

December 30, 1994  
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Introduced By: Jane Hague

Proposed No.: 95-006

ORDINANCE NO. **11647**

1  
2 AN ORDINANCE relating to adult use  
3 establishments, enacting a moratorium on  
4 applications for permits and licenses  
5 concerning adult use establishments and  
6 declaring an emergency.

7 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

8 SECTION 1. Findings. Based on evidence, information,  
9 documents and materials submitted to and reviewed by the King  
10 County Council and other municipalities and jurisdictions in  
11 this region, including but not limited to the record  
12 supporting passage of Ordinance 9915, the King County Council  
13 makes the following findings of fact:

14 A. "Adult use establishments," and "adult use  
15 facilities," as those terms are defined in the King County  
16 Code, include adult book and video stores and establishments  
17 offering panorama, peep shows, topless dancing or nude  
18 dancing. There are numerous such establishments currently  
19 operating in the incorporated and unincorporated areas of  
20 King County.

21 B. There is increasing evidence that the use of  
22 property to operate, conduct or maintain adult use  
23 establishments is a use which, because of its very nature,  
24 has serious objectionable operational characteristics. Those  
25 operational characteristics include a wide range of criminal  
26 and other unlawful activities that have regularly and  
27 historically occurred near adult use establishments. The

1 unlawful secondary effects of adult use establishments  
2 include prostitution, narcotics and liquor law violations,  
3 breaches of the peace, assaults, and sexual conduct involving  
4 contact between patrons, and between entertainers and  
5 patrons, some of whom have been minors.

6 C. The objectionable operational characteristics  
7 related to the operation of adult use establishments pose a  
8 threat to the public health, safety and welfare of the  
9 citizens of King County. This threat is most serious when  
10 conducted in close proximity to places where minors gather.

11 D. The need to protect minors from the unlawful  
12 activities associated with the operation of adult use  
13 establishments is compelling.

14 E. The objectionable characteristics associated with  
15 adult use establishments also include declines in adjacent  
16 property values, neighborhood blight, and other secondary  
17 effects that threaten the quality of County life.

18 F. In response to the above concerns, the Council  
19 enacted Ordinance 9915.

20 G. In October 1992, Hon's Entertainment Corporation,  
21 which operates a nude dance club in the Shoreline area of  
22 unincorporated King County, filed suit, under King County  
23 Superior Court Cause Number 92-2-23360-6, against King County  
24 challenging the constitutionality of Ordinance 9915. Hon's  
25 Entertainment alleged that the 660-foot set-back restrictions  
26 imposed by Ordinance 9915 denied reasonable alternative  
27 avenues of communication and that the Ordinance was not a  
28 content neutral time, place, and manner regulation narrowly  
29 tailored to serve a substantial governmental interest. The  
30 court found that the ordinance was indeed a content neutral,

1 time, place and manner regulation narrowly tailored to meet a  
2 substantial governmental interest. However, following a two  
3 and one-half day trial, the court concluded that the 660-foot  
4 set-back restrictions did not allow for a constitutionally  
5 sufficient number of alternative sites for nude dance clubs  
6 to locate and that the set-back restrictions were therefore  
7 unconstitutional.

8 H. The court also determined that alternative set-back  
9 requirements, such as 400 or 500 feet rather than 660 feet,  
10 could have accomplished the lawful purposes of the ordinance  
11 and provided a greater number of alternative sites. Although  
12 the court issued its decision on December 19, 1994, no final  
13 judgment has yet been entered. Entry of judgment, unless  
14 stayed pending an appeal, will render the set-back  
15 restrictions unconstitutional and unenforceable. With no  
16 set-back restrictions, an adult entertainment establishment  
17 could conceivably locate anywhere in various commercially  
18 zoned areas throughout unincorporated King County, thereby  
19 posing the immediate threat to the public health, safety and  
20 welfare that Ordinance 9915 was designed to combat.

21 I. King County needs time to review its present zoning  
22 and licensing restrictions and determine how to provide a  
23 constitutionally sufficient number of sites for the location  
24 of adult use establishments. To fulfill the purposes and  
25 policies embodied in Ordinance 9915 while maintaining  
26 consistency with constitutional requirements, the County must  
27 conduct a number of studies and surveys to provide the  
28 factual basis from which the Council may fashion a  
29 constitutionally sufficient ordinance regulating adult use  
30 establishments or facilities. For example, studies or

1 surveys may be required to ascertain the current uses of the  
2 approximately 1,500 acres where zoning, absent any setbacks,  
3 would permit adult establishments or facilities in  
4 unincorporated King County. Surveys and studies may be  
5 necessary to determine how best to ensure that separation is  
6 maintained between adult use establishments and the gathering  
7 places of minors. Further studies are necessary to determine  
8 whether the purposes of Ordinance 9915 are best addressed by  
9 set-back requirements and whether these setbacks should be  
10 400 or 500 feet as suggested by the court or some other  
11 distance. Depending upon the findings of these studies,  
12 further studies may be necessary to determine whether better  
13 control of the harmful secondary effects of adult use  
14 establishments are best met by dispersing adult use  
15 establishments, by concentrating them, by allowing adult use  
16 establishments in other zones, or by other appropriate  
17 regulation.

18 J. In the absence of this ordinance and until the  
19 Council has an opportunity to adopt new, constitutionally  
20 sufficient regulations to replace the invalidated set-back  
21 requirements, new applications to build and operate adult use  
22 establishments could lawfully obtain permits to locate in  
23 commercially zoned areas, including areas where minors are  
24 known to gather. In addition, the County would have no basis  
25 by which to deny a business license for adult use  
26 establishments or facilities in such areas. Such results  
27 would be contrary to the substantial governmental interest in  
28 preventing the unlawful secondary effects described above and  
29 would prevent the Council from carefully and rationally  
30 providing for appropriate locations and regulations and

1 continuing to carry out the lawful purposes of Ordinance 9915  
2 recognized by the court.

3 Section 2. Zoning Moratorium. No building permit shall  
4 be issued, nor shall any building permit application be  
5 accepted, for any "adult use establishment" or "adult use  
6 facility" as those terms are defined in KCC § 21.04.020 and  
7 KCC § 21A.06.035, respectively.

8 Section 3. Licensing Moratorium. No business license  
9 shall be issued, nor shall any business license application  
10 be accepted, for any place of adult entertainment, panoram or  
11 peep show as those terms are defined in KCC § 6.08.010;  
12 provided, however, that this licensing moratorium shall not  
13 prohibit license renewals for adult use establishments  
14 lawfully in existence as of the effective date of this  
15 ordinance.

16 Section 4. Declaration of Emergency and Effective Date.  
17 Based on the findings contained in Section 1 of this  
18 ordinance the council finds that an emergency exists in that  
19 unless this ordinance takes effect immediately adult use  
20 establishments with harmful secondary effects may seek or  
21 gain licensing or building permit approval before a  
22 constitutionally sufficient permanent ordinance is enacted  
23 following the studies called for in this ordinance. This  
24 ordinance is necessary for the immediate preservation of  
25 public peace, health or safety or for the support of county  
26 government and its existing public institutions and shall  
27 take effect and be in full force immediately upon its  
28 adoption.

29 Section 5. Effective Period. The moratorium shall  
30 continue in effect for 180 days from the effective date of

1 the ordinance, unless earlier repealed in an ordinance  
2 establishing new land use regulations governing the location  
3 of adult use establishments, whichever is sooner.

4 Section 6. SEPA Exemption. Pursuant to KCC § 20.44.040  
5 and Washington Administrative Code § 197-11-880, the County  
6 Council finds that an exemption under SEPA for this action is  
7 necessary to prevent an imminent threat of serious  
8 environmental degradation through continued development under  
9 the current regulations. The County shall conduct SEPA  
10 review of any permanent regulations proposed to replace this  
11 moratorium.

12 Section 7. Duties of DDES. The Department of  
13 Development and Environmental Services, in cooperation with  
14 the Licensing and Regulatory Services Division of the  
15 Department of Executive Administration and the Office of the  
16 Prosecuting Attorney, shall prepare a study of the current  
17 adult use entertainment regulations and alternative methods  
18 of addressing the harmful secondary effects of such  
19 establishments. This study shall address issues identified  
20 in Section 1.I of this ordinance. The department shall  
21 transmit the report, together with proposed legislation to  
22 implement its recommendations, to the council on or before  
23 May 1, 1995.

24 Section 8. Waiver of Notice. Recognizing that notice  
25 is not required for moratoria ordinances under state law, the  
26 County provides that the temporary emergency provisions in  
27 this ordinance shall take effect notwithstanding the  
28 requirements of KCC § 1.24.110.

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Section 9. Public Hearing. Pursuant to RCW §  
36.70A.390, the Council shall hold a public hearing on this  
ordinance within 60 days of its adoption.

Section 10. 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.

INTRODUCED AND READ for the first time this 3<sup>rd</sup>  
day of January, 1995.

PASSED by a vote of 12 to 0 on this 3<sup>rd</sup> day of  
January, 1995.

KING COUNTY COUNCIL  
KING COUNTY, WASHINGTON

Kent Pullen  
Chair

ATTEST:

Gerald G. Peterson  
Clerk of the Council

APPROVED this 12<sup>th</sup> day of January, 1995.

Ray Lohr  
King County Executive

Attachments: None