

**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 *SH*
David Wayne Johnson, Associate Planner

DATE: May 10, 2010

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



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. 08-1109-09) was adopted November 9, 2009 and expires May 9, 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 4.

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 November 9, 2009, the BOCC voted unanimously to continue to maintain the moratorium on adult businesses (Ord No. 08-1109-09) 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 five 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 and expires May 9, 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 for siting Adult Businesses is currently being reviewed and considered by the Planning Commission with a public hearing scheduled for May 19, 2010. The current moratorium will expire before anticipated adoption of those regulations in late June or early July 2010. Legal counsel has reviewed the proposed ordinance and approved it as to form.

FISCAL IMPACT/COST-BENEFIT ANALYSIS:

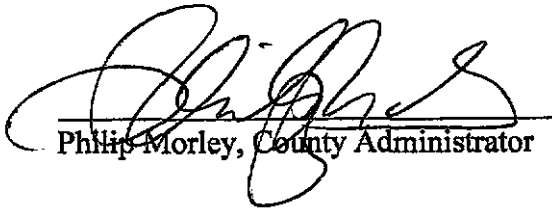
The BOCC is required to hold a public hearing within 60 days of adoption of the moratorium.

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 June 7, 2010.

REVIEWED BY:


Philip Morley, County Administrator

5/6/10

Date

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

Publish one (1) time: **Wednesday, May 26, 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: May 24, 2010

**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, June 7, 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. 08-1109-09, 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: 5/5/10

David Sullivan, Chair

**JEFFERSON COUNTY
STATE OF WASHINGTON**

In The Matter of Enacting a } Ordinance No. _____
Moratorium against the Issuance }
Of Permits or Approvals Pertaining }
To Adult Businesses }

WHEREAS, the County has determined to develop land use and development regulations for adult businesses; and

WHEREAS, the County requires time to consider properly and carefully the potential location and regulation of adult businesses; and

WHEREAS, based on a wide range of testimony and documents presented to other counties and cities by law enforcement officers and the public, County staff has concluded that adult businesses, although afforded limited constitutional protection, often result in undesirable secondary effects, including criminal and other unlawful activities such as narcotics and liquor law violations, breaches of peace, and assaults and sexual contact between patrons and entertainers; and

WHEREAS, the conclusions of the County staff dovetail with and support the general collective knowledge of the three elected members of the County Commission, also known as the BoCC, relating to adult businesses; and

WHEREAS, the BoCC finds that the County's land use planning process will suffer significant harm unless applications for permits and approvals for adult businesses are prohibited until the planning process is completed; and

WHEREAS, the BoCC finds that protection of the health, safety and welfare of the County's populace supports establishment of a moratorium on applications for permits and approvals for adult businesses, thereby creating an emergency in this County as referenced in the Planning Enabling Act at RCW 36.70.790; and

WHEREAS, RCW 36.70A.390, a section of the Growth Management Act (Ch. 36.70A RCW), authorizes a County to adopt a moratorium on development

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 May 2010.

SEAL

JEFFERSON COUNTY
BOARD OF COMMISSIONERS

David Sullivan, Chair

Phil Johnson, Member

John Austin, Member

ATTEST

Erin Lundgren
Clerk of the Board

Approved as to form

5/3/2010


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.