

**CITY COUNCIL AGENDA ITEM**  
CITY OF SHORELINE, WASHINGTON

**AGENDA TITLE:** Adoption of Ordinance No. 533 Amending Adult Cabaret Regulations  
**DEPARTMENT:** City Attorney's Office  
**PRESENTED BY:** Ian Sievers, City Attorney

**PROBLEM/ISSUE STATEMENT:**

- There are ambiguities present in Chapter 5.10 of the Shoreline Municipal Code, regulating Adult Cabarets which have become issues in recent license enforcement actions. In particular, the use of criminal history in issuing and suspending licenses should be clarified.
- Recent 9<sup>th</sup> Circuit case law involving ordinances similar to Shoreline's has determined that elements of the adult cabaret licensing regulations may be prior restraint of free expression in violation of constitutional safeguards.

**FINANCIAL IMPACT:**

- There will be no financial impact.

**RECOMMENDATION**

Staff recommends that Council pass proposed Ordinance No. 533 amending adult cabaret regulations and Chapter 5.10 of the Municipal Code.

Approved By: City Manager  City Attorney \_\_\_\_\_

## INTRODUCTION

The City received an inquiry from an attorney representing a number of adult entertainers employed at Club 21 aka Sugar's on Aurora Ave, requesting clarification of the requirement for disclosure of criminal history on applications for entertainers' licenses and the use of the information in denying or suspending licenses. In particular, the letter questioned whether criminal history unintentionally omitted would be considered intentional misrepresentation leading to license denial. The argument was made that the failure to accurately report was not "material" to the application since the City does background checks anyway and prior convictions cannot form the basis of denial. The same attorney subsequently brought a civil action in federal court following two enforcement actions at Sugar's in December 2007 and January 2008. The suit reiterates the challenge to the criminal history licensing requirement among other claims for declaratory relief and damages brought in this suit.

The City Attorney's Office has completed its review of these sections, the licensing practice of the clerk's office and the legislative record created in support of the licensing requirements in Chapter 5.10. Proposed amendments address these licensing and enforcement issues.

In addition, confidentiality of entertainer's license applications and standards of conduct have been addressed in a recent 9<sup>th</sup> Circuit review of an adult entertainment ordinance similar to Shoreline's. Based on the decision in this 2004 case, amendments to standards of conduct and license disclosure are proposed to remove possible challenges of prior restraint of first amendment rights.

## BACKGROUND

1997 was the first time the City addressed the issue of adult entertainment in Shoreline with the adoption of Chapter 5.10 of the Municipal Code. The Council last approved significant amendments and reorganization of this chapter in 2003.

Regulation of adult entertainment must invariably strike a balance between public nudity and sexual conduct with freedom of expression. Both the First Amendment to the United States Constitution<sup>1</sup> and Article 1, Section 5 of the Washington State Constitution<sup>2</sup> guarantee the right to free speech. The U.S. Supreme Court and the Washington Supreme Court have held that nude dancing is protected, albeit in a limited manner, by the right to free speech. One of the cornerstone doctrines within free speech law is "prior restraint". A prior restraint, viewed by the United States Supreme Court as one the greatest impediments to exercise of this right, is a prevention of future speech rather than a punishment for past conduct. Similarly, the Washington Supreme Court defines a prior restraint as "official restrictions imposed upon speech or other forms of expression in advance of actual publication."<sup>3</sup> Prior restraints are presumptively

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<sup>1</sup> "Congress shall make no law ... abridging the freedom of speech ...." U.S. Const., amend I.

<sup>2</sup> "Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that right." Wash. Const., art. I, § 5.

<sup>3</sup> JJR, Inc. v. City of Seattle, 126 Wn.2d 1, 6, 891 P.2d 720 (1995).

unconstitutional, and licensing schemes are traditionally viewed in the prior restraint context. Under the Washington Constitution, a city imposes a prior restraint when it prevents individuals from performing protected nude expression and establishments from showcasing nude dancing. However, in the context of adult entertainment licensing, so long as procedural safeguards are available, the licensing scheme will not be struck down under the general rule.

**Conviction Licensing Requirements.** Staff believes that the intended use of prior convictions in the adult entertainment licensing process is ambiguous. Case law on use of prior convictions as a restriction on adult entertainment licenses is unsettled nationwide. However, two Washington cases that predated our ordinance, one dealing with nude dancing, indicate that prior convictions should not be used to deny the initial license; a fundamental freedom such as expression should not be restrained by abuse of that freedom in the past. This context supports a similar interpretation of SMC 5.10.

A search of the extensive record of the original adoption of this chapter gives little additional insight into the intended use of pre-license convictions. Our ordinance closely resembles Bellevue's adult entertainment ordinance, except that on this point, Bellevue's ordinance is more specific. It requires action against the licensee for the convictions of activity on the premises. This is clearly license action taken only upon convictions after licensing.

Based on the above analysis of chapter 5.10 and case law when the chapter was adopted, it is the apparent intent of our ordinance to use prior convictions to suspend or revoke the license if violations of the chapter or other related crimes occur after issuance of a license. Criminal history before licensing will be used to demonstrate that post license offenses are an ongoing pattern justifying a longer suspension and the licensee will have knowledge of this consequence before the offense is committed.<sup>4</sup> If an entertainer is convicted of one of the listed offenses in SMC 5.10.090(A) after issuance of the license, a 30 day suspension will be imposed. A 90 day suspension will be imposed if the entertainer is convicted of a listed offense after issuance of the license *and* has been convicted of the same offense within the last 24 months. The license will be revoked if the entertainer is convicted of one of the offenses after license issuance *and* has two convictions of the same offense within the last 24 months.

Requesting prior criminal history is necessary. Although the staff attempts to confirm the reported history this may not always occur. For example, an under aged dancer began dancing before application information was verified and was subsequently arrested at Sugar's (a license must be issued without confirmation within 24 hours). Resources for background checks have improved efficiency since the chapter was first adopted, but there is no guarantee that the resources will continue to be available for regular confirmation in the future. Truthful application information is needed for appropriate action on the license if violations occur during the license term. The proposed amendment adds clarification to code section 5.10.090 to assure uniform licensing and enforcement.

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<sup>4</sup> The recent arrests at Sugar's provides further support of the Council's findings in SMC 5.10.005 that illegal sexual activity occurs regularly and repetitively in adult cabarets. The December 2007 enforcement effort resulted in 10 arrests for violating standards of conduct. In the January 2008 enforcement these violations increased to 16, including two for prostitution.

On a related concern, the language in SMC 5.10.030 is strengthened to limit use of inaccurate criminal history to only those associated crimes that are actionable after the license is issued. To make the application easier to complete for the dancer, the question on the application asks for all past crimes except traffic offenses, so that the applicant does not have to be knowledgeable about content of the particular state laws that may be used to enhance a suspension. However, if the applicant does not include a crime that is not a crime associated with adult entertainment, the omission would not be material and the license would not be denied. The history requested has been shortened from five to two years, since the enhanced suspension only considers violations within a two-year period.

**License Confidentiality.** The 9<sup>th</sup> Circuit has recently ruled that prior restraint of free speech associated with adult dancing would occur if patrons of adult clubs could track down dancers by requesting applications with identifying information through a public records request<sup>5</sup>. Dancers would be less likely to be involved in this occupation given this public access. The court found that the atmosphere created by public disclosure laws similar to Washington's constituted a prior restraint on expression. An exemption for licensing information is added to SMC 5.10.040 as a reminder to staff and an assurance to applicants.

**Standards of Conduct.** The same 9<sup>th</sup> Circuit case addressed simulated sex acts as prohibited conduct. This behavior is also prohibited under our standards of conduct in section SMC 5.10.070. As stated by the Court this particular limitation applies to a dancer even if partially clothed, could describe Elvis' gyrating hips, and presents a certain circularity of logic: the ordinance defines adult cabarets by reference to adult live entertainment, then prohibits the presentation. This restriction goes beyond reasonable content neutral time, place and manner restrictions on conduct (such as the four foot rule) and seeks to control expression by dictating what particular movements and gestures a dancer may not make during a performance. The limit of expression is obscenity, which is defined in detail in RCW Chapter 7.48A *Moral Nuisance* (Attachment B). It is suggested that the incorporation of this standard in the standards of conduct is sufficient without adding an overly- broad redefinition of prohibited expression.

### **RECOMMENDATION**

Staff recommends that Council pass proposed Ordinance No. 533 amending adult cabaret regulations and Chapter 5.10 of the Municipal Code.

### **ATTACHMENTS**

**ATTACHMENT A:** Proposed Ordinance 533

**ATTACHMENT B:** Chapter 7.48A RCW.

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<sup>5</sup> *Dream Palace v. County of Maricopa*, 384 F.3d 990 (2004).

**ORDINANCE NO. 533**

**AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON,  
AMENDING CHAPTER 5.10 OF THE SHORELINE MUNICIPAL CODE  
RELATED TO THE REGULATION OF ADULT ENTERTAINMENT  
BUSINESSES**

WHEREAS, recent enforcement actions have demonstrated ambiguity in the use of criminal history in the issuance of adult cabaret licenses;

WHEREAS, Chapter 5.10 should be amended to reflect recent case law protecting free expression involved in adult entertainment;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SHORELINE  
WASHINGTON DO ORDAIN AS FOLLOWS:**

**Section 1. Amendment.** Chapter 5.10 SMC, *Cabarets and Adult Entertainment*, Sections 5.10.030, 5.10.40, 5.10.070 and 5.10.090 are amended as set forth in Exhibit A attached hereto and incorporated herein.

**Section 2. Effective date.** A summary of this ordinance consisting of its title shall be published in the official newspaper of the City and the ordinance shall take effect and be in full force five (5) days after publication.

**ADOPTED BY THE CITY COUNCIL ON JANUARY 12, 2009.**

\_\_\_\_\_  
Cindy Ryu, Mayor

**ATTEST:**

**APPROVED AS TO FORM:**

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Scott Passey  
City Clerk

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Ian Sievers  
City Attorney

Date of Publication: January 15, 2009  
Effective Date: January 20, 2009

## Exhibit A

### **5.10.030 License prohibited to certain classes.**

No license shall be issued under this chapter to:

A. A natural person who has not attained the age of 21 years, except that licenses may be issued to persons who have attained the age of 18 years with respect to cabarets where no intoxicating liquors are served or provided.

B. A limited liability company, unless all managing members thereof are qualified to obtain a license as provided in this chapter.

C. A partnership, unless all general partners thereof are qualified to obtain a license as provided in this chapter.

D. A corporation, unless all the officers and directors thereof are qualified to obtain a license as provided herein.

E. A proposed adult cabaret operator whose place of business does not comply with all applicable requirements of the fire, building, and zoning codes of the city.

F. An applicant for any adult cabaret license who is delinquent on city taxes, fees, fines, or penalties assessed in relation to an adult entertainment.

G. An applicant for an adult cabaret operator's license whose place of business is conducted by an agent, unless such agent has obtained a manager's license.

H. An applicant who ~~has failed attempts to obtain a license by fraud or misrepresentation by intentionally failing to provide material information required on a license application for the issuance of the a license or has made, making, with the intent to mislead, a materially false statement~~<sup>2</sup> No new application shall be accepted for one year. "Material" means any omission or false statement, oral or written, which could have affected the course or outcome of the license application or retention of the license.

I. An applicant who has had a license previously issued under this chapter revoked within one year of the time the applicant seeks a new license.

### **5.10.040 Adult cabaret licenses.**

A. Adult Cabaret Operator's License.

1. All applications for an adult cabaret operator's license shall be submitted to the clerk in the name of the person or entity proposing to conduct an adult cabaret on the business premises and shall be signed by such person and certified as true under penalty of perjury. All applications shall be submitted on a form supplied by the city, and shall be complete when the following information and submittals are provided:

- a. For each applicant: names; any aliases or previous names; driver's license number, if any; Social Security number, if any; business, mailing, and residential address; and business and residential telephone number.
- b. If a corporation, date and place of incorporation, evidence that it is in good standing under the laws of Washington, and name and address of any registered agent for service of process.
- c. Whether the applicant holds any other licenses under this chapter or any license for similar adult entertainment or sexually oriented business, including motion picture theaters and panorams, from the city or another city, county or state, and if so, the names and addresses of each other licensed business.
- d. A summary of the business history of each applicant owning or operating the adult entertainment or other sexually oriented businesses, providing names, addresses and dates of operation for such businesses, and whether any business license or adult entertainment license has been revoked or suspended, and the reason therefor.
- e. For each applicant, any and all criminal convictions or forfeitures within ~~five~~ two years immediately preceding the date of the application, other than parking offenses or minor traffic infractions, including the dates of conviction, nature of the crime, name and location of court and disposition.
- f. For each applicant, a description of business, occupation or employment history for the three years immediately preceding the date of the application.
- g. The location and doing-business-as name of the proposed adult cabaret, including a legal description of the property, street address, and telephone number, together with the name and address of each owner and lessee of the property.
- h. Two two-inch by two-inch color passport-quality photographs of the applicant, taken within six months of the date of application showing only the full face.
- i. Documentation that the applicant has attained requisite age as stated in SMC 5.10.030(A). Any one of the following shall be accepted as documentation of age:
  - i. A motor vehicle operator's license issued by any state bearing the applicant's photograph and date of birth;
  - ii. A state-issued identification card bearing the applicant's photograph and date of birth;
  - iii. An official passport or military ID issued by the United States of America;
  - iv. An immigration card issued by the United States of America.
- j. A scale drawing or diagram showing the proposed configuration of the premises for the adult cabaret, including a statement of the total floor space occupied by the business, and marked dimensions of the interior of the premises. Performance areas, seating areas, manager's office and stations, restrooms and service areas shall be clearly marked on the

drawing. An application for a license for an adult cabaret shall include building plans which demonstrate conformance with SMC 5.10.070(C).

k. A nonrefundable application fee as set forth in the business license fee schedule in SMC 3.01.035 must be paid at the time of filing an application in order to defray the costs of processing the application.

2. Notification of the acquisition of new general partners, managing members, officers or directors, subsequent to the issuance of an adult cabaret license, shall be provided in writing to the city clerk no later than 21 days following such acquisition. The notice required shall include the information required for the original adult cabaret license application.

3. The adult cabaret license, if granted, shall state on its face the name of the person or persons to whom it is issued, the expiration date, the doing-business-as name and the address of the licensed adult cabaret. The permit shall be posted in a conspicuous place at or near the entrance to the adult cabaret so that it can be easily read at any time the business is open.

4. No person granted an adult cabaret license pursuant to this chapter shall operate the adult cabaret business under a name not specified on the license, nor shall any person operate an adult cabaret under any designation or at any location not specified on the license.

5. Upon receipt of any complete application and fee, the clerk shall provide copies to the police department, and to other appropriate city departments or contractors, for a full investigation and review to determine compliance of the proposed adult cabaret with this chapter and other applicable laws. Each adult cabaret operator's license shall be issued with a notification that it shall be subject to revocation for noncompliance of the premises with building and zoning codes and this chapter.

6. In the event the premises are not yet constructed, the departments shall base their recommendation as to premises compliance on their review of the drawings submitted with the application. Any adult cabaret license approved prior to premises construction shall contain a condition that the premises must be inspected prior to occupancy, and determined to be in substantial conformance with the drawings submitted with the application and other applicable building and development regulations.

7. An adult cabaret operator's license shall be issued or the application denied by the clerk within 14 days of the date of filing a complete license application and fee, unless the clerk determines that the applicant has failed to meet any of the requirements of this chapter or provide any information required under this subsection, or that the applicant has made a false, misleading or fraudulent statement of material fact on the application for a license. Upon request of the applicant, the clerk shall grant an extension of time, up to but not to exceed 20 additional days, in which to provide all information required for license application. The time period for granting or denying a permit shall be stayed during the period in which the applicant is allowed an opportunity to properly complete the application. If the clerk finds that the applicant has failed to meet any of the



requirements for issuance of an adult cabaret operator's license, the clerk shall issue a notice of nonissuance in writing, and shall cite the specific reasons therefor.

8. No person granted a license pursuant to this chapter shall operate the adult cabaret under a name not specified in the license, nor shall he or she conduct business under any designation or location not specified in the license.

B. Adult Cabaret Manager's License.

1. No person shall work as a manager at an adult cabaret without an applicable manager's license issued by the city. Each applicant for a manager's license shall complete an application on forms provided by the city containing the information identified below. A nonrefundable application fee as set forth in the business license fee schedule in SMC 3.01.035 shall accompany the application. A copy of the application shall be provided to the police department for its review, investigation and recommendation. All applications for a manager's license shall be signed by the applicant and certified to be true under penalty of perjury. The manager's license application shall require the following information:

a. The applicant's name, home address, home telephone number, date and place of birth, Social Security number, and any stage names or nicknames used in entertaining.

b. The name and address of each business at which the applicant intends to work as a manager.

c. Documentation that the applicant has attained the requisite age as stated in SMC 5.10.030(A). Any one of the following shall be accepted as documentation of age:

i. A motor vehicle operator's license issued by any state bearing the applicant's photograph and date of birth;

ii. A state-issued identification card bearing the applicant's photograph and date of birth;

iii. An official passport or military ID issued by the United States of America; or

iv. An immigration card issued by the United States of America.

d. A complete statement of all convictions of the applicant for any misdemeanor or felony violations in this or any other city, county, or state within ~~five~~ two years immediately preceding the date of the application, except parking violations or minor traffic infractions.

e. A description of the applicant's principal activities or services to be rendered.

f. Two two-inch by two-inch color passport-quality photographs of the applicant, taken within six months of the date of application showing only the full face.

2. The clerk may request additional information or clarification when necessary to determine compliance with this chapter.

3. Upon receipt of the complete application and fee, the clerk shall provide copies to the police department for its investigation and review for compliance with this chapter.

4. A manager's license shall be issued by the clerk by the end of the next business day following receipt of a complete application and fee, unless the clerk determines that the applicant has failed to provide any information required to be supplied according to this chapter, or that the applicant is a person of a class specified in SMC 5.10.030. Upon request of the applicant, the clerk shall grant an extension of time not to exceed 20 additional days in which to provide all information required for license application. If the clerk determines that the applicant has failed to meet any of the requirements for issuance of a manager's license, the clerk shall deny the application in writing and shall cite the specific reasons therefor, including applicable laws. If the clerk fails to approve or deny the application by the end of the next business day, the applicant may, subject to all other applicable laws, commence work as an adult cabaret manager in a duly licensed adult cabaret until notified, in writing, by the clerk that the application has been denied or the final disposition of the appeal if the applicant appeals the clerk's decision.

#### C. Entertainer's License.

1. No person shall work as an entertainer at an adult cabaret without an applicable entertainer's license issued by the city. Each applicant for an entertainer's license shall complete an application on forms provided by the city containing the information identified below. A nonrefundable application fee as set forth in the business license fee schedule in SMC 3.01.035 shall accompany the application. A copy of the application shall be provided to the police department for its review, investigation and recommendation. All applications for an entertainer's license shall be signed by the applicant and certified to be true under penalty of perjury. The entertainer's license application shall require the following information:

a. The applicant's name, home address, home telephone number, date and place of birth, Social Security number, and any stage names or nicknames used in entertaining.

b. The name and address of each business at which the applicant intends to work as an entertainer.

c. Documentation that the applicant has attained requisite age as stated in SMC 5.10.030(A). Any one of the following shall be accepted as documentation of age:

i. A motor vehicle operator's license issued by any state bearing the applicant's photograph and date of birth;

ii. A state-issued identification card bearing the applicant's photograph and date of birth;

iii. An official passport or military ID issued by the United States of America; or

iv. An immigration card issued by the United States of America.

d. A complete statement of all convictions of the applicant for any misdemeanor or felony violations in this or any other city, county, or state within five two years

immediately preceding the date of the application, except parking violations or minor traffic infractions.

e. A description of the applicant's principal activities or services to be rendered.

f. Two two-inch by two-inch color passport-quality photographs of the applicant, taken within six months of the date of application showing only the full face.

2. The clerk may request additional information or clarification when necessary to determine compliance with this chapter.

3. Upon receipt of the complete application and fee, the clerk shall provide copies to the police department for its investigation and review for compliance with this chapter. An entertainer's license shall be issued by the clerk by the end of the next business day following receipt of a complete application and fee, unless the clerk determines that the applicant has failed to provide any information required to be supplied according to this chapter, or that the applicant is a person of a class specified in SMC 5.10.030. Upon request of the applicant, the clerk shall grant an extension of time not to exceed 20 additional days in which to provide all information required for license application. If the clerk determines that the applicant has failed to meet any of the requirements for issuance of an entertainer's license, the clerk shall deny the application in writing and shall cite the specific reasons therefor, including applicable laws. If the clerk fails to approve or deny the application by the end of the next business day, the applicant may, subject to all other applicable laws, commence work as an entertainer in a duly licensed adult cabaret until notified, in writing, by the clerk that the application has been denied or the final disposition of the appeal if the applicant appeals the clerk's decision.

4. Name, address, phone numbers and other identifying information shall be redacted from applications disclosed in response to a public records request.

### **5.10.070 Standards of conduct and operation.**

A. Entertainers and Employees. The following standards of conduct must be adhered to by employees of any adult cabaret while in

any area of an adult cabaret in which members of the public are allowed to be present:

1. No employee or entertainer shall be unclothed or in such less than opaque and complete attire, costume or clothing so as to expose to view any portion of the female breast below the top of the areola or any portion of the pubic region, anus, buttocks, vulva or genitals, except upon a stage at least 18 inches above the immediate floor level and removed at least eight feet from the nearest member of the public.

2. No employee or entertainer mingling with members of the public shall be unclothed or in less than opaque and complete attire, costume or clothing as described in subsection (A)(1) of this section, nor shall any male employee or entertainer at any time appear with his genitals in a discernibly turgid state, even if completely and opaquely covered, or wear or use any device or covering which simulates the same.

3. No employee or entertainer mingling with members of the public shall wear or use any device or covering exposed to view which simulates the breast below the top of the areola, vulva, genitals, anus, any portion of the pubic region, or buttocks.

4. No employee or entertainer shall caress, fondle, or touch any member of the public, including another entertainer unless both such entertainers are on a stage meeting the requirements of subsection (A)(1) of this section, for the purpose of sexual arousal of either party. No employee or entertainer shall permit any member of the public to caress, fondle, or touch any employee or entertainer, for the purpose of sexual arousal of either party.

5. No employee or entertainer shall perform ~~actual or simulated acts of sexual conduct as defined in this chapter, or~~ any act which constitutes a violation of Chapter 7.48A RCW, the Washington Moral Nuisances Statute.

6. No employee or entertainer mingling with members of the public shall conduct any dance, performance or exhibition in or about the nonstage area of the adult cabaret unless that dance, performance or exhibition is performed at a distance of no less than four feet, measured from the forehead of the entertainer to the forehead of the customer paying for the dance, performance, or exhibition.

7. No tip or gratuity offered to or accepted by an adult entertainer may be offered or accepted prior to any performance, dance or exhibition provided by the entertainer. No entertainer performing upon any stage area shall be permitted to accept any form of gratuity offered directly to the entertainer by any member of the public. Any gratuity offered to any entertainer performing upon any stage areas must be placed into a receptacle provided for receipt of gratuities by the adult cabaret or provided through a manager on duty on the premises. Any gratuity or tip offered to any adult entertainer conducting any performance, dance or exhibition in or about the nonstage area of the adult cabaret shall be placed into the hand of the adult entertainer or into a receptacle provided by the adult entertainer, and not upon the person or into the clothing of the adult entertainer.

#### **5.10.090 License suspension and revocation – Hearing.**

~~A. The clerk may suspend or revoke any license issued under the provisions of this chapter at any time where the same was procured by fraud or false representations of fact, or for the violation of, or failure to comply with, the provisions of this chapter or the provisions of any applicable fire, building or zoning code.~~

A.B. A license procured by fraud or misrepresentation shall be revoked. Where other violations of this chapter or other applicable offenses ordinances, statutes or regulations are found, to have been committed by the licensee during the term of a license issued under this chapter, the license shall be denied or suspended for a period of 30 days upon the first such violation, 90 days upon the for a second violation within a 24-month period, and revoked for third and subsequent violations within a 24-month period, not including

periods of suspension. ~~“Other applicable ordinances, statutes or regulations”~~ “Other applicable offenses” are:

1. ~~A conviction of~~ Chapter 9A.44 RCW, Sex Offenses; or
2. ~~A conviction of~~ Chapter 9A.88 RCW, Indecent Exposure; or
3. ~~A conviction of~~ Chapter 9.68 RCW, Obscenity and Pornography; or
4. ~~A conviction of~~ Chapter 9.68A RCW, Sexual Exploitation of Children; or
5. ~~A conviction of~~ Chapter 69.50 RCW, Washington Uniform Controlled Substances Act.
6. Local laws of other jurisdictions substantially similar to this chapter.

~~C-B.~~ The clerk shall issue and mail to the licensee the decision to suspend or revoke the license at least 14 days prior to the effective date of the action. Such notice shall inform the licensee of the right to appeal the decision to the hearing examiner or other designated hearing body, pursuant to SMC 5.10:060, and shall state the effective date of such revocation or suspension and the grounds for revocation or suspension. The decision of the clerk shall be stayed during the pendency of any appeal to the hearing examiner or appeal of the hearing examiner’s decision to superior court.

**Attachment B****Chapter 7.48A RCW  
Moral nuisances**Chapter Listing**RCW Sections**

- 7.48A.010 Definitions.
- 7.48A.020 Moral nuisances -- Declaration of.
- 7.48A.030 Civil actions -- Who may bring.
- 7.48A.040 Maintenance of moral nuisance -- Fine -- Maximum.
- 7.48A.050 Fines -- Payment.
- 7.48A.060 Exceptions to application of chapter.
- 7.48A.070 Findings.
- 7.48A.080 Temporary injunction.
- 7.48A.090 Restraining order -- Service -- Violation of order or injunction.
- 7.48A.100 When bond or security not required.
- 7.48A.110 Hearing -- Service of notice.
- 7.48A.120 Production of discovery materials -- Temporary injunction.
- 7.48A.130 Precedence of hearing on injunction.
- 7.48A.140 Violation of order or injunction -- Penalties.
- 7.48A.900 Severability -- 1982 c 184.
- 7.48A.901 Severability -- 1989 c 70.

**Notes:**

Drug nuisances -- Injunctions: Chapter 7.43 RCW.

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**7.48A.010  
Definitions.**

The definitions set forth in this section shall apply throughout this chapter.

(1) "Knowledge" or "knowledge of such nuisance" means having knowledge of the contents and character of the patently offensive sexual or violent conduct which appears in the lewd matter, or knowledge of the acts of lewdness or prostitution which occur on the premises, or knowledge that controlled substances identified in Article II of chapter 69.50 RCW and not authorized by that chapter, are manufactured, delivered or possessed, or where any such substance not obtained in a manner authorized by chapter 69.50 RCW is consumed by ingestion, inhalation, or injection or any other means.

(2) "Lewd matter" is synonymous with "obscene matter" and means any matter:

(a) Which the average person, applying contemporary community standards, would find, when considered as a whole, appeals to the prurient interest; and

(b) Which explicitly depicts or describes patently offensive representations or descriptions of:

(i) Ultimate sexual acts, normal or perverted, actual or simulated; or

(ii) Masturbation, fellatio, cunnilingus, bestiality, excretory functions, or lewd exhibition of the genitals or genital area;  
or

(iii) Violent or destructive sexual acts, including but not limited to human or animal mutilation, dismemberment, rape or torture; and

(c) Which, when considered as a whole, and in the context in which it is used, lacks serious literary, artistic, political, or scientific value.

(3) "Lewdness" shall have and include all those meanings which are assigned to it under the common law.

(4) "Live performance" means any play, show, skit, dance, or other exhibition performed or presented to or before an audience of one or more, in person or by electronic transmission, with or without consideration.

(5) "Matter" shall mean a live performance, a motion picture film, or a publication or any combination thereof.

(6) "Motion picture film" shall include any:

(a) Film or plate negative;

(b) Film or plate positive;

(c) Film designed to be projected on a screen for exhibition;

(d) Film, glass slides, or transparencies, either in negative or positive form, designed for exhibition by projection on a screen;

(e) Video tape or any other medium used to electronically reproduce images on a screen.

(7) "Person" means any individual, partnership, firm, association, corporation, or other legal entity.

(8) "Place" includes, but is not limited to, any building, structure, or places, or any separate part or portion thereof, whether permanent or not, or the ground itself.

(9) "Prurient" means that which incites lasciviousness or lust.

(10) "Publication" shall include any book, magazine, article, pamphlet, writing, printing, illustration, picture, sound recording, or coin-operated machine.

(11) "Sale" means a passing of title or right of possession from a seller to a buyer for valuable consideration, and shall include, but is not limited to, any lease or rental arrangement or other transaction wherein or whereby any valuable consideration is received for the use of, or transfer of possession of, lewd matter.

[1990 c 152 § 4; 1988 c 141 § 2; 1982 c 184 § 1.]

**Notes:**

**Severability – 1990 c 152:** See note following RCW 7.48.050.

**Severability – 1988 c 141:** See RCW 7.43.900.

**7.48A.020**

**Moral nuisances — Declaration of.**

The following are declared to be moral nuisances:

(1) Any and every place in the state where lewd films are publicly exhibited as a regular course of business, or possessed for the purpose of such exhibition, or where lewd live performances are publicly exhibited as a regular course of business;

(2) Any and every lewd film which is publicly exhibited, or possessed for such purpose at a place which is a moral nuisance under this section;

(3) Any and every place of business in the state in which lewd publications constitute a principal part of the stock in trade;

(4) Every place which, as a regular course of business, is used for the purpose of lewdness or prostitution, and every such place in or upon which acts of lewdness or prostitution are conducted, permitted, carried on, continued, or exist;

(5) All houses, housing units, other buildings, or places of resort where controlled substances identified in Article II of chapter 69.50 RCW and not authorized by that chapter, are manufactured, delivered, or possessed, or where any such substance not obtained in a manner authorized by chapter 69.50 RCW is consumed by ingestion, inhalation, injection, or any other means.

[1990 c 152 § 5; 1988 c 141 § 3; 1982 c 184 § 2.]

**Notes:**

**Severability -- 1990 c 152:** See note following RCW 7.48.050.

**Severability -- 1988 c 141:** See RCW 7.43.900.

**7.48A.030**

**Civil actions — Who may bring.**

Any of the following parties may bring a civil action in the superior court of any county where a moral nuisance is alleged to have been maintained:

- (1) The prosecuting attorney for the county where the alleged moral nuisance is located;
- (2) The city attorney for the city where the alleged moral nuisance is located; or
- (3) The attorney general.

The rules of evidence, burden of proof, and all other rules of court shall be the court rules generally applicable to civil cases in this state: PROVIDED, That the standard of proof on the issue of obscenity shall be clear, cogent, and convincing evidence.

[1982 c 184 § 3.]

**7.48A.040**

**Maintenance of moral nuisance — Fine — Maximum.**

(1) No person shall with knowledge maintain a moral nuisance.

(2) Upon a determination that a defendant has with knowledge maintained a moral nuisance, the court shall impose a civil fine and judgment of an amount as the court shall determine to be appropriate. In imposing the civil fine, the court shall consider the wilfulness of the defendant's conduct and the profits made by the defendant attributable to the lewd matter, lewdness, or prostitution, whichever is applicable. In no event shall the civil fine exceed the greater of twenty-five thousand dollars or these profits.

[1985 c 235 § 1; 1982 c 184 § 4.]

**Notes:**

**Severability -- 1985 c 235:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 235 § 4.]



**7.48A.050****Fines — Payment.**

All civil fines assessed under RCW 7.48A.040 shall be paid into the general treasury of the governmental unit commencing the civil action.

[1985 c 235 § 2; 1982 c 184 § 5.]

**Notes:**

**Severability -- 1985 c 235:** See note following RCW 7.48A.040.

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**7.48A.060****Exceptions to application of chapter.**

Nothing in this chapter applies to the circulation of any material by any recognized historical society or museum, any library of any college or university, or to any archive or library under the supervision and control of the state, county, municipality, or other political subdivision.

[1982 c 184 § 6.]

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**7.48A.070****Findings.**

The legislature finds that actions against moral nuisances as declared in RCW 7.48A.020 (1) through (4) involve balancing the safeguards necessary to protect constitutionally protected speech and the community and law enforcement efforts to curb dissemination of obscene matters. The legislature finds that the difficulty in ascertaining and obtaining originals and copies of obscene matters for evidentiary purposes thwarts legitimate enforcement efforts. The legislature finds that the balancing of the concerns warrants specific discovery procedures applicable to actions against moral nuisances involving obscene matters.

[1989 c 70 § 1.]

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**7.48A.080****Temporary injunction.**

After the plaintiff files a civil action under this chapter, the plaintiff may apply to the superior court in which the plaintiff filed the action for a temporary or preliminary injunction. The court shall grant a hearing within ten days after the plaintiff applies for a temporary injunction.

[1989 c 70 § 2.]

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**7.48A.090****Restraining order — Service — Violation of order or injunction.**

After the plaintiff applies for a temporary or preliminary injunction, the court may, upon a showing of good cause, issue an ex parte restraining order restraining the defendant and all other persons from removing or in any manner interfering with the personal property and contents of the place where the nuisance is alleged to exist, until the court grants or denies the plaintiff's application for a temporary or preliminary injunction or until further order of the court. However, pending the court's decision on the injunction, the temporary restraining order shall not restrain the exhibition or sale of any film, publication or item of stock in trade. The order may require that at least one original of each film or publication shall be preserved pending the hearing on the injunction. The court may require an inventory and full accounting of all business transactions.

The officer serving the restraining order or preliminary injunction may serve the order by handing to and leaving a copy with any person in charge of the place or residing in the place, or by posting a copy in a conspicuous place at or upon one or more of the principal doors or entrances to the place, or by both delivery and posting. The officer serving the restraining order or injunction shall forthwith make and return to the court, an inventory of the personal property and contents situated in and used in conducting or maintaining the alleged nuisance.

Any violation of the temporary order or injunction is a contempt of court. Mutilation or removal of a posted order that is in force is a contempt of court if the posted order or injunction contains a notice to that effect.

[1989 c 70 § 3.]

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**7.48A.100**  
**When bond or security not required.**

A bond or security shall not be required of the city attorney, the prosecuting attorney, or the attorney general.

[1989 c 70 § 4.]

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**7.48A.110**  
**Hearing — Service of notice.**

A copy of the complaint, together with a notice of the time and place of the hearing on the application for a temporary injunction, shall be served upon the defendant at least three business days before the hearing. Service may also be made by posting the required documents in the same manner as is provided in RCW 7.48A.090. If the defendant requests a continuance of the hearing, all temporary restraining orders and injunctions shall be extended as a matter of course.

[1989 c 70 § 5.]

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**7.48A.120**  
**Production of discovery materials — Temporary injunction.**

If the court finds at the hearing for an injunction, that the accounting, inventory, personal property, and contents of the place alleged to be a nuisance provide evidence of a moral nuisance as defined by RCW 7.48A.020 (1) through (4), the court may order the defendant to produce to the plaintiff a limited number of original films, film plates, publications, videotapes, any other obscene matter, and other discovery materials the court determines is necessary for evidentiary purposes to resolve the action on the merits.

The court may issue a temporary injunction enjoining the defendant and all other persons from removing or in any

manner interfering with the court-ordered discovery. This discovery procedure supplements and does not replace any other discovery procedures and rules generally applicable to civil cases in this state.

[1989 c 70 § 6.]

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**7.48A.130**

**Precedence of hearing on injunction.**

The hearing on the injunction shall have precedence over all other actions, except prior matters of the same character, criminal proceedings, election contests, hearings on temporary restraining orders and injunctions, and actions to forfeit vehicles used in violation of the uniform controlled substances act, chapter 69.50 RCW.

[1989 c 70 § 7.]

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**7.48A.140**

**Violation of order or injunction — Penalties.**

An intentional violation of a restraining order, preliminary injunction, or injunction under this chapter is punishable as a contempt of court.

[1989 c 70 § 8.]

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**7.48A.900**

**Severability — 1982 c 184.**

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

[1982 c 184 § 9.]

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**7.48A.901**

**Severability — 1989 c 70.**

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

[1989 c 70 § 9.]

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