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Columbus City Attorney Releases Legal Review of ‘Community Defense Act’

Memo to police chief advises that statute should not be enforced and will not be prosecuted due to legal concerns

COLUMBUS, OH—Columbus City Attorney Zach Klein released a copy of a memo he sent earlier today to Columbus Division of Police Chief Kimberly Jacobs regarding the review of Ohio’s law pertaining to “illegal oriented activity in sexually oriented businesses.”

The memo explains that it is the legal advice of the Columbus City Attorney’s Office that Revised Code Section 2907.40(C)(2) “should not be enforced at this time, and that charges filed pursuant to this subsection subsequent to this memo will not be prosecuted.”

The code section states in relevant part:

(C) (2) No employee who regularly appears nude or seminude on the premises of a sexually oriented business, while on the premises of that sexually oriented business and while nude or seminude, shall knowingly touch a patron....

According to the memo, charging someone under this code section is “legally problematic because it creates an inequitable application of the law that is dependent on how ‘regular’ the employee appears... the very same actions/touching are treated completely differently depending on the regularity of the employees’ appearances, and each have drastically different outcomes for the employee.”

The memo also raises concern in the application of the law regarding the definition of “patron.” The memo explains that the Community Defense Act’s definition of a patron, as provided in [ORC 2907.40\(A\)\(8\)\(c\)](#), exempts public employees acting within the scope of their duties as a public employee. This public employee exemption, according to the City Attorney’s legal advisement, “exempts a police officer while on duty, regardless of whether the officer is in uniform or undercover. This clearly creates a legal problem when the police officer is the recipient of any alleged touching that would trigger a potential violation of O.R.C. § 2907.40(C)(2). If a police officer is not a ‘patron’ under the definition provided in the law, then touching the officer would not be a violation of the statute.”

“In light of the recent charges filed under this statute, we have recognized there is a glaring inequitable application of the law, which treats people differently for the same conduct based on the frequency of their appearances at sexually oriented businesses,” said Columbus City Attorney Zach Klein. **“For this reason, and for the concern over the definition of ‘patron’ as applied to law enforcement, we have**

issued a directive to the Columbus Division of Police to notify them that we will no longer be prosecuting these charges.”

The memo concludes by advising the Columbus Division of Police that “[n]othing in this memorandum is meant in any way to prevent the Division of Police from conducting undercover investigations relative to other vice-related offenses, narcotics, or human trafficking. This memo is only directed to the enforceability of O.R.C § 2907.40(C)(2).”

Any individuals who have been charged under this statute should feel free to contact the Prosecution Division of the City Attorney’s Office.

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