Ordinance No. 3475

["Beginning July 1, 1998"]

(Amending or Repealing Ordinances)

Amends Secs. 15.02.006, 15.02.007, 15.02.008, 15.02.502, & 15.02.503 of Ord. 2687;
Amends Secs. 15.02.006, 15.02.007, 15.02.008, 15.02.009, 15.02.502 & 15.02.503 of Ord. 2785;
Amends Secs. 5.10.030, 5.10.120, 5.10.140 & 5.10.200 (C) of Ords. 3214 & 3221
ORDINANCE NO. 3475

AN ORDINANCE of the City Council of the City of Kent, Washington, amending the zoning code and business license code of the City of Kent relating to adult entertainment by amending the definition of adult retail establishments and by making other related changes.

WHEREAS, the City Council, has previously determined, as set forth through findings in Ordinance Nos. 3214 and 3221, that adult entertainment uses cause adverse secondary effects that are detrimental to the public health, safety, and general welfare of the citizens of Kent; and

WHEREAS, there are adult bookstores, adult novelty, and adult video store establishments (hereinafter “Adult Retail Establishments”) doing business within the City of Kent whose stock in trade is devoted in whole or in part to books, magazines, cards, pictures, periodicals, video tapes, disks, films, or other such media, instruments, devices, equipment, paraphernalia, toys and novelties, games, clothing, or other merchandise which are distinguished or characterized by an emphasis on matters depicting, describing, or relating to specified anatomical areas, specified sexual activities, and sexual conduct as those terms are defined in the Kent City Code Section 5.10.030; and

WHEREAS, there is a possibility that the City could, in the near future, receive applications for adult retail establishments that would significantly increase the amount of square feet of commercial space characterized by such uses located within the
City and, therefore, it is appropriate to review existing regulations relating to these uses; and

WHEREAS, a public hearing was held on Tuesday, November 17, 1998, before the Kent City Council, and after considering the matter, the City Council adopted Findings of Fact and continued the moratorium until May 2, 1999; and

WHEREAS, pursuant to RCW 35A.63.220, a public hearing was held on April 20, 1999, to consider renewing the moratorium for a six (6) month period, and following the hearing, the City Council extended the moratorium to October 29, 1999; and

WHEREAS, a number of communities throughout the nation have studied the impacts of adult entertainment establishments, including adult retail establishments, on their surrounding areas; and

WHEREAS, since implementing the moratorium, the City Council has had the opportunity to study and review the following reports and research:

1. A Report on Zoning and Other Methods Regulating Adult Entertainment in Amarillo; Amarillo, Texas (September, 1977);
2. A Study on the Need to Regulate the Location of Adult Entertainment Uses; Bellevue, Washington (September, 1987);
3. Adult Entertainment Business in Indianapolis, Indiana (1984);
4. Adult Entertainment Study; City of New York (November, 1994);
5. City of Kent Adult Use Zoning Study; Kent, Washington (November, 1982);
6. Final Report to the City of Garden Grove: The Relationship Between Crime and Adult Business Operations on Garden Grove Boulevard; Garden Grove, California;
7. Regulation of Adult Entertainment Establishments in New Hanover County; North Carolina (July, 1989);
8. Relation of Criminal Activity and Adult Businesses; City of Phoenix (May, 1979);
9. Report on the Secondary Effects of the Concentration of Adult Use Establishments in the Times Square Area; New York, NY (April, 1994);
10. Report of the Attorney General’s Working Group on the Regulation of Sexually Oriented Businesses, Minnesota (June, 1989);
11. Report on Adult Oriented Businesses in Austin, Austin, Texas (May, 1986);
12. Study & Recommendations for Adult Entertainment Businesses in the Town of Islip; Islip, New York (September, 1980);
13. Study on the Effects of the Concentration of Adult Entertainment Establishments in the City of Los Angeles; Los Angeles, California (June, 1977);
14. Zoning and Adult Amusement; Albuquerque, New Mexico (May, 1995);
15. 40 Acre Study on Adult Entertainment, St. Paul Department of Planning and Economic Development, Division of Planning (1987);
16. Adult Entertainment Material; City of Des Moines (June, 1984);
17. Adult Business Regulation Study; City of Olympia (1996);

WHEREAS, these studies have concluded that adult entertainment businesses, including adult retail establishments, create adverse secondary effects on the surrounding neighborhoods; and

WHEREAS, the studies noted above document evidence that adult retail establishments have a detrimental effect on both the existing businesses around them and the surrounding residential areas adjacent to them causing increased crime, the downgrading of quality of life and property values, and the spread of urban blight (see Indianapolis, New York and Garden Grove studies regarding property values); and

WHEREAS, the City Council finds that the location of adult retail establishments in close proximity to residential neighborhoods, churches, parks, schools, and libraries will have a negative impact upon the quality of life in the surrounding areas,
will result in devaluation of property values, and would very likely lead to increased levels of criminal activities, including sex related crimes in the vicinity of such establishments; and

WHEREAS, these adverse secondary effects of adult retail establishments on the surrounding area appear to lessen as the distance from the adult retail establishment increases; and

WHEREAS, the City Council finds that concerns about adverse secondary effects including sexual activity generated and occurring at or nearby the adult retail establishments are legitimate, substantial, and compelling concerns of the City; and

WHEREAS, as a result of research and analysis performed during the moratorium and the City Council findings that adult retail establishments, due to their nature, have adverse secondary effects upon the health, safety and welfare of the citizenry, the Council has determined that code amendments to the Kent City Code are necessary to address such impacts; and

WHEREAS, it is the intent of the City Council to protect the general welfare, through the enforcement of laws, to prevent the adverse secondary effects of adult retail establishments while preserving constitutionally protected forms of expression; and

WHEREAS, the City Council finds that establishments having a significant or substantial stock-in-trade in adult entertainment material have adverse secondary effects identified in the studies as being detrimental to the citizenry, and

WHEREAS, the City Council also finds that existing adult retail establishments in Kent having less than thirty (30) percent of its stock-in-trade in adult
entertainment material, and not currently zoned as adult entertainment businesses pursuant to Title 15 of the Kent zoning code, do not have negative secondary impacts in the community; and

WHEREAS, it is the purpose of this ordinance to regulate the harmful adverse secondary effects of adult retail establishments in order to protect citizens of the City from increased crime; to preserve the quality of life, property values and the aesthetic and general character of neighborhoods and businesses; to deter the spread of urban blight; and to protect the health, safety and general welfare of the citizens of the City; NOW THEREFORE,

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

SECTION 1. FINDINGS ADOPTED. The recitals set forth above, including the findings set forth in Ordinances No. 3214 and 3221, are hereby adopted and incorporated herein by reference.

SECTION 2. Section 5.10.030 of the Kent City Code is hereby amended as follows:

Sec. 5.10.030. Definitions. The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

A. Adult entertainment means any dance, amusement, show, display, merchandise, material, exhibition, pantomime, modeling or any other like performance of any type 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 where such is characterized by an emphasis on the performer's "nudity," depiction, description or simulation of "specified anatomical areas" as defined herein, or the exhibition of "specified sexual activities," also defined herein, or, in the case of live adult entertainment performances, which emphasizes and seeks to
arouse or excite the patron's sexual desires. For the purposes of this chapter, any patron of an adult entertainment business, as defined in this section, shall be deemed a member of the public.

B. *Adult entertainment business* means any establishment providing adult entertainment as defined herein, including, but not limited to, adult arcade, adult bookstore, adult novelty store, adult video store, adult motion picture theater, and exotic dance studio, more specifically defined as follows:

1. *Adult arcade* means a commercial establishment where, for any form of consideration, one (1) or more still or motion picture projectors, slide projectors, computer generated or enhanced pornography, panorama, peep show, or similar machines, or other image producing machines, for personal viewing, are used to show films, motion pictures, video cassettes, slides, or other photographic reproductions which provides materials for individual viewing by patrons on the premises of the business which are characterized by an emphasis on the depiction, or description or simulation of "specified anatomical areas" of "nudity" or "specified sexual activities."

2. *Adult motion picture theater* means a commercial establishment where films, motion pictures, video cassettes, slides, or similar photographic reproductions characterized by an emphasis on the depiction, description or simulation of "specified anatomical areas" or "specified sexual activities" are regularly shown for any form of consideration.

2. *Adult bookstore, adult novelty store or adult video store* means a commercial establishment which has as a significant or substantial portion of its stock in-trade or revenues, substantial meaning twenty (20) percent or more, for any form of consideration, books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, slides, or other photographic reproductions or visual representations which are characterized by the depiction or description of "nudity" or "specified sexual activities." It shall be a rebuttable presumption that twenty (20) percent of a business' stock in-trade or revenues is considered substantial.
3. **Adult retail establishment** means any bookstore, adult novelty store, adult video store, or other similar commercial establishment, business, service, or portion thereof, which for money or any other form of consideration, provides as a significant or substantial portion of its stock-in-trade the sale, exchange, rental, loan, trade, transfer, and/or provision for viewing or use off the premises of the business adult entertainment material as defined in this section. For purposes of this provision, it shall be a rebuttable presumption that thirty (30) percent or more of a business' stock-in-trade in adult retail material, based on either the dollar value (wholesale or retail) or the number of titles of such material, is significant or substantial.

In determining whether or not the presumption is rebutted, the clerk may consider the following factors, which are not conclusive:

a. Whether minors are prohibited from access to the premises of the establishment due to the adult entertainment nature of the inventory;

b. Whether the establishment is advertised, marketed, or held out to be an adult merchandising facility;

c. Whether adult entertainment material is an establishment's primary or one of its principal business purposes; or

d. Whether thirty (30) percent or more of an establishment's revenue is derived from adult entertainment material.

An establishment may have other principal business purposes that do not involve the offering for sale or rental of adult entertainment materials depicting or describing "nudity" or "specified sexual activities," and still be categorized as an adult retail establishment, bookstore, adult novelty store, or adult video store, such other business purposes will not serve to exempt such establishments from being categorized as an adult retail establishment bookstore, adult novelty store, or adult video store so long as one (1) of its principal business purposes is offering for sale or rental, for some form of consideration, the specified adult entertainment materials which depict or describe "nudity" or "specified sexual activities."

The clerk shall have full discretion to give appropriate weight to the factors set
forth above as well as other factors considered depending on the particular facts and circumstances of each application.

2. Adult motion picture theater means a commercial establishment where films, motion pictures, video cassettes, slides, or similar photographic reproductions characterized by the depiction or description of "nudity" or "specified sexual activities" are regularly shown for any form of consideration.

4.3. Exotic dance studio, also known as "topless bar" and "adult cabaret," means a nightclub, bar, restaurant, or similar commercial establishment, or any premise or facility to which any member of the public is invited or admitted and where an entertainer provides live adult entertainment performances to any member of the public, which performances are characterized by an emphasis on the depiction, description or simulation of "specified anatomical areas" or "specified sexual activities," or which emphasizes and seeks to arouse or excite the patron's sexual desires.

C. Adult entertainment material means any books, magazines, cards, pictures, periodicals or other printed matter, or photographs, films, motion pictures, video tapes, slides, or other photographic reproductions, or visual representations, CD Rom, DVDs, disks, electronic media, or other such media, or instruments, devices, equipment, paraphernalia, toys, novelties, games, clothing or other merchandise or material which are characterized by an emphasis on the depiction, description or simulation of "specified anatomical areas" or "specified sexual activities.

D. City means the City of Kent, Washington.

E. Clerk means such city employees or agents as the mayor shall designate to administer this chapter, or any designee thereof. Unless otherwise designated by the mayor, for purposes relating to decisions under this chapter affecting zoning pursuant to title 15 and the filing of appeals to the hearing examiner as provided for in this chapter, the term clerk shall mean planning director or his or her designee.

F. Conviction means an adjudication of conviction of guilt and occurs at such time as a plea of guilty has been accepted or a verdict of guilty has been filed, notwithstanding the pendency of any future proceedings including but not limited to sentencing or
disposition, post-trial or post-fact finding motions, and appeals. Conviction also means a bail forfeiture.

G. Employee means any and all persons, including managers, entertainers, and independent contractors who work in or at or render any services directly related to the operation of any adult entertainment business offering adult entertainment, whether or not such person is paid compensation by the operator of said business.

H. Entertainer means any person who provides live adult entertainment in an adult entertainment business whether or not an employee of the operator and whether or not a fee is charged or accepted for such entertainment.

I. Establish means and include any of the following:
   1. To open or commence any adult entertainment business as a new business; or
   2. To convert an existing business, whether or not an adult entertainment business, to any adult entertainment businesses defined herein.
   3. To add any of the adult entertainment businesses defined herein to any other existing adult entertainment business; or
   4. To relocate any such adult entertainment business.

J. License means a license to operate, manage or entertain at any premises that is classified as an adult entertainment business.

K. Licensed premises means any premises that requires a license and that is classified as an adult entertainment business.

L. Licensee means a person in whose name a license to operate, manage or entertain at an adult entertainment business has been issued, as well as the individual listed as an applicant on the application for a license.

M. Manager means any person appointed by an owner or operator of an adult entertainment business who manages, directs, administers or is in charge of the affairs and/or the conduct or operation of an adult entertainment business and includes assistant managers.

N. Nude or nudity means:
1. Less than completely and opaquely covered or in such attire, costume or clothing as to expose to view male genitals, female genitals, pubic region, buttocks, anus; or any portion of the female breast below a point immediately above the top of areolae; or

2. Wearing any device or covering exposed to view which simulates the appearance of male genitals, female genitals, pubic region, buttocks, anus, or any portion of the female breast below a point immediately above the top of areolae.

N. Operator means and includes the owner, permit holder, custodian, manager, operator, or person in charge of, conducting or maintaining an adult entertainment business.

O. Panorama or peep show means any device which, upon insertion of a coin or by any other means, exhibits or displays a picture or view by film, video, or by any other means.

P. Person means any individual, firm, joint venture, copartnership, association, social club, fraternal organization, corporation, estate, trust, business trust, receive or any other group or combination acting as a unit.

Q. Specified anatomical areas means:

1. Less than completely and opaquely covered human genitals, pubic region, buttocks, anus, or female breast below a point immediately above the top of areolae; or

2. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

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

1. The caressing, touching, fondling or other intentional or erotic touching of male genitals, female genitals, pubic region, buttocks, anus, or female breasts of oneself or of one person by another; or

2. Sex acts, normal or perverted, actual or simulated, including masturbation, intercourse, oral copulation, flagellation, sodomy, bestiality, or any sexual acts which are prohibited by law; or

3. Masturbation, actual or simulated; or
4.3 Human genitals in a state of sexual stimulation, arousal or tumescence or visual state of sexual stimulation, arousal or tumescence, even if completely and opaquely covered; or

5.4 Excretory functions as part of or in connection with any of the activities set forth in subsections 1 through 4.3 of this subsection.

SECTION 3. Section 5.10.120 of the Kent City Code is hereby amended as follows:

Sec. 5.10.120. Standards of conduct and operation applicable to exotic dance studios.
A. Standards for patrons, employees and entertainers. The following standards of conduct must be adhered to by patrons, entertainers and/or employees of exotic dance studios at all times adult entertainment is performed.

1. Admission to exotic dance studios under this section shall be restricted to persons of the age of eighteen (18) years or more.
2. All dances, performances, or exhibitions by an entertainer shall occur on the entertainment performance areas intended for that purpose described in section 5.10.110 A.
3. No dances, performances, or exhibitions by an entertainer shall occur closer than ten (10) feet to any patron.
4. No patron shall go into or upon the adult entertainment performance area described in section 5.10.110 A. above while adult entertainment is being performed.
5. No patron, employee or entertainer shall be nude on the premises and no entertainer shall perform adult entertainment as defined in this chapter or otherwise entertain while nude except on the entertainment performance area described in subsection 5.10.110 A.
6. No patron, employee or entertainer shall allow, encourage, or knowingly permit any person upon the premises to touch, caress, or fondle the breasts, buttocks, anus, pubic area, or genitals of any other person.
7. No patron, employee or entertainer shall allow, encourage, or permit physical contact between an employee or entertainer and any member of the public, which contact is intended to arouse or excite sexual desires.

8. No employee or entertainer shall perform acts in a lewd or obscene fashion or perform acts of or acts which simulate:
   a. Specified sexual activities as defined in this chapter; or
   b. The touching, caressing or fondling of the breasts, buttocks or genitals.

9. No entertainer employed or otherwise working at an exotic dance studio shall solicit any gratuity or other payment from a patron or customer.

10. No customer or patron of an adult entertainment business shall directly pay or give any gratuity or other payment to any entertainer.

11. It is unlawful for any entertainer, manager, employee, or wait person to perform more than one (1) such function at an exotic dance studios on the same business day.

12. It is unlawful for any entertainer to use any stage name or nickname not listed in the application for entertainers license.

13. No exotic dance studio licensee shall employ as an entertainer a person under the age of eighteen (18) years or a person not licensed pursuant to this chapter.

14. No exotic dance studio licensee shall service, sell, distribute, or suffer the consumption or possession of any intoxicating liquor or controlled substance upon the premises of the licensee.

B. The responsibilities of the manager of an exotic dance studio shall include but are not limited to:

1. A licensed manager shall be on duty at an exotic dance studio 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. Managers shall be required to verify and ensure that entertainers possess a current and valid entertainer license available for immediate inspection on the premises.
2. The licensed manager on duty shall not be an entertainer.

3. The 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 exotic dance studio. Where there is more than one (1) performance area, or the performance area is of such size or configuration that one (1) 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 exotic dance studio.

4. The manager shall be responsible for and shall assure that the actions of members of the public, the adult entertainers and all other employees shall comply with the dress code and conduct set forth in section 5.10.120 and all other requirements of this chapter.

C. Violation/penalty. Any violation of the provisions of this section by a patron, owner, operator, manager, or any employee is a misdemeanor as set forth in this chapter.

SECTION 4. Section 5.10.140 of the Kent City Code is hereby amended as follows:

Sec. 5.10.140. Regulations applicable to book-stores, novelty stores, video stores and other businesses whether or not qualifying as adult entertainment businesses establishment.

A. Book stores, novelty stores, video stores, and other businesses that sell or otherwise distribute books, magazines, films, motion pictures, video cassettes, slides, or other visual representations which are characterized by an emphasis on the depiction, or description or simulation of nudity “specified anatomical areas” or “specified sexual activities,” whether or not such businesses qualify as an adult entertainment establishment pursuant to subsection 5.10.030(B)(3) KCC under this chapter and whether or not less than twenty (20) percent of their stock-in-trade or revenues comes from the rental or sale
of such items shall be subject to the following regulations:

1. All such items as are described above shall be physically segregated and closed off from other portions of the store so that these items are not visible and/or accessible from other portions of the store where non-adult entertainment material, if any, is displayed, sold or rented.

2. No advertising for such items, shall be posted or otherwise visible, except where such items are authorized for display.

3. Signs readable at a distance of twenty (20) feet shall be posted at the entrance to the business or the area where such items are displayed stating that persons under the age of eighteen (18) are not allowed access to the area where such items are displayed.

4. The manager or attendant shall take responsible steps to monitor the area where such items are displayed to insure that persons under eighteen (18) years of age do not access the age-restricted area.

5. Employees of such businesses shall check identification of persons appearing to be eighteen (18) or under to insure that such items are not rented or sold to persons under the age of eighteen (18).

B. Rental or sale of obscene material (as defined by state law) or material harmful to minors (as defined by state law) to persons under eighteen (18) years of age is prohibited.

C. Violation/penalty. Any violation of the provisions of this subsection by an owner, operator, manager, or employee of an adult entertainment business is a misdemeanor as set forth in this chapter.

SECTION 5. Section 5.10.200(C) of the Kent City Code is hereby amended as follows:

C. Notice. The clerk shall provide at least ten (10) days prior written notice to the licensee of the decision to suspend or revoke the license. Such notice shall inform the licensee of the right to appeal the decision to the hearing examiner and shall state the
effective date of such revocation or suspension and the grounds for revocation or suspension. Such appeal shall be filed with the clerk within ten (10) days of said notice and shall be processed pursuant to the hearing procedures set forth in chapter 2.32 of the Kent City Code. The hearing examiner shall set a date for hearing such appeal, to take place within forty-five (45) days of the date of receipt of the notice of appeal unless such time is extended by mutual consent. At such hearing the appellant and other interested persons may appear and be heard, subject to rules and regulations of the hearing examiner. The decision of the clerk shall be stayed during the pendency of any appeal to the hearing examiner and during any judicial appeal.

SECTION 6. Section 15.02.006 of the Kent City Code is hereby amended as follows:

Sec. 15.02.006. Adult bookstore. Adult bookstore means a commercial establishment which has a minimum of twenty (20) percent of its stock in trade in books, magazines or other periodicals distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas. Such an establishment is customarily not open to the public generally but only to one (1) or more classes of the public, excluding minors by virtue of age. It shall be a rebuttable presumption that twenty (20) percent of a business's stock in trade is considered substantial.

Sec. 15.02.006. Adult entertainment. Adult entertainment means any dance, amusement, show, display, merchandise, material, exhibition, pantomime, modeling or any other like performance of any type, 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 where such is characterized by an emphasis on the depiction, description or simulation of "specified anatomical areas," as defined in this chapter, or the exhibition of "specified sexual activities," also as defined in this chapter, or, in the case of live adult entertainment performances, which emphasizes and seeks to arouse or excite the patron's sexual desires.

Any patron of an adult entertainment business, as defined in section 15.02.007
KCC, shall be deemed a member of the public.

SECTION 7. Section 15.02.007 of the Kent City Code is hereby amended as follows:

Sec. 15.02.007. Adult motion-picture theatre. An adult motion-picture theatre is an enclosed building used for presenting motion picture films, videocassettes, cable television or any other such visual media, distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas for observation by patrons therein. This term includes outdoor drive-in theatres or structures which present similar films, movies or other visual media depicting, describing or relating to specified sexual activities or specified anatomical areas for observation by patrons.

Sec. 15.02.007 Adult entertainment business. Adult entertainment business means any establishment providing adult entertainment as defined in section 15.02.006 KCC, including, but not limited to, adult arcade, adult bookstore, adult novelty store, adult video store, adult motion picture theater, and exotic dance studio, more specifically defined as follows:

A. Adult arcade means a commercial establishment where, for any form of consideration, one (1) or more still or motion picture projectors, slide projectors, computer generated or enhanced pornography, panorama, peep show, or similar machines, or other image producing machines, for personal viewing, are used to show films, motion pictures, video cassettes, slides, or other photographic reproductions which provides materials for individual viewing by patrons on the premises of the business which are characterized by an emphasis on the depiction, description or simulation of "specified anatomical areas" or "specified sexual activities."

B. Adult motion picture theater means a commercial establishment where films, motion pictures, video cassettes, slides, or similar photographic reproductions characterized by an emphasis on the depiction, description, or simulation of "specified anatomical areas" or "specified sexual activities" are regularly shown for any form of
consideration.

C. *Adult retail establishment* means any bookstore, adult novelty store, adult video store, or other similar commercial establishment, business, service, or portion thereof, which for money or any other form of consideration, provides as a significant or substantial portion of its stock-in-trade the sale, exchange, rental, loan, trade, transfer, and/or provision for viewing or use off the premises of adult entertainment material as defined in this chapter. For purposes of this provision, it shall be a rebuttable presumption that thirty (30) percent or more of a business' stock-in-trade in adult retail material, based on either the dollar value (wholesale or retail) or the number of titles of such material, is significant or substantial.

In determining whether or not the presumption is rebutted, the clerk may consider the following factors, which are not conclusive:

1. Whether minors are prohibited from access to the premises of the establishment due to the adult entertainment nature of the inventory;
2. Whether the establishment is advertised, marketed, or held out to be an adult merchandising facility;
3. Whether adult entertainment material is an establishment's primary or one of its principal business purposes; or
4. Whether thirty (30) percent or more of an establishment's revenue is derived from adult entertainment material.

An establishment may have other principal business purposes that do not involve the offering for sale or rental of adult entertainment materials and still be categorized as an adult retail establishment. Such other business purposes will not serve to exempt such establishments from being categorized as an adult retail establishment so long as one (1) of its principal business purposes is offering for sale or rental, for some form of consideration, the specified adult entertainment materials."

The clerk shall have full discretion to give appropriate weight to the factors set forth above as well as other factors considered depending on the particular facts and circumstances of each application.
Exotic dance studio, also known as "topless bar" and "adult cabaret," means a nightclub, bar, restaurant, or similar commercial establishment, or any premise or facility to which any member of the public is invited or admitted and where an entertainer provides live performances to any member of the public, which performances are characterized by an emphasis on the depiction, description, or simulation of "specified anatomical areas" or "specified sexual activities," or which emphasizes and seeks to arouse or excite the patron's sexual desires.

SECTION 8. Section 15.02.008 of the Kent City Code is hereby amended as follows:

Sec. 15.02.008. Adult uses. Adult uses means and includes shall include adult motion picture theatres, adult drive-in theatres, adult bookstores and any adult entertainment business as defined by section 15.02.007 KCC and regulated pursuant to Chapter 5.10 KCC.

SECTION 9. Section 15.02.009 of the Kent City Code is hereby amended as follows:

Sec. 15.02.009. Adult entertainment material establishment. Adult entertainment material. An adult entertainment establishment means any books, magazines, cards, pictures, periodicals or other printed matter, or photographs, films, motion pictures, video tapes, slides, or other photographic reproductions, or visual representations, CD Roms, DVDs, disks, electronic media, or other such media, or instruments, devices, equipment, paraphernalia, toys, novelties, games, clothing or other merchandise or material which are characterized by an emphasis on the depiction, description or simulation of "specified anatomical areas" or "specified sexual activities," any business or operation regulated by chapter 5.11, including any business or operation that involves an exhibition or dance by persons that is distinguished or characterized by an emphasis on conduct that depicts, displays or relates to specified sexual activities or specified anatomical areas as defined in sections 15.02.502 and
15.02.503. Such an establishment customarily excludes persons by virtue of age from all or a portion of the premises.

**SECTION 10.** Section 15.02.502 of the Kent City Code is hereby amended as follows:

Sec. 15.02.502. Specified anatomical areas. Specified anatomical areas means:
A. Less than completely and opaquely covered human genitals, pubic region, buttocks, anus, or and female breast below a point immediately above the top of the areolae; and or
B. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

**SECTION 11.** Section 15.02.503 of the Kent City Code is hereby amended as follows:

Sec. 15.02.503. Specified sexual activities. Specified sexual activities means:
A. Human genitals in a state of sexual stimulation or arousal.
B. Acts of human masturbation, sexual intercourse or sodomy.
C. Fondling or other erotic touching of human genitals, pubic region, buttock or female breast.
A. The caressing, touching, fondling or other intentional or erotic touching of male genitals, female genitals, pubic region, buttocks, anus, or female breasts of oneself or of one person by another; or
B. Sex acts, normal or perverted, actual or simulated, including masturbation, intercourse, oral copulation, flagellation, sodomy, bestiality, or any sexual acts which are prohibited by law; or
C. Human genitals in a state of sexual stimulation, arousal or tumescence or visual state of sexual stimulation, arousal or tumescence, even if completely and opaquely covered; or
D. Excretory functions as part of or in connection with any of the activities set forth
SECTION 12. Termination of Moratorium. The moratorium on the acceptance of applications for and the issuance of any license, permit, or approval for adult retail establishments set forth in Resolution Nos. 1520, 1521 and 1534, and any further renewals thereof, shall terminate on the effective date of this ordinance.

SECTION 13. Non-conforming Use. Any adult retail establishment in existence as of November 3, 1998, the effective date of the moratorium set forth in Resolutions Nos. 1520, 1521 and 1534, and any further renewals thereof, shall be deemed a legal non-conforming use to the extent the zoning code amendments set forth in this ordinance would prohibit said establishment from being located in its existing site due to the zoning of the establishment.

SECTION 14. Severability. If any one or more sections, subsections, or sentences of this ordinance are held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this ordinance and the same shall remain in full force and effect.

SECTION 15. Effective Date. This ordinance shall take effect and be in force thirty (30) days from and after the date of passage and publication as provided by law.

JIM WHITE, MAYOR PRO TEM

ATTEST:

BRENDA JACOBER, CITY CLERK
APPROVED AS TO FORM:

[Signature]
ROGER A. LUBOVICH, CITY ATTORNEY

PASSED: ___ day of October, 1999.
APPROVED: ___ day of October, 1999.
PUBLISHED: ___ day of October, 1999.

I hereby certify that this is a true copy of Ordinance No. 3475, passed by the City Council of the City of Kent, Washington, and approved by the Mayor of the City of Kent as hereon indicated.

[Signature]
BRENTA JACOBER, CITY CLERK