

CITY OF FLAGSTAFF STAFF SUMMARY REPORT



To: The Honorable Mayor and City Council
From: James B. Speed, (928) 779-7680
Flagstaff City Attorney's Office
Date: September 2, 2009
Meeting Date: September 15, 2009

Title: Consideration of Ordinance No. 2009-34: An ordinance amending Title 6, Police Regulations, Chapter 6-01, General Offenses, by repealing Section 6-01-001-0011, Prostitution.

Recommended Action:

At the Council Meeting of September 15, 2009: Read Ordinance No. 2009-34 by title only.
At the Council Meeting of October 6, 2009: Read Ordinance No. 2009-34 for the final time by title only and adopt.

ACTION SUMMARY:

As the Arizona Revised Statutes' comprehensive scheme for prohibiting and penalizing those individuals engaged in activities related to prostitution, Chapter 32 of A.R.S. Title 13, precludes a local municipality from enacting legislation in the same field, Flagstaff City Code Section 6-01-001-0011, Prostitution, as written, is preempted. This ordinance is put forward as part of an ongoing effort by the City Attorney's Office to remove or update those archaic, obsolete and ineffective ordinances currently found within the Flagstaff City Code.

DISCUSSION:

Background/History:

Flagstaff City Code 6-01-001-0011, Prostitution, contains two separate though closely related prohibitions. The first, Subsection A, House of Prostitution, makes it unlawful "for any person to keep, maintain or run any house of ill fame or house of prostitution for the purpose of assignation or prostitution at any place within the corporate limits. (Ord. 194, 11-20-16)." The second, Subsection B, Prostitution, makes it unlawful for "any person to pursue or advertise in any manner her vocation as a prostitute or for any person to advertise the profession of a prostitute or solicit for a prostitute. (Ord. 160, 6-15-14)." As the citation at the end of Subsection A makes clear, this provision was adopted by the Common Council of the Town of Flagstaff on November 20, 1916 and was the 194th ordinance adopted after Flagstaff's incorporation as a town in May, 1882.

Subsection B, which makes it illegal for an individual to pursue or advertise the profession of a prostitute, or solicit the same, is attributed to Ordinance No. 160, which was passed by the Town Council of Flagstaff on June 15, 1914. However, the language of F.C.C. 6-01-001-

0011(B) is not present in that or any other City or Town ordinance related to prostitution. The language of this subsection appears to have been incorporated into the City Code with the adoption of the "Municipal Code of the City of Flagstaff, 1960" in October, 1960. The language of 6-01-001-0011(B) is identical to that of an ordinance that made its first appearance in the 1960 Code: 6-1-49, Prostitution. It appears that a transcription or other clerical error is responsible for the attribution of 6-01-001-0011(B) to Ordinance No. 160.

In 1978 the Arizona Legislature enacted a statewide scheme for the prohibition and penalization of prostitution within the State, amending and codifying all previous statutes related to prostitution into Chapter 32 of Title 13, Arizona Revised Statutes. In regard to the present inquiry, both provisions of F.C.C. 6-01-001-0011 are currently addressed by State statute. Subsection A, which makes it illegal for an individual to "maintain or run any house of ill fame or house of prostitution for the purpose of assignation or prostitution," is covered by A.R.S. § 13-3208, Keeping or Residing in House of Prostitution; Employment in Prostitution. That statute makes it a class one misdemeanor for an individual to knowingly be an employee "at a house of prostitution or prostitution enterprise," or a class five felony for those persons who knowingly operate or maintain "a house of prostitution or prostitution enterprise." Subsection B, which prohibits a person from advertising the profession of a prostitute, or soliciting the same, is addressed by A.R.S. § 13-3201, Enticement of Persons for Purpose of Prostitution. It states "[a] person who knowingly entices any other person into a house of prostitution, or elsewhere, for the purpose of prostitution with another person, is guilty of a class 6 felony." As a result of the State Legislature enacting statutes prohibiting the keeping or running of a house of prostitution as well as enticing persons for the purpose of prostitution, the City is preempted from legislating in this area. It should be noted that A.R.S. § 13-3214(B) states that "[t]his section does not prohibit cities or towns from enacting and enforcing ordinances to suppress and prohibit prostitution" so long as they provide for a punishment "at least as stringent as provided in this section." However, this reference is only to the prohibition on prostitution found within that specific section, A.R.S. § 13-3214(A), Prostitution, which makes it "unlawful for a person to knowingly engage in prostitution." As neither of the two provisions of F.C.C. 6-01-001-0011 prohibit prostitution per se, limiting their scope to keeping a house of prostitution and pursuing or advertising one's profession as a prostitute, the State Legislature's invitation to municipalities to enact legislation in the area of prostitution cannot be extended to include the provisions of F.C.C. 6-01-001-0011.

Key Considerations:

Should Council vote to repeal this ordinance Flagstaff Police Officers will be alerted and instructed that they should begin to cite the applicable A.R.S. statute when they observe a person keeping, maintaining or running any "house of ill fame or house of prostitution" or any person pursuing or advertising "her vocation as a prostitute," or any individual soliciting for a prostitute.

The Police Department has reviewed this Staff Summary and Ordinance and is in favor of repealing F.C.C. 6-01-001-0011.

Community Benefits and Considerations:

Removing superfluous sections from the Flagstaff City Code results in a clearer, more accessible code.

Community Involvement:

The proposed Ordinance and Staff Summary will be posted in accordance with law, and interested persons are invited to comment at the City Council meetings at which the Ordinance will be under consideration.

Financial Implications:

As a violation of A.R.S. § 13-3208(B) constitutes a class 6 felony, individuals knowingly operating a house of prostitution or a prostitution enterprise will be cited into the Coconino County Superior Court. Under F.C.C. 6-01-001-0011(A) a person maintaining a house of prostitution was guilty of a class one misdemeanor and was cited into the Flagstaff Municipal Court. A class one misdemeanor's maximum fine is \$2500.00 plus surcharges. As a result, the City is unable to collect a fine from those individuals found guilty of maintaining a house of prostitution. However, as those persons knowingly employed at a house of prostitution or prostitution enterprise, A.R.S. § 13-3208(A), are guilty of a class one misdemeanor, the City will continue to impose and collect fees related to this offense. A.R.S. § 13-3201, Enticement, which preempts F.C.C. 6-01-001-0011(B), Prostitution, is a class 6 felony and results in charges being filed in the Coconino County Superior Court.

Options and Alternatives:

1. Do not adopt Ordinance No. 2009-34.
2. Revise F.C.C. 6-01-001-0011, Prostitution, to prohibit individuals from engaging in prostitution and provide penalties in conformance with A.R.S. § 13-3214(D).

Attachments/Exhibits:

Ordinance No. 2009-34



Division Director *(Acknowledgment that all reviews have been completed and required approvals initialed below.)*

| INITIALS | RESPONSIBILITY | DATE | INITIALS | RESPONSIBILITY | DATE |
|------------|-----------------------------------|-----------------|----------|-------------------------------------|------|
| <u>JBS</u> | BIDS/PURCHASES GRANTS LEGAL | <u>9/2/2009</u> | | FINANCE/BUDGET CONTRACTS IGAS | |

DATE OF COUNCIL APPROVAL:

ORDINANCE NO. 2009-34

AN ORDINANCE AMENDING TITLE 6, POLICE REGULATIONS, CHAPTER 6-01, GENERAL OFFENSES, BY REPEALING SECTION 6-01-001-0011, PROSTITUTION.

WHEREAS, Flagstaff City Code 6-01-001-0011, Prostitution, containing two provisions dating from 1916 and 1960, prohibits an individual from keeping or maintaining a house of prostitution and from pursuing or advertising the profession of a prostitute; and

WHEREAS, In 1978 the Arizona Legislature enacted a statewide scheme for the prohibition and penalization of prostitution within the State, amending and codifying all previous statutes related to prostitution into Chapter 32 of Title 13, Arizona Revised Statutes, thereby preempting the City from legislating in this field.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:

SECTION 1. That Section 6-01-001-0011, PROSTITUTION, is hereby repealed.

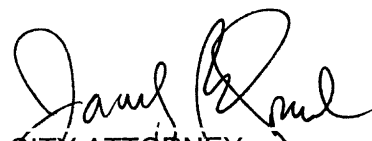
PASSED AND ADOPTED by the City Council and approved by the Mayor of the City of Flagstaff this day of , 2009.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:


CITY ATTORNEY