

RESOLUTION NUMBER 69 -01

**A RESOLUTION TO EXTEND THE EFFECTIVE PERIOD OF RESOLUTION 34-00  
AND CONTINUE THE MORATORIUM ON APPLICATIONS FOR LAND USE  
PERMITS AS THEY RELATE TO SEXUALLY ORIENTED BUSINESSES**

WHEREAS, on January 13, 1998 the Mason County Board of Commissioners imposed a six month moratorium on applications for land use permits as they relate to sexually oriented business in the unincorporated area of Mason County per Resolution No. 25-98 and conducted a public hearing as required by RCW 36.70A.390; and

WHEREAS, said moratorium was extended for six months by Resolutions No. 58-98 and 113-98, and was extended for one year by Resolution No. 38-99, and was extended six months by Resolution No. 34-00 and No. 110-00; and

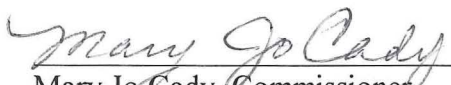
WHEREAS, more time is needed to complete the ordinance and present it through the public process;

NOW, THEREFORE, BE IT RESOLVED THAT:

The Mason County Board of Commissioners hereby amend Resolution No. 110-00 to extend by six months the effective period of the moratorium whereby the County shall not process land use permits as they relate to sexually oriented business in the unincorporated area of Mason County and applied as defined in Attachment A of Resolution No. 25-98, as adopted by reference, and also adopt by reference the findings of fact for Resolution 34-00.

Dated this 10th day of July, 2001.

Board of Commissioners  
Mason County, Washington

  
\_\_\_\_\_  
Mary Jo Cady, Commissioner

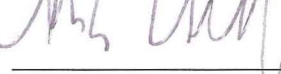
  
\_\_\_\_\_  
Herb Baze, Commissioner

  
\_\_\_\_\_  
Wesley E. Johnson, Commissioner

ATTEST:

  
\_\_\_\_\_  
Clerk of the Board

APPROVED AS TO FORM :

  
\_\_\_\_\_  
Prosecuting Attorney

## **ATTACHMENT "A"**

**This moratorium shall not be construed to prohibit:**

- A. Plays, operas, musicals, or other dramatic works that are not obscene;
- B. Classes, seminars and lectures held for serious scientific or educational purposes that are not obscene; or
- C. Exhibitions, performances, expression or dances that are not obscene.

**OBSCENE MEANS ANY MATTER:**

- 1. Which the average person, applying contemporary community standards, would find, when considered as a whole, appeals to the prurient interest; or
- 2. Which explicitly depicts or describes patently offensive representations or descriptions of:
  - A. Ultimate sexual acts, normal or perverted, actual or simulated, or
  - B. Masturbation, fellatio, cunnilingus, bestiality, excretory functions, or lewd exhibition of the genitals or genital areas, or
  - C. Violent or destructive sexual acts, including but not limited to human and/or animal mutilation, dismemberment, rape and/or torture, or
  - D. Has a dominant theme which appeals to the prurient interests of minors in sex; which is patently offensive because it affronts contemporary community standards relating to the description or representation of sexual matters or sadomasochistic abuse; and
- 3. Which, when considered as a whole, and in the context in which it is used, lacks serious literary, artistic, political or scientific value.

**Sexually oriented business means any erotic entertainment business, erotic retail establishment, massage parlor, erotic theater or erotic arcade.**

Erotic entertainment means any exhibition, performance, dance of any type, or other performance, not exempt from this chapter where such entertainment involves a person appearing or performing (either live or recreated) who:

- 1. 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, or (without regard to gender) any portion of the pubic region, anus, buttocks or genitals; or
- 2. Touches, caresses or fondles the breasts, buttocks, anus, genitals or public region of themselves or a patron, or permits the touching, caressing or fondling of their own breasts, buttocks, anus, genitals or pubic region by a patron, another employee or anyone else with the intent to sexually arouse or excite.

Erotic retail establishment means any premises in which 25% of the stock in trade consists of merchandise distinguished or characterized by the depiction, description, simulation or relation to specified sexual activities or specified anatomical areas. The term merchandise as used above includes but is not limited to the following: books, magazines, posters, cards, pictures, periodicals, or other printed matter; pre-recorded video tapes, discs, film or other such medium, instruments, devices, equipment, paraphernalia or other products.

Massage parlor means any premises where massages are given or furnished for, or in expectation of any fee, compensation or monetary consideration, except:

1. Facilities adjunct to athletic clubs, health clubs, medical facilities, hotels, motels, or beauty salons; and
2. Enterprises licensed by the state and operating as approved.  
Manipulating of the human body in the course of the practice of medicine, surgery, osteopathy, chiropractic, chiropody, naturopathy, dentistry, nursing, physical therapy, optometry, or any other of the healing arts by persons licensed by the state to practice such healing arts is not included in the term massage as used herein.

Erotic theater means a place of public assembly at which motion picture, slides, videos, films or any other method of visual media are presented which are distinguished or characterized by depicting, describing or relating to specified sexual activities or specified anatomical areas for observation by patrons therein. It does not include movies that have been rated G, PD-13, NC-13, NC-17 or R by Motion Picture Association of America.

Erotic arcade means any premise on which any erotic arcade device is located and to which patrons, customers and/or members of the public are admitted.

Erotic arcade device means any device which, for payment of a fee, membership fee or other charge, is used to exhibit or display a picture, view, film, videotape, videodisc or similar reproduction means, a live show or other graphic display of specified anatomical areas or specific sexual activities.

Erotic arcade station or booth means such enclosures where a patron, member or customer would ordinarily be positioned while using an adult arcade device or viewing a live show. An adult arcade station or booth shall also refer to the area in which an adult arcade device is located and from which the adult arcade picture, view, live show or graphic display is to be viewed. The words erotic arcade station or booth do not mean such enclosures that are private offices used by owners, managers, or persons employed on the premises for attending the tasks of their employment, which enclosures are not held open to the patron, members or the public for use, for hire or for a fee for the purpose of viewing the entertainment provided by the arcade device or live show, and are not open to any persons other than employees.

# MASON COUNTY BOARD OF COUNTY COMMISSIONERS

## INTERIM REGULATIONS SEXUALLY ORIENTED BUSINESSES

### FINDINGS OF FACT AND CONCLUSIONS

Based upon concerns expressed and inquiries made regarding the possible establishment of sexually oriented businesses in the unincorporated areas of Mason County the Board of County Commissioners make the following findings:

#### FINDINGS:

- A. Certain conduct occurring at sexually oriented businesses creates secondary impacts that are detrimental to the public health, safety and general welfare of the citizens of the county, and therefore such conduct must be regulated.
- B. Regulation of sexually oriented business is necessary because in the absence of such regulation significant criminal activity has historically and regular occurred.
- C. It is necessary to license entertainers in the erotic entertainment industry to prevent the exploitation of minors; to ensure that each such entertainer is an adult; and to ensure that such entertainers have not assumed a false name, which would make regulation of the entertainer difficult or impossible.
- D. Increased levels of criminal activities occur in the vicinity of sexually oriented businesses.
- E. Regulation of sexually oriented businesses should be developed to prevent deterioration and/or degradation of the vitality of the community before the problem exists rather than in response to an existing problem.
- F. In other entities sexually oriented businesses are increasingly associated with ongoing prostitution, disruptive conduct and criminal activity. Such businesses are not currently subject to effective regulation and therefore constitute an immediate threat to the public peace, health and safety.
- G. On February 13, 1998 the Board of County Commissioners approved a moratorium for six months which prohibited the location of any sexually oriented businesses in unincorporated Mason County. On June 2, 1998, October 27, 1998 and April 20, 1999 (for one year) the Board of County Commissioners extended the moratorium.
- H. To avoid problems that may arise during the planning efforts directed toward the development of a sexually oriented business ordinance the moratoriums have been implemented per the contents of RCW 36.70A.390.
- I. Public hearings have been conducted by the Board of County Commissioners on March 10, 1998, July 14, 1998, December 8, 1998 , May 25, 1999 and June 13, 2000.
- J. Mason County currently has in effect an erotic dance studio ordinance (34-83, Mason County Code Chapter 5.19) that provides for regulations applicable to a fixed place of business which emphasizes and seeks, through one or more dancers,

to arouse or excite the patrons' sexual desires. However, the land use regulations currently in effect in the county do not provide sufficient definitive criteria with which the county can address the concerns of county residents and properly evaluate and condition the siting of sexually oriented businesses such as erotic retail establishments, massage parlors, erotic theater's, erotic arcade's, erotic arcade devices or erotic arcade stations or booths.

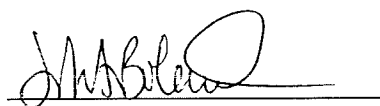
- K. Washington State's permissive vested rights doctrine, which allows many land use applications to vest to land use regulations which are in effect early in the application process, could enable applications for sexually oriented businesses to vest to inadequate regulations while the county studies the changes needed in those regulations. This would undermine effective county planning for these businesses.
- L. A moratorium on further processing of applications is necessary while the county studies the issues inherent to the establishment of sexually oriented businesses.

CONCLUSIONS:

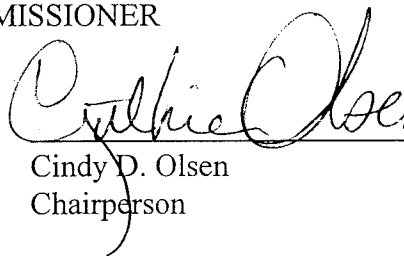
- A. The Board concludes that the county will not process any land use permit applications for sexually oriented businesses for a period of six months beginning April 25, 2000. Unless, the applications were complete and submitted to the Mason County Department of General Services or the Department of Community Development prior to the effective date of the first moratorium (January 13, 1998). The county has the ability to extend the moratorium for additional six month periods in compliance with the contents of RCW 36.70A.390.
- B. The Board concludes that the county shall study the issues inherent in the establishment of sexually oriented businesses and develop appropriate land use controls.

DATED THIS 13th DAY of June, 2000.

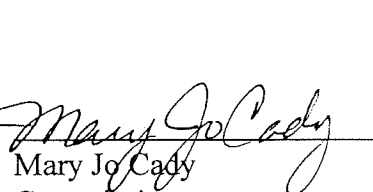
BOARD OF COUNTY COMMISSIONER



John A. Bolender  
Commissioner



Cindy D. Olsen  
Chairperson



Mary Jo Cady  
Commissioner