

AN ORDINANCE OF THE CITY OF HUNTINGTON BEACH
AMENDING CHAPTER 9.20 OF THE HUNTINGTON BEACH MUNICIPAL
CODE RELATING TO PUBLIC NUDITY

The City Council of the City of Huntington Beach does hereby ordain as follows:

SECTION 1. That new Section 9.20.015 be, and is hereby added to Chapter 9.20 of the Huntington Beach Municipal Code, said section to read as follows:

Section 9.20.015 Public Nudity. It shall be unlawful for any person over the age of nine years old to appear, bathe, sunbathe, walk or be on any public park, playground, beach, or in the water adjacent thereto, or on any other public land, or on any private property open to public view from any public beach, playground, park, public place, or public right-of-way in such a manner as to knowingly and intentionally expose his or her genitals, pubic hair, perineum, anal region or pubic hair region, or expose the nipples and/or areola of the female breast except as necessary while engaging in breastfeeding.

SECTION 2. This ordinance shall become effective 30 days after its adoption.

PASSED AND ADOPTED by the City Council of the City of Huntington Beach at a regular meeting thereof held on the _____ day of _____, 200__.

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

[Signature]

City Attorney

REVIEWED AND APPROVED:

City Administrator

INITIATED AND APPROVED:

[Signature] / ACTING CHIEF

Police Chief

APPROVED FOR INTRODUCTION (AS AMENDED)
8-6-2007

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Section 9.20.015 Public Nudity. It shall be unlawful for any person over the age of nine years old to appear, bath, sunbathe, walk or be on any public park, playground, beach, or in the water adjacent thereto, or on any other public land, or on any private property open to public view from any public beach, playground, park, public place, or public right-of-way in such a manner as to knowingly and intentionally:

- (a) Expose his or her genitals, pubic hair, ~~natal cleft,~~ perineum, anal region or pubic hair region, or expose the nipples and/or areola of the female breast except as necessary while engaging in the breastfeeding of an infant under the age of two years old; or
- (b) ~~Expose any device, costume or covering that gives the appearance of or simulates the male or female genitals, pubic hair, pubic hair region, natal cleft, perineum, anal region, or the nipple and/or areola of the female breast.~~

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Esparza, Patty

From: Dapkus, Pat
Sent: Tuesday, August 07, 2007 7:04 AM
To: City Clerk Agenda
Cc: Ross, Rebecca
Subject: FW: Nudity

Very late last night.

Pat Dapkus
 (714) 536-5579
 (714) 536-5233 (FAX)

From: Ron Davis [mailto:rdd@socal.rr.com]
Sent: Tuesday, August 07, 2007 12:00 AM
To: CITY COUNCIL; Junginger, Craig
Cc: Dapkus, Pat; Fikes, Cathy
Subject: Nudity

I don't doubt the need to have a city ordinance regarding public displays of nudity. However, I don't think it appropriate to enact an ordinance by directly or indirectly misleading the city council and the public as to the effect of the ordinance and the circumstances under which it can be enforced.

As an example, I believe an uncontested statement was made that the only way a person could be prosecuted under the ordinance was if a police officer personally witnessed the offending conduct. The statement went unchallenged by the city attorney and the chief of police. Since both were actively involved in the drafting of the ordinance one would presume that they understand our municipal code to potentially treat the matter as a misdemeanor. Both are well aware of the right of a citizen to make a citizen's arrest and the legal obligation of a police office (Penal Code § 142) to take the offending party into custody. Accordingly, someone who sees his or her neighbor in the buff from the public right of way can make a citizen's arrest. Moreover, whether the police department will actually take a report under the circumstance, what the citizen has witnessed will indeed be a crime in our city and I am not aware of the discretion of the police department to refuse to take a report relating to criminal conduct and to investigate it.

In addition, councilman Carchio expressed concern about an individual walking from the shower past windows that allowed his private parts to be viewed from the public right of way. The chief of police responded to the question by reading the section of the ordinance which provided, "in such a manner as to **knowingly** and **intentionally** expose his or her genitals . . ." with special emphasis on the highlighted words.

Of course, most lay people, including Mr. Carchio, believe the word "intentionally" in a

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statute means that the person is really trying to flaunt their exposed genitals to the public. Nothing could be further from the truth. Indeed, Mr. Carchio was correct in that the person, who knows he has no clothes on and knows he's walking by a window that is open to public view, violates this ordinance even though he did not intend to flaunt his genitals in public. The implication that the ordinance would not cover such an event went unchallenged by the city attorney.

Perhaps a reading of cases interpreting the word "intentionally" to mean "the crime in which the mental element involved is simply the *intentional doing* of an act declared to be a crime irrespective of whether the perpetrator **knows** or does not **know** that such act, **intentionally** done, constitutes the commission of a criminal offense."

Finally, to council's willingness to adopt a law with language which they never intend to be enforced on the theory that we should trust government never to enforce the clear language and mandate contained in an ordinance, I will remind the council that years ago a bicycle licensing ordinance was passed so that fees might be generated and in the event that bikes were lost or stolen, they could be returned to their rightful owners. I dare say that those who voted for the ordinance never envisioned truckload after truckload of bikes seized for residents and guests alike during several fourth of Julys. Nor was there an expectation that the laws relating to drinking in public would be contorted to prohibit people from having a beer at a location in their home or on their property that was visible to the public. And, the people so observed, weren't warned -they were arrested.

Just as though we write laws because we can't trust the public to voluntarily refrain from engaging in anti-social conduct and yet we're expected to trust that government won't enforce the plain and clear language of an ordinance. It just makes sense to write an ordinance that we intend to enforce and eliminate that language and those acts that we don't consider a problem.

While I respect Chief Small and the Huntington Beach Police Department there are sometimes officers, like members of the general public, who display poor judgment. The DA who prosecuted the alleged Duke rapists and the officer in Oregon who arrested and cuffed two seventh graders for slapping butts on Slap Butt Friday come to mind. I know it probably won't happen here. But, then again, that's what the parents of the seventh graders and the lacrosse players and their families thought.

For those of you who wish to discuss this further, you have my email address with this attachment and my phone number is 714-969-1239.

Ron Davis