

ORDINANCE NO. 2010-06

AN ORDINANCE OF THE TOWN OF GRANT-VALKARIA, FLORIDA, TO BE KNOWN AS THE "TOWN OF GRANT-VALKARIA PUBLIC NUDITY ORDINANCE"; STATING THE INTENT OF THE ORDINANCE; PROVIDING FOR THE DEFINITION OF NUDITY AS PROHIBITED BY THIS ORDINANCE AND PROVIDING FOR OTHER DEFINITIONS; PROVIDING FOR LEGISLATIVE FINDINGS; PROHIBITING NUDITY AND SEXUAL CONDUCT OR THE SIMULATION THEREOF; PROHIBITING NUDITY IN PUBLIC PLACES; PROVIDING FOR ENFORCEMENT AND PENALTIES FOR THE VIOLATION OF THIS ORDINANCE; PROVIDING FOR INJUNCTIVE RELIEF; PROVIDING FOR EFFECTIVENESS IN THE ENTIRETY OF THE TOWN LIMITS OF TOWN OF GRANT-VALKARIA IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE VIII, SECTION 2, CONSTITUTION OF THE STATE OF FLORIDA; PROVIDING FOR THE REPEAL OF ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR THE INCLUSION IN THE TOWN CODE; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, local governments may prohibit the exposure of certain body parts, see *Geaneas v. Willets*, 911 F. 2d 579 (11th Cir. 1990), *certiorari denied*, 499 U.S. 955, 111 S. Ct. 1431, 113 L.Ed. 2d 484 (1991), and see *Barnes v. Glen Theater*, 501 U.S. 560 (1991); and

WHEREAS, efforts by the State and Federal governments to apply Florida criminal statutes have been rejected by the courts because, under certain of Florida's criminal laws, nudity alone cannot be prosecuted without proof of lewd and lascivious conduct; and

WHEREAS, local governments for other counties have successfully passed and defended regulations relating to public nudity; and

WHEREAS, the citizens of Grant-Valkaria wish to regulate nudity and sexual conduct, and the citizens of Grant-Valkaria believe that nudity and sexual conduct begets undesirable behavior, and that adverse secondary effects such as, but not limited to, prostitution, attempted rape, rape, and assault may occur and have the potential for occurring where nude and sexual

conduct is permitted; and

WHEREAS, the citizens of Grant-Valkaria wish to protect against similar conditions to the end that they not occur in Grant-Valkaria; and

WHEREAS, the citizens of Grant-Valkaria desire to prohibit the public display of nudity and sexual behavior or the simulation thereof; and

WHEREAS, the citizens of Grant-Valkaria believe that there are increasing incidents of nudity in public places and in other places readily visible to the public; and

WHEREAS, the citizens of Grant-Valkaria believe 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* (a wrong in itself) and appearing nude in a public place which is not a public place provided or set apart for nudity has been considered improper see *Moffett v. State*, 340 So. 2d 1155, 1156 n.3 (Fla. 1977); and

WHEREAS, the citizens of Grant-Valkaria desire to protect and preserve the wholesome character of Grant-Valkaria as a family oriented community with a high quality of life offered for families, tourists and businesses; and

WHEREAS, the citizens of Grant-Valkaria believe that appearing nude in public places is still contrary to the general societal disapproval that the people of Grant-Valkaria have of persons appearing nude among strangers in public places; and

WHEREAS, the citizens of Grant-Valkaria believe that the appearance of persons in the

nude in public places generally increases adverse secondary effects such as, but not limited to, incidents of prostitution, unhealthy environment for minors, other citizens and tourists, sexual assaults and batteries, attracts other criminal activity to the community, and encourages degradation of women and other activities which break down societal and family structures; and

WHEREAS, the citizens of Grant-Valkaria believe 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 citizens of Grant-Valkaria 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; and

WHEREAS, it is the intent of the citizens of the Grant-Valkaria to protect and preserve the good order, public health, safety, welfare and morals of Grant-Valkaria by restricting, to the fullest extent allowed by the United States Constitution and Florida Constitution, the act of being nude to places which are readily visible to the public; and

WHEREAS, the Town 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 Town 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

WHEREAS, the citizens of Grant-Valkaria believe that Grant-Valkaria is a town that is, and desires very much to continue to be, a community that contains and is known for traditional

and wholesome public recreational activities, natural features and resources and historic facilities; and

WHEREAS, the citizens of Grant-Valkaria believe that the average person applying contemporary 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, the citizens of Grant-Valkaria believe that the absence of regulation of persons appearing nude in public places within Grant-Valkaria encourages persons and entities to advertise outside of Grant-Valkaria and the State of Florida by billboard, radio, print and other media the availability of nudity in public places within Grant-Valkaria and thus encourages the influx into Grant-Valkaria of persons seeking: (i) to observe and/or participate in such nudity, and

(ii) to participate in the disorderly, unhealthy, harmful, and illegal conduct that is associated therewith, thereby increasing injuries and damages to the citizens of the Grant-Valkaria who will be victims of such increased disorderly, harmful, and unlawful conduct and thereby working directly against Grant-Valkaria' economic development and tourism development activities; and

WHEREAS, the citizens of Grant-Valkaria believe that 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 public order and the public health; and

WHEREAS, the citizens of Grant-Valkaria believe 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, safety, morality, and decency within Grant-Valkaria 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 citizens of Grant-Valkaria believe that the passage of this Ordinance is necessary to preserve the basic character of Grant-Valkaria; and

WHEREAS, States may regulate the conduct of appearing nude in public places, see *Barnes v. Glen Theater, Inc.*, 501 U.S. 560, III S. Ct. 2456 115 L. Ed. 2d 504 (1991), and *Cafe 207, Inc. vs. St. Johns City*, 856 F. supp. 641 (M.D. Fla. 1994), affd, 989 F. 2d 1136 (11th Cir. 1995); and

WHEREAS, the citizens of Grant-Valkaria are not hereby prohibiting nudity in private places or prohibiting nudity which is protected by the United States Constitution or Florida Constitution; and

WHEREAS, the citizens of Grant-Valkaria believe that the express exemptions contained in this Ordinance provide adequate protection to persons who, without such express exemptions, might otherwise be prevented or discouraged by this Ordinance from exercising constitutionally protected rights; and

WHEREAS, this Ordinance is intended to regulate conduct, not speech; and not an ordinance that affects the use of land as contemplated by Section 125.66, and 166.041 Florida Statutes.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF GRANT-VALKARIA, BREVARD COUNTY, FLORIDA,
as follows:

SECTION 1. NEW PUBLIC NUDITY ORDINANCE ADOPTED

“PUBLIC NUDITY

Sec 1. Title. This Ordinance shall be known as the "Town of Grant-Valkaria Public Nudity Ordinance".

Sec 2. Intent.

A. It is the intent of this Ordinance to protect and preserve the good order, health, safety, welfare, and morals of the citizens of Grant-Valkaria 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 Grant-Valkaria in other places than those establishments defined in Section 3, *PLACES APPROVED OR SET APART FOR NUDITY*

B. It is the further intention of this Ordinance to accomplish those intents and purposes expressed in the recitals ("Whereas" clauses) of this Ordinance, each of which are incorporated by reference in this Section.

Sec 3. Definitions.

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, and (ii) 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 such line being ½ 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 ½ 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 other side of 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, (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.)

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

NUDE. Any person insufficiently clothed in any manner or 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 pubic area, or
- (3) the vulva, or
- (4) the penis, or
- (5) the female breast (each female person may determine which ¼ of her breast surface area (see definition of breast) contiguous to and containing the nipple and the areola is to be covered), or
- (6) the anus, or
- (7) the anal cleft, or
- (8) the anal cleavage, or
- (9) 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.
- (10) For the purposes of this section, body paint, body dyes, tattoos, liquid latex whether wet or dried, string and dental floss and similar substance shall not be considered an "opaque covering".

PERSON. Any live human being aged ten (10) years of age or older.

PLACES APPROVED or SET APART FOR NUDITY. Enclosed single sex public restrooms, enclosed single sex functional shower, single sex locker and/or dressing room facilities, enclosed motel rooms and hotel rooms designed and intended for sleeping accommodations, doctor's offices, portions of hospitals, the yard areas of private residences, 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. The aforementioned places approved or set apart for nudity 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 for commercial gain.

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 or membership fee), 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 motel or hotel rooms, used solely as a private residence, whether permanent or temporary in nature, shall not be deemed to be a public place.

Sec 4. Findings. In addition and supplemental to the findings and determinations contained in the recitals ("Whereas" clauses) of this Ordinance which are incorporated by reference into this Section, it is the intent of the citizens of Grant-Valkaria to regulate the conduct of appearing nude in public places for the purpose of regulating nudity and other conduct, that considering what has happened in other communities, the acts prohibited in Section 5 herein below encourage or create the potential for the conduct of adverse secondary effects such as, but not limited to, prostitution, attempted rape, rape, assault, and the spread of sexually communicable diseases; that actual and simulated nudity and sexual conduct in public places, begets and has the potential for begetting undesirable and unlawful behavior; that sexual, lewd, lascivious, and salacious conduct 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.

Sec 5. Nudity, Sexual Conduct Prohibited.

A. No person shall knowingly, intentionally or recklessly appear, or cause another person

to appear nude, as defined in Section 3, or expose to public view his or her genitals, vulva, penis, pubic area, or buttocks, or any simulation thereof.

B. No person shall knowingly, intentionally or recklessly expose, or cause a female person to expose her breasts or any simulation thereof to public view.

C. No person or entity maintaining, owning, or operating a public place shall encourage, allow or permit any person to appear nude or to expose to public view his or her genitals, pubic area, vulva, penis, anus, or any portion 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 shall engage in and no person or entity maintaining, owning, or operating a public place 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. Each female person may determine which $\frac{1}{4}$ of her breast surface area (see definition of breast) contiguous to and containing the areola is to be covered.

F. This section shall not be deemed to address photographs, movies, video presentations, or other non live performances.

Sec 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, as defined in Section 3, 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 to encourage, suffer or allow any person to appear nude in

such public place, except as provided in Section 7.

Sec 7. Exemptions.

A. The prohibitions of Section 5 of this Ordinance shall not apply:

1. When a person appears nude in a place provided or set apart for nudity, as defined by this Ordinance, provided:

a. 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

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.

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 (see for instance *Board of City Commissioners v. Dexterhouse*, 348 So. 2d 916 (Fla. 2nd DCA 1977), and as such is protected by the United States Constitution or Florida Constitution, or

b. It is otherwise protected by the United States Constitution or Florida Constitution.

B. A mother's breast feeding of her baby does not under any circumstance violate the provisions of this ordinance.

C. In establishments or businesses denominated as Adult Entertainment Establishments or Sexually-Oriented Businesses and regulated by Grant-Valkaria Adult Entertainment Code.

Sec 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 Five Hundred Dollars (\$500.00) or by imprisonment not to exceed sixty (60) days or by both such fine and imprisonment as provided in Florida Statutes or other applicable law. Each incident or separate occurrence of an act that violates this Ordinance shall be deemed a separate offense.

Sec 9. Injunctive Relief. In addition to the procedures provided herein, persons and entities that are not in conformity with these requirements shall be subject to appropriate civil action in the court of appropriate jurisdiction for abatement.

Sec 10. Area of Effectiveness. In accordance with the provisions of Article VIII, Section 2, Constitution of the State of Florida, this Ordinance shall have town wide effect within the borders of Grant-Valkaria, Florida, as they currently exist or as they may be changed from time to time.”

SECTION 2. Ordinances in Conflict.

All ordinances or parts of ordinances in conflict herewith are hereby repealed and all ordinances or parts of ordinances not in conflict herewith are hereby continued in full force and effect.

SECTION 3. Inclusion in Town Adult Entertainment Code.

It is the intention of the Town Council of Grant-Valkaria that the provisions of this Ordinance shall be made a part of the Adult Entertainment Code, of the Town of Grant-Valkaria, and the sections renumbered to accomplish such intention.

SECTION 4. Severability.

If any portion, clause, phrase, sentence or classification of this ordinance is held or declared to be either unconstitutional, invalid, inapplicable, inoperative or void, then such declaration shall not be construed to affect other portions of the ordinance; it is hereby declared to be the express opinion of the Town Council of Grant-Valkaria that any such unconstitutional, invalid, inapplicable, inoperative or void portion or portions of this ordinance did not induce its passage, and that without the inclusion of any such portion or portions of this ordinance, the Town Council would have enacted the valid constitutional portions thereof.

SECTION 5. Adoption; Effective Date.

The provisions within this ordinance shall take effect in accordance with the Town Charter.

PASSED AND ADOPTED by the Town Council of the Town of Grant-Valkaria, Brevard County, Florida, this 14th day of July, 2010.

(Signature on file)

Del Yonts, Mayor

ATTEST:
(Signature on file)

Susanne R. Krueger, Town Clerk

First Reading: June 24, 2010
Second Reading: July 14, 2010

Roll Call Vote:	Del Yonts	<u>AYE</u>
	Joe Hackford	<u>AYE</u>
	Lisette Kolar	<u>AYE</u>
	Pat Bryan	<u>AYE</u>
	Jason Mahaney	<u>ABSENT-EXCUSED</u>
	Dan Faden	<u>AYE</u>
	Cathy DeMott	<u>AYE</u>