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DEPT. OF HEALTH & HUMAN SERVICES
TALLAHASSEE, FLORIDA

ORDINANCE NO. 2003-14

AN ORDINANCE RELATING TO SEXUALLY ORIENTED BUSINESSES; STATING A PURPOSE AND MAKING FINDINGS OF FACT; PROVIDING DEFINITIONS; PROVIDING FOR CLASSIFICATION OF SEXUALLY ORIENTED BUSINESSES; REQUIRING LICENSES AND ESTABLISHING APPLICATION PROCEDURES; REQUIRING ISSUANCE OF LICENSES BY COUNTY UNLESS SPECIFIC CRITERIA MANDATE DENIAL, AND PROVIDING FOR AN APPEAL PROCEDURE; SETTING LICENSE FEES; PROVIDING FOR INSPECTION; SPECIFYING LICENSE TERM AND EXPIRATION; PROVIDING FOR SUSPENSION OF LICENSES; PROVIDING FOR REVOCATION OF LICENSES; AUTHORIZING AGGRIEVED APPLICANTS OR LICENSEES TO SEEK PROMPT JUDICIAL REVIEW; PROHIBITING TRANSFER OF LICENSES; SETTING FORTH ADDITIONAL REGULATIONS FOR CERTAIN SPECIFIC CLASSIFICATIONS OF SEXUALLY ORIENTED BUSINESSES; SUPPLEMENTING EXISTING REGULATIONS ON PUBLIC NUDITY; PROVIDING SPECIFIC REGULATIONS PERTAINING TO EXHIBITION OF CERTAIN FILMS AND VIDEOS; PROHIBITING SALE, USE OR CONSUMPTION OF ALCOHOLIC BEVERAGES ON PREMISES OF SEXUALLY ORIENTED BUSINESSES; PROHIBITING ENTRY OF UNDERAGE PERSONS; REGULATING MASSAGES OR BATHS IN SEXUALLY ORIENTED BUSINESSES; PROVIDING FOR HOURS OF OPERATION; PROVIDING FOR NOTICES; ESTABLISHING NEW LAND DEVELOPMENT REGULATIONS PERTAINING TO AUTHORIZED LOCATIONS AND LOCATIONAL RESTRICTIONS FOR SEXUALLY ORIENTED BUSINESSES, NON-CONFORMING USES, AMORTIZATION, BUSINESS EXTERIORS AND SIGNAGE; PROVIDING THAT VIOLATIONS MAY BE ENJOINED; PROVIDING FOR AN EFFECTIVE DATE AND SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE AND REPEALING SUPERSEDED CODE PROVISIONS AND HERNANDO COUNTY ORDINANCE NO. 85-1.

WHEREAS, sexually oriented businesses 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 the communities where they locate, and

WHEREAS, the Hernando County Board of County Commissioners finds that sexually oriented businesses are frequently used for unlawful sexual activities, including prostitution and sexual liaisons of a casual nature; and, the concern over sexually transmitted diseases is a legitimate health concern of the County that demands reasonable regulation of sexually oriented businesses in order to protect the health and well-being of the citizens; and

WHEREAS, licensing is a legitimate means of accountability to ensure that operators of sexually oriented businesses comply with reasonable regulations, and to ensure that operators do not allow their establishments to be used as places of illegal sexual activity or solicitation; and

WHEREAS, there is convincing documented evidence that sexually oriented businesses, because of their very nature, have a deleterious effect on both the existing businesses around them and the surrounding residential areas adjacent to them, causing increased crime and the downgrading of property values; and

WHEREAS, it is recognized that sexually oriented businesses, due to their nature, have serious objectionable operational characteristics, particularly when they are located in proximity to each other, thereby contributing to urban blight and downgrading the quality of life in the adjacent area; and

WHEREAS, the Hernando County Board of County Commissioners wants to prevent these adverse effects 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 surrounding neighborhoods and deter the spread of urban blight; and

WHEREAS, it is not the intent of this ordinance to suppress any speech activities protected by the First Amendment, but to enact a content neutral ordinance that addresses the secondary effects of sexually oriented businesses as well as the health problems associated with such businesses; and

WHEREAS, it is not the intent of the Hernando County Board of County Commissioners to condone or legitimize the distribution of obscene materials, and the council recognizes that state and federal law prohibits the distribution of obscene materials and expects and encourages state enforcement officials to enforce state and federal obscenity statutes against any such illegal activities in Hernando County.

NOW THEREFORE

BE IT ORDAINED BY THE HERNANDO COUNTY BOARD OF COUNTY COMMISSIONERS:

SECTION 1. Purpose and Findings.

(A) Purpose. It is the purpose of this ordinance to regulate sexually oriented businesses and related activities to promote the health, safety, morals, and general welfare of the citizens of the County. The provisions of this ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor 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. Neither is it the intent nor effect of this ordinance to condone or legitimize the distribution of obscene materials.

(B) Findings. Based on evidence concerning the adverse secondary effects of adult uses on the community presented in hearings and in reports made available to the Hernando County Board of County Commissioners, and on findings incorporated in the cases of *County of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theatres*, 426 U.S. 50 (1976); and *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *Arcara v. Cloud Books, Inc.*, 478 U.S. 697, (1986); *California v. LaRue*, 409 U.S. 109 (1972); *Iacobucci v. County of Newport, Ky*, 479 U.S. 92 (1986); *United States v. O'Brien*, 391 U.S. 367 (1968); *DLS, Inc. v. County of Chattanooga*, 107 F.3d 403 (6th Cir.1997); *Kev, Inc. v. Kitsap County*, 793 F.2d 1053 (9th Cir.1986); *Hang On, Inc. v. County of Arlington*, 65 F.3d 1248 (5th Cir.1995); *ILQ, Inv. Inc. v. City of Rochester*, 25 F.3d 1413 (8th Cir. 1994); *Z.J. Gifts, L.L.C. v. City of Aurora*, 136 F.3d 683 (10th Cir. 1998); and *South Florida Free Beaches, Inc. v. County of Miami*, 734 F.2d 608 (11th Cir.1984), as well as studies conducted by other local governments, including, but not limited to, Phoenix, Arizona; Minneapolis, Minnesota; St. Paul, Minnesota; Houston, Texas; Indianapolis, Indiana; Amarillo, Texas; Garden Grove, California; Los Angeles, California; Whittier, California; Austin, Texas; Seattle, Washington; Oklahoma County, Oklahoma; Cleveland, Ohio; Beaumont, Texas; Manatee County, Florida; and findings reported in the Final Report of the Attorney General's Commission on Pornography (1986), the Report of the Attorney General's Working Group On the Regulation Of Sexually Oriented Businesses (June 6, 1989, State of Minnesota), and statistics obtained from the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, the Hernando County Board of County Commissioners finds that:

(1) Sexually oriented businesses lend themselves to ancillary unlawful and unhealthy activities that are often not effectively controlled by the operators of the establishments. Further, there is presently no adequate mechanism to make owners of these establishments responsible for the activities that occur on their premises.

(2) Crime statistics show that all types of crimes, especially sex-related crimes, occur with more frequency in neighborhoods where sexually oriented businesses are located. *See, e.g.*, Studies of the cities of Phoenix, Arizona; Indianapolis, Indiana; and Austin, Texas.

(3) Sexual acts, including masturbation, and oral and anal sex, occur at sexually oriented businesses, especially those which provide private or semi-private booths or cubicles for viewing films, videos, or live sex shows. *See, e.g.*, *California v. LaRue*, 409 U.S. 109, 111 (1972); *See also* Final Report of

the Attorney General's Commission on Pornography (1986) at 377.

(4) Offering and providing such booths and/or cubicles encourages such activities, which creates unhealthy conditions. *See, e.g.*, Final Report of the Attorney General's Commission on Pornography (1986) at 376-77.

(5) Persons frequent certain adult theaters, adult arcades, and other sexually oriented businesses, for the purpose of engaging in sex within the premises of such sexually oriented businesses. *See, e.g.*, *Arcara v. Cloud Books, Inc.*, 478 U.S. 697, 698 (1986); *see also* Final Report of the Attorney General's Commission on Pornography (1986) at 376-77.

(6) At least 50 communicable diseases may be spread by activities occurring in sexually oriented businesses including, but not limited to, syphilis, gonorrhea, human immunodeficiency virus infection (HIV-AIDS), genital herpes, hepatitis B, Non A, Non B amebiasis, salmonella infections, and shigella infections. *See, e.g.*, Study of Fort Myers, Florida.

(7) For the period 1985 through 1995, the total number of reported cases of AIDS in the United States caused by the immunodeficiency virus (HIV) was 523,056. *See, e.g.*, Statistics of the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention.

(8) Since 1981 and to the present, there has been an increasing cumulative number of persons testing positive for HIV antibody test in Florida.

(9) The total number of cases of early (less than one year) syphilis in the United States reported during the ten year period 1985-1995 was 367,796. *See, e.g.*, Statistics of the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention.

(10) The number of cases of gonorrhea in the United States reported annually remains at a high level, with a total of 1,250,581 cases reported during the period 1993-1995. *See, e.g.* Statistics of the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention.

(11) The surgeon general of the United States in his report of October 22, 1986, advised the American public that AIDS and HIV infection may be transmitted through sexual contact, intravenous drug use, exposure to infected blood and blood components, and from an infected mother to her newborn.

(12) According to the best scientific evidence available, AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by

sexual acts. See, e.g. Findings of the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention.

(13) Sanitary conditions in some sexually oriented businesses are unhealthy, in part, because the activities conducted there are unhealthy, and, in part, because of the unregulated nature of the activities and the failure of the owners and the operators of the facilities to self-regulate those activities and maintain those facilities. See, e.g., Final Report of the Attorney General's Commission on Pornography (1986) at 377.

(14) Numerous studies and reports have determined that bodily fluids, including semen and urine, are found in the areas of sexually oriented businesses where persons view "adult" oriented films. See, e.g., Final Report of the Attorney General's Commission on Pornography (1986) at 377.

(15) Nude dancing in adult establishments encourages prostitution, increases sexual assaults, and attracts other criminal activity. See, e.g., *Barnes v. Glen Theatre*, 501 U.S. 560, 583 (1991).

(16) Nude dancing in adult establishments increases the likelihood of drug-dealing and drug use. See, e.g., *Kev, Inc. v. Kitsap County*, 793 F.2d 1053, 1056 (9th Cir.1986).

(17) Location of sexually oriented businesses proximate to residentially zoned property have an adverse effect on property values and lead to deterioration of neighborhoods and community blight. See the St.Paul, Minnesota, and Indianapolis, Indiana, studies in particular and the findings approved in *ILQ, Inv. Inc. v. City of Rochester*, 25 F.3d 1413 (8th Cir. 1994); and *Z.J. Gifts, L.L.C. v. City of Aurora*, 136 F.3d 683 (10th Cir. 1998), for example. Location of such businesses proximate to religious establishments, schools, parks, licensed day care centers, and other areas or establishments frequented by families and children pose particular issues of safety and concern in view of the previous findings herein.

(18) The findings noted in paragraphs numbered (1) through (17) raise substantial governmental concerns.

(19) Sexually oriented businesses have operational characteristics which should be reasonably regulated in order to protect those substantial governmental concerns.

(20) A reasonable licensing procedure is an appropriate mechanism to place the burden of that reasonable regulation on the owners and the operators of the sexually oriented businesses. Further, such a licensing procedure will place a

heretofore non-existent incentive on the operators to see that the sexually oriented business is run in a manner consistent with the health, safety, and welfare of its patrons and employees, as well as the citizens of the County. It is appropriate to require reasonable assurances that the licensee is the actual operator of the sexually oriented business, fully in possession and control of the premises and activities occurring therein.

(21) Removal of doors on adult booths and requiring sufficient lighting on the premises with adult booths advances a substantial governmental interest in curbing the illegal and unsanitary sexual activity occurring in adult establishments.

(22) The disclosure of certain information by those persons ultimately responsible for the day-to-day operation and maintenance of the sexually oriented business, where such information is substantially related to the significant governmental interest in the operation of such uses, will aid in preventing the spread of sexually transmitted diseases and criminal activity.

(23) It is desirable in the prevention of the spread of communicable diseases to obtain a limited amount of information regarding certain employees who may engage in the conduct this ordinance is designed to prevent or who are likely to be witnesses to such activity.

(24) The fact that an applicant for a sexually oriented business license has been convicted of a sex-related crime leads to the rational assumption that the applicant may engage in that conduct in contravention to this ordinance.

(25) The barring of such individuals from operation or employment in sexually oriented businesses for a period of ten (10) years for a previous felony conviction serves as a deterrent to and prevents conduct which leads to the transmission of sexually transmitted diseases.

(26) The general welfare, health, morals, and safety of the citizens of this County will be promoted by the enactment of this ordinance.

(27) Substantial case law from the U.S. Circuit Court of Appeal for the Eleventh Circuit as applicable to federal court jurisdiction in Florida supports the validity of a licensing ordinance with provisions similar to those contained herein based on Findings of the type cited in this section.

(C) CONCLUSIONS

- (1) It is the finding of the Hernando County Board of County Commissioners that public nudity (either partial or total) under certain circumstances, particularly circumstances related to the sale or consumption of alcoholic beverages in establishments offering live nude entertainment or "adult entertainment," (whether such alcoholic beverages are sold on the premises or not) begets criminal behavior and tends to create undesirable community conditions. In the same manner, other adult businesses have the same deleterious effects on the community.
- (2) Among the acts of criminal behavior found to be associated with the commercial combination of live nudity and alcohol, commercial nudity in general, and other adult businesses are disorderly conduct, prostitution, public solicitation, public indecency, drug use and drug trafficking. Among the undesirable community conditions identified with the commercial combination of live nudity and alcohol, commercial nudity in general, and other adult businesses are depression of property values and acceleration of community blight in the surrounding neighborhood, increased allocation of and expenditure for law enforcement personnel to preserve law and order, and increased burden on the judicial system as a consequence of the criminal behavior hereinabove described. The city council finds it is reasonable to believe that some or all of these undesirable community conditions would result in Hernando County as well.
- (3) The Hernando County Board of County Commissioners therefore concludes that it is in the best interests of the health, welfare, safety and morals of the community and the preservation of its businesses, neighborhoods, and of churches, schools, residential areas, public parks and playgrounds to prevent or reduce the adverse impacts of adult business establishments. Therefore, the Board finds that licensing and regulations are necessary for any adult business establishment. The Board finds that these regulations promote the public welfare by furthering legitimate public and governmental interests, including but not limited to, reducing criminal activity and protecting against or eliminating undesirable community conditions and further finds that such will not infringe upon the protected constitutional rights of freedom of speech or expression. To that end, this ordinance is hereby adopted.

SECTION 2. Definitions.

(1) **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 maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of "specified sexual activities" or "specified anatomical areas."

(2) **ADULT BOOKSTORE** or **ADULT VIDEO STORE** means a commercial

establishment that, as one of its principal business purposes, offers for sale or rental for any form of consideration any one or more of the following:

(A) books, magazines, periodicals or other printed matter, or photographs, films, motion picture, video cassettes or video reproductions, slides, or other visual representations that depict or describe "specified sexual activities" or "specified anatomical areas"; or

(B) instruments, devices, or paraphernalia that are designed for use in connection with "specified sexual activities."

A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing "specified sexual activities" or "specified anatomical areas" and still be categorized as ADULT BOOKSTORE or ADULT VIDEO STORE. Such other business purposes will not serve to exempt such commercial establishments from being categorized as an ADULT BOOKSTORE or ADULT VIDEO STORE so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials that depict or describe "specified sexual activities" or "specified anatomical areas." A principal business purpose need not be a primary use of an establishment so long as it is a significant use based upon the visible inventory or commercial activity of the establishment.

(3) ADULT CABARET means a nightclub, bar, restaurant, or similar commercial establishment that regularly features:

(A) persons who appear in a state of nudity or semi-nudity; or

(B) live performances that are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities"; or

(C) films, motion pictures, video cassettes, slides, or other photographic reproductions that are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; or

(D) persons who engage in erotic dancing or performances that are intended for the sexual interests or titillation of an audience or customers.

(4) ADULT MOTEL means a hotel, motel or similar commercial establishment that:

(A) offers accommodation to the public for any form of consideration and provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions that are characterized by the depiction or description of "specified sexual activities" or

"specified anatomical areas"; and has a sign visible from the public right of way that advertises the availability of this adult type of photographic reproductions; or

(B) offers a sleeping room for rent for a period of time that is less than twenty-four (24) hours, excluding the period between posted check-in and check-out times, provided such period is no more than four hours; or

(C) allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than twenty-four (24) hours.

(5) ADULT MOTION PICTURE THEATER means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown that are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

(6) ADULT THEATER means a theater, concert hall, auditorium, or similar commercial establishment that regularly features persons who appear, in person, in a state of nudity and/or semi-nudity, and/or live performances that are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities."

(7) DIRECTOR means the administrative official as provided for in Appendix A, Hernando County Code of Ordinances, or such other official as designated in writing by the County Administrator.

(8) EMPLOYEE means a person who performs any service on the premises of a sexually oriented business on a full time, part time, contract basis, or independent basis, whether or not the person is denominated an employee, independent contractor, agent, or otherwise, and whether or not the said person is paid a salary, wage, or other compensation by the operator of said business. "Employee" does not include a person exclusively on the premises for repair or maintenance of the premises or equipment on the premises, or for the delivery of goods to the premises, nor does "employee" include a person exclusively on the premises as a patron or customer.

(9) ESCORT means a person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

(10) ESCORT AGENCY means a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration.

(11) ESTABLISHMENT means and includes 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, to any sexually oriented business;

(C) the additions of any sexually oriented business to any other existing sexually oriented business; or

(D) the relocation of any sexually oriented business; or

(E) a sexually oriented business or premises on which the sexually oriented business is located.

(12) 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.

(13) LICENSEE means a person in whose name a license has been issued, as well as the individual listed as an applicant on the application for a license.

(14) NUDE MODEL STUDIO means any place where a person who appears in a state of nudity or semi-nudity or who displays "specified anatomical areas" is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons for consideration, either directly or indirectly.

(15) NUDITY or a STATE OF NUDITY means the appearance of a human bare buttock, anus, anal cleft or cleavage, pubic area, male genitals, female genitals, or vulva, with less than a fully opaque covering; or a female breast with less than a fully opaque covering of any part of the nipple; or human male genitals in a discernibly turgid state even if completely and opaquely covered; or any condition under which a person is in violation of the Hernando County Public Nudity Ordinance.

(16) PERSON means an individual, proprietorship, partnership, corporation, association, or other legal entity.

(17) 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 described in the application for a business license pursuant to Section 4 of this ordinance;

(18) RESIDENTIAL DISTRICT means a zoning district set forth in Section 2, Article IV, Appendix A, Hernando County Code of Ordinances.

(19) SEMI-NUDE OR SEMI-NUDITY means the appearance of the female breast below a horizontal line across the top of the areola at its highest point. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast exhibited by a dress, blouse, skirt, leotard, bathing suit, or other wearing apparel provided the areola is not exposed in whole or in part and the person is not in violation of any other ordinance or code provision regulating public nudity.

(20) SEXUAL ENCOUNTER CENTER means a business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:

(A) physical contact in the form of wrestling or tumbling between persons of the opposite sex; or

(B) activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nudity.

(21) SEXUALLY ORIENTED BUSINESS means an adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, or sexual encounter center.

(22) SPECIFIED ANATOMICAL AREAS means:

(A) the human male genitals in a discernibly turgid state, even if fully and opaquely covered;

(B) less than completely and opaquely covered human genitals, pubic region, buttocks, or a female breast below a point immediately above the top of the areola.

(23) SPECIFIED CRIMINAL ACTIVITY means any of the following offenses:

(A) prostitution or promotion of prostitution; dissemination of obscenity; sale, distribution, or display of harmful material to a minor; sexual performance by a child; possession or distribution of child pornography; public lewdness; indecent exposure; indecency with a child; sexual assault; molestation of a child; or any similar sex-related offenses to those described above under the criminal or penal code of this state, other states, or other countries.

(B) for which:

(1) less than five (5) years have 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;

(2) less than ten (10) years have 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;

(3) less than ten (10) years have elapsed since the date of the last conviction or the date of release from confinement imposed for the last conviction, whichever is the later date, if the convictions are of two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any twenty-four (24) month period;

(C) The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant or a person residing with the applicant.

(24) SPECIFIED SEXUAL ACTIVITIES means and includes any of the following:

(A) the fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts, whether covered or uncovered;

(B) sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;

(C) masturbation, actual or simulated; or

(D) excretory functions as part of or in connection with any of the activities set forth in (A) through (C) above.

(25) SUBSTANTIAL ENLARGEMENT of a sexually oriented business means the increase in floor areas occupied by the business by more than twenty-five (25%) percent, as the floor areas exist on the effective date of this ordinance.

(26) TRANSFER OF OWNERSHIP OR CONTROL of a sexually oriented business means and includes any of the following:

(A) the sale, lease, or sublease of the business;

(B) the transfer of securities that form a controlling interest in the business, whether by sale, exchange, or similar means; or

(C) the establishment of a trust, gift, or other similar legal device that transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

SECTION 3. Classification.

Sexually oriented businesses are classified as follows:

- (1) adult arcades;
- (2) adult bookstores or adult video stores;
- (3) adult cabarets;
- (4) adult motels;
- (5) adult motion picture theaters;
- (6) adult theaters;
- (7) escort agencies;
- (8) nude model studios; and
- (9) sexual encounter centers.

SECTION 4. License Required.

(A) It shall be unlawful:

- (1) For any person to operate a sexually oriented business without a valid sexually oriented business license issued by the Director pursuant to this ordinance;
- (2) For any person who operates a sexually oriented business to employ a person to work and/or perform services on the premises of the sexually oriented business, if such employee is not in possession of a valid sexually oriented business employee license issued to such employee by the Director pursuant to this ordinance;
- (3) For any person to obtain employment with a sexually oriented business if such person is not in possession of a valid sexually oriented business employee license issued to such person by the Director pursuant to this ordinance.
- (4) It shall be a defense to subsections (2) and (3) of this Section if the employment is of limited duration and for the sole purpose of repair and/or maintenance of machinery, equipment, or the premises.

Violation of any provision within this Subsection shall constitute a misdemeanor, **and may be subject to any other remedy for enforcement, as provided by Section 27 hereof.**

(B) An application for a sexually oriented business license must be made on a form provided by the County. The application must be accompanied by a sketch or a 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 must 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 inches. Prior to issuance of a license, the premises must be inspected by the health department, fire department, building department, and zoning department.

(C) An application for a sexually oriented business employee license must be made on a form provided by the County.

(D) All applicants for a license must be qualified according to the provisions of this ordinance. The application may request, and the applicant shall provide, such information (including fingerprints) as to enable the County to determine whether the applicant meets the qualifications established under this ordinance. The applicant has an affirmative duty to supplement an application with new information received subsequent to the date the application was deemed completed.

(E) If a person who wishes to own operate a sexually oriented business is an individual, he must sign the application for a business license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each individual who has a ten (10%) percent or greater interest in the business must sign the application for a business license as applicant. If a corporation is listed as owner of a sexually oriented business or as the entity that wishes to operate such a business, each individual having a ten (10%) percent or greater interest in the corporation must sign the application for a business license as applicant.

(F) Applications for a business license, whether original or renewal, must be made to the Director by the intended operator of the enterprise. Applications must be submitted to the office of the Director or the Director's designee during regular working hours. Application forms shall be supplied by the Director. The following information shall be provided on the application form:

- (1) The name, street address (and mailing address if different) of the applicant(s);
- (2) A recent photograph of the applicant(s);

- (3) The applicant's driver's license number, Social Security number, and/or his/her state or federally issued tax identification number;
- (4) The name under which the establishment is to be operated and a general description of the services to be provided;
 - (a) If the applicant intends to operate the sexually oriented business under a name other than that of the applicant; he or she must state 1) the sexually oriented business's fictitious name and 2) submit the required registration documents;
- (5) Whether the applicant, or a person residing with the applicant, has been convicted, or is awaiting trial on pending charges, of a "specified criminal activity" as defined in Section 2, subsection (22), and, if so, the "specified criminal activity" involved, the date, place, and jurisdiction of each;
- (6) Whether the applicant, or a person residing with the applicant, has had a previous license under this ordinance or other similar sexually oriented business ordinance from another County or county denied, suspended or revoked, including the name and location of the sexually oriented business for which the business license was denied, suspended or revoked, as well as the date of the denial, suspension or revocation, and whether the applicant or a person residing with the applicant is or has been a partner in a partnership or an officer, director or principal stockholder of a corporation that is or was licensed under a sexually oriented business ordinance whose business license has previously been denied, suspended or revoked, including the name and location of the sexually oriented business for which the business license was denied, suspended or revoked as well as the date of denial, suspension or revocation;
- (7) Whether the applicant or a person residing with the applicant holds any other licenses under this ordinance or other similar sexually oriented business ordinance from another County or county and, if so, the names and locations of such other licensed businesses;
- (8) The single classification of license, as found in Section 3, for which the applicant is filing;
- (9) The telephone number of the establishment;
- (10) The address, and legal description of the tract of land on which the establishment is to be located;

(11) If the establishment is in operation, the date on which the owner(s) acquired the establishment for which the business license is sought, and the date on which the establishment began operations as a sexually oriented business at the location for which the business license is sought;

(12) If the establishment is not in operation, the expected startup date (which shall be expressed in number of days from the date of issuance of the business license). If the expected startup date is to be more than ten (10) days following the date of issuance of the business license, then a detailed explanation of the construction, repair or remodeling work or other cause of the expected delay and a statement of the owner's time schedule and plan for accomplishing the same;

(13) If an applicant wishes to operate a sexually oriented business, other than an adult motel, which shall exhibit on the premises, in a viewing room or booth of less than one hundred fifty (150) square feet of floor space, films, video cassettes, other video reproductions, or live entertainment which depict specified sexual activities or specified anatomical areas, then the applicant shall comply with the application requirements set forth in Section 19 hereunder.

(G) Each application for a business license shall be accompanied by the following:

(1) Payment of the application fee in full;

(2) If the establishment is a Florida corporation, a certified copy of the articles of incorporation, together with all amendments thereto;

(3) If the establishment is a foreign corporation, a certified copy of the certificate of authority to transact business in this state, together with all amendments thereto;

(4) If the establishment is a limited partnership formed under the laws of Florida, a certified copy of the certificate of limited partnership, together with all amendments thereto;

(5) If the establishment is a foreign limited partnership, a certified copy of the certificate of limited partnership and the qualification documents, together with all amendments thereto;

(6) Proof of the current fee ownership of the tract of land on which the establishment is to be situated in the form of a copy of the recorded deed;

(7) If the persons identified as the fee owner(s) of the tract of land in item (6) are not also the owners of the establishment, then the lease, purchase contract,

purchase option contract, lease option contract or other document(s) evidencing the legally enforceable right of the owners or proposed owners of the establishment to have or obtain the use and possession of the tract or portion thereof that is to be used for the establishment for the purpose of the operation of the establishment;

(8) Any of items (2) through (7), above shall not be required for a renewal application if the applicant states that the documents previously furnished the Director with the original application or previous renewals thereof remain correct and current.

(H) Applications for an employee license to work and/or perform services in a sexually oriented business, whether original or renewal, must be made to the Director by the person to whom the employee license shall issue. Each application for an employee license shall be accompanied by payment of the application fee in full. Application forms shall be supplied by the Director. Applications must be submitted to the office of the Director or the Director's designee during regular working hours. Each applicant shall be required to give the following information on the application form:

(1) The applicant's given name, and any other names by which the applicant is or has been known, including "stage" names and/or aliases;

(2) Age, and date and place of birth;

(3) Height, weight, hair color, and eye color;

(4) Present residence address and telephone number;

(5) Present business address and telephone number;

(6) Date, issuing state, and number of photo driver's license, or other state issued identification card information;

(7) Social Security Number; and

(8) Proof that the individual is at least eighteen (18) years old.

(I) Attached to the application form for a license shall be the following:

(1) A color photograph of the applicant clearly showing the applicant's face, and the applicant's fingerprints on a form provided by the police department. Any fees for the photographs and fingerprints shall be paid by the applicant.

(2) A statement detailing the license history of the applicant for the five (5) years

immediately preceding the date of the filing of the application, including whether such applicant, in this or any other County, city, state, or country, has ever had any license, permit, or authorization to do business denied, revoked, or suspended, or had any professional or vocational license or permit denied, revoked, or suspended. In the event of any such denial, revocation, or suspension, state the name(s) under which the license was sought and/or issued, the name(s) of the issuing or denying jurisdiction, and describe in full the reason(s) for the denial, revocation, or suspension. A copy of any order of denial, revocation, or suspension shall be attached to the application.

(3) A statement whether the applicant has been convicted, or is awaiting trial on pending charges, of a "specified criminal activity" as defined in Section 2, subsection (22) and, if so, the "specified criminal activity" involved, the date, place and jurisdiction of each.

(J) Every application for a license shall contain a statement under oath that:

(1) The applicant has personal knowledge of the information contained in the application, and that the information contained therein and furnished therewith is true and correct; and,

(2) The applicant has read the provisions of this article.

(K) A separate application and business license shall be required for each sexually oriented business classification as set forth in Section 3.

(L) The fact that a person possesses other types of state or County permits and/or licenses does not exempt him from the requirement of obtaining a sexually oriented business or employee license.

SECTION 5. Issuance of License.

(A) Upon the filing of an application for a sexually oriented business employee license, the Director shall issue a temporary license to said applicant. The application shall then be referred to the appropriate County departments for investigation to be made on the information contained in the application. The application process shall be completed within thirty (30) days from the date of the completed application. After the investigation, the Director shall issue an employee license, unless it is determined by a preponderance of the evidence that one or more of the following findings is true:

(1) The applicant has failed to provide the information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form;

- (2) The applicant is under the age of eighteen (18) years;
- (3) The applicant has been convicted of a "specified criminal activity" as defined in Section 2, subsection (22) of this ordinance;
- (4) The sexually oriented business employee license is to be used for employment in a business prohibited by local or state law, statute, rule, or regulation, or prohibited by a particular provision of this ordinance; or
- (5) The applicant has had a sexually oriented business employee license revoked by the County within two (2) years of the date of the current application.

If the sexually oriented business employee license is denied, the temporary license previously issued is immediately deemed null and void. Denial, suspension, or revocation of a license issued pursuant to this subsection shall be subject to appeal as forth in subsection (I) of this Section.

(B) A license issued pursuant to subsection (A) of this Section, if granted, shall state on its face the name of the person to whom it is granted, the expiration date, and the address of the sexually oriented business. The employee shall keep the license on his or her person at all times while engaged in employment or performing services on the sexually oriented business premises so that said license may be available for inspection upon lawful request.

(C) A license issued pursuant to subsection (A) of this Section shall be subject to annual renewal upon the written application of the applicant and a finding by the Director that the applicant has not been convicted of any "specified criminal activity" as defined in this ordinance, or committed any act during the existence of the previous license which would be grounds to deny the initial license application. The decision whether to renew a license shall be made within thirty (30) days of the completed application. The renewal of a license shall be subject to the fee as set forth in Section VI. Non-renewal of a license shall be subject to appeal as set forth in subsection (I.) of this Section.

(D) If application is made for a sexually oriented business license, the Director shall approve or deny issuance of the license within forty-five (45) days of receipt of the completed application. In the event that the Director fails to approve or deny issuance of the license within forty-five (45) days of receipt, then the sexually oriented business license applied for shall be deemed to have been issued.

The Director shall issue a license to an applicant unless it is determined by a preponderance of the evidence that one or more of the following findings is true:

- (1) An applicant has failed to provide the information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form;

(2) An applicant is under the age of eighteen (18) years;

(3) An applicant or a person with whom the applicant is residing has been denied a license by the County to operate a sexually oriented business within the preceding twelve (12) months, or whose license to operate a sexually oriented business has been revoked within the preceding twelve (12) months;

(4) An applicant or a person with whom the applicant is residing is overdue in payment to the County in taxes, fees, fines, or penalties assessed against or imposed upon him/her in relation to any business;

(5) An applicant or a person with whom the applicant is residing has been convicted of a "specified criminal activity" as defined in Section 2, subsection (22);

(6) The premises to be used for the sexually oriented business have not been approved by the health department, fire department, and the building department as being in compliance with applicable laws and ordinances;

(7) The license fee required under this ordinance has not been paid;

(8) An applicant of the proposed establishment is in violation of or is not in compliance with one or more of the provisions of this ordinance.

(E) A license issued pursuant to subsection (D) of this Section, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, the address of the sexually oriented business, and the Section 3 classification for which the license is issued. The license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be easily read at any time.

(F) The health department, fire department, building department and zoning department shall complete their certification that the premises are in compliance or not in compliance within twenty (20) days of receipt of the completed application by the Director. The certification shall be promptly presented to the Director.

(G) A sexually oriented business license shall issue for only one classification, as set forth in Section 3.

(H) In the event that the Director determines that an applicant is not eligible for a sexually oriented business license, the applicant shall be given notice in writing of the reasons for the denial within forty five (45) days of the receipt of the completed application by the Director, provided that the applicant may request, in writing at any time before the notice is issued, that such period be extended for an additional period of not more than ten (10)

days in order to make modifications necessary to comply with this ordinance.

(I) An applicant may appeal the decision of the Director regarding a denial to the Hernando County Board of County Commissioners by filing a written notice of appeal with the County Administrator within fifteen (15) days after service of notice upon the applicant of the Director's decision. The notice of appeal shall be accompanied by a memorandum or other writing setting out fully the grounds for such appeal and all arguments in support thereof. The Director may, within fifteen (15) days of service upon him of the applicant's memorandum, submit a memorandum in response to the memorandum filed by the applicant on appeal to the Hernando County Board of County Commissioners. After reviewing such memoranda, as well as the Director's written decision, if any, and exhibits submitted to the Director, the Hernando County Board of County Commissioners shall hold a quasi-judicial hearing and, upon the memoranda and such additional competent and substantial evidence, vote to uphold, modify or overrule the Director's decision. Such vote shall be taken within twenty-one (21) calendar days after the date on which the County Administrator receives the notice of appeal. However, all parties shall be required to comply with the Director's decision during the pendency of the appeal. Judicial review of quasi-judicial action by the Hernando County Board of County Commissioners may be requested pursuant to Section 11 of this ordinance.

(J) A license issued pursuant to subsection (D) of this Section shall be subject to annual renewal upon the written application of the applicant and a finding by the Director that the applicant has not been convicted of any "specified criminal activity" as defined in this ordinance, or committed any act during the existence of the previous license which would be grounds to deny the initial license application. The decision whether to renew a license shall be made within thirty (45) days of the completed application. The renewal of a license shall be subject to the fee as set forth in Section 6.

SECTION 6. Fees.

The annual fee for a sexually oriented business license, whether new or renewal, is Five Hundred (\$500.00) Dollars. The annual fee for a sexually oriented business employee license, whether new or renewal, is Fifty (\$50.00) Dollars. These fees are to be used to pay for the cost of the administration and enforcement of this ordinance.

SECTION 7. Inspection.

(A) **AUTHORITY.** The Director or other county departments or offices with jurisdiction, including but not limited to the Sheriff and health, building and code enforcement departments, shall periodically inspect all premises licensed hereunder as shall be necessary to determine compliance with the provisions of this article and all other applicable law.

(B) **LICENSEE COOPERATION.** A licensee shall permit authorized persons hereunder to inspect the licensed premises for the purpose of determining compliance

with the provisions of this ordinance and all other applicable laws and ordinances at any time during which the licensed premises is occupied or open for business.

(C) **INTERFERENCE OR REFUSAL ILLEGAL.** It shall be unlawful for the licensee, any employee of the licensed premises, or any other person to prohibit, interfere with, or refuse to allow, any lawful inspection conducted pursuant to this ordinance or any other authority.

(D) **SUSPENSION OR REVOCATION.** Any such prohibition, interference, or refusal shall be grounds for suspension or revocation of the sexually oriented business license pursuant to Section 10 herein.

SECTION 8. Expiration of License.

(A) Each license shall expire one year from the date of issuance and may be renewed only by making application as provided in Section 4. Application for renewal should be made at least thirty (30) days before the expiration date; when made less than forty-five (45) days before the expiration date, the expiration of the license will not be affected.

(B) When the Director denies renewal of a license, the applicant shall not be issued a license for one year from the date of denial.

SECTION 9. Suspension.

The Director shall suspend a license for a period not to exceed thirty (30) days if he determines that licensee or an employee of licensee has:

- (1) violated or is not in compliance with any section of this ordinance;
- (2) operated or performed services in a sexually oriented business while intoxicated by the use of alcoholic beverages or controlled substances;
- (3) refused to allow prompt inspection of the sexually oriented business premises as authorized by this ordinance;
- (4) with knowledge, permitted gambling by any person on the sexually oriented business premises.

SECTION 10. Revocation.

(A) The Director shall revoke a license if a cause of suspension in Section 9 occurs and the license has been suspended within the proceeding twelve (12) months.

(B) The Director shall revoke a license if he determines that:

- (1) a licensee gave false or misleading information in the material submitted during the application process;

- (2) a licensee, or a person with whom the licensee is residing, was convicted of a "specified criminal activity" on a charge that was pending prior to the issuance of the license;
 - (3) a licensee has, with knowledge, permitted the possession, use, or sale of controlled substances on the premises;
 - (4) a licensee has, with knowledge, permitted the sale, use, or consumption of alcoholic beverages on the premises;
 - (5) a licensee has, with knowledge, permitted prostitution on the premises;
 - (6) a licensee has, with knowledge, operated the sexually oriented business during a period of time when the licensee's license was suspended;
 - (7) a licensee has, with knowledge, permitted any act of sexual intercourse, sodomy, oral copulation, masturbation, or other sexual conduct to occur in or on the licensed premises;
 - (8) a licensee is delinquent in payment to the County or State for any taxes or fees;
 - (9) a licensee has, with knowledge, permitted a person under eighteen (18) years of age to enter the establishment; or
 - (10) a licensee has attempted to sell his business license, or has sold, assigned, or transferred ownership or control of the sexually oriented business to a non-licensee;
 - (11) a licensee has, with knowledge, permitted a person or persons to engage in specified sexual activities on the premises of the sexually oriented business.
 - (12) a licensee, any employee of the licensed premises, or any other person has prohibited, interfered with, or refused to allow, any lawful inspection conducted pursuant to this ordinance or any other authority.
 - (13) a licensee, any employee of the licensed premises, or any other person has violated a requirement set forth in Sections 13, 14, 15, 16, 17, 18, 19, 20 or 21 of this ordinance, with either knowledge or constructive notice of such violation, regardless of whether such violation is or is not prosecuted as a misdemeanor.
- (C) When the Director revokes a license, the revocation shall continue for one (1) year, and the licensee shall not be issued a sexually oriented license for one (1) year from the date revocation became effective.

SECTION 11. Judicial Review.

After denial or modification, as applicable, of an initial or renewal application , or after

suspension or revocation of a license, by the Director as affirmed or modified in a quasi-judicial hearing by the Hernando County Board of County Commissioners, the applicant or licensee may seek prompt judicial review of such action in any court of competent jurisdiction. To the extent consistent with Court rules and procedures, the action of the Board shall be promptly reviewed by the court.

SECTION 12. No 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 application.

SECTION 13. Additional Regulations for Adult Motels.

(A) Evidence that a sleeping room in a hotel, motel, or a similar commercial enterprise has been rented and vacated two or more times in a period of time that is less than ten (10) hours creates a rebuttable presumption that the enterprise is an adult motel as that term is defined in this ordinance.

(B) It is unlawful if a person, as the person in control of a sleeping room in a hotel, motel, or similar commercial enterprise that does not have a sexually oriented business license, rents or subrents a sleeping room to a person and, within ten (10) hours from the time the room is rented, he rents or subrents the same sleeping room again.

(C) For purposes of subsection (B) of this section, the terms "rent" or "subrent" mean the act of permitting a room to be occupied for any form of consideration.

(D) Violation of subsection (B) of this Section shall constitute a misdemeanor, and may be subject to any other remedy for enforcement, as provided by Section 27 hereof.

SECTION 14. Additional Regulations For Escort Agencies.

(A) An escort agency shall not employ any person under the age of 18 years.

(B) A person commits an offense if the person acts as an escort or agrees to act as an escort for any person under the age of 18 years.

(C) Violation of this Section shall constitute a misdemeanor, and may be subject to any other remedy for enforcement, as provided by Section 27 hereof.

SECTION 15. Additional Regulations For Nude Model Studios

(A) A nude model studio shall not employ any person under the age of 18 years.

(B) A person under the age of 18 years commits a misdemeanor if the person appears semi-nude or in a state of nudity in or on the premises of a nude model studio. It is a

defense to prosecution under this subsection if the person under 18 years was in a restroom not open to the public view or visible by any other person.

(C) A person commits a misdemeanor if the person appears in a state of nudity, or with knowledge, allows another to appear in a state of nudity in an area of a nude model studio premises which can be viewed from the public right of way.

(D) A nude model studio shall not place or permit a bed, sofa, or mattress in any room on the premises, except that a sofa may be placed in a reception room open to the public.

SECTION 16. Additional Regulations Concerning Public Nudity

The following regulations are additional and supplemental to, and not in derogation or modification of, any other provisions of the Hernando County Code of Ordinances regulating public nudity, including but not limited to the Hernando County Public Nudity Ordinance.

(A) It shall be a misdemeanor for a person who, with knowledge and intent, appears in person in a nude or semi-nude condition in a sexually oriented business, unless the person is an employee who, while semi-nude, is at least ten (10) feet from any patron or customer, on a stage at least two (2) feet from the floor, and is not in violation of any other ordinances regulating public nudity.

(B) It shall be a misdemeanor for an employee, while nude or semi-nude in a sexually oriented business, to solicit any pay or gratuity from any patron or customer, or for any patron or customer to pay or give any gratuity to any employee, while said employee is nude or semi-nude in the sexually oriented business.

(C) It shall be a misdemeanor for an employee, while nude or semi-nude, to touch a patron or the clothing of a patron, or for a patron to touch a nude or semi-nude employee or the clothing of a nude or semi-nude employee.

(D) Nothing herein shall operate to preclude any other lawful remedy for enforcement of this ordinance as provided in Section 27 hereof.

SECTION 17. Regulations Pertaining to Exhibition of Sexually Explicit Films and Videos.

(A) 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, that depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:

(1) Upon application for a sexually oriented business license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying

the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed thirty-two (32) square feet of floor area. The diagram shall also designate the place at which the business license 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 should be oriented to the north or to some designated street or object and should 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 Director 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.

(2) The application shall be sworn to be true and correct by the applicant.

(3) No alteration in the configuration or location of a manager's station may be made without the prior approval of the Director or his designee.

(4) It is the duty of the owners and operator of the premises to ensure that at least one employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.

(5) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of the entire area of the premises to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of the entire area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.

(6) It shall be the duty of the operator, and it shall also be the duty of any agents and employees present in the premises, to ensure that the view area specified in subsection (5) of this section remains unobstructed by any doors, walls, merchandise, display racks or other materials at all times and to ensure that no patron is permitted access to any area of the premises that has been designated as an area in which patrons will not be permitted, as designated in the application filed pursuant to subsection (1) of this section.

(7) No viewing room may be occupied by more than one person at any time.

(8) The 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 (5.0) foot-candle as measured at the floor level.

(9) It shall be the duty of the operator, and it shall also be the duty of any agents and employees present in the premises, to ensure that the illumination described above is maintained at all times that any patron is present in the premises.

(10) No licensee shall allow an opening of any kind to exist between viewing rooms or booths.

(11) No person shall make any attempt to make an opening of any kind between the viewing booths or rooms.

(12) The operator of the sexually oriented business shall, during each business day, inspect the walls between the viewing booths to determine if any openings or holes exist.

(13) The operator of the sexually oriented business shall cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting.

(14) The operator of the sexually oriented business shall cause all wall surfaces and ceiling surfaces in viewing booths to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition board or other porous material shall be used within forty eight (48") inches of the floor.

(B) A person having a duty under Subsections (1) through (14) of this Section commits a misdemeanor if he/she, with knowledge, fails to fulfill that duty, and may be subject to any other remedy for enforcement, as provided by Section 27 hereof.

SECTION 18. Sale, Use, or Consumption of Alcoholic Beverages Prohibited.

(A) The sale, use, or consumption of alcoholic beverages on the premises of a sexually oriented business is prohibited.

(B) Any violation of this Section shall constitute a misdemeanor, and may be subject to any other remedy for enforcement, as provided by Section 27 hereof.

SECTION 19. Persons Younger Than Eighteen Prohibited From Entry; Attendant Required.

(A) It shall be unlawful to allow a person who is younger than eighteen (18) years of age to enter or be on the premises of a sexually oriented business at any time the sexually oriented business is open for business.

(B) It shall be the duty of the operator of each sexually oriented business to ensure that an

attendant is stationed at each public entrance to the sexually oriented business at all times during such sexually oriented businesses' regular business hours. It shall be the duty of the attendant to prohibit any person under the age of eighteen (18) years from entering the sexually oriented business. It shall be presumed that an attendant knew a person was under the age of eighteen (18) unless such attendant asked for and was furnished:

- (1) a valid operator's, commercial operator's, or chauffeur's driver's license; or
- (2) a valid personal identification certificate issued by the State of Florida reflecting that such person is eighteen (18) years of age or older.

(C) Violation of this Section shall constitute a misdemeanor, and may be subject to any other remedy for enforcement, as provided by Section 27 hereof.

SECTION 20. Massages or Baths Administered by Person of Opposite Sex .

It shall be unlawful for any sexually oriented business, regardless of whether in a public or private facility, to operate as a massage salon, massage parlor or any similar type business where any physical contact with the recipient of such services is provided by a person of the opposite sex. Violation of this Section shall constitute a misdemeanor, and may be subject to any other remedy for enforcement, as provided by Section 27 hereof.

SECTION 21. Hours of Operation

No sexually oriented business, except for an adult motel, may remain open at any time between the hours of one o'clock (1:00) A.M. and eight o'clock (8:00) A.M. on weekdays and Saturdays, and one o'clock (1:00) A.M. and twelve o'clock (12:00) P.M. on Sundays.

SECTION 22. Notices.

(A) Any notice required or permitted to be given by the Director or any other County office, division, department or other agency under this ordinance to any applicant, operator or owner of a sexually oriented business may be given either by personal delivery or by certified United States mail, postage prepaid, return receipt requested, addressed to the most recent address as specified in the application for the license, or any notice of address change that has been received by the Director. Notices mailed as above shall be deemed given upon their deposit in the United States mail. In the event that any notice given by mail is returned by the postal service, the Director or his designee shall cause it to be posted at the principal entrance to the establishment.

(B) Any notice required or permitted to be given to the Director by any person under this ordinance shall not be deemed given until and unless it is received in the office of the Director.

(C) It shall be the duty of each owner who is designated on the license application and each operator to furnish notice to the Director in writing of any change of residence or

mailing address.

SECTION 23. Location Restrictions.

Sexually oriented businesses shall be permitted in those commercial districts designated as C-1, C-2, C-3 or C-4, provided that:

(A) the specific retail or service activities of a sexually oriented business, such as sale or rental of products or services, would be a permitted use without regard to the sexually oriented nature of the business;

(B) the sexually oriented business may not be operated within:

(1) 1,500 feet of a religious establishment which holds a special exception permit as a place of public assembly or is otherwise a permitted land use;

(2) 1,500 feet of a public or private primary or secondary school, or public community college campus;

(3) 1,500 feet of a boundary of any residential district;

(4) 1,500 feet of a state, county or municipal park or similar facility, including but not limited to the Sand Hill Boy Scout Reservation, the Suncoast Trail and the Withlacoochee State Trail;

(5) 1,500 feet of a licensed day-care center;

(6) 2,500 feet of any right-of-way, including entrance and exit ramps, of any federal interstate highway; or

(7) 1,500 feet of another sexually oriented business;

without regard to whether or not such other establishment or facility is in the same zoning district or classification, and without regard to whether there are any intervening municipal, county or other jurisdictional boundaries between the sexually oriented business and such other establishment or facility.

(C) A sexually oriented business may not be operated in the same building, structure, or portion thereof, containing another sexually oriented business classified pursuant to Section 3.

(D) For the purpose of this ordinance, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where a sexually oriented business is conducted, to the nearest property line of premises on which is located a religious establishment which holds a special exception permit as a place of public assembly or is otherwise a permitted land use, or on which is located another sexually oriented business, or on which is located a public or private elementary or secondary school or public community college, or on which is located a licensed day care center; or to the nearest boundary of an affected state, county or municipal public park, residential district, or federal interstate highway right-of-way.

SECTION 24. Non-Conforming Uses; Amortization.

(A) Any business lawfully operating on the effective date of this ordinance that is in violation of the locational or structural configuration requirements of this ordinance shall be deemed a non-conforming use. The non-conforming use will be permitted to continue for a period not to exceed five years, unless sooner terminated for any reason or voluntarily discontinued for a period of thirty (30) days or more. Such non-conforming uses shall not be increased, enlarged, extended or altered except that the use may be changed to a conforming use. If two or more sexually oriented businesses are within 1,000 feet of one another and otherwise in a permissible location, the sexually oriented business that was first established and continually operated at a particular location is the conforming use and the later-established business(es) is non-conforming.

(B) A sexually oriented business lawfully operating as a conforming use is not rendered a non-conforming use by the location, subsequent to the grant or renewal of the sexually oriented business license, of a church, synagogue, or regular place of religious worship, public or private elementary or secondary school, licensed day-care center, public park, residential district, or child or family entertainment business within one thousand, five hundred (1,500) feet of the sexually oriented business. This provision applies only to the renewal of a valid business license, and does not apply when an application for a business license is submitted after a business license has expired or has been revoked.

SECTION 25. Exterior Portions of Sexually Oriented Businesses.

(A) It shall be unlawful for an owner or operator of a sexually oriented business to allow the merchandise or activities of the establishment to be visible from a point outside the establishment.

(B) It shall be unlawful for the owner or operator of a sexually oriented business to allow the exterior portion of the sexually oriented business to have flashing lights, or any words, lettering, photographs, silhouettes, drawings, or pictorial representations of any manner except to the extent permitted by the provisions of this ordinance.

(C) It shall be unlawful for the owner or operator of a sexually oriented business to allow exterior portions of the establishment to be painted any color other than a single achromatic color. This provision shall not apply to a sexually oriented business if the following conditions are met:

(1) The establishment is a part of a commercial multi-unit center; and

(2) The exterior portions of each individual unit in the commercial multi-unit center, including the exterior portions of the business, are painted the same color as one another or are painted in such a way so as to be a component of the overall architectural style or pattern of the commercial multi-unit center.

(D) Nothing in this article shall be construed to require the painting of an otherwise unpainted exterior portion of a sexually oriented business.

(E) A violation of any provision of this Section shall constitute a misdemeanor, and may be subject to any other remedy for enforcement, as provided by Section 27 hereof.

SECTION 26. Signage.

(A) Notwithstanding any other ordinance, code, or regulation to the contrary, it shall be unlawful for the operator of any sexually oriented business or any other person to erect, construct, or maintain any sign for the sexually oriented business other than the one (1) primary sign and one (1) secondary sign, as provided herein.

(B) Primary signs shall have no more than two (2) display surfaces. Each such display surface shall:

(1) not contain any flashing lights;

(2) be a flat plane, rectangular in shape;

(3) not exceed the maximum size permitted under the applicable land development regulations, or seventy-five (75) square feet in area, whichever is lesser; and

(4) not exceed ten (10) feet in height or ten (10) feet in length.

(C) Primary signs shall contain no photographs, silhouettes, drawings or pictorial representations in any manner, and may contain only the name of the enterprise.

(D) Each letter forming a word on a primary sign shall be of solid color, and each such letter shall be the same print-type, size and color. The background behind such lettering on the display surface of a primary sign shall be of a uniform and solid color.

(E) Secondary signs shall have only one (1) display surface. Such display surface shall:

(1) be a flat plane, rectangular in shape;

(2) not exceed twenty (20) square feet in area;

(3) not exceed five (5) feet in height and four (4) feet in width; and

(4) be affixed or attached to any wall or door of the enterprise.

(F) The provisions of item (1) of subsection (B) and subsection (C) and (D) shall also apply to secondary signs.

(G) Violation of any provision of this Section shall constitute a misdemeanor, and may be subject to any other remedy for enforcement, as provided by Section 27 hereof.

SECTION 27. Injunction; other enforcement.

A person who operates or causes to be operated a sexually oriented business without a valid business license issued hereunder or otherwise commits any act in violation of this ordinance is subject to a suit for injunction as well as prosecution or other enforcement action for criminal or non-criminal violations, in a judicial, quasi-judicial or administrative forum, as applicable. Each day a person operates an unlicensed sexually oriented business or commits any act in violation of this ordinance shall constitute a

separate offense or violation. Nothing herein relating to remedies or penalties for violation of this ordinance shall preclude enforcement of each and every provision of this ordinance by any other lawful means, including but not limited to code enforcement or license revocation proceedings.

SECTION 28. Effective Date.

This ordinance shall be enforced from and after the date of receipt of a certified copy of the ordinance by the Florida Department of State.

SECTION 29. Severability

It is declared to be the intent of the Board of County Commissioners that if any section, subsection, clause, sentence, phrase or provision of this Ordinance is for any reason held unconstitutional or invalid, the invalidity thereof shall not affect the validity of the remaining portions of this Ordinance.

SECTION 30. Inclusion in the Code; repeal of superseded ordinance and Code sections

It is the intention of the Board of County Commissioners of Hernando County, Florida, and it is hereby provided, that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of Hernando County, Florida. To this end, the sections of this Ordinance may be renumbered or re-lettered to accomplish such intention, and that the word "ordinance" may be changed to "section", "article", or other appropriate designation. Except as to Sections 23 through 26, the substantive body of this ordinance shall be incorporated in Chapter 18 of the Code in place of the provisions of Article III of the current Code. Code Sections 18-86 through 18-101 are hereby repealed, together with Hernando County Ordinance No. 85-1. Sections 23 through 26 of this ordinance, as land development regulations, shall be included in Appendix A, Article III of the Code, "Specific Regulations."

ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS in Regular Session this 8th day of July, 2003, A.D.

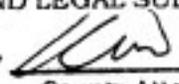
**BOARD OF COUNTY COMMISSIONERS
HERNANDO COUNTY, FLORIDA.**

Attest:


KAREN NICOLAI
Clerk

By:


MARY E. WHITEHOUSE
Chairperson

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY
BY  7/8/03
County Attorney's Office