

PUBLIC NOTICE

Notice is hereby given that at the Saunders County Board of Supervisors November 10, 2015 meeting, the Board of Supervisors adopted the following ordinance by Resolution #31-2015.

ORDINANCE NO. 1-2015

AN ORDINANCE TO ESTABLISH A LAW REGARDING PUBLIC NUDITY AND LEWD OR LASCIVIOUS BEHAVIOR; TO ESTABLISH A PENALTY AND PROVIDE A METHOD OF ENFORCEMENT; AND TO PROVIDE FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Neb. Rev. Stat. §23-104, the County has the power to do all acts in relation to the concerns of the County necessary to the exercise of its corporate powers;

WHEREAS, pursuant to Neb. Rev. Stat. §23-103, the powers of the County as a body are exercised by the Saunders County Board of Supervisors ("County Board");

WHEREAS, it is the intent of the County Board to enact an Ordinance;

WHEREAS, pursuant to Neb. Rev. Stat. §23-187, the County may regulate, through an ordinance, violations of the public peace and good order of the County by public nudity and/or lewd or lascivious behavior; and,

WHEREAS, the Saunders County Board has held a public meeting on the matter, after giving due notice as required by law.

NOW THEREFORE, BE IT ORDAINED BY THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF SAUNDERS, NEBRASKA:

SECTION 1. Statement of Intent:

It is the intent of this Ordinance to promote the public health, safety, welfare, peace and order of the County. It is the intent of the County to prohibit the exploitation of human nudity for the purpose of promoting the economic interests of any type of business enterprise. It is also the intent of the County to further the government's interest in avoiding the harmful secondary effects of public nude conduct and lewd or lascivious conduct such as prostitution, sexual assaults, and criminal activity. *See, e.g., Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *Pap's A.M. v. City of Erie*, 529 U.S. 277 (2000); *Ways v. City of Lincoln*, 331 F.3d 596 (8th Cir. 2003). The legislative record documents and the Board's legislative findings concerning negative secondary effects, which are found in Section 9.13.01 of the Saunders County Zoning Resolution, are incorporated herein by reference. This prohibition on public nude conduct and lewd or lascivious behavior is not intended to extend to any expression of opinion or the performance of a bona fide play, ballet, or drama which may not be prohibited under the First Amendment to the Constitution of the United States or by Article I, §5 of the Constitution of the State of Nebraska. The provisions of this Ordinance have neither the purpose nor effect of imposing a limitation or restriction on exercises of free speech that are protected by the First Amendment.

SECTION 2. Definitions: For purposes of this Ordinance, and where not inconsistent with the context of a particular section, the defined terms, phrases, word, abbreviations, and their derivations shall have the meaning given in this section. When not inconsistent with the context, words in the present tense include the future-tense, words used in the plural number include words in the singular number and words in the singular number include words in the plural number. The word "shall" is always mandatory, and not merely directory.

- a) **Nude, nudity, or a state of nudity** means the showing of the human male or female genitals or pubic area with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering on any part of the areola and nipple, or the showing of covered male genitals in a discernibly turgid state.
- b) **Public place** means all spaces owned by or open to the general public, whether or not an admission or cover charge is levied for entrance thereto; and public streets, sidewalks, alleys, or other public thoroughfares, and areas in or such close proximity thereto, as to be observed by the public traveling on such street, sidewalk, or other thoroughfare.
- c) **Employee** means any person who works on the premises of a business, on a full

time, part time, or contract basis, regardless of whether the person is denominated an employee, independent contractor, agent, lessee, or otherwise. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.

SECTION 3. Nudity, Prohibited:

It shall be unlawful for a person to, knowingly or intentionally, in a public place or in any place open to the public, appear nude or in a state of nudity.

SECTION 4. Sexual Contact, Prohibited:

- a) It shall be unlawful for any employee in any business or commercial establishment to have any sexual contact with any other employee, person, or patron for gratuity, pay or other remuneration, direct or indirect.
- b) It shall be unlawful for any person or patron to have sexual contact with any employee in any business or commercial establishment.
- c) For the purposes of this section, sexual contact shall mean the intentional touching between any person, patron, or employee involving contact by or with any person's, patron's, or employee's sexual organ, buttock(s), or breast(s), whether covered or not, or kissing, when such contact can reasonably be construed as being for the purpose of sexual arousal or sexual gratification of either party or any observer.
- d) It shall be unlawful for any person purposely or knowingly to solicit, induce, or attempt to induce another person to engage in an act or acts prohibited hereunder.
- e) It shall be unlawful for the owner, lessee, proprietor, or manager of any business or commercial establishment to knowingly allow any person on the premises of such business or commercial establishment to engage in an act or acts prohibited hereunder.

SECTION 5. Exceptions:

- a) No person shall be in violation of this Ordinance for breastfeeding a child.
- b) This Ordinance shall not apply to children under the age of twelve years old.
- c) No person shall be in violation of this Ordinance for appearing nude or in a state of nudity in any dressing/changing room, locker room, restroom facility, or hospital, clinic, or other similar medical facility in which appearing nude or in a state of nudity is necessary for health-related purposes.
- d) No person shall be in violation of this Ordinance for appearing nude or in a state of nudity in the presence of a licensed physical therapist, licensed massage therapist, licensed athletic trainer, or licensed cosmetologist, engaged in performing the functions authorized under the license held.
- e) This Ordinance shall not apply to models that are part of a nude modeling studio that is part of a proprietary school licensed by the State of Nebraska; or a college or junior college or university supported entirely or in part by public taxation; or a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation.
- f) This Ordinance shall also not apply to the exhibition, presentation, showing or performance of any play, ballet, drama, tableau, production or motion picture in any theater, concert hall, art center, museum, school, institution of higher learning or other similar establishment which is primarily devoted to such exhibitions, presentations, shows or performances as a form of expression of opinion, communication, speech, ideas, information, art or drama.

SECTION 6. Penalty:

Any person found to be in violation of this Ordinance shall be guilty of a crime, punishable by a maximum of a five hundred dollar fine.

SECTION 7. Effective Area:

This Ordinance is effective in Saunders County, including any unincorporated towns or villages, but it shall not be effective within the corporate boundaries of Ashland, Yutan, Wahoo, Cedar Bluffs, Ceresco, Colon, Ithaca, Leshara, Malmö, Mead, Memphis, Morse Bluff, Prague, Valparaiso, and Weston; nor shall it be effective within the area outside of the corporate boundaries of Ashland, Wahoo, Yutan, Cedar Bluffs, Ceresco, Colon, Ithaca, Leshara, Malmö, Memphis, Morse Bluff, Prague, Valparaiso, and Weston in which those cities have been granted and are exercising powers by ordinance on a similar subject matter.

SECTION 8: Effective Date:

This Ordinance shall take effect and be in force fifteen days after its passage, approval, and publication, as provided by law – November 25, 2015.

Doris M. Karloff
Chairperson, Board of Supervisors
Patti J. Lindgren
Saunders County Clerk