

RESOLUTION NUMBER 108-02

A RESOLUTION FOR A 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 first established a 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, a moratorium continues to be appropriate in order to allow time for the planning and public process necessary for the adoption of an ordinance to address this issue;

NOW, THEREFORE, BE IT RESOLVED THAT:

The Mason County Board of Commissioners hereby establish a moratorium whereby Mason 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 with said moratorium to remain in effect until December 18, 2002.

Dated this 6th day of August, 2002.

Board of Commissioners
Mason County, Washington

ATTEST:



Clerk of the Board

APPROVED AS TO FORM :


Deputy Prosecuting Attorney


Herb Baze, Commissioner


Bob Holter, Commissioner


Wesley E. Johnson, Commissioner

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 pubic 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.