

**WORKING COPY**

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ASF, INC.,

Plaintiff,

v.

CITY OF SEATTLE,

Defendant.

CASE NO. C05-903JLR

ORDER

**I. INTRODUCTION**

This matter comes before the court on Plaintiff's Motion for Partial Summary Judgment (Dkt. # 7). Having read the papers filed in connection with this motion, and having heard oral argument, the court GRANTS Plaintiff's motion.

**II. BACKGROUND**

Plaintiff ASF, Inc. ("ASF") filed suit against Defendant City of Seattle ("City") when it denied ASF's application for an adult entertainment license ("adult entertainment license") and extended a 17-year moratorium on issuing such licenses. Although ASF initiated this action only a few months ago, ASF now moves for summary judgment seeking (1) a declaration that the moratorium is unconstitutional on its face, and (2) an injunction preventing the City from enforcing the moratorium and ordering the City to

1 issue ASF an adult entertainment license (upon submitting an appropriate application).  
2 The City opposes summary judgment, arguing that ASF lacks standing to pursue this  
3 action and that the moratorium is constitutional.

4 Intending to operate an adult cabaret with live erotic dancers, ASF applied for an  
5 adult entertainment license from the City's Office of Revenue and Consumer Affairs on  
6 March 12, 2004. ASF's President, Robert Davis, applied for a general business license,  
7 but failed to apply for the special regulatory license which is also required.<sup>1</sup> According to  
8 Davis, the clerk at the application desk referenced the moratorium on adult entertainment  
9 licenses and advised him to use the standard business application form and note his  
10 intention to apply for an adult entertainment license.<sup>2</sup> Davis followed the clerk's  
11 directions and indicated that he intended to operate "Club Shandri La" in downtown  
12 Seattle, at 1921 Fifth Avenue, a few blocks away from another adult cabaret, Deja Vu.  
13 Three weeks later, Davis received a letter from the City denying his license application in  
14 light of the moratorium and advising him to resubmit "the applicable regulatory license,  
15 background documentation, and applicable fees" once "the moratorium . . . is lifted."  
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19 <sup>1</sup>To obtain an adult entertainment license under the current regulations, an applicant must  
20 apply for a special regulatory license, in addition to a general business license. Schriener Decl. at ¶  
21 3; Seattle Municipal Code ("SMC") § 6.270.040. The application form for an "adult  
22 entertainment premises" license requires the applicant to provide a variety of information not  
23 required by the standard business license application, including the applicant's criminal history and  
24 that of the corporation's officers, directors, managers, and supervisors. Schriener Decl., Exh. A.  
25 Further, to operate an adult cabaret with live erotic dancing, the applicant must possess a "master  
use permit" for a "performing arts theater." McKim Decl. at ¶¶ 3, 5-7. Thus, the applicant must  
comply with both licensing and zoning requirements, as well as general health and building code  
requirements. SMC § 6.270.090.

26 <sup>2</sup>In her declaration, the director who issues adult entertainment licenses states that she tells  
27 applicants that she "cannot process their applications until the moratorium on land use permits is  
28 lifted." Schriener Decl. at ¶ 5. Indeed, the City has not even updated the application form for an  
adult entertainment license in at least five years, as evidenced by the incorrect century and mayor  
listed on the form. Shrinder Decl., Exh. A.

1 Davis Decl., Exh. 3. The City, however, ultimately acquired the 1921 Fifth Avenue  
2 property by eminent domain for the Seattle Monorail Project, leaving Davis to look for a  
3 new location for an adult entertainment cabaret.

4 The City's 17-year moratorium on issuing adult entertainment licenses began in  
5 November 1988 when the City council approved an initial moratorium based on citizens'  
6 concerns about the rise in topless dancing establishments from two to seven, over the  
7 course of two years. The council adopted the initial 180-day moratorium in light of the  
8 "prostitution, disruptive conduct, and other criminal activity" it found were "increasingly  
9 associated" with adult entertainment businesses. Olson Decl., Exh. B. at 1. The council  
10 extended the moratorium on May 24, 1989, and broadened its reach to include adult  
11 panorams (peepshows) and adult motion picture theaters, in addition to topless dance  
12 halls, throughout Seattle. Although the council considered legislation in December 1989  
13 ending the moratorium and creating a new land use category for "adult cabarets," the  
14 council stopped consideration when neighborhood groups appealed the proposal, and  
15 extended the moratorium for adult cabarets only.  
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18 Since 1990, the council has extended the moratorium each year based on its failure  
19 to adopt new land use regulations governing the location of adult cabarets. The City's  
20 reasons for the extensions vary widely from waiting for the state legislature to adopt  
21 legislation regulating adult cabarets, to waiting for King County to adopt regulations, to  
22 waiting for the City to analyze court decisions from across the country striking down or  
23 upholding adult entertainment zoning regulations, to waiting for the Executive to prepare  
24 proposed legislation. Olson Decl., Exh. G-V. For the last six years, the council has  
25 continued the moratorium for one-year increments, "or until new land use regulations  
26 governing the location of adult cabarets take effect, whichever is sooner." *Id.*, Exh. P-V.  
27 With each extension over the past six years, the council has issued a "Work Plan and  
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