

Ordinance No. 6894

AN ORDINANCE OF THE CITY OF OLYMPIA, WASHINGTON, AMENDING SECTIONS 5.16.060, 5.16.070, 5.16.080, 5.16.090 AND 5.16.190 OF THE OLYMPIA MUNICIPAL CODE RELATING TO ADULT ORIENTED BUSINESSES.

WHEREAS, on March 4, 1997, the Olympia City Council adopted Ordinance No. 5671 amending the City's regulations concerning adult oriented businesses; and

WHEREAS, the City Council made certain findings at that time, based on information presented to the Council and the City Planning Commission, concerning the neighborhood and community secondary impacts related to adult oriented businesses; and

WHEREAS, the City Council found that adult oriented businesses generally create an atmosphere for increases in crimes, such as assault, theft, robbery, prostitution, drug use, and other serious offenses in the area in which those businesses are located; and

WHEREAS, the City of Olympia's regulations concerning adult oriented businesses have the intended purpose of establishing reasonable regulations that do not infringe on constitutionally protected rights but that do prevent criminal activity and antisocial activity which is typically committed in conjunction with the operation of adult oriented businesses; and

WHEREAS, the City Council has determined that the City's current regulations need to be updated to provide necessary clarifications to ensure that the purposes and goals of the regulations concerning adult oriented businesses are realized; and

WHEREAS, the City Council acknowledges that such regulations and updates must be framed within the constraints of the First Amendment of the U.S. Constitution since the courts have recognized that some activities within adult oriented businesses contain protected expression under that amendment; and

WHEREAS, the existing regulations and the amended regulations are intended to fall within the purview of reasonable time, place, and manner regulations; and

WHEREAS, the City Council finds that it is necessary to implement the amendments to the adult oriented businesses regulations on an immediate basis to ensure that the purposes of the City's adult oriented businesses regulations are realized and thus to protect public health, safety, property and peace; and

WHEREAS, after the Council adopted Ordinance No. 5671, the legislature adopted new laws regulating human trafficking, and clarification to the City's codes are thus necessary; and

WHEREAS, after the Council adopted Ordinance No. 5671, the legislature adopted new laws regarding background checks for occupation licenses, and clarification to the City's codes are thus necessary; and

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

NOW, THEREFORE, THE OLYMPIA CITY COUNCIL ORDAINS AS FOLLOWS:

Section 1. Recitals. The recitals above are hereby adopted as findings of fact in support of this Ordinance.

Section 2. Amendment of OMC 5.16.060. Olympia Municipal Code Section 5.16.060 is hereby amended to read as follows:

5.16.060 Application for license

A. Adult oriented business. Any application for an adult oriented business shall be made on a form provided by the Director and shall contain the following information and be accompanied by the following documents, which shall be submitted to the Director:

1. If the applicant is:
 - a. An individual/sole proprietor, the individual/owner shall state his/her legal name and any aliases, stage names, or previous names, date of birth, and social security number and submit satisfactory proof that he/she is eighteen (18) years or twenty-one (21) years of age or older, whichever is applicable.
 - b. A partnership, the partnership shall state its complete name, and the legal names of all partners, including their dates of birth, social security numbers, and whether the partnership is general or limited, and a copy of the partnership agreement, if any.
 - c. A corporation, including a limited liability organization, the corporation shall state its complete name, the date of its incorporation, evidence that the corporation is in good standing under the laws of the State of Washington, the legal names, dates ~~or~~ of birth, social security numbers of all directors, or principal stockholders, and the capacity of all officers, directors, and principal stockholders; the name of the registered corporate agent, and the address of the registered officer for service of process.
 - d. As part of the application process, each officer, director, or principal stockholder, as defined above, shall provide the Director with an affidavit attesting to their identity and relationship to the corporation. Principal stockholder shall mean those persons who own ten percent (10%) or greater interest in the adult entertainment facility.
2. Whether the applicant or any other individuals listed pursuant to Subsection A.(1)(a), (b), and (c) above within a four (4) year period immediately preceding the date of the application has been convicted of a crime and, if so, the specific criminal act involved, the date of conviction and the place of conviction.

3. Whether the applicant or any of the other individuals listed pursuant to this section has, within the last four (4) years, had a previous permit or license under this ~~ordinance~~chapter or other similar ordinances from another city or county denied, suspended, or revoked, including the name and location of the adult facility for which the permit or license was denied, suspended, or revoked, the entity denying the same, as well as the date of the denial, suspension, or revocation.
4. Whether the applicant or any other entity listed pursuant to this section holds any other permits and/or licenses under this chapter, or other similar adult oriented business, including a sexually oriented business license from another city or county, and if so, the names and locations of such other permitted businesses.
5. The classification of license for which the applicant is filing.
6. The location of the proposed adult oriented business, including a legal description of the property, street address, and telephone number(s), if any.
7. The applicant's mailing address and residential address.
8. Two (2) two-inch by two-inch color photographs of the applicant, including any corporate applicants, taken within six (6) months of the date of the application, showing only the full face of the same. The photographs shall be provided at the applicant's expense. The license, when issued, shall have affixed to it one such photograph of the applicant.
9. The applicant and/or each corporate applicant's driver's license number, social security number, and/or his/her state or federally issued tax identification number.
10. Each application shall be accompanied by a complete set of fingerprints of each person required to be a party to the application, including all corporate applicants as defined above, utilizing fingerprint forms as prescribed by the Chief of Police or his/her designee. A designee may include a contracted third party entity.
11. In the case of all adult oriented businesses, a sketch or diagram must be professionally prepared and submitted to and accepted by the City, and it must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches.
12. Applicants for a license under this ~~ordinance~~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. The failure to comply with said continuing duty within thirty (30) days from the date of such change by supplementing the application on file with the Director or his/her designee, shall be grounds for suspension of a license.

13. In the event the Director or his/her designee determines or learns at any time that the applicant has improperly completed the application for a proposed adult oriented business permit or license, he/she shall promptly notify the applicant of such fact and allow the applicant ten (10) days to properly complete the 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.)

14. 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.

15. The applicant shall be required to pay a nonrefundable initial application fee of \$2,400.00 and an annual application fee of \$500.750.00. In addition, applicants shall also be responsible for background check fees.

16. 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 oriented business permit.

17. The application form for licenses and permits issued under this ~~ordinance~~ chapter shall contain a provision providing that under penalty of perjury the applicant verifies that the information contained therein is true to the best of his/her knowledge.

B. 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 or forms provided by the Director containing the information identified below and submit same to the Director. A nonrefundable application fee of ~~\$100.00~~ 150.00 shall accompany the application. In addition, applicants shall also be responsible for background check fees. 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 Olympia police department employees,~~ social security number, and any state 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 eighteen (18) or twenty-one (21) years, whichever is applicable. 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;

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 (5) years immediately preceding the date of the application, except parking violations or minor traffic infractions.

e. A description of the applicant's principal activities or services to be rendered.

f. Two two-inch by two-inch color photographs of applicant, taken within six (6) 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. For managers and assistant managers, fingerprints shall be provided as prescribed by the Olympia Police Department or designee. A designee may include a contracted third party entity.

2. 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/theater.

3. The Director may request additional information or clarification when necessary to determine compliance with this chapter.

4. The application form for licenses and permits issued under this chapter shall contain a provision providing that under penalty of perjury the applicant verifies that the information contained therein is true to the best of his/her knowledge.

Section 3. Amendment of OMC 5.16.070. Olympia Municipal Code Section 5.16.070 is hereby amended to read as follows:

5.16.070 Investigation and application

A. Upon receipt of an application properly filed with the Director, and upon payment of the nonrefundable license fee, the Director or his/her designee shall immediately stamp the application as received and shall immediately thereafter send photocopies of the application to the city departments or other agencies responsible for enforcement of health, fire, criminal, and building codes and laws. Each department or agency shall promptly conduct an investigation of the application and the proposed adult oriented business. ~~Said investigation shall be completed within twenty (20) days of receipt of the application by the Director or his/her designee, unless circumstances support extending the investigation. If the investigation is extended, the City shall inform the applicant of the extension and the reason. The extension shall be for no longer than ten (10) additional days from the original expiration of the twenty (20) day time period stated above.~~ For owners, managers and assistant managers, the Police Department shall seek criminal history background information from Washington State and other states and may accept a reliable FBI criminal history provided by an applicant if authorized by the Director. For entertainers, the Olympia Police Department will review publicly available criminal history background information from Washington State and may require additional criminal background information if determined appropriate. At the conclusion of its investigation, each department or agency shall indicate on the photocopy of the application its recommendation as to approval or disapproval of the application, date it, sign it, and in the event it recommends disapproval, state the specific reasons therefor, citing applicable laws or regulations.

B. A department or agency shall recommend disapproval of an application if it finds that the proposed adult oriented business will be in violation of any provision of any statute, code, ordinance, regulation, or other law in effect in the City, or if the applicant does not meet the conditions as specified in this chapter. After its indication of approval or disapproval, each department or agency shall immediately return the photocopy of the application to the Director or his/her designee.

Section 4. Amendment of OMC 5.16.080. Olympia Municipal Code Section 5.16.080 is hereby amended to read as follows:

5.16.080 Issuance of licenses

A. Adult oriented business license. The Director shall grant or deny an application for an adult oriented business within thirty (30) days from the date of its filing unless the City or applicant establishes a good reason for up to a ~~ten (10)~~ thirty (30) day extension. The Director shall grant the application unless one or more of the criteria set forth below is present. The license, if granted, shall state on its face the name of the person(s) to whom it is granted, the expiration date, and the name and address of the adult oriented business. The

license shall be posted in a conspicuous place, at or near the entrance to the adult oriented business, so that it can be easily read at any time. The license shall be valid until the end of the year during which it was granted. The City may also conditionally approve the license, subject to the City's additional investigation as to whether the applicant meets the criteria set forth below. The Director shall deny an application for an adult oriented business for any of the following reasons:

1. An applicant is under eighteen (18) or twenty-one (21) years of age or will be employing a person under eighteen (18) or twenty-one (21) years of age, whichever is applicable under Section 5.16.050 of this ~~ordinance chapter~~.
2. An applicant is overdue on his/her payment to the City of taxes, fees, fines, assessments, or penalties assessed against him/her or imposed upon him/her in relation to an adult oriented business.
3. An applicant has failed to provide information required by this ~~ordinance chapter~~ for application for the license, or has falsely answered a question or request for information on the application form.
4. The applicant has failed to comply with any provision or requirement of this chapter.
5. The applicant has failed to comply with any city codes or zoning regulations, or other state or federal regulations or court order applicable to an adult oriented business.
6. The applicant has been convicted of a felony involving adult oriented businesses including, but not limited to, prostitution, promoting prostitution, violation of RCW 9A.40.100 and RCW 9.68A.100-103, and/or ~~possession of~~ controlled substances as that term is defined in Chapter 69.50 RCW, within the last ten (10) years.

B. Adult cabaret managers or adult entertainer's license.

1. An adult cabaret manager's or entertainer's license shall be issued by the Director within ~~fourteen (14)~~ thirty (30) days from the date the complete application and fee are received unless the Director determines that the applicant has failed to provide all 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. The Director may extend the application review time for an additional twenty (20) days if more time is needed for investigation. If the Director determines that the applicant has failed to qualify for the license applied for, the Director shall deny the application in writing and shall cite the specific reasons therefor, including applicable laws. An adult cabaret manager and entertainer's license shall be denied for the same reasons that are set forth in subsection A of this section.

2. If the Director has failed to approve or deny an application for an adult cabaret manager's license within ~~fourteen (14)~~ thirty (30) days of filing 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/theater until notified by the Director that the license has been denied, but in no event may the Director extend the application review time for more than an additional twenty (20) days. Director may conditionally approve the license, subject to the City's additional investigation as to whether the applicant meets the criteria set forth below. -.~~

~~32. An applicant for 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 (14th)~~ thirtieth (30th) day following the filing of the complete application and fee, unless the Director has failed to approve or deny the license application in which case the temporary license shall be valid until the Director approves or denies the application, or until the final determination of any appeal from a denial of the application. ~~In no event may the Director extend the application review time for more than an additional twenty (20) days.~~~~

Section 5. Amendment of OMC 5.16.090. Olympia Municipal Code Section 5.16.090 is hereby amended to read as follows:

5.16.090 Appeal

A. Denial of license. Any person aggrieved by the action of the Director in refusing to issue or renew any license issued under this chapter shall have the right to appeal such action to the ~~City Manager~~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 Director within ten (10) days of notice of the refusal to issue or renew. The ~~City Manager~~Hearing Examiner or other hearing body shall set a date for the open record hearing on such appeal, to take place within forty-five (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 ~~City Manager~~Hearing Examiner or other hearing body. The Hearing Examiner shall uphold the Director's decision unless it finds the decision is not supported by substantial evidence. . The ~~City Manager~~Hearing Examiner or other hearing body shall render its decision on the appeal within fifteen (15) days following the close of the appeal hearing.

B. Appeal to Superior Court. Any person aggrieved by the decision of the ~~City Manager~~Hearing Examiner or hearing body may appeal to the Superior Court ~~for a writ of certiorari, prohibition, or mandamus~~ as authorized by law.

Section 6. Amendment of OMC 5.16.190. Olympia Municipal Code Section 5.16.190 is hereby amended to read as follows:

5.16.190 Suspension or revocation of licenses and appeal procedure

A. When the Director suspends or revokes a license hereunder, he/she shall notify the applicant in writing of the same, describing the reasons therefor, and shall inform the applicant of his/her right to appeal to the ~~City Manager~~ Hearing Examiner within ten (10) days of the date of the written notice by filing a written notice of

appeal with the Director containing a statement of the specific reasons for the appeal and a statement of the relief requested.

B. Whenever the Director has found or determined that any violation of this ~~ordinance~~ chapter has occurred, he/she shall issued a Notice of Violation and Suspension or Revocation ("Notice") to the licensee. In addition, the Director shall issue a Notice of Suspension or Revocation to the licensee or permit holder under the following circumstances:

1. Where such license was obtained by fraud or false representation of fact;

2. For the violation of, or failure to comply with, the provisions of this chapter or any other similar local or state law by the licensee or by any of its agents, employees, or representatives; when the licensee knew or should have known of the violations committed by its agents, employees, or representatives;

3. For the conviction of the licensee of any crime or offense involving prostitution, promoting prostitution, violation of RCW 9A.40.100 and RCW 9.68A.100-103, or ~~transactions involving controlled substances~~ (as that term is defined in chapter 69.50 RCW) committed on the premises, or the conviction of the licensee's employees, agents, or representatives of any crime or offense involving prostitution, violation of RCW 9A.40.100 and RCW 9.68A.100-103, or ~~transactions involving controlled substances~~ (as that term is defined in Chapter 69.50 RCW) committed on the licensed premises.

C. The notice shall include the following:

1. Name(s) of person(s) involved.

2. Description of the violation(s), including date and section of this ~~ordinance~~ chapter violated.

3. Description of the administrative action taken.

4. Rights of appeal as set forth above.

The notice shall be served either personally or by mailing a copy of the notice by certified mail, postage prepaid, return receipt requested, to the licensee at his or her last known address. Proof of service shall be made at the time of service by a written declaration under penalty of perjury, executed by the person effecting the service, declaring the time, date, and the manner by which service was made. The decision may be appealed to the ~~City Manager~~ Hearing Examiner if request for appeal is properly filed with the Director within ten (10) calendar days of receipt of the notice. Said request shall be in writing, state specific reasons for the appeal, and the relief requested.

D. The suspension or revocation of a license shall be effective at the end of the expiration of any appeal period, unless there is a written request for an appeal properly filed by the licensee. If there is an appeal so

requested, then the revocation or suspension shall be stayed pending the outcome of the appeal. This effective date of suspension shall not apply to any fire code violation or building code violation deemed by the appropriate officials to be a serious risk to health and welfare.

E. Within ten (10) working days of receiving a timely appeal, the Director shall forward the administrative record of the licensing decision to the ~~City Manager~~Hearing Examiner.

F. When an applicant has appealed the Director decision according to the ~~stipulations-procedures~~ herein, the ~~City Manager~~Hearing Examiner shall review the administrative record as soon as possible, but no later than thirty (30) working days after the City receives the appeal. Written notice of the date, time, and place of the scheduled ~~meeting-open record hearing~~ will be given to the applicant by the Director by mailing the same, postage prepaid, to the applicant at the address shown on the license or permit application, at least five (5) days prior to the ~~meetinghearing, which take place within forty five (45) days of the date of the receipt of the notice of appeal.~~

G. If the licensee appeals the notice to the ~~City Manager~~Hearing Examiner, the licensee shall be afforded a reasonable opportunity to be heard as to the violation and action taken. The applicant and Director or his or her representative shall be given an opportunity to argue the merits of the appeal before the ~~City Manager~~Hearing Examiner.

H. The ~~City Manager~~ Hearing Examiner shall uphold the Director's decision unless it finds the decision is not supported by ~~substantial evidence in the administrative record.~~

I. The ~~City Manager~~ Hearing Examiner shall issue a written decision within ten (10) working days of hearing the appeal. The ~~City Manager~~ Hearing Examiner may uphold the Director's decision and deny the permit, overrule the Director's decision and grant the permit, or remand the matter to the Director for further review and action. The Director shall complete further action or review within thirty (30) working days of receiving any remand.

J. Decision by the ~~City Manager~~ Hearing Examiner shall constitute final administrative review. The applicant shall be responsible for the cost of any preparation of the record for appeal.

Section 7. Severability. If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance or application of the provisions to other persons or circumstances shall remain unaffected.

Section 8. Ratification. Any act consistent with the authority and prior to the effective date of this Ordinance is hereby ratified and affirmed.

Section 9. Effective Date. This Ordinance is designated as a public emergency ordinance necessary for the protection of public health, safety, property, and peace and therefore shall take effect immediately upon adoption by the City Council.


MAYOR

ATTEST:


CITY CLERK

APPROVED AS TO FORM:


CITY ATTORNEY

PASSED: February 25, 2014

APPROVED: February 25, 2014

PUBLISHED: February 27, 2014