ORDINANCE NO. 1496

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BONNEY LAKE, PIERCE COUNTY, WASHINGTON, AMENDING CHAPTER 9.05 OF THE BONNEY LAKE MUNICIPAL CODE AND ORDINANCE NO. 1444 RELATING TO PUBLIC NUDITY AND LEWD CONDUCT.

WHEREAS, the City Council recognizes the need to update the Criminal Public Nudity Ordinance in the Bonney Lake Municipal Code to address the protection and preservation of health, safety, and welfare of the people of the City.

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

Section 1. Chapter 9.05 BLMC, entitled “Public Nudity,” is hereby retitled “Lewd Conduct.”

Section 2. BLMC Sections 9.05.010, 9.05.020, 9.05.030, 9.05.040, 9.05.050, and Ordinance No. 1444 are hereby amended to read as follows:

9.05.010 Intent.
The intent of this chapter is to protect and preserve the health, safety, and welfare of the people of the city of Bonney Lake by prohibiting any person from recklessly, knowingly, or intentionally appearing nude or engaging in lewd conduct in a public place, or recklessly, knowingly, or intentionally causing or permitting another person to appear nude or engage in lewd conduct in a public place within the city, subject to the exceptions provided in BLMC 9.05.040. (Ord. 1444 § 1, 2012).

9.05.020 Definitions.
The following definitions apply to this chapter:

A. “Public place provided or set apart for nudity” means an enclosed public restroom, an enclosed functional shower or locker room facility, an enclosed sauna, a motel room or hotel room designed and intended for sleeping accommodations, or the location of a bona fide private club whose membership as a whole engages in social nudism or naturalism (a nudist resort or camp), an adult entertainment establishment as defined under Chapter 18.32 BLMC, and any similar public places in which nudity is necessarily and customarily expected outside of the home and the sphere of privacy constitutionally protected therein.

B. “Public place” means any location open to the common and general use, participation, or enjoyment of the public where the public is present or likely to be present, or any location where the public is invited and is free to go upon special or implied invitation, or any location where a person may reasonably be expected to be observed by the public; this definition includes, but is not limited to, places open to the public for business or commercial purposes. (Ord. 1444 § 1, 2012).
C. “Obscene” shall have the same meaning as set forth in BLMC 5.16.110(B).

9.05.030 Public nudity and exposure of certain body parts prohibited Lewd Conduct.

A. It shall be unlawful for any person 10 years of age or older to recklessly, knowingly, or intentionally appear in a public place other than a public place provided or set apart for nudity, or to recklessly, knowingly, or intentionally cause or permit another person 10 years of age or older to appear in a public place other than a public place provided or set apart for nudity, in a state of nudity, which includes a state of dress or undress such that any of the following body parts or portions thereof are exposed to view or are covered with anything other than a full and opaque covering which completely covers all of the described area:

1. The male or female genitals, pubic area, buttocks or anal cleavage.

2. The nipple or areola of the female breast; and in addition at least one-half of that outside surface of the breast located below the top of the areola, which area shall be reasonably compact and contiguous to the areola.

A person is guilty of lewd conduct if, in a public place other than a public place provided or set apart for nudity, the person intentionally:

1. Exposes any of the following body parts, or portions thereof, without a full and opaque covering:
   a. Any part of the male or female genitals, pubic hair, pubic area, perineum, anus, bottom one-half of the anal cleft, buttocks, or anal cleavage;
   b. Any part of the areola or nipple of the female breast; or
   c. More than one-half of the part of the female breast located below the top of the areola;

2. Exposes the male genitals in a discernibly turgid state, even if fully and opaquely covered;

3. Touches, caresses, or fondles the genitals or female breast, whether clothed or unclothed, with the intention of sexual arousal of one’s self or others;

4. Masturbates; or

5. Engages in sexual intercourse or sexual contact as those terms are defined in Chapter 9A.44 RCW.

B. Body paint, body dye, tattoos, latex, tape, or any similar substance applied to the skin surface, any substance that can be washed off the skin, or any substance designed to simulate or by which by its nature simulates the appearance of the anatomical area beneath it, is not a full and opaque covering within the meaning of this section.
C. Attire which is insufficient to comply with these requirements includes but is not limited to those items commonly known as G-strings, T-backs, dental floss, and thongs.

C. Body paint, body dye, tattoos, latex, tape, or any similar substance applied to the skin surface; any substance that can be washed off the skin, or any substance designed to simulate or which by its nature simulates the appearance of the anatomical area beneath it is not full and opaque covering as required by this section. (Ord. 1444 § 1, 2012).

9.05.040 Exceptions.
This chapter shall not be construed to prohibit nudity associated with:

A. The act of breastfeeding or expressing breast milk;

B. Plays, operas, musicals, or other dramatic works which are not obscene;

C. Classes, seminars, and lectures held for serious scientific or educational purposes;

D. Non-obscene adult entertainment exhibited in adult entertainment facilities as regulated under Chapter 18.32 BLMC;

E. Lawful, First Amendment protected protests; Conduct which cannot be prohibited because it is protected by the United States Constitution or the Washington Constitution; or

F. Nudity of children under 10 years of age. (Ord. 1444 § 1, 2012).

9.05.050 Penalty.
Any person who violates the terms of this chapter or Chapter 5.16 BLMC, pursuant to BLMC 5.16.130, shall be guilty of a misdemeanor. (Ord. 1444 § 1, 2012).

Section 3. A new BLMC section 9.05.035 is hereby created to read as follows:

9.05.035 Facilitating lewd conduct.
The owner, lessee, manager, operator, or other person in charge of a public place other than a public place provided or set apart for nudity shall be guilty of facilitating lewd conduct if the person knowingly permits, encourages, or causes to be committed lewd conduct as defined in BLMC 9.05.030. Facilitating lewd conduct is a misdemeanor.

Section 4. The city clerk shall sign and file with the adopting ordinance a copy of the statutes and regulations referenced herein and shall also file and maintain in the city clerk’s office one copy of each of the adopted laws in the form in which they were adopted for use and examination by the public.

Section 5. The Mayor is hereby authorized to implement such administrative procedures as may be necessary to carry out the directions of this legislation.
Section 6. This Ordinance shall take effect and be in force thirty (30) days from and after its passage, approval and publication, as required by law.

PASSED by the City Council and approved by the Mayor this 25th day of November, 2014.

Neil Johnson, Mayor

AUTHENTICATED:

Harwood T. Edvalson, MMC, City Clerk

APPROVED AS TO FORM:

Kathleen Haggard, City Attorney

Passed: 11/25/2014
Valid: 11/25/2014
Published: 12/3/2014
Effective Date: 12/26/2014
This Ordinance totals 4 page(s)
City of Bonney Lake, Washington

City Council Agenda Bill (AB)

<table>
<thead>
<tr>
<th>Department/Staff Contact:</th>
<th>Meeting/Workshop Date:</th>
<th>Agenda Bill Number:</th>
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</thead>
<tbody>
<tr>
<td>Executive / Don Morrison</td>
<td>18 November 2014</td>
<td>AB14-149</td>
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<td>Ordinance</td>
<td>D14-149</td>
<td>Watson</td>
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**Agenda Subject:** Update of Lewd Conduct Ordinance

**Full Title/Motion:** An Ordinance Of The City Council Of The City Of Bonney Lake Amending Chapter 9.05 Of The Bonney Lake Municipal Code And Ordinance No. 1444 Relating To Criminal Lewd Conduct.

**Administrative Recommendation:** Approve

**Background Summary:** The City Prosecutor has recommended that the lewd conduct and public nudity ordinance be updated to better comply with court cases, state law, and to better address the protection and preservation of health, safety, and welfare of the people of the City. The enforceability of the current statute was hindered by the vague language of what is nudity. This issue became troubling to members of the public that were continuing to complain about certain drive-thru establishments in Bonney Lake. These amendments should make the ordinance more enforceable in the courts and less subject to a successful appeal.

**Attachments:** Ordinance D14-149

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**COMMITTEE, BOARD & COMMISSION REVIEW**

**Council Committee Review:** Public Safety

- Date: 3 November 2014
- Approvals:
  - Chair/Councilmember: Mark Hamilton
  - Councilmember: Jim Rackley
  - Councilmember: Tom Watson

**Forward to:** 11/25/14

**Commission/Board Review:**

**Hearing Examiner Review:**

**COUNCIL ACTION**

**Workshop Date(s):**

**Meeting Date(s):**

**Tabled to Date:**

**APPROVALS**

**Director:**

**Mayor:**

**Date Reviewed by City Attorney:**

(if applicable):