

ORDINANCE NO. _____

AN ORDINANCE of the City Council amending Chapter 5.10.045 of the Olympia Municipal Code relating to background checks for owners, managers and assistant managers of adult entertainment establishments pursuant to Chapter 5.16 OMC.

WHEREAS, the Washington State Legislature passed Senate Bill (SB) 6288, effective June 10, 2010, which allows the authority of counties, cities and towns to request state and federal fingerprint based background checks of certain individuals. These individuals include license applicants or licensees in occupations specified by ordinance for the purpose of receiving criminal history record information by county, city or town officials and code city officials; and

WHEREAS, SB 6288 amended sections of Chapter 35A.21 RCW, authorizing code cities by ordinance to require a state and federal background investigation of license applicants or licensees in occupations specified by ordinance; and

WHEREAS, Chapter 5.10 of the Olympia Municipal Code, Occupational Permits, was enacted in 2012 to require applicants for occupational permits in certain professions to submit to a fingerprint based background check; and

WHEREAS, in February of 2014, the Olympia City Council adopted Ordinance no. 6894 which, among other things, amended Chapter 5.16 OMC to add owners, managers and assistant managers of adult cabarets to the list of occupations which required background checks; and

WHEREAS, the purpose of this Ordinance is to document the City's authority to conduct state and federal background checks for owners, managers and assistant managers of adult cabarets, and to specifically codify the requirement of applicants for those occupational permits to consent to be fingerprinted; and

WHEREAS, this Ordinance is supported by the staff report and attachments associated with the Ordinance along with documents on file with the City of Olympia; and

WHEREAS, this Ordinance is adopted pursuant to Article 11, Section 11, of the Washington State Constitution and any other legal applicable authority;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OLYMPIA, STATE OF WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Amendment of OMC 5.10.045. Section 5.10.045 of the Olympia Municipal Code and ordinances pertaining thereto is hereby amended as follows:

5.10.045 General Occupational Permit -- Background Checks

A. All applicants for a permit under this chapter or a license under Chapter 5.16 OMC must consent to be fingerprinted for a criminal background check. Pursuant to ~~Chapter RCW 35.21-92035A.21.370~~ RCW, the Chief of Police (or designee) shall cause to have performed a state and nationwide background check of

each applicant at the time of initial application and every third year thereafter, provided the applicant maintains his/her occupational permit continuously during that time.

B. The applicant shall be fingerprinted by the Police Department, which will forward the fingerprints to the Washington State Patrol (WSP) for processing. WSP will conduct a State background check and forward the fingerprints to the Federal Bureau of Investigation (FBI) for a nationwide background check.

C. The application fees for permits shall include the current charges for both State and national background checks and a charge for fingerprinting service. Background check and fingerprinting fees are non-refundable.

D. Upon receipt of the fingerprints and the appropriate fees from the Police Department, the WSP, pursuant to ~~Chapter 35.21.920 RCW~~ RCW 35A.21.370, will compare the applicant's fingerprints against its criminal database and submit the fingerprints to the FBI for a comparison with nationwide records. WSP will deliver the results of the State and national background checks to the Chief of Police (or designee) for use in determining the fitness of permit applicants, as specified in this chapter.

E. In those permit years in which State and nationwide background checks are not required, applicants shall certify as part of their renewal applications, under penalty of perjury, that they have no conditions or offenses which would disqualify or potentially disqualify them from holding a permit under this section.

F. The City reserves the right to cause to have conducted, at its own expense, at will, random spot checks of the backgrounds of permit holders at any time. Applicants are required to consent to such State and nationwide background checks, including the initial and any subsequent at will, random spot checks, as a condition of their application.

G. Applicants may request and receive a copy of the criminal history record information used by the City to determine fitness for a permit under this section, provided such request is made at the time of application. Criminal history record information that is used by the City to determine fitness for permits is not retained after the decision has been made to issue or deny a permit.

H. In rendering a fitness determination, the City will decide whether the record subject has been convicted of (or is under pending indictment for) (a) a crime which bears upon his/her ability or fitness to serve in that capacity; (b) any felony or a misdemeanor which involved force or threat of force, controlled substances, or was a sex-related offense; or (c) enumerated disqualifiers.

~~H~~I. The City shall not be responsible for correcting errors or otherwise amending criminal history record data it obtains from the Washington State Patrol or the Federal Bureau of Investigation for the purpose of making permit fitness decisions. Applicants who seek to amend or correct a criminal history record must

contact the Washington State Patrol for a Washington State record or the Federal Bureau of Investigation for records from other jurisdictions maintained in its file.

Section 2. Ratification. Any act consistent with the authority and prior to the effective date of this amendment is hereby ratified and affirmed.

Section 3. Severability. If any section, subsection, sentence, clause, phrase, or other portion of this Ordinance, or its application to any person, is, for any reason, declared invalid, in whole or in part by any court or agency of competent jurisdiction, said decision shall not affect the validity of the remaining portions hereof.

Section 4. Effective Date. This Ordinance shall take effect five (5) days after passage and publication, as provided by law.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

Darren Nienaber

DEPUTY CITY ATTORNEY

PASSED:

APPROVED:

PUBLISHED:

