



CO00039509

SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington

ORDINANCE NO. 09-127

RELATING TO PROSTITUTION, LEWD CONDUCT, AND OTHER
OFFENSES AGAINST PUBLIC DECENCY; PROHIBITING CERTAIN
CONDUCT; AMENDING SCC 10.04.010 AND 10.04.300; REPEALING
SCC 10.04.020, 10.04.030, 10.04.040, 10.04.100, AND 10.04.110;
ADDING NEW CODE SECTIONS; AND PRESCRIBING PENALTIES

WHEREAS, the Supreme Court has recognized the right of local governments to regulate offensive conduct in public places, including public nudity; and

WHEREAS, local laws that regulate conduct in public places should clearly describe the conduct that is proscribed and include appropriate safeguards against infringement on protected expression; and

WHEREAS, the County Sheriff and other County officers have received increasing numbers of complaints of offensive conduct associated with retail businesses that employ drive-up or walk-up windows, which have included complaints of prostitution, sexual contacts, and lewd conduct; and

WHEREAS, such conduct has had and is likely to have negative impacts on the community, including but not limited to criminal activities, exploitation of female employees, and exposure of minors to conduct that is appropriate only for adults; and

WHEREAS, the County Council intends by this ordinance to protect the public health, safety, and welfare by revising existing code provisions and adopting new provisions relating to prostitution, lewd conduct, and other offenses against public decency;

NOW, THEREFORE, BE IT ORDAINED:

Section 1. Snohomish County Code Section 10.04.010, last amended by Amended Ordinance No. 92-152 on January 13, 1993, is amended to read:

10.04.010 Definitions.

As used in this chapter, the following words and terms shall have the meaning set forth in this section:

(1) "Actor" means a person, regardless of gender, who engages in conduct prohibited by this chapter.

1 (2) "Expose" means to reveal, exhibit, or otherwise render open to public
2 view.

3 (3) "Expressive ((dance))conduct" means any dance ((which, when
4 considered in the context of the entire performance, constitutes an expression of
5 theme, story, or ideas, but excluding any dance such as, but not limited to,
6 common barroom type topless dancing which, when considered in the context of
7 the entire performance, is presented primarily as a means of displaying nudity as
8 a sales device or for other commercial exploitation without substantial expression
9 of theme, story or ideas)), opera, musical, dramatic work, or other exhibition or
10 performance, whether or not part of an organized or formal event, that constitutes
11 protected speech under the federal or state constitution.

12 ~~((3) "Exposed" means the state of being revealed, exhibited or otherwise~~
13 ~~rendered open to public view.))~~

14 (4) "High risk prostitution area" means:

15 (a) The entire area extending two blocks east of and two blocks west of
16 and inclusive of State Route 99 (Highway 99) from 220th Street S.W. to 244th
17 Street S.W.; and,

18 (b) The entire area extending two blocks east of and two blocks west of
19 and inclusive of State Route 99 (Highway 99) from State Road 525 (Mukilteo
20 Speedway) to 112th Street S.W.

21 (5) ~~("Public exposure" means the act of revealing, exhibiting or otherwise~~
22 ~~rendering open to public view.))~~ "Obscene" matter means any matter:

23 (a) Which the average person, applying contemporary community
24 standards, would find, when considered as a whole, appeals to the prurient
25 interest; and

26 (b) Which explicitly depicts or describes patently offensive
27 representations or descriptions of:

28 (i) Ultimate sexual acts, normal or perverted, actual or simulated; or

29 (ii) Masturbation, fellatio, cunnilingus, bestiality, excretory functions or
30 lewd exhibition of the genitals or genital area; or

31 (iii) Violent or destructive sexual acts including but not limited to human or
32 animal mutilation, dismemberment, rape or torture; and

33 (c) Which, when considered as a whole, and in the context in which it is
34 used, lacks serious literary, artistic, political or scientific value.

35 (6) "Public place" means an area generally visible to public view including
36 streets, sidewalks, bridges, alleys, plazas, parks, driveways, parking lots,
37 automobiles (whether moving or not) and any place in which the general public
38 has a right to be present or view, whether or not conditioned upon payment of a
39 fee, and includes, but is not limited to, buildings open to the general public,
40 including those which serve food or drink or provide entertainment, and the
41 doorways and entrances to buildings or dwellings and the grounds enclosing
42 them, and structures from which customers can be served through a drive-up or

1 walk-up window, door, or other means, whether or not access is restricted
2 according to age.

3 (7) "Public place provided or set apart for nudity" means an enclosed
4 public restroom, an enclosed functional shower or locker room facility, an
5 enclosed sauna, a motel room or hotel room designed and intended for sleeping
6 accommodations, the location of a bona fide private club whose membership as
7 a whole engages in social nudism or naturalism (a nudist resort or camp), and
8 any similar public places in which nudity is necessarily and customarily expected
9 outside of the home.

10 (8) "Sexual contact" means any touching of the sexual or other intimate
11 parts of a person done for the purpose of gratifying sexual desire of ((either
12 party)) any person.

13 ~~((8))~~ (9) "Sexual intercourse:"

14 (a) Has its ordinary meaning and occurs upon any penetration, however
15 slight; and

16 (b) Also means any penetration of the vagina or anus however slight, by
17 an object, when committed on one person by another, whether such persons are
18 of the same or opposite sex, except when such penetration is accomplished for
19 medically recognized treatment or diagnostic purposes; and

20 (c) Also means any act of sexual contact between persons involving the
21 sex organs of one person and the mouth or anus of another whether such
22 persons are of the same or opposite sex.

23 ~~((9))~~ (10) "Sexually explicit material" means any pictorial or three-
24 dimensional material depicting sexual intercourse, masturbation, sodomy,
25 bestiality, direct physical stimulation of unclothed genitals, flagellation or torture
26 in the context of sexual relationship, or emphasizing the depiction of adult human
27 genitals; PROVIDED, HOWEVER, That works of art or of anthropological
28 significance shall not be deemed to be within the foregoing definition. In
29 determining whether material is prohibited for public display by this section such
30 material shall be judged without regard to any covering which may be affixed or
31 printed over the material in order to obscure genital areas in a depiction
32 otherwise falling within the definition of this subsection.

33 ~~((10) Unlawful public exposure" means:~~

34 ~~(a) A public exposure of any portion of the human anus or genitals;~~

35 ~~(b) A public exposure of any portion of the female breast lower than the~~
36 ~~upper edge of the areola; or~~

37 ~~(c) A public exposure consisting of touching, caressing or fondling of the~~
38 ~~male or female genitals or female breasts, whether clothed or unclothed.))~~

39
40 Section 2. A new section is added to Chapter 10.04 of the Snohomish County
41 Code to read:

42
43 **10.04.025 Lewd conduct.**

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1 (1) A person is guilty of lewd conduct if in a public place and under
2 circumstances where such conduct is likely to be observed by a member of the
3 public the person intentionally:

4 (a) Exposes any of the following body parts of the person without a full
5 and opaque covering in other than a public place provided or set apart for nudity:

6 (i) Any part of the male or female genitals, pubic hair, pubic area,
7 perineum, anus, or bottom one-half of the anal cleft;

8 (ii) Any part of the areola or nipple of the female breast; or

9 (iii) More than one-half of the part of the female breast located below the
10 top of the areola, provided that the covered area shall be reasonably compact
11 and contiguous to the areola.

12 (b) Exposes the male genitals in a discernibly turgid state, even if fully
13 and opaquely covered.

14 (c) Touches, caresses, or fondles the genitals or female breast, whether
15 clothed or unclothed;

16 (d) Masturbates; or

17 (e) Engages in sexual contact.

18 (2) Body paint, body dye, tattoos, latex, tape, or any similar substance
19 applied to the skin surface, any substance that can be washed off the skin, or
20 any substance designed to simulate or by which by its nature simulates the
21 appearance of the anatomical area beneath it, is not full and opaque covering
22 within the meaning of this section.

23 (3) This section shall not be construed to prohibit:

24 (a) The act of breastfeeding or expressing breast milk;

25 (b) Classes, seminars, and lectures held for serious scientific or
26 educational purposes;

27 (c) Expressive conduct that is not obscene, subject to the time, place, and
28 manner restrictions contained in chapters 6.25, 6.30, or 30.28 SCC or other law;

29 (d) Conduct of licensed adult entertainers within adult entertainment
30 dance studios operating pursuant to chapter 6.25 SCC;

31 (e) Conduct of licensed employees working as escorts or nude house
32 cleaners in adult businesses operating pursuant to chapter 6.30 SCC, provided
33 that the conduct is not exposed to a person under 18 years of age; or

34 (f) Conduct of a child under 10 years of age.

35
36 Section 3. A new section is added to Chapter 10.04 of the Snohomish County
37 Code to read:

38
39 **10.04.035 Facilitating lewd conduct.**

40 The owner, lessee, manager, operator, or other person in charge of a
41 public place is guilty of facilitating lewd conduct if the person knowingly permits,
42 encourages, or causes to be committed lewd conduct as defined in SCC
43 10.04.025.

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2 Section 4. Snohomish County Code Section 10.04.300, adopted by Ordinance
3 No. 83-010 on February 25, 1983, is amended to read:

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5 **10.04.300 Penalty.**

6 Violation of any of the provisions of this chapter constitutes a
7 misdemeanor, punishable by a fine of up to ~~(((\$500.00))~~ \$1,000, imprisonment for
8 a period of up to ~~((six months))~~ ninety days, or both.

9
10 Section 5. The following ordinances or parts of ordinances are each repealed:

11
12 (1) Snohomish County Code Section 10.04.020, adopted by Ordinance
13 No. 83-010 on February 25, 1983;

14
15 (2) Snohomish County Code Section 10.04.030, adopted by Ordinance
16 No. 83-010 on February 25, 1983;

17
18 (3) Snohomish County Code Section 10.04.040, last amended by
19 Amended Ordinance No. 96-099 on November 12, 1996;

20
21 (4) Snohomish County Code Section 10.04.100, adopted by Ordinance
22 No. 83-010 on February 25, 1983; and

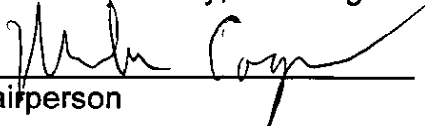
23
24 (5) Snohomish County Code Section 10.04.110, adopted by Ordinance
25 No. 83-010 on February 25, 1983.

26
27 Section 6. The chapter heading of Chapter 10.04 SCC, adopted by Ordinance
28 No. 83-010 on February 25, 1983, is amended to read:

29
30 **OFFENSES AGAINST PUBLIC ~~((MORALS))~~ DECENCY**

31
32 PASSED this 9th day of December 2009.

33
34 SNOHOMISH COUNTY COUNCIL
35 Snohomish County, Washington

36
37 
38 _____
39 Chairperson

40 ATTEST:

41 
42 Clerk of the Council, *Asst.*
43

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APPROVED

EMERGENCY

VETOED

DATE: 12/28/09

~~_____
County Executive~~

ATTEST:

Cora E. Palmer

MARK SOINE
Deputy Executive

Approved as to form only:

Deputy Prosecuting Attorney

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