



A BILL FOR AN ORDINANCE

RELATING TO PUBLIC SIDEWALKS.

BE IT ORDAINED by the People of the City and County of Honolulu:

SECTION 1. Council Findings and Purpose. The purpose of this ordinance is to prohibit, subject to exceptions, persons from lying down on public sidewalks.

The Council finds that the primary purpose of public sidewalks in the City and County of Honolulu is to provide for safe and convenient passage. The Council finds that there are people who are lying down on public sidewalks in the City and County of Honolulu. This creates an unsafe and unsanitary environment for those lying down on the sidewalks and impedes the movement on and mobility of those wishing to use the public sidewalks for their primary purpose. It also inhibits ingress to and egress from vehicles adjacent to the sidewalks for passengers and persons making deliveries and interferes with the cleaning of sidewalks and city and private refuse pickup.

The Council finds that although lying down is not normally considered expressive in nature, in some instances, such as when it is part of a protest lie-in or part of a street performance, lying down on a public sidewalk may be considered an expressive activity. The Council has, in enacting this ordinance, therefore tried to protect, to the extent possible, the First Amendment rights of those who may be participating in an expressive event, activity or performance on a public sidewalk.

SECTION 2. Chapter 29, Revised Ordinances of Honolulu 1990 ("Streets, Sidewalks, Malls and Other Public Places"), as amended, is amended by adding a new article to be appropriately designated by the revisor of ordinances and to read as follows:

"Article __. Lying Down on Public Sidewalks

Sec. 29-__1 Prohibition—Exceptions—Citation.

- (a) No person shall lie down on a public sidewalk, or on a tarp, towel, sheet, blanket, sleeping bag, bedding, chair, bench, tent floor or any other object or material located on a public sidewalk.
- (b) Subsection (a) shall not apply to any person:
 - (1) Unable to comply with the direction of a law enforcement officer made under subsection (c) due to a medical condition or emergency;



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- (2) Engaged in an expressive activity;
 - (3) Engaged in a maintenance, repair or construction activity on behalf of a governmental entity or a public utility;
 - (3) Under the age of six years old who is lying down in a baby carriage, stroller, or carrier, or is lying down while being held or carried by a person who is not lying down; or
 - (4) Who can provide to the citing or arresting officer evidence that on the date of the citation or arrest he or she attempted to obtain overnight accommodations from a homeless shelter listed on the registry established pursuant to Section 29-___2, but was turned down.
- (c) No person shall be cited for a violation of this article unless the person knowingly or recklessly continues to engage in the conduct prohibited by this article after having been notified by a law enforcement officer that the conduct is unlawful; provided that such notification shall not be required for a person who has previously been cited for a violation of this article.
- (d) No person shall raise as a defense to a prosecution under this article that they were participating in an expressive event or activity, unless they notified the law enforcement officer prior to or at the time of the citation that they were engaging in an expressive activity, or unless it would have been clearly evident to a reasonably observant person that the lying down was part of an expressive activity.
- (e) As used in this section:

"Expressive activity" means an event, activity, or performance, the sole or principal object of which is the expression, dissemination or communication of opinions, views, or ideas by verbal, visual, literary or auditory means.

"Public sidewalk" means a publicly owned or maintained "sidewalk," as defined in Section 29-1.1, and includes a "replacement sidewalk" as defined in that section.



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Sec. 29-__2 Rules and registry.

- (a) The director of transportation services, the chief of police or the head of any city executive agency designated by the mayor may, pursuant to HRS Chapter 91, adopt rules having the force and effect of law for the implementation, administration or enforcement of this article. A violation of the rules shall be deemed a violation of this article.

- (b) The director of community services or the head of another city agency designated by the mayor to perform the function shall work in good faith with public agencies serving the homeless and with homeless shelter providers to maintain a registry of shelters providing overnight sleeping accommodations to homeless persons, and to inform such persons of the availability of the shelters. The registry shall be posted on the internet and a copy shall be provided free of charge to any person upon request. Listing on the registry shall not obligate a shelter to provide accommodations to any particular person.

Sec. 29-__3 Penalty.

Any person violating this article shall be fined up to \$50 for each violation."



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SECTION 3. This ordinance shall take effect 120 days following its approval.

INTRODUCED BY:

[Handwritten signature]

DATE OF INTRODUCTION:

SEP 05 2013

Honolulu, Hawaii

Councilmembers

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel

APPROVED this _____ day of _____, 20____.

KIRK CALDWELL, Mayor
City and County of Honolulu

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CITY CLERK
RECEIVED
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FILED
SEP 05 2015
PURSUANT TO ROH Sec. 1-2.4