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CITY OF OAKLAND



10 APR 14 AM 11:50

CITY HALL • 1 FRANK H. OGAWA PLAZA • OAKLAND, CALIFORNIA 94612

Rebecca D. Kaplan
Councilmember At Large

(510) 238-7008
FAX (510) 238-6910
TDD (510) 839-6451

April 27, 2010

Public Safety Committee
Chairperson Reid and members of the Committee

RE: Ordinance Amending Section 9.08.080 of the Oakland Municipal Code to Delete the Language that Makes it Unlawful To Dress In Attire Of A Person Of The Opposite Sex.

The proposed ordinance amends Section 9.08.080 of the Oakland Municipal Code by deleting the language making it unlawful to “appear in public dressed in attire of a person of the opposite sex.” The revised language would delete an outdated clause that could have the unintended effect of criminalizing a broad group of persons. While no longer enforced, under the existing language women in uniform in both the Oakland Police and Fire Departments would be subject to arrest and charged with a misdemeanor.

The ordinance came out of a period of significant population growth and urbanization of the city in the late 1800s. There was a fear of change, and a desire to enforce “traditional” social “norms” which also included anti – immigration legislation and racial and ethnic segregation of the city. The ordinance was used to prohibit people from “breaking” traditional gender and social norms. However, traditional gender and social norms for men and women have changed. It is important for the City to reassess what the Immoral Dress phrase “in the attire of a person of the opposite sex” means given changing attitudes towards gender and sexuality.

The court of law respects the basic civil rights of those who may not “fit” traditional gender and social norms as demonstrated in 1975, when the Ohio Supreme Court (City of Columbus v. Rogers (1975) 41 Ohio St. 2nd 141) found a virtually identical ordinance of the City of Columbus which prohibited appearing in public “in dress not belonging to his or her sex . . .” too vague for the public to comply with, as men’s and women’s fashions had become quite similar in many aspects. It also found that the ordinance gave no guidance to the public or police on what type of clothing was prohibited. The United States Supreme Court refused to review the case, implying that it agreed with the Ohio Court’s ruling.

I respectfully request that my fellow Council members support this Ordinance and remove a vague and outdated part of our Municipal Code.

Respectfully submitted,

Rebecca Kaplan
Councilmember At Large

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APPROVED AS TO FORM AND LEGALITY


City Attorney

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

ORDINANCE AMENDING SECTION 9.08.080 OF THE OAKLAND MUNICIPAL CODE TO DELETE THE LANGUAGE THAT MAKES IT UNLAWFUL TO DRESS IN ATTIRE OF A PERSON OF THE OPPOSITE SEX

WHEREAS, section 9.08.080 of the Oakland Municipal Code ("OMC") contains a clause prohibiting a person in the City of Oakland from appearing in any public place in the attire of a person of the opposite sex; and

WHEREAS, such clause has, through the evolution of men's and women's fashion, become vague and uncertain; and

WHEREAS, developments in jurisprudence developing over the past decades has found similar ordinances in other municipalities to be vague on their face and unconstitutional if applied to persons undergoing sex reassignment; and

WHEREAS, the City of Oakland seeks to cultivate a diverse and pluralistic community that respects the rights of citizens to self determine their own individual gender identity and gender expression; and

WHEREAS; discrimination based on one's gender expression directly and profoundly threatens the rights and freedom of all Oakland residents; now, therefore

THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

Section 1. It is the intent of the City Council in amending this ordinance, to align our law with federal and state constitutions.

Section 2. The City Council finds and determines the foregoing recitals to be true and correct and hereby makes them a part of this ordinance.

Section 3. Oakland Municipal Code Section 9.08.080 is hereby amended as follows. Additions are indicated by underline type, and deletions are indicated by ~~strikethrough~~ type. Text not appearing here is unchanged:

9.08.080 - Immoral dress

It is unlawful for any person in the city to appear in any public place nude ~~or in the attire of a person of the opposite sex,~~ or in any indecent or lewd attire.

Section 4.

This Ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes on final adoption as provided by Section 216 of the City Charter; otherwise it shall become effective upon the seventh day after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT BRUNNER,

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

DATE OF ATTESTATION: _____

**ORDINANCE AMENDING SECTION 9.08.080 OF THE OAKLAND
MUNICIPAL CODE TO DELETE THE LANGUAGE THAT MAKES IT
UNLAWFUL TO DRESS IN ATTIRE OF A PERSON OF THE OPPOSITE
SEX**

NOTICE AND DIGEST

This Ordinance amends Oakland Municipal Code Section 9.08.080. That section currently prohibits persons in the City of Oakland from appearing, in public, in the nude, wearing attire of the opposite sex, and in indecent or lewd attire. This amendment deletes the clause which prohibits persons in the city from appearing in any public place wearing attire of the opposite sex.