



CO00029420

RECEIVED
SNOHOMISH COUNTY

COUNTY COUNCIL

EXECUTIVE OFFICE Snohomish County, Washington

FEB 24 1983 513

W.T. _____ K.B. _____
D.F. _____ S.W. _____
G.E. _____ D.J. _____

ORDINANCE NO. 83- 010

REPEALING CHAPTER 10.04 OF THE SNOHOMISH COUNTY CODE; AND
ADDING A NEW CHAPTER 10.04 THERETO ENTITLED
"OFFENSES AGAINST PUBLIC MORALS"; DEFINING AND
PROHIBITING THE CRIMINAL OFFENSES OF UNLAWFUL PUBLIC
EXPOSURE AND FACILITATING UNLAWFUL PUBLIC EXPOSURE;
PROHIBITING THE CRIMES OF PROSTITUTION, PERMITTING
PROSTITUTION AND PATRONIZING A PROSTITUTE;
PROHIBITING PUBLIC DISPLAY OF SEXUALLY EXPLICIT
MATERIAL; REGULATING THE PROVISION OF ENTERTAINMENT
INVOLVING NUDITY; AND PROVIDING PENALTIES FOR THE COMMISSION
OF SAID OFFENSES; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, the County Council has determined that the
activities defined and prohibited hereinafter are
detrimental to the public health, safety, morals and general
welfare and, therefore, such activities must be regulated as
provided herein; and,

WHEREAS, the County Council finds that certain forms of
public nudity, including barroom type topless dancing,
whether or not presented in conjunction with the sale of
alcoholic beverages, promotes prostitution and other illegal
activity and degrades the quality of the county's
residential and business environment; and,

WHEREAS, the County Council finds that the provision of
entertainment of the type described hereinafter when
performed in close proximity to patrons of establishments in

which such entertainment is provided tends to and does promote unlawful conduct and conduct which is detrimental to the public health, safety, morals and general welfare of the community; and

WHEREAS, the County Council intends to regulate conduct as set forth hereinafter for the purpose of discouraging such illegal activity, reducing the need to expend law enforcement resources, and protecting the quality of the county's residential and business environment without interfering with the free exchange and expression of ideas;

NOW, THEREFORE, BE IT ORDAINED:

Section 1. Sections 1 and 2 of that certain resolution adopted December 27, 1965 and codified as Snohomish County Code Sections 10.04.010 and 10.04.020 are hereby repealed.

Section 2. The following new chapter is added to Title 10 of the Snohomish County Code:

Chapter 10.04

OFFENSES AGAINST PUBLIC MORALS

Sections:

10.04.010 Definitions
10.04.020 Unlawful Public Exposure Prohibited
10.04.030 Facilitating Unlawful Public Exposure Prohibited
10.04.040 Exemptions
10.04.050 Prostitution
10.04.060 Prostitution - Sex of Parties Immaterial - No Defense
10.04.070 Permitting Prostitution
10.04.080 Patronizing a Prostitute
10.04.090 Public Display of Sexually Explicit Material

Ordinance Regarding Title 10 of Snohomish County Code - 2

- 10.04.100 Location of Performers Providing Certain Forms of Entertainment Restricted
- 10.04.110 Affirmative Defenses
- 10.04.300 Penalty
- 10.04.310 Severability

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

- A. "Expressive dance" means any dance which, when considered in the context of the entire performance, constitutes an expression of theme, story, or ideas, but excluding any dance such as, but not limited to, common barroom type topless dancing which, when considered in the context of the entire performance, is presented primarily as a means of displaying nudity as a sales device or for other commercial exploitation without substantial expression of theme, story or ideas.
- B. "Exposed" means the state of being revealed, exhibited or otherwise rendered open to public view.
- C. "Public exposure" means the act of revealing, exhibiting or otherwise rendering open to public view.
- D. "Public place" means any place in which the general public has a right to be present, whether or not conditioned upon payment of a fee, and includes, but is not limited to, buildings open to the general public, whether or not access is restricted according to age, including those in which food or drink is served, or entertainment provided.
- E. "Sexual contact" means any touching of the sexual or other intimate parts of a person done for the purpose of gratifying sexual desire of either party.
- F. "Sexual intercourse":

- ✓
1. Has its ordinary meaning and occurs upon any penetration, however slight, and
 2. Also means any penetration of the vagina or anus however slight, by an object, when committed on one person by another, whether such persons are of the same or opposite sex, except when such penetration is accomplished for medically recognized treatment or diagnostic purposes, and
 3. Also means any act of sexual contact between persons involving the sex organs of one person and the mouth or anus of another whether such persons are of the same or opposite sex.
- G. "Sexually explicit material" means any pictorial or three-dimensional material depicting sexual intercourse, masturbation, sodomy, bestiality, direct physical stimulation of unclothed genitals, flagellation or torture in the context of sexual relationship, or emphasizing the depiction of adult human genitals; provided, however, that works of art or of anthropological significance shall not be deemed to be within the foregoing definition. In determining whether material is prohibited for public display by this section such material shall be judged without regard to any covering which may be affixed or printed over the material in order to obscure genital areas in a depiction otherwise falling within the definition of this subsection.
- H. "Unlawful public exposure" means:
1. A public exposure of any portion of the human anus or genitals;
 2. A public exposure of any portion of the female breast lower than the upper edge of the areola; or
 3. A public exposure consisting of touching, caressing or fondling of the male or female genitals or female breasts, whether clothed or unclothed.

10.04.020 Unlawful Public Exposure Prohibited. It shall be unlawful for any person to intentionally commit any act constituting unlawful public exposure as defined in this chapter.

10.04.030 Facilitating Unlawful Public Exposure Prohibited. It shall be unlawful for the owner, lessee, manager, operator or other person in charge of any public place to knowingly permit, encourage or cause to be committed, whether by commission or omission, any unlawful public exposure upon said premises.

10.04.040 Exemptions. The prohibitions set forth in Sections 10.04.020 and .030 shall not apply to any:

- A. "Expressive dance" as defined in Section 10.04.010.
- B. Play, opera, musical, or other dramatic work;
- C. Class, seminar, or lecture, conducted for a scientific, medical or educational purpose.
- D. Nudity within a locker room or other similar facility used for changing clothing in connection with athletic or exercise activities.

10.04.050 Prostitution.

- A. A person is guilty of prostitution if such person engages or agrees or offers to engage in sexual conduct with another person in return for a fee.
- B. For purposes of this section, "sexual conduct" means "sexual intercourse" or "sexual contact" as defined herein.

10.04.060 Prostitution - Sex of Parties Immaterial - No Defense. In any prosecution for prostitution, the sex of the two parties or prospective parties to the sexual conduct engaged in, contemplated, or solicited is immaterial, and it is no defense that:

- A. Such persons were of the same sex; or
- B. The person who received, agreed to receive, or solicited a fee was a male and the person who paid or agreed or offered to pay such fee was female.

✓

10.04.070 Permitting Prostitution. A person is guilty of permitting prostitution if, having possession or control of premises which he knows are being used for prostitution purposes, he fails without lawful excuse to make reasonable effort to halt or abate such use.

10.04.080 Patronizing a Prostitute. A person is guilty of patronizing a prostitute if:

- A. Pursuant to a prior understanding he pays a fee to another person as compensation for such person or a third person having engaged in sexual conduct with him; or
- B. He pays or agrees to pay a fee to another person pursuant to an understanding that in return therefor such person will engage in sexual conduct with him; or
- C. He solicits or requests another person to engage in sexual conduct with him in return for a fee.

10.04.090 Public Display of Sexually Explicit Material. A person is guilty of displaying sexually explicit material if he knowingly places such material upon public display, or if he knowingly fails to take prompt action to remove such a display from property in his possession after learning of its existence.

Material is placed upon "public display" if it is placed on or in a billboard, viewing screen, theater marquee, newsstand, display rack, window, showcase, display case or similar place so that sexually explicit material is easily visible from a public thoroughfare or from the property of others.

10.04.100 Location of Performers Providing Certain Forms of Entertainment Restricted. No entertainer shall appear in any public place while unclothed or with any portion of the buttocks, genitals, pubic region or female breasts exposed, if allowed to so perform under the exemptions of 10.04.040, except upon a stage or other surface raised at least 18 inches above the level of the floor upon which the closest patrons are seated or standing, nor closer than six feet from the nearest patron.

10.04.110 Affirmative Defenses. It is an affirmative defense to a prosecution for violation of Section 10.04.020 or 10.04.030 that the nudity or other public exposure, when considered in the context in which presented, provided actual literary, artistic, political or scientific value and was not provided for commercial or sexual exploitation or with an emphasis on an appeal to a prurient interest.

10.04.300 Penalty. Violation of any of the provisions of this chapter constitutes a misdemeanor, punishable by a fine of up to \$500, imprisonment for a period of up to six months, or both.

10.04.310 Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 3. Effective Date. This ordinance shall be in full force and effect thirty (30) days after passage as provided by law.

PASSED this 23 day of February, 1983.

SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington

Cliff Bailey
Chairperson

Approved as to Form:

John T. Dalton
Deputy Prosecuting Attorney

ATTEST:

Ellie Snyder
Clerk of Council

Ordinance Regarding Title 10 of Snohomish County Code - 7

- () APPROVED
- () VETOED
- () EMERGENCY

DATE: 2-25-83

Willis D. Tucker
County Executive

PUBLISHED 2-13-83 and 3-13-83