

## Chapter 129

### NUDITY, PUBLIC

**[HISTORY: Adopted by the of the Town Council of the Town of Callahan 12-4-1995 by Ord. No. 8A-O-1995. Amendments noted where applicable.]**

#### GENERAL REFERENCES

Alcoholic beverages — See Ch. 66.

#### § 129-1. Title.

This chapter shall be known as the "Callahan Public Nudity Ordinance."

#### § 129-2. Intent.

- A. It is the intent of this chapter to protect and preserve the health, safety, welfare, and morals of the citizens of the Town of Callahan, Florida, 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 the Town of Callahan, Florida, except:
- (1) When such person appears nude in a place provided or set apart for nudity, provided 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 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
  - (2) When the conduct of being nude cannot legally be prohibited by this chapter 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 Town Council 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 because it is otherwise protected by the United States or Florida Constitution.
- B. It is the Town Council's further intention to accomplish those intents and purposes expressed by the Town Council in the whereas provisions of this chapter, each of which is incorporated by reference into this § 129-2.<sup>1</sup>

#### § 129-3. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

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1. Editor's Note: Said whereas provisions are on file in the office of the Town Clerk.

**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.

**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 reasonably compact and contiguous to the areola and contains at least the nipple and the areola and 1/4 of the outside surface area of such gland.

**BUTTOCKS** — (For, a short general description see the last sentence of this definition.) 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 the left inside perpendicular line and the left outside perpendicular line or 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 that is perpendicular to the ground and to the horizontal lines described above and 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 that is perpendicular to the ground and to the horizontal lines described above and 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.)

**COMMERCIAL ESTABLISHMENT** — Not only rooms where alcoholic beverages are stored or sold, but also all other rooms in the building which are so closely constructed therewith as to admit free passage from drinking parlor to other rooms of which the owner or operator has some dominion or control.

**ENTITY** — Any proprietorship, partnership, corporation, association, business trust, joint venture, joint-stock company or other for profit and/or not-for-profit organization.

**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; nightclub; 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.

#### NUDE

- A. 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 § 129-4B); 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.
- B. 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.

PERSON — Any live human being aged ten years of age or older.

PLACES PROVIDED OR SET APART FOR NUDITY — 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.

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, nightclubs, 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."

SALE AND SELL — 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.

**§ 129-4. Prohibited acts.**

- A. It shall be unlawful for any person maintaining, owning or operating a commercial establishment located within the Town of Callahan, Florida, at which alcoholic beverages are offered for sale on the premises or allowed to be consumed on the premises:
- (1) 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.
  - (2) 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 § 129-3.
  - (3) 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.
  - (4) 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.
- B. It shall be unlawful for any female person, while on the premises of a commercial establishment located within the Town of Callahan, 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.
- C. It shall be unlawful for any person, while on the premises of a commercial establishment located within the Town of Callahan, 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.
- D. 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.
- E. The prohibitions of this § 129-4 shall not apply when a person appears nude in a place provided or set apart for nudity, provided 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 such person is not nude for the purpose of obtaining money or other financial gain for such person or for another person or entity.
- F. This § 129-4 shall not be deemed to address photographs, movies, video presentations, or

other nonlive performances.

**§ 129-5. Legislative findings.**

In addition and supplemental to the findings and determinations contained in the whereas provisions of this chapter which are incorporated by reference into this § 129-5,<sup>2</sup> it is hereby found by the Town 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 § 129-6 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 § 129-6 of this chapter to specifically prohibit nudity, gross sexuality and the simulation thereof in establishments dealing in alcoholic beverages.

**§ 129-6. 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 § 129-7. 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 § 129-7.

**§ 129-7. Exemptions.**

The prohibitions of § 129-6 of this chapter shall not apply:

- A. When a person appears nude in a place provided or set apart for nudity, provided 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 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 chapter 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 Town Council 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 because it is otherwise protected by the United States or Florida Constitution.

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2. Editor's Note: Said whereas provisions are on file in the office of the Town Clerk.

**§ 129-8. Penalties for offenses.**

Any person who shall violate any section of this chapter shall be guilty of a misdemeanor punishable by a fine not to exceed \$500 or imprisonment in the County Jail not to exceed 60 days, or both. Each incident or separate occurrence of an act that violates this chapter shall be deemed a separate offense.

**§ 129-9. Additional remedies.**

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.

**§ 129-10. Territory embraced.**

All territory within the legal boundaries of the Town of Callahan, Florida, shall be embraced by the provisions of this chapter.