

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF FRANKLIN COUNTY, STATE OF FLORIDA, TO BE KNOWN AS THE FRANKLIN 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 PUBLIC 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.

WHEREAS, Florida law prohibits indecent exposure, to wit:

It is unlawful to expose or exhibit one's sexual organs in public or on the private premises of another, or so near thereto as to be seen from such private premises, in a vulgar or indecent manner, or to be naked in public except in any place provided or set apart for that purpose. Fla Stats. §800.03. and

WHEREAS, the Florida Supreme Court has upheld that law in the face of a constitutional challenge and in the process clarified a portion of its language, saying:

Within the ambit of the proviso in our Florida statute, we find public restrooms, bathing and locker room facilities, and those places in which nudity or exposure is necessarily expected outside of the home and the sphere of privacy protected therein.

Hoffman v. Carson, 250 So. 2d 891, 893 (Fla. 1971), app. dismiss. 404 U.S. 981, 92 S. Ct. 453, 30 L. Ed. 2d 365 (1971); and

WHEREAS, indecent exposure was a crime in the common law that provides the foundation for much of the criminal law in the United States and in Florida; see *LeRoy v. Sidley*, 1 Sid. 168, 82 Eng Rep 1036, 1146-47 (1663); *State v. Rose*, 32 Mo 560 (1862); and

WHEREAS, in the common law, indecent exposure or public nudity was considered *malum en se*, or evil in itself.

WHEREAS, as Taylor explained in an article in the *Tulsa Law Review*, it is common and useful to clarify and modify the common law through state laws; L. Taylor, "Criminal Law: Fashion or Felony," 2 *Tulsa Law Rev.* 58 (1965); and

WHEREAS, the Board of County Commissioners of Franklin County adopts this ordinance in reliance on Section 800.03 of the state statutes but with the intention of providing additional clarity; and

WHEREAS, the Board finds and determines that there are increasing incidents of nudity 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, studies of the effects of indecent exposure on its victims have found that the psychological effects can last long after the occurrence of the event; see, for example, Sharon Riordan, "Indecent exposure: the impact on the victim's fear of sexual crime," 10 *Journal of Forensic Psychiatry* 309-16 (1999); and Anne Hardman et al., "Unwanted sexual experiences reported by nursing students; implications for nurse education and training," 28 *Journal of Advance Nursing* 1158-67 (1998), showing that there can be adverse effects even on professionals accustomed to seeing naked people); and

WHEREAS, a study at the medical school at the University of California at Los Angeles found that repeat violators of laws against indecent exposure showed significant personality disorders that verged "into the deviant and sociopathic range," Charles P. McCreary, "Personality Profiles of Persons Convicted of Indecent Exposure," 31 *Journal of Clinical Psychology* 262 (1972)

WHEREAS, the Board desires to protect and preserve the unique character of Franklin 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 Franklin 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, it is the intent of the Board to protect and preserve the public health, safety, welfare and morals of Franklin 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,

WHEREAS, Franklin County is essentially a rural suburban community with a total population of 11,916 as of 2016; and,

WHEREAS, the largest municipalities of Franklin County are the Historic City of Apalachicola with a population of 2,311 as of 2016 and the Historic City of Carrabelle with a population of 2,276 as of 2016; and,

WHEREAS, Franklin 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 cities of Apalachicola and Carrabelle; the gulf beaches; the inland waterways; and it's tradition of seafood markets; together with its reputation as a safe family friendly destination for eco-tourism; and

WHEREAS, the Board finds and determines that Nudity lacks serious literary, artistic, political, and scientific value; and,

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

- (i) 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 Franklin 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 Franklin County; 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 6(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 that this is not an ordinance that affects the use of land as contemplated by Florida Statute 125.66; and,

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

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

Section 1. TITLE: This ordinance shall be known as the Franklin 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 Franklin 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 Franklin 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 cannot 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 expressive conduct incidental to and 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. DEFINITIONS: Capitalized terms, when used in this ordinance, shall have the following meanings:

- a. 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 .
- b. 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 such line being ½ 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 ½ 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 and the line or (ii) the right inside perpendicular 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.)

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

d. 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 $\frac{1}{4}$ of her Breast surface area (See definition of Breast) contiguous to and containing the nipple and areola is to be covered.

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

f. 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.

g. 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.

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 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 6. 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 cannot 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 7. 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 8. 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 9. TERRITORY EMBRACED: All territory within the legal boundaries of unincorporated Franklin County shall be embraced by the provisions of this ordinance.

Section 10. 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, or any other reason, such portion shall be deemed a

separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this ordinance.

Section 11. Conflict: In the event of a conflict between this Ordinance and any other applicable law or ordinance, the most strict shall apply.

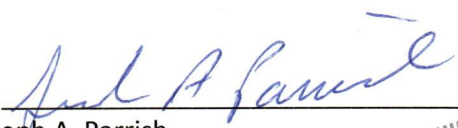
Section 12. INCLUSION IN THE CODE: It is the intention of the Board and it is hereby provided that the provisions of this ordinance shall be made a part of the Franklin County Code; that the sections of this ordinance may be renumbered or relettered to accomplish such intention; and that the word "ordinance" 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 Franklin 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.


PASSED AND ADOPTED by the Board of County Commissioners of Franklin County, State of Florida, this the 7th day of March, 2017.

FRANKLIN COUNTY, a political subdivision
of the State of Florida


By: 
Joseph A. Parrish
Chairman



ATTEST:


Marcia M. Johnson
Clerk of Court

Approved as to form and content:


Thomas M. Shuler
Franklin County Attorney