

ORDINANCE NO. 14-11

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, AMENDING CHAPTER 18, OF THE CODE OF ORDINANCES ENTITLED "BUSINESSES" BY ADDING ARTICLE XIII SECTION 18-701 THROUGH 18-707, ENTITLED "COSMETICS" TO ESTABLISH REQUIREMENTS AND PROCEDURES TO APPLY FOR AND OBTAIN A PERMIT AND FOR VIOLATIONS AND REVOCATION OR SUSPENSION OF A PERMIT; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City Commission finds that the proliferation of cosmetic cream businesses within the tourist area of the City of Key West that employ aggressive sales tactics creates a severe negative impact on the image of the City of Key West; and

WHEREAS, the customers who are targeted largely involve tourists who are not visiting long enough to take advantage of predatory return policies; and

WHEREAS, numerous complaints have been lodged by tourists and visitors indicating questionable and aggressive sales tactics; and

WHEREAS, the City Commission of the City of Key West finds that the proposed regulation meets the minimum scrutiny constitutional test in that the proposed regulation is rationally related to meet a legitimate governmental interest.

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

Section 1: That Chapter 18, Article XIII of the Code of Ordinances is hereby added to the Code of Ordinances as follows*:

ARTICLE XIII. COSMETICS.

Sec. 18-701. Definitions.

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

Cosmetic retailer means any business that offers for sale cosmetic products in an amount over \$75.00 U.S. Dollars, or who offers cosmetic product samples wherein said samples are applied on customers in any form, with or without an associated fee.

Customer means any person entering upon the business premises of or engaging in discussion with a cosmetic retailer

*(Coding: Added language is underlined; deleted language is ~~struck through~~ for first reading; Added language is double underlined; deleted language is ~~double struck through~~ for second reading.

for the purpose of inquiring about cosmetics offered for sale, sampling, or negotiating a purchase, or actual purchasing cosmetics held for sale by a cosmetics retailer.

Historic District shall mean all property located within the following zoning districts of Key West: HRO, HRCC-1, HRCC-2, HRCC-3, HRCC-4, HMDR, HHDR, HNC-1, HNC-2, HNC-3, HCT, HCL, HPS, HPS-1 and HPRD.

Permit holder means cosmetics retailer.

Sec. 18-702. Permit required.

Any cosmetics retailer offering cosmetics for sale or sampling to a customer as defined herein within the historic district, must obtain a permit from the city manager or his designee prior to engaging in the business of selling cosmetics or offering cosmetics as samples.

Sec. 18-703. Cosmetics permit required; inspection; fee.

(a) No cosmetics retailer shall engage in the retail sale of cosmetics or the offering of samples of any sort within the historic district without first obtaining a permit from the city manager or his designee. The code enforcement office shall

inspect the premises where retail sale of cosmetics or the offering of samples is to be performed to ensure compliance with section 18-704 prior to issuance or renewal of the permit. The permit required under this section shall be in addition to any license required under article IV of chapter 66 [section 66-86 et seq.].

(b) The permit fee shall be \$200.00 for each premises where retail sale of cosmetics or the offering of samples is to be performed. If a re-inspection is required, the city may charge a re-inspection fee of \$50.00. This permit must be renewed on an annual basis each October 1. Failure to timely renew this permit shall constitute a violation of this section punishable pursuant to section 18-706.

Sec. 18-704. Requirements for obtaining permit.

(a) Any applicant for a cosmetic retail permit must provide the following information:

(1) Business name, as used for advertising.

(2) Business owners, including all corporate officers, stockholders (if a closely-held corporation), members (if a limited liability company), and general and limited partners (if a partnership).

(3) Business location and phone number.

(4) Business tax receipt number (the proposed permit holder must be the same person or entity as the business tax receipt).

(5) A listing of other similar businesses owned or operated by applicant.

(6) The name of the registered agent.

(7) The Federal Employer Identification Number.

(b) In addition the applicant shall:

(1) Display the business name and numbered street address of the business, in letters and/or numbers not less than five inches in height, on or above the entrance of the business or in a window adjacent to the entrance of the business.

(2) Post in plain view (unobstructed, at eye level) at each cash register, on cardboard or other similar material with one-half-inch block style letters, two signs issued by the licensing official which read as follows:

CITY ORDINANCE REQUIRES A WRITTEN STATEMENT OF COST PRIOR TO COMMENCEMENT OF THE SALE OF COSMETICS, THE OFFERING OF SAMPLES, THE APPLICATION OF COSMETIC SAMPLES, AND THE RETURN, EXCHANGE & REFUND POLICY:

IF YOU HAVE A DISPUTE WITH THIS ESTABLISHMENT ABOUT
THE PRICE OF YOUR PURCHASE, CONTACT KEY WEST CODE
ENFORCEMENT AT (305)809-3740 OR THE KEY WEST POLICE
DEPARTMENT AT (305)809-1111 FOR ASSISTANCE.

These notices shall appear in English, Spanish, French,
Japanese, German and Italian.

Sec. 18-705. Requirements of permit holder.

Any permit holder must:

(1) Maintain conditions set forth in section 18-704; and
(2) Clearly display each cosmetic item offered for sale with
each item bearing a sale price posted directly on the item. For
services, a description of the service with the associated price
posted in a location at the cash register and at the location
where the service is actually rendered within the establishment
plainly visible to patrons, in letters not less than two inches
in height. If the item is free or part of a discounted offer,
then a statement to this effect shall both be displayed in the
store and affixed to each applicable item or description of
service.

(3) No permit holder shall commence or initiate the
application of cosmetic samples in any form for a customer
without first furnishing to the customer a written statement

showing the final total cost of the item or service to be purchased by the customer. The statement shall clearly delineate the cost of each cosmetic item, the cost of the application of cosmetics for each item, and the total cost to the customer. These shall be available to customers printed in six languages: English, French, German, Italian, Spanish and Japanese. The statement shall be provided in full detail on a form substantially identical to the following content:

[NAME OF STORE]			
[ADDRESS OF STORE]			
ORDER OF COSMETICS/SERVICES			
Description of Item or Service to be purchased	Cost of Item	Cost of Service	Subtotal Cost (including Items and Service or Labor)
The total at the bottom of the page is the total cost of your purchase in American dollars. Signature of Buyer: _____ Date: _____			Subtotal: \$ _____ Sales Tax of (7½%) \$ _____ TOTAL: \$ _____

(5) Threats of arrest or prosecution to induce a sale are prohibited. No permit holder shall threaten a customer with arrest or criminal prosecution when the customer refuses to purchase a cosmetic item or service from the retailer because of a dispute over price, quality of work, or other terms of sale in order to induce or force the customer to purchase the cosmetic or service.

(6) The permit holder shall issue to every customer a cash register receipt for each sale of cosmetics or services.

Sec. 18-706. Violations.

A violation of this article is subject to enforcement either pursuant to section 1-15 or pursuant to the code enforcement authority of the special master in sections 2-633 and 2-634. Any violation of this article shall also be considered an unfair or deceptive act or practice as contemplated by F.S. § 501.204. All remedies provided by Florida's Deceptive and Unfair Trade Practices Act (F.S. § 501.201, et seq.) shall be available for any violation of this article. Any such remedy shall be cumulative and in addition to all other remedies provided herein or available at law or equity.

Sec. 18-707. Revocation or suspension of permit.

(a) If a permit holder is found in violation or admits to a violation of this article, the city manager may conduct a permit suspension or revocation hearing, as applicable. The permit holder shall be afforded due process. The city manager may impose a permit suspension or revocation as follows:

(1) One violation: up to 30 days' suspension.

(2) Two violations: up to 60 days' suspension.

(3) Three or more violations: up to a year's suspension or revocation of the permit.

(b) Before reaching any decision under subsection (a) of this section, the city manager shall:

(1) Afford the permit holder a reasonable opportunity to be heard.

(2) Consider the permit holder's past record of compliance with this article and with the entire Code.

(3) Consider the seriousness of the violation.

(c) The city manager's decision to suspend or revoke shall be issued in writing and shall inform the permit holder of his right to appeal to the city commission by filing a written appeal with the city clerk within ten days of receipt of the notice. No permit holder shall engage in cosmetic sales or

services while his or her permit is suspended or revoked, nor shall the permit holder display for sale any cosmetic time or service during the period of suspension or revocation. The city manager or his designee may post the exterior of the property notifying the public of the violation hereunder.

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 3 day of June, 2014.

Read and passed on final reading at a regular meeting held
this 17 day of June, 2014.

Authenticated by the presiding officer and Clerk of the
Commission on 18 day of June, 2014.

Filed with the Clerk June 18, 2014.

Mayor Craig Cates	<u>Yes</u>
Vice Mayor Mark Rossi	<u>Absent</u>
Commissioner Teri Johnston	<u>Yes</u>
Commissioner Clayton Lopez	<u>Yes</u>
Commissioner Billy Wardlow	<u>Yes</u>
Commissioner Jimmy Weekley	<u>Yes</u>
Commissioner Tony Yaniz	<u>Yes</u>


CRAIG CATES, MAYOR

ATTEST:


CHERYL SMITH, CITY CLERK

OFFICE OF THE CITY ATTORNEY



PHONE: (305) 809-3770

FAX: (305) 809-3774

THE CITY OF KEY WEST

POST OFFICE BOX 1409
KEY WEST, FL 33041-1409
WWW.KEYWESTCITY.COM

EXECUTIVE SUMMARY

To: The City Commission for the City of Key West

From: Ron Ramsingh, Assistant City Attorney

Date: March 11, 2014

RE: Proposed ordinance revision to regulate cosmetic cream businesses in the historic district

Action statement:

A proposed ordinance revision to include cosmetic cream shops in the realm of regulations that govern t-shirt shops, contractors, mobile vendors, recreational rental vehicles, alcohol sales, pawnbrokers, and peddlers. This revision is being proposed by Commissioner Weekley.

Background:

The city has received numerous complaints concerning customers of cosmetic cream shops along Duval St. falling victim to predatory sales tactics and being charged exorbitant amounts of money for services that they did not expressly acquiesce to, and the sales of products for which the price was not fully disclosed prior to purchase. Further, the typical exchange policies not allowing for exchanges (if at all) within 14 days of purchase makes it practically impossible for a short term visitor to refund their purchase if they realize that their purchase was not what was represented. This proposal does not infringe on a business owner's right to set their own rates for products or services on the free market or prescribe a particular return policy. The ordinance only applies to higher end sales and services over \$75.00 in the historic district. This ordinance merely requires such cosmetic retailers in the historic district to fully inform its patrons of the costs of the goods and services in multiple languages in unambiguous terms in order to have

fully informed customers prior to purchase. This ordinance is nearly identical to the ordinance that was adopted in 1993 concerning t-shirt shops (custom made wearing apparel ordinance).

Options:

1. To pass the proposed ordinance revision, thereby requiring cosmetic cream retailers operating in the historic district to fully inform their customers of the prices for goods and services prior to purchase.
2. To fail the proposed revision and thereby continue to allow cosmetic cream retailers to operate in Key West without a requirement to fully advise customers of prices for goods and services.

Reccomendation:

To pass the proposed revision

February 27, 2014

**Mr. James Young
SR. Manager-Code Compliance
P.O. Box 1409
Key West, FL 33041**

Dear Mr. Young,

I am writing to you to complain about a business in Key West. I obtained your name from a newspaper article appearing in the *Key News*, dated July 6, 2013. The article referred to Vine-Vera store downtown Key West and the problems going on.

The week of February 17, 2014, the wife and I visited your great town. When we were walking down Duval Street, my wife was taken into store of Vine Vera at 408 Duval Street, by their representative "Joshua". I stood outside for a long period of time while my wife was being waited on. As I was standing there, one of the other reps (in a white shirt) made a very derogatory statement that offended me.

I went into the store to get my wife out, but it was too late as she was signing the credit card statement. I did ask Joshua, what the return policy was, he said, " 100% return of unopened items."

After that we walked down the street to have lunch, at which time my wife noticed something bothering me. After probing I explained to her what had happened. She was irate and went back to the store to return the merchandise. When she got there, Joshua told her "No Refunds".

The bottom of our receipt says, "No Returns or Exchanges WITHIN 14 days. I will be going after my refund on day 15. (Copy attached).

In my research I contacted your Business License Office, which they provided me information, but the Business name doesn't jive with Vine Vera. I found no listing for this business on State of Florida Secretary of State website for Corporate/LLC searches. I question even if they are licensed to do business in your city or state. Again they are located at 408 Duval St., Key West FL 33040.

I have attempted to call the phone numbers provided, with no response yet.

I am not asking you to get my money back, I am alerting you to a business in your town that is not representing the best interest of Key West. They are aggressive, deceptive, believe they are working both sides of the street. They do not know their own policies are make them up as they go along, they are promising anything to get the order. They are unethical.

In addition, they do not have their company name on receipt, phone number is corporate office which isn't very responsive either. I will be discussing the matter with my credit card company.

What you can do is maybe provide me the true business name, contact information to pursue my refund, and close this place down so other visitors to your city don't get hurt by these people. If you are not the correct person I need to contact, let me know who is.

For reference I am enclosing a enlarged copy of my sales receipt, and copy of article from Key West News of July 6, 2013. From article it appears this company has moved down the street

This was our second trip to Key West, and the only thing that ruined it was passing by the Vine Vera store at 408 Duval Street.

Thank you very much

Sincerely,



**Richard & Marigold Black
5806 Delor St.
ST. Louis, MO 63109
(314) 660-7587
Email: rb2372848bc@gmail.com**

**Cc: Copy (enlarged)- Sales receipt
Newspaper article- *KeyNews* – July 6, 2013
Copy- email to/from Key West City License Bureau**

new location

new location

408 duval st
Florida 33040
1-877-554-1777

Invoice #: 2257

Date: Monday, 17 February 2014 4:48 PM

Product	Quantity	Price
eye serum ID-2	1	\$296.00
		*Discount : -\$71.00
		\$225.00
eye serum ID-2	1	\$296.00
		*Discount - \$296.00
		\$0.00
refining peeling ID-8	1	\$146.00
		*Discount : -\$146.00
		\$0.00

Total Discount - 69.51% \$513.00

Subtotal: \$225.00
Tax: \$16.88
Total: \$241.88

Payment Method(s)

Credit Card

Auth.net - MasterCard

\$241.88

Swipe - XXXX-1690

XXXXXXXXXXXX005028

Transaction# 59339766075

Your sales representative
josh

Thank you for shopping with us! Come back again
with this receipt to enjoy special promotions for
returning customers!

No Refunds. Exchanges will in 14 days

Tourist claims gouging

Saturday, July 6, 2013

Store already paid one fine

BY ADAM LINHARDT Citizen Staff

alinhardt@keysnews.com

A Duval Street store recently cited for breaking city code laws is already back under code enforcement review after a tourist complained she was ripped off.

City of Key West Code Enforcement fined Vine Vera, 102 Duval St., \$500 on June 26 along with a \$4,500 suspended fine with the stipulation that the store would be forced to pay that larger amount if they violated again within 24 months, said Code Compliance Manager Jim Young.

Four days later, tourist Cathy Ann Kromm, Baltimore, Md., filed a police report accusing three store employees overcharged her \$547 for facial creams, according to a code enforcement report.

Officers described the incident as a civil matter and no criminal charges have been filed.

Kromm declined to comment when reached by phone in Maryland.

In the report, though, Kromm said Vine Vera manager Anni Cohen was standing in front of the store and told her about some free samples while two other male employees came out and "escorted" her inside, reports say.

While inside, the men described various facial creams ranging from \$1,500 to \$3,000 while also describing their 80 percent discount and providing her with "free samples," the report states.

"Kromm said everything was confusing," the report states. "Kromm didn't realize the cost would be \$547 for the service they provided and the product she bought. Kromm said she didn't realize until she left the store how much they charged on her credit card."

Officers also noted that employees of a nearby art gallery told them, "People complain all the time about that store and they were not surprised about the incident," the report states.

In an email response to The Citizen, store manager Cohen said the owner told her there was never any complaint from the customer.

"He tried to contact the lady that filed the report to offer her a refund, as well as see what went wrong because she seemed to be happy when she left and she did pay willingly for the products," Cohen wrote. "He says she didn't know what he was talking about. She is from Baltimore and wasn't in Key West."

Attempts to identify and reach the owner independently of Cohen were not successful. The

store's name did not come up on the state's corporations database.

Kromm's complaint drew the interest of Young, who is now scheduling a second code hearing before code enforcement judge, Jeff Overby.

"There's been about four of these facial creme stores pop up on Duval Street overnight and I contacted the Florida Department of Business and Professional Regulation and I was told if it was just facial creme, it's not considered cosmetology and these business don't need a state (cosmetology) license, is what I was told," Young said. "I spoke to (Kromm) and she is willing to come back to Key West to testify at the code hearing."

Young likened Kromm's complaint to the practices of some T-shirt shop owners and employees in the early 2000s when the city cracked down on the businesses overcharging customers for customized T-shirts.

A city ordinance requires all shop workers to give customers written estimates of how much a custom T-shirt will cost before charging them.

"These type of cases give the city a black eye and hurts honest merchants," Young said. "As soon as we started receiving complaints we took action. I know other merchants told her to contact police."

alinhardt@keysnews.com

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COMPLIMENTARY TREATMENT.

This card entitles you to a complimentary Red Wine Resveratrol Treatment. The Red Wine Resveratrol treatment is packed with protective and nourishing antioxidants, vitamins and other beneficial nutrients for healthy, youthful and glowing skin.

Instantly hydrating, protect against signs of aging such as environmental damage, lines, wrinkles and loss of elasticity.

Name

Appointment date

Time

Specialist

Josina

Invoice # 2257

www.vinevera.com



408 Duval Street

Richard Black <rb2372848bc@gmail.com>
To: cwalker@keywestcity.com

Tue, Feb 25, 2014 at 4:23 PM

I was trying to find out the Business Name of company at 408 Duval Street in downtown key West. The business sells Vine Vera Cosmetic products.

We were recently there on vacation and wanted to further contact them.

Enjoyed our visit!

I live in St. Louis, MO

If you can help let me know.

Thanks

Richard Black
rb2372848bc@gmail.com

Carolyn Walker <cwalker@keywestcity.com>
To: Richard Black <rb2372848bc@gmail.com>

Wed, Feb 26, 2014 at 7:00 AM

This is the business we show licensed at that location.

Business control 20686 Updated: 02/14/14 by KEYWCAW

Business name & address Mailing address

LIFE IN PARADISE 408 DUVAL ST

408 DUVAL ST KEY WEST FL 33040

KEY WEST FL 33040

License number : 14 00026236

Appl, issue, expir . . . 102213 102213 93014

License status (F4) AC ACTIVE

Classification (F4) . . 11C RETAIL/MAILORDER/WHSALE 2,001-5,000 SF

Exemption (F4)

License comments CLOTHING, ACCESSORIES, SOUVINERS

License restrictions

OL100U01 THE CITY OF KEY WEST - OL 2/26/14

 Business File Maintenance 07:57:46

Type information, press Enter.

Business control number .: 20686 408 DUVAL ST

Location ID 22389 KEY WEST FL 33040

Business status A A=Active, I=Inactive

Business name LIFE IN PARADISE

 408 DUVAL ST

Address 2

Zip code (F4), delivery pt . . 33040 KEY WEST FL

Date opened, contractor 2182011 Y=Yes

Federal tax ID number 200948947

Type of ownership (F4) CP CORPORATION

Type of business (F4)

Business, secondary phone/type (F4) . 786 3902007

Email address

786 390-2007

From: Richard Black [mailto:rb2372848bc@gmail.com]
Sent: Tuesday, February 25, 2014 5:24 PM
To: cwalker@keywestcity.com
Subject: 408 Duval Street

[Quoted text hidden]