

ORDINANCE NO. 24-07

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 OR VULGAR 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 obscene, vulgar and sexually oriented merchandise that are on display in storefronts that are visible to minors and the general public on city rights of way as a 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 obscene, vulgar, or 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 outright ban any obscene, vulgar, or 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 obscene, vulgar, or 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, vulgar, and sexually oriented 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.

WHEREAS, The City Commission for the City of Key West hereby declares obscene, profane, and vulgar materials to be a public nuisance when visible from any public right of way by minors pursuant to Sec. 26-32(5) of the Code of Ordinances.

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. The City of Key West hereby further finds and declares that juveniles are confronted

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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.)



on a daily basis by the public display and sale of merchandise which graphically depicts profanity and vulgarity in and on storefronts that are visible to minors and that such content is harmful to minors. 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. The City of Key West incorporates the Order of Judge Ignatius Lester in in 89-935-CA-11 in the Circuit Court for the 16<sup>th</sup> Judicial Circuit regarding obscene and/or vulgar t-shirts publicly displayed in a store on Duval Street. The City adopts and incorporates the Order granting an injunction as a basis for this valid and constitutionally defensible restriction on speech. The City Commission for the City of Key West accepts, adopts and incorporates 54 pictures taken of material that is considered vulgar and obscene as described and defined herein and widely visible to minor passersby 24 hours a day, 7 days a week.



**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) Vulgar material means any grossly offensive language or pictorial representations of words printed on merchandise that is considered a public nuisance. Vulgar language includes words or expressions that are used to denigrate and insult one's racial or ethnic background, gender or sexual orientation. Vulgar material can also portray sexual or excretory organs or activities in a way that is patently offensive but does not meet the definition for obscenity.

(g) 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 Obscene, Vulgar, or Sexually Oriented Merchandise

(1) Open display or sale to children unlawful.

(a) It shall be unlawful for any business operator to display obscene, vulgar 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, vulgar 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, vulgar, 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, vulgar, 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 11th day of January, 2024.

Read and passed on final reading at a regular meeting held this 8th day of February, 2024.

Authenticated by the presiding officer and Clerk of the Commission on 9th day of February, 2024.

Filed with the Clerk February 9, 2024.

Mayor Teri Johnston	<u>Yes</u>
Vice Mayor Sam Kaufman	<u>Yes</u>
Commissioner Lissette Carey	<u>Yes</u>
Commissioner Mary Lou Hoover	<u>Yes</u>
Commissioner Clayton Lopez	<u>Absent</u>
Commissioner Billy Wardlow	<u>Yes</u>
Commissioner Jimmy Weekley	<u>Absent</u>

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TERI JOHNSTON, MAYOR

ATTEST:

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KERI O'BRIEN, CITY CLERK