

MANATEE COUNTY GOVERNMENT AGENDA MEMORANDUM

33
12/3/98

SUBJECT	Public Nudity Ordinance. CAO File No 1055-070	TYPE AGENDA ITEM	Consent
DATE REQUESTED	December 8, 1998	DATE SUBMITTED/REVISED	December 3, 1998
BRIEFINGS?/WHO?	Available upon request	CONSEQUENCES IF DEFERRED	Ordinance cannot be considered 12/3/98 JNW
DEPARTMENT/DIVISION	County Attorney's Office	AUTHORIZED BY TITLE	Teddy N. Williams, Jr. <i>TNW</i> for County Attorney
CONTACT PERSON TELEPHONE/EXTENSION	James A. Minix/Dee Dee Rosario - ext. 3750	PRESENTER/TITLE TELEPHONE/EXTENSION	James A. Minix ext 3750 <i>JAM</i>

ADMINISTRATIVE APPROVAL

ACTION DESIRED

INDICATE WHETHER ¹REPORT or ²DISCUSSION, ³FORM OF MOTION, or ⁴OTHER ACTION REQUIRED:

Authorization for publication of a proposed Public Nudity Ordinance: I move to authorize publication of notice of public hearing on Ordinance 98-51 as a land use item.

ENABLING/REGULATING AUTHORITY

Federal/State law(s), administrative ruling(s), Manatee County Comp Plan/Land Development Code, ordinances, resolutions, policy.)

Florida Statutes §125 01(1)(t)

BACKGROUND/DISCUSSION

The County Attorney's office has prepared a proposed Public Nudity Ordinance. The purpose of the proposed Ordinance is to prohibit nudity in all public places within the unincorporated areas of Manatee County, subject to certain specified exceptions. This item is scheduled strictly to obtain authorization to publish notice of hearing on the Ordinance, not for Board approval of the Ordinance itself at this time.

HAS COUNTY ATTORNEY REVIEW BEEN REQUESTED? Indicate "NO" or "YES" @ right. (if "NO," proceed to 1) below; and if "YES," proceed to 2) below) N/A

1) IF "NO" TO ABOVE,

A) PLEASE EXPLAIN BELOW: (see also following section 1B) re: contract, agreement, lease, etc.:

This is a County Attorney's Office item.

B) IF A CONTRACT, AGREEMENT, LEASE OR OTHER DOCUMENT WAS PREVIOUSLY APPROVED, STATE YEAR OF LAST USE @ RIGHT: APPROVED IN OPEN SESSION
N/A

2) IF "YES" TO FIRST QUESTION IN THIS SECTION,

A) HAS ENTIRE MATTER, OR ONLY A PORTION, BEEN REVIEWED? IF ONLY A PORTION, WHICH PORTION? DEC 08 1998

B) HAVE ALL COMMENTS/SUGGESTIONS RAISED BY COUNTY ATTORNEY BEEN ADDRESSED/INCORPORATED; IF NOT, PLEASE EXPLAIN. A COPY OF FINAL COUNTY ATTORNEY MEMO RE THIS MATTER **MUST BE ATTACHED** (if comments were verbal, so indicate.) BOARD OF COUNTY COMMISSIONERS
MANATEE COUNTY, FLORIDA

dd.

<p>ATTACHMENTS: (List in order as attached)</p> <p>Draft Ordinance No. 98-51</p>	<p>INSTRUCTIONS TO BOARD RECORDS: ✓</p> <p>Return copy of this Agenda Memorandum, stamped by Board Records, to James A. Minix, County Attorney's Office</p>
<p>COST</p>	<p>SOURCE (ACCT# & NAME)</p>
<p>COMMENTS</p>	<p>AMT./FREQ. OF RECURRING COSTS (ATTACH FISCAL IMPACT STATEMENT)</p>

ORDINANCE NO. 98-51

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF MANATEE, STATE OF FLORIDA, TO BE KNOWN AS THE MANATEE 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 IN CERTAIN PUBLIC PLACES; PROVIDING FOR ENFORCEMENT AND PENALTIES FOR THE VIOLATION OF THIS ORDINANCE; PROVIDING FOR INJUNCTIVE RELIEF; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MANATEE COUNTY, FLORIDA:

WHEREAS, the Board desires to protect and preserve the unique character of Manatee County as a destination for families, tourists, and businesses; and,

WHEREAS, the Board wishes to regulate nudity and sexual conduct in and around business establishments in that such activity begets undesirable behavior; and,

WHEREAS, the Board finds and determines that there are increasing incidents of nudity in Public 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 finds and determines that appearing Nude in Public Places still generates societal disapproval; and,

WHEREAS, the Board finds and determines that the mere appearance of Nude Persons 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 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 Manatee 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, Manatee County is essentially a rural - suburban community; and,

WHEREAS, Manatee County desires to continue as a community that is known for traditional wholesome public recreation activities, and its abundant natural resources; and,

WHEREAS, the Board finds and determines that the average person applying contemporary Manatee 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, Public Nudity in Manatee County encourages commercial Entities and other Persons to advertise outside of Manatee County and the State of Florida by billboard, radio, print, and other media the availability of nudity in Public Places within Manatee County and thus encourages the influx into Manatee 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; 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, morality, and decency within Manatee County, when such conduct takes place at locations where the public is present or is likely to be present, or where such conduct would be readily visible to the public; and,

WHEREAS, the Board is aware that States may regulate the conduct of appearing Nude in Public Places; see *Michael Barnes v. GlenTheatre, 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 the United States or Florida constitutional provisions guaranteeing freedom of expression; and,

WHEREAS, 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 get 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,

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 of Manatee County, Florida, as follows:

Section 1. TITLE: This ordinance shall be known as the Manatee 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 Manatee 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 Manatee 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 functions that are

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 themselves or others; 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 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 2.

Section 3. DEFINITIONS:

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 $\frac{1}{2}$ 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 $\frac{1}{2}$ 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 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 $\frac{1}{3}$ 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 $\frac{1}{3}$ of the distance from the anus to the right outside line. (The above description can generally be described as covering $\frac{1}{3}$ 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, 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.

e. Person: Any live human aged five (5) years of age or older.

f. Places Provided Or Set Apart For Nudity: Shall mean enclosed public restrooms, enclosed functional shower and locker room facilities, enclosed motel rooms and hotel rooms designed and intended for sleeping accommodations, 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 being Nude is used for profit or 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. **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 5. 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 5.

Section 5. **EXEMPTIONS**: The prohibitions of Section 4 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 (are) 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 guise or pretense utilized to exploit nudity for profit or commercial gain 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.

C. When a mother bares her breast for the purpose of nursing a child under the age of two years old.

Section 6. **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 7. **INJUNCTIVE RELIEF**: In addition to the procedures provided herein, Establishments which suffer or permit employees to appear in violation of this ordinance shall be subject to appropriate civil action in the court of appropriate jurisdiction for abatement.

Section 8. **TERRITORY EMBRACED**: All territory within the legal boundaries of unincorporated Manatee County shall be embraced by the provisions of this ordinance.

Section 9. **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 reasons, 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 10. **EFFECTIVE DATE**. This ordinance shall become effective on January 1, 2000.

PASSED AND DULY ADOPTED by the Board of County Commissioners of Manatee
County, Florida, this ____ day of _____, 1998.

**BOARD OF COUNTY COMMISSIONERS
MANATEE COUNTY, FLORIDA**

By: _____
**PATRICIA M. GLASS
CHAIRMAN**

ATTEST:

**R. B. SHORE
CLERK OF THE CIRCUIT COURT**

By: _____

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December 2, 1998 (9:41AM)