

CITY OF MARYSVILLE AGENDA BILL

EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: 6/26/17

AGENDA ITEM:	
Ordinance Amending chapter 6.30 MMC	
PREPARED BY:	DIRECTOR APPROVAL:
Jon Walker	
DEPARTMENT:	
Legal	
ATTACHMENTS:	
BUDGET CODE:	AMOUNT:
SUMMARY:	

Chapter 6.30 MMC concerns public indecency. The code currently defines to overlapping crimes – “lewd conduct” and “unlawful public exposure.” The crimes are nearly identical and the duplication makes the chapter less clear than it could be. This ordinance would define one crime – “unlawful public exposure” – and make some other “housekeeping” changes.

RECOMMENDED ACTION: Staff recommends that the Council consider adopting the proposed ordinance amending chapter 6.30 MMC.
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CITY OF MARYSVILLE

Marysville, Washington

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MARYSVILLE, WASHINGTON, AMENDING CHAPTER 6.30 OF THE MUNICIPAL CODE REGARDING PUBLIC INDECENCY.

WHEREAS, chapter 6.30 of the municipal code contains duplicative provisions; and

WHEREAS, eliminating duplicative provisions and reorganizing parts of the chapter will clarify its intent.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MARYSVILLE, WASHINGTON, DO ORDAIN AS FOLLOWS:

SECTION 1. Chapter 6.30 of the municipal code is amended as set forth in Exhibit A.

SECTION 2. Severability. If any section, subsection, sentence, clause, phrase or word of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, subsection, sentence, clause, phrase or word of this ordinance.

SECTION 3. Effective Date. This ordinance shall become effective five days after the date of its publication by summary.

PASSED by the City Council and APPROVED by the Mayor this _____ day of _____, 2017.

CITY OF MARYSVILLE

By _____

JON NEHRING, MAYOR

Attest:

By _____

APRIL O'BRIEN, DEPUTY CITY CLERK

Approved as to from:

By _____

JON WALKER, CITY ATTORNEY

Date of publication: _____

Effective Date (5 days after publication): _____

EXHIBIT A

Chapter 6.30 PUBLIC INDECENCY – PROSTITUTION – SEX CRIMES

Sections:

- [6.30.010](#) Statutes incorporated by reference.
- [6.30.020](#) Definitions.
- [6.30.025](#) ~~Unlawful public exposure~~[Lewd conduct.](#)
- [6.30.030](#) ~~Unlawful public exposure prohibited.~~
- [6.30.040](#) Facilitating unlawful public exposure prohibited.
- [6.30.050](#) Exemptions.
- [6.30.060](#) Public display of sexually explicit material.
- [6.30.070](#) Location of performers providing certain forms of entertainment restricted.
- [6.30.080](#) Affirmative defenses.

6.30.010 Statutes incorporated by reference.

The following statutes relating to public indecency, prostitution, sexual exploitation of children, and other sex crimes are incorporated by reference:

RCW

- [9A.44.010](#) Definitions for sexual offenses.
- [9A.44.096](#) Sexual misconduct with a minor in the second degree.
- [9A.44.120](#) Admissibility of child's statement.
- [9A.88.010](#) Indecent exposure.
- [9A.88.030](#) Prostitution.
- [9A.88.050](#) Prostitution – Sex of parties immaterial – No defense.
- [9A.88.090](#) Permitting prostitution.
- [9A.88.110](#) Patronizing a prostitute.
- [9.68A.011](#) Definitions.
- [9.68A.080](#) Processing depictions of minors engaged in sexually explicit conduct.
- [9.68A.090](#) Communication with minor for immoral purposes.

6.30.020 Definitions.

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

~~(1)~~ “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.

~~(2)~~ “Exposed” means the state of being revealed, exhibited or otherwise rendered open to public view.

~~(3)~~ “Public exposure” means the act of revealing, exhibiting or otherwise rendering open to public view.

~~(4)~~ “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 ~~general~~ public, ~~and including those which serve food or drink or provide entertainment in the~~ doorways, windows, drive-up windows, and entrances to buildings or dwellings ~~in the grounds enclosing them~~ that are visible to public view.

~~(5)~~ “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.

~~(6)~~ “Sexual intercourse”:

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

(b) 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

(c) 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.

~~(7)~~ “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.

~~(8) "Unlawful public exposure" means:~~

- ~~(a) A public exposure of any portion of the human anus or genitals;~~
- ~~(b) A public exposure of any portion of the female breast lower than the upper edge of the areola; or~~
- ~~(c) A public exposure consisting of touching, caressing or fondling of the male or female genitals or female breasts, whether clothed or unclothed.~~

~~(9) The word "he" includes masculine, feminine and neuter; therefore references to "he" shall also be meant to refer to "she."~~

6.30.025 Unlawful Public Exposure Lewd conduct.

~~(1) Penalty.~~

- ~~(a) A person is guilty of a misdemeanor 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 the public.~~
- ~~(b) The owner or operator of premises open to the public is guilty of a misdemeanor if he intentionally permits lewd conduct in a public place under his control.~~

~~(2) "Lewd act" means~~A person is guilty of a misdemeanor if he or she intentionally performs any of the following acts in a public place:

- (a) Public eExposure of one's genitals, buttocks, or any portion of the female breast below the top of the areola; or
- (b) Public tTouching, caressing or fondling of the genitals or female breast whether clothed or not; or
- (c) Public uUrination or defecation in a place other than a washroom or toilet room; or
- (d) Public mMasturbation; or
- (e) Public sSexual intercourse; or

(f) Simulation of any ~~such intercourse or such of the~~ acts as described in subsections (2)(a) through (e) in this section, including but not limited to the use of devices which appear to be male or female genitalia or female breasts ~~to simulate such acts as described in subsections (2)(a) through (e) in this section.~~

~~(g) In addition, a person commits the offense of lewd conduct if he or she performs any lewd act when he or she knows or reasonably should know such act is likely to be observed by a person and such act is likely to cause reasonable affront or alarm.~~

~~(3) "Public" or "public display" means easily visible from a public thoroughfare or from property of others, or in a public place in manner so obtrusive as to make it difficult for an unwilling person to avoid exposure.~~

~~(4) This chapter shall not be construed to prohibit:~~

~~(a) Plays, operas, musicals or other dramatic works which are not obscene;~~

~~(b) Classes, seminars and lectures held for scientific or education purposes;~~

~~(c) Exhibitions or dances which are not obscene;~~

~~(d) Breast feeding an infant. (Ord. 2888 § 1, 2012).~~

~~6.30.030 Unlawful public exposure prohibited.~~

~~It is unlawful for any person to intentionally commit any act constituting unlawful public exposure as defined in this chapter. A violation of this section is a misdemeanor. (Ord. 2888 § 1, 2012; Ord. 1281 § 2, 1983).~~

~~6.30.040 Facilitating unlawful public exposure prohibited.~~

It is ~~unlawful a misdemeanor~~ 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.

~~6.30.050 Exemptions.~~

~~(1) This chapter shall not be construed to prohibit the following when conducted within a building or area that is not within view of streets, sidewalks, bridges, alleys, plazas, parks, or parking lots,;~~

~~(a) Plays, operas, musicals or other dramatic works which are not obscene;~~

~~(b) Classes, seminars and lectures held for scientific or education purposes;~~

~~(c) Exhibitions or dances which are not obscene;~~

The prohibitions set forth in MMC [6.30.025](#) through [6.30.040](#) shall not apply to any:

(1) ~~“Expressive dance,” as defined in MMC [6.30.020](#);~~

(2) ~~Play, opera, musical, or other dramatic work;~~

(3) ~~Class, seminar, or lecture, conducted for a scientific, medical or educational purpose;~~

(4d) Nudity within a locker room or other similar facility used for changing clothing in connection with athletic or exercise activities.

(e) The exemptions in subsections (a), (b), and (c) are available only if the performer is 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.

(2) This chapter does not prohibit breast feeding an infant regardless of the location.

6.30.060 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 such 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 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.

~~6.30.070 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 MMC [6.30.050](#), 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.~~

6.30.080 Affirmative defenses.

It is an affirmative defense to a prosecution for violation of MMC [6.30.025](#) through [6.30.040](#) 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.