

4. Ordinance 2024-38, amending the Code or Ordinances, Title IX, General Regulations, by creating Chapter 102, Public Nudity, first reading.



## LEGISLATIVE MEMORANDUM

**TO:** Honorable Mayor and Members of the City Council

**FROM:** Lisa Frazier, Growth Management Director

**THRU:** Suzanne Sherman, City Manager

**DATE:** August 8, 2024

**RE:** Ordinance 2024-38, amending the Code or Ordinances, Title IX, General Regulations, by creating Chapter 102, Public Nudity, first reading.

### SUMMARY:

The Palm Bay 2045 Comprehensive Plan Future Land Use Element was adopted on May 1, 2023, and became effective on June 10, 2023. The remaining Palm Bay Comprehensive Plan Elements were adopted on May 18, 2023, and became effective on July 20, 2023. To bring the Land Development Code into compliance with the Comprehensive Plan, an update has been drafted for consideration by the City Council.

The proposed update is more concise and only includes requirements pursuant to Chapter 163, F.S. As such, some regulations are proposed to be moved to other parts of the Palm Bay Code of Ordinances as new "Titles", "Chapters", "Sub-Chapters", and "Sections".

To facilitate the relocation, and to retain the City's authority to regulate certain issues, new "Titles", "Chapters", "Sub-Chapters", and "Sections" were created as listed below.

- Title X, Impact Fees Chapter 103 was created for the relocation of Parks, Police, and Fire Impact Fees
- Chapter 103, Closure and Abandonment of Easements and Drainage Rights-of-Way was created and added to Title IX, General Regulations
- Chapter 204, Stormwater Management Utility was created and added to Title XX, Utilities Code
- Chapter 205, Water Shortage Emergency was created and added to Title XX, Utilities Code
- Chapter 102, Public Nudity was created and added to Title IX, General Regulations
- Provisions for emergency power and pumping equipment in residential areas was moved to Title XX, Utilities Code, Chapter 201, Sewer Use, Subchapter Private Lift Stations
- Section 74.25, Regulation of Vehicles In Residential Areas was created and added to Title VII, Traffic and Vehicles, Chapter 74, Stopping, Standing, and Parking, Subchapter Parking Regulation
- Chapter 75, Golf Carts was created and added to Title VII, Traffic and Vehicles
- Subchapter 33, Fire Prevention and Protection; Buildings and Structures was created and added

Honorable Mayor and Members of the City Council

Legislative Memorandum

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to Title III, Administration, Chapter 33, Fire Department

Upon repeal and replacement of Title XVII, Land Development Code, the aforementioned regulations will be retained in other sections of the Palm Bay Code of Ordinances.

**REQUESTING DEPARTMENTS:**

City Attorney's Office

City Manager's Office

Growth Management

**FISCAL IMPACT:**

None.

**STAFF RECOMMENDATION:**

Staff recommends approval of the proposed ordinance.

**ATTACHMENTS:**

1. Ordinance

## ORDINANCE 2024-38

AN ORDINANCE OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES, TITLE IX, GENERAL REGULATIONS, BY CREATING CHAPTER 102, PUBLIC NUDITY; PROVIDING FOR THE REPEAL OF ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING FOR INCLUSION IN THE CITY OF PALM BAY CODE OF ORDINANCES; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, as follows:

**SECTION 1.** The City of Palm Bay Code of Ordinances, Title IX, General Provisions, is hereby amended by creating Chapter 102, Public Nudity, which shall henceforth read as follows:

### **>>CHAPTER 102: PUBLIC NUDITY**

#### **Section102.01 TITLE.**

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

#### **Section102.02 INTENT.**

(A) It is the intent of this chapter to protect and preserve the good order, health, safety, welfare, and morals of the citizens of Palm Bay 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 Palm Bay in other places than those establishments defined in §102.03, as may be amended from time to time.

(B) It is the further intention of this chapter to accomplish those intents and purposes expressed in the recitals ("Whereas" clauses) of Ordinance 2007-31, passed April 30, 2007, each of which are incorporated by reference in this section.

#### **Section 102.03 DEFINITIONS.**

The following words and phrases defined in this section and used in this subchapter shall have the meaning herein prescribed unless the context clearly suggests otherwise.

**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 reasonably compact and contiguous to the areola and contains at least the nipple and the areola and one-quarter ( $\frac{1}{4}$ ) of the outside surface area of such gland.

**BUTTOCKS.** The area at the rear of the human body (sometimes referred to as the gluteus maximus) which lies between two (2) imaginary straight lines running parallel to the ground when a person is standing, the first or top such line being one-half ( $\frac{1}{2}$ ) 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 one-half ( $\frac{1}{2}$ ) inch above the lowest point of the curvature of the fleshy protuberance (sometimes referred to as the gluteal fold), and between two (2) imaginary straight lines, one (1) 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: 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, that is one-third ( $\frac{1}{3}$ ) 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 that is perpendicular to the ground and to the horizontal lines described above, and that is one-third ( $\frac{1}{3}$ ) of the distance from the anus to the right outside line. (The above description can generally be described as covering one-third ( $\frac{1}{3}$ ) 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 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;

(2) The pubic area;

(3) The vulva;

(4) The penis;

(5) The female breast (each female person may determine which one-quarter ( $\frac{1}{4}$ ) of her breast surface area (see definition of BREAST) contiguous to and containing the nipple and the areola is to be covered);

(6) The anus;

(7) The anal cleft;

(8) The anal cleavage;

(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 or dressing room facilities, enclosed motel rooms and hotel rooms designed and intended for sleeping accommodations, doctors' 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 their 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.

#### **Section 102.04 FINDINGS.**

In addition and supplemental to the findings and determinations contained in the recitals ("Whereas" clauses) of Ordinance 2007-31, passed April 30, 2007, which are incorporated by reference into this section, it is the intent of the citizens of Palm Bay 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 §102.05, as may be amended from time to time, 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 §102.05, as may be amended from time to time, to specifically prohibit nudity, gross sexuality, or the simulation thereof.

#### **Section 102.05 NUDITY PROHIBITED IN PUBLIC PLACES.**

(A) It shall be unlawful for any person to appear knowingly, intentionally, or recklessly, or cause another person to appear nude in a public place or in any other place which is readily visible to the public or expose or cause another person to expose to public view their genitals, vulva, penis, pubic area, or buttocks, or any simulation thereof, except as provided in §102.07. 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 §102.07.

(B) It shall be unlawful for any person to appear knowingly, intentionally, or recklessly expose, or cause a female person to expose her breasts or any simulation thereof to public view. Each female person may determine which one-quarter ( $\frac{1}{4}$ ) of her breast surface area (see definition of breast) contiguous to and containing the areola is to be covered.

#### **Section 102.06 PUBLIC SEXUAL CONDUCT PROHIBITED.**

(A) 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 their 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.

(B) 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.

(C) This section shall not be deemed to address photographs, movies, video presentations, or other non-live performances.

#### **Section 102.07 EXEMPTIONS.**

(A) The prohibitions of §102.06 shall not apply:

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

(a) Such person is nude for the sole purpose of performing the legal function(s) that 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 chapter 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, *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 chapter.

(C) In establishments or businesses denominated as adult entertainment establishments or sexually-oriented businesses and regulated by the Land Development Code.



**Section 102.08 PENALTY**

Any person or entity violating any of the provisions of §§102.01 through 102.07 shall be prosecuted in the same manner as misdemeanors are prosecuted. Such violations shall be prosecuted in the name of the state 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 (\$500.00) Dollars 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 §§102.01 through 102.07 shall be deemed a separate offense.

**Section 102.08 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.<<"

**SECTION 2.** 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.** It is the intention of the City Council of the City of Palm Bay that the provisions of this Ordinance shall be made a part of the City of Palm Bay Code of Ordinances and the sections may be renumbered to accomplish such intention.

**SECTION 4.** 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 City Council of the City of Palm Bay 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 City Council would have enacted the valid constitutional portions thereof.

**SECTION 5.** The provisions within this ordinance shall take effect immediately upon the enactment date.

Read in title only at Meeting 2024-XX, held on \_\_\_\_\_, 2024; and read in title only and duly enacted at Meeting 2024-XX, held on \_\_\_\_\_, 2024.

\_\_\_\_\_  
Rob Medina, MAYOR

ATTEST:

\_\_\_\_\_  
Terese M. Jones, CITY CLERK

Reviewed by CAO: \_\_\_\_\_

***Strikethrough words shall be deleted; highlighted words that will included will be placed in between two arrow symbols (>> <<). Deletions and additions constitute the proposed amendment. Words remaining are now in effect and remain unchanged.***