

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, AMENDING CHAPTER 18 OF THE CODE OF ORDINANCES, ENTITLED "BUSINESSES" BY CREATING ARTICLE XV TITLED "OBSCENE MATERIALS", DIVISION 1, ENTITLED "DISPLAY OF OBSCENE MATERIALS"; CREATING SEC 18-800 TITLED "INTENT"; CREATING SEC 18-801 ENTITLED "DEFINITIONS"; CREATING SECTION 18-802 ENTITLED "REGULATIONS"; CREATING SEC 18-803 ENTITLED "PENALTIES"; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City Commission for the City of Key West has taken sworn public input at publicly noticed meetings and has identified sexually oriented merchandise that are on display in storefronts that are visible to the general public on city rights of way as community concern and a legitimate governmental interest to be regulated; and

WHEREAS, through public input and sworn testimony, it is the desire of the City Commission for the City of Key West to address this legitimate governmental interest through regulations that are narrowly tailored to address such interests. The City Commission further finds that requiring sexually oriented materials to be displayed in locations that are not visible from the public rights of way and not outright banning sales of such materials is the most narrowly tailored

solution to this legitimate governmental concern; and

WHEREAS, the City Commission does not wish to ban any sexually oriented materials from any stores. Rather, it is the desire of the City of Key West to protect minors and families from being subjected to the unwanted visual presentation of sexually oriented materials while otherwise traversing public rights of way without voluntarily entering stores that contain such materials; and

WHEREAS, it is not the intent of the City of Key West to stifle or otherwise prevent free speech, regulate profanity or vulgarity but to regulate obscene materials to the extent that the regulation only requires that passersby on public rights of way are not subjected to the visual presentation of such materials.

WHEREAS, The Judge Lester in the Circuit Court for the 16<sup>th</sup> Judicial Circuit granted an injunction in 89-935-CA-11 regarding obscene and vulgar t-shirts publicly displayed in a store on the 300 block of Duval Street, the City adopts and incorporates the Order granting the injunction as a basis for this valid and constitutionally defensible restriction on speech.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF KEY

WEST, FLORIDA:

**Section 1: That Chapter 18, Article XV, Division 1,  
Section 18-800 of the Code of Ordinances is hereby created as  
follows\*:**

Sec. 18-800 Intent

The City of Key West hereby finds and declares that juveniles  
are confronted on a daily basis by the public display and sale  
of merchandise which graphically depicts or describes sexual  
activities or organs in an indecent manner, and which is  
therefore inappropriate for their viewing. By adoption of this  
Article, it is the intent of the city to aid parents in the  
exercise of their primary responsibility for the health and  
welfare of their children and to help protect the physical and  
psychological well-being of juveniles by shielding juveniles  
from the harmful influences of exposure to such merchandise in  
businesses which are open to the general public. The "Whereas"  
clauses of this ordinance are incorporated herein and made a  
part thereto.

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\*(Coding: Added language is underlined; deleted language is ~~struck through~~ at first reading. Added language is double underlined and ~~double struck through~~ at second reading.)

**Section 2: That Chapter 18, Article XIV, Division 1, Section 18-801 of the Code of Ordinances is hereby created as follows\*:**

Sec. 18-801 DEFINITIONS

(1) Definitions. For purposes of this section, the following words and phrases shall have the following meanings:

(a) *Business operator* means any person who owns, leases, operates or manages or is employed by a business establishment.

(b) *Child or children* means any person under the age of 18.

(c) *Knowingly* means having general knowledge of, or a reason to know or a belief or grounds for belief which warrants further inquiry into the age of a person.

(d) *Merchandise* means, without limitation, any banner, button, clothing (including hats), figurine, game, greeting card, magnet, photograph, postcard, novelty item, poster, sculpture, souvenir, sticker, towel or similar item, whether or not the item is offered for sale.

(e) *Obscene* means the status of material which:

(i) The average person, applying contemporary community standards, would find, taken as a whole, appeals to the prurient interest;

(ii) Depicts or describes, in a patently offensive way, sexual conduct as specifically defined herein; and

(iii) Taken as a whole, lacks serious literary, artistic, political, or scientific value.

(iv) The breastfeeding of a baby shall not be considered Obscene in any circumstance.

(f) Sexually oriented merchandise means any merchandise which graphically depicts or describes human or animal sexual activities or bodily organs. This shall include any depiction or description, by pictorial representation or language, of any sexual intercourse; masturbation; sadomasochistic abuse; sexual penetration with an inanimate object; sodomy; bestiality; uncovered genitals, buttocks, or female breast; defecation or urination; covered genitals in an obvious state of sexual stimulation or arousal; or the fondling or other erotic touching of genitals, the pubic region, buttocks or female breasts.

**Section 3: That Chapter 18, Article XIV, Division 1, Section 18-802 of the Code of Ordinances is hereby created as follows\*:**

Sec. 18-802 Regulations

DISPLAY OF SEXUALLY ORIENTED MERCHANDISE

(2) Open display or sale to children unlawful.

(a) It shall be unlawful for any business operator to display obscene or sexually oriented merchandise unless such merchandise is confined to an area of the business establishment that is separate and enclosed so that the merchandise is inaccessible to and out of the view of children and cannot be viewed from outside the business establishment.

(b) It shall be unlawful for a business operator to knowingly sell obscene or sexually oriented merchandise to a child or to permit a child to enter the area where sexually oriented merchandise is displayed unless the child is accompanied by an adult parent, or legal guardian.

(3) Signage required. Any business owner who displays obscene or sexually oriented merchandise shall prominently display a clearly legible sign or signs as necessary to notify anyone entering an area where such merchandise is displayed that obscene or sexually oriented merchandise is displayed and that no one under the age of 18 may enter the area unless accompanied by a parent or legal guardian. Such sign shall have a white background with the text in block letters no less than one inch in height which shall be black in color.

(4) State and local law not superseded. This section shall not

be deemed to supersede or conflict with Ch. 847 of Florida Statutes or any adult entertainment ordinances in Ch. 122 of the Code of Ordinances.

**Section 4: That Chapter 18, Article XV, Division 1, Section 18-803 of the Code of Ordinances is hereby created as follows\*:**

Sec. 18-803 Penalty

Upon the effective date of this Article, there shall be a six-month amnesty period to educate businesses on the requirements of these regulations. Thereafter, a violator shall have one written warning of an offense. Any subsequent violations shall be prosecuted by the City of Key West pursuant to Ch.2, Article VI. Each item that violates this Article shall be deemed a separate violation. Each day of continued violation shall constitute a separate violation and offense.

Read and passed on first reading at a regular meeting held this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

Read and passed on final reading at a regular meeting held this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

Authenticated by the presiding officer and Clerk of the Commission on \_\_\_\_\_ day of \_\_\_\_\_, 2023.

Filed with the Clerk \_\_\_\_\_, 2023.

Mayor Teri Johnston  
Vice Mayor Sam Kaufman  
Commissioner Lissette Carey  
Commissioner Mary Lou Hoover  
Commissioner Clayton Lopez  
Commissioner Billy Wardlow  
Commissioner Jimmy Weekley

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TERI JOHNSTON, MAYOR

ATTEST:

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KERI O'BRIEN, CITY CLERK