

Ordinance No. _____

AN ORDINANCE OF THE CITY OF OLYMPIA, WASHINGTON AMENDING OLYMPIA MUNICIPAL CODE CHAPTER 9.24 RELATING TO CRIMES AGAINST PUBLIC DECENCY BY ADOPTING BY REFERENCE SECTION 9A.88.010 OF THE REVISED CODE OF WASHINGTON

WHEREAS, there is an inherent interest in protecting the public's safety and appropriately sentencing repeat offenders who engage in acts of public indecency; and

WHEREAS, there has been an increase in the arrest of offenders for lewd conduct whose actions would constitute indecent exposure pursuant to RCW 9A.88.010; and

WHEREAS, those who engage in acts of indecent exposure have higher risks of recidivism and sexual deviancy so as to justify an enhanced sentence for repeat offenders; and

WHEREAS, adoption of RCW 9A.88.010 will permit a potential enhanced sentence if the person is again arrested and subsequently convicted of similar conduct in the future; and

WHEREAS, this Ordinance is adopted pursuant to Article 11, Section 11, of the Washington State Constitution and any other applicable authority;

NOW, THEREFORE, THE OLYMPIA CITY COUNCIL ORDAINS AS FOLLOWS:

Section 1. Amendment of OMC 9.24. Chapter 9.24 of the Olympia Municipal Code is hereby amended to read as follows:

**Chapter 9.24
OFFENSES AGAINST PUBLIC DECENCY**

9.24.000 Chapter Contents

Sections:

- 9.24.010 Definitions.
- 9.24.020 Prostitution.
- 9.24.030 Prostitution loitering.
- 9.24.040 Promoting prostitution.
- 9.24.050 Patronizing a prostitute.
- 9.24.060 Prostitution and patronizing a prostitute –No defense.
- 9.24.070 Permitting prostitution.
- 9.24.080 Body studios and on-premises dating services.
- 9.24.090 Urinating in public.
- 9.24.100 Displaying erotic material.
- 9.24.110 Lewd conduct.
- 9.24.120 State statute adopted by reference.

9.24.010 Definitions

For the purpose of this chapter, certain words and terms are defined as follows:

A. Commit prostitution means to engage in sexual conduct for a fee but does not include sexual conduct engaged in as part of any stage performance, play or other entertainment open to the public.

B. "Erotic material" means motion pictures, photographs, pictures, printed material and other such objects depicting:

1. Human sexual intercourse;
2. Masturbation;
3. Sodomy (i.e., bestiality or oral or anal intercourse);
4. Direct physical stimulation of unclothed genitals;
5. Flagellation or torture in the context of sexual relationships; or
6. An emphasized depiction of bare adult human genitals; provided, however, that this definition applies only to those works which, applying the average standards of the city, taken as a whole appeal to the prurient interest of persons and which lack serious literary, artistic, political or scientific value.

C. "Known prostitute or panderer" means a person who within one year previous to the date of arrest for violation of this section, has within the knowledge of the arresting officer been convicted of an offense involving prostitution.

D. Lewd act means public:

1. Exposure of one's anus, genitals or female breasts; or
2. Touching, caressing or fondling of the anus, genitals or female breasts; or
3. Sexual conduct, as defined by subsection F of this section; provided, however, that this definition applies only to those works which, applying the average standards of the city, taken as a whole appeal to the prurient interest of persons and which lack serious literary, artistic, political or scientific value.

E. Public place means 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 public, whether or not limited to persons over a specified age, including those which serve food or drink, or provide entertainment, and the doorways and entrances to buildings or dwellings and the grounds enclosing them.

F. "Sexual conduct" means:

1. Sexual intercourse within its ordinary meaning, occurring upon any penetration, however slight; or
2. 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
3. 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
4. Masturbation, manual or instrumental, of one person by another; or
5. Flagellation or torture in the context of a sexual relationship.

9.24.020 Prostitution

A. A person is guilty of prostitution if he engages in or agrees or offers to engage in sexual conduct with another person in return for a fee.

B. This section shall not apply to sexual conduct engaged in as part of a stage performance, play or other entertainment open to members of the public.

9.24.030 Prostitution loitering

A. A person is guilty of prostitution loitering if he remains in a public place and intentionally solicits, induces, entices, or procures another to commit prostitution.

B. Among the circumstances which may be considered in determining whether the actor intends such prohibited conduct are that he:

1. Repeatedly beckons to, stops or attempts to stop, or engages a passerby in conversation; or
2. Repeatedly stops or attempts to stop motor vehicle operators by hailing, waving of arms or other bodily gestures; or
3. Is a known prostitute or panderer.

9.24.040 Promoting prostitution

A person is guilty of promoting prostitution if:

A. Acting other than as a prostitute or as a customer thereof, he knowingly:

1. Causes or aids a person to commit or engage in prostitution, or
2. Procures or solicits customers for prostitution, or
3. Provides persons or premises for prostitution purposes, or
4. Operates or assists in the operation of a house of prostitution or a prostitution enterprise, or
5. Engages in any other conduct designed to institute, aid or facilitate an act or enterprise of prostitution; or

B. Acting other than as a prostitute receiving compensation for personally rendered prostitution services, he accepts or receives money or other property pursuant to an agreement or understanding with a person whereby he participates or is to participate in the proceeds of prostitution activity.

9.24.050 Patronizing a prostitute

A person is guilty of patronizing a prostitute if:

- A. Pursuant to 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;
- 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;
- C. He solicits or requests another person to engage in sexual conduct with him in return for a fee.

9.24.060 Prostitution and patronizing a prostitute –No defense

In any prosecution for prostitution or patronizing a prostitute, 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;
- 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 a female.

9.24.070 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 to make reasonable effort to halt or abate such use.

9.24.080 Body studios and on-premises dating services

A. Prohibited. It is unlawful for any person to operate, conduct, maintain, participate in or advertise a body studio or on-premises dating service, as defined in this section, or to knowingly be employed, participate in or conduct any business on the premises of a body studio or on-premises dating service.

B. Body Studio Defined. As used in this section, a "body studio" is any premises, other than a massage parlor as defined in Chapter 5.44 of this code, and licensed as such, upon which is furnished for a fee or charge the opportunity to paint, massage, feel, handle or touch the unclothed body or unclothed portion of the body of another person with intent to arouse the prurient interest of any person, or to be so painted, massaged, felt, handled or touched by another person, or to observe or photograph any such activity. This includes any such premises which is advertised or represented to be a body painting studio, model studio, sensitivity awareness studio, communications center or any other such characterization and which leads to a reasonable belief that there will be furnished on such premises for a fee or charge the opportunity to paint, massage, feel, handle, or touch the unclothed body or an unclothed portion of the body of another person with intent to arouse the prurient interest of any person, or to be so painted, massaged, felt, handled or touched by another person, or to observe, view or photograph any such activity.

C. On-premises Dating Service Defined. "On-premises dating service" means any premises which is advertised or represented as, or is, a dating service or studio or any other expression or characterization which conveys the same or similar meaning, and which renders its services on its premises, and leads to the reasonable belief that there will be furnished on such premises for a fee or charge the opportunity to massage, feel, handle, caress or touch the unclothed body or unclothed portion of the body of another person with intent to arouse the prurient interest of any person, or to be so massaged, felt, handled, touched or caressed by another person.

9.24.090 Urinating in public

It is unlawful for any person to urinate or defecate in a public place other than a washroom or toilet room or other facility specifically designated and intended for that use.

9.24.100 Displaying erotic material

A person who, having knowledge of the contents thereof, knowingly places, or causes another to place, for sale or otherwise, erotic material upon display in a public place or knowingly fails to take prompt action to remove such public display from property in his possession after learning of its existence is guilty of displaying erotic material; provided, however, the display of written material depicting the activity enumerated in subsection B1 of Section 9.24.010 will not by itself constitute an offense.

9.24.110 Lewd conduct

A. A person is guilty of lewd conduct if he intentionally performs a lewd act in a public place or at a place and under circumstances where such act could be observed by any member of the public.

B. The owner, manager or operator of premises open to the public is guilty of permitting lewd conduct if he intentionally permits or causes any lewd act on the premises.

C. A violation of this section is a gross misdemeanor.

9.40.120 State statute adopted by reference

The following section of the Revised Code of Washington, as it appears now or is hereafter amended, is hereby adopted by reference as though fully set forth in this chapter:

RCW 9A.88.010- Indecent Exposure

Section 2. Severability. If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance or application of the provisions to other persons or circumstances shall remain unaffected.

Section 3. Ratification. Any act consistent with the authority and prior to the effective date of this Ordinance is hereby ratified and affirmed.

Section 5. Effective Date. This Ordinance shall take effect five (5) days after publication, as provided by law.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:



CITY ATTORNEY

PASSED:

APPROVED:

PUBLISHED: