

# JEFFERSON COUNTY BOARD OF COUNTY COMMISSIONERS

## AGENDA REQUEST

**TO:** Board of County Commissioners  
Philip Morley, County Administrator

**FROM:** Al Scaff, Department of Community Development (DCD) Director  
Stacie Hoskins, DCD Planning Manager  
David Wayne Johnson, Associate Planner

**DATE:** October 25, 2010

**SUBJECT:** Re-establishment of Adult Business Moratorium; and  
Approval of Legal Notice for Public Hearing

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### STATEMENT OF ISSUE:

The Planning Agency and Board of County Commissioners have determined a need for Adult Business regulations. A moratorium per RCW 36.70A.390 would allow Jefferson County time to establish appropriate siting criteria and regulations prior to submittal of development proposals. The most recent moratorium (Ord No. 02-0510-10) was adopted May 10, 2010 and expires November 11, 2010. The proposed moratorium ordinance is attached.

BACKGROUND: On February 16, 2005, the Planning Commission unanimously agreed to request the Board of County Commissioners pass a moratorium prohibiting the issuance of permits and approvals pertaining to adult businesses until the appropriate planning and regulations could be done. On March 14, 2005 the BoCC passed such a moratorium pursuant to RCW 36.70A.390.

Initially commenced during the 2005 Housekeeping Omnibus for Permit Efficiency (HOPE), the BOCC has adopted several moratoria on adult businesses. The PC subcommittee prepared a report and draft adult business ordinance language to further the progress on ultimate adoption of development regulations addressing adult businesses.

UDC amendments are governed by Jefferson County Code, JCC 18.45.090, and subject to review under the State Environmental Policy Act (SEPA), WAC 197-11. The UDC amendment process can be simplified to **8 Steps** detailed below. This amendment proposal is at **Step 7**.

1. Amendment initiated by DCD staff, the BOCC, the PC or by application.
2. DCD staff provides preliminary review of the proposed amendment and presents to BOCC for direction on whether or not to place on DCD work plan.
3. DCD staff reviews the amendment, prepares a staff report and makes recommendation.
4. Notice of Intent to amend the development regulations shall be provided, and public hearing before the PC is scheduled
  - a. At least 10 days prior to the date of the hearing per JCC 18.45.090(2)(b); and
  - b. At least 60 days prior to final adoption per WAC 365-195-620.
5. The PC shall hold a public hearing, JCC 18.45.090(3)
6. The PC shall make a recommendation to the BOCC using the site-specific criteria set forth in JCC 18.45.080(1)(b) and (1)(c), as applicable.

7. The BOCC shall consider the proposed amendment at a regularly scheduled meeting and apply the criteria set forth in JCC 18.45.080(1)(b) and (1)(c), as applicable.
8. The BOCC may adopt the PC recommendation or may conclude a change in the recommendation is necessary. A change requires the Board conduct its own public hearing and comply with notice requirements.

On May 19, 2010, the Planning Commission held a public hearing on the amendment, deliberated and voted to forward their recommendation to the BoCC on June 2, 2010. On June 28, 2010, DCD Staff presented the PC recommendation to the BoCC for possible acceptance and further action. At that Board meeting, The BoCC instructed staff to conduct further research on SOB licensing issues. The current moratorium will expire before staff has concluded its research and presented findings to the BoCC for consideration and further action.

On May 10, 2010, the BOCC voted unanimously to continue to maintain the moratorium on adult businesses (Ord No. 02-0510-10) and continue review of amendment (MLA08-00257) in the first quarter of 2010. To date, no applications for adult businesses have been submitted, and the Board has adopted six moratoria regarding adult businesses:

- Ordinance No. 04-0314-05, adopted March 14, 2005
- Ordinance No. 05-0505-08, adopted May 5, 2008
- Ordinance No. 10-1103-08, adopted November 3, 2008
- Ordinance No. 05-0427-09, adopted April 27, 2009
- Ordinance No. 08-1109-09, adopted November 9, 2009
- Ordinance No. 02-0510-10, adopted May 10, 2010 and expires November 11, 2010

**ANALYSIS/STRATEGIC GOALS/PROS and CONS:**

Moratoriums are valid for 6-month periods so they must be reinstated periodically as the final legislation is drafted. The regulations and related issued for siting and licensing Adult Businesses is currently being researched by DCD Staff. The current moratorium will expire before anticipated adoption of those regulations. Legal counsel has reviewed the proposed ordinance and approved it as to form.

**FISCAL IMPACT/COST-BENEFIT ANALYSIS:**

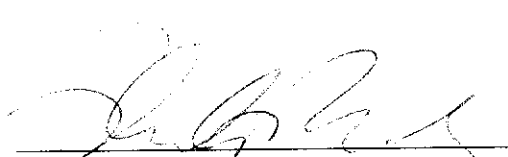
The BOCC is required to hold a public hearing within 60 days of adoption of the moratorium.


**RECOMMENDATION:**

DCD recommends the BOCC:

1. Re-establish the moratorium by adopting the attached Ordinance; and
2. Approve the attached legal notice for a Public Hearing on November 8, 2010.

**REVIEWED BY:**

  
Philip Morley, County Administrator

  
Date

To: *Port Townsend & Jefferson County Leader*  
LEGAL NOTICE

Publish one (1) time: **Wednesday, October 27, 2010**  
**Please use 7-point font.**

Bill: Jefferson County Department of Community Development  
621 Sheridan St., Port Townsend, WA 98368  
Customer #: 17385

Staff Contact: Stacie Hoskins, Planning Manager, (360) 379-4450

Date: October 25, 2010

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**NOTICE OF PUBLIC HEARING  
JEFFERSON COUNTY BOARD OF COUNTY COMMISSIONERS**

**NOTICE IS HEREBY GIVEN** that the Jefferson County Board of County Commissioners will hold a public hearing on **Monday, November 8, 2010 at 10:00 AM** in the Board Chambers at the Jefferson County Courthouse, 1820 Jefferson Street, Port Townsend, WA 98368.

The purpose of the public hearing is to hear testimony regarding Ordinance No. \_\_\_-\_\_\_-10, enacting a six month moratorium against the issuance of permits or approvals pertaining to adult businesses.

For further information, please contact Long-Range Planning, Dept. of Community Development, 621 Sheridan Street, Port Townsend, WA 98368, (360) 379-4465.

**Date:** 10/25/10

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**David Sullivan, Chair**



permits and approvals for adult businesses and thereafter to hold a public hearing on the moratorium within 60 days of the commencement of the moratorium;

***NOW, THEREFORE BE IT RESOLVED***, that the Board of County Commissioners ordains as follows:

SECTION 1. Moratorium Established. A moratorium is imposed upon the filing with the County any applications for permits or approvals for "adult businesses." "Adult businesses" are defined for the purposes of this ordinance in Exhibit A, attached hereto and incorporated by reference.

SECTION 2. Severability. If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance, or the application of the provision to other persons or circumstances is not affected.

SECTION 3. Effective Date. This ordinance shall take effect immediately after passage. It shall be effective for six (6) months.

**APPROVED AND SIGNED THIS \_\_\_\_\_ DAY OF October 2010.**

SEAL

JEFFERSON COUNTY  
BOARD OF COMMISSIONERS

\_\_\_\_\_  
David Sullivan, Chair

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Phil Johnson, Member

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John Austin, Member

ATTEST

\_\_\_\_\_  
Lorna Delaney  
Clerk of the Board

Approved as to form

*David Alvarez* 10/12/2010  
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David Alvarez, Chief Civil DPA

## EXHIBIT A

(a) **“Adult businesses”** means any establishment or premises which has as a substantial or significant portion of its trade, the display, barter, rental or sale of any adult entertainment medium, or which meets the definitions of “Adult Retail Establishment”, “Adult Theatre” or “Adult Entertainment Establishment”.

(b) **“Adult retail establishment”** means any premises in which twenty-five percent or more of the retail space open to patrons consists of merchandise distinguished or characterized by the depiction, description, simulation or relation to “specified sexual activities” or “specified anatomical areas” as those terms are defined below. Merchandise for the purposes of this definition may include but is not limited to books, video, photographs, devices, magazines, posters or other mediums utilized to sell or display material.

(c) **“Adult Theatre”** means any place of public assembly at which motion picture, slides, videos, films or any other method of visual media are presented which are characterized by depicting, describing or relating to “specified sexual activities” or “specified anatomical areas,” as defined in this section, for observation by patron therein. This shall not include movies that have been rated G, PG, PG-13, NC-13, NC-17 or R by the Motion Picture Association of America.

(d) **“Adult Entertainment Establishment”** means any business or establishment which displays any performance, display, dance or any other medium which the public, patrons, or members are invited or admitted where such entertainment involves a person appearing or performing who: i) Is unclothed or in such attire, costume or clothing as to expose to view any portion of the female breast below the top of the areola, vulva or (without regard to gender) any portion of the pubic region, anus or genitals; or ii) Touches, caresses or fondles the breasts, buttocks, anus, genitals or pubic region of themselves, a patron, another employee, or anyone else, with the intent to sexually arouse or excite.

(e) **“Specified anatomical areas”** means any of the following: i) less than completely and opaquely covered human genitals, pubic region, buttocks and female breasts below a point immediately about the top of the areola; ii) Human male genitals in a discernibly turgid state, even if completely or opaquely covered.

(f) **“Specified sexual activities”** means any of the following: i) Human genitals in a state of sexual stimulation or arousal; or ii) Acts of human masturbation, sexual intercourse, sodomy or bestiality; or iii) Fondling or other erotic touching of human genitals, pubic region, human anus, or female breast.