

ORDINANCE 93-13

AN ORDINANCE AMENDING ORDINANCE 84-3 WHICH PROHIBITS THE EXPOSURE OF PRIVATE PARTS OR FEMALE BREASTS IN AN ESTABLISHMENT OF WHICH ALCOHOLIC BEVERAGES ARE OFFERED FOR SALE OR CONSUMPTION ON THE PREMISES; SPECIFICALLY AMENDING ORDINANCE 84-3 BY PROHIBITING NUDITY IN CERTAIN OTHER PLACES AND PROVIDING DEFINITIONS AND PENALTIES.

WHEREAS, the Board of County Commissioners of Nassau 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,

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

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,

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

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

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,

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 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 en se; and,

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

WHEREAS, the Board finds and determines that appearing Nude in Public Places is still contrary to the general societal disapproval that the people of Nassau County have of persons appearing Nude among strangers in Public Places, and

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,

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 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, 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

WHEREAS, a requirement that dancers don opaque covering sufficient to cover the Buttocks and the Breasts 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 limitation on the message; and,

WHEREAS, it is the intent of the Board to protect and preserve the public health, safety, welfare and morals of Nassau County by

restricting, to the full extent allowed by the United State 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,

WHEREAS, Nassau County is essentially a rural - suburban community the largest municipality of which (the City of Fernandina Beach) has a population of less than 10,000 people; and,

WHEREAS, Nassau County is a county that is, and desires very much to continue to be, community that contains and is known for traditional wholesome public recreation activities and historic facilities such as: the historic city of Fernandina Beach; the ocean beaches; the inland waterways; the Women's Players Championships; and,

WHEREAS, the Board finds and determines that the average person applying contemporary Nassau 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

WHEREAS, non regulation of persons appearing nude in Public Places within Nassau County encourages commercial Entities and other Entities and Persons to advertise outside of Nassau County and the State of Florida by billboard, radio, print and other media the availability of nudity in Public Places within Nassau County and thus encourages the influx into Nassau 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,

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 the adverse effects upon public order and the public health; and

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 Nassau 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 passage of this ordinance is necessary to preserve the basic character of the unincorporated community of Nassau County; and

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, 111 S.Ct. 2456 (1991); and,

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

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,

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

NOW, THEREFORE, BE IT ORDAINED this 24th day of May, 1993, by the Board of County Commissioners of Nassau County, Florida, that Ordinance 84-3 shall be amended as follows:

SECTION 1. LEGISLATIVE AUTHORIZATION

This Ordinance is adopted pursuant to Article VIII, Section 1, under the State Constitution and Section 125.01(o) of the Florida Statutes.

SECTION 2. TITLE

This ordinance shall be known as the Nassau County Public Nudity Ordinance.

SECTION 3. INTENT

It is the intent of this ordinance to protect and preserve the health, safety, welfare, and morals of the citizens of Nassau County by prohibiting a Person from intentionally or recklessly appearing or being Nude, 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 unincorporated areas of Nassau 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 be 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 necessary for the conveyance or communication of a genuine message or public expression and is not a guise or 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 or (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 3.

SECTION 2 4. DEFINITIONS

4.1 Alcoholic beverages: All distilled spirits and all beverages containing one-half of 1 percent or 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.

4.2 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 area of such gland.

4.3 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 or bottom of 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 right 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.)

2-2 4.3 "Commercial Establishment" means not only rooms where alcoholic beverages are stored or sold, but also all other rooms in the building which are so closely ~~connected~~ constructed therewith as to admit free passage from drinking parlor to other rooms of which the owner or operator has some dominion or control.

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

4.5 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 curtilage 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 as a private residence, whether permanent or temporary in

nature, shall not be deemed to be an Establishment Dealing in Alcoholic Beverages.

4.6 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:

- A. The male or female genitals, or
- B. The male or female pubic area, or
- C. The female Breast (see the last sentence in this subsection 4.2), or
- D. 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 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.

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

4.8 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.

4.9 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 a private residence, whether permanent or temporary in nature shall not be deemed to be a Public Place.

~~2.1~~ 4.10 "SALE & SELL" means any transfer of an alcoholic beverage for a consideration, any gift of an alcoholic beverage in connection with, or as a part of, a transfer of property other than an alcoholic beverage for a consideration or the serving of an alcoholic beverage by a club licensed under the beverage law.

SECTION 35. PROHIBITION

~~3.1~~ 5.1 It shall be unlawful for any person maintaining, owning or operating a commercial establishment located within the unincorporated areas of Nassau County, Florida, at which alcoholic

beverages are offered for sale on premise or allowed to be consumed on the premises:

A. To suffer or permit any female person, while on the premises of said commercial establishment, to expose to the public view that area of the human female breast at or below the areola thereof.

B. To suffer or permit any female person, while on the premises of said commercial establishment, to employ any device or covering which is intended to give the appearance of or simulate such portions of the human female breast as described in Section 4.

C. To suffer or permit any person, while on the premises of said commercial establishment, to expose to public view his or her genitals, pubic area, buttocks, vulva, anus, or anal cleft or cleavage, or any simulation thereof.

D. To suffer or permit any person, while on the premises of said commercial establishment, to employ any device or covering which is intended to give the appearance of or simulate the genitals, pubic area, buttocks, anus, anal cleft or cleavage.

~~3.2~~ 5.2 It shall be unlawful for any female person, while on the premises of a commercial establishment located within the unincorporated areas of Nassau County, Florida, at which alcoholic beverages are offered for sale for consumption on the premises and or allowed to be consumed on the premises, to expose to public view that area of the human female breast at or below the areola thereof, or to employ any device or covering which is intended to

give the appearance of or simulate such areas of the female breast as described herein.

3.3 5.3 It shall be unlawful for any person, while on the premises of a commercial establishment located within the unincorporated areas of Nassau County, Florida, at which alcoholic beverages are offered for sale for consumption on the premises, to expose to public view his or her genitals, pubic area, buttocks, anus, or anal cleft or cleavage.

5.4 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.

5.5 The prohibitions 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 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.

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

SECTION 6. 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 6, 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 6 hereinbelow 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 6 of this ordinance to specifically prohibit nudity, gross sexuality and the simulation thereof in Establishments Dealing in Alcoholic Beverages.

SECTION 7. 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 8. 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 8.

SECTION 8. EXEMPTIONS:

The prohibitions of section 5 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 916 (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 4, 9. PENALTIES

Any person who shall violate any section of this Ordinance shall be guilty of a misdemeanor punishable by a fine not to exceed \$500.00 or imprisonment in the County Jail not to exceed sixty (60)

days, or both. Each incident or separate occurrence of an act that violates this ordinance shall be deemed a separate offense.

SECTION 10. INJUNCTIVE RELIEF

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

SECTION 11. TERRITORY EMBRACED

All territory within the legal boundaries of unincorporated Nassau County shall be embraced by the provisions of this ordinance.

SECTION 5- 13. SEVERABILITY


It is declared to be the legislative intent that, if any section, sub-section, sentence, clause or provision of this Ordinance is held invalid, the remainder of the Ordinance shall not be affected.

SECTION 6- 14. EFFECTIVE DATE


This ordinance takes effect immediately upon receipt of the official acknowledgement from the Office of the Secretary of the

State of Florida that this Ordinance has been filed with said office.

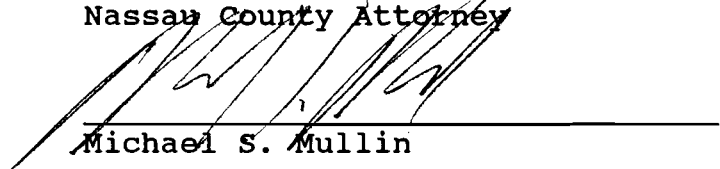
BOARD OF COUNTY COMMISSIONERS
NASSAU COUNTY, FLORIDA


JAMES E. TESTONE
Its: Chairman

ATTEST:


T. J. GIBSON
Its: Ex-Officio Clerk

Approved as to form by the
Nassau County Attorney


Michael S. Mullin

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