

ORDINANCE NO. 10-14

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, AMENDING CHAPTER 42 OF THE CODE OF ORDINANCES ENTITLED "MISCELLANEOUS OFFENSES" BY AMENDING SECTION 42-9 TO REVISE DEFINITIONS AND PROVIDE FOR AN EXEMPTION FROM THE NUDITY PROHIBITION IN AREAS SPECIFICALLY DESIGNATED FOR THAT PURPOSE BY RESOLUTION OF THE CITY COMMISSION; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City Commission finds that updated regulations consistent with ~~the exception provided by~~ Florida Statute section 800.03 would promote the health, safety and welfare of the citizens of Key West;

~~WHEREAS, the intent of this ordinance is to protect and preserve the health, safety and welfare of the people of Key West by prohibiting any person from appearing nude in a public place, subject to an exception for those areas set aside for such purpose.~~

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF KEY WEST, FLORIDA:

Section 1: That Section 42-9 of the Code of Ordinances is hereby amended as follows*:

Sec. 42-9. Nudity; body painting.

(a) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Nude or Nudity means the exposure of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering or the exposure of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple. ~~A mother's breastfeeding of her baby does not violate this section.~~

Public place means any place where the conduct may reasonably be expected to be viewed by others ~~and an individual does not have a constitutionally protected expectation of privacy. However, any private property enclosed by a fence or wall of a height of six feet or higher shall not be considered to be a public place.~~

(b) Prohibited conduct. No person shall ~~sunbathe, bathe, wash, or swim in any bay, lake, pond, pool, bight, ocean, gulf, beach or public place within the city, being~~ be nude in a public place in a state of nudity or insufficiently clothed to prevent improper exposure of his or her person in a public place.

(c) Body painting. No person in a public place shall paint all or a portion of a human body that is in a state of nudity or partial nudity. Body painting establishments shall be screened from public view. During the week of Fantasy Fest (the preceding Monday through the Saturday of the parade), a person who has had his or her body painted shall not be considered nude, provided that such person not display genitalia or the pubic area in a public place. Body paint shall not be deemed to clothe or cover

genitalia or the pubic area. This body painting exception to the nudity prohibition is applicable only to a person who is located within the boundaries of a "Fantasy Zone," the area designated by the city for the primary Fantasy Fest activities. For the purposes of this section, the meaning of "body painting" shall include "airbrushing."

(d) Exemption. Notwithstanding the provisions of sections (a) - (c) above, the City Commission may by Resolution ~~or Ordinance~~ provide or set apart a public place specifically permitting nudity.

*(Coding: Language added prior to first reading is underlined; Language added at first reading is double underlined; Language added at second reading is underlined with bold dashes ; language deleted prior to first reading is ~~struck through~~; language deleted at first reading is ~~double struck through~~.)

Section 2. If any section, provision, clause, phrase, or application of this Ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, the remaining provisions of this Ordinance shall be deemed severable therefrom and shall be construed as reasonable and necessary to achieve the lawful purposes of this Ordinance.

Section 3. All Ordinances or parts of Ordinances of said City in conflict with the provisions of this Ordinance are hereby

superseded to the extent of such conflict.

Section 4. This Ordinance shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Read and passed on first reading at a regular meeting held this 18th day of May, 2010.

Read and passed on final reading at a regular meeting held this 15th day of June, 2010.

Authenticated by the presiding officer and Clerk of the Commission on 2 day of August, 2010.

Filed with the Clerk August 2, 2010.



CRAIG CATES, MAYOR

ATTEST:



CHERYL SMITH, CITY CLERK