establish the adult entertainment establishment exclusive of the fair market value of the building in which such use is located and site improvements unrelated to the nonconforming adult entertainment establishment, i.e., paving, fencing, et cetera. (3) in order to secure an extension of time, the applicant must submit to the Mayor and City Council a written application for such extension which shall set forth the following information: (a), the amount of the financial expenditures for the improvements in the existing enterprise through the date of passage and approval of this ordinance; (b), the date each improvement was made with proof of expenditure; (c), the amount of such financial expenditures that has been or will be realized through the effective date; (d), the life expectancy of the existing enterprise as based on federal depreciation guidelines; (e), the existence or nonexistence of lease obligations as well as any contingency clauses therein permitting the termination of such lease. (4), this information shall be supported by relevant documentary evidence such as financial statements, copies of the lease agreements to premises, and any equipment and tax records. Copies of such documentary evidence must be attached to the application for extension. No investment that was not incurred by the date of passage and approval of this ordinance shall be considered. (5) nonconforming for purposes of this section is a use, lot, or structure which use, lot, or structure was lawful and valid -- we are referring only to the adult entertainment portion, not the alcohol -- when established as evidenced by a certificate of occupancy as provided in Article 23, Section 23.1 of the Sandy Springs zoning ordinance; and (b), which use, lot, or structure does not conform with one or more of the requirements of this chapter as a result of a change in requirements subsequent to the establishment of or applications for the subject use, lot, or structure. That would be our form of the language that we would request that you enter if you choose that."

**Second:** Councilmember Greenspan seconded the Amendment to Amendment No. 4.

**Discussion on Amendment to Amendment No. 4 and Second:**

**Second Amendment to Amendment No. 4 and Second and Vote:** Councilmember Meinzen McEnery moved to add "*Fulton County Police Officer*: in Section 8, the third line down.

The second amendment to Amendment No. 4 was accepted by Councilmember DeJulio and Councilmember Greenspan.

**Vote:** There was no further Council discussion. The amendments to Amendment No. 4 was unanimously adopted.

Mayor Galambos stated that amendment would separate alcohol and amortize the length of time for five years for the location. Assistant City Attorney Bentley stated that is for the location only, not the alcohol.

City Attorney Willard stated that this goes to the denial of alcohol even as to a grandfathered business and that statement was confirmed by Assistant City Attorney Bentley. City Attorney Willard stated he wanted to be clear that is what the motion is as it is stated.

**Vote on Amendment No. 4 to the Motion.** There was no further Council discussion. The motion passed unanimously.

Assistant City Attorney Bentley stated there was one last amendment which is under the 19.4.1.

**Amendment No. 5 to the Motion:** Councilmember DeJulio moved to amend that the allowable locations be C-1, M-1, C-2, M-2.

Assistant City Attorney Bentley stated that is correct. And that would be under both the Sandy Springs Adult Entertainment Ordinance and the land use permit sections 19.4.1, 19.4.2. Councilmember DeJulio confirmed that was correct.

Assistant City Attorney Bentley asked for simplicity if this could include the deletion of 19.4.2(d)7, which was the 50-foot building?

**Amendment to Amendment No. 5:** Councilmember DeJulio moved to delete the 50-foot separation or the 50-foot.

Assistant City Attorney Bentley stated that portion is in the Zoning Ordinance. Mayor Galambos asked if those two items were together – 50-foot and the M-2. Assistant City Attorney Bentley replied yes.

**Second and Vote:** Councilmember Jenkins seconded the Amendment to Amendment No. 5. There was no Council discussion. The motion passed unanimously.

**Amendment No. 6 to the Motion:** Councilmember DeJulio moved for standardization purposes to change the closing time to 4:00 AM.

Assistant City Attorney Bentley stated that they have language with respect to **change closing time to 4:00 AM** “that would be under Section 3, Rules of Operation: Number 1 would be amended to say no licensee shall operate between the hours of 4:00 a.m. and 8:00 a.m. on all days except Sundays when the licensee shall not operate between the hours of 2:55 a.m. and 9:00 a.m. And that would be consistent with the existing alcohol.”

**Second and Vote:** Councilmember Paul seconded Amendment No. 6. There was no Council discussion. The motion passed unanimously.

**Amendment No. 7 to the Motion:** Councilmember Greenspan moved to strike Section 3, Rules of Operation, second paragraph, five.

Assistant City Attorney Bentley asked Councilmember Greenspan to please read that particular section. Councilmember Greenspan read for the record “No patron shall directly pay or give any gratuity to any adult entertainer. No adult entertainer shall solicit any pay or gratuity from any patron.”

Assistant City Attorney stated that will be replaced by “*no direct pay or any gratuity for adult entertainers or performers shall be placed on the person performing except by hand to hand.*”

**Second and Vote to Amendment No. 7:** Councilmember DeJulio seconded the motion. There was no Council discussion. The motion passed unanimously.

Councilmember Greenspan stated under Section 5(c), License Requirement, looks like an addition and asked do we need to have an amendment and that added. It says, no adult entertainment establishment allows patrons, members, or guests to bring in his or her alcoholic beverages.

**Amendment No. 8 to the Motion:** Councilmember Greenspan moved to Amend Section 5(c) License Requirement with the new 5(c) as read into the record below.

**Assistant City Attorney Bentley** stated that he believed that one is in there, but for purposes of making sure that it is clear, under 5(c) the language should include the last portion.

He read the entire (c) just to make sure we have it. “No annual license for an adult entertainment establishment shall be issued by the city for premises to be used also holds a license to sell alcoholic beverages or malt beverages and wine for consumption on the premises. Any premises licensed as an adult entertainment establishment shall not be eligible to apply at any time for a license to sell alcoholic beverages or malt beverages and wine for consumption on the premises nor shall

such adult entertainment establishment allow patrons, members, or guests to bring in his or her own alcoholic beverages for consumption on the premises.”

**Second and Vote:** Councilmember Jenkins seconded the amendment. There was no Council discussion. The motion passed unanimously.

Councilmember Greenspan stated that under Section 8, Conduct or Activities Prohibited it looks like under (c), there is some language that has been added. It appears to be repetitive, but it says, “no direct pay or any gratuities for adult entertainers or performers will be placed on the person of the performer except by hand to hand and then removed. Continuing on, no patron shall directly pay or give any gratuity to any adult entertainer.” Assistant City Attorney Bentley asked if that was under (c). Councilmember Greenspan replied yes under conduct or activity prohibited, page 18. Assistant City Attorney Bentley asked to remove this and Councilmember Greenspan stated that it looks like there is an addition - add or remove an addition of language. Assistant City Attorney asked him to read the language he wanted.

Councilmember Greenspan stated “No direct pay or any gratuity for adult entertainers or performers shall be placed on the person of the performer except by hand to hand.” That is an addition. The deletion is following “no patrons shall directly pay or give any gratuity to any adult entertainer.”

City Attorney Willard stated that is a conflict – is it not? Mayor Galambos asked if he was moving that as an amendment.

**Amendment No. 9 to the Motion:** Councilmember Greenspan moved to amend Section 8(c) for hand to hand being entered and no patron shall directly pay or give any gratuity to any adult entertainer removed.

Assistant City Attorney Bentley stated that he thinks that is still there. So it is *no direct pay or any gratuity to any adult entertainer or performer shall be placed on the person of the performer except by hand to hand?* Councilmember Greenspan replied correct. Assistant City Attorney Bentley asked if that was the replacement language. Councilmember Greenspan replied correct and remove the other just referred to.

Assistant City Attorney suggested adding that and stated that he wanted to make sure that the Council understands each of the changes.

**Second and Vote:** Councilmember Meinzen McEnemy seconded the motion. There was no Council discussion. The motion passed unanimously.

Mayor Galambos asked are we ready to move to the main motion? City Attorney Willard stated “call your main question”.

Councilmember Paul stated that he would call the main question. There were no objections.

City Attorney Willard stated that the motion has been made and stated to call the main questions. Now, it is just a matter of voting on the main ordinance as amended.

Assistant City Attorney Bentley added that this would be an opportunity to comment with respect to the issues and terms at this point.

Mayor Galambos stated that the motion has been read and all the amendments have been passed, so we need to vote on the motion.

Assistant City Attorney Bentley asked if there was any discussion in terms of what the Council has determined. There was no further Council discussion.

**Vote:** The motion passed unanimously.

Mayor Galambos stated we do have some additional business on the agenda that needs to be taken care of tonight and before the first of the year.

**Approval of an Ordinance Adopting and Approving Ad Valorem, Hotel Motel, and Motor Vehicle Rental Taxes and Providing for their Inclusion and Identification in the Future Developed Code of Ordinances for the City of Sandy Springs, GA to be referenced in the future as Chapter 10 and providing for an effective date; and repealing all Code and Laws which may be in Conflict with this Ordinance. (First Reading)**

Mayor Galambos stated that the next item of business is new business, an ordinance having to do with hotel taxes, hotel-motel tax. She requested that the City Clerk read the ordinance for consideration.

**City Clerk Marchiafava** conducted a reading of An ordinance to Adopt and Approve Ad Valorem, Hotel-Motel, and Motor Vehicle Rental Taxes and Providing for Their Inclusion and Identification in the Future Developed Code of Ordinances for the City of Sandy Springs, Georgia to be Referenced in the Future as Chapter 10 (Taxes) as attached and incorporated herein, Providing for an Effective Date; and Repealing all Codes and Laws which may be in conflict with this ordinance. This is the first reading.

**Acting City Manager Bovos** stated that this will serve as Chapter 10 of the Code of Ordinances. There is primarily three sections as just read; an ad valorem tax, hotel-motel tax, and motor vehicle rental tax. The Ad Valorem Tax will be set on an annual basis during the adoption of the budget. We are taking our ability through the State law to levy a hotel-motel tax consistent with what Fulton County is currently doing. That is the current ordinance before you this evening at seven percent. The motor vehicle rental taxes have the same stipulations. He is available to answer any questions regarding this ordinance.

**Approval of an Ordinance Amending Chapter 11, Business Occupation Tax, Licenses and Regulations, Article 2, Section 7, Due Date for License Fees of the Code of Ordinances of the City of Sandy Springs. First Reading**

Mayor Galambos stated the next item, which is an ordinance amending Chapter 11, has to do with the due date of license fees in the Code of Ordinances. She requested that the City Clerk read the ordinance for consideration.

**City Clerk Marchiafava** conducted a reading of An Ordinance Amending Chapter 11, Business Occupation Tax, Licenses, and Regulation, Article 2, Section 7, Due Date for License Fees of the Code of Ordinances of the City of Sandy Springs, Georgia. This is the first reading.

**Director of Operations Don Howell** stated this is simply a change having to do with the insurer's license fee portion because premium taxes are set by State law to be March 1. This would set the insurance license fee from January 1 and would be consistent with the practice in Georgia.

Mayor Galambos stated that we will have a second reading next meeting.

**Approval of Franchise Agreements:**

- a) Georgia Power – Electric
- b) Atlanta Gas Light – Gas
- c) Comcast – Cable
- d) BellSouth

Mayor Galambos stated that the next item is the approval of franchise agreements. The City Attorney will present this item.

**Georgia Power**

**City Attorney Willard** stated that we have had discussions with the various franchisees being Georgia Power; Atlanta Gas Light or AGL, and Comcast. Everybody is out-of-pocket all of a sudden for the last several days because of the holidays, but we are going to have these completed, especially the one with Georgia Power before the first of January. He

has a simple agreement for Georgia Power. This is true of all the franchise agreements for one year. The purpose of that is to give the new City Manager an opportunity to get on board and begin doing some detailed negotiations with the various utilities for the purpose of getting a long-term agreement. As an example, Georgia Power would like to have a 35-year agreement, but we are going to have some other things to look at as far as including the specifics of the franchise agreement. It will still be a four percent franchise. We want to adopt it this year as a means of going back to December 1st. We should be able to pick up about \$400,000 by having it in place before the end of this year. He would suggest and recommend to the Council that the proposal that was submitted by Georgia Power be accepted for the one year at four percent.

Councilmember Paul asked was it brought to your attention some of the concerns of the neighborhoods such as Breakwater where they have had a large number of outages. City Attorney Willard answered yes. Councilmember Paul asked what was the extent of that conversations. City Attorney Willard stated that they have to them, and thinks what we will have to do is probably put the emphasis with the Georgia Power representative, Alan Golden, to go in and do something to find out the cause behind these failures. In his neighborhood the same thing happened and they found out it was some old transformers not being able to carry the capacity, which were replaced. We have little or no problem since then. He recommended that we discuss this with Georgia Power and request a solution to these problems, as opposed to trying to address it within the franchise agreement at this time. Councilmember Paul stated that it is a real concern with the folks in that neighborhood. They have had had multiple outages, 30 or 40 outages in the last 12 months.

Mayor Galambos asked if there were any questions regarding the franchise agreement with Georgia Power. There were no questions.

**Motion and Vote:** Councilmember Fries moved to approve the Georgia Power Company's one-year franchise agreement at four percent. Councilmember DeJulio seconded the motion. There was no Council discussion. The motion passed unanimously.

#### **Atlanta Gas Light (AGL)**

City Attorney Willard stated that the next franchise agreement with AGL. We have AGL which also has one very convoluted formula as to the way the fee is being determined. We are also looking to have this effective as of December 1<sup>st</sup>. It is for one-year. He has some discussions back and forth on some modifications of language to clarify a couple of points. He requested Council approval with the formula as prepared by AGL. Mayor Galambos asked there was a proposal for Council to approve. City Attorney Willard replied yes, but there will be some modified language. Council will authorize the City Manager and him to resolve the specific language modifications.

**Motion and Second:** Councilmember Fries moved to approve the franchise agreement with Atlanta Gas Light (AGL) and authorize the City Manager and City Attorney to resolve the specific language modifications. Councilmember Meizen McEnery seconded the motion. There was no Council discussion. The motion passed unanimously.

#### **Discussion on the Motion:**

Councilmember Greenspan asked is there a percentage that we are getting now that we are negotiating for. How ambiguous is the agreement. City Attorney Willard stated he can give him the formula. It is a seven-line formula. This is what is used by each one of their franchise agreements. We are not going to get anything different than what we could do elsewhere. It is based upon gas flows, the design, day capacity, the base year, and inflation index. A number of things go into defining their formula. Councilmember Greenspan confirmed that it is no different than any other and the City Attorney replied there is no difference.

Councilmember DeJulio asked if the franchise agreement with Atlanta Gas Light, which is a transmission company covered the provider such as SCANA and the other gas providers? City Attorney Willard replied absolutely. It covers all the flow of gas through their trunk lines, which is the only carrier into the City of Sandy Springs. Then you have the individual homes, who are the consumers, who subscribe to a particular retail outlet. Through that retail outlet, you pay the bill. But the gas is measured based upon the flow into your home that comes through the main trunk line. Councilmember DeJulio asked do we have another agreement with the retailer. City Attorney Willard answered no.

There is not a basis for doing an additional agreement because we are getting paid through the franchise AGL has. They are the only ones that have what would be the exclusive rights to bring the gas into the City of Sandy Springs.

**Vote:** There was no further Council discussion. The motion passed unanimously.

#### **Comcast**

**City Attorney Willard** stated that we are still waiting to get the agreement from Comcast. He spoke to them before Christmas but he has not received it yet. He called yesterday and today, but could not get in touch with their representative. It will be a five percent franchise fee for Comcast, which is the only provider also within the city limits of Sandy Springs for the cable services.

Mayor Galambos asked if there were any questions regarding this franchise agreement. Councilmember Greenspan asked if that covers all their scope of product offerings or just cable television. City Attorney Willard stated that it is covering everything they have as far as use of cable services.

Mayor Galambos asked if he needs any other authorization from the Council at this point and City Attorney Willard answered he does not believe so. He will bring that agreement to Council on January 3<sup>rd</sup>.

#### **BellSouth**

**City Attorney Willard** stated that BellSouth is an interesting issue. They are no longer a regulated industry. And as such, their position has been since 2003 that they do not pay a franchise fee. If they are required by a city to pay a franchise fee, they will then add that additional amount as an excise tax payment onto the bill of the customer. He has discussed this with the Georgia Municipal Association and this is true throughout the State. There are a couple of areas that are looking to bring action against BellSouth because of the change. They have kept that amount built into their fee structure prior to the time when they were regulated, but they have not dropped it. Councilmember Paul asked have they escrowed that? City Attorney Willard replied no, not to his knowledge. He stated that now he is looking at some other avenues to find a way because they are still using our right-of-ways. They still have the permissive use of it. Councilmember Paul stated that it is his understanding that the purpose of the franchise fee is for them to use our right-of-ways. City Attorney Willard replied that is correct. Councilmember Paul asked has anyone challenged this by asking them to take down their transmission lines. City Attorney Willard answered not to his knowledge.

#### **Approval of an employment contract for the City Manager.**

Mayor Galambos stated that the next item is the approval of the employment contract for the City Manager.

**City Attorney Willard** stated that they have had back-and-forth discussions. Today, he provided Council with the final draft. It has been approved by the proposed City Manager, John McDonough. It sets forth the compensation and other benefits he will be receiving as the City Manager. He thinks we are all very excited about his potential arrival here. He was advised that the outside date will be February 20<sup>th</sup>. He recommended acceptance of this contract for signing by the Mayor.

**Motion and Vote:** Councilmember DeJulio moved to approve the employment contract with John McDonough to be executed by the Mayor. Councilmember Fries seconded the motion. There was no Council discussion. The motion passed unanimously.

#### **Approval of a Resolution Directing the City Manager and City Attorney to Negotiate and Complete an Intergovernmental Agreement with Fulton County for Parks and Recreation at a cost not to exceed \$6,000 per month.**

##### **Resolution No. 2005-12-27**

Mayor Galambos stated that the next item is an Intergovernmental Agreement with Fulton County for parks and recreation negotiations.

**Acting City Manager Bovos** stated that he would like to bring everybody up to speed on what has happened from the County's perspective on parks and recreation. First off, in their last meeting they did accept the resolution that we had put forward regarding the use of parks and recreation with the exception of changing our \$5,000 a month to \$6,000 a month. The Resolution before Council this evening is to accept their counteroffer of \$6,000. In addition to that, he has provided Council with a signed letter from Tom Andrews on the Fulton County letterhead which requests entering into a Memorandum of Understanding from January 1<sup>st</sup> to January 31<sup>st</sup> by the City of Sandy Springs and Fulton County. We would enter into that agreement to be able to provide parks and recreation services as of January 1<sup>st</sup> and then use the 31 days to finish an intergovernmental agreement with the County that we would bring back before Council for adoption and approval. Both City Council and the County Commissioners would need to approve the final IGA, or intergovernmental agreement.

Mayor Galambos asked if there were any questions of Mr. Bovos regarding this item.

Councilmember Meinzen McEnery stated on Mr. Andrews' letter he indicated that they would be willing to lease our facilities subject to any existing leases, contracts, or covenants related to the park facilities. She asked him to explain what he thought might be included in those three items. Acting City Manager Bovos stated that he can tell her what some of them are. He cannot tell her how they will end up in the end of the IGA. But, for example, the tennis facility has a current use agreement that allows the people who hold that agreement to run and operate the facility. There is a portion of revenue that is shared back with the County. He thinks there is some land use agreements for some of the facilities at Morgan Falls recreation facilities with some of that. We are just walking through with the County at this point all of those ideas. He stated that Buddy Reneau, Public Works Director from CH2M Hill, has formulated the list. We have shared with Tom Andrews and with John Lavelle at the County some of the challenges we are going to be working out with some of those details. That is why we have asked for the extra 31 days to do that. Regarding the tennis facility, he does not know if the City will take that over and we will get the revenue as opposed to the County gets the revenue. That is something we are discussing with the County. Big Trees is the same way. That is currently under an overlying agreement that the County currently has. The County would like to pass that to us and we are obviously willing to take that. But there are stipulations that we would need to include in the IGA to make sure that we facilitate that and cover our interest. Councilmember Meinzen McEnery asked would that include the lease of the Blue Heron Golf Course and Acting City Manager Bovos replied no. Councilmember DeJulio commented not to the City, but it will be an encumbrance because it has a long-term lease on it. Acting City Manager Bovos stated that is actually not included. There are some other regulations and requirements regarding that particular facility, which are regulated at the federal level versus the county level that we are not able to take over. Councilmember DeJulio asked if it was because of the landfill and Acting City Manager Bovos replied correct.

Councilmember Meinzen McEnery stated in furtherance of that, would it include the ball fields at Morgan Falls and Acting City Manager Bovos replied yes. He stated that is the goal right now. Again, we have to work out some of those details and that is what we would do in the next month.

**Motion and Vote:** Councilmember Fries moved to approve A Resolution Directing the City Manager and City Attorney to Negotiate and Complete an Intergovernmental Agreement with Fulton County for Parks and Recreation at a cost not to exceed \$6,000 per month. Councilmember Jenkins seconded the motion. There was no Council discussion. The motion passed unanimously.

**Approval of a Resolution Adopting a fee for Review and Processing of ARC/MRPA River Corridor Certificate Applications.**

Resolution No. 2005-12-28

Mayor Galambos stated that the next item is a Resolution adopting a fee for review and processing of ARC/MRPA River Corridor Certified Application. Tom Wilson will present this item.

**Deputy Director of Community Development Tom Wilson** stated that this is a fee regarding the processing of river corridor applications. It is consistent with that fee charged from Fulton County. It was inadvertently left off in the previously approved fee schedule.

Councilmember Paul asked where the 2,000 feet is measured. Deputy Director Wilson replied that it is measured from the top of the bank of the Chattahoochee River.

Mayor Galambos asked is the fee charged against the developer, or who pays this fee? Mr. Wilson answered the property owner pays this fee.

**Motion and Vote:** Councilmember Meinzen McEnery moved to approve A Resolution Adopting a fee for Review and Processing of ARC/MRPA River Corridor Certificate Applications. Councilmember Jenkins seconded the motion. There was no Council discussion. The motion passed unanimously.

**Approval of Alcoholic Beverages License Issuance.**

Mayor Galambos stated that the next is the approval of alcoholic beverages license issuance.

**Director of Operations Don Howell** stated that Acting City Manager Bovos is passing out a revised list of the establishments located in Sandy Springs that we have been working with, as well as the Tax Commissioner's Office, to try and finalize a list of those existing alcoholic beverage establishments that have submitted completed applications and are somewhere in the process through the Tax Commissioner's office for re-licensing. There are approximately 186 on the list. We would like to request to add Compass Group d/b/a EBar, the Grape at Sandy Springs, and Insomnia as far as establishments to process for licensing. We would be glad to specifically answer any questions regarding Insomnia. There are others that are in the process that were not added on the list. For some reason the Grape, for example, applied on June 3rd to Fulton County, completed all the requirements, held the public hearing in July, and Fulton County has not issued their license yet. They have temporary license that expires December 31<sup>st</sup> through Fulton County.

Councilmember Meinzen McEnery, while reviewing the list, asked if it indicates that the status is deleted does that mean they are not applying to renew? Director of Operations Howell stated that it either means they are not applying or the existing owner has sold the business and it is being applied for under a different name. If it indicates issued that means they have paid all fees in full and are awaiting final action. The other category is renewal, and that means they have paid all the fees except they might have been late and there might be a penalty of some few hundred dollars outstanding. We actually got some revisions at 4:55 this afternoon from the Tax Commissioner's Office, and our goal is simply to not interrupt business, legitimate businesses. We have been working with the attorneys, the Tax Commissioner's Office, new applicants and transferees to try to identify everyone. He pointed out that there are some duplications on this list and it has some omissions. There are some areas that need clarification.

As indicated in our memorandum to Council of December 23<sup>rd</sup>, we basically asked Council to consider two conditions or two approvals. One would be to conditionally approve those establishments on the list that are required and cannot qualify for a temporary license. Those are package stores of distilled spirits or package sales of distilled spirits. Secondly, to approve as temporary licenses for not to exceed 60 days all of those on this list and to waive the temporary license fees because they have paid all the fees. They got caught in the transition of Fulton County to Sandy Springs. There was a time before December 1<sup>st</sup> that the Fulton County Tax Commissioner's Office was telling applicants for renewal, that they needed to go see Sandy Springs when they become a city. Then, on December 1<sup>st</sup>, we approved an initial agreement for an Intergovernmental Agreement with the Tax Commissioner. The final approval was at our meeting on December 20<sup>th</sup>. But, after the approval of that agreement, then the Tax Commissioner said that they would process it for us. There has been a considerable amount of confusion getting us to this point. In the next sixty (60) days, we want to make certain that there are 12 specific code requirements that have to be met in order to receive the license. We have seen nothing but an Excel spreadsheet. We have not seen any files. We have not had a reevaluation of the background checks, some that may not have been rechecked since an establishment was licensed several years ago. The City Attorney's office has prepared an affidavit for each of these existing businesses. It is a one page document that says everything is accurate and complete and current. We need to get those executed. We are working on a timeline to have everyone continue in business into 2006, but only until such time as we have verified all of the information and followed all the procedures. They plan to bring those back to Council on the Consent Agenda and ask for approval of them on an annual basis.

Councilmember Paul stated that he sees on the list several where the license type and license is unknown. He asked is that because we have not received that information yet. Director of Operations Howell stated that on the 4:55 p.m. e-mail he

got today, which he called at 5:01 and did not get an answer at the Tax Commissioner's Office, they did not indicate a type of license.

Councilmember DeJulio asked why would there be a place like Five Seasons that is on the list three times. Mayor Galambos commented that he said there are errors in it. Councilmember DeJulio stated that one of the ones to add was Insomnia and he assumes we are talking about the adult bookstore. Councilmember Fries stated that is Insurrection and Insomnia is the club. Director of Operations Don Howell stated that Fulton County did perform an audit in October of 2005 and found that Insomnia was in violation of the food ratio that is required in the ordinance. We have discussed this with them and basically our City Attorney's office felt that that type of audit and determination now that the jurisdiction has changed needs to be done by Sandy Springs. We do intend to work with Code Enforcement in auditing and do just that. We can issue a current report of those findings to Council's consideration. But in the interim, we were advised not to rely on the findings of another agency that no longer has jurisdiction. They will be issued a sixty (60) day temporary license. The City Manager has that authority under the Code to issue temporary licenses. It was never envisioned that it would be of this magnitude and that we would also ask that the fees be waived related to it because of the conditions. That is why they are asking for that as well as additional approval of those applicants who cannot qualify for a temporary license.

City Attorney Willard stated that we are not issuing temporaries for retail liquor stores because they have to be issued completely. There cannot be a temporary of that type of license. The only language he would add is the acceptance of the list of alcoholic beverage licenses provided to the Council with the additions as made. Assistant City Attorney Bentley added to include the deletions.

Councilmember Paul asked is this called a provisional or a conditional license. City Attorney Willard stated it is a conditional – it is a temporary license for everything except as to the liquor stores.

Mayor Galambos added that it is a temporary license without having a fee attached to it. Councilmember Fries asked if it was worded as conditional or temporary. City Attorney Willard replied it is conditional. Director of Operations Howell stated that the conditional is the package stores that cannot be granted temporary licenses, but we have no idea if they have met all the requirements, and we want to verify that. City Attorney Willard stated that if the liquor store does not meet the requirements, then we have got a basis by which we can pull the license, but you go ahead and issue the license as to a liquor store. The condition would be, of course, when we get all the information in, if they have not met the proper licensing requirements, their license can be revoked.

Councilmember Greenspan stated because of the challenges with the County, are we certain that these retail license types that we are about to give a different status than consumption on the premises license type are accurate. Director of Operations Howell answered that we are not certain of that. We are meeting on Thursday with the Tax Commissioner's Office with the people that put together this database. We were told a representative of that office will be present that has handled the Sandy Springs Alcoholic Beverage licensing for the last nine years. We hope to walk through this list, if we need to, one at a time to get certainty.

Councilmember Paul stated that in reading the list, it seems to be largely accurate, substantially accurate. Whatever errors they made are probably minimal. Director of Operations Howell stated that when the new owner picks up the application, we would go under the code sections of City Manager and issue a temporary license while we process that application.

Councilmember Greenspan stated that he would like to make a suggestion that as we receive the business name that we actually get the d/b/a name so we know who it is.

Councilmember Fries requested a clarification and stated that this does not tie us into any grandfathering effects and City Attorney Willard replied no. He asked if she was referring to Adult Entertainment and she replied no. He added that they are not on the list. Our licenses are issued from year to year for anything else being grandfathered. If you had a license in the past and if you are getting a license now and you have done something that would be considered in violation of that license, there are steps and means by which it can be revoked. Our standards are still being met. The only thing that is being done is it is being provided by the Tax Commissioner as a means of processing.

City Attorney Willard suggested that the resolution be that the Mayor and Council are approving the alcohol beverage licensing list as provided to them with the additions as made by Don Howell, and with the understanding that there will be a time for a temporary license to be issued to those places that have any consumption on premises or retail sales other than liquor stores, which will be receiving their permanent license and that is conditioned upon their not being in violation of the law.

**Director of Operations Howell** stated that the final category of the package store, liquor store sales, could be that we are certain that they meet the minimum requirements including the execution of an affidavit as to accuracy and completeness. City Attorney Willard stated that if their affidavit is found to be false, there are means of revoking the license, but we cannot issue those on a temporary or conditional basis. Director of Operations Howell stated that this is a new affidavit that we are requiring of all the re-licensing. City Attorney Willard added subject to the signing and filing of that affidavit with the City.

**Motion and Vote:** Councilmember Paul moved to approve the alcohol beverage licensing list as provided with the additions as made by the Director of Operations and with the understanding that there will be a time for a temporary license to be issued to those places that have any consumption on premises or retail sales other than liquor stores, which will be receiving their permanent license and that is conditioned upon their not being in violation of the law. Councilmember DeJulio seconded the motion. There was no Council discussion. The motion passed unanimously.

Mayor Galambos stated that this is the time for public comment from the audience.

#### **Martin Luther King Proclamation**

Councilmember Paul stated that the Sandy Springs Ministerial Association has put together an appropriate observance of the Martin Luther King Day.

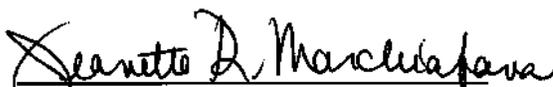
**Motion and Vote:** Councilmember Paul moved to approve the Martin Luther King Day proclamation. Councilmember DeJulio seconded the motion. There was no Council discussion. The motion passed unanimously.

#### **Adjourn**

**Motion and Vote:** Councilmember Fries moved to adjourn the meeting. Councilmember DeJulio seconded the motion. There was no Council discussion. The motion passed unanimously.

There being no other business the meeting adjourned at 11:15 p.m.

**Date Approved:** February 7, 2006

  
\_\_\_\_\_  
Jeanette R. Marchiafava, City Clerk

  
\_\_\_\_\_  
Eva Galambos, Mayor

**CITY OF SANDY SPRINGS, GA**

**STATE OF GEORGIA  
FULTON COUNTY**

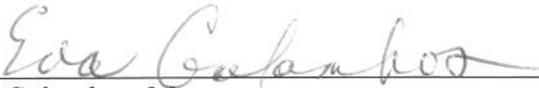
December 27, 2005

**AFFIDAVIT FOR CLOSURE**

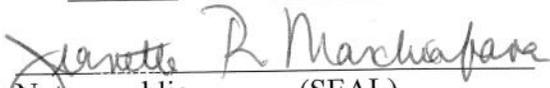
Personally comes Eva Galambos, Mayor of the City of Sandy Springs, who on oath says that to the best of his knowledge and belief, on the 27<sup>th</sup> day of December, 2005, in the city aforesaid, a meeting of the Council was closed to the public for the following reason(s):

Attorney/client privilege in order to consult and meet with legal counsel pertaining to pending or potential litigation, settlement, claims, administrative proceedings or other judicial actions brought or to be brought by or against the agency or any officer or employee or in which the agency or any officer or employee may be directly involved, pursuant to O.C.G.A. 50-14-2(1).

Except for the foregoing, no portion of the closed meeting involved discussion, presentation, or action on any other matter.

  
\_\_\_\_\_  
Eva Galambos, Mayor

Sworn to and subscribed before me,  
this 27<sup>th</sup> day of December, 2005.

  
Notary public (SEAL)

JEANETTE R MARCHIAFAVA  
Notary Public, Fulton Co., GA  
My Commission Expires August 29, 2009