

**AN ORDINANCE PROHIBITING NUDITY IN A PUBLIC PLACE**

**ORDINANCE NO. 99-0615-A**

Be it ordained by the Fiscal Court of the County of Calloway, Commonwealth of Kentucky:

WHEREAS, the Fiscal Court of the County of Calloway, Commonwealth of Kentucky finds that Chapter 67 of the Kentucky Revised Statutes and KRS 67.083 in particular authorizes fiscal courts to promulgate and enforce ordinances necessary to protect the life, health and property of the public, and to preserve the good government, order and security of counties and their inhabitants. Further, the Fiscal Court finds that the Kentucky Revised Statutes authorizes fiscal courts to establish civil and/or criminal fines, penalties and forfeitures which may be imposed for violations of their ordinances; and

WHEREAS, it is the intent of the Fiscal Court of the County of Calloway, Kentucky, to protect and preserve the life, health and property of the public, and to preserve the good government, order and security of Calloway County and its inhabitants by restricting, to the full extent allowed by the United States and Kentucky 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, the City Council of Murray, has adopted Ordinances regulating adult entertainment and public nudity; and

WHEREAS, the Fiscal Court has conducted a public hearing regarding the issues relating to adult entertainment businesses and public nudity and as a result thereof does herein make findings of fact;

NOW, THEREFORE, The Fiscal Court of Calloway County finds the following facts, to wit:

**FINDINGS OF FACT:**

I. At common law, appearing nude in a public place was a criminal offense. The Fiscal Court finds and determines that appearing nude in public is contrary to general social and community standards in Calloway County and the people of this County generally are offended by public nudity and the activities of adult oriented businesses.

II. The Fiscal Court 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.

III. The Fiscal Court finds and determines that the mere appearance of Persons in the

Nude in Public Places may generally increase incidents of prostitution, sexual assaults and batteries, attract other criminal activity to the community, encourages degradation of men and women as well as other activities which may break down family structures.

IV. The advertisement and exploitation of public nudity encourages the escalation of nude and lewd conduct within and without the adult oriented businesses which is harmful to the public and community standards. The Fiscal Court desires to protect the public from obscene and pornographic material and activities in accordance with local community standards.

V. The Fiscal Court finds and determines that, without regulation, public nudity constitutes harmful conduct and may occur in a manner which is incompatible with the normal primary activity of a particular place at a particular time.

VI. The non-regulation of Persons appearing Nude in Public Places within the County may encourage commercial entities and other entities and persons to advertise outside of the County and the Commonwealth of Kentucky by billboard, radio, television, print and other media, the availability of nudity in public places within Calloway County. This will likely encourage the influx into the County of Persons seeking to observe and/or participate in such activities, to participate in the disorderly, harmful, and illegal conduct that is associated therewith, and thereby increase injuries and damages to the citizens of this County who will be victims of such increased disorderly, harmful and unlawful conduct.

VII. The Fiscal Court finds that competitive commercial advertising and/or exploitation of nudity encourages escalation of Nude and lewd conduct within competing commercial establishments exploiting such conduct and thereby increases the adverse effects upon public order and the public health.

VIII. The local law enforcement have substantial cause to believe that with the adoption of the ordinances by the City of Murray concerning adult oriented businesses and public nudity, such activities may become established outside the City, but within the County, which would significantly affect the community of the City and County as a whole.

IX. The Fiscal Court is concerned about the secondary effects and impacts of public nudity and its associated adult entertainment activities. The Fiscal Court finds that sexually transmitted diseases is a legitimate health concern. The Fiscal Court further finds that there is convincing documented evidence that sexually oriented businesses, which feature public nudity in particular, because of their very nature, have a deleterious effect on both existing businesses around them and the surrounding residential areas adjacent to them, causing increased crime, the down-grading of property values, and a detrimental effect on the character and safety of surrounding neighborhoods.

X. It is hereby found by the Fiscal Court that the acts prohibited in this Ordinance encourage and or create the potential for the conduct of prostitution, attempted rape, rape, and

assault and battery, that actual and simulated nudity and/or sexual conduct begets and has the potential for betting undesirable and unlawful behavior; that sexual, lewd, lascivious and salacious conduct may result in violation of law and creates dangers to the health, safety, welfare and morals of the public and those who engage in such conduct.

XI. The Fiscal Court desires to protect and preserve the unique character of Calloway County as a family oriented location for families, businesses and tourists.

XII. The Fiscal Court is aware that States may regulate the conduct of appearing Nude in Public Places. See Michael Barnes v. Glen Theatre, Inc., 501 U.S. 560; 115 L.Ed. 2d 504, 111 S.Ct. 2456 (1991).

XIII. The City of Newport, Kentucky, a second-class city, has enacted an Ordinance regulating nudity in public places, and said Ordinance has been found to be lawful and constitutional by the Kentucky Supreme Court. See Hendricks v. Commonwealth, Ky., 865 S.W.2d 332 (1993).

XIV. The Fiscal Court finds that a requirement that Persons, including dancers, don opaque covering sufficient to cover such portions of the human anatomy as defined in this Ordinance does not deprive a 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.

XV. The Fiscal Court 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 Calloway 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.

XVI. The Fiscal Court is not hereby prohibiting nudity in truly private places or prohibiting nudity which is protected by the United States and Kentucky Constitutions; therefore, the Fiscal Court further finds and determines that the express exemptions contained in this Ordinance provide adequate protection to Persons who, without such express exemption, might otherwise be prevented or discouraged by the Ordinance from exercising constitutionally protected rights.

NOW, THEREFORE, BE IT ORDAINED BY THE FISCAL COURT OF THE COUNTY OF CALLOWAY, COMMONWEALTH OF KENTUCKY:

**SECTION 1. INTENT AND PURPOSES:**

A. It is the intent of this Ordinance to promote the health, safety, and general welfare of the citizens of the County, and further to protect the life, health and property of the public, and

to preserve the good government, order and security of Calloway County and its inhabitants 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 be expected to be observed by the public within Calloway County, except for those areas specifically exempted by this Ordinance or as otherwise defined herein.

B. It is the Fiscal Court's further intention to accomplish those intents and purposes expressed herein in the Findings of Fact and as may be otherwise expressed in other provisions of this Ordinance, each of which are incorporated by reference.

## **SECTION 2. DEFINITIONS:**

The following terms when used in this Ordinance, shall have the following meanings:

- A. **Breast(s):** The areola and nipple of the human female breast below a horizontal line across the top of the areola at its highest point. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast exhibited by a dress, blouse, shirt, leotard, bathing suit or other wearing apparel provided that the areola and/or nipple is not exposed in whole or in part.
- B. **Buttocks:** The cleavage of the human buttocks. This definition shall not include any portion of the cleavage of the human buttocks exhibited by a bathing suit, thong, g-string or other wearing apparel.
- C. **Entity:** Any proprietorship, partnership, corporation, association, business trust, joint venture, joint stock company, any other for profit organization, any non-profit organization, and any other legal entity recognized or hereafter recognized by the Commonwealth of Kentucky.
- 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 and/or any simulation thereof, or
  - 2) Covered male genitals in a discernible turgid state, or
  - 3) The female Breast, or
  - 4) The male or female anus, or
  - 5) The male or female buttocks.

Body paint, body dyes, tattoos, liquid latex whether wet or dried, and similar substances shall not be considered opaque covering.

- 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, physician's offices, chiropractic offices, the offices of licensed physical therapists, portions of hospitals and similar places 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: For the purposes of this Ordinance, "Public Place" as used herein means the same as "Public Place" as defined in Kentucky Revised Statute 525.010.

H. "Intentionally", "Knowingly" and "Recklessly" as used herein mean the same as those terms are defined in Kentucky Revised Statute 501.020.

### **SECTION 3. NUDITY PROHIBITED IN PUBLIC PLACES:**

A. 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 4.

B. It shall be unlawful for any Person or Entity maintaining, owning, operating, or acting as an employer of such Person or Employee of any Public Place establishment to encourage, suffer or allow any Person to appear Nude in such Public Place, except as provided in Section 4.

### **SECTION 4. EXEMPTIONS:**

The prohibitions of Section 3 of this Ordinance shall not apply:

A. To any acts or omissions within the regulatory and/or city limits of the City of Murray, Kentucky.

B. When a Person appears Nude in a Place Provided or Set Apart for Nudity, provided that:

- 1) 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

- 2) 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
- C. When the conduct of being Nude cannot legally be prohibited by this Ordinance because:
- 1) 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, and as such is protected by the United States or Kentucky Constitution or
  - 2) it is otherwise protected by the United States or Kentucky Constitution.
- D. Notwithstanding any other provision of this Ordinance, a mother may breast feed her baby or babies, in any location, public or private, where the mother is otherwise authorized to be, irrespective of whether the nipple and/or areola of the mother's breast is uncovered during or incidental to the breast feeding.
- E. This Ordinance does not apply to a "Nudist Society," which is recognized and licensed by the Commonwealth of Kentucky in accordance with Chapter 232 of the Kentucky Revised Statutes.

#### **SECTION 5. ENFORCEMENT AND PENALTIES:**

Any person who shall violate this Ordinance shall be guilty of a Class B Misdemeanor, which, under the Kentucky Revised Statutes, is punishable by a term of imprisonment not to exceed 90 days and/or a fine not to exceed \$250.00. Each incident or separate occurrence of an act that violates this Ordinance shall be deemed a separate offense.

#### **SECTION 6. INJUNCTIVE RELIEF:**

In addition to the procedures provided herein, the Calloway Fiscal Court may take any such lawful action to prevent or remedy any violation or non-compliance including but not limited to an equitable action for injunctive relief or an action at law for damages. In such action, attorneys fees and costs of the Calloway Fiscal Court and/or the Calloway County Sheriff's Office shall be assessed against the Defendant(s).

#### **SECTION 7. TERRITORY EMBRACED:**

All territory within the legal boundaries of Calloway County, Kentucky, shall be

embraced by the provisions of this Ordinance except for that territory that is regulated by the City of Murray, Kentucky.

**SECTION 8. 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 9. EFFECTIVE DATE:**

This Ordinance shall become effective upon passage by the Fiscal Court of Calloway County and upon its publication or a summary thereof, in accordance with the requirements of the Kentucky Revised Statutes.

Approved by the Calloway County Fiscal Court on First Reading:

                      06-15-99  
LARRY ELKINS                      DATE  
CALLOWAY COUNTY-JUDGE EXECUTIVE


Attest:

                      6-15-99  
RAY COURSEY, JR.                      DATE  
CALLOWAY COUNTY CLERK

Adopted by the Calloway County Fiscal Court on Second Reading:

                      7-20-99  
LARRY ELKINS,                      DATE  
CALLOWAY COUNTY-JUDGE EXECUTIVE

Attest:

                      7-20-99  
RAY COURSEY, JR.                      DATE  
CALLOWAY COUNTY CLERK