



THE CITY OF KEY WEST

Executive Summary

To: Jim Scholl, City Manager
Cc: Greg Veliz, Assistant City Manager
From: Jim Young, Director of Code Compliance
Date: December 12, 2017
Subject: Amendment to Cosmetic Retailer Ordinance

Action statement:

This measure proposes to amend Chapter 18 titled Business, Article XIII Cosmetics, Section 18-705 (3) titled Requirements of Permit Holder and Section 18-707 titled Revocation or Suspension of Permit.

Background:

On April 26, 2017 at the Code Compliance Hearing the attorney for a cosmetic retailer that had been cited as a repeat offender argued that the language in the ordinance was vague. The Ordinance currently states; 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 attorney argued that what the Ordinance requires is that the cosmetic retailer should know ahead of time what the customer will be purchasing, which is not possible. The Special Magistrate dismissed the case and opined if the Ordinance stated; 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, then there would have been a violation.

Since the Cosmetic Ordinance was enacted Code Compliance has experienced an increase in complaints and violations of the Off-Premises Canvassing, (OPC), Ordinance. The Cosmetic Ordinance was established on June 17, 2014 and Code Compliance has received or observed a total of forty-six, (46), complaints or violations, of the OPC Ordinance, fifteen, (15), of which have been from cosmetic establishments, which is close to 33%.

Options:

1. To approve the proposed ordinance revisions which will eliminate the ambiguity in the current Ordinance and provide for a nexus for a proactive effort to ensure compliance with the OPC Ordinance.
2. To defeat the proposed ordinance amendments.

Recommendation:

To approve the proposed ordinance revisions.

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.

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, or is found in violation or admits to a violation of Article VIII Off-Premises Canvassing 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.