

ORDINANCE NO. 768

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, ADDING A NEW CHAPTER 5.10 TO THE GIG HARBOR MUNICIPAL CODE ENTITLED "LICENSING AND OPERATION OF ADULT ENTERTAINMENT FACILITIES" PROVIDING FOR THE LICENSING AND REGULATION OF ADULT ENTERTAINMENT FACILITIES, PROVIDING FOR THE LICENSING AND REGULATION OF THE MANAGERS AND ENTERTAINERS OF SUCH BUSINESSES, AND ESTABLISHING MISDEMEANOR OFFENSES AND CIVIL PENALTIES FOR VIOLATIONS OF THIS ORDINANCE.

WHEREAS, on April 8, 1996, the City of Gig Harbor ("City") held a public hearing, adopted findings of fact and approved Ordinance No. 718, establishing a one-year moratorium on the siting and operation of adult entertainment facilities with the intent to adopt zoning and licensing regulations for such businesses; and

WHEREAS, on December 12, 1996, the City held a public hearing, adopted findings of fact and approved Ordinance No. 743, regulating the location of adult entertainment facilities within the City; and

WHEREAS, the City is hereby adopting certain licensing and operational regulations governing adult entertainment facilities in order to mitigate and reduce unacceptable adverse secondary effects associated with and caused by adult entertainment facilities; and

WHEREAS, the City Council takes notice of and specifically relies upon the experiences of and studies utilized by other cities and counties in combating the negative secondary effects of various types of adult entertainment facilities; and

WHEREAS, based upon the public testimony and other information presented on this subject to the Planning Commission and City Council during the adoption of Ordinance No. 743, as well as additional evidence presented to the City Council in conjunction with the adoption of this ordinance, the City Council finds that the adoption of licensing and operational standards is necessary to protect the health, safety and welfare of its citizens; and

WHEREAS, there are important and substantial governmental interests providing a constitutional basis for the reasonable regulation of the time, place and manner under which adult entertainment facilities operate; and

WHEREAS, it is the intent of this ordinance to enact time, place and manner regulations which address the compelling interests of the City in mitigating the adverse secondary effects of adult entertainment facilities; and

WHEREAS, it is not the intent of this ordinance to unreasonably suppress any speech activities protected by the First Amendment or Article I, Section 5 of the Washington State Constitution, but to enact regulations which address the deleterious secondary effects of adult entertainment facilities, as well as the health problems associated with such businesses; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, DO ORDAIN AS FOLLOWS:

***Section 1. Purpose And Intent.** It is the purpose of this ordinance to establish licensing requirements and operational standards for adult entertainment facilities to promote the health, safety, and general welfare of the citizens of the City of Gig Harbor. It is not the intent of the City Council that it should be the purpose or effect of this ordinance to impose a limitation or restriction on the content of any communicative materials, including sexually-oriented materials. Similarly, it is not the intent of the City Council that it should be the effect of this ordinance to restrict or deny access by adults to sexually-oriented materials protected by the State or Federal Constitutions, or to deny access by the distributors and exhibitors of sexually-oriented materials to their intended market. Finally, it is not the intent of the City Council to condone or legitimize the distribution of obscene materials.*

***Section 2. Findings of Fact.** Based upon a wide range of evidence presented to the Gig Harbor City Council, including but not limited to studies, publications, articles, case law and other materials submitted to*

and reviewed and considered by the City Council and City staff, the City Council makes the following findings:

- A. The City Council may rely on the experiences and studies of other cities, counties and organizations in assessing the need for licensing and regulating the operation of adult entertainment facilities.*
- B. The City Council takes notice of the studies and experiences of other cities and counties in combating the specific adverse impacts of adult entertainment facilities.*
- C. The City Council finds that the protection and preservation of public health, safety and welfare requires establishment of this ordinance.*
- D. Regulation of adult entertainment facilities should be developed to prevent deterioration and degradation of the vitality of the community before the problem exists, rather than in response to an existing problem.*
- E. There are important and substantial government interests providing a constitutional basis for the reasonable regulation of the time, place, and manner under which adult entertainment facilities can operate.*
- F. Certain conduct occurring on the premises of adult entertainment facilities creates secondary impacts that are*

detrimental to the public health, safety and general welfare of the citizens of the City, and therefore such conduct must be regulated as provided herein.

- G. Regulation of adult entertainment facilities through licensing and operational standards is necessary because, in the absence of such regulation, significant criminal and unlawful activity has historically and regularly occurred. This history of criminal and unlawful activity includes prostitution, illegal employment of minors, narcotics and 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.*
- H. The criminal and unlawful activities described in this ordinance occur, in the absence of regulation, regardless of whether the adult entertainment is presented in conjunction with the sale of alcoholic beverages.*
- I. Adult entertainment facilities are increasingly associated with ongoing prostitution, disruptive conduct and other unlawful and criminal activity. Such uses and businesses are currently not subject to effective regulation and constitute an immediate threat to the public peace, health and safety.*
- J. Due to the connection between prostitution and adult entertainment facilities, there is concern over*

sexually-transmitted diseases which is a legitimate health concern of the City and thus requires regulation of adult entertainment facilities in order to protect the health, safety and well-being of the public.

- K. Hidden ownership interests for the purpose of skimming profits and avoiding payment of taxes have historically occurred in adult entertainment facilities in the absence of regulation. These hidden ownership interests have historically been held by organized and white collar criminal 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 facilities, and the identities and backgrounds of persons responsible for management and control of adult entertainment facilities.*
- L. The law enforcement resources available for responding to problems associated with or created by adult entertainment facilities are limited and are best conserved by licensing and regulating the operations of adult entertainment facilities.*
- M. In order to ensure that all conditions and regulations of this ordinance are met, the City has established a reasonable time period for review of all license applications for adult entertainment facilities.*

- N. *Regulation of adult entertainment facilities is necessary to prevent public nuisances including moral nuisances.*
- O. *Proximity between entertainers and patrons during adult entertainment performances has proven to facilitate unlawful sexual contact, prostitution, narcotics transactions, and other related crimes; the City Council therefore finds it necessary to impose separation requirements between entertainers and patrons.*
- P. *A lack of lighting in adult entertainment facilities has proven to facilitate unlawful sexual contact, prostitution, and other related crimes; the City Council therefore finds it necessary to impose minimum lighting requirements within adult entertainment facilities to increase visibility for law enforcement purposes.*
- Q. *It is necessary to license managers of adult entertainment facilities so there will, at all times, be an individual responsible for the overall operation of the establishment, including the actions of entertainers and other employees.*
- R. *It is necessary to license entertainers in adult entertainment facilities to prevent the exploitation of minors, to ensure that each entertainer is an adult, and to ensure that each*

entertainer has not assumed a false name, which would make regulation of the entertainers difficult or impossible.

- S. The mandatory disclosure provisions required by this ordinance advance several legitimate goals. They protect minors, assure the correct identification of persons working in adult entertainment facilities, enable the City to deploy law enforcement resources effectively, and detect and discourage the involvement of organized crime in the adult entertainment industry.*
- T. It is necessary to regulate the manner in which adult entertainers receive tips or gratuities; the City has a substantial interest in preventing prostitution and narcotics transactions in adult entertainment facilities.*
- U. The application fees required by this ordinance are nominal fees necessary to defray the costs of processing the application and to help defray the substantial expenses incurred by the City in regulating adult entertainment facilities.*
- V. Restricting the hours of operation is necessary to prevent the flow of patrons from bars and taverns to adult entertainment facilities.*
- W. It is not the intent of this ordinance to unconstitutionally 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 time, place, and manner regulations designed to mitigate the deleterious secondary effects associated with and caused by adult entertainment facilities.

Section 3. New Chapter. *A new chapter 5.10 entitled "Licensing and Operation of Adult Entertainment Facilities" is hereby added to Title 5 (Business Licenses and Regulations) of the Gig Harbor Municipal Code ("GHMC") to read as follows:*

Chapter 5.10 Licensing and Operation of Adult Entertainment Facilities

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PART A: GENERALLY

5.10.010 Purpose. It is the intended purpose of this chapter to recognize the importance and benefits of freedom of expression to a democratic society. Experience has shown, however, that adult

entertainment facilities, as defined herein, are detrimental to the public health, safety and welfare. Adult entertainment facilities are historically linked with organized crime, prostitution, narcotics, and other unlawful and criminal activity. These activities often lead to the development of public nuisances, including moral nuisances. Therefore, the licensing and operation of adult entertainment facilities should be regulated and monitored through the system of licensing and operating regulations contained in this chapter.

5.10.020 Scope. This chapter governs the licensing and operation of all adult entertainment facilities within the City. The location and siting of adult entertainment facilities is governed by the zoning regulations contained in Chapter 17.58 of the Gig Harbor Municipal Code. All adult entertainment facilities shall satisfy the requirements of both this chapter and Chapter 17.58 of the Gig Harbor Municipal Code.

5.10.030 Definitions.

For the purposes of this chapter, certain terms and words are defined as follows:

- A. "Adult arcade" means a commercial establishment containing individual viewing areas or booths, where, for any form of consideration, including a membership fee, one or more still or motion picture projectors, slide projectors, or other similar image producing machines are used to show films, motion

pictures, video cassettes, slides, or other visual representations that are distinguished or characterized by a predominant emphasis on matters depicting, describing, or simulating any specified sexual activities or any specified anatomical areas.

- B. "Adult cabaret" means a nightclub, bar, restaurant, tavern, or similar commercial establishment, whether or not alcoholic beverages are served, that regularly features adult entertainment.*
- C. "Adult entertainment" means:*
 - 1. Any exhibition, performance or dance conducted in an adult entertainment facility where such exhibition, performance or dance is distinguished or characterized by a predominant emphasis on matters depicting, describing, or simulating any specified sexual activities or any specified anatomical areas; or*
 - 2. Any exhibition, performance or dance intended to sexually stimulate any member of the public and conducted in an adult entertainment facility where such exhibition, performance or dance is performed for, arranged with, or engaged in with fewer than all patrons in the adult entertainment facility at that time, with separate consideration paid, either directly or indirectly, for such performance, exhibition or dance. For purposes of example and not limitation, such exhibitions,*

performances or dances are commonly referred to as table dancing, couch dancing, taxi dancing, lap dancing, private dancing or straddle dancing.

- D. "Adult entertainment business license" means a license issued by the City Clerk under this chapter to the owner or operator of an adult entertainment facility.*
- E. "Adult entertainment facility" means a commercial establishment defined herein as an adult arcade, adult cabaret, adult motel, adult motion picture theater, or adult retail store.*
- F. "Adult motel" means a hotel, motel, or similar commercial establishment which:*
 - 1. Offers sleeping accommodations to the public for any form of consideration and provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other visual representations that are distinguished or characterized by a predominant emphasis on matters depicting, describing, or simulating any specified sexual activities or any specified anatomical areas, and that has a sign visible from a public right of way that advertises the availability of this type of sexually-oriented materials; or*

2. Offers a sleeping room for rent for a period of time that is less than ten (10) hours; or
 3. Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten (10) hours.
- G. "Adult motion picture theater" means an enclosed commercial establishment where, for any form of consideration, motion pictures, films, video cassettes, slides, or other similar visual representations are regularly shown that are distinguished or characterized by a predominant emphasis on matters depicting, describing, or simulating any specified sexual activities or any specified anatomical areas.
- H. "Adult retail store" means a commercial establishment such as a bookstore, video store, or novelty shop which as its principal business purpose offers for sale or rent, for any form of consideration, any one or more of the following:
1. Books, magazines, periodicals or other printed materials, or photographs, films, motion pictures, video cassettes, slides, or other visual representations that are distinguished or characterized by a predominant emphasis on matters depicting, describing, or simulating any specified sexual activities or any specified anatomical areas; or

2. Instruments, devices, or paraphernalia designed for use in connection with any specified sexual activities.

For the purpose of this definition, the term "principal business purpose" shall mean the business purpose that constitutes fifty (50) percent or more of the stock in trade of a particular business establishment. The stock in trade of a particular business establishment shall be determined by examining either: (i) the retail dollar value of all sexually oriented materials compared to the retail dollar value of all non-sexually oriented materials readily available for purchase, rental, view, or use by patrons of the establishment, excluding inventory located in any portion of the premises not regularly open to patrons; or (ii) the total volume of shelf space and display area reserved for sexually oriented materials compared to the total volume of shelf space and display area reserved for non-sexually oriented materials.

- I. "Applicant" means a person or persons applying for a license under this chapter.
- J. "City" means the City of Gig Harbor, Washington.
- K. "Employee" means any person, including a manager, assistant manager and entertainer, who works in or renders any services directly related to the operation of any adult entertainment

facility, whether or not such person is paid compensation by the owner or operator of the adult entertainment facility.

- L. "Entertainer" means any person who provides live adult entertainment in an adult entertainment facility during which the person exposes any specified anatomical areas or performs any specified sexual activities, whether or not the person is an employee of the adult entertainment facility, and whether or not a fee is charged or accepted for such entertainment.
- M. "Entertainer's license" means a license issued by the City Clerk under this chapter to an entertainer.
- N. "Licensee" means a person or persons in whose name a license to operate an adult entertainment facility has been issued under this chapter, as well as the individual listed as an applicant on the application for a license, and in the case of a manager, assistant manager or entertainer, a person in whose name a license has been issued authorizing employment or entertainment in an adult entertainment facility.
- O. "Manager" means any person who manages, directs, or administers the affairs or conduct of a portion of the activity within an adult entertainment facility, including assistant managers working with or under the direction of a manager to carry out such purposes.

- P. "Manager's license" means a license issued by the City Clerk under this chapter to a manager or assistant manager of an adult entertainment facility.
- Q. "Nude" means the appearance of less than complete and opaque covering of the human anus, human male genitals, human female genitals, or the areola or nipple of the human female breast. The opaque covering shall be made of material or fabric, but shall not include any liquid substance, including mud, water, lotion, whipping cream, or other similar substances that are easily broken down or removed and do not offer the covering intended for an opaque covering.
- R. "Owner or operator" means any person who owns, operates, or has a significant interest in an adult entertainment facility, with significant interest being based on responsibility for management of the business. Where an adult entertainment facility is owned or operated by a partnership, then each partner shall be deemed an owner or operator of the business. Where an adult entertainment facility is owned or operated by a corporation, including a limited liability organization, then each officer, director and principal stockholder shall be deemed an owner or operator of the business. For the purposes of this chapter, a principal stockholder is a person who owns or controls twenty percent (20%) or greater interest in an adult entertainment facility.

- S. "Person" means an individual, association, corporation, firm, estate, joint venture, partnership, proprietorship, or other legal entity.
- T. "Sexually-oriented materials" means any books, magazines, periodicals or other printed materials, or any photographs, films, motion pictures, video cassettes, slides, or other visual representations that are distinguished or characterized by a predominant emphasis on matters depicting, describing, or simulating any specified sexual activities or any specified anatomical areas. The term "sexually oriented materials" includes any instruments, devices, or paraphernalia designed for use in connection with any specified sexual activities.
- U. "Specified anatomical areas" means and includes any of the following:
1. The human male genitals in a discernibly turgid state, even if completely and opaquely covered; or
 2. Less than completely and opaquely covered human genitals, pubic region, anus, buttocks, or female breast below the top of the areola.
- V. "Specified criminal offense" means an offense for prostitution or promotion of prostitution, sale or distribution of obscenity, sale or display of materials harmful to minors, public lewdness,

indecent exposure, or transactions involving controlled substances (as that term is defined in Chapter 69.50 RCW) for which:

- 1. Less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is later, if the conviction is of a misdemeanor offense; or*
- 2. Less than five years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is later, if the conviction is of a felony offense; or*
- 3. Less than five years have elapsed since the date of the last conviction or the date of release from confinement imposed for the last conviction, whichever is later, if the convictions are of two or more misdemeanor offenses occurring within a twenty-four month period.*

W. "Specified sexual activities" means and includes any of the following:

- 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 any object; or
3. Any contact between persons involving the sex organs of one person and the mouth or anus 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.

5.10.040 Penalties.

- A. Criminal Penalty. In addition to any other penalty provided in this chapter or by law, any person who violates any provision of this chapter shall be guilty of a misdemeanor and shall be subject to a criminal penalty pursuant to RCW 9A.20.021(3).
- B. Civil Penalty. In addition to any other penalty provided in this chapter or by law, any person who violates any provision of this chapter shall be subject to a civil penalty pursuant to GHMC 1.16.010(D).
- C. Separate Offense. Each day during any portion of which a violation of any provision of this chapter is committed or is permitted is a separate offense.

5.10.050 Nuisance.

- A. Public Nuisance. Any adult entertainment facility operated, conducted, or maintained in violation of this chapter or any law of the City of Gig Harbor shall be deemed a public nuisance, and all remedies given by law for the prevention and abatement of public nuisances shall apply regardless of any other remedy.
- B. Moral Nuisance. Any adult entertainment facility operated, conducted, or maintained contrary to the provisions of Chapter 7.48A RCW shall be deemed a moral nuisance, and all remedies given by law for the prevention and abatement of moral nuisances shall apply regardless of any other remedy.

5.10.060 Activities Not Prohibited.

- A. This chapter shall not be construed to restrict or prohibit the following activities or products: (a) plays, operas, musicals or other dramatic works that are not obscene; (b) classes, seminars, or lectures which are held for a serious scientific or educational purpose and that are not obscene; and (c) exhibitions, performances, expressions or dances that are not obscene.
- B. The provisions of this chapter are not intended to and do not prohibit the simulation of sexual acts which are part of non-obscene expression.

- C. Whether or not activity is obscene shall be judged by consideration of the following factors:
1. Whether the average person, applying contemporary community standards, would find that the activity taken as a whole appeals to the prurient interest in sex; and
 2. Whether the activity depicts or describes sexual conduct in a patently offensive way, as measured against community standards, and as described in RCW 7.48A.010(2)(b); and
 3. Whether the activity taken as a whole lacks serious literary, artistic, political or scientific value.

PART B: LICENSING REQUIREMENTS

5.10.070 License Required.

- A. It is unlawful for any person to operate an adult entertainment facility unless that person is the holder of a valid adult entertainment business license issued by the City Clerk under this chapter.
- B. It is unlawful for any person to work as a manager in an adult entertainment facility unless that person is the holder of a valid manager's license issued by the City Clerk under this chapter.

- C. It is unlawful for any person to work or perform as an entertainer in an adult entertainment facility unless that person is the holder of a valid entertainer's license issued by the City Clerk under this chapter.
- D. It is unlawful for any manager or entertainer to knowingly work in or about, or to knowingly perform any service or entertainment directly related to the operation of an adult entertainment facility which is not licensed under this chapter.

5.10.080 Application for Adult Entertainment Business License.

- A. No person shall operate an adult entertainment facility within the City of Gig Harbor without a valid adult entertainment business license issued by the City Clerk.
- B. Each person qualifying as an owner or operator of the proposed adult entertainment facility shall submit a separate application. Each applicant shall be separately qualified under this chapter.
- C. All applications shall be submitted to the City Clerk on a form supplied by the City and shall contain or be accompanied by all of the following information and documents:
 - 1. The date of the application.

2. The legal name, any previous names, any aliases, any driver's license number, any social security number, and the date of birth of the applicant.
3. If the applicant is a partner in a partnership, the applicant shall state the complete name of the partnership, state whether the partnership is general or limited, and state the legal names of all partners.
4. If the applicant is an officer, director, or principal stockholder of a corporation, including a limited liability organization, the applicant shall state the complete name of the corporation, state the date of its incorporation, state the name of the registered corporate agent, state the address of the registered office for service of process, and provide evidence that the corporation is in good standing under the laws of the State of Washington.
5. A description of the principal activities and services to be offered by the proposed adult entertainment facility, including a summary of the types of adult entertainment and sexually-oriented materials to be offered for sale or rent by the proposed adult entertainment facility.
6. A description of the principal activities and services to be rendered by the applicant with respect to the proposed adult entertainment facility.

7. *A statement whether the applicant has been convicted of a specified criminal offense, and if so, the date, place, and jurisdiction of each specified criminal offense.*
8. *A statement whether the applicant holds any license issued under this chapter or under a similar ordinance from another city or county, and if so, the operating names and locations of the other licensed businesses.*
9. *A statement whether the applicant has had a previous license issued under this chapter denied, suspended, or revoked, and if so, the name and location of the adult entertainment facility for which the license was denied, suspended, or revoked, as well as the date of the denial, suspension, or revocation.*
10. *A statement whether the applicant has been a partner in a partnership or an officer, director, or principal stockholder of a corporation that has had a previous license under this chapter denied, suspended, or revoked, and if so, the name and location of the adult entertainment facility for which the license was denied, suspended, or revoked, as well as the date of the denial, suspension, or revocation.*

11. The proposed location of the adult entertainment facility, including a legal description of the property, street address, and telephone numbers, if any.
12. The present mailing and residential address of the applicant.
13. Two (2) two-inch by two-inch color photographs of the applicant, taken within six (6) months of the date of the application, showing the full face of the applicant. The photographs shall be provided at the expense of the applicant.
14. Two sets of fingerprints of the applicant, on a form approved by the City of Gig Harbor Police Department.
15. A sketch or diagram showing the configuration of the premises, including a statement of total floor space to be occupied by the adult entertainment facility. The sketch or diagram shall be drawn to a designated scale to an accuracy of plus or minus six (6) inches.
16. Authorization for the City, its agents, and employees to seek information to confirm any statements or other information set forth in the application.

- D. *Each applicant shall verify under penalty of perjury that the information contained in the application is true to the best of his or her knowledge.*
- E. *An application shall be deemed complete upon receipt of all the information and documents requested by this section. Where necessary to determine compliance with this chapter, the City Clerk may request information or clarification in addition to that provided in a complete application.*
- F. *If any person or entity acquires, subsequent to the issuance of an adult entertainment business license, a significant interest in the licensed adult entertainment facility, notice of such acquisition shall be provided in writing to the City Clerk within twenty-one (21) calendar days following such acquisition and the person acquiring the interest shall submit a complete application to the City Clerk pursuant to GHMC 5.10.080 within forty-five (45) calendar days of acquiring such interest.*
- G. *Each adult entertainment business license application shall be accompanied by a non-refundable application fee of five hundred dollars (\$500.00).*

5.10.090 Application for Manager's or Entertainer's License.

- A. No person shall work or perform as a manager or entertainer at an adult entertainment facility without a valid manager's or entertainer's license issued by the City Clerk.
- B. All applications shall be submitted to the City Clerk on a form supplied by the City and shall contain or be accompanied by all of the following information and documents:
 - 1. The date of the application.
 - 2. The legal name, any previous names, any aliases, any driver's license number, any social security number, and the date of birth of the applicant.
 - 3. Documentation that the applicant has attained the age of eighteen years. Any of the following shall be accepted as documentation of age:
 - a. A valid driver's license issued by any state bearing the applicant's photograph and date of birth;
 - b. A valid identification card issued by any state 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; or
 - e. Any other form of identification that the City Clerk determines to be acceptable.
- 4. The height, weight, hair and eye color of the applicant.
- 5. The present mailing and residential address of the applicant.
- 6. The name and address of the adult entertainment facility at which the applicant will work or perform.
- 7. A description of the principal activities or services to be rendered by the applicant at the adult entertainment facility.
- 8. Two (2) two-inch by two-inch color photographs of the applicant, taken within six (6) months of the date of the application, showing the full face of the applicant. The photographs shall be provided at the expense of the applicant.
- 9. Two sets of fingerprints of the applicant, on a form approved by the City of Gig Harbor Police Department.

10. A statement whether the applicant has been convicted of a specified criminal offense, and if so, the date, place, and jurisdiction of each specified criminal offense.
 11. A statement whether the applicant holds any license issued under this chapter or under a similar ordinance from another city or county, and if so, the operating names and locations of the other licensed businesses.
 12. A statement whether the applicant has had a previous license issued under this chapter denied, suspended, or revoked, and if so, the name and location of the adult entertainment facility for which the license was denied, suspended, or revoked, as well as the date of the denial, suspension, or revocation.
 13. Authorization for the City, its agents, and employees to seek information to confirm any statements or other information set forth in the application.
- C. The applicant shall verify under penalty of perjury that the information contained in the application is true to the best of his or her knowledge.
- D. An application shall be deemed complete upon receipt of all the information and documents requested by this section. Where

necessary to determine compliance with this chapter, the City Clerk may request information or clarification in addition to that provided in a complete application.

- E. Each manager's and entertainer's license application shall be accompanied by a non-refundable application fee of one hundred dollars (\$100.00).

5.10.100 Initial Investigation.

- A. Upon receipt of a complete adult entertainment business application and filing fee, the City Clerk shall stamp the application as received and shall send photocopies of the application to the departments or agencies responsible for the enforcement of public safety, health, fire, and building codes and laws. Each interested department or agency shall conduct an investigation of the application and the proposed adult entertainment facility within twenty (20) calendar days of receipt of the application by the City Clerk, unless circumstances support extending the investigation. If the investigation is extended, the City Clerk shall inform the applicant of the extension and the reasons therefor. The extension shall not exceed ten (10) additional calendar days from the original expiration of the twenty (20) day time period stated above. At the conclusion of its investigation, each interested department or agency shall recommend approval or disapproval of the application by so indicating on the photocopy of the

application. After indicating its approval or disapproval, each interested department or agency shall immediately return the photocopy of the application to the City Clerk. In the event the proposed adult entertainment facility is in a state of construction at the time of the inspection, then each interested department or agency shall make a preliminary determination of approval or disapproval based on the drawings submitted in the application. Any adult entertainment business license approved prior to final construction of the adult entertainment facility shall contain a condition that the adult entertainment facility may not open for business until the facility has been inspected and determined to be in compliance with applicable laws and regulations and substantially conforms with the drawings submitted with the application.

- B. In the event an interested department or agency recommends disapproval, the department or agency recommending disapproval shall state the basis for the disapproval in writing. A department or agency shall recommend disapproval of an application if it finds that the proposed adult entertainment facility will violate any provision of any statute, code, ordinance, regulation, or other law in effect in the City.

5.10.110 Issuance and Denial of Licenses.

- A. Issuance of Adult Entertainment Business License.

1. The City Clerk shall grant or deny an application for an adult entertainment business license within thirty (30) calendar days from the date a complete application is filed unless a ten (10) day extension is granted as provided in GHMC 5.10.100(A) in which case the City Clerk shall grant or deny an application for an adult entertainment business license within forty (40) calendar days from the date a complete application is filed.
2. The City Clerk shall issue an adult entertainment business license unless one or more of the criteria set forth in GHMC 5.10.110(C)(1) is present.
3. An adult entertainment business license, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, and the name and address of the adult entertainment facility. An adult entertainment business license shall be posted in a conspicuous place, at or near the entrance to the adult entertainment facility.
4. An adult entertainment business license shall be valid for one year from the date of issuance.

B. Issuance of Manager's or Entertainer's License.

1. The City Clerk shall grant or deny an application for a manager's or entertainer's license within fifteen (15) calendar days from the date of its proper filing.
2. An applicant for a manager's or entertainer's license shall be issued a temporary license upon receipt of a complete license application and fee. Said temporary license shall automatically expire on the fifteenth day following the filing of the complete application and fee, unless the City Clerk has failed to approve or deny the license application in which case the temporary license shall be valid until the City Clerk approves or denies the application, or until the final determination of any appeal from a denial of the application. In no event may the City Clerk extend the application review time for more than an additional twenty (20) days.
3. The City Clerk shall issue a manager's or entertainer's license unless one or more of the criteria set forth in GHMC 5.10.110(C)(1) is present.
4. A manager's or entertainer's license, if granted, shall state on its face the name of the person to whom it is granted, the expiration date, and the name and address of the adult entertainment facility at which the manager or entertainer will work or perform. Each manager and entertainer shall ensure that his or her license is posted in

a conspicuous place, at or near the entrance to the adult entertainment facility, at all times the manager or entertainer is working or performing in the adult entertainment facility.

- 5. A manager's or entertainer's license shall be valid for one year from the date of issuance.*

C. Denial of License Application.

- 1. The City Clerk shall deny a license application if it is demonstrated by a preponderance of the evidence that one or more of the following findings is true:*
 - a. The premises to be used for the proposed adult entertainment facility are not in compliance with applicable laws and ordinances.*
 - b. An applicant is under eighteen (18) years of age.*
 - c. An applicant has failed to provide information required by this chapter or has falsely answered a question or request for information on the application form.*
 - d. An application fee required by this chapter has not been paid.*

2. *In the event the City Clerk denies an application, the City Clerk shall do so in writing, and shall state the specific reasons therefor, including applicable laws.*
3. *Denial of a license application is subject to appeal as set forth in GHMC 5.10.150.*

5.10.120 Renewal of Licenses.

- A. *A licensee may apply for renewal of an adult entertainment business license issued under this chapter. An application for renewal shall contain the information and documents required in GHMC 5.10.080 and shall be accompanied by a non-refundable application fee of one hundred dollars (\$100.00).*
- B. *A licensee may apply for renewal of a manager's or entertainer's license issued under this chapter. An application for renewal shall contain the information and documents required in GHMC 5.10.090 and shall be accompanied by a non-refundable application fee of one hundred dollars (\$100.00).*
- C. *Application for renewal of an adult entertainment business license shall be made within forty (40) calendar days before the expiration date of the currently valid license.*

- D. Application for renewal of a manager's or entertainer's license shall be made within fifteen (15) calendar days before the expiration date of the currently valid license.
- E. An application for a renewal license shall be issued or denied according to the requirements of GHMC 5.10.110.
- F. Denial of a renewal license is subject to appeal as set forth in GHMC 5.10.150.

5.10.130 Nontransferability of Licenses.

- A. Adult Entertainment Business License. The holder of an adult entertainment business license issued pursuant to this chapter shall not assign or transfer the license to another person, except that a transfer may be made to the surviving spouse of a deceased licensee if the transferor and transferee were maintaining a marital community and the license was issued in the name of one or both of them.
- B. Manager's or Entertainer's License. The holder of a manager's or entertainer's license issued pursuant to this chapter shall not assign or transfer the license to another person.

5.10.140 Suspension and Revocation of Licenses.

- A. The City Clerk may, subject to this chapter, suspend or revoke any license issued pursuant to this chapter. In the event a license is suspended or revoked, all rights of the licensee under this chapter are then suspended or terminated, as the case may be.
- B. Upon receipt of notice of the suspension or revocation of an adult entertainment business license or manager's license or entertainer's license, the licensee shall without delay deliver such license to the City Clerk. In the case of a suspension, the City

Clerk shall return the license to the licensee at the expiration of the suspension period.

C. Suspension of License. The City Clerk shall suspend a license for a period not to exceed thirty (30) calendar days if the City Clerk determines that:

1. The licensee has refused to allow an inspection of the adult entertainment facility as required by GHMC 5.10.160; or
2. The licensee has not submitted a timely monthly report as required by GHMC 5.10.170(B); or
3. The licensee has been convicted of a specified criminal offense committed on the premises of the adult entertainment facility for which he or she is licensed within the time periods provided in GHMC 5.10.030(V); or
4. The licensee has violated any applicable requirement of this chapter.

D. Revocation of License.

1. The City Clerk shall revoke a license if the City Clerk determines that:

- a. The licensee has given false information in the material submitted during the application process;
or
 - b. The licensee has knowingly operated an adult entertainment facility during a period of time when the adult entertainment business license of the adult entertainment facility was suspended; or
 - c. The licensee has knowingly acted as a manager of an adult entertainment facility during a period of time when the licensee's manager's license was suspended;
or
 - d. The licensee has knowingly acted as an entertainer at an adult entertainment facility during a period of time when the licensee's entertainer's license was suspended; or
 - e. A cause of suspension in GHMC 5.10.140(C) occurs and the license has been suspended within the preceding twelve months.
2. In the event the City Clerk revokes a license, the revocation shall continue for one year, and the licensee shall not be issued an adult entertainment business license, manager's license, or entertainer's license for one year

from the date the revocation becomes effective. If, after revocation, the City Clerk finds that the basis for the revocation has been corrected or abated, the applicant may be granted a license if at least ninety (90) calendar days have elapsed since the date of revocation became effective.

5.10.150 Appeal of Denial, Suspension, or Revocation of License.

- A. In the event the City Clerk denies, suspends or revokes a license issued under this chapter, the City Clerk shall notify the applicant or licensee in writing of the decision at least ten (10) calendar days prior to the effective date of any such denial, suspension, or revocation. The notice shall describe the grounds for such denial, suspension or revocation and shall inform the applicant or licensee of his or her right to appeal to the City Hearing Examiner within ten (10) calendar days of the date of the written decision by filing a written notice of appeal with the City Clerk containing a statement of the specific reasons for the appeal and a statement of the relief requested. The notice shall be served either in person or by mailing a copy of the notice by certified mail, postage prepaid, return receipt requested, to the applicant or licensee at his or her last known address.

- B. If a licensee timely appeals a decision of the City Clerk, then the licensee may continue to engage in the activity for which the license was issued pending the decision of the City Hearing

Examiner, unless the license was suspended or revoked based on a threat of immediate serious injury to public health or safety pursuant to GHMC 5.10.160(B).

- C. Within ten (10) calendar days of receiving a timely appeal, the City Clerk shall forward the administrative record of the licensing decision to the City Hearing Examiner.*
- D. In the event an applicant or licensee timely appeals the denial, suspension, or revocation of a license issued under this chapter, the City Hearing Examiner shall hold a hearing on the appeal within twenty (20) calendar days from receipt of the appeal. Written notice of the date, time, and place of the scheduled hearing shall be given to the applicant by the City Clerk at least five (5) calendar days prior to the hearing.*
- E. The City Hearing Examiner shall uphold the decision of the City Clerk unless it finds the decision is not supported by substantial evidence in the administrative record.*
- F. The City Hearing Examiner shall issue a written decision within ten (10) calendar days of hearing the appeal. The decision shall be served either in person or by mailing a copy of the decision by certified mail, postage prepaid, return receipt requested, to the applicant or licensee at his or her last known address. The decision of the City Hearing Examiner shall constitute the final administrative decision of the City and may*

be appealed to superior court within ten (10) calendar days. The applicant or licensee shall be responsible for the costs of preparing the administrative record for judicial review. If a licensee timely appeals a decision of the City Hearing Examiner, then the licensee may continue to engage in the activity for which the license was issued pending the decision of the court, unless the license was suspended or revoked based on a threat of immediate serious injury to public health or safety pursuant to GHMC 5.10.160(B).

5.10.160 Inspections and Public Health and Safety Suspensions.

- A. *An applicant or licensee shall permit representatives of the police department, health department, and other state and local government agencies to inspect the premises of the adult entertainment facility, at any time the adult entertainment facility is open for business, for the purpose of insuring compliance with all applicable statutes, codes, ordinances, regulations, and laws.*
- B. *Where a condition exists upon the premises of an adult entertainment facility that constitutes a threat of immediate serious injury to public health or safety, the City Clerk or any other City official may immediately suspend any license issued under this chapter by issuing a notice setting forth the facts that constitute a threat of immediate serious injury to public health or safety, and informing the licensee of the right to*

appeal the suspension to the City Hearing Examiner under the appeal provisions set forth in GHMC 5.10.150.

5.10.170 Recordkeeping Requirements and Monthly Reports.

- A. Each adult entertainment facility licensed under this chapter shall maintain and retain for a period of two (2) years from the date of termination of employment, the names, addresses, and ages of all persons employed or otherwise retained as managers and entertainers.*
- B. Each adult entertainment facility licensed under this chapter shall file a monthly report with the City Clerk including the names, addresses, and ages of all persons employed or otherwise retained as managers and entertainers.*

5.10.180 License Requirement for Existing Adult Entertainment Facilities.

Any adult entertainment facility in existence prior to the effective date of this ordinance shall be deemed to be operating under a temporary adult entertainment business license. Within forty-five (45) calendar days of the effective date of this ordinance, such adult entertainment facility shall submit a complete adult entertainment business license application and license fee pursuant to GHMC 5.10.080 to the City Clerk. The license application shall be issued or denied in accordance with the requirements of this chapter.

The adult entertainment facility shall be permitted to continue to engage in the activities specified in the adult entertainment business license application pursuant to GHMC 5.10.080(C)(5) pending the decision of the City Clerk.

PART C: OPERATIONAL REQUIREMENTS

5.10.190 Regulations Applicable to All Adult Entertainment Facilities. All adult entertainment facilities shall comply with the following regulations:

- A. Manager on Premises. A licensed manager shall be on duty at the adult entertainment facility at all times the adult entertainment facility is open for business. The manager shall be stationed at a location within the adult entertainment facility where he or she shall have an unobstructed view of all public portions of the adult entertainment facility.
- B. Hours of Operation. Adult entertainment facilities, except adult motels, shall not be operated or otherwise open to the public between the hours of 2:00 a.m. and 10:00 a.m.
- C. Admission to Minors Prohibited. Admission to adult entertainment facilities, except adult motels, shall be restricted to persons of the age of eighteen (18) years or more. The age of all patrons shall be verified at the time of entry by an employee of the adult entertainment facility.

5.10.200 Regulations Specifically Applicable to Adult Cabarets.

- A. General. An adult cabaret shall satisfy the zoning requirements contained in Chapter 17.58 of the Gig Harbor Municipal Code, the general requirements in Part A of this chapter, the licensing requirements in Part B of this chapter, the general operational requirements in GHMC 5.10.190, and the specific operational requirements applicable to adult cabarets contained in this section.
- B. Separation of Nude Entertainers From Patrons. No entertainer shall appear nude except on a stage or platform at least twenty-four (24) inches in elevation above the level of the patron seating areas. The stage shall be separated by a distance of at least eight (8) feet from all areas of the premises to which patrons have access. A continuous fixed-barrier railing, of sufficient construction to prevent encroachment by patrons onto the stage, at least three (3) feet in height and located at least eight (8) feet from all points of the stage, shall separate the stage from all patron areas.
- C. General Separation of Entertainers From Patrons. No entertainer shall conduct any dance, performance, or exhibition in or about the adult cabaret unless that dance, performance, or exhibition is performed at a torso-to-torso distance of no less

than four feet from the patron for whom the dance, performance, or exhibition is intended.

- D. Managers. The licensed manager on duty shall not be an entertainer. There shall be one manager on duty for every stage operating on the premises. No manager shall knowingly permit an employee or entertainer to violate any provision of this section.
- E. Tips. No entertainer shall allow a member of the public to place a tip or gratuity directly upon his or her body or into his or her clothing.
- F. Maintenance. All public areas of the adult cabaret shall be maintained in a clean and sanitary condition.
- G. Lighting. A minimum lighting level of 30 lux semi-cylindrical measured at thirty (30) inches from the floor or ten (10) foot centers shall be provided and equally distributed in and about the public portions of the adult cabaret, including the patron seating areas, so that all objects are plainly visible at all times.
- H. Visibility From Outside the Adult Cabaret. No activity or entertainment occurring at or in the adult cabaret, nor any photograph, drawing, sketch or other pictorial or graphic representation of any specified sexual activities or specified anatomical areas, shall be visible at any time from outside the adult cabaret.

I. Prohibited Activities.

1. No manager, entertainer or employee shall perform or simulate any sexual activities specified in GHMC 5.10.030(W) or RCW 7.48A.010(2)(b).
2. No manager, entertainer or employee shall expose to view any anatomical areas specified in GHMC 5.10.030(U) except upon a stage or platform as set forth in GHMC 5.10.200(B).

- J. Sign. A sign at least two (2) feet by two (2) feet, with letters at least one (1) inch high, shall be conspicuously and permanently posted at or near the entrance to the adult entertainment facility which states the following:

THIS ADULT CABARET IS REGULATED BY THE CITY OF GIG HARBOR. ENTERTAINERS ARE NOT PERMITTED TO ENGAGE IN ANY TYPE OF SEXUAL ACTIVITY AND ARE NOT PERMITTED TO APPEAR NUDE EXCEPT ON STAGE. ENTERTAINERS IN THE SEATING AREAS OF THE ADULT CABARET ARE NOT ALLOWED TO DANCE WITHIN FOUR FEET OF ANY CUSTOMER. TIPS AND GRATUITIES MAY NOT BE PLACED ON THE BODY OR IN THE CLOTHING OF ANY ENTERTAINER.

5.10.210 Regulations Specifically Applicable to Adult Arcades.

- A. General. An adult arcade shall satisfy the zoning requirements contained in Chapter 17.58 of the Gig Harbor Municipal Code, the general requirements in Part A of this chapter, the licensing requirements in Part B of this chapter, the general operational requirements in GHMC 5.10.190, and the specific operational requirements applicable to adult arcades contained in this section.
- B. Physical Layout.
1. Each viewing booth shall be visible from a manager's station and shall not be obscured by any curtain, door, wall or other enclosure. As used in this section "viewing booth" means the area where a patron or customer would be positioned while watching a film, video or other photographic reproduction.
 2. No steps or risers shall be allowed in any viewing booth.
 3. No viewing booth shall have more than one stool or seat. In order to prevent obscuring the occupant of a viewing booth from view, no stool for seating within a viewing booth shall have any seat back or sides.

4. No viewing booth shall have any holes or openings in its walls other than ventilation holes. All ventilation holes shall be located one foot from the top of the booth walls or one foot from the bottom of the booth walls. All ventilation holes shall be covered with a permanently affixed ventilation cover.
- C. Maintenance. All viewing booths shall be maintained in a clean and sanitary condition.
- D. Lighting. A minimum lighting level of 30 lux semi-cylindrical measured at thirty (30) inches from the floor or ten (10) foot centers shall be provided and equally distributed in and about the public portions of the adult arcade, including the viewing booths, so that all objects are plainly visible at all times.
- E. Limit on Number of Persons Within a Viewing Booth. No licensee or employee shall permit more than one person to occupy a viewing booth at any given time.
- F. Prohibited Activities. No licensee or employee shall knowingly permit a patron to perform any sexual activity specified in GHMC 5.10.030(W) or RCW 7.48A.010(2)(b) within a viewing booth.
- G. Sign. A sign at least two (2) feet by two (2) feet, with letters at least one (1) inch high, shall be conspicuously and

permanently posted at or near the entrance to the adult entertainment facility which states the following:

THIS ADULT ARCADE IS REGULATED BY THE CITY OF GIG HARBOR. IT IS UNLAWFUL TO PERFORM SEXUAL ACTS WITHIN A VIEWING BOOTH, AND IT IS UNLAWFUL FOR MORE THAN ONE PERSON TO OCCUPY A VIEWING BOOTH AT ANY GIVEN TIME.

- H. Visibility From Outside the Adult Arcade. No activity or entertainment occurring at or in an adult arcade, nor any photograph, drawing, sketch or other pictorial or graphic representation of any specified sexual activities or specified anatomical areas shall be visible at any time from outside the adult arcade.

Section 4. Limitations of Liability. None of the provisions of this ordinance are intended to create a cause of action or provide the basis for a claim against the City, its officials, or employees for the performance or the failure to perform a duty or obligation running to a specific individual or specific individuals. Any duty or obligation created herein is intended to be a general duty or obligation running in favor of the general public.

Section 5. Severability. If any portion of this ordinance as now or hereafter amended, or its application to any person or circumstance is held invalid or unconstitutional, such adjudication shall not affect the validity of the ordinance as a whole, or any section, provision, or part thereof not

adjudged to be invalid or unconstitutional, and its application to other persons or circumstances shall not be affected.

Section 6. Conflicting Ordinances Repealed. Any ordinance or regulation in conflict with this ordinance is hereby repealed.

Section 7. Effective Date. This ordinance or a summary thereof consisting of the title and penalty section shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) calendar days after publication.

PASSED by the City Council and APPROVED by the Mayor this ____ day of _____, 2022.

APPROVED:

MAYOR, GRETCHEN WILBERT

ATTEST/AUTHENTICATED:

CITY CLERK, MOLLY TOWSLEE

APPROVED AS TO FORM:

CITY ATTORNEY, CAROL MORRIS

FILED WITH THE CITY CLERK: 8/28/97

PASSED BY THE CITY COUNCIL: 9/22/97

PUBLISHED: 10/1/97

EFFECTIVE DATE: 10/6/97

ORDINANCE NO. 768