

# Ordinance No. 00171

[\(Council Minutes 98/05/18\)](#)

ORDINANCE NO. 171

AN ORDINANCE of the City Council of the City of Lakewood, Washington creating a new Chapter 5.16 of the Lakewood Municipal Code, relating to the regulations of sexually-oriented businesses as defined herein, providing for the licensing of such businesses, further providing standards of conduct and operation, including the regulation of certain physical features of adult cabarets, and establishing penalties for the violation of such regulations, and repealing Chapter 5.14 of the Lakewood Municipal Code

WHEREAS, the City of Lakewood is an urban residential community and a non-charter code city under the constitution and statutes of the State of Washington, incorporated February 28, 1996, with a population of approximately 63,000 residents living in approximately 19 square miles; and,

WHEREAS, the City is immediately adjacent to the United States Military Reservations of Fort Lewis and McChord Air Force Base, in Pierce County, State of Washington; and,

WHEREAS, because of the length of time that the area that is now Lakewood grew and developed as an urban unincorporated area in Pierce County, there was no clear demarcation of a commercial/business district within the area; and,

WHEREAS, the City of Lakewood now has no single commercial core district, but has a collection of commercial/business districts disbursed and spread throughout the City; and,

WHEREAS, prior to the incorporation of the City of Lakewood, numerous sexually oriented businesses located in and have operated within the area now included within the corporate boundaries of the City of Lakewood; and,

WHEREAS, since the City's incorporation, it has struggled with the dilemma of addressing the adult entertainment influences and the need to protect and preserve the community standards of its residents, particularly in light of the unique circumstances of its proximity to the military reservations of Fort Lewis and McChord Air Force Base, and its numerous, disbursed commercial/business districts, often adjacent to or in close proximity to residential neighborhoods; and,

WHEREAS, in order to determine the appropriate method of addressing adult entertainment in the City, the City Council, by Ordinance No.78 directed its Planning Advisory Board to study these issues; and,

WHEREAS, in order to assist the Planning Advisory Board in its function of studying the adult entertainment issues, it established a Citizens' Adult Entertainment Task Force; and,

WHEREAS, the Task Force met on 11 occasions, reviewing the legal considerations of adult entertainment regulation, the practical and operational aspects of the adult entertainment businesses in the City, the impacts of such businesses on neighborhoods, the number and types of cases that are related to such businesses with which law enforcement officers must contend, the problems experienced by neighboring and area cities related to adult entertainment businesses, the similarities and distinctions that these cities had to the City of Lakewood, and how these cities addressed their problems; and,

WHEREAS, the Task Force completed its study, and it reported its findings , suggestions and recommendations to the Planning Advisory Board on the 18th day of March, 1998; and,

WHEREAS, preliminary to the development of a comprehensive plan, identifying appropriate locations for adult entertainment businesses, in an effort to identify the appropriate time, place and manner restrictions on adult entertainment type businesses, and to fully and fairly recognize the factors and interests involved, the Planning Advisory Board, its Adult Entertainment Task Force and the City Council held a number of numerous public meetings and/or public hearings on May 13th, 1996, May 20th, 1996, January 21st, 1997, January 29th, 1997, August 18th, 1997, February 17th, 1998, March 18th, 1998 and April 15, 1998, to receive information, consider and hear comments and testimony on adult entertainment issues, hearing from members of the City's police services and legal/prosecution staff, and from members of the public, including representatives from the business community and residents of the residential neighborhoods of the City; and,

WHEREAS, included in the information received at the various public hearings and public meetings, were descriptions of

police and prosecution experiences in the City of Lakewood related to adult entertainment; and,

WHEREAS, on the 15th day of April, 1998, following a Public Hearing on the March 18, 1998 and April 15, 1998, on the proposed draft ordinance, and its consideration of the statements, comments and information received, including its receipt of the report and recommendation of its Adult Entertainment Task Force, the Planning Advisory Board, upon motion duly made and seconded and approved by a majority of its members, forwarded its recommendation to the City of Lakewood City Council that the proposed Ordinance be adopted; and,

WHEREAS, in addition to the various hearings and meetings referenced above, the City Council of the City of Lakewood reviewed and considered, at its City Council Study Session of May 11, 1998, the material amassed by the Adult Entertainment Task Force, the Planning Advisory Board, City staff, and comments and correspondence from citizens, as well as the information received from the police department and from other communities as to the issues involved in adult cabaret regulation, including the secondary effects and implications on the community of adult cabaret establishments; and, WHEREAS, the City of Lakewood City Council further takes notice of and specifically relies upon the experiences of and studies utilized by other cities and counties in combating the specific adverse impacts of sexually-oriented businesses including nude and semi-nude dancing; and,

WHEREAS, based incidents of described conduct in adult entertainment establishments and statements of individuals involved, there are concerns and risks of sexually transmitted disease; and,

WHEREAS, the City Council finds that based on statements of citizens and police, and on information received from other communities, sexually-oriented businesses have historically led to an increase in prostitution, sexually transmitted disease, drug and alcohol offenses and other criminal activity; and,

WHEREAS, the City finds a compelling need to protect all citizens, but especially minors from criminal and unlawful activities and impacts associated with sexually oriented businesses; and,

WHEREAS, based on information from other communities, sexually-oriented businesses are sometimes fronts for criminal activity and for or operated by persons associated with organized crime, and the need to scrutinize such businesses and their operators is thereby enhanced; and,

WHEREAS, the law enforcement resources available for responding to problems associated with or created by sexually-oriented businesses are limited and are best conserved by regulating and licensing sexually-oriented businesses and those associated with them; and,

WHEREAS, based on public comment and testimony, and on other information presented on this subject to the Planning Advisory Board, its Adult Entertainment Task Force and to the City Council, the City Council has determined that there are deleterious secondary effects of sexually-oriented businesses that can be minimized through the adoption of specific licensing and premises operational requirements that are narrowly tailored to alleviate those harmful effects; and,

WHEREAS, based upon the information gathered by the Planning Advisory Board, its Adult Entertainment Task Force and the City Council, including studies and testimonial information presented, the City Council finds that the adult entertainment activities defined herein are detrimental to the public health, safety, morals, and general welfare of the citizens of Lakewood, and finds that the adoption of licensing and operational regulations on sexually-oriented businesses to be necessary to minimize harmful secondary effects, and to preserve and protect the quality of life in the City of Lakewood, and further finds that such activities must be regulated as provided herein; and,

WHEREAS, there are sufficient important and substantial government interests to provide a constitutional basis for reasonable regulation of time, place, and manner under which sexually-oriented businesses can operate; and,

WHEREAS, it is appropriate and necessary for the City Council to adopt comprehensive regulations of sexually-oriented businesses, so as to substantially enhance its ability to protect its citizens from the public nuisance resulting from the identified public health and safety dangers created and exacerbated by sexually-oriented businesses; and,

WHEREAS, regulation of sexually-oriented business through permitting and or/licensing is further necessary because, in the absence of such regulation, significant criminal activity has historically and regularly occurred; and,

WHEREAS, the history of criminal activity in sexually--oriented business has included prostitution, narcotics and liquor law violations, breaches of the peace, and the presence within the industry of organized crime through individuals with hidden ownership interests and outstanding arrest warrants; and,

WHEREAS, it is necessary to have a licensed manager on the premises of sexually--oriented businesses so there will, at all necessary times, be an individual responsible for the overall operation of the establishment, including the actions of patrons,

entertainers and other employees; and, WHEREAS, the evidence supporting the need to protect minors from the criminal and other unlawful activities associated with the operation of sexually-oriented businesses is compelling; and,

WHEREAS, the provisions of this ordinance are necessary to ensure that sexually-oriented uses in Lakewood are conducted in a manner consistent with the legitimate governmental interests of the City, and conducted at a reasonable distance away from residential neighborhoods and from places where minors regularly gather; and,

WHEREAS, it is not the intent of this ordinance to unreasonably suppress any speech activities protected by the First Amendment or Article 1, Section 5 of the Washington State Constitution, but to enact regulations which address the secondary effects of sexually-oriented businesses, as well as the health problems associated with such businesses; and,

WHEREAS, the concern over sexually-transmitted diseases is a legitimate health concern of the City which further demands reasonable regulation of sexually-oriented businesses in order to protect the health and well-being of the citizens; and,

WHEREAS, the Washington State Supreme Court recently decided the case of *Ino Ino, Inc. v. Bellevue*, 132 Wn.2d 103, 937 P.2d 154 (1997), which case gives further guidance to the City of Lakewood in developing its Ordinance.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAKEWOOD, WASHINGTON DO ORDAIN as follows:

SECTION ONE: That a new Chapter 5.16 of the Lakewood Municipal Code is hereby created and established to read as follows:

## ADULT CABARETS

5.16

Sections:

5.16.010 Definitions.

5.16.020 License required.

5.16.030 License prohibited to certain classes.

5.16.040 Application.

5.16.050 Standards of conduct and operation - Adult cabarets.

5.16.060 Business License Fees and Renewals.

5.16.070 Liquor regulations.

5.16.080 Grounds for Suspension or Revocation, Notice and Order, and Appeal.

5.16.090 Violation a misdemeanor.

5.16.100 Nuisance declared.

5.16.110 Additional enforcement.

5.16.120 Severability.

5.16.010 Definitions.

A. "Adult cabaret" means any commercial premises, including any cabaret premises, to which any member of the public is invited or admitted and where an entertainer provides live adult entertainment to any member of the public.

B. "Adult entertainment" means:

1. Any exhibition, performance, dance or conduct of any type conducted in a premises where such exhibition, performance, or dance involves a person who is unclothed or in such costume, attire, or clothing as to expose any portion of the female breast below the top of the areola or any portion of the pubic region, anus, buttocks, vulva or genitals, or wearing any device or

covering exposed to view which simulates the appearance of any portion of the female breast below the top of the areola or any portion of the pubic region, anus, buttocks, vulva or genitals, or human male genitals in a discernibly turgid state, even if completely and opaquely covered; or

2. Any exhibition, performance, dance or conduct of any type conducted in a premises where such exhibition, performance or dance is distinguished or characterized by a predominant emphasis on the depiction, description, simulation or relation to the following specified sexual activities:

- a. Human genitals in a state of sexual stimulation or arousal,
- b. Acts of human masturbation, sexual intercourse or sodomy, or
- c. Fondling or other erotic touching of human genitals, pubic region, buttocks or female breast; or

3. Any exhibition, performance, dance or conduct which is intended to sexually stimulate any member of the public and which is conducted on a regular basis or as a substantial part of the premises activity. This includes, but is not limited to, any such exhibition, performance, dance or conduct performed for, arranged with or engaged in with fewer than all members of the public on the premises at that time, for which payment is made, either directly or indirectly, for such performance, exhibition, dance or conduct and which is commonly referred to as table dancing, couch dancing, taxi dancing, lap dancing, private dancing or straddle dancing, or similar types of performances, exhibitions, dances or conduct.

C. "Applicant" means the individual or entity seeking an adult cabaret license in the City of Lakewood.

D. "Applicant control persons" means all partners, corporate officers and directors and any other individuals in the applicant's business organization who hold a significant interest in the adult cabaret business, based on responsibility for management of the adult cabaret business.

E. "City" means the City of Lakewood..

F. ACity Manager@ means the City Manager of the City of Lakewood.

G. ACity Manager or designee@ means either the City Manager of the City of Lakewood or the person designated by the City Manager of the City of Lakewood to handle or perform some act, function, responsibility or task.

H. "Employee" means any and all persons who work in or at or render any services directly related to the operation of any adult cabaret, including, but not limited to managers and entertainers, regardless of whether any such employee is or considers himself or herself an independent contractors or otherwise.

I. "Entertainer" means any person who provides adult entertainment within an adult cabaret as defined in this Section, whether or not a fee is charged or accepted for entertainment.

J. "Liquor" means all beverages defined in RCW 66.04.200.

K. "Manager" means any person who manages, directs, administers or is in charge of the affairs and/or conduct of any portion of any activity involving adult entertainment occurring at any adult cabaret, and includes assistant managers working with or under the direction of a manager to carry out such purposes.

L. "Operator" means any person operating, conducting or maintaining an adult cabaret.

M. "Person" means any individual, partnership, corporation, trust, incorporated or unincorporated association, marital community, joint venture, governmental entity, or other entity or group of persons however organized.

N. "Member of the public" means any customer, patron, club member, or person, other than an employee as defined in this Section, who is invited or admitted to a cabaret.

O. "Sexual conduct" means acts of:

1. Sexual intercourse within its ordinary meaning, occurring upon any penetration, however slight; or
2. Any penetration of the vagina or anus, however slight, by an object; or
3. Any contact between persons involving the sex organs of one person and the mouth or anus or another; or
4. Masturbation, manual or instrumental, of oneself or of one person by another; or
5. Touching of the sex organs or anus, whether clothed or unclothed, of oneself or of one person by another; or
6. Touching of the sexual or other intimate parts of a person done for the purpose of gratifying sexual desire of either party or a third party.

5.16.020 License required.

A. It is unlawful for any person to conduct, manage or operate an adult cabaret unless such person is the holder of a valid and subsisting license from the City to do so, obtained in the manner provided in this Chapter.

B. It is unlawful for any entertainer, employee or manager to knowingly work in or about, or to knowingly perform any service or entertainment directly related to the operation of an unlicensed adult cabaret.

C. It is unlawful for any entertainer to perform in an adult cabaret unless such person is the holder of a valid and subsisting license from the City to do so.

D. It is unlawful for any manager to work in an adult cabaret unless such person is the holder of a valid and subsisting license from the City to do so. It is also unlawful for any manager to allow or permit an entertainer to perform in an adult cabaret unless such entertainer is the holder of a valid and subsisting license from the City to do so, and it is the responsibility of the manager to make sure that the entertainers who are performing while the manager is working are properly licensed.

5.16.030 License prohibited to certain classes.

No license shall be issued to:

A. A natural person who has not attained the age of 21 years, except that licenses may be issued to persons who have attained the age of 18 years with respect to cabarets where no intoxicating liquors are served or provided.

B. A person whose place of business is conducted by a manager or agent, unless such manager or agent possesses the same qualifications required of the licensee, or in the case of a manager or an adult cabaret, the manager has obtained a manager's license.

C. A copartnership, unless all the members thereof are qualified to obtain a license as provided in this Chapter. Such license shall be issued to the manager or agent thereof.

D. A corporation, unless all the officers and directors thereof are qualified to obtain a license as provided herein. Such license shall be issued to the manager or agent thereof.

E. A person, copartnership, or corporation that owns, operates or maintains any other adult cabaret, adult entertainment establishment or sexually oriented business, as those terms are generally understood to mean, located within the City of Lakewood. It is provided, however, that this limitation shall not be applied so as to prohibit the renewal of a license for such a business where such person, copartnership, or corporation operates two or more adult cabaret, adult entertainment establishment or sexually oriented business as of the effective date of the Ordinance by which this provision is adopted, PROVIDED that such adult cabarets, adult entertainment establishments or sexually oriented businesses may not be expanded, enlarged or improved in any way, nor modified in any way that increases the amount or level of activity or business at such adult cabaret, adult entertainment establishment or sexually oriented business, unless the adult cabaret, adult entertainment establishment or sexually oriented business is brought into full compliance with the provisions of this Chapter and the Lakewood Municipal Code; provided that this shall not restrict said person, copartnership, or corporation from making necessary repairs.

F. No more than one adult cabaret, adult entertainment establishment or sexually oriented business may be located on any piece of property or any adjacent piece of property owned or leased by the same person, copartnership, or corporation. It is provided, however, that this limitation shall not be applied so as to prohibit the renewal of a license for such businesses where such adult cabarets, adult entertainment establishments or sexually oriented businesses were located on the same or adjacent property on the effective date of the Ordinance by which this provision is adopted, PROVIDED that such adult cabarets, adult entertainment establishments or sexually oriented businesses may not be expanded, enlarged or improved in any way, nor modified in any way that increases the amount or level of activity or business at either or any such adult cabaret, adult entertainment establishment or sexually oriented business, unless the adult cabarets, adult entertainment establishments or sexually oriented businesses is brought into full compliance with the provisions of this Chapter and the Lakewood Municipal Code; provided that this shall not restrict said person, copartnership, or corporation from making necessary repairs.

#### 5.16.040 Application.

##### A. Adult Cabaret License.

1. All applications for an adult cabaret license shall be submitted to the City Manager or designee in the name of the person or entity proposing to conduct an adult cabaret on the business premises and shall be signed by such person and certified as true under penalty of perjury. All applications shall be submitted on a form supplied by the City, which shall require the following information:

a. For the applicant and for each applicant control person, provide: Names, any aliases or previous names, date and place of birth, driver's license number, if any, social security number if any, and business, mailing, and residential address, and business telephone number.

b. If a partnership, whether general or limited; and if a corporation, date and place of incorporation, evidence that it is in good standing under the laws of Washington, and name and address of any registered agent for service of process.

c. Whether the applicant or any partner, corporate officer, or director of the applicant holds any other licenses under this Chapter or any license for similar adult entertainment or sexually oriented business, including motion picture theaters and panoramas, from the City or another city, county or state, and if so, the names and addresses of each other licensed business.

- d. A summary of the business history of the applicant and applicant control persons in owning or operating the adult entertainment or other sexually oriented businesses, providing names, addresses and dates of operation for such businesses, and whether any business license or adult entertainment license has been revoked or suspended, and the reason therefor.
- e. For the applicant and all applicant control persons, any and all criminal convictions or forfeitures within five years immediately preceding the date of the application, other than parking offenses or minor traffic infractions including the dates of conviction, nature of the crime, name and location of court and disposition.
- f. For the applicant and all applicant control persons, a description of business, occupation or employment history for the three years immediately preceding the date of the application.
- g. Authorization for the City, its agents and employees to seek information to confirm any statements set forth in the application.
- h. The location and doing-business-as name of the proposed adult cabaret, including a legal description of the property, street address, and telephone number, together with the name and address of each owner and lessee of the property.
- i. Three (3) two-inch by two-inch color photographs each of the applicant and of applicant control persons, taken within six months of the date of application showing only the full face.
- j. A complete set of fingerprints for the applicant and for each applicant control person, by employees of the department providing law enforcement services for the City of Lakewood.
- k. A scale drawing or diagram showing the configuration of the premises for the proposed adult cabaret, including a statement of the total floor space occupied by the business, and marked dimensions of the interior of the premises. Performance areas, seating areas, manager's office and stations, restrooms and service areas shall be clearly marked on the drawing. An application for a license for an adult cabaret shall include building plans which demonstrate conformance with Section 5.16.050 of the City Code.
2. An application shall be deemed complete upon the applicant's provision of all information requested above, including identification of "none" where that is the correct response, and the applicant's verification that the application is complete. The City Manager or designee may request other information or clarification in addition to that provided in a complete application where necessary to determine compliance with this Chapter.
3. A non-refundable application fee must be paid at the time of filing an application in order to defray the costs of processing the application.
4. Each applicant shall verify, under penalty of perjury that the information contained in the application is true.
5. If any person or entity acquires, subsequent to the issuance of an adult cabaret license, a significant interest based on responsibility for management or operation of the licensed premises or the licensed business, notice of such acquisition shall be provided in writing to the City Manager or designee, no later than 21 calendar days following such acquisition. The notice required shall include the information required for the original adult cabaret license application.
6. The adult cabaret license, if granted, shall state on its face the name of the person or persons to whom it is issued, the expiration date, the name or names under which the business shall be done or by which the business shall be known and the address of the location of the licensed adult cabaret. The permit shall be posted in a conspicuous place at or near the entrance to the adult cabaret so that it can be easily read at any time the business is open.
7. No person granted an adult cabaret license pursuant to this Chapter shall operate the adult cabaret business under a name not specified on the license, nor shall any person operate an adult cabaret under any designation or at any location not specified on the license.
8. Upon receipt of the complete application and fee, the City Manager or designee shall provide copies to the police, fire, and community development departments for their investigation and review to determine compliance of the proposed adult cabaret with the laws and regulations which each department administers. Each department shall, within 30 calendar days of the date of such application, inspect the application and premises and shall make a written report to the City Manager or designee whether such application and premises comply with the laws administered by each department. No license may be issued unless each department reports that the application and premises comply with the relevant laws. In the event the premises is not yet constructed, the departments shall base their recommendation as to premises compliance on their review of the drawings submitted in the application. Any adult cabaret license approved prior to premises construction shall contain a condition that the premises may not open for business until the premises have been inspected and determined to be in substantial conformance with the drawings submitted with the application. A department shall recommend denial of a license under this subsection if it finds that the proposed adult cabaret is not in conformance with the requirements of this Chapter or

other law in effect in the City. A recommendation for denial shall cite the specific reason therefor, including applicable laws.

9. An adult cabaret license shall be issued by the City Manager or designee within thirty-five (35) calendar days of the date of filing a complete license application and fee, unless the City Manager or designee determines that the applicant has failed to meet any of the requirements of this Chapter or provide any information required under this subsection or that the applicant has made a false, misleading or fraudulent statement of material fact on the application for a license. The City Manager or designee shall grant an extension of time in which to provide all information required for a complete license application upon the request of the applicant. If the City Manager or designee finds that the applicant has failed to meet any of the requirements for issuance of an adult cabaret license, the City Manager or designee shall deny the application in writing and shall cite the specific reasons therefor, including applicable law. If the City Manager or designee fails to issue or deny the license within thirty-five (35) calendar days of the date of filing of a complete application and fee, the applicant shall be permitted, subject to all other applicable law, to operate the business for which the license was sought until notification by the City Manager or designee that the license has been denied, but in no event may the City Manager or designee extend the application review time for more than an additional 20 calendar days.

#### B. Adult Cabaret Manager and Entertainer Licenses.

1. No person shall work as a manager, assistant manager or entertainer at an adult cabaret without an entertainer's or manager's license from the City. Each applicant for a manager's or entertainer's license shall complete an application on forms provided by the City containing the information identified below. A nonrefundable application fee of \$100.00 shall accompany the application. A copy of the application shall be provided to the police department for its review, investigation and recommendation. All applications for a manager's or entertainer's license shall be signed by the applicant and certified to be true under penalty of perjury. The manager's or entertainer's license application shall require the following information:

a. The applicant's true name, home address, home telephone number, date and place of birth, fingerprints taken by employees of the department providing law enforcement services for the City of Lakewood, social security number, and any stage names or nicknames used in entertaining.

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

c. Documentation that the applicant has attained the age of 18 years. Any two of the following shall be accepted as documentation of age:

i. A motor vehicle operator's license issued by any state bearing the applicant's photograph and date of birth;

ii. A state issued identification card bearing the applicant's photograph and date of birth;

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 identification that the City determines to be acceptable.

d. A complete statement of all convictions of the applicant for any misdemeanor or felony violations in this or any other city, county, or state within five years immediately preceding the date of the application, except parking violations or minor traffic infractions.

e. A description of the applicant's principal activities or services to be rendered.

f. Three (3) two-inch by two-inch color photographs of applicant, taken within six months of the date of application showing only the full face.

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

2. The City Manager or designee may request additional information or clarification when necessary to determine compliance with this Chapter.

3. An adult cabaret manager's or an adult entertainer's license shall be issued by the City Manager or designee within twenty-one (21) calendar days from the date the complete application and fee are received unless the City Manager or designee determines that the applicant has failed to provide any information required to be supplied according to this Chapter, has made any false, misleading or fraudulent statement of material fact in the application, or has failed to meet any of the requirements for issuance of a license under this Chapter. If the City Manager or designee determines that the applicant has failed to qualify for



the license applied for, the City Manager or designee shall deny the application in writing and shall cite the specific reasons therefor, including applicable laws. If the City Manager or designee has failed to approve or deny an application for an adult cabaret manager's license within twenty-one (21) calendar days of filing of a complete application, the applicant may, subject to all other applicable laws, commence work as an adult cabaret manager in a duly licensed adult cabaret until notified by the City Manager or designee that the license has been denied, but in no event may the City Manager or designee extend the application review time for more than an additional 20 calendar days.

4. An applicant for an adult entertainer's license shall be issued a temporary license upon receipt of a complete license application and fee. Said temporary license will automatically expire on the twenty-first (21st) day following the filing of the complete application and fee, unless the City Manager or designee has failed to approve or deny the license application in which case the temporary license shall be valid until the City Manager or designee approves or denies the application, or until the final determination of any appeal from a denial of the application. In no event may the City Manager or designee extend the application review time for more than an additional 20 calendar days. The temporary license must be surrendered by the applicant to the City before the City will issue a regular (non-temporary) license.

#### 5.16.050 Standards of conduct and operation - Adult cabarets.

A. The following standards of conduct must be adhered to by employees of any adult cabaret while in any area in which members of the public are allowed to be present:

1. No employee or entertainer shall be unclothed or in such less than opaque and complete attire, costume or clothing so as to expose to view any portion of the female breast below the top of the areola or any portion of the pubic region, anus, buttocks, vulva or genitals, except upon a stage at least 18 inches above the immediate floor level and removed at least eight feet from the nearest member of the public.

2. No employee or entertainer mingling with members of the public shall be unclothed or in less than opaque and complete attire, costume or clothing as described in subdivision 1 of this subsection, nor shall any male employee or entertainer at any time appear with his genitals in a discernibly turgid state, even if completely and opaquely covered, or wear or use any device or covering which simulates the same.

3. No employee or entertainer mingling with members of the public shall wear or use any device or covering exposed to view which simulates the breast below the top of the areola, vulva, genitals, anus, any portion of the pubic region, or buttocks.

4. No employee or entertainer shall caress, fondle or erotically touch any member of the public. No employee or entertainer shall encourage or permit any member of the public to caress, fondle or erotically touch any employee or entertainer.

5. No employee or entertainer shall perform actual or simulated acts of sexual conduct as defined in this Chapter, or any act which constitutes a violation of Chapter 7.48A RCW, the Washington Moral Nuisances Statute.

6. No employee or entertainer mingling with members of the public shall conduct any dance, performance or exhibition in or about the non-stage area of the adult cabaret unless that dance, performance or exhibition is performed at a distance of no less than four feet from any member of the public.

7. No payment, tip or gratuity may be paid directly to any adult entertainer or other employee of an adult cabaret, regardless of where the adult entertainer or other employee of an adult cabaret is located. Any payments, tips or gratuities that any patron or other person intends or desires to pay to any adult entertainer or other employee of an adult cabaret shall be deposited in a box or receptacle clearly identified as the box or receptacle into which payments, tips or gratuities shall be received by or deposited for the intended adult entertainer or other employee of an adult cabaret. The location of such box(es) or receptacle(s) shall be in the vicinity of the cash register or counter where payments are made for services provided in the establishment, and shall be clearly visible to the manager of the adult cabaret and to the public. No payment, tip or gratuity may be offered to, or accepted by an adult entertainer in advance of or prior to any performance, exhibition, dance or conduct provided by the entertainer. No entertainer performing upon any stage area shall be permitted to accept any form of payment, tip or gratuity offered directly to the entertainer by any member of the public.

8. No adult cabaret manager, entertainer or other employee shall perform more than one type of work or service for the adult entertainment establishment by which the manager, entertainer or other employee is employed during any twelve (12) hour period. (This provision would, for instance, prohibit a person from acting as the adult cabaret manager during any twelve hour period from the time that such person acted or served in the capacity as a wait-person at the adult cabaret or as an entertainer; and would prohibit a person from acting as an entertainer in the adult cabaret during any twelve hour period from the time that such person acted or served in the capacity as a wait-person at the adult cabaret or as an adult cabaret manager, etc.)

B. At any adult cabaret, the following are required:

1. Admission must be restricted to persons of the age of 18 years or more. It is unlawful for any owner, operator, manager or other person in charge of an adult cabaret to knowingly permit or allow any person under the minimum age specified to be in or upon such premises. The owner, operator, manager or other person in charge of an adult cabaret shall be responsible for checking the identity and age of persons who appear to be close to or under the age of 18 years.

2. Neither the performance nor any photograph, drawing, sketch or other pictorial or graphic representation thereof displaying any portion of the breasts below the top of the areola or any portion of the pubic hair, buttocks, genitals, and/or anus may be visible outside of the adult cabaret. No member of the public shall be permitted at any time to enter into any of the non-public portions of the adult cabaret, which shall include but are not limited to: the dressing rooms of the entertainers or other rooms provided for the benefit of employees, and the kitchen and storage areas; except that persons delivering goods and materials, food and beverages, or performing maintenance or repairs to the premises or equipment on the premises may be permitted into non-public areas to the extent required to perform their job duties.

C. The responsibilities of the manager of an adult cabaret shall include but are not limited to:

1. A licensed manager shall be on duty at an adult cabaret at all times adult entertainment is being provided or members of the public are present on the premises. The name and license of the manager shall be prominently posted during business hours. The manager shall be responsible for verifying that any person who provides adult entertainment within the premises possesses a current and valid entertainer's license.

2. The licensed manager on duty shall not be an entertainer.

3. The manager or an assistant manager licensed under this Chapter shall maintain visual observation of each member of the public at all times any entertainer is present in the public or performance areas of the adult cabaret. Where there is more than one performance area, or the performance area is of such size or configuration that one manager or assistant manager is unable to visually observe, at all times, each adult entertainer, each employee, and each member of the public, a manager or assistant manager licensed under this Chapter shall be provided for each public or performance area or portion of a public or performance area visually separated from other portions of the adult cabaret.

4. The manager shall be responsible for and shall assure that the actions of members of the public, the adult entertainers and all other employees shall comply with all requirements of this Chapter.

5. Every adult entertainer shall provide his or her license to the adult cabaret manager on duty on the premises prior to his or her performance. The manager shall retain the licenses of the adult entertainers readily available for inspection by the City at any time during business hours of the adult cabaret.

D. Premises - Specifications.

1. Performance Area. The performance area of the adult cabaret where adult entertainment as described in Section 5.16.050(A)(1) is provided shall be a stage or platform at least 18 inches in elevation above the level of the patron seating areas, and shall be separated by a distance of at least eight feet from all areas of the premises to which members of the public have access. A continuous railing at least three feet in height and located at least eight feet from all points of the performance area shall separate the performance area and the patron seating areas. The stage and the entire interior portion of cubicles, rooms or stalls wherein adult entertainment is provided must be visible from the common areas of the premises and at least one manager's station. Visibility shall not be blocked or obstructed by doors, curtains, drapes or any other obstruction whatsoever.

2. Lighting. Sufficient lighting shall be provided and equally distributed throughout the public areas of the premises so that all objects are plainly visible at all times. A minimum lighting level is established requiring that lighting be sufficient so that 8 point size print on white background would be readable at a distance of twenty inches from the eyes of the person so reading, and that level of lighting shall be provided for all areas of the adult cabaret where members of the public are admitted.

3. Visibility to Manager. All activity or entertainment occurring on the premises shall be visible at all times by and from the manager on duty at the time.

4. Visibility from Public Places. No activity or entertainment occurring on the premises shall be visible at any time from any public place, and no entertainer shall be visible from any public place during the hours of his or her employment, or apparent hours of such employment, on the premises.

5. Signs. A sign at least two feet by two feet, with letters at least one inch high shall be conspicuously displayed in the public area(s) of the premises stating the following:

THIS ADULT CABARET IS REGULATED BY THE CITY OF LAKEWOOD. ENTERTAINERS ARE: (A) NOT PERMITTED TO ENGAGE IN ANY TYPE OF SEXUAL CONDUCT; (B) NOT PERMITTED TO APPEAR SEMI-NUDE OR NUDE, EXCEPT ON STAGE; (C) NOT PERMITTED TO ACCEPT PAYMENTS, TIPS OR GRATUITIES IN ADVANCE OF THEIR PERFORMANCE; (D) NOT PERMITTED TO ACCEPT PAYMENTS, TIPS OR GRATUITIES DIRECTLY FROM PATRONS

6. Business Signs. Exterior signs and any interior sign or notice visible to the public may announce the name of the business and the nature of the business by the terms "adult entertainment", "adult theater" or "adult use establishment" but shall not contain any representation of the human body or make any statement pertaining to the human body, whether of entertainers, patrons or the public.

7. Price List. There shall be posted and conspicuously displayed in all areas of the adult cabaret where members of the public are admitted a list of any and all types of entertainment, performances, dances or conduct or other services provided on the premises for which a fee or charge is or may be paid. Such list shall further indicate the specific fee or charge in dollar amounts for each entertainment listed. It shall be unlawful for any entertainer, manager or other person to charge, request or demand any fee or charge in excess of the amount so posted. All payments for such entertainment, performances, dances or conduct or other services shall be paid in accordance with this Section.

8. Record Keeping Requirements.

a. All papers, records, and things required to be kept pursuant to this Chapter shall be open to inspection by the City Manager or designee during the hours when the licensed premises are open for business, upon two working days' written notice. The purpose of such inspections shall be to determine whether the papers, records, and things meet the requirements of this Chapter.

b. Each adult entertainment business shall maintain and retain for a period of two years the name, address, and age of each person employed or otherwise retained or allowed to perform on the premises as an adult entertainer, including independent contractors and their employees, as an entertainer. This information shall be open to inspection by the clerk during hours of operation of the business upon 24 hours' notice to the licensee.

9. Inspections. In order to insure compliance with this Chapter all areas of licensed adult cabarets which are open to members of the public shall be open to inspection by agents and employees of the City during the hours when the premises are open for business. The purpose of such inspections shall be to determine if the licensed premises are operated in accordance with the requirements of this Chapter. It is hereby expressly declared that unannounced inspections are necessary to insure compliance with this Chapter.

E. It is unlawful for any adult cabaret to be operated or otherwise open to the public between the hours of 2:00 a.m. and 11:00 a.m.

F. This Chapter shall not be construed to prohibit:

1. Plays, operas, musicals, or other dramatic works that are not obscene;

2. Classes, seminars and lectures which are held for serious scientific or educational purposes and which are not obscene; or

3. Exhibitions, performances, expressions or dances that are not obscene.

These exemptions shall not apply to the sexual conduct defined in Section 5.16.010 (O) of the City Code, or the sexual conduct described in RCW 7.48A.010 (2)(b)(ii) and (iii).

G. Whether or not activity is obscene shall be judged by consideration of the following factors:

1. Whether the average person, applying contemporary community standards, would find that the activity taken as a whole appeals to a prurient interest in sex; and
2. Whether the activity depicts or describes in a patently offensive way, as measured against community standards, sexual conduct as described in RCW 7.48A.010 (2)(b); and
3. Whether the activity taken as a whole lacks serious literary, artistic, political or scientific value.

#### 5.16.060 Business License Fees and Renewals.

A. Annual License Fees. Annual license fees shall be as follows:

Adult Entertainment \$750.00 per year

Manager/Entertainer \$100.00 per year

There shall be no proration of license fees, and all licenses issued pursuant to this Chapter shall expire at 12:00 p.m. (midnight) on December 31 of the year issued.

B. Renewal of License. All business licenses shall be renewed on or before January 31st of the tax year following the year of issuance or renewal of the current license, if the business is to be continued. Application for renewal shall be made on forms prescribed by the City Manager, or designee. Each application for renewal shall be accompanied by the license renewal fee for the ensuing tax year as prescribed by an annual resolution of the City Council establishing fees and charges. Applications for renewal shall be processed hereafter by the City commencing during December of each tax year for the ensuing tax year. Although the City shall endeavor to mail renewal notices for the next year to persons who possess valid licenses at the end of the current year, it shall be the responsibility of the applicant to submit to the City the appropriate applications and fees for license renewal, regardless of whether or not renewal notices are sent out or received.

C. Late penalty. A late penalty shall be charged on all applications for renewal of a license received later than seven working days after the due date (January 31st) of such license. The amount of such penalty is fixed as follows:

#### *Additional Percentage*

#### *Days Past Due of License Fees*

1-30 25%

1-30 25%

31-60 50%

61 and over 100%

D. Cancellation of Delinquent License. Notwithstanding the provisions of subsection C above, if an application for the renewal of an adult cabaret business license is received by the City more than ninety (90) calendar days past the due date, the business license (renewal) application shall be considered a new license application, with any rights, privileges or expectations related to a license renewal being canceled, so that all applicable code requirements and regulations must be met as if the business had not operated in the past. It is provided, however, that if a license application is approved after having been canceled because of more than ninety (90) calendar days delinquency, the additional percentage of license fee (100%) shall be paid prior to issuance of the license.

#### 5.16.070 Liquor regulations.

Any license issued pursuant to this Chapter for any business in which any liquor is consumed shall be subject to the rules or regulations of the Washington State Liquor Control Board relating to the sale or use of intoxicating liquor, regardless of whether the liquor is provided pursuant to a liquor license or banquet permits. No liquor shall be allowed in any adult cabaret establishment without either a valid liquor license or banquet permit issued by or under the authority of the Washington State Liquor Control Board. In the event of a conflict between the provisions of this Chapter and the applicable rules and regulations of the Washington State Liquor Control Board, the rules and regulations of the Washington State Liquor Control Board shall control.

#### 5.16.080 Grounds for Suspension or Revocation, Notice and Order, and Appeal.

A. General Business Licensing Provisions Referenced. The provisions of Sections 5.02.170, 5.02.180 and 5.02.190 of the City Code shall apply to licensing issues under this Chapter to the extent that the provisions of Sections 5.02.170, 5.02.180 and 5.02.190 of the City Code are not in specific conflict with the provisions hereof, and said provisions are thus incorporated herein by this reference as if fully set forth.

B. Appeal to Superior Court. Notwithstanding the provisions of Section 1.36.090 of the City Code, any appeals or requests for review by persons aggrieved by the decision of the Hearing Examiner related to a license or a provision under this Chapter shall be made to the Superior Court, whether as an appeal or a writ of certiorari, prohibition or mandamus.

#### 5.16.090 Violation a misdemeanor.

Any person violating any of the provisions of this chapter is guilty of a misdemeanor.

#### 5.16.100 Nuisance declared.

A. Public Nuisance. Any adult cabaret operated, conducted, or maintained in violation of this chapter or any law of the City of Lakewood or the State of Washington shall be, and the same is, declared to be unlawful and a public nuisance. The City Attorney may, in addition to or in lieu of any other remedies set forth in this chapter, commence an action to enjoin, remove or abate such nuisance in the manner provided by law and shall take such other steps and apply to such court or courts as may have jurisdiction to grant such relief as will abate or remove such public nuisance, and restrain and enjoin any person from operating, conducting or maintaining an adult cabaret contrary to the provisions of this chapter.

B. Moral Nuisance. Any adult cabaret operated, conducted or maintained contrary to the provisions of Chapter 7.48A RCW , Moral Nuisance, shall be, and the same is declared to be, unlawful and a public and moral nuisance and the City Attorney may, in addition to or in lieu of any other remedies set forth herein, commence an action or actions, to abate, remove and enjoin such public and moral nuisance, or impose a civil penalty, in the manner provided by Chapter 7.48A RCW.

#### 5.16.110 Additional enforcement.

The remedies found in this chapter are not exclusive, and, the City may seek any other legal or equitable relief, including but not limited to enjoining any acts or practices which constitute or will constitute a violation of any business license ordinance or other regulations herein adopted.

#### 5.16.120 Severability.

If any portion of this chapter, or its application to any person or circumstances, is held invalid, the validity of the chapter as a

whole, or any other portion thereof, and its application to other persons or circumstances, shall not be affected.

SECTION TWO: That Chapter 5.14 of the Lakewood Municipal Code is hereby repealed contemporaneous with the provisions of Section One this Ordinance becoming in full force and effect.

SECTION THREE: That the Ordinance shall be in full force and effect five (5) days after publication of the Ordinance Summary.

ADOPTED by the City Council this 18th day of May, 1998.

CITY OF LAKEWOOD

Attest:

\_\_\_\_\_

Bill Harrison, Mayor

\_\_\_\_\_

Alice M. Bush, CMC, City Clerk

Approved as to Form:

\_\_\_\_\_

Daniel B. Heid, City Attorney

.....