

Meeting Date: 8/25/2015

Report Type: Consent

Report ID: 2015-00717

Title: Ordinance Amending Section 9.04.060 of the Sacramento City Code Relating to Public Nudity (Passed for Publication 08/18/15; Published 08/21/15)

Location: Citywide

Recommendation: Pass an Ordinance amending Sacramento City Code section 9.04.060 relating to public nudity.

Contact: Katherine Lester, Police Captain, Central Command, (916) 808-4500, Police Department

Presenter: None

Department: Police

Division: Central Command

Dept ID: 11001171

Attachments:

1-Description/Analysis

2-Background

3-Ordinance (Redline)

4-Ordinance (Clean)

City Attorney Review

Approved as to Form

Michael Fry

7/31/2015 4:24:30 PM

Approvals/Acknowledgements

Department Director or Designee: Sam Somers - 7/30/2015 10:10:56 AM

Description/Analysis

Issue: Multiple incidents have occurred where officers from the Sacramento Police Department encountered individuals on a public sidewalk or right of way who were nearly naked or their genitals were visible. The officers arrested the subjects, but the District Attorney was unable to prosecute since the incidents did not meet the criteria under state law for lewd conduct or the City of Sacramento's ordinance regarding public nudity. Section 9.04.060 of the Sacramento City Code is only applicable to nudity in public parks, playgrounds, beaches or adjacent waterways. The current ordinance is inapplicable to nudity on streets, sidewalks, or private property visible from the public right of way. State law does not regulate public nudity or otherwise make it a criminal offense to be observed naked while in public. To constitute a criminal offense under state law, an individual must be nude coupled with some type of lewd, obscene, or indecent exposure pursuant to Penal Code section 314. Consequently, local municipalities have the ability to regulate situations of persons appearing, disrobing, or otherwise being observed naked in public.

Policy Considerations: The City Council has a long history of supporting policies that protect its residents from quality of life crimes that threaten the health, morals, safety, comfort, convenience, and/or welfare of the community.

Economic Impact: None.

Environmental Considerations: Not applicable.

California Environmental Quality Act (CEQA): This proposal does not constitute a "project" and is therefore exempt from the CEQA process, per Sections 15061(b)(3) and 15378(a) of the CEQA Guidelines.

Sustainability Considerations: Not applicable.

Commission/Committee Action: On May 12, 2015, the Law and Legislation Committee reviewed the proposed ordinance and approved the item for forwarding to the City Council.

Rationale for Recommendation: Local municipalities have the ability to prohibit persons from appearing, disrobing, or otherwise being observed naked in public. The City of Sacramento has a long standing commitment to ensuring its residents are not subject to conduct that is considered alarming or offensive to individuals in public places. The proposed amendment will expand the scope of the existing ordinance by instituting a more comprehensive definition of prohibited activities concerning nudity in public places and upon private property that is visible from the public right of way.

Financial Considerations: There is no financial impact associated with implementing the proposed amendment.

Local Business Enterprise: Not applicable.

Background

Public nudity laws are often classified with public nuisance laws to address quality of life crimes that annoy, offend, or endanger the comfort, health, safety or public peace. The current City ordinance concerning nudity (Section 9.04.060) is limited in its application to certain locations of public property. For example, an individual could be nude on the sidewalk in front of Cesar Chavez Park while children are present and to most people, it would be considered offensive or socially repugnant, yet it would not be a crime unless the individual stepped off the pavement and onto park grounds, or simultaneously engaged in lewd or sexually gratifying behavior.

Multiple incidents have occurred when officers from the Sacramento Police Department contacted individuals upon the sidewalk or public right of way who were almost completely naked or where their genitals were visible. Neither individual could be charged under state law with indecent exposure (Penal Code section 314.1) because they did not willfully expose their genitals, make sexual comments, or do anything that would be considered to have lewd intent or sexually gratifying behavior. Since the existing City ordinance did not prohibit public nudity on the street, sidewalk, or public right of way, there was nothing illegal about the conduct observed by the officers.

The proposed amendment would also expand the prohibition against public nudity to include any portion of private property that is visible from public property.

Exceptions to the amended ordinance include children under the age of ten, breastfeeding mothers, theatrical performances, and nudity upon public property within a fully enclosed structure such as a locker room. Violation of the ordinance is a misdemeanor and may result in criminal sanctions, civil sanctions and administrative penalties.

ORDINANCE NO.

Adopted by Sacramento City Council

Date Adopted

AN ORDINANCE AMENDING SECTION 9.04.060 OF THE SACRAMENTO CITY CODE RELATING TO PUBLIC NUDITY

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO

SECTION 1.

Section 9.04.060 of the Sacramento City Code is amended to read as follows:

9.04.060 Public nNudity.

~~It is unlawful for any person to appear, bathe, sunbathe, walk or be in any public park, playground, or beach, or the waters adjacent thereto, located within the city, in such a manner that the genitals, vulva, pubis, pubic hair, buttocks, perineum, anus, anal region, or pubic hair region of any person, or any portion of the breast at or below the upper edge of the areola thereof on any female person, is exposed to public view or is not covered by an opaque covering.~~

~~A. This section shall not apply to children under the age of ten (10) years.~~

~~B. This section shall not apply to live theatrical performances performed in a theater, concert hall, or other similar establishment located on public land.~~

A. Definitions. For purposes of this section, the following words and phrases are defined as follows:

“Nude” or “nudity” means exposure of the genitals, pubic area, anus, or buttocks with less than a fully opaque covering; or exposure of a female breast below a horizontal line across the top of the areola at the areola’s highest point with less than a fully opaque covering.

“Public property” means any property owned or controlled by the city of Sacramento, including, but not limited to, any building, street, sidewalk, bike path, alley, parking lot, plaza, park, playground, pool, beach or adjacent waters, or other place open to the public.

B. Public Nudity Prohibited. No person shall be nude upon public property or upon any portion of private property that is visible from public property.

C. Exceptions.

This section shall not apply to:

1. Children under the age of ten years;

2. The exposure of a breast while breastfeeding a nursing child;
3. Theatrical performances in a theater, concert hall, or other similar establishment located on public property;
4. Nudity within a fully enclosed structure intended to allow brief nudity, such as a bathroom, locker room, dressing room, or changing room; and
5. Any act that is expressly permitted or prohibited by any law of the State of California.

D. Violation.

1. In addition to any other remedy allowed by law, any person who violates this section is subject to criminal sanctions, civil actions, and administrative penalties pursuant to chapter 1.28.
2. Any person who violates this section is guilty of a misdemeanor.
3. Violations of this section are hereby declared to be public nuisances and the city attorney is authorized to bring and prosecute an action in a court of competent jurisdiction to enjoin the violations.

SECTION 2.

If any provision of this Ordinance or its application to any person or circumstance is held invalid or ineffective by any court of competent jurisdiction, or by reason of any preemptive legislation, that invalidity shall not affect the validity of the remaining provisions of this Ordinance. The City Council declares that it would have passed this Ordinance and each section, subsection, subdivision, sentence, clause and phrase, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases or words be declared invalid.

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