

ORDINANCE
1997-27

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF WALTON COUNTY, STATE OF FLORIDA, TO BE KNOWN AS THE WALTON COUNTY PUBLIC NUDITY ORDINANCE; STATING THE INTENT OF THE ORDINANCE; PROVIDING THE DEFINITION OF NUDITY AS PROHIBITED BY THIS ORDINANCE AND PROVIDING OTHER DEFINITIONS; PROVIDING LEGISLATIVE FINDINGS: PROHIBITING NUDITY AND SEXUAL CONDUCT OR THE SIMULATION THEREOF WITHIN ALCOHOLIC BEVERAGE ESTABLISHMENTS; PROHIBITING NUDITY IN CERTAIN OTHER PLACES; PROVIDING FOR ENFORCEMENT AND PENALTIES FOR THE VIOLATION OF THIS ORDINANCE; PROVIDING FOR INJUNCTIVE RELIEF; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE COUNTY CODE; AND PROVIDING AN EFFECTIVE DATE.

a) WHEREAS, the Board of County Commissioners of Walton County, Florida (the "Board"), is aware that local governments may, by virtue of the twenty-first (21st) amendment to the United States Constitution, regulate and prohibit various forms of actual and simulated Nude and sexual conduct, and the depiction thereof, within and around Establishments Dealing in Alcoholic Beverages. See California v. LaRue, 409 U.S. 109, 93 S.Ct. 390, rehearing denied, 410 U.S. 948, 93 S.Ct. 1351 (1972); and New York State Liquor Authority v. Bellanca, 452 U.S. 714, 101 S.Ct. 2599 (1981); and,

b) WHEREAS, the Board is aware that local governments may prohibit the exposure of certain body parts in and around Establishments Dealing in Alcoholic Beverages, see Geaneas v. Willets, 911 F.2d 579 (11th Cir. 1990); and,

c) WHEREAS, the Board wishes to regulate nudity and sexual conduct in and around Establishments Dealing in Alcoholic Beverages; and, the Board is aware of evidence from other communities that indicates that nudity and sexual conduct, coupled with alcohol in Public Places, begets undesirable behavior, and that prostitution, attempted rape, rape, and assault have occurred and have the potential for occurring in and around Establishments Dealing In Alcoholic Beverages where Nude and sexual conduct is permitted; and,

d) WHEREAS, the Board wishes to protect against similar conditions to the end that they not occur in Walton County at or around Establishments Dealing in Alcoholic Beverages; and,

e) WHEREAS, the Board desires to prohibit the public display of Nude conduct and sexual behavior or the simulation thereof in and around Establishments Dealing in Alcoholic Beverages; and,

f) WHEREAS, the Board finds and determines that there are increasing incidents of nudity in Public Places other than Establishments Dealing in Alcoholic Beverages and in other places readily visible to the public; and

g) WHEREAS, the Board finds and determines 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 reasonable avoid observing it, and who may be offended or distressed thereby; and,

h) WHEREAS, appearing Nude in Public Places was a criminal offense at common law and was considered an act malum en se; and,

i) WHEREAS, the Board desires to protect and preserve the unique character of Walton County as a family oriented, historic attraction for families, tourists and businesses; and,

j) WHEREAS, the Board finds and determines that appearing Nude in Public Places is still contrary to the general societal disapproval that the people of Walton County have of person appearing Nude among strangers in Public Places; and,

k) WHEREAS, the Board finds and determines that the mere appearance of Persons in the Nude in Public Places generally increases 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 family structures; and,

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

m) 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, 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 United States or Florida constitutional provisions; and,

n) WHEREAS, a requirement that dancers don opaque covering sufficient to cover the Buttocks and the Breast as such portions of the human anatomy are defined in this ordinance does not deprive the dance of whatever erotic message, if any, it may convey, but simply makes such message, if any, slightly less graphic and imposes only an incidental limitations on the message; and,

o) WHEREAS, it is the intent of the Board to protect and preserve the public health, safety, welfare and morals of Walton County by restricting, to the full extent allowed by the United States and Florida constitutions, the act of being Nude to places which are not frequented by the public and places which are not readily visible to the public; and,

p) WHEREAS, Walton County is essentially a rural suburban community the largest municipality of which (the City of DeFuniak Springs) has a population of less than 13,000 people; and,

q) WHEREAS, Walton County is a county that is, and desires very much to continue to be, a community that contains and is known for traditional wholesome public recreation activities and historic facilities such as: the historic city of DeFuniak Springs; the ocean beaches; the inland waterways; and,

r) WHEREAS, the Board finds and determines that the average person applying contemporary Walton County community standards would find that the public nudity prohibited by 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,

s) WHEREAS, non regulation of persons appearing nude -in Public Places within Walton County encourages commercial Entities and other Entities and Persons to advertise outside of Walton County and the State of Florida by billboard, radio, print and other media the availability of nudity in Public Places within Walton County and thus encourages the influx into Walton 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 this county who will be victims of such increased disorderly, harmful, and unlawful conduct; and,

t) WHEREAS, competitive 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 and adverse effects upon public order and the public health; and,

u) WHEREAS, the Board finds and determines that the prohibitions contained herein are the most reasonable and minimal restrictions required so as to regulate conduct which is adverse to public order, health, morality, and decency within Walton 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,

v) WHEREAS, the passage of this ordinance is necessary to preserve the basic character of the unincorporated community of Walton County; and

w) WHEREAS, the Board is aware that States may regulate the conduct of appearing Nude in Public Places, see Michael Barnes v. Glen Theatre, Inc. 115 L.Ed 2d 504, Ill S.Ct. 2456 (1991); and,

x) WHEREAS, the Board is not hereby prohibiting nudity in truly private places or prohibiting nudity which is protected by United States or Florida constitutional provisions; and,

y) WHEREAS, the Board finds and determines that the express exemption contained in Section 7(b) (ii) of this ordinance provides adequate protection to Persons who, without such express exemption, might otherwise be prevented or discouraged by the ordinance from exercising constitutionally protected rights; and

z) WHEREAS, although the Board is of the opinion that this ordinance is a general ordinance regulating conduct and is not an ordinance that affects the use of land as contemplated by Florida Statute 125.66, the Board does not wish to become sidetracked in lengthy and expensive litigation concerning procedural matters that are not relevant to the subject matter of this ordinance and has determined to enact this ordinance under the more conservative, expensive, and time consuming “affecting use of land” procedure as well as under the general procedure for ordinances that regulate conduct; and

aa) WHEREAS, the Board finds and determines that this ordinance is consistent with its current comprehensive plan;

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS WALTON COUNTY, FLORIDA, THAT:

Section 1. TITLE: This ordinance shall be known as the Walton County Public Nudity Ordinance.

Section 2. INTENT: It is the intent of this ordinance to protect and preserve the health, safety, welfare, and morals of the citizens of Walton County by prohibiting a Person from intentionally or recklessly appearing or being nude, or causing another Person to appear to be Nude, in a Public Place and in other places which may reasonably be expected to be observed by the public within the unincorporated areas of Walton County except:

- a) When such Person appears Nude in a Place Provided Or Set Apart For Nudity provided (i) such Person is nude for the sole purpose of performing the legal function(s) that is customarily intended to be performed within such Place Provided Or Set Apart For Nudity and (ii) such Person is not Nude for the purpose of obtaining money or other financial gain for such Person or for another person or Entity, or;

- b) When the conduct of being Nude can not legally prohibited by this ordinance (i) because it constitutes ~a part of a bona fide live communication, demonstration or performance by such 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 guise of pretense utilized to exploit nudity for profit or commercial gain (see for instance Board of County Commissioners vs. Dexterhouse, 348 So. 2d 916 (Fla. 2nd DCA 1977) and as such is protected by the United States or Florida Constitution of (ii) because it is otherwise protected by the United States or Florida Constitution.

It is the Board's further intention to accomplish those intents and purposes expressed by the Board in the "Whereas" provisions of this ordinance, each of which are incorporated by reference into this section 2.

Section 3. DEFINITIONS: Capitalized terms, when used in this ordinance, shall have the following meanings:

a. Alcoholic Beverages: All distilled spirits and all beverages containing one-half of 1 percent of more alcohol by volume. The percentage of alcohol by volume shall be determined by measuring the volume of the standard ethyl alcohol in the beverage and comparing it with the volume of the remainder of the ingredients as though said remainder ingredients were distilled water.

b. 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 (i) reasonably compact and contiguous to the areola and (ii) contains at least the nipple and the areola and 1/4 of the outside surface of such gland.

c. Buttocks: (For a short general description see the last sentence of this subsection.) 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 of such line being 1/2 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 of bottom such line being 1/2 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 (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(s) at which each nate meets the outer side of each 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 and (ii) that is 1/3 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 1/3 of the distance from the anus to the tight outside line. (The above description can generally be described as covering 1/3 of the buttocks centered over the cleavage for the length of the cleavage.)

d. Entity: Any proprietorship, partnership, corporation, association, business trust, joint venture, joint-stock company of other for profit and/or not for profit organization.

e. Establishment Dealing In Alcoholic Beverages: Any business, commercial or other establishment (whether for profit or not for profit and whether open to the public at large or where entrance is limited by cover charge or membership requirement) including those licensed by the State for sale and/or service of Alcoholic Beverages, and any bottle club; hotel; motel; restaurant; night club; country club; cabaret; meeting facility utilized by any religious, social, fraternal or similar organization; business', commercial or other establishment where a product or article is sold, dispensed, served or provided with the knowledge, actual or implied, that the same will be, or is intended to be mixed, combined with or drunk in connection or combination with an Alcoholic Beverage on the premises or curtilages of said business, commercial or other establishment; or business, commercial or other establishment where the consumption of Alcoholic Beverages is permitted. Premises or portions thereof such as hotel rooms, used solely & a private residence, whether permanent or temporary in nature, shall not be deemed to be an Establishment Dealing in Alcoholic Beverages.

f. 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 (see the last sentence in this subsection f), or
- (4) The Buttocks. Attire which is insufficient to comply with this requirement includes, but is not limited to, G-Strings, T-Backs, dental floss and thongs.

Body paint, body dyes, tattoos, liquid latex whether wet or dried, and similar substances shall not be considered opaque covering. Each female Person may determine which 1/4 of her Breast surface area (see definition of Breast) contiguous to and containing the nipple and the areola is to be covered.

g. Person: Any live human being aged ten years of age or older.

h. Places Provided Or Set Apart For Nudity: Shall mean enclosed single sex public restrooms, enclosed single sex functional shower, locker and/or dressing room facilities, enclosed motel rooms and hotel rooms designed and intended for sleeping accommodations, doctor's offices, portions of hospitals, and similar places in which nudity or exposure is necessarily and customarily expected outside of the home and the sphere of privacy constitutionally protected therein. This term shall not be deemed to include places 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 commercially exploited.

i. Public Place: 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. Public Places 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), bottle clubs, hotels, motels, restaurants, night clubs, country clubs, cabarets, and meeting facilities utilized by any religious, social, fraternal or similar organization. Premises, or

portions thereof such as hotel rooms, used solely as private residence, whether permanent or temporary in nature shall not be deemed to be a Public Place.

Section 4. LEGISLATIVE FINDINGS: In addition and supplemental to the findings and determinations contained in the “Whereas” provisions of this ordinance which are incorporated by reference into this Section 4, it is hereby found by the Board, acting in its legislative capacity for the purpose of regulating the conduct of appearing Nude in Public Places and for the purpose of regulating nudity and other conduct in Establishments Dealing In Alcoholic Beverages, that, considering what has happened in other communities, the acts prohibited in Section 5 herein below encourage or create the potential for the conduct of prostitution, attempted rape, rape, and assault in and around Establishments Dealing In Alcoholic Beverages; that actual and simulated nudity and sexual conduct, coupled with the consumption of Alcoholic Beverages in Public Places, begets and has the potential for begetting undesirable and unlawful behavior; that sexual, lewd, lascivious, and salacious conduct among patrons and employees within Establishments Dealing In Alcoholic Beverages 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; and, it is the intent of section 5 of this ordinance to specifically prohibit nudity, gross sexuality and the simulation thereof in Establishments Dealing in Alcoholic Beverages.

Section 5. NUDITY, SEXUAL CONDUCT PROHIBITED IN ESTABLISHMENTS DEALING IN ALCOHOLIC BEVERAGES: The following prohibitions and criteria shall apply within existing and/or newly created Establishments Dealing In Alcoholic Beverages and the curtilages thereof:

- 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, pubic area, vulva, or Buttocks, or any simulation thereof;
- b. No female person shall knowingly, intentionally or recklessly expose, or cause another female person to expose her Breasts or any simulation thereof to public view;

c. No person or Entity maintaining, owning, or operating an Establishment Dealing In Alcoholic Beverages shall encourage, allow or permit any person to appear Nude or to expose to public view his or her genitals, pubic area, vulva, anus or any portion of the Buttocks or simulation thereof. This section shall be violated if any portion of the Buttocks is visible from any vantage point.

d. No person or Entity maintaining, owning, or operating an Establishment Dealing In Alcoholic Beverages shall encourage, allow or permit any female person to expose her Breasts or any simulation thereof to public view;

e. No person shall engage in and no person or Entity maintaining, owning, or operating an Establishment Dealing In Alcoholic Beverages shall encourage, allow or permit any 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 the simulation thereof.

f. The prohibition of this Section 5 shall not apply when a person appears Nude in a Place Provided Or Set Apart For Nudity provided (i) such person is Nude for the sole purpose of performing the legal function(s) that is customarily intended to be performed within such Place Provided Or Set Apart and (ii) such person is not Nude for the purpose of obtaining money or other financial gain for such person or for another person or Entity.

g. Each female person may determine which 1/4 of her Breast surface area (see definition of Breast) contiguous to and containing the areola is to be covered.

h. This section 5 shall not be deemed to address photographs, movies, video presentations, or other non live performances.

Section 6. NUDITY PROHIBITED IN PUBLIC PLACES: It shall be unlawful for any Person to knowingly, intentionally, or recklessly appear, or cause another Person to appear, Nude in a public Place or in any other place which is readily visible to the public, except as provided in Section 7. It shall also be unlawful for any Person or Entity maintaining, owning, or operating any Public Place establishment to encourage, suffer or allow any Person to appear Nude in such Public Place, except as provided in Section 7.

Section 7. EXEMPTIONS: The prohibitions of section 6 of this ordinance shall not apply:

- a. When a Person appears Nude in a Place Provided Or Set Apart For Nudity provided (i) such Person is Nude for the sole purpose of performing the legal function(s) that is customarily intended to be performed within such Place Provided Or Set Apart For Nudity and (ii) such Person is not Nude for the purpose of obtaining money or other financial gain for such Person or for another person or Entity, or;
- b. When the conduct of being Nude can not legally be prohibited by this ordinance (i) because 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 conduct of being Nude for profit or commercial gain (see for instance Board of County Commissioners vs. Dexterhouse, 348 So. 2d 915 (Fla. 2nd DCA 1977) and as such is protected by the United States or Florida Constitution or (ii) because it is otherwise protected by the United States or Florida Constitution.

Section 8. ENFORCEMENT AND PENALTIES: Any person or Entity violating any of the provisions of this ordinance shall be prosecuted in the same manner as misdemeanors are prosecuted. Such violations 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 an act that violates this ordinance shall be deemed a separate offense.

Section 9. INJUNCTIVE RELIEF: In addition to the procedures provided herein, Establishments Dealing In Alcoholic Beverages that are not in conformity with these requirement shall be subject to appropriate civil action in the court of appropriate jurisdiction for abatement.

Section 10. TERRITORY EMBRACED: All territory within the legal boundaries of unincorporated Walton County shall be embraced by the provisions of this ordinance.

Section 11. SEVERABILITY: If any section, subsection, sentence, clause, phrase, word or provision of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, whether for substantive, procedural, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this ordinance.

Section 12. INCLUSION IN THE CODE: It is the intention of the Board and it is hereby provided that the provisions of this ordinance shall be made a part of the Walton County Code; that the sections of this ordinance may be remembered or relettered to accomplish such intention; and that the word "ordinance" may be changed to "section", "article", or other appropriate designation.

Section 13. In order to reduce controversy and provide widespread notice to the public, this ordinance shall be combined and compiled in and with the County's land development code in addition to and with the county code of Walton County.

Section 14. EFFECTIVE DATE: This ordinance shall become effective immediately upon receipt by the Clerk of the Board of notice that it has been filed with the Department of State.

BE IT FURTHER ORDAINED that Walton County Ordinance 93-2 be and the same is hereby repealed.

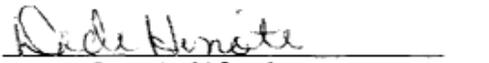
BE IT FURTHER ORDAINED that this ordinance shall terminate at such time as the official results of a referendum on a like or similar ordinance shall be made public pursuant to a referendum at the general election in 1994 or at such special election at an earlier time, should the Board of County Commissioners decide to do so.

PASSED AND ADOPTED by the Board of County
Commissioners of Walton County, Florida this 22 day of
July, 1997.

BOARD OF COUNTY COMMISSIONERS
WALTON COUNTY, FLORIDA


BY: William A. Young
Chairman

ATTEST:


BY: Dan Bodiford
for Clerk of the Circuit Court