

ARTICLE XIX

ADULT ENTERTAINMENT REGULATIONS

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ARTICLE XIX

ADULT ENTERTAINMENT REGULATIONS

SECTION 21-500 - GENERAL PROVISIONS

21-500.01- Definitions

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Adult bookstore means:

- a. An establishment which, as its principal business purpose, sells or rents adult material or which offers adult materials for sale or rent as a significant portion of its stock and trade.
- b. Any establishment in which any one or more of the following five elements occur shall be presumed to be an adult bookstore/adult video store:
 1. That the adult material is accessible to customers; "accessible to customers" means that the item can be physically touched, picked up, handled by a customer before being transferred from the control of a worker, or is visually displayed so that an adult or child present in the store can view substantially more than its name alone; or
 2. That the individual items of adult material offered for sale and/or rental comprise more than 25 percent of the unused individual items publicly displayed at the establishment as stock in trade in the following categories: books, magazines, periodicals, other printed matter, slides, photographs, films, motion pictures, videotapes, compact disks, computer digital graphic recordings, other visual representations, audio recordings and other audio matter, and more than 25 percent of the total used items publicly displayed at the establishments as stock in trade in each of the same categories set out above; or
 3. The gross income each month from the sale and rental of adult material comprises more than ten percent of that month's gross income from the sale and rental of the goods and material at the establishment; or
 4. The floor area used to display adult material comprises more than ten percent of the floor area used for display of all goods and material at the establishment; or
 5. The establishment uses any of the following terms in advertisements or any other promotional activities relating to the adult material: "XXX," "XX," "X," or any series of the letter "X" whether or not interspersed with other letters, figures or characters; "erotic" or deviations of that word; "adult entertainment," "adult books," "adult videos" or similar phrases; "sexual acts" or similar phrases; "nude" or "nudies" or similar phrases which letters, words or phrases a reasonable person would believe to be promotional of the purchase or rental of adult material.

- c. In recognition of the provisions of F.S. §§ 847.013 and 847.0133, which protects minors from exposure to obscene material, any business which is an adult bookstore/adult video store shall have in place at each entrance to such business a sign, no less than one square foot in size, stating "Persons under 18 years of age not permitted."

Adult booth means a small enclosure inside an adult entertainment establishment accessible to any person over the age of 18, regardless of whether a fee is charged for access. The term adult booth includes, but is not limited to, a peep-show booth or other booth used to view adult material, but does not include a restroom or a foyer through which the public enters or exits the establishment.

Adult entertainment establishment means an adult theater, an adult bookstore, an adult-performance establishment, a commercial physical-contact parlor or an escort service operated for commercial or pecuniary gain, regardless of whether such establishment is licensed under this Article. "Operated for commercial or pecuniary gain" shall not depend upon actual profit or loss. An establishment which has a business tax receipt or an establishment which advertises itself as a type of adult entertainment establishment shall be presumed to be operated for commercial or pecuniary gain. An establishment with an adult entertainment license shall be presumed to be an adult entertainment establishment.

Adult material means any one or more of the following, regardless of whether it is new or used:

- a. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, videotapes, slides or other visual representations, or recordings, computer digital graphic recordings, other visual representations, tape recordings or other audio matter, which have as their primary or dominant theme matter depicting, illustrating, describing or relating to specified sexual activities or specified anatomical areas; or
- b. Instruments, novelties, devices or paraphernalia which are designed for use in connection with specified sexual activities, excluding bona fide birth-control devices.

Adult motel means any motel, hotel, boardinghouse, roominghouse or other place of temporary lodging which includes the word "adult" in any name it uses or otherwise advertises the presentation of films, motion pictures, videotapes, slides or other photographic reproductions, which have as their primary or dominant theme matters depicting, illustrating or relating to specified sexual activities or specified anatomical areas. The term "adult motel" is included within the definition of "adult theater."

Adult-performance establishment.

- a. Adult-performance establishment means an establishment where any worker:
 1. Engages in a private performance or displays or exposes any specified anatomical areas to a customer, regardless of whether the worker engages in dancing or any particular activity;
 2. Wears and displays to a customer any covering, tape, pasty or other device which simulates or otherwise gives the appearance of the display or exposure of any specified

anatomical areas, regardless of whether the employee actually engages in performing or dancing;

3. Offers, solicits or contracts to dance or perform with a customer and accepts any consideration, tip, remuneration or compensation from or on behalf of that customer; or
 4. Dances or performs with or within 18 inches of a person other than another employee and accepts any consideration, tip, remuneration or compensation from or on behalf of that person.
- b. It is an affirmative defense that an establishment is not an adult-performance establishment if the establishment is a bona fide private club whose membership as a whole engages in social nudism or naturalism as in a nudist resort or camp, or such other establishment in which the predominant business or attraction of the establishment is not the offering to customers of a product, service or entertainment which is intended to provide sexual stimulation or sexual gratification to such customers, and the establishment is not distinguished by an emphasis on or the advertising or promotion of materials relating to or workers depicting, describing, displaying, exposing or simulating specified sexual activities or specified anatomical areas.
- c. An adult-performance establishment shall not be deemed a place provided or set apart for the purpose of exposing or exhibiting a person's sexual organs in a manner contrary to the first sentence of F.S. § 800.03, the state's indecent-exposure statute as set forth in the decision of the Supreme Court of Florida in the case of *Hoffman v. Carson* , 250 So. 2d 891, 893 (Fla. 1971), appeal dismissed 404 U.S. 981 (1971).

Adult theater means any establishment which has adult booths where adult material may be viewed or any establishment which has an auditorium, rooms or an open-air area where persons may view films, motion pictures, videocassettes, slides or other photographic reproductions which have as their primary or dominant theme matters depicting, illustrating or relating to specified sexual activities or specified anatomical areas. Adult motels and adult booths or peep-show arcades are considered to be adult theaters.

Alcoholic beverage means a beverage containing more than one percent of alcohol by weight. It shall be prima facie evidence that a beverage is an alcoholic beverage if there is proof that the beverage in question was or is known as beer, wine, whiskey, moonshine whiskey, moonshine, shine, rum, gin, tequila, bourbon, vodka, scotch, scotch whiskey, brandy, malt liquor or by any other similar name or names, or was contained in a bottle or can labeled as any of the above names, or a name similar thereto, and the bottle or can bears the manufacturer's insignia, name or trademark. Any person who, by experience in the handling of alcoholic beverages, or who by taste, smell or drinking of such alcoholic beverages has knowledge of the alcoholic nature thereof, may testify as to such person's opinion about whether such beverage is an alcoholic beverage.

Child Care Facility means that as defined by Sec. 402.302(2), Florida Statutes.

Commercial physical contact means to manipulate, wash, scrub, stroke or touch, for commercial or pecuniary gain, another person's body tissues directly or indirectly, through a medium using any object, instrument, substance or device.

It is an affirmative defense to an alleged violation of this Article regarding engaging in commercial physical contact or operating a commercial physical-contact parlor if the alleged violator, business or establishment can establish membership in one of the following classes of persons or businesses and the activity alleged to be commercial physical contact is part of the bona fide practice of the profession or business of the person, which overlaps into the field regulated by this Article:

- a. Persons licensed as a massage therapist or apprentice massage therapist pursuant to F.S. ch. 480, if providing massage services only in a massage establishment licensed under F.S. ch. 480.
- b. Persons licensed under the laws of the state to practice medicine, surgery, osteopathy, chiropody, naturopathy or podiatry, or persons licensed as a physician's assistant or holding a drugless practitioner's certificate.
- c. Registered nurses under the laws of the state.
- d. Barbers or beauticians licensed under the laws of the state.
- e. Cosmetologists licensed under the laws of the state.
- f. Persons performing services in any hospital, nursing home or sanitarium licensed under the laws of the state.
- g. Instructors, coaches or athletic trainers employed by, or on behalf of, any bona fide professional, Olympic or sanctioned amateur athletic team, governmental entity or any bona fide state, county or private educational institution.
- h. Physical therapists licensed under the laws of the state.

Commercial physical-contact parlor means a business, establishment or place operated for commercial or pecuniary gain, where any worker engages in commercial physical contact, or any business or establishment for which any portion is set aside, advertised or promoted as a place where commercial physical contact occurs or a place designated as a "body scrub salon," or a place designated as a "relaxation salon."

Conviction means a determination of guilt resulting from a plea or trial, regardless of whether adjudication was withheld or whether imposition of sentence was suspended.

Customer means any person at an establishment, excluding an employee or operator, who does any of the following:

- a. Is present at an establishment, regardless of whether that person has actually given any consideration or spent any money for goods or services; or

- b. Has paid or has offered, agreed, been solicited or had someone else offer or agree on that person's behalf to, pay any consideration, fee or tip to an operator or worker of an adult entertainment establishment.

Department means the building department, fire department, health department, police department, Development Services Department or City Clerk, including the respective director, workers, officers and agents thereof.

Educational institution means a premises or site upon which there is an institution of learning for minors, whether public or private, which conducts regular classes and/or courses of study required for eligibility to, certification by, accreditation to, or membership in the state department of education, Southern Association of Colleges and Secondary Schools or the Florida Council of Independent Schools. The term "educational institution" includes a premises or site upon which there is a kindergarten, elementary school, middle school, senior high school. However, the term "educational institution" does not include a premises or site upon which there is a vocational institution, professional institution or an institution of higher education, including a community college, junior college, four-year college or university.

Escort means any person who, for commercial or pecuniary gain, compensation or tips agrees to, offers to go or goes to any place, including a business, hotel, motel, residence or conveyance to do any of the following acts:

- a. Act as a companion or date for, or converse with, a customer;
- b. Engage in physical contact with another person;
- c. Provide private adult entertainment;
- d. Display specified anatomical areas, strip naked or go topless; or
- e. Engage in any specified sexual activity.

Caveat: Nothing in this definition shall be construed to legalize prostitution or other conduct prohibited by this Article or other law.

Escort service or escort agency means a person, business, establishment or place operated for commercial or pecuniary gain, which does any of the following:

- a. Advertises as an escort service or escort agency or otherwise offers or advertises that it can furnish escorts or private dancers; or
- b. Offers or actually provides, arranges, dispatches or refers workers to act as an escort for a customer.

It is an affirmative defense that a business is not an escort service if the person seeking to invoke this defense can demonstrate that the business is a bona fide dating or matching service which arranges

social matches or dates for two persons who each wish to meet a compatible companion when neither of such persons solicits, accepts or receives any financial gain or any monetary tip, consideration or compensation for the meeting or date.

Establishment means any place, site or premises, or portion thereof, upon which any person, corporation or business conducts activities or operations for commercial or pecuniary gain, including any place, site or premises from where an escort service dispatches or refers workers to other locations or at which an escort service receives business calls from customers.

Law enforcement officer means an officer who is on official duty for a law-enforcement agency, including, but not limited to, the police department of the City.

Licensee means any person whose application for an adult entertainment establishment has been granted and who owns, operates or controls the establishment.

Operated for commercial or pecuniary gain means any business or attempt to generate income and shall not depend upon actual profit or loss. An establishment which has a business tax receipt shall be presumed to be operated for commercial or pecuniary gain.

Operator means any person who engages in or performs any activity necessary to, or which facilitates, the operation of an adult entertainment establishment, including but not limited to the licensee, manager, owner, doorman, bouncer, bartender, disc jockey, sales clerk, ticket taker, movie projectionist, dispatcher, receptionist or attendant.

Park means a tract of land within a city or unincorporated area of a county which is kept for ornament or recreation and which is maintained as public property.

Preexisting means as follows:

a. When used together with the terms "adult entertainment establishment," "religious institution," "educational institution," "commercial establishment that in any manner sells or dispenses alcohol for on-premises consumption" or "residence," the word "preexisting" shall mean:

1. The establishment, institution or residence is already being lawfully used or lawfully occupied;
2. A building permit for the establishment, institution or residence has been lawfully issued, all fees associated with the permit have been paid and the permit has not expired; or
3. An application or plan to allow the establishment, institution or residence to be constructed, used or occupied has been filed and is undergoing review or is approved, with or without conditions.

b. When used together with the term "park," the word "preexisting" shall mean:

1. The park is already being used; or

2. The park site has been approved or otherwise designated by the appropriate governing body.

Private performance means posing, or the display or exposure of any specified anatomical area by a worker of an adult entertainment establishment to a customer, while the person is in an area not accessible during such display to all other persons in the establishment, or while the customer or worker is in an area which is private or in which the customer or worker is totally or partially screened or partitioned during such display from the view of all persons outside the area.

Public nudity means the appearance at an adult entertainment establishment of a specified anatomical area as defined herein.

Religious institution means a premises or site which is used primarily or exclusively for religious worship and related religious activities.

Sexually oriented business means a commercial physical-contact establishment or escort service, regardless of whether such business is licensed under this Article.

Specified anatomical areas means:

(Editor's note: the source of the footnotes below is The New Webster's Medical Dictionary (Bolander, 1991). The definitions of terms set forth in footnotes are a material part of this Article and apply to the use of the term each time it is used in this Article.)

- (a) Any of the following in a state that is less than completely and opaquely covered:
 - a. The male or female genitals¹;
 - b. The male or female pubic area²;
 - c. The vulva³;
 - d. The anus⁴;
 - e. The penis⁵;
 - f. The scrotum⁶;

¹Genitals, Genitalia – organs of the reproductive system, especially the external organs.

²Pubic Area - (1) Pubes, the pubic region; the anterior region of the innominate bone covered with pubic hair; os pubis. (2) Pubic, pertaining to the pubes. (3) Pubis, pubic bone, or the innominate bone.

³Vulva - External female genitalia, including the mons pubis, labia majora and minora, clitoris and vestibule of the vagina.

⁴Anus - Outline of the rectum leading from the bowel.

⁵Penis - The male organ for urination and copulation, a pendulous structure that is suspended from the front and the sides of the pubic arch.

- g. The anal⁷ cleft.
- h. The breast⁸ of a female;
- i. The human male genitals in a discernibly turgid state, even if completely and opaquely covered.

For purposes of this definition, body paint, body dyes, tattoos, liquid latex whether wet or dried, and dental floss shall not be considered an opaque covering.

Specified sexual activity means:

- a. Human genitals in a state of sexual stimulation, arousal, erection or tumescence; or
- b. Fondling or other erotic touching of human genitals, pubic region, buttock, anus or female breast;
- c. Acts of human anilingus, bestiality, buggery, cunnilingus, coprophagy, coprophilia, fellation, flagellation, masochism, masturbation, necrophilia, pederasty, pedophilia, sadism, sadomasochism, sapphism, sexual intercourse, sodomy or urolagnia; or
- d. Excretory functions as part of or in connection with any of the activities set forth in subsections (1), (2) or (3) of this definition.

Straddle dance, also known as a lap dance, face dance or friction dance, means either of the following acts at an establishment:

- a. The use by a worker of any part of the worker's body to touch the genital or pubic area of another person, or the touching of the genital or pubic area of any worker to another person. It shall be termed a "straddle dance" regardless of whether the touch or touching occurs while the worker is displaying or exposing any specified anatomical area. It shall also be termed a "straddle dance" regardless of whether the touch or touching is direct or indirect (through a medium); or

⁶Scrotum - The external double pouch that contains the testicles.

⁷Anal - A ring, pertaining to the rectal opening; near the anus.

⁸Breast - A portion of the human female mammary gland (commonly referred to as the female breast) including the nipple and the 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 one-fourth of the outside surface area of such gland. The female breast shall not include any portion of the cleavage between the human female breasts typically exhibited by a dress, blouse, skirt, leotard, bathing suit, or other wearing apparel, provided that the areola is not exposed.

- b. The straddling of the legs of a worker over any part of the body of another person at the establishment, regardless of whether there is a touch or touching.

Worker means a person who works, performs or provides services at an adult entertainment establishment or who is an escort, irrespective of whether such person is paid a salary or wage, and shall include, but is not limited to, employees, independent contractors, subcontractors, lessees or sublessees who work or perform at an adult entertainment establishment.

21-500.02- Authority for Article

This Article is enacted under the Home Rule Power of the City in the interest of the health, peace, safety and general welfare of the people of the City and under the authority of the City to regulate the sale and consumption of alcoholic beverages under the Twenty-First Amendment to the Constitution of the United States.

21-500.03- Scope of Article

This Article shall be effective throughout the City.

21-500.04- Purpose of Article

The intent of the City Council in adopting this Article is to establish reasonable and uniform regulations for the adult entertainment industry that will protect the health, safety, property values and general welfare of the people, businesses and industries of the City. It is not the intent of the City Council to legislate with respect to matters of obscenity. These matters are regulated by federal and state law, including F.S. ch. 847.

21-500.05- Findings of fact

Based on evidence and testimony presented at public hearings before the City Council and on the findings incorporated in the United States Attorney General's Commission on Pornography (1986), Jacksonville Ordinance Code, Chapter 410, Ord. 77-257-256, Section 1, the Los Angeles Municipal Code, Section 12.70, Ord. 156509 (1982), the Detroit Zoning Ordinance, 66,0000, Ord. 742-G, Section 1, 10-24-72, and A Summary of a National Survey of Real Estate Appraisers Regarding the Effect of Adult Bookstores on Property Values, conducted by the division of planning, department of metropolitan development, Indianapolis, January 1984, and the findings of fact set out in section 3-5 of the adult entertainment code of Orange County, Florida, a county in central Florida, and evidence and affidavits presented by the Metropolitan Bureau of Investigation of the Ninth Judicial Circuit of Florida, the cases of *City of Renton v. Playtime Theaters, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theaters*, 426 U.S. 50 (1976); *Barnes v. Glen Theater, Inc.*, 501 U.S. 560 (1991); *City of Erie v. Pap's A.M.*, 120 S. Ct. 1382 (2000); *City of Los Angeles v. Alameda Books*, 535 U.S. 425 (2003); *City of Littleton v. Z.J. Gifts, LLC*, 124 S.Ct. 2219 (U.S. 2004); and on materials made of record relating to the Seminole County and St. Johns County Public Nudity Ordinances, and on the substance of and findings made or incorporated in studies accomplished in other communities and ordinances enacted in other communities, including, but not limited to, New York, New York; city of Houston Ordinance Number 97-75; Senate Bill Number 232, as passed by the Kansas State Legislature; Phoenix, Arizona; Tucson,

Arizona; St. Paul, Minnesota; Minneapolis, Minnesota; Houston, Texas; Indianapolis, Indiana; Amarillo, Texas; Garden Grove, California; Los Angeles, California; Austin, Texas; Macon-Bibb County, Georgia; Palm Beach County, Florida; Manatee County, Florida; the findings of the attorney general of the State of Minnesota; the report of United States Attorney General's Council on Pornography (1986); Jacksonville, Florida; Detroit, Michigan; and "A Summary of a National Survey of Real Estate Appraisers Regarding the Effect of Adult Bookstores on Property Values," conducted by the division of planning, department of metropolitan development, Indianapolis, January 1984; the publication entitled "Protecting Communities From Sexually Oriented Businesses" (Southwest Legal Press, Inc.); the publication entitled "Local Regulation Of Adult Businesses" (Clark, Boardman and Callaghan); publications prepared by the Florida Family Association, Inc. (Tampa, Florida) relating to the regulation of sexually oriented businesses and adverse secondary effects of sexually oriented businesses; the "Report to: The American Center for Law and Justice on the Secondary Impacts of Sex Oriented Businesses", Peter R. Hecht, Ph.D. (1996); and the findings of fact relating to the adult entertainment codes of Orange and Seminole Counties, two neighboring and contiguous counties in central Florida, and the findings of fact relating to the sexually oriented business and adult entertainment establishment ordinance of Brevard County, Florida, the county in which the city is located, the publications of Dr. William George regarding erotica and alcohol: Alcohol and Human Sexuality: Review and Integration, Leif C. Crowe and William H. George, Psychological Bulletin, 1989; Alcohol and Hypermasculinity as Determinants of Men's Empathic Responses to Violent Pornography, Jeanette Norris, William H. George, Kelly Cue Davis, Joel Martell, R. Jacob Leonesio; Journal of Int'l Violence, 1999; Alcohol Expectancies and Sexuality: A Self-Fulfilling Prophecy, Analysis of Dyadic Perceptions and Behavior, William H. George, Ph.D., and Susan A. Stoner, B.A., Jeanette Norris, Ph.D., Peter A. Lopez, Ph.D. and Gail L. Lehman, Ph.D., Journal of Studies on Alcohol, 1998; The Effect of Alcohol and Anger on Interest in Violence, Erotica & Deviance, William H. George and G. Alan Marlatt, Journal of Abnormal Psychology, 1986; Perception of Postdrinking Female Sexuality: Effects of Gender, Beverage Choice, and Drink Payment, William H. George, Susan J. Gournic, and Marry P. McAfee, Journal of Applied Social Psychology, 1988; Postdrinking Sexual Inferences: Evidence of Linear Rather than Curvilinear Dosage Effects, William H. George, Gail L. Lehman, Kelly L. Cue, Lorraine J. Martinez, Peter A. Lopez, and Jeanette Norris, Journal of Applied Social Psychology, 1997; Self-Reported Alcohol Expectancies and Postdrinking Sexual Inferences About Women, William H. George, Kelly L. Cue, Peter A. Lopez, Lief C. Crowe, and Jeanette Norris, Journal of Applied Social Psychology, 1995; Self-Reported Alcohol Expectancies for Self and Other as a Function of Behavior Type and Dosage Set; William H. George and Kurt H. Dermen, Journal of Substance Abuse, 1988; *Sammy's of Mobile, Ltd. v. City of Mobile*, 140 F. 3d 993 (11th Cir. 1998); *City of Daytona Beach v. Del Percio* 476 So. 2d 197 (Fla. 1985); *SOB, Inc. v. County of Benton*, 317 F. 3d 856 (8th Cir. 2003); *New York State Liquor Auth. V. Bellanca*, 452 U.S. 714 (1981); *California v. LaRue*, 409 U.S. 109 (1972) (result upheld in *44 Liquormart v. R.I.*, 517 U.S. 484 (1996)); *Seminole Entertainment, Inc. v. city of Casselberry*, 813 So. 2d 186 (Fla. 5th DCA 2002), rev. denied 835 So. 2d 269 (2002), cert. denied 123 S. Ct. 2276, 71 USLW 3641 (2003) (including the entire record presented to the Casselberry city council and the order of the city council revoking Rachel's adult entertainment license); *McKee v. City of Casselberry*, 10 Fla. L. Weekly Supp. 408a, Per Curium Affirmed 2004 WL 1178246; (Fla. 5th DCA 2004); and matters and materials submitted at the public hearings relating to this article and other matters and documents relating to all of the above; and the experiences of other central Florida communities, the Council hereby finds that:

- a. Commercial establishments exist or may exist within the City and other nearby cities or counties in central Florida where books, magazines, periodicals or other printed material, or photographs, films, motion pictures, prints, videotapes, slides, computer digital graphic recordings or other visual representations or recordings, or recordings or other audio matter, or instruments, novelties, devices or paraphernalia which depict, illustrate, describe or relate to specific sexual activities or specified anatomical areas are possessed, displayed, exhibited, distributed and/or sold.
- b. Commercial establishments exist or may exist within the City and other nearby cities or counties in central Florida where adult entertainment activities in the form of nude, seminude or topless dancers, entertainers, performers or other individuals who, for commercial gain, perform or are presented while displaying or exposing specified anatomical areas; or engage in straddle dancing or touching with customers.
- c. Commercial sexually oriented businesses exist or operate or may exist or operate within the City and other nearby cities or counties in central Florida where sexually oriented services are offered for commercial or pecuniary gain in the form of commercial physical contact or escort services. The workers of such sexually oriented businesses operating in central Florida engage in physical contact or touching with customers, including acts of prostitution, or encourage or entice the customers to engage in lewdness.
- d. The activities described in subsections (A), (B) and (C) of this section occur at establishments which operate primarily for the purpose of making a profit and, as such, are subject to regulation by the City in the interest of the health, safety, economy, property values and general welfare of the people, businesses and industries of the City. A major industry which is important to the community's economic welfare is tourism by persons seeking to bring children to visit attractions who wish to stay in a community with a family atmosphere not dominated by commercialized sexual themes.
- e. When the activities described in subsections (A), (B) and (C) of this section are present in establishments, other activities which are illegal, unsafe or unhealthful tend to accompany them, concentrate around them and be aggravated by them. Such other activities include, but are not limited to, prostitution, pandering, solicitation for prostitution, lewd and lascivious behavior, exposing minors to harmful materials, possession, distribution and transportation of obscene materials, sale or possession of controlled substances and violent crimes against persons and property.
- f. When the activities described in subsections (A),(B) and (C) of this section are competitively exploited in establishments, they tend to attract an undesirable number of transients, blight neighborhoods, adversely affect neighboring businesses, lower real-property values, promote the particular crimes described in subsection(E)of this section, and ultimately lead residents and businesses to move to other locations.
- g. The establishments in which the activities described in subsections (A),(B) and(C) of this section occur are often constructed, in part or in whole, of substandard materials, maintained in a manner reflecting disregard for the health and safety of the occupants, and have exterior signs or appearance that lower the surrounding property values and contribute to urban decline.

- h. The activities described in subsections (A),(B) and(C)of this section often occur in establishments concurrent with the sale and consumption of alcoholic beverages, which concurrence leads to a further increase in criminal activity, unsafe activity and disturbances of the peace and order of the surrounding community and creates additional hazards to the health and safety of customers and workers and further depreciates the value of adjoining real property, harming the economic welfare of the surrounding community and adversely affecting the quality of life, commerce and community environment.
- i. In order to preserve and safeguard the health, safety, property values and general welfare of the people, businesses and industries of the City, it is necessary and advisable for the City to regulate the sale and consumption of alcoholic beverages at establishments where the activities described in subsections (A),(B) and(C) of this section occur.
- j. Workers at adult entertainment establishments and sexually oriented businesses engage in a higher incidence of certain types of unhealthy or criminal behavior than workers of other establishments, including a very high incidence of illegal prostitution or engaging in lewdness in violation of F.S. ch. 796, operation without business tax receipts and illegal unlicensed massage.
- k. Physical contact or touching within establishments at which the activities described in subsections (A),(B) and (C) of this section occur between workers exhibiting specified anatomical areas and customers poses a threat to the health of both and promotes the spread of communicable and social diseases.
- l. In order to preserve and safeguard the health, safety and general welfare of the people of the City, it is necessary and advisable for the City to regulate the conduct of owners, managers, operators, agents, workers, entertainers, performers and customers at establishments where the activities described in subsections (A),(B) and(C)of this section occur.
- m. The potential dangers to the health, safety and general welfare of the people of the City posed by permitting an establishment at which the activities described in subsections (A), (B) and(C) of this section occur to operate without first meeting the requirements for obtaining a license under this Article are so great as to require the licensure of such establishments prior to their being permitted to operate.
- n. Requiring operators of establishments at which the activities described in subsections (1), (2) and (3) of this section occur to keep records of information concerning workers and certain recent past workers will help reduce the incidence of certain types of criminal behavior by facilitating the identification of potential witnesses or suspects, and by making it difficult for minors to work in such establishments.
- o. Prohibiting establishments at which the activities described in subsections (A),(B) and(C) of this section occur from operating within set distances of educational institutions, religious institutions, residences, areas zoned or designated for residential use and parks, at which minors are customarily found, will serve to protect minors from the adverse effects of the activities that accompany such establishments.

- p. Straddle dancing, unregulated private performances and enclosed adult booths in establishments at which the activities described in subsections (A),(B) and(C) of this section occur have resulted in indiscriminate commercial sex between strangers, pose a threat to the health of the participants and promote the spread of communicable, sexually transmitted diseases. Straddle dancing is primarily conduct rather than communication or expression.
- q. Physical contact or touching between workers of sexually oriented businesses and customers poses a threat to the health of both, and promotes the spread of communicable and sexually transmittable diseases.
- r. The practice of not paying workers at sexually oriented businesses and requiring them to earn their entire income from tips or gratuities from their customers who are predisposed to want sexual activity has resulted in an extremely high, nearly universal, incidence of prostitution and crimes related to lewdness by workers.
- s. Sexually oriented businesses involve activities the sole purpose of which is financial gain rather than free speech or expressive activity, and therefore are subject to and require increased regulation to protect the health, welfare and safety of the community.
- t. Requiring sexually oriented businesses to post a listing of services provided, to restrict services to those listed and to maintain a customer contract and transaction record in a daily register will discourage incidents of criminal behavior such as lewdness and prostitution, thereby further safeguarding the health of both workers and customers and facilitating the identification of potential witnesses or suspects if criminal acts do occur.

21-500.06- Construction

This Article shall be liberally construed to accomplish its purpose of licensing, regulating and dispersing adult entertainment and related activities. Unless otherwise indicated, all provisions of this Article shall apply equally to all persons, regardless of sex.

SECTION 21-510- ADMINISTRATION AND ENFORCEMENT

21-510.01- Enforcement

The provisions of this Article may be enforced by:

- a. A suit brought by the City Council in the circuit court to restrain, enjoin or prevent a violation of this Article;
- b. Enforcement proceedings by the City's code enforcement board; or
- c. Criminal prosecution as provided in the criminal provisions in division 6 of this Article.

21-510.02- Responsibilities of Departments

Ultimate responsibility for the administration of this Article is vested in the City Council. The other departments are responsible for the following:

- a. The Development Services Department is responsible for granting, denying, revoking, renewing, suspending and canceling adult entertainment licenses for proposed and existing adult entertainment establishments as set out in the licensing provisions of this Article.
- b. The Police Department is responsible for verifying information contained in an application and for inspecting proposed or existing adult entertainment establishments in order to ascertain compliance with applicable criminal statutes and ordinances, including those set forth in the criminal provisions in of this Article, and for enforcing applicable criminal statutes and ordinances, including those set forth in the criminal provisions of this Article.
- c. The Building Department is responsible for inspecting any proposed establishment or existing adult entertainment establishment in order to ascertain compliance with the general operational rules in this Article and all applicable building codes, statutes, ordinances and regulations.
- d. The Fire Department is responsible for inspecting any proposed or existing adult entertainment establishment in order to ascertain compliance with the general operational rules in this Article and all applicable fire codes, statutes, ordinances and regulations.
- e. The Health Department is responsible for inspecting any proposed or existing adult entertainment establishment in order to ascertain compliance with the general operational rules in this Article and all applicable health codes, statutes, ordinances and regulations.
- f. The Development Services Department is responsible for ascertaining whether the location of proposed adult entertainment establishments complies with all distance, zoning and location requirements of the distance restrictions in this Article, applicable portions of the general operational rules in this Article and all applicable zoning regulations in the City and whether existing adult entertainment establishments are in compliance with the distance restrictions and general operational rules of this Article and all applicable zoning regulations and land use laws.

21-510.03- Appeals

An applicant may appeal the decision of the Development Services Department regarding a denial of a license application or renewal of a license under this Article to the City Council by filing a written notice of appeal with the Development Services Department within fifteen (15) days after service of notice upon the applicant of the Development Services Department's decision. The notice of appeal shall be accompanied by a memorandum or other writing setting out fully the grounds for such appeal and all arguments in support thereof. The Development Services Department may, within fifteen (15) days of service upon it of the applicant's memorandum, submit a responsive memorandum to the City Council. After reviewing such memoranda, as well as the Development Services Department's written decision, if any, and exhibits submitted to the Development Services Department, the City Council shall vote either to uphold or overrule the decision. Such vote shall be taken within twenty-one (21) calendar days after the date on which the Development Services Department receives the notice of appeal. The status quo immediately prior to denial of the license shall be maintained during the pendency of the

appeal. Judicial review of a denial by the Development Services Department and City Council may be made pursuant to Section 21-520.11 of this Article. The status quo shall continue to be maintained during the pendency of judicial review.

21-510.04 Notice

Any notice required under this Article shall be accomplished by sending a written notification by certified mail to the mailing address set forth on the application for the license. This mailing address shall be considered the correct mailing address unless the Development Services Department has been otherwise notified in writing or by personal service or delivery to the applicant or licensee.

21-510.05- Immunity from Prosecution

The City or any of its departments or agents or any law enforcement officer shall be immune from prosecution, civil or criminal, for reasonable, good-faith trespass upon an adult entertainment establishment while acting within the scope of the authority under this Article.

SECTION 21-520- LICENSE

21-520.01- Required.

No adult entertainment establishment shall be permitted to operate without having been first granted an adult entertainment license by the Development Services Department under this Article. The operation of an adult entertainment establishment without a valid adult entertainment license is unlawful and shall be grounds for the closing of the establishment or business upon a finding of fact by a court or other body with proper jurisdiction that the establishment does not have a valid adult entertainment license. In no event shall a business tax receipt serve as a substitute for an adult entertainment license required by this Article.

21-520.02- Classifications

- a. *Generally.* Adult entertainment establishment licenses referred to in this Article shall be classified as follows:
 1. Adult bookstore;
 2. Adult theater;
 3. Adult-performance establishment;
 4. Commercial physical-contact parlor; or
 5. Escort service.

- b. *Single classification of license.* An adult entertainment license for a particular adult entertainment establishment shall be limited to one classification of license.

21-520.03- Application; fee; consent by applicant

- a. *Application required.* Any person desiring to operate an adult entertainment establishment shall file with the Development Services Department a sworn license application on standard application forms supplied by the Development Services Department.
- b. *Contents of application.* The completed application shall contain the following information and shall be accompanied by the following documents:
 - 1. If the applicant is:
 - a. An individual. The individual shall state his or her legal name and any aliases and submit satisfactory proof of identity and that the applicant is at least 18 years of age or older;
 - b. A partnership. The partnership shall state its complete name, the names and residential addresses and residential telephone numbers of all partners, whether general or limited, and the residence address of at least one person authorized to accept service of process, and provide a copy of any existing partnership agreement; or
 - c. A corporation. The corporation shall state its complete name, the date of its incorporation, evidence that the corporation is in good standing, the names and capacities of all officers, directors and principal stockholders, the name and address of the registered corporate agent for service of process, the name, residential address and residential telephone number of the person making the application for the corporation, and provide a copy of its articles of incorporation;
 - 2. All business names and telephone numbers to be used by the establishment. If the applicant intends to conduct the establishment under a name other than that of the applicant, the establishment's fictitious-name registration under F.S. § 865.09;
 - 3. Whether the applicant or any of the other individuals listed pursuant to subsection (B)(1) of this section have had a previous license under this Article suspended or revoked, including the name and location of the establishment for which the license was suspended or revoked, as well as the date of the suspension or revocation, and whether the applicant or any other individuals listed pursuant to subsection (B)(1) of this section have been a partner in a partnership or an officer, director or principal stockholder of a corporation whose license under this Article has previously been suspended or revoked, including the name and location of the establishment for which the license was suspended or revoked, as well as the date of the suspension or revocation;

4. Whether the applicant or any other individuals listed pursuant to subsection (B)(1) of this section hold any other licenses under this Article, and if so, the names and locations of such other licensed establishments;
 5. The single classification of license for which the applicant is filing;
 6. The location of the proposed establishment, including a legal description of the property site, a legal street address, the name and address of the real property owner of the site and a notarized statement of consent to the specific proposed adult entertainment use from the owner of the property;
 7. The applicant's mailing address and telephone number(s);
 8. A site plan of the proposed establishment drawn to appropriate scale, including but not limited to:
 - a. All property lines, rights-of-way and the location of buildings, parking areas and spaces, curb cuts and driveways;
 - b. All windows, doors, entrances and exits, fixed structural features, walls, stages, partitions, projection booths, admission booths, adult booths, concession booths, stands, counters and similar structures;
 - c. All proposed improvements or enlargements to be made, which shall be indicated and calculated in terms of percentage of increase in floor size;
 9. A notarized statement that the owner of the real property has approved of the proposed adult entertainment use, if the applicant is not the title owner.
- c. *Application fee.* Each application shall be accompanied by a nonrefundable fee of \$200.00. Such application fee shall be used to defray the costs and expenses incurred by the various departments in reviewing applications. If the application for a license is approved and a license is granted, the fee shall be applied as a credit toward the annual license fee required for the first year pursuant to Section 21-520.07.
- d. *False, incorrect or incomplete application.* If the Development Services Department determines or learns that the applicant has falsely or incorrectly completed an application, or has not properly completed the application for a proposed establishment, the applicant shall promptly notify the applicant of such fact and shall allow the applicant ten days to properly complete the application. The revised application shall then be promptly forwarded to the appropriate departments for further review. (The time period for granting or denying a license under Section 21-520.05 shall be stayed during the period in which the applicant is allowed an opportunity to properly complete the application.) Upon receipt of a revised application, the 30-day time period for granting or denying a license shall be extended for ten (10) additional days to a total of 40 days.

- e. *Consent.* By applying for a license under this Article, the applicant shall be deemed to have consented to the provisions of this Article and to the exercise of their responsibilities under this Article by the agents or departments of the City.

21-520.04- Processing of Application; Investigation; Findings

- a. *Processing.* Upon receipt of a complete application properly filed with the Development Services Department and upon payment of the nonrefundable application fee, the Development Services Department shall immediately stamp the application with the date it was received and shall immediately thereafter send photocopies of the application and all attachments to the police department, the building department, the fire department, and the health department.
- b. *Findings.* After investigation, each department shall report its findings in writing and shall forward its findings to the Development Services Department within fourteen (14) days and shall state whether the department finds that false, incomplete or incorrect information was given on the application or whether the proposed establishment will be in violation of any provision of the distance restrictions in division 4 or general operational rules in division 5 of this Article or of any building, fire, health or zoning statute, code, ordinance, regulation, lease, deed restriction or court order.

21-520.05- Grant; Denial; Rejection

- a. *Time period for granting or denying license.* If application is made for a license under this Article, the Development Services Department shall issue a license to an applicant unless it is determined by a preponderance of the evidence that one or more of the following findings is true:
 - 1. The applicant has failed to provide the information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form;
 - 2. The applicant has failed to comply with the F.S. ch. 607, regarding corporations, F.S. ch. 620, regarding partnerships, or F.S. § 865.09, regarding fictitious names;
 - 3. The granting of the application would violate a statute or ordinance, deed restriction, lease or an order from a court of law which prohibits the applicant from obtaining an adult entertainment establishment license;
 - 4. The applicant or any of the other individuals listed pursuant to subsection have been denied a license by the City to operate a adult entertainment establishment within the preceding twelve (12) months, or whose license to operate a adult entertainment establishment has been revoked within the preceding twelve (12) months;
 - 5. An applicant is under the age of eighteen (18) years;
 - 6. The license fee required under this ordinance has not been paid; or

7. The premises to be used for the adult entertainment establishment have not been approved by departments specified in Section 21-510.02 as being in compliance with applicable laws and ordinances.
- b. If the Development Services Department denies the application, the Development Services Department shall, within seven (7) days, notify the applicant of the denial and state the reasons for the denial.
- c. A license issued pursuant to subsection (A) of this Section, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, and the address of the establishment. The license shall be posted in a conspicuous place at or near the entrance to the establishment so that it may be easily read at any time.
- d. In the event the Development Services Department fails to render a decision on the application within the time specified herein, the applicant shall be permitted to commence operation of the business in accordance with the ordinances and codes of the City and other applicable federal and state laws as if a license has been issued on the 31st day of the receipt of the completed application by the Development Services Department and shall be governed by the term specified in Section 21-520.06.
- e. In the event that the Development Services Department determines that an applicant is not eligible for a license, the applicant shall be given notice in writing of the reasons for the denial within thirty (30) days of the receipt of the completed application by the Development Services Department, provided that the applicant may request, in writing at any time before the notice is issued, that such period be extended for an additional period of not more than ten (10) days in order to make modifications necessary to comply with this ordinance.

21-520.06- Term; Renewal; Expiration; Cancellation; Reports; Consent

- a. *Contents.* An adult entertainment license shall state the name of the licensee, the name of the establishment, the street address of the establishment, the classification of the license, the date of issuance and the date of expiration.
- b. *Term.* All licenses issued under this Article shall be annual licenses, which shall commence running on October 1 if they have been paid for, and shall expire on the last day of September of the following year. If a license is issued after October 1 and before March 31 of the following year, the applicant shall pay the applicable license fee in full. If a license is issued after March 31 and before October 1 of the same year, the applicant shall pay one-half of the applicable license fee.
- c. *Renewals.* A license issued under this Article shall be subject to annual renewal upon the written application to the Development Services Department. Subject to other provisions of this Article, a licensee under this Article shall be entitled to a renewal of his or her annual license from year to year, as a matter of course, by October 1 by presenting the license for the previous year, restating and updating all information required for a license application and by paying the applicable license fee unless the licensee has committed any act during the existence of the previous license which would serve as grounds for the denial of the initial license application as set forth in Section 21-

520.05. Non-renewal of a license shall be subject to the appeal provision of Section 21-510.03 and judicial review as set forth in Section 21-520.11.

- d. *Expiration.* A license that is not renewed under this Article by October 1 of each year shall expire. An expired license may be renewed by November 30 of the same year upon presentment of an affidavit stating that no adult entertainment activity has taken place at the establishment subsequent to expiration and upon payment of a penalty of ten percent of the appropriate license fee for the month of October, or fraction thereof, and an additional penalty of five percent of the appropriate license fee for the month of November, or fraction thereof. Any application for renewal of a license under this Article received by the Development Services Department after November 30 of the same year of its expiration shall be treated as an initial application for a license as set forth in Section 21-520.03.
- e. *Cancellation.* All expired licenses not renewed by November 30 shall be summarily canceled by the Development Services Department.
- f. *Reports and records.* Each licensee shall keep such records and make such reports as may be required by the Development Services Department and other departments to implement this Article and to carry out its purpose. Whenever the information required by or provided under subsection 21-520.03(b) has changed, the licensee shall promptly report the change to the Development Services Department.
- g. *Consent.* By holding a license under this Article, the licensee shall be deemed to have consented to the provisions of this Article and to the exercise by the Development Services Department and other departments of their responsibilities under this Article.

21-520.07- Annual fee

- a. *Levy.* The following annual license fees are hereby levied under this Article for an adult entertainment establishment:
 - 1. Adult bookstore: \$750.00.
 - 2. Adult theater, as follows:
 - a. Having adult booths: \$35.00 for each booth.
 - b. Having a hall or auditorium: \$3.50 for each seat.
 - c. Having an outdoor area designed to permit viewing by customers seated in vehicles: \$3.50 for each parking space.
 - d. Having a combination of subsections (2)a, (2)b and/or (2)c: the cumulative license fee applicable to each under such subsections.
 - 3. Adult motel: \$750.00.

4. Adult-performance establishment: \$750.00.
 5. Commercial physical-contact parlor: \$750.00.
 6. Escort service: \$750.00.
- b. *Regulatory fees.* The annual license fees collected under this Article are declared to be regulatory fees collected for the purpose of examination and inspection of adult entertainment establishments under this Article and the administration thereof. These regulatory fees are in addition to and not in lieu of the business tax receipt imposed by other ordinances.

21-520.08- Transfer

- a. *Requirements.* An adult entertainment license is not transferable to another person by surrendering possession, control or operation of the licensed establishment. An adult entertainment license may be transferred to another person only upon satisfaction of the following requirements:
1. Application is made to the Development Services Department for a license transfer setting forth the information called for under Section 21-520.03.
 2. Satisfactory proof is provided that control of the establishment has been or will be transferred through a bona fide sale, lease, rental or other transaction;
 3. A transfer fee of ten percent of the annual license fee is paid; and
 4. A transferred license has been issued by the Development Services Department.
- b. *Effect of suspension or revocation procedures.* No license may be transferred pursuant to subsection (a) of this Section when the Development Services Department has notified the licensee that suspension or revocation proceedings have been or will be brought against the licensee.
- c. *No transfer to a different location.* A licensee shall not transfer his or her license to another location.
- d. *Attempted improper transfer void.* Any attempted transfer of a license, either directly or indirectly, in violation of this Section is hereby declared void.

21-520.09- Changing name of establishment

No licensee may change the name of an adult entertainment establishment unless and until the licensee satisfies each of the following requirements:

- a. Thirty days notice in writing to the Development Services Department of the proposed name change;
- b. Payment to the Development Services Department of a \$10.00 change-of-name fee; and

c. Compliance with F.S. § 865.09, regarding fictitious names.

21-520.10- Suspension and revocation

a. *Generally.*

1. *Violation of building, fire, health or zoning statute, code, ordinance or regulation.* If a department learns or finds upon sufficient cause that a licensed adult entertainment establishment is operating in violation of this Article, the department shall promptly notify the licensee of the violation and shall allow the licensee a seven-day period in which to correct the violation. If the licensee fails to correct the violation before the expiration of the seven-day period, the department shall notify the Development Services Department, who shall forthwith suspend the license, and shall notify the licensee of the suspension in writing. The suspension shall remain in effect until the department which reported the violation notifies the Development Services Department in writing that the violation of the provision in question has been corrected.
2. *Illegal transfer.* If the Development Services Department learns or finds upon sufficient cause that a licensee engaged in a license transfer contrary to Section 21-520.08, the Development Services Department shall forthwith suspend the license and notify the licensee of the suspension in writing. The suspension shall remain in effect until the Development Services Department is satisfied that the requirements of subsection 21-520.08(A) have been met.
3. *Effective date of suspension.* All periods of suspension shall begin ten days after the date on which the Development Services Department mails the notice of suspension to the licensee or the date on which the licensee delivers the license to the Development Services Department, whichever occurs first.

b. *Revocation.*

1. *False information.* If the Development Services Department receives evidence that a license was granted, renewed or transferred based upon false information, misrepresentation of facts or erroneous information, the Development Services Department shall forthwith revoke the license and notify the licensee of the revocation.
 2. *Effect of final revocation.* If a license is revoked, the licensee of the adult entertainment establishment shall not be allowed to obtain another adult entertainment license for a period of one year, and no adult entertainment license shall be issued again to any other person for the location upon which the adult entertainment establishment was situated.
- c. *Effective date of suspension or revocation.* The suspension or revocation of a license shall take effect the day after delivery of a notice of final suspension or revocation to the licensee in person, or by mail to the licensee's record address, or on the date the licensee surrenders the license, whichever happens first. The licensee shall immediately return and surrender a revoked license to the business tax receipt department or surrender the revoked license, upon demand, to the Development Services

Department. A suspension or revocation shall be abated during an appeal of the Development Services Department's ruling to the City Council until the day following the decision of the Council.

d. *Suspension and revocation proceedings.*

1. *Challenge to suspension or revocation.* If the Development Services Department notifies a licensee in writing of the pending suspension or revocation of a license, then the suspension or revocation shall become final and effective ten (10) days after mailing to the licensee's record address or actual delivery of the notice to the licensee, unless the licensee first files with the Development Services Department a written response stating the reasons why the suspension or revocation is alleged to be in error or inappropriate and a written notice of intent to challenge the suspension or revocation requesting a hearing before the City Council to determine whether the suspension or revocation will become effective.
2. *Hearing on suspension or revocation.*
 - a. When a licensee files a written response and notice of intent to challenge a pending or existing suspension or revocation, then a public hearing to determine if the pending suspension or revocation will become effective and final shall be held by the City Council. The Development Services Department shall notify the City Attorney and any appropriate City staff, who shall schedule and provide notice of the hearing.
 - b. The suspension or revocation hearing should be held within twenty-one (21) calendar days of a written challenge and request for a hearing, or as soon thereafter as can reasonably be scheduled, but no sooner than after seven (7) days' notice mailed to the licensee and posting to the public at a place for notices in a public building, and shall be quasi-judicial in nature.
 - c. The participants before the City Council shall be the licensee, any witnesses of the licensee, City staff, any interested members of the public and any witnesses of the interested members of the public. Any interested member of the public who participates at the hearing shall provide a mailing address to the City Council.
 - d. The licensee and any witnesses of the licensee shall be limited to a total of 30 minutes to present the licensee's case. City staff shall be similarly limited to a total of 30 minutes. Interested members of the public and their witnesses shall be limited to ten minutes. For good cause shown, the City Council may grant additional time to each side or the public.
 - e. Testimony and evidence may be submitted by any witness but shall be limited to matters directly relating to the grounds for suspension or revocation. Irrelevant, immaterial or unduly repetitious testimony or evidence may be excluded.

- f. All testimony shall be under oath. The City Council shall decide all questions of procedure and standing. The order of presentation of testimony and evidence shall be as follows:
 - i. The licensee and any witnesses of the licensee.
 - ii Interested members of the public and their witnesses, if any.
 - iii City staff and any witnesses.
 - iv Rebuttal witnesses from the licensee.
 - v. Rebuttal witnesses from City staff.
 - vi Summation by the licensee.
 - vii Summation by City staff.
 - g. The City Council may also call and question witnesses or request additional evidence as the City Council deems necessary and appropriate.
 - h. To the maximum extent practicable, the hearing shall be informal. Reasonable cross-examination of witnesses shall be permitted, but questioning shall be confined as closely as possible to the scope of direct testimony.
 - i. If the City Council comes to believe that any facts, claims or allegations necessitate additional review or response by either the licensee or staff, then the City Council may order the hearing continued until an announced date.
 - j. The City Council shall render a written decision determining whether the suspension or revocation will become or remain effective within ten (10) days after the conclusion of the suspension or revocation hearing.
3. *Filing of decision.* The original of the written decision of the City Council shall be filed with the Development Services Department, and copies shall be provided to the licensee and to any interested member of the public who participated at the hearing.
 4. *Notice of final suspension or revocation.* If no response or request for a suspension or revocation hearing is filed within ten (10) days of the notice of a pending suspension or revocation by the Development Services Department, or if the licensee who requested the hearing does not appear at the revocation hearing after notice, the suspension or revocation shall become final.

21-520.11- Judicial Review

Within thirty (30) days of an affirmation by the City Council of a denial of an initial or renewal application, or affirmation by the City Council of a suspension or revocation of a license by the Development Services Department, the applicant or licensee may seek prompt judicial review of such administrative action by filing a petition for writ of certiorari with the Seventh Judicial Circuit of the State of Florida. The appellate record before the circuit court shall consist of the complete record of the proceedings before the City Council. Judicial review shall be available only after the administrative remedies set forth in this Article have been exhausted.

SECTION 21-530- ZONING AND DISTANCE RESTRICTIONS

21-530.01- Prohibited locations

- a. No person or entity shall propose, cause or permit the operation of, or enlargement of, an adult entertainment establishment that would or will be located within, 1,000 feet of a preexisting adult entertainment establishment, within 500 feet of a preexisting commercial establishment that in any manner sells or dispenses alcohol for on-premises consumption, within 500 feet of a preexisting religious institution, within 500 feet of a preexisting park, or within 2,500 feet of a preexisting educational institution. In this subsection the term "enlargement" includes, but is not limited to, increasing the floor size of the establishment by more than ten percent.
- b. In addition to the distance requirements set forth in subsection (A) of this Section, an adult entertainment establishment shall not be allowed to open anywhere except in the I-1 district (with the exception of parcels having frontage on Park Avenue) where adult entertainment establishments are an expressly permitted use. No adult entertainment establishment shall be allowed to open in violation of Section 847.0134, Florida Statutes, unless otherwise permitted in subsection (A) of this Section.
- c. The distance requirements of subsection (A) are independent of and do not supersede the distance requirements for alcoholic beverage establishments which may be contained in other laws, rules, ordinances or regulations.

21-530.02- Measurement of Distance

The distance from a proposed or existing adult entertainment establishment to a preexisting adult entertainment establishment, a preexisting religious institution, a preexisting educational institution, a preexisting park or a preexisting commercial establishment that sells or dispenses alcohol for on-premises consumption shall be measured by drawing a straight line between the closest property lines of the proposed or existing adult entertainment establishment and the other establishment, use or operation.

21-530.03- Nonconforming Uses

- a. An adult entertainment establishment which, on April 1, 2007, was located on a site which is prohibited by this Section, shall cease operations by October 1, 2020.
- b. When a nonconforming use of an adult entertainment establishment has been discontinued, whether voluntarily or involuntarily, for 90 consecutive days or more, the nonconforming use shall be deemed abandoned and the future use of the premises or site shall revert to only those uses permitted on the site on which the establishment is located.

21-530.04- Variances.

The Planning and Zoning Board is authorized to grant a variance from the distance requirements of this division, pursuant to the procedures and criteria for other variance requests as set forth in the land development regulations.

SECTION 540- GENERAL OPERATIONAL RULES

21-540.01- General Requirements for All Adult Entertainment Establishments

Each adult entertainment establishment is subject to all of the following general requirements and shall:

- a. Conform to all applicable building, fire, health, zoning and land use statutes, codes, ordinances and regulations, whether federal, state or local.
- b. Clearly indicate that all patrons of the establishment must enter and leave the establishment only through the front door. All other exits will be used only in the event of an emergency.
- c. In order to protect surrounding residential neighborhoods from excessive noise during business hours, ensure that no doors or windows of the establishment are left open for an extended period of time.
- d. On the first Monday of each month, provide the police department with a report of all persons who are workers, or who were workers at the establishment or for the adult entertainment business during the previous month, which report shall contain the actual legal name, proof of age, position and stage name, if any, for each such worker.
- e. Provide prior notification to the chief of police or the chief's designee of parties or events of a private nature which utilize the dancers within the establishment or at other locations within the community, thereby ensuring that such parties or events meet all City requirements pertaining to adult entertainment and that no special entertainment permit or license is required for such activity.
- f. Keep the adult entertainment license posted in a conspicuous place at the establishment available for inspection by the public at all times.
- g. Cover opaquely each window or other opening through which a person outside the establishment may otherwise see inside the establishment.
- h. Maintain all exterior walls and surfaces of the establishment, excluding signs, a single achromatic or light pastel color, and maintain all awnings, canopies, window shutters, window treatment or other trim the same color or a single different shade of the same achromatic or light pastel color. The trim color shall not exceed 20 percent of the entire exterior surface of the building. Nothing in this subsection shall be construed to require the painting of an otherwise unpainted exterior portion of an establishment such as brick or stone.
- i. Install a minimum of four 175-watt mercury-vapor or sodium lighting fixtures for the rear parking lot and any adjacent motel area.

- j. Install, construct, keep, maintain or allow only those signs at the establishment which comply with the City sign ordinances and the provisions of this subsection.
 - 1. No sign shall contain any flashing lights, photographs, silhouettes, drawings or pictorial representations of any manner, except for the logo of the establishment, provided the logo shall not contain any specified anatomical areas, or any portion of a male or female form at or below the clavicle; and
 - 2. No sign shall contain in the name or logo of the establishment, or otherwise, any words or material which depict, describe, reference or infer in any manner, sexual activities, specified anatomical areas or the display of specified anatomical areas.
- k. Each entrance and exit shall remain unlocked when any customer is inside.

21-540.02- Adult Theaters

In addition to the general requirements for an adult entertainment establishment contained above, an adult theater shall comply with the following special requirements:

- a. If an adult theater contains a hall or auditorium area, the area shall have:
 - 1. Individual separate seats, not couches, benches or the like, to accommodate the number of persons allowed to occupy the area;
 - 2. A continuous main aisle alongside the seating areas in order that each person seated in the areas shall be visible from the aisle at all times;
 - 3. A sign posted in a conspicuous place at or near each entrance to the hall or auditorium area which lists the maximum number of persons who may occupy the hall or auditorium area, which number shall not exceed the number of seats within the hall or auditorium area; and
 - 4. Sufficient illumination so that persons in all areas of the auditorium can be seen.
- b. If an adult theater contains adult booths, each adult booth shall have:
 - 1. A sign posted in a conspicuous place at or near the entrance which states the maximum number of persons allowed to occupy the booth, which number shall correlate with the number of seats in the booth;
 - 2. A permanently open entrance not less than 32 inches wide and not less than six feet high, which entrance shall not have any curtain rods, hinges, rails or the like which would allow the entrance to be closed or partially closed by a curtain, door or other partition;
 - 3. Individual, separate seats, not couches, benches or the like, which correlate with the maximum number of persons who may occupy the booth;

4. A well-illuminated continuous main aisle alongside the booth in order that each person situated in the booth shall be visible from the aisle at all times;
 5. Except for the entrance, walls or partitions of solid construction without any holes or openings in such walls or partitions; and
 6. Illumination by a light bulb of no less than 25 watts.
- c. If an adult theater is designed to permit outdoor viewing by persons seated in automobiles, it shall have the motion-picture screen so situated, or the perimeter of the establishment so fenced, that the material to be seen by those customers may not be seen by other persons from any public right-of-way, property zoned for residential use, religious institution, educational institution or park.

21-540.03- Adult-performance Establishments

In addition to the general requirements for an adult entertainment establishment contained above, an adult-performance establishment shall comply with the following special requirements:

- a. Have a stage provided for the display or exposure of any specified anatomical area by a worker to a customer consisting of a permanent platform, or other similar permanent structure, raised a minimum of 18 inches above the surrounding floor and encompassing an area of at least 100 square feet; and
- b. Any area in which a private performance occurs shall:
 1. Have a permanently open entrance not less than 32 inches wide and not less than six feet high, which entrance shall not have any curtain rods, hinges, rails or the like which would allow the entrance to be closed or partially closed by a curtain, door or other partition; and
 2. Have a wall-to-wall, floor-to-ceiling partition of solid construction without any holes or openings, which partition may be completely or partially transparent, and which partition separates the worker from the customer viewing the private performance.

The requirements of subsections (A) and (B) of this Section shall not apply to any adult-performance establishments in operation on the adoption date of Ordinance Number 14-95 (April 11, 1995). Notwithstanding this provision, all adult-performance establishments--whether or not in operation on the adoption date of Ordinance Number 14-95 (April 11, 1995)--must comply with subsections (A) and (B) of this Section on or before midnight, October 1, 2020.

21-540.04- Adult Bookstores

In addition to the general requirements for an adult entertainment establishment contained above, an adult bookstore shall not display merchandise or adult material in a manner that allows such merchandise or adult material to be visible from outside the structures at the establishment.

21-540.05- Commercial Physical-Contact Parlors

In addition to the general requirements for an adult entertainment establishment contained above, a commercial physical-contact parlor shall comply with the following special requirements:

- a. Operate only from a fixed physical commercial location at which are displayed its adult entertainment license and all other required business tax receipts.
- b. Provide clean linen and towels for each customer without any reuse of towels or linens without laundering; provided, however, that heavy white paper may be substituted for sheets, provided that such paper is used only for one customer, then discarded into a sanitary receptacle.
- c. Provide closed cabinets for the storage of clean linen, towels and other materials used in connection with administering commercial physical contact.
- d. Disinfect and sterilize all nondisposable instruments and materials after use on each customer.
- e. Require each worker to wear a clean outer garment in the nature of a surgical gown when providing commercial physical contact, and during all other times during working hours conceal, with a fully opaque covering, all specified anatomical areas of his or her body.
- f. Inform each customer, in his or her customer contract, that he or she must cover his or her specified anatomical areas by a towel, cloth, robe, undergarment, swimsuit or other similar fully opaque material while in the presence of a worker.
- g. Not permit, suffer or allow any animal, except a seeing-eye guide dog, to be on the premises of the commercial physical-contact parlor.
- h. If male and female customers are to be served simultaneously, provide two separate work areas for commercial physical contact, one for males and the other for females.
- i. Configure all work areas where commercial physical contact is to be provided so that the areas are readily visible at all times from common areas of the establishment outside of the work areas.

21-540.06- Escort Services

In addition to the general requirements for an adult entertainment establishment contained above, an escort service shall comply with the following special requirements:

- a. If offering or providing escorts within the City, an escort service must notify the business tax receipt department of an authorized physical commercial location, which may or may not be within the City, from which the escort service operates and dispatches escorts.
- b. Include in all advertising or promotional literature posted, placed, published or distributed within the City the number of a valid adult entertainment escort-service licenses issued by the business tax

receipt department, unless the escort service does not refer, send or dispatch escorts to any location within the jurisdictional limits of the City.

- c. Ensure that every escort and worker of an escort service is provided or obtains, carries while working as an escort and displays upon the request of any law-enforcement officer, a business tax receipt to engage in the occupation of escort within the City. An escort or worker of an escort service who is a paid employee for whom taxes and social security payments are withheld and paid by the escort service, and who is not an independent contractor, may substitute and carry a copy of the adult entertainment escort-service license of the employing escort service.

21-540.07- Records and Inspection of Records

- a. An adult entertainment establishment shall maintain a worker record for each worker who currently works or performs at the establishment, and for each former worker who worked or performed at the establishment during the preceding one-year period. The worker record shall contain the current or former worker's full legal name, including any aliases, and proof of age of worker.
- b. An operator of the establishment shall, upon request by a law enforcement officer when the establishment is open for business, immediately make available for inspection the original, or the true and exact photocopies, of each of the records set forth in subsection (A).

SECTION 21-550- ENFORCEMENT AND CRIMINAL PROVISIONS

21-550.01- Penalty for Violation of Article

Whoever violates any section of this division may be punished as provided in the City's Code of Ordinances or F.S. ch. 162.

21-550.02- Operation without valid adult entertainment license

It shall be unlawful for any person to be an operator of an adult entertainment establishment when:

- a. The establishment does not have a valid adult entertainment license for each applicable classification;
- b. The license of the establishment is under suspension;
- c. The license of the establishment has been revoked or canceled; or
- d. The establishment has a license which has expired.

21-550.03- Working at Unlicensed Establishment

It shall be unlawful for any person to act as a worker of an adult entertainment establishment that he or she knows or should know does not have a valid license under this Article, or which has a license which is under suspension, has been revoked or canceled, or has expired, or which does not have each applicable adult entertainment license conspicuously displayed.

21-550.04- Operation Contrary to Certain Provisions

It shall be unlawful for any person to be an operator of an adult entertainment establishment:

- a. Which does not satisfy all of the general requirements of subsection 21-540.01(C), (D) or (E);
- b. Which is an adult theater and does not satisfy all of the special requirements of Section 21-540.02;
- c. Which is an adult-performance establishment and does not satisfy all of the special requirements of Section 21-540.03;
- d. Which is an adult bookstore that does not satisfy all of the special requirements of Section 21-540.03;
- e. Which is a commercial physical-contact establishment that does not satisfy all of the special requirements of Section 21-540.05;
- f. Which is an escort service that does not satisfy all of the special requirements of Section 21-540.06;
or
- g. While the entrance or exit of the establishment is locked when a customer is inside the establishment.

21-550.05- Prohibited Acts

It shall be unlawful for a worker of an adult entertainment establishment to commit any of the following acts or for an operator of an adult entertainment establishment to knowingly or permit, suffer or allow any worker to commit any of the following acts:

- a. Engage in a straddle dance with a person at the establishment;
- b. Offer, contract or otherwise agree to engage in a straddle dance with a person at the establishment;
- c. Engage in any specified sexual activity at the establishment;
- d. Engage in public nudity as defined in Section 21-500.01 at the establishment;
- e. Display or expose at the establishment specified anatomical areas while such worker is not continuously positioned at least 18 inches away from all other persons or while such worker is not in an area as described in subsection 21-540.03(A).
- f. Display or expose specified anatomical areas at an establishment where alcoholic beverages are sold, offered for sale or consumed;
- g. Display or expose any specified anatomical area while simulating any specified sexual activity with any other person at the establishment;
- h. Engage in a private performance unless such worker is in an area which complies with the requirements of subsection 21-540.03(1) and (2);
- i. Intentionally touch any person at the adult entertainment establishment while engaged in the display or exposure of any specified anatomical area; or
- j. Intentionally touch the clothed or unclothed body of any person at the adult entertainment establishment, at any point below the waist and above the knee of the person, or to intentionally touch the clothed or unclothed breast of any female person.

Notwithstanding any provision indicating to the contrary, it shall not be unlawful for any worker or operator of an adult entertainment establishment to expose any specified anatomical area during the worker's or operator's bona fide use of a restroom, or bona fide use of a dressing room which is used and occupied only by other workers or operators.

21-550.06- Touching of Workers Prohibited

- a. It shall be unlawful for any person in an adult entertainment establishment to intentionally touch a worker who is displaying or exposing any specified anatomical area at the adult entertainment establishment.

- b. It shall be unlawful for any person in an adult entertainment establishment to intentionally touch the clothed or unclothed breast of a worker, or to touch the clothed or unclothed body of a worker at any point below the waist and above the knee of the worker.

21-550.07- Advertising Prohibited Activity

It shall be unlawful for an operator of an adult entertainment establishment to advertise, encourage or promote any activity prohibited by this Article or any applicable state statute or ordinance.

21-550.08- Minors Prohibited

It shall be unlawful for an operator or worker of an adult entertainment establishment to knowingly, or with reason to know, permit, suffer or allow a person under 18 years of age to:

- a. Enter or remain in the establishment;
- b. Purchase goods or services at the establishment; or
- c. Work or perform at the establishment as a worker.

21-550.09- Failure to Maintain Required Records and Licenses

- a. It shall be unlawful to be an operator of an adult entertainment establishment at which the license required by the licensing provisions of this Article and each record required by the general operational rules of this Article, are not made available for inspection by a law enforcement officer upon request when the establishment is open for business.
- b. It shall be unlawful to be a worker of an adult entertainment establishment who fails to obtain, carry and display upon demand of a law enforcement officer, while working in the adult entertainment occupation, a business tax receipt for the adult entertainment occupation in which the worker is engaged.
- c. It is an affirmative defense and subsection (b) of this Section does not apply to a worker of an adult entertainment establishment who is a paid employee for whom taxes and social security payments are withheld and paid to the federal government by the adult entertainment establishment, and who is not an independent contractor, except an employee who is an escort working away from the establishment premises who shall then be required to obtain, carry and display to a law enforcement officer, upon demand, a copy of the adult entertainment license of the employing escort service.

21-550.10- Exceeding Occupancy Limit of Adult Booth

It shall be unlawful for any person to occupy an adult booth in which there are more people than are specified on the posted sign required by Section 21-540.02.

21-550.11- Hours of Operation

It shall be unlawful between the hours of 2:00 a.m. and 9:00 a.m. of any day for:

- a. An operator of an adult entertainment establishment to allow such establishment to remain open for business, or to allow, suffer or permit any worker to engage in a performance, solicit a performance, make a sale, solicit a sale, provide a service or solicit a service.
- b. A worker of an adult entertainment establishment to engage in a performance, solicit a performance, make a sale, solicit a sale, provide a service or solicit a service.

21-550.12- Alteration of License

It shall be unlawful for any person, except the business tax receipt department, to alter or otherwise change the contents or appearance of an adult entertainment license.

21-550.13- False or Misleading Statement in Required Documents

It shall be unlawful for any person applying for an adult entertainment license pursuant to the licensing provisions in division 3 of this Article to make a false or misleading statement or provide false or misleading information which is intended to facilitate the issuance of a license on the application required by this Article, to provide false information in the monthly reports required by this Article or to falsify the records required by this Article.

21-550.14- Solicitation or Personal Advertising

It shall be unlawful for any worker of an adult entertainment establishment pursuant to the licensing provisions of this Article, while situated outside any structure on the site of the adult entertainment establishment, or while the worker is situated at a place at the adult entertainment establishment where the worker is visible from any public right-of-way or sidewalk, to display or expose specified anatomical areas or engage in personal advertising, pandering or solicitation, whether passive or otherwise, on behalf of the worker, any other worker or the adult entertainment establishment. "Personal advertising" includes, but is not limited to, sitting or standing outside any structure on the site of the adult entertainment establishment, gesturing, waving, repeatedly speaking in a raised tone of voice or otherwise encouraging or enticing potential customers beyond the adult entertainment establishment to enter the adult entertainment establishment. Additionally, it shall be unlawful for an operator or any worker to suffer, permit or allow any door that is visible from a public right-of-way or sidewalk to be opened or remain opened except when a person is entering or exiting the establishment.

21-550.15- Allowing Customers to Engage in Specified Sexual Activity

It shall be unlawful for a worker of an adult entertainment establishment to knowingly, or with reason to know, permit, suffer, entice or allow a customer to engage in any specified sexual activity at the establishment while remaining in the presence of the worker.

21-550.16- Prohibited Acts by Customers at Adult Entertainment Establishments

It shall be unlawful for any customer of an adult entertainment establishment (commercial physical-contact parlor or escort service) to do any of the following acts or for a worker or operator of a adult entertainment establishment to knowingly suffer, permit, aid, assist or allow a customer to do any of the following acts:

- a. Touch, massage or manipulate, directly or indirectly, the body of any worker of the adult entertainment establishment;
- b. Touch, massage, manipulate, display or expose any of the customer's own specified anatomical areas; or
- c. Engage in any specified sexual activity while in the presence of a worker of the adult entertainment establishment.

21-550.17- Prohibited Acts by Commercial Physical-Contact Parlor Workers

It shall be unlawful for a worker of a commercial physical-contact parlor to commit any of the following acts or for an operator of a commercial physical-contact parlor to knowingly or with reason to know, permit, suffer, aid, assist or allow any worker to commit any of the following acts:

- a. Fail to, while engaged in providing commercial physical contact, wear a clean outer garment in the nature of a surgical gown;
- b. Display or expose specified anatomical areas to a customer at a commercial physical-contact parlor;
- c. Fail to require all customers to cover their specified anatomical areas by a towel, cloth, robe, undergarment, swimsuit or other similar fully opaque material at all times while in the presence of a worker;
- d. Perform commercial physical contact on a customer while not on the premises of a commercial physical-contact parlor licensed under this Article;
- e. Engage in, or offer to engage in, any escort services in relation to the commercial physical-contact parlor;
- f. Solicit or require a customer to remove any item of clothing as a prerequisite to providing commercial physical contact; or
- g. Solicit a tip or gratuity in exchange for a promise or suggestion of any act or enhanced service.

21-550.18- Prohibited Acts by Escort-Service Workers

It shall be unlawful for a worker of an escort service to commit any of the following acts or for an operator of an escort service to knowingly or with reason to know, permit, suffer, aid, assist or allow any escort or escort-service worker to commit any of the following acts:

- a. Entering a hotel, motel or other transient place of lodging for the purpose of meeting or serving a customer without immediately meeting with the front-desk or reception-area personnel and doing each of the following:
 1. Providing the time of arrival and the estimated time of departure;
 2. Presenting a copy of the escort service's adult entertainment license and the escort's business tax receipt; and
 3. Identifying himself or herself, identifying the escort service that sent him or her, stating the name of the customer he or she is meeting or servicing, and the location of the meeting, including any applicable room number; and notifying the front-desk or reception-area personnel upon departing the premises.
- b. Distributing, placing, posting or leaving any unsolicited business cards, advertisements or promotional material on or within the premises of any other business.
- c. Beginning a meeting or service with a customer between 10:00 p.m. any day of the week and 9:00 a.m. of the following day.
- d. Beginning a meeting or service with a customer without first meeting such customer in a public place such as a bar or restaurant before accompanying the customer to any place which is not open and occupied by the public, such as a hotel room or residence.
- e. Displaying or exposing specified anatomical areas to a customer of an escort service.
- f. Requiring, enticing or soliciting a customer to remove any item of clothing.
- g. Soliciting a tip or gratuity from a customer in exchange for a promise or suggestion of any act or enhanced service.

21-550.19- Enforcement of Article by Injunction

A person who operates or causes to be operated an adult entertainment establishment without a valid license, or in violation of this Article, is subject to a suit for injunction.

SECTION 21-560-RESERVED

SECTION 21-570-RESERVED

SECTION 21-580-RESERVED

SECTION 21-590-RESERVED