



Kriss Worthington

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ACTION CALENDAR
 September 12, 2017

To: Honorable Mayor and Members of the City Council
 From: Councilmember Kriss Worthington

Subject: Adopt an Ordinance Equalizing Nudity Laws in Berkeley Between All Genders by Decriminalizing the Display of Female Nipples

RECOMMENDATION:

That the Council adopt an ordinance to eliminate the line in section 13.32.010 of Berkeley's Municipal Code, which specifically targets women by criminalizing only the display of *female* breasts or "any portion of the breast at or below the areola thereof of any female person" in any place open to the public or any place visible from a place open to the public, while placing no such restriction upon males.

The revised section would read: "It shall be either a misdemeanor or an infraction, in the discretion of the prosecutor, for any person to appear nude in any place open to the public or any place visible from a place open to the public. 'Nude' within the meaning of this section means the absence of an opaque covering which covers the genitals, pubic hair, buttocks, perineum, anus or anal region of any person ~~or any portion of the breast at or below the areola thereof of any female person.~~ (Ord. 6446-NS § 1, 1998; Ord. 6199-NS § 1, 1993)."

BACKGROUND:

It is nonsensical and sexist that Berkeley criminalizes the display of the female nipple while allowing the display of the male nipple. Berkeley has sought to uphold an equal standard of living for all its citizens, no matter what gender they may identify as. Upholding legislative inequalities, like this law from a bygone era, undermines that goal. Indeed, even California's state law is less restrictive than Berkeley's, as it applies only to genitals and not breasts. Berkeley prides itself on being a trailblazer for equality, so it makes no sense that its laws are more antagonistic and regressive than state law, which can be notoriously slow-moving.

Implying that the display of a woman's chest is inherently vulgar enough to warrant illegality needlessly objectifies her as a sexual object. While section 13.32.010 of the Municipal Code makes female breasts illegal to display, section 13.32.020 exempts breastfeeding women. If a woman's nipples are fit to be seen by the most innocent and impressionable portion of the population, babies and toddlers, then it stands to reason that nipples are not inherently sexual and are fit to be seen by the rest of the population, if that woman so chooses. Thus, the assumption that female nipples

are inherently more sexual is erroneous, as they serve a working purpose that is not erotic in the slightest. This is especially poignant when female nipples are compared to male nipples, which are vestigial but still erogenous. Also, the physical differences between male and female breasts and nipples can be quite minute. Some men naturally have a high amount of breast tissue or prominent areoles, which can be nearly identical to mammaries; yet, male nipples are still deemed fit for public exposure.

Furthermore, when policing situations involving shirtless transgender men (individuals who were assigned female at birth who identify as men) who have not had 'top surgery', also known as a bilateral mastectomy and male chest reconstruction, the current law's inconsistencies have the potential to cause much unneeded confusion. Either the city must invalidate a citizen's identity, which is extremely harmful and the absolute antithesis of all that Berkeley stands for, or the city must arbitrarily choose to allow the exposure of biological female breasts. By simplifying Berkeley's law to not outlaw *anyone's* nipples, future complications can be avoided before they even arise and grow into complex legal issues. This is especially relevant as a lot of progress has been made to recognize and respect individuals who are transgender, non-gender binary, and intersex; it is imperative that extreme care should be shown to not violate these marginalized groups' trust in not being exposed to violence, discrimination, or unneeded police activity when they outwardly express their identity.

It is high time that Berkeley follow the lead of other cities like D.C., Portland, New York City, and Columbus and take one more step in making all its citizens equal in the eyes of the law by decriminalizing female nipples.

FINANCIAL IMPLICATIONS:

None.

ENVIRONMENTAL SUSTAINABILITY

Consistent with Berkeley's Environmental Sustainability Goals and no negative impact.

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ATTACHMENT

1: Ordinance

ORDINANCE NO. #,###-N.S.

AMENDING THE BERKELEY MUNICIPAL CODE CHAPTER 13.32.010 TO
DECRIMINALIZE THE PUBLIC DISPLAY OF FEMALE BREASTS

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Section 13.32.010 is amended to read as follows:

- A. "It shall be either a misdemeanor or an infraction, in the discretion of the prosecutor, for any person to appear nude in any place open to the public or any place visible from a place open to the public. "Nude" within the meaning of this section means the absence of an opaque covering which covers the genitals, pubic hair, buttocks, perineum, anus or anal region of any person ~~or any portion of the breast at or below the areola thereof of any female person.~~ (Ord. 6446-NS § 1, 1998: Ord. 6199-NS § 1, 1993)".

Section 2. Legislative Findings

The City Council hereby finds that:

1. Berkeley's laws, and all laws, should apply to all genders equally.
2. Berkeley's municipal code criminalizes the display of only female nipples while not affecting male nipples in the slightest.
3. even California's state law is less restrictive than Berkeley's, as it applies only to genitals and not breasts. Berkeley prides itself on being a trailblazer for equality, so it makes no sense that its laws are more antagonistic and regressive than state law, which can be notoriously slow-moving.
4. Implying that the display of a woman's chest is inherently vulgar enough to warrant illegality needlessly objectifies her as a sexual object. While section 13.32.010 of the municipal code makes female breasts illegal to display, section 13.32.020 exempts breastfeeding women. If a woman's nipples are fit to be seen by the most innocent and impressionable portion of the population, babies and toddlers, then it stands to reason that nipples are not inherently sexual and are fit to be seen by the rest of the population, if that woman so chooses.
5. The assumption that female nipples are inherently more sexual is erroneous, as they serve a working purpose which is not erotic in the slightest. This is especially poignant when female nipples are compared to male nipples which are vestigial but still erogenous.
6. The physical differences between male and female breasts and nipples can be quite minute. Some men naturally have a high amount of breast tissue or prominent areoles, which can be nearly identical to mammaries; yet, male nipples are still deemed fit for public exposure.
7. When policing situations involving shirtless transgender men (individuals who were assigned female at birth who identify as men) who have not had 'top surgery', also known as a bilateral mastectomy and male chest reconstruction, the existing inconsistent law could cause much unneeded confusion. Either the city must invalidate a citizen's identity, which is extremely harmful and the absolute antithesis

of all that Berkeley stands for, or the city must arbitrarily choose to allow the exposure of biological female breasts.

8. By simplifying Berkeley's law to not outlaw *anyone's* nipples, future legal complications surrounding forcing nudity laws can be avoided before they even arise and grow into complex legal issues. This is especially relevant as a lot of progress has been made to recognize and respect individuals who are transgender, non-gender binary, and intersex; it is imperative that extreme care should be shown to not violate these marginalized groups' trust in not being exposed to violence, discrimination, or unneeded police activity when they outwardly express their identity.

Section 3. Posting

Copies of this Ordinance shall be posted for two days prior to adoption the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.