

ORDINANCE NO. _____

AN ORDINANCE AMENDING ASHLAND MUNICIPAL CODE 10.44.012 and 10.44.020, RELATING TO PUBLIC NUDITY AND PENALTIES.

Annotated to show ~~deletions~~ and additions to the code sections being modified. Deletions are **~~bold lined through~~** and additions are **bold underlined**.

WHEREAS, Article 2, Section 1 of the Ashland City Charter provides:

Powers of the City The City shall have all powers which the constitutions, statutes, and common law of the United States and of this State expressly or impliedly grant or allow municipalities, as fully as though this Charter specifically enumerated each of those powers, as well as all powers not inconsistent with the foregoing; and, in addition thereto, shall possess all powers hereinafter specifically granted. All the authority thereof shall have perpetual succession.

WHEREAS, the above referenced grant of power has been interpreted as affording all legislative powers home rule constitutional provisions reserved to Oregon Cities. City of Beaverton v. International Ass'n of Firefighters, Local 1660, Beaverton Shop 20 Or. App. 293; 531 P 2d 730, 734 (1975); and

WHEREAS, Article I, Section 8 of the Oregon Constitution provides:

No law shall be passed restraining the free expression of opinion, or restricting the right to speak, write, or print freely on any subject whatever, but every person shall be responsible for the abuse of this right; and

WHEREAS, the Oregon Supreme Court has held that the protections afforded free expression under Article I, Section 8 of the Oregon Constitution are greater than the protections afforded under the U.S. Constitution; and

WHEREAS, the City Council fully acknowledges that under Oregon law, the determination of whether conduct is protected by Article I, Section 8, is determined on a case by case basis and it is not the intention of the City to interfere with constitutionally protected expression; and

WHEREAS, following publicity concerning the City's existing geographically-limited ban on public nudity, a public school in Ashland was targeted by an individual who deliberately circled the school in a state of undress, causing public annoyance, inconvenience and alarm; and

WHEREAS, victims of sexual abuse, especially children, are particularly sensitive to conduct of a sexual nature, including unexpected public nudity, and such conduct is only exacerbated if it occurs in or around areas considered 'safe areas', like schools; and

WHEREAS, given the total number of elementary, middle and high schools within the City of Ashland, and given the number of pedestrian and bicycle routes to and from such schools, the only practical regulation to prevent such harm is a city-wide ban on public nudity within the City limits; and

WHEREAS, the ordinance reflects that the ban on public nudity is not intended to reach constitutionally protected expressive activities and individuals desiring to engage in protected expression involving nudity are encouraged to coordinate with responsible public officials so as to avoid harm to participants and citizens alike; and

WHEREAS, the City Council of the City of Ashland has determined that in order to protect and benefit the health, safety and welfare of existing and future residents of the City, it is necessary to amend the Ashland Municipal Code in manner proposed and that the amendment is fully supported by the record of this proceeding.

THE PEOPLE OF THE CITY OF ASHLAND DO ORDAIN AS FOLLOWS:

SECTION 1. AMC 10.44.012 [Public Nudity] is hereby amended to read as follows:

10.44.012 Public Nudity.

It is unlawful for any person **eight years of age or older** to **intentionally** expose his or her genitalia ~~while on public property in the C-1-D (Downtown Commercial) zone or in a public park~~ **while in a public place or a place visible from a public place.** This provision is not intended to apply to **family changing areas, or to** a person ~~who is prepubescent or~~ who has taken steps to create an envelope of privacy upon their own property and the nudity occurs within that envelope. **Nothing in this Chapter shall be construed to prohibit any act protected under the circumstances by the federal or state constitution.**

SECTION 2. AMC 10.44.020 [Penalties] is hereby amended to read as follows:

10.44.020 Penalties.

Subject to limitations of the Ashland City Charter, any Any person violating any section within this chapter shall be guilty of ~~a misdemeanor as set forth in Section 1.08.010.~~ **a Class B violation as that class is defined under Oregon law and AMC 1.08.020.**

SECTION 3. Severability. The sections, subsections, paragraphs and clauses of this ordinance are severable. The invalidity of one section, subsection,

paragraph, or clause shall not affect the validity of the remaining sections, subsections, paragraphs and clauses.

SECTION 4. Codification. Provisions of this Ordinance shall be incorporated in the City Code and the word "ordinance" may be changed to "code", "article", "section", "chapter" or another word, and the sections of this Ordinance may be renumbered, or re-lettered, provided however that any Whereas clauses and boilerplate provisions (i.e. Sections 3-4) need not be codified and the City Recorder is authorized to correct any cross-references and any typographical errors.

The foregoing ordinance was first read in full, and then by title only in accordance with Article X, Section 2(A) of the City Charter on the 3rd day of November, 2009, and duly PASSED and ADOPTED this 15th day of December, 2009.

Barbara M. Christensen, City Recorder

SIGNED and APPROVED this _____ day of _____, 2009.

John Stromberg, Mayor

Reviewed as to form:

Richard Appicello, City Attorney