

ORDINANCE NUMBER 1533

AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON PROVIDING FOR THE REGULATION OF RELAXATION TREATMENT AND RELATED BUSINESSES.

THE CITY OF MILWAUKIE DOES ORDAIN AS FOLLOWS:

Section 1. Purpose. The purpose of this ordinance is to provide for regulation of types of business that the Council finds present extraordinary risk of being used as a means to conceal criminal behavior and to have an adverse impact on residential neighborhoods. This ordinance is intended to minimize this risk by limiting entry into this occupation to persons of good moral character and to provide for strict enforcement of all laws. In making this determination the Council has specifically considered the impact these regulations will have on the competitive nature of this industry. The Council finds that the regulations provided for herein are necessary, and need for the regulations outweighs any anti-competitive effect that may result from their adoption.

Section 2. Permits required.

A. It shall be unlawful for any person to engage in, conduct or carry on or to permit to be engaged in, conducted or carried on, in or upon any premises in the City of Milwaukie, the operation of a relaxation treatment business, a nude modeling business, a sexy reading room business, a sex counseling business, a sexy dance studio, a sexual encounter center business or a sex sauna or bathhouse business as herein defined, unless a permit for such business has first been obtained from the Chief of Police.

B. It shall be unlawful for a person to engage in the practice of relaxation treatment, nude modeling, sexy reading, sex counseling, sexy dancing, or to be employed by or work in a sexual encounter center business or a sexy sauna or bathhouse business as herein defined, without first having obtained a permit from the Chief of Police.

Section 3. Definitions. For the purpose of this ordinance, the following definitions shall apply:

"Compensation" means any form of remuneration, direct or indirect.

"Manual" means the use of hands, feet, any other part of the human anatomy.

"Nude Model" means a person to whom a permit to engage in the practice of nude modeling has been issued under this section.

"Nude Modeling" means allowing or otherwise permitting others to observe, photograph, paint a likeness of, sculpt or otherwise artistically depict a likeness of one's person while in a state of nudity, either directly or by means of a live transmission by means of closed circuit video equipment or other electronic means.

"Nude modeling business" means the operation of an establishment where the practice of nude modeling occurs.

"Nudity" means appearing without a covering for the genitalia consisting of an opaque material which does not simulate the organ covered and in the case of a female exposing to view wholly or substantially one or both breasts.

"Practice of nude modeling" means performing nude modeling for compensation.

"Practice of relaxation treatment" means the performance of relaxation treatment or permitting relaxation treatment to be performed on one's own body for compensation.

"Practice of sex counseling" means performing sex counseling for compensation.

"Practice of sexy dancing" means performing sexy dancing for compensation.

"Practice of sexy reading" means performing sex reading for compensation.

"Purpose of sensual or sexual gratification" means that the conduct or activity is done with the intent of creating sensual or sexual excitement, or with the intent of arousing the sexual desire of any person.

"Relaxation treatment" means the treatment of the body of another person by pressure, friction, stroking, tapping, kneading, painting, or any other manipulation or contact, direct or indirect, by manual or mechanical means or gymnastics, with or without appliances such as vibrators, infrared heat, sun lamps and external baths, and with or without lubricants or pigments including but not limited to oils, soaps, alcohol, paints, powders, lotions, shampoos or salts, whether for the purpose of maintaining good health and establishing and maintaining good physical condition or for any other lawful purpose.

"Relaxation treatment business" means a person to whom a permit to engage in the practice of relaxation has been issued under this ordinance.

"Relaxation treatment technician" means a person to whom a permit to engage in the practice of relaxation has been issued under this ordinance.

"Sex counselor" means a person to whom a permit to engage in the practice of sex counseling has been issued under this ordinance.

"Sex counseling" means the act of advising or discussing with any person of the opposite sex any matter related to sexual performance or conduct. Sex counseling service does not include any act performed by a person licensed pursuant to ORS Chapter 675, 677, 678, 684, or 685.

"Sex counseling business" means the operation of an establishment where the practice of sex counseling occurs.

"Sexual encounter center business" means the operation of any establishment in which any person is allowed, or permitted, for any form of compensation, to mingle with or in any way come into contact with, any other person, in or upon such business premises, for the purpose of sensual or sexual gratification, and which business is not otherwise specifically defined and regulated by this ordinance.

"Sexual encounter center employee" means any person who is employed by or works in any sexual encounter center business.

"Sexy dancer" means a person to whom a permit to engage in the practice of sexy dancing has been issued under this ordinance.

"Sexy dancing" means dancing, or moving, in any position, for any form of compensation, by any employee, with or without the use of music, for the purpose of sensual or sexual gratification.

"Sexy dancing business" means the operation of an establishment in which sexy dancing occurs.

"Sexy reader" means a person to whom a permit to engage in the practice of sexy reading has been issued under this ordinance.

"Sexy reading" means reading out loud or reciting any matter which contains explicit verbal descriptions or narrative accounts of sexual conduct, sexual excitement or sadomasochistic abuse, as these terms are defined in ORS 167.060.

"Sexy reading business" means the operation of an establishment where the practice of sexy reading occurs for any form of compensation.

"Sexy sauna or bathhouse" means the operation of any establishment in which any person is allowed or permitted, for any form of compensation, to become immersed in or surrounded by any liquid or vapor for the purpose of sensual or sexual gratification.

"Sexy sauna or bathhouse employee" means any person who is employed by or works in any sexy sauna or bathhouse.

Section 4. Exemptions. This ordinance does not apply to:

A. Persons who employ relaxation treatments, sex counseling, sexy reading, nude modeling, sexy dancing or sexual encounter groups as a part of a treatment program that is administered pursuant to another profession licensed under authority of the state and who hold the license in good standing from the state board having authority to license that profession. This exemption does not apply to state licensed businesses or persons engaged in or contracting for massage activities requiring a state license.

B. Persons directly involved in any accredited educational program at an accredited institution.

C. Trainers of any amateur, semi-professional or professional athlete or athletic teams.

D. Relaxation treatment practiced at the athletic department of any institution maintained by public funds of the state or any of its political subdivisions.

E. Relaxation treatment practiced at the athletic department of any bona fide accredited school or college.

Section 5. Fees.

A. Every applicant for a permit to maintain, operate or conduct a business regulated under this ordinance shall file an application with the Chief of Police and pay a non-refundable fee of \$250.00.

B. Every applicant for a permit to engage in the practice of nude modeling, relaxation treatment, sex counseling, sexy dancing or sexy reading, or to be employed by a sexual encounter center or sexy sauna or bathhouse business shall file an application with the Chief of Police and pay a non-refundable fee of \$50.00.

Section 6. Application for business permit.

A. The applications for a permit to operate any business regulated under this ordinance shall set forth the exact nature of the business to be operated, the proposed place of business and facilities therefore, the name and address of the principal managing employee thereof, and the name and address of each applicant. Each application shall also set forth the names and addresses of all persons, trusts, foundations, or corporations who have an ownership interest in the business or who have loaned money to the applicant for the business or hold a mortgage or other secured interest in the business and indicate the extent and terms of any such loan or mortgage, or other secured interest.

B. In addition to the foregoing, any applicant for a permit, each of the natural persons enumerated above, and any person who is directly involved in managing or supervising such regulated activities shall furnish the following information:

1. Written proof that such person is at least 18 years of age.

2. Business occupation, or employment for the three (3) years immediately preceding the date of application.

3. The business license history of the person in operating a business identical to or similar to those regulated under this ordinance.

4. Whether such person, previously operating a business in this or any other city or state under any license or permit, has had such license or permit revoked or suspended, the reason therefore, and the business activity or occupation of the person subsequent to such action of suspension or revocation.

5. Any criminal convictions, or arrests, except minor traffic violations. If convicted, a statement must be made giving the place and court in which the conviction was obtained and the sentence imposed as the result of such conviction.

C. Each applicant and natural person enumerated in subsections A and B of this section shall personally appear before the Chief of Police, or his designate, for fingerprinting and the taking of photographs.

D. A single application may be made for any combination of permits provided for by this ordinance, provided that the fee to be paid for such a combination permit shall be \$250 for each type of business applied for.

Section 7. Application for permit to practice relaxation treatment, nude modeling, sex counseling, sexy reading, sexy dancing or employment in a sexual encounter business or a sexy sauna or bathhouse business.

A. The application for a relaxation treatment technician, nude model, sex counselor, sexy reader, sexy dancer, or employment in a sexual encounter center business or a sexy sauna or bathhouse business shall contain the following:

1. Name and residence address.
2. Date of birth
3. Applicant's weight, height, color of hair and eyes.
4. Written evidence that the applicant is at least 18 years of age.
5. Business, occupation or employment of applicant for the three (3) years immediately preceding date of application.
6. Whether such person has ever been arrested for or convicted of any crime, except minor traffic violations. If so convicted, a statement must be made giving the place and court in which the conviction was obtained and the sentence imposed as a result of such conviction.

B. Each applicant shall personally appear before the Chief of Police or his designee for fingerprinting and the taking of photographs.

C. A single application may be made for any combination of permits that may be applied for under this section, provided that the fee for such a combination permit shall be \$50 for each type of activity applied for.

Section 8. Issuance and renewal of business permits. Upon the filing of an application for issuance or renewal of any business permit, and payment of the required fee, the Chief of Police shall cause the applicant to be investigated regarding the veracity of the statements contained in the application.

A. The application for a business permit shall be denied if:

1. Applicant, or any other person who will be directly engaged in the management or operation of the business, or any person who owns a five percent or more interest in the business, has previously owned or operated a business regulated under this or a similar ordinance and the permit for such business has been revoked pursuant to this or a similar ordinance or for cause which would be grounds for revocation pursuant to this ordinance, or if such business has

been found to constitute a public nuisance and abatement has been ordered; or if such person has been convicted of or evidence exists that supports a finding by the preponderance of the evidence the applicant has committed:

- a. Any felony.
- b. Prostitution, promoting prostitution, compelling prostitution or prohibited touching.
- c. Any misdemeanor involving the possession, use, sale or transportation of any controlled substance.
- d. Any sexual offense.
- e. Any crime involving gambling or alcoholic beverages except traffic offenses.
- f. For the purpose of this ordinance, the crimes listed in subsection a through e shall be considered to be defined by the statutes of the State of Oregon. Any conviction obtained other than pursuant to the statutes of the State of Oregon shall be considered a conviction for one of the listed crimes if the elements of the crime for which the conviction was obtained would have constituted one of the above crimes under the applicable Oregon Statutes.

2. The operation as proposed by the applicant would not comply with all applicable requirements of the City of Milwaukie Ordinances, including but not limited to the building, health, planning and zoning and fire codes of the City of Milwaukie. No permit shall be issued for any location within 1000 feet of any public or private elementary, junior high or high school, or any church, day care center, children's nursery, public park or playground, or property zoned residential.

3. Any statement in the application is found false.

4. Any employee has been convicted of a violation of any statute or ordinance pertaining to any felony, prostitution, promoting prostitution, compelling prostitution, prohibited touching, the use, sale, or transportation of controlled substances or any sexual offense and such violation either occurred on the premises of the establishment subject to the permit or was connected in time and manner with the operation of the establishment.

B. Notwithstanding the mandatory direction of subsection A the Chief of Police may grant a permit despite presence of one or more of the factors enumerated in subparagraph 1 or 4 above, if he concludes that the applicant has established to his satisfaction that the behavior evidenced by such factor is not likely to recur, or is remote in time, or occurred under circumstances which diminish the seriousness of the factor as it relates to the purpose of this ordinance.

C. The permit shall be for a term of one year, the permit shall be non-transferable and shall expire on the first anniversary of its issuance, and shall be valid only as to the location for which it is issued.

D. Denial of a permit may be appealed to the City Council by filing written notice of an appeal with the City Recorder within ten days of the date of denial.

Section 9. Issuance and renewal of permit to practice relaxation treatment, nude modeling, sex counseling, sexy reading, sexy dancing, or for employment by or work in a sexual encounter center or a sexy sauna or bathhouse, business.

Upon receipt of an application for a permit as a relaxation treatment technician, nude model, sex counselor, sexy reader, sexy dancer, or for employment in a sexual encounter center or a sexy sauna or bathhouse, the Chief of Police shall conduct an investigation of the applicant and shall issue such permit if no cause for denial exists.

A. Application for a permit shall be denied if:

1. The applicant has been convicted of or evidence exists that supports a finding by the preponderance of the evidence that the applicant has committed:

- a. Any felony.
- b. Any offense involving prostitution, promoting prostitution, compelling prostitution or prohibited touching.
- c. Any offense involving the possession, use, sale or transportation of any controlled substance.
- d. Any offense relating to any sexual activities.
- e. Any crime involving gambling or alcoholic beverages except traffic offenses.

f. For the purpose of this ordinance, the crimes listed in subsections a through e shall be considered to be defined by the statutes of the State of Oregon. Any conviction obtained other than pursuant to the statutes of the State of Oregon shall be considered a conviction for one of the listed crimes if the elements of the crime for which the conviction was obtained would have constituted one of the listed crimes under the applicable Oregon Statutes.

2. Any statement in the application is found to be false.

B. Notwithstanding the mandatory direction of subsection A, the Chief of Police may grant a permit despite the presence of one or more of the factors enumerated in subparagraph 1 above if he concludes that the applicant has established to his satisfaction that the behavior evidenced by such factor is not likely to recur, or is remote in time, or occurred under circumstances which diminish the seriousness of the factor as it relates to the purpose of this ordinance.

C. The permit shall be for a term of one year, the permit shall be non-transferable, and shall expire on the first anniversary of its issuance.

D. Denial of a permit may be appealed to the City Council by filing written notice of an appeal with the City Recorder within ten days of the date of denial.

Section 10. Revocation or suspension of permit.

A. Any permit issued for a business regulated under this ordinance may be revoked or suspended by the Chief of Police for any cause which would be grounds for denial of a permit or where investigation reveals any violation of the provisions of this ordinance or any violation of federal or state law relating to gambling, controlled substances, alcoholic beverages or prostitution has been committed by an employee either on the premises or in a time and manner connected with the operation of the establishment, or that such violations have been permitted to occur on the premises by the permit holder or any employee, or that a lawful inspection has been refused.

B. Any relaxation treatment technician, nude model, sex counselor, sexy dancer, or sexy reader permit, or permit to be employed in a sexual encounter center business or a sexy sauna or bathhouse business, may be revoked or suspended by the Chief of Police for any cause which would be grounds for denial of a permit.

C. Any permit shall be revoked or suspended if any statement contained in the application therefore shall be found to have been false.

D. The Chief of Police, upon revocation or suspension of any permit issued under this ordinance shall give the permittee written notice of such revocation or suspension by causing notice to be served upon the permit holder at the business or residence listed on the permit application. Service of such notice shall be accomplished either by mailing the notice by certified mail, return receipt requested, or at the option of the Chief of Police, by personal service in the same manner as a summons served in an action at law. When notice is sent by certified mail and is returned, receipt unsigned, service of notice shall be accomplished by personal service in the same manner as a summons is served in an action at law. Refusal of the service by the person whose permit is suspended or revoked is prima facie evidence of receipt of the notice. Provided further, that service of notice upon the person in charge of a business during its hours of operation shall constitute prima facie evidence of notice to the person holding the permit to operate the business. Suspension or revocation shall be effective and final ten (10) days after the giving of such notice, unless such suspension or revocation is appealed by filing a written notice of appeal to the City Council with the City Recorder of the City of Milwaukie.

Section 11. Appeals. The filing of an appeal of a revocation or suspension of a permit under this ordinance shall stay the effectiveness of such suspension or revocation until the appeal is determined by the Council. Upon receipt of notice of the appeal, the City Recorder shall give notice of the filing of the appeal to



the Chief of Police, who shall file a notice with the Council containing reasons for such denial, revocation or suspension. The notice of appeal filed with the City Recorder shall contain an address for the appellant to which all notices herein required may be mailed. The City Recorder shall set a date for a Council hearing upon the denial, revocation or suspension. At the hearing the Chief of Police or his designate shall report to the Council his reasons for denying, revoking, or suspending the permit. The person whose application has been denied or whose permit has been revoked or suspended shall have the right to call witnesses, cross-examine all witnesses, be heard by the Council and file a written statement in his behalf. At the conclusion of the hearing, the Council shall determine the appeal and the decision of the Council shall be final. If the Council denies the appeal, the revocation or suspension shall be effective immediately.

Section 12. Duty of business permit holder. No person who has been issued a permit to operate a business regulated under this ordinance shall permit any person to engage in any act for which a permit is required by Section 2.B unless such person has a valid permit issued by the Chief of Police to perform such act and notice has been given to the Chief of Police that such person will engage in such activity on the premises. Upon termination of the employment of any such person, the business permit holder shall give notice of such termination to the Chief of Police.

Section 13. Advertising restricted. No person shall advertise or cause to be advertised a business subject to the provisions of this ordinance unless a valid permit for such business shall have been issued by the Chief of Police.

Section 14. Prohibited conduct.

A. It shall be unlawful for any relaxation or treatment technician, sex counselor, sexy reader, sexy dancer or sexual encounter center employee to perform while in a state of nudity.

B. It shall be unlawful for any person to come into physical contact with any nude model.

Section 15. Penalty. Violation of any provision of this ordinance is punishable upon conviction by a fine of not more than \$500. Each day a violation is allowed to continue shall be considered a separate violation.

Section 16. Effective date for existing businesses. Any business subject to this ordinance and any person engaged in any activity subject to this ordinance on the date such business or activity first becomes subject to this ordinance may continue to do so subject to the provisions of this ordinance if:

A. Application for the required permit is made within thirty days of the effective date of this ordinance.

B. The application for such permit is not subsequently denied, revoked or suspended.

C. Such persons prove to the satisfaction of the Chief of Police that they were, in fact, engaged in such business or practice on the effective date of this ordinance.

D. Any person operating a business subject to this ordinance shall not be denied a permit solely on the grounds the business location is in violation of the location requirements of Section 8.A.2 during the first six months that this ordinance applies to such business. Any permit issued pursuant to this subsection shall expire on the six months anniversary of this ordinance applying to the business and shall not be renewed unless the business is in compliance with Section 8.A.2.

Section 17. Maintenance of premises in violation declared a nuisance; abatement.

Any premises maintained in violation of the provisions of this ordinance is hereby declared to be a public nuisance. The city attorney is authorized to bring any action or suit to abate such nuisance in any court of competent jurisdiction when he has probable cause to believe a nuisance under this section exists, regardless if any individual has been convicted of a violation of this ordinance.

Section 18. Notice required. Each person issued a permit to operate a business regulated under this ordinance shall cause to be placed and maintained in a conspicuous place within each room or enclosure where regulated activities occur, a notice stating in letters at least two inches high the following:

"PROSTITUTION IS A CRIME. THIS ESTABLISHMENT IS REGULATED BY THE CITY OF MILWAUKIE. IT IS UNLAWFUL FOR ANY PERSON TO OFFER TO OR ENGAGE IN SEXUAL ACTIVITY FOR A FEE. THESE LAWS ARE COMPLIED WITH BY THIS ESTABLISHMENT AND ARE STRICTLY ENFORCED. DON'T EVEN BOTHER TO ASK."

Such notice shall utilize appropriate spacing between letters and words so as to be clearly readable.

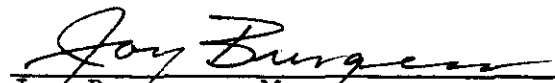
Section 19. Inspection of premises. A police officer may, during hours the establishment is open for business, inspect those portions of any premises in which a business regulated under this ordinance is conducted that are open to or frequented by customers. Further, a police officer may, during such inspection, inspect any additional portions of such premises in which the officer reasonably believes that non-permitted employees or customers may be hiding to avoid detection.

Section 20. Severability. The sections of this ordinance are severable. The invalidity of a section shall not affect the validity of the remaining sections.


Read on the 16th day of November, 1982, and moved to second reading by unanimous vote of the City Council.

Read the second time and adopted by the City Council on November 16, 1982.

Signed by the Mayor on November 16, 1982.

  
Joy Burgess, Mayor

ATTEST:

  
Laurie Perkin, City Recorder

Approved as to form:

  
Greg Eades, City Attorney