ORDINANCE #752

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ILWACO, WASHINGTON EXTENDING THE MORATORIUM ON THE ACCEPTANCE OF APPLICATIONS FOR AND ISSUANCE OF LAND USE, BUILDING AND DEVELOPMENT PERMITS, AND BUSINESS LICENSES, FOR ADULT BUSINESS USES.

WHEREAS, there is evidence that the City could, in the near future, receive applications for Adult Business Uses in the City; and

WHEREAS, the Ilwaco Municipal 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 this State and elsewhere in the country have adopted ordinances regulating Adult Business Uses based on evidence of the negative secondary effects of such uses; and

WHEREAS, the citizens of Ilwaco would be well served if City Council members and City Staff had an opportunity to more thoroughly consider all aspects of zoning and business regulations relating to Adult Business Uses and more fully addressed and understood the potential negative secondary effects, in the form of health, safety and economic and aesthetic impacts, those uses impose upon neighboring properties and on the community as a whole; and

WHEREAS, the City needs to review existing information on the negative secondary effects of Adult Business Uses, and to review the City's Code and ordinance in a comprehensive fashion to determine whether they sufficiently address the secondary effects of such uses; 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 until additional review has been completed and any necessary code revisions have been adopted by the Ilwaco City Council and become effective; and

WHEREAS, the Ilwaco City Council understands that a portion of or all of the materials sold by Adult Business Uses may be protected by the First Amendment of the U.S. Constitution and/or Article 1, Section 5 of the Washington State Constitution; and

WHEREAS, the Ilwaco City Council does not intend, by this Ordinance, to impermissibly infringe upon any party's free speech rights, and urges any court reviewing this Ordinance to interpret it in such a manner and 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 Adult Business Uses, determine what reasonable regulation is necessary to mitigate the secondary effects; and prepare for adoption of suitable time, place and manner restriction narrowly tailored to regulate such uses by the least restrictive means available; and

WHEREAS, the City of Ilwaco is continuing to pursue its examination of the prospective impacts on the unique, family-oriented, tourism-based economy of the City during the period of the moratorium established by Ordinance No. 744; and

WHEREAS, additional time for further examination of the implications of such regulation is necessary; and

WHEREAS, the City of Ilwaco desires to continue its existing moratorium on the operation of Adult Business without a business license authorizing said activity, as authorized pursuant to RCW 35A.63.220 and RCW 36.70A.390; and

WHEREAS, the City of Ilwaco desires to make violations of this ordinance criminal offenses;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ILWACO HEREBY ORDAINS AS FOLLOWS:

Section 1. Moratorium. The Ilwaco City Council hereby declares a continued moratorium upon the acceptance of applications for and the issuance of any business use 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 Business Use (defined below) as described in the recitals of this Ordinance. Further, during the pendency of this moratorium, no information or submission on any pending applications for adult entertainment or adult retail uses shall be accepted by City staff.

Section 2. Definitions. Adult Business Uses, for purposes of this Ordinance, includes Adult Theaters, Adult Entertainment Establishments, Panorams and Peepshows and Adult Retail, which are defined as follows:

(1) *Adult Theater* shall mean a building or enclosure or any portion thereof used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" (defined below) for observation by patrons therein;

(2) *Adult entertainment establishment* shall mean a cabaret, nightclub or other establishment which features go-go dancers, exotic dancers, strippers, male or female impersonators, similar entertainers or attendants, who are so clothed or dressed as to emphasize "specified anatomical areas" and/or whose performance or other activities included or mimic "specified sexual activities" (defined below);

(3) *Panoram or peepshow* shall mean any establishment which provided a device which, upon insertion of a coin or by any other means of payment, including

membership fee or other charge, exhibits or displays a picture or view by film, video or by any other means, including observation of live performances;

(4) *Adult retail* shall mean a retail establishment which, for money or any other form of consideration either:

a. Has as one of its principal purposes to sell, exchange, rent, loan, trade, transfer, and/or provide for viewing, off the premises, any adult oriented merchandise; or

b. Provides, as its substantial stock in trade, for the sale, exchange, rental, loan, trade, transfer, and/or for viewing or use, off the premises, any adult oriented merchandise;

(5) *Adult oriented merchandise* shall mean any goods, products, commodities, or other wares, including but not limited to, videos, CD ROMS, DVD's, magazines, books, pamphlets, posters, cards, periodicals, or non-clothing novelties which depict, describe, or simulate specified anatomical areas of specified sexual activities (define below);

(6) *Specified anatomical areas* shall mean the following:

a. Less than completely and opaquely covered human genitals, anus, pubic region, buttock, or female breast below a point immediately above the top of the areola; or

b. Human male genitals in a discernibly turgid state, even if completely and opaquely covered; and

(7) *Specified sexual activities* shall mean any of the following:

a. Human genitals in a state of sexual stimulation or arousal;

b. Acts of human masturbation, sexual intercourse, sodomy, oral copulation, or bestiality;

c. Fondling or other erotic touching of human genitals, pubic region, buttocks, or female breasts, of oneself or of one person by another; or

d. Excretory functions as part of or in connection with any of the activities set forth in this section.

Section 3. Duration. This moratorium shall be in effect for an additional 180 days following the expiration of the original moratorium adopted by Ordinance 744, and shall expire at midnight on October 22nd, 2009, unless further extended by the City Council.

Section 4. Staff Direction. During the moratorium, the City Staff is directed to continue its survey of existing studies and evidence and identify any negative secondary effects that are associated with Adult Business Uses; determine whether any mechanisms exist by which these effects may be mitigated; identify the least restrictive of these mechanisms; identify alternative available areas within the City which the City may provide a reasonable means to accommodate means to constitutionally-protected material, if any; and make recommendations to the City Council, or a subcommittee thereof, if appropriate, concerning any necessary and appropriate legislation and/or code amendment.

Section 5. Violations. During the pendency of this moratorium, it shall be unlawful for any person to own or operate an Adult Business as defined herein, without a business license. Each violation of this ordinance shall constitute a misdemeanor punishable by up to 90 days in jail and a fine of up to $1,000.00.

Section 6. Recitals Incorporated. The recitals set forth on pages 1 and 2 of this Ordinance are incorporated as if fully set forth herein.

Section 7. Ratification. Any act consistent with the authority and prior to the effective date of this Ordinance is hereby ratified and affirmed.

Section 8 . Severability. The provisions of this ordinance are declared to be severable and in the event a court of competent jurisdiction declares any portion of this ordinance invalid, the remaining provisions shall be unaffected thereby.

Section 9. Repealer. Any previously enacted ordinance, or part thereof in conflict herewith be and the same hereby is repealed to the extent of such conflict.

Section 10. Effective Date. This ordinance is for the best interest of the City of Ilwaco and an emergency exists making the passage of this ordinance urgent and necessary to the public peace, health, safety and welfare and immediate preservation of the public order of the City of Ilwaco and the same shall take effect immediately upon its passage as provided by law.

PASSED on first reading by at least a majority plus one of the whole membership of the City Council of the City of Ilwaco, Washington and executed by its Mayor this 13th Day of April, 2009.

Aye:_____ Naye:_____ Abstain:_____

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Doug Hubbard, Mayor

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Melissa K. Busby, MBA, City Treasurer