

ORDINANCE NO. 2015-9

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF CLAY COUNTY, FLORIDA, ESTABLISHING NEW CHAPTER 2.4 OF THE CLAY COUNTY CODE ENTITLED “PUBLIC NUDITY REGULATIONS” AND CREATING THEREUNDER AN ARTICLE AND SECTIONS COMPRISING REGULATIONS FOR PUBLIC NUDITY; STATING THE INTENT OF THE REGULATIONS; PROVIDING DEFINITIONS, INCLUDING THE DEFINITION OF NUDE; PROVIDING FINDINGS; PROHIBITING PUBLIC NUDITY AND SEXUAL CONDUCT OR THE SIMULATION THEREOF; DECLARING PUBLIC NUDITY AND SEXUAL CONDUCT OR THE SIMULATION THEREOF UNLAWFUL; PROVIDING FOR EXEMPTIONS; PROVIDING FOR ENFORCEMENT AND PENALTIES; PROVIDING FOR CIVIL AND CRIMINAL RELIEF; PROVIDING MISCELLANEOUS PROVISIONS PERTAINING TO THE DETERMINATION OF A CERTAIN PORTION OF THE BREAST SURFACE AREA, AND TO ITEMS THAT ARE NOT CONSIDERED OPAQUE COVERINGS; PROVIDING FOR APPLICABILITY WITHIN THE COUNTY; PROVIDING FOR SEVERABILITY AND INTERPRETATION; AND PROVIDING AN EFFECTIVE DATE.

Recitals

WHEREAS, local governments may prohibit the exposure of certain body parts, see *Geaneas v. Willets*, 911 F.2d 579 (11th Cir. 1990), *cert. den.*, 499 U.S. 955, 111 S. Ct. 1431, 113 L. Ed. 2d 484 (1991); and,

WHEREAS, efforts by the state and federal governments to apply Florida criminal statutes to public nudity have been rejected by the courts because, under certain of Florida’s criminal laws, nudity alone cannot be prosecuted without proof of lewd and lascivious conduct; and,

WHEREAS, other Florida counties have successfully passed and defended regulations relating to public nudity; and,

WHEREAS, the Board of County Commissioners (the Board), of Clay County, Florida (the County), on behalf of the citizens of the County, desires to regulate public nudity and sexual conduct, and the Board believes that public nudity and sexual conduct begets undesirable behavior, and that adverse secondary effects such as, but not limited to, prostitution, attempted sexual battery, sexual battery, assault and the spread of social communicable and sexually transmittable diseases and may occur and have the potential for occurring where nude and sexual conduct is permitted; and,

WHEREAS, the Board desires to protect against similar conditions to the end that they not occur in the County; and,

WHEREAS, the Board desires to prohibit the public display of nudity and sexual behavior or the simulation thereof; and,

WHEREAS, the Board believes that there are increasing incidents of nudity in public places and in other places readily visible to the public; and,

WHEREAS, the Board believes that persons who choose to appear nude in public places are engaging in conduct which often serves to impose their nudity on others who did not seek it out, who are not able to reasonably avoid observing it, and who may be offended or distressed thereby; and,

WHEREAS, appearing nude in public places was a criminal offense at common law and was considered an act *malum in se* (a wrong in itself), and appearing nude in a public place which is not a public place provided or set apart for nudity has been considered improper, see *Moffett v. State*, 340 So. 2d 1155, 1156 n.3 (Fla. 1977); and,

WHEREAS, the Board desires to protect and preserve the wholesome character of Clay County as a family oriented community with a high quality of life offered for families, tourists and businesses; and,

WHEREAS, the Board believes that appearing nude in public places is still contrary to the general societal disapproval that the people of the County have of persons appearing nude among strangers in public places; and,

WHEREAS, the Board believes that the appearance of persons in the nude in public places generally increases adverse secondary effects such as, but not limited to, incidents of prostitution, sexual assaults and batteries, attracts other criminal activity to the community, and encourages degradation of women and other activities which break down societal and family structures; and,

WHEREAS, the Board believes that without regulation public nudity constitutes harmful conduct and occurs in a manner which is incompatible with the normal primary activity of a particular place at a particular time; and,

WHEREAS, the Board's sole intent in enacting this ordinance is to prohibit the conduct of being nude in public places and to suppress the adverse secondary effects such nudity generates; and,

WHEREAS, the regulation of nudity of exotic dancers and other workers in adult entertainment establishments and sexually oriented businesses is set forth in other regulations enacted by the Board; and,

WHEREAS, it is the intent of the Board to protect and preserve the good order, public health, safety, welfare and morals of the County by restricting, to the fullest extent allowed by

the United States Constitution and Florida Constitution, the act of being nude to places which are not readily visible to the public; and,

WHEREAS, the Board's sole intent in enacting this ordinance is to prohibit the conduct of being nude in public places and to suppress the adverse secondary effects such nudity generates; and,

WHEREAS, the Board nevertheless recognizes that there may be instances wherein appearing nude in a public place may be expressive conduct incidental to and a necessary part of the freedom of expression that is protected by provisions of United States Constitution or Florida Constitution; and,

WHEREAS, the Board believes that the County is, and desires very much to continue to be, a community that contains and is known for traditional and wholesome public recreational activities, natural features and resources and historic facilities; and,

WHEREAS, the Board believes that the average person applying contemporary community standards would find that the public nudity prohibited by the Public Nudity Regulations established under this ordinance, if allowed, when taken as a whole: (i) appeals to the prurient interests, and (ii) lacks serious literary, artistic, political, and scientific value; and,

WHEREAS, the Board believes that non-regulation of persons appearing nude in public places within the County encourages persons and entities to advertise outside of the County and the State of Florida by billboard, radio, print and other media the availability of nudity in public places within the County and thus encourages the influx into the County of persons seeking: (i) to observe and/or participate in such nudity, and (ii) to participate in the disorderly, harmful, and illegal conduct that is associated therewith, thereby increasing injuries and damages to the citizens of the County who will be victims of such increased disorderly, harmful, and unlawful conduct and thereby working directly against the County's economic development and tourism development activities; and,

WHEREAS, the Board believes that commercial advertising and/or exploitation of nudity encourages escalation of nude and lewd conduct within the competing commercial establishments exploiting such conduct and thereby increases the adverse effects upon public order and the public health; and,

WHEREAS, the Board believes that the prohibitions contained in the Public Nudity Regulations established under this ordinance are the most reasonable and minimal restrictions required so as to regulate conduct which is adverse to public order, health, safety, morality, and decency within the County when such conduct takes place at locations where the public is present or is likely to be present, or where such conduct would be readily visible to the public; and,

WHEREAS, the Board believes that the adoption of this ordinance is necessary to preserve the basic character of the County; and,

WHEREAS, states may regulate the conduct of appearing nude in public places, see *Barnes v. Glen Theater, Inc.*, 501 U.S. 560, 111 S. Ct. 2456 115 L. Ed. 2d 504 (1991), and *Cafe 207, Inc. v. St. Johns County*, 856 F. Supp. 641 (M.D. Fla. 1994), *aff'd*, 989 F. 2d 1136 (11th Cir. 1995); and,

WHEREAS, the Board is not hereby prohibiting nudity in private places or prohibiting nudity which is protected by the United States Constitution or Florida Constitution; and,

WHEREAS, the Board believes that the express exemptions contained in the Public Nudity Regulations established under this ordinance provide adequate protection to persons who, without such express exemptions, might otherwise be prevented or discouraged by this ordinance from exercising constitutionally protected rights; and,

WHEREAS, this ordinance is intended to regulate conduct, not speech.

Be It Ordained by the Board of County Commissioners of Clay County:

Section 1. Chapter 2.4 of the Clay County Code is hereby established and entitled "Public Nudity Regulations." Within said Chapter 2.4 are hereby created the following article and sections:

ARTICLE I. PUBLIC NUDITY REGULATIONS

Sec. 2.4-1. Intent.

It is the intent of this article to protect and preserve the good order, health, safety, welfare, and morals of the citizens of the county by prohibiting a person from intentionally or recklessly appearing or being nude as defined herein, or causing another person to appear or be nude in a public place and in other places which may reasonably be expected to be observed by the public within the county except as provided for in Sec. 2.4-5, or otherwise regulated in accordance with this article. It is the intent of Sec. 2.4-4 to specifically prohibit nudity, gross sexuality and the simulation thereof.

Sec. 2.4-2. Definitions.

The following words and phrases defined in this section and used in this article shall have the meaning herein prescribed, unless the context clearly suggests otherwise:

Board means the board of county commissioners of the county.

Breast means a portion of the human female mammary gland, commonly referred to as the female breast, including the nipple and areola, which is the darker colored area of the breast surrounding the nipple, and an outside area of such gland wherein such outside area:

- (a) is reasonably compact and contiguous to the areola, and,
- (b) contains at least the nipple and the areola and one-fourth of the outside surface area of such gland.

Buttocks means (the following description can generally be described as covering one-third of the buttocks centered over the cleavage for the length of the cleavage) the area at the rear of the human body, sometimes referred to as the gluteus maximus, which lies between two imaginary straight lines running parallel to the ground when a person is standing, the first or top such line being one-half inch below the top of the vertical cleavage of the nates, i.e., the prominence formed by the muscles running from the back of the hip to the back of the leg, and the second or bottom such line being one-half inch above the lowest point of the curvature of the fleshy protuberance, sometimes referred to as the gluteal fold, and between two imaginary straight lines, one on each side of the body, referred to herein as the "outside lines", which outside lines are perpendicular to the ground and to the horizontal lines described above and which perpendicular outside lines pass through the outermost point or points at which each nate meets the other side of leg. Notwithstanding the above, buttocks shall not include the leg, the hamstring muscle below the gluteal fold, the tensor fasciae latae muscle or any of the above-described portion of the human body that is between either: (i) the left inside perpendicular line and the left outside perpendicular line, or (ii) the right inside perpendicular line and the right outside perpendicular line. For the purpose of the previous sentence the left inside perpendicular line shall be an imaginary straight line on the left side of the anus: (i) that is perpendicular to the ground and to the horizontal lines described above, (ii) that is one-third of the distance from the anus to the left outside line, and the right inside perpendicular line shall be an imaginary straight line on the right side of the anus (i) that is perpendicular to the ground and to the horizontal lines described above, and (ii) that is one-third of the distance from the anus to the right outside line.

County means Clay County, Florida.

Entity means any proprietorship, partnership, corporation, association, business trust, joint venture, joint-stock company or other for profit and/or not for profit organization.

Nude, with respect to a person, means a state of being insufficiently clothed in any manner, or a state of appearance such that any of the following body parts are not entirely covered with a fully opaque covering:

- (a) The male or female genitals.
- (b) The pubic area.

- (c) The vulva.
- (d) The penis.
- (e) The breast of a female contiguous to and containing the nipple and the areola and more than three-fourths of the breast surface area, but excluding any portion of the cleavage between the human female breasts typically exhibited by a dress, blouse, shirt, leotard, bathing suit, or other wearing apparel, provided that the areola is not exposed.
- (f) The anus.
- (g) The anal cleft.
- (h) The anal cleavage.
- (i) The buttocks.

Person means any live human being 10 years of age or older.

Place set apart for nudity means enclosed an single sex public restroom, an enclosed single sex functional shower, a single sex locker and/or dressing room facility, an enclosed motel room and hotel room designed and intended for sleeping accommodations, a doctor's office, any portion of a hospital, the yard areas of a private residence, and any similar place in which nudity or exposure is necessarily and customarily expected outside of the home and the sphere of privacy constitutionally protected therein, but shall not be deemed to include any place where a person's conduct of being nude is used for his or her profit or where being nude is used for the promotion of business or is otherwise for commercial gain.

Public Place means any location frequented by the public, or where the public is present or likely to be present, or where a person may reasonably be expected to be observed by members of the public, and include, but are not limited to, streets, sidewalks, parks, beaches, business and commercial establishments, whether for profit or not for profit and whether open to the public at large or where entrance is limited by a cover charge or membership requirement or membership fee, bottle clubs, hotels, motels, restaurants, night clubs, country clubs, cabarets, and meeting facilities utilized by any religious, social, fraternal or similar organization, but do not include premises, or portions thereof such as motel or hotel rooms, used solely as a private residence, whether permanent or temporary in nature.

Sec. 2.4-2. Findings.

The recitals set forth in the ordinance creating this article contain findings and determinations supporting its creation. Said recitals are incorporated by reference into this section. In addition and supplemental to said recitals, the board finds and determines that, considering the undesirable events that have occurred and conditions that prevail in other communities that have not regulated public nudity as provided in this article, the acts prohibited in Sec. 2.4-3 encourage or create the potential for the occurrence of adverse secondary effects such as, but not limited to, prostitution, attempted sexual battery, sexual battery, assault and the spread of socially communicable and sexually transmitted diseases; that actual and simulated nudity and sexual conduct in public places begets, and has the potential for begetting, undesirable and unlawful behavior; and that sexual, lewd, lascivious and salacious conduct results in violation of law and creates dangers to the health, safety, morals and welfare of the public and those who engage in such conduct.

Sec. 2.4-3. Public nudity, sexual conduct prohibited.

- (a) No person shall knowingly, intentionally or recklessly appear, or cause another person to appear nude or expose to public view his or her genitals, vulva, penis, pubic area, or buttocks or any simulation thereof.
- (b) No female person shall knowingly, intentionally or recklessly expose her breasts or any simulation thereof to public view.
- (c) No person shall knowingly, intentionally or recklessly cause a female person to expose her breasts or any simulation thereof to public view.
- (d) No person or entity maintaining, owning, or operating a public place shall encourage, allow or permit any person to knowingly, intentionally or recklessly appear nude or to knowingly, intentionally or recklessly expose to public view his or her genitals, pubic area, vulva, penis, anus, or any portion of the buttocks or any simulation thereof at such public place. This section shall be deemed violated if any portion of the buttocks is visible from any vantage point.
- (e) No person at a public place shall engage in and no person or entity maintaining, owning, or operating a public place shall encourage, allow or permit any person at such public place to engage in sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, lap dancing, straddle dancing, any sexual act which is prohibited by law, touching, caressing, or fondling of the breasts, buttocks, anus or genitals or any simulation thereof.

Sec. 2.4-4. Conduct declared unlawful.

It shall be unlawful and a violation of this article for any person to commit any act or engage in any conduct prohibited under Sec. 2.4-3, except as provided in Sec. 2.4-5.

Sec. 2.4-5. Exemptions.

The prohibitions of Sec. 2.4-3 shall not apply:

- (a) When a person appears nude in a place set apart for nudity, as defined in this article, provided:
 - (1) such person is nude for the sole purpose of performing the legal function or functions that are customarily intended to be performed within such place set apart for nudity, and,
 - (2) such person is not nude for the purpose of obtaining money or other financial gain for such person or for another person or entity.
- (b) When the act or conduct of being nude cannot legally be prohibited by this article because:
 - (1) it constitutes a part of a bona fide live communication, demonstration or performance by a person wherein such nudity is expressive conduct incidental to and necessary for the conveyance or communication of a genuine message or public expression and is not a mere guise or pretense utilized to exploit the act or conduct of being nude for profit or commercial gain, see for instance *Board of County Commissioners v. Dexterhouse*, 348 So.2d 916 (Fla. 2d DCA 1977), and as such is protected by the United States Constitution or Florida Constitution; or,
 - (2) it is otherwise protected by the United States Constitution or Florida Constitution.
- (c) To a woman breast feeding a baby; or,
- (d) To the presentation or display of photographs, movies, video presentations, or to other non-live performances.

Sec. 2.4-6. Enforcement and penalties.

Any person or entity committing any act or engaging in any conduct declared unlawful and a violation of this article under Sec. 2.4-4 to which an exemption under Sec. 2.4-5 does not apply shall be guilty of an offense that, pursuant to section 125.69, Florida Statutes, and any successor thereto, shall be prosecuted in the same manner as misdemeanors are prosecuted. Such violation

shall be prosecuted in the name of the State of Florida in a court having jurisdiction of misdemeanors by the prosecuting attorney thereof and, upon conviction, shall be punished by a fine not to exceed \$500 or by imprisonment in the county jail, not to exceed 60 days, or by both such fine and imprisonment. Each incident or separate occurrence of any act that constitutes such violation shall be deemed a separate offense.

Sec. 2.4-7. Civil and criminal relief.

Any person or entity committing any act or engaging in any conduct declared unlawful and a violation of this article under Sec. 2.4-4 to which an exemption under Sec. 2.4-5 does not apply shall be subject to any appropriate civil or criminal action provided by law in a court of competent jurisdiction, including, but not limited to, an action for injunctive relief.

Sec. 2.4-8. Miscellaneous provisions.

- (a) With respect to the provisions pertaining to the breast of a female in the definition of nude, the determination of which three-fourths of the breast surface area applies is at the discretion of the female.
- (b) For purposes of the definition of nude, body paints, body dyes, tattoos, liquid latex whether wet or dried, string, twine, cords, G-Strings, T-backs, thongs and similar coverings shall not be considered opaque coverings.

Sec. 2.4-9. Applicability.

This article shall be applicable throughout the incorporated and unincorporated areas of the county; provided, if any portion of this article is in conflict with the ordinance of any municipality within the county, then the ordinance of such municipality shall prevail within such municipality, but only to the extent of such conflict.

Section 2. It is hereby declared to be the intention of the Board that the sections, paragraphs, sentences, clauses and phrases of this ordinance and of the Public Nudity Regulations established under section 1 are severable, and if any section, paragraph, sentence, clause or phrase of this ordinance or of the Public Nudity Regulations established under section 1 shall be declared unconstitutional by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining sections, paragraphs, sentences, clauses and phrases of this ordinance or of the Public Nudity Regulations established under section 1.

Section 3. This ordinance shall take effect as provided under Florida general law.

[The remainder of this page is intentionally blank.]

24th DULY ADOPTED by the Board of County Commissioners of Clay County, Florida, this day of March, 2015.

BOARD OF COUNTY COMMISSIONERS
OF CLAY COUNTY, FLORIDA

By: *Diane Hutchings*
Diane Hutchings
Its Chairman

ATTEST:

S. C. Kopelousos
S. C. Kopelousos
County Manager and Clerk of the
Board of County Commissioners