ORDINANCE NO. 2778

AN ORDINANCE of the City of Kent, Washington, regarding the establishment of regulatory standards for businesses, managers, and employees that provide adult entertainment in the City of Kent, Amending § 5.32 to KCC.

WHEREAS, cities have the right to enact laws for the protection of the public health, safety and general welfare; and

WHEREAS, various Washington State municipalities have found it is necessary for the public health, safety, and welfare to regulate businesses, managers, and employees that provide adult entertainment; and

WHEREAS, the City Council has adopted ordinances relating to adult businesses and adult entertainment that regulate adult book stores and adult motion picture theatres, massage parlors and massageists, and adult entertainment in businesses licensed by the Washington Liquor Control Board in order to protect the public health, safety, and general welfare of the City as well as to protect and preserve the quality of the City's neighborhoods, commercial districts, and the quality of urban life; and

WHEREAS, the City Council has determined that adult entertainment, including nude and semi-nude dancing, in public establishments is frequently linked to patron, employee, and owner participation in criminal activity including controlled substance violations, liquor law violations, prostitution, and, generally, increased criminal activity; and

WHEREAS, the City takes notice of the experiences of other cities and counties in combating the specific adverse impacts of businesses providing adult entertainment including nude and semi-nude dancing; and
WHEREAS, the City has conducted a study of the impacts of adult entertainment places and adult uses in its city in a report entitled "City of Kent - Adult Use Zoning Study" issued by the Kent Planning Department in November, 1982, which is incorporated herein by this reference; and

WHEREAS, the City has closed two adult use businesses due to violations of business licenses and/or criminal activity as is set forth in the above-referenced study; and

WHEREAS, certain testimony has been presented to the City Council and its committees through verbal and written statements concerning the adverse secondary impacts of businesses providing adult entertainment; NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF KENT, WASHINGTON DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. A new ordinance regulating businesses, managers and employees that provide adult entertainment is adopted as follows:

5.32.010. FINDINGS OF FACT. Based on public testimony and other evidence and information before it, the Kent City Council makes the following Findings of Fact:

A. The activities defined and regulated hereinafter are detrimental to the public health, safety, and general welfare of the citizens of the City and, therefore, such activities must be regulated as provided herein.

B. 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, narcotics and liquor law violations, breaches of the peace and the presence within the industry of individuals with hidden ownership interests and outstanding arrest warrants.

C. In the absence of regulation, the activities described above occur regardless of whether the adult entertainment is presented in conjunction with the sale of alcoholic beverages.
D. It is necessary to license entertainers in the adult entertainment industry to prevent the exploitation of minors; to ensure that each such entertainer is an adult; to ensure that such entertainers have not assumed a false name, which would make regulation of the entertainer difficult or impossible; and to ensure that such entertainers are not involved in criminal activity.

E. 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 that there will at all necessary times be an individual responsible for the overall operation of the establishment, including the actions of patrons, entertainers and other employees.

F. The license fees required herein are nominal fees imposed as necessary regulatory measures designed to help defray the substantial expenses incurred by the City in regulating the adult entertainment industry.

G. Hidden ownership interests for the purposes 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, and general welfare of its citizenry, it is important that the City be fully apprised of the actual ownership of adult entertainment establishments.

5.32.020. DEFINITIONS. For the purpose of this chapter the words and phrases used herein, unless the context otherwise indicates, shall have the following meanings:

A. "Public place of amusement," "public amusement/entertainment," and "public entertainment" mean an amusement, diversion, entertainment, show, performance, exhibition, display or like activity, for the use or benefit of a member or members of the public, or advertised for the use or benefit of a member of the public, held, conducted, operated or maintained for a profit, either direct or indirect.

B. "Manager" means any person appointed by the operation 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 place offering adult entertainment.

C. "Entertainer" means any person who provides adult entertainment within a public place of amusement as defined in this section whether or not a fee is charged or accepted for such entertainment.

D. "Entertainment" means any exhibition or dance of any type, pantomime, modeling or any other performance.

E. "Adult entertainment" means any exhibition or dance of any type conducted in premises where such exhibition or dance involves a person that is unclothed or in such attire, costume or clothing 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.

F. "Employee" means any and all persons, including entertainers and independent contractors, who work in or at or render any services directly related to the operation of a public place of amusement, which offers, conducts or maintains adult entertainment.

G. "Operator" means any person operating, conducting or maintaining an adult entertainment business.

5.32.030. LICENSE FOR BUSINESS REQUIRED - FEE.
A. No public place of amusement, including but not limited to places which offer adult entertainment, shall be operated or maintained in the City of Kent unless the owner or lessee thereof has obtained a license from the City Clerk; Provided, however, that it is unlawful for any entertainer, employee or operator to knowingly work in or about, or to knowingly perform any service directly related to the operation of an unlicensed public place of amusement/entertainment.

B. The annual fee for such a license shall be $500.00.

C. This license expires annually on December 31 and must be renewed by January 1.

D. There will be no prorating of the fee.

E. The applicant must be 18 years of age or older.
5.32.040. LICENSE FOR MANAGERS AND ENTERTAINERS REQUIRED - FEE.

A. No person shall work as a manager or entertainer at a public place of amusement offering adult entertainment without having first obtained a manager's or an entertainer's license from the City Clerk pursuant to section 5.32.070 of this chapter.

B. The annual fee for such a license shall be $150.00.

C. This license expires annually on December 31 and must be renewed by January 1.

D. There will be no prorating of the fee.

E. The applicant must be 18 years of age or older.

5.32.050. DUE DATE FOR LICENSE FEES. All licenses required by 5.32.030 must be issued and the applicable fees are due and payable to the City Clerk at least fourteen (14) calendar days before the opening of the adult entertainment business.

5.32.060. RENEWAL OF LICENSE, REGISTRATION OR PERMIT - LATE PENALTY. A late penalty shall be charged on all applications for renewal of a license, received later than ten (10) calendar days after the expiration date of such license. The amount of such penalty is fixed as follows:

A. For a license, requiring a fee of fifty cents or more, but less than or equal to seventy-five dollars, twenty percent of the required fee;

B. For a license, requiring a fee of more than seventy-five dollars, ten percent of the required fee.

5.32.070. LICENSE APPLICATIONS.

A. Public Adult/Entertainment License. All applications for a public amusement/entertainment license for places which offer adult entertainment shall be submitted in the name of the person or entity proposing to conduct such public amusement/entertainment on the business premises and shall be signed by such person and notarized or certified as true under penalty of perjury. All applications shall be submitted on a form supplied by the City Clerk, which shall require the following information:

1. The name, home address, home telephone number, date and place of birth, driver's license number, if any, and
social security number of the applicant if the applicant is an individual.

2. The business name, address and telephone number of the establishment.

3. The names, addresses, telephone numbers, and social security numbers of any partners, including limited partners, corporate officers, shareholders who own ten percent or more of the business, or other persons who have a substantial interest or management responsibilities in connection with the business, specifying the interest or management responsibility of each. For the purpose of this subsection "substantial interest" shall mean ownership of ten percent or more of the business, or any other kind of contribution to the business of the same or greater size.

4. Terms of any loans, leases, secured transactions and repayments therefore relating to the business.

5. Addresses of the applicant for the five (5) years immediately prior to the date of application.

6. A description of the adult entertainment or similar business history of the applicant; whether such person or entity, in previously operating in this or another city, county or state, has had a business license revoked or suspended, the reason therefore, and the activity or occupation subsequent to such action, suspension or revocation.

7. Any and all criminal convictions or forfeitures other than parking offenses or minor traffic violations including dates of conviction, nature of the crime, name and location of court and disposition for each owner, partner or corporation.

8. A description of the business, occupation, or employment of the applicant for the three (3) years immediately preceding the date of application.

9. Authorization for the City, its agents and employees to seek information to confirm any statements set forth in the application.

10. Supplemental identification and/or information necessary to confirm matters set forth in the application.

B. Manager or Entertainer License. A separate license shall be obtained for each and every establishment at which the applicant will practice. All applications for a manager's or entertainer's license shall be signed by the applicant and
notarized or certified to be true under penalty of perjury. All applications shall be submitted on a form supplied by the City Clerk, which shall require the following information:

1. The applicant's name, home address, home telephone number, date and place of birth, fingerprints taken by the Kent Police Department employees, social security number, and any stage names or nicknames used in entertaining.

2. The name and address of each business at which the applicant intends to work.

3. 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, or
   (ii) a state issued identification card bearing the applicant's photograph and date of birth.

4. A complete statement of all convictions of the applicant for any misdemeanor or felony violations in this or any other city, county, or state except parking violations or minor traffic infractions.

5. A description of the applicant's principal activities or service to be rendered.

6. Resident addresses and telephone numbers for five (5) years immediately prior to the date of application specifying the period of residence at each address.

7. The name and address of employers or individuals or businesses for whom the applicant was an employee or independent contractor for the three (3) year period immediately prior to the date of application, including the period of employment.

8. Supplemental information and/or identification deemed necessary by the Clerk or his designee to confirm any statements set forth in the application.

9. Authorization for the City, its agents and employees to investigate and confirm any statements set forth in the application.

C. If any person or entity acquires, subsequent to the issuance of a public amusement/entertainment license for places offering adult entertainment, a substantial interest in the
licensed premises, immediate notice of such acquisition shall be provided in writing to the City Clerk, and in no event, no later than twenty-one (21) days following such acquisition. The information required to be provided pursuant to this subsection shall be that information required pursuant to subsection 5.32.070 of this chapter.

D. Copies of an application shall, within five (5) calendar days of receipt thereof, be referred by the City Clerk to the Planning, Building, Fire or other appropriate Departments. The departments shall, within thirty (30) business days, inspect the application, the premises proposed to be operated as an adult entertainment place and shall make written verification to the City Clerk that such premises complies with the codes of the City. No license may be issued without such verification. The application shall also be referred to the Police Department for a criminal records check and verification of the information provided by the applicant on the application for a license.

E. Upon completion of the investigation and review by the departments, a review of the recommendations and verifications, and a determination that all matters contained in the application are true and correct and that this chapter has been complied with, the City Clerk shall issue such license applied for in accordance with the provisions with this chapter; provided, however, that the applicable license fee, together with any delinquent fees that may then be due shall first be paid to the City.

5.32.080. MANAGER ON PREMISES. A licensed manager shall be on the premises of a public place of amusement at all times that adult entertainment is being provided.

5.32.090. LICENSE NONTRANSFERABLE. No license or permit shall be transferable.

5.32.100. LICENSE - POSTING AND DISPLAY.
A. Every adult entertainer shall post his or her permit in his or her work area so it is readily available for public inspection.
B. Every person, corporation, partnership, or association licensed under this Chapter shall display such license
in a prominent place. The name of the manager on duty shall be prominently posted during business hours.

5.32.120. LICENSE - NAME OF BUSINESS AND PLACE OF BUSINESS. No person granted a license pursuant to this Chapter shall operate the adult entertainment business under a name not specified in his/her license, nor shall he/she conduct business under any designation or location not specified in his/her license.

5.32.130. ADULT ENTERTAINMENT. Any license issued for an adult entertainment business may be revoked or suspended by the City Council after notice of not less than ten (10) calendar days, and a subsequent hearing for good cause, or in any case where any of the provisions of this Chapter are violated, or where any employee of the licensee is engaged in any conduct which violates any state or local laws or ordinances at licensee's place of business and of which the licensee has actual or constructive knowledge. Such permit may also be revoked or suspended by the City Council after notice and hearing, upon the recommendations of the County Health Department that such business is being managed, conducted, or maintained without regard to proper sanitation and hygiene.

5.32.140. PERMIT - REVOCATION OR SUSPENSION. An adult entertainment manager or entertainer permit issued by the City Clerk shall be revoked or suspended where it appears that the operator has made a false statement on an application for a permit, or has committed an act in violation of this Chapter.

5.32.150. LICENSE - SALE, TRANSFER, OR RELOCATION. Upon sale, transfer or relocation of an adult entertainment business, the license therefor shall be null and void; Provided, however, that upon the death or incapacity of the licensee or any colicensee, any heir or devisee of a deceased licensee, or any guardian of an heir or devisee of a deceased licensee may continue the adult entertainment for a reasonable period of time not to exceed sixty (60) calendar days to allow for an orderly renewal of the license, if such new licensee fulfills all requirements of this Chapter.
5.32.160. STANDARDS OF CONDUCT AND OPERATION.

A. The following standards of conduct must be adhered to by employees of any public place of amusement which offers, conducts, or maintains adult entertainment:

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 of any portion of the pubic region, anus, buttocks, vulva or genitals except as provided for in subdivision 6 of this subsection and section 5.32.160.C.3 of this chapter.

2. No employee or entertainer mingling with the patrons shall be unclothed or in such attire, costume or clothing as described in subdivision 1. of this subsection.

3. No employee or entertainer shall encourage or knowingly permit any person upon the premises to touch, caress or fondle the breasts, buttocks, anus or genitals of any other person.

4. 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 or genitals, anus, buttocks, or any portion of the pubic region.

5. No employee or entertainer shall perform acts of or acts which simulate:
   a. Sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any sexual acts which are prohibited by law;
   b. The touching, caressing or fondling of the breasts, buttocks or genitals; or
   c. The displaying of the pubic region, anus, vulva or genitals; except as provided for in subdivision 6 of this subsection and section 5.32.160.C.3 of this chapter.

6. 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, vulva or genitals, anus and/or buttocks exposed to view except upon a stage at least eighteen inches above the immediate floor level and removed at least six feet from the nearest patron.

7. No employee or entertainer shall use artificial devices or inanimate objects to depict any of the prohibited activities described in this subsection.
a. No employee or entertainer shall remain in or upon the public place of amusement who exposes to public view any portion of his or her genitals or anus except as expressly provided for in subdivision 6 of this subsection and section 5.32.160.C.3 of this chapter.

8. No entertainer of any place offering adult entertainment shall be visible from any public place during the hours of his or her employment, or apparent hours of his or her employment, on the premises.

9. No entertainer at a place offering adult entertainment shall demand or collect all or any portion of a fee from a patron for entertainment before its completion.

10. A sign shall be conspicuously displayed in the common area of the premises, and shall read as follows:

   THIS ADULT ENTERTAINMENT ESTABLISHMENT IS REGULATED BY THE CITY OF KENT; ENTERTAINERS ARE:

   a. Not permitted to engage in any type of sexual conduct;

   b. Not permitted to be unclothed or in such less than opaque and complete attire, costume or clothing so as to expose to view any portion of the breasts below the top of the areola, any portion of the pubic region, buttocks, genitals or vulva and/or anus except upon a stage at least eighteen inches from the immediate floor level and removed at least six feet from the nearest patron; and

   c. Not permitted to demand or collect all or any portion of a fee from a patron for entertainment before its completion.

B. At any public place of amusement which offers, conducts, or maintains adult entertainment, the following are required:

   1. Admission must be restricted to persons of the age of eighteen years or more; and

   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 public place of amusement so licensed.
3. Sufficient lighting shall be provided in and about the parts of the premises which are open to and used by the public so that all objects are plainly visible at all times.

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

D. For purposes of this chapter, an activity is "obscene" if:
   1. Taken as a whole by an average person applying contemporary community standards the activity appeals to a prurient interest in sex;
   2. The activity depicts patently offensive representations according to Kent community standards of
      a. ultimate sexual acts, normal or perverted, actual or simulated; or
      b. masturbation, fellatio, cunnilingus, bestiality, excretory functions, or lewd exhibition of the genitals or genital area; or violent or destructive sexual acts, including but not limited to human or animal mutilation, dismemberment, rape or torture; and
   3. The activity taken as a whole lacks serious literary, artistic, political, or scientific value.

E. For purposes of this chapter, an activity is "dramatic" if the activity is of, relating to, devoted to, or concerned specifically or professionally with current drama or the contemporary theater.

F. Section 5.32.160 of this chapter does not apply to taverns and premises maintaining liquor licenses. City of Kent Ordinance 2312 does so apply.

5.32.170. BUSINESS HOURS. No public entertainment shall be conducted between the hours of two-thirty a.m. and ten a.m.

5.32.180. PUBLIC NUISANCE. Any adult entertainment business operated, conducted or maintained contrary to the provisions of this Chapter or any law of the City or State of Washington shall be, and the same is, declared to be unlawful and
a public nuisance and the City Attorney may, in addition to or in lieu of prosecuting a criminal action hereunder, commence an action or actions, for the abatement, removal and enjoinder thereof, in the manner provided by law; and shall take such other steps and shall apply to such court or courts as may have jurisdiction to grant such reliefs as will abate or remove such adult entertainment business, and restrain and enjoin any person from operating, conducting or maintaining an adult entertainment business contrary to the provisions of this Chapter.

5.32.190. VIOLATION - PENALTY. Every person, except those persons who are specifically exempted by this Chapter, whether acting as an individual owner, operator, employee, or agent or independent contractor for the owner, employee or operator, or acting as a participant or worker in any way directly or indirectly who works in or operates an adult entertainment business, of any of the services defined in this Chapter without first obtaining a license or permit, and paying a fee to do so, from the City, or violates any provisions of this Chapter shall be guilty of a misdemeanor. Upon conviction such person shall be punished by a fine not to exceed five thousand dollars, or by imprisonment for a period not to exceed twelve months, or by both such fine and imprisonment.

5.32.200. ADDITIONAL ENFORCEMENT. Notwithstanding the existence or use of any other remedy, the City may seek legal or equitable relief to enjoin any acts or practices which constitute or will constitute a violation of any business license ordinance or other regulations herein adopted.

5.32.210. SEVERABILITY. If any section, sentence, clause or phrase of this chapter should be held invalid or unconstitutional, the validity or constitutionality thereof shall not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this chapter.

Section 2. Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and confirmed.
Section 3. Effective Date. This ordinance shall take effect and be in force five (5) days from and after its passage, approval and publication as provided by law.

DAN KELLEHER, MAYOR

ATTEST:

MARIE JENSEN, CITY CLERK

APPROVED AS TO FORM:

SANDRA DRISCOLL, CITY ATTORNEY

PASSED the 17th day of May, 1988.
APPROVED the 19th day of May, 1988.
PUBLISHED the 20th day of May, 1988.

I hereby certify that this is a true copy of Ordinance No. 2778, passed by the City Council of the City of Kent, Washington, and approved by the Mayor of the City of Kent as hereon indicated.

MARIE JENSEN, CITY CLERK

(SEAL)