

SUBSTITUTE ORDINANCE NO. 679

AN ORDINANCE of the City Council of the City of Lakewood, Washington, amending Title 5 Business Licenses and Regulations, to clarify the definition of “flea market” to include both new and second-hand items; to remove “flea markets” form the list of temporary businesses; and reference state law in regard to reporting requirements.

WHEREAS, on or about September 23, 2016, Plaintiff Star Lite Garage Sale and Swap Meet (through Hank Bardon), commenced an action in the Superior Court of the State of Washington in and for Pierce County, captioned Complaint for Injunctive Relief, under cause No. 16-2-11339-2 against the City of Lakewood (hereinafter “Complaint” or “Lawsuit”); and

WHEREAS, on or about September, 2016, and over objection of the City of Lakewood, the Pierce County Superior Court entered a Temporary Restraining Order against the City of Lakewood regarding enforcement of certain provisions of the City’s business licensing code; and

WHEREAS, on or about November 21, 2016, the following individuals filed a document captioned Third Party Complaint for Declaratory and Injunctive Relief and Damages and Attorneys Fees against the City of Lakewood, also under Pierce County Cause No. 16-2-11339-2: Dennis Eros, Hubert Young, Victor Lopez, Willbert Illig, Carl Ritmanich, Soo Oh, Jae Park, John Seidl, Gary Wagner, Louis Fontenot, and Ted Bell; and

WHEREAS, the Lawsuit makes various claims and claims for relief against the City of Lakewood, including but not limited to allegations that parts of the City’s business licensing code and regulations are excessive or unduly oppressive or that the City improperly enforces certain regulations and interferes with their business operations; and

WHEREAS, the City of Lakewood denies all responsibility or liability for the claims, damages and actions claimed by Plaintiffs and Intervenors in the Lawsuit, and denies all claims for relief, whether equitable or legal, and all claims for damages, attorneys’ fees and costs; and

WHEREAS, Plaintiffs and the City have engaged in settlement discussions, which discussions have resulted in a settlement proposal which is acceptable to City staff, but which must go through a defined and required approval process and must be considered and approved by the Lakewood City Council following an open public meeting, and the ultimate decision by the Lakewood City Council whether to approve or disapprove of the proposed legislative changes is a discretionary legislative act without assurances of approval or other action; and

WHEREAS, the City finds that minor changes to the City’s code are necessary to better implement the purpose of the code.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAKEWOOD, WASHINGTON HEREBY ORDAINS, Title 5 Lakewood Municipal Code shall be amended as follows:

**Section 1. 5.02.010 Definitions.**

For purposes of this Ordinance, the following definitions shall apply:

A. "Business" includes all lawful activities engaged in with the object of gain, benefit, or advantage, directly or indirectly, whether part-time, full-time or seasonal.

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E. "Flea market" means and includes, but is not limited to, arrangements whereby a person or persons sell, lease, rent, offer or donate to one or more persons a place or area where such persons may offer or display new, second-hand or junk items. "Flea market" includes, but is not limited to, bazaars, rummage sales and swap meets.

H. "Temporary Business" means all business of a short term or transitory nature, including but not limited to the following: ~~In addition to those activities meeting this definition of a "temporary business," the following business activities shall require a license issued under this chapter:~~

1. Any business which occupies a site or operates within the City for no more than seven days per occurrence twice within any 365-day period;
2. Roving mobile vendors involved in business such as door-to-door sales, sales from ice-cream trucks, or other businesses that do not have a fixed location.
- ~~3. Serving as a vendor at a flea market.~~
- 4-3. Operating a carnival or circus within the City.

## **Section 2. 5.02.100 Term of License/General and Temporary.**

A. Each Annual Business License shall expire one year from the date of issuance by the City, unless renewed. Upon renewal, each license shall be valid for an additional year from the date of expiration, unless suspended, revoked, closed, or invalidated by a change in business as defined in LMC 5.02.040. Any additional Rules and Regulations and Conditional Licenses imposed or stipulated to pursuant to LMC 5.2.150 shall remain in full force and effect notwithstanding any licensing renewals unless expressly terminated in writing by the City.

B. A Temporary Business License may specify dates for which a license is valid. In no event shall a license issued under this chapter be valid for more than four months ~~one year~~ after issuance.

If no dates are specified on the face of the temporary business license, a temporary business may operate within the City for no more than seven days after the date of issuance. Upon supplemental application, and payment of any fee, the City may authorize up to one seven-day extension.

## **Section 3. 5.12.013 Additional Reporting Requirements.**

A. ~~In addition to the reporting requirements contained in RCW 19.60.025 and RCW 19.290.020, e~~ Every entity subject to this Chapter shall be required to report as required by chapter 19.60 RCW and chapter 19.290 RCW. ~~electronically with Leads Online or such other entity or upon such forms as may be designated by the Chief of Police.~~

B. ~~Each entity subject to this chapter shall operate and maintain a computer system with Internet access and photographic or video capability sufficient for the electronic reporting requirements of this chapter. Any failure or malfunction of such equipment on the part of the~~

licensee shall not exempt the licensee from the reporting requirements of chapters 19.60 and 19.290 RCW and this section.

~~C. In addition to the information required to be reported by chapters 19.60 and 19.290 RCW, each entity subject to regulation under this chapter shall obtain a photographic image of identification of both the pawner/seller, sufficiently clear to allow the information on the identification to be read and the item which is the subject of the transaction. The identification must be current, issued from a governmental entity of the United States and must include the pawner/seller's first and last name, current address, date of birth and physical descriptors.~~

~~D. On a daily basis, every entity subject to this Chapter shall furnish reports to the City as required by RCW 19.60.040 and 19.290.050. Each report shall cover the transactions covered within the time period proscribed by those statutes.~~

~~E. The following transactions shall be exempt from the reporting requirements of this Chapter:~~

~~1. Clothing with a current resale value of less than seventy-five dollars, except for items made partially or wholly from fur or leather;~~

~~F. The failure to file a report as required by this section or chapters 19.60 or 19.290 RCW shall constitute unlawful conduct justifying summary revocation of a license to do business within the City of Lakewood and shall be governed by the processes set forth in LMC 5.02.190.~~


~~G. Nothing contained within this chapter or the provisions of chapters 19.60 or 19.290 RCW should be construed as a limitation upon the authority of the City to require, as an express condition of a license issued under this Title, differing reporting requirements upon a business. (Ord. 610 § 17, 2015.)~~

**Section 4. Severability.** If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining parts of this ordinance

**Section 5. Effective Date.** This ordinance shall take place thirty (30) days after its publication or publication of a summary of its intent and contents.

ADOPTED by the Lakewood City Council this 19<sup>th</sup> day of March, 2018.

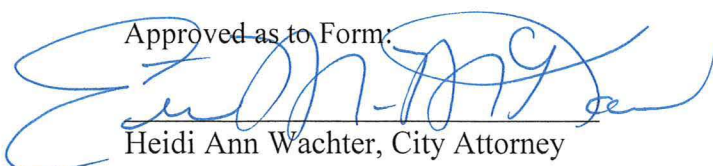
CITY OF LAKEWOOD

  
Don Anderson, Mayor

Attest:

  
Alice M. Bush, MMC, City Clerk

Approved as to Form:

  
Heidi Ann Wachter, City Attorney