

ORDINANCE 2009-1

ORIGINAL

**AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF SUNNYSIDE, WASHINGTON, REPEALING
CHAPTER 5.54 OF THE SUNNYSIDE MUNICIPAL CODE
AND ADOPTING NEW CHAPTER 5.54 OF THE
SUNNYSIDE MUNICIPAL CODE PROVIDING FOR
REGULATION AND LICENSING OF ADULT
ENTERTAINMENT BUSINESSES, AND AMENDING
SECTION 2.02.020 TO PROVIDE APPLICABLE
LICENSING FEES**

WHEREAS, the City Council of the City of Sunnyside has previously adopted ordinances regulating Adult Entertainment Businesses as codified at Chapter 5.54 of the Sunnyside Municipal Code; and

WHEREAS, other cities in the state and region, and elsewhere in the country, have adopted ordinances regulating adult retail and adult entertainment uses, based upon evidence of the negative secondary effects of such uses; and

WHEREAS, based on a wide range of testimony and documents presented to other cities and counties by law enforcement officers and the public, the City council finds that adult entertainment businesses, although afforded some constitutional protection, often result in undesirable secondary effects, including criminal and other unlawful activities such as prostitution, narcotics and liquor law violations, breaches of the peace, assaults and sexual contact between entertainers and patrons; and

WHEREAS, the Planning Commission has held public meetings and hearing concerning the subject of adult entertainment businesses and secondary effects arising from the operation thereof, and has studied the current city regulations, and has recommended adoption of a comprehensive ordinance regulating and licensing adult entertainment businesses; and

WHEREAS, the Sunnyside Planning Commission has developed an extensive legislative history comprised of several studies conducted by other cities within the State of Washington and in the nation documenting undesirable secondary effects of adult entertainment businesses, to wit:

Report to: The American Center for Law and Justice on the Secondary Impacts of Sex Oriented Businesses, Environmental Research Group (March 31, 1996)

Adult Use Study, City of Des Moines, Washington (August 1984)

Location of Adult Entertainment Uses – Background Material, City of Bellevue, Washington (January 11, 1988)

Adult Entertainment Legislative Record, Londi K. Lindell, City of Federal Way, Washington (1995)

Director's Report: Proposed Land Use Code Text Amendment – Adult Cabarets, City of Seattle Department of Construction and Land Use (March 24, 1989)

Status Report – Regulation of Adult Entertainment, Mark Kunkler, City of Sunnyside (August 12, 2008); and

WHEREAS, the investigations and reports of the cities and agencies listed above, together with the reports from other communities and cities referenced therein, support comprehensive regulation of adult entertainment businesses in order to address secondary effects identified and discussed; and

WHEREAS, the City Council finds and determines that the studies referenced above support imposition of a restriction that no adult entertainment business shall be located within 1,000 feet of any R-1, R-2 or R-3 Zone, any public or private school, public park, church, nor within 1,000 feet of any other adult entertainment business; and

WHEREAS, the City Council receives, approves and adopts the recommendations of the Sunnyside Planning Commission and the record herein, together with reports and recommendations of staff; and

WHEREAS, the City Council finds and determines that repeal of existing Chapter 5.54 of the Sunnyside Municipal Code, adoption of new Chapter 5.54 of the Sunnyside Municipal Code, and amendment of Section 2.02.020 of the Sunnyside Municipal Code pertaining to business licensing fees for adult entertainment businesses, is in the best interests of residents of the City of Sunnyside and will promote the general health, safety and welfare; and

WHEREAS, the City Council and declares that an emergency exists given the expiration of the moratorium previously enacted, and that immediate effect of the ordinance adopted herein is necessary to preserve, protect and promote the general health, safety and welfare.

NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE CITY COUNCIL OF THE CITY OF SUNNYSIDE, WASHINGTON, as follows:

Section 1. Chapter 5.54 of the Sunnyside Municipal Code as set forth in Exhibit "A" attached hereto and incorporated herein by this reference, is hereby adopted and approved.

Section 2. Ordinance No. 1978 as previously codified at Chapter 5.54 of the Sunnyside Municipal Code is hereby repealed and replaced by new Chapter 5.54 of the Sunnyside Municipal Code as adopted pursuant to Section 1 above.

Section 3. Section 2.02.020 of the Sunnyside Municipal Code is hereby amended to provide annual licensing fees for adult entertainment business licenses as follows:

Adult Entertainment Business Operator's License:	\$1,000 annual
Adult Entertainment Business Manager's License:	\$ 500 annual
Entertainer's License:	\$ 100 annual

(The business licenses are subject to the provisions of Chapter 5.54 SMC, and further subject to Section 5.52.040 SMC regarding payment when due and any license renewal)

Section 4. Except as amended herein, Title 5 and Title 2 of the Sunnyside Municipal Code shall remain unchanged.

Section 5. For the reasons set forth above and to promote the objectives stated herein, the City Council finds that a public emergency exists, necessitating that this Ordinance take effect immediately upon its passage by a majority plus one of the whole membership of the Council in order to protect the public health, safety, property and general welfare.

Section 6. The moratorium enacted pursuant to Ordinance No. 2195 shall expire upon the effective date of this Ordinance.

PASSED this 12th day of January, 2009.



PABLO GARCIA, MAYOR

ATTEST:



DEBORAH A. ESTRADA, CITY CLERK

APPROVED AS TO FORM:



MARK A. KUNKLER, CITY ATTORNEY

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Chapter 5.54

ADULT ENTERTAINMENT

Sections:

- 5.54.005 Findings of fact.
- 5.54.010 Definitions.
- 5.54.020 License required.
- 5.54.030 License prohibited to certain classes.
- 5.54.040 Adult entertainment business licenses.
- 5.54.045 Additional license requirements.
- 5.54.050 Location.
- 5.54.060 Adult entertainment business license fees
- 5.54.070 Appeal.
- 5.54.080 Standards of conduct and operation.
- 5.54.090 License term – Assignment – Renewals.
- 5.54.100 License suspension and revocation – Hearing.
- 5.54.110 Liquor regulations.
- 5.54.120 Violation a misdemeanor.
- 5.54.130 Nuisance declared.
- 5.54.140 Additional enforcement.
- 5.54.150 Severability.

5.54.005 Findings of fact.

The city of Sunnyside takes notice and specifically relies upon the experiences of and studies utilized by other cities and counties in combating the specific adverse impacts of sexually oriented businesses including nude and semi-nude dancing. This includes but is not limited to the studies relied upon, and findings of fact entered by, the city councils of the cities of Shoreline, Bellevue, Tukwila, SeaTac, and Federal Way in their respective adult cabaret ordinances.

5.54.010 Definitions.

A. "Adult cabaret" means any commercial 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 any exhibition, performance, or dance which is not obscene and:

1. 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. 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 breasts; or

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3. 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 activity on the premises. 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, and which is commonly referred to as table dancing, couch dancing, lap dancing, private dancing and straddle dancing.

4. This term shall not be construed to include:

- a. Plays, operas, musicals, or other dramatic works; or
- b. Classes, seminars and lectures which are held for serious scientific or educational purposes.

C. "Adult entertainment business" shall mean and include an adult cabaret, adult arcade, adult bookstore, adult novelty store, adult video store, adult motion picture theater, adult mini-motion picture theater, exotic dance business, or adult entertainment show, more specifically defined as follows:

1. "Adult arcade" shall mean an establishment where, for any form of consideration, one or more still or motion picture projectors, slide projectors, computer-generated or enhanced photography, panorama, peep show or similar machines or other image-producing machines, for personal viewing, or used to show films, motion pictures, video cassettes, slides or other photographic reproductions, which provides materials for individual viewing by patrons on the premises of the business which are characterized by the depiction or description of "adult entertainment" or "sexual conduct." "Panorama" 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.

2. "Adult bookstore," "adult novelty store" or "adult video store" shall mean a commercial establishment which has a significant or substantial portion of stock-in-trade or revenues, substantial meaning 20 percent or more, for any form of consideration, of or from books, magazines, periodicals or other printed matter or photographs, films, motion pictures, video cassettes, slides or other photographic reproductions or visual representations which are characterized by the depiction or description of "adult entertainment" or "sexual conduct."

It shall be a rebuttable presumption that 20 percent of the business's stock-in-trade or revenues are considered substantial. An establishment may have other principal business purposes that do not involve the offering for sale or rental of materials depicting or describing "adult entertainment" or "sexual conduct," and still be categorized as adult bookstore, adult novelty store or adult video store. Such other business purposes will not serve to exempt such establishments from being categorized as an adult bookstore, adult novelty store or adult video store so long as one of its principal business purposes is offering or sale or rental, for some form of consideration, the specified materials which depict or describe "adult entertainment" or "sexual conduct."

3. "Adult motion picture theater" shall mean a commercial establishment where films, motion pictures, video cassettes, slides or similar photographic reproductions characterized by the depiction or description of "adult entertainment" or "sexual conduct" are regularly shown for any form of consideration. The term includes "adult motion picture theaters" defined in SMC 17.44.025.

4. "Adult mini-motion picture theaters" means an enclosed building or multi-screened enclosed building with each screened area constituting an individual theater with a seating capacity of 50 or less persons used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to "adult entertainment" or "sexual conduct" for the observation of patrons therein.

5. "Exotic dance business" means a commercial business or show in which any dancer or entertainer presents dances or entertainment characterized by the depiction or representation of "adult entertainment" or "sexual conduct."

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6. "Adult entertainment show" means a show, performance, exhibition, dance or similar performance depicting or characterized by "adult entertainment" or "sexual conduct."

D. "Applicant" means the individual or entity seeking an adult entertainment business operator's, manager's, entertainer's license, or adult entertainment business license in the city of Sunnyside. "Applicant" for an adult cabaret operator's license means all partners, corporate officers and directors and managing members of limited liability companies, regardless of whether such person's name appears on corporate filings, license applications, or other official documents of the applicant.

E. "Business day" means the days and hours of city operation defined as those days and times City Hall is open and available to the public for the conducting of business.

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 entertainment business as defined in this section, whether or not a fee is charged or accepted for entertainment.

I. "Liquor" means all beverages defined in RCW 66.04.010(20).

J. "Manager" means any person who manages, directs, administers or is in charge of the business affairs and/or conduct of any portion of any activity involving adult entertainment occurring at any adult entertainment business, and includes assistant managers working with or under the direction of a manager to carry out such purposes.

K. "Operator" means any person, licensed under this chapter, operating, conducting or maintaining an adult entertainment business.

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 an adult entertainment business.

N. "Sexual conduct" means any act or 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, whether clothed or unclothed, of one person and the mouth or anus, whether clothed or unclothed, of 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.

5.54.020 License required.

A. It is unlawful for any person to conduct or operate an adult entertainment business unless such person has been issued a valid and current adult entertainment business operator's license from the city to do so, obtained in the manner provided in this chapter.

B. It is unlawful for any entertainer to perform in an adult entertainment business unless such person has been issued a valid and current license from the city to do so.

C. It is unlawful for any manager to work in an adult entertainment business unless such person has been issued a valid and current license from the city to do so.

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D. Each license shall be subject to annual renewal upon payment of the applicable fee in accordance with SMC 5.52.040, subject to the City's review for compliance with the provisions of this chapter.

5.54.030 License prohibited to certain classes.

No license shall be issued under this chapter to:

A. A natural person who has not attained the age of 21 years, except that licenses may be issued to persons who have attained the age of 18 years with respect to cabarets where no intoxicating liquors are served or provided.

B. A limited liability company, unless all managing members thereof are qualified to obtain a license as provided in this chapter.

C. A partnership, unless all general partners thereof are qualified to obtain a license as provided in this chapter.

D. A corporation, unless all the officers and directors thereof are qualified to obtain a license as provided herein.

E. A proposed adult entertainment business operator whose place of business does not comply with all applicable requirements of the fire, building, and zoning codes of the city.

F. An applicant for any adult entertainment business license who is delinquent on city taxes, fees, fines, or penalties assessed in relation to an adult entertainment.

G. An applicant for an adult entertainment business license whose place of business is conducted by an agent, unless such agent has obtained a manager's license.

H. An applicant who has failed 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 statement in the application for a license under this chapter. "Materially false statement" means any false statement, oral or written, which could have affected the course or outcome of the license application.

I. An applicant who has had a license previously issued under this chapter revoked within one year of the time the applicant seeks a new license.

5.54.040 Adult entertainment business license.

A. Adult Entertainment Business Operator's License.

1. All applications for an adult entertainment business operator's license shall be submitted to the clerk in the name of the person or entity proposing to conduct an adult entertainment business on the business premises and shall be signed by such person and certified as true under penalty of perjury. All applications shall be submitted on a form supplied by the city, and shall be complete when the following information and submittals are provided:

a. For each applicant: names; any aliases or previous names; driver's license number, if any; Social Security number, if any; business, mailing, and residential address; and business and residential telephone number.

b. If a corporation, date and place of incorporation, evidence that it is in good standing under the laws of Washington, and name and address of any registered agent for service of process.

c. Whether the applicant holds any other licenses under this chapter or any license for similar adult entertainment or sexually oriented business, including motion picture theaters and panorams, from the city or another city, county or state, and if so, the names and addresses of each other licensed business.

d. A summary of the business history of each applicant owning or operating the adult entertainment or other sexually oriented businesses, providing names, addresses and dates of operation for such businesses, and whether any business license or adult entertainment license has been revoked or suspended, and the reason therefor.

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e. For each applicant, 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 each applicant, a description of business, occupation or employment history for the three years immediately preceding the date of the application.

g. The location and doing-business-as name of the proposed adult entertainment business, including a legal description of the property, street address, and telephone number, together with the name and address of each owner and lessee of the property.

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

i. Documentation that the applicant has attained requisite age as stated in SMC 5.10.030(A). Any one of the following shall be accepted as documentation of age:

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

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

iii. An official passport or military ID issued by the United States of America;

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

j. A scale drawing or diagram showing the proposed configuration of the premises for the adult entertainment business, 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 entertainment business shall include building plans which demonstrate conformance with SMC 5.54.080(C).

k. A nonrefundable application fee as set forth in the business license fee schedule in SMC 2.02.020 must be paid at the time of filing an application in order to defray the costs of processing the application.

2. Notification of the acquisition of new general partners, managing members, officers or directors, subsequent to the issuance of an adult cabaret license, shall be provided in writing to the city clerk no later than 21 days following such acquisition. The notice required shall include the information required for the original adult cabaret license application.

3. The adult 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, the doing-business-as name and the address of the licensed adult entertainment business. The permit shall be posted in a conspicuous place at or near the entrance to the adult entertainment business premises so that it can be easily read at any time the business is open.

4. No person granted an adult entertainment business license pursuant to this chapter shall operate the adult entertainment business under a name not specified on the license, nor shall any person operate an adult entertainment business under any designation or at any location not specified on the license.

5. Upon receipt of any complete application and fee, the clerk shall provide copies to the police department, and to other appropriate city departments or contractors, for a full investigation and review to determine compliance of the proposed adult entertainment business with this chapter and other applicable laws. Each adult entertainment business operator's license shall be issued with a notification that it shall be subject to revocation for noncompliance of the premises with building and zoning codes and this chapter.

6. In the event the premises are not yet constructed, the departments shall base their recommendation as to premises compliance on their review of the drawings submitted with the application. Any adult entertainment business license approved prior to premises construction shall contain a condition that the premises must be inspected prior to occupancy, and

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determined to be in substantial conformance with the drawings submitted with the application and other applicable building and development regulations.

7. An adult entertainment business operator's license shall be issued or the application denied by the clerk within 14 days of the date of filing a complete license application and fee, unless the clerk determines that the applicant has failed to meet any of the requirements of this chapter or provide any information required under this subsection, or that the applicant has made a false, misleading or fraudulent statement of material fact on the application for a license. Upon request of the applicant, the clerk shall grant an extension of time, up to but not to exceed 20 additional days, in which to provide all information required for license application. The time period for granting or denying a permit shall be stayed during the period in which the applicant is allowed an opportunity to properly complete the application. If the clerk finds that the applicant has failed to meet any of the requirements for issuance of an adult entertainment business operator's license, the clerk shall issue a notice of non-issuance in writing, and shall cite the specific reasons therefor.

8. 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.

B. Adult Entertainment Business Manager's License.

1. No person shall work as a manager at an adult entertainment business without an applicable manager's license issued by the city. Each applicant for a manager's license shall complete an application on forms provided by the city containing the information identified below. A nonrefundable application fee as set forth in the business license fee schedule in SMC 2.02.020 shall accompany the application. A copy of the application shall be provided to the police department for its review, investigation and recommendation. All applications for a manager's license shall be signed by the applicant and certified to be true under penalty of perjury. The manager's license application shall require the following information:

a. The applicant's name, home address, home telephone number, date and place of birth, Social Security number, and any stage names or nicknames used in entertaining.

b. The name and address of each business at which the applicant intends to work as a manager.

c. Documentation that the applicant has attained the requisite age as stated in SMC 5.54.030(A). Any one of the following shall be accepted as documentation of age:

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

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

iii. An official passport or military ID issued by the United States of America;

or

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

d. A complete statement of all convictions of the applicant for any misdemeanor or felony violations in this or any other city, county, or state within five years immediately preceding the date of the application, except parking violations or minor traffic infractions.

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

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

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

3. Upon receipt of the complete application and fee, the clerk shall provide copies to the police department for its investigation and review for compliance with this chapter.

4. A manager's license shall be issued by the clerk by the end of the next business day following receipt of a complete application and fee, unless the clerk determines that the

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applicant has failed to provide any information required to be supplied according to this chapter, or that the applicant is a person of a class specified in SMC 5.54.030. Upon request of the applicant, the clerk shall grant an extension of time not to exceed 20 additional days in which to provide all information required for license application. If the clerk determines that the applicant has failed to meet any of the requirements for issuance of a manager's license, the clerk shall deny the application in writing and shall cite the specific reasons therefor, including applicable laws. If the clerk fails to approve or deny the application by the end of the next business day, the applicant may, subject to all other applicable laws, commence work as an adult entertainment business manager in a duly licensed adult entertainment business until notified, in writing, by the clerk that the application has been denied or the final disposition of the appeal if the applicant appeals the clerk's decision.

C. Entertainer's License.

1. No person shall work as an entertainer at an adult entertainment business without an applicable entertainer's license issued by the city. Each applicant for an entertainer's license shall complete an application on forms provided by the city containing the information identified below. A nonrefundable application fee as set forth in the business license fee schedule in SMC 2.02.020 shall accompany the application. A copy of the application shall be provided to the police department for its review, investigation and recommendation. All applications for an entertainer's license shall be signed by the applicant and certified to be true under penalty of perjury. The entertainer's license application shall require the following information:

a. The applicant's name, home address, home telephone number, date and place of birth, Social Security number, and any stage names or nicknames used in entertaining.

b. The name and address of each business at which the applicant intends to work as an entertainer.

c. Documentation that the applicant has attained requisite age as stated in SMC 5.54.030(A). Any one of the following shall be accepted as documentation of age:

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

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

iii. An official passport or military ID issued by the United States of America;

or

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

d. A complete statement of all convictions of the applicant for any misdemeanor or felony violations in this or any other city, county, or state within five years immediately preceding the date of the application, except parking violations or minor traffic infractions.

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

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

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

3. Upon receipt of the complete application and fee, the clerk shall provide copies to the police department for its investigation and review for compliance with this chapter. An entertainer's license shall be issued by the clerk by the end of the next business day following receipt of a complete application and fee, unless the clerk determines that the applicant has failed to provide any information required to be supplied according to this chapter, or that the applicant is a person of a class specified in SMC 5.54.030. Upon request of the applicant, the clerk shall grant an extension of time not to exceed 20 additional days in which to provide all information required for license application. If the clerk determines that the applicant has failed to meet any of the requirements for issuance of an entertainer's license, the clerk shall deny the

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application in writing and shall cite the specific reasons therefor, including applicable laws. If the clerk fails to approve or deny the application by the end of the next business day, the applicant may, subject to all other applicable laws, commence work as an entertainer in a duly licensed adult entertainment business until notified, in writing, by the clerk that the application has been denied or the final disposition of the appeal if the applicant appeals the clerk's decision.

5.54.045 Additional license requirements.

A. Duty to Supplement. 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 in the application. The notice shall include the information required to be provided for the original adult cabaret or adult entertainment business license. The failure to supplement the application on file with the clerk regarding such change in ownership or interest within 30 days from the date of such change, shall be grounds for suspension or revocation of a license.

B. 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. Transfer with the sale, lease, or sublease of a business; or
2. The transfer of securities which constitute a controlling interest in the cabaret, whether by sale, exchange, or similar means; or
3. Transfer with the establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business.

C. Posting and Display.

1. The adult entertainment business operator's 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 adult entertainment business is open.

2. The name and license of the manager shall be prominently posted during business hours.

3. Entertainers' licenses need not be posted. However, 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 entertainment business. 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, regardless of whether such photocopy is notarized or certified to be true under penalty of perjury, be acceptable as proof of issuance of any license required under this chapter.

5.54.050 Location.

Adult entertainment businesses, including but not limited to adult entertainment shows, are subject to the following:

A. No adult entertainment business or show shall be located within 1,000 lineal feet of property zoned R-1, R-2 or R-3 residential;

B. No adult entertainment business or show shall be located within 1,000 lineal feet of the perimeter of any church, public park or public or private school grounds;

C. No adult entertainment business or show shall be located within 1,000 feet from any other adult entertainment business.

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5.54.060 Adult entertainment business license fees.

The license fees are set forth in Chapter 2.02 of this Code.

5.54.070 Appeal.

A. Any person aggrieved by the action of the clerk in refusing to issue or renew any license under this chapter or in temporarily suspending or permanently revoking any license under this chapter shall have the right to appeal such action to the city hearing examiner, by filing an appeal statement with the clerk within 14 days of issuance and mailing notice of the action from which appeal is taken. The filing of such appeal shall stay the action of the clerk.

B. The hearing examiner, upon receipt of a timely notice of appeal, shall set a date for a hearing of such appeal within 30 days from the date of such receipt, unless extended by mutual agreement or for good cause shown. The hearing shall be de novo. The hearing shall be conducted under the city rules of procedure for administrative hearings; provided, however, the burden of proof shall be on the city.

C. The decision of the hearing body on an appeal from a decision of the clerk shall be based upon a preponderance of the evidence.

D. 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 filing an application or complaint upon the city within 14 calendar days after the date the hearing examiner's decision is issued and mailed to the parties.

5.54.080 Standards of conduct and operation.

A. Entertainers and Employees. The following standards of conduct must be adhered to by employees of any adult entertainment business while in any area of an adult entertainment business in which members of the public are allowed to be present:

1. No employee or entertainer shall be unclothed or in such less than opaque and complete attire, costume or clothing so as to expose to view any portion of the female breast below the top of the areola or any portion of the pubic region, anus, buttocks, vulva or genitals, except upon a stage at least 18 inches above the immediate floor level and removed at least eight feet from the nearest member of the public.

2. No employee or entertainer mingling with members of the public shall be unclothed or in less than opaque and complete attire, costume or clothing as described in subsection (A)(1) of this section, nor shall any male employee or entertainer at any time appear with his genitals in a discernibly turgid state, even if completely and opaquely covered, or wear or use any device or covering which simulates the same.

3. No employee or entertainer mingling with members of the public shall wear or use any device or covering exposed to view which simulates the breast below the top of the areola, vulva, genitals, anus, any portion of the pubic region, or buttocks.

4. No employee or entertainer shall caress, fondle, or touch any member of the public, including another entertainer unless both such entertainers are on a stage meeting the requirements of subsection (A)(1) of this section, for the purpose of sexual arousal of either party. No employee or entertainer shall permit any member of the public to caress, fondle, or touch any employee or entertainer, for the purpose of sexual arousal of either party.

5. No employee or entertainer shall perform actual or simulated acts of sexual conduct as defined in this chapter, or any act which constitutes a violation of Chapter 7.48A RCW, the Washington Moral Nuisances Statute.

6. No employee or entertainer mingling with members of the public shall conduct any dance, performance or exhibition in or about the nonstage area of the adult cabaret unless that dance, performance or exhibition is performed at a distance of no less than four feet, measured

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from the forehead of the entertainer to the forehead of the customer paying for the dance, performance, or exhibition.

7. No tip or gratuity offered to or accepted by an adult entertainer may be offered or accepted prior to any performance, dance or exhibition provided by the entertainer. No entertainer performing upon any stage area shall be permitted to accept any form of gratuity offered directly to the entertainer by any member of the public. Any gratuity offered to any entertainer performing upon any stage areas must be placed into a receptacle provided for receipt of gratuities by the adult entertainment business 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 entertainment business 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. Adult Entertainment Business Manager's License. The following are required of an adult entertainment business manager:

1. Admission must be restricted to persons of the age 18 years or more. It is unlawful for any owner, operator, manager or other person in charge of an adult entertainment business to knowingly permit or allow any person under the minimum age specified to be in or upon such premises. A licensed manager or other employee shall verify the age of all members of the public seeking to enter an adult entertainment business.

2. Neither the performance nor any photograph, drawing, sketch or other pictorial or graphic representation thereof displaying any portion of the breast 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 entertainment business. The prohibition of this subsection (B)(2) is intended to be limited to adult entertainment business performances and representation of same, and is not intended to prohibit the activities enumerated in SMC 5.54.010(B)(4).

3. No member of the public shall be permitted at any time to enter into any of the nonpublic portions of the adult entertainment business, 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.

4. The licensee shall not operate or maintain any warning system or device, of any nature or kind, for the purpose of warning customers or patrons or any other persons located on the licensee's premises that police officers or other city inspectors are approaching or have entered the licensee's premises.

5. A licensed manager shall be on duty at an adult entertainment business 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.

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

7. 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 entertainment business premises. 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 entertainment business premises.

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8. 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.

C. Adult Entertainment Business Operator's License.

1. Responsibility for Conduct of Entertainers and Employees. The adult entertainment business operator shall assure that all managers, entertainers and employees comply with standards of conduct of this section and all other requirements of this chapter. Failure to take reasonable measures to promptly correct violations which were known or should have been known to the operator shall be grounds for suspension or revocation of the adult entertainment business operator's license or other penalties provided in this chapter.

2. Performance Area. The performance area of the adult entertainment business premises where adult entertainment 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.

3. 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 entertainment business premises where members of the public are admitted.

4. 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 ENTERTAINMENT BUSINESS IS REGULATED BY THE CITY OF
SUNNYSIDE. 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

5. 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.

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6. Inspections. In order to ensure compliance with this chapter, all areas of licensed adult entertainment businesses 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.

D. It is unlawful for any adult entertainment business to be operated or otherwise open to the public between the hours of 2:00 a.m. and 10:00 a.m.

5.54.090 License term – Assignment – Renewals.

A. Licenses shall expire one year from the date of issue.

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 entertainment 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. 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 set forth in the business license fee schedule in SMC 2.02.020.

C. The clerk shall renew a license upon receipt of a complete application and fee, and subject to compliance with the provisions of SMC 5.54.040 regarding original licenses.

5.10.100 License suspension and revocation – Hearing.

A. The clerk may suspend or revoke any license issued under the provisions of this chapter at any time where the same was procured by fraud or false representations of fact, or for the violation of, or failure to comply with, the provisions of this chapter or the provisions of any applicable fire, building or zoning code.

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. "Other applicable ordinances, statutes or regulations" are:

1. A conviction of Chapter 9A.44 RCW, Sex Offenses; or
2. A conviction of Chapter 9A.88 RCW, Indecent Exposure; or
3. A conviction of Chapter 9.68 RCW, Obscenity and Pornography; or
4. A conviction of Chapter 9.68A RCW, Sexual Exploitation of Children; or
5. A conviction of Chapter 69.50 RCW, Washington Uniform Controlled Substances Act.
6. A violation of any license or applicable rules or regulations of the Washington State Liquor Control Board relating to the sale or consumption of intoxicating liquor.

C. The clerk shall issue and mail to the licensee the decision to suspend or revoke the license at least 14 days prior to the effective date of the action. Such notice shall inform the licensee of the right to appeal the decision to the hearing examiner or other designated hearing body, pursuant to SMC 5.54.060, and shall state the effective date of such revocation or suspension and the grounds for revocation or suspension. The decision of the clerk shall be stayed during the pendency of any appeal to the hearing examiner or superior court.

5.54.110 Liquor regulations.

Any license issued pursuant to this chapter shall be subject to any applicable 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.

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5.54.120 Violation a misdemeanor.

Any person violating any of the provisions of this chapter is guilty of a misdemeanor in addition to other remedies provided in this chapter.

5.54.130 Nuisance declared.

A. Public Nuisance. Any adult cabaret operated, conducted, or maintained in violation of this chapter or any law of the city of Sunnyside 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.

5.54.140 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.

5.54.150 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.