

ORDINANCE O-4570

AN ORDINANCE OF THE CITY OF KIRKLAND RELATED TO EROTIC PERFORMANCE ESTABLISHMENTS AND NOTICE PERIODS RELATED TO APPEALS AND STANDARDS OF CONDUCT AND OPERATION.

1 WHEREAS, as part of a legal review of the Kirkland Municipal
2 Code ("KMC") by Code Publishing Company, it was recommended that
3 KMC Section 7.26.060(a) be amended to provide clarity related to when
4 notice of a City Clerk refusal to issue or renew an erotic performance
5 establishment license is received depending on whether it is delivered
6 or mailed; and
7

8 WHEREAS, Code Publishing Company also recommended that
9 establishment recordkeeping requirements and notice of City records
10 inspections be addressed uniformly for purposes of clarity and to avoid
11 any potential vagueness or unlawful search and seizure issues.
12

13 NOW, THEREFORE, the City Council of the City of Kirkland do
14 ordain as follows:
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16 Section 1. Kirkland Municipal Code Section 7.26.060 is amended
17 to read as follows:
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19 7.26.060 Appeal.

20 (a) Denial of License. Any person aggrieved by the action of the
21 clerk in refusing to issue or renew any license issued under this chapter
22 shall have the right to appeal such action to the hearing examiner, or to
23 such other hearing body as may hereafter be established by the city
24 council for the hearing of license appeals, by filing a notice of appeal
25 with the clerk within ten days of notice of the refusal to issue or renew.
26 Such notice to a person shall be deemed effective upon delivery or three
27 days after deposit in the regular U.S. mail. The hearing examiner or
28 other hearing body shall set a date for hearing such appeal, to take
29 place within forty-five days of the date of receipt of the notice of appeal.
30 At such hearing the appellant and other interested persons may appear
31 and be heard, subject to rules and regulations of the hearing examiner
32 or other hearing body. The hearing examiner or other hearing body shall
33 render its decision on the appeal within fifteen days following the close
34 of the appeal hearing.

35 (b) Appeal to Superior Court. Any person aggrieved by the decision
36 of the hearing examiner or hearing body may seek judicial review under
37 Chapter 7.16 RCW.
38

39 Section 2. Kirkland Municipal Code Section 7.26.070 is amended
40 to read as follows:
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42 7.26.070 Standards of conduct and operation—Erotic performance
43 establishments.

44 (a) The following standards of conduct must be adhered to by
45 employees of any erotic performance establishment while in any area in
46 which members of the public are allowed to be present:

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

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

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

63 (4) No employee or performer shall caress, fondle or erotically
64 touch any member of the public. No employee or performer shall
65 encourage or permit any member of the public to caress, fondle or
66 erotically touch any employee or performer.

67 (5) No employee or performer shall perform acts of sexual conduct
68 as defined in this chapter, or any act which constitutes a violation of
69 Chapter 7.48A RCW, the Washington Moral Nuisances Statute, or
70 Chapter 11.20 of this code.

71 (6) No employee or performer mingling with members of the public
72 shall conduct any dance, performance or exhibition in or about the
73 nonstage area of the erotic performance establishment unless that
74 dance, performance or exhibition is performed at a distance of no less
75 than four feet from any member of the public.

76 (7) No tip or gratuity offered to or accepted by a performer may be
77 offered or accepted prior to any performance, dance or exhibition
78 provided by the performer. No performer performing upon any stage
79 area shall be permitted to accept any form of gratuity offered directly
80 to the performer by any member of the public. Any gratuity offered to
81 any performer performing upon any stage area must be placed into a
82 receptacle provided for receipt of gratuities by the erotic performance
83 establishment or provided through a manager on duty on the premises.
84 Any gratuity or tip offered to any performer conducting any
85 performance, dance or exhibition in or about the nonstage area of the
86 erotic performance establishment shall be placed into the hand of the
87 performer or into a receptacle provided by the performer, and not upon
88 the person or into the clothing of the adult performer.

89 (b) At any erotic performance establishment, the following are
90 required:

91 (1) Admission must be restricted to persons of the age of eighteen
92 years or more. It is unlawful for any owner, operator, manager or other
93 person in charge of an erotic performance establishment to knowingly
94 permit or allow any person under the minimum age specified to be in or
95 upon such premises.

96 (2) Neither the performance nor any photograph, drawing, sketch
97 or other pictorial or graphic representation thereof displaying any
98 portion of the breasts below the top of the areola or any portion of the
99 pubic hair, buttocks, genitals, and/or anus may be visible outside of the
100 erotic performance establishment. No member of the public shall be
101 permitted at any time to enter into any of the nonpublic portions of the
102 erotic performance establishment, which shall include but are not limited
103 to: the dressing rooms of the performers or other rooms provided for
104 the benefit of employees, and the kitchen and storage areas; except
105 that persons delivering goods and materials, food and beverages, or
106 performing maintenance or repairs to the premises or equipment on the
107 premises may be permitted into nonpublic areas to the extent required
108 to perform their job duties.

109 (c) The responsibilities of the manager of an erotic performance
110 establishment shall include but are not limited to:

111 (1) A licensed manager shall be on duty at an erotic performance
112 establishment at all times adult entertainment is being provided or
113 members of the public are present on the premises. The name and
114 license of the manager shall be prominently posted during business
115 hours.

116 (2) The licensed manager on duty shall not be a performer.

117 (3) The manager or an assistant manager licensed under this
118 chapter shall maintain visual observation of each member of the public
119 at all times any performer is present in the public or performance areas
120 of the erotic performance establishment. Where there is more than one
121 performance area, or the performance area is of such size or
122 configuration that one manager or assistant managemanager is unable
123 to visually observe, at all times, each performer, each employee, and
124 each member of the public, then a manager or assistant manager
125 licensed under this chapter shall be provided for each public or
126 performance area or portion of a public or performance area visually
127 separated from other portions of the adult cabaret.

128 (4) The manager shall be responsible for and shall assure that the
129 actions of members of the public, the performers and all other
130 employees shall comply with all requirements of this chapter.

131 (d) Premises—Specifications.

132 (1) Performance Area. The performance area of the erotic
133 performance establishment where adult entertainment is provided shall
134 be a stage or platform at least eighteen inches in elevation above the
135 level of the patron seating areas, and shall be separated by a distance
136 of at least eight feet from all areas of the premises to which members
137 of the public have access. A continuous railing at least three feet in
138 height and located at least eight feet from all points of the performance

139 area shall separate the performance area and the patron seating areas.
 140 The stage and the entire interior portion of cubicles, rooms or stalls
 141 wherein adult entertainment is provided must be visible from the
 142 common areas of the premises and at least one manager's station.
 143 Visibility shall not be blocked or obstructed by doors, curtains, drapes
 144 or any other obstruction whatsoever.

145 (2) Lighting. Sufficient lighting shall be provided and equally
 146 distributed throughout the public areas of the premises so that all
 147 objects are plainly visible at all times. A minimum lighting level of thirty
 148 lux horizontal, measured at thirty inches from the floor and on ten-foot
 149 centers is hereby established for all areas of the erotic performance
 150 establishment where members of the public are admitted.

151 (3) Signs. A sign at least two feet by two feet, with letters at least
 152 one inch high shall be conspicuously displayed in the public area(s) of
 153 the premises stating the following:

154 THIS EROTIC PERFORMANCE ESTABLISHMENT IS REGULATED BY THE
 155 CITY OF KIRKLAND. ENTERTAINERS ARE:

156 A. NOT PERMITTED TO ENGAGE IN ANY TYPE OF SEXUAL CONDUCT

157 B. NOT PERMITTED TO APPEAR SEMI-NUDE OR NUDE, EXCEPT ON
 158 STAGE

159 C. NOT PERMITTED TO ACCEPT TIPS OR GRATUITIES IN ADVANCE
 160 OF THEIR PERFORMANCE

161 D. NOT PERMITTED TO ACCEPT TIPS DIRECTLY FROM PATRONS
 162 WHILE PERFORMING UPON ANY STAGE AREA

163 (4) Recordkeeping Requirements.

164 (a) All papers, records, and things required to be kept pursuant to
 165 this chapter, including the name, address and age of each person
 166 employed or otherwise retained or allowed to perform on the premises
 167 as a performer, including independent contractors and their employees,
 168 shall be retained for a period of at least two years and open to inspection
 169 by the clerk during the hours when the licensed premises are open for
 170 business, upon two days' written notice. The purpose of such
 171 inspections shall be to determine whether the papers, records, and
 172 things meet the requirements of this chapter.

173 ~~(b) Each erotic performance establishment business shall maintain~~
 174 ~~and retain for a period of two years the name, address, and age of each~~
 175 ~~person employed or otherwise retained or allowed to perform on the~~
 176 ~~premises as a performer, including independent contractors and their~~
 177 ~~employees. This information shall be open to inspection by the clerk~~
 178 ~~during hours of operation of the business upon twenty four hours' notice~~
 179 ~~to the licensee.~~

180 (5) Inspections. In order to insure compliance with this chapter all
 181 areas of licensed adult erotic performance establishments which are
 182 open to members of the public shall be open to inspection by city agents
 183 and employees during the hours when the premises are open for
 184 business. The purpose of such inspections shall be to determine if the
 185 licensed premises are operated in accordance with the requirements of

186 this chapter. It is hereby expressly declared that unannounced
187 inspections are necessary to insure compliance with this chapter.

188 (e) It is unlawful for any erotic performance establishment to be
189 operated or otherwise open to the public between the hours of 2:00
190 a.m. and 10:00 a.m.

191 (f) This chapter shall not be construed to prohibit:

192 (1) Plays, operas, musicals, or other dramatic works that are not
193 obscene;

194 (2) Classes, seminars and lectures which are held for serious
195 scientific or educational purposes and which are not obscene; or

196 (3) Exhibitions, performances, expressions or dances that are not
197 obscene.

198 These exemptions shall not apply to the sexual conduct described in
199 RCW 7.48A.010(2)(b).

200 (g) Whether or not activity is obscene shall be judged by
201 consideration of the following factors:

202 (1) Whether the average person, applying contemporary
203 community standards, would find that the activity taken as a whole
204 appeals to a prurient interest in sex; and

205 (2) Whether the activity depicts or describes in a patently offensive
206 way, as measured against community standards, sexual conduct as
207 described in RCW 7.48A.010(2)(b); and

208 (3) Whether the activity taken as a whole lacks serious literary,
209 artistic, political or scientific value.

210
211 Section 3. If any provision of this ordinance or its application to
212 any person or circumstance is held invalid, the remainder of the
213 ordinance or the application of the provision to other persons or
214 circumstances is not affected.

215
216 Section 4. This ordinance shall be in force and effect five days
217 from and after its passage by the Kirkland City Council and publication
218 pursuant to Section 1.08.017, Kirkland Municipal Code in the summary
219 form attached to the original of this ordinance and by this reference
220 approved by the City Council.

221
222 Passed by majority vote of the Kirkland City Council in open
223 meeting this 4th day of April, 2017.

224
225 Signed in authentication thereof this 4th day of April, 2017.


MAYOR

Attest:


City Clerk

Publication Date: 04/10/2017

Approved as to Form:

Kevin Raymond

City Attorney

PUBLICATION SUMMARY
OF ORDINANCE O-4570

AN ORDINANCE OF THE CITY OF KIRKLAND RELATED TO EROTIC PERFORMANCE ESTABLISHMENTS AND NOTICE PERIODS RELATED TO APPEALS AND STANDARDS OF CONDUCT AND OPERATION.

SECTION 1. Amends Kirkland Municipal Code Section 7.26.060 related to denial of a license.

SECTION 2. Amends Kirkland Municipal Code Section 7.26.070 related to standards of conduct and operation.

SECTION 3. Provides a severability clause for the ordinance.

SECTION 4. Authorizes publication of the ordinance by summary, which summary is approved by the City Council pursuant to Section 1.08.017 Kirkland Municipal Code and establishes the effective date as five days after publication of summary.

The full text of this Ordinance will be mailed without charge to any person upon request made to the City Clerk for the City of Kirkland. The Ordinance was passed by the Kirkland City Council at its meeting on the 4th day of April, 2017.

I certify that the foregoing is a summary of Ordinance O-4570 approved by the Kirkland City Council for summary publication.



City Clerk