



APPLICATION PACKET

Adult Entertainment Establishment License & Adult Entertainment Manager's and Entertainer's License

This Packet includes forms necessary for the Adult Entertainment Establishment License and Adult Entertainment Manager's and Entertainer's License:

- **Adult Entertainment Establishment License**
- **Adult Entertainment Manager's or Entertainer's License**
- **Daily Log**
- **Copy of Ordinance 1604**
Please read the ordinance for a detailed guideline on the application and licensing process.

Highlights of the Application Process:

FEES

Adult Entertainment Establishment License
\$720.00 per Year (January 1st to December 31st)

Adult Entertainment Manager's or Entertainer's License
\$145.00 per Year (January 1st to December 31st)

The application fee includes the fee to cover the cost of a WATCH criminal background check, as provided in OHMC 3.64.100. Upon filing of the application and fees, the applicant(s) shall be issued a temporary license which shall expire upon the City Council determination set forth in Chapter 5.20 OHMC.

RECEIPT OF APPLICATION

Return the application to the city clerk. The city clerk shall forward an adult entertainment establishment license application to the Chief of Police for a WATCH background check, business location investigation, and a report to City Council on the results of the investigation and condition recommendations that should be placed upon the adult entertainment establishment license to reduce noise, traffic or other similar public health and safety impacts. PLEASE READ THE ENTIRE SECTION OF THE ATTACHED ORDINANCE – SECTION 5.20.140 (3) FOR COMPLETE DETAILS OF ALLOWABLE CONDITIONS.

CITY COUNCIL REVIEW AND PUBLIC HEARING

The City Council shall hold a public hearing with respect to the issuance of the adult entertainment establishment license. PLEASE READ SECTION 5.20.140 (4) FOR COUNCIL REVIEW OF CONDITIONS. The decision of the City Council shall be the final decision of the City.



Application for Adult Entertainment Establishment License*

Application Fee -- Non-Refundable

Fee/\$720 (Annual) + Background Check Fee (OHPD Fee Schedule)

***Must have a licensed Adult Entertainment Manager on duty during hours of operation (OHMC 5.20.280)**

Section 1.a: Applicant Information: (OHMC 5.20.060-070)

Business Name:

Business Address:

*(Location of
Nightclub)*

Business Number:

Owner Name:

Owner Address:

Owner's Phone
Number:

Date of Birth:

Social Security No.:

Additional Information required for any Partners, Members, Corporate Officers and Directors:
(attach additional pages if needed)

Name:

Residence Address

Residence Phone
Number:

Social Security No.:

Date of Birth:

Section 1.b: Applicant Information: Questionnaire (OHMC 5.20.060-070)

1. **Provide two (2) two-inch by two-inch color passport-quality photographs of the applicant:** *(provide copies with submittal of the application)*
- Must be taken within six (6) months of the application submission *(Must show date taken on image)*
 - Full face shown only

2. **Provide all physical addresses for five (5) years immediately prior to date of application:**
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3. **Have you ever had an Adult Entertainment License issued from the City of Oak Harbor or from another jurisdiction denied, suspended, or revoked in the last five (5) years?**
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4. **If you answered Yes to Question 3, provide the following information which pertains to the adult entertainment business license that was denied, suspended or revoked:**

Name and location:

Date of action:

Jurisdiction:

Reason for the action:

Status of any appeal of such action:

5. **Please provide a description of your business, occupation or employment within the last five (5) years:**
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6. **Provide the name(s) and address(es) (*address must be in Washington State*) which shall appear on the license and for all official notification purposes:**
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7. **Have you ever been the subject of a bail forfeiture, adverse finding of conviction with local, state or federal criminal law, (other than parking or traffic infractions) within the last five (5) years? If so, please explain:**

Nature of the Crime:

Date of crime:

Location and nature of judicial action taken:

Section 2: Issuance Prohibitions (OHMC 5.20.070) *(attach additional pages if needed)*

1. **Are you at least eighteen (18) years of age?** _____
OHMC 5.20.060 (1):
No license authorized under this chapter shall be issued to a natural person who has not attained the age of 18 years;

2. **Are you the owner _____ manager _____ or agent _____ of this business?** _____

3. **If you are an agent for the owner, please provide documentation verifying that you have actual authority to enter into this License. Please attach to this application.**

4. **Are you a co-partner of this business?** _____
OHMC 5.20.060 (2):
No license authorized under this chapter shall be issued to a partnership, unless all of the members thereof are individually qualified to obtain a license as provided by this chapter. Such license shall be issued to the manager of the partnership;

5. **Is this business a corporation, limited liability company, trust, association, marital community or joint venture, or other entity or group?** _____
OHMC 5.20.060 (3):
No license authorized under this chapter shall be issued to a corporation, limited liability company, trust, incorporated or unincorporated association, marital community, joint venture, or other entity or group of persons however organized unless all of the officers and directors thereof are individually qualified to obtain a license as provided by this chapter.

6. **In addition to the requirements set forth in this application, applicants and licensees alike must abide by duties to supplement, rules of operation and/or continuing obligations.**

Please read carefully all provisions of OHMC Chapter 5.20 “Adult Entertainment.”

Under penalty of perjury of the laws of the State of Washington, I do solemnly swear that I have read the Oak Harbor Municipal Code (OHMC) 5.20 regulating adult entertainment establishment licensing and that I will abide by the rules set forth therein and I furthermore swear that the facts I have stated in this application are true.

Signature

Date

Section 3.a: Temporary License Issuance (OHMC 5.20.090, 5.20.130)

Upon filing the application and paying associated fees, the city clerk shall issue or deny the adult entertainment establishment license within thirty (30) days of receipt of the completed application. If the temporary license is permitted, then after investigation by City officials, you will be notified of their report and the date upon which the City Council will conduct a hearing for issuance of a regular license. OHMC 5.20.090 and 5.20.130 sets forth these procedures.

For more details regarding denial and appeal, please see OHMC 5.20.090 and 130.

Failure to provide information required by OHMC 5.20.070 will constitute an incomplete application, which will not be processed.

Section 3.b: Application Investigation – Police Chief (OHMC 5.20.070 - .080, 5.20.140)

Oak Harbor Police Department

Date Received Application: _____

- Conducted WATCH Criminal Background Check _____ (attach results)
- Conducted Fingerprint-based State & National Background Check _____ (attach results)
- Attach Investigative Report and Recommendations and any reports requested of other City departments.

Section 4: License Conditions – Public Hearing (OHMC 5.20.140(4))

CITY COUNCIL ACTION

Public Hearing Date: _____

Decision/Findings: (show below or attach report)

License Conditions: (show below or attach report)

Review Date: (if any scheduled)



Application for Adult Entertainment
Manager/ Entertainer License
Application Fee -- Non-Refundable
Annual Fee \$145.00 Due January 1st of each year
Background Check Fees + Fingerprint Card Fees (OHPD Fee Schedule)

Section 1.a: Applicant Information: (OHMC 5.20.060-070)

Applicant Name
(including all aliases):

Home Address:
(including mailing
address)

Home Number:

Date of Birth:

Place of Birth

Social Security No.:

Name(s) of
Nightclubs:

Address(es) of
Nightclubs:

Stage names or
nicknames used in
entertaining:

Name and Address of each Nightclub the Applicant intends to work as Manager or Entertainer:

Attach copy of proof of U.S. Citizenship or Legal Residency and Right to Work in Washington

Section 1.b: Applicant Information: Questionnaire (OHMC 5.20.070 (2))

1. Have you ever had an Adult Entertainment-related license issued from the City of Oak Harbor or from another jurisdiction denied, suspended, or revoked in the last five (5) years?

2. If you answered **Yes to Question 1**, provide the following information which pertains to the adult entertainment business license that was denied, suspended or revoked:

Name and location of Nightclub:

Date of action:

Jurisdiction that took action:

Reason for the action:

Status of any appeal of such action:

3. Have you ever been the subject of a bail forfeiture, adverse finding of conviction with local, state or federal criminal law, (other than parking or traffic infractions) within the last five (5) years? If so, please explain:

Nature of the Crime:

Date of crime:

Location of Crime:

Nature of judicial action taken:

Section 2: Issuance Prohibitions (OHMC 5.20.060, 070(2)) *(attach additional pages if needed)*

1. Are you at least eighteen (18) years of age? _____

Attach copy of proof of age, e.g.: Driver’s License; State ID; Passport; Immigration Card
See OHMC 5.20.070(2)(c).

OHMC 5.20.060 (1): No license authorized under this chapter shall be issued to a natural person who has not attained the age of 18 years;

2. Are you the owner _____ manager _____ or agent _____ of this business? _____

3. If you are an agent for the owner, please provide documentation verifying that you have actual authority to enter into this License. Please attach to this application.

4. Are you a co-partner of this business? _____

OHMC 5.20.060 (2): No license authorized under this chapter shall be issued to a partnership, unless all of the members thereof are individually qualified to obtain a license as provided by this chapter. Such license shall be issued to the manager of the partnership;

5. **Is this business a corporation, limited liability company, trust, association, marital community or joint venture, or other entity or group?** _____

OHMC 5.20.060 (3): No license authorized under this chapter shall be issued to a corporation, limited liability company, trust, incorporated or unincorporated association, marital community, joint venture, or other entity or group of persons however organized unless all of the officers and directors thereof are individually qualified to obtain a license as provided by this chapter.

6. **Submit a WATCH background check form for all names/aliases to the Police Department. The Police Department will conduct the background check.**

- Attach copy of receipt(s)
The City Clerk will contact you with results.

7. **Obtain a Fingerprint-based state background check with the Police Department and pay applicable fees at the Police Department.**

- Attach copy of receipt and date attended: _____
Drop-in hours: Tuesdays or Thursdays 10:00 a.m. - 1:30 p.m. (*No appointment needed*)
State Patrol will contact you with results.

8. **In addition to the requirements set forth in this application, applicants and licensees alike must abide by duties to supplement, rules of operation and/or continuing obligations.**

Please read carefully all provisions of OHMC Chapter 5.20 “Adult Entertainment.”

Section 3: Submission of Application (OHMC 5.20.070 (2))

Under penalty of perjury of the laws of the State of Washington, I certify that I have read the Oak Harbor Municipal Code (OHMC) 5.20 regulating adult entertainment managers and adult entertainer licensing and that I will abide by the rules set forth therein and I furthermore swear that the facts I have stated in this application are true.

Signature

Date

Section 4: Temporary License Issuance (OHMC 5.20.090 (2), 5.20.130)

Upon filing the application and paying associated fees, the city clerk shall issue or deny the adult entertainment manager’s or adult entertainer’s license by the close of the second business day after the complete application, including all submittals and information required by the chapter, is received. If the temporary license is permitted, then after investigation by City officials, you will be notified of their report and the date upon which the City Council will conduct a hearing for issuance of a regular license. OHMC 5.20.090 and 5.20.130 sets forth these procedures.

For more details regarding denial and appeal, please see OHMC 5.20.090 and 5.20.130.

Failure to provide information required by OHMC 5.20.070 will constitute an incomplete application, which will not be processed.

Temporary Issuance Date	Temporary Business License No. Issued

City Clerk

Date

Section 5: Instructions to Obtain Entertainment License

- **Step 1:** First-time applicants – Complete Application, and pay application and background check fees.
- **Step 2:** The Clerk will issue complete applications a Temporary License.
- **Step 3:** The City Clerk will inform you when your application will be added to the Council Agenda for City Council action on the Regular license.
- **Step 4:** Following Council action, the Clerk will contact you with the results.
- **Step 5:** If approved, you will receive a Regular Business & Entertainment endorsement via mail.
- **Note:** *If the application is granted, the \$145.00 application fee will count as the first annual license payment.*
- **Step 6:** If application is denied, the \$145.00 application fee + Background Check and fingerprint fees are non-refundable.
- **Renewal:** Must renew Entertainer license fees annually. **Expires December 31st** each year.

SECTION 6-- INTERNAL USE ONLY

Section 6: Application Investigation – Police Chief (OHMC 5.20.070 - .080, 5.20.140)

Oak Harbor Police Department

Date Received Application: _____

- Conducted WATCH Criminal Background Check _____ (attach results)
- Conducted Fingerprint-based State & National Background Check _____ (attach results)
- Attach Investigative Report and Recommendations and any reports requested of other City departments.

Section 7: License Conditions – City Council Action (OHMC 5.20.140(4))

City Council Public Hearing Date: _____

Decision/Findings: (show below or attach report)

License Conditions: (show below or attach report)

Review Date: (if any scheduled)

Approval/Denial Date	Fees Paid	Business License No. Issued

City Clerk

Date

Please contact the City Clerk if you have any questions at 360-929-4539 or at athompson@oakharbor.org

Adult Entertainment Establishment DAILY LOG

- Each manager and/or operator shall be responsible for maintaining a daily log of all employees, entertainers, and managers working at the adult entertainment establishment each day.
- The log shall list the employee's, entertainer's, and manager's name as it is listed on his/her license, license number, stage name if any, the time he/she arrived at the adult entertainment establishment, and the time he/she left the adult entertainment establishment.
- Each employee, entertainer, and manager shall sign his/her name in the daily log each time he/she arrives and leaves the adult entertainment establishment.
Chapter 5.20.100 (5) OHMC.

Establishment's Name:
Complete Address:
Phone Number:
Other Contact Information:

Date: _____

Manager's, Employee's, Entertainer's Name as listed on his/her license:	
License Number:	
Stage Name, if any:	
Arrival Time:	Departure Time:
Arrival Time:	Departure Time:
Signature: _____	

ORDINANCE NO. 1604

AN ORDINANCE OF THE CITY OF OAK HARBOR ADDING A NEW CHAPTER 5.20 ENTITLED "ADULT ENTERTAINMENT" TO TITLE 5 OF THE OAK HARBOR MUNICIPAL CODE

WHEREAS, adult entertainment establishments require special supervision from the public safety agencies of the City in order to protect and preserve the health, safety, morals and welfare of the patrons of such businesses as well as the citizens of Oak Harbor; and

WHEREAS, the city council find that adult entertainment establishments are frequently used for unlawful sexual activities, including prostitution and sexual liaisons of a casual nature; and

WHEREAS, licensing is a legitimate and reasonable means of accountability to ensure that operators of sexually oriented businesses comply with reasonable regulations and to ensure that operators do not knowingly allow their establishments to be used as places of illegal sexual activity or solicitation; and

WHEREAS, there is convincing, documented evidence that adult entertainment establishments because of their very nature, have a deleterious effect on both the existing businesses around them and the surrounding residential areas adjacent to them, causing increased crime and the down grading of property values; and

WHEREAS, the city council desires to minimize and control these adverse effects and thereby protect the health, safety and welfare of the citizenry, protect the citizens from increased crime, preserve the quality of life, protect the property values and character of the surrounding neighborhoods; and

WHEREAS, the city council has determined that locational criteria alone do not adequately protect the health, safety and general welfare of the people of Oak Harbor; and

WHEREAS, regulation of the adult entertainment industry is necessary because, in the absence of such regulation, significant criminal activity has historically and regularly occurred. This history of criminal activity in the adult entertainment industry has included prostitution, illegal employment of minors, narcotics, alcoholic beverage law violations, breaches of the peace, tax evasion, and the presence within the industry of individuals with hidden ownership interests and outstanding arrest warrants; and

WHEREAS, it is not the intent of this ordinance to suppress any speech activities protected by the First Amendment of the U.S. Constitution or Article I, Section 5 of the Washington State Constitution, but to enact a content-neutral ordinance which addresses the secondary effects of adult entertainment businesses;

Pursuant to the authority granted by the Constitution and the legislature of the state of Washington; now, therefore,

THE CITY COUNCIL OF THE CITY OF OAK HARBOR do ordain as follows:

Section One. There is hereby added a new Chapter 5.20 entitled "Adult Entertainment" to Title 5 of the Oak Harbor Municipal Code to read as follows:

**CHAPTER 5.20
ADULT ENTERTAINMENT**

Sections:

- 5.20.010 Findings of Fact.
- 5.20.020 Definitions.
- 5.20.030 Adult entertainment establishment license.
- 5.20.040 License for managers and entertainers.
- 5.20.050 License fees.
- 5.20.060 License prohibited to certain classes.
- 5.20.070 License applications.
- 5.20.080 License - Applicant investigation.
- 5.20.090 Issuance of licenses.
- 5.20.100 Additional license requirements.
- 5.20.110 License - Denial, revocation, or refusal to renew - Grounds.
- 5.20.120 Additional grounds for suspension or revocation of establishment license.
- 5.20.130 Filing of application.
- 5.20.140 License conditions for adult entertainment establishment license.
- 5.20.150 Violation of license conditions.
- 5.20.160 Revision of adult entertainment establishment license conditions.
- 5.20.170 Appeal to court.
- 5.20.180 Continuation of business while complaint hearing decision pending.
- 5.20.190 Standards of conduct and operation.
- 5.20.200 Physical layout of premises.
- 5.20.210 Permission to inspect.
- 5.20.220 Public nuisance.
- 5.20.230 Non-public areas.
- 5.20.240 Additional requirements for adult entertainment establishments.
- 5.20.250 List of entertainments - Fees.
- 5.20.260 Notice to customers.
- 5.20.270 Activities not prohibited.
- 5.20.280 Manager on premises.
- 5.20.290 Hours of operation.
- 5.20.300 Persons under eighteen (18) years of age prohibited.
- 5.20.310 Locking entrance unlawful.
- 5.20.320 Alarm system at entrance - Unlawful.
- 5.20.330 Warning of approach of police - Lookouts.
- 5.20.340 Warning that police are approaching - Unlawful.
- 5.20.350 Presence in place where warning given.
- 5.20.360 Locking rooms.
- 5.20.370 Presence in locked rooms.

- 5.20.380 Permitting alarm system unlawful.
5.20.390 Exemption from Chapter.

5.20.010 Findings of Fact. Based on evidence concerning the adverse secondary effects of adult uses on the community presented in hearings and in reports made available to the council, and on findings incorporated in the cases of *City of Renton v. Playtime Theaters, Inc.*, 475 U.S. 41 (1986), *Young v. American Mini Theatres*, 426 U.S. 50 (1976), *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991), *City of Erie v. Pap's A.M., TDA "Kandyland"*, 529 U.S. 277 (2000), *City of Los Angeles v. Alameda Books, Inc.*, 121 S.Ct. 1223 (2001), *Wise Enterprises, Inc., v. Athens-Clarke County Georgia*, No. 99-8265 (11th Circuit Court of Appeals 2000), *Sammy's v. City of Mobile*, No. 96-7073 (11th Circuit Court of Appeals 1998), *Ino Ino, Inc., v. Bellevue*, 132 Wn.2d 103 (1997), *World Wide Video v. Tukwila*, 117 Wn.2d 382 (1991), *Kitsap County v. Kev, Inc.*, 106 Wn.2d 135 (1986), *Colacurcio v. City of Kent*, 163 F. 3d 545 (1998), *DCR, Inc., v. Pierce County*, 92 Wn.App. 660 (1998), and on studies in other communities including, but not limited to, Bellevue, Burien, Everett, Shoreline, Lynnwood, Tukwila, SeaTac, Federal Way, Tacoma, and Seattle, the council hereby adopt the following Findings of Fact:

- (1) The city council has determined that locational criteria alone do not adequately protect the health, safety and general welfare of the people of Oak Harbor.
- (2) The secondary effects of the activities defined and regulated in this ordinance are detrimental to the public health, safety, morals, and general welfare of the citizens of the city and, therefore, such activities must be regulated.
- (3) Regulation of the adult entertainment industry is necessary because, in the absence of such regulation, significant criminal activity has historically and regularly occurred. This history of criminal activity in the adult entertainment industry has included prostitution, illegal employment of minors, narcotics, alcoholic beverage law violations, breaches of the peace, tax evasion, and the presence within the industry of individuals with hidden ownership interests and outstanding arrest warrants.
- (4) Proximity between entertainers and patrons during adult entertainment performances can facilitate sexual contact, prostitution, and related crimes. Concerns about crime and public sexual activity are legitimate and compelling concerns of the city which demand reasonable regulation of adult entertainment establishments in order to protect the public health, safety, and general welfare of its citizens, including a prohibition against direct contact between entertainers and patrons, a ten (10) foot minimum distance between entertainers and patrons, restricting nude dancing to stage raised 18 inches above the floor, and a ban on direct tipping of entertainers, as evidenced in Pierce County, the City of Kent, the City of Bellevue and the County of San Diego County in particular.
- (5) Licensing is a legitimate and reasonable means of accountability to ensure that operators of adult entertainment establishments comply with reasonable regulations and to ensure that operators don't knowingly allow their establishments to be used as places of illegal sexual activity or solicitation.

- (6) It is necessary to license entertainers in the adult entertainment industry to prevent the exploitation of minors, to ensure that each entertainer is an adult, and to ensure that such entertainers have not assumed a false name which would make regulation of the entertainer difficult or impossible.
- (7) It is necessary to have a licensed manager on the premises of establishments offering adult entertainment at such times as such establishments are offering adult entertainment, so there will at all necessary times be an individual responsible for the overall operation of the adult entertainment establishment, including the actions of patrons, entertainers, and other employees, and to ensure a design, layout and sufficient lighting to permit a manager to effectively monitor activity at all times, as evidenced in Burien, Spokane, Tukwila and Garden Gove in particular.
- (8) The license fees required in this chapter are necessary as nominal fees imposed as necessary regulatory measures designed to help defray the substantial expenses incurred by the city in regulating the adult entertainment industry, as evidenced in Burien in particular.
- (9) Hidden ownership interests for the purpose of skimming profits and avoiding the payment of taxes have historically occurred in the adult entertainment industry in the absence of regulation. These hidden ownership interests have historically been held by organized and white-collar crime elements. In order for the city to effectively protect the public health, safety, morals, and general welfare of its citizens and effectively allocate its law enforcement resources, it is important that the city be fully apprised of the actual ownership of adult entertainment establishments and the identities and backgrounds of persons responsible for management and control of the adult entertainment establishments, as evidenced in Tukwila in particular and Burien in particular.
- (10) Removal of doors on adult booths and requiring sufficient lighting on premises with adult booths advances a substantial governmental interest in the illegal and unsanitary sexual activity from occurring in adult entertainment establishments, as evidenced in *US v. Colacurcio, et al.*, CR09 0209 RAJ, and in Garden Grove.
- (11) Requiring licensees of adult entertainment establishments to keep information regarding current employees and certain past employees will help reduce the incidents of certain types of criminal behavior by facilitating the identification of potential witnesses or suspects and by preventing minors from working in such establishments as evidenced in Burien in particular.
- (12) The general welfare, health, morals and safety of the citizens of Oak Harbor will be promoted by the enactment of this ordinance.
- (13) It is not the intent of this chapter to suppress or censor any expressive activities protected by the First Amendment of the United States Constitution or Article I, Section 5 of the Washington State Constitution, but rather to enact content neutral reasonable time, place,

and manner regulations which address the compelling interests of the city in mitigating the secondary effects of adult entertainment establishments.

5.20.020 Definitions. For the purposes of Chapter 5.20 OHMC, the words and phrases used in this section shall have the following meanings, unless context indicates otherwise:

- (1) "Adult entertainment" shall mean any of the following:
 - (a) 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 with less than a fully opaque covering of any part of the nipple or 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 with less than a fully opaque covering of any part of the nipple or 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.
 - (b) Any exhibition, performance, or dance of any type conducted on 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:
 - (i) Human genitals in a state of sexual stimulation or arousal;
 - (ii) Acts of human masturbation, sexual intercourse, or sodomy;
 - (iii) Fondling or other erotic touching of human genitals, pubic area, buttocks, or female breast.
- (2) "Adult entertainment establishment" shall mean any commercial premises or club to which any patron is invited or admitted and where adult entertainment is provided on a regular basis or is provided as a substantial part of the premises.
- (3) "Applicant" shall mean the individual or entity seeking an adult entertainment establishment premises license, manager's license or entertainer's license in the city of Oak Harbor.
- (4) "Applicant control persons" shall mean all partners, corporate officers, and directors, and any other individuals in the applicant's business organization who hold a significant interest in the adult entertainment establishment, based on responsibility for management of the adult entertainment business.
- (5) "City Clerk" shall mean the city of Oak Harbor city clerk.

- (6) "Employee" shall mean any and all persons, including managers, entertainers, and independent contractors who work in or at or render any services directly related to the operation of any adult entertainment establishment.
- (7) "Entertainer" shall mean any person who provides live adult entertainment, whether or not a fee is charged or accepted for such entertainment.
- (8) "Manager" shall mean any person who manages, directs, administers, or is in charge of the affairs and/or the conduct of any portion of any activity involving adult entertainment occurring at any adult entertainment establishment.
- (9) "Operator" shall mean any person operating, conducting, or maintaining an adult entertainment establishment.
- (10) "Picture machine" shall mean any machine, instrument, or device showing moving pictures, slides, plain, colored or three-dimensional pictures, or any picture device of a similar nature depicting sexual conduct or specified anatomical areas, the operation of which is made possible by the insertion or placing of any coin, plate, disc, or slug into the slot or other receptacle, or by the payment directly or indirectly of any consideration to another for such purpose.
- (11) "Sexual conduct" shall mean acts of:
 - (a) sexual intercourse within its ordinary meaning and occurs upon any penetration, however slight; and also means any penetration of the vagina or anus, however slight, by an object, when committed on one person by another, whether such persons are of the same or opposite sex, except when such penetration is accomplished for medically recognized treatment or diagnostic purposes;
 - (b) any contact between persons involving the sex organs of one person and the mouth or anus of another;
 - (c) masturbation, manual or instrumental, of oneself, or of one person by another.
- (12) "Specified anatomical areas" shall mean and include any of the following:
 - (a) Human genitals, pubic region, buttocks, anus, or female breasts with less than a fully opaque covering of any part of the nipple or areola; or
 - (b) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

5.20.030 Adult entertainment establishment license.

- (1) It is unlawful for any person to operate or maintain an adult entertainment establishment in the city of Oak Harbor unless the owner, operator or lessee thereof has obtained from

the city clerk a license to do so, to be designated an "adult entertainment establishment license".

- (2) It is unlawful for any person to knowingly allow the use of his or her property for the operation of an adult entertainment establishment that is not licensed under this Chapter.
- (3) It is unlawful for any entertainer, employee or manager to knowingly work in or about, or to knowingly perform any service or entertainment directly related to the operation of, an unlicensed adult entertainment establishment.

5.20.040 License for managers and entertainers.

- (1) It is unlawful for any person to work as a manager at an adult entertainment establishment without first having obtained from the city clerk a license to do so, to be designated as an "adult entertainment manager's license".
- (2) It is unlawful for any person to work as an entertainer at an adult entertainment establishment without having first obtained from the city clerk a license to do so, to be designated as an "adult entertainer's license".

5.20.050 License fees. The license year for adult entertainment establishment licenses, adult entertainer's licenses and adult entertainment manager's licenses required under this Chapter shall be from January 1st to December 31st. All license fees shall be payable on an annual basis, which fees shall be as follows:

- (1) Adult entertainment establishment license, Seven Hundred Twenty Dollars (\$720.00) per year;
- (2) Adult entertainer's license, One Hundred Forty-five Dollars (\$145.00) per year; and
- (3) Adult entertainment manager's license, One Hundred Forty-five Dollars (\$145.00) per year.

5.20.060 License prohibited to certain classes. No license authorized under this Chapter shall be issued to:

- (1) a natural person who has not attained the age of eighteen (18) years;
- (2) a partnership, unless all of the members thereof are individually qualified to obtain a license as provided by this Chapter. Such license shall be issued to the manager of the partnership; or
- (3) a corporation, limited liability company, trust, incorporated or unincorporated association, marital community, joint venture, or other entity or group of persons however organized unless all of the officers and directors thereof are individually qualified to obtain a license as provided by this chapter.

5.20.070 License applications.

- (1) **Adult Entertainment Establishment License.** All applications for an adult entertainment establishment license shall be submitted in the name of the person proposing to conduct such adult entertainment on the establishment and shall be signed by such person and notarized or certified as true under penalty or perjury. All applications shall be submitted on a form supplied by the city clerk and shall require the following information:
- (a) The name, residence address, home telephone number, date and place of birth, and social security number of the applicant;
 - (b) The business name, address and telephone number of the establishment;
 - (c) The names, residence addresses, residence telephone numbers, social security numbers and dates of births of any partners, members, corporate officers and directors;
 - (d) The applicant shall undergo a fingerprint-based state and national background check;
 - (e) 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, and such information as the city clerk, by rule, may require concerning the identity of corporate or other business or entity shareholders;
 - (f) Addresses of the applicant for the five (5) years immediately prior to the date of application;
 - (g) Whether the applicant has had a license under this Chapter or an adult entertainment-related license issued by another jurisdiction, denied, suspended or revoked within the five (5) years immediately preceding the date of the application; and, if so, the name and location of the adult entertainment business to which the denied, suspended or revoked license pertained, the date of the action, the jurisdiction that took such action, the reason for the action, and the status of any appeal of the action;
 - (h) A description of the business, occupation, or employment of the applicant for the five (5) years immediately preceding the date of application;
 - (i) The name of at least one (1) natural person whose name and mailing address, which shall be an address located within the state of Washington, shall appear on the adult entertainment establishment license and who shall receive notices from the city clerk;

- (j) Whether the applicant has been the subject of a bail forfeiture, adverse finding or conviction with local, state or federal criminal law, other than a parking offense or traffic infraction, within the five (5) years preceding the date of the application; and, if so, the nature of the crime and the date, location and nature of the judicial action taken.

A failure to provide information required by this subsection will constitute an incomplete application, which will not be processed.

- (2) Adult Entertainment Manager's or Adult Entertainer's License. All applications for an adult entertainment manager's license or adult entertainer's license shall be signed by the applicant and notarized or certified as true under penalty of perjury. All applications shall be submitted on a form supplied by the city clerk, and shall require the following information:

- (a) The applicant's name, home address, home telephone number, date and place of birth, social security number, proof of U.S. citizenship or of legal residency and the right to work in Washington State, and any stage names or nicknames used in entertaining;
- (b) The name and address of each adult entertainment establishment at which the applicant intends to work as a manager or entertainer;
- (c) The applicant shall present documentation that he or she has attained the age of eighteen (18) years. Any 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 or another country;
- (iv) An immigration card issued by the United States of America;
- (v) Any other picture identification bearing the applicant's photograph and date of birth issued by a governmental agency; or
- (vi) 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, and such other form of identification as the city clerk deems, by rule, to be acceptable;

- (d) The applicant shall undergo a fingerprint-based state and national background check;
- (e) Whether the applicant has had a license under this Chapter or an adult entertainment-related license issued by another jurisdiction denied, suspended or revoked within the five (5) years immediately preceding the application; and, if so, the name and location of the adult entertainment business to which the denied, suspended or revoked license pertained, the jurisdiction that took such action, the reason for the action, the date of the action and the status of any appeal of the action; and
- (f) Whether the applicant has been the subject of a bail forfeiture, adverse finding or conviction in connection with local, state or federal criminal law, in this country or another country other than a parking offense or traffic infraction, within the five (5) years immediately preceding the date of the application; and if so, the nature of the crime and the date, location, and nature of the judicial action take.

Failure to provide information required by this subsection will constitute an incomplete application which will not be processed.

- (3) **Duty to Supplement.** Each license applicant for, or holder of, a license issued under this Chapter shall modify or supplement application information on file with the city clerk, within ten (10) days of a change, if the information changes materially from what is stated on the applicant or holder's license application.

5.20.080 License - Applicant investigation. The city clerk shall investigate an application for an adult entertainment establishment license required by requesting criminal records and a confirmation of zoning compliance from appropriate city agencies. The city clerk shall investigate an application for an adult entertainment manager's or adult entertainer's license by requesting criminal records from appropriate city agencies.

5.20.090 Issuance of licenses.

- (1) **Adult Entertainment Establishment License.** Within thirty (30) days of receipt by the city clerk of a complete application for an adult entertainment establishment license, including all submittals and information required by this Chapter, the city clerk shall issue or deny the adult entertainment establishment license. If the city clerk fails to issue or deny the license within the thirty (30) day period, the license is deemed issued on the last day of the thirty (30) day period and the applicant may operate the adult entertainment establishment for which the license was sought, subject to all other provisions of this Chapter.
 - (a) The city clerk shall deny the adult entertainment establishment license for any of the following reasons, and shall notify the applicant in writing of the reasons for the denial and the opportunity to appeal if the city clerk finds:

- (i) the application does not meet the requirements of this Chapter;
 - (ii) the applicant, his or her employee, agent, partner, director, officer, or manager has knowingly made any false, misleading or fraudulent omission or statement of material fact in the application for a license, or in any report or record required to be filed with the city clerk;
 - (iii) the applicant, and all employees, agents, partners, directors, officers, or managers of the applicant have not attained the age of eighteen (18) years, as provided by OHMC 5.20.060;
 - (iv) the applicant or his or her partner, director, or officer is currently the subject of a final adult entertainment establishment license revocation order issued pursuant to this Chapter which became final less than one (1) year prior to the pending application.
- (b) If the city clerk denies an adult entertainment establishment license authorized by this Chapter, and if the applicant files a timely notice of appeal pursuant to this Chapter, the city clerk shall, upon receipt of a copy of such notice of appeal, immediately issue the applicant a temporary license which shall authorize the applicant to operate the establishment to the same requirements as if the license had been granted, pending the final outcome of the appeal. A license applicant must pay the fee for an adult entertainment establishment license as set forth in OHMC 5.20.030 at the time the temporary license is issued. The holder of a temporary license is subject to all requirements, standards and penalty provisions of this Chapter. Nothing in this section is intended to authorize activities that do not comply with other requirements of the Oak Harbor Municipal Code or other applicable law.
- (2) Adult Entertainment Manager's and Adult Entertainer's Licenses. The city clerk shall issue or deny an adult entertainment manager's license or an adult entertainer's license by the close of the second business day after the complete application, including all submittals and information required by this Chapter, is received.
- (a) The city clerk shall deny an application for an adult entertainment manager's license or an adult entertainer's license for any of the following reasons, and shall notify the applicant in writing of the grounds for the denial and the opportunity to appeal, if the city clerk finds:
 - (i) the applicant is less than eighteen (18) years old;
 - (ii) the applicant has failed to provide any of the submittals or information required to be supplied according to this Chapter;
 - (iii) the applicant has knowingly made any false, misleading or fraudulent statement or omission of material fact in the application for a license; or

- (iv) the applicant is currently the subject of a final license suspension order issued pursuant to this Chapter or is the subject of a license revocation order issued pursuant to this Chapter which became final less than one (1) year before the pending application.
- (b) If the city clerk denies an adult entertainment manager's license or an adult entertainer's license authorized by this Chapter, and if the applicant files a timely notice of appeal pursuant to this Chapter, the city clerk shall, upon receipt of a copy of such notice of appeal, immediately issue the applicant a temporary license which shall authorize the applicant to perform as a manager or entertainer in the same manner and subject to the same requirements as if the license had been granted, pending the final outcome of the appeal. A license applicant must pay the fee for an adult entertainment manager's license or an adult entertainer's license as set forth in OHMC 5.20.050 at the time the temporary license is issued. The holder of a temporary license is subject to all requirements, standards and penalty provisions of this Chapter. Nothing in this section is intended to authorize activities that do not comply with other requirements of the Oak Harbor Municipal Code or other applicable law.

5.20.100 Additional license requirements.

- (1) 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 entertainment license. The failure to supplement the application on file with the city clerk regarding such change in ownership or interest within thirty (30) days from the date of such change, shall be grounds for suspension or revocation of a license.
- (2) 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:
 - (a) Transfer with the sale, lease or sublease of a business; or
 - (b) The transfer of securities which constitute a controlling interest in the cabaret, whether by sale, exchange or similar means; or
 - (c) Transfer with the establishment of a trust, gift or other similar legal device which transfers the ownership or control of the cabaret.
- (3) Every adult entertainer shall post his or her license in his or her work area so it is readily available for inspection by city authorities responsible for enforcement of this Chapter.

- (4) Every person, corporation, partnership, limited liability company, trust, incorporated or unincorporated association, marital community, joint venture, or other entity or business group of persons however organized or association licensed under this Chapter as an adult entertainment establishment or adult entertainment manager shall post such license in a conspicuous place and manner on the licensed premises.
- (5) Each manager and/or operator shall be responsible for maintaining a daily log, on a form provided by the city clerk, of all employees, entertainers, and managers working at the adult entertainment establishment each day. The log shall list the employee's, entertainer's and manager's name as it is listed on his/her license, license number, stage name, if any, the time he/she arrived at the adult entertainment establishment, and the time he/she left the adult entertainment establishment. Each employee, entertainer and manager shall sign his/her name in the daily log each time he/she arrives and leaves the adult entertainment establishment.
- (6) It is unlawful for any person to violate any of the provisions of this section.

5.20.110 License - Denial, revocation, or refusal to renew - Grounds.

- (1) Licenses shall expire one year from the date of issue.
- (2) A license may be denied, suspended, revoked, or not renewed for violation of any ordinance or law that regulates licensed activity in order to further the public interest in public health, safety, and welfare. A license may also be denied, suspended, revoked, or not renewed upon a finding that any applicant or licensee, or any owner, officer or agent thereof:
 - (a) has omitted to disclose any material fact necessary to make a statement not misleading, in any application for the license; or
 - (b) has charges pending against her/him or has been convicted of a crime or offense that directly relates to the activity for which the license is required, and the time elapsed since the date of conviction or release from jail or prison, whichever is more recent, is less than ten (10) years; or has been convicted of several crimes including at least one (1) within the last ten (10) years; provided, however, that any licensee whose license is revoked because of charges pending against her/him may engage in the activity for which the license is required, pending a final decision on the charges; "crimes or offenses that directly relates to the activity for which the license is required" include Chapter 9A.44 RCW, Sex Offenses; Chapter 9A.88 RCW, Indecent Exposure; Prostitution; Chapter 9.68 RCW, Obscenity and Pornography; Chapter 9.68A, Sexual Exploitation of Children; Chapter 69.50 RCW, Washington Uniform Controlled Substances Act; or violations of similar city ordinances; or
 - (c) has been subject to an adverse finding in any judgment or order that directly relates to the activity for which the license is required, in any judicial or

administrative proceeding in which fraud, deceit, coercion, breach of trust, unfair method of competition, unfair or deceptive trade act or practice, or assertion of unconscionable contractual provisions, or other similar act, practice, or conduct, on the part of the licensee-applicant is proven, and the time elapsed since the judgment or order is less than ten (10) years; or

- (d) has violated or failed to comply with any applicable provisions of the OHMC or rule or regulation prescribed under this subtitle; provided, that failure to obtain a license shall not be grounds for license denial; or
- (e) is in default in any payment of any fee or tax required under the Oak Harbor Municipal Code; or
- (f) has been subject to an adverse finding in any judgment or order, in any judicial or administrative proceeding for violation of any provision of a city ordinance or rule or regulation prescribed thereunder pertaining to fire, building, health, sanitation, zoning, weights and measures, consumer protection, environmental protection, or any other ordinance or law and that is applicable to the licensed activity or licensed establishment; or
- (g) has been determined to have discriminated against any person because of race, color, age, sex, marital status, sexual orientation, gender identity, political ideology, creed, religion, ancestry, national origin, or the presence of any sensory, mental, or physical handicap, in the course of licensed activity, in violation of a city ordinance, law, rule or regulation prescribed thereunder; or
- (h) has violated or failed to comply with any final order of the city clerk or hearing examiner; or
- (i) has failed to complete the application for a license as required by the OHMC; or
- (j) has failed to obtain a license or permit required by state or other law necessary to engage in the licensed activity; or
- (k) has failed to comply with Chapters 49.12 and 26.28 RCW, and rules and regulations promulgated pursuant thereto, regarding employment of minors; or
- (l) has permitted or authorized his/her agent to violate or fail to comply with any provision of the OHMC; or
- (m) has allowed the property at which the business is located to be determined by a court to be a chronic nuisance property as provided by law.

5.20.120 Additional grounds for suspension or revocation of establishment license. As now or hereafter amended, an adult entertainment establishment license may be suspended or revoked upon a finding that:

- (1) the licensee permitted or authorized his or her employees, agents, entertainers or managers to violate any of the provisions of this Chapter; or
- (2) the adult entertainment manager permitted or authorized any violation of any of the provisions of this Chapter by any person;
- (3) the licensee is convicted 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 there has been a conviction of any of the licensee's 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 licensed premises when the licensee knew or should have known of the violations committed by the licensee's servants, agents, or employees;
- (4) the Oak Harbor Fire Department, Oak Harbor Police Department, Oak Harbor Public Works Department or the Island County Health Department find that any condition exists upon the premises of an 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 this Chapter. The official shall issue a 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 and the city clerk of the right to appeal the suspension to the city council under the same appeal provision set forth in this Chapter; provided, however, that a suspension based on threat of immediate serious injury or damage shall not be stayed during the pendency of the appeal.

5.20.130 Filing of application.

- (1) Application for an adult entertainment establishment license, adult entertainment manager's license or adult entertainer's license shall be made to the city clerk, together with a receipt from the city clerk or designee for the amount of the license in full. The license application shall include all personal identification information requested by the city including date of birth and Social Security number. The application shall also specify the business location upon which the adult entertainment establishment license, adult entertainment manager's license or adult entertainer's license will be conducted. The application fee includes the fee to cover the cost of a WATCH criminal background check, as provided in OHMC 3.64.100. Upon filing of the application and fees, the applicant(s) shall be issued a temporary license which shall expire upon the city council determination set forth in Chapter 5.20 OHMC, unless stayed by filing of a judicial appeal within thirty (30) days of the city council decision appealed.
- (2) If the city clerk denies an adult entertainment establishment license, adult entertainment manager's license or adult entertainer's license authorized by this Chapter, and if the applicant files a timely notice of appeal pursuant to this chapter, the city clerk shall, upon

receipt of a copy of such notice of appeal, immediately issue the applicant a temporary license which shall authorize the applicant to continue as an adult entertainment establishment or to continue to perform as a manager or entertainer in the same manner and subject to the same requirements as if the license had been granted, pending the final outcome of the appeal. A license applicant must pay the fee for an adult entertainment establishment license, adult entertainment manager's license or adult entertainer's license as set forth in this Chapter at the time the temporary license is issued. The holder of a temporary license is subject to all requirements, standards and penalty provisions of this Chapter. Nothing in this section is intended to authorize activities that do not comply with other requirements of the Oak Harbor Municipal Code or other applicable law.

5.20.140 License conditions for adult entertainment establishment license.

- (1) Upon receipt of an application for an adult entertainment establishment license, the city clerk shall transmit the application to the chief of police, who shall immediately conduct a WATCH criminal background check of the applicant(s).
- (2) The chief of police shall also investigate the business location to determine whether there are any features of the establishment which pose noise, traffic or other similar public health or safety concerns for the operation of an adult entertainment establishment. The chief of police may request the assistance of other city departments, including the fire department and/or the building official, in assessing the impacts of the proposed business location if used as an adult entertainment establishment.
- (3) The chief of police shall report to the city council the result of his/her investigation and make recommendations concerning any conditions that should be placed upon the adult entertainment establishment license to reduce noise, traffic or other similar public health and safety impacts. Allowable conditions may include, but are not limited to, restrictions upon the hours of operation, structural improvements to the establishment to reduce noise impacts on neighboring uses, limitations on the numbers of patrons at any one time, landscaping or other screening, and requirements for traffic control. Periodic review of the efficacy of the imposed conditions may also be a condition of the adult entertainment establishment license.
- (4) The city council shall hold a public hearing with respect to the issuance of the adult entertainment establishment license. The applicant(s) shall be entitled to respond to any findings of the police chief or other city officials and any proposed conditions on the adult entertainment establishment license. Unless the applicant is restricted from holding an adult entertainment establishment license pursuant to this Chapter, the city council shall then determine whether the noise, traffic and other similar public health and safety impacts of the adult entertainment establishment require mitigation through specified conditions and, if so, shall impose such conditions on the license. In no event shall the expressive content of any music, signing or dancing be the basis for denial of an adult entertainment establishment license or any conditions placed thereon.
- (5) The decision of the city council shall be the final decision of the city.

5.20.150 Violation of license conditions.

- (1) A license holder who violates any license condition of his/her adult entertainment establishment license, adult entertainment manager's license or adult entertainer's license shall be subject to civil penalties and to a license suspension or revocation as follows:
 - (a) First violation of a license condition: Five Hundred Dollars (\$500.00) fine and/or a license suspension for thirty (30) days per violation;
 - (b) Second violation of same license condition: Seven Hundred Fifty Dollars (\$750.00) fine and a license suspension for ninety (90) days per violation;
 - (c) Third violation of same license condition: One Thousand Dollars (\$1,000.00) fine and revocation for a third violation within any twenty-four (24) month period.
- (2) Time spent serving a suspension shall not be counted in determining the twenty-four (24) month period referred to in this section.
- (3) For an adult entertainment premises licensee, a violation for which an adult entertainment premises license may be suspended or revoked includes a violation of this Chapter by a manager, employee, agent, entertainer or any other person, occurring on the premises when the adult entertainment premises licensee knew of or should have known of the violation.
- (4) For an adult entertainment manager's license, a violation for which an adult entertainment manager's license may be suspended or revoked includes a violation of this Chapter by an adult entertainer or other person when the adult entertainment manager knew of or should have known of the violation.
- (5) If a licensee is convicted of committing a crime or offenses involving one of the following occurring on the premises of an adult entertainment establishment, the license shall be revoked:
 - (a) A violation of RCW 9A.88.030, 9A.88.070, 9A.88.080 or 9A.88.090;
 - (b) A violation of OHMC 6.05.270;
 - (c) A transaction involving a controlled substance as defined in Chapter 69.50 RCW or OHMC 6.05.470; or
 - (d) A violation of Chapter 9A.44 RCW, Sex Offenses or Chapter 9.68 RCW, Obscenity and Pornography, Chapter 9.68A RCW, Sexual Exploitation of Children, or OHMC 6.05.430.

- (6) For an adult entertainment establishment licensee, a conviction for which the adult entertainment establishment license may be revoked includes the conviction of a manager, employee, agent or entertainer for a crime or offense listed in this section occurring on the premises of the adult entertainment establishment when the adult entertainment establishment licensee knew of or should have known of the crime or offense.
- (7) For an adult entertainment manager's license, a conviction for which the adult entertainment manager's license may be revoked includes the conviction of an employee or entertainer for a crime or offense listed in this section occurring on the premises of the adult entertainment establishment when the adult entertainment manager licensee knew of or should have known of the crime or offense.
- (8) A licensee whose license has been revoked is not eligible to reapply for any license authorized by this Chapter for one (1) year following the date the decision to revoke is final.
- (9) On receipt of a notice of suspension or revocation, the license holder shall promptly deliver the license to the city clerk unless an appeal is pending under this Chapter. Upon expiration of a license suspension, the city clerk shall return the license to the license holder.
- (10) For purposes of this section, a person "should have known" of a crime or offense or violation of this Chapter, when the person has information which would lead a reasonable person to believe that a crime or offense or violation of this Chapter was occurring or would occur.
- (11) If the city clerk determines that a condition exists on an adult entertainment premises which constitutes a threat of immediately serious injury or damage to a person or property, the city clerk may immediately suspend an adult entertainment premises license. The city clerk shall issue a notice setting forth the basis for the action and the facts that constitute a threat of immediate serious injury or damage to a person or property.
- (12) First, second and third violations of license conditions shall constitute civil offenses and shall be governed by the procedures of Chapter 1.28 OHMC.
- (13) The fourth or greater violation of the same license provision shall constitute a misdemeanor punishable by a fine not exceeding One Thousand Dollars (\$1,000.00), up to ninety (90) days in jail, or both such fine and jail time.

5.20.160 Revision of adult entertainment establishment license conditions.

- (1) The city council also reserves to itself the power to revise the conditions of the adult entertainment establishment license upon information received indicating that the existing conditions are not sufficient to mitigate the noise, traffic and public health and safety impacts associated with the adult entertainment establishment location. A revision

proceeding shall be initiated by an investigative report by the chief of police, fire chief, building official or other city official.

- (2) In the event that such investigative report is filed, the license holder shall be sent a copy of the complaint and/or report and provided at least ten (10) days' notice of a hearing to determine whether the conditions of the license shall be modified. At a public hearing before the city council, the license holder shall have the opportunity to respond to the investigative report, and to present any evidence in opposition to a modification of conditions. The city council shall base any change in conditions on the license upon noise, traffic or other similar public health and safety impacts. In no event shall the expressive content of any music, singing or dancing be the basis for denial of an adult entertainment establishment license or any conditions placed thereon. The decision of the city council, after a public hearing on the proposed change in conditions, shall be final.

5.20.170 Appeal to court. Appeal of any final decision of the city under this Chapter shall be to Superior Court. The city's decision shall be stayed, upon appeal filed within thirty (30) days of the city council decision appealed, pending judicial review.

5.20.180 Continuation of business while complaint hearing decision pending.

- (1) Except in the case of summary suspension or revocation, whenever a timely request for hearing on a complaint is filed, a licensee or an applicant for license renewal may engage in the activity for which the license is required, pending decision by the city council. An applicant not licensed in the preceding license year may not engage in the activity for which the license is required pending decision by the city council. Nothing in this section is intended to authorize activities that do not comply with other requirements of the Oak Harbor Municipal Code or other applicable law.
- (2) If the city clerk denies an adult entertainment establishment license governed by this Chapter, and if the license applicant files a notice of appeal with the city council, the city clerk shall immediately issue the license applicant a temporary license. The temporary license shall authorize the license applicant to operate an adult entertainment establishment or perform as a manager or entertainer, in the same manner as if the license had been granted, pending the city council's decision.
 - (a) If the city council affirms the city clerk's license denial, the temporary license shall remain in effect pending a motion for reconsideration before the city council and, in addition:
 - (i) if the license applicant does not timely file for judicial review, then only until the expiration of the time allowed to file an application for a writ of review under Chapter 7.16 RCW; or
 - (ii) if the license applicant does timely file an application for a writ of review, then only until the court either issues a writ or denies the writ application.

- (b) If the city council dismisses the adult entertainment establishment license denial with prejudice, the city clerk shall immediately issue an adult entertainment license.
- (c) If the city council dismisses the adult entertainment denial without prejudice, the temporary license shall remain in effect for five (5) additional business days, at the end of which time the city clerk must either reissue a denial or issue an adult entertainment establishment license. If the city clerk reissues the denial, then the temporary license will continue in effect according to the procedures set forth in subsection (2) of this section.
- (d) If a license applicant is issued a temporary license, the license applicant shall pay the fee charged for an adult entertainment establishment license under this Chapter.

5.20.190 Standards of conduct and operation. The following standards of conduct must be adhered to by employees of any adult entertainment establishment:

- (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 regions, anus, buttocks, vulva, or genitals, except upon a stage at least eighteen (18) inches above the immediate floor level and removed at least ten (10) feet from the nearest patron.
- (2) No employee or entertainer mingling with patrons shall be unclothed or in less than opaque and complete attire, costume, or clothing as described in subsection (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 patrons shall wear or use any device or covering exposed to view which simulates the breast with less than a fully opaque covering of any part of the nipple or areola, vulva, genitals, anus, or buttocks.
- (4) No employee or entertainer shall caress, fondle, or erotically touch any patron. No employer or entertainer shall encourage or permit any patron 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.
- (6) No employee or entertainer mingling with patrons shall conduct any dance, performance, or exhibition in or about the non-stage area of the adult entertainment establishment.

- (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 solicit, demand, accept or receive any form of gratuity offered directly to the entertainer by any patron. Any gratuity offered to any entertainer must be placed into a receptacle provided for receipt of gratuities by the adult entertainment establishment, or provided through a manager on duty on the premises. Any gratuity or tip offered to any adult entertainment establishment shall be placed into a receptacle provided by the manager, and not upon the person or into the clothing of the adult entertainer or any other employee.
- (8) Separate restrooms shall be maintained for performers, entertainers, managers and employees than for customers and members of the public. Performers, entertainers, managers and employees shall not be permitted to use restrooms available for customers or members of the public, nor shall customers or members of the public be permitted to use restrooms available for performers, entertainers, managers and employees.
- (9) No viewing equipment shall be installed, maintained or used in any of the restrooms located on the premises.

5.20.200 Physical layout of premises.

- (1) Performance area at adult entertainment establishments. Every place offering adult entertainment shall be physically arranged in such a manner that the performance area where adult entertainment is provided shall be a stage or platform at least eighteen (18) inches in elevation above the level of the patron seating areas, and shall be separated by a distance of at least ten (10) feet from all areas of the premises to which patrons have access. 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 (1) manager's station. Visibility shall not be blocked or obstructed by doors, curtains, drapes, or any other obstruction whatsoever.
- (2) Picture machines must be visible and publicly accessible. Every booth, cubicle, or partition utilized or maintained at a picture machine location as the area from which the screen of any picture machine is to be viewed shall be arranged so that any person viewing such picture machine screen shall be visible from the waist down to the floor without obstruction by the viewing booth, cubicle, or partition. The licensee shall not permit any doors to any publicly accessible area on the premises to be locked during business hours. Every room or area on such premises which is open to the public shall be readily accessible at all times for inspection by any public officer charged with the enforcement of the provisions of applicable city ordinances or regulations. The licensee shall maintain sufficient illumination generally distributed in all parts of the premises at all times when the picture machine area is open or when the public is permitted to enter or remain on the picture machine premises.
- (3) No activity or entertainment occurring on the premises shall be visible at any time from outside the facility or from any other public place.

- (4) No alteration in the configuration or location of a manager's station may be made without the prior approval of the city.
- (5) It is the duty of the licensee of the premises to ensure that at least one licensed manager is on duty and situated in each manager's station at all time that any patron is present inside the premises.

5.20.210 Permission to inspect. An adult entertainment establishment licensee and its manager shall permit the city clerk and the personnel from the Oak Harbor Police Department to conduct announced inspections, during hours that the adult entertainment establishment is open to the public, of all exterior and interior areas of the premises open to and used by members of the public and of all books and records required to be kept under this Chapter. The purpose of such inspections is to determine whether the premises are being operated in compliance with the provisions of this Chapter.

5.20.220 Public nuisance. An adult entertainment premises operated, conducted or maintained in violation of laws of 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 and may 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 entertainment premises contrary to the provisions of this chapter.

5.20.230 Non-public areas. No member of the public shall be permitted to enter into any of the non-public portions of the adult entertainment establishment, which shall include but are not limited to: the dressing rooms of 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 non-public areas to the extent required to perform their job duties.

5.20.240 Additional requirements for adult entertainment establishments. At any adult entertainment establishment, the following are required:

- (1) Admission must be restricted to persons of the age of eighteen (18) years or older.
- (2) No adult entertainment shall be visible outside the adult entertainment establishment, nor shall any photograph, drawing, sketch, or other pictorial or graphic representation, which includes lewd matter as defined in Chapter 7.48A RCW, or display of sexually explicit material in violation of RCW 9.68.130.
- (3) Sufficient lighting shall be provided in and equally distributed in and about the parts of the premises which are open to patrons so that all objects are plainly visible at all times. A minimum lighting level of thirty (30) lux horizontal measured at thirty (30) inches from

the floor on ten (10) foot centers is hereby established for all areas of the adult entertainment establishment where members of the public are admitted. It shall be the duty of the licensee and the manager to ensure that the illumination described above is maintained at all times that any patron is present in the premises.

- (4) No viewing room may be occupied by more than one (1) person at a time.
- (5) No licensee shall allow openings of any kind to exist between viewing rooms or booths.
- (6) No person shall make or attempt to make an opening of any kind between a viewing booths or rooms. The manager shall, during each business day, regularly inspect the walls between the viewing booths to determine if any openings or holes exist.
- (7) The licensee shall cause all wall coverings, floor coverings, and ceiling coverings in viewing booths to be non-porous, easily cleanable surfaces with no rugs or carpeting.

5.20.250 List of entertainments - Fees. There shall be posted and conspicuously displayed in the common areas of each place offering adult entertainment a list of any and all entertainment provided on the premises. Such list shall further indicate the specific fee or charge in dollar amounts for each entertainment listed.

5.20.260 Notice to customers. A sign shall be conspicuously displayed in a common area of the premises which shall read as follows:

"This adult entertainment establishment is regulated by the City. Entertainers are:

- (1) not permitted to engage in any type of sexual conduct;
- (2) not permitted to appear semi-nude or nude, except on stage;
- (3) not permitted to accept tips of gratuities in advance of their performance;
and
- (4) not permitted to accept tips or gratuities directly from patrons while performing upon any stage area."

5.20.270 Activities not prohibited.

- (1) This Chapter shall not be construed to prohibit:
 - (a) plays, operas, musicals, or other dramatic works which are not obscene; or
 - (b) classes, seminars, and lectures held for serious scientific or educational purposes that are not obscene; or

- (c) exhibitions, performances or dances which are not obscene.
- (2) Whether or not activity is obscene shall be judged by consideration of the following factors:
- (a) Whether the average person, applying contemporary community standards, would find that the activity taken as a whole appeals to a prurient interest in sex;
 - (b) 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);
 - (c) Whether the activity taken as a whole lacks serious literary, artistic, political, or scientific value.

5.20.280 Manager on premises.

- (1) A licensed manager shall be on duty at an adult entertainment establishment during the adult entertainment establishment's hours of operation. The name of the manager on duty shall be prominently posted during business hours.
- (2) Any adult entertainment establishment found to be operating without a manager on duty shall be immediately closed until a licensed manager arrives for duty at the adult entertainment establishment pursuant to subsection (1) above.
- (3) The manager shall verify that each entertainer performing while the manager is on duty possesses a current and valid entertainer's license, as required by this Chapter. The manager shall verify that such adult entertainment license is posted in the manner required by this Chapter.
- (4) A manager shall not perform as an entertainer on days during which he or she acts as a manager on duty at an adult entertainment establishment.

5.20.290 Hours of operation. It is unlawful for any adult entertainment establishment to be conducted, operated, or otherwise open to the public between the hours of two o'clock a.m. (2:00 a.m.) and ten o'clock a.m. (10:00 a.m.).

5.20.300 Persons under eighteen (18) years of age prohibited.

- (1) It is unlawful for any person under the age of eighteen (18) years to be in or upon any premises for which an adult entertainment establishment license is required. Only the following types of identification will be accepted as proof of age:
 - (a) A motor vehicle operator's license issued by any state, bearing the applicant's photograph and date of birth;

- (b) A state-issued identification card bearing the applicant's photograph and date of birth;
 - (c) An official passport issued by the United States of America;
 - (d) An immigration card issued by the United States of America;
 - (e) Any other picture identification bearing the applicant's photograph and date of birth issued by a governmental agency.
- (2) It is unlawful for any owner, operator, manager, or other person in charge of an establishment for which an adult entertainment establishment license is required, to knowingly permit or allow any person under the age of eighteen (18) years to be in or upon such premises.

5.20.310 Locking entrance unlawful. It is unlawful for any person or persons in charge of or having the management of, or being in the employment of, or a member of or guest in, any adult entertainment establishment, either incorporated or unincorporated, to lock, bar, or in any manner obstruct, or to suffer or permit to be locked, barred or in any manner obstructed, the entrance or entrances leading to any room or place in such adult entertainment establishment open to a member or members of the public, at any time when any person is present therein with one (1) or more persons.

5.20.320 Alarm system at entrance - Unlawful. It is unlawful for any person to construct or cause to be constructed, or to suffer or permit to continue or be maintained, any alarm or system of alarms in connection with the entrance or entrances leading to any room or place in any adult entertainment establishment.

5.20.330 Warning of approach of police - Lookouts. It is unlawful for the owner or any person having the management or control or charge of, or in the employment of the owner of, any place in the city of Oak Harbor, or where an adult entertainment establishment is maintained, to employ, station, post, keep, maintain, suffer or permit any person or persons at or near the entrance or entrances thereto, or in any place so as to command a view of the approach thereto, for the purpose or with the object of giving any advice, information or warning in any manner whatsoever that police officers are approaching, are about to enter, are entering, or have entered such place.

5.20.340 Warning that police are approaching - Unlawful. It is unlawful for any person to give any advice, information or warning, in any manner whatsoever, that police officers are approaching, are about to enter, are entering or have entered, any place in the adult entertainment establishment.

5.20.350 Presence in place where warning given. It shall be unlawful for any person to be with one (1) or more other persons in any adult entertainment establishment, when , with the knowledge of such person at such time any person is employed, stationed, kept, maintained, suffered or permitted at or near the entrance or entrances thereto or in any place so as to

command a view of the approach thereto, for the purpose or with the object of giving any advice, information or warning in any manner whatsoever that police officers are approaching, or are about to enter, are entering, or have entered, such place.

5.20.360 Locking rooms. It shall be unlawful for the owner of, or any agent or other person or persons having the charge or rental of, any premises occupied by any adult entertainment establishment, to knowingly suffer or permit to be locked, barred, or in any manner obstructed, the entrance or entrances leading to any room or place in such adult entertainment establishment.

5.20.370 Presence in locked rooms. It shall be unlawful for any person to be with one (1) or more other persons in any room or place in any adult entertainment establishment, at any time when the entrance or entrances leading thereto are locked, barred or obstructed in any manner equipped with any alarm or system of alarms.

5.20.380 Permitting alarm system unlawful. It shall be unlawful for the owner of, or any agent or other person or persons having the charge or rental of, any premises occupied by any adult entertainment establishment, to knowingly suffer or permit to be constructed, or to be continued or maintained, any alarm or system of alarms in connection with the entrance or entrances leading to any room or place in such adult entertainment establishment.

5.20.390 Exemption from Chapter. No person holding an adult entertainment establishment license, and no manager or employee of any such person, and no entertainer, shall allow alcohol on the premises except for those adult entertainment establishments properly licensed under the Washington State Liquor Control Board.

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.

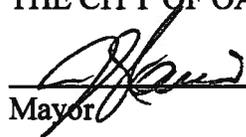
Section Two. Severability. If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the Ordinance or the application of the provision to other persons or circumstances is not affected.

Section Three. Effective Date. This Ordinance shall be in full force and effect five days after publication.

PASSED by the City Council this 17th day of May, 2011.

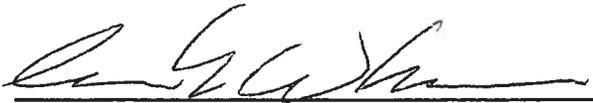
APPROVED by its Mayor this 19th day of may, 2011.

THE CITY OF OAK HARBOR



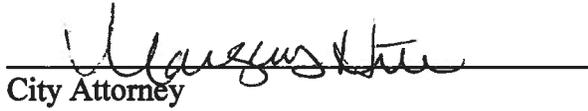
Mayor

Attest:



City Clerk

Approved as to Form:



City Attorney

Published: May 23, 2011