

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Adoption of Ordinance No. 332 Amending the Adult Cabaret Regulations To Clarify Activity Exempt from Licensing and Modify Application Requirements.
DEPARTMENT:	City Attorney's Office and City Clerk
PRESENTED BY:	Ian R. Sievers, City Attorney

PROBLEM/ISSUE STATEMENT:

On February 10, 2003 the Council approved clarifications to the Adult Entertainment regulations of Chapter 5.10 of the Municipal Code with the passage of Ordinance No. 318. The purpose of these amendments was to:

- Create a clear distinction among the standards of conduct for the three licenses required for adult cabarets, with particular emphasis on the owner/operator responsibility for conduct of employees.
- Changes to simplify and expedite the license administration by the Clerk's Office after this work was transferred from King County in 2002.

Clarification of Exempt Activity

After passage, the staff found that the amendment moving exempt activity from the standards of conduct section to the definition of "Adult Entertainment" created some unintended ambiguity. The proposed amendments to section .010 clarify the intent of this definition.

Fingerprint/background Checks

Prior to the amendments in February, the license procedure required an automatic temporary license to provide dancers the opportunity to work to avoid a prior restraint on expression¹ while the Police Department completed fingerprinting. The temporary expired upon issuance or denial of the regular license, but often dancers continued to dance on the temporary license, without bothering to obtain fingerprinting. With new fingerprint verification technology, there was an insignificant burden in requiring the fingerprint verification to be submitted as part of the complete application. With the fingerprint check submitted with the application, the Clerk's Office was required to issue the license in one business day. Such a procedure significantly expedited the

¹ 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.

processing of applications and no temporary license was issued because the police investigation, based on a records check, was submitted with the application.

Passage of this new procedure in February produced a surprising surge of appointments by dancers for fingerprinting. This sudden increase caused a backup for these appointments to exceed two weeks, thus delaying the issuance of licenses by this period. Many of these appointments were never kept. The City began documenting cancellation in anticipation of a first amendment "prior restraint" complaint. The City Attorney's office, Clerk's Office and Police Department reviewed the procedure for fingerprint and background checks in an effort to improve the response time, even considering interlocal agreements with other police agencies as a referral source for this service in addition to our own department. The procedure requires a half-hour appointment with a limited number of appointments available each week at current staffing levels at the Shoreline police department.

Staff recommends the requirement for fingerprinting is not warranted and should be eliminated. Even if the background check reveals past convictions, they cannot be used as a basis for license denial. The application procedure already requires proof of identification issued by a government agency and background checks can be performed with this information. To improve reliability without the fingerprints, the birth certificate should be removed as a permitted identification, since it is not a picture identification. These changes are shown in amendments to section .020.

FINANCIAL IMPACT:

There will be no financial impact. Elimination of the fingerprint background check saves staff time and avoids this disruption of police operations which is not adequately compensated under the current license fee.

RECOMMENDATION

Staff recommends that Council pass proposed Ordinance No. 332 amending adult cabaret regulations and Chapter 5.10 of the Municipal Code.

ATTACHMENT:

Proposed Ordinance No. 332.

Approved By:

City Manager 

City Attorney 

ORDINANCE NO. 332

**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, Chapter 5.10 of the Shoreline Municipal Code regulating adult entertainment was amended by Ordinance No. 318 on February 10, 2003 to require fingerprinting of license applicants as part of the complete license applications rather than issuance of a temporary license pending this background check; and

WHEREAS, this requirement coincided with an extraordinary and unexpected increase in license fingerprint requests for entertainers; and

WHEREAS, the requirement that entertainers and managers produce official identification should be sufficient for background checks without the expense and administrative burden of fingerprint checks; and

WHEREAS, the exclusion of certain activities and uses from the licensing of adult entertainment in Ordinance No. 318 should be amended to remove an ambiguity in the application of the ordinance to adult entertainment establishments; and

WHEREAS, these amendments 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. Section 5.10.010 of the Shoreline Municipal Code is amended to read as follows:

.010 Definitions.

A. "Adult cabaret" means any commercial 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 any exhibition, performance, or dance which is not obscene and :

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,

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 w~~ 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; or 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.~~
 - ~~d. These exemptions shall not apply to the sexual conduct defined in SMC 5.10.010(M), 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 means all partners, corporate officers and directors and managing members of limited liability companies 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. "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 66.04.010(20).
- I. "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.

- J. "Operator" means any person, licensed under this chapter, operating, conducting or maintaining an adult cabaret.
- K. "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.
- L. "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.
- M. "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.

Section 2. Amendment. Section 5.10.040 of the Municipal Code is amended to read as follows:

.040 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 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 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 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.
 - i. ~~A fingerprint verification card issued by the Shoreline Police Department or other law enforcement agency.~~ 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;
 - 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 of \$500.00 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 acquires, 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 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 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.
 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 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 ~~or~~ 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 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, ~~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.
 - c. Documentation that the applicant has attained the 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.
 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.

Section 3. 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 July 21, 2003.

Mayor Scott Jepsen

ATTEST:

APPROVED AS TO FORM:

Sharon Mattioli, CMC
City Clerk

Ian Sievers
City Attorney

Date of Publication: , 2003

Effective Date: , 2003