



Ordinance No. 2023-002

AN ORDINANCE CONCERNING PUBLIC NUDITY IN TOPSAIL BEACH

The Board of Commissioners of the Town of Topsail Beach ("Town" or "TTB") at its duly noticed regularly scheduled meeting conducted on May 10, 2023, after having conducted a duly noticed public hearings during its regularly scheduled meetings on the question of public nudity in public places within TTB, hereby amends the Town Code of Ordinances as follows:

Section 1:

New Article III (entitled "Public Nudity") to Chapter 24 (entitled "Offenses and Miscellaneous Provisions"), consisting of Sections 24-39 through -42 is added to the Town Code of Ordinances as follows:

ARTICLE III – PUBLIC NUDITY

Sec. 24-39. - - Legislative findings.

The Board of Commissioners adopts the following legislative findings:

- (a) The Town of Topsail Beach is a historically family-oriented beach resort community.
- (b) Recently from time-to-time, persons have appeared nude in public places within the Town municipal limits.
- (c) The Town has received numerous complaints and correspondence indicating the sensibilities of numerous persons while enjoying public places within the Town municipal limits were and are offended by persons have appeared nude in public places within the Town municipal limits.
- (d) The Town Board of Commissioners has conducted public hearings and has received comments at those hearings, as well as correspondence submitted for consideration at the public hearings.
- (e) The overwhelming weight of comments received oppose persons appearing nude in public places within the Town municipal limits.
- (f) There is no constitutional right for an individual to appear nude in public or in a state of nudity. Appearing nude in public does not implicate the First Amendment to the United States Constitution or any protected liberty interest.

Appearing nude in public lacks any communicated value that might call for First Amendment protection. Appearing nude in public does not implicate the right of privacy or the right to be alone. Nor does one have a right to impose one's lifestyle of appearing nude in public on others who have an equal right to be left alone and to avoid being subjected to unwanted exposure in public places to nude persons.

(g) Whatever personal right one has to be nude or in a state of nudity, that right becomes subject to government interest and regulation when one seeks to exercise it in public.

(h) With respect to a municipality that imposes restrictions on females baring their breasts in public that do not apply to males:

- i. Protecting the public sensibilities is an important governmental interest based on an indisputable difference between the sexes.
- ii. Further, a prohibition against females baring their breasts in public, although not offensive to everyone, offends many in the Town and society at large.
- iii. A gender-based distinction challenged under the equal protection clause of the United States Constitution is gauged by an important governmental interest that is substantially accomplished by the challenged discriminatory means.
- iv. The equal protection clause does not demand that things that are different in fact be treated the same in law, nor that a government pretend there are no physiological differences between men and women.

(i) The provisions in this Article III are:

- i. a reasonable accommodation to all concerned;
- ii. narrowly tailored so to avoid overbroad application that would overly restrict modes of dress and relative states of undress in a way unnecessary to protect the sensibilities of the public;
- iii. balance the interests between (1) those who do not want persons appearing nude in public, and (2) the rights of the persons who desire to appear nude in public

Sec. 24-40 - Definitions.

The following definitions apply for the purposes of this Article III of Chapter 24:

Nude, or a State of nudity means any or any combination of the following:

- (a) the showing of the human male or female genitals, pubic area, vulva, anus, or anal cleft with less than a full opaque covering of the same;
- (b) the showing of the covered male genitals in a discernibly turgid state;

- (c) the showing of the fully developed female breast below a point immediately above the top of the areola surrounding the nipple with less than a fully opaque covering of any part of the top of the areola surrounding the nipple

Provided, however, *Nude, or a State of nudity* does not include the showing of the female breast while breast feeding an infant.

Specified anatomical areas means any one or combination of the following:

- (1) The human male genitals in a discernibly turgid state, even if completely and opaquely covered; or
- (2) Less than completely and opaquely covered human genitals, pubic region, anus, anal cleft;
- (3) the fully developed female breast below a point immediately above the top of the areola surrounding the nipple.

Specified anatomical areas do not include those portions of the buttocks that are not the anus and anus cleft.

Sec. 24-41. - Violations.

It shall be unlawful for any person to be on the beach, public parks, parking lots, streets, avenues, alleys or any other public place within the Town's municipal limits with the person's *specified anatomical areas* being *nude* or *in a state of nudity*; provided, however, the following are not unlawful:

- (1) infant breast feeding;
- (2) the wearing of thong bathing suits that expose the buttocks, but completely and opaquely cover the anus or anus cleft.

Sec. 24-42. - Penalties.

Any person who is found to be in any violation of Section 24-41 is subject to those civil charges and penal penalties as set forth in Section 24-13, Section 1-7 and Table 1 found therein, and Section 1-8 and Table 2 therein.

Section 2:

Subsection (a) of Section 24-13) of Article I of Chapter 24 is amended so that it reads as follows:

A civil charge as specified in Table 1 found at section 1-7 may be imposed for every violation of sections 24-2 (camping on prohibited areas), 24-3 (surfing), 24-12 (operating vessel near beach or pier), 24-14 (sleeping in vehicles), 24-15 (digging of holes in beach strand), 24-17 (glass containers), and 24-14 (public nudity).

Section 3:

Table 1 of Section 1-7 is amended by adding the following:

| Code Section | Description | Administrative Charge |
|-----------------|---------------|--------------------------|
| 24-41 | Public Nudity | 250.00 |

Section 4:

Table 2 of Section 1-8 is amended by adding the following:

| Code Section | Description | Penal Penalty |
|-----------------|---------------|----------------------------|
| 24-41 | Public Nudity | Misdemeanor, up to maximum |

Section 5:

This Ordinance is effective May 11, 2023.

Duly adopted this the 10th day of May, 2023.

Steve Smith, Mayor

ATTEST:

Rochelle Jagst, Deputy Town Clerk