

ORIGINAL

CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 4695

AN ORDINANCE regulating cabarets and adult cabarets; amending Ordinance No. 4602, Section 6; Ordinance No. 4692, Section 6; and Bellevue City Code Section 5.08.070; and declaring an emergency which requires the ordinance be immediately effective.

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Ordinance No. 4602, Section 6, Ordinance No. 4692, Section 6, and Bellevue City Code Section 5.08.070 are hereby amended to read as follows:

5.08.070 Standards of conduct and operation - Adult cabarets.

- A. The following standards of conduct must be adhered to by employees of any adult cabaret while in any area in which members of the public are allowed to be present:
1. No employee or entertainer shall be unclothed or in such less than opaque and complete attire, costume or clothing so as to expose to view any portion of the breast below the top of the areola or any portion of the pubic region, anus, buttocks, vulva or genitals, except upon a stage at least eighteen inches above the immediate floor level and removed at least eight feet from the nearest member of the public.
 2. No employee or entertainer mingling with members of the public shall be unclothed or in less than opaque and complete attire, costume or clothing as described in subdivision 1 of this subsection, nor shall any male employee or entertainer appear at any time with his genitals in a discernibly turgid state, even if completely and opaquely covered.
 3. No employee or entertainer shall wear or use any device or covering exposed to view which simulates the breast below the top of the areola, vulva, genitals, anus, buttocks, or any portion of the pubic region or human male genitals in a discernibly turgid state, even if completely and opaquely covered.

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4. No employee or entertainer shall encourage or permit any person upon the premises to touch, caress or fondle the breasts, buttocks, anus or genitals of any other person. No employee or entertainer shall touch, caress or fondle the breasts, buttocks, anus or genitals of any other person.
 5. No employee or entertainer shall perform any acts which constitute a violation of the provisions of Chapter 10A.88 of this code, or any other act in violation of any other applicable chapter, ordinance or statute.
 6. No employee or entertainer mingling with members of the public shall conduct any dance, performance or exhibition in or about the non-stage area of the adult cabaret unless that dance, performance or exhibition is performed at a distance of no less than four feet from any member of the public.
 7. No tip or gratuity offered to or accepted by an adult entertainer may be offered or accepted prior to any performance, dance or exhibition provided by the entertainer. No entertainer performing upon any stage area shall be permitted to accept any form of gratuity offered directly to the entertainer by any member of the public. Any gratuity offered to any entertainer performing upon any stage area must be placed into a receptacle provided for receipt of gratuities by the adult cabaret or provided through a manager on duty on the premises. Any gratuity or tip offered to any adult entertainer conducting any performance, dance or exhibition in or about the non-stage area of the adult cabaret shall be placed into the hand of the adult entertainer or into a receptacle provided by the adult entertainer, and not upon the person or into the clothing of the adult entertainer.
- B. At any adult cabaret, the following are required:
1. Admission must be restricted to persons of the age of eighteen years or more. It is unlawful for any owner, operator, manager or other person in charge of an adult cabaret to knowingly permit or allow any person under the minimum age specified to be in or upon such premises.

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2. Neither the performance nor any photograph, drawing, sketch or other pictorial or graphic representation thereof displaying any portion of the breasts below the top of the areola or any portion of the pubic hair, buttocks, genitals, and/or anus may be visible outside of the adult cabaret.

No member of the public shall be permitted at any time to enter into any of the non-public portions of the adult cabaret, which shall include but are not limited to: the dressing rooms of the entertainers or other rooms provided for the benefit of employees, and the kitchen and storage areas; EXCEPT that persons delivering goods and materials, food and beverages, or performing maintenance or repairs to the premises or equipment on the premises may be permitted into non-public areas to the extent required to perform their job duties.

- C. The responsibilities of the manager of an adult cabaret shall include but are not limited to:
 1. A licensed manager shall be on duty at an adult cabaret at all times adult entertainment is being provided or members of the public are present on the premises. The name and license of the manager shall be prominently posted during business hours. The manager shall be responsible for verifying that any person who provides adult entertainment within the premises possesses a current and valid entertainer's license.
 2. The licensed manager on duty shall not be an entertainer.
 3. The manager or assistant manager licensed under this Chapter shall maintain visual observation of each member of the public at all times any entertainer is present in the public or performance area of the adult cabaret. Where there is more than one performance area, or the performance area is of such size or configuration that one manager or assistant manager is unable to visually observe, at all times, each adult entertainer, each employee, and each member of the public, a manager or assistant manager licensed under this Chapter shall be provided for each public or performance area or portion of a public or performance area visually separated from other portions of the adult cabaret.

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4. The manager shall be responsible for and shall ensure that the actions of members of the public, the adult entertainers, and all other employees shall comply with all requirements of this chapter.

D. Premises -- specifications.

1. **Performance area.** The performance area of the adult cabaret where adult entertainment is provided shall be a stage or platform at least eighteen inches in elevation above the level of the patron seat areas, and shall be separated by a distance of at least eight feet from all areas of the premises to which members of the public have access. A continuous railing at least three feet in height and located at least eight feet from all points of the performance area shall separate the performance area and the patron seating areas. The stage and the entire interior portion of cubicles, rooms or stalls wherein adult entertainment is provided must be visible from the common areas of the premises and at least one manager's station. Visibility shall not be blocked or obstructed by doors, curtains, drapes or any other obstruction whatsoever.
2. **Lighting.** Sufficient lighting shall be provided and equally distributed throughout the public areas of the premises so that all objects are plainly visible at all times. A minimum lighting level of 30 lux semi-cylindrical measured at 30 inches from the floor on 10 foot centers is hereby established for all areas of the adult cabaret where members of the public are admitted.
3. **Signs.** A sign at least two feet by two feet, with letters at least one inch height shall be conspicuously displayed in the public area(s) of the premises stating the following:

THIS ADULT CABARET IS REGULATED BY THE CITY OF BELLEVUE. ENTERTAINERS ARE:

- A. NOT PERMITTED TO ENGAGE IN ANY TYPE OF SEXUAL CONDUCT**
- B. NOT PERMITTED TO APPEAR SEMI-NUDE OR NUDE, EXCEPT ON STAGE**

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- C. **NOT PERMITTED TO ACCEPT TIPS OR GRATUITIES IN ADVANCE OF THEIR PERFORMANCE**
- D. **NOT PERMITTED TO ACCEPT TIPS DIRECTLY FROM PATRONS WHILE PERFORMING UPON ANY STAGE AREA**

4. Record keeping requirements.

- A. All licenses, papers, records, and things required to be kept pursuant to this chapter shall be open to inspection by the clerk during the hours when the licensed premises are open for business, upon two days' written notice. The purpose of such inspections shall be to determine whether the licenses, papers, records, and things meet the requirements of this ordinance.
- B. Each adult entertainment business shall maintain and retain for a period of two years the name, address, and age of each person employed or otherwise retained or allowed to perform on the premises as an adult entertainer, including independent contractors and their employees, as an entertainer. This information shall be open to inspection by the clerk during hours of operation of the business upon twenty-four hours notice to the licensee.

5. Inspections.

In order to insure compliance with this chapter all areas of licensed adult cabarets which are open to members of the public shall be open to inspection by city agents and employees during the hours when the premises are open for business. The purpose of such inspections shall be to determine if the licensed premises are operated in accordance with the requirements of this ordinance. It is hereby expressly declared that unannounced inspections are necessary to insure compliance with this ordinance.

- E. It is unlawful for any adult cabaret to be operated or otherwise open to the public between the hours of two a.m. and ten a.m.

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- F. This chapter shall not be construed to prohibit:
1. Plays, operas, musicals, or other dramatic works that are not obscene;
 2. Classes, seminars and lectures which are held for serious scientific or educational purposes and which are not obscene; or
 3. Exhibitions, performances, expressions or dances that are not obscene.

These exemptions shall not apply to sexual conduct as defined in Section 10A.88.010D.

- G. Whether or not the activity is obscene shall be judged by consideration of the following factors:
1. Whether the average person, applying contemporary community standards, would find that the activity taken as a whole appeals to a prurient interest in sex; and
 2. Whether the activity depicts or describes in a patently offensive way, as measured against community standards, conduct as defined in Section 10A.88.010B; and
 3. Whether the activity taken as a whole lacks serious literary, artistic, political or scientific value.

Section 2. The City Council finds that a public emergency exists, and that this ordinance is a public emergency ordinance necessary for the protection of the public health, safety, and peace and should therefore take effect upon adoption. The facts upon which such determination of emergency are based are:

- A. The existing provisions of Bellevue City Code 5.08.070 which provide that certain standards of conduct must be adhered to are unconstitutional under the holding of the United States Supreme Court in Miller v. California, 413 U.S. 15, 37 L.Ed.2d 419, 93 S.Ct. 2607 (1973).

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The Council finds that it is essential to the public interest that this constitutional defect be cured immediately.

Section 3. In accordance with RCW 35A.11.090 this ordinance as a public emergency ordinance shall take effect and be in force immediately upon adoption.

PASSED by a unanimous vote of the entire membership of the City Council this 19th day of September, 1994, and signed in authentication of its passage this 19th day of September, 1994.

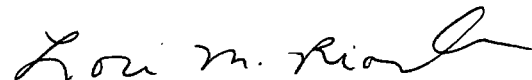
(SEAL)



Donald S. Davidson, DDS, Mayor

Approved as to form:

Richard L. Andrews, City Attorney



Lori Molander Riordan, Assistant City Attorney

Attest:



Myrria L. Basich, City Clerk

Published September 23, 1994