

ORDINANCE #295

AN ORDINANCE OF THE COUNCIL OF THE CITY OF BONIFAY COUNCIL MEMBERS OF THE CITY OF BONIFAY, STATE OF FLORIDA, TO BE KNOWN AS THE BONIFAY 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; AND PROVIDING AN EFFECTIVE DATE.

a) WHEREAS, the City Council of the City of Bonifay, Florida (the "Council"), 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 Council is aware that local governments may prohibit the exposure of certain body parts in and around Establishments Dealing in Alcoholic Beverages, see Geaneas v. Willetts, 911 F.2d 579 (11th Cir. 1990); and,

c) WHEREAS, the Council wishes to regulate nudity and sexual conduct in and around Establishments Dealing in

Alcoholic Beverages; and, the Council 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 Council wishes to protect against similar conditions to the end that they not occur in the City of Bonifay at or around Establishments Dealing In Alcoholic Beverages; and,

e) WHEREAS, the Council 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 Council 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 Council 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,

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 Council desires to protect and preserve the unique character of the City of Bonifay as a family oriented, historic attraction for families, tourists and businesses; and,

j) WHEREAS, the Council finds and determines that appearing Nude in Public Places is still contrary to the general societal disapproval that the people of the City of Bonifay have of persons appearing Nude among strangers in Public Places; and,

k) WHEREAS, the Council 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 Council 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,

m) WHEREAS, the Council'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 Council 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 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,

o) WHEREAS, it is the intent of the Council to protect and preserve the public health, safety, welfare and morals of the City of Bonifay 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, the City of Bonifay is a rural community with a population less than three thousand people, situated in a rural county; and,

q) WHEREAS, the City of Bonifay is a city 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 All Night Sing, the Rodeo, hunting and fishing activities; and,

r) WHEREAS, the Council finds and determines that the average person applying contemporary Bonifay 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 Bonifay encourages commercial Entities and other Entities and Persons to advertise outside of the City of Bonifay and the State of Florida by billboard, radio, print and

other media the availability of nudity in Public Places within the City of Bonifay and thus encourages the influx into the City of Bonifay 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 city 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 the adverse effects upon the public order and the public health; and,

u) WHEREAS, the Council 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 the City of Bonifay 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 City of Bonifay;
and,

w) WHEREAS, the City is aware that State may regulate the conduct of appearing Nude in Public Places, see Michael Barmes v. Glen Theatre, Inc. 115 L.Ed 2d 504, 111 S. Ct. 2456 (1991); and,

x) WHEREAS, the Council 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 City 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 city 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 Council 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 City finds and determines that this ordinance is consistent with its current comprehensive plan;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF BONIFAY, FLORIDA, THAT;

Section 1. TITLE: This ordinance shall be known as the Bonifay 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 the City of Bonifay by prohibiting a Person from intentionally or recklessly appearing or being Nude, or causing another Person to appear or be Nude, in Public Place and in other places which may reasonably be expected to be observed by the public within the incorporated areas of the City of Bonifay 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 expressive conduct incidental to and necessary for the conveyance or communication 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 Council's further intention to accomplish those intents and purposes expressed by the Council 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 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.

b. Breast: A portion of the human female mammary gland (commonly referred to as the female breast) including the nipple and 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.

c. Buttock: (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 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 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.)

d. Entity: Any proprietorship, partnership, corporation, association, business trust, joint venture, joint-stock company or other for profit and/or nor 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 curtilage or 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 residents, 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) Any portion of the female breast below the

top of the areola, or any simulation thereof,

- (4) The Buttocks. Attire which is insufficient to comply with this requirement includes, but it 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.

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 room, 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 Council 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 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 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 portions 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 of 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 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 (iii) Notwithstanding any other provision of this ordinance, a mother may breast feed her baby in any location, public or private, where the mother is otherwise authorized to be, irrespective of whether the nipple of the mother's breast is uncovered during or incidental to the breast feeding.

g. 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 a mother breast feeding a baby 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 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 requirements 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 the incorporated area of Bonifay 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, 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.

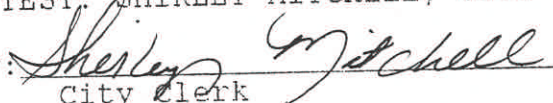
Section 12. In order to reduce controversy and provide widespread notice to the public, this ordinance shall be combined and complied in and with the City's land development code.

Section 13. EFFECTIVE DATE: This ordinance shall be effective immediately upon its passage.

PASSED AND ADOPTED by the Council of the City of Bonifay, State of Florida this 27th day of February, 1995.
Effective Date: Feb 27th, 1995

City Council of the City of
Bonifay, State of Florida

BY: 
Mayor

ATTEST: SHIRLEY MITCHELL, CITY CLERK
BY: 
City Clerk