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WP0374C-ORD
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CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 4691

AN ORDINANCE regulating public conduct and prohibiting lewd conduct, amending Ordinance No. 3516, Sections 11 (part), 24 (part) and 26 (part), Ordinance No. 3550, Section 3 (part) and Section 4 (part) and Bellevue City Code Sections 10A.88.010, .030 and .035, and declaring an emergency which requires the ordinance be immediately effective.

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Ordinance No. 3516, Sections 11 (part) and 26 (part), Ordinance No. 3550, Section 4 (part), and Bellevue City Code Section 10A.88.010, are hereby amended as follows:

10A.88.010 Definitions.

For the Purpose of this chapter:

- A. "Known prostitute or panderer" means a person who, within one year previous to the date of arrest for violation of Chapter 10A.88.050, has within the knowledge of the arresting officer been convicted of an offense involving prostitution.
- B. "Lewd act" means public:
 - 1. Exposure of any portion of the human anus or genitals, including display of the human male genitals in a discernibly turgid state, even if completely and opaquely covered; or
 - 2. Exposure of the female breast lower than the upper edge of the areola; or
 - 3. Touching, caressing or fondling of the male or female genitals or female breast, whether clothed or naked; or
 - 4. Sexual conduct as defined by subsection D of this section.
 - 5. Simulated acts of human sex, including intercourse, oral copulation, sodomy, or masturbation of oneself or of one person by another.
- C. "Public" or "public display" means easily visible from a public thoroughfare or from property of others, or in a public place in a

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manner so obtrusive as to make it difficult for an unwilling person to avoid exposure to the conduct, or at a place and under circumstances where such act could be observed by any member of the public, or in any premises open to the public.

D. "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 oneself or of one person by another.

Section 2. Ordinance No. 3516, Sections 11 (part) and 24 (part), Ordinance No. 3550, Section 3 (part), and Bellevue City Code Section 10A.88.030 are hereby amended as follows:

10A.88.030 Lewd act.

- A. Except as provided in Section 10A.88.035, every person who intentionally performs any 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 or in any premises open to the public is guilty of a gross misdemeanor.
- B. The owner, manager or operator of a premises open to the public wherein alcoholic beverages are sold, served or consumed is guilty of a gross misdemeanor if he knowingly permits or causes any lewd act on his premises.

Section 3. Ordinance No. 3516, Sections 11 (part) and 24 (part), Ordinance No. 3550, Section 3 (part), Ordinance 4601, Section 1, and Bellevue City Code Section 10A.88.035 are hereby amended as follows:

10A.88.035 Lewd act--Limitations.

A. The following activities are exempt from the prohibitions of Section 10A.88.030 if they are not conducted in a place easily visible from a public thoroughfare, or from property of others, or in a public place in a manner so obtrusive as to make it difficult for an unwilling person to avoid exposure to the activities:

1. Plays, operas, musicals, or other dramatic works which are not obscene;
2. Classes, seminars and lectures which are held for serious scientific or educational purposes and which are not obscene;
3. Exhibitions or dances which are not obscene.

These exemptions shall not apply to sexual conduct as defined in Section 10A.88.010D.

B. Whether or not the activity is obscene shall be judged by consideration of the following factors:

1. Whether the average person, applying contemporary community standards, would find that the activity taken as a whole appeals to a prurient interest in sex; and
2. Whether the activity depicts or describes in a patently offensive way, as measured against community standards, conduct as defined in Section 10A.88.010.B; and
3. Whether the activity taken as a whole lacks serious literary, artistic, political or scientific value.

Section 4. The City Council finds that a public emergency exists, and that this ordinance is a public emergency ordinance necessary for the protection of the public health, safety, and peace and should therefore take effect upon adoption. The facts upon which such determination of emergency is based are:


1. The existing provisions of Bellevue City Code 10A.88.035 which provide that certain standards must be applied to determine whether conduct is obscene is unconstitutional under the holding of the United States Supreme Court in Miller v. California, 413 U.S. 15, 37 L.Ed.2d 419, 93 S.Ct. 2607 (1973).

The Council finds that it is essential to the public interest that this constitutional defect be cured immediately.

Section 5. In accordance with RCW 35A.13.090 this ordinance, as a public emergency ordinance, shall take effect and be in force immediately upon adoption.

PASSED by a unanimous vote of the entire membership of the City Council this 19th day of September, 1994, and signed in authentication of its passage this 19th day of September, 1994.

(SEAL)



Donald S. Davidson, DDS, Mayor


Approved as to form:

Richard L. Andrews, City Attorney



Lori Molander Riordan, Assistant City Attorney

Attest:



Myrna L. Basich, City Clerk

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