

ORDINANCE NO. 358

An Ordinance of the City of Lakewood, Washington, repealing sections 18A.70.700, 18A.70.710, 18A.70.720, 18A.70.730, 18A.70.740, 18A.70.750, 18A.70.760, 18A.70.770 and 18A.70.780, and sections 18A.30.550 (C)(7), 18A.30.550(D)(7) and 18A.30.650(B)(11) of the Lakewood Municipal Code; amending sections 18A.02.310 and 18A.20.600 of the Lakewood Municipal Code; and adding new sections 18A.40.400, 18A.40.410, 18A.40.415, 18A.40.420, 18A.40.430, 18A.40.435, 18A.40.440, 18A.40.445, 18A.40.450, 18A.40.455, 18A.40.460, 18A.40.470 and 18A.40.480 to the Land Use and Zoning Code title of the Lakewood Municipal Code relating to Sexually Oriented Businesses

WHEREAS, the character, distribution and patterns of land use within the City of Lakewood necessitated detailed examination in order to evaluate how Sexually Oriented Businesses (SOBs) might exist within the community; and,

WHEREAS, the Planning Advisory Board (PAB) of the City was uniquely qualified to render such detailed zoning and land use study, being comprised of citizens who sought to improve the community through the recommendation of regulations that would shape the community in the future, lawfully regulating SOBs and thereby preserving neighborhoods and invigorating business and community interests; and,

WHEREAS, the Planning Advisory Board of the City of Lakewood passed Resolution No. 2004-03, thereby recommending to the City Council a proposal as to how SOBs may be regulated in a manner intended to serve and protect the public health, safety and welfare; and,

WHEREAS, within PAB Resolution No. 2004-03, specific findings were made that SOBs create harmful secondary effects, and the City Council does hereby adopt the findings of the PAB as contained in Resolution No. 2004-03 and as re-stated within the Ordinance; and,

WHEREAS, to document the efforts of the PAB and the impacts SOBs have upon the community, the City Council was provided a legislative record that included minutes from public meetings and hearings, legislative records from previous City of Lakewood Ordinances, public comments, police incident reports, analysis of precedential court cases, Ordinances from other Washington Cities, and documents related to administrative enforcement actions the City has taken in regard to SOBs; and,

WHEREAS, regulations upon SOBs are justified by the findings of the PAB, as documented in PAB Resolution No. 2004-03, and the regulations the PAB proposed are in the judgment of the City Council constitutional and necessary regulations upon the SOBs and are intended to minimize the harmful secondary effects of SOBs within the City; and,

WHEREAS, the City Council finds the legislative record of the PAB's activities to be extensive, accurate and compelling, and does hereby adopt the PAB's legislative record as the City Council's own in support of this Ordinance; and,

WHEREAS, although the PAB has made findings that SOBs generate harmful secondary effects, the PAB's recommendation necessarily includes the caveat that SOBs engage in expressive conduct protected under the first amendment of the United States Constitution, and, therefore, such businesses cannot be banned or subjected to unconstitutional regulations.

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

Section 1. That sections 18A.70.700 through 18A.70.780 of the Lakewood Municipal Code are hereby repealed.

Section 2. That sections 18A.30.550(C)(7) and 18A.30.550(D)(7) of the Lakewood Municipal Code are hereby repealed.

Section 3. That section 18A.30.650(B)(11) of the Lakewood Municipal Code is hereby repealed.

Section 4. That section 18A.02.310 of the Lakewood Municipal Code is hereby amended to read as follows:

18A.02.310 - Overlay Districts

A. An overlay district is a district that may be combined with any portion of any zone as appropriate to the purpose of the district. The regulations of a special purpose district consist of additional sections of this title and additional standards. Some of these regulations are supplementary so that both the regulations of the special purpose district and the zone apply and in other cases, the special purpose district regulations preempt and override the regulations of the underlying zone. Where these regulations conflict, the regulations that are more restrictive shall control. The boundaries of special purpose districts are shown on the City's official overlay districts map, which is hereby adopted by reference as part of this title, and are further described as follows:

1. The boundaries of the Flood Hazard Overlay (FHO) district shall be the areas of flood hazards identified by the Federal Insurance Administration in a report entitled: "The Flood Insurance Study for the Unincorporated Areas of Pierce

County, WA, Vols. 1 and 2", dated August 19, 1987, as amended, with accompanying Flood Insurance Rate Maps (FIRM) and Flood Boundary Maps dated effective August 19, 1987, and any revisions thereto are hereby adopted by reference and declared to be a part of this section.

2. The boundaries of the Riparian Overlay (RO) district shall be the areas of those parcels which abut or are adjacent to Chambers Creek, Clover Creek, Flett Creek, Leach Creek, and Ponce de Leon Creek as further described in LMC 18A.40.200.

3. The boundaries of the Senior Housing Overlay (SHO) district shall be the area shown in Figure 3.1, Senior Housing Overlay in the City of Lakewood Comprehensive Plan.

4. The boundaries of the Sexually Oriented Business Overlay (SOBO) district shall be the areas identified and described in "Exhibit A" as referenced in LMC 18A.40.420.

B. Each special purpose district and the abbreviated designation suffix are listed in Table 2 below.

TABLE 2. SPECIAL PURPOSE OVERLAY DISTRICTS

Special Purpose District	Abbreviated Designation
Flood Hazard Overlay	(zoning district)/FHO
Riparian Overlay	(zoning district)/RO
Senior Housing Overlay	(zoning district)/SHO
Sexually Oriented Business Overlay	<u>(zoning district)/SOBO</u>

Section 5. That section 18A.20.600 of the Lakewood Municipal Code is hereby amended to read as follows:

18A.20.600 - Commercial Use Category - Land Use Types and Levels

The Commercial use category includes establishments, facilities, and individuals providing services and the sale, distribution or rental of goods that benefit the daily needs of the general public, which are not otherwise classified in another use category.

A. Amusement and Recreation. Establishments or places of business primarily engaged in the provision of sports, entertainment, or recreational services to the general public or members, which may or may not include Eating and Drinking Establishment Commercial use types in conjunction, but where eating and drinking is clearly secondary to a primary Amusement and Recreation Commercial use type, and which do not otherwise constitute Sexually Oriented Business Commercial use types. Examples include video arcades; teen clubs; dance halls; athletic clubs; indoor swimming pools; billiard parlors; bowling alleys; ice or roller skating rinks; indoor and drive-in movie theaters; outdoor recreational equipment rental, including marine-related; mini-golf and indoor or outdoor driving ranges that are not located in conjunction with a golf course; enclosed sports arenas or stadiums; amusement parks; and gambling establishments or activities such as

cardrooms, enhanced cardrooms (“mini-casinos”), bingo parlors, off-track betting, or similar gambling activities, subject to appropriate state licensure; specifically excluding Lottery and pull tabs. Such uses may include facilities or activities clearly incidental and secondary to the primary use which provide functions typical of a “pro shop” in conjunction with the primary use.

Level 1: Indoor facilities not exceeding five thousand (5,000) gross square feet and/or outdoor facilities of less than thirty-five thousand (35,000) square feet, without alcohol sales.

Level 2: Indoor facilities of between five thousand (5,000) and thirty thousand (30,000) gross square feet and/or outdoor facilities of between thirty-five thousand (35,000) and eighty-seven thousand, one hundred twenty (87,120) gross square feet (two acres), without alcohol sales.

Level 3: Indoor facilities of up to thirty thousand (30,000) gross square feet with up to five thousand (5,000) gross square feet of enclosed outdoor facilities, with or without alcohol sales.

Level 4: Indoor facilities exceeding thirty thousand (30,000) gross square feet and/or outdoor facilities exceeding five thousand (5,000) gross square feet, with or without alcohol sales.

B. Building/Garden Supply and Nurseries. Establishments primarily engaged in wholesale and retail selling of lumber, building materials, paint, glass, wallpaper, hardware, nursery stock, lawn and garden, plumbing, and electrical supplies.

Level 1: Establishments primarily engaged in retail sales. Utilization of outdoor areas for retail display and storage may occur as an accessory use. The combination of total floor area and outdoor storage and display area is less than ten thousand (10,000) gross square feet.

Level 2: Establishments primarily engaged in retail sales. Utilization of outdoor areas for retail display or storage purposes may occur as an accessory use. The combination of total floor area and outdoor storage and display area ranges between ten thousand (10,000) and eighty thousand (80,000) gross square feet.

Level 3: Establishments primarily engaged in retail sales where the combination of total floor area and outdoor storage and display area exceeds eighty thousand (80,000) square feet.

Level 4: Establishments primarily engaged in wholesale activities, except for and as distinguished from Level 2 Agriculture uses.

C. Bulk Fuel Dealers. Establishments that sell fuels which, by their nature, are flammable, explosive, or toxic, to businesses and households for transportation, heating, and business purposes. Examples include propane gas sales, heating oil dealers, liquefied petroleum gas dealers, coal, wood, or other fuel dealers.

D. Business Services. Businesses primarily engaged in providing services to other businesses on a contract or fee basis. Examples include courier services, parcel delivery services, fax services, telegraph services, reproduction services, commercial art and photography services, stenographic services, and janitorial services.

E. Buy-Back Recycling Center. Any small-scale business without industrial activity which collects, receives or buys recyclable materials (typically recyclable consumer goods and containers) from household, commercial or industrial sources for the purpose of sorting, grading or packaging recyclables for subsequent shipment and marketing, as distinguished from Recycling Processor Industrial use types, which use heavy equipment for processing and may provide for outdoor storage of recyclable materials. Examples of commercial buy-back recycling centers include small scale glass or aluminum container and paper buy-back centers. Facilities which process vehicle parts, building materials, or industrial scrap material are classified under the Recycling Processor Industrial use type. All materials stored outdoors must be containerized.

F. Convenience Commercial. Stores which may be either primarily engaged in serving the auto-driving public or, at lesser levels, principally oriented to neighborhood pedestrian traffic, which may include any combination of gasoline sales, uses typical of Food Stores as listed herein, and same-structure collocation of limited prepared food and drink sales such as fast food or espresso; as distinguished from Food Stores Commercial use type, which does not allow gasoline sales.

Level 1: Structure of up to ten thousand (10,000) gross square feet, without a drive-up window or gas sales.

Level 2: Structure of up to 10,000 gross square feet, with or without a drive-up window, with up to six (6) two-sided gas pumps.

Level 3: Structure of up to twenty thousand (20,000) gross square feet, with or without a drive-up window, with up to nine (9) two-sided gas pumps.

Level 4: Structure of over twenty thousand (20,000) gross square feet, with or without a drive-up window, or with more than nine (9) two-sided gas pumps.

Level 4 shall include levels 1, 2 and 3.

G. Eating and Drinking Establishment. Establishments that sell prepared food and/or beverages, including liquor, subject to appropriate state and local licensure, including health permits. Such uses may or may not include Amusement and Recreation Commercial use types in conjunction but shall be considered to constitute Eating and Drinking Establishments for the purpose of zoning only where amusement and recreation is clearly secondary to a primary Eating and Drinking Establishment Commercial use type. Does not include sexually oriented businesses serving food and/or beverages, which are instead treated as Sexually Oriented Business Commercial use types.

Level 1: Motorized or non-motorized, mobile outdoor carts and vehicles which go from place to place selling pre-prepared food and/or beverages, or food and/or beverages made to order, with no seating, subject to specific standards. Examples include lunch wagons, espresso carts, hot dog carts, popcorn vendors, and ice cream trucks.

Level 2: Carts or vehicles which were, at one time, mobile but have been converted to permanent structures by virtue of placement on a foundation and/or removal of wheels, and stand-alone, drive-up, conventionally built structures selling pre-prepared food and/or beverages or food and/or beverages made to order; which may have limited indoor or outdoor seating. Examples include

double-decker bus or utility trailer conversions, "Fotomat" conversions, and espresso drive-ups located on pads in parking fields of broader groupings of commercial uses or on individual small lots. Any facility that requires a Type I Hood pursuant to the Uniform Mechanical Code shall be not be considered a Level 2 use (but rather shall generally be classified as an Eating and Drinking Establishment Level 3, 4, or 5 use type).

Level 3: Establishments selling food and/or beverages made to order which is intended to be consumed on the premises or which may, at the customer's option, be taken away, with no drive-up option. Examples include coffee shops such as Starbucks, franchise sandwich shops such as Subway and Blimpie, family style chain restaurants such as Denny's and Shari's, fine dining establishments, and comparable independent operations.

Level 4: Establishments selling food and/or beverages made to order which is intended to be consumed on the premises or which may, at the customer's option, be taken away, which include a drive-up option. Examples include fast food chains such as McDonald's and Burger King, and comparable independent operations.

Level 5: Establishments primarily involved in alcohol sales, or which include a specific bar/lounge area, selling food and/or beverages made to order which is intended to be consumed solely on the premises, which may, from time to time, feature entertainment such as video sports events, comedy shows, or dancing to recorded or live music, or low-intensity entertainment such as video games, pool tables, darts, television, and/or jukebox music. Examples include sports bars, restaurants with bars/lounges, taverns and brewpubs. Distinguished from establishments primarily involved in alcohol sales, where pre-prepared or made-to-order food may also be available, which routinely offer entertainment such as dancing to live or recorded music, which shall instead be treated as Amusement and Recreation Commercial use types. Examples include dance or karaoke bars and "nightclubs."

H. Food Stores. Stores primarily engaged in the retail sale of a variety of canned and dry foods, fresh fruits and vegetables, or meats, poultry, and fish, which may include a variety of non-food products as well. Examples include meat and fish markets, vegetable markets, retail bakeries, dairy stores, grocery stores, and specialty food and beverage stores; provided, that neither gasoline sales nor drive-through facilities are located on the same lot and as distinguished from Convenience Commercial use types.

Level 1: Floor area up to thirty thousand (30,000) gross square feet.

Level 2: Floor area between thirty thousand (30,000) and eighty thousand (80,000) gross square feet.

Level 3: Floor area over eighty thousand (80,000) gross square feet.

I. Funeral Services. Funeral facilities such as preparation and display facilities, funeral chapels, crematories, and affiliated offices.

Level 1: Mortuaries, including affiliated funeral chapels and offices.

Level 2: Crematories, subject to state air quality standards.

Level 3: Cemeteries, including affiliated mausoleums, funeral chapels, and offices.

J. Lodging. Establishments that provide transitory lodging services, subject to appropriate state and local licensure.

Level 1: Bed and breakfast, subject to the requirements of LMC 18A.70.900.

Level 2: Camping and recreational vehicle parks where a tract of land under single ownership or unified control is developed with individual sites for rent and containing roads and utilities to accommodate recreational vehicles or tent camping for vacation or other similar short stay purposes, subject to design standards set forth in LMC 18A.70.500. This use does not include the rental of recreational vehicles or manufactured home parks.

Level 3: Hotels and motels, or other transient lodging facilities not listed herein, containing a single building or a group of detached or semi-detached buildings containing guest rooms or self-contained suites, with parking provided on the site for the use of those staying in the rooms or suites, which is or are designed and used for the accommodation of transient travelers.

K. Manufactured and Modular Homes Sales. Establishments that provide for the marketing, sale, and distribution of new manufactured and modular homes.

L. Motor Vehicle Sales and Rental. Establishments or places of business engaged in the sales or leasing of motor vehicles, utility trailers, recreational and/or sporting vehicles, commercial vehicles, construction equipment, and heavy equipment subject to compliance with all applicable federal, state, and/or local licensing requirements. Service of vehicles may be permitted as an incidental, and clearly secondary, accessory use.

Level 1: New and used motor, recreational, and sporting vehicle sales and rental of up to two (2) acres in size.

Level 2: New and used motor, recreational, and sporting vehicle sales and rental of more than two (2) and up to five (5) acres in size.

Level 3: New and used motor, recreational, and sporting vehicle sales and rental of larger than five (5) acres.

Level 4: Commercial truck-trailer and heavy equipment sales and rental.

M. Motor Vehicle Service and Repair. Facilities or places where the repair and service of motor vehicles, recreational vehicles, sporting vehicles, commercial vehicles, and construction equipment occurs. Includes the sale of or refilling of personal or recreational propane tanks. Where outdoor storage is allowed, may include usable and/or scrap tire piles of up to a total of two hundred (200) tires as an accessory use.

Level 1: Minor service and repair of motor vehicles, including glass repair and replacement, truck bedliners, installation of vehicle accessories, lube/oil, tires, mufflers, brakes, and carpet/upholstery and other related services, conducted entirely within a completely enclosed building of less than two thousand (2,000) gross square feet which utilizes no outdoor storage. Specifically excludes transmission and engine rebuild shops, vehicle painting, body work or the installation and/or testing of audio or alarm systems; but may include short-term parking of customer vehicles while awaiting service.

Level 2: Car wash, subject to water recapture and treatment, and/or motor vehicle detailing services. May include short-term parking of customer vehicles while awaiting service.

Level 3: Minor service and repair of motor vehicles with up to two thousand (2,000) gross square feet of outdoor storage of vehicles under repair. Level 3 shall include Level 1 uses.

Level 4: Major service and repair of motor vehicles including transmission and engine rebuild shops; towing services; vehicle customization and fabrication; motor vehicle rebuilds; motor vehicle and vehicle trailer manufacturing/assembly; installation and/or testing of audio or alarm systems; body work and vehicle painting, subject to state air quality standards, including outdoor storage of vehicle body parts and vehicles under repair; and minor service and repair uses with more than two thousand (2,000) gross square feet of outdoor storage. Level 4 shall include Level 3 and Level 1 uses.

Level 5: Commercial vehicle fueling and/or service stations, such as truck stops, with or without convenience shopping; wash and repair services for commercial vehicles, their trailers, and recreational vehicles; and construction and heavy equipment service, repair and body work.

N. Personal Services. Businesses primarily engaged in providing services to meet individuals' periodic personal needs. Examples include coin-operated laundries, dry cleaning drop-off/pick-up establishments, dry cleaners, beauty shops, barber shops, clothing alterations, tanning salons which do not otherwise constitute Sexually Oriented Business Commercial use types, travel agencies, payday loan establishments, photographic studios, carpet and upholstery cleaners, and personal improvement services.

Level 1: Establishments of up to two thousand, five hundred (2,500) gross square feet which do not involve outdoor storage of vehicles.

Level 2: Establishments exceeding two thousand, five hundred (2,500) gross square feet or which involve outdoor storage of vehicles.

O. Pet Sales and Services. Businesses primarily engaged in retail sales and services associated with small animals and household pets. Examples include pet stores, pet grooming shops, pet day cares, and veterinary hospitals for small animals and pets.

Level 1: Completely indoor retail and service establishments, with or without accessory kennels, of less than two thousand, five hundred (2,500) gross square feet.

Level 2: Completely indoor retail and service establishments, with or without accessory kennels, exceeding two thousand, five hundred (2,500) gross square feet.

Level 3: Retail and service establishments with outdoor sales, kennels, and/or yard area.

Level 4: Commercial kennels and catteries, subject to LMC 5.52.

P. Private Training School. Educational services provided for profit by private organizations or individuals with the primary purpose of preparing students for jobs in a trade or a profession. Examples include commercial/vocational schools, drivers' training, beauty and barber schools, business or computer training schools, and conservatories of

art, music, or drama. Facilities larger than ten thousand (10,000) gross square feet shall be regulated as a Level 2 Education Civic use type.

Level 1: Establishments of up to five thousand (5,000) gross square feet and/or which utilize up to one thousand (1,000) square feet of outdoor area for instructional purposes or for parking of vehicles or storage of materials utilized in the instructional program.

Level 2: Establishments of between five thousand (5,000) and ten thousand (10,000) gross square feet and/or which utilize more than one thousand (1,000) square feet of outdoor area for instructional purposes or for parking of vehicles or storage of materials utilized in the instructional program.

Q. Professional Offices. Offices, private firms, or organizations which provide professional or administrative services to individuals or businesses. Examples include employment services, property management services, title companies, law offices, engineering/surveying consulting firms, architecture and landscape architecture firms, advertising and public relations firms, medical and dental offices, diagnostic testing services, advertising agencies, travel agencies, talent agencies, insurance offices, real estate offices, investment brokers, financial planners, banking services, administrative offices for non-profit and quasi-public agencies, and other business offices customarily associated with professional or administrative office services.

Level 1: Office building of up to ten thousand (10,000) gross square feet.

Level 2: Office building of between ten thousand (10,000) and thirty thousand (30,000) gross square feet.

Level 3: Office building exceeding thirty thousand (30,000) gross square feet.

R. Rental and Repair Services. Establishments primarily engaged in the provision of rental and repair services or closely related uses. Examples include home improvement, garden, and party equipment rental; upholstery shops; appliance repair shops; small engine and power tool rental and repair such as lawn mowers and chainsaws; vacuum cleaner repair; medical equipment rental and repair services; rental furnishings; and instrument repair services. Does not include vehicle repair or auto body, which are instead treated as Motor Vehicle Service and Repair Commercial use types.

Level 1: Rental and repair services not exceeding five thousand (5,000) gross square feet with no outdoor storage.

Level 2: Rental and repair services not exceeding five thousand (5,000) gross square feet with up to one thousand (1,000) gross square feet of outdoor storage/display of equipment.

Level 3: Rental and repair services exceeding five thousand (5,000) gross square feet of floor area with no outdoor storage/display of equipment.

Level 4: Rental and repair services exceeding five thousand (5,000) gross square feet with over one thousand (1,000) square feet of outdoor storage/display of equipment.

S. Sales of General Merchandise. Establishments that sell new general merchandise including apparel and accessories; auto parts; bookstores which do not otherwise constitute Sexually Oriented Business Commercial use types; legal pharmaceuticals; optical goods; furniture and home furnishings; and computers and electronics. Does not

include establishments primarily engaged in selling lumber and other building materials, paint, glass, wallpaper, hardware, nursery stock, and lawn and garden supplies, which are instead treated as Building/Garden Supply and Nurseries Commercial use types. May include usable and/or scrap tire piles of up to a total of two hundred (200) tires as an accessory use.

Level 1: Establishments of up to five thousand (5,000) gross square feet primarily engaged in retail sales activities.

Level 2: Establishments of between five thousand (5,000) and thirty thousand (30,000) gross square feet primarily engaged in retail sales activities.

Level 3: Establishments of up to thirty thousand (30,000) gross square feet primarily engaged in retail/wholesale sales activities.

Level 4: Establishments exceeding thirty thousand (30,000) gross square feet primarily engaged in retail/wholesale sales activities.

T. Sales of Secondhand Property. Individuals or establishments that sell secondhand property. Examples include pawnbrokers; secondhand, antique, junk and/or salvage dealers; and transient traders in secondhand property, including garage sales and flea markets. This use type does not include used or pre-owned automobiles or other vehicles, which are instead treated as Motor Vehicle Sales and Rental Commercial use types, nor wrecking or parts yards, which are instead treated as Salvage/Wrecking Yards and Vehicle Storage Facilities Industrial use types.

Level 1: Antique stores; used bookstores which do not otherwise constitute Sexually Oriented Business Commercial use types; and used clothing, furniture and appliances, jewelry and valuable coins, and valuable collectibles sales.

Level 2: Surplus, military, and miscellaneous sales and flea markets. Flea markets include swap meets but does not include antique malls where stalls are leased, which are instead treated as a Level 1 use listed above. This use type does not include junk and/or salvage dealers, which are instead treated as Salvage/Wrecking Yards and Vehicle Storage Facilities Industrial use types.

Level 3: Pawnshops, subject to the provisions of LMC 5.12. Businesses which are engaged, in whole or in part, in the business of loaning money on the security of pledges, deposits, or conditional sales of personal property; or which publicly display, at or near their place of business, any sign or symbol generally used by pawnbrokers or indicating that the business loans money on personal property on deposit or pledge.

U. Sexually Oriented Business. A business that includes as a primary use any one or more of the following: an adult entertainment facility; adult-oriented merchandise; adult retail use; panoram; or similar facility, merchandise, or entertainment as defined in LMC ~~18A.70.700~~ 18A.40.400, subject to specific standards, including siting criteria, set forth therein.

V. Storage. Businesses engaged in the storage of items for personal and business use. Business activities other than rental of storage spaces are prohibited. Does not include vehicle impound lots or wrecking yards, which are instead regulated as Salvage/Wrecking Yards and Vehicle Storage Facilities Industrial use types.

Level 1: Indoor mini-warehouse/storage facility.

Level 2: Indoor/outdoor mini-warehouse/storage facility, including the storage of motor, recreational, and sporting vehicles not otherwise regulated as a Level 1 Salvage/Vehicle Storage Facilities Industrial use type.

Level 3: Outdoor storage, including the storage of shipping containers, which is not accessory to a primary permitted use on the site, including the storage of motor, recreational, and sporting vehicles not otherwise regulated as a Level 1 Salvage/Vehicle Storage Facilities Industrial use type.

Section 6. That new sections 18A.40.400 through 18A.40.480 are created and adopted to read as follows:

18A.40.400 – Sexually Oriented Business Overlays

18A.40.410 – Findings and Legislative Record

Prior to the adoption of this Ordinance, the City of Lakewood City Council enacted legislation related to Sexually Oriented Businesses (SOBs) based upon information and findings relevant to this Ordinance. These prior legislative actions included City of Lakewood Ordinances No. 171 and 258.

Lakewood Ordinance No. 171, adopted in May of 1998, provided for the licensing of and regulation of conduct within adult cabarets. Ordinance No. 171 based these regulations in part upon the city's lack of a clearly demarked commercial/business district, the location of commercial and business land uses near residential neighborhoods, and the need to protect citizens – especially children – from criminal and unlawful activities and impacts associated with SOBs. These impacts are known as, and are generally referred to herein as, the harmful secondary effects of SOBs.

Ordinance No. 258, adopted in February of 2001, regulated the location and zoning of SOBs within the City. Ordinance 258 cited a detailed review of the national record regarding the harmful secondary effects of SOBs, as well as studies from cities such as New York, Indianapolis, San Diego and Los Angeles. Ordinance 258 found convincing documented evidence based upon that record to find that SOBs have detrimental effects upon nearby businesses and residential neighborhoods.

The legislative record and findings of Ordinances No. 171 and 258 are incorporated herein by this reference as if set forth fully herein, and such records and findings are cited hereby as support for the zoning regulations created in this Ordinance.

Prior to adoption of this Ordinance, the PAB held public meetings to consider relevant amendments to the City's comprehensive plan. During a public hearing held on October 15, 2003, approximately 35 people testified and many written comments were submitted in response to the City's proposed amendments, which at that time contemplated concentrating all SOBs within the city into a single defined overlay area. The comments were overwhelmingly negative and cited citizen perceptions regarding the adverse effects

that adult entertainment and SOBs have upon the community, neighborhoods and families exposed to such land uses. Citizens resoundingly stated their belief that concentrating SOBs into a single zone would irreparably harm a thriving business community located near the proposed overlay.

The PAB then recommended to the City Council that the comprehensive plan goals and policies related to SOBs be deleted to allow flexibility to implement the changes shown in this Ordinance, because, by state statute, amendments to the City's comprehensive plan can be made only once per year. The City Council adopted this amendment to the comprehensive plan on December 1, 2003. Thereafter, public meetings were held and the PAB worked with a variety of stakeholders in formulating SOB zoning regulations that fit the specific needs, community and conditions of the City. The stakeholder groups included representatives from businesses, educational institutions, community leaders, and representatives from the adult entertainment industry.

After amendment of the City's comprehensive plan, the PAB commenced studying alternative SOB zoning proposals. The PAB's research and study resulted in the specific findings listed below. Based upon these findings the PAB recommended to the Lakewood City Council that the harmful secondary effects of SOBs be minimized through regulations upon the zoning, operating and locating of SOBs as specified in this Ordinance. The PAB found that through creation of overlay areas within the City wherein SOBs could locate, the City could control the locations where SOBs exist and minimize the harmful secondary effects SOBs have upon business districts, neighborhoods and residential areas. Further, by creation of two or more overlay areas where SOBs will be allowed, the City can minimize the impact SOBs have upon any individual neighborhood or district within the City.

The City Council, through the passage of this Ordinance, does hereby adopt the specific findings of the PAB in regard to zoning SOBs, stated as follows:

- A. Materials submitted to the PAB demonstrated that SOBs can create harmful secondary effects upon the communities they are located in, are detrimental to and conflict with the peace and tranquility of neighborhoods and residential land uses, and if left un-regulated can cause deterioration of property values and increased crime and public disturbances in the areas in which they are located.
- B. Citizens and business owners within the City have publicly expressed their fear of the harmful secondary effects SOBs cause and have testified that they strongly oppose SOB land uses. Citizens have expressed that they believe SOB land uses are harmful to neighborhoods and negatively impact families and children. Business owners have expressed concern that SOB land uses may impact commercial areas and business districts, increasing incidents of crime and decreasing property values.
- C. Based upon a review of land use patterns, zoning and demographics throughout Lakewood, the PAB found that some areas are entirely unsuitable for and incompatible with SOB land uses. Such areas include residential

neighborhoods and locations in close proximity to churches and schools. The PAB also found that the harmful effects of SOBs may be minimized if SOBs are limited to the areas where they currently exist; to areas that contain no residential land uses or only nonconforming residential land uses; and areas separated topographically and/or geographically from residential neighborhoods, churches and schools.

- D. The PAB found that the creation of overlay areas wherein Sexually Oriented Businesses may locate is in the best interests of the City of Lakewood and necessary to protect the public health, safety and welfare. Protecting, preserving and improving the quality of its residential neighborhoods is sufficient to justify zoning regulations upon SOBs, as shown in the Washington State Supreme Court's opinion in Northend Cinema, Inc. v. City of Seattle, 90Wn.2d 709, 585 P.2d 1153 (1978).
- E. The PAB reviewed police incident reports that documented the occurrence of crimes within adult cabarets in the City. Since adoption of the City's adult entertainment standards of conduct and violations in 1998, three adult entertainment cabarets have offered or allowed entertainment that violated City regulations. These adult cabarets are Lipstix (now known as Stiletto's), the New Players Club, and the Déjà vu Nightclub. Police incident reports and court records regarding these violations are contained within the legislative record for this Ordinance.
- F. The PAB has reviewed the administrative actions City officials have taken against the business licenses issued to adult entertainment cabarets. These administrative actions have included revocation of the New Players Club's business license, a thirty (30) day suspension of Lipstix' business license, and a pending action to revoke Stiletto's business license for one year. The specific facts, violations and crimes that form the basis for these administrative actions are contained within the legislative record.
- G. The PAB has reviewed records that indicate that improperly operated SOBs can be the focal point for a variety of crimes. These crimes were documented in the case of Heesan Corp. v. City of Lakewood, 118 Wn.App. 341, 75 P.3d 1003 (2003), wherein it was shown that entertainers at the New Players Club, a SOB located in the Ponders neighborhood of Lakewood, engaged in many illegal practices. These practices included entertainers offering to perform and engaging in sexual conduct in exchange for money, entertainers performing at less than four feet from the audience, and entertainers engaging in improper physical contact with customers. Additionally, the decision in Heesan Corp. v. City of Lakewood contained documentation that the premises of the New Players Club was used for the unlicensed consumption of alcohol, for illegal smoking of marijuana, and for the sale of other illegal drugs.
- H. The PAB reviewed records that indicated that the harmful secondary effects of an improperly operated SOB can constitute a public or moral nuisance. Such a nuisance would impact the community as a whole, although the impact would be particularly burdensome to the employees and patrons of the business, and to property owners and persons residing and working in close proximity to the offending SOB land use.

- I. The PAB concurred with the findings of the City of Lacey in the rationale for the adoption of City of Lacey Ordinances No. 11422 and 11274, regarding Urban Growth Area Zoning and adult entertainment facilities. When adopting these Ordinances in 1996 and 1997, the City of Lacey found that studies in Austin, Texas, and in the state of Michigan provided convincing evidence that crime increased in areas close to adult businesses. The City of Lacey also cited to a Detroit, Michigan, report and to evidence gathered from Seattle and Tacoma, Washington, that demonstrated that cities and metropolitan areas experienced harmful secondary effects related to adult entertainment activities. These harmful secondary effects can cause a detrimental impact upon residential land uses leading to destabilization of residential areas and depressed property values.
- J. The PAB concurred with the findings contained in City of Spokane Ordinances No. 32778 and 33001, where the Spokane Planning Services Department documented evidence that adult bookstores and adult entertainment establishments create harmful secondary effects including negative health, safety, economic and aesthetic impacts upon neighboring properties and the community as a whole. The PAB cited to World Wide Video v. City of Spokane, No. 02-35936 (9th Cir. 2004), as documenting evidence of the harmful secondary effects of adult entertainment and as further support for the belief that reducing the undesirable effects of adult entertainment and SOBs is a substantial governmental interest that can be achieved with time, place and manner restrictions upon where such businesses may locate within a city.
- K. The PAB reviewed studies that indicated that adult bookstores generate harmful secondary effects upon neighborhoods, families and the community. The PAB also reviewed police incident reports that indicated that crimes involving indecent exposure can occur at adult bookstores that contain panoram devices.

18A.40.415 – Purpose and Intent

Based upon the findings of the PAB, the City Council for the City of Lakewood does hereby adopt this Ordinance for the purpose of minimizing the harmful secondary effects of SOB land uses within the City. It is the intent of this Ordinance to protect Lakewood's citizens, persons who own property within the City, and people who travel through the City from crime, blight and other harmful secondary effects associated with SOBs.

By limiting the areas in which SOBs are allowed to operate, the Lakewood City Council intends to protect families, children and residential neighborhoods from crimes, nuisances and disturbances of the public peace and safety; to protect residential neighborhoods and business districts from blight and deterioration of property values; and to protect, foster and support the goals and ideals of schools, religious and public service organizations serving the Lakewood community.

It is not the intent of this Ordinance to suppress any constitutionally protected speech or expression. This Ordinance is intended as a content neutral regulation to diminish and control crime and the harmful secondary effects associated with SOBs, while allowing the existence of constitutionally protected expression.

18A.40.420 – Sexually Oriented Business Overlays Created

There are hereby created Sexually Oriented Business Overlays (SOBOs) within the geographic areas of the City as identified and depicted on “Exhibit A (SOBOs),” attached hereto and by this reference incorporated herein. Sexually oriented businesses as defined within this title may locate only within the SOBOs identified in “Exhibit A.”

18A.40.430 – Applicability

- A. This section shall apply to all SOB land uses, as defined herein or as may be hereafter defined, located within the City of Lakewood.
- B. Any SOB that lawfully existed, held all valid and necessary business licenses, and operated within the boundaries of any SOBO identified in “Exhibit A” as of the effective date of this Ordinance shall be considered a conforming land use.
- C. Any SOB that lawfully existed, held all valid and necessary business licenses, and operated within the City in a location or parcel of property not completely within the boundaries of a SOBO as of the date of passage of this Ordinance shall be considered a vested but nonconforming land use.
- D. All new applications for SOB business licenses shall be denied unless the application clearly identifies a business location and premises located within a SOBO and the application is in compliance with all requirements stated in this title.
- E. If a new application for a SOB business license shows a SOB business location or premises address upon a parcel of land partially within a SOBO, the application shall be approved if the application conforms in all other ways with the requirements of this title and at least 75 percent of the square footage of the parcel upon which the SOB is proposed is located within a SOBO.

18A.40.435 -- Notice to Nonconforming SOB Land Uses

- A. All SOBs made nonconforming upon the effective date of this Ordinance shall be notified in writing of such nonconforming status pursuant to LMC 18A.40.455.
- B. The City Manager or the designee thereof shall determine whether SOBs lawfully existing on the effective date of this Ordinance are within SOBO zone boundaries. This determination shall be made within forty-five (45) days after the effective date of this Ordinance. This determination of zoning compliance shall be based upon the boundaries of the SOBOs and the location of each SOB as determined by a review of business licensing information and public records available to the City.
- C. Determinations of nonconformity under this section shall be subject to appeal as provided in LMC 18A.02.500 through 18A.02.575 and LMC 18A.02.740 as a process one administrative action. Appeal of the hearing examiner’s decision on

a determination of nonconformity shall be to superior court as provided in LMC 18A.02.755.

18A.40.440 – Processing of Applications for Licenses and Permits

- A. Upon receipt of an application for a permit or license for a SOB, the City Manager or the designee thereof shall determine within 28 days whether the application is complete. Whether an application is complete shall be determined as specified in LMC 18A.02.152 for permits, as specified in LMC 5.16.040 for adult cabaret licenses, as specified in LMC chapter 5.02 for SOB bookstores, and as specified in LMC 5.20.070 for SOBs applying for panoram, preview, picture arcade or peep show license. Should an application for a SOB license or permit be determined to be incomplete, the City Manager or designee shall notify the applicant in writing within the twenty-eight (28) day time frames stated above and describe the specific information necessary to complete the application. Should the City fail to request additional information or determine that an application is incomplete within the time frames specified in this section, the application shall be deemed complete and processed, accepted, denied, modified or conditioned within the time periods set forth in sub-sections (B) and (C) below.
- B. Upon receipt of a completed application for a new SOB business license, the City Manager or designee thereof shall determine whether the application complies with all requirements of the Lakewood Land Use and Development Code, LMC Title 5 and this chapter. The City Manager or Designee shall determine compliance within thirty-five (35) days after receiving a completed application.
- C. Upon receipt of a completed application for a permit related to a SOB land use, the City manager or designee thereof shall determine whether the permit application complies with all requirements of the Lakewood Land Use and Development Code and this title. The City Manager or designee shall determine compliance within one hundred and twenty (120) days of the receipt of the completed application based upon information contained within the application, the boundaries of the SOBO zone, and public records available to the City at the time of receipt of the application. Determinations related to SOB permit applications shall be processed in the same manner as any other completed permit application received by the City, however determinations regarding completed SOB permit applications must be made within one hundred and twenty (120) days of the receipt of the completed application.
- D. Should the City fail to make a determination of zoning compliance or fail to specifically approve, condition, modify or deny a completed application for an SOB-related license or permit within the time frames set forth above, the SOB application will be assumed to be in conformity with all applicable zoning requirements. This presumption shall have the effect of making the application or permit a lawful and vested land use even if the City erred by failing to make a determination or by failing to deny, accept, condition or modify a license or permit.
- E. Should a SOB that obtained a de facto license or permit as described above be found not to comply with applicable zoning or development regulations, the SOB

land use shall obtain nonconforming status through the vested permit or application.

18A.40.445 – Regulations Within SOBO

Newly established or created SOBs shall be allowed to locate anywhere within a SOBO except that all new SOBs must be located at least 1000 feet away from any SOB that lawfully existed prior to the receipt of the new application. New SOBs shall be required to locate at least 1000 feet away from existing conforming and existing nonconforming SOBs without regard to whether any nonconforming SOB is located within a SOBO. The 1000 foot distance separation shall be measured from the nearest building used for an existing SOB to the nearest portion of any building proposed to be used for a new SOB land use.

18A.40.450 – Expiration of Nonconforming Status

- A. Nonconforming SOBs shall be discontinued upon the occurrence of any one or more of the following:
 - 1. Upon abandonment of a nonconforming SOB land use for six months or longer. For the purposes of this section, abandonment shall mean voluntary discontinuance or closure of the SOB land use or failure to apply for required permits to rebuild, remodel and/or reopen the business after it has been damaged or destroyed due to an involuntary event of fire, natural disaster or other casualty. For the purposes of this section, business license suspension or revocation shall not constitute a voluntary discontinuance or closure of a SOB.
 - 2. Upon a change in use of the business to a use not defined as an SOB.
- B. Nonconforming SOB land uses may apply for permits to make renovations or repairs as necessary or required for safety and health purposes. Applications for permits to perform renovations or repairs shall be processed, approved, modified, conditioned or denied in compliance with LMC 18A.02.835 and 18A.40.440.
- C. To determine issues regarding whether a SOB has nonconforming status or has maintained nonconforming status pursuant to this section, the City Manager or designee shall rely upon the process and types of evidence listed in LMC 18A.02.845.

18A.40.455 Notice and Order – Sexually Oriented Businesses

- A. Any SOB that becomes nonconforming upon the effective date of this Ordinance shall be given written notice of such nonconforming status by notice and order issued by the City Manager or designee pursuant to LMC 18A.40.435 and this section.
- B. Whenever a completed application for a new SOB license or for a permit related to a SOB is denied, conditioned or modified, written notice shall be given to the applicant by notice and order issued by the City Manager or designee pursuant to this section.
- C. A notice and order, and any amended or supplemental notice and order, shall be served upon the owner of the SOB either personally, by posting upon the property and personal service upon the manager or person responsible for the business during

business hours, or by certified mail, postage prepaid, return receipt requested and addressed to the business owner at the address which appears on the most current license or permit application on file with the City.

D. Notice and orders issued pursuant to this Ordinance shall contain the following information:

1. The street address, when available, and a legal description sufficient for identification of the premises upon which the nonconforming business is located.
 2. A statement clearly informing the applicant that an administrative determination has been made in regard to the SOB.
 3. A description of or specific statement as to the reason(s) justifying the administrative determination.
 4. A statement advising the SOB owner that an appeal may be made from the notice and order or from any action of the City Manager or designee to the City's Hearing Examiner. Appeals of notice and orders concerning licensing of SOBs shall be governed by the provisions of LMC sections 5.02.190 and 5.16.080. Appeals of notice and orders related to zoning determinations, determinations of nonconformity, applications for permits, and land use regulations shall be governed by the regulations stated in LMC 18A.02.500 through 18A.02.575, LMC 18A.02.740 and LMC 18A.02.755. Failure to appeal shall constitute a waiver of all rights to an administrative hearing and appeal of the matter.
- E. Timely Hearing of Appeals. In addition to the requirements of LMC 5.02.190 concerning appeals, within forty-five (45) days of the receipt of a properly perfected appeal, the City Clerk shall set an appeal hearing before the Hearing Examiner and send notice of such hearing in writing to the SOB that requested the appeal. The Hearing Examiner hearing must be held within ninety (90) days after the receipt of an appeal under this chapter, unless the party, entity or person seeking appeal waives this requirement in writing. Upon closing of the record in such an appeal, the Hearing Examiner shall have ten (10) days within which to render a written decision upon the appeal. Decisions of the Hearing Examiner regarding the issuance of licenses and permits to SOBs are final and conclusive.
- F. Appeal to Superior Court. Any appeals or requests for review by persons, parties or entities aggrieved by a decision of the Hearing Examiner related to a decision made pursuant to any provision under this title shall be made to the Superior Court, whether pursuant to LMC 1.36.110, 18A.02.502 or 18A.02.755.
- G. General Business Licensing Provisions Referenced. The provisions of LMC 5.02.170, 5.02.180, and 5.02.190 shall apply to issues of licensing, zoning, development regulation, and notice and orders issued under this chapter to the extent that the provisions of LMC 5.02.170, 5.02.180, and 5.02.190 are not in specific conflict with the provisions set forth in this chapter, and said provisions are thus incorporated herein by reference as if fully set forth herein.

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

- A. **ADULT ENTERTAINMENT.** Any entertainment that includes the following:
1. Any public exhibition, performance, dance or conduct of any type 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.
 2. Any public exhibition, performance, dance or conduct of any type that 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.
 - c. Fondling or other erotic touching of human genitals, pubic region, buttocks or female breast.
 - d. Any exhibition, performance, dance or conduct which is intended to sexually stimulate any member of the public. 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 for which payment is made, either directly or indirectly, for such performance, exhibition, dance or conduct.

Provided, however, that for the purposes of this chapter, adult entertainment activities do not include the following: plays, operas, musicals, or other dramatic works that are not obscene; classes, seminars and lectures which are held for serious scientific or educational purposes and which are not obscene; or exhibitions, performances, expressions or dances that are not obscene. Provided, however, that the exemptions listed above shall not apply to sexual conduct defined in LMC 5.16.010(O), or the sexual conduct described in RCW 7.48A.010(2)(b)(ii) and (iii).

- B. **ADULT-ORIENTED MERCHANDISE.** 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 the anatomical areas or sexual activities described under the definition of Adult Entertainment listed above.
- C. **ADULT RETAIL USE.** A retail establishment which, for money or any other form of consideration, either:
1. 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 using, off the premises, any adult oriented merchandise; or
 2. Provides for, as its substantial stock in trade, 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 its 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. Provided, however, that it shall not be considered a “primary part of its 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 twenty (20) percent 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 twenty (20) percent 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; twenty (20) percent or more of the inventory of the business is adult-oriented merchandise; or twenty (20) percent 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. 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. SEXUALLY ORIENTED BUSINESS. A business that includes any one (1) or more of the following as defined herein: “adult entertainment facility,” “adult-oriented merchandise,” “adult retail use,” and/or “panoram”; or a similar facility, merchandise, or entertainment.

18A.40.470 Prohibition and Public Nuisance

All SOBs within the City of Lakewood shall be operated and maintained in compliance with this Ordinance. Any SOB not conducted and maintained in compliance with the SOBO requirements set forth in this Chapter is hereby declared a public nuisance subject to abatement and removal.

18A.40.480 Provision for Conformance – Sexually Oriented Businesses

If any portion of this section is deemed to be in conflict or inconsistent with any other provisions of the Lakewood Municipal Code, including, but not limited to other sections of this title, such other provisions shall be construed in conformity herewith; provided, that if such other provisions cannot be so construed, then the provisions of this section

shall control, and such other provisions shall be deemed modified to conform herewith, for the purposes of this section only.

Section 7. As identified in newly created section 18A.40.420 contained above, that the City Council does further adopt and create a document identifying the location of the Sexually Oriented Business Overlays as the same is attached hereto, marked as "Exhibit A" and incorporated herein by this reference.

Section 8. Severability. If any portion of this Ordinance or its application to any person or circumstances is held invalid, the remainder of the Ordinance or the application of the provision to other persons or circumstances shall not be affected.

Section 9. Effective Date. 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 1st day of November, 2004.

CITY OF LAKEWOOD

Douglas G. Richardson, Mayor

Attest:

Alice M. Bush, CMC, City Clerk

Approved as to Form:

Heidi Ann Wachter, City Attorney