

CLEAN

06/20/2013

ORDINANCE NO.49-552

083303

AN ORDINANCE AMENDING SECTIONS 5.68.010, 5.68.020, 5.68.110, 5.68.190, 5.68.210, 5.68.215 AND 5.68.218 OF THE CODE OF THE CITY OF WICHITA, KANSAS, AND REPEALING THE ORIGINAL OF SECTIONS 5.68.010, 5.68.020, 5.68.030, 5.68.110, 5.68.170, 5.68.180, 5.68.190, 5.68.210, 5.68.215 AND 5.68.218 OF THE CODE OF THE CITY OF WICHITA .

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. The title to Chapter 5.68 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

Chapter 5.68. Sex trafficking, Obscenity and Morals Offenses

SECTION 2. Section 5.68.010 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"The sale of sexual relations. (1) The sale of sexual relations is performing for hire, or offering or agreeing to perform for hire where there is an exchange of value, any of the following acts:

(a) Sexual intercourse;

(b) Sodomy; or

(c) Manual or other bodily contact stimulation of the genitals

of any person with the intent to arouse or gratify the sexual desires of the offender or another.

(2) Any person who shall commit or offer or agree to commit an act of selling sexual relations shall be guilty of a misdemeanor and upon conviction under this section, shall be punished by a fine of not more than one thousand dollars or six months imprisonment or by both such fine and imprisonment.

(3) It shall be an affirmative defense to any prosecution under this section that the defendant committed the violation of this section because such defendant was subjected to human trafficking or aggravated human trafficking, as define by K.S.A. 21-5426, and amendments thereto, or commercial sexual exploitation of a child, as defined by section 4 of Senate Substitute for House Bill No. 2034 (2013) and amendments thereto.

SECTION 3. Section 5.68.020 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Buying sexual relations. Any person who knowingly buys sexual relations is guilty of a misdemeanor. For purposes of this chapter, “buying sexual relations” shall mean:

(a) Entering or remaining in a place where sexual relations are being sold or offered for sale with intent to engage in manual or other bodily contact stimulation of the genitals of any person with the intent to arouse or gratify the sexual desires of the offender or another, sexual intercourse, sodomy or any unlawful sexual acts with a person selling sexual relations who is 18 years of age or older; or

(b) Hiring a person selling sexual relations who is 18 years of age or older to engage in manual or other bodily contact stimulation of the

genitals of any person with the intent to arouse or gratify the sexual desires of the offender or another, sexual intercourse, sodomy or any unlawful sexual act;

(c) Every person convicted under this section (5.68.020), shall be punished by a fine of not more than \$2,500 or twelve months imprisonment or both such fine and imprisonment.

(d) In addition to any other sentence imposed, a person convicted under this section shall be fined \$2,500. Pursuant to K.S.A. 12-4120 and amendments thereto, the Clerk of the Municipal Court shall remit \$2,500 of any fine imposed and collected to the state treasurer.

(e) The court, in addition to any other sentence imposed, for any conviction under this section, may order the person convicted to enter into and complete a suitable educational and treatment program regarding commercial sexual exploitation.

SECTION 4. Section 5.68.110 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Soliciting for immoral purposes. (a) It is unlawful to solicit any person upon the streets or in public places within the corporate limits of the city, to engage in an act of selling sexual relations.

(b) For the purposes of this section, the following terms shall have the meanings respectively ascribed to them:

(1) “Public place” is any place to which the general public has access and a right to resort for business, entertainment or other lawful purpose, but does

not necessarily means a place devoted solely to the uses of the public. Such term also includes the front or immediate area of any store, shop, restaurant, tavern or other place of business and all public grounds, areas and parks.

(2) “Selling sexual relations” is defined in 5.68.010.

(3) “Solicit” is an offer to buy or sell.

(c) Any person violating the provisions of this section (5.68.110) shall be deemed guilty of a misdemeanor, and any person convicted thereof shall be punished by a fine of not more than five hundred dollars or six months imprisonment or both such fine and imprisonment.”

SECTION 5. Section 5.68.210 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Loitering for the purpose of soliciting. (a) It shall be unlawful for any person to loiter in or near any thoroughfare, or any other public place, in a manner and under circumstances manifesting the purpose of inducing, enticing, soliciting or procuring another to commit an act in violation of any of the following sections of this Code: Sections 5.68.010 (the sale of sexual relations), 5.68.020 (buying sexual relations), 5.68.110 (soliciting for immoral purposes). Among the circumstances which may be considered in determining whether such purpose is manifested are: that such person repeatedly stops or attempts to stop motor vehicle operators or pedestrians by hailing, waving of arms or any bodily gesture, or is a known seller or buyer of sexual relations. No arrest shall be made or notices to appear issued for a violation of this subsection unless the arresting officer first affords such person an opportunity to explain such conduct, and no one shall be convicted of violating this subsection if it appears at trial

that the explanation given was true and disclosed a lawful purpose.

(b) For purposes of this section, “any public place” shall mean any place to which the general public has access and a right to resort for business, entertainment or other lawful purpose, but does not necessarily mean a place devoted solely to the uses of the public. It also includes the front or immediate area of any store, shop, restaurant, tavern or other place of business, and all public grounds, areas or parks.

(c) For purposes of this section, the term “loitering” means remaining idle in essentially one location and includes the concept of spending time idly; to be dilatory; to linger, to stay; to saunter; to delay; to stand around; and shall also include the colloquial expression “hanging around.”

(d) For purposes of this section, the term “known seller or buyer of sexual relations” means a person who within two years previous to the date of arrest or issuing of a notice to appear for violation of this section has, within the knowledge of the arresting officer, been convicted of violating any statutes of the State of Kansas or any other state or ordinances of the City of Wichita, Kansas, or of any other city defining and punishing acts of soliciting, committing or offering or agreeing to commit the sale of sexual relations, buying sexual relations, or soliciting for immoral purposes.

(e) Any person who violates the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of not more than five hundred dollars or six months’ imprisonment or both such fine and imprisonment.

SECTION 6. Section 5.68.215 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Anti sex-trafficking emphasis area—Enhanced penalties. (a) The following described area of the city is designated to be an anti-sex trafficking emphasis area:

(1) An area bounded to the north at Twenty-First Street, on the east by Washington, on the south by Second Street, and on the west by Main Street, which becomes Park Place, which encompasses all areas within those parameters, including the property on both sides of each of the boundary streets.

(2) An area bounded to the north at Waterman, on the east by Washington, on the south by Forty-Seventh Street South, and to the west by Wichita, which encompasses all areas within those parameters, including the property on both sides of each of the boundary streets.

(3) An area bounded to the north by Thirteenth Street, on the east by Hillside, on the south by Second Street, and on the west by Cleveland, which encompasses all areas within those parameters, and including the property on both sides of each of the boundary streets.

(b) Any person who commits an unlawful act of the sale of sexual relations or a sale of sexual relations related act within the area set forth in subsection (a) is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than two thousand five hundred dollars or one year’s imprisonment, or by both such fine and imprisonment. Upon a first conviction of a violation of this section, the court shall impose a fine not less than two hundred dollars nor more than five hundred dollars, and a mandatory jail sentence of not less than five consecutive days nor more than six months’ imprisonment. Upon a second conviction of a violation of this section, the court shall impose a fine of not less than five hundred dollars nor more than one thousand dollars

and a mandatory jail sentence of not less than thirty consecutive days nor more than one year's imprisonment. Upon a third or a subsequent conviction of a violation of this section, the court shall impose a fine of not less than one thousand dollars nor more than two thousand five hundred dollars and a mandatory jail sentence of not less than ninety consecutive days nor more than one year's imprisonment. No person shall be eligible for probation or parole until serving the entire minimum sentence.

(c) For the purposes of this section, an unlawful act of the sale of sexual relations or a sale of sexual relations related act shall include the following sections of this code, and any amendments thereto: Sections 5.68.010 (the sale of sexual relations), 5.68.020 (buying sexual relations), 5.68.110 (soliciting for immoral purposes) or 5.68.210 (loitering for the purpose of solicitation). Prior convictions for promoting prostitution, prostitution, sodomy for hire, patronizing a person offering sodomy for hire, promoting sodomy for hire, patronizing a prostitute and sodomy shall be considered as unlawful acts of selling or buying sexual relations for the purposes of this section.

(d) For the purpose of determining whether a conviction is a first, second, third or subsequent conviction in sentencing under this section, it is irrelevant whether an offense occurred before or after conviction for a previous offense.

(e) The imposition of the fines established in subsection (b) herein shall be mandatory and the court shall not waive, remit, suspend, parole or otherwise excuse the payment thereof except that defendants who are in violation of this section due to their commission of an act in violations of Sections 5.68.010 (the sale of sexual relations), 5.68.110 (solicitation for immoral purposes) or shall be eligible to have such fines suspended by their agreement to enter and successfully complete a court-ordered program

of treatment and supervision. The court may also order that any defendant perform community service specified by the court but such an order shall be entered only after the court has required the defendant to file an affidavit of such defendant's financial condition as required by Section 1.04.210(e) of this code and amendments thereto, and the court has found from the information contained in the affidavit that the defendant is financially unable to pay the fines imposed herein.

(f) If any subsection, clause or provision of this section is for any reason held illegal, invalid or unconstitutional, such action shall not affect the remaining provisions of this section which shall remain valid to the extent possible.

SECTION 7. Section 5.68.218 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Failure to comply with mapping restrictions. (a) Whenever a defendant has been released on probation or parole from a conviction of the sale of sexual relations or a sale of sexual relations related act, the municipal judge may impose mapping restrictions upon such defendant. A mapping restriction prohibits the defendant from being in any area of the city that is mapped by the court. A copy of such mapped area shall be provided to the defendant, and shall be entered as a part of the court record and as a condition of the defendant's probation.

(b) Any person who is released on probation or parole upon a conviction of the sale of sexual relations or a sale of sexual relations related act who has been made subject to mapping restrictions by the court, and who, during the term of such defendant's probation or parole knowingly violates or knowingly fails to comply with said mapping

restrictions, shall be guilty of a misdemeanor, and upon conviction, shall be punished by a fine not to exceed two thousand five hundred dollars and by imprisonment of not more than one year, or by both such fine and imprisonment.

(c) For the purposes of this section, the sale of sexual relations or a sale of sexual relations related act shall include a violation of the following sections of this Code, and any amendments thereto: 5.68.010 (the sale of sexual relations), 5.68.020 (buying sexual relations), 5.68.110 (soliciting for immoral purposes) or 5.68.210 (loitering for the purpose of solicitation).

SECTION 8. The original of Sections 5.68.010, 5.68.020, 5.68.030, 5.68.110, 5.68.170, 5.68.180, 5.68.190, 5.68.210, 5.68.215 and 5.68.218 of the Code of the City of Wichita, Kansas, are hereby repealed.

SECTION 9. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper.

PASSED by the governing body of the City of Wichita, Kansas, this 13th day of August, 2013.

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to Form:

Gary E. Rebenstorf
Director of Law