

# Ordinance No. 00258

[Council Meeting Minutes 01/02/05](#)

ORDINANCE NO. 258

AN ORDINANCE of the City of Lakewood, Washington, adding a new Chapter 18A.12 of the Lakewood Municipal Code relating to Sexually Oriented Businesses and regulating the location of such uses

WHEREAS, the City Council is committed to protecting the general welfare of the City through the enforcement of laws prohibiting obscenity, indecency, and sexual offenses while preserving constitutionally protected forms of expression; and,

WHEREAS, the City has made a detailed review of the national record, including studies from the cities of New York, Indianapolis, San Diego and Los Angeles, and other cities in the State of Washington, and the police records of various cities, and court decisions regarding sexually oriented business establishments. The City Council finds that sexually oriented business establishments require special supervision from public safety agencies in order to protect and preserve the health, safety, and welfare of the patrons and employees of said business as well as the citizens of the City; and,

WHEREAS, the City Council also reiterates and reaffirms its findings set forth in its Ordinance No. 171, and hereby incorporates by this reference its legislative record for said Ordinance; and,

WHEREAS, the City Council finds that concerns about crime and public sexual activity generated and/or occurring within or nearby the sexually oriented business establishments are legitimate, substantial and compelling concerns of the City which demand reasonable regulation; and,

WHEREAS, the City Council finds that sexually oriented business establishments, due to their nature, have secondary adverse impacts upon the health, safety, and welfare of the citizenry through increases in crime and opportunity for spread of sexually transmitted diseases; and,

WHEREAS, there is convincing documented evidence that sexually oriented business establishments have a detrimental effect on both the existing businesses around them and the surrounding residential areas adjacent to them, causing increased crime, the downgrading of quality of life and property values and the spread of urban blight. Reasonable regulation of the location of these facilities will provide for the protection of the community, protect residents, patrons, and employees from the adverse secondary effects of such retail facilities; and,

WHEREAS, the City recognizes that sexually oriented business establishments, due to their very nature, have serious objectionable operational characteristics, particularly when located in close proximity to residential neighborhoods, day care centers, religious facilities, public parks, and schools, thereby having a deleterious impact upon the quality of life in the surrounding areas, and it has been acknowledged by courts and communities across the nation that state and local governmental entities have a special concern in regulating the operation of such businesses under their jurisdiction to ensure the adverse secondary effects of the establishments are minimized; and,

WHEREAS, this Ordinance is intended to protect the general public health, safety, and welfare of the citizenry of the City through the regulation of the location of sexually oriented business establishments, and the regulations set forth herein are intended to control health, safety, and welfare issues, the decline in neighborhood conditions in and around sexually oriented

business establishments, and to isolate dangerous and unlawful conduct associated with these facilities; and,

WHEREAS, it is not the intent of this Ordinance to suppress any speech activities protected by the First Amendment to the United States Constitution, or Article 1, Section 5, of the Washington State Constitution, but to enact content neutral legislation which addresses the negative secondary impacts of sexually oriented business establishments; and,

WHEREAS, it is not the intent of the City Council to condone or legitimize the distribution of obscene material, and the City Council recognizes that state and federal law prohibits the distribution of obscene materials; and,

WHEREAS, in advance of the development and presentation of the proposed Ordinance City Staff met on a number of occasions with colleagues from other cities to compare and consider methods to address the purposes of this Ordinance and to develop a record therefor; and,

WHEREAS, also in advance of the presentation of this Ordinance to the Planning Advisory Board, the Planning Advisory Board's Adult Entertainment Task Force met on a number of occasions to discuss and consider the methods and approaches that could be used to address the purposes of this Ordinance; and,

WHEREAS, the City of Lakewood Planning Advisory Board, discussed the proposed Ordinance, and reviewed drafts thereof at various meetings, and further held a duly advertised public hearing on the 10th day of January, 2001, to again consider the proposed Ordinance and the subject matter of location of sexually oriented business establishments, at which public hearing the Planning Advisory Board received comments from the public on that subject matter, and thereafter forwarded to the City Council its recommendations and proposed language which the City Council believes to be true, and which, together with the findings heretofore set forth, form the basis for the adoption of this ordinance.

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

SECTION ONE: That a new Chapter 18A.12 of the Lakewood Municipal Code be and the same is hereby created to read as follows:

#### Chapter 18A.12

#### Location of Sexually Oriented Businesses

#### Sections:

18A.12.010 Definitions.

18A.12.020 Prohibited in Certain Areas.

18A.12.030 Amortization of Nonconforming Use - Extension - Appeal.

18A.12.040 Conditional Use Permit Required.

18A.12.050 Construction.

18A.12.060 Severability.

## 18A.12.010 Definitions.

The definitions in this Section apply throughout this Chapter unless the context clearly requires otherwise.

A. "Adult Entertainment Facility" means any establishment where the business or activity of the facility includes the following:

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 activities in these premises. 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.

4. It is provided however that for the purposes of this Chapter, adult entertainment activities do not include the following:

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

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

c. Exhibitions, performances, expressions or dances that are not obscene;

It is further Provided that 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).

B. "Adult Oriented Merchandise" means any goods, products, commodities, or other wares, including but not limited to, videos, CD ROMs, DVDs, magazines, books, pamphlets, posters, cards, periodicals or non-clothing novelties, which depict, describe or simulate specified anatomical areas or specified sexual activities.

C. "Adult Retail Use" means a retail establishment which, for money or any other form of consideration, either: (a) has as a primary part of its business the purpose or function of selling, exchanging, renting, loaning, trading, transferring, and/or providing for viewing or use, off the premises, any adult oriented merchandise; or (b) provides, as its substantial stock in trade, for the sale, exchange, rental, loan, trade, transfer, and/or provide for viewing or use, off the premises, any adult oriented merchandise. For the purposes of this Chapter, a "primary part of [a] business" includes, but is not limited to instances where a business provides or has advertising displays, merchandise or product information reasonably visible to customers and other persons within the business facilities that shows, displays or otherwise depicts adult oriented merchandise, or other sexually oriented business activities. It is provided, however, that it shall not be considered a "primary part of [a] business" if such display, merchandise or product information is only reasonably visible from within a limited portion of the business facility screened from general view, taking up not more than 20% of the customer floor space, and where the access to the limited portion can be controlled to prevent accidental or incidental viewing of the display, merchandise or product information by customers and other persons outside the limited portion of the business facilities. Also, for the purposes of this Chapter, a "substantial stock in trade" refers to but is not limited to instances where 20% or more of the revenue generated by the business is derived from the sale, exchange, rental, loan, trade, transfer, and/or provision of adult oriented merchandise, or 20% or more of the inventory of the business is adult oriented merchandise, or 20% or more of the customers of the business buy, exchange, rent, borrow, trade, transfer, and/or shop for adult oriented merchandise in or from the business.

D. "Panoram," "preview," "picture arcade" or "peep show" means any device which, for payment of a fee, membership fee, or other charge, is used to view, exhibit or display a film, videotape, or videodisc. All such devices are denominated in this Chapter by the terms "panoram" or "panoram device." The terms panoram and panoram device as used in this Chapter do not include games which employ pictures, views or video displays, or state regulated gambling devices.

E. "Sensitive Receptor Areas" means those uses and zoning designations where children are likely to congregate, including: property zoned for residential use or any single-family or multiple-family residential use; public or private elementary or secondary schools; day care centers for children, nurseries, or pre-schools; churches or other facilities or institutions used primarily for religious purposes; and public parks or open spaces where children are likely to congregate.

F. "Sexually Oriented Business" means a business that includes as a primary part of its business any one or more of the following: "adult entertainment facility," "adult oriented merchandise," "adult retail use," "panoram," or similar facility, merchandise or entertainment.

G. "Specified Anatomical Areas" means:

1. Less than completely and opaquely covered human genitals, anus, pubic region, buttock, or female breast below a point immediately above the top of the areola; or
2. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

H. "Specified Sexual Activities" means any of the following:

1. Human genitals in a state of sexual stimulation or arousal;
2. Acts of human masturbation, sexual intercourse, sodomy, oral copulation, or bestiality;
3. Fondling or other erotic touching of human genitals, pubic region, buttocks, or female breasts, whether clothed or unclothed, of oneself or of one person by another; or
4. Excretory functions as part of or in connection with any of the activities set forth in this subsection.

#### 18A.12.020 Prohibited in Certain Areas.

Sexually oriented business uses are prohibited:

- A. Within three hundred thirty (330) feet of any property zoned for any residential use or of any property used for any single-family or multiple-family residential use;
- B. Within three hundred thirty (330) feet of any public or private elementary or secondary school;
- C. Within three hundred thirty (330) feet of any child day care center, child care service, nursery-or, pre-school or community youth center;
- D. Within three hundred thirty (330) feet of any church or other facility or institution used primarily for religious purposes;
- E. Within three hundred thirty (330) feet of any public park, open space or other place where children are likely to congregate; and,
- F. Within one thousand (1,000) feet of any other sexually oriented business use.

As used herein, the distances shall mean the straight-line distance between the edge or corner of the property on which the sexually oriented business use is located to the nearest edge or corner of the property of another sexually oriented business use or any of the sensitive uses set forth above.

#### 18A.12.030 Amortization of Nonconforming Use - Extension - Appeal.

Any sexually oriented business located within the city limits on the effective date of this Ordinance that is made nonconforming by this Ordinance shall be terminated within one (1) year; provided, however, that such termination date may be extended upon

the approval by the Community Development Director or designee of an application filed with the City within 120 days of the effective date of this ordinance, or within 120 days of the date the sexually oriented business is made nonconforming subsequent to the effective date of the Ordinance by the location of a use or property as described in Section 18A.12.020 of this Chapter, requesting an extension to such one (1) year amortization period. The decision of the Community Development Director or designee on whether or not to approve any extension period and the length of such period shall be based upon the applicant clearly demonstrating extreme economic hardship based upon an irreversible financial investment or commitment made prior to the effective date of this Ordinance or the date of subsequent nonconformity, which precludes reasonable alternative uses of the subject property. The decision denying such extension or the decision on the length of an extension period may be appealed by the applicant for such extension through a Writ of Review in the Pierce County Superior Court. The review of the decision by the Superior Court shall be limited to whether the Community Development Director or designee manifestly abused his/her discretion in determining the existence or absence of extreme economic hardship based upon an irreversible financial investment or commitment made prior to the effective date of this Ordinance or the date of subsequent nonconformity, which precludes reasonable alternative uses of the subject property.

#### 18A.12.040 Conditional Use Permit Required.

Any business subject to the regulations of this Chapter shall be required to obtain a Conditional Use Permit, in conformity with the Discretionary Land Use Permit process in the City Code, as specified in Section 18.75.030 of the City Code or successor provisions.

#### 18A.12.050 Construction.

If any portion of this Chapter, is deemed to be in conflict or inconsistent with any other provisions of the City Code, including but not limited to its zoning regulations, such other provisions shall be construed in conformity herewith; Provided that if such other provisions are not able to be so construed, the provisions of this Chapter shall control, and such other provisions shall be deemed modified to conform herewith, for the purposes of this Chapter only.

#### 18A.12.060 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 the Ordinance shall be in full force and effect five (5) days after publication of the Ordinance Summary.

ADOPTED by the City Council this 5th day of February, 2001.

CITY OF LAKEWOOD

---

Bill Harrison, Mayor

Attest:

---

Alice M. Bush, CMC/AE, City Clerk

Approved as to Form:

---

Daniel B. Heid, City Attorney

.....