

ORIGINAL

0163-ORD
06/11/98

CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 5073

AN ORDINANCE Imposing a Moratorium on the Acceptance of Applications for and Issuance of Land Use, Building and Development Permits and Business Licenses for Adult Entertainment and Adult Retail Uses; and Declaring an Emergency.

WHEREAS, the Bellevue City Council has previously determined, based on public testimony and other evidence and through findings of fact detailed in Ordinance Nos. 4602, 4692, and 4735, that adult retail and adult entertainment uses cause secondary effects that are detrimental to the public health, safety, morals and general welfare of the citizens of the City of Bellevue; and

WHEREAS, there are present within the City of Bellevue several adult retail establishments, whose stock in trade is devoted in whole or in substantial or significant part to books, magazines, cards, pictures, periodicals, prerecorded video tapes, disks, film or other such media, instruments, devices, equipment, paraphernalia, toys, novelties, games, clothing or other merchandise which are distinguished or characterized by an emphasis on matter depicting, describing or relating to specified anatomical areas, specified sexual activities, and sexual conduct, as those terms are defined in Bellevue Land Use Code Section 20.50.046 and Bellevue City Code Section 5.08.010; and

WHEREAS, there is evidence that the City could, in the near future, receive applications for adult entertainment or adult retail uses that would significantly increase the amount of commercial space characterized by such uses and located within the City; and

WHEREAS, the Bellevue City Code may not currently adequately address the various impacts to public health, safety, morals and general welfare that these uses present; and

WHEREAS, other cities in the surrounding Seattle-Tacoma metropolitan region and elsewhere in the country, have adopted ordinances regulating adult entertainment and adult retail uses, based upon evidence of the negative secondary effects of such uses;

WHEREAS, the citizens of Bellevue would be well-served if City Council members and city staff more fully addressed and understood the potential negative secondary effects, in the form of health, safety and economic and aesthetic impacts, that these uses impose upon neighboring properties and on the community as a whole; and

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WHEREAS, the City needs to review existing information on the negative secondary effects of adult entertainment and adult retail uses, and to review the City's Code and ordinances in a comprehensive fashion to determine whether they sufficiently address the secondary effects of such uses; and

WHEREAS, RCW 35A.63.220 and RCW 36.70A.390 authorize cities to adopt moratoria, provided a public hearing is held within sixty (60) days of their adoption; and

WHEREAS, the City should impose a moratorium barring the acceptance of all applications for and issuance of business licenses, building permits, land use permits, or other licenses or permits under the Bellevue City Code for adult entertainment or adult retail uses, until additional review has been completed and any necessary code revisions have been adopted by the Bellevue City Council; and

WHEREAS, the Bellevue City Council understands that a portion or all of the materials sold by adult entertainment or adult retail uses may be protected by the First Amendment to the United States Constitution and/or Article 1, Section 5 of the Washington State Constitution; and

WHEREAS, the Bellevue City Council does not intend, by this ordinance, to infringe upon any party's free speech rights, and urges any court reviewing this ordinance to interpret it in such a manner so as to determine that it is constitutional; and

WHEREAS, the purpose of this ordinance is to provide, during the moratorium period, time in which the City Council may study its existing Code, ordinances and the negative secondary effects of such uses; determine whether any additional, reasonable regulation is necessary to mitigate the secondary effects; and prepare for adoption, suitable time, place and manner restrictions narrowly tailored to regulate such uses; and now, therefore,

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Moratorium. The Bellevue City Council hereby declares a moratorium upon the acceptance of applications for and the issuance of any business license, building, land use or development permit or approval (including variances and rezones), or any other permit, license or approval required to construct, install, relocate, or operate any adult entertainment or adult retail use as defined in the Bellevue City Code or described in the recitals of this ordinance. Further, during the pendency of this moratorium, no information or submissions on any pending applications for adult entertainment or adult retail uses shall be accepted by City staff.

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Section 2. Duration. This moratorium shall be in effect for 180 days following the effective date of this ordinance, and shall expire at midnight on December 12, 1998, unless sooner terminated by or extended by action of the City Council.

Section 3. Public Hearing. Pursuant to RCW 36.70A.390, the Bellevue City Council shall hold a public hearing on this moratorium within sixty (60) days of its adoption, or no later than August 14, 1998. Immediately after the public hearing the City Council shall adopt findings on the subject of this moratorium, to either justify its continued imposition or cancel the moratorium.

Section 4. Staff Direction. During the moratorium, the City staff is directed to survey existing studies and evidence and identify any negative secondary effects that are associated with adult retail portions of adult entertainment uses; determine whether any mechanisms exist by which these effects may be mitigated; and identify alternative, available means and locations within the City by which the City may accommodate access to constitutionally protected material, if any, and make recommendations to the City Council concerning any necessary and appropriate legislation and/or code amendments.

Section 5. Temporary Use Permits. Notwithstanding the moratorium in Section 1 above, any business that regularly features or devotes a substantial portion of its trade or business to entertainment or material characterized by an emphasis on specified anatomical areas, specified sexual activities, or specified sexual conduct, as those terms are defined in Bellevue Land Use Code Section 20.50.046 and Bellevue City Code Section 5.08.010, and which satisfies all criteria applicable to its underlying land use district, may be permitted under a temporary use permit if it meets the following criteria:

A. It is not located or proposed to be located within six hundred-sixty feet (660') of:

1. Any residential land use district (R-1 - R-30);
2. Any single or multiple-family residence;
3. Any public or private school preschool - twelfth grade);
4. Any religious facility;
5. Any public park;
6. Any child care service or day care center;

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7. Any community youth center;
8. Any massage parlor; or
9. Any other adult entertainment or adult retail use or activity.

For purposes of this subsection, 660 feet shall be measured pursuant to the requirements of Bellevue Land Use Code Section 20.20.127.C.

B. It meets other applicable criteria under the Bellevue City Code, including those under Chapter 20.30.M.140, for issuance of a temporary use permit.

C. Any license, permit or authorization issued and any temporary use established pursuant to this Section 5. shall terminate upon the expiration of the temporary period prescribed by the Bellevue Land Use Code for temporary use permits, and the holder of such license, permit or authorization and or the person or entity establishing such temporary use shall acquire no right to the continuation of such license, permit, authorization or use beyond such temporary period. Continued operation of such use beyond the expiration of such temporary period shall require a new application for a license, permit or authorization and shall be subject to any regulations adopted during the period of the moratorium established by this Ordinance, or any extension thereof.

Section 6. Recitals and Findings of Fact Incorporated. The recitals set forth on pages 1 through 3 of this Ordinance, and the findings of fact contained in Ordinance Nos. 4602, 4692, and 4735, are incorporated as if fully set forth herein and shall serve as Findings of Fact. The City Council may amend such findings in whole or in part and adopt additional findings following the public hearing described in Section 3 above.

Section 7. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 8. Ratification. Any act consistent with the authority granted herein and prior to the effective date of this Ordinance is hereby ratified and affirmed.

Section 9. Public Emergency. The City Council finds that a public emergency exists, and that this ordinance is a public emergency ordinance necessary for the protection of the public health, safety and peace, and should therefore take effect upon adoption. The facts upon which such determination of emergency is based are as follows:

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1. The City has received increasing reports of illegal activity associated with existing adult retail uses; and
2. The existing provisions of the Bellevue City Code do not adequately address the secondary effects associated with existing and potential adult retail uses.

The Council further finds that it is essential to the public interest that these defects be cured immediately in order to avoid the continuation of and/or increases in such illegal activity, and to avoid the establishment and/or expansion of businesses in the City within which such illegal activities occur or with which such illegal activities are associated before new regulations to address such illegal activities can be adopted by the City Council and become effective.

Section 6. In accordance with RCW 35A.13.190 this ordinance, as a public emergency ordinance, shall take effect and be in force immediately upon adoption.

PASSED by a majority plus one of the whole membership of the City Council this 15th day of June, 1998 and signed in authentication of its passage this 15th day of June, 1998.

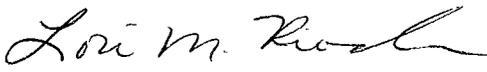
(SEAL)



Mike Creighton, Mayor

Approved as to form:

Richard L. Andrews, City Attorney



Lori M. Riordan, Assistant City Attorney

Attest:



Myrna L. Basich, City Clerk
Published June 19, 1998