

ORDINANCE NO. _____

AN ORDINANCE TO AMEND TITLE 6, BUSINESS LICENSES AND REGULATIONS, CHAPTER 6-20 – DANCES AND DANCE HALLS – OF THE CODE OF ORDINANCES OF MEMPHIS, TENNESSEE

WHEREAS, the citizens of Memphis have fundamental rights to the greatest protection of their welfare and safety, and the democratic process should allow them to maintain the highest quality of life possible; and

WHEREAS, the Memphis City Council has studied possible modifications to the Dance Hall Permit Ordinance to ensure its consistency with other city ordinances and to evaluate possible penalties and remedies available to the City in the event of a violation of the Dance Hall Permit Ordinance.

NOW, THEREFORE,

SECTION 1. BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS,

That Title 6, Business Licenses and Regulations, Chapter 6-20 – Dances and Dance Halls - of the Code of Ordinances of Memphis, Tennessee be and is hereby amended as follows:

Article 1 - General Provisions

Sec. 6-20-1- Definitions.

As used in this chapter, the following terms shall have the indicated meaning:

"Adult cabaret" means an establishment that features as a principal use of its business, entertainers, waiters, or bartenders who expose to public view of the patrons within such establishment, at any time, the bare female breast below a point immediately above the top of the areola, human genitals, pubic region, or buttocks, even if partially covered by opaque material or completely covered by translucent material, including swim suits, lingerie, or latex covering. "Adult cabaret" includes a commercial establishment that features entertainment of an erotic nature, including exotic dancers, strippers, male or female impersonators, or similar entertainers.

"Adult entertainment" means any exhibition of any adult-oriented motion picture, live performance, display or dance of any type, that has as a principal or predominant theme, emphasis, or portion of such performance, any actual or simulated performance of specified sexual activities or exhibition and viewing of specified anatomical areas, removal of articles of clothing or appearing unclothed, pantomime, modeling, or any other personal service offered customers.

"Adult-oriented establishment" includes, but is not limited to, an adult bookstore, adult motion picture theater, adult mini-motion picture establishment, adult cabaret, escort agency, sexual encounter center, massage parlor, rap parlor, sauna; further, "adult-oriented establishment" means any premises to which the public patrons or members are invited or admitted and that are so physically arranged as to provide booths, cubicles, rooms, compartments or stalls separate from the common areas of the premises for the purpose of viewing adult-oriented motion pictures, or wherein an entertainer provides adult entertainment

to a member of the public, a patron or a member, when such adult entertainment is held, conducted, operated or maintained for a profit, direct or indirect. "Adult-oriented establishment" further includes, without being limited to, any adult entertainment studio or any premises that is physically arranged and used as such, whether advertised or represented as an adult entertainment studio, rap studio, exotic dance studio, encounter studio, sensitivity studio, model studio, escort service, escort or any other term of like import.

"Club" means any bona fide nonprofit society, association of persons or corporation, organized for civic, fraternal, social or charitable purposes, or for any purpose not a business or commercial purpose, which owns, rents or operates a place or building for the accommodation of its members and their invited guests, when such place or premises, or any part thereof, is used for dancing by members of the club or their invited guests.

"Dance hall operator" means the person who conducts, manages, maintains or controls, either directly or indirectly, any public dance hall as defined in this section.

"Person" means any person, copartnership, corporation, firm, or other association or organization which conducts or holds a public dance in a public dance hall as defined in this section.

"Public dance" means any dance to which the public generally gains admission, either with the payment of a fee directly or indirectly, or without payment of a fee, but the term "public dance" shall not include the following:

1. "Private dance" means any dance given at a private home or residence, admission to which is restricted to invited guests, and from which the general public is excluded; any dance given or conducted by a club whose purposes or primary activities do not include the arrangement or holding of dances and where the attendance is restricted to the members of such club and their invited guests, and from which the general public is excluded; any dance given or conducted by a corporation, or other organization or person whose purpose or primary activities do not include the arrangement or holding of dances and where the attendance is restricted to the members of such corporation or other organization and their invited guests, and from which the general public is excluded; and any dance given or conducted by public or private schools or churches for the students or members thereof, or their invited guests, and from which the general public is excluded.
2. "Public agency dance" means any dance which is given or conducted by the state, the county, the city or any political subdivision or public agency or instrumentality thereof.
3. "Dancing school classes" means any dance held or conducted by any dancing school or academy which gives instruction in dancing for hire.
4. "Commercial premises" means a commercial establishment whose principal business is other than public dancing and upon which premises no alcoholic beverages are sold or permitted.

"Public dance hall" means any room, place, space or building, enclosed or unenclosed, where a public dance is held or conducted.

Sec. 6-20-2- Prohibitions.

It is unlawful for any person or dance hall operator, by itself or himself or herself, directly or indirectly, or by any servant, agent or employee, on the premises at which a public dance is being held or conducted to:

- A. Operate as an adult cabaret, adult-oriented establishment or permit adult entertainment as defined herein;
- B. Permit any disorderly conduct as defined in Section 10-8-2 of this code, or any lewd or indecent conduct as defined in Section 10-8-2 of this code;
- C. Permit any known prostitute, male or female, procurer or vagrant to come and remain upon the premises at which a public dance is being held or conducted;
- D. Permit intoxicated persons to dance or loiter on the premises at which a public dance is being held or conducted;
- E. Permit the public dance hall employees to dance with or accept any direct compensation from the patrons;
- F. Permit any person who has not attained the age of eighteen (18) years to attend or remain at any public dance where alcohol is being consumed unless such person is accompanied by the parent or legal guardian of such person, and it is unlawful for any person to represent himself or herself to have reached the age of eighteen (18) years in order to attend or remain at any public dance where alcohol is being consumed when such person in fact is under eighteen (18) years of age; it is also unlawful for any person to falsely represent himself or herself to be the parent or guardian of any person in order that such person may attend or remain in any public dance hall;
- G. Permit any person under the age of eighteen (18) years of age to be employed in any capacity in a public dance hall; provided that, the provisions of this section relative to employment shall not apply to minors under the age of eighteen (18) years of age who are under contract to provide entertainment in the field of music or vocal entertainment; and shall not apply to minors under age of eighteen (18) years of age who are under contract to provide entertainment in the field of choreography. Such minors must have the written consent of their parents or guardians sworn to before a notary public. The owner or operator shall keep the written consent on file at all times during the employment of such minor, and the same shall be available for inspection by officers of the police services division. A duplicate of such written consent shall be forwarded to the director of police services of the city. The provisions herein shall not apply to disorderly or disreputable persons. Provisions of this subsection shall be in effect only during the actual hours of business;
- H. Fail to furnish proper ventilation and separate and sufficient toilet facilities for each sex;
- I. Fail to provide and maintain throughout the part of the dance hall premises used for dancing a minimum of two candlepower light measured at a level five feet above the floor;
- J. Deny free access and entrance into the dance hall at all times to police and fire officers when on official duty;
- K. Violate any other laws, ordinances, health and fire regulations, or building code requirements which may be applicable to the operation or regulation of the public dance hall.

Article 2 - Dance Hall Permit

Sec. 6-20-4- Required.

- A. It is unlawful for any person or dance hall operator to hold or conduct any public dance, or to operate any public dance hall within the city, until such dance hall, or other place in which such public dance may be held, shall first have been duly registered as a public dance hall with, and approved by, the city treasurer, and a permit shall have been issued by the city treasurer, or his or her designee, for the operation of such public dance hall or the holding of such public dance;
- B. A permit may be issued only for one (1) dance hall located at a fixed and certain place. Any person, partnership or corporation that desires to operate more than one (1) dance hall must have a permit for each.

Sec. 6-20-5- Application.

Any person or dance hall operator, as defined in this chapter, desiring to obtain a public dance hall permit as required by this chapter shall file a sworn written application with the director of police services at least seventy-two (72) hours prior to the date on which such permit is desired. Such application shall be made on forms approved by the director of police services and shall include the following information:

- A. Name, age, address and telephone number of each person or operator, copartnership, firm, corporation, or other association or organization desiring to conduct such public dance or public dance hall;
- B. Name to be used by applicant;
- C. Location by street and number of the place, space or building and room or floor, and the size of such room or space which is proposed to be used for such purpose;
- D. If the applicant is an individual, a statement that he or she has not been convicted of a felony, or of a misdemeanor involving moral turpitude, within five years prior to the date of making the application;
- E. If the applicant is a firm, association or partnership, all of the information described in subsection D of this section as to each individual composing the firm, association, or partnership;
- F. If the applicant is a corporation, a statement that the applicant is organized and chartered under the corporation laws of the state applicable to such corporation, or, if a foreign corporation, if such a corporation has complied with the laws of the state applicable to such corporation, and the same information with reference to the operator or person in charge of the operation of the public dance hall desired to be conducted as is prescribed in subsection D of this section, and, in addition thereto, a statement as to the names of stockholders in the corporation, and the percentage of the corporation's outstanding stock owned by each;
- G. The business license history of the applicant; whether such applicant, in previously operating in this or any other county, city or state under license, has had such license revoked or suspended, the reason therefor, and the business activity or occupation subject to such action of suspension or revocation during the previous five (5) years;
- H. Previous occupation or employment of the applicant for a period of two years next preceding the filing of his or her application;

- I. Any other information reasonably deemed necessary by the director of police services to determine whether the applicant qualifies for the issuance of the permit;
- J. A statement by the applicant that the applicant is familiar with the provisions of this part and is in compliance with this part.

Failure or refusal of the applicant to give any information relevant to the investigation of the application, or the applicant's refusal or failure to appear at any reasonable time and place for examination under oath regarding the application or the applicant's refusal to submit to or cooperate with any investigation required by this part constitutes an admission by the applicant that the applicant is ineligible for such permit and shall be grounds for denial of the permit.

Sec. 6-20-6-Qualifications of applicants.

- A. All applicants for dance hall permits must be at least twenty-one (21) years of age and shall not have been convicted of a felony or of a crime involving moral turpitude within five years next preceding the filing of the application;
- B. The director of police services or his or her designated representative is empowered to conduct investigations of persons engaged in the operation of any dance hall and inspect the permit of the operators and establishment for compliance. Refusal of an operation or establishment to allow inspections shall be grounds for revocation, suspension or refusal to issue licenses provided by this part.
- C. Upon receipt of a public dance hall permit application, the body or entity that permits operators may:
 1. Conduct a criminal conviction record check through such computer terminals available to it or other means of access to criminal convictions that are maintained by the county, city or other political subdivision, the Tennessee bureau of investigation and the federal bureau of investigation;
 2. Forward the applicant's fingerprints to the Tennessee bureau of investigation, which shall verify the identity of the applicant and shall conduct its own criminal conviction record check itself and forward the results of that investigation to the requesting county, city or other political subdivision;
 3. If no disqualifying criminal conviction is identified by the city or by the Tennessee bureau of investigation, the Tennessee bureau of investigation shall forward a set of the applicant's fingerprints to the federal bureau of investigation for verification of the applicant's identity and request the federal bureau of investigation to conduct a criminal conviction record check investigation using the fingerprints.

Sec. 6-20-7-Inspection before issuance.

- A. No public dance hall permit shall be issued unless the applicant certifies that the applicant has satisfied the rules, regulations and provisions of the applicable zoning requirements in the city and has submitted a zoning letter issued by the Memphis and Shelby County Office of Construction Code Enforcement. Any zoning requirement shall be in addition to and not an alternative to any requirement of this part;
- B. Before any public dance hall permit shall be issued by the director of police services, such director of police services shall cause an investigation of the premises at which the proposed public dance is to be held by the city and county department of health, the fire services division, and the chief building inspector, to determine whether or not such premises comply with the laws of the state, of the city, and this chapter, the fire

regulations, and the zoning ordinance and building code. Such officers shall, in their respective capacities, note their approval or disapproval upon the application, and if their disapproval, their reasons therefor.

Sec. 6-20-10-Revocation—Appeals—Notice required.

- A. If a public dance hall permit has been issued under the provisions of this chapter, and such public dance hall is being conducted in violation of the laws of this state or of this chapter, or of any other law or ordinance relating to the operation of public dance halls, the director of police services may at any time give notice in writing to the holder of the permit or other person in control of the operation and maintenance of such public dance hall that the permit has been revoked and cancelled. Such written notice shall state the reason for such revocation and cancellation and shall become a final revocation and cancellation after the expiration of ten (10) days from the date of service of such notice, unless on or before the expiration of such ten (10) days the permit holder or other person in control of the operation and maintenance of the public dance hall shall file with the director of police services a written request for a hearing before him or her upon the question whether or not the permit should have been revoked and cancelled. Such hearing shall be held by the director or his or her designated representative within thirty (30) days after the date of the filing of such request therefor, and the action and judgment of the director of police services, after hearing all the evidence and facts, shall be final and subject to court reviews as provided by law;
- B. The director of police services or his or her designated representative shall revoke, suspend or annul a public dance hall permit for any of the following reasons:
 - 1. Discovery that false or misleading information or data was given on any application or material facts were omitted from any permit application;
 - 2. The operator, entertainer, or any employee violates any provision of this part; provided, that an operator has a duty to supervise conduct on the premises of the dance hall and shall be deemed responsible for the conduct of an employee or entertainer, if the operator knew, or should have known, of the violation and authorized, approved, or, in the exercise of due diligence, failed to take reasonable efforts to prevent the violation;
 - 3. The operator becomes ineligible to obtain the appropriate permit;
- C. Any cost or fee required to be paid by this part is not paid.
- D. Once a public dance hall permit revocation and cancellation is final upon a hearing pursuant to Section A, the applicant is prohibited from applying for any subsequent dance hall permit.

Sec. 6-20-11-Fee—Expiration.

- A fee shall be charged for each dance permit issued. Such fee shall be:
- A. Ten dollars (\$10.00) for a limited dance permit which covers a seven consecutive calendar day period, during which a public dance hall may be used for public dances;
 - B. One hundred dollars (\$100.00) for a public dance hall except as set forth in subsection C of this section;
 - C. Five hundred dollars (\$500.00) for a public dance hall if alcoholic beverages, beer or wine are served in the same room where the dancing occurs.

Sec. 6-20-12- Renewal.

- A. With the exception of the limited dance permit described in Section 6-20-11(A), permits issued under this article shall be renewed annually and the application for renewal shall be accompanied by the payment of the fee required for the type permit prescribed. The renewal fee shall be paid each year by July 1st and will remain in effect through June 30th the following year. Permits issued after July 1st shall be prorated to reflect the months remaining in the fiscal year;
- B. If the police department is aware of any information bearing on the operator's qualifications, the information shall be filed in writing not later than ten (10) days after the date of the application for renewal.

Sec. 6-20-13- Employee Register.

- A. The operator shall maintain a register of all employees and entertainers, showing for each person the name, any aliases used, home address, age, birth date, sex, height, weight, color of hair and eyes, telephone number, social security number, driver license number, date of employment and termination, and duties. This information on each employee shall be maintained in the register on the premises for a period of three (3) years following termination;
- B. The operator shall make the register of employees available immediately for inspection by the board or police department upon demand of a member of the board or police department at all reasonable times;
- C. Every act or omission by an employee constituting a violation of the provisions of this part shall be deemed the act or omission of the operator if such act or omission occurs either with the authorization, knowledge, or approval of the operator, or as a result of the operator's negligent failure to supervise the employee's conduct, and the operator shall be punishable for such act or omission in the same manner as if the operator committed the act or caused the omission;
- D. An operator shall be responsible for supervising the conduct of all entertainers and employees while on the permitted premises, and shall exercise due diligence in taking reasonable efforts to prevent acts or omissions of any entertainers or employees constituting a violation of the provisions of this part, with the operator's failure to reasonably fulfill this duty constituting a ground for determining whether the operator's permit shall be revoked, suspended or renewed;
- E. No operator, employee or entertainer shall allow any minor to loiter around or to frequent a dance hall.

SECTION 2. BE IT FURTHER ORDAINED, that the provisions of this Ordinance are hereby severable. If any of these sections, provisions, sentences, clauses, phrases, or parts are held unconstitutional or void, the remained of this Ordinance shall continue in full force and effect.

SECTION 3. BE IT FURTHER ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, that this ordinance shall take effect on the later of: after it is passed by the Council, signed by the Chairman of the Council, certified and delivered to the Office of the Mayor in writing by the comptroller and become effective as otherwise provided by law.

MYRON LOWERY
Council Chairman

Attest:
Patrice Thomas, Comptroller

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