

## BOARD OF YAKIMA COUNTY COMMISSIONERS

### ORDINANCE 8A-2010

IN THE MATTER OF AMENDING ORDINANCE 8-1985 AND YAKIMA COUNTY CODE CHAPTER 2.23, LAST AMENDED BY ORDINANCE 11-2009, PERTAINING TO THE HEARING EXAMINER, AND IN THE MATTER OF CREATING A YAKIMA COUNTY CODE CHAPTER 5.06, PERTAINING TO LICENSING AND OPERATION OF ADULT ENTERTAINMENT FACILITIES, AND IN THE MATTER OF AMENDING ORDINANCE 1-1990 AND YAKIMA COUNTY CODE CHAPTER 20.00, LAST AMENDED BY ORDINANCE 1-2010, PERTAINING TO THE SCHEDULE OF APPLICATION FEES.

WHEREAS, there is convincing, documented evidence, such as studies included in the record of this ordinance and in the record of Ordinance 8-2010, that adult entertainment establishments, because of their very nature, have a deleterious effect on both the existing businesses around them and the surrounding residential areas adjacent to them, exhibiting correlated increases in crime and the down grading of property values; and

WHEREAS, the Board of Yakima County Commissioners desires to minimize and control these adverse effects and thereby protect the health, safety and welfare of the citizenry, protect the citizens from increased crime, preserve the quality of life, and protect the property values and character of the surrounding neighborhoods; and

WHEREAS, the Board takes notice of the experience of other counties and cities in attempting to combat the specific adverse impacts of businesses that on a regular basis provide adult entertainment; and

WHEREAS, it is not the intent of this ordinance to suppress any speech activities protected by the First Amendment of the U.S. Constitution or Article I, Section 5 of the Washington State Constitution, but to enact a content-neutral ordinance which addresses the secondary effects of adult entertainment facilities; and

WHEREAS, adult entertainment facilities may present the opportunity to engage in activity which the Constitution does not protect and which is detrimental to the public health, safety and welfare; and

WHEREAS, the operation of such establishments should be regulated and monitored; and

WHEREAS, the County staff has drafted licensing and operational ordinances which will recognize the constitutional right of all legitimate businesses to function while reasonably restricting time and manner of such businesses; and

*Ordinance 8A-2010 Licensing and Application Fee*

*Regulations for Adult Entertainment Facilities - Page 1 of 31*

WHEREAS, the Board has determined that zoning criteria alone do not adequately protect the health, safety and general welfare of the people of Yakima County; and

WHEREAS, the Board wishes to enact legislation and amendments to existing ordinances which will establish procedures for governmental action regarding issuance of regulatory licenses to operate or engage in retail sales and service activities related to adult entertainment and merchandise; and

WHEREAS, the Board held a duly advertised public hearing for the purpose of considering the amendments to Yakima County Code Titles 2, 5 and 20 on May 24, 2011, pursuant to Resolution No. 198-2011, dated May 3, 2011, wherein testimony was heard from all persons present who wished to be heard; and

WHEREAS, the Board deliberated on the proposed legislation and text amendments on June 21, 2011, after considering all written comments received, the testimony at its public hearing, and staff recommendations; and

WHEREAS, after considering the testimony and materials presented, the Board believes it is in the best public interest to amend Yakima County Code Titles 2, 5 and 20 in a manner consistent with staff's recommendation; now, therefore,

**BE IT HEREBY ORDAINED BY THE BOARD OF YAKIMA COUNTY COMMISSIONERS:**

**Section 1. Hearing Examiner duties.** Yakima County Code Section 2.23.080, adopted by Ordinance No. 8-1985, and amended by Ordinance No. 8-1996, is amended to read:

**2.23.080 Duties and Powers.**

The examiner shall hear, make a record of, and decide matters provided in this chapter or by other ordinances including but not limited to the following land use and adult entertainment facility licensing matters:

(1) Matters prescribed by Title 15 and Title 15A of this code. Decisions of the examiner on such matters shall have the legal effect as set forth in the provisions of Title 15 and Title 15A of this code.

(2) Review of preliminary plats and modifications thereto within the county using the procedures and provisions for review by the planning commission as set forth in RCW Chapter 58.17. The decisions of the hearing examiner on such matters shall constitute recommendations to the board of county commissioners.

(3) The matters prescribed by Yakima County Subdivision Ordinance – Title 14 Yakima County Code.

(4) Plat vacations or amendments pursuant to RCW Chapter 58.17. Decisions of the examiner on such matter shall constitute final decisions unless appealed to the board under the provisions of this chapter.

(5) The examiner shall conduct hearings pursuant to RCW Chapter 43.21C State Environmental Policy Act (SEPA) in Title 16 of this code.

(6) The matters prescribed by the Yakima County Critical Areas Ordinance – Titles 16A and 16C Yakima County Code, except Chapters 16A.05, 16C.05.

(7) The matters prescribed by the Project Permit Administration Ordinance – Title 16B Yakima County Code.

(8) The matters prescribed by the Yakima County Regional Shoreline Master Program – Title 16D Yakima County Code, except Chapter 16D.05.

(9) Adult entertainment licensing appeals as set forth in the provisions of Chapter 5.06 of this code.

The provisions of this section designating and assigning the hearing examiner the duties and functions listed in this chapter shall supersede any and all conflicting provisions of this code.

**Section 2. Appeals of the Hearing Examiner's decision.** Yakima County Code Section 2.23.140, adopted by Ordinance No. 8-1985, is amended to read:

**2.23.140 Appeal from Examiner's Decision.**

Except as to those decisions which constitute recommendations to the board as provided in Sections 2.23.080 and 2.23.100 of this chapter, and except for decisions on adult entertainment licensing appeals as set forth in the provisions of Chapter 5.06 of this code, and except for appeals processed under Chapter 15A.16 of this code, a final decision by the examiner may be appealed to the board by any aggrieved person, or by any officer, department, board or bureau of the county affected by the examiner's decision, in the following manner:

(1) The appealing party must file a complete written notice of appeal with the department upon forms prescribed by the department and accompanied by the appeal fee within fourteen days from the date of the examiner's final decision.

(2) Unless the statute or ordinance governing the application specifically states a different fee for an appeal to the board, the appeal fee shall be as established in YCC Title 20, provided, that such appeal fee shall not be charged to other than the first appellant.

(3) The notice of appeal shall specify the claimed error(s) or issue(s) which ~~the board is asked to consider on appeal are being appealed~~ and shall specifically state all the grounds for such appeal. Issues or grounds of appeal which are not so identified ~~need~~ shall not be considered by the board.

(4) The department shall notify the parties of record that an appeal has been filed and that copies of the notice of appeal and any written argument or memorandum of authorities accompanying the notice of appeal may be obtained from the department. The notice to parties shall also state that parties of record wishing to respond to the appeal may submit written argument or

memorandum to the board within fourteen days from the date that the notice to the parties is mailed and shall further specify that such written argument or memorandum shall not include the presentation of new evidence and shall be based only upon the facts presented to the examiner. A copy of the notice shall be sent to the appellant.

(5) The appellant or any party of record may submit a written argument or memorandum of authority within fourteen days of the date of mailing of the notice of appeal to parties of record. Such written argument or memorandum of authorities shall be filed with the department. No written argument or authorities may be thereafter submitted, ~~except as follows: The appellant or parties of record may request, in writing, and the department may, in its discretion and for cause, grant, without prior notice to other parties of record a fifteen-day extension of time within which written argument or memoranda must be submitted, provided that the request for extension is made no later than the last date the memoranda would otherwise be due. The board may grant further extensions on a finding by the board of the existence of extenuating circumstances which warrant such extensions. Notice of an extension shall be given to all parties of record.~~ Memoranda, written argument or comments shall not include the presentation of any new evidence and shall be based only on the facts presented to the examiner.

(6) When a timely appeal has been filed and the deadline for receipt of written memoranda has passed, the department shall, within five days, deliver to the board a copy of the examiner's decision, the evidence presented to the examiner, an audio recording of the hearing before the examiner and any written argument or memorandum of authority which have been received.

**Section 3. Adult entertainment facility licensing chapter.** The following chapter is added to Yakima County Code Title 5, Business Licenses and Regulations:

**Chapter 5.06**  
**LICENSING AND OPERATION OF ADULT ENTERTAINMENT FACILITIES**

Sections:

**Article I. Generally**

- 5.06.010 Findings of fact.
- 5.06.015 Purpose.
- 5.06.020 Scope.
- 5.06.022 Liquor regulations.
- 5.06.025 Severability.
- 5.06.030 Definitions.
- 5.06.035 Prima facie evidence of adult sales practice.
- 5.06.040 Penalties.
- 5.06.050 Nuisance.
- 5.06.060 Activities not prohibited.

**Article II. Licensing Requirements**

- 5.06.070 License required.
- 5.06.080 Application for adult entertainment facility license.
- 5.06.090 Application for manager's or entertainer's license.
- 5.06.100 Initial investigation.
- 5.06.110 Issuance and denial of licenses.
- 5.06.120 Renewal of licenses.
- 5.06.130 Nontransferability of licenses.
- 5.06.140 Suspension and revocation of licenses.
- 5.06.150 Appeal of denial, suspension or revocation of license.
- 5.06.160 Inspections and public health and safety suspensions.
- 5.06.170 Recordkeeping requirements and monthly reports.
- 5.06.180 License requirement for existing adult entertainment facilities.

**Article III. Operational Requirements**

- 5.06.190 Regulations applicable to all adult entertainment facilities.
- 5.06.200 Regulations specifically applicable to adult cabarets.
- 5.06.210 Regulations specifically applicable to adult motion picture theaters.
- 5.06.220 Regulations specifically applicable to commercial establishments that include an adult sales practice.

## **Article I. Generally5.06.010 Findings of fact.**

The Board of Yakima County Commissioners makes the following findings having taken legislative notice of the evidence of conduct occurring in and around adult entertainment facilities located in other jurisdictions, which the Board hereby deems to be relevant to Yakima County, as reported in judicial opinions including but not limited to *O'Day v. King County*, 109 Wn.2d 796 (1988), *Kev, Inc. v. Kitsap County*, 793 F.2d 1053 (9th Cir. 1986), *Ino Ino, Inc. v. City of Bellevue*, 132 Wn.2d 103 (1997), *DCR, Inc. v. Pierce County*, 92 Wn.App. 660 (1998) and *Colacurcio v. City of Kent*, 163 F.3d 545 (9th Cir. 1998) and as reported in the studies and findings of other city and county legislative bodies that have also adopted ordinances regulating adult entertainment facilities, including but not limited to the counties of King, Kitsap, Pierce, Snohomish and Spokane and the cities of Bellevue, Bothell, Everett, Federal Way, Kent, Lake Forest Park, Redmond, Renton, Seattle, Shoreline and Tukwila.

(1) The operation of adult entertainment facilities has historically and regularly been accompanied by secondary effects that are detrimental to the public health, safety and general welfare of the citizens of Yakima County. Such secondary effects include significant criminal activity and activities injurious to the public health, safety and general welfare of the community, detrimental effects on nearby businesses and residential areas and a decline in property values in the area of the adult entertainment facilities. Accordingly, there is a compelling need and interest to regulate adult entertainment facilities as provided in this chapter to protect and promote the public health, safety and general welfare of the citizens of Yakima County;

(2) These activities occur regardless of whether adult entertainment is presented in conjunction with the sale of alcoholic beverages;

(3) The resources available for responding to problems associated with adult entertainment facilities are limited and are most efficiently and effectively utilized through a licensing and regulatory program;

(4) The license fees required in this ordinance are necessary as reasonable fees imposed to defray the costs of processing the license applications and the substantial expenses incurred by Yakima County in regulating the adult entertainment industry;

(5) To detect and discourage the involvement of organized crime in the adult entertainment industry, to effectively deploy its limited law enforcement resources and to effectively protect the public health, safety and general welfare of its citizenry, the county must be fully apprised of the actual and controlling interests of adult entertainment facilities and the identities and criminal backgrounds of persons responsible for the management and control of adult entertainment facilities. The county must also be fully apprised of the identity, age, and criminal background of managers in adult entertainment facilities for these reasons and to prevent the exploitation of minors and to assure the correct identification of persons working in adult entertainment facilities;

(6) It is necessary to have a licensed manager on the premises of an adult entertainment facility during all hours of operation so there will be a person responsible for the overall operation of the business, including the actions of

customers, entertainers and other employees. To monitor the actions of these individuals, a manager must be able to observe these individuals at all times;

(7) To prevent the exploitation of minors, to assure the correct identification of persons working in adult entertainment facilities, to effectively deploy its limited law enforcement resources and to effectively protect the public health, safety and general welfare of its citizenry, the county must be fully apprised of the identity, age and criminal background of entertainers in adult clubs;

(8) Entertainers in adult clubs perform offstage erotic performances, variously referred to as "table", "couch" or "lap" dances, which typically involve exposure of nudity or sexual conduct between entertainers and customers, or both, and may also include acts of prostitution, transactions involving controlled substances and other crimes. Proximity between entertainers and customers in adult clubs facilitates sexual conduct, prostitution, transactions involving controlled substances and other crimes. To effectively deter offstage erotic performances which typically involve exposure of nudity or sexual conduct between entertainers and customers, acts of prostitution, transactions involving controlled substances, and other crimes, and to assist law enforcement in detecting such conduct, it is necessary that all erotic performances in an adult club occur on a stage which is at least ten feet from the nearest customer. Such a requirement is in effect in the city of Kent, Kitsap county and Pierce county and has been upheld as a constitutional regulation that furthers the governmental interest in preventing sexual conduct and other criminal conduct while still allowing an entertainer to convey an erotic expression (see *Colacurcio v. City of Kent*, 163 F.3d 545 (9th Cir. 1998), *Kev, Inc. v. Kitsap County*, 793 F.2d 1053 (9th Cir. 1986) and *DCR, Inc. v. Pierce County*, 92 Wn.App. 660 (1998), respectively). To prevent sexual conduct from occurring between entertainers and customers, customers must be prohibited from any stage where adult entertainment occurs and be prohibited from passing tips, gratuities or other payments directly to entertainers performing on stage;

(9) Adult entertainment facilities have historically attempted to prevent law enforcement and licensing officials from detecting sexual conduct, prostitution, sale and distribution of controlled substances and other violations of law occurring on the premises by maintaining a low level of lighting and other techniques. It is necessary, to effectively enforce this ordinance and to protect the public health, safety and general welfare of the county's citizenry, that adult entertainment facilities be required to maintain a minimum level of lighting and that unannounced inspections be permitted by county licensing and law enforcement personnel;

(10) To assure that minors are not subjected to adult entertainment, it is necessary to prohibit adult entertainment facilities from allowing adult entertainment performances, or pictorial representations of adult entertainment performances displaying nudity or sexual conduct, from being visible from outside the business; and

(11) To discourage customers of bars and other alcohol-serving businesses from moving to adult entertainment facilities at two a.m. for "after hours" activities, and the increased likelihood of breaches of the peace and other

criminal conduct that arise from those customers and to reduce the adverse secondary effects of adult entertainment facilities on minors and the community, it is necessary to restrict the closing time of adult entertainment facilities.

**5.06.015 Purpose.**

It is the intended purpose of this chapter to recognize the importance and benefits of freedom of expression to a democratic society. Experience has shown, however, that adult entertainment facilities, as defined herein, are detrimental to the public health, safety, and welfare. Therefore, the licensing and operation of adult entertainment facilities should be regulated and monitored through the system of licensing and operating regulations contained in this chapter.

**5.06.020 Scope.**

This chapter governs the licensing and operation of all adult entertainment facilities within the unincorporated areas under County licensing regulatory authority. The location and siting of adult entertainment facilities is governed by the zoning regulations contained in Chapters 15.18 and 15A.09 of the Yakima County Code. All adult entertainment facilities shall satisfy the requirements of both this chapter and Chapter 15.18 or 15A.09, as applicable, of the Yakima County Code.

**5.06.022 Liquor regulations.**

Title 66 RCW, Alcoholic Beverage Control, and the rules of the Washington State Liquor Control Board govern to the extent they conflict with this chapter. The provisions of this chapter that refer to the minimum age of eighteen require a minimum age of twenty-one as applied to an adult entertainment facility that is licensed by the Washington State Liquor Control Board.

**5.06.025 Severability.**

If any portion of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected.

**5.06.030 Definitions.**

For the purposes of this chapter, certain words and phrases used in this chapter are defined as follows:

(1) "Administrative Official" means the duly appointed Yakima County Planning Director and all designees of the Administrative Official. The Administrative Official shall assist the Yakima County Building Official in administration and enforcement of this chapter and shall administer the adult entertainment facility zoning requirements contained in Chapter 15.18 or 15A.09, as applicable, of the Yakima County Code.

(2) "Adult arcade" means a commercial establishment containing individual viewing areas or booths where, for any form of consideration, including a membership fee, one or more still or motion picture projectors, slide projectors, or other similar image producing machines are used to show films, motion pictures, video cassettes, slides, or other visual representations that are distinguished or



characterized by a predominant emphasis on matters depicting, describing, or simulating any specified sexual activities or any specified anatomical areas.

(3) "Adult cabaret" means a nightclub, bar, restaurant, tavern or similar commercial establishment, whether or not alcoholic beverages are served, that regularly features adult entertainment.

(4) "Adult entertainment" means:

(a) Any exhibition, performance, or dance conducted in an adult entertainment facility where such exhibition, performance, or dance is distinguished or characterized by a predominant emphasis on matters depicting, describing, or simulating any specified sexual activities or any specified anatomical areas; or

(b) Any exhibition, performance, or dance intended to sexually stimulate any member of the public and conducted in an adult entertainment facility where such exhibition, performance, or dance is performed for, arranged with, or engaged in with fewer than all patrons in the adult entertainment facility at that time, with separate consideration paid, either directly or indirectly, for such exhibition, performance, or dance. For purposes of example and not limitation, such exhibitions, performances, or dances are commonly referred to as table dancing, couch dancing, taxi dancing, lap dancing, private dancing, or straddle dancing.

(5) "Adult entertainment facility license" means a license issued by the licensing official under this chapter to the owner or operator of an adult entertainment facility.

(6) "Adult entertainment facility" means a commercial establishment defined herein as an adult cabaret, adult motion picture theater, adult retail store, or a commercial establishment that includes an adult sales practice. Adult arcades as defined herein are expressly prohibited under this title.

(7) "Adult motion picture theater" means an enclosed commercial establishment where, for any form of consideration, motion pictures, films, video cassettes, slides, or other similar visual representations are regularly shown that are distinguished or characterized by a predominant emphasis on matters depicting, describing, or simulating any specified sexual activities or any specified anatomical areas.

(8) "Adult retail store" means a commercial establishment such as a bookstore, video store, or novelty shop which, as its principal business purpose, offers for sale or rent, for any form of consideration, any one or more of the following:

(a) Books, magazines, periodicals, or other printed materials or photographs, films, motion pictures, video cassettes, slides, or other visual representations that are distinguished or characterized by a predominant emphasis on matters depicting, describing, or simulating any specified sexual activities or any specified anatomical areas; or

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

For the purposes of this definition, the term "principal business purpose" shall mean the business purpose that constitutes fifty percent or more of the stock-in-trade of a particular business establishment. The stock-in-trade of a particular

business establishment shall be determined by examining the following: (i) the retail dollar value of all sexually oriented materials compared to the retail dollar value of all nonsexually oriented materials readily available for purchase, rental, view, or use by patrons of the establishment, excluding inventory located in any portion of the premises not regularly open to patrons; (ii) sales records of the retail dollar value of all sexually oriented materials compared to the retail dollar value of all nonsexually oriented materials over an appropriate period of time to be determined by the licensing official, on a case-by-case basis, if the facility has been in operation for any period of time; and (iii) the total visible shelf space and display area reserved for sexually oriented materials compared to the total area of shelf space and display area reserved for nonsexually oriented materials, as determined by examination of a floor plan prepared by the business owner or operator and visual examination on the premises.

(9) "Adult sales practice" means any activity which is distinguished or characterized by a person being in a state of partial nudity while conducting or otherwise engaged in retail sales of goods or services under circumstances where such conduct is likely to be viewed by a member of the public.

(10) "Applicant" means a person or persons applying for a license under this chapter.

(11) "County" means the county of Yakima, Washington.

(12) "Building Official" means the individual so designated per YCC Title 13.

(13) "Employee" means any person, including a manager, assistant manager, and entertainer, who works in or renders any services directly related to the operation of any adult entertainment facility, whether or not such person is paid compensation by the owner or operator of the adult entertainment facility.

(14) "Entertainer" means any person who provides live adult entertainment in an adult entertainment facility, whether or not the person is an employee of the adult entertainment facility and whether or not a fee is charged or accepted for such entertainment.

(15) "Entertainer's license" means a license issued by the licensing official under this chapter to an entertainer.

(16) "Fire Marshal" means that person charged with the responsibility of administering and enforcing YCC Chapters 13.10 and 13.12.

(17) "Licensee" means a person or persons in whose name a license to operate an adult entertainment facility has been issued under this chapter, as well as the individual listed as an applicant on the application for a license and, in the case of a manager, assistant manager or entertainer, a person in whose name a license has been issued authorizing employment or entertainment in an adult entertainment facility.

(18) "Licensing official" means the Yakima County Building Official or the Official's designee.

(19) "Manager" means any person who manages, directs, or administers the affairs or conducts of any portion of any activity within an adult entertainment facility, including assistant managers working with or under the direction of a manager to carry out such purposes.

(20) "Manager's license" means a license issued by the licensing official under this chapter to a manager or assistant manager of an adult entertainment facility.

(21) "Nude or state of nudity" means the appearance of less than complete and opaque covering of the human anus, human male genitals, human female genitals, or the areola or nipple of the human female breast. The opaque covering shall be made of material or fabric but shall not include any liquid substance, including mud, water, lotion, whipping cream, or other similar substances that are easily broken down or removed and do not offer the covering intended for an opaque covering.

(22) "Owner or operator" means any person who owns, operates, or has a significant interest in an adult entertainment facility, with significant interest being based on responsibility for management of the business. Where an adult entertainment facility is owned or operated by a partnership, then each partner shall be deemed an owner or operator of the business. Where an adult entertainment facility is owned or operated by a corporation, including a limited liability organization, then each officer, director, and principal stockholder shall be deemed an owner or operator of the business. For the purposes of this chapter, a principal stockholder is a person who owns or controls twenty percent or greater interest in an adult entertainment facility.

(23) "Person" means an association, corporation, estate, firm, individual, joint venture, marital community, partnership, or other legal entity or group of persons however organized.

(24) "Sexually oriented materials" means any books, magazines, periodicals, or other printed materials or any photographs, films, motion pictures, video cassettes, slides, or other visual representations, that are distinguished or characterized by a predominant emphasis on matters depicting, describing, or simulating any specified sexual activities or any specified anatomical areas. The term "sexually oriented materials" includes any instruments, devices, or paraphernalia designed for use in connection with any specified sexual activities.

(25) "Specified anatomical areas" means and includes any of the following:

(a) The human male genitals in a discernibly turgid state, even if completely and opaquely covered; or

(b) Less than completely and opaquely covered human genitals, pubic region, anus, or female areola.

(26) "Specified criminal offense" means an offense for prostitution or promotion of prostitution, sale or distribution of obscenity, sale or display of materials harmful to minors, public lewdness, indecent exposure, or transactions involving controlled substances (as that term is defined in Chapter 69.50 RCW) for which:

(a) Less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is later, if the conviction is of a misdemeanor offense; or

(b) Less than five years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is later, if the conviction is of a felony offense; or

(c) Less than five years have elapsed since the date of the last conviction or the date of release from confinement imposed for the last conviction, whichever

is later, if the convictions are of two or more misdemeanor offenses occurring within a twenty-four-month period.

(27) "Specified sexual activities" means and includes any of the following:

(a) The caressing, fondling, or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts; or

(b) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy; or

(c) Masturbation, actual or simulated; or

(d) Excretory functions as part of, or in connection with, any of the sexual activities specified in this definition.

(28) "State of partial nudity" means a state of dress or undress not constituting a state of nudity in which any of the following body parts or portions thereof is exposed to view or covered with anything other than a full and opaque covering:

(a) Any part of the buttocks or anal cleft; or

(b) Any part of the female breast located below the top of the areola.

(c) Items commonly known as pasties, G-strings, T-backs, dental floss, and thongs; body paint, body dye, tattoos, latex, tape, or any similar substance applied to the skin surface; any substance that can be washed off the skin; or any substance designed to simulate or which by its nature simulates the appearance of the anatomical area beneath it, is not full and opaque covering within the meaning of this subsection.

#### **5.06.035 Prima facie evidence of adult sales practice.**

It shall be prima facie evidence of an adult sales practice when a person other than an entertainer in an adult cabaret as defined in YCC 5.06.030 engages in the retail sale of goods or services while in a state of partial nudity under circumstances where such conduct is likely to be viewed by a member of the public.

#### **5.06.040 Penalties.**

(1) Criminal Penalty. In addition to any other penalty provided in this chapter or by law, any person who violates any provision of this chapter shall be guilty of a misdemeanor and shall be subject to a criminal penalty pursuant to RCW 9A.20.021(3).

(2) Civil Penalty. In addition to any other penalty provided in this chapter or by law any person who violates any provision of this chapter shall be subject to a civil penalty and infractions pursuant to Yakima County Code including, but not limited to, Chapter 13.25 and other civil actions available to Yakima County.

(3) In addition to any criminal or civil infraction brought to enforce this Title and in addition to any fine or imprisonment provided for therein, continuing violations of this Title may be enjoined or ordered abated in a civil proceeding for injunction or for abatement. For purposes of abatement actions, such violations are declared to be public nuisances. Any person, firm, or corporation violating the provisions of this Title shall be liable for all costs of such proceedings, including reasonable attorney's fees and expenses of abatement. The provisions of this subsection are in addition to any other remedies available at law or equity.

(4) The Prosecuting Attorney's Office on behalf of the County and the public may pursue civil remedies to enforce compliance with the provisions of the Title. A private person directly affected by a violation of this Title may pursue civil remedies to enforce compliance with its provisions or to recover damages for its violation.

(5) Separate Offense. Each day, or any portion thereof after written notice of a violation has been issued, shall be considered a separate offense.

#### **5.06.050 Nuisance.**

(1) Public Nuisance. Any adult entertainment facility operated, conducted, or maintained in violation of this chapter or any law of the county shall be deemed a public nuisance, and all remedies given by law for the prevention and abatement of public nuisances shall apply in addition to any other remedy.

(2) Moral Nuisance. Any adult entertainment facility operated, conducted, or maintained contrary to the provisions of Chapter 7.48A RCW shall be deemed a moral nuisance, and all remedies given by law for the prevention and abatement of moral nuisances shall apply in addition to any other remedy.

#### **5.06.060 Activities not prohibited.**

(1) This chapter shall not be construed to restrict or prohibit the following activities or products: (a) plays, operas, musicals, or other dramatic works that are not obscene; (b) classes, seminars, or lectures which are held for a serious scientific or educational purpose and that are not obscene; and (c) exhibitions, performances, expressions, or dances that are not obscene.

(2) In accordance with the judicial opinion reported in *Miller v. California*, 413 U.S. 15 (1973), whether or not activity is obscene shall be judged by consideration of the following factors:

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

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

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

## **Article II. Licensing Requirements**

### **5.06.070 License required.**

(1) It is unlawful for any person to operate an adult entertainment facility within the unincorporated areas under County licensing regulatory authority unless that person is the holder of a valid adult entertainment facility license issued by the licensing official under this chapter.

(2) It is unlawful for any person to work as a manager in an adult entertainment facility unless that person is the holder of a valid manager's license issued by the licensing official under this chapter.

(3) It is unlawful for any person to work or perform as an entertainer in an adult entertainment facility unless that person is the holder of a valid entertainer's license issued by the licensing official under this chapter.

(4) It is unlawful for the owner or operator of an adult entertainment facility to employ a person to work or perform as a manager or entertainer at the adult entertainment facility unless that person holds a valid license issued by the licensing official under this chapter.

### **5.06.080 Application for adult entertainment facility license.**

(1) Each person qualifying as an owner or operator of the proposed adult entertainment facility shall submit a separate application. Each applicant shall be separately qualified under this chapter.

(2) All applications shall be submitted to the licensing official on a form supplied by the County and shall contain or be accompanied by all of the following information and documents:

(a) The date of the application;

(b) The legal name, any previous names, any aliases, any driver's license number, any social security number, and the date of birth of the applicant;

(c) Documentation that the applicant has attained the age of eighteen years. Any of the following shall be accepted as documentation of age:

(i) A valid driver's license issued by any state bearing the applicant's photograph and date of birth,

(ii) A valid identification card issued by any state,

(iii) An official passport issued by the United States of America,

(iv) An immigration card issued by the United States of America, or

(v) Any other form of identification that the licensing official determines to be acceptable.

(d) If the applicant is a partner in a partnership, the applicant shall state the complete name of the partnership, state whether the partnership is general or limited, and state the legal names of all partners;

(e) If the applicant is an officer, director, or principal stockholder of a corporation, including a limited liability organization, the applicant shall state the complete name of the corporation, state the date of its incorporation, state the name of the registered corporate agent, state the address of the registered office for service of process, and provide evidence that the corporation is in good standing under the laws of the state;

(f) A description of the principal activities and services to be offered by the proposed adult entertainment facility, including a summary of the types of adult entertainment and sexually oriented materials to be offered for use, sale or rent by the proposed adult entertainment facility;

(g) A description of the principal activities and services to be rendered by the applicant with respect to the proposed adult entertainment facility.

(h) A statement whether the applicant has been convicted of a specified criminal offense, and if so, the date, place, and jurisdiction of each specified criminal offense;

(i) A statement whether the applicant holds any license issued under this chapter or under a similar ordinance from another city or county, and if so, the operating names and locations of the other licensed facilities or businesses;

(j) A statement whether the applicant has had a previous license issued under this chapter denied, suspended, or revoked, and if so, the name and location of the adult entertainment facility for which the license was denied, suspended, or revoked, as well as the date of the denial, suspension, or revocation;

(k) A statement whether the applicant has been a partner in a partnership or an officer, director, or principal stockholder of a corporation that has had a previous license under this chapter denied, suspended, or revoked, and if so, the name and location of the adult entertainment facility for which the license was denied, suspended, or revoked, as well as the date of the denial, suspension, or revocation;

(l) The proposed location of the adult entertainment facility, including a legal description of the property, street address, and telephone numbers, if any;

(m) The present mailing and residential address of the applicant;

(n) Two two-inch by two-inch color photographs of the applicant, taken within six months of the date of the application, showing the full face of the applicant. The photographs shall be provided at the expense of the applicant;

(o) A complete set of fingerprints of the applicant, taken by a designated county official, on a form adopted and approved by the county sheriff's department;

(p) A sketch or diagram showing the configuration of the premises, including a statement of total floor space to be occupied by the adult entertainment

facility. The sketch or diagram shall be drawn to a designated scale to an accuracy of plus or minus six inches;

(q) Authorization for the County, its agents, and employees to seek information to confirm any statements or other information set forth in the application.

(3) The applicant shall verify under penalty of perjury that the information contained in the application is true to the best of his or her knowledge.

(4) An application shall be deemed complete upon receipt of all the information and documents requested by this section. Where necessary to determine compliance with this chapter, the licensing official may request information or clarification in addition to that provided in a complete application.

(5) If any person or entity acquires, subsequent to the issuance of an adult entertainment facility license, a significant interest in the licensed adult entertainment facility, notice of such acquisition shall be provided in writing to the licensing official within twenty-one calendar days following such acquisition, and the person acquiring the interest shall submit a complete application to the licensing official in accordance with this section within forty-five calendar days of acquiring such interest.

(6) Each adult entertainment facility license application shall be accompanied by a nonrefundable application fee, the amount of which is established by YCC Title 20. Each license fee is in addition to any other application fee for other permits that apply under other laws and regulations.

(7) Any person who commences operation of an adult entertainment facility before obtaining the necessary permits and license shall be ordered to immediately cease operations by the licensing official and shall be subject to an investigation fee that shall be in addition to any required license fees. An investigation fee, in addition to the license fee, shall be collected whether or not a license is then or subsequently issued. The investigation fee shall be not less than the cost of enforcement to Yakima County as determined by the licensing official. The minimum investigation fee shall be the same as the license fee set forth in YCC Title 20. The payment of such investigation fee shall not exempt any person from compliance with all other provisions of this code nor from any penalty prescribed by law.

#### **5.06.090 Application for manager's or entertainer's license.**

(1) No person shall work or perform as a manager or entertainer at an adult entertainment facility without a valid manager's or entertainer's license issued by the licensing official.

(2) All applications shall be submitted to the licensing official on a form supplied by the County and shall contain or be accompanied by all of the following information and documents:

- (a) The date of the application;
- (b) The legal name, any previous names, any aliases, any driver's license number, any social security number, and the date of birth of the applicant;
- (c) Documentation that the applicant has attained the age of eighteen years. Any of the following shall be accepted as documentation of age:



- (i) A valid driver's license issued by any state bearing the applicant's photograph and date of birth,
  - (ii) A valid identification card issued by any state,
  - (iii) An official passport issued by the United States of America,
  - (iv) An immigration card issued by the United States of America, or
  - (v) Any other form of identification that the licensing official determines to be acceptable.
  - (d) The height, weight, hair, and eye color of the applicant;
  - (e) The present mailing and residential address of the applicant;
  - (f) The name and address of the adult entertainment facility at which the applicant will work or perform;
  - (g) A description of the principal activities or services to be rendered by the applicant at the adult entertainment facility;
  - (h) Two two-inch by two-inch color photographs of the applicant, taken within six months of the date of the application, showing the full face of the applicant. The photographs shall be provided at the expense of the applicant;
  - (i) A complete set of fingerprints of the applicant, taken by a designated county official, on a form adopted and approved by the county sheriff's department;
  - (j) A statement whether the applicant has been convicted of a specified criminal offense, and if so, the date, place, and jurisdiction of each specified criminal offense;
  - (k) A statement whether the applicant holds any license issued under this chapter or under a similar ordinance from another city or county and, if so, the operating names and locations of the other licensed facilities or businesses;
  - (l) A statement whether the applicant has had a previous license issued under this chapter denied, suspended, or revoked and, if so, the name and location of the adult entertainment facility for which the license was denied, suspended, or revoked, as well as the date of the denial, suspension, or revocation;
  - (m) Authorization for the County, its agents, and employees to seek information to confirm any statements or other information set forth in the application;
- (3) The applicant shall verify under penalty of perjury that the information contained in the application is true to the best of his or her knowledge.
- (4) An application shall be deemed complete upon receipt of all the information and documents requested by this section. Where necessary to determine compliance with this chapter, the licensing official may request information or clarification in addition to that provided in a complete application.
- (5) Each manager's and entertainer's license application shall be accompanied by a nonrefundable application fee, the amount of which is established by YCC Title 20.

#### **5.06.100 Initial Investigation.**

- (1) Upon receipt of a complete adult entertainment facility license application and filing fee, the licensing official shall stamp the application as

received and shall send photocopies of the application to the departments or agencies responsible for the enforcement of public safety, health, fire, and building codes and laws. Each responsible department or agency shall conduct an investigation of the application and the proposed adult entertainment facility within twenty calendar days of receipt of the application by the licensing official, unless circumstances support extending the investigation. If the investigation is extended, the licensing official shall inform the applicant of the extension and the reasons therefore. The extension shall not exceed ten additional calendar days from the original expiration of the twenty-day time period stated above. At the conclusion of its investigation, each responsible department or agency shall recommend approval or disapproval of the application by so indicating in writing.

(2) After indicating its approval or disapproval, each responsible department or agency shall return its written recommendation to the licensing official within the time frame for investigation, including any extensions issued. In the event the proposed adult entertainment facility is in a state of construction at the time of the inspection, then each responsible department or agency shall make a preliminary determination of approval or disapproval based on the drawings submitted in the application. Any adult entertainment facility license approved prior to final construction of the adult entertainment facility shall contain a condition that the adult entertainment facility shall not open for business until the facility has been inspected and determined to be in compliance with applicable laws, ordinances and regulations and substantially conforms with the drawings submitted with the application.

(3) In the event a responsible department or agency recommends disapproval, the department or agency recommending disapproval shall state the basis for the disapproval in writing. A responsible department or agency shall recommend disapproval of an application if it finds that the proposed adult entertainment facility will violate any provision of any statute, code, ordinance, regulation, or other law for which it has responsibility.

#### **5.06.110 Issuance and denial of licenses.**

(1) Issuance of Adult Entertainment Facility License.

(a) The licensing official shall grant or deny an application for an adult entertainment facility license within thirty calendar days from the date a complete application is filed unless a ten-day extension is granted as provided in Section 5.06.100A, in which case the licensing official shall grant or deny as application for an adult entertainment facility license within forty calendar days from the date a complete application is filed.

(b) The licensing official shall issue an adult entertainment facility license unless one or more of the criteria set forth in subsection (3)(a) of this section is present.

(c) An adult entertainment facility license, if granted, shall state on its face the name of the person or persons to whom it is granted, the date issued, and the name and address of the adult entertainment facility. An adult entertainment facility license shall be posted in a conspicuous place, at or near the entrance to the adult entertainment facility.

(d) An adult entertainment facility license shall expire one year from the last day of the month in which the license is issued.

(2) Issuance of Manager's or Entertainer's License.

(a) The licensing official shall grant or deny an application for a manager's or entertainer's license within fifteen calendar days from the date of its proper filing.

(b) An applicant for a manager's or entertainer's license shall be issued a temporary license upon receipt of a complete license application and fee. Said temporary license shall automatically expire on the fifteenth day following the filing of the complete application and fee, unless the licensing official has failed to approve or deny the license application, in which case the temporary license shall be valid until the licensing official approves or denies the application, or until the final determination of any appeal from a denial of the application. In no event may the licensing official extend the application review time for more than an additional twenty days.

(c) The licensing official shall issue a manager's or entertainer's license unless one or more of the criteria set forth in subsection (3)(a) of this section is present.

(d) A manager's or entertainer's license, if granted, shall state on its face the name of the person to whom it is granted, the date issued, and the name and address of the adult entertainment facility at which the manager or entertainer will work or perform. Each manager and entertainer shall ensure that his or her license is posted in a conspicuous place, at or near the entrance to the adult entertainment facility, at all times the manager or entertainer is working or performing in the adult entertainment facility.

(e) A manager's or entertainer's license shall expire one year from the last day of the month in which the license is issued.

(3) Denial of License Application.

(a) The licensing official shall deny a license application if it is demonstrated by a preponderance of the evidence that one or more of the following findings is true:

(i) The premises to be used for the proposed adult entertainment facility are not in compliance with applicable laws and ordinances;

(ii) An applicant is under eighteen years of age;

(iii) An applicant has failed to provide information required by this chapter or has falsely answered a question or request for information on the application form;

(iv) An application fee required by this chapter has not been paid;

(v) The applicant has been convicted of a "specified criminal offense" as the term is defined in Section 5.06.030 of the Yakima County Code, whether or not such offense is related to the adult entertainment facility.

(b) In the event the licensing official denies an application, the licensing official shall do so in writing and shall state the specific reasons therefore.

(c) Denial of a license application is subject to appeal as set forth in Section 5.06.150.

#### **5.06.120 Renewal of licenses.**

(1) A licensee may apply for renewal of an adult entertainment facility license issued under this chapter. An application for renewal shall contain the information and documents required in Section 5.06.080 and shall be accompanied by a nonrefundable application fee, the amount of which shall be established by resolution.

(2) A licensee may apply for renewal of a manager's or entertainer's license issued under this chapter. An application for renewal shall contain the information and documents required in Section 5.06.090 and shall be accompanied by a nonrefundable application fee, the amount of which shall be established by resolution.

(3) Application for renewal of an adult entertainment facility license shall be made within forty calendar days before the expiration date of the currently valid license.

(4) Application for renewal of a manager's or entertainer's license shall be made within fifteen calendar days before the expiration date of the currently valid license.

(5) An application for a renewal license shall be issued or denied according to the requirements of Section 5.06.110.

(6) Denial of a renewal license is subject to appeal as set forth in Section 5.06.150.

#### **5.06.130 Nontransferability of licenses.**

(1) Adult Entertainment Facility License. The holder of an adult entertainment facility license issued pursuant to this chapter shall not assign or transfer the license to another person. Any successor owner or operator will be required to obtain a license under the provisions of this chapter.

(2) Manager's or Entertainer's License. The holder of a manager's or entertainer's license issued pursuant to this chapter shall not assign or transfer the license to another person.

#### **5.06.140 Suspension and revocation of licenses.**

(1) The licensing official may, subject to this chapter, suspend or revoke any license issued pursuant to this chapter. In the event a license is suspended or revoked, all rights of the licensee under this chapter are then suspended or terminated, as the case may be.

(2) Upon receipt of notice of the suspension or revocation of an adult entertainment facility license or manager's license or entertainer's license, the licensee shall without delay deliver such license to the licensing official. In the case of suspension, the licensing official shall return the license to the licensee at the expiration of the suspension period.

(3) Suspension of License. The licensing official shall suspend a license for a period not to exceed thirty calendar days if the licensing official determines that:

(a) The licensee has refused to allow an inspection of the adult entertainment facility as required by Section 5.06.160; or

(b) The licensee has not submitted a timely monthly report as required by Section 5.06.170(2); or

(c) The licensee has violated any applicable requirement of this chapter.

(4) Revocation of License.

(a) The licensing official shall revoke a license if the licensing official determines that:

(i) The licensee has given false information in the material submitted during the application process; or

(ii) The licensee has knowingly operated an adult entertainment facility during a period of time when the adult entertainment facility license of the adult entertainment facility was suspended; or

(iii) The licensee has knowingly acted as a manager of an adult entertainment facility during a period of time when the licensee's manager's license was suspended; or

(iv) The licensee has knowingly acted as an entertainer at an adult entertainment facility during a period of time when the licensee's entertainer's license was suspended; or

(v) A cause of suspension in Section 5.06.140(3) occurs and the license has been suspended within the preceding twelve months.

(vi) The licensee has been convicted of a specified criminal offense.

(b) In the event the licensing official revokes a license, the revocation shall continue for one year, and the licensee shall not be issued an adult entertainment facility license, manager's license, or entertainer's license for one year from the date the revocation becomes effective. If the license is revoked because the licensee is convicted of a specified criminal offense then the licensee shall not be issued a license until the time period of the specified criminal offense has lapsed.

(c) If, after revocation, the licensing official finds that the basis for the revocation has been corrected or abated, the applicant may be granted a license if at least ninety calendar days have elapsed since the date of revocation became effective with the exception that licensees convicted of specified criminal offenses shall not be issued or reissued a license until the time period of the specified criminal offense has lapsed.

(5) The licensing official may impose, subject to this chapter, additional conditions in lieu of suspension or revocation to allow an adult entertainment facility to continue operating where he determines such conditions will definitively mitigate noncompliance issues on a trial basis. Such conditions may be continued to be required for continued operation at the discretion of the licensing official. Nothing in this subsection shall limit the authority of the licensing official to deny, suspend or revoke any license issued under this chapter.

**5.06.150 Appeal of denial, suspension or revocation of license.**

(1) In the event the licensing official denies, suspends, revokes or imposes additional conditions for continued operation on a license issued under this chapter, the licensing official shall notify the applicant or licensee in writing of the decision at

least ten calendar days prior to the effective date of any such denial, suspension, revocation, or imposition of additional conditions. The notice shall describe the grounds for such denial, suspension, or revocation and shall inform the applicant or licensee of his or her right to appeal of the county hearing examiner within ten calendar days of the date of the written decision by filing a written notice of appeal with the licensing official containing a statement of the specific reasons for the appeal and a statement of the relief requested. The notice shall be served either in person or by mailing a copy of the notice by certified mail, postage prepaid, return receipt requested, to the applicant or licensee at his or her last known address. Service by certified mail in the manner described in this section shall be effective on the date of postmark.

(2) If a licensee timely appeals a decision of the licensing official, then the licensee may continue to engage in the activity for which the license was issued pending the decision of the county hearing examiner, unless the license was suspended or revoked based on a threat of immediate serious injury to public health or safety pursuant to Section 5.06.160(2).

(3) Within twenty-one calendar days of receiving a timely appeal, the licensing official shall forward the administrative record of the licensing decision to the county hearing examiner.

(4) In the event an applicant or licensee timely appeals the denial, suspension, or revocation of a license issued under this chapter, the county hearing examiner shall hold a hearing on the appeal within forty-five calendar days from receipt of the appeal. Written notice of the date, time, and place of the scheduled hearing shall be given to the applicant by the licensing official at least ten calendar days prior to the hearing.

(5) The county hearing examiner shall uphold the decision of the licensing official unless the hearing examiner finds the decision is not supported by substantial evidence in the administrative record.

(6) The county hearing examiner shall issue a written decision within ten business days of hearing the appeal. The decision shall be served either in person or by mailing a copy of the decision by certified mail, postage prepaid, return receipt requested, to the applicant or licensee at his or her last known address. The decision of the county hearing examiner shall constitute the final administrative decision of the County and may be appealed to superior court within ten calendar days. The applicant or licensee shall be responsible for the costs of preparing the administrative record for judicial review. If a licensee timely appeals a decision of the county hearing examiner, then the licensee may continue to engage in the activity for which the license was issued pending the decision of the court, unless the license was suspended or revoked based on a threat of immediate serious injury to public health or safety pursuant to Section 5.06.160(2).

#### **5.06.160 Inspections and public health and safety suspensions.**

(1) An applicant or licensee shall permit representatives of the sheriff's department, health district, Building Official, Fire Marshal, Administrative Official, licensing official and other state and local government agencies to inspect the premises of the adult entertainment facility, at any time the adult entertainment

facility is open for business, for the purpose of ensuring compliance with all applicable statutes, codes, ordinances, regulations, and laws.

(2) Where a condition exists upon the premises of an adult entertainment facility that constitutes a threat of immediate serious injury to public health or safety (such as, but not limited to, immediate, potential loss of life or limb) the licensing official or any other official with regulatory authority may immediately suspend any license issued under this chapter by issuing a notice setting forth the facts that constitute a threat of immediate serious injury to public health or safety and informing the licensee of the right to appeal the suspension under the appeal provisions set forth in this chapter.

#### **5.06.170 Recordkeeping requirements and monthly reports.**

(1) Each adult entertainment facility licensed under this chapter shall maintain and retain for a period of two years from the date of termination of employment the names, addresses, and ages of all persons employed or otherwise retained as managers and entertainers.

(2) Each adult entertainment facility licensed under this chapter shall file a monthly report with the licensing official including the names, addresses, and ages of all persons employed or otherwise retained as managers and entertainers.

#### **5.06.180 License requirement for existing adult entertainment facilities.**

Any adult entertainment facility in existence prior to the effective date of the ordinance codified in this chapter shall be deemed to be operating under a temporary adult entertainment facility license. Within forty-five calendar days of the effective date of said ordinance, each owner and operator of the adult entertainment facility shall submit a complete adult entertainment facility license application and license fee pursuant to Section 5.06.080 to the licensing official. The license application shall be issued or denied in accordance with the requirements of this chapter. The adult entertainment facility shall be permitted to continue to engage in the activities specified in the adult entertainment facility license application pursuant to Section 5.06.080 pending the decision of the licensing official.

### **Article III. Operational Requirements**

#### **5.06.190 Regulations applicable to all adult entertainment facilities.**

All adult entertainment facilities shall comply with the following regulations:

(1) **Manager on Premises.** A licensed manager shall be on duty at the adult entertainment facility at all times the adult entertainment facility is open for business. The manager shall be stationed at a location within the adult entertainment facility where he or she shall have an unobstructed view of all public portions of the adult entertainment facility.

(2) **Hours of Operation.** Adult entertainment facilities shall not be operated or otherwise open to the public between the hours of two a.m. and ten a.m.

(3) Admission to Minors Prohibited. Admission to adult entertainment facilities shall be restricted to persons of the age of eighteen years or more. The age of all patrons shall be verified at the time of entry by an employee of the adult entertainment facility.

**5.06.200 Regulations specifically applicable to adult cabarets.**

(1) General. An adult cabaret shall satisfy the zoning requirements contained in Chapter 15.18 or 15A.09, as applicable, of the Yakima County Code, the general requirements in Article I of this chapter, the licensing requirements in Article II of this chapter, the general operational requirements in Section 5.06.190, and the specific operational requirements applicable to adult cabarets contained in this section.

(2) Separation of Entertainers from Patrons. No entertainer shall be visible to patrons while in a state of nudity except on a stage or platform at least twenty-four inches in elevation above the patron seating areas. The stage shall be separated by a distance of at least ten feet from all areas of the premises to which patrons have access. A continuous fixed-barrier railing, of sufficient construction to prevent encroachment by patrons onto the stage, at least three feet in height and located at least ten feet from all points of the stage, shall separate the stage from all patron areas.

(3) General Separation of Entertainers from Patrons. No entertainer shall conduct any dance, performance, or exhibition in or about the adult cabaret unless that dance, performance, or exhibition is performed at a torso-to-torso distance of no less than four feet from the patron for whom the dance, performance, or exhibition is intended.

(4) Managers. The licensed manager on duty shall not be an entertainer. There shall be one manager on duty for every stage operating on the premises. No manager shall knowingly permit an employee or entertainer to violate any provision of this section.

(5) Tips. No entertainer shall allow any person to place a tip or gratuity directly upon his or her body or into his or her clothing. All tips shall be placed either into a container that is separate from and not affixed, attached or placed upon any portion of the entertainer's body, or tips shall be placed directly from the patron's hand into the entertainer's hand.

(6) Maintenance. All public areas of the adult cabaret shall be maintained in a clean and sanitary condition.

(7) Lighting. A minimum lighting level of thirty lux semi-cylindrical measured at thirty inches from the floor at ten foot centers, or as determined by the Building Official, shall be provided and equally distributed in and about the public portions of the adult cabaret, including the patron seating areas, so that all objects are plainly visible at all times.

(8) Visibility From Outside the Adult Cabaret. No activity or entertainment occurring at or in the adult cabaret, nor any photograph, drawing, sketch or other pictorial or graphic representation of any specified sexual activities or specified anatomical areas, shall be visible at any time from outside the adult cabaret.

(9) Prohibited Activities.



(a) No licensee or employee shall perform or simulate any specified sexual activities nor perform or simulate any act that constitutes a moral nuisance as defined in RCW 7.48.050 and 7.48A.010.

(b) No licensee or employee shall caress, fondle, or erotically touch any patron. No manager, entertainer, or employee shall encourage or permit any patron to caress, fondle, or erotically touch any manager, entertainer, or employee.

(c) No entertainer or employee shall expose to public view any specified anatomical areas, except as provided in Subsection 5.06.200(2).

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

THIS ADULT CABARET IS REGULATED BY YAKIMA COUNTY. ENTERTAINERS ARE NOT PERMITTED TO ENGAGE IN ANY TYPE OF SEXUAL ACTIVITY AND ARE NOT PERMITTED TO BE VISIBLE WHILE IN A STATE OF NUDITY EXCEPT ON STAGE. ENTERTAINERS ARE NOT ALLOWED TO DANCE WITHIN FOUR FEET OF ANY CUSTOMER. TIPS AND GRATUITIES MAY NOT BE PLACED ON THE BODY OR IN THE CLOTHING OF ANY ENTERTAINER.

**5.06.210 Regulations specifically applicable to adult motion picture theaters.**

(1) General. An adult motion picture theater shall satisfy the zoning requirements contained in Chapter 15.18 or 15A.09, as applicable, of the Yakima County Code, the general requirements in Article I of this chapter, the licensing requirements in Article II of this chapter, the general operational requirements in Section 5.06.190, and the specific operational requirements applicable to adult motion picture theaters contained in this section.

(2) Physical Layout. The minimum size of a space for showing motion pictures, films, video cassettes, slides, or other similar visual representations that are distinguished or characterized by a predominant emphasis on matters depicting, describing, or simulating any specified sexual activities or any specified anatomical areas shall be not less than 500 square feet. Individual viewing booths are prohibited.

(3) Visibility From Outside the Adult Motion Picture Theater. No activity or entertainment occurring at or in an adult motion picture theater nor any photograph, drawing, sketch, or other pictorial or graphic representation of any specified sexual activities or specified anatomical areas shall be visible at any time from outside the adult motion picture theater.

**5.06.220 Regulations specifically applicable to commercial establishments that include an adult sales practice.**

(1) General. A commercial establishment that includes an adult sales practice as defined in YCC Section 5.06.030 shall satisfy the zoning requirements contained in Chapter 15.18 or 15A.09, as applicable, of the Yakima County Code, the general requirements in Article I of this chapter, the licensing requirements in Article II of this chapter, the general operational requirements in Section 5.06.190, and the specific

operational requirements applicable to establishments that include an adult sales practice as contained in this section.

(2) Physical Layout.

(a) Install a six-foot-high, view-obscuring fence, made of wood, masonry block or slatted chain link, together with a three-foot-wide planting strip landscaped with a combination of tree, shrubs and groundcover along the outside of the fence, such that all portions of any building or area containing an adult sales practice is obscured from public view.

(b) Visibility to all portions of the structure or area where any member of the public is admitted, whether or not for a fee, shall be preserved from the station of any employee on duty.

(3) Employee License Required. It shall be unlawful for any person who is in a state of partial nudity while conducting or otherwise engaged in retail sales of goods or services to work in a business using an adult sales practice unless that person is the holder of a valid entertainer's license issued by the licensing official under this chapter.

(4) Standards of Conduct. The following standards of conduct shall be adhered to by any commercial establishment that includes an adult sales practice as contained in this section:

(a) No person under the age of 18 years shall enter or remain in any establishment or premises in which an employee is in a state of nudity or partial nudity.

(b) No employee shall be in a state of partial nudity under circumstances where such conduct is likely to be observed by a member of the public other than a customer.

(c) No employee shall be in a state of nudity under circumstances where such conduct is likely to be observed by a member of the public.

(d) No employee shall caress, fondle or erotically touch any employee or member of the public.

(e) No employee shall encourage or permit any member of the public to caress, fondle or erotically touch any employee or member of the public.

(5) Visibility From Outside the Lot Containing an Adult Sales Practice. No activity or entertainment occurring at or in an establishment that includes an adult sales practice nor any photograph, drawing, sketch, or other pictorial or graphic representation of any specified sexual activities or specified anatomical areas shall be visible at any time from outside the boundaries of the lot containing the commercial establishment.

**Section 4. Fee schedule.** Yakima County Code Section 20.00.010, adopted by Ordinance No. 1-1990, and amended by Ordinance No. 1-2010, is amended as follows. Much of the existing text is unchanged, but omitted in the presentation for this ordinance for clarity. Notes following tables and subsection headings in brackets in this section shall not be inserted into the text of the County Code:

**20.00.010 Schedule of Fees.**

The schedule of fees and charges adopted by the board of county commissioners and established in this chapter for the processing of the numerous and variety of applications required by the county, pursuant to the Yakima County Code, may be altered or amended only by the board of county commissioners.

No application shall be accepted, processed or approved unless or until such fees and charges listed in this title have been paid in full.

**(A) YAKIMA COUNTY CODE  
CHAPTER 5.06 - ADULT ENTERTAINMENT FACILITIES**

(1)	Adult entertainment facility owner's or operator's license application	\$ 2,000.00 minimum deposit plus 100% processing and regulatory costs*
(2)	Adult entertainment facility manager's license application	\$ 200.00
(3)	Adult entertainment facility entertainer's license application	\$ 200.00
(4)	Appeals	100% processing and regulatory costs* plus 100% fee charged by Hearing Examiner for review

\* "Processing and regulatory costs" means actual costs, including, but not necessarily limited to, staff wages, benefits, review, regulatory inspections, overhead, consultant services or other expenses incurred during the review of the project. The hourly costs include, but are not necessarily limited to, wages, benefits, review, regulatory inspections, and overhead for planning, managerial, licensing, enforcement and clerical staff, and are assessed based on the time expended by Yakima County staff only.

**(AB) YAKIMA COUNTY CODE  
CHAPTER 12.10 - STORMWATER AUTHORITY**

5.	Appeals	See subsection (GI)
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**[Note: The remainder of the table is unchanged, omitted here for clarity.]**

**(BC) YAKIMA COUNTY CODE  
TITLE 14 - SUBDIVISION ORDINANCE**

(6)	Appeal of Administrative/Hearing Examiner Short Plat Decision	See subsection (G)
(13)	Industrial and Commercial Binding Site Plan Applications	
(a)	Preliminary binding site plan application	\$ 365.00
(b)	Final binding site plan application	\$ 230.00*
	* \$230.00 + auditor's recording fee	
(c)	Administrative approval of lot(s)	\$ 170.00*
	* \$170.00 + auditor's recording fee	
(d)	Appeals	See subsection (G)
(e)	Binding site plan vacation or alteration	\$ 365.00*
	* \$365.00 + auditor's recording fee	

**[Note: The remainder of the table is unchanged, omitted here for clarity.]**

**(CD) YAKIMA COUNTY CODE  
TITLE 15 - ZONING ORDINANCE**

(1)	Appeals	See subsection (G)
(7)	Adult Entertainment Facility Land Use Application	\$1,000.00 minimum deposit plus 100% processing and regulatory costs, as described in YCC 20.00.010 (A), plus 100% fee charged by Hearing Examiner for review, if applicable

**[Note: The remainder of the table is unchanged, omitted here for clarity.]**

**(DE) YAKIMA COUNTY CODE  
TITLE 15A - YAKIMA URBAN AREA ZONING ORDINANCE**

(8)	Appeals	See subsection (G)
(13)	Adult Entertainment Facility Land Use Application	\$1,000.00 minimum deposit plus 100% processing and regulatory costs, as described in YCC 20.00.010 (A), plus 100% fee charged by Hearing Examiner for review, if applicable

**[Note: The remainder of the table is unchanged, omitted here for clarity.]**

**(EE) YAKIMA COUNTY CODE  
TITLE 16 - SEPA**

(3)	Appeals	See subsection (G)
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**[Note: The remainder of the table is unchanged, omitted here for clarity.]**

**(FG) YAKIMA COUNTY CODE - TITLE 16A, 16C AND 16D  
CRITICAL AREAS ORDINANCE AND**

**YAKIMA COUNTY REGIONAL SHORELINE MANAGEMENT MASTER  
PROGRAM**

(5)	Appeals	See subsection (G)
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**[Note: The remainder of the table is unchanged, omitted here for clarity.]**

**(GH) YAKIMA COUNTY OPEN SPACE TAX PROGRAM**

**[Note: The table is unchanged, omitted here for clarity.]**

**(HI) APPEALS**

**[Note: The table is unchanged, omitted here for clarity.]**

**(I) MAJOR APPLICATIONS**  
**Major applications involving the following:\*\***  
**100% Processing Costs\***

\* "Processing cost" means actual costs, including (but not limited to) staff wages, benefits, overhead, consultant services or other expenses incurred during the review of the project. The hourly rate listed below includes wages, benefits, and overhead for planning, managerial, and clerical staff, and is assessed based on the time expended by the project planner only.

\*\* All applications that are needed in conjunction with Major Applications shall be assessed expense-based fees as if they were part of the Major Application; except that any needed SEPA review shall be assessed fees per subsection DE.

**[Note: The remainder of the table is unchanged, omitted here for clarity.]**

**Section 5.** Sections not modified by this ordinance remain as originally adopted in Ordinance 8-1985 and codified in Yakima County Code Chapter 2.23, or as originally adopted in Ordinance 1-1990 and codified in Yakima County Code Chapter 20.00, together with all amendments to date.

**Section 6. Severability.** The provisions of this ordinance are declared separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, sections, or portion of this ordinance, or the invalidity of the application thereof to any person or circumstance, shall not affect the validity of the remainder of the ordinance, or the validity of its application to any other persons or circumstances.

**Section 7. Effective date.** This ordinance shall be effective at 12:00 P.M. on June 24, 2011.

Dated this 24 day of June 2011.



Attest:

Mandy Burkett  
Tiera Girard, Clerk of the Board

Mandy Burkett  
Deputy Clerk of the Board

*Ordinance 8-2010*

BOARD OF YAKIMA COUNTY  
COMMISSIONERS

[Signature]  
Kevin J. Bouchey, Chairman

[Signature]  
J. Rand Elliott, Commissioner

[Signature]

Michael D. Leita, Commissioner  
Constituting the Board of County Commissioners  
for Yakima County, Washington