

ORDINANCE No.

114895

COUNCIL BILL No.

107732

Law Department

The City

AN ORDINANCE relating to license fees for peepshows; reducing and eliminating certain fees for peepshows and subjecting those businesses to amusement device license fees effective January 1, 1990; and amending Seattle Municipal Code (SMC) Sections 5.32.140, 5.32.160, 6.42.010, 6.42.020, 6.42.030, 6.42.040, and 6.42.060.

Honorable President:

Your Committee on

Public

to which was referred the within report that we have considered the

COMPTROLLER FILE No.

Introduced: DEC 1 1 1989	By: Nolan
Referred: DEC 1 1 1989	To: Public Safety
Referred:	To:
Referred:	To:
Reported: DEC 1 1 1989	Second Reading: DEC 1 1 1989
Third Reading: DEC 1 1 1989	Signed: DEC 1 8 1989
Presented to Mayor: DEC 1 1 1989	Approved: DEC 2 7 1989
Returned to City Clerk: DEC 7 7 1989	Published:
Vetted by Mayor:	Veto Published:
Passed over Veto:	Veto Sustained:

Vote 9-0

Public

OX

Department

# The City of Seattle--Legislative Department

## REPORT OF COMMITTEE

Date Reported  
and Adopted  
12-12-89

to President:

Committee on

Public Safety

was referred the within Council Bill No.

107732

that we have considered the same and respectfully recommend that the same:

Note 9-0

Pass

2-0

Jane Mand

Committee Chair

#8  
C.B.107732

ORDINANCE 114895

1  
2  
3 AN ORDINANCE relating to license fees for peepshows; reducing  
4 and eliminating certain fees for peepshows and subjecting  
5 those businesses to amusement device license fees  
6 effective January 1, 1990; and amending Seattle Municipal  
7 Code (SMC) Sections 5.32.140, 5.32.160, 6.42.010,  
8 6.42.020, 6.42.030, 6.42.040, and 6.42.060.

9 WHEREAS, the United States Court of Appeals for the Ninth  
10 Circuit, in Acorn Investments, Inc. v. The City of  
11 Seattle, et al., Docket No. 88-3657 (1989), ruled that the  
12 license fee provisions of The City of Seattle's  
13 panoram/peepshow ordinance violate the First Amendment;  
14 and

15 WHEREAS, reducing and eliminating certain license fees  
16 currently applied to peepshows and instead subjecting  
17 peepshows to amusement device license fees will comport  
18 with the Court's ruling; Now, Therefore:

19 BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

20 Section 1. Section 5.32.140 of the Seattle Municipal Code  
21 is amended as follows:

22 **5.32.140 Definitions.**

23 As used in this subchapter, the following definitions  
24 apply:

25 A. "Amusement device" means any machine or device which  
26 provides recreation or entertainment for which a charge is made  
27 for use or play, and includes, but is not limited to, pool and  
28 billiard tables, shuffleboards, music machines, video games,  
pinball games, riding devices, panoram and peepshow devices,  
televisions and devices for display of pictures or views on  
film; provided, that it does not mean or include any machine  
or device used exclusively for the vending of merchandise.

B. "Owner" of an amusement device means a person who has  
legal title to the device, or a person who as purchaser is  
entitled to possession under a retained title contract,  
conditional sales agreement, vendor's lien agreement, or other  
legal purchase agreement.

1           Section 2. Section 5.32.160 of the Seattle Municipal Code  
2 is amended as follows:

3           **5.32.160 Exemptions.**

4           No amusement device license is required under this chapter  
5 for an amusement device((+

6           A. ~~—E~~)) if an admissions tax is collected upon its use  
7 pursuant to Ordinance 72495, as now or hereafter amended((+

8           B. ~~—F~~)), for which the minimum price for use of play is  
9 less than Five Cents (\$.05) (~~+ or~~

10           C. ~~If the device is licensed under Ordinance 48022, as~~  
11 ~~amended~~)).

12           Section 3. Section 6.42.010 of the Seattle Municipal Code  
13 is amended as follows:

14           **6.42.010 Panoram location license.**

15           It is unlawful to display, exhibit, expose or maintain  
16 upon any premises, any manually, mechanically, magnetically,  
17 electrically, or electronically operated device commonly known  
18 as a "panoram" or "peepshow," which exhibits, displays,  
19 projects or illuminates photographed, videotaped or  
20 magnetically reproduced images, or exposes live entertainment  
21 to the viewer while the viewer is in a booth or stall, without  
22 a license to do so, to be designated a "panoram location  
23 license"; provided that no license is required if all such  
24 devices are contained in a single common area and are not  
25 separated by partitions, screens, booths or any other physical  
26 barrier or obstruction; provided, further, that no license is  
27 required if no fee, membership fee, deposit, purchase or other  
28 charge is paid for using or viewing the panoram or peepshow or  
for entering or remaining upon the premises. (~~A separate  
license is required for~~) Each place of business shall have a

1 separate license and the same shall at all times be  
2 conspicuously posted and maintained therein. The Director of  
3 Licenses and Consumer Affairs shall prescribe the form of such  
4 license, number the same and shall indicate thereon the number  
5 of such devices (~~((which may))~~)to be operated thereunder, and the  
6 location.

7 Section 4. Section 6.42.020 of the Seattle Municipal Code  
8 is amended as follows:

9 **6.42.020** (~~((Panoram operator license --))~~) **Panoram** (~~((sublicense))~~)  
10 **device license.**

11 ((A+)) It is unlawful to own and exhibit or display for  
12 use, or to place by lease or otherwise for use, exhibit or  
13 display with another, any device described in Section 6.42.010  
14 without a license to be designated a (~~("panoram operator  
license."~~)

15 ~~B. It shall further be unlawful to exhibit or display  
16 for use any such device without a license to be designated a))  
17 "panoram ((sublicense"))device license" for each device.  
18 Panoram ((sublicenses))device licenses shall be issued for  
19 devices at specific locations only and shall not be  
20 transferable. The Director of Licenses and Consumer Affairs  
21 shall prescribe the form of such licenses and number the same.  
22 Panoram ((sublicenses))device licenses shall be securely  
23 attached to each such device in a conspicuous place.~~

24 Section 5. Section 6.42.030 of the Seattle Municipal Code  
25 is amended as follows:

26 **6.42.030 License fees.**

27 The license year shall be from January 1st to December  
28 31st. All license fees shall be payable on an annual basis,

1 except as hereinafter provided, which fees shall be as follows:

2 A. Panoram location license

3 .....\$30.00 per year for each ~~((device))~~location;

4 B. Panoram ~~((sublicense))~~device license

5 .....\$30.00 per year for each device~~((+))~~.

6 ~~((C. Panoram operator license~~

7 ~~.....\$650.00 per year plus \$25.00 per month per~~  
8 ~~device.))~~

9 Section 6. Section 6.42.040 of the Seattle Municipal Code  
10 is amended as follows:

11 **6.42.040 License application -- Report by City departments.**

12 Any person seeking a panoram location~~((~~panoram~~~~  
13 ~~operator's))~~license or panoram ~~((sublicense))~~device license  
14 shall file a written application with the Director for that  
15 purpose. The Director, upon presentation of such application  
16 and before acting upon the same, shall refer such application  
17 to the Police Department, which shall make a full investigation  
18 as to the truth of the statements contained therein, and to the  
19 Fire Department, the Seattle-King County Health Department and  
20 the Department of Construction and Land Use, which shall  
21 investigate and provide information to the Director concerning  
22 compliance of the premises and devices sought to be licensed  
23 with this and other applicable City and state health, zoning,  
24 building, fire and safety ordinances and laws.

25 Section 7. Section 6.42.060 of the Seattle Municipal Code  
26 is amended as follows:

27 **6.42.060 Issuance of licenses.**

28 A. After an investigation, the Director shall issue the  
applicable license or licenses authorized by this chapter if

1 the Director finds:

2 1. That the business for which a license is  
3 required herein will be conducted in a building, structure and  
4 location which complies with the requirements and meets the  
5 standards of the applicable health, zoning, building, fire and  
6 safety laws of the state, and the ordinances of the City, as  
7 well as the requirements of this chapter;

8 2. That the applicant, his or her employee, agent,  
9 partner, director, officer, stockholder or manager has not  
10 knowingly made any false, misleading or fraudulent statement  
11 of material fact in the application for a license, or in any  
12 report or record required to be filed with the Director;

13 3. That the applicant has not had a panoram  
14 location ((~~panoram~~—operator's))license or panoram  
15 ((~~sublicense~~))device license revoked by the City within two (2)  
16 years of the date of the application; and

17 4. That the applicant, and all employees, agents,  
18 partners, directors, officers, or managers of the applicant  
19 have attained the age of eighteen (18) years.

20 B. The decision of the Director regarding issuance of  
21 any license shall be rendered within thirty (30) days of the  
22 date of filing of the application.

23 Section 8. The Director of Licenses and Consumer Affairs  
24 is authorized to make refunds to the litigants in Acorn  
25 Investments, Inc. v. The City of Seattle, and to other  
26 applicants of the amount of fees required by law to be  
27 refunded.

28 Section 9. The provisions of this ordinance are declared  
to be separate and severable. The invalidity of any clause,

1 sentence, paragraph, subdivision, section, or portion of this  
2 ordinance, or the invalidity of the application thereof to any  
3 person or circumstance shall not affect the validity of the  
4 remainder of this ordinance or the validity of its application  
5 to other persons or circumstances.

6 Section 10. The license fees and ordinance amendments  
7 shall relate back to and take effect as of January 1, 1990.  
8 License fees paid under SMC § 6.42.030 during December 1989  
9 shall be applied to fees payable under SMC 6.42.030, as  
10 amended, payable as of January 1, 1990. The Director of  
11 Licenses and Consumer Affairs is authorized to mail  
12 applications to affected licensees before January 1, 1990, and  
13 to commence collection of the license fees for the period  
14 January 1, 1990 - December 31, 1990, as if the ordinance were  
15 in full force and effect, and, as of the effective date of this  
16 ordinance, all such actions and license fee collections are  
17 ratified and confirmed. All other acts consistent with the  
18 authority and prior to the effective date of this ordinance are  
19 hereby ratified and confirmed.  
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(To be used for all Ordinances except Emergency.)

Section 11.1. This ordinance shall take effect and be in force thirty days from and after its passage and approval, if approved by the Mayor; otherwise it shall take effect at the time it shall become a law under the provisions of the city charter.

Passed by the City Council the 18<sup>th</sup> day of December, 1989, and signed by me in open session in authentication of its passage this 18<sup>th</sup> day of December, 1989.

*[Signature]*  
President of the City Council

Approved by me this 27<sup>th</sup> day of December, 1989.

*[Signature]*  
Mayor.

Filed by me this 27<sup>th</sup> day of December, 1989.

Attest: *[Signature]*  
City Comptroller and City Clerk.

(SEAL)

Published \_\_\_\_\_

By *[Signature]*  
Deputy Clerk.

PUBLISH  DO NOT PUBLISH  
CITY ATTORNEY \_\_\_\_\_

CS 8.1.8

M E M O R A N D U M

December 4, 1989

TO: Andrew Lofton, Director, Department of Licenses and  
Consumer Affairs

FROM: The Law Department  
By: James Pidduck, Assistant City Attorney

RE: Amendment of Panoram/Peepshow License Fee Ordinance  
and Application of Amusement Device License Fees to  
Those Businesses as a Result of Acorn Investments, Inc.  
v. The City of Seattle

The Law Department, in consultation with your Department, has prepared the attached ordinance in response to the recent decision of the United States Court of Appeals for the Ninth Circuit in Acorn Investments, Inc. v. The City of Seattle, et al., Docket No. 88-3657. The Court ruled that the license fee provisions of The City of Seattle's panoram/peepshow ordinance violate the First Amendment. The Court ruled that the revenue generated by the City's current panoram license fee structure does not bear a reasonable relationship to the City's legitimate costs of regulation.

The current panoram license fee ordinance imposes fees on each panoram device, each panoram business location, and each panoram operator. Section 5 of the draft ordinance amends SMC 6.42.030 by eliminating the Panoram Operator License Fee and providing a Panoram Device License Fee of \$30.00 per year for each device, and a Panoram Location License fee of \$30.00 per year for each business location. Related sections of Chapter 6.42 SMC have similarly been amended to provide for two, instead of three, license fees. The amounts of the fees have been reduced to comport with the Ninth Circuit's recent ruling.

In a further response to the Ninth Circuit's decision, Sections 1 and 2 of the proposed ordinance amend SMC Sections 5.32.140 and 5.32.160, respectively, so as to apply the Amusement Device License Fee to panoram and peepshow devices. Accordingly, the tax treatment of peepshow devices will be similar to that of video games, pinball games, and music machines.

# City of Seattle

Executive Department-Office of Management and Budget

Kenneth R. Bounds, Director  
Charles Royer, Mayor

December 5, 1989



The Honorable Douglas Jewett  
City Attorney  
City of Seattle

Dear Mr. Jewett:

The Mayor is proposing to the City Council that the enclosed legislation be adopted.

REQUESTING  
DEPARTMENT: Department of Licenses and Consumer Affairs

SUBJECT: AN ORDINANCE relating to license fees for peepshows; reducing and eliminating certain fees for peepshows and subjecting those businesses to amusement device license fees effective January 1, 1990; and amending Seattle Municipal Code (SMC) Sections 5.32.140, 5.32.160, 6.42.010, 6.42.020, 6.42.030, 6.42.040, and 6.42.060.

Pursuant to the City Council's S.O.P. 100-014, the Executive Department is forwarding this request for legislation to your office for review and drafting.

After reviewing this request and any necessary redrafting of the enclosed legislation, return the legislation to OMB. Any specific questions regarding the legislation can be directed to Andrew J. Lofton at 4-8444.

Sincerely,

Charles Royer  
Mayor

by

KENNETH R. BOUNDS  
Budget Director

KB/bf/mhe

Enclosure

cc: Director, Department of Licenses and Consumer Affairs

Andrew Lofton  
December 4, 1989  
Page 2

Section 8 of the proposed ordinance carries out the Court's ruling by authorizing the Director of Licenses and Consumer Affairs to make refunds to the litigants in Acorn Investments, Inc. v. The City of Seattle and to other applicants of the amount of fees required by law to be refunded.

Finally, as the license year for panorams/peepshows runs from January 1 through December 31, Section 10 provides that the license fees and ordinance amendments shall relate back to and take effect as of January 1, 1990. Section 10 also authorizes the Director to mail applications to affected licensees before January 1, 1990 so the Director may promptly commence collection of license fees for the calendar year 1990.

The Law Department recommends adoption of the attached ordinance. Your department should obtain the necessary Council sponsorship so the proposed ordinance may be placed on the Public Safety Committee's December 12, 1989 agenda.

JP:dmc

[Lofton.Mem]

Your  
Seattle  
Department of Licenses and Consumer Affairs



Andrew J. Lofton, Director  
Charles Royer, Mayor

December 5, 1989

The Honorable Sam Smith  
Seattle City Council  
01-11-01

Via: Bobby Faucette, Analyst  
Office of Management and Budget

Dear President Smith:

Please find enclosed a Panoram Ordinance amendment and Amusement Device Ordinance amendment. These changes are required due to recent Ninth District Appeals Court rulings that the fee structure for panoram licensing is unconstitutional and should be amended to reflect actual license administrative costs and not the police enforcement costs.

The proposal places panorams under the amusement device licenses, at \$75.00 per panoram, and establishes an administrative fee of \$30.00 for each device and a \$30.00 fee for every location where panorams are operated.

As this amendment is necessary to comply with the Court, we request that you consider passage under an emergency clause.

If you have any questions, please call me at 684-8444.

Sincerely,

  
Andrew J. Lofton  
Director

AJL:wta

91205.2

Enclosure

TIME AND DATE STAMP

**SPONSORSHIP**

THE ATTACHED DOCUMENT IS SPONSORED FOR FILING WITH THE CITY COUNCIL BY  
THE MEMBER(S) OF THE CITY COUNCIL WHOSE SIGNATURE(S) ARE SHOWN BELOW:

Jane Bland

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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**FOR CITY COUNCIL PRESIDENT USE ONLY**

COMMITTEE(S) REFERRED TO:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
PRESIDENT'S SIGNATURE

STATE OF WASHINGTON - KING COUNTY

22334  
City of Seattle

—ss.

No.

Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

ORD: 114895

was published on

01/04/90

The amount of the fee charged for the foregoing publication is the sum of \$ \_\_\_\_\_, which amount has been paid in full.

Barbara Baldwin

Subscribed and sworn to before me on

1-4-90  
[Signature]

Notary Public for the State of Washington,  
residing in Seattle