

ORDINANCE NO. _____

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:

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

(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 _____ day of _____, 2014.

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

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

Filed with the Clerk _____, 2014.

Mayor Craig Cates	_____
Vice Mayor Mark Rossi	_____
Commissioner Teri Johnston	_____
Commissioner Clayton Lopez	_____
Commissioner Billy Wardlow	_____
Commissioner Jimmy Weekley	_____
Commissioner Tony Yaniz	_____

CRAIG CATES, MAYOR

ATTEST:

CHERYL SMITH, CITY CLERK