

STAFF REPORT NO. 163-98

TO: Mayor and City Council
FROM: Vernon E. Storz, City Manager

DATE: 7/13/98
7/20/98

Subject: Live Adult Entertainment Ordinance.

Objective: To adopt an ordinance regulating businesses providing live adult entertainment.

Present Situation: Presently, although the City regulates the locations where adult businesses may locate through its zoning code, city ordinances do not specifically regulate live adult entertainment establishments. This lack of regulation could lead to enforcement difficulties should a live adult entertainment business locate within the City. The proposed ordinance is based on an ordinance adopted by the City of Bellevue, Washington, and upheld by the Washington State Supreme Court.

Proposal: Adopt an ordinance regulating live adult entertainment.

Advantages: The City can control and deter the secondary effects associated with live adult entertainment. This type of business has been associated with various types of illegal conduct, including prostitution.

Disadvantages: Although the Bellevue ordinance has been upheld in the State Supreme Court, this does not foreclose the possibility that the City of Vancouver's ordinance could also be challenged in court.

Action Requested:

1. On July 13, 1998, approve ordinance on first reading, setting date of second reading and public hearing for July 20, 1998.
2. On July 20, 1998, subject to second reading and public hearing, approve the ordinance.

- Attachments:**
- Memorandum from City Attorney's Office RE: Legislative Record
 - Background Materials on Adult Entertainment
(Due to volume of materials, copies are available for review in the Law Department, 2nd Floor, City Hall, 210 East 13th Street, (206) 696-8251
 - Ordinance

MEMORANDUM
CITY ATTORNEY'S OFFICE

To: Royce E. Pollard, Mayor
Members of the Vancouver City Council

From: Ted Gathe, City Attorney
Jim McNamara, Assistant City Attorney

Re: Live Adult Entertainment Ordinance and Legislative Background Materials

Date: July 13, 1998

Background

On June 1, 1998 the City Council conducted a workshop on the issue of adult entertainment regulations. One aspect of that workshop concerned live adult entertainment, or nude dance clubs. At the conclusion of the workshop, Council directed that the City Attorney's Office bring back a draft ordinance addressing the regulation of live adult entertainment.

This attached proposed ordinance is based upon the ordinance adopted by the City of Bellevue and upheld by the State Supreme Court in Ino Ino, Inc. v. City of Bellevue, 132 Wn.2d 103 (1997). The proposed ordinance includes a minimum four-foot (4') separation between an entertainer and a patron during couch or table dances, a minimum distance of eight feet (8') between an entertainer on stage and a patron. These provisions specifically address the fact that proximity between entertainers and patron during adult entertainment performances can facilitate sexual contact, prostitution and related crimes.

Various ordinances and studies from other jurisdictions have been placed in the record, which demonstrate secondary effects of adult entertainment and other means to address adult entertainment. Other jurisdictions have taken a much harsher approach to adult entertainment than the proposed ordinance, including absolute bans on one-on-one performances (commonly known as "couch" or "table" dances) between an adult entertainer and a patron. However, the proposed ordinance will be sufficient to deter criminal behavior, without limiting the entertainers' ability to express themselves in any material manner.

This proposed ordinance, once implemented, should not only deter criminal activity if a live adult entertainment business locates within the City, but it will simultaneously protect the entertainers' ability to express themselves, help protect entertainers from

assault and other potentially unwelcome physical contact from patrons, and provide adult entertainment management with useful tools to assist in detecting criminal violations.

Secondary Effects

The City's adult entertainment ordinance seeks to mitigate the secondary impacts of adult entertainment uses. Such secondary effects include increased crime, reduction in property values, deterioration of the quality of the environment of neighborhoods, lessening of the suitability of certain areas for children and increased municipal expenses such as police services.

Our office has prepared a packet of materials examining the experience of other communities, and the literature on the subject of secondary impacts. The Washington State Supreme Court has held that a city may rely on evidence generated by other jurisdictions in connection with the adoption of an ordinance so long as such evidence is believed to be relevant to the problem the city is facing. Of special interest is the experience of the City of Bellevue.

The City of Bellevue was the location of two adult entertainment clubs, Babes and Papagayos. The Bellevue police investigation of these clubs revealed a high incidence of criminal activity related to prostitution and violations of Bellevue's adult entertainment ordinance. (See attachment "3", Ino Ino, Inc. v. City of Bellevue, Findings of Fact and Conclusions of Law, and attachment "4" City of Bellevue Police Department Incident Reports re: Incidents at "Babes".) The proposed ordinance is intended to deter these types of secondary effects.

Conclusion

After the City Council's consideration of the evidence in the record, including the secondary effects of adult entertainment establishments, we recommend that the City Council enact the attached proposed ordinance.

cc: Vernon E. Stoner, City Manager

MEMORANDUM
CITY ATTORNEY'S OFFICE

To: Royce E. Pollard, Mayor
Members of the Vancouver City Council

From: Ted Gathe, City Attorney
Jim McNamara, Assistant City Attorney

Re: Adult Entertainment Background Materials

Date: July 13, 1998

Attached for your review are the following materials relating to adult entertainment:

1. City of Bellevue – “A Study on the Need to Regulate the Location of Adult Entertainment Uses”
2. Bellevue Planning Commission – Minutes of Study Session on Adult Entertainment
3. Ino Ino, Inc. v. City of Bellevue – Amended Findings of Fact and Conclusions of Law
4. Bellevue Police Department Incident Reports re: “Babes”
5. Declaration of Detective Covey in Opposition to Plaintiff’s Motion for Preliminary Injunction (Déjà Vu v. City of Federal Way)
6. 5/2/95 Surveillance Videotape Taken at Déjà vu (Tape Available for Check Out from Mary White)
7. City of Kent Adult Use Zoning Study
8. City of Bothell – Materials Presented to Bothell Planning Commission
9. Police Incident Reports -- Pierce County Sheriff’s Department re: “Fox’s”
10. Summary of Studies Documenting Secondary Effects of Sexually Oriented Businesses
11. Report of the Attorney General’s Working Group on the Regulation of Sexually Oriented Businesses (Minnesota)
12. City of Phoenix Planning Department – Adult Business Study
13. Final Report to the City of Garden Grove: the Relationship Between Crime and Adult Business Operations on Garden Grove Boulevard
14. An Analysis of the Relationship Between Adult Entertainment Establishments, Crime and Housing Values –Minnesota Crime Prevention Center, Inc.
15. A report on Zoning and Other Methods for Regulating Adult Entertainment in Amarillo – Planning Department of Amarillo, Texas

16. Report on Adult Oriented Businesses in Austin, Office of Land Development Services, City of Austin, Texas
17. City of Beumont, Texas – Memo re: Regulation of Adult Business
18. Houston City Council Legislative Report on an Ordinance Regulating Sexually Oriented Commercial Enterprises
19. Seattle Department of Construction and Land Use, Director's Report and Recommendation on a Proposed Land Use Code Amendment Regulating the Location of Topless Dance Halls
20. City of Tucson, Arizona Police Memo re: Adult Entertainment Ordinance
21. Study of the Concentration of Adult Entertainment Establishments in the City of Los Angeles Adult
22. Adult Entertainment Businesses in Indianapolis – An Analysis
23. News Articles and Legal Materials re: Adult Uses

cc: Vernon E. Stoner, City Manager

7-13-98
7-20-98

ORDINANCE NO. M-3382

AN ORDINANCE OF THE CITY OF VANCOUVER RELATING TO ADULT ENTERTAINMENT; and providing for an effective date.

WHEREAS, the City recognizes the importance of freedom of expression in a democratic society; and

WHEREAS, the City takes notice of the experience of other cities and counties in attempting to combat the specific adverse impacts of businesses that on a regular basis provide adult entertainment, including semi-nude dancing as a substantial portion of their business operations; and

WHEREAS, the City finds that adult entertainment has, historically, led to an increase in prostitution, sexually transmitted disease, drug and alcohol offenses and other criminal activity; and

WHEREAS, adult entertainment uses sometimes are fronts for or operated by persons associated with organized criminal activities and the need to scrutinize such adult entertainment is enhanced; and

WHEREAS, the City recognizes the need to prohibit behavior which may be harmful to its citizens; and

WHEREAS, establishments where nude, topless or erotic dancing are offered may present the opportunity to engage in activity which the Constitution does not protect and which is detrimental to the public health, safety and welfare; and

WHEREAS, the operation of such establishments should be regulated and monitored; and

WHEREAS, the City staff has drafted licensing and operational ordinances which will recognize the constitutional right of all legitimate businesses to function while reasonably restricting time and manner of such businesses; and

WHEREAS, the law enforcement resources available for responding to problems associated with or created by adult entertainment establishments are limited and are best conserved by regulating and licensing adult entertainment establishments and those associated with them; and

WHEREAS, the City has determined that there are deleterious secondary effects of adult entertainment businesses that can be minimized through the adoption of specific licensing and premises operational requirements that are specifically and narrowly tailored to alleviate these harmful effects;

NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF VANCOUVER:

Section 1. Adult Entertainment. A new chapter 5.32 entitled "Adult Entertainment" is hereby created and added to the Vancouver Municipal Code to read as follow

Chapter 5.32

ADULT ENTERTAINMENT

Sections:

- 5.32.010 Definitions.
- 5.32.020 License required.
- 5.32.030 License prohibited to certain classes.
- 5.32.040 Application.
- 5.32.050 Live Adult Entertainment Establishment License Fees.
- 5.32.060 Appeal.
- 5.32.070 Standards of conduct and operation - live adult entertainment establishments.
- 5.32.080 License term - Assignment - Renewals.
- 5.32.090 License suspension and revocation - Hearing.
- 5.32.100 Liquor regulations.
- 5.32.110 Violation a misdemeanor.
- 5.32.120 Nuisance declared.
- 5.32.130 Additional enforcement.
- 5.32.140 Severability.

5.32.010 Definitions.

A. "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.

B. "Applicant" means the individual or entity seeking a live adult entertainment license in the city of Vancouver.

C. "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 live adult entertainment business, based on responsibility for management of the live adult entertainment

business.

D. "Clerk" means such city employees or agents as the city manager shall designate to administer this chapter or any designee thereof.

E. "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 live adult entertainment establishment.

F. "Entertainer" means any person who provides adult entertainment within a live adult entertainment establishment as defined in this section, whether or not a fee is charged or accepted for entertainment.

G. "Liquor" means all beverages defined in RCW 66.04.200.

H. "Live adult entertainment establishment" means any commercial premises to which any member of the public is invited or admitted and where an entertainer provides adult entertainment to any member of the public

I. "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 a live adult entertainment establishment, and includes assistant managers working with or under the direction of a manager to carry out such purposes.

J. "Member of the public" means a customer, patron, club member, or person, other than an employee, who is invited or admitted to a live adult entertainment establishment/

K. "Nude or seminude" means a state of complete or partial undress in such costume, attire, or clothing so 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 human male genitals in a discernibly

turgid state, even if completely and opaquely covered.

L. "Operator" means any person operating, conducting or maintaining a live adult entertainment establishment.

M. "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.

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.

5.32.020 License required.

A. It is unlawful for any person to conduct, manage or operate a live adult entertainment establishment 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 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 live adult entertainment establishment.

C. It is unlawful for any entertainer to perform in a live adult entertainment establishment unless such person is the holder of a valid and subsisting license from the city to do so.

D. It is unlawful for any manager to work in a live adult entertainment establishment unless such person is the holder of a valid and subsisting license from the city to do so.

5.32.030 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 live adult entertainment establishments 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 a live adult entertainment establishment, 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.

5.32.040 Application.

A. Live Adult Entertainment Establishment License.

1. All applications for a live adult entertainment establishment license shall be submitted to the clerk in the name of the person or entity proposing to conduct a live adult entertainment establishment 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 live adult entertainment establishment, 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 Vancouver police department employees.

k. A scale drawing or diagram showing the configuration of the premises for the proposed live adult entertainment establishment, 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 a live adult entertainment establishment shall include building plans which demonstrate conformance with VMC 5.32.070.

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 a live adult entertainment establishment 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 live adult entertainment establishment license application.

6. The live adult entertainment establishment 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 live adult entertainment establishment. The permit shall be posted in a conspicuous place at or near the entrance to the live adult entertainment establishment so that it can be easily read at any time the business is open.

7. No person granted a live adult entertainment establishment license pursuant to this chapter shall operate the live adult entertainment establishment under a name not specified on the license, nor shall any person operate a live adult entertainment establishment 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 live adult entertainment establishment 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 live adult entertainment establishment 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 live adult entertainment establishment 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. A live adult entertainment establishment 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 live adult entertainment establishment 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. Live Adult Entertainment Establishment Manager and Entertainer Licenses.

1. No person shall work as a manager, assistant manager or entertainer at a live adult entertainment establishment 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 Vancouver 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 color 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 live adult entertainment establishment 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 live adult entertainment establishment.

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

3. A live adult entertainment establishment manager's or 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 a live adult entertainment establishment manager's license within 14 days of filing of a complete application, the applicant may, subject to all other applicable laws, commence work as a live adult entertainment establishment manager in a duly licensed live adult entertainment establishment 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 a live adult entertainment establishment 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 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.

5.32.050 Live Adult Entertainment Establishment License Fees.

A. Any person desiring to obtain a live adult entertainment establishment license shall first pay a license fee of \$700.00 per year.

B. Any person desiring to obtain a live adult entertainment establishment manager's license shall first pay a license fee of \$100.00 per year.

D. Any person desiring to obtain a live adult entertainer's license shall first pay a license fee of \$100.00 per year.

5.32.060 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 hearing examiner or other hearing body shall set a date for hearing such appeal, to take place within 30 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 10 working 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 within 10 days of the date the decision of the hearing body is mailed to the applicant.

5.32.070 Standards of conduct and operation - live adult entertainment establishments.

A. The following standards of conduct must be adhered to by employees of any live adult entertainment establishment 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 7.88 VMC.

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 live adult entertainment establishment 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 live adult

entertainment establishment 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 live adult entertainment establishment 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 live adult entertainment establishment, 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 a live adult entertainment establishment 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 live adult entertainment establishment.

No member of the public shall be permitted at any time to enter into any of the nonpublic portions of the live adult entertainment establishment, 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 a live adult entertainment establishment shall include but are not limited to:

1. A licensed manager shall be on duty at a live adult entertainment establishment 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 live adult entertainment establishment. 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 live adult entertainment establishment.

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 live adult entertainment establishment where adult entertainment as described in VMC 5.32.070 A.1. 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 affixed to the floor and measuring 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 live adult entertainment establishment 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 LIVE ADULT ENTERTAINMENT ESTABLISHMENT IS REGULATED BY THE CITY OF VANCOUVER. 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 live adult entertainment establishment 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 live adult entertainment establishment 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 live adult entertainment establishment 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 VMC 5.32.010(M), 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.

5.32.080 License term - Assignment - Renewals.

A. There shall be no prorating of the license fees set out in VMC 5.32.050, and 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 30th, then one-half of the annual fee may be accepted for the remainder of said year. 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 live adult entertainment establishment licenses, and no later than 14 days prior to the expiration of live adult entertainment establishment 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.

5.32.090 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 7.88 VMC 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 live adult entertainment establishment 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. The hearing must be conducted within 30 days of the filing of the notice of appeal. The hearing examiner or other hearing body shall render its decision within 10 working 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 within 10 days of the date the decision was mailed to the applicant. The decision of the clerk shall be stayed during the pendency of any appeal except as provided in subsection D below.

D. Where the Vancouver building official or fire marshal or their designees or the Clark County health department find that any condition exists upon the premises of a live adult entertainment establishment 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.

5.32.100 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.

5.32.110 Violation a misdemeanor.

Any person violating any of the provisions of this chapter is guilty of a misdemeanor.

5.32.120 Nuisance declared.

A. Public Nuisance. Any live adult entertainment establishment operated, conducted, or maintained in violation of this chapter or any law of the city of Vancouver 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 a live adult entertainment establishment contrary to the provisions of this chapter.

B. Moral Nuisance. Any live adult entertainment establishment 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 .

5.32.130 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.

5.32.140 Severability.

If any portion of this chapter, or its application to any person or circumstances, is held invalid, the validity of the chapter as a whole, or any other portion thereof, and its application to other persons or circumstances, shall not be affected.

Section 2. Severability.

If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder or the application of the provision to other persons or circumstances is not affected.

Section 3. Effective Date.

This ordinance shall take effect on _____, 1998.

Read first time:

PASSED BY THE FOLLOWING VOTE:

Ayes: Councilmembers

Nays: Councilmembers

Absent: Councilmembers

Read second time:

PASSED BY THE FOLLOWING VOTE:

Ayes: Councilmembers

Nays: Councilmembers

Absent: Councilmembers

Signed this _____ day of _____, 1998.

Royce E. Pollard, Mayor

Attest:

H.K. Shorthill, City Clerk
By: Judy Hoggatt

Approved as to form:

Ted H. Gathe, City Attorney

H:\council\ord\adult entertainment

