

An Ordinance placing a moratorium upon adult oriented businesses and nudity in a public place.

WHEREAS, the Kentucky General Assembly in 1998 gave the Fiscal Courts authority under HB 432 to enact regulations of establishments or commercial enterprises offering adult entertainment and adult entertainment activities; and

WHEREAS, the City Council of Murray, has adopted after the first reading Ordinances regulating adult entertainment and public nudity; and

WHEREAS, the City of Murray and Calloway County have already had an alleged adult oriented business established within its jurisdiction; and

WHEREAS, the Fiscal Court of Calloway County, Kentucky, will have a new County Judge-Executive, County Attorney, and three new Magistrates beginning in January, 1999; and

WHEREAS, the Fiscal Court is in need of the time and opportunity for its new incoming members to study the issues regarding adult entertainment activities and public nudity; and

WHEREAS, the Fiscal Court has conducted a public hearing regarding the need for a moratorium on adult entertainment businesses and public nudity;

NOW, THEREFORE, the Fiscal Court of Calloway County makes the following findings of fact, to wit:

1. In other communities throughout this country, adult oriented businesses have historically resulted in the increased incidence of crime. Those communities have also had the need for additional law enforcement personnel.
2. Studies from other communities with adult oriented businesses have found that adult oriented businesses lend themselves to ancillary unlawful and unhealthy activities which may be uncontrolled by the operators of such businesses. The secondary effects of related crime have been as large if not larger problems for those communities than the other unhealthy effects of the businesses.
3. The increased crime and unhealthy conduct tend to be aggravated by the presence of adult oriented businesses, including but not limited to prostitution, pandering, exposing minors to harmful or obscene materials, child pornography and violent crimes against persons and property.
4. There is substantial evidence that in the event adult oriented businesses and public nudity are not regulated or prohibited and hereafter locate in this County, then the Calloway County Sheriff's Department will be in immediate need of significantly more personnel and will be

in immediate need of significantly more budgetary funds for the protection of the public. The Calloway County Sheriff's Department is not currently fiscally or physically able to adequately protect the public or police adult oriented businesses under current budget constraints.

5. Historically, appearing nude in a public place was a criminal offense. The presence of persons appearing nude in public places generally increases the incidents of prostitution, sexual assaults and batteries, and generally tends to attract other criminal activity to the community.

6. 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.

7. 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.

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

9. It is the finding of the Fiscal Court that regulation of public nudity and adult oriented businesses is necessary for the protection of life, health and property of the public, and to preserve the good government, order and security of Calloway County and its inhabitants.

10. 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, prior to an adequate opportunity for the new Fiscal Court to study and determine what action or regulation of adult oriented businesses and public nudity should be adopted.

11. The Fiscal Court finds that an emergency exists justifying a moratorium limited in time on adult oriented businesses, activities and public nudity.

NOW, THEREFORE, in consideration of the above-stated findings, the Fiscal Court of Calloway County, Kentucky, does hereby declare the following:

SECTION 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.

SECTION B. It shall be unlawful for any person or entity to employ or encourage, suffer or allow any person to appear nude in a public place as defined herein.

SECTION C. It shall be unlawful to establish, initiate, or operate an adult oriented business as defined herein for the period of this moratorium.

SECTION D. It shall be unlawful for any person or entity in a public place to knowingly, intentionally, or recklessly engage, or cause another person to engage in, the following:

- (1) Patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated.
- (2) Patently offensive representations or descriptions of masturbation, excretory functions, and lewd exhibition of the genitals.

SECTION E. This moratorium shall remain in effect for a period not to exceed July 30, 1999.

SECTION F. Definitions. For the purposes of this Ordinance, certain terms and words are defined as follows:

- (1) "Adult Oriented Businesses" are those businesses defined as:
 - (a) "Adult Bookstore," "Adult Novelty Store" or "Adult Video Store" means a commercial enterprise which has as a significant or substantial portion of its stock-in-trade or derives a significant or substantial portion of its individual sales or devotes a significant or substantial portion of its interior business or advertising to the sale or rental, for any form of consideration, of any one or more of the following:
 - (i.) Books, magazines, newspapers, periodicals or other printed matter, or drawings, photographs, films, motion pictures, video cassettes, slides, compact discs, laser discs, computer driven video productions, or other visual representations which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas" as defined herein;
 - (ii.) Instruments, devices, or paraphernalia which are designed for use or marketed primarily for stimulation of human genital organs or for sadomasochistic use or abuse.

For the purposes of this definition, "significant or substantial portion" shall mean at least twenty-five percent (25%) of the business sales, interior business premises or advertising is devoted to an Adult Oriented Business purpose.

- (b) "Adult cabaret" means a nightclub, bar, restaurant, "bottle club," adult dancing business or similar commercial enterprise, whether or not alcoholic beverages are served, which regularly features:
 - (i.) Persons who appear nude, semi-nude or in a state of nudity; or

- (ii.) Live performances which are characterized by the exposure of "specified anatomical areas" and/or the exhibition of "specified sexual activities," or
 - (iii.) Photographs, films, motion pictures, video cassettes, slides, compact discs, laser discs, computer driven video productions, or other visual representations which are characterized by the depiction or description of "specified sexual activities" and/or "specified anatomical areas" as defined herein; or
 - (iv.) "Adult dancing." "Adult Dancing" shall mean and include, but not be limited to the following: any dancing which exposes to view by patrons, spectators or persons on the premises at any time the "specified anatomical areas" and/or consists of "specified sexual activities."
- (c) "Adult motel" means a motel, hotel or similar commercial enterprise which offers public accommodations, for any form of consideration, which provides patrons with closed-circuit television transmissions, photographs, films, motion pictures, video cassettes, slides, compact discs, laser discs, computer driven video productions, or other visual representations which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas" as defined herein; and which advertises the availability of this adult oriented type of material by means of a sign visible from the public right-of-way, or by means of any off-premises advertising including but not limited to, newspapers, magazines, pamphlets or leaflets, radio or television.
- (d) "Adult movie theater" means a commercial enterprise where photographs, films, motion pictures, video cassettes, slides, compact discs, laser discs, computer driven video productions, or other visual representations which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas" as defined herein; are shown for any form of consideration.
- (e) "Adult theater" means a theater, concert hall, auditorium, or similar commercial enterprise which, for any form of consideration, regularly features persons who appear in a state of nudity or live performances which are characterized by an emphasis on and/or exposure of "specified anatomical areas" or by "specified sexual activities."
- (f) "Escort agency" means a person or business association who furnishes, offers to furnish, or advertises to furnish Escorts as one of its primary business purposes for a fee, tip, or other consideration; including, but not limited to a out-call service in the form of nude or semi-nude dancing or exhibition.
- (g) "Adult Personal Service Business" means any commercial enterprise where, either on or off the business premises, for any form of consideration or gratuity; massage, alcohol rub, administration of fomentations, electric or magnetic treatments, hair

care, manicures, pedicures, exotic rubs, and/or any other treatment manipulation of the human body, occurs as a part of or in connection with "specified sexual activities," or where any person providing such treatment, manipulation, or service related thereto, exposes any of his or her "specified anatomical areas" for another person, who may or may not appear in a state of nudity or display "specified anatomical areas." The definition of Adult Personal Service Business or Adult Oriented Business shall not include the practice of any treatment manipulation in any licensed hospital, nor by a licensed hospital, nor by a licensed physician, surgeon, chiropractor or osteopath, nor by any nurse or technician working under the supervision of a licensed physician, surgeon, chiropractor or osteopath, nor by trainers for any amateur, semiprofessional or professional athlete or athletic team or school athletic program.

- (h) "Nude Model Studio" means any place where a person, who regularly appears in a state of nudity or displays "specified anatomical areas" is provided for money or any form of consideration to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons. This definition does not include a modeling class offered by a college, junior college, or university supported in whole or in part by taxation; by a private college or university which maintains and operates educational programs in which credits are transferrable to a college, junior college, or university supported entirely or partly by taxation; or in a structure: (a) Which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing; and where, in order to participate in a class, a student must enroll at least three (3) days in advance of the class.
- (i) "Sexual Encounter Center" means a business or commercial enterprise, that as one of its primary business purposes, offers for any form of consideration, a place where two or more persons may congregate, associate, or consort for the purpose of "specified sexual activities" or the exposure of "specified anatomical areas" or activities when one or more of the persons is in a state of nudity or semi-nudity. The definition of Sexual Encounter Center shall not include a business where a medical practitioner, psychologist, psychiatrist, or similar professional person licensed by the state engages in medically approved and recognized sexual therapy.
- (j) "Adult Arcade" shall mean any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image producing devices are regularly maintained to show images to five or fewer persons per machine at any one time, where the images so displayed are distinguished or characterized by the depicting or describing of specified sexual activities or specified anatomical areas.

A business may have other principal business purposes that do not involve any of the aforementioned "Adult Oriented Businesses" and still be categorized as an "Adult Oriented

Business." Such other business purposes will not serve to exempt such businesses from being categorized as an "Adult Oriented Business" so long as one of its principal business purposes, in form or substance, is an "Adult Oriented Business" as defined by this ordinance.

(2) "County" shall mean the Calloway County, Kentucky.

(3) "Employee" means a person who works, performs, entertains or performs any services in and/or for an Adult Oriented Business, regardless of whether or not said person is paid a salary, wage or other compensation by the operator of said business or is full-time, part-time, an independent contractor, or on a contract or sub-contract basis. This definition includes any person who provides services on behalf of any Adult Oriented Business to the patrons of such business, whether or not the individual receives any remuneration, gratuity or tips of any kind, or pays the owner/operator for the right to work, perform or entertain in the Adult Oriented Business. This definition shall also include the definition of "Escort," as if fully set forth herein. This definition shall not include a Person who works in and/or for an Adult Oriented Business and does not, as a part of his/her job, have contact or interact with patrons of the Adult Oriented Business (Examples: VCR repair person, janitor).

(4) "Escort" means a person who, for any form of consideration, agrees to offer to act as a companion, guide, or date for another person, who agrees or offers to privately model lingerie or to perform a striptease for another person or group of persons and who appears in a state of nudity, displays "specified anatomical areas" or engages in "specified sexual activities." This definition shall be included in the definition of "Employee," as if fully set forth therein.

(5) "Establishment" means and includes any of the following:

- (a) The opening or commencement of any Adult Oriented Business as a new business;
- (b) The conversion of an existing business, whether or not a Adult Oriented Business, to any of the Adult Oriented Businesses defined in this Ordinance;
- (c) The addition of any of the Adult Oriented Businesses defined in this Ordinance to any other existing Adult Oriented Business; or
- (d) The relocation of any such Adult Oriented Business.

(6) "Nude", "Nudity" or "State of Nudity" means:

(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 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.

(b) The following terms for purposes of defining nudity mean the following:

(i.) **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.

(ii.) **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.

(iii.) **Person:** For purposes of the definitions relating to nudity, a person shall mean any live human being aged ten years of age or older.

(7) **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.

(8) "Person" is defined, except as otherwise provided in this ordinance, to include: an individual, proprietorship, partnership, corporation, association or other legal entity recognized by the Kentucky Revised Statutes or any other state.

(9) **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.

(10) "Specified Anatomical Areas" as used in this Ordinance means and includes any of the following:

(a) Less than completely and opaquely covered human genitals, buttocks, the anus, 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. This definition shall include the cleavage of the human buttocks, but shall not include any portion of the cleavage of the human buttocks exhibited by a bathing suit, thong, g-string or other wearing apparel; or

- (b) Human male genitals in a clearly discernible turgid state, even if completely and opaquely covered.

(11) "Specified Sexual Activities" as used in this Ordinance means and includes any of the following:

- (a) The fondling or other intentional touching of human genitals, buttocks, anus, or female breasts; or
- (b) Sex acts, normal, deviant, or perverted, actual or simulated; including, but not limited to sexual intercourse, oral copulation, anilingus, cunnilingus, fellatio, flagellation, sadism or sadomasochism;
- (c) Erotic or sexual stimulation with objects or mechanical devices; or
- (d) Masturbation, actual or simulated; or
- (e) Human genitals in a state of sexual stimulation, arousal or tumescence; or
- (f) Bestiality; or
- (g) Excretory functions as part of or in connection with any of the activities set forth in subdivisions (1) through (6) of this subsection.

(12) "Specified Criminal Acts" are sexual crimes against children, sexual abuse, rape, gross sexual imposition, sexual exploitation of a minor, prostitution, promoting prostitution, permitting prostitution and/or other crimes connected with Adult Oriented Businesses; including, but not limited to; distribution of obscenity or other material harmful to minors, pandering and prostitution. This includes any and all other substantially similar crimes recognized by the Kentucky Revised Statutes and/or Federal Law on the effective date of this Ordinance as well as those later enacted.

SECTION G. Exemptions: The prohibitions of this Ordinance shall not apply:

(1) When a Person appears Nude in a Place Provided or Set Apart for Nudity, provided that:

- (a) 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
- (b) 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 Ordinance because:

- (a) 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
- (b) it is otherwise protected by the United States or Kentucky Constitution.

(3) 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.

(4) 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 H. 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 I. INJUNCTIVE RELIEF: In addition to the procedures provided herein, the County 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 County shall be assessed against the Defendant(s).

SECTION J. TERRITORY EMBRACED: All territory within the legal boundaries of the County shall be embraced by the provisions of this Ordinance except for that territory that is regulated by the City of Murray, Kentucky.

SECTION K. 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 L. 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.

Adopted by the Calloway County Fiscal Court on First Reading:



J.D. WILLIAMS,
CALLOWAY COUNTY-JUDGE EXECUTIVE

10-30-98

DATE

Attest:



RAY COURSEY, JR.
CALLOWAY COUNTY CLERK

10-30-98

DATE

Adopted by the Calloway County Fiscal Court on Second Reading:



J.D. WILLIAMS,
CALLOWAY COUNTY-JUDGE EXECUTIVE

11-12-98

DATE

Attest:



RAY COURSEY, JR.
CALLOWAY COUNTY CLERK

11-12-98

DATE