

## ORDINANCE NO. 1176

### **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO CRIMES RELATING TO PUBLIC MORALS; ADDING A NEW SECTION 9.30.100 TO THE GIG HARBOR MUNICIPAL CODE TO ADOPT BY REFERENCE RCW 9.94A.835; PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.**

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WHEREAS, the City of Gig Harbor desires to adopt by reference RCW 9.94A.835, which provides that the prosecuting attorney shall file a special allegation of sexual motivation in every criminal misdemeanor or gross misdemeanor case other than sex offenses as defined in RCW 9.94A.030; and

WHEREAS, the special allegation of sexual motivation must be proved beyond a reasonable doubt; and

WHEREAS, the prosecuting attorney shall not withdraw the special allegation of sexual motivation without approval of the court or an order of dismissal; and

WHEREAS, proof of sexual motivation beyond a reasonable doubt may be considered as an aggravating circumstance under RCW 9.94A.537 to impose a sentence above the standard sentencing range; and

WHEREAS, the Gig Harbor City Council considered the Ordinance at first reading and public hearing on August 10, 2009; and

WHEREAS, on September 14, 2009, the City Council adopted this Ordinance at second reading during a regular City Council meeting; Now, therefore,

THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1.    Amendment.    Section 9.30.010 of the Gig Harbor Municipal Code is hereby amended to read as follows:

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

A. "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 interest, depicts sexual conduct in a patently offensive way and lacks serious literary, artistic, political or scientific value.

B. "Exposed" means the state of being revealed, exhibited or otherwise rendered to public view.

C. "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.

D. "Public exposure" means the act of revealing, exhibiting or otherwise rendering open to public view.

E. "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.

F. "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.

G. "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.

H. "Sexual motivation" means that one of the purposes for which the defendant committed the crime was for the purpose of his or her sexual gratification.

I. "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; or

4. A public exposure consisting of masturbation, or of urination or defecation in a place other than a restroom.

Section 2. New Section. Section 9.30.100 of the Gig Harbor Municipal Code is hereby added to read as follows:

**9.30.100 Sexual Motivation - Special Allegation**

The following state statute is adopted by reference:

RCW 9.94A.835 Special Allegation - Sexual Motivation - Procedures.

Section 3. Severability. If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the Ordinance or the application of the provision to other persons or circumstances by a court of competent jurisdiction shall not be affected.

Section 4. Effective Date. This Ordinance shall take effect and be in full force five (5) days after passage and publication of an approved summary consisting of the title.

PASSED by the Council and approved by the Mayor of the City of Gig Harbor, this 14<sup>th</sup> day of September, 2009.

CITY OF GIG HARBOR

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Mayor Charles L. Hunter

ATTEST/AUTHENTICATED:

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Molly Towslee, City Clerk

APPROVED AS TO FORM:  
Office of the City Attorney

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Angela S. Belbeck, City Attorney

FILED WITH THE CITY CLERK: 08/05/09  
PASSED BY THE CITY COUNCIL: 09/14/09  
PUBLISHED: 09/23/09  
EFFECTIVE DATE: 09/28/09  
ORDINANCE NO: 1176