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City of Gainesville Policy Program Preliminary Research & Analysis

TOPIC: De-Gendering the City Code of Ordinances
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DATE: April 8, 2020
REQUESTED BY: Commissioner Hayes-Santos

OBJECTIVE

To assess what it would look like to have a gender-neutral code of ordinances.

EXECUTIVE SUMMARY

The City of Gainesville Code of Ordinances, like the codes of many other municipalities, has explicitly stated pronouns like “she” and “he.” By removing gendered terms and replacing them with the singular “they,” the City’s code can take on a more inclusive language that acknowledges the **fluidity** of gender and gender pronouns and treats each equally. To note, the Gainesville City Attorney is currently working to remove gender references from the code. By strategically removing gender-specific language and allowing women to be held under the same standards as men, Gainesville’s residents are better able to exist without being discriminated against on the basis of gender.

For example, Gainesville’s public nudity standards only apply to one gender, women, at this time. Many cities across the nation have removed public nudity standards that disproportionately target women in order to treat all people equally under City code. In other cases, cities have ambiguous codes wherein female toplessness is not outright banned but women may be arrested on other charges such as disorderly conduct. Nonetheless, cities that take the step to remove language in their codes that is specific to women’s breasts are helping remove the stereotype that women’s bodies are inherently sexual, and challenge prejudices about objectification of females in society.¹

¹ <https://www.theatlantic.com/national/archive/2013/09/the-social-and-legal-arguments-for-allowing-women-to-go-topless-in-public/279755/>

This report highlights the Free the Nipple Movement and the process other Cities have gone through to amend their Codes of Ordinances.

HISTORY/BACKGROUND INFORMATION

Free the Nipple Movement

Activists for decades have been rebelling against their local laws to fight for equality in the realm of public nudity, specifically toplessness. After the release of the film *Free the Nipple* in 2012, this grassroots movement began to gain traction and would be known as the Free the Nipple Movement.² Notable court cases surrounding female toplessness, however, began back in 2008 when a woman was arrested in New Jersey for sunbathing topless at a beach. She was sentenced to 16 days in jail when she refused to pay fines related to her actions. This woman was part of a group called Go Topless, with goals similar to that of today’s Free the Nipple Movement. Although female toplessness remains illegal in most cities around the world, the movement continues to work towards emphasizing the argument that both men and women have breasts, but when the media censors only women’s breasts and society defines them as being inherently sexual, they become objectified as a body part that must be regulated.

TOPLESS LAWS



The green colored states are those where top freedom is in effect.
The orange colored ones have ambiguous state laws on the matter.
The red colored ones are the ones where the mere showing of the female breast in public is illegal according to state law.

² <https://www.thesun.co.uk/fabulous/2778411/free-the-nipple-campaign-celebrity-supporters-laws-illegal-facebook-instagram/>

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Image: Topless Laws Map of the United States, with color coding used to identify states where top freedom is or is not in effect. Source: GoTopless.org

The GoTopless.org website, run by the Go Topless organization which advocates for similar rights as the Free the Nipple Movement, has a map that helps people navigate topless laws across the country. While the map claims green colored states have top freedom in effect, this claim cannot be fully backed because many municipalities have ordinances that outlaw female toplessness. Thus, while many states may have public nudity laws or statutes that do not specify the female breast in their public indecency or nudity laws, that does not immediately suggest that the cities in each state allow toplessness as well. Nonetheless, the map can be referred to when generally speaking about public nudity laws in different states.

State of Florida

While in the State of Florida it is legal to breastfeed in public, it can be assumed that outright female toplessness is *not* legal in municipalities. The Lewdness/Indecent Exposure chapter in the Crimes title of state statutes says that it is unlawful for any person to exhibit their sexual organs in public, although a mother's breastfeeding of her baby does not under any circumstance violate this section.³ The term "**sexual organs**," however, is not defined in this section or anywhere else in the state statute. The only definition involving these body parts is found in the Obscenity chapter in the Crimes title of state statutes which defines "nudity" as:

*"Nudity: the showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering; or **the showing of the female breast** with less than a fully opaque covering of any portion thereof below the top of the nipple; or the depiction of covered male genitals in a discernibly turgid state. A mother's breastfeeding of her baby does not under any circumstance constitute 'nudity,'"*⁴

But, that criminal chapter covers crimes involving pornographic materials, exploitation of children, and sexual bullying. It does not contemplate the legality of people simply being topless in public. Whether the breast or chest is considered a sexual organ for the crimes of lewdness/indecent exposure is not clear within the text of the statute itself. Because the section specifically exempts breastfeeding from the criminal definition, one might infer that the female breast is otherwise included. This ambiguity has led to inconsistent application of these rules across the state.

In its 2020 session, the Florida legislature approved a bill that will increase the penalties for indecent exposure and public nudity in the State of Florida.⁵ Although the bill, which is awaiting the Governor's signature, amends the Indecent Exposure section of the statutes, it again declines to specifically define "sexual organs."⁶ The new law keeps the breastfeeding exception and adds

³http://www.leg.state.fl.us/statutes/index.cfm?mode=View%20Statutes&SubMenu=1&App_mode=Display_Statute&Search_String=indecent&URL=0800-0899/0800/Sections/0800.03.html

⁴ http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0800-0899/0847/Sections/0847.001.html

⁵ <https://www.flsenate.gov/Session/Bill/2020/675>

⁶ <http://flsenate.gov/Session/Bill/2020/675/BillText/er/PDF>

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another: it is not Indecent Exposure if an individual is “merely naked at any place provided or set apart for this purpose.” This addition is meant to add clarity to public nude beaches. One area of inconsistent application of the statute was at these locations. Additional changes expected include an expedited arrest process in cases where a law enforcement officer has probable cause to believe that a person has unlawfully exposed their sexual organs and can thus make a warrantless arrest.⁷ Additionally, criminal penalties are increased for second time offenders with sexual organ exposure charges.⁸

Florida is part of the 11th District of the U.S. District Courts, which has not addressed this issue. In the below section, we will discuss a 2019 case from Colorado decided by the 10th U.S. District Court which offers some arguments, though no direct precedent, on this topic. More details about this case can be found in this report’s section titled Preliminary Research & Findings, under Free the Nipple v. Fort Collins, Colorado.

Alachua County

Alachua County’s Code of Ordinances only discuss nudity in Title 11 – Offenses. However, the rules are specific to alcoholic establishments, and state that no female shall expose her breasts in one of these establishments. Also, the owner of an establishment selling alcoholic beverages may not allow a female to expose her breasts.⁹

City of Gainesville

Currently, Gainesville’s Code of Ordinances uses the terms *female*, *male*, *husband*, *wife*, *woman*, *man*, *nude/nudity* and *gender* in contexts that are not conducive to gender neutrality and in some cases are explicitly targeted against the female body. Most of the gender-based language in the city code is intended to cover all individuals and would not be substantively impacted by a shift to gender-neutral language. There are, though, a couple of places where gender does play a substantive role in the meaning of the ordinance, specifically where the Code limits women from showing their breasts in public but does not limit men from exposing their chests in public.

In order to do an overhaul of the City Code and make it entirely gender-neutral, the following chapters and sections would need to be addressed, many which are already being reviewed by Gainesville’s City Attorney’s Office. Specifically, Chapter 17’s language on public nudity.

- Chapter 1
- Chapter 8, Article I
- Chapter 13, Article II
- Chapter 14.5, Article IV.
- Chapter 17, Article II
- Chapter 30

⁷<https://www.myfloridahouse.gov/Sections/Documents/loadoc.aspx?FileName=h0675z.CRJ.DOCX&DocumentType=Analysis&BillNumber=0675&Session=2020>

⁸<https://www.myfloridahouse.gov/Sections/Bills/billsdetail.aspx?BillId=68055>

⁹https://library.municode.com/fl/alachua_county/codes/code_of_ordinances?nodeId=PTIIADCO_TIT11OF_C_H115ALBEES_S115.03NUSECOPR

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- All other chapters where the terms she/her/hers/he/him/his are used and replacing the terms with they/them/theirs or other terms as applicable.

Chapter 1

Chapter 1 uses the term Gender in the Section 1-2 titled Definitions. The definition used for Gender is;

“Gender. A word importing the masculine gender only shall extend and be applied to females and to firms, partnerships and corporations as well as to males.”¹⁰

While the term is largely speaking generally, this definition should be updated to include the range of identities that can fall under the term.

Chapter 8

In Chapter 8, Article I, gender identity carries a definition that can be found to be representative of more inclusive language;

*“As used in this chapter, "gender identity" means an inner sense of being a specific gender, or the **expression of a gender identity** by verbal statement, appearance, or mannerisms, or other gender-related characteristics of an individual **with or without regard** to the individual's designated sex at birth.”¹¹*

Additionally, this Article discusses regulation on discrimination, referencing gender in different sections. Given the definition of gender that is used in Chapter 1, it is likely that “gender identity” only refers to female and male genders. Thus, revising the definition in Chapter 1 would be recommended to ensure the term is **inclusive** when used in this and other chapters.

Chapter 13

Chapter 13 discusses housing and commercial building codes. Article II includes a term ‘Rooming house’ which encompasses language that is not inclusive of people choosing to identify (or not identify) with other gender terms;

“Rooming house shall mean any dwelling, or that part of any dwelling containing one or more rooming units, in which space is let by the owner to three or more persons who are not husband or wife, or registered domestic partner, son or daughter, mother or father, or sister or brother of the owner....”¹²

Incorporating other terminology that is not as specific as husband and wife, such as spouse, and replacing son and daughter with “child”, mother and father with “parent” and so forth would be more inclusive than the terms currently being used under this term’s definition.

¹⁰ https://library.municode.com/fl/gainesville/codes/code_of_ordinances?nodeId=PTIICOOR_CH1GEPR_S1-2DERUCO

¹¹ https://library.municode.com/fl/gainesville/codes/code_of_ordinances?nodeId=PTIICOOR_CH8DI_ARTIIN_GE_S8-6SEORGEIDDE

¹² https://library.municode.com/fl/gainesville/codes/code_of_ordinances?nodeId=PTIICOOR_CH13HOCOBUCO_ARTIIHOCO_DIV1GE_S13-19DE

Chapter 14.5

Article IV of Chapter 14.5 discusses regulations on adult establishments, as well as escort services and licenses. Section 14.5-73 mentions that no “male or female forms at or below the clavicle” should be visible on an adult performance establishment sign. This language can be made more general to people of any gender, or non-conforming to a specific gender.¹³

Chapter 17

Article II discusses **nudity in public places**.¹⁴ The Article proceeds to define *Breast* as it applies to the female’s body:

“*Breast*: A portion of the human female mammary gland (commonly referred to as the female breast) including the nipple and the areola (the darker colored area of the breast, surrounding the nipple) and an outside area of such gland wherein such outside area is

1. reasonably compact and contiguous to the areola and
2. contains at least the nipple and the areola and one-fourth of the outside surface area of such gland.”

Then, a portion of the definition for *Nude* is as follows:¹⁵

“*Nude*: Any person insufficiently clothed in any manner so that any of the following body parts are not entirely covered with a fully opaque covering:

1. The male **or** female genitals; or
2. The male **or** female pubic area; or
3. The **female breast** (applying to human beings ages 10 or older)”

The *Nude* definition visibly **singles out the female breast** as having to be fully covered, but there is **no language on the male chest** or nipple needing to be covered. In some cities, this has been brought to litigation after communities challenged the specificity towards females as a **violation** of the Equal Protection Clause in the 14th Amendment of the Constitution given that the code prohibits women, but not men, from knowingly exposing their breasts in public.¹⁶ A later section in **Chapter 17 states that “considering what has happened in other communities, the acts prohibited in section 17-15 encourage or create the potential for the conduct of prostitution, attempted rape, rapes, and assault in and around establishments dealing in alcoholic beverages”,** however some may find that in any setting, this mentality promotes and reinforces objectification of females and

¹³https://library.municode.com/fl/gainesville/codes/code_of_ordinances?nodeId=PTIICOOR_CH14.5MIBURE_ARTIVADPEESESEESLI_DIV3GEOPRU_S14.5-73GERE

¹⁴https://library.municode.com/fl/gainesville/codes/code_of_ordinances?nodeId=PTIICOOR_CH17OF_ARTII_NUPUPL

¹⁵https://library.municode.com/fl/gainesville/codes/code_of_ordinances?nodeId=PTIICOOR_CH17OF_ARTII_NUPUPL_S17-13DE

¹⁶<https://law.justia.com/cases/federal/appellate-courts/ca10/17-1103/17-1103-2019-02-15.html>

their bodies.¹⁷ Ultimately, amending Section 17-13 (e) to remove part 3, and other sections or chapters that explicitly target the female breast, would give women equal freedoms as men in the city within public nudity laws and standards.

PRELIMINARY RESEARCH AND FINDINGS

Haulover Beach, Florida

Haulover Beach is located in Miami-Dade County, and is well known for being one of the most popular nudist beaches in the United States. This is largely due to the fact that it has been recognized as one for almost 30 years. In 1991, a naturist organization called South Florida Free Beaches designated a “clothing-optional” section on the public beach. The section was later sanctioned by Miami-Dade County with the installation of signs in 1993.¹⁸ Although nudity is addressed in state statutes, it should be noted that the state law does not clearly regulate female toplessness under Section 88 where it discusses “sexual organs.” Additionally, Haulover Beach is supported by law, given two situations;

1. Florida *case law*
2. Absence of any Miami-Dade County anti-nudity ordinance

Different cases have gone to court in Florida for instances of indecent exposure. The outcomes of some of those cases have clarified what the Florida State Statute section on Lewdness and Indecent Exposure constitutes as a crime. Cases like *Goodmakers v. State*, 450 So. 2d 888 (Fla. Dist. Ct. App. 1984), clarified that mere nudity in public is insufficient to sustain a conviction.¹⁹ Instead, the act has to include an evident intent to perform and eventual performance of some indecent or lascivious act. Given that this is typically not the case in the nudist beach, Haulover remains unaffected by state or local laws to this day. However, with the recent bill passed in Florida’s House of Representatives, it sounds as though the way the courts have been handling public exposure cases may change now that officers will be able to make arrests if they believe someone has illegally exposed themselves. Nonetheless, Miami-Dade County law remains silent on the issue of public nudity on beaches, so how law enforcement begins to act as a result of the new state bill will reveal what the law truly entails.

Free the Nipple v. Fort Collins, Colorado

In 2015, an activist in Fort Collins began to protest the city’s ban on female toplessness. In 2016, another activist joined the protest and together the two sued the City of Fort Collins due to the fact that its public nudity ordinance unequally treated women compared to men by prohibiting women, not men, from exposing their breasts (and thus their nipples) in public. Given their affiliation with the Free the Nipple movement, they sued the city under the name “Free the Nipple.” In the case,

¹⁷https://library.municode.com/fl/gainesville/codes/code_of_ordinances?nodeId=PTIICOOR_CH17OF_ARTII_NUPUPL_S17-15NUSECOPRESDEALBE

¹⁸<https://sffb.com/government.php>

¹⁹<https://www.husseinandwebber.com/crimes/public-order-obstruction/exposure-of-sexual-organs/>

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Free the Nipple cited the Equal Protection Clause in the 14th Amendment of the Constitution. Meanwhile, the City of Fort Collins argued that “the ordinance maintained public order and protected children.”²⁰ The Federal District Court placed an injunction on the ordinance shortly after the court case began, stating that the City did not provide any meaningful evidence to support their case. Ultimately, the 10th Circuit Court upheld the federal judge’s conclusion that Fort Collins’ law did indeed “amount to **unconstitutional discrimination based on negative stereotypes depicting women’s breasts**, but not men’s breasts, as sex objects.”²¹ By September, 2019, Fort Collins, after having spent over \$300,000 in legal fees, decided to formally remove its law that prohibited women from publicly exposing their breasts. Before the City made its final decision, however, some people from the community spoke out against the revision to the Code. One resident was a woman who worked at a local high school and felt that legalizing female toplessness would send a bad message to female students. Other men who spoke felt that outright female toplessness in public was comparable to pornography.

Some media outlets have since suggested that the 10th Circuit Court’s decision extends to all 6 states in the circuit (Utah, Colorado, Wyoming, New Mexico, Kansas, and Oklahoma). However, the 10th Circuit has only stated a strong legal argument and a preliminary injunction. Thus, since the 10th Circuit Court did not issue a final decision “its language can be used in a challenge... of the City’s existing ordinance” but it does not mean that female toplessness is legal in all 6 states.²²

Because different circuits have varying opinions on the legality of female toplessness, the Supreme Court was asked to hear a case from New Hampshire and resolve the circuit split. This was a case where three women were arrested for going topless at a local beach in 2016.²³ The three women appealed to New Hampshire’s Supreme Court in late 2018, which upheld the convictions in early 2019.²⁴ As a result, the women appealed to the U.S. Supreme Court, but on January 13th, 2020, the U.S. Supreme Court declined to hear the case.²⁵

In a City Commission Agenda Memo, Fort Collins City Attorney Katie Jackson discusses the situation for public nudity in other states and municipalities within the 10th Circuit. She makes an interesting point regarding Kansas which has several laws that may apply to public nudity but no explicit laws at the state level about female toplessness. Thus, there have been few, if any, citations and prosecutions of female toplessness there. Instead, circumstances that fall in the realm of nudity, may fall under the regulation of other local ordinances or state laws, such as ones on “public indecency.”

As of 2019, Boulder, Denver, and Fort Collins are three cities in Colorado that do not discriminate between male and female toplessness.

²⁰ <https://collegian.com/2019/09/category-news-city-council-frees-the-nipple-by-striking-gendered-topless-ban-from-fort-collins-city-code/>

²¹ <https://www.nbcnews.com/politics/politics-news/topless-women-win-big-colorado-city-drops-ban-n1056701>

²² <https://cityofmhk.com/DocumentCenter/View/56353/Item-6C-Amend-Public-Nudity-Ordinance>

²³ <https://www.nhpr.org/post/free-nipple-trio-appeal-laconia-case-scotus#stream/0>

²⁴ <https://www.nhpr.org/post/nh-high-court-upholds-convictions-free-nipple-topless-case#stream/0>

²⁵ <https://www.nhpr.org/post/us-supreme-court-declines-hear-nh-trios-free-nipple-appeal#stream/0>

Boulder, CO

The public nudity regulations in Boulder were most recently updated in 2014. As it stands, any person who is 10 years or older is not allowed to expose any portion of their anus, vulva, penis, or scrotum while located in a specified public location or on private property if they can be viewed from the ground level by someone on public property.²⁶ This excludes places where nudity is explicitly permitted such as bathrooms and dressing rooms. Notably, this language does not specify the female breasts, meaning that this body part does not fall under the list of prohibited body parts.

Getting to the point where female toplessness was not outlawed by the local public nudity ordinance was no easy feat, as in January of 2010 there were plenty of people in Boulder who opposed the idea of female toplessness.²⁷ Although it had technically been legal since the 1980s, some were concerned with the topic and brought it to the attention of city officials in 2010. Some believed that too many people were “streaking” and “pranking” or participating in events where people would bike or run through the street nude, such as the “World Naked Bike Ride.” So, in 2010, City officials were looking into updating their public nudity ordinance to include the areola of the female breast in order to give police more options in terms of regulating public nudity. The Boulder County District Attorney found that if the issue was regulated under local ordinance, then police could cite people with a ticket/citation, rather than an arrest for state indecent exposure which could carry stiffer penalties.²⁸

While in some states, an indecent exposure law may limit how municipalities can get around the law to legalize female toplessness, the indecent exposure laws in Colorado are rather broad;

18-7-302. Indecent exposure

“(1) A person commits indecent exposure:

- (a) If he or she knowingly exposes his or her genitals to the view of any person under circumstances in which such conduct is likely to cause affront or alarm to the other person with the intent to arouse or to satisfy the sexual desire of any person;
- (b) If he or she knowingly performs an act of masturbation in a manner which exposes the act to the view of any person under circumstances in which such conduct is likely to cause affront or alarm to the other person.”²⁹

²⁶ https://library.municode.com/co/boulder/codes/municipal_code?nodeId=TIT5GEOF_CH6MIOF_5-6-13PUNUPR

²⁷ <https://www.dailycamera.com/2010/01/28/boulder-to-consider-public-nudity-law-making-toplessness-illegal/>

²⁸ https://advance.lexis.com/documentpage/?pdmfid=1000516&crd=c42746f9-751c-45cb-8273-6f96e449d095&config=014FJAAyNGJkY2Y4Zi1mNjgyLTRkN2YtYmE4OS03NTYzNzYzOTg0OGEKAFBvZENhdGFsb2d592qv2Kywlf8caKqYROP5&pddocfullpath=%2Fshared%2Fdocument%2Fstatutes-legislation%2Furn%3AcontentItem%3A5YH1-3731-FCCX-60YN-00008-00&pdcontentcomponentid=234176&pdteaserkey=sr0&pditab=allpods&ecomp=twg_kkk&earg=sr0&prid=55f53009-f4a6-4078-804f-a3fd2684c2ea

²⁹ [C.R.S. 18-7-302](#)

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By March 2010, the City Council had agreed to expand their public nudity ordinance, but it did not explicitly ban women from being topless in public.³⁰ This is likely because there was strong enough community support for maintaining the freedom for women to be topless if they so choose.

New York City, NY

New York unofficially allows female toplessness and goes as far as reminding officers that “they cannot arrest women simply for going shirtless in locations where it would be permissible for men to do the same.”³¹ The activists who challenged New York state law to get it where it is today, did so in 1986. Nine women stood topless in New York City and “were charged with violating New York state penal law section 245.01” which prohibited women from exposing the “portion of the breast which is below the top of the areola.”³²³³ Two of the women challenged the convictions in court and cited the Equal Protection Clause of the 14th Amendment, saying that it “made it unconstitutional for lawmakers to ban women – but not men – from going topless.” New York’s state court avoided the constitutional issue by citing a 1973 decision that section 245.01 “should not be applied to the noncommercial, perhaps accidental, and certainly not lewd, exposure alleged.”³⁴

Today, it is that court decision which protects women going topless in New York. In New York City, many women walk around the Times Square plaza, often covered in paint and asking for tips from tourists. This may conflict with the portion of the ruling that says the law does not apply to “noncommercial” circumstances. However, there are two other factors protecting the women who are walking topless in Times Square:³⁵

1. The women cannot be arrested for indecency because they are street performers, thus exempted by state law and protected by the First Amendment, and
2. Panhandling is a form of protected speech in New York State, so the women could only be arrested if they are aggressively soliciting money or harassing people.

In the memo written by the Fort Collins City Attorney, she includes the following discussion about Manhattan:

“A challenge to Manhattan’s ordinance could arise in one of two ways:
(1) law enforcement issues a citation to a woman who is topless in public, and the citation is sent to Municipal Court for prosecution. The City prosecutors will prosecute the violation and will defend any challenge to the ordinance’s constitutionality through the state court system.
(2) a civil lawsuit is filed by plaintiffs challenging the ordinance’s constitutionality. A civil lawsuit can be filed simply because the

³⁰ <https://www.dailycamera.com/2010/04/06/boulder-approves-public-nudity-ban-doesnt-outlaw-toplessness/>

³¹ <https://time.com/3834365/map-topless-laws/>

³² <https://www.npr.org/sections/thetwo-way/2015/08/24/434315957/topless-in-new-york-the-legal-case-that-makes-going-top-free-legal-ish>

³³ <http://public.leginfo.state.ny.us/lawssrch.cgi?NVLWO:>

³⁴ https://www.law.cornell.edu/nyctap/I92_0160.htm

³⁵ <https://www.nytimes.com/2015/08/21/nyregion/topless-in-times-square-a-legal-view.html>

ordinance exists; an actual violation need not occur. In a civil lawsuit, the City will incur legal fees and, if the City loses, can be required to pay the plaintiff's legal fees or, less likely, damages."³⁶

Ambiguous Laws

Many states and municipalities in the United States "do not expressly prohibit female toplessness, but can prosecute a circumstance if the facts support the city's "public indecency" ordinance or law", or a law that prohibits "lewd and lascivious behavior" as the Fort Collins, Colorado, City Attorney describes.

Portland, OR

The city of Portland uses more inclusive language in the Civil Rights Chapter of their Code and Charter. "Gender Identity" is defined as:

"a person's actual or perceived sex, including a person's identity, appearance, expression or behavior, whether or not that identity, appearance, expression or behavior is different from that traditionally associated with the person's sex at birth."³⁷

With regard to female toplessness, however, the city's Indecent Exposure is vague on the topic:

"14A.40.030 Indecent Exposure: It is unlawful for any person to expose his or her genitalia while in a public place or place visible from a public place, if the public place is open or available to persons of the opposite sex"³⁸

Meanwhile, State Statutes regulate laws around nudity in Chapter 321 that discusses how a person commits the crime of invasion of personal privacy when they make a recording or photograph of another person in a state of nudity without consent of the person being recorded. In this case, the term "Nudity" means any part of the uncovered or less than opaquely covered female breast below the top of the areola.

Ultimately, with Portland's indecent exposure ordinance not specifying female breasts, it can be assumed that it would not be illegal for a woman to be topless. In Oregon, "all local municipalities have the right to make their own laws regarding laws [that would] outrank the statewide policy."³⁹ Nonetheless, Oregon's policy discusses the recording of a nude person, or that to be charged with public indecency, one would have to be either engaged in a sexual act or intending to arouse someone. Regardless, the laws are not as clear or straight forward as they are in other municipalities, leaving women technically able, by law, to be topless. However, there are certainly other circumstances that a woman could end up in if the public display of nudity is paired with behavior that is indecent.

³⁶ <https://cityofmhk.com/DocumentCenter/View/56353/Item-6C-Amend-Public-Nudity-Ordinance>

³⁷ <https://www.portlandoregon.gov/citycode/article/725414>

³⁸ <https://www.portlandoregon.gov/citycode/article/15423>

³⁹ https://www.oregonlive.com/entertainment/2015/06/public_nudity_in_oregon.html

PRELIMINARY AND ILLUSTRATIVE LIST OF POTENTIAL STAKEHOLDERS

- Office of Equal Opportunity
- Human Resources
- Office of the City Attorney
- Free the Nipple supporters in the Community