

**CITY OF MARYSVILLE AGENDA BILL**

**EXECUTIVE SUMMARY FOR ACTION**

**CITY COUNCIL MEETING DATE: December 9, 2019**

<b>AGENDA ITEM:</b>	
Amendment to Chapter 6.33 of the Municipal Code	
<b>PREPARED BY:</b>	<b>DIRECTOR APPROVAL:</b>
Burton Eggertsen	
<b>DEPARTMENT:</b>	
Legal	
<b>ATTACHMENTS:</b>	
RCW 9A.86.010	
<b>BUDGET CODE:</b>	<b>AMOUNT:</b>
<b>SUMMARY:</b>	

RCW 9A.86.010 prohibits the wrongful disclosure of intimate images. Title 6 of the municipal code (“Penal Code”) does not contain the criminal offense of disclosure of intimate images. The proposed ordinance will amend Chapter 6.33 to incorporate by reference RCW 9A.86.010.

**RECOMMENDED ACTION:** Staff recommends the Council consider amending Chapter 6.33 of the municipal code to incorporate by reference RCW 9A.86.010.

**RECOMMENDED MOTION:** I move to approve Ordinance No. \_\_\_\_\_ amending Chapter 6.33 of the municipal code.

CITY OF MARYSVILLE  
Marysville, Washington

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MARYSVILLE,  
WASHINGTON, AMENDING CHAPTER 6.33 OF THE MARYSVILLE  
MUNICIPAL CODE.**

WHEREAS, Title 6 of the municipal code sets crimes and penalties for offenses within the City of Marysville; and

WHEREAS, there is currently not a criminal offense in the municipal code for wrongfully disclosing intimate images; and

WHEREAS, disclosing intimate images is prohibited by RCW 9A.86.010; and

WHEREAS, it is appropriate to amend the municipal code in response to changes in state law or conditions in the City; and

WHEREAS, public health, safety, and welfare benefits from periodic updates to the municipal code.

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

SECTION 1. Amendment of Municipal Code. Section 6.33 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. Upon approval by the city attorney, the city clerk or the code reviser are authorized to make necessary corrections to this ordinance, including scrivener's errors or clerical mistakes; references to other local, state, or federal laws, rules, or regulations; or numbering or referencing of ordinances or their sections and subsections.

SECTION 4. 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 \_\_\_\_\_, 20\_\_\_\_\_.

CITY OF MARYSVILLE

By \_\_\_\_\_  
JON NEHRING, MAYOR

Attest:

By \_\_\_\_\_  
\_\_\_\_\_, DEPUTY CITY CLERK

Approved as to form:

By \_\_\_\_\_  
JON WALKER, CITY ATTORNEY

Date of publication: \_\_\_\_\_

Effective Date (5 days after publication): \_\_\_\_\_

# EXHIBIT A

## Chapter 6.33 OBSCENITY AND PORNOGRAPHY

Sections:

[6.33.010](#) Statutes incorporated by reference.

### **6.33.010 Statutes incorporated by reference.**

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The following statutes regarding obscenity and pornography are incorporated by reference:

RCW

[9.68.015](#) Obscene literature, shows, etc. – Exemptions.

[9.68.030](#) Indecent articles, etc.

[9.68.050](#) Erotic material – Definitions.

[9.68.060](#) Sale, distribution or exhibition of erotic material.

[9.68.070](#) Affirmative defenses.

[9.68.080](#) Unlawful acts relating to minors.

[9.68.100](#) Exceptions for libraries.

[9.68.110](#) Exceptions for motion picture projectionists.

[9.68.130](#) Display of sexually explicit material.

[9A.86.010](#) *Disclosing intimate images*

## **RCW 9A.86.010**

### **Disclosing intimate images.**

(1) A person commits the crime of disclosing intimate images when the person knowingly discloses an intimate image of another person and the person disclosing the image:

- (a) Obtained it under circumstances in which a reasonable person would know or understand that the image was to remain private;
- (b) Knows or should have known that the depicted person has not consented to the disclosure; and
- (c) Knows or reasonably should know that disclosure would cause harm to the depicted person.

(2) A person who is under the age of eighteen is not guilty of the crime of disclosing intimate images unless the person:

- (a) Intentionally and maliciously disclosed an intimate image of another person;
- (b) Obtained it under circumstances in which a reasonable person would know or understand that the image was to remain private; and
- (c) Knows or should have known that the depicted person has not consented to the disclosure.

(3) This section does not apply to:

- (a) Images involving voluntary exposure in public or commercial settings; or
- (b) Disclosures made in the public interest including, but not limited to, the reporting of unlawful conduct, or the lawful and common practices of law enforcement, criminal reporting, legal proceedings, or medical treatment.

(4) This section does not impose liability upon the following entities solely as a result of content provided by another person:

- (a) An interactive computer service, as defined in 47 U.S.C. Sec. 230(f)(2);
- (b) A mobile telecommunications service provider, as defined in RCW 82.04.065; or
- (c) A telecommunications network or broadband provider.

(5) It shall be an affirmative defense to a violation of this section that the defendant is a family member of a minor and did not intend any harm or harassment in disclosing the images of the minor to other family or friends of the defendant. This affirmative defense shall not apply to matters defined under RCW 9.68A.011.

(6) For purposes of this section:

(a) "Disclosing" includes transferring, publishing, or disseminating, as well as making a digital depiction available for distribution or downloading through the facilities of a telecommunications network or through any other means of transferring computer programs or data to a computer;

(b) "Intimate image" means any photograph, motion picture film, videotape, digital image, or any other recording or transmission of another person who is identifiable from the image itself or from information displayed with or otherwise connected to the image, and that was taken in a private setting, is not a matter of public concern, and depicts:

(i) Sexual activity, including sexual intercourse as defined in RCW 9A.44.010 and masturbation; or

(ii) A person's intimate body parts, whether nude or visible through less than opaque clothing, including the genitals, pubic area, anus, or postpubescent female nipple.

(7) The crime of disclosing intimate images:

- (a) Is a gross misdemeanor on the first offense; or
  - (b) Is a class C felony if the defendant has one or more prior convictions for disclosing intimate images.
- (8) Nothing in this section is construed to:
- (a) Alter or negate any rights, obligations, or immunities of an interactive service provider under 47 U.S.C. Sec. 230; or
  - (b) Limit or preclude a plaintiff from securing or recovering any other available remedy.
- [ 2016 c 91 § 1; 2015 2nd sp.s. c 7 § 1. ]