

*repealed by 3331*ORDINANCE NO. 2730

AN ORDINANCE OF THE CITY OF KIRKLAND, WASHINGTON RELATING TO OFFENSES AGAINST PUBLIC MORALS AND AMENDING CHAPTER 11.20 OF THE KIRKLAND MUNICIPAL CODE.

Whereas, the City Council of the City of Kirkland has determined that the activities defined and prohibited hereinafter are detrimental to the public health, safety, morals and general welfare; and

Whereas, the City 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, promote prostitution, and drug trafficking and degrade the quality of the City's residential and business environment; and

Whereas, the City Council intends to regulate conduct as set forth hereinafter for the purposes of discouraging such illegal activity, reducing the need to expend law enforcement resources, and protecting the quality of the City's residential and business environment without interfering with the free exchange and expression of ideas, now, therefore,

The City Council of the City of Kirkland, Washington, do ordain as follows:

Section 1. Chapter 11.20 of the Kirkland Municipal Code, the title of which shall henceforth be "Offenses Against Public Morals," is hereby amended by the addition of new sections to read as follows:

NEW SECTION11.20.200 DEFINITIONS

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

- A. "Body Studio" means and includes any premises, other than a massage parlor, reducing salon, health spa or public bathhouse, upon which is furnished for a fee or charge or other like consideration, or which is offered to be furnished, the opportunity to paint, massage, feel, handle, or touch the unclothed body or any

unclothed portion of the body of another person, or to be so painted, massaged, felt, handled, or touched by another person, or to observe, view or photograph any such activity.

- B. "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.
- C. "Exposed" means the state of being revealed, exhibited or otherwise rendered open to public view.
- D. "Person" means and includes natural persons of either sex, firms, corporations, and all association of natural persons, whether acting by themselves or by an agent servant, or employee.
- E. "Public Exposure" means the act of revealing, exhibiting or otherwise rendering open to public view.
- F. "Public place" means any place in which the general public has a right to be present, and any area open to public view, 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.
- G. "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.
- H. "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.
- I. "Sexually explicit material" means any pictorial or three-dimensional material depicting human sexual intercourse, masturbation, sodomy (i.e., bestiality or oral or anal intercourse), 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 under this definition, 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 section.
- J. "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;
 4. A public exposure consisting of masturbation, or of urination or defecation in a place other than restroom or other toilet facility.

NEW SECTION (S)11.20.220 UNLAWFUL PUBLIC EXPOSURE

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

NEW SECTION (S)11.20.225 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, 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.

NEW SECTION (S)11.20.230 UNLAWFUL PUBLIC EXPOSURE--EXEMPTIONS

The prohibition set forth in Section 11.20.020 shall not apply to any:

- A. "Expressive dance" as defined in Section 11.20.010;
- B. Play, opera, musical, or other dramatic work;
- C. Class, seminar, or lecture, conducted for a scientific or educational purpose.
- D. Nudity within a locker room or other similar facility used for changing clothing in connection with athletic or exercise activities.

NEW SECTION 11.20.235 UNLAWFUL PUBLIC EXPOSURE--AFFIRMATIVE DEFENSES

It is an affirmative defense to a prosecution for violation of Section 11.20.020 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.

NEW SECTION (S)11.20.340 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.

NEW SECTION

11.20.250 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.

NEW SECTION

(S)11.20.260 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.

NEW SECTION

(S)11.20.270 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.

NEW SECTION

(S)11.20.280 PUBLIC DISPLAY OF SEXUALLY EXPLICIT MATERIAL

- A. 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.

- B. 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.

NEW SECTION

(S)11.20.290 BODY STUDIOS PROHIBITED

It shall be unlawful for any person to operate, conduct, or maintain a body studio, or to knowingly participate in any business or conduct related thereto on the premises of a body studio, or to knowingly be employed on such premises.

NEW SECTION

(S)11.20.300 FACILITATING OFFENSE

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 offense prohibited by this Chapter upon said premises.

NEW SECTION

(S)11.20.310 PENALTY FOR VIOLATIONS

Any person who commits, attempts to commit, conspires to commit, or aids and abets in the commission of any act which is in violation of the provisions of Sections 11.20.100 through 11.20.300 inclusive of this chapter, whether individually or in connection with one or more persons and whether as principal, agent, or accessory or who falsely, fraudulently, forcefully or wilfully induces, causes, coerces, requires, permits or directs other to commit such violation, shall be deemed guilty of a serious crime and upon conviction thereof shall be punished as provided in Section 1.04.010 of this code.

Section 2. 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. This ordinance shall be in force and effect five days from and after its passage by the Kirkland City Council and posting or publication, as required by law.

Passed by majority vote of the Kirkland City Council in regular, open meeting this 7th day of March, 1983.


Signed in authentication thereof this 7th day of March, 1983.


MAYOR

ATTEST:

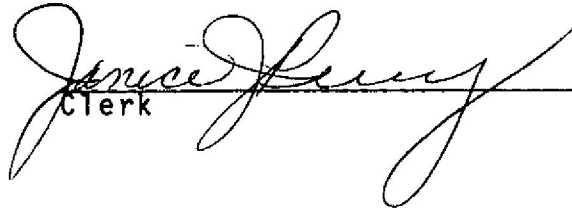

Director of Administration & Finance
(ex officio City Clerk)

APPROVED AS TO FORM:


City Attorney

CERTIFICATION OF POSTING

I hereby certify under penalty of perjury that the foregoing ordinance was posted on the 10 day of March, 1983 in accordance with the provisions of RCW 35A.12.160 and City of Kirkland Ordinance No. 2600.


Clerk