

ORDINANCE NO. 2012-04

AN ORDINANCE OF THE CITY OF NORTH BAY VILLAGE, FLORIDA, CREATING CHAPTER 119 OF THE CODE OF ORDINANCES PERTAINING TO ADULT ENTERTAINMENT LICENSING AND BUSINESS REGULATION; 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 desires to provide adult entertainment business regulations pursuant to the City's home rule powers; 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 and operation 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 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 Chapter 119 “Adult Entertainment Establishments,” of the City of North Bay Village Code of Ordinances is hereby created to read as follows:¹

CHAPTER 119. ADULT ENTERTAINMENT ESTABLISHMENTS.

ARTICLE I. ADULT ENTERTAINMENT LICENSING.

Section 119.01 – Purpose, Findings and Authority.

(a) *Purpose.* In the development and enforcement of this chapter, 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 location 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 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 chapter to:

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

¹ All text is new. Additions to the new text since the draft was provided (for informational purposes only) to the Planning and Zoning Board are shown in underline; deletions from the new text since the draft was provided to the Planning and Zoning Board are shown in ~~strikethrough~~.

This chapter 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 chapter.

(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) To preserve the public peace and good order, and to safeguard the health, safety, and welfare of the community and its residents, it is necessary and advisable to regulate and restrict the conduct of owners, operators, agents, employees, entertainers, performers, patrons, spectators, and persons on the premises of the commercial establishment subject to this chapter.

(11) 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.

(12) 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.

(13) 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.

(14) Physical contact between employees exhibiting specified anatomical areas and customers within establishments at which the activities described in subsections (1) and (2) occur poses a threat to the health of both and may lead to the spread of communicable, infectious, and social diseases.

(15) 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, employees, entertainers, performers, and customers at establishments where the activities described in subsections (1) and (2) occur.

(16) The potential dangers to the health, safety, and general welfare of the residents of the city from the activities described in subsections (1) and (2) occurring at establishments without first obtaining a license under this chapter are so great as to require the licensure of such establishments before they are permitted to operate.

(17) "Lap dancing" does not contain an element of communication, and is therefore conduct rather than expression.

(18) "Lap dancing" in establishments poses a threat to the health of the participants and promotes the spread of communicable, infectious, and social diseases.

(19) Adult entertainment establishments are frequently used for unlawful and unhealthy sexual activities, including prostitution and sexual liaisons of a casual nature.

(20) The concern over sexually transmitted diseases is a legitimate health concern of the city that demands reasonable regulation of adult entertainment establishments in order to protect the health and well-being of the citizens.

(21) The prevention of sexual contact between patrons and employees at adult dancing establishments is unrelated to the suppression of free expression, but serves to address the concerns raised in the findings contained in this chapter. Although the dancer's erotic message may be slightly less effective from four (4) feet away, the ability to engage in the protected expression is not significantly impaired.

(22) Separating dancers from patrons, and prohibiting dancers and patrons from engaging in sexual fondling and caressing in adult dancing establishments, would reduce the opportunity for prostitution transactions and thus should help to deter prostitution.

(23) 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.

(24) Removal of doors on adult booths and requiring sufficient lighting in adult theaters advances the substantial governmental interest in curbing the illegal and unsanitary sexual activity occurring at adult theaters.

(25) Requiring that the facilities of adult theaters be constructed of materials that are easy to clean, that the facilities be cleaned on a regular basis, and that the employees cleaning the facilities take reasonable precautions to avoid contact with possible disease-transmitting media is reasonably related to the protection of both employees and patrons from sexually transmitted diseases.

(26) Licensing is a legitimate, reasonable means of accountability to ensure that operators of adult entertainment establishments comply with the reasonable regulations within this chapter and the location requirements of the Zoning Code, and to ensure that operators do not knowingly allow their establishments to be used as places of illegal sexual activity or solicitation.

(c) *Authority.* This chapter 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.

Section 119.02 – Definitions.

Adult Bookstore/Adult Video Store. Shall mean an adult entertainment establishment which offers adult material for sale or rent for commercial gain, or having such materials as a substantial percentage or significant portion of its sale or stock in trade, or an establishment with a substantial or significant portion 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, or actual sales. A substantial or significant portion of its stock in trade shall be deemed to occur when: (1) twenty-five (25) percent or 400 square feet (whichever is less) of the floor area of the establishment contains the items listed above; or (2) the items listed above comprise at least twenty-five (25) percent of the value of the stock in trade of the establishment.

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) 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 dancing establishment. Shall mean an adult entertainment establishment wherein performers or employees of the establishment display or expose to others specified anatomical areas as defined in this chapter, regardless of whether the performer or employee so exposed is actually engaging in dancing.

Adult domination/submission parlor. Shall mean an adult entertainment establishment specializing in bondage, sadomasochism, humiliating activities or other similar activities which depicts, describes or relates to the "specified sexual activities" or "specified anatomical areas," as defined below.

Adult entertainment. Shall mean any action intended to amuse 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.

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 this Chapter; 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 herein, 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 motel. Shall mean a hotel, motel, boarding house or rooming house or other place of temporary lodging presenting adult material by means of closed circuit television, for observation by patrons therein.

Adult theater/Adult movie theater. Shall mean an enclosed building used for presenting adult materials for observation by patrons or any material which may not be exposed to minors under F.S. Ch. 847. An establishment which has adult booths is considered to be an adult theater. Theaters designed to allow the outdoor viewing of adult material are not permitted.

Educational institution. Shall mean any premises or site upon which there is an institution of learning, whether public or private, which conducts regular classes, courses of study, or both, required for accreditation by or membership in the State Department of Education of Florida, Southern Association of Colleges and Secondary Schools, or the Florida Council of Independent Schools. This term also includes art galleries and museums open to the public; or other accredited special institutions of learning.

Establishment. Shall mean the site or premises on which the adult entertainment establishment is located, including the interior of the establishment, or portion of it, upon which certain activities or operations are being conducted for commercial gain.

Encounter studio. Shall mean all establishments offering nude or partially nude encounter sessions between two (2) or more persons, nude dance/photo sessions, or sexual consultations, which have as their dominant or primary theme matters depicting, describing or relating to "specified sexual activities" or "specified anatomical areas," as defined herein or requiring the exclusion of minors pursuant to Chapter 847, Florida Statutes.

Lap dance or lap dancing. Also known as a "straddle dance," "face dance," "friction dancing," or "flash dance," shall mean the use by an employee, whether clothed or partially or totally nude, of a part of his or her body to touch, massage, rub, stroke, caress, or fondle the genital or pubic area of a person while at the establishment, or the touching of the genital or pubic area of an employee by a person while at the establishment. It shall be a "lap dance" regardless of whether the "touch" or "touching" occurs while the employee is displaying or exposing a specified anatomical area. It shall also be a "lap dance" regardless of whether the "touch" or "touching" is direct or through a medium. However, incidental touching shall not constitute lap dancing.

Licensed premises. See "Establishment."

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 chapter, 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 chapter 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.

Nude entertainment establishment. Shall mean any establishment which features male or female entertainers, performing in a state of full nudity, displayed in a setting, section, stage or cubicle within a business, which has as its principal or incidental purpose the offering for viewing to adults of performances which have as their dominant or primary theme matters depicting, describing or relating to "specified sexual activities" or "specified anatomical areas," as defined below.

Full nudity. Shall mean the showing of the human male or female genitals, pubic area or buttocks with less than a fully opaque covering; the showing of the female breast with less than a fully opaque covering of any part of the nipple and areola; the exposure of any device, costume, or covering which gives the appearance of or simulates the genitals, pubic hair, natal cleft, perineum anal region or pubic hair region; or the exposure of any device worn as a cover over the nipples and/or areola of the female breast, which device simulates and gives the realistic appearance of nipples and/or areola.

Patron. Shall mean any natural person other than an employee, operator, licensee, or governmental officer while such persons are performing duties pursuant to this Code or other law.

Principal stockholder. Shall mean an individual, partnership or corporation that owns or controls, legally or beneficially, thirty-three (33) percent or more of a corporation's capital stock and includes the officers, directors and principal stockholders of a corporation that is a principal stockholder under this chapter; provided, that if a corporation is registered with the Securities and Exchange Commission or pursuant to Chapter 517, Florida Statutes and its stock is for sale to the general public, it shall not be considered to have any principal stockholders.

Private performance. Shall mean the display or exposure of any specified anatomical area by an employee of an adult entertainment establishment to a person other than another employee, while the person is in an area not accessible during such display to all other persons in the establishment, or while the person is in an area in which the person is totally or partially screened or partitioned during such display from the view of all persons outside the area.

Regulated use or adult entertainment establishment. Shall include, but not be limited to, the following:

- (1) Adult bookstore/adult novelty store/adult video store;
- (2) Adult dancing establishment;
- (3) Adult domination/submission parlor;
- (4) Adult theater/adult movie theater;
- (5) Adult motel;
- (6) Encounter studio/modeling studio;
- (7) Massage establishment; and
- (8) Any bookstore, video store, motion picture theater, motel/hotel, dancing establishment, massage establishment, or photo or modeling studio: (a) that includes the word "adult" in its name; (b) where an employee, operator, or owner exposes his or her specified anatomical area for viewing by patrons; or (c) that requires the exclusion of minors under Chapter 847, Florida Statutes, shall be considered a regulated use.

Specified anatomical areas. Shall mean:

- (1) Less than completely and opaquely covered:
 - a. Human genitals and pubic region; or
 - b. Cleavage of the human buttocks; or
 - c. That portion of the human female breast encompassed within an area falling below the horizontal line one would have to draw to intersect a point immediately above the top of the areola, including the areola; this definition shall include the entire lower portion of the human female breast, but shall not include a portion of the cleavage of the human female breast exhibited by a dress, blouse, shirt, leotard, bathing suit or other wearing apparel, provided the areola is not so exposed; and

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

Specified criminal offense. Shall mean:

- (1) A conviction under F.S. § 60.05 (Nuisance Abatement);
- (2) A conviction under F.S. Ch. 480 (Massage Practice);
- (3) A conviction under F.S. Ch. 561 (Beverage Law: Administration) or F.S. Ch. 562 (Beverage Law: Enforcement); or
- (4) A judgment against or conviction under F.S. Ch. 823 (Public Nuisances).

Specified sexual activities. Shall mean:

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

Section 119.03 - Adult entertainment license.

(a) No adult entertainment establishment shall be allowed to operate without first having been issued an adult entertainment license by the City Clerk pursuant to this chapter.

(b) Adult entertainment licenses referred to in this chapter shall be licenses limited to the following classifications:

- (1) Adult bookstore /adult video store;
- (2) Adult theater/adult movie theater;
- (3) Adult dancing establishment;
- (4) Adult domination/submission parlor;
- (5) Adult motel;
- (6) Encounter studio/modeling studio;
- (7) Massage establishment; or
- (8) Any other adult use as defined in this chapter.

(c) No adult entertainment license shall be issued to a nude entertainment establishment, or any establishment engaging in any display of full nudity.

(d) An adult entertainment license for a particular adult entertainment establishment shall be limited to one (1) classification of license.

(e) An adult entertainment establishment may hold more than one (1) classification of adult entertainment license.

Section 119.04 - Administration.

The ultimate responsibility for the administration of this chapter is vested in the City Commission. Several agencies have been delegated responsibility pursuant to the provisions outlined in this chapter:

- (1) The City Clerk or designee shall be the "business licensing section" responsible for issuing the official notice of the grant, denial, revocation, renewal, suspension, or cancellation of adult entertainment licenses for existing or proposed adult entertainment establishments.
- (2) The Chief of Police is responsible for verifying information contained in an application for an adult entertainment license by means of a criminal background check, and for inspecting a proposed, licensed, or unlicensed establishment in the city in order to ascertain whether it is in compliance with applicable articles and criminal statutes, and for enforcing applicable ordinances and criminal statutes, including those provisions set forth in articles this Chapter and in Section 152.111 of this Code.
- (3) The building official is responsible for inspecting a proposed establishment for which a license is being applied in order to ascertain whether it complies with or is complying with article II of this chapter and all applicable building codes, statutes, ordinances, and regulations in effect in the city. The building official shall compare and certify that all aspects of the submitted floor plan, site plan, and certified survey accurately depict the actual structure, and comply with the provisions of this chapter.
- (4) The fire department is responsible for the inspection of licensed premises or a proposed establishment to ascertain whether it complies with or is complying with Article II of this chapter and all applicable fire codes, statutes, ordinances, and regulations in effect in the city.
- (5) The City Planner is responsible for ascertaining whether a proposed establishment for which a license is being sought complies with section 152.111 of the City Code, the applicable portions of article II, and all applicable zoning regulations in effect in the city, and whether a licensed establishment is complying with section 152.111 of the City Code, Article II of this chapter, and all applicable zoning regulations and land use laws in effect in the city.
- (6) Any employee of the agencies referenced in subsections (2) through (5) above who is authorized by the person in charge of the agency shall at any reasonable hour, when the agency has reasonable cause to believe that a violation of this chapter may exist, have access to and shall have the right to inspect the premises of all licensees under this chapter for compliance with any or all of the applicable codes, statutes, ordinances, and regulations in effect in the city and within the responsibilities of their respective agencies as outlined in this chapter.

Section 119.05 - Application.

- (a) *Filing.* A person desiring to operate an adult entertainment establishment shall file with the business licensing section a sworn license application on a standard application form supplied by the business licensing section.
- (b) *Contents.* The application shall contain the following information and shall be accompanied by the following documents:

- (1) If the applicant is:
 - a. An individual, his or her legal name, aliases, and date of birth, driver's license number or a state or federally issued identification card number;
 - b. A partnership, the full and complete name of the partners, dates of birth, driver's license numbers or state or federally issued identification card numbers of all partners, and all aliases used by all of the partners, whether the partnership is general or limited, and, if in existence, a copy of the partnership agreement; or
 - c. A corporation, the exact and complete corporate name, the date of its incorporation, evidence that the corporation is in good standing, the legal names and dates of birth, driver's license numbers or state or federally issued identification card numbers of all officers, directors and principal stockholders, and all aliases used, the capacity of all officers, directors, and principal stockholders, and, if applicable, the name of the registered corporate agent, and the address of the registered office for service of process; and
- (2) The application shall list the current local and legal domiciliary residential addresses of all individual applicants, partners in a partnership application, and the principal stockholders of a corporate applicant; for purposes of this subsection, principal stockholders are natural persons and not corporate or other legal entities; when the principal stockholder is a corporate or other legal entity, the application must trace back the ownership through layers of corporate organization to the eventual principal stockholder who is a natural person; and
- (3) If the applicant intends to conduct business under a name other than that of the applicant, the applicant shall state the establishment's fictitious name and the county of registration under F.S. § 865.09, all legal names, dates of birth, addresses and all aliases used by all owners; and
- (4) Whether the applicant, or other individuals listed pursuant to subsection (1) above, has within the five-year period immediately preceding the date of the application, ever been convicted of a specified criminal offense and, if so, the specified criminal act involved, the date of conviction, and the place of conviction; and
- (5) Whether the applicant, or other individuals listed pursuant to subsection (1) above, has (a) had a previous license issued under this chapter suspended or revoked, or by court order, been required to cease operation, 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 (b) whether the applicant, or any other individuals listed pursuant to subsection (a), has been a partner in a partnership or an officer, director or principal stockholder of a corporation whose license issued under this chapter 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; and

- (6) Whether the applicant, or other individuals listed pursuant to subsection (1) above, holds other licenses under this chapter and, if so, the names and locations of such other licensed establishments; and
- (7) The single classification of license for which the applicant is filing and the general nature of adult use for which the applicant is seeking a license, including a statement concerning the degree to which the anticipated activities at the adult entertainment establishment meet the definitions of the enumerated adult use classifications listed in the definitions section (section 119.02); such characterization shall serve as an initial basis for the permitted activities allowed under the license issued as well as a basis for the fee charged; and
- (8) The location of the proposed establishment, including a legal description of the property site, and a legal street address; and
- (9) The names of all employees, dates of birth, and aliases used for the proposed establishment, if known, or, if currently unknown, a statement to that effect; and
- (10) The applicant's mailing address, residential address and residential telephone number (if any); and
- (11) A site plan and certified survey drawn to appropriate scale of the proposed establishment including, but not limited to, all property lines, rights-of-way, and the location of buildings, parking areas and spaces, curb cuts, and driveways and shall state and indicate on the survey that the distance and location requirements of section 152.111.04 have been satisfied; and
- (12) A floor plan drawn to appropriate scale of the proposed establishment including, but not limited to:
 - a. All windows, all doors, all entrances and exits; and
 - b. Proposed seating arrangement; and
 - c. All fixed structural interior features including, but not limited to, doors, aisles, walls, stages, partitions, projection booths, admission booths, adult booths, concession booths, stands, counters, platforms, and similar structures; and
 - d. All proposed improvements or enlargements to be made, which shall be indicated and calculated in terms of percentage of increase in floor size; and
- (13) The name, address and phone number of the person whom the building official should contact to schedule the inspection; and
- (14) The phone number and address of the existing or proposed establishment; and
- (15) The name, phone number and address of the manager; and
- (16) A detailed security plan;

(17) A notarized, signed, and sworn statement that the information within the application is truthful, independently verifiable, and complete and that the photocopies of the attached driver's licenses or state or federally issued identification cards are true and correct copies of the originals.

(c) *Copies.*

(1) In addition to the requirements of subsection (b) above, the applicant shall supply a minimum of five (5) copies of the application, or more as may be required, to the business licensing section.

(2) An application shall not be considered complete until the application satisfies the requirements of subsection (b) and subsection (c)(1) above.

(d) *Application fee.* Each application shall be accompanied by a nonrefundable fee to be set by resolution of the City Commission to recoup the costs related to administering the licensing program. If the application for a license is approved and a license is granted, half of the application fee shall be applied as a credit towards the annual license fee required for the first year pursuant to subsection 119.08(f).

(e) *Rejection of application.* In the event the business licensing section is notified by one of the agencies listed in subsections 119.04(2) through (5) above, that the applicant has not satisfied the application requirements for a proposed establishment, the applicant shall be notified of such fact within the time frame specified in this chapter, with a detailed list of reasons, and the application shall be denied.

Section 119.06 - Investigation of application.

(a) Upon receipt of a complete application filed properly with the business licensing section and upon payment of the nonrefundable application fee, the business licensing section shall send the attached photocopies of the application to the Police Chief, the fire department, building official, and City Planner. Each agency shall promptly conduct an investigation of the applicant and the proposed establishment in accordance with its responsibilities outlined in Article II of this chapter. At the conclusion of its investigation, each agency shall indicate on the photocopy of the application whether the application satisfies each requirement of this chapter, and shall date and sign the application.

(b) Any of the foregoing reviewers shall recommend denial of an application upon finding that the proposed establishment will be in violation of a provision of article II or of any building, fire, or zoning code, statute, ordinance or regulation. If the application fails to satisfy this Code or any building, fire or zoning code, statute, ordinance or regulation, the reviewer shall state specifically its reasons, on a separate letter attached to the photocopy of the application.

Section 119.07 - Administrative review.

(a) The reviewers shall conduct and complete an investigation of the application within twenty-one (21) days of receipt of the application. If a provision of this chapter, any building, fire, zoning, or any other applicable code, statute, ordinance or regulation is found to be applicable to the applicant who is in violation of any such provisions, the respective reviewer shall notify the business licensing section of the violation, state the reasons, and offer suggestions for correction. Upon receipt of notice of a violation from a reviewer, the business licensing section shall wait until day twenty-one (21) for the review from the other agencies. Then, the business licensing section shall notify the applicant of the denial. All communications regarding approval or denial shall be issued by and through the business licensing section. Oral statements issued directly or independently by the reviewers shall not be deemed to create a reliance or estoppel situation as to the provisions of this chapter.

(b) The business licensing section shall issue or deny an application for an adult entertainment license within forty (40) days from the date of the filing of a complete application. Upon the expiration of the forty-day period, the applicant may demand a license and begin operating the establishment for which a license is sought. The date of the proper filing of the application shall be the date the applicant furnishes the fully completed and sworn application, the required number of copies, and the appropriate, non-refundable application fee.

(c) If the applicant has satisfied the requirements of this chapter, the business licensing section shall notify the applicant and issue the license to the applicant upon payment of the appropriate annual license fee provided in subsection 119.08(f), with credit as provided in subsection 119.05(d).

(d) The business licensing section shall deny the application upon notification by one of the reviewers that:

(1) The application violates or fails to meet the provisions of this chapter, any building, fire, zoning, or any other applicable code, statute, ordinance or regulation;

(2) The application contains material false information, or information material to the decision was omitted; failure to list an individual required to be listed, and whose listing would result in a denial, is presumed to be material false information for purposes of denial of the application; the certification that the licensee owns, possesses, operates and exercises control over the proposed or existing adult use establishment is a material representation for purposes of this chapter;

(3) The applicant, or other individuals listed pursuant to section 119.05(b) has a license under this chapter, or has had a license under this chapter, which has been suspended or revoked;

(4) The granting of the application would violate a statute or ordinance, or an order from a court of law that effectively prohibits the applicant from obtaining an adult entertainment license; or

(5) An applicant, or any other individual required to be listed, has been convicted of a specified criminal offense;

a. For which:

i. Less than two (2) years has elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense; or

ii. Less than five (5) years has elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a felony offense; or

iii. Less than five (5) years has elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the convictions are of two (2) or more misdemeanor offenses or a combination of misdemeanor offenses occurring within any twenty-four-month period.

b. The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant.

c. An applicant who has been convicted of a specified criminal offense may qualify for an adult entertainment establishment license only when the time period set forth above has elapsed and if his or her civil rights have been restored.

(c) If a person applies for a license at a particular location within a period of one (1) year from the date of denial of a previous application for a license at the location, and there has not been an intervening change in the circumstances material to the decision regarding the former reason(s) for denial, the application shall not be accepted for consideration.

Section 119.08 - License.

(a) *Contents.* An adult entertainment license shall state on its face the name of the licensee, the business name, local residential and legal domiciliary residential address of the licensee, the name of the establishment, the street address of the establishment, the classification of the license, a twenty-four-hour working phone number, the date of issuance, and the date of expiration.

(b) *Term.* All licenses issued under this chapter shall be annual licenses which shall commence running on October 1, on which date they shall have been paid for, and shall expire on September 30 of the following year. If a license is issued after October 1, but prior to March 31 of the following year, the applicant shall pay the prorated license fee. If a license is issued after March 31, but prior to October 1 of the same year, the applicant shall pay one-half (½) the appropriate license fee.

(c) *Renewal.* Licenses shall be entitled to renewal annually subject to the provisions of this chapter. Before the October 1 expiration date, the annual license may be renewed by presenting the license for the previous year, by paying the appropriate license fee, and by updating the information supplied with the latest application or certifying that the information supplied previously remains unchanged.

(d) *Expiration.* A license shall expire for failure to obtain a renewal pursuant to this chapter by October 1. An expired license may be renewed no later than November 30 of the same year upon:

(1) The submission of an affidavit stating that the establishment has not been operated as an adult entertainment establishment from the date of expiration of the license;

(2) The payment of the appropriate license fee; and

(3) Payment of a penalty of ten (10) percent of the appropriate license fee for the month of October and, if renewed after October 31, an additional penalty of five (5) percent of the appropriate license fee for the month of November.

(e) *Cancellation.* All licenses not renewed by November 30 shall be deemed expired by the business licensing section unless such license is involved in litigation. The applicant may reapply for an adult entertainment license. Upon the payment of the application fee, satisfaction of the application requirements, and payment of the license fee, operation of the adult entertainment establishment may continue.

(f) *Annual license fees.* The annual license fees under this chapter for an adult entertainment establishment shall be set by resolution of the City Commission.

(g) *Collection of fees.* The business licensing section shall be responsible for the collection of the application and annual license fees pursuant to this chapter.

Section 119.09 - Transfer of license.

(a) A licensee shall not transfer his or her license to another person, or surrender possession, control, or operation of the licensed establishment to such other person.

(b) A licensee shall not transfer his or her license to another location.

(c) An attempted transfer of a license either directly or indirectly in violation of this section is declared void and, in that event, the license shall be deemed abandoned, and the license shall be forfeited.

Section 119.10 - Changed name.

No licensee may change the name of an adult entertainment establishment unless and until he or she satisfies all of the following requirements:

- (a) Provides the business licensing section with thirty (30) days' notice in writing of the proposed name change;
- (b) Pays to the business licensing section a change-name fee to be set by resolution of the City Commission; and
- (c) Complies with F.S. § 865.09, the Florida Fictitious Name Statute.

Section 119.11 - Enforcement.

(a) *Suspension.*

(1) *Violation of regulations.* In the event a licensed adult entertainment establishment is operating in violation of a building, fire, or zoning code, statute, ordinance or regulation, whether federal, state, or local, or the respective requirements of article II of this chapter, the appropriate agency shall promptly notify a code enforcement officer, who shall notify the licensee of the violation. The licensee shall have ten (10) business days in which to correct the violation. If the licensee fails to correct the violation within ten (10) business days, the agency shall notify a code enforcement officer, who shall schedule a hearing before the special master. If the special master determines that a licensed establishment is in violation of a building, fire, or zoning statute, code, ordinance, or regulation, whether federal, state, or local, the code enforcement officer shall notify the business licensing section, which shall forthwith suspend the license and shall notify the licensee of the suspension. The suspension shall remain in effect until the code enforcement officer notifies the business licensing section in writing that the violation of the provision in question has been corrected. Nothing in this section shall take away other enforcement powers of the special master or any other agency provided by the City Code or statute.

(2) *Illegal transfer.* Upon the written notification by one of the agencies that a licensee is or has engaged in a license transfer contrary to section 119.09, the business licensing section shall officially suspend the license and notify the licensee of the suspension. The suspension shall remain in effect until all of the requirements of this chapter have been satisfied and a new license has been issued by the business licensing section.

(3) *Violations of article II of this chapter.*

a. In the event two (2) or more convictions for violations of the rules and regulations within article II or of any health code, statute or regulation occur within a two-year period, the business licensing section shall, upon notification of the date of the second conviction, suspend the license and notify the licensee of the suspension. The suspension shall remain in effect for a period of sixty (60) days.

b. In the event one (1) or more convictions for violations of the rules and regulations of article II or of any health code, statute or regulation occur within a period of two (2) years from the date of the violation from which the conviction resulted, for which the license was suspended for sixty (60) days under subsection a. above, the business licensing section shall, upon notification of the date of the first conviction, suspend the license again and notify the licensee of the suspension. The time during which the license was previously suspended for sixty (60) days shall not be included within the two-year period. The suspension shall remain in effect for a period of ninety (90) days.

c. In the event one (1) or more convictions for violations of a rule or regulation of article II or of any health code, statute or regulation occur within a period of two (2) years from the date of the violation from which the conviction resulted, for which the license was suspended for ninety (90) days under subsection b., the business licensing section shall, upon notification of the date of the first conviction, suspend the license again and notify the licensee of the suspension. The time during which the license was previously suspended for ninety (90) days shall not be included within the two-year period. The suspension shall remain in effect for a period of one hundred eighty (180) days.

d. The renewal of, or new application for, a license pursuant to this chapter shall not defeat the terms of this section.

(4) *Effect of suspension.* If a license is suspended, all operations within the adult entertainment establishment shall cease for the period of the suspension, and the license shall be suspended for the suspension period. The State of Florida, Division of Alcoholic Beverages and Tobacco and the Department of Business and Professional Regulation shall be notified of the suspension, and no other person shall be allowed to operate an adult entertainment establishment at that location for a period of one hundred eighty (180) days.

(5) *Effective date of suspension.* All periods of suspension shall begin fifteen (15) calendar days after the date the business licensing section mails the notice of suspension to the licensee, or on the date the licensee surrenders his or her license to the business licensing section, whichever occurs first.

(b) *Revocation.*

(1) *False information.* In the event it is learned or found, or upon sufficient cause determined that a license was granted based upon false information, misrepresentation of fact, or mistake of fact by the licensee or his or her agent, the respective agency that has knowledge of the false information shall notify the business licensing section. The business licensing section shall notify the licensee in writing of the business licensing section's intent to revoke the license. The licensee shall have ten (10) days from the date of receipt of the notification to request a hearing. The hearing shall be scheduled before the special master. If the licensee does not request a hearing, the license shall be considered revoked ten (10) days after the receipt of the notification. If the licensee does request a hearing, the license shall remain in effect during the pendency of the action before the special master.

(2) *Convictions for violations of article II of this chapter.* In the event one (1) or more convictions for violations of article II or of any applicable health code, statute or regulation occur within a period of two (2) years from the date of the violation from which the conviction resulted, for which the license was suspended for a period of one hundred eighty (180) days pursuant to subsection (a)(4), the business licensing section shall forthwith revoke the license and notify the licensee of the revocation. The time during which the license was previously suspended for one hundred eighty (180) days shall not be included within the two-year period.

(3) *Effect of revocation.* If a license is revoked, the licensee shall not be allowed to obtain another adult entertainment license for a period of two (2) years, and no license shall be issued during that time period to another person for the location and premises upon which the adult entertainment establishment was situated.

(4) *Effective date.* The revocation shall take effect fifteen (15) calendar days after the date the business licensing section mails the notice of revocation to the licensee, or on the date the licensee surrenders his or her license to the business licensing section, whichever occurs first.

Section 119.12 - Records and reports; consent.

(a) Each licensee shall keep such records and make such reports as may be required by the business licensing section and the agencies to implement this chapter and to carry out its purpose.

(b) By holding a license under this chapter, the licensee shall be deemed to have consented to the provisions of this chapter, and to the exercise by the applicable agencies of their respective responsibilities under this chapter.

[Sections 119.13-119.19 Reserved]

ARTICLE II - ADULT ENTERTAINMENT ESTABLISHMENTS: BUSINESS REGULATIONS.

Section 119.20 - Hours of operation.

(1) It shall be unlawful for an operator of an adult entertainment establishment to allow such establishment to remain open for business, or to allow an employee to engage in a performance, solicit a performance, make a sale, solicit a sale, provide a service, or solicit a service, between the hours of 2:00 a.m. and 10:00 a.m. on all days.

(2) It shall be unlawful for an employee 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, between the hours of 2:00 a.m. and 10:00 a.m. on all days.

Section 119.21 - Alcoholic beverages prohibited.

(1) No alcoholic beverages shall be sold, served, or consumed in an adult entertainment establishment.

(2) No person or employee shall expose to public view his or her specified anatomical areas, or simulation thereof, in an establishment selling, serving, or allowing the consumption of alcoholic beverages.

(3) No person maintaining, owning or operating an establishment selling, serving or allowing the consumption of alcoholic beverages shall allow a person or employee to expose to public view his or her specified anatomical areas, or simulation thereof, within the establishment.

(4) No person maintaining, owning or operating an establishment selling, serving or allowing the consumption of alcoholic beverages shall allow the exposure to public view of specified anatomical areas, or the simulation thereof, within the establishment.

(5) No person shall cause and no person maintaining, owning or operating an establishment selling, serving or allowing the consumption of alcoholic beverages shall allow the exposition of graphic representation, including pictures or projection of film, which depicts specified anatomical areas engaged in specified sexual activities, or other sexual acts prohibited by law, or simulation thereof, within the establishment.

Section 119.22 - Supplementary requirements; prohibitions.

(1) *Adult theater:* In addition to the general requirements for an adult entertainment establishment contained in this article, an adult theater shall comply with the following special requirements:

(a) If the adult theater contains a hall or auditorium area, the area shall comply with each of the following provisions:

1. Have individual or separate seats, not couches, benches, beds, or the like, to accommodate the maximum number of persons who may occupy the area; and
2. Have a continuous main aisle alongside of the seating areas in order that each person seated in the areas shall be visible from the aisle at all times; and
3. Have a sign posted in a conspicuous place at or near each entrance way to the hall or auditorium area listing the maximum number of persons who may occupy the hall or auditorium area, which number shall not exceed the number of seats within the auditorium area; and
4. Have premises equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than 1 foot-candle as measured at floor level; and
5. It shall be the duty of the licensee, the owners, and operator and it shall also be the duty of any agents and employees present on the premises to ensure that the illumination described above is maintained at all times that any patron is present on the premises; and
6. Have an AIDS crisis sign visible to all patrons on the side of the door that opens and allows patrons to enter the theater.

(b) Furnishing of adult theaters:

1. Each adult theater subject to this article shall cover the floor of areas accessible to patrons with smooth and nonpermeable flooring material which can withstand frequent effective cleaning in accordance with subsection (1)(c)3. Carpeting of any type is prohibited; and
2. Each adult theater shall use smooth and non-permeable upholstery material which can withstand frequent cleaning in accordance with paragraph (1)(c)3. to cover furniture permitted by this chapter for use of patrons; and
3. Each adult theater shall have, in areas accessible to patrons, interior wall surfaces which can withstand frequent cleaning in accordance with paragraph (1)(c)3; and
4. Each adult theater shall use only those shades, blinds and vertical blinds which can withstand frequent cleaning in accordance with paragraph (1)(c)3. Draperies are prohibited.

(c) Sanitation:

1. All areas of each adult theater which are accessible to patrons shall be maintained in a clean and sanitary condition. The surfaces of all floors, furniture, counter tops, shades, blinds, vertical blinds, doors and walls of areas accessible to patrons shall be cleaned in accordance with paragraph (1)(c)3;
2. All floors, furniture, counter tops, shades, blinds, vertical blinds, doors and walls of areas accessible to patrons of adult theaters subject to this chapter shall be renovated or be replaced as needed. All furniture must be kept free from holes and rips; and
3. Any individual cleaning or sanitizing of the areas accessible to patrons shall be accomplished a minimum of 1 time each 24 hours with a 1:10 bleach solution (1 part bleach to 10 parts water), mixed daily, as recommended by the U.S. Center for Disease Control as a precaution for the prevention of transmission of the HIV virus and other diseases. A copy of the approved procedure shall be kept on file at the adult theater and a copy shall be provided to each person cleaning or sanitizing the areas accessible to the patrons. Each such individual shall certify that he or she has read and understood the procedure. Records of the sanitation performed on the premises as required herein shall be kept and maintained on the premises and posted in a conspicuous place. The signed copy of the sanitation procedure executed by each sanitation employee and the sanitation record referenced above shall be kept as a part of the records of the adult theater, and open for inspection by the applicable agencies.

(2) *Adult dancing establishment:* In addition to the general requirements for an adult entertainment establishment contained in article II of this chapter, an adult dancing establishment shall observe the following special requirements:

(a) It shall have a stage provided for the display or exposure of specified anatomical areas by an employee to a person other than another employee, 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) The exposure by an employee of specified anatomical areas, or simulation thereof, to public view shall be restricted to the stage required above; and nonemployees or patrons shall not be allowed closer than 4 feet to the stage edge when an employee exposes those anatomical areas; and

(c) The establishment provides 2 security officers consisting of sworn law enforcement officers or identified security personnel if the occupant capacity is less than or equal to 150 persons, and an additional sworn law enforcement officer or identified security personnel for each additional increase of occupant capacity of 100 persons. The security officers or personnel shall be granted unfettered access to all parts of the establishment in order to monitor the interior and exterior of the establishment; and

(d) The establishment provides at least 1 responsible person under the supervision of a manager to check identification at the door to ensure that minors do not enter; and

(e) In all areas in which a private performance shall occur:

1. The private performance area shall be at least 100 square feet in size; and

2. Have a permanently open entrance way not less than 7 feet wide and not less than 7 feet high, which entrance way will never be closed or partially closed by a curtain, door or other partition which would be capable of wholly or partially obscuring a person situated in the area; and

3. Have a wall-to-wall, floor-to-ceiling partition of solid construction without holes or openings, which partition may be completely or partially transparent and which partition separates the employee from the person viewing the display; and

4. Have, except for the entrance way, walls or partitions of solid construction without holes or openings in such walls or partitions.

(f) Parking. All adult dancing establishments shall offer valet parking, and shall further comply with the parking requirements of Chapter 152.

(g) Sign. All adult dancing establishments shall post in a conspicuous area at least 1 sign which states that patrons may not touch employees and drugs are prohibited.

(h) Food service.

(i) No person shall cause and no person maintaining, owning or operating an establishment storing, preparing, serving, selling, or allowing the consumption of food shall allow the exposition or graphic representation, including pictures or projection of film, which depicts specified anatomical areas engaged in specified sexual activities, or other sexual acts prohibited by law, or simulation thereof, within the establishment.

(ii) Notwithstanding the foregoing, any person maintaining, owning or operating an adult dancing establishment may sell, serve or allow the consumption of customary bar snacks on the premises.

Section 119.23 - Violations of ordinance.

It shall be unlawful for a person to be an operator of an adult entertainment establishment which does not satisfy all of the requirements of article II of this chapter.

Section 119.24 - Allowing employee to engage in prohibited acts.

It shall be unlawful for an operator of an adult entertainment establishment to knowingly, or with reason to know, allow an employee:

- (1) To engage in a lap dance with a person at the establishment; or
- (2) To contract or otherwise agree with a person to engage in a lap dance with a person at the establishment; or
- (3) To contract or otherwise agree with a person to engage in specified sexual activity at the establishment; or
- (4) To display or expose a specified anatomical area while simulating a specified sexual activity with another person at the establishment, including with another employee; or
- (5) To allow a person, excluding another employee, to touch a portion of the clothed or unclothed body of the employee below the neck and above the knee, excluding that part of the employee's arm below the wrist, referred to as the hand; or
- (6) To engage in a private performance unless such employee is in an area that complies with the special requirements set forth in section 119.22(2); or
- (7) To intentionally touch the clothed or unclothed body of a person at the adult entertainment establishment, excluding another employee, at a point below the neck and above the knee of the person, excluding that part of the person's arm below the wrist, referred to as the hand.
- (8) To display or expose at the establishment a specified anatomical area unless such employee is continuously positioned away from a person other than another employee, and unless such employee is in an area as described in section 119.22(2); or

Section 119.25 - Engaging in prohibited activity.

It shall be unlawful for an employee of an adult entertainment establishment:

- (1) To engage in a lap dance with a person at an establishment; or
- (2) To contract or otherwise agree with a person to engage in a lap dance with a person at an establishment; or
- (3) To contract or otherwise agree with a person to engage in specified sexual activity at the establishment; or
- (4) To display or expose a specified anatomical area while simulating a specified sexual activity with another person at the establishment, including with another employee; or
- (5) To allow a person, excluding another employee, to touch a portion of the clothed or unclothed body of the employee below the neck and above the knee, excluding that part of the employee's arm below the wrist, referred to as the hand.
- (6) To engage in a private performance unless such employee is in an area which complies with the special requirements set forth in section 119.22(2); or

(7) To intentionally touch the clothed or unclothed body of a person at the adult entertainment establishment, excluding another employee, at a point below the neck and above the knee of the person, excluding that part of the person's arm below the wrist, referred to as the hand; or

(8) To display or expose at the establishment a specified anatomical area unless such employee is continuously positioned away from a person other than another employee, and unless such employee is in an area as described in section 119.22(2); or

Section 119.26 - Advertising prohibited activity.

It shall be unlawful for an operator of an adult entertainment establishment to advertise the presentation of an activity prohibited by an applicable state statute or local ordinance.

Section 119.27 - Specified criminal offense.

It shall be a violation of this Code if the operator is convicted or is adjudged guilty of a specified criminal offense that occurred at the establishment.

Section 119.28 - Minors prohibited.

It shall be unlawful for an operator of an adult entertainment establishment to knowingly, or with reason to know, allow:

- (1) Admittance to the establishment of a person under 18 years of age; or
- (2) A person under 18 years of age to remain at the establishment; or
- (3) A person under 18 years of age to purchase goods or services at the establishment;
or
- (4) A person to work at the establishment as an employee who is under 18 years of age.

Section 119.29 - Touching of employee by nonemployee.

It shall be unlawful for a person in an adult entertainment establishment, other than another employee, to intentionally touch the unclothed or clothed body of an employee at a point below the neck and above the knee of the employee, excluding that part of the employee's arm below the wrist, referred to as the hand.

Section 119.30 - Use of rest rooms or dressing rooms.

(1) Notwithstanding any provision of this Code to the contrary, it shall not be unlawful for an employee of an adult entertainment establishment to expose a specified anatomical area during the employee's bona fide use of a rest room, or during the employee's bona fide use of a dressing room, which is accessible only and restricted to employees.

(2) The restrictions of this article also apply to all rest rooms and dressing rooms.

(3) Notwithstanding any provision of this Code to the contrary, it shall not be deemed unlawful for a person to expose a specified anatomical area during that person's bona fide use of a rest room.

Section 119.31 - Violation subject to prosecution.

A violation of any requirement of this article may be prosecuted by the city attorney in a court of competent jurisdiction and/or before the city special master for code enforcement.

Section 119.32 - Miscellaneous.

(a) *Appeal process.* Subject to article I, after a denial of an application for a license, or a notice of suspension or revocation of a license, the aggrieved party may timely file a notice of appeal with any court of competent jurisdiction in accordance with applicable law and court rules.

(b) *Variances.* In the event the notice of denial of an application for a license was grounded in whole or in part upon failure to comply with or satisfy all applicable zoning regulations, the applicant may apply for a variance in accordance with the provisions of the City Code. However, no variance shall be granted from Section 152.111.04(2).

(c) *Notice.* A notice required under this chapter shall be accomplished by sending a written notification by certified mail, return receipt requested, to the mailing address set forth on the application for the license. This mailing address shall be considered the correct mailing address unless the business licensing section has been otherwise notified in writing by certified mail, return receipt requested, by the licensee of the new address. The licensee shall have the burden of proving the business licensing section received the new address.

(d) *Immunity from prosecution.* The city or an agency of the city shall be immune from prosecution, civil or criminal, for reasonable, good-faith trespass upon an adult entertainment establishment while acting within the scope of its authority under this chapter.

(e) *Enforcement of this chapter.* The City Commission, Chief of Police, or state attorney may bring suit in any court of competent jurisdiction to restrain, enjoin, or otherwise present the violation of this chapter.

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 relettered 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 Commissioner Stuart Blumberg, seconded by Commissioner Richard Chervony.

THE VOTES WERE AS FOLLOW:

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.

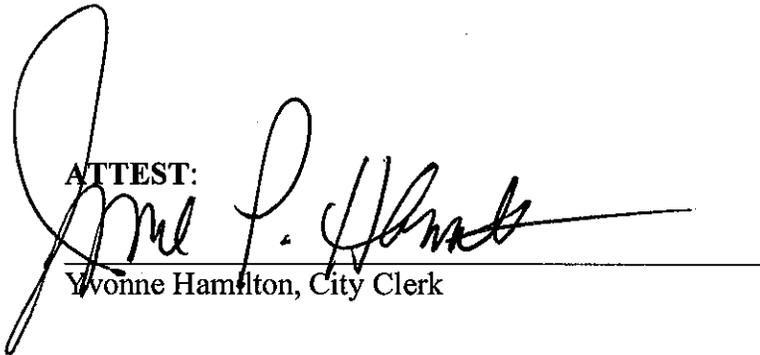
The motion to adopt the foregoing Ordinance on final reading was offered by Commissioner Richard Chervony, seconded by Commissioner Stuart Blumberg.

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.

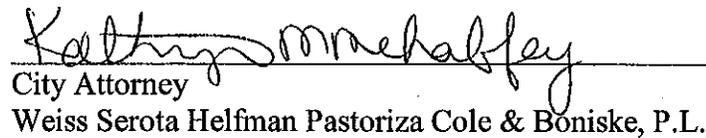
ATTEST:


Yvonne Hamilton, City Clerk



Connie Leon-Kreps, Mayor

**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.

City of North Bay Village Ordinance: Adult Entertainment Business Regulations: Chapter 119, City of North Bay Village Code of Ordinances