

ORDINANCE NO. 1998-7

Ordinance Prohibiting Public Nudity

WHEREAS, Indiana Code § 35-45-4-1 prohibits a person from knowingly or intentionally, in a public place, appearing in a state of nudity, which is defined as the "showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple, or the showing of covered male genitals in a discernibly turgid state;"

WHEREAS, the United States Supreme Court upheld the Indiana statute prohibiting public nudity in the case of Barnes v. Glen Theatre, Inc., 501 U.S. 560, 115 L.Ed.2d 504, 111 S.Ct. 2456 (1991), finding that the statute furthered a government interest in protecting order and morality, and that the requirement in that case that individuals wear at least pasties and g-strings was "the bare minimum necessary to achieve the State's purpose;"

WHEREAS, the Indiana Court of Appeals in Turner v. State, 650 N.E.2d 705 (Ind. App. 1995), reh'g denied, transfer denied, cert. denied, 116 S.Ct. 1050, 134 L.Ed.2d 196, and the Indiana Supreme Court in Erhardt v. State, 468 N.E.2d 224 (Ind. 1984), found that wearing a g-string violates the prohibition on public nudity found at Indiana Code § 35-45-4-1; and

WHEREAS, the Indiana Court of Appeals in Turner found that the United States Supreme Court in Barnes did not prohibit the State of Indiana from requiring more than pasties and g-strings in order to comply with the public nudity law, in that requiring an incidental increase in fabric to cover the body "could hardly be deemed an

enlargement of the restriction on public nudity significant enough to rise to constitutional dimensions;" and

WHEREAS, the Town Council of the Town of Millersburg desires to promote the significant governmental interest of the societal disapproval of nudity in public places and among strangers; and

WHEREAS, the federal court in Bright Lights, Inc. v. City of Newport, Kentucky, 830 F.Supp. 378 (E.D.Ky. 1993) upheld a public nudity ordinance prohibiting a person from appearing in any public place in such a manner or attire as to expose to view any portion of the pubic area, anus, vulva or genitals, or simulation thereof, or for any female to appear in such manner or attire as to expose to view the portion of the breast below a horizontal line across the top of the areola at its highest point or simulation thereof, which prohibition included the entire lower portion of the human female breast, but did 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 the areola was not exposed in full or in part; and

WHEREAS, other courts have upheld statutes or ordinances prohibiting exposure of any portion of the female breast below point immediately above the top of the areola, as, for example, in New York State Liquor Auth. v. Bellanca, 452 U.S. 714 (1981); Dodger's Bar & Grill v. Johnson County Bd. of Comm'rs., 32 F.3d 1436 (10th Cir. 1994); Top Shelf, Inc. v. Mayor & Aldermen for Savannah, 840 F.Supp. 903 (S.D.Ga. 1993); S.J.T., Inc. v. Richmond County, 430 S.E.2d 726 (Ga. 1993), cert. denied, 114 S.Ct. 601

(1993); City of Daytona Beach v. Del Percio, 476 So.2d 197 (Fla 1985); and Vonderhaar v. Parish of St. Tammany, 633 So.2d 21 (La.App. 1993);

NOW, THEREFORE, BE IT ORDERED, ESTABLISHED AND ORDAINED by the Town Council of the Town of Millersburg, Indiana, as follows:

Section 1. It shall be unlawful for a person to knowingly or intentionally appear in a state of nudity in a public place.

Section 2. "Nudity" means the showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering, or the showing of covered male genitals in a discernibly turgid state, or the exposure of the female breast below a horizontal line across the top of the areola with less than a fully opaque covering, including the entire lower portion of the human female breast, but shall not include the exposure of any portion of the cleavage of the human female breast exhibited by a dress, blouse, shirt, leotard, bathing suit, or other wearing apparel provided the areola is not exposed in whole or in part.

Section 3. It is unlawful for a person to knowingly intentionally aid, induce, or cause another person to violate Section 1 of this Ordinance, even if the other person:

- (1) has not been prosecuted for the offense;
- (2) has not been convicted of the offense; or
- (3) has been acquitted of the offense.

Section 4. This Ordinance shall be effective upon its passage by the Town Council.

ADOPTED, ESTABLISHED AND ORDAINED this 16th day of March
1998.

TOWN COUNCIL OF THE TOWN OF
MILLERSBURG, INDIANA

By: Robert Majdak, President

By: James L. Kaufman
Jim Kaufman

By: Sharlein Miller
Sharlein Miller

ATTEST:

Cindy Yoder
Cindy Yoder, Clerk-Treasurer