

4-2-2015

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Law Review

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Recommended Citation

Law Review, "San Francisco Nudity Ban, A Balance of Interests" (2015). *GGU Law Review Blog*. Paper 35.
http://digitalcommons.law.ggu.edu/ggu_law_review_blog/35

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San Francisco Nudity Ban, A Balance of Interests

April 2, 2015 · by anicolopulos · in GGU Law Review.



(<https://ggulawreview.files.wordpress.com/2015/04/nudity-ban.jpg>)

In California, public nudity is legal, so long as those participating are not engaged in lewd acts. Individual cities can choose to invoke bans on public nudity, which Berkeley, San Jose, and San Francisco have done. In November 2012, San Francisco lawmakers outlawed something that is not an issue in other parts of the country, public nudity. The debate over public nudity began in 2011 when San Francisco Supervisor Scott Wiener wrote an ordinance (http://www.huffingtonpost.com/2013/02/13/nancy-pelosi-san-francisco-nudity-ban_n_2677948.html) that requires nudists to put a towel between themselves and any public property they choose to sit on. This ordinance came as a response to an increased number of complaints regarding men whose exercise of their right to be naked was almost a daily occurrence in the Castro District. The nudity ban, which went into effect in February 2013, placed a \$100 fine on first-time offenders and possible jail time for those caught more than three times.

Was this ban necessary? This is a question that many have asked, especially advocates of public nudity. Prior to the ban, on any given day, a person who walked around Market and Castro streets would be sure to witness someone in the buff at a café table, on a park bench, or even pumping gas (https://mail.google.com/mail/u/0/#14bc25b99945cd5b_top). The ban prohibits people from participating in everyday public activities in the nude, but it does leave exceptions where nudity is still acceptable. These events (https://mail.google.com/mail/u/0/#14bc25b99945cd5b_top) include the annual Gay Pride Parade and the Folsom Street Fair, which cater to certain sexual subcultures.

In March 2013, a request by nudist activists for a temporary restraining order blocking the ban on nudity in public places was turned down. U.S. District Judge Edward Chen denied (<http://sanfrancisco.cbslocal.com/2013/03/21/federal-judge-upholds-public-nudity-ban-in-san-francisco/>) the restraining order because the evidence presented lacked details and lacked a substantive legal argument. Chen explained that nudity is not inherently expressive, so it is not protected speech.

Every year since the ban was enacted, nudist advocates have gathered in Jane Warner Plaza at Castro and Market Street to protest the nudity ban on its anniversary. On Saturday, February 1, 2014, protesters were wearing censor cards, or socks to cover up their genitals in compliance with the ordinance. However, when protestors removed (<http://www.sfweekly.com/thesnitch/2014/02/03/nudity-ban-protest-takes-an-unexpectedly-violent-turn>) these items, leaving themselves fully exposed, police gave a five-minute warning that they needed to cover back up. When the protestors failed to comply with the request, police began arresting protestors who were violating the ordinance.

Similarly, on Sunday, February 1, 2015, a rally was held to protest the ban on its two-year anniversary. Organizers of the protest did not obtain a permit for this event and because of that, police officers arrested (<http://www.sfgate.com/news/crime/article/3-arrested-in-protest-against-San-Francisco-s-6055708.php>) two men and women whom they warned were in violation of the ordinance.

Despite these instances of enforcement of the nudity ban, it has largely been ineffective to prevent public nudity. As a resident of the Castro neighborhood I can attest that even with the ban, I can walk down Castro Street on any given weekend and still see people walking around in their birthday suits.

Upon closer examination of the language of the ordinance, I found that [SEC. 154\(b\)](http://www.sfbos.org/ftp/uploadedfiles/bdsupvrs/ordinances12/o0234-12.pdf) (<http://www.sfbos.org/ftp/uploadedfiles/bdsupvrs/ordinances12/o0234-12.pdf>) only states that a person may not expose his or her genitals or anal region. But the ban does not go so far as to require people to wear clothing while in public places, nor does it specify what can be used to cover the genital and anal regions, only indicating that these regions are not to be exposed. As a result of this vagueness, it is still very common to walk down the streets of the Castro neighborhood and see people who are for all intents and purposes naked, with the exception of a flap or a sock to cover their genitals.

Though the ban has not entirely stopped people from being “naked” in public, there are [separate city laws](http://sanfrancisco.cbslocal.com/2013/03/21/federal-judge-upholds-public-nudity-ban-in-san-francisco/) (<http://sanfrancisco.cbslocal.com/2013/03/21/federal-judge-upholds-public-nudity-ban-in-san-francisco/>) that prohibit nudity in restaurants, public seating areas, and parks. It is unclear to me whether the ban was necessary because it appears to be a “naked” fail. However, nudist activists disagree, and argue that it is not the same as it was prior to the ban because the ban stifles their ability to engage in free expression, their “[body freedom](http://www.huffingtonpost.com/2013/02/01/san-francisco-nudity-arrests_n_2601869.html)” (http://www.huffingtonpost.com/2013/02/01/san-francisco-nudity-arrests_n_2601869.html),” and using nudity as a political statement. Activists further argue that forcing people to cover up will damage San Francisco’s reputation as a “city without inhibitions.”

The ban was only approved by a 6-5 vote by the Board of Supervisors. Those who voted against the ban were concerned that civil liberties and free speech would be infringed as well as its potential to change San Francisco’s notoriously tolerant style as a city. However proponents of the ban disagreed, claiming that while the San Francisco and the Castro in particular are a place for freedom, expression, and acceptance, these concepts have limits and should not elicit an [anything goes](http://www.huffingtonpost.com/2012/11/20/san-francisco-bans-public-nudity_n_2165847.html) (http://www.huffingtonpost.com/2012/11/20/san-francisco-bans-public-nudity_n_2165847.html) idea. Public spaces are made for everyone, thus, it is important to have minimum behavioral standards. However, the question remains whether this ban was necessary in the first place, especially since it has not entirely prevented the expression it was meant to.

Tags: [Activist](#), [Ban](#), [Board of Supervisors](#), [Castro](#), [Folsom Street Fair](#), [Gay Pride Parade](#), [Judge Edward Chen](#), [Nudist](#), [Nudity](#), [san francisco](#), [Scott Wiener](#)

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