



ORDINANCE NO. 4015-24

An ORDINANCE Relating to the Regulation of Quick Service Facilities and Barista Stands, AMENDING EMC 5.132.020; .040 (Ordinance 3650-17)

WHEREAS,

- A.** The City has seen a proliferation of crimes of a sexual nature occurring at bikini barista stands throughout the City, on its borders, and in Snohomish County. The City has reviewed this matter and found evidence relating to the adverse impacts of the conduct of bikini barista stands. This evidence relates to barista stands with employees dressing in a manner that is closely and customarily associated with adult entertainment or adult situations. Further this evidence indicates that businesses providing casual food services including such things as fast food restaurants, delis, food trucks and coffee stands (“Quick Service Facilities”) might easily transition to the bikini barista stand model;
- B.** The City has considered such evidence as compiled in the legislative record for this ordinance also including court cases, police records, memoranda and other information related to conduct of bikini barista stands;
- C.** The City finds that it has primarily used its lewd conduct and adult entertainment regulations and ordinances to regulate inappropriate conduct at these stands. This approach, however, has resulted in a labor intensive enforcement effort by the City, while seemingly providing little or no deterrent to the bikini baristas' continued flashing and committing acts of prostitution. Further the City has found that the stand owner/operator are in the best position to ensure that employees comply with existing lewd conduct laws;
- D.** The City finds that it is not the intent of the City to suppress any protected rights of expression under the United States or Washington Constitutions, but to propose and enact content neutral legislation which addresses narrowly the negative adverse impacts associated with bikini barista stands while allowing these types of businesses adequate alternative channels for communication of protected expression;
- E.** The City finds that a licensing mechanism is needed to place more accountability and responsibility on the owners of businesses where the illegal conduct has occurred. Exclusive reliance on existing criminal provisions allow owners to avoid liability by pleading ignorance and game the system by creating a paper trail purporting to prohibit conduct while in fact encouraging that conduct by looking the other way and setting revenue expectations that implicitly encourage such conduct;

- F. The City finds that this Ordinance bears a substantial relation to public health, safety or welfare and promotes the best long term interests of the Everett community; and
Whereas, the City Council does conclude:
1. The evidence provided is clearly reliable and demonstrates that bikini barista stands generate significant adverse secondary effects;
 2. This evidence supports the conclusion that the bikini barista stand model is easily transitioned to other Quick Service Facilities type of business and, as such, it is appropriate and necessary to regulate these all the same;
 3. The evidence supports the conclusion that the City has tried to regulate these businesses in a less restrictive manner which has proven unsuccessful and that imposing minimal dress requirements along with a licensing scheme placing responsibility for compliance primarily on the owner is reasonable and will both diminish the adverse secondary effects and improve the quality of living within the City; and
 4. This ordinance is intended to protect Constitutional rights while addressing the adverse impacts these bikini barista stands have on the City;

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

Section 1. EMC 5.32.020 is amended as follows:

Definitions

A. "Dress Requirement" is clothing that covers "minimum body areas." Such clothing shall not be see-through and must fit adequately so that ~~undergarments~~ and all minimum body areas remain covered at all times including when the wearer is sitting, standing, bending, reaching or performing other work duties. The City Clerk is authorized to issue regulations to ensure full compliance and provide diagrams to illustrate the Dress Requirement.

B. "Minimum body areas" means one's genitals, anus, or any portion of the areola or nipple of the female breast, and at least one-half of the part of the female breast located below the top of the areola, provided that the covered area shall be covered by opaque material and coverage shall be contiguous to the areola (body paint is not "opaque material"); and the bottom half of the anal cleft. ;~~the upper and lower body (breast/pectorals, stomach, back below the shoulder blades, buttocks, top three inches of legs below the buttocks, pubic area and genitals).~~

C. "Quick-Service Facilities" ("Facility") include coffee stands, fast food restaurants, delis, food trucks, and coffee shops, as well as businesses that provide drive-thru forms of food and/or beverage service, or are focused on quick service providing minimal or no table service. If an owner owns or operates more than one Quick Service Facility within the City, each Facility shall be treated as a separate business for the purpose of this Ordinance.

D. "Employee" means anyone working at a Quick Service Facility including the owner or any person who agrees or contracts with the owner of a Quick Service Facility to operate the business or work at the business, whether working as an employee or manager or other type of agent including subcontractors and independent contractors.

E. "Owner" means the person that owns the Quick Service Facility from which the business



activity is conducted.

F. "Person" means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, co-partnership, joint venture, club, company, joint stock company, business trust, corporation, limited liability company, association, society, or any group acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise.

Section 2. Chapter 5.132.040 EMC is amended as follows:

A. Unlawful Acts.

1. It shall be unlawful for the owner of a Quick Service Facility to serve customers (to operate a Facility) when the owner or any Employee is not in full compliance with the dress requirement. A violation of this requirement is a civil infraction.

2. It shall be unlawful for a person required to obtain a Quick Service Probationary License under this Ordinance to knowingly operate a Quick Service Facility without having a valid Quick Service Probationary License. A violation of this requirement shall be a gross misdemeanor.

B. Civil Infraction Violations including the Quick Service Probationary License Requirement.

Civil infractions for violating the Dress Requirement shall be issued against the owner of the Facility by Everett Police and/or Everett Code Enforcement.

1. **First violation.** The first infraction issued to a Quick Service Facility shall be a \$250 fine assessed against the owner. In addition, the owner shall be required to obtain and maintain a Quick Service Probationary License issued in accordance with Section 4(C) (I) of this Ordinance for five consecutive years following a violation in order to operate a Quick Service Facility at the location where the violation occurred.

2. **Subsequent Violations.** If an owner of a Quick Service Facility is operating with a Quick Service Probationary License and the owner or an employee violates the dress requirement, the infraction issued to an owner shall be a \$500 fine assessed against the owner. In addition, the owner shall be required to continue to have a Quick Service Probationary License for five years following the subsequent violation to operate any Quick Service Facility at the location where the subsequent violation occurred. If the owner receives two or more infractions while required to have a Quick Service Probationary License, those citations shall serve as grounds for revoking the Quick Service Probationary License pursuant to Section 4(C).

3. **Notice of infraction and of the Quick Service Probationary License requirement.** An owner of a Quick Service Facility shall be deemed to have notice of the infraction and of the Quick Service Probationary License requirement if the citation and notice is either mailed to the owner via first class mail to the address provided in the owner's application for a City business license for the Quick Service Facility (provided if there is no application, then notice may be mailed to an address determined by the City to be the owner's) or by having it hand-delivered to the Quick Service Facility's location and provided to the owner, or any employee who is 18 years or older. The notice shall identify the address of the Quick Service Facility, the violation of the

Dress Requirement and the date and time the violation occurred.

4. **Appeal of infraction.** Any challenge of an infraction shall be in accordance with the rules in Washington State Infraction Rules for Courts of Limited Jurisdiction. Pursuant to Infraction Rule 2.4 any such appeal must be filed within 15 days of the service of the notice of infraction.

C. Probationary License Application, Denial, and Revocation.

1. **Application for a Probation License Requirement.** An owner of a Quick Service Facility required to obtain a Quick Service Probationary License shall apply for the license using the procedures in EMC 5.04.050, subject to the following additional requirements: (a) the applicant must affirm that the owner has adopted a mandatory dress code that complies with the dress requirement in Section 3 of this Ordinance and has posted that dress code in a conspicuous location on or within the Quick Service Facility where it can be easily viewed by the employees of the Quick Service Facility;

2. **Denial.** In addition to those bases for denial of a license in chapter 5.04 EMC, a Quick Service Probationary License may/will be denied if (a) the owner has previously had a Quick Service Probationary License revoked in the prior 5 years; or (b) has been convicted of operating a Quick Service Facility without having obtained a valid Quick Service Probationary License.

3. **Revocation of Quick Service Probationary License for multiple violations.** If an owner of a Quick Service Facility that has been required to obtain a Quick Service Probationary License receives two or more infractions for violating the Dress Requirement during the period the Owner is required to have a Quick Service Probationary License, those infractions shall be grounds for revoking the Quick Service Probationary License. This ground for revocation is in addition to those provided for in EMC 5.04.080. Any appeal from revocation shall be governed by Chapter 5.04 EMC, as supplemented by the requirements of Section 5 of this Ordinance.

4. **Notice to Employees.** An owner of a Quick Service Facility required to obtain a probationary license shall post a notice to employees about the minimum dress requirement in the location where other notices to employees regarding their rights are posted. The City Clerk, in conjunction with the City Attorney shall prepare the required notice.

D. **Infraction does not limit authority to issue criminal citation.** Nothing in this Ordinance shall preclude the City from filing criminal charges for any conduct which violates the laws of the City or the State, including but not limited laws prohibiting lewd conduct.

Section 3. The following is provided for reference and may not be complete:


EMC Amended/Repealed by this Ordinance	Ordinance History of EMC Amended/Repealed by this Ordinance
EMC 5.132.020	(Ord. 3650-17 § 2.)
EMC 5.132.040	(Ord. 3650-17 § 4)

Section 4. The City Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection numbers, and any internal references.

Section 5. The City Council hereby declares that should any section, paragraph, sentence, clause or phrase of this ordinance be declared invalid for any reason, it is the intent of the City Council that it would have passed all portions of this ordinance independent of the elimination of any such portion as may be declared invalid.

Section 6. The enactment of this Ordinance shall not affect any case, proceeding, appeal or other matter currently pending in any court or in any way modify any right or liability, civil or criminal, which may be in existence on the effective date of this Ordinance.

Section 7. It is expressly the purpose of this Ordinance to provide for and promote the health, safety and welfare of the general public and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this Ordinance. It is the specific intent of this Ordinance that no provision or any term used in this Ordinance is intended to impose any duty whatsoever upon the City or any of its officers or employees. Nothing contained in this Ordinance is intended nor shall be construed to create or form the basis of any liability on the part of the City, or its officers, employees or agents, for any injury or damage resulting from any action or inaction on the part of the City related in any manner to the enforcement of this Ordinance by its officers, employees or agents.



Cassie Franklin, Mayor

ATTEST:



City Clerk

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Ordinance 4015-24

Final Audit Report

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