

CITY OF LACEY

AN ORDINANCE RELATING TO THE PROCESSING OF LAND USE APPLICATIONS, ZONING AND THE LICENSING OF BUSINESSES, AMENDING SECTIONS 2.30.180, 5.12.010, 5.40.020, 5.40.050 AND 16.67.010 OF THE LACEY MUNICIPAL CODE, DECLARING AN EMERGENCY AND APPROVING A SUMMARY FOR PUBLICATION.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LACEY, WASHINGTON, as follows:

Section 1. Section 2.30.180 of the Lacey Municipal Code is hereby amended to read as follows:

City council action. The city council may accept, modify or reject the examiner’s decision, or any findings or conclusions therein. A decision by the city council to modify or reject shall be supported by findings and conclusions. The City Council’s decision shall be rendered within twenty-one (21) days after consideration in open public meeting unless all parties affected agree to an extension of such date.

The action of the city council in approving or rejecting a decision of the examiner shall be final and conclusive unless a Land Use Petition is timely filed with the Thurston County Superior Court in accordance with Chapter 1D of the City of Lacey Development Guidelines and Public Works Standards and applicable state laws; provided, that appeals from a decision to grant, deny or rescind a shoreline permit shall be governed by the provisions of Chapter 90.58 of the Revised Code of Washington.

Section 2. Section 5.12.010 of the Lacey Municipal Code is hereby amended to read as follows:

Definitions--Application--Registration fee.

- A. Whenever the word “business” is used herein, it applies to any person, firm or corporation which operates any store or place for the sale of goods, services, wares or merchandise at retail or at wholesale, within the corporate limits of the city, on a temporary or permanent basis. Each such store or place shall be considered a separate business even though more than one such store or place is owned by the same person, firm or corporation. “Business,” as used solely in this chapter, shall not apply to the temporary sale activities of nonprofit, religious, educational or charitable organizations where such activities are incidental or customary to the charitable, educational or religious purpose of the organization and such organization has notified the city in writing of the dates upon which the activities will be conducted, nor shall “business,” as used solely in this chapter, apply to the temporary sale activities of other persons, firms or corporations conducted on

premises or in facilities furnished by a person, firm or corporation holding a master business registration certificate for temporary sales pursuant to Section 5.12.015 nor to the sales activities of persons, firms or corporations conducted on premises or in facilities furnished by a person, firm or corporation holding a business registration certificate for a “farmers’ market.” “Temporary,” as used solely in this chapter, shall be any business operated for thirty consecutive days or less within the corporate limits of the city or which may be located in a mobile unit; provided, however, that the term “temporary” shall not apply to the direct sales of agricultural products grown in Thurston County by the grower or the grower’s employees. “Farmers’ market”, as used solely in this chapter, means an organization of local growers and handcrafters formed for the purpose of selling goods grown or made by said members where the normal requirements for participation is that those members selling have either grown or crafted seventy-five percent of their product.

- B. Any proposed new business, and any business which changes its state tax number or moves its location, shall make application for registration to the city. Such application shall be accompanied by the fee established by resolution of the city council; provided, however, that until such time as the council passes a resolution establishing the fee for a “farmers’ market”, the annual application fee for such organization shall be \$60.00; provided, further, that until the city council passes a resolution establishing the fee for the direct sales of agricultural products grown in Thurston County by a grower or a grower’s employee, the fee shall be \$50.00 for each location for a period of ninety days and an additional fee of \$10.00 for each thirty days thereafter to a maximum of an additional sixty days. The application shall be reviewed by the building official, who shall review the application for compliance with the building codes adopted in Title 14, Lacey Municipal Code; the planner who shall review the application for compliance with the zoning codes as adopted in Title 16 of the Lacey Municipal Code; and the fire marshal who shall review the application for compliance with the requirements of the fire code as adopted in Chapter 14.07 of the Lacey Municipal Code. In addition, the police department shall review the type of business proposed and the products to be sold in order to prevent the potential sale of stolen goods or the practice of fraud upon the public, in addition to reviewing the location of the business for the prevention of a safety hazard to the public. In addition, all applicants for businesses dealing in food services shall provide a copy of the certificate issued by the county health department prior to the business registration certificate being issued. The city shall notify the applicant of the results of such review within ten working days after the application is submitted. If the proposed business location is in compliance with the city’s zoning and building code requirements as detailed in Chapters 14 and 16, if the health certificate, when appropriate, has been furnished, and if the police department finds that a public safety hazard will not be created by the business and there shall not be a likelihood of stolen property being sold by the business or fraud upon the public being perpetrated, or if the city fails to notify the applicant of the results of the investigation and inspection within ten working days after the application is submitted, a business registration certificate shall be issued to the applicant. Provided, however, if subsequent investigation and inspection by the City determines that the information provided in the application is either inaccurate or misleading, the registration certificate issued shall be considered temporary in nature and may be revoked by the City based upon the results of such further investigation or inspection.

- C. No business registration application shall be approved or registration certificate issued for any business to occupy space in a building requiring a certificate of occupancy as required in Chapter 14.03, until such certificate of occupancy has been issued.
- D. Subject to the provisions of Subsection B of this section, a A registration certificate will be valid for the period of time for which the fee is paid pursuant to this section and resolution of the city council.
- E. All appeals from actions or decisions of the City pursuant to this section shall be to the City's Hearing Examiner pursuant to Section 1D of the City's Development Guidelines and Public Works Standards.

Section 3. Section 5.40.020 is hereby amended to read as follows:

Definitions.

- A. "Adult Arcade" shall mean an establishment where, for any form of consideration, one or more still or motion picture projectors, slide projectors, or similar machines, or other image producing machines, for viewing by five or fewer persons each, are used to show films, motion pictures, video cassettes, slides, video disks or other photographic reproductions which are characterized by the depiction or description of "Specific Sexual Activities" or "Specific Anatomical Areas".
- B. "Adult Bookstore", "~~Adult Novelty Store~~", or "Adult Video Store" shall mean a commercial establishment which offers ~~has as one of its principal business purposes the offering~~ for sale or rental for some form of consideration, books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, slides, video disks or other forms of reproduction the contents of ~~visual representations~~ which are characterized by the depiction or description of specific sexual activities or specific anatomical areas in any of the following described proportions or quantities:-
 - 1. An average value of inventory of products described in this subsection held by such establishment exceeding ten percent (10%) of the total average value of all inventory held by such establishment;
 - 2. An average revenue received from the sales or rentals of products described in this subsection exceeding ten percent (10%) of the total average revenue received from all sales or rentals by such establishment;
 - 3. An average floor space devoted to the display of products described in this subsection exceeding ten percent (10%) of the total floor space devoted to the display of all products held by such establishment; or
 - 4. The display for sale or rental of more than twenty separate items meeting the definition of products set forth in this subsection.

~~Provided, however, that video stores that sell and/or rent only video tapes or other graphic reproductions and associated equipment shall only come within the definition set forth herein if twenty percent or more of its stock in trade or revenue comes from the rental or~~

~~sale of video tapes or other photographic reproductions or associated equipment which are characterized by the depiction or description of specific sexual activities or specific anatomical areas.~~

C. “Adult Novelty Store” shall mean a commercial establishment which offers for sale or rental for some form of consideration, sexual devices, novelties or paraphernalia as defined in this section in any of the following described proportions or quantities:

1. An average value of inventory of sexual devices, novelties or paraphernalia held by such establishment exceeding ten percent (10%) of the total average value of all inventory held by such establishment;

2. An average revenue received from the sales or rentals of sexual devices, novelties or paraphernalia exceeding ten percent (10%) of the total average revenue received from all sales or rentals by such establishment;

3. An average floor space devoted to the display of sexual devices, novelties or paraphernalia exceeding ten percent (10%) of the total floor space devoted to the display of all products held by such establishment; or

4. The display for sale or rental of more than twenty separate items meeting the definition of products set forth in this subsection.

~~D.C.~~ “Sexual devices, novelties or paraphernalia shall include dildos and vibrators which graphically simulate the male sexual organ, artificial vaginas and anuses, sexual toys and enhancers, sexual restraints, collars, whips, harnesses and sexual products, novelties and paraphernalia similar to such listed items and categories of products.

~~E.C.~~ “Specific anatomical areas” means:

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

~~F.D.~~ “Specific sexual activities” means:

1. Human genitals in a state of sexual stimulation; and/or
2. Acts of human masturbation, sexual intercourse or sodomy; and/or
3. Fondling or other erotic touching of human genitals, pubic region, buttocks or the female breasts.

Section 4. Section 5.40.050 is hereby amended to read as follows:

Regulations applicable to commercial establishments video stores not qualifying as an adult book store, adult video stores or adult novelty store. ~~Video stores~~ Establishments that offer for sale or rental for some form of consideration, books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, slides, video disks or other forms of reproduction, the contents of which are characterized by the depiction or description of specific sexual activities or specific

anatomical areas and establishments that offer for sale or rental for some form of consideration, sexual devices, novelties or paraphernalia as defined in LMC 5.40.020C but do not qualify as adult book, adult video or adult novelty stores, shall be subject to the following regulations:

~~otherwise distribute films, motion pictures, video cassettes, slides, video disks or other visual representations which are characterized by the depiction or description of specific sexual activities or specific anatomical areas, and less than twenty percent of their stock in trade or revenues comes from the rental or sale of such items shall be subject to the following regulations:~~

- A. All ~~such~~ items as are described in the definitions of adult bookstore, adult video store, and adult novelty store, ~~above~~ shall be physically segregated and closed off from other portions of the store such that these items are not visible and/or accessible from other portions of the store.
- B. No advertising for such items other than a sign stating "adult products, adults only" shall be posted or otherwise visible outside of the physically segregated and closed off portion of the store where such items are displayed. ~~Except where such items are authorized for display.~~
- C. Signs readable at a distance of twenty feet in both English and Spanish shall be posted at the entrance to the area where such items are displayed stating that persons under the age of eighteen are not allowed access to the area where such items are displayed.
- D. The manager or attendant shall take reasonable steps to monitor the area where such items are displayed to ensure that persons under eighteen years of age do not access the age-restricted area.
- E. Rental or sale of such material or products ~~obscene material (as defined by state law) or material harmful to minors (as defined by state law)~~ to persons under eighteen years of age is prohibited.
- F. Employees of such video stores shall check identification to ensure that such items are not rented or sold to persons under the age of eighteen.

Section 5. Section 16.67.010 of the Lacey Municipal Code is hereby amended to read as follows:

Definitions.

- A. Those certain terms used herein which are defined in section 5.40.020 ~~5.40.010~~ and 5.42.010 of the Lacey Municipal Code shall have the same meaning as set forth in said sections.
- B. The term "Adult Entertainment Facility" shall include all adult-oriented businesses including adult arcades, adult bookstores, adult novelty stores, adult video stores and similar adult uses and adult live entertainment facilities.

Section 6. If any section, subsection, or any other portion or requirement of this amendatory ordinance, including provisions for its immediately effective date, should be declared invalid, such declaration shall not effect the remaining provisions hereof.

Section 7. Due to the status of litigation filed and pursued against the City and the expressed intention of an adult business establishment to seek a business location not allowed by the zoning ordinances of the City, the Council hereby declares and considers this amendatory ordinance to be a public emergency ordinance necessary for the protection of the public health and welfare and shall be effective upon its adoption.

Section 8. The Summary attached hereto is hereby approved for publication.

PASSED BY THE CITY COUNCIL OF THE CITY OF LACEY,
WASHINGTON, at a regularly-called meeting thereof, held this 8th day of
September, 2005.

CITY COUNCIL

By: 
Mayor

Approved as to form:


City Attorney

Attest:


City Clerk

Published Monday, September 12, 2005

SUMMARY FOR PUBLICATION

ORDINANCE 1247

CITY OF LACEY

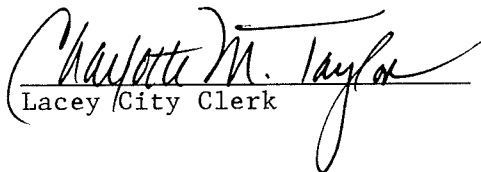
The City Council of the City of Lacey, Washington, passed on September 8, 2005, Ordinance No. 1247, entitled "AN ORDINANCE RELATING TO THE PROCESSING OF LAND USE APPLICATIONS, ZONING AND THE LICENSING OF BUSINESSES, AMENDING SECTIONS 2.30.180, 5.12.010, 5.40.020, 5.40.050 AND 16.67.010 OF THE LACEY MUNICIPAL CODE, DECLARING AN EMERGENCY AND APPROVING A SUMMARY FOR PUBLICATION."

The main points of the Ordinance are described as follows:

1. The ordinance limits the time for Council action on appeals and land use decisions to twenty-one (21) days after holding a public meeting on such subject.
2. This amendatory ordinance modifies the standards and definitions for adult facilities by setting a definite percentage of inventory value, revenue received or floor space devoted to the sale of regulated items and the number of items offered for sale or rental or displayed.
3. The ordinance regulates the placement, display and age category for the defined products for those establishments selling less than the prohibited percentage of such products.
4. The ordinance provides that decisions or actions by City officials relating to business license applications are appealable to the City's Hearing Examiner.
5. The ordinance is declared by the Council to be a public emergency ordinance, effective upon its passage.
6. The Ordinance approves this Summary for Publication.

A copy of the full text of this Ordinance will be mailed without charge to any person requesting the same from the City of Lacey.

Published: September 12, 2005.
Monday


Lacey City Clerk