

**ORDINANCE NO. 2012-03**

**AN ORDINANCE OF THE CITY OF NORTH BAY VILLAGE, FLORIDA, AMENDING CHAPTER 152, ZONING, SECTION 152.111, ADULT ENTERTAINMENT, OF THE CODE OF ORDINANCES; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE. (INTRODUCED BY CITY COMMISSIONER RICHARD CHERVONY, CITY MANAGER DENNIS KELLY, AND CITY ATTORNEYS SUSAN TREVARTHEN AND KATHRYN MEHAFFEY)**

**WHEREAS**, the City Commission of the City of North Bay Village (the “City”) recognizes that changes to the adopted Code of Ordinances are periodically necessary in order to ensure that the City’s regulations are current and consistent with the needs of the City and the requirements of Florida and federal Law; and

**WHEREAS**, the City Commission relies upon the evidence and testimony presented before the City Commission and on the findings incorporated in the following studies to support the modifications made by this Ordinance:

- (1) The “Survey of Texas Appraisers – Secondary Effects of Sexually-Oriented Businesses on Market Values” study by Connie B. Cooper, FAICP and Eric Damian Kelly, FAICP in association with David C. Keuhl, Ph.D. and Shawn Wilson, MAI (2008)(Texas);
- (2) The “Crime-Related Secondary Effects – Secondary Effects of “Off-Site” Sexually Oriented Businesses” study by Richard McCleary, Ph.D. in association with Alexi Alexander, J.D., Larry Bush, M.A., and Mark Vasquez, B.A. (2008)(Texas);
- (3) “Crime-Related Secondary Effects of Sexually-Oriented Businesses: Report To The City Attorney” by Richard McCleary, Ph.D. (2007)(Los Angeles, California);
- (4) “Survey of Findings and Recommendations of Sexually Oriented Businesses” by Eric Damian Kelly, PhD, FAICP and Connie B. Cooper, FAICP (August 2002) (Toledo, Ohio);

- (5) "A Report on the Secondary Impacts of Adult Use Businesses in the City of Denver," by the Zoning Administration, Office of Planning and Development, Department of Public Safety, Department of Excise and Licenses, Assessor's Office, and in consultation with the City Attorney's Office, Denver, Colorado (January 1998);
- (6) "Sexually Oriented Business Ordinance Revision Committee Legislative Report, Houston, Texas (January 7, 1997);
- (7) "Adult Use Study," by the Newport News Department of Planning and Development, Newport News, Virginia (March 1996);
- (8) "Report to American Center for Law and Justice on the Secondary Impacts of Sex Oriented Businesses," by Peter R. Hecht, Ph.D. of the Environmental Research Group (March 31, 1996);
- (9) "Adult Entertainment Study" by Department of City Planning, City of New York (November 1994);
- (10) The "Adams County Nude Entertainment Study" by the Adam's County Sheriff's Department (1991)(Colorado);
- (11) "Effects of Adult Entertainment Businesses on Residential Neighborhoods," by the Department of Planning, Research and Development, City of El Paso, TX (Sept. 26, 1986); and
- (12) "NLC Summaries of "SOB Land Use" Studies, Crime Impact Studies by Municipal and State Governments on Harmful Secondary Effects of Sexually-oriented Businesses," National Law Center for Children and Families, 1991, 1994, 1996, 1997, 1999, 2000, 2001, 2002, 2005; and

**WHEREAS**, based on the evidence and testimony which has been presented to the City Commission, and based upon the findings provided in the studies above, the City Commission finds that there is convincing documented evidence that Adult Entertainment Establishments, because of their very nature, have deleterious effects on existing and future business establishments and residential areas, causing increased crime and the deterioration of property values; and

**WHEREAS**, the City Commission finds that Adult Entertainment Establishments, because of their very nature, have serious objectionable operational characteristics; and

**WHEREAS**, the City Commission finds that the regulation of the location of Adult Entertainment Establishments is necessary to prevent undesirable adverse secondary impacts on surrounding areas; and

**WHEREAS**, the City Commission desires to minimize and control these adverse secondary impacts and thereby protect the health, safety, and welfare of the citizenry; protect the citizens from increased crime; preserve the quality of life; preserve the property values and character of adjacent areas; and deter the spread of blight; and

**WHEREAS**, the City Commission, although concerned about these adverse secondary impacts, upholds constitutionally protected speech and expression and does not desire to infringe on or censor constitutionally protected speech and expression; and

**WHEREAS**, the City Commission desires to enact a content neutral ordinance that addresses only the adverse secondary impacts of Adult Entertainment Establishments; and

**WHEREAS**, the Planning and Zoning Board has reviewed this Ordinance at a duly advertised public hearing, and finds that this Ordinance is consistent with the City's Comprehensive Plan and recommended approval of the Ordinance; and

**WHEREAS**, the City Commission hereby finds and declares that adoption of this Ordinance is necessary, appropriate, and advances the public interest.

**NOW, THEREFORE, BE IT ENACTED BY THE CITY COMMISSION OF THE CITY OF NORTH BAY VILLAGE, FLORIDA, AS FOLLOWS:**

**Section 1. Recitals Adopted.** That each of the above stated recitals is true and correct and incorporated herein by this reference.

**Section 2. City Code Amended.** That Section 152.111 “Adult Entertainment”, of Chapter 152 “Zoning”, of the City of North Bay Village Code of Ordinances is hereby amended to read as follows<sup>1</sup>:

**SECTION 152.111 - ADULT ENTERTAINMENT**

**§ 152.111.01 – Purpose, Findings and Authority.**

(a) Purpose.

In the development and enforcement of this section, it is recognized that there are adult entertainment uses, which because of their very nature are recognized as having serious objectionable characteristics, particularly when several of them are concentrated in any given locations thereby having a deleterious effect upon the adjacent business and residential areas. It is desirable, therefore, to protect the well-being of the youth of the City from objectionable operational characteristics of these adult entertainment uses by ~~to~~ locating adult oriented activities away from residential areas and public facilities used frequently by minors such as schools, religious facilities, parks, libraries, playgrounds and day care centers. The City finds that, just as advertising is designed to stimulate one’s appetite for desired goods and services, an overabundance or preoccupation with sexual displays or materials arouses the appetites of those so preoccupied, and encourages criminal sexual behavior.

In recognition of the protections afforded to the citizens of the United States under the First and Fourteenth Amendments to the Constitution of the United States, it is neither the intent nor the effect of this Section to:

- (a) inhibit freedom of speech or the press; or
- (b) impose a limitation or restriction on the content of any communicative materials, including sexually oriented materials; or
- (c) restrict or deny access by adults to sexually oriented materials protected by the First Amendment; or
- (d) deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market.

This Section balances the legitimate governmental purposes of the City against the above-described constitutional rights, by imposing incidental, content-neutral place, time, and manner regulations of adult entertainment establishments without limiting alternative avenues of communication. The special regulations deemed necessary to control the undesirable effects arising from these enterprises are set forth in this Section.

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<sup>1</sup> Additions to existing city code text are shown by underline; deletions from existing city code text are shown by ~~strikethrough~~. Additions subsequent to the Planning and Zoning Board meeting are shown in double underline and deletions are shown in ~~double-strikethrough~~.

(b) Findings.

Based on the evidence and testimony presented before the City Commission and on the findings incorporated in (i) "Survey of Texas Appraisers – Secondary Effects of Sexually-Oriented Businesses on Market Values" study by Connie B. Cooper, FAICP and Eric Damian Kelly, FAICP in association with David C. Keuhl, Ph.D. and Shawn Wilson, MAI (2008)(Texas); (ii) "Crime-Related Secondary Effects – Secondary Effects of "Off-Site" Sexually Oriented Businesses" study by Richard McCleary, Ph.D. in association with Alexi Alexander, J.D., Larry Bush, M.A., and Mark Vasquez, B.A. (2008)(Texas); (iii) "Crime-Related Secondary Effects of Sexually-Oriented Businesses: Report To The City Attorney" by Richard McCleary, Ph.D. (2007)(Los Angeles, California); (iv) "Survey of Findings and Recommendations of Sexually Oriented Businesses" by Eric Damian Kelly, PhD, FAICP and Connie B. Cooper, FAICP (August 2002) (Toledo, Ohio); (v) "A Report on the Secondary Impacts of Adult Use Businesses in the City of Denver," by the Zoning Administration, Office of Planning and Development, Department of Public Safety, Department of Excise and Licenses, Assessor's Office, and in consultation with the City Attorney's Office, Denver, Colorado (January 1998); (vi) "Sexually Oriented Business Ordinance Revision Committee Legislative Report, Houston, Texas (January 7, 1997); (vii) "Adult Use Study," by the Newport News Department of Planning and Development, Newport News, Virginia (March 1996); (viii) "Report to American Center for Law and Justice on the Secondary Impacts of Sex Oriented Businesses," by Peter R. Hecht, Ph.D. of the Environmental Research Group (March 31, 1996); (ix) "Adult Entertainment Study" by Department of City Planning, City of New York (November 1994); (x) The "Adams County Nude Entertainment Study" by the Adam's County Sheriff's Department (1991)(Colorado); (xi) "Effects of Adult Entertainment Businesses on Residential Neighborhoods," by the Department of Planning, Research and Development, City of El Paso, TX (Sept. 26, 1986); (xii) "NLC Summaries of "SOB Land Use" Studies, Crime Impact Studies by Municipal and State Governments on Harmful Secondary Effects of Sexually-oriented Businesses," National Law Center for Children and Families, 1991, 1994, 1996, 1997, 1999, 2000, 2001, 2002, 2005; the City Commission finds as follows:

(1) Establishments exist or may exist within the city where books, magazines, motion pictures, videos, prints, photographs, periodicals, records, novelties, and devices that depict, illustrate, describe, or relate to specified sexual activities are possessed, displayed, exhibited, distributed, and sold.

(2) Establishments exist or may exist within the city where:

(a) The superficial tissues of one person are manipulated, rubbed, stroked, kneaded, or tapped by a second person, accompanied by the display or exposure of specified anatomical areas;

(b) Dancers, entertainers, performers, or other individuals, who, for forms of commercial gain, perform or are presented while displaying or exposing specified anatomical areas; or

(c) Lap dancing occurs.

(3) The activities described in subsections (1) and (2) occur at establishments for the purpose of making a profit and, as such, are subject to regulation by the city in the interest of the health, safety, and general welfare of city residents.

(4) The competitive commercial exploitation of such nudity and seminudity is adverse to the public's interest, quality of life, tone of commerce, and total community environment.

(5) The commercial exploitation of nudity and seminudity consists of the use of nude and seminude entertainment in connection with or for the promotion of the sale of goods or services, and the receipt of money by the person engaging in nude or seminude entertainment in exchange for or as consideration for nude or seminude performance by such individuals.

(6) The commercial exploitation of nude and seminude acts, exhibitions, and nude entertainment occurs frequently at commercial establishments either selling or allowing consumption of alcoholic beverages on the premises.

(7) There is a direct relationship between the consumption of alcoholic beverages and the nude and seminude activities mentioned above, and an increase in criminal activities, disturbances of the peace and good order of the community. The occurrence of these activities is hazardous to the health and the safety of those persons in attendance and tends to depreciate the value of adjoining property and harm the economic welfare of the community as a whole.

(8) The combination of the sale and consumption of alcoholic beverages with the performance of nude and seminude acts, exhibitions and entertainment is adverse to the public's interest and the quality of life, tone of commerce, and total community environment in the city.

(9) To promote and preserve the public peace and good order and to safeguard the health, safety, and welfare of the community and its citizens, it is necessary and advisable for the city to prohibit nude and seminude acts, exhibitions, and entertainment establishments at which alcoholic beverages are, or are available to be, sold or consumed.

(10) There is a direct relationship between the display or depiction of specified anatomical areas as defined in this chapter and an increase in criminal activities and disturbances of the peace and good order of the community, and the occurrence of these activities is hazardous to the health and safety of those persons in attendance and tends to depreciate the value of adjoining property and harm the economic welfare of the community as a whole. These secondary effects are adverse to the public's interest and quality of life, tone of commerce, and total community environment in the city.

(11) When the activities described in subsections (1) and (2) take place in establishments within the city, other activities that are illegal or unhealthy tend to

accompany them, concentrate around them, and be aggravated by them. Such other activities include, but are not limited to, prostitution, solicitation for prostitution, lewd and lascivious behavior, possession, distribution and transportation of obscene materials, sale or possession of controlled substances, and violent crimes against persons and property.

(12) When the activities described in subsections (1) and (2) are present in establishments within the city, they tend to blight neighborhoods, adversely affect neighboring businesses, lower property values, foster an atmosphere that promotes crime, and ultimately lead residents and businesses to move to other locations.

(13) The establishments used for the activities described in subsections (1) and (2) are frequently used for unlawful and unhealthy sexual activities, including prostitution and sexual liaisons of a casual nature.

(14) 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 obtain sufficient information regarding the owners of establishments where the activities described in subsections (1) and (2) occur in order to preclude the involvement of organized crime.

(c) Authority.

This Section is enacted pursuant to the City's home rule power to enact regulations to protect the public health, safety, and general welfare of the residents of the city; F.S. § Ch. 163 and Ch. 166; and the city's authority to regulate the sale and consumption of alcoholic beverages under the Twenty-First Amendment of the Constitution of the United States.

**§ 152.111.02 - Definitions.**

For the purpose of this Section, the following definitions shall apply unless the context clearly indicates or requires a different meaning. These definitions shall be in addition to the terms relevant to this Section provided in Chapter 119 of this Code.

~~*Adult Bookstore/Adult Video Store.* Shall mean an establishment which offers adult material for sale or rent for commercial gain, having as a substantial percentage or significant portion of its sale or stock in trade, books, magazines, films or video media for sale or rent, and other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing or relating to "Specified Sexual Activities" or "Specified Anatomical Areas," or an establishment with a segment or section devoted to the sale or display of such material, or an establishment that holds itself out to the public as a purveyor of such materials based upon its signage, advertising, displays, actual sales.—~~

~~*Adult Booth.* Shall mean a small enclosed or partitioned area inside an adult entertainment establishment which is:—~~

- ~~(1) Designed or used for the viewing of adult material by one (1) or more persons; and~~
- ~~(2) Is accessible to any person, 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." The term "adult booth" does not include a foyer through which any person can enter or exit the establishment, or a restroom.

*Adult Entertainment Establishment.* Shall mean:

(1) Any adult arcade, adult theater, adult bookstore/adult video store, adult modeling establishment, adult motel, encounter studio, or adult dancing establishment as these uses are defined in Chapter 119 of this Code; or any other establishment or business operated for commercial gain where any employee, operator or owner exposes his or her specified anatomical area for viewing by patrons, including but not limited to massage establishments, whether or not licensed pursuant to Chapter 480, Florida Statutes, tanning salons, modeling studios, or lingerie studios.

(2) Any establishment where an action is taken which is intended to amuse and which is distinguished or characterized by an emphasis on material depicting, describing or relating to specified sexual activities or specified anatomical areas or which features topless dancers, exotic dancers, strippers, male or female impersonators, the modeling of clothing revealing, or less than completely and opaquely covering, specified anatomical areas, or similar activities.

(3) An adult entertainment establishment shall include the entire site or premises on which the adult entertainment establishment is located, including the exterior and interior of the establishment, or any portion thereof, upon which the activities or operations described in subsection (1) and (2) above are being conducted for commercial gain.

(4) Excluded from this definition are any educational institutions, as defined in Chapter 119, where the exposure of specified anatomical areas is associated with a curriculum or program.

(5) An establishment that possesses an adult entertainment license is presumed to be an adult entertainment establishment.

*Adult material.* Shall mean any one (1) or more of the following, regardless of whether it is new or used:

(1) Books, magazines, periodicals or other printed matter, photographs, films, motion pictures, video cassettes, slides, or other visual representations; recordings, other audio matter; and novelties or devices which have as their primary or dominant theme subject matter depicting, exhibiting, illustrating, describing or relating to specified sexual activities or specified anatomical areas; or

(2) Instruments, novelties, devices or paraphernalia that are designed for use in connection with specified sexual activities.

~~*Adult modeling establishments.* Shall mean any establishment offering nude or partially nude modeling sessions or lingerie, swimwear, or photography modeling sessions between two (2) or~~

~~more persons or private modeling sessions between two (2) or more persons requiring the exclusion of minors pursuant to Chapter 847, Florida Statutes.~~

~~*Adult theater.* Shall mean an enclosed building used for presenting for observation by patrons motion pictures, films, or video media, distinguished or characterized by an emphasis on matter depicting, describing or relating to sexual conduct or specified anatomical areas as defined in this section. An establishment which has adult booths is considered to be an adult theater.~~

~~*Encounter studio.* Shall mean all establishments offering nude or partially nude encounter sessions between two (2) or more persons, and requiring the exclusion of minors pursuant to Chapter 847, Florida Statutes.~~

*Massage establishment.* Shall mean:

(1) Any shop, parlor, establishment or place of business wherein all of any one (1) or more of the following named subjects and methods of treatments are administered or practiced: body massage either by hand or by any mechanical or electrical apparatus or device (excluding fever therapy), apply such movements as stroking, friction, rolling, vibration, kneading, cupping, petrissage, rubbing, effleurage, or tapotement.

(2) Provided, however, that, for the purpose of this section ~~division~~, the terms "massage establishment" shall not include any massage establishment wherein at least one (1) state licensed massage therapist is employed and on duty full time during the hours opened for business.

(3) Nothing in this section ~~division~~ shall be construed as applying to state licensed massage therapist, barbers, cosmetologists, manicurists, pedicurists, physical therapists' assistants, midwives, practical nurses, agents, servants of employees in licensed hospitals or nursing home or other licensed medical institutions, licensed physicians, osteopaths, chiropractors, podiatrists, naturopathic physicians or other licensed medical practitioners, or their agents, or employee acting in the course of such agency, service or employment under the supervision of the licensee.

~~*Encounter studio.* Shall mean all establishments offering nude or partially nude encounter sessions between two (2) or more persons, and requiring the exclusion of minors pursuant to Chapter 847, Florida Statutes.~~

~~*Nude dancing establishment.* Shall mean an establishment operated for commercial gain wherein performers or employees of the establishment display or expose to others specified anatomical areas as defined in this section, regardless of whether the performer or employee so exposed is actually engaging in dancing.~~

~~*Sexual conduct.* Shall mean any sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, any sexual act, erotic touching, caressing or fondling of the breasts, buttocks, or any portion thereof, anus or genitals or the simulation thereof.~~

~~*Specified anatomical areas.* Shall mean as used in this division either of the following:~~

~~(1) Less than completely opaquely covered human genitals, pubic region, anal cleft, cleft of the buttocks, and all or any part of the areola of the female breast; and~~

~~(2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.~~

**§ 152.111.03 - Permitted use schedule.**

Adult entertainment establishments ~~are shall be~~ permitted in the General Commercial (CG) Zoning district, subject to distance requirements set forth below, ~~as conditional uses upon approval by the City Commission, after public hearing.~~

**§ 152.111.04 - Regulations applicable to adult entertainment establishments.**

(a) ~~Required Approval Conditions. Prior to approving a conditional use, after public hearing,~~ An application for an adult entertainment establishment requires the approval of the City Commission after a public hearing. ~~shall find that such use meets the following conditional~~ No application for an adult entertainment establishment shall be presented to the City Commission unless it satisfies the following requirements:

(1) ~~No~~ The adult entertainment establishment must be located ~~shall be permitted on a parcel of land located in any district other than the CG zoning district, and if to be located within a CG zoning district it cannot be:~~

(2) The adult entertainment establishment must be located:

(i) ~~Within~~ At least five hundred (500) feet ~~offrom~~ any residentially zoned district as designated on the City's official zoning district map, or within and at least five hundred (500) feet of from any property on which over twenty-five (25) percent of the floor area is devoted to residential use; and

(ii) ~~Within~~ At least five hundred (500) feet of from any area parcel of land upon which a religious facility, public school, private school, public park, public playground, library, daycare center or nursery for children is located; ~~and~~

(iii) ~~Within~~ At least five hundred (500) feet of from any hotel or motel, or; and

(iv) ~~Within~~ At least one thousand (1,000) feet of from any parcel of land upon which another adult entertainment establishment is located; and

(v) At least three hundred fifty (350) feet from a building that contains a business that sells or dispenses alcohol.

(3) No variance shall be granted to the spacing requirements of subsection (2) above.

(42) The minimum distance separation shall be measured by following a straight line from any portion of the building used for such purpose, or any building located on the property, of the adult entertainment establishment to:

(i) the nearest point of the property designated as residential on the City's official zoning district map; or

(ii) the nearest point of the residential area of any property on which over twenty-five (25) percent of the floor area is devoted to residential use; or

(iii) the nearest point of any area used for a religious facility, public school, private school, or public park, or playground, library, daycare center or nursery for children,

hotel or motel.

(5) In cases where a minimum distance is required between an adult entertainment establishment and another adult entertainment establishment, or an establishment licensed to sell or serve alcohol, the distance under this section division shall be measured from the building line of the existing licensee to the building line of the proposed licensee and shall be from the airline distance between the two (2) buildings.

~~(3) No application for a Business Tax Receipt for an adult entertainment establishment shall be approved for zoning compliance unless such application is accompanied by a certified survey from a registered land surveyor in the State of Florida showing that such use meets the distance requirements as set forth in this section. The applicant for such use shall furnish a certified survey from a registered surveyor. Such sketch shall indicate the distance between the place of business, and any existing use as defined by this division, any religious facility, public school, private school, public park, public library, playgrounds, day care center or nursery for children, hotel or motel, or residential zoning district or any property on which over twenty-five (25) percent of the floor area is devoted to residential use. Each sketch shall indicate all such distances and routes. In case of a dispute, the measurement sealed by the City shall govern.~~

~~(4) Will not adversely affect the health or safety of persons residing or working in the vicinity of the proposed use.~~

(65) The applicant must show a present possessory interest in the property (ownership, or leasehold, or contract to purchase/lease interest) by sufficient documentation.

~~(6) Will not be detrimental to the public welfare, properties or improvements in the neighborhood.~~

~~(7) Complies with all other applicable Code provisions.~~

~~(8) Additional conditions. The City Commission may designate such additional conditions in connection with the conditional use, which in the City Commission's opinion will assure that such use will conform to the foregoing requirements. The City Commission shall consider any of the information included in the application and presentation for public hearing.~~

(b) Expiration of conditional use approval. An ~~a~~Approved of an adult entertainment establishment conditional use shall lapse after twenty-four (24) six (6) months unless:

(1) a Business Tax Receipt or building permit has been issued for such use, or

(2) the next phase of development has been initiated, or

(3) unless the City Commission has specified a longer approval period, for good cause. Renewal of the Business Tax Receipt shall be subject to City Commission's approval in the same manner specified herein for an original approval of the conditional use.

~~(e) Extension of conditional use approvals. Four (4) affirmative votes of the City Commission may grant an extension for a previously approved conditional use if a proper and timely request is made by the applicant prior to the expiration of the approval period.~~

~~(d) Conditional use reapplication. No reapplication for a conditional use shall be accepted by the City within twelve (12) months of the date of final disapproval by the City Commission of a previous application for a conditional use involving the same or substantially the same property, unless evidence is submitted to and accepted by the City Commission which justifies such reconsideration.~~

(ce) Application requirements. An application for approval of an adult entertainment establishment a conditional use shall, in addition to the requirements of Section 2.7.2 of the Land Development Regulations, include:

(1) A property survey by a registered surveyor;

(2) A letter of intent;

(3) Certified distance survey complying with subsection (a)(1), above; from a registered land surveyor in the State of Florida showing that such use meets the distance requirements as set forth in this section. Such sketch shall indicate the distance between the proposed adult entertainment establishment and:

(i) any other adult entertainment establishment, and

(ii) any establishment licensed to sell or serve alcohol; and

(iii) any area used for a religious facility, public school, private school, public park, public library, playgrounds, day care center or nursery for children, hotel or motel, and

(iv) any residential zoning district, and

(v) the residential area of any property on which over twenty-five (25) percent of the floor area is devoted to residential use.

Each sketch shall indicate all such distances and routes. In case of a dispute, the measurement scaled by the City shall govern.

(4) Where the use includes a vehicular use area or landscaped buffer, a proposed landscape plan and information regarding permanent maintenance arrangements;

(5) A neighborhood location map showing all surrounding zoning, ~~and usage~~ land use designations and existing uses located within 500 feet of the proposed site;

~~(6) All information required for any other type of application which is being processed simultaneously or for any other type of application, including but not limited to proposed signage;~~

~~(7) Any other information necessary to demonstrate that the proposed conditional use will conform fully with the requirements of this Division;~~

~~(8) Detailed security plan;~~

~~(9) Hours of operation; and,~~

~~(10) Anticipated noise levels and methods to regulate same; and,~~

~~(644) Documents establishing ownership of the property, or valid leasehold, or a contractual interest in a future ownership or leasehold.~~

(7) The proposed activities and specific type of adult entertainment establishment proposed.

(8) For adult entertainment establishments to be established in new construction, a sketch and description showing all new and existing structures on the property, interior layouts and proposed parking areas.

(9) For adult entertainment establishments to be established in redeveloped sites, a sketch and description or building plan that details all proposed interior and exterior changes to any existing building or structure.

~~The application process shall be consistent with existing regulations pertaining to public hearings.~~

(d) *Review of applications.* Applications shall be reviewed and be considered approved or denied by the City Commission within sixty (60) days of the applicant filing a complete application with the City, as follows:

(1) No application shall be accepted until it is deemed complete by the City Planner.

(2) The City Planner shall review all of the information submitted to determine conformity with this section.

(3) The submitted application will be reviewed for completeness within 20 business days, and any corrections, revisions or deficiencies provided to the applicant within that 20-day period.

(4) Upon each re-submittal of corrected plans, the City Planner shall have ten business days to review the application and provide any corrections, revisions or deficiencies to the applicant. This process shall continue until the applicant has submitted a complete application, or demands that the application be reviewed as is, without further revisions.

(5) If an applicant fails to provide additional information as requested by the City Planner within two (2) months of the request or respond to the City Planner with a time when the information will be submitted, the application shall be deemed to be withdrawn by the applicant. The applicant shall be entitled to one (1) sixty-day extension upon request, providing the request for extension is granted prior to the expiration of the two (2) month period.

(6) The City Commission shall approve or deny the ~~sign~~ permit within sixty days of the City's receipt of the complete application, or the applicant's demand for review as submitted, based on whether it complies with the requirements of this section. A written notice of the City Commission's decision shall be provided to the applicant, either in the form of an approved permit or written notice of denial. Such notice shall describe the applicant's appeal rights, and be provided to the applicant within ten (10) business days of the decision.

~~(f) *Revocation of conditional use.* Failure to comply with the conditional use requirements as established by the City Commission shall result in a revocation of the conditional use by the City Manager or his designee, after proper written notice sent by certified mail or overnight courier, and failure to cure within ten (10) calendar days of the date of the notice. The ten-day cure period may be extended by the City Manager or his designee for good cause.~~

(e) *Minimum space requirements.* An adult dancing establishment shall be subject to the Minimum Space Requirements (for parking) as provided for “Restaurants, Lounges and Nightclubs,” in Section 152.044(b)(7) of this Code.

(f) *Regulation of obscenity subject to state law.* It is not the intent of the City Commission to legislate with respect to matters of obscenity. These matters are regulated and preempted by general law.

(g) *Regulation of massage establishments subject to state law.* It is not the intent of the City Commission to legislate, limit, or conflict with respect to matters pertaining to massage establishments that are regulated by state agency, the department of business and professional regulation, board of massage, and by general law, F.S. Chapter 480.

~~(hg) *Appeal.* The applicant may appeal the decision of the City Manager or his designee to revoke a conditional use to the City Commission by filing a timely notice of appeal with any court of competent jurisdiction in Miami-Dade County in accordance with applicable law and court rules. An administrative appeal must be filed within fifteen (15) days following receipt of the notice of the City Manager's decision. The City Commission shall hear appeals at a Public Hearing, and enter a decision on all appeals within ninety (90) days of the date of filing the appeal, and shall provide due notice of the appeal to the parties and the public. While the appeal is pending, the conditional use may not continue. The City Commission may reverse, affirm or modify any order, requirement, decision or determination appealed from and shall make any order, requirement, decision or determination that, in the City Commission's opinion, ought to be made in the circumstances.~~

**Section 3. Repeal.** That all ordinances or parts of ordinances, resolutions or parts of resolutions in conflict herewith are repealed to the extent of such conflict.

**Section 4. Severability.** That the provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance, and they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

**Section 5. Inclusion in the Code.** That it is the intention of the City Commission, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of the City of North Bay Village; that the sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

**Section 6. Effective Date.** That this Ordinance shall be effective immediately upon adoption on second reading.

The motion to approve the foregoing Ordinance on first reading was made by Mayor Connie Leon-Kreps, seconded by Commissioner Richard Chervony.

**THE VOTES WERE AS FOLLOWS:**

Mayor Connie Leon-Kreps	<u>Yes</u>
Vice Mayor Eddie Lim	<u>Yes</u>
Commissioner Stuart Blumberg	<u>Yes</u>
Commissioner Richard Chervony	<u>Yes</u>

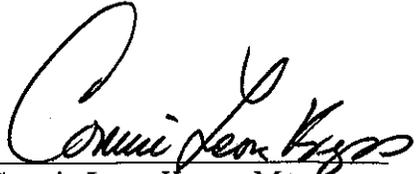
**APPROVED ON FIRST READING** during a regular session of the City Commission of North Bay Village this 10th day of July 2012.

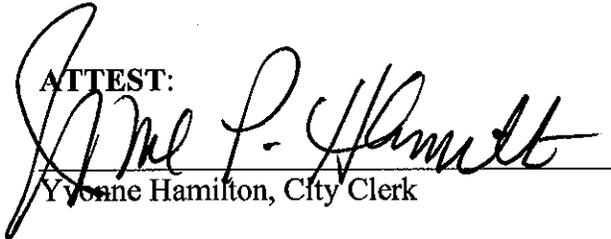
The motion to adopt the foregoing Ordinance on final reading was offered by Commissioner Chervony, seconded by Commissioner Stuart Blumberg.

**FINAL VOTE ON ADOPTION:**

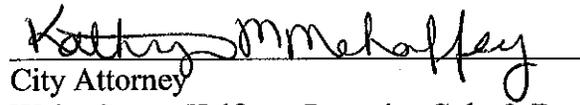
Mayor Connie Leon-Kreps	<u>Yes</u>
Vice Mayor Eddie Lim	<u>Yes</u>
Commissioner Stuart Blumberg	<u>Yes</u>
Commissioner Richard Chervony	<u>Yes</u>

**PASSED AND ENACTED BY THE CITY COMMISSION OF NORTH BAY  
VILLAGE, FLORIDA, THIS 25th DAY OF July, 2012.**

  
\_\_\_\_\_  
Connie Leon-Kreps, Mayor

**ATTEST:**  
  
\_\_\_\_\_  
Yvonne Hamilton, City Clerk

**APPROVED AS TO FORM FOR THE USE OF  
THE CITY OF NORTH BAY VILLAGE ONLY:**

  
\_\_\_\_\_  
City Attorney  
Weiss Serota Helfman Pastoriza Cole & Boniske, P.L.