

Ordinance No. 00178

[\(Council Minutes 98/07/06\)](#)

ORDINANCE NO. 178

AN ORDINANCE of the City Council of the City of Lakewood, Washington, amending Section 5.16.050 of the Lakewood Municipal Code and clarifying the provisions of the recently adopted Ordinance No. 171, relating to Standards of conduct and operation - Adult cabarets.

WHEREAS, after an extensive review of legal issues and options, in terms of regulation of adult entertainment cabarets, and following numerous public hearings and public meetings of the City Council, the City's Planning Advisory Board and its Adult Entertainment Task Force, the City Council passed its Ordinance No. 171, establishing regulation of adult entertainment cabarets; and,

WHEREAS, following the adoption of that Ordinance, questions surfaced that warranted clarification relating to the provisions restricting the payment of moneys to certain persons in the establishments; and,

WHEREAS, it is appropriate to clarify that for the purposes of the Ordinance, payments made to cashiers, wait-persons or other employees of an adult cabaret for admission fees or for food, beverage or other product sales are not included in the limitation on payments to adult entertainers.

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

Section 1. That Section 5.16.050 of the Lakewood Municipal Code be, and the same is amended to read as follows:

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 as compensation for any adult entertainment, regardless of where the adult entertainer or other employee of an adult cabaret is located. Payments made to cashiers, wait-persons or other employees of an adult cabaret for admission fees or for food,

beverage or other product sales do not constitute compensation for any adult entertainment. 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 as compensation for any adult entertainment 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.

Section 2. That if any portion of this Ordinance or its application to any person or circumstance is held to be invalid, the remainder and its application to any other persons or circumstances shall be unaffected.

Section 3. That this Ordinance shall be in full force and effect five (5) days after publication of the Ordinance Summary .

ADOPTED by the City Council this 6th day of July, 1998.

CITY OF LAKEWOOD

Bill Harrison, Mayor

Attest:

Alice M. Bush, CMC, City Clerk

Approved as to Form:

Daniel B. Heid, City Attorney

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