

ORDINANCE NO. 403

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON AMENDING TITLE 9 OF THE GIG HARBOR CITY CODE BY ADDING A NEW CHAPTER 9.29 THERETO ENTITLED "OFFENSES AGAINST PUBLIC MORALS"; DEFINING AND PROHIBITING THE CRIMINAL OFFENSES OF UNLAWFUL PUBLIC EXPOSURE, AND FACILITATING UNLAWFUL PUBLIC EXPOSURE; PROHIBITING THE CRIMES OF PROSTITUTION, PERMITTING PROSTITUTION AND PATRONISING A PROSTITUTE; AND PROVIDING PENALTIES FOR THE COMMISSION OF SAID OFFENSES; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City Council has determined that the activities defined and prohibited hereinafter are detrimental to the public health, safety, morals and general welfare, and

WHEREAS, the City Council finds that certain forms of public nudity and sexual activity degrade the quality of the City's residential and business environment, and

WHEREAS, the City Council intends to regulate conduct as set forth hereinafter for the purposes of protecting the quality of the City's residential and business environment without interfering with the free exchange and expression of ideas, now, therefore,

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

Section 1. Title 9 of the Gig Harbor City Code is hereby amended by adding a new Chapter 9.29 thereto entitled "Offenses Against Public Morals," to read as follows:

DEFINITIONS

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

A. "Expressive dance" and "expressive performance"

means any dance or performance which, when considered in the context of the entire dance or performance, constitutes an expression of theme, story or ideas, but excluding any dance or performance which, when considered in the context of the entire dance or 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.

B. "Exposed" means the state of being revealed, exhibited or otherwise rendered open to view by others in a public place.

C. "Public Exposure" means the act of revealing, exhibiting or otherwise rendering open to view by others in a public place.

D. "Public Place" means any place in which the general public has a right to be present, whether within or without a building and whether or not attendance at such place is conditioned upon payment of a fee, and/or whether or not access is restricted according to age.

E. "Sexual Contact" means any touching, caressing or fondling of the genitals, breasts or buttocks of a person, done for the purpose of gratifying sexual desire of, or sexually stimulating either party.

F. "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, anus, or breasts of one person

with any portion of the body of another whether such persons are of the same or opposite sex.

G. "Unlawful Public Exposure" means:

1. A public exposure of any portion of a person's genitals, or buttocks, or anus;

2. A public exposure of any portion of the female breast lower than the upper edge of the aureola; or

3. A public exposure consisting of sexual contact.

H. "prostitution" means; the engaging in or the agreement or offering to engage in sexual intercourse or sexual contact with another person for a fee.

UNLAWFUL PUBLIC EXPOSURE PROHIBITED

It shall be unlawful for any person to intentionally commit any act constituting unlawful public exposure as defined in this chapter.

FACILITATING UNLAWFUL PUBLIC EXPOSURE PROHIBITED

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 unlawful public exposure upon said premises.

EXEMPTIONS

The prohibitions set forth in Sections _____ and _____ shall not apply to any:

A. "Expressive Dance" or expressive performance" as defined in Section _____;

PROSTITUTION - SEX OR PARTIES IMMATERIAL - NO DEFENSE

It is unlawful to engage in prostitution. In any prosecution for prostitution, 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; or
- 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 female.

PERMITTING PROSTITUTION

It is unlawful if a person permits prostitution. A person permits 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.

PATRONIZING A PROSTITUTE

Patronizing a prostitute is unlawful. A person patronizes a prostitute if:

- A. Pursuant to a prior understanding he or she pays a fee to another person as compensation for such person or a third person to engage in sexual intercourse or sexual contact with him or her; or

- B. He or she pays or agrees to pay a fee to another person pursuant to an understanding that in return therefor such person will engage in sexual intercourse or sexual contact with him or her; or

- C. He or she solicits or requests another person to engage in sexual intercourse or sexual contact with him or her in return for a fee.

LOCATION OF PERFORMERS PROVIDING CERTAIN FORMS OF ENTERTAINMENT

RESTRICTED

It is unlawful for an entertainer to appear in any public place while unclothed or with anus or any portion of the buttocks, genitals,

pubic region or female breasts exposed, 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.

PENALTY:

Violation of any of the provisions of this chapter constitutes a misdemeanor, punishable by a fine of up to \$500.00.

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

B
Section 3. This ordinance shall be in full force and effect five (5) days after passage and publication by posting as provided by law.

CITY OF GIG HARBOR

Ruth M. Bogue
MAYOR, RUTH M. BOGUE

ATTEST/AUTHENTICATED:


CITY COUNCIL

OCTOBER 25, 1982
DATE OF APPROVAL BY CITY COUNCIL

APPROVED AS TO FORM:

WILLIAM L. HESS, City Attorney