

ORDINANCE 3331

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF KIRKLAND RELATING TO REPEAL OF OFFENSES AGAINST PUBLIC MORALS AND PUBLIC INDECENCY AND ESTABLISHING A NEW CHAPTER 11.20 RELATING TO OFFENSES AGAINST PUBLIC MORALS OF THE KIRKLAND MUNICIPAL CODE.

Be it ordained by the City Council of the City of Kirkland as follows:

Section 1. Chapter 11.20 of the Kirkland Municipal Code, entitled "Offenses Against Public Morals," is hereby repealed.

Section 2. Chapter 11.88A of the Kirkland Municipal Code, entitled "Public Indecency - Prostitution - Sex Crimes", is hereby repealed.

Section 3. Chapter 11.84A.030(2)(2) of the Kirkland Municipal Code, entitled "Public Disturbance-Disorderly Conduct-Urination in Public" is hereby repealed.

Section 4. There is hereby created a new Chapter 11.20, to read as follows:

Chapter 11.20 Offenses Against Public Morals.

11.20.200 Definitions.

11.20.220 Lewd Act.

11.20.225 Location of Performers Providing Certain Forms of Entertainment and Patrons Restricted.

11.20.230 Lewd Act - Exemptions.

11.20.235 Lewd Act - Affirmative Defenses.

11.20.240 Prostitution.

11.20.245 Prostitution Loitering.

11.20.250 Patronizing a Prostitute.

11.20.260 Permitting Prostitution.

11.20.270 Prostitution - No Defense.

11.20.280 Public Display of Sexually Erotic/Explicit Materials.

11.20.285 Urinating in Public

11.20.290 Body Studios.

11.20.300 Facilitating Offense.

11.20.310 Penalties.

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

- (1) "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 upon 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 for the purpose of giving the other person sexual stimulation or gratification, or to be so painted, massaged, felt, handled, or touched by another person for the purpose of receiving sexual stimulation or gratification, or to observe, view or photograph any such activity and shall include any such premises which is advertised or represented in any manner whatsoever as a "body painting studio," "model studio," "sensitivity awareness studio," or any expression or characterization which conveys the same or similar meaning and which leads to the reasonable belief that there will be furnished on such premises for a fee or charge or other like consideration, the opportunity to paint, massage, feel, handle, or touch the unclothed body or an unclothed portion of the body of another person or to be so painted, massaged, felt, handled or touched by another person for the purpose of giving or receiving sexual stimulation or gratification, or to observe, view or photograph any such activity.

- (2) **"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, and the conduct appeals to the prurient interests, depicts sexual conduct in a patently offensive way, and lacks serious literary, artistic, political or scientific value.
- (3) **"Exposed"** means the state of being revealed, exhibited or otherwise rendered to public view.
- (4) **"Known prostitute or panderer"** means a person who, within one year previous to the date of arrest for violation of Section 11.20.240 has within the

- knowledge of the arresting officer been convicted of offense involving prostitution.
- (5) **"Lewd act"** means public:
- (a) Exposure of any portion of the human anus, genitals, or pubic region; or
 - (b) Exposure of the female breasts lower than the upper edge of the areola; or
 - (c) Touching, caressing, or fondling of the male or female genitals or female breast, whether clothed or naked; or
 - (d) Masturbation; or
 - (e) Sexual conduct as defined by subsection 9 of this section.
- (6) **"Person"** means and includes natural persons of either sex, firms, corporations, and all associations of natural persons, whether acting by themselves or by an agent, servant or employee.
- (7) **"Public or public display"** means easily audible or visible from a public thoroughfare, or from property of others, or in a public place in a manner so obtrusive as to make it difficult for an unwilling observer, should one arrive, to avoid the observation.
- (8) **"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 and drink is served, or entertainment provided. Also, public place is an area generally visible to public view and includes streets, sidewalks, bridges, alleys, plazas, parks, driveways, parking lots, automobiles (whether moving or not) and buildings open to the general public including those which serve food or drink or provide entertainment, and the doorways and entrances to buildings or dwellings and the grounds enclosing them.
- (9) **"Sexual conduct"** means:
- (a) Sexual intercourse within its ordinary meaning, occurring upon any penetration, however slight; or
 - (b) Any penetration of the vagina or anus, however slight, by an object, when committed by one person on another; whether such persons are of

- the same or opposite sex, except when such penetration is accomplished for medically recognized treatment or diagnostic purposes; or
- (c) Any 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; or
- (d) Masturbation, manual or instrumental, or of one person by another.
- 10) **"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, 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.

11.20.220 **Lewd act.** Every person who intentionally performs any lewd act in a public place or in public is guilty of a gross misdemeanor.

11.20.225 **Location of performers providing certain forms of entertainment and patrons restricted.**

- (1) Every entertainer who shall appear in a public place while unclothed or with any portion of the crack of the buttocks, the genitals, pubic region or female breasts below the upper edge of the areola exposed, where such activity is lawful, shall confine his or herself to a stage or other surface that is raised at least eighteen inches above the level of the floor upon which the closest patrons are seated or standing, and not closer than six feet from the nearest patron. Violation of this section is a gross misdemeanor.

- (2) No person or patron who enters a public place wherein nude entertainment is permitted, as described in KMC 11.20.225, shall go within six feet of the raised stage. Violation of this section is a gross misdemeanor.

11.20.230 Lewd act - exemptions. The prohibitions set forth in Section 11.20.220 shall not apply to any:

- (1) Expressive dance as defined in Section 11.20.200(2);
- (2) Play, opera, musical or other dramatic work;
- (3) Class, seminar, or lecture, conducted for a scientific or educational purpose;
- (4) Nudity within a locker room or other similar facility used for changing clothes in connection with athletic or exercise activities.

11.20.235 Lewd act - affirmative defenses. It is an affirmative defense to a prosecution for violation of Section 11.20.220 that the nudity or other public exposure, when considered in the context in which presented, provide 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.

11.20.240 Prostitution - Defined, Penalty.

Every person who engages or agrees or offers to engage in sexual conduct as defined in KMC 11.20.200(9) with another person in return for a fee is guilty a misdemeanor.

11.20.245 Prostitution loitering.

- (1) Every person who remains in a public place and intentionally solicits, induces, entices, or procures another to commit prostitution is guilty of a misdemeanor.
- (2) Among the circumstances which may be considered in determining whether the actor intends such prohibited conduct are that he or she:
 - (a) Repeatedly beckons to, stops or attempts to stop, or engages passersby in conversation; or
 - (b) Repeatedly stops or attempts to stop motor vehicle operators by hailing, waiving of arms or by making any other bodily gesture; or
 - (c) Is a known prostitute or panderer.

11.20.250 Patronizing a prostitute. Every person who:

- (1) Pursuant to a prior understanding, pays a fee to another person as compensation for such person or a third person having engaged in sexual conduct with him/her; or
- (2) Pays or agrees to pay a fee to another person pursuant to an understanding that in return therefore such person will engage in sexual conduct with him/her; or
- (3) Solicits or requests a known prostitute to engage in sexual conduct with him/her in return for a fee; is guilty of a misdemeanor.

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

11.20.270 Prostitution - sex of parties immaterial - no defense. In any prosecution for prostitution or patronizing a prostitute, the sex of the parties or perspective parties to the sexual conduct engaged in, contemplated or solicited is immaterial and is not a defense to the charge.

11.20.280 Public display of sexually explicit material.

- (1) 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 a display from property in his possession after learning of its existence.
- (2) Material is placed upon "public display" if it is placed on or in a billboard, viewing screen, theater marque, 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.
- (3) Public display of sexually explicit material is a misdemeanor.

11.20.285 Urinating in public. A person is guilty of urinating in public if he intentionally urinates or defecates in a public place, other than a washroom or toilet room, or

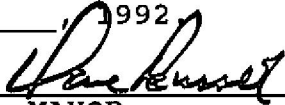
at a place and under circumstances where such act could be observed by any member of the public. Violation of this section is a misdemeanor.

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. Violation of this section is a gross misdemeanor.

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. Violation of this section is a misdemeanor.

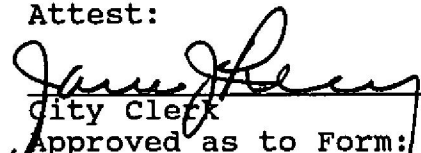
Passed by majority vote of the Kirkland City Council in regular, open meeting this 6th day of October, 1992.

Signed in authentication thereof this 6th day of October, 1992.




MAYOR

Attest:



City Clerk

Approved as to Form:



City Attorney

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