

**ORDINANCE 2005 - 10**

AN ORDINANCE ESTABLISHING LICENSING REQUIREMENTS  
AND REGULATIONS FOR SEXUALLY ORIENTED BUSINESSES  
WITHIN NASSAU COUNTY; PROVIDING AN EFFECTIVE  
DATE.

WHEREAS, the Board of County Commissioners finds that sexually oriented businesses, as a category of establishments, require special supervision in order to protect and preserve the health, safety, and welfare of the patrons of such businesses, as well as the citizens of Nassau County; and

WHEREAS, there is convincing evidence that sexually oriented businesses, as a category of establishments, have deleterious secondary effects and are often associated with crime and the downgrading of property values; and

WHEREAS, the Board of County Commissioners desires to minimize and control these adverse effects and thereby protect the health, safety, and welfare of the citizenry; protect the citizens from crime; preserve the quality of life; preserve the property values and character of surrounding neighborhoods and deter the spread of urban blight; and

WHEREAS, the Board of County Commissioners recognizes its constitutional duty to interpret, construe, and amend

its laws and ordinances to comply with constitutional requirements as they are announced; and

WHEREAS, it is not the intent of this Ordinance to suppress any speech activities protected by the U.S. Constitution or the Florida constitution, but to enact an Ordinance to further the content-neutral governmental interest of the County, to wit, the controlling secondary effects of sexually oriented businesses.

NOW, THEREFORE, BE IT ORDAINED this 28<sup>th</sup> day of March, 2005, by the Board of County Commissioners of Nassau County, Florida, as follows:

1. **PURPOSE and FINDINGS.**

a. **Purpose:** It is the purpose of this Ordinance to regulate sexually oriented businesses in order to promote the health, safety, and general welfare of the citizens of the County, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented businesses within the County. The provisions of this Ordinance have neither the purpose nor the effect of imposing a limitation or restriction on the legal content or reasonable access to any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor the effect of this Ordinance to restrict or deny access by adults to sexually

oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market.

b. **Findings:** Based on evidence of the adverse secondary effects of adult uses presented in hearings and in reports made available to the Board of County Commissioners, and on findings, interpretations, and narrowing constructions incorporated in numerous cases, including, but not limited to: City of Littleton v. Z.J. Gifts D-4, LLC, 2004, U.S. LEXIS 4026 (June 7, 2004); Pap's A.M. v. City of Erie, 529 U.S. 277 (2000); City of Los Angeles v. Alameda Books, Inc., 535 U.S. 425 92002); City of Renton v. Playtime Theatres, Inc., 475 U.S. 41 (1986); Young v. American Mini Theatres, Inc., 427 U.S. 50 (1976); Barnes v. Glen Theatre, Inc., 501 U.S. 560 (1991); FW/PBS, Inc. v. City of Dallas, 493 U.S. 215 (1990): I. 490 U.S. 109 (1972); as well as in the case of Artistic Entertainment, Inc., v. City of Warner Robins, 223 F.3d 1306 (11<sup>th</sup> Cir. 200); Peek-A-Boo Lounge of Bradenton, Inc., v. Manatee County, 337 Fed 1251 (11<sup>th</sup> Cir. 2003); Gary v. City of Warner Robins, 311 F.3d 1334 (11<sup>th</sup> Cir. 2002); Ward v. County of Orange, 217 F.3d 1359 (11<sup>th</sup> Cir. 2000); Boss Capital, Inc., v. City of Casselberry, 187 F.3d 1351 (11<sup>th</sup> Cir. 1999); Ben's Bar v. Village of Somerset, 316 F.3d 702

(7<sup>th</sup> Cir 2003); David Vincent, Inc., v. Broward County, 200 F.3d 1325 (11<sup>th</sup> Cir 2000); Sammy's of Mobile, Ltd. v. City of Mobile, 140 F.3d 993 (11<sup>th</sup> Cir 1998); Lady J. Lingerie, Inc. v. City of Jacksonville, 176 F.3d 1358 (11<sup>th</sup> Cir. 1999); Lady J. Lingerie, Inc., v. City of Jacksonville, 973 F.Supp. 1428 (M.D. Fla. 1997); Grand Faloon Tavern, Inc. v. Wicker, 670 F.2d 943 (11<sup>th</sup> Cir. 1982); Board of County Commissioners v. Dexterhouse, 348 So. 2d 916 (Ct. App. Fla. 1977); International Food & Beverage Systems v. Ft. Lauderdale, 794 F.2d 1520 (11<sup>th</sup> Cir. 1986); and other cases and reports of secondary effects occurring in and around sexually oriented businesses, including, but not limited to, Phoenix, Arizona, 1979; Minneapolis, Minnesota, 1980; Houston, Texas, 1997; Indianapolis, Indiana, 1984; Amarillo, Texas, 1977; Garden Grove, California, 1991; Los Angeles, California, 1977; Spokane, Washington, 2001; Whittier, California, 1978; Austin, Texas, 1986; Seattle, Washington, 1989; Oklahoma City, Oklahoma, 1986; Cleveland, Ohio, 1977; Dallas, Texas, 1994; Phoenix, Arizona, 1995-98; Centralia, Washington, 2003; Greensboro, North Carolina, 2003; and also "Exposing Workplace Sexual Violence" by Kelly Holsopple, Program Director, Freedom and Justice Center for Prostitution Resources, Minneapolis, Minnesota, and from "Sexually Oriented Businesses: An Insider's View"

by David Sherman, presented to the Michigan House Committee on Ethics and Constitutional Law, January 12, 2000, and the Report of the Attorney's General's Working Group on the Regulation of Sexually Oriented Businesses (June 6, 1989, State of Minnesota); the Board of County Commissioners finds:

1. Sexually oriented businesses, as a category of commercial uses, are associated with a wide variety of adverse secondary effects including, but not limited to, personal and property crimes, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on property values, urban blight, litter, and sexual assault and exploitation.

2. Sexual acts, including masturbation, oral and anal sex, sometimes inside the premises of or in the parking lot of unregulated sexually oriented businesses, including, but not limited to, those which provide private or semi-private booths, rooms, or cubicles for viewing films, videos, or live sexually explicit shows, which acts pose a risk to public health through the spread of sexually transmitted diseases.

3. Sexually oriented businesses should be separated from sensitive land uses to minimize the impact

of their secondary effects upon such uses, and should be separated from other sexually oriented businesses, to minimize the secondary effects associated with such uses and to prevent an unnecessary concentration of sexually oriented businesses in one area.

4. Each of the foregoing negative secondary effects constitutes a harm which the County has a substantial governmental interest in preventing and/or abating, and said substantial interest exists independent of any comparative analysis between sexually oriented businesses and non-sexually oriented businesses.

## **SECTION 2. DEFINITIONS.**

For the purposes of this Ordinance, the words and phrases defined in the sections hereunder shall have the meanings therein respectively ascribed to them unless a different meaning is clearly indicated by the context.

1. "Administrator" means the Nassau County Administrator or his/her designee.

2. "Adult Arcade" means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are regularly maintained to show images to five (5) or fewer persons per

machine at any one time, and where the images so displayed are characterized by their emphasis upon matter exhibiting "specified sexual activates" or "specified anatomical areas".

3. "Adult Bookstore or Adult Video Store" means a commercial establishment which, as one of its principal purposes, as defined below, offers for sale or rental for any form of consideration any one or more of the following: books, magazines, periodicals, or other printed material, or photographs, films, motion pictures, video cassettes, compact discs, digital video discs, slides, or other visual representation which are characterized by their emphasis upon the display of "specified sexual activities" or "specified anatomical areas".

a. A "principal purpose" means that the commercial establishment:

i. Has a substantial portion of its displayed merchandise, which consists of said items; or

ii. Has a substantial portion of the wholesale value of its displayed merchandise, which consists of said items; or

iii. Has a substantial portion of the retail value of its displayed merchandise, which consists of said items; or

iv. Derives a substantial portion of its revenues from the sale or rental, for any form of consideration of said items; or

v. Maintains a substantial section of its interior business space for the sale or rental of said items.

4. "Adult Cabaret" means a nightclub, bar, juice bar, restaurant, bottle club, or similar commercial establishment, whether or not alcoholic beverages are served, which regularly features persons who appear semi-nude.

5. "Adult Motel" means a motel, hotel, or similar commercial establishment which:

a. Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, other photographic reproductions, or live performances, which are characterized by the display of "specified sexual activities" or specified anatomical areas"; and which advertises the availability of such material by means of a sign visible from the public right-of-way, or by means of any on- or off-premises advertising, including, but not limited to, newspapers, magazines, pamphlets or leaflets, radio, or television; or



b. Offers a sleeping room for rent for a period of time that is less than ten (10) hours; or

c. Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten (10) hours.

6. "Adult Motion Picture Theater" means a commercial establishment where films, motion pictures, videocassettes, slides, or similar photographic reproductions which are characterized by their emphasis upon the display of "specified sexual activities" or specified anatomical areas" are regularly shown to more than five (5) persons for any form of consideration.

7. "Board of County Commissioners" means the Board of County Commissioners of Nassau County, Florida.

8. "Characterized" means to describe the essential character or quality of an item. As applied in this Ordinance, no business shall be classified as a sexually oriented business by virtue of showing, selling, or renting materials rated NC-17 or R by the Motion Picture Association of America.

9. "County" means Nassau County, Florida.

10. "Employ, Employee, and Employment" describe and pertain to any person who performs any service on the premises of a sexually oriented business, on a full-time,

part-time, or contract basis, whether or not the person is denominated an employee, independent contractor, agent, or otherwise. "Employee" does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.

11. "Establish or Establishment" shall mean and include any of the following:

a. The opening or commencement of any sexually oriented business as a new business;

b. The conversion of an existing business, whether or not a sexually oriented business, or any sexually oriented business; or

c. The addition of any sexually oriented business to any other existing sexually oriented business,

12. "Hearing Body" shall mean the Board of County Commissioners of Nassau County.

13. "Influential Interest" means any of the following: (1) the actual power, directly or indirectly, to control the operation, management or policies of a business or entity, or (2) holding an office (e.g., president, vice president, secretary, treasurer, etc.) or directorship in a legal entity which operates the sexually oriented business.

14. "Licensed Day Care Center" means a facility licensed by the State of Florida, whether situated within the County or not, that provides care, training, education, custody, treatment, or supervision for more than twelve (12) children under fourteen (14) years of age, where such children are not related by blood, marriage, or adoption to the owner or operator of the facility, for less than twenty-four (24) hours a day, regardless of whether or not the facility is operated for a profit or charges for the services it offers.

15. "Licenses" shall mean a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual or individuals listed as an applicant on the application for a sexually oriented business license. In case of an "employee", it shall mean the person in whose name the sexually oriented business employee license has been issued.

16. "Nudity or a State of Nudity" means the showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering, or showing the female breast with less than a fully opaque covering of any part of the nipple and areola.

17. "Operate or Cause to Operate" shall mean to cause to function or to put or keep in a state of doing business.

"Operator" means any person on the premises of a sexually oriented business who causes the business to function or who puts or keeps in operation the business or who is authorized to manage the business or exercise overall operational control of the business premises. A person may be found to be operating or causing to be operated a sexually oriented business whether or not that person is an owner, part owner, or licensee of the business.

18. "Person" shall mean an individual, proprietorship, partnership, corporation, association, or other legal entity.

19. "Premises" means the real property upon which the sexually oriented business is located, and all appurtenances thereto and buildings thereon, including, but not limited to, the sexually oriented business, the grounds, private walkways, and parking lots and/or parking garages adjacent thereto, under the ownership, control, or supervision of the licensee, as to Section 4 of this Ordinance.

20. "Regularly" means and refers to the consistent and repeated doing of an act so described.

21. "Semi-Nude or State of Semi-Nudity" means the showing of the female breast below a horizontal line across the top of the areola and extending across the width of the

breast at that point, or the showing of the male or female buttocks. This definition shall include the lower portion of the female breast, but shall not include any portion of the cleavage of the human female breasts exhibited by a dress, blouse, shirt, leotard, or similar wearing apparel provided the areola is not exposed in whole or in part.

22. "Semi-Nude Model Studio" means a place where persons regular appear in a state of semi-nudity for money or any form of consideration in order to be observed, sketched, drawn, painted, sculpted, photographed, or similarly depicted by other persons.

This definition does not apply to any place where persons appearing in a state of semi-nudity did so in a modeling class operated:

a. By a college, junior college, or university supported entirely or partly by taxation;

b. By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or

c. In a structure:

i. Which has no sign visible from the exterior of the structure and no other advertising that indicates a semi-nude person is available for viewing; and

ii. Where, in order to participate in a class, a student must enroll at least three (3) days in advance of the class.

23. "Sexual Device" means any three (3) dimensional object designed and marketed for stimulation of the male or female human genital organ or anus or for sadomasochistic use or abuse of oneself or others and shall include devices such as dildos, vibrators, penis pumps, and physical representations of the human genital organs. Nothing in this definition shall be construed to include devices primarily intended for protection against sexually transmitted diseases or for preventing pregnancy.

24. "Sexual Device Shop" means a commercial establishment that regularly features sexual devices. Nothing in this definition shall be construed to include any pharmacy, drug store, medical clinic, or any establishment primarily dedicated to providing medical or healthcare products or services, nor shall this definition be construed to include commercial establishments which do not restrict access to any portion of their premises by reason of age.

25. "Sexually Encounter Center" shall mean a business or commercial enterprise that, as one of its principal business purposes, purports to offer for any form of

consideration, physical contact in the form of wrestling or tumbling between persons of the opposite sex when one or more of the persons is semi-nude.

26. "Sexually Oriented Business" means an "adult bookstore or adult video store", an "adult cabaret", an "adult motel", and "adult motion picture theater", a "semi-nude model studio", "sexual device shops", or a "sexual encounter center".

27. "Sexually Anatomical Areas" means and includes:

a. Less than completely and opaquely covered human genitals, pubic region; buttock; and female breast below a point immediately above the top of the areola; and

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

28. "Specified Criminal Activity" means:

a. Any of the following specified crimes for which less than five (5) years elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date:

i. Any sex offense set forth in the Florida Statutes Annotated, or amendments thereto;

ii. Any crime set forth in the Florida Uniform Controlled Substances Act, of the Florida Statutes Annotated, or amendments thereof;

iii. Incest;  
iv. Obscenity;  
v. Distributing material harmful to  
minors; or

b. Any Florida municipal ordinance violation  
based upon any of the crimes set forth above in Subsections  
i. through v., inclusive; or

c. Any offenses in other jurisdictions that,  
had the predicate act(s) been committed in Florida, would  
have constituted any of the forgoing offenses.

29. "Specified Sexual Activity" means any of the  
following:

a. Intercourse, oral copulation, masturbation  
or sodomy; or

b. Excretory functions as a part of or in  
connection with any of the activities described in this  
definition.

30. "Substantial" means at least thirty-five percent  
(35%) of the item(s) so modified.

31. "Transfer of Ownership or Control" of a sexually  
oriented business shall mean any of the following:

a. The sale, lease or sublease of the business;  
b. The establishment of a trust, gift, or other  
similar legal device which transfers the ownership or



control of the business, except for transfer by bequest or other operation of law upon the death of the person possession the ownership or control.

32. "Viewing Room" shall mean the room, booth, or area where a patron of a sexually oriented business would ordinarily be positioned while watching a film, videocassette, or other video reproduction.

### **SECTION 3. CLASSIFICATION**

The classifications for sexually oriented businesses shall be as follows:

1. Adult bookstores or adult video stores;
2. Adult cabarets;
3. Adult motels;
4. Adult motion picture theaters;
5. Semi-nude model studios;
6. Sexual device shops;
7. Sexual encounter centers.

### **SECTION 4. LICENSE REQUIRED**

1. It shall be unlawful for any person to operate a sexually oriented business in Nassau County without a valid sexually oriented business license.

2. It shall be unlawful for any person to be an "employee", as defined in this Ordinance, of a sexually

oriented business in Nassau County without a valid sexually oriented business license.

3. An applicant for a sexually oriented business license or a sexually oriented business employee license shall file in person at the office of the Nassau County Administrator's Office, with a copy provided to the Building Department, a completed application made on a form provided by the County Administrator's Office. The application shall be signed as required herein and shall be notarized. An application shall be considered complete when it contains, for each person required to sign the application, the information and/or items required herein, accompanied by the appropriate fee identified herein:

a. The applicant's full true name and any other names used by the applicant in the preceding five (5) years.

b. Current business address and other mailing address of the applicant.

c. Written proof of age, in the form of a driver's license or a copy of a birth certificate accompanied by a picture identification document issued by a governmental agency.

d. A statement of whether an applicant has been convicted of or has pled guilty or nolo contendere to a

specified criminal activity as defined in this Ordinance, and, if so, each specified criminal activity involved, including the date, place, and jurisdiction of each, as well as the dates of conviction and release from confinement, where applicable.

e. A statement of whether any sexually oriented business in which an applicant has had an influential interest, has, in the previous five (5) years (and at any time during which the applicant had the influential interest);

i. Been declared by a Court of law to be a nuisance; or

ii. Been subject to a Court Order of closure or padlocking.

The information provided herein shall be supplemented in writing by certified mail, return receipt requested, to the County Administrator's Office within ten (10) working days of a change of circumstances which would render the information originally submitted false or incomplete.

f. If the application is for a sexually oriented business license:

i. The business name, location, legal description, mailing address, and telephone number of the sexually oriented business.

ii. The name and business address of the statutory agent or other agent authorized to receive service of process.

iii. An application for a sexually oriented business license shall be accompanied by a legal description of the property where the business is located and a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared, but shall be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches.

iv. Applicants who are required to comply with the provisions herein shall submit a diagram indicating that the interior configuration meets the requirements of the provisions herein.

4. If a person who wishes to operate a sexually oriented business is an individual, he/she shall sign the application for a license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each person with an influential interest in the business shall sign the application for a license as an applicant. Each applicant must be qualified

pursuant to the provisions of this Ordinance, and each applicant shall be considered a licensee if a license is granted.

5. The information provided by an applicant in connection with an application for a license under this Ordinance shall be maintained by the County Administrator's Office on a confidential basis, and such information may be disclosed only as may be required, and only to the extent required, by a Court Order.

#### **SECTION 5. ISSUANCE OF LICENSE**

1. Upon the filing of a completed application for a sexually oriented business license, the County Administrator shall immediately issue a Temporary License to the applicant, which Temporary License shall expire upon the final decision of the County to deny or grant an annual license. Within twenty (20) days of the filing of a completed sexually oriented business license, the County Administrator shall issue a license to the applicant or issue to the applicant a letter of intent to deny the application. The County Administrator shall issue a license unless:

a. An applicant is less than eighteen (18) years of age.

b. An applicant has failed to provide information pursuant to Section 3 for issuance of a license or has falsely answered a question or request for information on the application form.

c. The license application fee required by this Ordinance has not been paid.

d. The sexually oriented business, as defined herein, is not in compliance with the interior configuration requirements of this Ordinance or is not in compliance with locational requirements of this ordinance or any other part of the Nassau County Code.

e. Any sexually oriented business in which the applicant has had an influential interest, has, in the previous five (5) years (and at a time during which the applicant had the influential interest):

i. Been declared by a Court of law to be a nuisance; or

ii. Been subject to an order of closure or padlocking.

f. An applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in this Ordinance.

2. Upon the filing of a completed application for a sexually oriented business employee license, the Nassau

County Administrator shall immediately issue a Temporary License to the applicant, which Temporary License shall expire upon the final decision of the County to deny or grant an annual license. Within twenty (20) days of the filing date of a completed sexually oriented business employee license application, the County Administrator shall either issue a license or issue a written notice of intent to deny a license to the applicant. The County Administrator shall approve the issuance of a license unless:

a. An applicant is less than eighteen (18) years of age.

b. An applicant has failed to provide information pursuant to Section 4 for issuance of a license or has falsely answered a question or request for information on the application form.

c. The license application fee required by this Ordinance has not been paid.

d. Any sexually oriented business in which the applicant has had an influential interest, has, in the previous five (5) years (and at a time during which the applicant had the influential interest):

i. Been declared by a Court of law to be a nuisance; or

ii. Been subject to an order of closure or padlocking.

e. An applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in this Ordinance.

3. The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the number of the license issued to the licensee(s), the expiration date, and, if the license is for a sexually oriented business, the address of the sexually oriented business. The sexually oriented business license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be read at any time. A sexually oriented business employee shall keep the employee's license on his/her person or on the premises where the licensee is then working or performing.

#### **SECTION 6. FEES**

The initial license and annual renewal fees for sexually oriented business licenses and sexually oriented business employee licenses shall be as follows: two hundred fifty dollars (\$250.00) for the initial fee for a sexually oriented business license; and two hundred fifty dollars (\$250.00) for annual renewal; fifty dollars (\$50.00) for the initial sexually oriented business



employee license, and twenty-five dollars (\$25.00) for the annual renewal.

#### **SECTION 7. INSPECTION**

1. Sexually oriented businesses and sexually oriented business employees shall permit the County Administrator and/or his/her agents to inspect, from time to time on an occasional basis, the portions of the sexually oriented business premises where patrons are permitted, for the purpose of ensuring compliance with the specific regulations of this Ordinance, during those times when the sexually oriented business is occupied by patrons or is open to the public. This Section shall be narrowly construed by the County to authorize reasonable inspections of the licensed premises pursuant to this ordinance, but not to authorize a harassing or excessive pattern of inspections.

2. The provisions of this Section do not apply to areas of an adult motel that are currently being rented by a customer for use as a permanent or temporary habitation.

#### **SECTION 8. EXPIRATION OF LICENSE**

1. Each license shall remain valid for a period of one (1) calendar year from the date of issuance unless otherwise suspended or revoked. Such license may be

renewed only by making application and payment of a fee as provided in Sections 4 and 6.

2. Application for renewal should be made pursuant to the procedures set forth in Section 4 at least ninety (90) days before the expiration date, and when made less than ninety (90) days before the expiration date, the expiration of the license will not be affected.

#### **SECTION 9. SUSPENSION**

1. The County shall issue a written letter of intent to suspend a sexually oriented business license for a period of not to exceed thirty (30) days if the sexually oriented business licensee has knowingly violated this ordinance or has knowingly allowed an employee to violate this Ordinance.

2. The County shall issue a written letter of intent to suspend a sexually oriented business employee license if the employee has knowingly violated this Ordinance.

#### **SECTION 10. REVOCATION**

1. The County shall issue a letter of intent to revoke a sexually oriented business license or a sexually oriented business employee license, as applicable, if the licensee knowingly violates this Ordinance or has knowingly allowed an employee to violate this Ordinance, and the

licensee's license has been suspended within the previous twelve (12) month period.

2. The County shall issue written intent to revoke a sexually oriented business license or a sexually oriented business employee license, as applicable, if:

a. The licensee has knowingly given false information in the application for the sexually oriented business license.

b. The licensee has knowingly or recklessly engaged in or allowed possession, use, or sale of controlled substances on the premises;

c. The licensee has knowingly or recklessly engaged in or allowed prostitution on the premises;

d. The licensee knowingly or recklessly operated the sexually oriented business during a period of time when the license was finally suspended or revoked; or

e. The licensee has knowingly or recklessly engaged in or allowed any specified sexual activity to occur in or on the licensed premises.

3. The fact that any relevant conviction is being appealed shall have no effect on the revocation of the license, provided that, if any conviction which serves as a basis of a license revocation is overturned or reversed on

appeal, that conviction shall be treated as null and of no effect for revocation purposes.

4. When, after the notice and hearing procedure described in Section 11, the Board of County Commissioners revokes a license, the revocation shall continue for one (1) year, and the licensee shall not be issued sexually oriented business license or sexually oriented business employee license for one (1) year from the date revocation becomes effective.

**SECTION 11. HEARING; DENIAL, REVOCATION, AND SUSPENSION;  
APPEAL**

1. When the County Administrator issues a written notice of intent to deny, suspend, or revoke a license, the County Administrator shall immediately send such notice, which shall include the specific grounds under this Ordinance for such action, to the applicant or license (respondent) by personal delivery or certified mail. The notice shall be directed to the most current business address or other mailing address on file with the County Administrator for the respondent. The notice shall specify a date, not less than ten (10) days nor more than twenty (20) days after the date the notice is issued, on which the Board of County Commissioners shall conduct a hearing on

the County Administrator's intent to deny, suspend, or revoke the license.

At the hearing, the respondent shall have the opportunity to present all of respondent's arguments and to be represented by counsel, present evidence and witnesses on his/her behalf, and cross-examine any of the County Administrator's witnesses. The County Administrator shall bear the burden of proving the grounds for denying, suspending, or revoking the license. The hearing shall take no longer than two (2) days, unless extended at the request of the respondent to meet the requirements of due process and proper administration of justice. The Board of County Commissioners shall issue a written decision, including specific reasons for the decision pursuant to this Ordinance, to the respondent within five (5) days after the hearing.

If the decision is to deny, suspend, or revoke the license, the decision shall not become effective until the thirtieth (30<sup>th</sup>) day after it is rendered, and the decision shall include a statement advising the respondent of the right to appeal such decision to a Court of competent jurisdiction. If the Board of County Commissioners' decision finds that no grounds exist for denial, suspension, or revocation of the license, the Board of

County Commissioners shall, contemporaneously with the issuance of the decision, order the County Administrator to immediately withdraw the intent to deny, suspend, or revoke the license and to notify the respondent in writing by certified mail of such action. If the respondent is not yet licensed, the County Administrator shall contemporaneously therewith issue the license to the applicant.

2. If any Court action challenging the Board of County Commissioners' decision is initiated, the Board of County Commissioners shall prepare and transmit to the Court a transcript of the hearing within ten (10) days after receiving written notice of the filing of the Court action. The Board of County Commissioners shall consent to expedited briefing and/or disposition of the action, shall comply with any expedited schedule set by the Court, and shall facilitate prompt judicial review of the proceedings.

3. The following shall apply to any sexually oriented business that is in operation as of the effective date of this Ordinance: Upon the filing of any Court action to appeal, challenge, restrain, or otherwise enjoin the County's enforcement of the denial, suspension, or revocation, the County shall immediately issue the respondent a Provisional License. The Provisional License

shall allow the respondent to continue operation of the sexually oriented business or to continue employment as a sexually oriented business employee and will expire upon the Court's entry of a judgment on the respondent's appeal or other action to restrain or otherwise enjoin the County's enforcement.

#### **SECTION 12. TRANSFER OF LICENSE**

A licensee shall not transfer his/her license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the sexually oriented business license application.

#### **SECTION 13. HOURS OF OPERATION**

No sexually oriented business shall be or remain open for business between 10:00 p.m. and 7:00 a.m. Monday through Saturday. No sexually oriented business shall be open for business prior to 12:00 noon on Sunday.

#### **SECTION 14. REGULATIONS PERTAINING TO EXHIBITION OF SEXUALLY EXPLICIT FILMS OR VIDEOS**

1. A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space, a film, video cassette, or other video reproduction

characterized by an emphasis on the display of specified sexual activities or specified anatomical areas shall comply with the following requirements:

a. Each application for a sexually oriented business license shall contain a diagram of the premises showing the location of all operator's stations, viewing rooms, overhead lighting fixtures, video cameras and monitors installed for monitoring purposes and restrooms, and shall designate all portions of the premises in which patrons will not be permitted. Restrooms shall not contain video reproduction equipment. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram shall be oriented to the north or to some designated street or object and shall be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six (6) inches. The County Administrator may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and



certifies that the configuration of the premises has not been altered since it was prepared.

b. It shall be the duty of the operator, and of any employees present on the premises, to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to Paragraph a. of this subsection.

c. The interior premises shall be 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 five (5) foot candles as measured at the floor level. It shall be the duty of the operator, and of any employees present on the premises, to ensure that the illumination described above is maintained at all times that the premises is occupied by patrons or open for business.

d. It shall be the duty of the operator, and of any employees present on the premises, to ensure that no sexual activity occurs in or on the licensed premises.

e. It shall be the duty of the operator to post conspicuous signs in well-lighted entry areas of the business stating all of the following:

i. That the occupancy of viewing rooms is limited to one (1) person.

ii. That sexual activity on the premises is prohibited.

iii. That the making of openings between viewing rooms is prohibited.

iv. That violators will be required to leave the premises.

v. That violations of this Paragraph are unlawful.

f. It shall be the duty of the operator to enforce the regulations stated herein.

g. The interior of the premises shall be configured in such a manner that there is an unobstructed view from an operator's station of every area of the premises, including the interior of each viewing room, but excluding restrooms, to which any patron is permitted access for any purpose. An operator's station shall not exceed thirty-two (32) square feet of floor area. If the premises has two (2) or more operator's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one (1) of

the operator's stations. The view required in this Paragraph must be by direct line of sight from the operator's station. It is the duty of the operator to ensure that at least one (1) employee is on duty and situated in each operator's station at all times that any patron is on the premises. It shall be the duty of the operator, and it shall also be the duty of any employees present on the premises, to ensure that the view area specified in this Paragraph remains unobstructed by any doors, curtains, walls, merchandise, display racks, or other materials or enclosures at all times that any patrons is present on the premises.

2. It shall be unlawful for a person having a duty under this section to knowingly fail to fulfill that duty.

**SECTION 15. LOITERING, EXTERIOR LIGHTING, VISIBILITY, AND MONITORING REQUIREMENTS**

1. It shall be the duty of the operator of a sexually oriented business to: (a) post conspicuous signs stating that no loitering is permitted on such property; (b) designate one or more employees to monitor the activities of persons on such property by visually inspecting such property at least once every ninety (90) minutes or inspecting such property by use of video cameras and monitors; and (c) provide lighting of the exterior

premises to provide for visual inspection or video monitoring to prohibit loitering. If used, video cameras and monitors shall operate continuously at all times that the premises are open for business. The monitors shall be installed within an operator's station.

2. It shall be unlawful for a person having a duty under this Section to knowingly fail to fulfill that duty.

3. No sexually oriented business shall erect a fence, wall, or other barrier that prevents any portion of the parking lot(s) for the establishment from being visible from a public right-of-way.

#### **SECTION 16. PENALTIES AND ENFORCEMENT**

1. A person who knowingly violates, disobeys, omits, neglects, or refuses to comply with or resists the enforcement of any of the provisions of this Ordinance shall be guilty of a misdemeanor, and, upon conviction, shall be punishable by a fine in an amount not less than \$250.00 and not to exceed \$1,000.00, or imprisonment in the County Jail for a period not to exceed six (6) months. Each day a violation is committed, or permitted to continue, shall constitute a separate offence and shall be fined as such.

2. The County Attorney or his/her designee is hereby authorized to institute civil proceedings necessary for the

enforcement of this Ordinance to prosecute, restrain, or correct violations hereof. Such proceedings, including injunction, shall be brought in the name of the County, provided, however, that nothing in this Section and no action taken hereunder, shall be held to exclude such criminal or administrative proceedings as may be authorized by other provisions of this ordinance, or any of the laws or ordinances in force in the County or to exempt anyone violating this Code or any part of the said laws from any penalty which may be incurred.

#### **SECTION 17. APPLICABLE TO EXISTING BUSINESS**

All existing sexually oriented businesses and sexually oriented business employees are hereby granted a *De Facto* Temporary License to continue operation of employment for a period of one (1) year following the effective date of this Ordinance. By the end of said one (1) year period, all sexually oriented businesses and sexually oriented business employees must conform to and abide by the requirements of this Ordinance.

#### **SECTION 18. PROHIBITED ACTIVITIES**

It is unlawful for a sexually oriented business to knowingly violate the following regulations or to knowingly allow an employee or any other person to violate the following regulations:

1. It shall be a violation of this Ordinance for a patron, employee, or any other person to knowingly or intentionally, in a sexually oriented business, appear in a state of nudity, regardless of whether such public nudity is expressive in nature.

2. It shall be a violation of this Ordinance for a person to knowingly or intentionally, in a sexually oriented business, appear in a semi-nude condition and use or display devices used primarily for the stimulation of human genital organs unless the person is an employee who, while semi-nude, remains at least six (6) feet from any patron or customer and on a stage at least eighteen (18) inches from the floor in a room of at least one thousand (1,000) square feet.

3. It shall be a violation of this Ordinance for any employee who regularly appears semi-nude in a sexually oriented business to knowingly or intentionally touch a customer or the clothing of a customer on the premises of a sexually oriented business.

4. It shall be a violation of this Ordinance for any person to sell, use, or consume alcoholic beverages on the premises of a sexually oriented business.

A sign in a form to be prescribed by the County Administrator's office and summarizing the provisions of

this Section shall be posted near the entrance of the sexually oriented business in such a manner as to clearly visible to patrons upon entry.

**SECTION 19. SCIENTER REQUIRED TO PROVE VIOLATION OR BUSINESS LICENSEE LIABILITY**

This Ordinance does not impose strict liability. Unless a culpable mental state is otherwise specified herein, a showing of a knowing or reckless mental state is necessary to establish a violation of a provision of this Ordinance. Notwithstanding anything to the contrary, for the purposes of this Ordinance, an act by an employee that constitutes grounds for suspension or revocation of that employee's license shall be imputed to the sexually oriented business licensee for purposes of finding a violation of this Ordinance, or for the purposes of license denial, suspension, or revocation, only if an officer, director, or general partner, or a person who managed, supervised, or controlled the operation of the business premises, knowingly or recklessly allowed such act to occur on the premises. It shall be a defense to liability that the person to whom liability is imputed was powerless to prevent the act.

**SECTION 20. FAILURE OF COUNTY TO MEET DEADLINE NOT TO RISK APPLICANT/LICENSEE RIGHTS**

In the event that a County official is required to take an act or do a thing pursuant to this Ordinance within a prescribed time, and fails to take such action or do such thing within the time prescribed, said failure shall not prevent the exercise of constitutional rights of an applicant or licensee. If the act required of the County official under this Ordinance, and not completed in the time prescribed, includes approval of condition(s) necessary for approval by the County of an applicant or licensee's application for a sexually oriented business license or a sexually oriented business employee's license (including a renewal), the license shall be deemed granted and the business or employee allowed to commence operations or employment the day after the deadline for the County's action has passed.

#### **SECTION 21. SEVERABILITY**

This Ordinance and each section and provision of this Ordinance, are hereby declared to be independent divisions and subdivisions and, notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that, if any provisions of this Ordinance, or the application thereof to any person or circumstance is held to be invalid, the remaining sections or provisions and the application of such sections and



provisions to any person or circumstances other than those to which it is held invalid, shall not be affected thereby, and it is hereby declared that such sections and provisions would have been passed independently of such section or provision so known to be invalid. Should any procedural aspect of this Ordinance be invalidated, such invalidation shall not affect the enforceability of the substantive aspects of this Ordinance.

**SECTION 22. CONFLICTING CODE PROVISIONS REPEALED**

Any provision(s) in the Nassau County Code of Ordinances specifically in conflict with any provision in this Ordinance is hereby deemed inoperative and repealed.

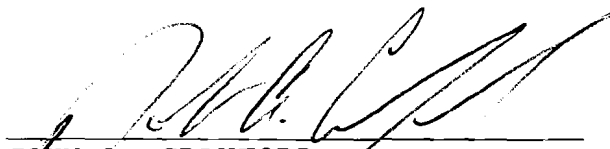
**SECTION 23. EFFECTIVE DATE**

This Ordinance shall become effective upon its being filed in the Office of the Secretary of State.

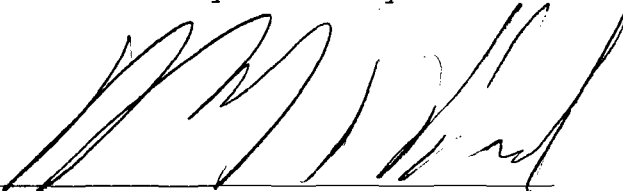
BOARD OF COUNTY COMMISSIONERS  
NASSAU COUNTY, FLORIDA

  
ANSLEY N. ACREE  
Its: Chairman

ATTEST:

  
JOHN A. CRAWFORD  
Its: Ex-Officio Clerk

Approved as to form by the  
Nassau County Attorney

  
MICHAEL S. MULLIN

z/amyers/ords/sexually-oriented-businesses