

ORIGINAL

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:



Scott Passey
City Clerk

APPROVED AS TO FORM:



Ian Sievers
City Attorney

Date of Publication: January 15, 2009

Effective Date: January 20, 2009

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 in the application, for a license under this chapter. "Materially false statement"~~ 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.