LAP DANCING AND TABLE DANCING
ORDINANCE PREPARATION

Erotic cabarets, juice bars or bottle clubs that feature lap dancing or table dancing whether nude or partially nude or clothed have been found to foster prostitution, immoral conduct and drug dealing and to be a bane on the neighboring area.

Using the tools of an existing state statute, lap dancing as such, in some jurisdictions, can be found to be obscene or illegal as a form of prostitution or prohibited "lewdness" and, in some cases, a nuisance.

Oftentimes, a more effective weapon is a local ordinance creating a "buffer zone" between dancers and performers so that no lap or table dancing is possible. Such ordinances, if properly drawn, have in most cases, been upheld as a proper exercise of the police powers. These ordinances can be, and are, utilized in an alcoholic or non-alcoholic context.

Since some jurisdictions will view table dancing, and perhaps lap "dancing", as a form of First Amendment conduct, it is well to prepare local ordinances as content-neutral enactments utilizing the United States v. O'Brien, 391 U.S. 367 (1968) test, which, the recent U.S. Supreme Court case of City of Erie v. Pap's A.M., 529 U.S. 277 (2000) tells us may be applied to conduct. [See Appendix I and the Checklist appended thereto]. The object is to avoid a content-based enactment, which would be tested under a strict-scrutiny standard.

Any City or County desiring to enact local "Buffer Zone" ordinances, should of course, determine whether enabling legislation is required or whether a local law would be preempted by some state law provision.

One of the most important caveats is to make sure that the ordinance has an adequate Preamble and Findings to show that the justification for the ordinance is the secondary effects of such establishments and not a distaste for the erotic "message" conveyed.

The justification for the ordinance should be spelled out somewhere in the language of the ordinance and may include reference to affidavits, testimony at preliminary hearings, local studies of adverse effects, or identified studies or judicial findings (See Appendix VI) in other locales and references to other judicial decisions, all effected prior to taking legislative action. Such studies, findings, and other gathered material should be made available to the legislators prior to passing the ordinance. The purposes spelled out in the ordinance should be aimed at curbing the deleterious secondary effects.

In the following pages we will review the decided cases and, as Appendices, attach copies of local ordinances. We will, however, first spell out cases that have relied

on state statutes as distinguished from local enactments or that use other than a "buffer zone" approach.

Lap Dancing As Obscene

Washington

The court in City of Everett v. Heim, 859 P. 2d 55 (Wash. Ct. App. 1993) review denied 871 P. 2d 600 (Wash. Sup. Ct. 1994) refused to accede to a defendant's claim that the jury should be required to find the lap dance obscene under an ordinance prohibiting sitting on a patron's lap in an adult entertainment establishment (even if fully clothed).

Kansas

A jury properly instructed under the Miller standards, says a Kansas Court, could find that lap dances are obscene (State v. McGraw, 879 P. 2d 1147 (Kan. Ct. App. 1994). (See Miller v. California, 413 U.S. 15 (1973))

South Carolina

The South Carolina Supreme Court in State v. Bouye, 484 S.E. 2d 461 in 1997 authoritatively construed a state statute that prohibited exposing the private parts in a lewd and lascivious manner as applied to erotic dancers to mean in an obscene manner. Review was denied by the United States Supreme Court at 522 U.S. 822 in 1997.

Lap Dancing as Prostitution

Texas

The state of Texas, in Steinbach v. State, 979 S.W. 2d 836 (Tex. Ct. App. 1998), held that the Texas Statute that prohibits sexual conduct for a fee, is violated by lap dancing which is a form of prostitution. Flesh on flesh contact is not a requisite.

New York

A similar result was reached in People v. Hinzman, 677 N.Y.S. 2d 440 (1998) where there was an offer to engage in sexual conduct for a fee in that the defendant agreed to perform a lap dance in exchange for money. The criminal court held this to be prostitution under the New York Statute.

The court in the Hinzman case informs us that:

> "The earliest reference to 'lap dancing' in reported decisions, is in 1989, discussing the constitutionality of a 1988 ordinance prohibiting the practice (Movie & Video

World v. Board of County Commissioners, 723 F. Supp. 695, (S.D. Fla. 1989)".

The ordinance can be found within that case.

Lap Dancing as Lewdness

Some state statutes prohibit operating a building for the purpose of lewdness.

Florida

The first state to use this approach apparently was Florida where, although lap dancing remains a problem, inroads have been made. This was the case of Hoskins v. Department of Business Regulation, 592 So. 2d 1145 (Fla. Dist. Ct. App. 1992) review denied, 601 So. 2d 552 (Fla. Sup. Ct. 1992), where the court held that lap dancing was "lewdness" under the statute.

In 1993, the Florida District Court of Appeals for the Second District in State v. Waller, 621 So. 2d 499, held that a jury could find that lap dancing is lewd because it is indecent and thus a violation of a Florida statute on lewdness.

In 1977, the Florida District Court of Appeals reiterated that lap dancing was prohibited lewdness in State v. Conforti, 688 So. 2d 350, review denied 697 So. 2d 509 (Fla. Sup. Ct. 1997).

A case that was decided in 2001 involved a strip club that provided strip dancers and lap dancers and a state statute that made it unlawful for any person to own or operate a place for purpose of providing lewdness. A conviction was obtained despite the objection of the club owner that the law was invalid without any scienter requirement and that the premises were operated as a private club. (Dreamland Ballroom and Social Dance Club v. City of Fort Lauderdale, 789 So. 2d 1099 (Fla. Dist. Ct. App. 4th District 2001).

Michigan

The state of Michigan has a law similar to that of Florida. M.C.L. 600.3801; M.S.A. 27A.3801 states that any building used for the purpose of "lewdness, assignation or prostitution" is a nuisance. The Wayne County Prosecutor, in a series of cases, was able to use the statute against an establishment that featured, among other activities, "lap dancing" and "shower dancing". The trial court, and the Michigan Court of Appeals, in State of Michigan ex rel Wayne County Prosecuting Attorney v. Dizzy Duck, 511 N.W. 2d 907 (1994), held that lap dancing fell within the terms of the statute relating to lewdness. The appellate court, however, refused to declare the premises a nuisance. In addition, the appellate court's abatement order on lap dancing only enjoined the same "where there is significant direct contact."

Not satisfied with the outcome, the prosecutor appealed to the Supreme Court of Michigan, 535 N.W. 2d 178 (1995), which reversed, holding that lap dancing was "lewdness" under the statute, stopping just short of prostitution. It remanded the matter to the state's circuit court to consider whether the establishment should be padlocked. The Michigan Supreme Court, in its ruling, rejected the lower court approach and held that the nuisance abatement statute permitted abatement of the premises for both lewdness and prostitution. On January 12, 1996, Dizzy Duck was closed for a year.

A prohibition of simulated sexual conduct on premises licensed by the Michigan Liquor Control Commission was held to be violated by a lap and table dance in Kotmar v. Liquor Control Commission, 525 N.W. 2d 921 (Mich. Ct. App. 1994).

In the 1998 case of State v. Mell, 576 N.W. 2d 428, the Court Of Appeals of Michigan again addressed the issue of lap dancing. The Court refused to apply the Dizzy Duck Supreme Court of Michigan opinion on the theory that at the time of the infraction the lower court opinion was the law. The Supreme Court of Michigan was not about to allow such an interpretation and in October 1998, 586 N.W. 2d 745, remanded to the District Court with instructions to apply its July 1995 decision, 535 N.W. 2d 178, indicating that that decision represented the law prior to its articulating the same.

Nebraska

The Nebraska Court of Appeals in 1994 in the case of Houston v. Nebraska Liquor Control, 1994 Neb. App. Lexis 67 (Neb. Ct. App. 1994), ruled that "lap dancing" and certain other sexual activity, violated a city ordinance which prohibited "lewd" "indecent" or "lascivious" behavior.

Ohio

One of the cases cited by the Michigan Supreme Court was State ex rel Miller v. Private Dancer, 613 N.E. 2d 1066 (1992), an earlier Ohio Court of Appeals opinion. In that case the County Prosecutor filed a complaint indicating that the establishment known as "Private Dancer" permitted "lewdness" in the form of "lap dancing" and should be closed as a nuisance. The Court of Appeals dismissed a vagueness attack on the use of the word "lewdness" and upheld an injunction saying there was credible evidence that "lap dancing" was "lewd" and "tended to excite sensual desire or imagination".

Pennsylvania

An early "lap dancing" case, involving a male lap dancer in a liquor establishment setting, arose in the Commonwealth of Pennsylvania in 1990. The Commonwealth Court held in Commonwealth Pennsylvania Liquor Control Board v. CIC Investors, 584 A. 2d 1094 that this was "immoral or improper" entertainment in violation of Section 4-493(10) of the Liquor Code.

A similar result was obtained under a Pennsylvania "Bottle Club" statute in the more recent case of Commonwealth v. Maker, 716 A. 2d 619 (Pa. Super. Ct. 1998). The new statute, 18 Pa. CSA 7329(a), prohibited "lewd, immoral or improper" entertainment for profit in a "bottle club". The Supreme Court of Pennsylvania affirmed this decision on November 27, 2000 at 761 A. 2d 1167.

No Touch Provisions

Texas

Perhaps, next to "Buffer Zone" ordinances, "no touch" provisos may be the most effective in preventing lap dancing. This approach has been used successfully in Arlington, Texas, where the ordinance was upheld both by the state and federal courts.

The "no touch" provisions of Arlington provide:

(a) An employee of an adult cabaret, while appearing in a state of nudity, commits an offense if he touches a customer or the clothing of a customer.
(b) A customer at an adult cabaret commits an offense if he touches an employee appearing in a state of nudity or the clothing of the employee.

The definition of state of nudity included semi-nudity.

These provisions, combined with the balance of the ordinance, were upheld by the Texas Court of Appeals in 2300 Inc. v. City of Arlington, 888 S.W. 2d 123, in 1994 as content-neutral time, place and manner regulations directed against secondary effects such as prostitution, drug trafficking and assault.

Another plaintiff raised the issue of constitutionality of the ordinance in Federal Court In Hang On Inc. v. City of Arlington, 65 F. 3d 1248 (5th Cir.) in 1995 where the court noted that the definition of "state of nudity" was defined as a state of dress that fails to opaquely cover a human buttock, anus, male genitals, female genitals or female breast. The 5th Circuit recognized that nude dancing is within the outer perimeter of the First Amendment but said:

> "It does not necessarily follow, however, that touching between a nude performer and a customer is protected expression".

The court also held that the mere fact that it applied to employees other than dancers did not change the result. The opinion construed the ordinance to exclude inadvertent or accidental touching and as requiring a culpable mental state. It rejected equal protection arguments.

Kansas

Another result was mandated by a Kansas Court of Appeals in the determination of DPR Inc. v. City of Pittsburg, Kansas, where different language was employed at 953 P. 2d 231 review denied 1998 Kan. Lexis 180 (Kan. March 17, 1998). Section 4(b) of the ordinance, which was enacted to control lap dancing, prohibited:

> "Encouraging or knowingly permitting any manager, employee or agent on the licensed premises to touch, caress or fondle whether clothed or unclothed the breasts, buttocks, anus, vulva, penis or genitals of any other manager, employee or agent of any patron" (so in original case).

The court interpreted this section of the ordinance to prohibit innocent dancing with a spouse, girlfriend or boyfriend and, as such, held it to be overly broad, but severable.

Buffer Zone Laws

These ordinances have been the most successful. Instead of prohibiting "lap dancing" or "table dancing" as such, the "Buffer Zone" regulations obtain the same result by maintaining a separation between dancers (or entertainers or performers) and patrons. The cases, outlined herein, indicate that a well-drawn ordinance will articulate in the Preamble or the Findings the deleterious effects that the ordinance is designed to ameliorate and demonstrate the link between the regulation and the asserted government interest as well as the evidence on which the city relied to determine that adverse secondary effects emanate from "lap dancing". This evidence is garnered either from local studies, testimony, studies conducted in other locales, or as the Supreme Court in Renton v. Playtime Theatres, Inc. 475 U.S. 41 (1986) says:

> "We hold that Renton was entitled to rely on the experience of Seattle and other cities, and in particular on the 'detailed findings' summarized in the Washington Supreme Court's Northend Cinema Opinion".

In other words, a municipality can rely for justification not only on local studies, testimony, or studies from other locales, but on the "detailed findings" of deleterious effects found in other court opinions. (See Appendix VI, Judicial Findings) The cases indicate that the better course is to spell out the specific studies by name or the specific findings of other courts. It is also important, too, say the cases, to be able to demonstrate that the city relied on this evidence prior to the adoption of the ordinance.

A typical Buffer Zone ordinance is that represented in the Bolser case, discussed below, requiring that topless dancing be performed upon a stage "at least 18 inches above the immediate floor level and removed at least six feet from the nearest patron". The

adult entertainment ordinance of the City of Bellevue, Washington (See Appendix II) was designed to include lap dancers as well as stage and table dancers.

Although it is uncertain where the buffer zone concept was first utilized, a likely source is the State of New York. The United States Supreme Court in New York State Liquor Authority v. Bellanca, 452 U.S. 714, 101 S. Ct. 2599 at 2603 (1981), noted that prior to a 1977 amendment to the New York Alcoholic Beverage Law prohibiting topless dancing, the ABC Regulation permitted topless "on a stage or platform which is at least 18 inches above the immediate floor level and at least six feet from the nearest patron".

It is also interesting to observe that this approach to topless would apparently have garnered the votes of the four dissenters in Barnes v. Glen Theatre, 501 U.S. 560 (1991). In the dissent, Justices White, Marshall, Blackmum and Stevens state:

> "If the state is genuinely concerned with prostitution and associated evils…or the type of conduct that was occurring in California v. LaRue…it can adopt restrictions that do not interfere with the expressiveness of non-obscene nude dancing performances. For instance, the state could perhaps require that, while performing nude, nude performers remain at all times a certain minimum distance from spectators, that nude entertainment be limited to certain hours, or even that establishments providing such entertainment be dispersed throughout the city. Renton v. Playtime Theatres, Inc. 475 U.S. 41 (1986). Likewise the state clearly has the authority to criminalize prostitution and obscene behavior."

Some may view these remarks as presaging approval by the United States Supreme Court of the first lap dancing (buffer zone or lewdness) case that reaches the High Court.

We now review the Lap Dancing Buffer Zone cases at the Circuit Court level beginning with the 9th Circuit, which includes Alaska, Arizona, California, Guam, Hawaii, Idaho, Montana, Nevada, Oregon and Washington.

An early 1986 "juice bar" case in Washington, Kev Inc. v. Kitsap County, 793 F.2d 1053, was a test of an erotic dance studio ordinance prohibiting affectionate touching between dancers and patrons and requiring that all dancing take place at least ten feet from the patrons and on a stage raised at least two feet from the floor. Tipping was not permitted. (See Kitsap Ordinance, Appendix V.) At page 1061 the 9th Circuit said:

> "Separating dancers from patrons would reduce the opportunity for prostitution and narcotics transactions…The county presented testimony that close contact between dancers and patrons facilitated these transactions".

The court went on to hold that the ten-foot rule did not "significantly burden First Amendment rights" and opined that "While the dancer's erotic message may be slightly less effective from ten feet, the ability to engage in protected expression is not significantly impaired. Erotic dancers still have reasonable access to the market".

While the Kev case was making its way up to the 9th Circuit, and after the Federal District Court for the Western District of Washington, No. 83-180R (1984), had upheld the ordinance except for the hours-of-operation proviso, the county brought an action to enjoin the erotic dance studio as a nuisance in state court for violations of the ordinances. The Washington Supreme Court in Kitsap County v. Kev. Inc., 720 P.2d 818 infra (1986) held that a nuisance existed.

The 9th Circuit was again afforded an opportunity to uphold its prior 1986 ruling in 1998 when an ordinance of the City of Kent, Washington was at issue. Colacurcio v. City of Kent, 163 F. 3d 545 Review denied 529 U.S. 1053 (2000). It, in effect, parroted the Kitsap County language and was patterned to conform to a King County Superior Court ruling on an ordinance of Bellevue Washington. It provided in relevant part:

> "The portion of the exotic dance studio premises in which dancing and adult entertainment by an entertainer is performed shall be on a stage or platform at least twenty-four (24) inches in elevation above the level of the patron seating area. No dancing or adult entertainment by an entertainer shall occur closer than ten (10) feet to any patron".
>
> The code also prohibited dancers from soliciting or receiving tips from patrons.

The 9th Circuit, in reviewing this case and affirming the District Court's opinion at 944 Fed. Supp. 1470 (1996), outlined the requirement, for time, place and manner regulation as follows:

> "Municipalities may impose reasonable restrictions on the time, place and manner of protected speech provided the restrictions are (1) content neutral (2) narrowly tailored to serve a significant government interest; (3) leave open ample alternative channels for communications of information, Ward v. Rock Against Racism, 491 U.S. 781, 791 (1989). The Supreme Court has determined that the test is similar or identical to the O'Brien test…In determining whether an ordinance is content-neutral, our principal inquiry is whether the government had adopted a regulation of speech because of disagreement with the message it conveys…The content-neutrality requirement is met if the involved ordinance is 'aimed to control secondary effects resulting from the protected expression rather than at inhibiting the expression itself.'"

The court, basing its opinion, partly on the previously decided Kev case upheld the ordinance. It noted that the ordinance was based on "A comprehensive study of adult entertainment businesses and their secondary impacts…In formulating the ordinance, the

city relied on the study concluding that regulation of adult uses was an important factor in controlling prostitution and drug dealing and other criminal activity".

The federal court upheld these provisions as valid time, place or manner regulations. The court noted that the state's purpose was to curtail public sexual contact and sexual criminal offenses and ruled that this represented a significant state interest. The court also said that the distance requirement did not diminish the expressiveness of the nude entertainment. (See Kent ordinance Appendix III).

Another earlier 9th Circuit case was BSA Inc. v. King County, 804 F. 2d 1104 arising in 1986. This was a "soda pop" or "juice bar" matter where the county ordinance required that all entertainment be on a stage 18 inches high and six feet from the nearest patron. The Court affirmed the district court, holding that "The purpose of the section is to deter sexual contact and illegal touching between performers and patrons", and the provision was a reasonable time, place, or manner regulation permissible under the First Amendment.

We now move to the 6th Circuit's handling of the Buffer Zone issue. The 6th Circuit includes Kentucky, Michigan, Ohio and Tennessee.

The Federal Eastern District of Tennessee Court in 1995 in the case of DLS Inc. v. City of Chattanooga, upheld a "six foot rule" designed, inter alia, to prevent lap dancing, as meeting the elements of the O'Brien test and ruled that Chattanooga was under no obligation to provide a legislative history to justify the same citing Justice Souter's opinion in Barnes as authority. (894 F. Supp. 1140).

On appeal to the 6th Circuit, 107 F. 3d 403 (1997), the opinion of the District Court as to the validity of the six-foot buffer rule was affirmed. That court said:

> "The defendants assert and the District Court found, that the requirement of a six foot buffer furthers the important state interest of the prevention of crime and the prevention of disease. The plaintiff's argue…that there is no evidence that 'adult cabarets', as opposed to 'adult book stores', are associated with crime or health problems…That is incorrect. Ann Martin, the sole shareholder of DLS operated another cabaret in Chattanooga known as the 'Classic Cat' in the late 1970's and early 1980's. Police records reveal that in 1978 and 1980 police were called to the Classic Cat a total of 435 times; the records include reports of rape, aggravated assault, prostitution…and one report of lunacy. In addition, there are contemporaneous reports of serious crimes in other adult cabarets in Chattanooga…Members of the Chattanooga Police Department testified that they have visited adult cabarets in the city repeatedly…Each officer testified that he had witnessed 'couch dancers'…An officer of the Chattanooga Health Department testified that such contact poses a risk of the transmission of disease."

The Circuit Court continues:

> "The plaintiff's object that much of the evidence of crime and health effects was developed after the enactment of the amendment to the ordinance, and therefore is not evidence of the City Council's intent. They cite 6th Circuit authority to the effect that the government must show that the legislature actually relied on evidence of secondary effects. This argument is foreclosed by Justice Souter's concurrence in Barnes…It is reasonable to believe that the six-foot rule would further a state interest in the prevention of crime and disease. A prohibition on contact…limits the spread of disease…The addition of a buffer zone to the ban on contact was necessary to achieve that goal, given the repeated violations of the no-contact and testimony to the effect that without a buffer zone, it was difficult to determine if contact actually occurred or who was responsible…Just as Indiana could conclude 'The higher incidence of prostitution and sexual assault in the vicinity of adult entertainment locations results from the concentration of crowds of men predisposed to such activities, or from a simple showing of nude bodies', so-too could the City of Chattanooga conclude that similar results obtain from similar concentrations of crowds or from the viewing of nearly nude bodies…at…close proximity".

The 1998 code of the State or Tennessee, Section 7-51-114, as the Chancery Court for Sullivan County says, provides:

> "Among other things, for no physical contact and requires performers to perform only upon an 18 inch stage, six feet away from the customers".

That Court then goes on to interpret the statute as follows:

> "The Court finds that the restrictions set forth in Tennessee Code 7-51-1114 are the least restrictive that could be done. More specifically with regard to this section, the court finds that the provision regarding no physical contact only applies during a performance not in between performances, not between employees that are not performing while someone's performing. The clear intent is to prevent sexual contact between the performer and the employee or a fellow performer or a customer. (American Show Bar Series Inc. V. Sullivan County, Tennessee,) No. 15-279 (Tenn. Chan. Ct.1999). (aff'd., 30 S.W. 3d 324 (Tenn. Ct. App. 2000) (appeal denied, 2000 Tenn. Lexis 543 (Tenn. 2000).

Note

In Tennessee, see also Tenn. Code 39-13-511 relating to nudity in a public place prohibiting "sexual contact," upheld by the 6th Circuit in Déjà vu of Nashville, Inc. v. City of Nashville, 1999 U.S. App. Lexis 535 (Jan. 19, 1999).

Buffer Zone Treatment at State Level

We now outline the state cases that create a Buffer Zone to, inter alia, limit lap dancing by distancing the "dancer" from the patron.

California

An ordinance of the City of Newport Beach California, among other provision, incorporated a No Touching Rule and a requirement that entertainers perform on a stage at least 18 inches high and six feet away from patrons. The California Court of Appeals in Tily B. Inc. v. City of Newport Beach, 81 Cal. Rptr. 2d 6, decided in 1998 held:

> "The stage height and distance requirements further the city's interest in crime and disease prevention, they are reasonably tailored to meet that goal and they are constitutional. It is reasonable to conclude that the six foot rule would further the…interest in the prevention of crime and disease. A prohibition against contact certainly limits the spread of disease. The requirement that the stage be six (6) feet from the nearest area occupied by patrons is not vague. Difficulties in configuring the club to comply do not vagueness make."

The court rejected equal protection arguments and upheld the power of municipalities in California to revoke the licenses of adult business that "bumped up" against local ordinances prohibiting "erotic touching".

The California Supreme Court denied review at 1999 Cal. Lexis 1621 (Cal. March 17, 1999).

The same Court of Appeals in People v. Janini, 89 Cal. Rptr. 2d 244 (1999) in a criminal misdemeanor prosecution of "lap dancers" for violation of local ordinance, said:

> "Cities may require adult theaters to obtain permits or licensee. They may regulate the time, place, and manner for the conduct of adult businesses, including the hours of operation, noise and parking. And while cities may revoke permits for noncompliance or prosecute for operating without one, they may not punish alleged violations [of sexual activity ordinances] directly as sex crimes without express legislative authority."

It is interesting to note that the Court of Appeals certified this case for publication, but for some reason, not apparent, the California Supreme Court decertified it at 2000 Cal. Lexis 784 (2000) and at the same time denied review.

Colorado

The en banc Colorado Supreme Court, in City of Colorado Springs v. 2354 Inc., 896 P. 2d 272, decided in 1995, held that a 3 foot buffer zone was a valid time, place or manner limitation and was valid.

Florida

T-Marc Inc. v. Pinellas County was a case where a Florida municipality adopted the use of the Buffer Zone approach requiring a three-foot separation between nude or semi-nude dancers and patrons. The United States District Court for the Middle District of Florida, at 804 F. Supp. 1500 (1995) held that the rule was adopted to combat secondary effects of permitting close contact between the patrons and the dancers. The ordinance is aimed at combating the secondary effects of the spread of social disease and crime, which are "substantial governmental interests". The court held that the rule was narrowly tailored because it does not greatly impair the dancer's expression quoting the dissenting judges in Barnes (supra) for its validity.

Georgia

The Supreme Court of Georgia in 1995 upheld a local ordinance provision that required dancers to remain four feet from patrons over a challenge based on equal protection. (Club Southern Burlesque v. City of Carrollton, 457 S.E. 2d 816)

In the same year that court upheld an ordinance of Whitfield County, stating that it furthered the important governmental interests of reducing crime and protecting neighborhoods from deterioration, over an objection that it violated equal protection.

The court described the ordinance as one which:

> "Sets forth certain regulations to create and ensure a buffer between performers and patrons. For example it requires performers to dance on a stage of minimum height; establishes minimum distance requirements to prevent patrons and performers from touching each other; provides for full lighting of the premises, prohibits performers from receiving gratuities and prohibits the sale and consumption of alcoholic beverages on the premises". (Parker v. Whitfield County, 463 S.E. 2d 116).

Maryland

The Federal Court in Maryland had occasion to deal with a buffer zone case in Zanganeh v. Hymes, 844 F. Supp. 1087 (D. Md. 1994) and cited the 9th Circuit Kev Inc. v. Kitsap County case and held that a buffer zone "does not impair the dancer's freedom of expression".

Ohio

The Northern District of Ohio Federal Court in Threesome Entertainment v. Strittmather, 4 F. Supp. 2d 710 in 1998, ruled that a municipal ordinance of Vermillion, Ohio could require that there be a buffer zone with the dancers separated by six feet in order to curb the secondary effects without foreclosing a patron's opportunity to view and appreciate an artistic dance performance even if the result was to preclude lap dancing.

Tennessee

A 1992 Court of Appeals case, PP&C Inc. v. Metropolitan Beer Permit Board, 833 S.W. 2d 90, upheld an 18 inch-six foot Buffer ordinance "to protect societal order and morality".

Washington

Kitsap County v. Kev, 720 P. 2d 818 (Wash. Sup. Ct. 1986) was an early buffer zone case (mentioned above). While the case gives scant details of the 1982 ordinance involved, its terms can be derived from Kev V. Kitsap County, supra. The ordinance prohibited affectionate touching between dancers and patrons. It required that dancing be performed on a stage raised at least two feet and a buffer of ten feet between dancers and patrons. Because of multiple violations of the ordinance, including violations of the distance separation requirements, the Kitsap County Commissioners declared the studio a public nuisance under the terms of ordinance. That declaration was upheld by the trial court and the Supreme Court of Washington. The trial court enjoined the principals as well as the corporation from operating the studio.

DCR Inc. v. Pierce County, 964 P. 2d 380 (Wash. Ct. App.1998) Review denied 980 P. 2d 1283 (Wash. 1999) Writ of cert. denied 529 U.S. 1053 (2000) involved a Pierce County Ordinance, (See Pierce Ordinance, Appendix IV) 94-5 (1994), codified as Section 5.14 (1994) which regulates erotic dance studios, managers, dancers and employees. It's stated purpose is to eliminate the 'historic' and regular occurrence of prostitution, narcotics and breaches of the peace…" Section 514.010(D) defines erotic dance studios. Section 514.80(H) requires all dancing to occur on a platform raised at least 18 inches from the floor and no closer than 10 feet to any patrons. Section 514.190 (K) and (L) prohibit direct tipping.

DCR presented the declaration of Fueston, part owner of that adult club in Bellevue, who claimed that after his business began complying with Bellevue's four-foot minimum distance restriction for adult cabarets, entertainers were no longer willing to work there and the business was forced to close. DCR also presented the declaration of Paul Bem, comptroller for the Deja Vue nightclub in Federal Way, which began operating at a loss once it complied with Federal Way's four-foot separation requirement. To support its contention that the ordinance would destroy the market for alcohol-free exotic dance clubs, DCR submitted Richard Wilson's declaration that prohibition of table dancing will eliminate the market for such clubs. Wilson is an attorney who has

represented several nightclubs across the United States. He has been a legal and business consultant for several adult entertainment companies. His declaration states:

> "Based on my experience in the industry…it is my opinion and belief that table dancing is the primary entertainment activity provided by adult nightclubs, and that attracts customers…without table dances, entertainers would not be able to earn a living and adult nightclubs would suffer severe financial losses and be forced to close…"

The Washington Court of Appeals held:

> "In the abstract sense, all conduct 'expresses' something. That alone cannot justify treating all conduct as speech…The issue here is whether proximity of the erotic dance, as contrasted to movements of the dance, constitutes communicative 'expression'….The ten foot rule minimizes opportunity for illegal activities which are not protected conduct. But the ten foot rule does not restrict expressive conduct of the dance itself."

Pierce County ordinance, No. 94-5, states that its purpose is to curb significant "criminal activity" that has "historically and regularly occurred in the adult entertainment industry. Thus, it shows a legitimate purpose on its face…The county produced ample evidence that its predominant purpose was the amelioration of deleterious secondary effects…The ordinance is content-neutral."

The court went on to quote Playtime Theatres on the irrelevance of economic effect and said:

> "Similarly in the context of adult business, lower federal courts have consistently rejected financial feasibility as a consideration…Paramount to the dicta in Ino Ino fn.16 we must apply the economic effects of Playtime Theatres, as followed by the 9th Circuit in Spokane Arcades…only a denial of access to the market constitutes an unconstitutional elimination of alternative channels fn17". Review was denied at 68 L.W. 3629 (U.S. 2000). Note: [The Pierce County Ordinance may be found as Appendix IV] See also the dissent in this case (DCR v. Pierce County).

Next we review a Washington Supreme Court case decided in 1997. Ino-Ino Inc. v. Bellevue, Washington, 937 P. 2d 154 cert denied 118 S. Ct. 856 (1998). The Bellevue ordinance (See Appendix II) is a regulation of adult cabarets. It defines adult entertainment and provides that nude or semi-nude dancers must perform on an elevated stage at least eight feet from patrons. It prohibited nude performances or graphic representations of such performances outside adult cabarets. The ordinance prohibited any employee or entertainer from erotically touching any member of the public or another employee or entertainer. It further prohibited actual or simulated acts of sexual

conduct violative of the State of Washington Moral Nuisance Statute. It also provided that no employee or entertainer mingling with the public shall conduct any dance, performance or exhibition in and about the non-stage area unless that dance performance or exhibition be performed at a distance of no less than four feet from any member of the public. The ordinance also regulated tipping. The Washington Court stated:

> "The trial court found the illegal exposure and sexual contact occurred at adult cabarets…The trial court also found that the low lighting and close proximity between patrons and dancers hindered the officer's ability to detect violations that may have been occurring elsewhere in the club…The trial court found…that the city had enacted the ordinance in order to control the illegal exposure and sexual conduct or 'secondary effects' of live adult entertainment. With respect to the restrictions for table dancers, the trial court found that a dancer can convey eroticism from a distance of four feet from the patron's torso"…(and) "that Papagayo's had not complied with the city's four-foot restriction on table and couch dances."

The court continues:

> "The four foot distance requirement here does not ban table dancing…It does regulate the time, place or manner of expression…[It] meets the requirements of the O'Brien test…It facilitates the detection of public sexual contact and discourages contact from occurring in the first place…Bellevue, may rely on the experiences of other jurisdictions to show that its ordinances further the substantial interest in curbing secondary effects…In this case the respondent's presented evidence showing only that financial failure was possible, and thus failed to show an inevitable effect such as that in Gomillion…The eight foot requirement for stage dancing regulates only conduct, and therefore we examine this rule under the rational basis test."

The court went on to construe the ordinance provision that all non-stage dancing be performed no less than four feet from "any member of the public" to be interpreted to mean between a dancer and "his or her customer".

The court also held that the argument that the definition of "adult entertainment" makes the ordinance applicable to businesses that do not "regularly feature" these types of performances fails because it is unrealistic and if overly broad, is not real and substantial. Review denied 68 L.W. 3569 (2000).

To complete our study of the State of Washington lap dancing buffer-zone cases we next review the 1988 O'Day case and then the 1978 Bolser ruling.

In O'Day v. King County, 749 P.2d 142, the Washington Supreme Court considered a county ordinance that applied to juice bars and soda pop clubs. It required

nude or semi-nude dancing to be on a stage 18 inches high and at least six feet from the nearest patron, but the ordinance included a non-obscene dance exception.

The court upheld this requirement when read in pari materia with other provisions, since, read together, it limits the standards to "pure conduct" and non-obscene expression. The court complained about the fact that the ordinance was not "precisely drafted" and had great difficulty in construing the same so as to make it constitutional.

It did comment that the stage requirement was a time, place and manner restriction and held that it regulated only conduct, to wit, sexual contact between entertainers and patrons. The court also said that the ordinance did not violate equal protection.

Bolser v. Washington State Liquor Control Board, 580 P. 2d 629 (Wash. Sup. Ct. 1978) held that a regulation of the Liquor Control Board which forbids a licensee from permitting entertainers whose breast and/or buttock are exposed to view to perform elsewhere on the licensed premises except on a stage eighteen inches above the immediate floor level and removed at least six feet from the nearest patron applied only to the licensee and did not expressly control the conduct of the dancers. The court, referring to its prior opinion in Anderson v. State, 575 P. 2d 221 (1977), upheld the authority of the Board to promulgate the regulation and upheld its validity. It also indicated that the 9th Circuit had upheld the regulation in Richter v. Department of Alcoholic Beverage Control, 559 F. 2d 1168 (1977) cert. denied 434 U.S. 1046 (1978), which had ruled:

> "The goal of the regulation is not censorship of the expression but the prevention of crime and disorderly conduct which is concomitant with the consumption of liquor in such situations. In this case, it was shown at the hearings…that a vast amount of various crimes (e.g. rape, prostitution, public indecency, assaults, etc.) was taking place on or near premises wherein the forms of entertainment delineated in the rules occurred".

The Bolser Court also held that:

"If there is an infringement [of the First Amendment], we conclude it is at most minimal".

APPENDIX I – PART I

CREATION OF A SYMBOLIC SPEECH OR A TIME, PLACE OR MANNER, CONTENT-NEUTRAL SEXUALLY ORIENTED BUSINESS ORDINANCE

THE O'BRIEN RULE

We start with United States v. O'Brien (391 U.S. 367 (1968)) where, as a symbolic protest, a demonstrator burned his draft registration certificate. This was a political act involving freedom of "symbolic" speech. Destruction of a draft certificate was made a federal crime in 1965.

The United States Supreme Court created a new test for legislation that criminalized conduct involving a "symbolic" speech element. This became known as the O'Brien Rule. That Court said:

> "When speech and 'non-speech' elements are combined in the same course of conduct, a sufficiently important governmental interest in regulating the non-speech element can justify incidental limitations on First Amendment freedoms."

The Court then gives us the O'Brien Test for such a regulation saying:

> "We think a governmental regulation is sufficiently justified if,"
> (1) "It is within the constitutional power of the government"
> (2) "If it furthers an important or substantial governmental interest"
> (3) "If the governmental interest is unrelated to the suppression of free expression"
> (4) "If the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest".

The O'Brien Test is a "symbolic speech" rule and differs from a "time, place, or manner regulation of protected speech", only in the exact words of the test. Time, place or manner regulations are valid if:

(1) "They are justified without reference to the content of the regulated speech"
(2) "They are narrowly tailored to serve a significant governmental interest" and
(3) "They leave open ample alternative channels for communication of information" (Clark v. Community for Creative Non Violence, 468 U.S. 288 (1984)).

The Clark Court then quotes the O'Brien Test for the regulation of "Symbolic Speech" (noted above) and says:

"The standard of…O'Brien…is…little, if any, different from the standard applied to time, place or manner restrictions".

THE RENTON-WARD TEST

A species of time, place or manner regulation that, on its face, appears to be content-based such as classifying motion picture theaters by the nature of the films they show (Cf. Renton v. Playtime Theaters Inc., 475 U.S. 41 (1986)) can still avoid the strict scrutiny applied to content-based enactments and usual invalidity if it is a "content neutral" enactment.

In Renton, the U.S. Supreme Court approved, as content neutral, a time, place or manner regulation where the "predominate concerns" of the City Council, or their "predominant interest", were with the secondary effects of adult theaters and not with the content of the films and said:

"The Renton ordinance is completely consistent with our definition of 'content neutral' speech regulations as those that 'are justified without reference to the content of the regulated speech".

The Renton Court goes on to say:

"In American Mini Theaters, a majority of this Court decided that, at least with respect to businesses that purvey sexually explicit materials, zoning ordinances designed to combat the undesirable secondary effects of such businesses are to be reviewed under the standards applicable to 'content-neutral' time, place and manner regulations".

A later case reiterated the content-neutral requirements in a slightly altered fashion when the U.S. Supreme Court said:

"Municipalities may impose reasonable restrictions on the time, place or manner of protected speech, provided the restrictions are (1) justified without reference to the content of the regulated speech (2) narrowly tailored to serve a significant governmental interest and (3) leave open ample alternative channels for communication of the information. (Ward v. Rock Against Racism, 491 U.S. 781 (1989))."

In Ward , the U.S.

> "We reaffirm today that any regulation of the time, place or manner of protected speech must be narrowly tailored to serve the government's content-neutral interest but that it need not be the least restrictive or least intrusive means of doing so…so long as the…regulation promotes a substantial governmental interest that would be achieved less effectively absent the regulation…this…does not mean that…a…regulation may burden substantially more speech then is necessary to further the government's legitimate interests".

It would appear to be wise to comply with Renton and Ward in constructing a sexually oriented business (SOB) zoning ordinance.

CONTENT NEUTRALITY AND LEVEL OF SCRUTINY

Now it may be se

ordinances avoid strict scrutiny and may be judged on an intermediate or more deferential standard of review. In Ben Rich Trading Inc. v. City of Vineland, (126 F. 3d 155 (1997)) the Third Circuit said:

> "Any regulation of…sexually oriented speech that is aimed primarily at suppressing the content of the speech is subject to strict scrutiny…and unless justified by a compelling government interest is presumptively unconstitutional…However, if a regulation's primary purpose is to ameliorate the socially adverse secondary effects of speech-related activity, the regulation is deemed content-neutral and is accordingly measured by intermediate scrutiny…See Turner Broadcasting Systems Inc. v. FCC, 512 U.S. 622, 642 (1994)".

This Third Circuit court, however, also said:

> "The City must still have presented evidence of 'incidental adverse social effects that provides the important governmental interest'…and must be able to 'articulate and support its argument with a reasoned and substantial basis demonstrating the link between the regulation and the asserted governmental interest (Phillips, 107 F. 3d 17).

This justification is usually presented to the City Council or Planning Board by means of affidavits, testimony at the hearing, local studies of adverse effects, studies or "findings" in other locales (cf. Renton) prior to taking legislative action. (cf. Bamon Corp v. City of Dayton, 730 F. Supp 80 (S.D. Ohio 1990) aff'd 923 F. 2d 470 (8th Circuit 1991))

The Third Circuit, however, does not now require the same prior to passage of the legislation and a city may present it when the ordinance is challenged. (cf. Ben Rich and Phillips) It remains to be seen whether other circuits will follow that example.

In preparing a sexually oriented content-neutral ordinance, the cause of the government can be advanced by articulating its governmental interests in the preamble or in its "findings" in the ordinance (or both). (Cf. Avalon Cinema Corp. v. Thompson, 667 F. 2d 659 (8th Cir. 1981))

It is probably a mistake to combine different types of regulation in the same ordinance for a variety of reasons, one of which is that it will draw more flack from interested opponents. The other is that if it is combined with a zoning regulation it will have to also pass muster with the Planning Board. Sometimes a mistake is made by giving existing non-conforming uses a grandfather which, of course, is not required in a non-zoning SOB regulation.

Watch also for the trap of using a percentage figure for stock in trade of sexually oriented materials as a way of defining an SOB in a zoning ordinance. This can be, and is, easily avoided by stocking up with trinkets, non-sexual magazines, newspapers etc. New York tried this and had a bad experience. Many cases support the phrase "substantial or significant" in reference to the amount of sexually oriented materials.

The recent case of City of Erie v. Pap's A.M. (529 U.S. 277 (2000)) is significant in making clear three concepts: (1) that the Secondary Effects doctrine is not confined to the location of a commercial enterprise, and (2) that a content-neutral ordinance may be applied to conduct, and (3) that such ordinances may be held content-neutral if they meet the O'Brien test. That Court said:

> "Justice Stevens claims that today we for the first time extend Renton's secondary effects doctrine to justify restrictions other than location of a commercial enterprise…Our reliance on Renton to justify other restrictions is not new. In Ward, the Court relied on Renton to evaluate restrictions on sound amplification".

The Court continues:

> "Erie's ordinance is on its face a content-neutral restriction on conduct…valid if it satisfies the four factor test from O'Brien for evaluating restrictions on symbolic speech.

It may be seen then that if the claimed First Amendment activity is conduct-speech, such as erotic dancing, it may be regulated by an ordinance that meets the O'Brien test for content neutrality. Attention should be given in constructing such an ordinance to the protection of truly artistic stage or theater productions or activity otherwise protected by the First Amendment.

Appendix I Part 2

CHECKLIST FOR FORMULATING
A NO TOUCH OR BUFFER ZONE
LAP OR TABLE DANCE ORDINANCE

- Do your state laws permit cities or counties to enact legislation of this type?
- Were your state laws reviewed with an eye toward whether such an ordinance would be preempted?
- Does the ordinance have a preamble that articulates a legitimate governmental interest in regulating of such activities?
- Is that predominant purpose related to the deleterious secondary effects of such services? And not to the restriction of First Amendment Freedoms?
- Does the ordinance rely for evidence on local conditions or studies, and if so, are these spelled out in the language of the ordinance?
- Does it rely, or also rely, on the deleterious effects of erotic dance studios in other locales? If so, does it spell out the locales and the deleterious effects and where found in cases, studies or judicial findings?
- Was there a review of case law and ordinances and findings in home state (if any) and other locales?
- Was a sufficient record made of all studies, cases and judicial findings both local and in other locales as evidence reasonably to be relied on to justify the provisions of the ordinance?
- Do local studies include reports, affidavits, testimony, maps, surveys and police reports?
- Did the city/county conduct a public hearing after proper notice?

- Were the city/county council members reminded that their comments, including comments to the press, will become part of the public record?

- During the public hearing or hearings or prior to a vote was all the evidence to justify the ordinance available to and brought to the attention of the city/county council members so that they could rely on such evidence in casting their vote?

- In preparing the ordinance was due observance paid to the following considerations?
    1. Does the ordinance contain adequate definitions or provisions relating to:
        (a) Erotic dance studio
        (b) Age requirements for performers
        (c) Age requirements for admission
        (d) Restrictions on alcohol
        (e) Restrictions on controlled substances
        (f) Definition of dancer
        (g) Regulations applicable to performers
        (h) Definition of Manager
        (i) Prima Facie evidence that establishment is an erotic dance studio
        (j) Definition of lap and table dancing, license requirements if licenses required
        (k) Necessity for manager on premises when open and his/her responsibilities.
        (l) Restrictions or standards of operation:
            1. Licensees, if any
            2. Reports of receipts and payments to performers
            3. Age restrictions
            4. Platform requirements
            5. Buffer requirement
            6. Regulations regarding performers and employees
            7. Tipping restrictions
            8. Visibility from common areas of all performances
            9. Invisibility from any public place
            10. Signs, if any
            11. Restrictions on obscene performances and definition thereof
            12. Exemptions from ordinance
            13. Inspection of records
            14. Inspections of premises and purposes of inspection
            15. Penalties for violations
            16. Whether or not violations are a nuisance
            17. Provision for seeking injunction
            18. Do standards apply to managers, dancers and owner as operator?
            19. Do your no-touch or stage or buffer provisos follow those upheld elsewhere?

- Have you determined that the ordinance is content-neutral under the standards articulated in O'Brien and reiterated in Paps?

- Does the ordinance require that the applicant be of a certain character, such as having a clean record regarding prior convictions for sex crimes, prostitution or pimping including a time period between the date of conviction and date of application?

- Do such requirements relate to a legitimate governmental interest. (See FW/PBS v. City of Dallas, 493 U.S. 215 (1990) and especially 837 F.2d 1298 (5th Cir. 1988) and 648 F. Supp. 1061 (U.S. Dist. Ct. 1986).

- Are you satisfied that the license or permit provisions (if any) meet the requirements of FW/PBS for time periods and judicial review as interpreted in your jurisdiction (both State and Federal)?
- Does the ordinance have a severability clause?

- Does it have an effective date?

- If you have an hours-of-operation provision, are you satisfied that it is justified by previously decided cases?

- Do you have an exemption for work of serious value? Is one necessary?

Note

Many of the extant ordinances, including some referred to in this review, were enacted prior to City of Erie v. Paps and perhaps prior to Barnes and many were prepared with a belief that nudity or semi-nudity had to be permitted. It may be that City of Erie v. Paps will permit an ordinance requiring some cover up. Have you read Paps and shepardized it to make the determination of whether or not nudity or semi-nudity should continue to be permitted in erotic dance studios? (See for example, Gatena v. County of Orange, 80 F. Supp.2d 1331 (M.D. Fla. 1999) and as affirmed by the 11th Circuit at No. 99-14905, 226 F.3d 649 (2000), in an unpublished opinion available from the National Obscenity Law Center upon request (Writ of cert. denied 121 S. Ct. 858)). See also, Café 207 Inc. v. St. John's County 66 F. 3d 272 (11th Cir. 1995).

It should be noted that the Pap's case involved nude dancing in an adult entertainment establishment, but nevertheless the general nudity ordinance was properly applied to that activity.

Appendix VI

Judicial Findings

The Supreme Court of the United States in City of Renton v. Playtime Theatres, Inc. indicates that for relevant evidence of secondary effects a municipality may rely on the experience of other cities and in particular on the detailed findings summarized in other court's opinions. The exact quote from City of Renton reads:

> "We hold that Renton was entitled to rely on the experiences of Seattle and other cities and in particular on the detailed findings summarized in the Washington Supreme Court's North Cinema opinion".

One of the cases to revisit this principle is the 1999 Seventh Circuit case of Di Mar Corporation v. Town of Hallie, Wisconsin, 185 F. 3d 829, review denied, 68 L.W. 3655 (U.S. 2000). There the Circuit Court, in commenting on Justice Souter's controlling opinion in Barnes v. Glen Theatre, said:

> "Justice Souter's reasoning appears to be the Court's holding"…[He] "accepted the experience of other cities as reported in judicial opinions" (Emphasis in original) "as being evidence upon which the legislative could have reasonably relied"…"501 U.S. 560 at 583-86" "The Renton Court has similarly accepted the reliance on the experience of Seattle, as expressed in the detailed findings of fact summarized by the Washington Supreme Court in a prior case".

It should also be observed that Justice O'Connor, writing the opinion of the Supreme Court in City of Erie v. Paps, 529 U.S. 277 (2000) said:

> "Erie could reasonably rely on the evidentiary foundation set forth in Renton and Young v. American Mini Theatres, Inc., 427 U.S. 50 to the effect that secondary effects are caused by the presence of even one adult entertainment establishment in a given neighborhood. See Renton…at 51-52. Erie expressly relied on Barnes and its discussion of secondary effects including its reference to Renton and American Mini Theatres".

In the light of Renton, Barnes, DiMar and City of Erie, we interpret the reference in Renton to "detailed findings", to include the judicial findings that we outline by state following this introduction.

The following is an effort to outline judicial "Findings" relative to the deleterious secondary effects emanating from erotic studios, cabarets and juice bars which feature, or permit, as part of their "adult" entertainment, lap dancing or table dancing.

It is quite obvious that the Supreme Court was enunciating a rule of law, not just for Renton or for a zoning ordinance, but for all attempts, in enacting S.O.B. ordinances, to comply with the requirement whatever evidence " the city relies upon is reasonably believed to be relevant to the problem the city addresses" found as a requirement in the Renton case.

It is well, therefore for us to determine if there are judicial "Findings" in the cases previously cited. We find that there are, and report them here so that they may be incorporated as "evidence" to justify any enactment of a lap dancing or table dancing

either in the Preamble, the "Findings" or otherwise in the record of the enactment of the ordinance.

It does not appear to be legislatively necessary to produce "evidence" to enact an obscenity or prostitution ordinance since they are not in the content-neutral genre. The same is probably also true of nuisance regulations. Where we are dealing, however, with incidental restrictions on what is normally protected speech based on secondary effects, the cases appear to require that evidence of deleterious effects appear somewhere in the record. The Renton case indicates that judicial findings of such effects from other locales can satisfy such a requirement.

We will delineate such findings by state, alphabetically for possible use in the drafting of lap and table dancing ordinances. We start with California.

California

> "It is reasonable to conclude that the six foot stage distance rule would further the state's interest in the prevention of crime and disease. A prohibition on contact certainly limits the spread of disease".

Tily B. Inc. v. City of Newport Beach
81 Cal. Rptr. 2d 6
(Cal. Ct. Aps. 1998)
review denied
(1999 Cal. Lexis 162 (1999)).

Colorado

"We conclude that the ordinance furthers a substantial governmental interest of reducing incidents of criminal conduct and preventing neighborhood blight".

City of Colorado Springs v. 2354 Inc.
896 P. 2d 272
(Colo. Sup. Ct. 1995).

Florida

"The evidence supports the Magistrate/Judge conclusion that the ordinance three foot requirement is directed at combating the secondary effects of permitting close contact between the patrons and the dancers. The ordinance is aimed at combating the spread of social disease and crime".

T Marc Inc. v. Pinellas County
804 F. Supp. 1500
(M.D. Fla. 1995)

Georgia

"The Whitfield County ordinance furthers important government interests, reducing crime and protecting neighborhoods from deterioration."

Parker v. Whitfield County
463 S.E. 2d 116
(Ga. Sup. Ct. 1995)

Tennessee

"Contact titillation at adult cabarets is tantamount to prostitution".

DLS Inc. v. City of Chattanooga
107 F. 3d 403
(6th Cir. 1997)

Texas

"The provisions are directed against the secondary effects of adult cabarets, namely crimes such as prostitution, drug trafficking and assault".

2300 Inc. v. City of Arlington
888 S.W. 2d 123
(Tex. Ct. Apps. 1994)

"We are persuaded that Arlington's" ("No Touch")"ordinance furthers Arlington's interest in preventing prostitution, drug dealing and assault".

Hang On Inc. v. City of Arlington
64 F. 3d 1248
(5th Cir. 1995)

Washington

"The evidence adduced by the County establishes that proximity of table dancers to customers promotes lucrative illegal conduct".

DCR Inc. v. Pierce County
964 P. 2d 380
(Wash. Ct. Aps. 1998)
review denied,
980 P. 2d 1283
(Wash. Sup. Ct. 1999)
cert. denied
529 U.S. 1054 (2000)

"Fantasy attracted drugs and drug dealers from Philadelphia, Alaska and Seattle. The drug dealers and pushers and users often outnumbered the studio's regular patrons".

Kitsap County v. Kev.

720 P. 2d 818
(Wash. Sup. Ct. 1986)
See also 793 F. 2d 1053
(9th Cir. 1986) infra

"The stage requirement is aimed at public sexual contact between entertainers and patrons".

O'Day v. King County
749 P. 2d 142
(Wash. Sup. Ct. 1998)

"Separating dancers from patrons would reduce the opportunity for prostitution and narcotics transactions…Preventing the exchange of money between dancers and patrons would also appear to reduce the likelihood of drug and sex transactions".

Kev. Inc. v. Kitsap County
793 F. 2d 1053
(9th Cir. 1986)

"The city has a substantial interest in avoiding the transmission of sexually transmitted disease and otherwise discouraging public sexual contact.

Ino-Ino v. Bellevue Washington
937 P. 2d 154 (Wash. Sup. Ct. 1997)
cert. denied, 918 S. Ct. 856 (1998)

"Curtailing public sexual contact and sexual criminal offenses represents a significant state interest. The six foot eighteen inch distance requirements furthers this interest by keeping nude entertainers out of the reach of the nearest patron".

BSA Inc. v. King County
804 F. 2d 1103
(9th Cir. 1986)

"The court is satisfied that the city has a substantial interest in reducing the risk of sexual contact and illegal touching between dancers and patrons".

Colacurcio v. City of Kent
944 F. Supp. 1470
(W.D. Wash. 1996)
aff'd. 163 F. 3d 545
(9th Cir. 1998)
cert. denied,
529 U.S. 1053 (2000)

Appendix II

BELLEVUE WASHINGTON

Chapter 5.08
CABARETS AND ADULT ENTERTAINMENT

Sections:

5.08.010 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 breast; 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 premises activity. 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, with separate consideration paid, either directly or indirectly, for such performance, exhibition or dance and which is commonly referred to as table dancing, couch dancing, taxi dancing, lap dancing, private dancing or straddle dancing.

C. “Applicant” means the individual or entity seeking a cabaret license in the city of Bellevue.

D. “Applicant control persons” means all partners, corporate officers and directors and any other individuals in the applicant’s business organization who hold a significant interest in the adult cabaret business, based on responsibility for management of the adult cabaret business.

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, eating place, directly selling, serving, or providing the public, with or without charge, food or liquor. The words “music and entertainment” as used herein, shall not apply to radios or mechanical devices.

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

G. “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.

H. “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.

I. “Liquor” means all beverages defined in RCW 66.04.200.

J. “Manager” means any person who manages, directs, administers or is in charge of the 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.

K. “Operator” means any person operating, conducting or maintaining an adult cabaret.

L. “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.

M. “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.

N. “Sexual conduct” means 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 of one person and the mouth or anus or 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. (Ord. 4735 § 1, 1995; Ord. 4692 § 1, 1994; Ord. 4602 § 1, 1993; 1961 code § 5.32.010.)

5.08.020 License required.

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

C. 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.

D. It is unlawful for any entertainer to perform in an adult cabaret unless such person is the holder of a valid and subsisting license from the city to do so.

E. It is unlawful for any manager to work in an adult cabaret unless such person is the holder of a valid and subsisting license from the city to do so. (Ord. 4735 § 2, 1995; Ord. 4602 § 2, 1993; 1961 code § 5.32.020.)

5.08.030 License prohibited to certain classes.

No license shall be issued 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 person whose place of business is conducted by a manager or agent, unless such manager or agent possesses the same qualifications required of the licensee, or in the case of a manager or an adult cabaret, the manager has obtained a manager's license.

C. A copartnership, unless all the members thereof are qualified to obtain a license as provided in this chapter. Such license shall be issued to the manager or agent thereof.

D. A corporation, unless all the officers and directors thereof are qualified to obtain a license as provided herein. Such license shall be issued to the manager or agent thereof. (Ord. 4692 § 2, 1994; Ord. 4602 § 3, 1993; 1961 code § 5.32.030.)

5.08.040 Application.

A. Cabaret License. Any person desiring a cabaret license required under the provisions of this chapter shall file written application with the clerk on forms provided by the clerk for that purpose. All applications shall be signed by the applicant and notarized or certified as true under penalty of perjury. A failure to provide all information required on the form will constitute an incomplete application and will not be processed. The clerk upon presentation of a complete application and before acting upon the same shall refer such application to the police department for a full investigation as to the truth of the statements contained therein, and as to

any or all other matters which would aid the clerk in determining whether or not such application should be granted. After the police department has reported back to the clerk the result of such investigation, and within 14 days of the date of filing of the complete application, if the clerk is satisfied that the statements contained in such application are true and that the applicant meets all requirements of this chapter, the clerk shall issue the license applied for, provided however, that if the application does not meet the requirements of this code, then the clerk shall deny such license application.

B. Adult Cabaret License.

1. All applications for an adult cabaret 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, which shall require the following information:

a. For the applicant and for each applicant control person, provide: Names, any aliases or previous names, driver's license number, if any, social security number if any, and business, mailing, and residential address, and business telephone number.

b. If a partnership, whether general or limited; and 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 panoramas, 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 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 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 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. Authorization for the city, its agents and employees to seek information to confirm any statements set forth in the application.

h. 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.

i. Two two-inch by two-inch color photographs of the applicant and applicant control persons, taken within six months of the date of application showing only the full face.

j. A complete set of fingerprints for the applicant or each applicant control person, by Bellevue police department employees.

k. A scale drawing or diagram showing the configuration of the premises for the proposed 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 BCC 5.08.070.

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 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 acquires, subsequent to the issuance of an adult cabaret license, a significant interest based on responsibility for management or operation of the licensed premises or 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 the complete application and fee, the clerk shall provide copies to the police, fire, and community development departments for their investigation and review to determine compliance of the proposed adult cabaret with the laws and regulations which each department administers. Each department shall, within 30 days of the date of such application, inspect the application and premises and shall make a written report to the clerk whether such application and premises comply with the laws administered by each department. No license may be issued unless each department reports that the application and premises comply with the relevant laws. In the event the premises is not yet constructed, the departments shall base their recommendation as to

premises compliance on their review of the drawings submitted in the application. Any adult cabaret license approved prior to premises construction shall contain a condition that the premises may not open for business until the premises have been inspected and determined to be in substantial conformance with the drawings submitted with the application. A department shall recommend denial of a license under this subsection if it finds that the proposed adult cabaret is not in conformance with the requirements of this chapter or other law in effect in the city. A recommendation for denial shall cite the specific reason therefor, including applicable laws.

9. An adult cabaret license shall be issued by the clerk within 30 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. The clerk shall grant an extension of time in which to provide all information required for a complete license application upon the request of the applicant. If the clerk finds that the applicant has failed to meet any of the requirements for issuance of an adult cabaret license, the clerk shall deny the application in writing and shall cite the specific reasons therefor, including applicable law. If the clerk fails to issue or deny the license within 30 days of the date of filing of a complete application and fee, the applicant shall be permitted, subject to all other applicable law, to operate the business for which the license was sought until notification by the clerk that the license has been denied, but in no event may the clerk extend the application review time for more than an additional 20 days.

C. Adult Cabaret Manager and Entertainer Licenses.

1. No person shall work as a manager, assistant manager or entertainer at an adult cabaret without an entertainer's or manager's license from 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 Bellevue police department employees, 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.

c. Documentation that the applicant has attained the age of 18 years. Any two 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 issued by the United States of America;

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

v. Any other identification that the city determines to be acceptable.

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

g. Authorization for the city, its agents and employees to investigate and confirm any statements set forth in the application.

h. 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. An adult cabaret manager's or an adult entertainer's license shall be issued by the clerk within 14 days from the date the complete application and fee are received unless the clerk determines that the applicant has failed to provide any information required to be supplied according to this chapter; has made any false, misleading or fraudulent statement of material fact in the application; or has failed to meet any of the requirements for issuance of a license under this chapter. If the clerk determines that the applicant has failed to qualify for the license applied for, the clerk shall deny the application in writing and shall cite the specific reasons therefor, including applicable laws. If the clerk has failed to approve or deny an application for an adult cabaret manager's license within 14 days of filing of a complete application, the applicant may, subject to all other applicable laws, commence work as an adult cabaret manager in a duly licensed adult cabaret until notified by the clerk that the license has been denied, but in no event may the clerk extend the application review time for more than an additional 20 days.

4. An applicant for an adult cabaret manager's license or an adult entertainer's license shall be issued a temporary license upon receipt of a complete license application and fee. Said temporary license will automatically expire on the fourteenth day following the filing of the complete application and fee, unless the clerk has failed to approve or deny the license application, in which case the temporary license shall be valid until the clerk approves or denies the application, or until the final determination of any appeal from a denial of the application. In no event may the clerk extend the application review time for more than an additional 20 days. (Ord. 5190 § 1, 1999; Ord. 4735 § 3, 1995; Ord. 4692

§ 3, 1994; Ord. 4602 § 4, 1993; Ord. 2070 § 5, 1974; 1961 code § 5.32.040.)

5.08.050 Cabaret license fees.

A. Any person desiring to obtain a cabaret license shall first pay a license fee of $400.00 per year.

B. Any person desiring to obtain an adult cabaret license shall first pay a license fee of $700.00 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. (Ord. 4692 § 4, 1994; Ord. 4602 § 5, 1993; 1961 code § 5.32.050.)

5.08.060 Appeal.

A. Denial of License. Any person aggrieved by the action of the clerk in refusing to issue or renew any license issued under this chapter shall have the right to appeal such action to the hearing examiner or to such other hearing body as may hereafter be established by the city council for the hearing of license appeals, by filing a notice of appeal with the clerk within 10 days of notice of the refusal to issue or renew. The decision of the clerk shall be stayed pending the final outcome of any such appeal. The appeal shall be processed under Process II, LUC 20.35.200, et seq. The hearing examiner or other hearing body shall set a date for hearing such appeal, to take place within 45 days of the date of receipt of the notice of appeal. At such hearing the appellant and other interested persons may appear and be heard, subject to rules and regulations of the hearing examiner or other hearing body. The hearing examiner or other hearing body shall render its decision on the appeal within 15 days following the close of the appeal hearing.

B. Appeal to Superior Court. Any person aggrieved by the decision of the hearing examiner or hearing body may appeal to the superior court for a writ of certiorari, prohibition or mandamus. (Ord. 5190 § 2, 1999; Ord. 4819 § 2, 1995; Ord. 4735 § 4, 1995; Ord. 4692 § 5, 1994; Ord. 2070 § 3, 1974; 1961 code § 5.32.055.)

5.08.070 Standards of conduct and operation – Adult cabarets.

A. The following standards of conduct must be adhered to by employees of any adult cabaret while in any area 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 subdivision 1 of this subsection, 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 erotically touch any member of the public. No employee or entertainer shall encourage or permit any member of the public to caress, fondle or erotically touch any employee or entertainer.

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, or Chapter 10A.88">10A.88 BCC.

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 from any member of the public.

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 area 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. At any adult cabaret, the following are required:

1. Admission must be restricted to persons of the age of 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.

2. Neither the performance nor any photograph, drawing, sketch or other pictorial or graphic representation thereof displaying any portion of the breasts 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.

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.

C. The responsibilities of the manager of an adult cabaret shall include but are not limited to:

1. 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.

2. The licensed manager on duty shall not be an entertainer.

3. 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.

4. 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.

D. Premises – Specifications.

1. Performance Area. The performance area of the adult cabaret where adult entertainment as described in BCC 5.08.070A1 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.

2. 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.

3. 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 BELLEVUE.
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

4. Recordkeeping 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.

5. Inspections. In order to insure 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. It is hereby expressly declared that unannounced inspections are necessary to insure compliance with this chapter.

E. 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.

F. 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 BCC 5.08.010(N), or the sexual conduct described in RCW 7.48A.010(2)(b)(ii) and (iii).

G. Whether or not activity is obscene shall be judged by consideration of the following factors:

1. Whether the average person, applying contemporary community standards, would find that the activity taken as a whole appeals to a prurient interest in sex; and

2. Whether the activity depicts or describes in a patently offensive way, as measured against community standards, sexual conduct as described in RCW 7.48A.010(2)(b); and

3. Whether the activity taken as a whole lacks serious literary, artistic, political or scientific value. (Ord. 4745, 1995; Ord. 4735 § 5, 1995; Ord. 4695 § 1, 1994; Ord. 4692 § 6, 1994; Ord. 4602 § 6, 1993; 1961 code § 5.32.060.)

5.08.080 License term – Assignment – Renewals.

A. The business license is valid for one year and shall be renewed annually. The clerk shall have the authority to adjust the expiration date and to prorate the license fee of the license in order to coincide with state of Washington license expiration dates. Licenses issued 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 licenses, 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	25%
31 – 60	50%
61 and over	75%

C. The clerk shall renew a license upon application unless the clerk is aware of facts that would disqualify the applicant from being issued the license for which he or she seeks renewal, and further provided that the application complies with all provisions of this chapter as now enacted or as the same may hereafter be amended. (Ord. 5190 § 3, 1999; Ord. 4692 § 7, 1994; Ord. 2070 § 1, 1974; 1961 code § 5.32.070.)

5.08.090 License suspension and revocation – Hearing.

A. The clerk may, upon the recommendation of the chief of police or his designee and as provided in subsection B below, suspend or revoke any license issued under the provisions of this chapter at any time where the same was procured by fraud or false representation of fact; or for the violation of, or failure to comply with, the provisions of this chapter or any of the provisions of Chapter 10A.88">10A.88 BCC or any other similar local or state law by the licensee or by any of his servants, agents or employees when the licensee knew or should have known of the violations committed by his servants, agents or employees; or for the conviction of the licensee of any crime or offense involving prostitution, promoting prostitution, or transactions involving controlled substances (as that term is defined in Chapter 69.50 RCW) committed on the premises, or the conviction of any of his servants, agents or employees of any crime or offense involving prostitution, promoting prostitution, or transactions

involving controlled substances (as that term is defined in Chapter 69.50 RCW) committed on the premises in which his cabaret is conducted when the licensee knew or should have known of the violations committed by his servants, agents or employees.

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.

C. The clerk shall provide at least 10 days' prior written notice to the licensee of the decision to suspend or revoke the license. Such notice shall inform the licensee of the right to appeal the decision to the hearing examiner or other designated hearing body and shall state the effective date of such revocation or suspension and the grounds for revocation or suspension. Such appeals shall be processed under Process II (LUC 20.35.250). The hearing examiner or other hearing body shall render its decision within 15 days following the close of the appeal hearing. 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 or mandamus as provided in LUC 20.35.250F. The decision of the clerk shall be stayed during the pendency of any appeal except as provided in subsection D below.

D. Where the Bellevue building official or fire marshal or their designees or the King County health department find that any condition exists upon the premises of a cabaret or adult cabaret which constitutes a threat of immediate serious injury or damage to persons or property, said official may immediately suspend any license issued under this chapter pending a hearing in accordance with subsection C above. The official shall issue notice setting forth the basis for the action and the facts that constitute a threat of immediate serious injury or damage to persons or property, and informing the licensee of the right to appeal the suspension to the hearing examiner or other designated hearing body under the same appeal provisions set forth in subsection C above; provided, however, that a suspension based on threat of immediate serious injury or damage shall not be stayed during the pendency of the appeal. (Ord. 4978 § 24, 1997; Ord. 4735 § 6, 1995; Ord. 4692 § 8, 1994; Ord. 4602 § 7, 1993; Ord. 2070 § 4, 1974; 1961 code § 5.32.080.)

5.08.100 Liquor regulations.

Any license issued pursuant to this chapter shall be subject to any 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. (Ord. 4692 § 9, 1994; 1961 code § 5.32.090.)

5.08.110 Suspension or revocation of licenses.

Repealed by Ord. 4692. (Ord. 2094 § 1, 1974; 1961 code § 5.32.095.)

5.08.120 Violation a misdemeanor.

Any person violating any of the provisions of this chapter is guilty of a misdemeanor. (Ord. 2070 § 2, 1974; 1961 code § 5.32.100.)

5.08.130 Nuisance declared.

A. Public Nuisance. Any adult cabaret operated, conducted, or maintained in violation of this chapter or any law of the city of Bellevue 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. (Ord. 4692 § 11, 1994.)

5.08.140 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. (Ord. 4692 § 12, 1994.)

Appendix III

KENT WASHINGTON

Chapter 5.10
ADULT ENTERTAINMENT

Sections:

5.10.010 Findings of fact.

Based on public testimony and other evidence and information before it, the city council makes the following findings of fact:

1. The secondary effects of the activities defined and regulated in this chapter are detrimental to the public health, safety and general welfare of the citizens of the city and, therefore, such activities must be regulated as provided in this chapter.

2. Regulation of the adult entertainment industry is necessary because, in the absence of such regulation, significant criminal activity has historically and regularly occurred. This history of criminal activity in the adult entertainment industry has included prostitution, narcotics and liquor law violations, breaches of the peace and the presence within the industry of individuals with hidden ownership interests and outstanding arrest warrants.

3. Contact between entertainers and patrons of adult entertainment businesses facilitates prostitution and other related crimes and the concern over unlawful sexual activities and related crimes is a legitimate health concern of the city which demands reasonable regulation of adult entertainment businesses in order to protect the health and well-being of the citizens.

4. Licensing is a legitimate and reasonable means of accountability to ensure that operators of adult entertainment businesses comply with reasonable regulations and to ensure that operators do not knowingly allow their establishments to be used as places of illegal sexual activity or solicitation.

5. In the absence of regulation, the activities described in this section occur regardless of whether the adult entertainment is presented in conjunction with the sale of alcoholic beverages.

6. It is necessary to license entertainers in the adult entertainment industry to prevent the exploitation of minors, to ensure that each such entertainer is an adult, to ensure that such entertainers have not assumed a false name which would make regulation of the entertainer difficult or impossible and to ensure that such entertainers are not involved in criminal activity.

7. It is necessary to have a licensed manager on the premises of establishments offering adult entertainment at such times as such establishments are offering adult entertainment so that there will, at all necessary times, be an individual responsible for the overall operation of the establishment, including the actions of patrons, entertainers and other employees.

8. The license fees required in this chapter are nominal fees imposed as necessary regulatory measures designed to help defray the substantial expenses incurred by the city in regulating the adult entertainment industry.

9. Hidden ownership interests for the purposes of skimming profits and avoiding the payment of taxes have historically occurred in the adult entertainment industry in the absence of regulation. These hidden ownership interests have historically been held by organized and white collar crime elements. In order for the city to effectively protect the public health, safety and general welfare of its citizenry, it is important that the city be fully apprised of the actual ownership of adult entertainment establishments.

10. The city council desires to prevent these adverse effects and thereby protect the health, safety, and welfare of the citizenry; protect the citizens from increased crime; preserve the quality of life; preserve the property values and character of surrounding neighborhoods; and deter the spread of urban blight.

11. It is not the intent of this chapter to suppress any speech activities protected by the First Amendment or Article I, Section 5 of the Washington State Constitution, but to enact content neutral regulations which address the secondary effects of adult entertainment businesses, as well as the health problems associated with such businesses.

(Ord. No. 3214, § 1, 3-7-95; Ord. No. 3221, § 1, 4-18-95)

5.10.020 Purpose and intent.

It is the purpose of this chapter to regulate adult entertainment businesses and related activities to promote health, safety, morals, and general welfare of the citizens of the city of Kent, and to establish reasonable and uniform regulations to prevent the establishment of adult entertainment businesses in locations within the city which would have a harmful effect on the residents of the city. The purpose of this chapter is to alleviate undesirable social problems that accompany adult entertainment businesses, and to enact content neutral regulations which address the secondary effects of adult entertainment businesses as well as health problems associated with such business, not to curtail the First Amendment expression, namely dancing or entertainment. The provisions of this chapter have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this chapter to restrict or deny access by adults to sexually oriented materials protected by the state or federal constitutions, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this chapter to condone or legitimize the distribution of obscene materials.

(Ord. No. 3214, § 1, 3-7-95)

5.10.030 Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

A. *Adult entertainment* means any dance, amusement, show, display, merchandise, material, exhibition, pantomime, modeling or any other like performance of any type for the use or benefit of a member or members of the public or advertised for the use or benefit of a member of the public where such is characterized by an emphasis on the depiction, description or simulation of “specified anatomical areas” as defined herein, or the exhibition of “specified sexual activities,” also defined herein, or in the case of live adult entertainment performances, which emphasizes and seeks to arouse or excite the patron’s sexual desires. For the purposes of this chapter, any patron of an adult

entertainment business, as defined in this section, shall be deemed a member of the public.

B. *Adult entertainment business* means any establishment providing adult entertainment as defined herein, including, but not limited to, adult arcade, adult bookstore, adult novelty store, adult video store, adult motion picture theater, and exotic dance studio, more specifically defined as follows:

1. *Adult arcade* means a commercial establishment where, for any form of consideration, one (1) or more still or motion picture projectors, slide projectors, computer-generated or enhanced pornography, panoram, peep show, or similar machines, or other image-producing machines, for personal viewing, are used to show films, motion pictures, video cassettes, slides, or other photographic reproductions which provide material for individual viewing by patrons on the premises of the business which are characterized by an emphasis on the depiction, description or simulation of "specified anatomical areas" or "specified sexual activities."

2. *Adult motion picture theater* means a commercial establishment where films, motion pictures, video cassettes, slides, or similar photographic reproductions characterized by an emphasis on the depiction, description or simulation of "specified anatomical areas" or "specified sexual activities" are regularly shown for any form of consideration.

3. *Adult retail establishment* means any bookstore, adult novelty store, adult video store, or other similar commercial establishment, business, service, or portion thereof, which for money or any other form of consideration provides as a significant or substantial portion of its stock-in-trade the sale, exchange, rental, loan, trade, transfer, and/or provision for viewing or use off the premises of the business adult entertainment material as defined in this section. For purposes of this provision, it shall be a rebuttable presumption that thirty (30) percent or more of a business' stock-in-trade in adult retail material, based on either the dollar value (wholesale or retail) or the number of titles of such material, is significant or substantial.

In determining whether or not the presumption is rebutted, the clerk may consider the following factors, which are not conclusive:

a. Whether minors are prohibited from access to the premises of the establishment due to the adult entertainment nature of the inventory;

b. Whether the establishment is advertised, marketed, or held out to be an adult merchandising facility;

c. Whether adult entertainment material is an establishment's primary or one of its principal business purposes; or

d. Whether thirty (30) percent or more of an establishment's revenue is derived from adult entertainment material.

An establishment may have other principal business purposes that do not involve the offering for sale or rental of adult entertainment materials and still be categorized as an adult retail establishment. Such other business purposes will not serve to exempt such establishments from being categorized as an adult retail establishment so long as one (1) of its principal business purposes is offering for sale or rental, for some form of consideration, the specified adult entertainment materials.

The clerk shall have full discretion to give appropriate weight to the factors set forth above as well as other factors considered depending on the particular facts and circumstances of each application.

4. *Exotic dance studio,* also known as "topless bar" and "adult cabaret," means a nightclub, bar, restaurant, or similar commercial establishment, or any premises or facility to which any member of the public is invited or admitted and where an entertainer provides live performances to any member of the public, which performances are

characterized by an emphasis on the depiction, description or simulation of “specified anatomical areas” or “specified sexual activities,” or which emphasize and seek to arouse or excite the patron’s sexual desires.

C. *Adult entertainment material* means any books, magazines, cards, pictures, periodicals or other printed matter, or photographs, films, motion pictures, video tapes, slides, or other photographic reproductions, or visual representations, CD roms, DVDs, disks, electronic media, or other such media, or instruments, devices, equipment, paraphernalia, toys, novelties, games, clothing or other merchandise or material, which are characterized by an emphasis on the depiction, description or simulation of “specified anatomical areas” or “specified sexual activities.”

D. *City* means the city of Kent, Washington.

E. *Clerk* means such city employees or agents as the mayor shall designate to administer this chapter, or any designee thereof. Unless otherwise designated by the mayor, for purposes relating to decisions under this chapter affecting zoning pursuant to KCC Title 15 and the filing of appeals to the hearing examiner as provided for in this chapter, the term “clerk” shall mean planning director or his or her designee.

F. *Conviction* means an adjudication of conviction of guilt and occurs at such time as a plea of guilty has been accepted or a verdict of guilty has been filed, notwithstanding the pendency of any future proceedings including but not limited to sentencing or disposition, post-trial or post-fact finding motions, and appeals. “Conviction” also means a bail forfeiture.

G. *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 adult entertainment business offering adult entertainment, whether or not such person is paid compensation by the operator of said business.

H. *Entertainer* means any person who provides live adult entertainment in an adult entertainment business whether or not an employee of the operator and whether or not a fee is charged or accepted for such entertainment.

I. *Establish* means and include any of the following:

1. To open or commence any adult entertainment business as a new business; or

2. To convert an existing business, whether or not an adult entertainment business, to any adult entertainment businesses defined herein; or

3. To add any of the adult entertainment businesses defined herein to any other existing adult entertainment business; or

4. To relocate any such adult entertainment business.

J. *License* means a license to operate, manage or entertain at any premises that is classified as an adult entertainment business.

K. *Licensed premises* means any premises that requires a license and that is classified as an adult entertainment business.

L. *Licensee* means a person in whose name a license to operate, manage or entertain at an adult entertainment business has been issued, as well as the individual listed as an applicant on the application for a license.

M. *Manager* means any person appointed by an owner or operator of an adult entertainment business who manages, directs, administers or is in charge of the affairs and/or the conduct or operation of an adult entertainment business and includes assistant managers.

N. *Operator* means and includes the owner, permit holder, custodian, manager, operator, or person in charge of, conducting or maintaining an adult entertainment business.

O. *Panoram* or *peep show* means any device which, upon insertion of a coin or by any other means, exhibits or displays a picture or view by film, video, or by any other means.

P. *Person* means any individual, firm, joint venture, copartnership, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver or any other group or combination acting as a unit.

Q. *Specified anatomical areas* means:

1. Less than completely and opaquely covered human genitals, pubic region, buttocks, anus, or female breast below a point immediately above the top of areolae; or

2. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

R. *Specified sexual activities* means:

1. The caressing, touching, fondling or other intentional or erotic touching of male genitals, female genitals, pubic region, buttocks, anus, or female breasts of oneself or of one person by another; or

2. Sex acts, normal or perverted, actual or simulated, including masturbation, intercourse, oral copulation, flagellation, sodomy, bestiality, or any sexual acts which are prohibited by law; or

3. Human genitals in a state of sexual stimulation, arousal or tumescence or visual state of sexual stimulation, arousal or tumescence, even if completely and opaquely covered; or

4. Excretory functions as part of or in connection with any of the activities set forth in subsections (R)(1) through (3) of this section.

(Ord. No. 3214, § 1, 3-7-95; Ord. No. 3221, § 1, 4-18-95; Ord. No. 3475, § 2, 10-5-99)

5.10.040 Administration of licensing.

The clerk is responsible for granting, denying, revoking, renewing, suspending, and cancelling adult entertainment business, manager's and entertainer's licenses. The planning director and the building official or their designee are responsible for ascertaining whether a proposed adult entertainment business for which an adult entertainment business license is being applied for complies with all building code and land use requirements enumerated herein and all other applicable building code and zoning laws and/or regulations now in effect or as amended or enacted subsequent to the effective date of this chapter.

(Ord. No. 3214, § 1, 3-7-95; Ord. No. 3221, § 1, 4-18-95)

5.10.050 License required – Fee.

A. *Adult entertainment business license required.*

1. No person or entity shall use any property or premises for an adult entertainment business within the city of Kent except within those areas authorized for location of said businesses as set forth in KCC 15.08.270, and no adult entertainment business shall be established, operated or maintained in the city unless the owner or operator thereof has obtained an adult entertainment business license from the clerk. It is unlawful for any entertainer, employee or operator to knowingly work in or about or to knowingly perform any service directly related to the operation of an unlicensed public adult entertainment business.

Violation/penalty. Any violation of the provisions of this subsection shall constitute a misdemeanor as set forth in this chapter.

2. The annual fee for an exotic dance studio business license shall be five hundred dollars ($500). This amount shall be used for the cost of administration of this chapter.

3. The annual license fee for all other adult entertainment businesses subject to this chapter shall be one hundred fifty dollars ($150). This amount shall be used for the cost of administration of this chapter.

4. The above-referenced licenses expire annually on December 31 and must be renewed by January 1.

5. The applicant must be eighteen (18) years of age or older.

B. *License for managers and entertainers required.*

1. No person shall work as an entertainer at an adult entertainment business without having first obtained an entertainer's license from the clerk. No person shall work as a manager of an exotic dance studio, adult arcade, adult motion picture theater or other adult entertainment businesses providing onsite entertainment without having first obtained a manager's license from the clerk, the purpose being to require licensed managers at adult entertainment business establishments to monitor the conduct of patrons viewing adult entertainment on the premises and ensure compliance with this chapter. Onsite entertainment includes, but is not limited to, live entertainment, the viewing of films and videos and other such entertainment on the premises, whether or not for a fee or other consideration, as opposed to strictly the sale or rental of adult books, magazines, novelties and videos.

Violation/penalty. It shall be unlawful and a person commits a misdemeanor as set forth in this chapter if he or she acts or performs as a manager or entertainer in an adult entertainment business without said valid and current license as required in this section.

2. The annual fee for such a license shall be one hundred fifty dollars ($150). This amount shall be used for the cost of administration of this chapter.

3. This license expires annually on December 31 and must be renewed by January 1.

4. The applicant must be eighteen (18) years of age or older.

(Ord. No. 3214, § 1, 3-7-95; Ord. No. 3221, § 1, 4-18-95)

5.10.060 License applications.

A. *Adult entertainment business.* All applications for an adult entertainment business license for places which offer adult entertainment shall be submitted in the name of the person or entity proposing to conduct such adult entertainment on the business premises. All applications for an adult entertainment business license shall be signed by the applicant and notarized or certified to be true under penalty of perjury. All applications shall be submitted on a form supplied by the city, along with a nonrefundable application processing fee of one hundred fifty dollars ($150), which shall contain the following information:

1. Names, any aliases or previous names, driver's license number, if any, business, mailing, and residential address, telephone number, and social security numbers of the applicant and each general partner, corporate officer, director, and persons having a significant responsibility for management of the business, specifying the interest and management responsibility of each such applicant, partner, corporate officer and/or director.

2. If a partnership, whether general or limited; and 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.

3. Addresses of the applicant for the five (5) years immediately prior to the date of application.

4. Any and all criminal misdemeanor or felony convictions or forfeitures, other than parking offenses or minor traffic violations, including dates of conviction, nature of the crime, name and location of court and disposition for each individual, partner, corporate officer and/or director identified in subparagraph (1) above for the ten (10) years immediately preceding the date of application.

5. A description of the business, occupation, or employment of the applicant for the three (3) years immediately preceding the date of application.

6. Whether the applicant or any individual, partner, corporate officer, or director identified in subparagraph (1) above has had a previous license under this chapter or other similar ordinances from another city or county denied, suspended, or revoked, including the name and location of the adult entertainment business for which the license was denied, suspended, or revoked, as well as the date of the denial, suspension, or revocation.

7. Whether the applicant or any individual, partner, corporate officer, or director identified in subparagraph (1) above holds any other licenses under this chapter, or other similar adult entertainment business ordinance from another city or county and, if so, the names and locations of such other permitted businesses.

8. The single classification of license for which the applicant is filing.

9. The name and location of the proposed adult entertainment business, including a legal description of the property, street address, and telephone number(s), if any, together with the name and address of each owner and lessee of the property.

10. Two (2) two (2) inch by two (2) inch color photographs of each applicant, taken within six (6) months of the date of the application, showing only the full face of the applicant. The photographs shall be provided at the applicant's expense. Alternatively, the applicant may be required to submit to a photograph taken at the direction of the clerk.

11. Complete sets of fingerprints of each individual, partner, corporate officer, and director on forms prescribed by the chief of police.

12. In the case of an exotic dance studio, a scale drawing or diagram showing the configuration of the premises for the proposed exotic dance studio, 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. The applicant shall further demonstrate conformance with KCC 15.08.270 pertaining to the location of adult entertainment businesses and, in the case of exotic dance studios and adult arcades, conformance with KCC 5.10.110 and 5.10.130 respectively.

13. Authorization for the city, its agents and employees to investigate and seek information to confirm any statements set forth in the application.

14. Identification and/or information, as requested by the clerk, supplemental to that required in a complete application when deemed necessary to confirm statements set forth in the application or determine compliance with this chapter. The application will be deemed complete when the applicant submits responses to all inquiries on the application form.

15. Subparagraphs (10) and (11) above shall not be applicable to adult bookstores, adult novelty stores or adult video stores; provided, that such business does not provide onsite entertainment.

B. *Processing adult entertainment business license applications.*

1. Upon receipt of the complete application and fee, the clerk shall provide copies to the police, planning and other applicable departments for their investigation and review to determine compliance of the proposed adult entertainment business with the laws and regulations which each department administers. Each department shall, within thirty (30) days of the date of receipt of such application, report to the clerk whether such application and premises complies with the laws administered by each department. No license may be issued unless each department reports that the application and premises comply with the relevant laws. In the event the premises is not yet constructed, the department shall base their recommendation as to premises compliance on their review

of the drawings submitted in the application. Any license approved prior to premises construction shall contain a condition that the premises may not open for business until the premises have been inspected and determined to be in substantial conformance with the drawings submitted with the application and in compliance with KCC 5.10.110 and 5.10.130 as applicable. A department shall recommend denial of a license under this subsection if it finds that the proposed adult entertainment business is not in conformance with the requirements of any provision of any applicable statute, code, ordinance, regulation or other law in effect in the city. A recommendation for denial shall be in writing and cite the specific reason therefor, including applicable laws.

2. An adult entertainment business license shall be issued by the clerk within thirty (30) 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 license has failed to meet any of the requirements for issuance of an adult entertainment license, the clerk shall deny the application in writing, and shall cite, in writing, the specific reasons therefor, including applicable laws. If the clerk fails to issue or deny the license within thirty (30) days of the date of filing of a complete application and fee, the applicant shall be permitted, subject to all other applicable laws, operate the business for which the license was sought until notified, in writing, by the clerk that the license has been denied.

C. *Manager or entertainer license.* All applications for a manager's or entertainer's license shall be signed by the applicant and notarized or certified to be true under penalty of perjury. All applications shall be submitted on a form supplied by the city, along with a nonrefundable application processing fee of one hundred dollars ($100), which shall contain the following information:

1. The applicant's name, any aliases or previous names, home address, home telephone number, date and place of birth, driver's license number, if any, social security number and, for entertainers, any stage names or nicknames used in entertaining.

2. The name and address of each business at which the applicant intends to work.

3. Documentation that the applicant has attained the age of eighteen (18) years. Any of the following shall be accepted as documentation of age:

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

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

c. An official passport issued by the United States of America.

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

e. Any other picture identification that the city determines to be acceptable.

4. A complete statement of all convictions of the applicant for any misdemeanor or felony violations in this or any other city, county or state, except parking violations or minor traffic infractions.

5. A description of the applicant's principal activities or service to be rendered.

6. Resident addresses and telephone numbers for the period of three (3) years immediately prior to the date of application specifying the period of residence at each address.

7. The names and addresses of employers or individuals or businesses for whom the applicant was an employee or independent contractor for the period of three (3) years immediately prior to the date of application, including the period of employment.

8. Two (2) two (2) inch by two (2) inch color photographs of each applicant, taken within six (6) months of the date of the application, showing only the full face of the applicant. The photographs shall be provided at the applicant's expense. Alternatively, the applicant may be required to submit to a photograph taken at the direction of the clerk.

9. Complete sets of fingerprints of each manager and entertainer on forms prescribed by the chief of police.

10. Authorization for the city, its agents and employees to investigate and seek information to confirm any statements set forth in the application.

11. Supplemental identification and/or information, as requested by the clerk, deemed necessary to confirm any information set forth in the application or to determine compliance with this chapter.

D. *Processing manager's or entertainer's license applications.* A copy of the application shall be provided to the police and other applicable departments for its review, investigation and recommendation. An adult entertainment business manager's or an adult entertainer's license shall be issued by the clerk within fourteen (14) days from the date the complete application and fee were received 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 has made any false, misleading or fraudulent statement of material fact in 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 license shall be stayed during the period in which the applicant is allowed an opportunity to properly complete the applicant.) If the clerk determines that the applicant has failed to meet any of the requirements for issuance of a manager's or entertainer's license, the clerk shall deny the application in writing and shall cite the specific reasons therefor, including applicable laws. If a request for extension of time is not made, and the clerk has failed to approve or deny the license within fourteen (14) days of filing of a complete application for an adult entertainment business manager's license, the applicant may, subject to all other applicable laws, commence work as an adult entertainment business manager in a duly licensed adult entertainment business until notified, in writing, by the clerk that the license has been denied. An applicant for an adult entertainment manager's or entertainer's license shall be issued a temporary license upon receipt of a complete license application and fee. Said temporary license will automatically expire on the fourteenth day (or on such day established pursuant to any extension granted herein) following the filing of a complete application and fee, unless the clerk has failed to approve or deny the license application, in which case the temporary license shall be valid until the clerk approves or denies the application, or until the final determination of any appeal from a denial of the application.

(Ord. No. 3214, § 1, 3-7-95; Ord. No. 3221, § 1, 4-18-95)

5.10.070 Issuance of licenses.

Upon completion of the investigation and review by the departments, a review of the recommendations and verifications, and a determination that all matters contained in the application are true and correct and that this chapter has been complied with, the clerk shall issue such license applied for in accordance with the provisions of this chapter. The

applicable license fee, together with any delinquent fees that may then be due shall first be paid to the city.

(Ord. No. 3214, § 1, 3-7-95)

5.10.080 Denial of application for licenses.

The clerk shall deny the application to:

1. An applicant who is under eighteen (18) years of age.

2. An applicant who is overdue on his/her payment to the city of taxes, fees, fines, or penalties assessed against him/her or imposed upon him/her in relation to an adult entertainment business.

3. An applicant whose place of business is conducted by an agent, unless such agent possesses the same qualifications required of the licensee, or in the case of a manager of an adult entertainment business, the manager has obtained a manager's license.

4. A partnership, unless all the members thereof are qualified to obtain a license as provided in this chapter. Such license shall be issued to the agent of said partnership.

5. A corporation, unless all the officers and directors thereof are qualified to obtain a license as provided herein. Such license shall be issued to the agent of said corporation.

6. 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 representation in the application for a license under this chapter which the applicant knows to be false.

7. The applicant has failed to comply with any provision or requirement of this chapter.

8. An applicant having an interest in any license granted under this chapter revoked within six (6) months from the date of application.

(Ord. No. 3214, § 1, 3-7-95; Ord. No. 3221, § 1, 4-18-95)

5.10.090 License term – Renewals.

A. There shall be no prorating of the license fees for licenses required pursuant to this chapter, and all such licenses shall expire on the thirty-first day of December of each year, except that in the event that the original application is made subsequent to June 30, then one-half of the annual fee may be accepted for the remainder of said year.

B. Application for renewal of licenses issued hereunder shall be made to the clerk no later than thirty (30) days prior to the expiration of adult entertainment business licenses and manager's and entertainer's business 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. All applicants for a license renewal shall present their current license for verification of identity, and upon issuance of a renewed license, shall surrender the expiring license to the clerk. There shall be assessed and collected by the clerk, an additional charge of twenty-five (25) percent of the license fee, on applications not made on or before said date.

C. The clerk shall renew a license upon application unless the clerk is aware of facts that would disqualify the applicant from being issued the license for which he or she seeks renewal, and further provided that the application complies with all provisions of this chapter as now enacted or as the same may hereafter be amended.

(Ord. No. 3214, § 1, 3-7-95)

5.10.100 Other license requirements.

A. *Duty to supplement.*

1. Applicants for a license under this chapter shall have a continuing duty to promptly supplement application information required in the event that said information changes in any way from what is stated on the application. If any person or entity acquires, subsequent to the issuance of an adult entertainment business license for places offering adult entertainment, an interest in the licensed premises or the licensed business, immediate 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 entertainment business. 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.

2. The applicant must be qualified according to the provisions of this section and the premises must be inspected and found to be in compliance with health, fire, and building codes of the city.

3. The fact that a person possesses other types of state or city permits and/or licenses does not exempt him/her from the requirement of obtaining an adult entertainment business.

B. *Manager on premises.* A licensed manager shall be on duty on the premises of an adult business at all times that adult entertainment is being provided.

C. *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. The sale, lease or sublease of the business; or

2. The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means; or

3. The establishment of a trust, gift or other similar legal devise which transfers the ownership or control of the business, except for transfer by bequest or other operation of law.

D. *Name of business and place of business.* No person granted a license pursuant to this chapter shall operate the adult entertainment business 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.

E. *License; posting and display.*

1. The adult entertainment business 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 entertainment business. 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 business is open.

2. The license of the manager on duty shall be prominently posted during business hours.

3. Entertainer licenses need not be posted, but must be available on the premises when the entertainer is on the premises, for immediate inspection by any city official or law enforcement agency having jurisdiction. Managers’ and entertainers’ licenses 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 be acceptable as proof of issuance of any license required under this chapter.

5. Violation/penalty. Any violation of the provisions of this subsection is a misdemeanor as set forth in this chapter.

F. *Inspection of licenses.* The manager shall, upon request by any law enforcement officer or inspector, make available for inspection the entertainer licenses required to be on the premises as described herein.

(Ord. No. 3214, § 1, 3-7-95; Ord. No. 3221, § 1, 4-18-95)

5.10.110 Specifications – Exotic dance studios.

A. *Separation of adult entertainment performance area.* The portion of the exotic dance studio premises in which dancing and adult entertainment by an entertainer is performed shall be a stage or platform at least twenty-four (24) inches in elevation above the level of the patron seating areas and shall be situated so that no dances, performances, or exhibitions by an entertainer shall occur closer than ten (10) feet to any patron. The stage(s) must be visible from the common areas of the premises and at least one (1) manager's station.

B. *Lighting.* Sufficient lighting shall be provided and equally distributed in and about the parts of the premises which are open to and used by patrons so that all objects are plainly visible at all times, and shall be illuminated so that patrons, on any part of the premises open to the public, shall be able to read a program, menu, or list printed in eight (8) point type.

C. *Visibility.* No adult entertainment performance may be visible outside the premises of the adult entertainment businesses.

D. *Submittal of plans.* Building plans showing conformance with the requirements of this section shall be included with any application for an exotic dance studio business license.

E. *Signs.* Signs of sufficient size to be readable at twenty (20) feet shall be conspicuously displayed in the public area of the establishment stating the following:

> THIS ADULT ENTERTAINMENT ESTABLISHMENT IS REGULATED BY THE CITY OF KENT. ENTERTAINERS ARE:
> (A) Not permitted to engage in any type of sexual conduct;
> (B) Not permitted to dance or appear nude, except on stage;
> (C) Not permitted to solicit or demand or to directly accept, or receive any gratuity or other payment from a patron.

(Ord. No. 3214, § 1, 3-7-95; Ord. No. 3221, § 1, 4-18-95)

5.10.120 Standards of conduct and operation applicable to exotic dance studios.

A. *Standards for patrons, employees and entertainers.* The following standards of conduct must be adhered to by patrons, entertainers and/or employees of exotic dance studios at all times adult entertainment is performed:

1. Admission to exotic dance studios under this section shall be restricted to persons of the age of eighteen (18) years or more.

2. All dances, performances, or exhibitions by an entertainer shall occur on the entertainment performance areas intended for that purpose described in KCC 5.10.110(A).

3. No dances, performances, or exhibitions by an entertainer shall occur closer than ten (10) feet to any patron.

4. No patron shall go into or upon the adult entertainment performance area described in KCC 5.10.110(A) while adult entertainment is being performed.

5. No patron, employee or entertainer shall be nude on the premises and no entertainer shall perform adult entertainment as defined in this chapter or otherwise entertain while nude except on the entertainment performance area described in KCC 5.10.110(A).

6. No patron, employee or entertainer shall allow, encourage, or knowingly permit any person upon the premises to touch, caress, or fondle the breasts, buttocks, anus, pubic area, or genitals of any other person.

7. No patron, employee or entertainer shall allow, encourage, or permit physical contact between an employee or entertainer and any member of the public, which contact is intended to arouse or excite sexual desires.

8. No employee or entertainer shall perform acts in a lewd or obscene fashion or perform acts of or acts which simulate:

a. Specified sexual activities as defined in this chapter; or

b. The touching, caressing or fondling of the breasts, buttocks or genitals.

9. No entertainer employed or otherwise working at an exotic dance studio shall solicit any gratuity or other payment from a patron or customer.

10. No customer or patron of an adult entertainment business shall directly pay or give any gratuity or other payment to any entertainer.

11. It is unlawful for any entertainer, manager, employee, or waitperson to perform more than one (1) such function at an exotic dance studio on the same business day.

12. It is unlawful for any entertainer to use any stage name or nickname not listed in the application for entertainer's license.

13. No exotic dance studio licensee shall employ as an entertainer a person under the age of eighteen (18) years or a person not licensed pursuant to this chapter.

14. No exotic dance studio licensee shall service, sell, distribute, or suffer the consumption or possession of any intoxicating liquor or controlled substance upon the premises of the licensee.

B. The responsibilities of the manager of an exotic dance studio shall include but are not limited to:

1. A licensed manager shall be on duty at an exotic dance studio 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. Managers shall be required to verify and ensure that entertainers possess a current and valid entertainer's license available for immediate inspection on the premises.

2. The licensed manager on duty shall not be an entertainer.

3. The 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 area of the exotic dance studio. Where there is more than one (1) performance area, or the performance area is of such size or configuration that one (1) 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 exotic dance studio.

4. 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 the dress code and conduct set forth in this section and all other requirements of this chapter.

C. *Violation/penalty.* Any violation of the provisions of this section by a patron, owner, operator, manager, or any employee is a misdemeanor as set forth in this chapter.

(Ord. No. 3214, § 1, 3-7-95; Ord. No. 3221, § 1, 4-18-95; Ord. No. 3475, § 3, 10-5-99)

5.10.130 Regulations applicable to adult arcades, adult motion picture theaters and other adult entertainment businesses providing onsite entertainment.

A. *Specifications.*

1. The licensee shall not permit any doors to public areas on the premises to be locked during business hours.

2. Any room or area on such premises shall be readily accessible at all times for inspection by any law enforcement officer or license inspector.

B. *Additional specifications applicable to adult arcades.*

1. The interior of the show premises shall be arranged in such a manner as to ensure that patrons are fully visible from the waist down, and all persons viewing such panorama pictures shall be visible from the common areas of such premises.

2. No more than one (1) patron at a time shall be present in a booth, cubicle, room, or stall wherein adult entertainment is provided.

3. The licensee shall maintain, at a minimum, illumination as required in this chapter for exotic dance studios generally distributed in all parts of the premises at all times when the facility is open or when the public is permitted to enter or remain therein.

C. *Standards of conduct.*

1. Admission shall be restricted to persons of the age of eighteen (18) years or more and it shall be unlawful for any owner, operator, manager or employee of an adult arcade to knowingly permit or allow any person under the age of eighteen (18) years to be in or upon such premises.

2. No patron shall be unclothed or in such attire, costume or clothing so as to be in a state of nudity or engage in any specified sexual activity and no owner, operator, manager or employee shall knowingly allow such conduct in or upon the premises.

3. *Violation/penalty.* Any violation of the provisions of this subsection by a patron, owner, operator, manager, or any employee is a misdemeanor as set forth in this chapter.

(Ord. No. 3214, § 1, 3-7-95; Ord. No. 3221, § 1, 4-18-95)

5.10.140 Regulations applicable to stores, novelty stores, video stores and other businesses whether or not qualifying as adult entertainment establishments.

A. Bookstores, novelty stores, video stores, and other businesses that sell or otherwise distribute books, magazines, films, motion pictures, video cassettes, slides, or other visual representations which are characterized by an emphasis on the depiction, description or simulation of “specified anatomical areas” or “specified sexual activities,” whether or not such businesses qualify as an adult entertainment establishment pursuant to KCC 5.10.030(B)(3), shall be subject to the following regulations:

1. All such items as are described above shall be physically segregated and closed off from other portions of the store so that these items are not visible and/or accessible from other portions of the store where non-adult entertainment material, if any, is displayed, sold or rented.

2. No advertising for such items shall be posted or otherwise visible, except where such items are authorized for display.

3. Signs readable at a distance of twenty (20) feet shall be posted at the entrance to the business or the area where such items are displayed stating that persons under the age of eighteen (18) are not allowed access to the area where such items are displayed.

4. The manager or attendant shall take responsible steps to monitor the area where such items are displayed to insure that persons under eighteen (18) years of age do not access the age-restricted area.

5. Employees of such businesses shall check identification of persons appearing to be eighteen (18) or under to insure that such items are not rented or sold to persons under the age of eighteen (18).

B. Rental or sale of obscene material (as defined by state law) or material harmful to minors (as defined by state law) to persons under eighteen (18) years of age is prohibited.

C. *Violation/penalty.* Any violation of the provisions of this section by an owner, operator, manager, or employee of an adult entertainment business is a misdemeanor as set forth in this chapter.

(Ord. No. 3214, § 1, 3-7-95; Ord. No. 3221, § 1, 4-18-95; Ord. No. 3475, § 4, 10-5-99)

5.10.150 Exemptions.

A. This chapter shall not be construed to prohibit:

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

2. Classes, seminars and lectures held for serious scientific or educational purposes; or

3. Exhibitions or dances which are not obscene.

B. For purposes of this chapter, an activity is obscene if:

1. Taken as a whole by an average person applying contemporary community standards the dominant theme of the activity appeals to a prurient interest in sex;

2. The activity portrays or depicts in a patently offensive way, as measured against community standards, representations of:

a. Ultimate sexual acts, normal or perverted, actual or simulated; or

b. Masturbation, fellatio, cunnilingus, bestiality, excretory functions, or lewd exhibition of the genitals or genital area; or violent or destructive sexual acts, including but not limited to human or animal mutilation, dismemberment, rape or torture; and

3. The activity taken as a whole lacks serious literary, artistic, political, or scientific value.

(Ord. No. 3214, § 1, 3-7-95; Ord. No. 3221, § 1, 4-18-95)

Appendix IV

PIERCE COUNTY, WASHINGTON

To View the Pierce County, Washington Code you must go to the County Web page at:

http://www.co.pierce.wa.us/pc/abtus/ourorg/council/code/index.htm

Appendix V

KITSAP COUNTY, WASHINGTON

Kitsap County Code

Chapter 6.48
EROTIC DANCE STUDIOS

Sections:

6.48.010 Purpose of regulations.

The purpose of this chapter is to regulate erotic dance studios to the end that the many types of criminal activities frequently engendered by such studios will be curtailed. However, it is recognized that such regulation cannot *de facto* approach prohibition, otherwise a protected form of expression would vanish. This chapter represents a balancing of competing interests: reduced criminal activity through the regulation of erotic dance studios versus the protected
rights of erotic dancers and patrons.
(Ord. 92 (1983) § 1, 1983)

6.48.020 Definitions.

In this chapter, the following definitions shall apply unless the context clearly requires otherwise:

(1) "Auditor" means the Kitsap County auditor.

(2) "Board" means the Kitsap County board of county commissioners.

(3) "Dancer" means a person who dances or otherwise performs for an erotic dance studio and seeks to arouse or excite the patrons' sexual desires.

(4) "Department" means the Kitsap County department of community development.

(5) "Erotic dance studio" means a fixed place of business which emphasizes and seeks, through one or more dancers, to arouse or excite the patrons' sexual desires.

(6) "Sheriff" means the Kitsap County sheriff.
(Ord. 92-A (1983) § 1, 1983: Ord. 92 (1983) § 2, 1983)

6.48.030 Prima facie evidence of erotic dance studio.

It shall be *prima facie* evidence that a business is an erotic dance studio when one or more dancers displays or exposes, with less than a full opaque covering, that portion of

the female breast lower than the upper edge of the areola.
(Ord. 92 (1983) § 3(a), 1983)

6.48.040 Studio license - Application to auditor.

Application for an erotic dance studio license shall be made to the auditor.
(Ord. 92-A (1983) § 3 (part), 1983: Ord. 92 (1983) § 4(a), 1983)

6.48.050 Studio license - Information required.

An application for erotic dance studio license shall be verified and shall contain or set forth the following information:

(1) The name, address, telephone number, principal occupation and age of the applicant;

(2) The name, address and principal occupation of the managing agent or agents of the business;

(3) The business name, business address, and business telephone number of the establishment or proposed establishment together with a description of the nature of the business and magnitude thereof;

(4) Whether the business or proposed business is the undertaking of a sole proprietorship, partnership, or corporation:

(A) If a sole proprietorship, the application shall set forth the name, address, telephone number and principal occupation of the sole proprietor,

(B) If a partnership, the application shall set forth the names, addresses, telephone numbers, principal occupations, and respective ownership shares of each partner, whether general, limited or silent,

(C) If a corporation, the application shall set forth the corporate name, a copy of the articles of incorporation, and the names, addresses, telephone numbers and principal occupations of every officer, director and shareholder (having more than five percent of the outstanding shares) and the number of shares held by each;

(5) The names, addresses, telephone numbers and principal occupations of every person, partnership, or corporation having any interest in the real or personal property utilized or to be utilized by the business or proposed business.
(Ord. 92-A (1983) § 3 (part), 1983: Ord. 92 (1983) § 4(b), 1983)

6.48.060 Studio license - Fee.

Applications shall be accompanied by a nonrefundable fee of ten dollars.
(Ord. 92-A (1983) § 3 (part), 1983: Ord. 92 (1983) § 4(c), 1983)

6.48.070 Studio license - Transmittal of application.

Within five days of receipt of an application for erotic dance studio license, the auditor shall transmit copies of such application to sheriff, department, board and prosecuting attorney.
(Ord. 92-A (1983) § 3 (part), 1983: 92 (1983) § 4(d), 1983)

6.48.080 Studio license - Issuance.

Within five days of receipt of an application for erotic dance studio license, the auditor shall issue such.
(Ord. 92-A (1983) § 3 (part) 1983: 92 (1983) § 4(e), 1983)

6.48.090 Studio license - Expiration.

An erotic dance studio license shall expire on December thirty-first of the year in which it is issued.
(Ord. 92-A (1983) § 3 (part), 1983: 92 (1983) § 4(f) 1983)

6.48.110 Studio license - Renewal - Revocation.

An erotic dance studio license may be renewed by following the application procedure set forth in Sections 6.48.040 through 6.48.090.
(Ord. 92-A (1983) § 4, 1983: Ord. 92 (1983) § 5(a), 1983)

6.48.130 Dancer's license - Required.

No person shall dance at an erotic dance studio without a valid dancer's license issued by the auditor.
(Ord. 92-A (1983) § 5, 1983: Ord. 92 (1983) § 6, 1983)

6.48.140 Dancer's license - Application to auditor.

Applications for dancers' licenses shall be made to the auditor.
(Ord. 92-A (1983) § 6 (part), 1983: Ord. 92 (1983) § 7(a), 1983)

6.48.150 Dancer's license - Information required.

An application for dancer's license shall contain or set forth the following information:

(1) The applicant's name, home addresses (current and former), home telephone number, date of birth, and aliases (past or present);

(2) The business name and address where the applicant intends to dance.
(Ord. 92-A (1983) § 6 (part), 1983: Ord. 92 (1983) § 7(b), 1983)

6.48.160 Dancer's license - Fee.

Applications shall be accompanied by a nonrefundable fee of five dollars.
(Ord. 92-A (1983) § 6 (part), 1983: Ord. 92 (1983) § 7(c), 1983)

6.48.170 Dancer's license - Issuance.

Within five days of receipt of an application for a dancer's license, the auditor shall issue such.
(Ord. 92-A (1983) § 6 (part), 1983: Ord. 92 (1983) § 7(d), 1983)

6.48.180 Dancer's license - Expiration.

A dancer's license shall expire on December thirty-first of the year in which it is issued.
(Ord. 92-A (1983) § 6 (part), 1983: Ord. 92 (1983) § 7(e), 1983)

6.48.190 Dancer's license - Exclusive to business.

A dancer's license shall entitle a dancer to dance only at the business indicated on the dancer's license application.
(Ord. 92-A (1983) § 6 (part), 1983: Ord. 92 (1983) § 7(f) 1983)

6.48.210 Dancer's license - Renewal - Revocation.

A dancer's license may be renewed by following the application procedure set forth in Sections 6.48.140 through 6.48.190.
(Ord. 92-A (1983) § 7, 1983: Ord. 92 (1983) § 8(a), 1983)

6.48.230 Operation restrictions - Unlawful acts designated.

(a) No person, firm, partnership, corporation or other entity shall advertise, or cause to be advertised, an erotic dance studio without a valid erotic dance studio license issued pursuant to this chapter.

(b) No later than March first of each year an erotic dance studio licensee shall file a verified report with the auditor showing the licensee's gross receipts, and amounts paid to dancers for the preceding calendar year.

(c) An erotic dance studio licensee shall maintain and retain for a period of two years the names, addresses and ages of all persons employed as dancers by the licensee.

(d) No erotic dance studio licensee shall employ as a dancer a person under the age of eighteen years or a person not licensed pursuant to this chapter.

(e) No person under the age of eighteen years shall be admitted to an erotic dance studio.

(f) An erotic dance studio shall be closed between 2:00 a.m. and 8:00 a.m.

(g) No erotic dance studio licensee shall serve, sell, distribute, or suffer the consumption or possession of any intoxicating liquor or controlled substance upon the premises of the licensee.

(h) An erotic dance studio licensee shall conspicuously display all licenses required by this chapter.

(i) All dancing shall occur on a platform intended for that purpose which is raised at least two feet from the level of the floor.

(j) No dancing shall occur closer than ten feet to any patron.

(k) No dancer shall fondle or caress any patron and no patron shall fondle or caress any dancer.

(l) No patron shall directly pay or give any gratuity to any dancer.

(m) No dancer shall solicit any pay or gratuity from any patron.
(Ord. 92-C (1993) § 1, 1993: Ord. 92-D (1993) § 1, 1993: Ord. 92 (1983) § 9, 1983)

6.48.240 Inspection of records and premises authorized when.

All books and records required to be kept pursuant to this chapter shall be open to inspection by the sheriff, prosecuting attorney, or agents thereof during the hours when the erotic dance studio is open for business. The purpose of such inspection shall be to determine if the books and records meet the requirements of this chapter.
(Ord. 92-A (1983) § 8, 1983: Ord. 92 (1983) § 10, 1983)

6.48.250 Public display prohibited.

No person, firm, partnership, corporation or other entity shall publicly display or expose or suffer the public display or exposure, with less than a full opaque covering, of any portion of a person's genitals, pubic area or buttocks in a lewd and obscene fashion.
(Ord. 92-A (1983) § 2, 1983: Ord. 92 (1983) § 3(b), 1983)

6.48.260 Unlawful acts deemed public nuisances - Enforcement actions.

Any activity, act or conduct contrary to the provisions of this chapter is hereby declared to be unlawful and a public nuisance, and such activity, act or conduct may be enjoined by an action brought by the prosecuting attorney or other interested person.
(Ord. 92 (1983) § 11, 1983)

6.48.270 Violation - Penalty.