Council Meeting Date: January 13, 2003 **Agenda Item:** 8(b)

CITY COUNCIL AGENDA ITEM

CITY OF SHORELINE, WASHINGTON

AGENDA TITLE: Adoption of Ordinance No. 318 Amending to Adult Cabaret Regulations
DEPARTMENT: City Attorney's Office and City Clerk
PRESENTED BY: Ian R. Sievers, City Attorney's Office

PROBLEM/ISSUE STATEMENT:

- There are various ambiguities present in Chapter 5.10 of the Shoreline Municipal Code, Cabarets and Adult Entertainment, which have become issues in recent license enforcement actions. In particular, the standards of conduct for the three licenses required for adult cabarets are not clearly distinguished. Owner/ operator responsibility for conduct of employees needs to be clearly emphasized.

- Recent transfer of license administration to the City Clerk from King County has prompted changes to simplify this work and create clearer criteria for enforcement. Changes to simplify and expedite the application process will also benefit license applicants.

FINANCIAL IMPACT:

- There will be no significant financial impact, although it is hoped the proposed amendments will reduce processing time for staff, which was a greater than expected time commitment undertaken in 2002.

RECOMMENDATION

Staff recommends that Council pass proposed Ordinance No. 318 amending adult cabaret regulations and chapter 5.10 of the Municipal Code.

Approved By: City Manager ___ City Attorney ___

This page intentionally left blank.

INTRODUCTION

The City Attorney's Office concluded a successful litigation against the Club for Free Speech aka Sugar's last spring, only to find the same pattern of violations by the new owner in follow-up police investigations. An effort to reduce the considerable time and expense of seeking court orders for injunctions was initiated by using the license suspension and revocation remedies of 5.10 SMC. These remedies are common in cities that regulate adult cabarets, yet there has been little reported litigation of the procedures.

Notice and Orders were issued suspending two entertainers' licenses and a third order suspended the Scores (successor to Sugars') business license. The entertainers' suspensions were either sustained or not appealed. However, in the ensuing appeal to the Shoreline Hearing Examiner of the business license suspension, a number of claims were raised challenging ordinance procedures for suspension and revocation. In particular, Scores claimed the ordinance was not clear about the responsibility of the owner/operator for the conduct of entertainers and employees. The current version of SMC 5.10.090(B) also does not give the Clerk clear guidance in deciding when to revoke a valid license based on related criminal conduct.

In 2002 the City's contract for regulatory license administration was terminated by King County and the workload was assumed by the City Clerk. This involvement exposed a number of confusing provisions in processing new applications and license renewals, and other procedures which created unnecessary processing time and uncertainty in license status.

The proposed amendments address these licensing and enforcement issues.

BACKGROUND

A. Clarification and Affirmation of License Enforcement Criteria.

Ordinance No. 139 (Chapter 5.10 of the Municipal Code) first addressed the issue of adult entertainment in Shoreline in 1997. The 1997 Ordinance established the basic framework for permissible conduct at adult cabarets. At that time, the Council established what is commonly referred to as the "four-foot" rule—a restriction on the distance a dancer must remain if he/she is nude. For the most part, the current version of Chapter 5.10 SMC has remained unchanged since the original enactment. 1998 amendments were relatively minor.

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[1] and Article 1, Section 5 of the Washington State Constitution[2] 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

[1] "Congress shall make no law ... abridging the freedom of speech ...." U.S. Const., amend I.
[2] "Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that right." Wash. Const., art. I, § 5.

manner, by the right to free speech. The aim of the ordinance must be content neutral (meaning the regulation must not be aimed at suppressing one kind of speech over the other) and the police power must be limited to curtailing adverse secondary effects not nude expression.

One of the cornerstone doctrines within free speech law is "prior restraint." A prior restraint is a prevention of future speech rather than a punishment for past conduct, and is viewed by the United States Supreme Court as one the greatest impediments to exercising first amendment rights. 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." [3] Prior restraints are presumptively 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, a licensing scheme will not be invalidated. For example, Chapter 5.10 SMC is constitutional because of the automatic right to appeal and the stay of orders pending appeal. This stay was clarified to reflect case law requiring a stay during any judicial appeal as well as administrative appeals.

The clerk is given criteria in SMC 5.10.090 for revoking a license; however, the current regulation provides that a license may be revoked upon "violation of [Chapter 5.10 SMC] *or other applicable laws*." SMC 5.10.090(B) (emphasis added). There is no definition for "other applicable laws," leaving the Clerk with some discretion as to which laws apply and which laws do not. This may give rise to a constitutional challenge if laws outside the chapter itself are relied upon for license enforcement. "A licensing scheme containing vague terms gives the government unfettered discretion to issue or to deny a license and thus presents a danger that the decision maker may exercise its judgment to suppress speech based on content."[4]

The proposed amendments list violations of specific crimes of sexual misconduct that should be grounds for license suspension/revocation since they are closely linked to the conduct and secondary impacts sought to be regulated in Chapter 5.10. The City's desire to curtail the "illegal sexual activity" that is pervasive around Shoreline's adult cabarets recited in SMC 5.10.005(B)(1) undoubtedly applies to sex offenses. Moreover, the use of illegal narcotics is also been cited as a problem with adult oriented businesses. See Kent City Code, § 5.10.010(2). Hence, drug use has a direct relation with adult businesses. Changes proposed for this section mirror those of Kent City Code 5.10.080, one of the clearest of those surveyed.

Finally, the current ordinance makes all licenses subject to suspension or revocation for violations of Chapter 5.10 of the Municipal Code. One of the violations applicable to the operator is SMC 5.10.120: "[a]ny adult cabaret operated, conducted, or maintained in violation of this chapter or any law of the city of Shoreline or the state of Washington shall be, and the same is, declared to be unlawful and a public nuisance." The city will argue in pending appeals by Score that pervasive misconduct by managers

---

[3] JJR, Inc. v. City of Seattle, 126 Wn.2d 1, 6, 891 P.2d 720 (1995).
[4] DCR, Inc., 92 Wn. App. at 686 n.21

and entertainers working the club which is known or should be known to the operator is made unlawful by this section and a grounds for license enforcement. The proposed amendments affirm this intent by setting out the operator's responsibility under the standards of conduct in SMC 5.10.070(C): "[t]he Adult Cabaret Operator shall assure that all managers, entertainers and employees comply with standards of conduct of this section and all other requirements of this chapter. Failure to correct violations which were known or should have been known by the Operator shall be grounds for suspension or revocation of the Adult Cabaret Operator License or other penalties provided in this chapter." No substantive change in the ordinance is intended by this amendment.

Staff feels clarity for enforcement is added by listing standards of conduct separately for each license. Subsection .040(A) will apply to entertainers, subsection (B) will now apply only to the manager's license and subsection .040(C) applies to the cabaret operator's license.

B. License Administration Changes

As a preliminary consideration, staff recommends an amendment to eliminate the license requirement for "cabarets" as distinguished from "adult cabarets". The cabaret license applies to any establishment providing live music where food or beverages are provided with or without charge, however there is no evidence that these establishments present more of a problem that those providing recorded music, and the definition is exceedingly broad. While a license is required, there are no standards of conduct in the chapter for a cabaret not engaged in adult entertainment.

1. Eliminating the need for a temporary license.

One of the problems the City discovered in processing adult cabaret licenses is the delay presently in place between the time when the person completes the application and receives official notification of denial or issuance. The current ordinance gives a temporary license automatically to any person who submits a complete application with fee, regardless of the person's credentials, to avoid a prior restraint on expression[5] while the Police Department completes fingerprinting. The temporary expires upon issuance or denial of the regular license, but often dancers will continue to dance on the temporary license not bothering to obtain fingerprinting . With new fingerprint verification technology, there is an insignificant burden in requiring the fingerprint verification to be submitted as part of the complete application. To avoid constitutional scrutiny, the time period for granting or denying a license has been limited to one business day, as defined in the Municipal Code.

2. Fingerprint Cards

As stated above, under the current ordinance, applicants submit a completed application prior to bringing in the required fingerprint card to be issued by the Shoreline Police Department. Staff recommends that the applicants be required to bring fingerprint cards with them prior to submitting the application (Attachment A, SMC

[5] Shortly before the current ordinance was passed, the Washington Supreme Court held that the City of Bellevue's failure to provide managers with temporary licenses during the 14-day delay in issuing a manager's license constitutes a prior restraint in violation of the Washington Constitution.

5.10.040(A)(2). Applications submitted without a complete "fingerprint card" will be deemed incomplete, and the Clerk is directed to not accept the application for review. Such a procedure would significantly expedite the processing of applications. No temporary license will issue to allow police investigation, rather records checks will be submitted with the application.

Court's have allowed regulations requiring fingerprints to be submitted simultaneously with an application. The one Washington case that held a county's denial of a license application unconstitutional because of an incomplete fingerprint submission did so because the county's ordinance lacked any requirement for a complete fingerprint application. Our proposed approach is supported by federal courts. The Sixth Circuit held the fingerprinting section of a nude dancing ordinance constitutional but struck down other portions. The United States Supreme Court upheld the ordinance in its entirety.

3. Miscellaneous Clarifications and Corrections

Staff revised various other portions of Chapter 5.10 SMC for substantive and clarification purposes.

- Simplified the identification requirements to one piece of government issued ID. For birth certificates that can serve as verification of applicant's age, "certified" was added to ensure that the applicant does not use a photocopy

- Section 5.10.010(C): Added "manager and entertainer" to ensure that all types of licenses (adult cabaret, manager, and entertainer) for which one applies are subsumed within the definition of "applicant." No substantive change is intended.

- Section 5.10.010(I): Amended the RCW section specifying the definition of liquor. Section 66.04.200 was recodified as RCW 66.04.010.

- Section 5.10.040(B)(1)(g): For some reason, these required actions of entertainers is listed under the subheading of "Application and temporary license" for "Adult Cabaret Manager and Entertainer Licenses." Combined with the language in subsection (B)(1), the sentence reads:

  > The manager's or entertainer's license application shall require the following information:
  >
  > ....
  >
  > (g) Every adult entertainer shall provide his or her license to the adult cabaret manager on duty on the premises prior to his or her performance. The manager shall retain the licenses of the adult entertainers readily available for inspection by the city at any time during business hours of the adult cabaret.

Obviously, this subsection belongs elsewhere, so it was moved under the standards of conduct section explicating the required actions of managers [*see new sections* 5.10.070(B). No substantive change is intended.

RECOMMENDATION

Staff recommends that Council pass proposed Ordinance No. 318 amending adult cabaret regulations and chapter 5.10 of the Municipal Code.

ATTACHMENTS

Attachment A: Proposed Ordinance No. 318 amending Chapter 5.10 SMC.

ATTACHMENT A

ORDINANCE NO. 318

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 against an adult cabaret licensee under Chapter 5.10 indicates a need to affirm the intent of the ordinance that operators of adult cabarets are responsible for assuring compliance of their managers, entertainers and other employees with the ordinance standards of conduct; and

WHEREAS, amending the provisions of the Municipal Code will allow the City to process adult entertainment license applications in a more timely and efficient manner;

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, of the Shoreline Municipal Code is hereby amended to read as follows:

Chapter 5.10
ADULT CABARETS ~~AND ADULT ENTERTAINMENT~~

5.10.005 Findings of fact.

A. The city of Shoreline takes notice and specifically relies upon the experiences of and studies utilized by other cities and counties in combating the specific adverse impacts of sexually oriented businesses including nude and semi-nude dancing. This includes but is not limited to the studies relied upon, and findings of fact entered by, the city councils of the cities of Bellevue, Tukwila, SeaTac, and Federal Way in their respective adult cabaret ordinances.
B. Additionally, the city council enters the following findings of fact related to adult cabaret activity within the city of Shoreline:
    1. Much like the documented activity in other cities with nude and semi-nude adult cabaret entertainment, illegal sexual activity occurs regularly and repetitively in Shoreline's adult cabarets.
    2. Undercover police officers personally experienced, and personally observed, "table dances" involving regular exposure by the entertainer of breasts, buttocks, and pubic area. The "dances" also frequently featured masturbation by the entertainer of the customer's groin area.

3. The entertainers feature two types of dances, one costing $10.00 and the other costing $20.00. A $20.00 dance takes place in a darkened area of the cabaret, where managers and others have difficulty viewing the illegal activity.
4. In Shoreline, and in other jurisdictions, entertainers have committed acts of prostitution inside the adult cabaret by agreeing to meet patrons off-site to perform sexual activity in exchange for a fee.

5.10.010 Definitions.

A. "Adult cabaret" means any commercial premises, including any cabaret premises, to which any member of the public is invited or admitted and where an entertainer provides live adult entertainment to any member of the public.

B. "Adult entertainment" means:

1. Any exhibition, performance or dance of any type conducted in a premises where such exhibition, performance, or dance involves a person who is unclothed or in such costume, attire, or clothing as to expose any portion of the female breast below the top of the areola or any portion of the pubic region, anus, buttocks, vulva or genitals, or wearing any device or covering exposed to view which simulates the appearance of any portion of the female breast below the top of the areola or any portion of the pubic region, anus, buttocks, vulva or genitals, or human male genitals in a discernibly turgid state, even if completely and opaquely covered; or
2. Any exhibition, performance or dance of any type conducted in a premises where such exhibition, performance or dance is distinguished or characterized by a predominant emphasis on the depiction, description, simulation or relation to the following specified sexual activities:
    a. Human genitals in a state of sexual stimulation or arousal,
    b. Acts of human masturbation, sexual intercourse or sodomy, or
    c. Fondling or other erotic touching of human genitals, pubic region, buttocks or female breasts; or
3. Any exhibition, performance or dance which is intended to sexually stimulate any member of the public and which is conducted on a regular basis or as a substantial part of the activity on the premises. This includes, but is not limited to, any such exhibition, performance or dance performed for, arranged with, or engaged in with fewer than all members of the public on the premises at that time, and which is commonly referred to as table dancing, couch dancing, lap dancing, private dancing and straddle dancing.
4. **This term shall not be construed to include:**
    a. **Plays, operas, musicals, or other dramatic works that are not obscene;**
    b. **Classes, seminars and lectures which are held for serious scientific or educational purposes and which are not obscene; or**
    c. **Exhibitions, performances, expressions or dances that are not obscene.**
    a. **These exemptions shall not apply to the sexual conduct defined in SMC 5.10.010(N), or the sexual conduct described in RCW 7.48A.010(2)(b)(ii) and (iii).**

C. "Applicant" means the individual or entity seeking **an adult** cabaret **operator, manager, or entertainer** license in the city of Shoreline. "Applicant" for an adult cabaret operator license ~~D. "Applicant control person"~~ means all partners, corporate officers and directors and any other individuals in the applicant's business organization who hold ~~a significant~~ **more than a fifteen percent** interest in the adult cabaret business~~, based on responsibility for management or control of the adult cabaret business,~~ regardless of whether such person's name appears on corporate filings, license applications, or other official documents of the applicant.

D. "Business day" means the days and hours of city operation as specified in SMC 2.05.010.

~~E. "Cabaret" means any room, place or space whatsoever in the city in which any music, singing, dancing, or other similar entertainment is permitted in connection with any hotel, restaurant, cafe, club, tavern, or eating place, directly selling, serving, or providing the public, with or without charge, food, drink or liquor. The words "music and entertainment" as used herein, shall not apply to radios or mechanical devices.~~

~~**F. "City" means the city of Shoreline, Washington.**~~

E. "Clerk" means such city employees or agents as the city manager shall designate to administer this chapter, or any designee thereof.

F. "Employee" means any and all persons, including managers, entertainers and independent contractors who work in or at or render any services directly related to the operation of any cabaret.

G. "Entertainer" means any person who provides adult entertainment within an adult cabaret as defined in this section, whether or not a fee is charged or accepted for entertainment.

H. "Liquor" means all beverages defined in RCW ~~66.04.200~~ **64.04.010(20)**

H. "Manager" means any person who manages, directs, administers or is in charge of the business affairs and/or conduct of any portion of any activity involving adult entertainment occurring at any adult cabaret, and includes assistant managers working with or under the direction of a manager to carry out such purposes.

I. "Operator" means any person, **licensed under this chapter,** operating, conducting or maintaining an adult cabaret.

J. "Person" means any individual, partnership, corporation, trust, incorporated or unincorporated association, marital community, joint venture, governmental entity, or other entity or group of persons however organized.

K. "Member of the public" means any customer, patron, club member, or person, other than an employee as defined in this section, who is invited or admitted to a cabaret.

L. "Sexual conduct" means any act or acts of:

1. Sexual intercourse within its ordinary meaning, occurring upon any penetration, however slight; or
2. Any penetration of the vagina or anus, however slight, by an object; or
3. Any contact between persons involving the sex organs, whether clothed or unclothed, of one person and the mouth or anus, whether clothed or unclothed, of another; or
4. Masturbation, manual or instrumental, of oneself or of one person by another; or
5. Touching of the sex organs or anus, whether clothed or unclothed, of oneself or of one person by another.

5.10.020 License required.

~~A. It is unlawful for any person to conduct, manage or operate a cabaret unless such person has been issued a valid and current license from the city to do so, obtained in the manner provided in this chapter.~~

B. It is unlawful for any person to conduct~~, manage~~ or operate an adult cabaret unless such person has been issued a valid and current **adult cabaret operator** license from the city to do so, obtained in the manner provided in this chapter.

C. It is unlawful for any entertainer to perform in an adult cabaret unless such person has been issued a valid and current license from the city to do so.

D. It is unlawful for any manager to work in an adult cabaret unless such person has been issued a valid and current license from the city to do so.

~~E. It is unlawful for any entertainer, employee or manager to knowingly work in or about, or to knowingly perform any service or entertainment directly related to the operation of an unlicensed adult cabaret.~~

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 an adult cabaret who is delinquent on city taxes, fees, fines, or penalties assessed in relation to an adult entertainment.

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

H. An applicant who has failed to provide information required on a license application for the issuance of the license or has made, with the intent to mislead, a materially false statement in the application for a license under this chapter "Materially false statement" means any false statement, oral or written, which could have affected the course or outcome of the license application.

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 ~~Application and temporary issuance of license~~. **Adult Cabaret Licenses.**

A. Adult Cabaret **Operator** License

1. All applications for an adult cabaret operator 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** ~~which shall require~~ the following information **and submittals are provided**:

a. For ~~the~~ each applicant ~~and for each applicant control person~~: 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 partnership, whether general or limited, provide for all general partners the same information required under subsection (A)(1)(a) of this section.~~

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 or any partner, corporate officer, or director of 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** ~~the~~ applicant ~~and applicant control persons in~~ 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 ~~the~~ **each** applicant and all applicant control persons, any and all criminal convictions or forfeitures within five 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 ~~the~~ **each** applicant ~~and all applicant control persons~~, 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 2-inch by 2-inch color **passport-quality** photographs of the applicant and applicant control persons, taken within six months of the date of application showing only the full face.

i. ~~A complete set of fingerprints for the applicant or each applicant control person, taken by Shoreline police department employees or their designee.~~ **A fingerprint verification card issued by the Shoreline Police Department or other law enforcement agency.**

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(D).

k. A nonrefundable application fee of $500.00 must be paid at the time of filing an application in order to defray the costs of processing the application

~~2. An application shall be deemed complete upon the applicant's provision of all information requested above, including identification of "none" where that is the correct response, and the applicant's verification that the application is complete. The clerk may request other information or clarification in addition to that provided in a complete application where necessary to determine compliance with this chapter.~~

3. ~~A nonrefundable application fee of $500.00 must be paid at the time of filing an application in order to defray the costs of processing the application~~.

~~4. Each applicant shall verify, under penalty of perjury, that the information contained in the application is true.~~

5. If any person or entity ~~becomes an applicant control person or otherwise~~ acquires, subsequent to the issuance of an adult cabaret license, ~~a significant~~ **more than a fifteen percent interest** ~~based on responsibility for management or operation of the licensed premises or~~ in the licensed business, notice of such acquisition 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.

6. 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.

7. 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.

8. 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. ~~Upon receipt of any complete application and fee for a license, the clerk shall further issue a temporary license, pending disposition of the application or the completion of the term of any license suspension issued pursuant to this chapter. The temporary license shall expire upon issuance of a license or renewal thereof or notice of nonissuance. The holder of a temporary license is subject to all requirements, standards, and penalty provisions of this chapter.~~ **Each adult cabaret operator 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.**

9. 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.
10. **An adult cabaret operator license shall be issued or the application denied by the clerk within fourteen (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 twenty (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 license, the clerk shall issue a notice of nonissuance in writing, and shall cite the specific reasons therefor.
11. **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 License ~~and Entertainer Licenses~~.

1. No person shall work as a manager~~, assistant manager or entertainer~~ at an adult cabaret without an applicable manager's ~~or entertainer's~~ license issued by the city. Each applicant for a manager's ~~or entertainer's~~ license shall complete an application on forms provided by the city containing the information identified below. A nonrefundable application fee of $100.00 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 ~~or entertainer's~~ license shall be signed by the applicant and certified to be true under penalty of perjury. The manager's ~~or entertainer's~~ license application shall require the following information:
    a. The applicant's name, home address, home telephone number, date and place of birth, ~~fingerprints taken by Shoreline police department employees or their designee~~, **a fingerprint verification form,** 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 ~~or entertainer~~.
    c. Documentation that the applicant has attained the ~~age of 18 years~~ **requisite age as stated in section .030(A) of this chapter**. 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; or

v. A **certified** birth certificate issued by a state or other authorized governmental entity.

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 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 2-inch by 2-inch color **passport-quality** photographs of the applicant, taken within six months of the date of application showing only the full face.

~~g. Every adult entertainer shall provide his or her license to the adult cabaret manager on duty on the premises prior to his or her performance. The manager shall retain the licenses of the adult entertainers readily available for inspection by the city at any time during business hours of the adult cabaret.~~

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. ~~Upon receipt of any complete application and fee for a license, the clerk shall further issue a temporary license, pending disposition of the application or the completion of the term of any license suspension issued pursuant to this chapter. The temporary license shall expire upon issuance of a license or renewal thereof or notice of nonissuance. The holder of a temporary license is subject to all requirements, standards, and penalty provisions of 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 section .030 of this chapter. Upon request of the applicant, the clerk shall grant an extension of time not to exceed twenty (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 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 of $100.00 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, a fingerprint verification form, 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 section .030(A) of this chapter. 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; or
        v. A certified birth certificate issued by a state or other authorized governmental entity.
    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 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 2-inch by 2-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 section .030 of this chapter. Upon request of the applicant, the clerk shall grant an extension of time not to exceed twenty (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.

5.10.045 Additional license requirements

A. Duty to supplement.

1. Applicants for a license under this chapter shall have a continuing duty to promptly supplement applications information required in the event that said information changes in any way from what is stated in the application. If any person or entity acquires more than a 15% interest in the licensed premises or the licensed business after issuance of the license, notice of such acquisition shall be provided in writing to the clerk. The notice shall include the information required to be provided for the original adult cabaret license. The failure to supplement the application on file with the clerk regarding such change in ownership or interest within thirty (30) days from the date of such change, shall be grounds for suspension or revocation of a license.

B. License nontransferable. No license or permit issued pursuant to this chapter shall be assignable or transferable. For purposes of this chapter, "assignable" or "transferable" shall mean and include any of the following:

1. Transfer with the sale, lease, or sublease of a business; or
2. The transfer of securities which constitute a controlling interest in the cabaret, whether, by sale, exchange, or similar means; or
3. Transfer with the establishment of a trust, gift, or other similar legal devise which transfers the ownership or control of the cabaret.,

C. Posting and display

1. The adult cabaret operator license, if granted, shall state on its face the name of the person or persons to whom it is issued, the expiration date, and the address of the licensed adult cabaret. The license shall be posted in a conspicuous place at or near the entrance to the licensed premises so that it can be easily read at any time the adult cabaret is open.
2. The name and license of the manager shall be prominently posted during business hours.

3. **Entertainer licenses need not be posted. However, the manager shall retain the licenses of the adult entertainers readily available for inspection by the city at any time during business hours of the adult cabaret. Managers' and entertainers' licensed must be endorsed by the clerk for the business premises for which the manager is managing and the entertainer is entertaining.**
4. **Under no circumstances will photocopies or other forms of reproduction, regardless of whether such photocopy is notarized or certified to be true under penalty of perjury, be acceptable as proof of issuance of any license required under this chapter.**

5.10.050 Cabaret license fees.

~~A. Any person desiring to obtain a cabaret license shall first pay a license fee of $250.00 per year.~~

B. Any person desiring to obtain an adult cabaret **operator's** license shall first pay a license fee of $500.00 per year.

C. Any person desiring to obtain an adult cabaret manager's license shall first pay a license fee of $100.00 per year.

D. Any person desiring to obtain an adult cabaret entertainer's license shall first pay a license fee of $100.00 per year.

5.10.060 Appeal.

A. Any person aggrieved by the action of the clerk in refusing to issue or renew any license under this chapter or in temporarily suspending or permanently revoking any license under this chapter shall have the right to appeal such action to the city hearing examiner, ~~or to such other hearing body as may hereafter by established by the city council for the hearing of such appeals~~, by filing a**n appeal statement** ~~notice of appeal~~ with the clerk within ~~10~~ **14** days of ~~receiving~~ issuance and mailing notice of the action from which appeal is taken. The filing of such appeal shall stay the action of the clerk.

B. The hearing examiner ~~body,~~ upon receipt of a timely notice of appeal, shall set a date for a hearing of such appeal within 30 days from the date of such receipt, unless extended by mutual agreement or for good cause shown. The hearing shall be de novo. The hearing ~~body shall hear testimony, take evidence and may hear oral argument and receive written briefs~~ **shall be conducted under the city Rules of Procedure for Administrative Hearings; provided, however, the burden of proof shall be on the city.**

C. The decision of the hearing body on an appeal from a decision of the clerk shall be based upon a preponderance of the evidence. ~~The burden of proof shall be on the city.~~

D. Any person aggrieved by the decision of the hearing examiner or other designated hearing body shall have the right to appeal the decision to the superior court by writ of certiorari filed and served upon the city within 14 calendar days after the date of the hearing examiner's ~~or other hearing body's~~ decision **is issued and mailed to the parties**.

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.

B. Adult Cabaret Manager License. The following are required of an Adult Cabaret Manager: ~~At any adult cabaret, the following are required:~~

1. Admission must be restricted to persons of the age 18 years or more. It is unlawful for any owner, operator, manager or other person in charge of an adult

cabaret to knowingly permit or allow any person under the minimum age specified to be in or upon such premises. A licensed manager or other employee shall verify the age of all members of the public seeking to enter an adult cabaret.

~~2.~~ Neither the performance nor any photograph, drawing, sketch or other pictorial or graphic representation thereof displaying any portion of the breast below the top of the areola or any portion of the pubic hair, buttocks, genitals, and/or anus may be visible outside of the adult cabaret. The prohibition of this subsection (B)(2) is intended to be limited to adult cabaret performances and representation of same, and is not intended to prohibit the activities enumerated in ~~subsection F~~ **subsection .010 (B)(4)** ~~of this section.~~

3. No member of the public shall be permitted at any time to enter into any of the nonpublic portions of the adult cabaret, which shall include but are not limited to: the dressing rooms of the entertainers or other rooms provided for the benefit of employees, and the kitchen and storage areas; except that persons delivering goods and materials, food and beverages, or performing maintenance or repairs to the premises or equipment on the premises may be permitted into nonpublic areas to the extent required to perform their job duties.
4. The licensee shall not operate or maintain any warning system or device, of any nature or kind, for the purpose of warning customers or patrons or any other persons located on the licensee's premises that police officers or other city inspectors are approaching or have entered the licensee's premises.

~~B. At any adult cabaret, the following are required of managers:~~

5. A licensed manager shall be on duty at an adult cabaret at all times adult entertainment is being provided or members of the public are present on the premises. The name and license of the manager shall be prominently posted during business hours. The manager shall be responsible for verifying that any person who provides adult entertainment within the premises possesses a current and valid entertainer's license.
6. The licensed manager on duty shall not be an entertainer.
7. The manager or an assistant manager licensed under this chapter shall maintain visual observation of each member of the public at all times any entertainer is present in the public or performance areas of the adult cabaret. Where there is more than one performance area, or the performance area is of such size or configuration that one manager or assistant manager is unable to visually observe, at all times, each adult entertainer, each employee, and each member of the public, a manager or assistant manager licensed under this chapter shall be provided for each public or performance area or portion of a public or performance area visually separated from other portions of the adult cabaret.
8. The manager shall be responsible for and shall assure that the actions of members of the public, the adult entertainers and all other employees shall comply with all requirements of this chapter.

C. **Adult Cabaret Operator License.** ~~Premises—Specifications.~~

1. **Responsibility for Conduct of Entertainers and Employees. The Adult Cabaret Operator shall assure that all managers, entertainers and employees comply with standards of conduct of this section and all other**

requirements of this chapter. Failure to correct violations which were known or should have been known by the Operator shall be grounds for suspension or revocation of the Adult Cabaret Operator License or other penalties provided in this chapter.

2. Performance Area. The performance area of the adult cabaret where adult entertainment is provided shall be a stage or platform at least 18 inches in elevation above the level of the patron seating areas, and shall be separated by a distance of at least eight feet from all areas of the premises to which members of the public have access. A continuous railing at least three feet in height and located at least eight feet from all points of the performance area shall separate the performance area and the patron seating areas. The stage and the entire interior portion of cubicles, rooms or stalls wherein adult entertainment is provided must be visible from the common areas of the premises and at least one manager's station. Visibility shall not be blocked or obstructed by doors, curtains, drapes or any other obstruction whatsoever.
3. Lighting. Sufficient lighting shall be provided and equally distributed throughout the public areas of the premises so that all objects are plainly visible at all times. A minimum lighting level of 30 lux horizontal, measured at 30 inches from the floor and on 10-foot centers is hereby established for all areas of the adult cabaret where members of the public are admitted.
4. Signs. A sign at least two feet by two feet, with letters at least one inch high shall be conspicuously displayed in the public area(s) of the premises stating the following:

THIS ADULT CABARET IS REGULATED BY THE CITY OF SHORELINE. ENTERTAINERS ARE:

A. NOT PERMITTED TO ENGAGE IN ANY TYPE OF SEXUAL CONDUCT
B. NOT PERMITTED TO APPEAR SEMI-NUDE OR NUDE, EXCEPT ON STAGE
C. NOT PERMITTED TO ACCEPT TIPS OR GRATUITIES IN ADVANCE OF THEIR PERFORMANCE
D. NOT PERMITTED TO ACCEPT TIPS DIRECTLY FROM PATRONS WHILE PERFORMING UPON ANY STAGE AREA

8. Record keeping Requirements.
    a. All papers, records, and things required to be kept pursuant to this chapter shall be open to inspection by the clerk during the hours when the licensed premises are open for business, upon two days' written notice. The purpose of such inspections shall be to determine whether the papers, records, and things meet the requirements of this chapter.
    b. Each adult entertainment business shall maintain and retain for a period of two years the name, address, and age of each person employed or otherwise retained or allowed to perform on the premises as an adult

entertainer, including independent contractors and their employees, as an entertainer. This information shall be open to inspection by the clerk during hours of operation of the business upon 24 hours' notice to the licensee.

9. Inspections. In order to ensure compliance with this chapter, all areas of licensed adult cabarets which are open to members of the public shall be open to inspection by city agents and employees during the hours when the premises are open for business. The purpose of such inspections shall be to determine if the licensed premises are operated in accordance with the requirements of this chapter.

~~B.~~ **D.** It is unlawful for any adult cabaret to be operated or otherwise open to the public between the hours of 2:00 a.m. and 10:00 a.m.

~~B. This chapter shall not be construed to prohibit:~~

~~1. Plays, operas, musicals, or other dramatic works that are not obscene;~~

~~2. Classes, seminars and lectures which are held for serious scientific or educational purposes and which are not obscene; or~~

~~3. Exhibitions, performances, expressions or dances that are not obscene.~~

~~These exemptions shall not apply to the sexual conduct defined in SMC 5.10.010(N), or the sexual conduct described in RCW 7.48A.010(2)(b)(ii) and (iii).~~

5.10.080 License term - Assignment - Renewals.

~~A.~~ Licenses shall expire one year from the date of issue. ~~Licenses under this chapter shall not be assignable.~~

B. Application for renewal of licenses issued hereunder shall be made to the clerk no later than 30 days prior to the expiration of adult cabaret license. ~~and no later than 14 days prior to the expiration of cabaret licenses and adult cabaret manager and entertainer licenses.~~ The renewal license shall be issued in the same manner and on payment of the same fees as for an original application under this chapter. There shall be assessed and collected by the clerk, an additional charge, computed as a percentage of the license fee, on applications not made on or before said date, as follows:

Days Past Due	Percent of License Fee
7 – 30	10%
31 – 60	25%
61 and over	100%

C. The clerk shall renew a license upon receipt of a complete application and fee, and subject to compliance with the provisions of SMC 5.10.040 regarding original licenses.

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.

B. A license procured by fraud or misrepresentation shall be revoked. Where other violations of this chapter or other applicable ordinances, statutes or regulations are found, the license shall be suspended for a period of 30 days upon the first such violation, 90 days upon the 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" 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**
5. **A conviction of Chapter 69.50 RCW, Washington Uniform Controlled Substances Act.**

C. The clerk shall ~~provide at least 10 days'~~ **issue and mail** ~~prior written notice~~ to the licensee ~~of~~ the decision to suspend or revoke the **license at least 14 days prior to the effective date of 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 superior court.**

5.10.100 Liquor regulations.

Any license issued pursuant to this chapter shall be subject to any applicable rules or regulations of the Washington State Liquor Control Board relating to the sale of intoxicating liquor. In the event of a conflict between the provisions of this chapter and the applicable rules and regulations of the Washington State Liquor Control Board, the rules and regulations of the Washington State Liquor Control Board shall control.

5.10.110 Violation a misdemeanor.

Any person violating any of the provisions of this chapter is guilty of a misdemeanor **in addition to other remedies provided in this chapter.**

5.10.120 Nuisance declared.

A. Public Nuisance. Any adult cabaret operated, conducted, or maintained in violation of this chapter or any law of the city of Shoreline or the state of Washington shall be, and the same is, declared to be unlawful and a public nuisance. The city attorney may, in addition to or in lieu of any other remedies set forth in this chapter, commence an action to enjoin, remove or abate such nuisance in the manner provided by law and shall take such other steps and apply to such court or courts as may have jurisdiction to grant such relief as will abate or remove such public nuisance, and restrain and enjoin any person from operating, conducting or maintaining an adult cabaret contrary to the provisions of this chapter.

B. Moral Nuisance. Any adult cabaret operated, conducted or maintained contrary to the provisions of Chapter 7.48A RCW, Moral Nuisance, shall be, and the same is declared to be, unlawful and a public and moral nuisance and the city attorney may, in addition to or in lieu of any other remedies set forth herein, commence an action or actions, to abate,

remove and enjoin such public and moral nuisance, or impose a civil penalty, in the manner provided by Chapter 7.48A RCW.]

5.10.130 Additional enforcement.

The remedies found in this chapter are not exclusive, and the city may seek any other legal or equitable relief, including but not limited to enjoining any acts or practices which constitute or will constitute a violation of any business license ordinance or other regulations herein adopted.

5.10.140 Severability.

If any portion of this chapter, or its application to any person or circumstances, is held invalid, the validity of the chapter as a whole, or any other portion thereof, and its application to other persons or circumstances, shall not be affected.

Section 2. **Effective Date and Publication**. A summary of this ordinance consisting of the title shall be published in the official newspaper and the ordinance shall take effect thirty days after publication.

PASSED BY THE CITY COUNCIL ON JANUARY 13, 2003.

_____
Mayor Scott Jepsen

ATTEST:

_____
Sharon Mattioli, CMC
City Clerk

APPROVED AS TO FORM:

_____
Ian Sievers
City Attorney

Date of Publication: January 16, 2003
Effective Date: February 15, 2003