



120 Malabar Road, SE - Palm Bay, FL 32907 (321-952-3400)

Mayor
JOHN J. MAZZIOTTI

Deputy Mayor
ED GEIER

Councilmembers
PAT WOODARD
DONNA BROOKS
ANDY ANDERSON

AGENDA

SPECIAL COUNCIL MEETING NO. 2007-14

MONDAY

April 30, 2007 - 7:00 P.M.
City Hall Council Chambers

CALL TO ORDER:

ROLL CALL:

PUBLIC HEARINGS:

1. Ordinance No. 2007-29, amending the Code of Ordinances, by repealing Chapter 173, Adult Entertainment Code, and substituting a new chapter titled "Adult Entertainment Code" regulating adult entertainment establishments and sexually-oriented businesses, for second and final reading.
2. Ordinance No. 2007-30, establishing locational and distance requirements for adult entertainment establishments and sexually-oriented businesses, for first reading.
3. Ordinance No. 2007-31, establishing provisions prohibiting public nudity, for second and final reading.

ADJOURNMENT:

If an individual decides to appeal any decision made by the City Council with respect to any matter considered at this meeting, a record of the proceedings will be required and the individual will need to ensure that a verbatim transcript of the proceedings is made, which record includes the testimony and evidence upon which the appeal is based (FS 286.0105). Such person must provide a method for recording the proceedings verbatim.

In accordance with the Americans with Disabilities Act, persons needing special accommodations for this meeting shall, at least 48 hours prior to the meeting, contact the Office of the City Clerk at (321) 952-3414 or Florida Relay System at 711.

MEMO TO: Honorable Mayor and Members of City Council
FROM: Alice Passmore, City Clerk
DATE: April 30, 2007
SUBJECT: Ordinance Nos. 2007-29, 2007-30, and 2007-31

Public hearings are to be held on the above subject ordinances and the captions of each read as indicated:

Second and final reading:

ORDINANCE NO. 2007-29

AN ORDINANCE OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES, TITLE XVII, LAND DEVELOPMENT CODE, BY REPEALING CHAPTER 173, ADULT ENTERTAINMENT CODE, AND SUBSTITUTING IN ITS PLACE AND STEAD A NEW CHAPTER TITLED "ADULT ENTERTAINMENT CODE"; MAKING FINDINGS; STATING THE INTENT OF THE ORDINANCE; PROVIDING DEFINITIONS; PROVIDING FOR CLASSIFICATIONS OF ADULT ENTERTAINMENT ESTABLISHMENTS AND SEXUALLY-ORIENTED BUSINESSES; REQUIRING THE LICENSING OF ADULT BOOKSTORES AND ADULT VIDEO STORES, ADULT PERFORMANCE ESTABLISHMENTS, ADULT MOTELS, ADULT THEATERS, COMMERCIAL BODILY CONTACT ESTABLISHMENTS AND ESCORT SERVICES, AS DEFINED; PROVIDING REQUIREMENTS AND PROCEDURES FOR LICENSE APPLICATION, ISSUANCE, RENEWAL, SUSPENSION AND REVOCATION; PROVIDING FOR A LICENSE APPLICATION FEE; IMPOSING SPECIAL ADVERTISING RESTRICTIONS; PROVIDING FOR ANNUAL LICENSE FEES; REGULATING THE TRANSFER OF LICENSES AND CHANGE IN NAME OF A LICENSED ESTABLISHMENT; PROVIDING HEARING PROCEDURES FOR SUSPENSION AND REVOCATION OF LICENSES; PROVIDING FOR PROMPT JUDICIAL REVIEW OF SUSPENSION AND REVOCATION DECISIONS; PROVIDING GENERAL REGULATIONS FOR ALL ADULT ENTERTAINMENT ESTABLISHMENTS AND SEXUALLY-ORIENTED BUSINESSES; PROVIDING SPECIFIC REGULATIONS FOR SEXUALLY-ORIENTED

BUSINESSES, ADULT THEATERS, ADULT PERFORMANCE ESTABLISHMENTS, COMMERCIAL BODILY CONTACT ESTABLISHMENTS, AND ESCORT SERVICES; PROHIBITING CUSTOMERS OF ADULT ENTERTAINMENT ESTABLISHMENTS AND SEXUALLY-ORIENTED BUSINESSES FROM ENGAGING IN CERTAIN ACTS; PROHIBITING WORKERS AND OPERATORS OF ADULT ENTERTAINMENT ESTABLISHMENTS AND SEXUALLY-ORIENTED BUSINESSES FROM ENGAGING IN CERTAIN ACTS; PROHIBITING ADULT ENTERTAINMENT ESTABLISHMENTS AND SEXUALLY-ORIENTED BUSINESSES FROM OPERATING WITHOUT A LICENSE OR OPERATING CONTRARY TO THE APPLICABLE REGULATIONS; PROVIDING FOR AN EXCEPTION FROM REGULATIONS FOR BONA FIDE USE OF REST ROOMS; PROHIBITING OPERATORS OF ADULT ENTERTAINMENT ESTABLISHMENTS AND SEXUALLY-ORIENTED BUSINESSES FROM ALLOWING MINORS TO ENTER, REMAIN, OR WORK AT ANY SUCH ESTABLISHMENT OR BUSINESS DURING HOURS OF OPERATION; PROHIBITING OPERATORS OF SUCH ESTABLISHMENTS AND BUSINESSES FROM OPERATING WITHOUT COMPLYING WITH THE REQUIREMENTS FOR MAINTAINING RECORDS, POSTING LICENSES AND OTHER INFORMATION OR THE REQUIREMENTS CONCERNING HOURS OF OPERATION; PROVIDING SPECIAL PROHIBITIONS RELATING TO ESCORTS AND ESCORT SERVICES AND COMMERCIAL BODILY CONTACT ESTABLISHMENTS; PROVIDING A SAVINGS PROVISION; PROVIDING THAT BUSINESS TAXES LEVIED IN ACCORDANCE WITH THIS ORDINANCE AND THAT ADULT ENTERTAINMENT ESTABLISHMENTS AND SEXUALLY-ORIENTED BUSINESSES SHALL NOT BE APPROVED AS HOME OCCUPATIONS; PROHIBITING SEXUAL ENCOUNTER BUSINESSES; PROVIDING FOR IMMUNITY FROM PROSECUTION FOR TRESPASS WHILE ENFORCING THIS ORDINANCE; PROVIDING PENALTIES FOR VIOLATIONS OF THIS CODE; PROVIDING FOR THE REPEAL OF ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR INCLUSION IN THE CITY OF PALM BAY CODE OF ORDINANCES; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR AN EFFECTIVE DATE.

First reading:

ORDINANCE NO. 2007-30

AN ORDINANCE OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, PROVIDING FOR LOCATIONAL REQUIREMENTS FOR ADULT ENTERTAINMENT ESTABLISHMENTS AND SEXUALLY-ORIENTED BUSINESSES; MAKING FINDINGS; SETTING FORTH LOCATIONAL AND DISTANCE REQUIREMENTS; PROVIDING FOR THE REPEAL OF ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR INCLUSION IN THE CITY OF PALM BAY CODE OF ORDINANCES; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR AN EFFECTIVE DATE.

Second and final reading:

ORDINANCE NO. 2007-31

AN ORDINANCE OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, TO BE KNOWN AS THE "PALM BAY PUBLIC NUDITY ORDINANCE"; STATING THE INTENT OF THE ORDINANCE; PROVIDING FOR THE DEFINITION OF NUDITY AS PROHIBITED BY THIS ORDINANCE AND PROVIDING FOR OTHER DEFINITIONS; PROVIDING FOR LEGISLATIVE FINDINGS; PROHIBITING NUDITY AND SEXUAL CONDUCT OR THE SIMULATION THEREOF; PROHIBITING NUDITY IN PUBLIC PLACES; PROVIDING FOR ENFORCEMENT AND PENALTIES FOR THE VIOLATION OF THIS ORDINANCE; PROVIDING FOR INJUNCTIVE RELIEF; PROVIDING FOR EFFECTIVENESS IN THE ENTIRETY OF THE CITY LIMITS OF PALM BAY IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE VIII, SECTION (1)(g), CONSTITUTION OF THE STATE OF FLORIDA; PROVIDING FOR THE REPEAL OF ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR INCLUSION IN THE CITY OF PALM BAY CODE OF ORDINANCES; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR AN EFFECTIVE DATE.

If you should have any questions or desire additional information, please advise.

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ORDINANCE NO. 2007-29

AN ORDINANCE OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES, TITLE XVII, LAND DEVELOPMENT CODE, BY REPEALING CHAPTER 173, ADULT ENTERTAINMENT CODE, AND SUBSTITUTING IN ITS PLACE AND STEAD A NEW CHAPTER TITLED "ADULT ENTERTAINMENT CODE"; MAKING FINDINGS; STATING THE INTENT OF THE ORDINANCE; PROVIDING DEFINITIONS; PROVIDING FOR CLASSIFICATIONS OF ADULT ENTERTAINMENT ESTABLISHMENTS AND SEXUALLY-ORIENTED BUSINESSES; REQUIRING THE LICENSING OF ADULT BOOKSTORES AND ADULT VIDEO STORES, ADULT PERFORMANCE ESTABLISHMENTS, ADULT MOTELS, ADULT THEATERS, COMMERCIAL BODILY CONTACT ESTABLISHMENTS AND ESCORT SERVICES, AS DEFINED; PROVIDING REQUIREMENTS AND PROCEDURES FOR LICENSE APPLICATION, ISSUANCE, RENEWAL, SUSPENSION AND REVOCATION; PROVIDING FOR A LICENSE APPLICATION FEE; IMPOSING SPECIAL ADVERTISING RESTRICTIONS; PROVIDING FOR ANNUAL LICENSE FEES; REGULATING THE TRANSFER OF LICENSES AND CHANGE IN NAME OF A LICENSED ESTABLISHMENT; PROVIDING HEARING PROCEDURES FOR SUSPENSION AND REVOCATION OF LICENSES; PROVIDING FOR PROMPT JUDICIAL REVIEW OF SUSPENSION AND REVOCATION DECISIONS; PROVIDING GENERAL REGULATIONS FOR ALL ADULT ENTERTAINMENT ESTABLISHMENTS AND SEXUALLY-ORIENTED BUSINESSES; PROVIDING SPECIFIC REGULATIONS FOR SEXUALLY-ORIENTED BUSINESSES, ADULT THEATERS, ADULT PERFORMANCE ESTABLISHMENTS, COMMERCIAL BODILY CONTACT ESTABLISHMENTS, AND ESCORT SERVICES; PROHIBITING CUSTOMERS OF ADULT ENTERTAINMENT ESTABLISHMENTS AND SEXUALLY-ORIENTED BUSINESSES FROM ENGAGING IN CERTAIN ACTS; PROHIBITING WORKERS AND OPERATORS OF ADULT ENTERTAINMENT ESTABLISHMENTS AND SEXUALLY-ORIENTED BUSINESSES FROM ENGAGING IN CERTAIN ACTS; PROHIBITING ADULT ENTERTAINMENT ESTABLISHMENTS AND SEXUALLY-ORIENTED BUSINESSES FROM OPERATING WITHOUT A LICENSE OR OPERATING CONTRARY TO THE APPLICABLE REGULATIONS; PROVIDING FOR AN EXCEPTION FROM REGULATIONS FOR BONA FIDE USE OF REST ROOMS; PROHIBITING OPERATORS OF ADULT ENTERTAINMENT ESTABLISHMENTS AND SEXUALLY-ORIENTED BUSINESSES

FROM ALLOWING MINORS TO ENTER, REMAIN, OR WORK AT ANY SUCH ESTABLISHMENT OR BUSINESS DURING HOURS OF OPERATION; PROHIBITING OPERATORS OF SUCH ESTABLISHMENTS AND BUSINESSES FROM OPERATING WITHOUT COMPLYING WITH THE REQUIREMENTS FOR MAINTAINING RECORDS, POSTING LICENSES AND OTHER INFORMATION OR THE REQUIREMENTS CONCERNING HOURS OF OPERATION; PROVIDING SPECIAL PROHIBITIONS RELATING TO ESCORTS AND ESCORT SERVICES AND COMMERCIAL BODILY CONTACT ESTABLISHMENTS; PROVIDING A SAVINGS PROVISION; PROVIDING THAT BUSINESS TAXES LEVIED IN ACCORDANCE WITH THIS ORDINANCE AND THAT ADULT ENTERTAINMENT ESTABLISHMENTS AND SEXUALLY-ORIENTED BUSINESSES SHALL NOT BE APPROVED AS HOME OCCUPATIONS; PROHIBITING SEXUAL ENCOUNTER BUSINESSES; PROVIDING FOR IMMUNITY FROM PROSECUTION FOR TRESPASS WHILE ENFORCING THIS ORDINANCE; PROVIDING PENALTIES FOR VIOLATIONS OF THIS CODE; PROVIDING FOR THE REPEAL OF ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR INCLUSION IN THE CITY OF PALM BAY CODE OF ORDINANCES; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Palm Bay, Florida, has determined it to be in the best interest of the general health, safety and welfare of the residents of the City to provide regulatory, as well as locational, requirements for all adult entertainment establishments and sexually-oriented businesses as hereinafter defined, and

WHEREAS, the City Council of the City of Palm Bay, Florida, has reason to believe and believes that (a) when the possession, display, exhibition, distribution and sale of books, magazines, motion pictures, prints, photographs, periodicals, records, novelties and devices that depict, illustrate, describe or relate to specified sexual activities and/or (b) with the operation and maintenance of places where parts of one person are treated or

encountered by rubbing, stroking, kneading or tapping by a second person, accompanied by the exposure or display of specified anatomical areas, other activities tend to accompany them that are illegal, immoral or unhealthy, and

WHEREAS, such other activities include, but are not limited to, prostitution, pandering, solicitation for prostitution, obscene, lewd and lascivious behavior, exposing minors to harmful materials, exposing citizens to an unsanitary and/or unhealthy environment, sale or possession of controlled substances, and violent crimes against persons and property, and

WHEREAS, illegal, immoral or unhealthful activities tend to concentrate around and be aggravated by the presence of the activities detailed above, and

WHEREAS, the buildings and establishments in which the activities and business operations described above take place are conducive to and may be used for the commission of immoral, lewd, indecent or illegal acts, and

WHEREAS, the business operations and activities detailed above frequently occur in commercial establishments either selling or allowing consumption of alcoholic beverages on the premises, and

WHEREAS, there is a direct relationship between the concurrent consumption of alcoholic beverages and the activities described above and an increase in criminal activities, degradation and disturbances of the peace and good order of the community, and

WHEREAS, certain studies have shown the concurrence of the sale and consumption of alcoholic beverages with the activities described above is hazardous to the

health and safety of those persons in attendance, and tends to depreciate the value of adjoining property, harm the economic welfare of the community as a whole and adversely affect the public's interest in the quality of life, tone of commerce, and total community environment of the City, and

WHEREAS, to preserve the public peace and good order, and to safeguard the health, safety and welfare of the community and the citizens thereof, it is necessary and advisable to regulate adult entertainment establishments and sexually-oriented businesses within the city limits of Palm Bay where the activities described above occur, and

WHEREAS, the business operations and activities described above are commercial ventures, operated for the purpose of making a profit, and as such are proper subjects for regulation by the City in the interest of the health, safety and welfare of the public, and

WHEREAS, the potential dangers to the health, safety, and welfare of the citizens of Palm Bay posed by permitting a sexually-oriented business or an adult entertainment establishment to operate without first meeting the requirements of this ordinance are so great as to require the inspection and licensing of said establishments prior to permitting them to initiate operations and thereafter, and

WHEREAS, there is a higher incidence of criminal activity among the employees of commercial establishments that permit the concurrence of the consumption of alcoholic beverages and adult entertainment than among the employees of other commercial establishments, and

WHEREAS, the City, through its police power and the Twenty-First Amendment of the United States Constitution, has the right to regulate the time, place and manner of the selling and consumption of alcohol, and

WHEREAS, sexually-oriented businesses and adult entertainment establishments lend themselves to ancillary unlawful and unhealthy activities that are presently uncontrolled or not adequately controlled by the operators of the establishments or businesses. Further, there are presently no mechanisms or inadequate mechanisms to make the owners of these businesses or establishments responsible for the activities that occur on their premises, and

WHEREAS, certain workers of certain sexually-oriented businesses and adult entertainment establishments defined in this Ordinance engage in a higher incidence of certain types of illicit sexual behavior than workers of other business establishments, and

WHEREAS, sexual acts, including masturbation, and oral and anal sex, occur at sexually-oriented businesses and adult entertainment establishments, especially those which provide private or semi-private areas, booths or cubicles for viewing films, videos, live sex shows and those having physical interaction between workers and customers, and

WHEREAS, offering and providing such private spaces encourages such previously mentioned activities, which create unhealthy conditions, and

WHEREAS, persons frequent certain adult theaters, adult arcades, and other sexually-oriented businesses and adult entertainment establishments for the purpose of engaging in sex within the premises of such businesses and establishments, and

WHEREAS, at least 50 communicable diseases may be spread by activities occurring in sexually-oriented businesses and adult entertainment establishments, 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, and

WHEREAS, since 1981 and to the present, there has been an increasing cumulative number of reported cases of AIDS caused by the human immunodeficiency virus (HIV) in the United States 600 in 1982, 2,200 in 1983, 4,600 in 1984, 8,555 in 1985 and 253,448 through December 31, 1992, and

WHEREAS, as of December 31, 1995, there have been 51,838 reported cases of AIDS in the State of Florida, and

WHEREAS, from 1981 to June 1996, the number of living persons testing positive for the HIV antibody with AIDS symptoms has risen to 73,217 in the 28 states having confidential reporting requirements, and

WHEREAS, the number of cases of early (less than one year) syphilis in the United States reported annually has risen, with 33,613 cases reported in 1982 and 45,200 through November of 1990, and

WHEREAS, the number of cases of gonorrhea in the United States reported annually remains at a high level, with over one-half million cases being reported in 1990, and

WHEREAS, the Surgeon General of the United States, in his report of October 22, 1986, has advised the American public that AIDS and HIV infection may be transmitted

through sexual contact, intravenous drug abuse, exposure to infected blood and blood components, and from an infected mother to her newborn, and

WHEREAS, according to the best scientific evidence, AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts, and

WHEREAS, sanitary conditions in some sexually-oriented businesses and adult entertainment establishments 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 owners and operators of the facilities to self-regulate those activities and maintain those facilities, and

WHEREAS, numerous studies and reports have determined that semen is found in the areas of sexually-oriented businesses and adult entertainment establishments where persons view "adult" oriented films which causes many concerns of Palm Bay citizens including but not limited to health and aesthetic concerns, and

WHEREAS, the findings noted above and as set forth hereinafter raise substantial governmental concerns, and

WHEREAS, sexually-oriented businesses and adult entertainment establishments should be reasonably regulated in order to protect those substantial governmental concerns, and

WHEREAS, commercial establishments exist or may exist within the City and other nearby cities and counties in Florida where adult entertainment material is possessed, displayed, exhibited, distributed and/or sold for commercial purposes in the form of books, magazines, periodicals or other printed material, or photographs, films, motion pictures,

prints, videotapes, slides, DVDs, computer digital graphic representations or other visual representations or recordings, or recordings or other audio matter, or instruments, novelties, devices, or paraphernalia which depict, illustrate, describe or relate to specified sexual activities or specified anatomical areas, and

WHEREAS, commercial establishments exist or may exist within the City or other nearby cities or counties in Florida where adult entertainment and sexually-oriented commercial activities in the form of semi-nude, or topless dancers, entertainers, performers, or other individuals, who, for commercial gain, perform or are presented while displaying or exposing specified anatomical areas; or engage in straddle dancing or touching with customers, and

WHEREAS, commercial sexually-oriented businesses exist or operate or may exist or operate within the City or other nearby cities or counties in Florida where sexually-oriented services are offered for commercial or pecuniary gain in the form of commercial physical contact, escort services and other services providing sexual encounters. The workers of such sexually-oriented businesses operating in Florida engage in physical contact or touching with customers including, but not limited to, acts of prostitution, or encourage or entice the customers to engage in lewdness, and

WHEREAS, the activities occurring at sexually-oriented businesses and adult entertainment establishments occur at establishments and businesses which operate primarily for the purpose of making a profit and, as such, their locations are subject to regulation by the City in the interest of the good order, health, safety, economy, property values, and general welfare of the people, businesses and industries of the City. A major

industry which is important to the community's economic welfare is tourism by persons seeking to bring children to visit Palm Bay and environs who wish to stay in a community with a family atmosphere not dominated by commercialized sexual themes, and

WHEREAS, when the activities occurring at sexually-oriented businesses and adult entertainment establishments are present in establishments and businesses, other activities which are illegal, unsafe, or unhealthy tend to accompany them, concentrate around them, and be aggravated by them. Such other activities include, but are not limited to, prostitution, pandering, solicitation for prostitution, lewd and lascivious behavior, exposing minors to harmful materials and unhealthy environments, exposing other citizens to unhealthy environments, possession, distribution and transportation of obscene materials, sale or possession of controlled substances, and violent crimes against persons and property, and

WHEREAS, when the activities occurring at sexually-oriented businesses and adult entertainment establishments are competitively exploited in establishments and businesses, they tend to attract an undesirable number of transients, lower real property values, promote the particular crimes described above, discourage tourism and, ultimately, lead residents to move to other locations, and

WHEREAS, sexually-oriented businesses and adult entertainment establishments often have exterior signs or exterior appearance that are aesthetically displeasing and incongruous with surrounding business signage, lower the surrounding property values and contribute to urban decline, and

WHEREAS, the activities occurring at sexually-oriented businesses and adult entertainment establishments sometimes occur in establishments and businesses concurrent with the sale and consumption of alcoholic beverages which concurrence leads to a further increase in criminal activity, unsafe activity, and disturbances of the peace and order of the surrounding community and creates additional hazards to the health and safety of customers and workers and further depreciates the value of adjoining real property harming the economic welfare of the surrounding community and adversely affecting the quality of life, commerce, and community environment, and

WHEREAS, physical contact or touching within sexually-oriented businesses and adult entertainment establishments between workers exhibiting specified anatomical areas and customers poses a threat to the health of both and promotes the spread of communicable and social diseases, and

WHEREAS, in order to preserve and safeguard the good order, health, morals, safety, and general welfare of the people of the City it is necessary and advisable for the City to regulate sexually-oriented businesses and adult entertainment establishments, and

WHEREAS, the potential dangers to the good order, health, safety, and general welfare of the people of the City posed by permitting a sexually-oriented business or adult entertainment establishment to operate without first meeting the requirements under this Chapter are so great as to require the inspection and examination of such establishments prior to their being permitted to operate, and

WHEREAS, straddle dancing is primarily conduct rather than communication or expression, and

WHEREAS, straddle dancing, unregulated private performances, and enclosed adult booths in sexually-oriented businesses and adult entertainment establishments have resulted in indiscriminate commercial sex between individuals and poses a threat to the health of the participants and promotes the spread of communicable sexually transmitted diseases, and

WHEREAS, workers at sexually-oriented businesses and adult entertainment establishments engage in a higher incidence of certain types of unhealthy or criminal behavior than workers of other establishments and businesses including, but not limited to, a very high incidence of illegal prostitution or engaging in lewdness in violation of Florida Statutes, Chapter 796, operation without business tax receipts and illegal and unlicensed massage, and

WHEREAS, physical contact or touching between workers of sexually-oriented businesses and adult entertainment establishments and customers poses a threat to the health of both and promotes the spread of communicable and sexually transmissible diseases, and

WHEREAS, the practice of not paying or underpaying workers at sexually-oriented businesses and requiring them to earn their entire income from tips or gratuities from their customers who are predisposed to want sexual activity has resulted in a high incidence of prostitution and crimes related to lewdness by workers, and

WHEREAS, sexually-oriented businesses involve some activities that are pure conduct engaged in for the purpose of making a profit, rather than speech or expressive

activity and, therefore, are subject to and require increased regulation to protect the health, good order, morals, welfare and safety of the community, and

WHEREAS, the general welfare, health, good order, morals and safety of the citizens of the City will be promoted by the enactment of this Ordinance, and

WHEREAS, the City Council of the City of Palm Bay has been presented with case law from the United States Supreme Court, the Eleventh Circuit Court of Appeals, the Federal District Court for Middle District of Florida and studies validating and supporting the predicate clauses set forth hereinabove.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF PALM BAY, FLORIDA, as follows:

SECTION 1. The City of Palm Bay Code of Ordinances, Title XVII, Land Development Code, is hereby amended by repealing Chapter 173, Adult Entertainment Code, and substituting in its place and stead a new chapter titled “Adult Entertainment Code”, which language shall read as follows:

“CHAPTER 173: ADULT ENTERTAINMENT CODE

GENERAL PROVISIONS

Section 1. PURPOSE, FINDINGS, INTENT, AND INCORPORATION OF RECITALS.

(A) Purpose. It is the purpose of this chapter to regulate sexually-oriented businesses and adult entertainment establishments in order to promote and protect the public health, safety, good order, morals and general welfare of the citizens of the City, to establish reasonable and uniform regulations of adult entertainment establishments and sexually-oriented businesses within the City. The provisions of this Chapter have neither the purpose nor effect of imposing an unreasonable limitation or unreasonable restriction on the content of any lawful communicative materials including sexually-oriented materials. Similarly, it is neither the intent nor effect of this Chapter to unreasonably 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 protected by the First Amendment to their intended market. Neither is it the intent nor effect of this subchapter to condone or legitimize the distribution of obscene or otherwise illegal material.

(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 Council, and on findings incorporated in Supreme Court cases presented for consideration by the City Council in the record supporting this Chapter, including but not limited to *City of Renton v. Playtime Theaters, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theaters*, 427 U.S. 50 (1976); *Barnes v. Glen Theater, Inc.*, 501 U.S. 560 (1991), on materials made of record relating to the St. Johns County Public Nudity Ordinance, and on the substance of and findings made or incorporated in studies accomplished in other communities and ordinances enacted in other communities, including, but not limited to, New York, New York; City of Houston Ordinance Number 97-75; Senate Bill Number 232, as passed by the Kansas State Legislature; Phoenix, Arizona; Tucson, Arizona; St. Paul, Minnesota; Minneapolis, Minnesota; Houston, Texas; Indianapolis, Indiana; Amarillo, Texas; Garden Grove, California; Los Angeles, California; Austin, Texas; Macon-Bibb County, Georgia; Palm Beach County, Florida; Manatee County, Florida; the findings of the Attorney General of the State of Minnesota; the report of United States Attorney General's Commission on Pornography (1986); Jacksonville, Florida; Detroit, Michigan; and "A Summary of a National Survey of Real Estate Appraisers Regarding the Effect of Adult Bookstores on Property Values," conducted by the Division of Planning, Department of Metropolitan Development, Indianapolis, January 1984; the publication entitled "Protecting Communities From Sexually-Oriented Businesses" (Southwest Legal Press, Inc.); the publication entitled "Local Regulation Of Adult Businesses" (Clark, Boardman and Callaghan); publications prepared by the Florida Family Association, Inc. (Tampa, Florida) relating to the regulation of sexually-oriented businesses and adverse secondary effects of sexually-oriented businesses; the "Report to: The American Center for Law and Justice on the Secondary Impacts of Sex Oriented Businesses", Peter R. Hecht, Ph.D. (1996); and the findings of fact relating to the Adult Entertainment Code of Orange County, Florida, and the findings of fact relating to the Sexually-Oriented Business and Adult Entertainment Establishment Ordinance of Seminole County, Florida, matters and materials submitted at the public hearings relating to this Ordinance and other matters and documents relating to all of the above; the City Council finds:

(1) Sexually-oriented businesses and adult entertainment establishments lend themselves to ancillary unlawful and unhealthy activities that are presently uncontrolled or not adequately controlled by the operators of the establishments or businesses. Further, there are presently no mechanisms or inadequate mechanisms to make the owners of these businesses or establishments responsible for the activities that occur on their premises.

(2) Certain workers of certain sexually-oriented businesses and adult entertainment establishments defined in this Chapter engage in a higher incidence of certain types of illicit sexual behavior than workers of other business establishments.

(3) Sexual acts, including masturbation, and oral and anal sex, occur at sexually-oriented businesses and adult entertainment establishments, especially those which provide private or semi-private areas, booths or cubicles for viewing films, videos, live sex shows and those having physical interaction between workers and customers.

(4) Offering and providing such private spaces encourages such previously mentioned activities, which create unhealthy conditions.

(5) Persons frequent certain adult theaters, adult arcades, and other sexually-oriented businesses and adult entertainment establishments for the purpose of engaging in sex within the premises of such businesses and establishments.

(6) At least 50 communicable diseases may be spread by activities occurring in sexually-oriented businesses and adult entertainment establishments, 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.

(7) Since 1981 and to the present, there has been an increasing cumulative number of reported cases of AIDS caused by the human immunodeficiency virus (HIV) in the United States 600 in 1982, 2,200 in 1983, 4,600 in 1984, 8,555 in 1985 and 253,448 through December 31, 1992.

(8) As of December 31, 1995, there have been 51,838 reported cases of AIDS in the State of Florida.

(9) From 1981 to June 1996, the number of living persons testing positive for the HIV antibody with AIDS symptoms has risen to 73,217 in the 28 states having confidential reporting requirements.

(10) The number of cases of early (less than one year) syphilis in the United States reported annually has risen, with 33,613 cases reported in 1982 and 45,200 through November of 1990.

(11) The number of cases of gonorrhea in the United States reported annually remains at a high level, with over one-half million cases being reported in 1990.

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

(13) According to the best scientific evidence, AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts.

(14) Sanitary conditions in some sexually-oriented businesses and adult entertainment establishments 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 owners and operators of the facilities to self-regulate those activities and maintain those facilities.

(15) Numerous studies and reports have determined that semen is found in the areas of sexually-oriented businesses and adult entertainment establishments where persons view "adult" oriented films which gives rise to health and aesthetic concerns.

(16) The findings noted in paragraphs (1) through (15) above and as set forth hereinafter raise substantial governmental concerns.

(17) Sexually-oriented businesses and adult entertainment establishments have operational characteristics that should be reasonably regulated in order to protect those substantial governmental concerns.

(18) 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 and adult entertainment establishments. Further, such a licensing procedure will place a heretofore nonexistent incentive on the operators to see that the business or establishment is run in a manner consistent with the good order, health, safety and welfare of its patrons and workers, as well as the citizens of the City. It is appropriate to require reasonable assurances that the licensee is the actual operator of the business or establishment, fully in possession and control of the premises and activities occurring therein.

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

(20) Requiring licensees of sexually-oriented businesses and adult entertainment establishments to keep information regarding current workers and certain past workers will help reduce the incidence of certain types of criminal behavior by facilitating the identification of potential witnesses or suspects and by preventing minors from working at such businesses and establishments.

(21) The disclosure of certain information by those persons ultimately responsible for the day-to-day operation and maintenance of the sexually-oriented business and adult entertainment establishments, 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.

(22) It is desirable in the prevention of the spread of communicable diseases to obtain a limited amount of information regarding certain workers who may engage in the

conduct which this Chapter is designed to prevent or who are likely to be witnesses to such activity.

(23) The fact that an applicant for an adult entertainment establishment or sexually-oriented business license has been convicted of a sexually related crime leads to the rational assumption that the applicant may engage in that conduct in contravention of this Chapter.

(24) Commercial establishments exist or may exist within the City and other nearby cities and counties in central Florida where adult entertainment material is possessed, displayed, exhibited, distributed and/or sold for commercial purposes in the form of books, magazines, periodicals or other printed material, or photographs, films, motion pictures, prints, videotapes, slides, computer digital graphic recordings or other visual representations or recordings, or recordings or other audio matter, or instruments, novelties, devices, or paraphernalia which depict, illustrate, describe or relate to specified sexual activities or specified anatomical areas.

(25) Commercial establishments exist or may exist within the City and other nearby cities or counties in Florida where adult entertainment and sexually-oriented commercial activities in the form of nude, semi-nude, or topless dancers, entertainers, performers, or other individuals, who, for commercial gain, perform or are presented while displaying or exposing specified anatomical areas; or engage in straddle dancing or touching with customers.

(26) Commercial sexually-oriented businesses exist or operate or may exist or operate within the City or other nearby cities or counties in Florida where sexually-oriented services are offered for commercial or pecuniary gain in the form of commercial physical contact, escort services and other services providing sexual encounters. The workers of such sexually-oriented businesses operating in Florida engage in physical contact or touching with customers including, but not limited to, acts of prostitution, or encourage or entice the customers to engage in lewdness.

(27) The activities occurring at sexually-oriented businesses and adult entertainment establishments occur at establishments and businesses which operate primarily for the purpose of making a profit and, as such, are subject to regulation by the City in the interest of the good order, health, safety, economy, property values, morals and general welfare of the people, businesses and industries of the City. A major industry which is important to the community's economic welfare is tourism by persons seeking to bring children to visit Palm Bay who wish to stay in a community with a family atmosphere not dominated by commercialized sexual themes.

(28) When the activities occurring at sexually-oriented businesses and adult entertainment establishments are present in establishments and businesses, other activities which are illegal, unsafe, or unhealthful tend to accompany them, concentrate around them, and be aggravated by them. Such other activities include, but are not limited

to, prostitution, pandering, solicitation for prostitution, lewd and lascivious behavior, exposing minors to harmful materials and an unhealthy and unsanitary environment, possession, distribution and transportation of obscene materials, sale or possession of controlled substances, and violent crimes against persons and property.

(29) When the activities occurring at sexually-oriented businesses and adult entertainment establishments are competitively exploited in establishments and businesses, they tend to attract an undesirable number of transients, blight neighborhoods, discourage wholesome tourism, adversely affect neighboring businesses, lower real property values, promote the particular crimes described above and, ultimately, lead residents and businesses to move to other locations.

(30) Sexually-oriented businesses and adult entertainment establishments often have exterior signs or exterior appearance that are incongruous with other business signage, lower the surrounding property values and contribute to urban decline.

(31) The activities occurring at sexually-oriented businesses and adult entertainment establishments sometimes occur in establishments and businesses concurrent with the sale and consumption of alcoholic beverages which concurrence leads to a further increase in criminal activity, unsafe activity, and disturbances of the peace and order of the surrounding community and creates additional hazards to the health and safety of customers and workers and further depreciates the value of adjoining real property harming the economic welfare of the surrounding community and adversely affecting the quality of life, commerce, and community environment.

(32) Physical contact or touching within sexually-oriented businesses and adult entertainment establishments between workers exhibiting specified anatomical areas and customers poses a threat to the health of both and promotes the spread of communicable and social diseases.

(33) In order to preserve and safeguard the good order, health, morals, safety, and general welfare of the people of the City it is necessary and advisable for the City to regulate the conduct of owners, managers, operators, agents, workers, entertainers, performers, and customers at sexually-oriented businesses and adult entertainment establishments.

(34) The potential dangers to the good order, morals, health, safety, and general welfare of the people of the City posed by permitting a sexually-oriented business or adult entertainment establishment to operate without first meeting the requirements for obtaining a license under this Chapter are so great as to require the licensure of such establishments prior to their being permitted to operate.

(35) Requiring operators of sexually-oriented businesses and adult entertainment establishments to keep records of information concerning workers and certain recent past workers as well as customer contracts and other matters and materials

will help reduce the incidence of certain types of criminal behavior by facilitating the identification of potential witnesses or suspects and by making it difficult for minors to work at or be customers in such establishments.

(36) Prohibiting sexually-oriented businesses and adult entertainment establishments from operating within set distances of educational institutions, religious institutions, residences, areas zoned or designated for residential use, and parks at which minors are customarily found, will serve to protect minors from the adverse affects of the activities that accompany such establishments and businesses.

(37) Straddle dancing, unregulated private performances, and enclosed adult booths in sexually-oriented businesses and adult entertainment establishments have resulted in indiscriminate commercial sex between individuals and poses a threat to the health of the participants and promotes the spread of communicable sexually transmitted diseases. Straddle dancing is primarily conduct rather than communication or expression.

(38) Workers at sexually-oriented businesses and adult entertainment establishments engage in a higher incidence of certain types of unhealthy or criminal behavior than workers of other establishments and businesses including, but not limited to, a very high incidence of illegal prostitution or engaging in lewdness in violation of Florida Statutes Chapter 796, operation without business tax receipts and illegal and unlicensed massage.

(39) Physical contact or touching between workers of sexually-oriented businesses and adult entertainment establishments and customers poses a threat to the health of both and promotes the spread of communicable and sexually transmittable diseases.

(40) The practice of not paying or underpaying workers at sexually-oriented businesses and adult entertainment establishments and requiring them to earn their entire income from tips or gratuities from their customers who are predisposed to want sexual activity has resulted in a high incidence of prostitution and crimes related to lewdness by workers.

(41) Sexually-oriented businesses and adult entertainment establishments involve some activities that are pure conduct engaged in for the purpose of making a profit, rather than speech or expressive activity and, therefore, are subject to and require increased regulation to protect the health, good order, morals, welfare and safety of the community.

(42) Requiring sexually-oriented businesses to post a listing of services provided and restrict services to those listed as well as maintaining a customer contract and transaction record in a daily register will discourage incidents of criminal behavior such as lewdness and prostitution thereby further safeguarding the health of both workers and

customers and will assist facilitating the identification of potential witnesses or suspects if criminal acts do occur.

(43) The general welfare, health, good order, morals and safety of the citizens of the City will be promoted by the enactment of this Chapter.

(C) Intent. It is the intent of this Chapter to protect and preserve the good order, health, peace, morals, safety, and welfare of the citizens of the City of Palm Bay. This Chapter regulates conduct and is not an ordinance that affects the use of land as contemplated by Section 166.041, Florida Statutes.

(D) Authority. This Chapter is enacted under the constitutionally derived home rule power of the City of Palm Bay in the interest of the good order, health, morals, peace, safety, and general welfare of the people of the City.

(E) Recitals. It is the City Council's further intention to accomplish those intents and purposes expressed by the City Council in the recitals of the ordinance from which this Section derives, each of which are incorporated by reference into this section.

(F) Speech protection. Nothing herein shall be construed to prohibit constitutionally protected expression or speech. This Chapter is intended to reasonably regulate the adult entertainment industry and sexually-oriented businesses which engage in commercial activities involving acts or services of a sexually explicit nature or which involve acts or services involving matters which are sexual in nature.

Section 2. CONSTRUCTION.

(A) This Chapter shall be liberally construed to accomplish its purpose of reasonably regulating sexually-oriented businesses and adult entertainment establishments in order to reduce or eliminate adverse secondary effects of such businesses and establishments. See for example and not by way of limitation *Barnes v. Glen Theater, Inc.*, 501 U.S. 560, 111 S. Ct. 2456, 115 L.Ed. 2d 504 (1991), *Cafe 207, Inc. v. St. Johns County*, 856 F. Supp. 641 (M.D. Fla. 1994); affirmed, *Cafe 207, Inc. v. St. Johns County*, 66 F. 3d 272 (11th Cir. 1995); cert. denied, 134 L Ed. 2d.647 (U.S. April 22, 1996). This Chapter shall not be construed to authorize any illegal act under Federal law, State law or City ordinance. This Chapter is intended to reasonably regulate such matters in order to reduce or eliminate the adverse secondary effects of commercial establishments and businesses. The regulation of alcoholic beverage establishments is also addressed in the City Code of the City of Palm Bay and other provisions of law.

(B) Unless otherwise indicated, all provisions of this Chapter shall apply equally to all persons, regardless of sex. Masculine pronouns, such as "he," "his," and "him," as employed in this Chapter, shall also be construed to apply to feminine pronouns and neutral pronouns, unless the context suggests otherwise. Words used in the singular number shall include the plural number, unless the context suggests otherwise.

REGULATORY PROVISIONS

Section 3. OBSCENITY/INDECENT/EXPOSURE UNLAWFUL.

As a matter of State and Federal law, obscenity is unlawful in the City of Palm Bay. Likewise, State law prohibits indecent exposure. Nothing in this Chapter shall be construed to allow or permit the possession, distribution and transportation of obscene materials; to authorize the exposing of persons under eighteen (18) years of age to motion pictures, exhibitions, shows, representations and presentations of specified sexual activities or persons displaying or exhibiting specified anatomical areas; or the indecent exposure of a person as prohibited by State law.

Section 4. DEFINITIONS.

The following words and phrases defined in this section and used in this chapter shall have the meaning herein prescribed, unless the context clearly suggests otherwise.

ADULT BOOKSTORE/ADULT VIDEO STORE.

(1) An establishment which, as its principal business purpose, sells or rents adult material or which offers adult materials for sale or rent as a significant portion of its stock and trade as defined more particularly herein below.

(2) Any establishment in which any one or more of the following five elements occur shall be presumed to be an adult bookstore/adult video store:

(a) That the adult material is accessible to customers; "accessible to customers" means that the item can be physically touched, picked up, handled by a customer before being transferred from the control of a worker, or is visually displayed so that an adult or child present in the store can view substantially more than its name alone; or

(b) That the individual items of adult material offered for sale and/or rental comprise more than ten percent (10%) of the unused individual items publicly displayed at the establishment as stock in trade in the following categories: books, magazines, periodicals, other printed matter, slides, photographs, films, motion pictures, videotapes, compact disks, DVDs, computer digital graphic recordings, other visual representations, audio recordings and other audio matter, and more than twenty-five percent (25%) of the total used items publicly displayed at the establishments as stock in trade in each of the same categories set out above; or

(c) The gross income each month from the sale and rental of adult material comprises more than ten percent (10%) of that month's gross income from the sale and rental of the goods and material at the establishment; or

(d) The floor area used to display adult material comprises more than ten percent (10%) of the floor area used for display of all goods and material at the establishment; or

(e) The establishment uses any of the following terms in advertisements or any other promotional activities relating to the adult material: "XXX," "XX," "X," or any series of the letter "X" whether or not interspersed with other letters, figures or characters; "erotic" or deviations of that word; "adult entertainment," "adult books," "adult videos" or similar phrases; "sexual acts" or similar phrases; "nude" or "nudies" or similar phrases which letters, words or phrases a reasonable person would believe to be promotional of the purchase or rental of adult material.

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

ADULT BOOTH. A separate booth inside an adult entertainment establishment accessible to any person, regardless of whether a fee is charged for access. The term "adult booth" includes, but is not limited to, a "peep show" booth or arcade, or other booth used to view "adult material." The term "adult booth" does not include a foyer through which any person can enter or exit the establishment or a rest room.

ADULT ENTERTAINMENT.

(1) The display or exposure of any specified anatomical area by a worker to a customer regardless of whether the worker actually engages in performing or dancing or where workers wear or display to a customer any covering, tape, pastie, or other device which simulates or otherwise gives the appearance of the display or exposure of any specified anatomical areas regardless of whether the worker actually engages in performing or dancing; or

(2) Providing adult material for commercial or pecuniary gain; or

(3) The offering, soliciting or contracting to dance or perform by a worker with or for a customer with the acceptance of any consideration, tip, remuneration or compensation from or on behalf of that customer; or

(4) The dancing or performing by a worker with or within three (3) feet of a customer with the acceptance of any consideration, tip, remuneration, or compensation from or on behalf of that customer.

ADULT ENTERTAINMENT ESTABLISHMENT. An adult performance establishment, adult bookstore/adult video store, adult motel, or adult theater as those terms are defined herein, which is operated for commercial or pecuniary gain. An establishment with an adult entertainment license shall be presumed to be an adult entertainment establishment.

ADULT MATERIAL. One or more of the following, regardless of whether it is new or used:

(1) Books, magazines, periodicals, or other printed matter, photographs, films, motion pictures, DVDs, videotapes, video cassettes, slides, computer digital graphic recordings, or other visual representations, tape recordings, disks or other audio matter, which have as their primary or dominant theme matters depicting, illustrating, describing or relating to specified sexual activities or specified anatomical areas; or

(2) Instruments, novelties, devices or paraphernalia which are designed for use in connection with specified sexual activities, excluding bona fide birth control devices.

ADULT MODEL. Any person who, for commercial or pecuniary gain, offers, suggests, or agrees to engage in a private performance, modeling or display of male or female lingerie, bathing suits, under garments, or specified anatomical areas to the view of a customer.

ADULT MOTEL. Any motel, hotel, boarding house, rooming house or similar commercial establishment which offers accommodations to the public for any form of consideration whose advertisements or business name includes the word "adult" or which advertises to the public outside of the premises of the establishment and visible from a public right-of-way the presentation of closed-circuit television transmissions, films, motion pictures, video tapes, DVDs, video cassettes, slides or other photographic reproductions, which have as their primary or dominant theme matters depicting, illustrating or relating to specified sexual activities or specified anatomical areas. The term "adult motel" is included within the definition of "adult theater."

ADULT PERFORMANCE ESTABLISHMENT.

(1) Any establishment where any worker:

(a) Engages in a private performance, acts as an adult model, or displays or exposes any specified anatomical areas to a customer, regardless of whether the worker engages in dancing or any particular activity; or

(b) Wears and displays to a customer any covering, tape, pastie, or other device which simulates or otherwise gives the appearance of the display or exposure

of any specified anatomical areas, regardless of whether the worker actually engages in performing or dancing; or

(c) Offers, solicits, or contracts to dance or perform with or for a customer and accepts any consideration, tip, remuneration or compensation from or on behalf of that customer; or

(d) Dances or performs with or within three (3) feet of a customer and accepts any consideration, tip, remuneration, or compensation from or on behalf of that customer.

(2) A bona fide private club whose membership as a whole engages in social nudism or naturalism as in a nudist resort or camp and at which specified sexual activities do not occur shall be presumed not to be an adult performance establishment.

ADULT THEATER. An establishment which consists of an enclosed building, or a portion or part of an enclosed building, or an open-air area used for viewing by persons of films, motion pictures, DVDs, video cassettes, video tapes, slides, computer digital graphic recordings, or other photographic reproductions which have as their primary or dominant theme, matters depicting, illustrating or relating to specified sexual activities or specified anatomical areas. "Adult motels," and "adult booths" are included within the definition of "adult theater."

ADULT VIDEO STORE. See "ADULT BOOKSTORE"

ALCOHOLIC BEVERAGES. All distilled spirits and all beverages containing one-half (1/2) of one (1) percent (.005) or more alcohol by volume. It shall be prima-facie evidence that a beverage is an alcoholic beverage if there is proof that the beverage in question was or is known as beer, wine, whiskey, moonshine whiskey, moonshine, shine, rum, gin, tequila, bourbon, vodka, scotch, scotch whiskey, brandy, malt liquor, or by any other similar name or names, or was contained in a bottle or can labeled as any of the above names, or a name similar thereto, and the bottle or can bears the manufacturer's insignia, name, or trademark. Any person who, by experience in the handling of alcoholic beverages, or who by taste, smell, or drinking of such alcoholic beverages has knowledge of the alcoholic nature thereof, may testify as to his opinion about whether such beverage is an alcoholic beverage.

CITY COUNCIL. The City Council of the City of Palm Bay, Florida.

COMMERCIAL BODILY CONTACT.

(1) The manipulation, washing, scrubbing, stroking, or touching, for commercial or pecuniary gain, of the body of another person directly, or indirectly through a medium or using any object, instrument, substance, or device between a worker and a customer.

(2) The following persons engaged in the bona fide performance of the following activities shall not be deemed to be engaging in commercial bodily contact for the purposes of this Chapter when they are engaged in the bona fide practice of their occupation or profession:

(a) Persons licensed as a massage therapist or apprentice massage therapist pursuant to Florida Statutes, Chapter 480, when providing massage services in an establishment licensed under Florida Statutes, Chapter 480.

(b) Persons licensed under the laws of the State of Florida to practice medicine, surgery, osteopathy, chiropractic, naturopathy, or podiatry.

(c) Persons licensed under the laws of the State of Florida as a physician's assistant or nurse.

(d) Persons holding a drugless practitioner's certificate under the laws of the State of Florida.

(e) Persons licensed as barbers or cosmetologists under the laws of the State of Florida.

(f) Persons performing authorized services in a hospital, nursing home, sanitarium, adult congregate living facility, group home, day care center, or similar place of business when owned and operated in accordance with the laws of the State of Florida.

(g) Persons who are instructors, coaches, or athletic trainers employed by, or on behalf of, any professional, amateur, Olympic, or similar athletic team engaging in bona fide athletic events, or when employed by a governmental entity or a bona fide educational institution.

(h) Persons licensed as physical therapists under the laws of the State of Florida.

COMMERCIAL BODILY CONTACT ESTABLISHMENT. Any establishment, business, or place operated for commercial or pecuniary gain or where for any form of consideration workers or customers engage in commercial bodily contact or any establishment, business or place any portion of which is set aside, advertised, promoted or used as a place where commercial bodily contact occurs or which is described or depicted as a "body scrub salon," "body wash salon," or "body relaxation salon."

COMMERCIAL or PECUNIARY GAIN. Operated for commercial or pecuniary gain shall be presumed for any establishment which has received a business tax receipt. For the purposes of this Chapter, operation for commercial or pecuniary gain shall not depend on actual profit or loss. An establishment which has a business tax receipt or an establishment which advertises itself as a type of adult entertainment establishment shall be presumed to be "operated for commercial or pecuniary gain".

COMMERCIAL ESTABLISHMENT. Any business, location, or place which conducts or allows to be conducted on its premises any activity for commercial or pecuniary gain.

CONVICTION. A determination of guilt resulting from plea or trial, regardless of whether adjudication was withheld or whether imposition of sentence was suspended.

CUSTOMER.

(1) Any person present at an adult entertainment establishment or sexually-oriented business, other than operators or workers, regardless of whether the person has given or paid any consideration to be present at the adult entertainment establishment or sexually-oriented business and regardless of whether the person has paid any money for goods or services at or to the adult entertainment establishment or sexually-oriented business; or

(2) Any person, excluding a worker or operator, who has paid, or has offered, agreed, been solicited, or had someone else offer or agree on that person's behalf to pay any consideration, fee, or tip to an operator or worker of an adult entertainment establishment or sexually-oriented business.

EDUCATIONAL INSTITUTION. A premises or site upon which there is an institution of learning for minors, whether public or private, which conducts regular classes and/or courses of study required for eligibility to certification by, accreditation to, or membership in the State Department of Education of Florida, Southern Association of Colleges and Secondary Schools, or the Florida Council of Dependent Schools. The term "educational institution" includes a premises or site upon which there is a nursery school, kindergarten, elementary school, junior high school, senior high school, Charter school, or any special institution of learning, a vocational institution, professional institution, an institution of higher education, a community college, junior college, four (4) year college or university.

ENTITY. Any proprietorship, partnership, corporation, limited liability company, association, business trust, joint venture, joint-stock company or other for profit and/not for profit organization by whatever name, title or description.

ESCORT. Any person who, for commercial or pecuniary gain, compensation or tips, agrees to, offers to go, or goes to any place, including, but not limited to, a business, hotel, motel, residence, boat, vessel, motor vehicle, or other mode of transportation to do any of the following acts:

- (1) Act as a companion or date for, or converse with a customer;
- (2) Engage in commercial bodily contact with another person;

- (3) Engage in a private performance;
- (4) Engage in adult modeling or act as an adult model;
- (5) Display specified anatomical areas, strip naked, or go topless; or
- (6) Engage in any specified sexual activity.

Nothing in this definition shall be construed to legalize prostitution or other conduct prohibited by this Code or other law. Workers of a licensed adult-performance establishment for whom worker records are maintained pursuant to this Chapter are excluded from the definition of escort when engaged in the expressive display of specified anatomical areas at a licensed adult-performance establishment.

An escort who is a paid employee type worker of an escort service for whom taxes and social security payments are withheld and paid by the escort service, and who is not an independent contractor, is not required to obtain his or her own sexually-oriented business license for activities conducted pursuant to employment with the escort service.

ESCORT SERVICE. A person, business, establishment, or place operated for commercial or pecuniary gain, which advertises as an "escort", "escort service" or "escort agency" or otherwise offers or advertises that it can furnish escorts, a private performance, or adult models; or offers or actually provides, arranges, dispatches, or refers workers or themselves to act as an escort or engage in a private performance for a customer. An affirmative defense to an allegation that any person, business or establishment or entity is acting as an escort service is that it is a bona fide dating or matching service which arranges social matches or dates for two persons who each wish to meet a compatible companion when neither of said persons solicits, accepts, or receives any financial gain or any monetary tip, consideration, or compensation for the meeting or date is not an escort service.

ESTABLISHMENT. Any place, site, or premises, or portion thereof, upon which any person, corporation, or business entity of any type conducts activities or operations for commercial or pecuniary gain including, but not limited to, any place, site or premises from where an escort service dispatches or refers workers to other locations or at which an escort service receives business calls from customers.

LAW ENFORCEMENT OFFICER. An officer who is on official duty for any law enforcement agency.

LICENSEE. Any person, corporation, partnership, or other entity whose application for an adult entertainment establishment or sexually-oriented business license has been

granted and any person, corporation, partnership or other entity who owns or operates or controls the establishment or business.

OPERATOR. Any person who engages in or performs any activity which is necessary to or which facilitates the operation of a sexually-oriented business or an adult entertainment establishment including, but not limited to, the licensee, manager, owner, doorman, bouncer, bartender, disc jockey, sales clerk, ticket taker, movie projectionist, DVD operator, dispatcher, receptionist, attendant or supervisor.

PARK. A tract of land within any jurisdiction which is kept for ornament or recreation and which is maintained as public property including, but not limited to, a playground, nature trails, swimming pool, reservoir, athletic field, basketball or tennis courts, pedestrian/bicycle paths, wilderness areas or other similar public land.

PERSON. Includes, but is not limited to, an individual, associations, joint ventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, limited liability companies and any and all other similar entities and all officers, directors and principal stockholders of such associations, joint ventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations or other similar entities.

PRIVATE PERFORMANCE. Modeling, posing, or the display or exposure of any specified anatomical area by a worker to a customer while the customer is in an area not accessible during such display to all other persons in the establishment or, while the customer or worker is in an area which is not on the premises of the establishment, or in which the customer or worker is totally or partially screened or partitioned during such display from the view of persons outside of the area.

SEXUAL ENCOUNTER BUSINESS.

(1) Any person or entity which for any form of consideration or remuneration or which charges an admission fee and provides a place for the purpose of providing, encouraging or allowing three (3) or more persons to engage in any specified sexual activity among themselves or with other persons.

(2) The following shall be presumed not to be a sexual encounter business:

(a) A bona fide private club whose membership as a whole engages in social nudism or naturalism as in a nudist resort or camp and at which specified sexual activities do not occur.

(b) A State licensed sexual therapist.

(c) A bona fide hotel or motel licensed by the State.

SEXUALLY-ORIENTED BUSINESS. A commercial bodily contact establishment, escort service, or sexual encounter business. A business shall be a sexually-oriented

business, whether services are provided on the premises of an establishment or on an out call basis at any other place and regardless of whether such business is licensed under this Chapter. A business with a sexually-oriented business license shall be presumed to be a sexually-oriented business. An individual operating a sexually-oriented business is subject to the provisions of this Chapter notwithstanding the fact that services are being provided at or from a residence, motor vehicle, vessel or any other location and a license pursuant to this Chapter is required unless the individual is a paid employee for whom taxes and social security payments are withdrawn and paid by the licensed establishment, worker records are maintained, and the individual is not an independent contractor.

POLICE CHIEF. The Chief of Police of the City of Palm Bay, Florida.

SPECIFIED ANATOMICAL AREAS.

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

(1) Any of the following in a state that is less than completely and opaquely covered:

- (a) The male or female genitals;
- (b) The male or female pubic area;
- (c) The vulva;
- (d) The anus;
- (e) The penis;
- (f) The scrotum;
- (g) The cleavage of the buttocks;
- (h) The buttocks;
- (i) The anal cleft;
- (j) The anal cleavage;
- (k) The areola on the breast of a female;
- (l) The nipple on the breast of a female;
- (m) The female breast below a line immediately above the top of the areola said line running horizontal across the top of the entire breast, but shall not include any portion of the cleavage between the human female breasts typically exhibited by a dress, blouse, shirt, leotard, bathing suit, or other wearing apparel, provided that the areola is not exposed;
- (n) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

(2) Body paint, body dyes, tattoos, liquid latex whether wet or dried, dental floss, G-Strings, thongs, and similar coverings shall not be considered an opaque covering.

SPECIFIED CRIMINAL ACT.

- (1) A violation of this chapter;
- (2) Any felony not otherwise specified in this definition;
- (3) An offense under Florida Statutes, Chapter 794, (Sexual Battery);
- (4) An offense under Florida Statutes, Chapter 796, (Prostitution);
- (5) An offense under Florida Statutes, Chapter 800, (Lewdness; Indecent Exposure);
- (6) An offense under Florida Statutes, Chapter 826, (Bigamy; Incest);
- (7) An offense under Florida Statutes, Chapter 847, (Obscene Literature; Profanity); or
- (8) An offense against an analogous Federal statute.

SPECIFIED SEXUAL ACTIVITIES.

Editor's note: The sources of definitions of terms used below are (1) Taber's Cyclopedic Medical Dictionary, T.A. Davis Co., Philadelphia, 1997 (ed. 18); (2) Oxford Dictionary of the English Language (multi-volume); (3) Florida Statutes. The definitions of terms are a material part of this Chapter and apply to the use of the term each time it is used.

- (1) Human genitals in a state of sexual stimulation, arousal or tumescence; or
- (2) Acts of human anilingus, bestiality, buggery, cunnilingus, coprophagy, coprophilia, fellatio, flagellation, masochism, masturbation, necrophilia, pederasty, pedophilia, sadism, sadomasochism, sapphism, sexual intercourse, sodomy, urolagnia, or zoerasty; or
- (3) Fondling or other touching of human genitals, pubic region, any part of the buttocks, anus or female breast; or
- (4) Oral, anal, or vaginal penetration by, or union with, the sexual organ or any other part of the body of another;
- (5) Anal or vaginal penetration of another or oneself with any object; or
- (6) The handling or fondling of the sexual organ of another for the purpose of masturbation directly or through a medium; or

(7) Excretory functions as part of or in connection with any of the activities set forth in paragraphs (1) through (6) above.

STRADDLE DANCE.

(1) The use by a worker of any part of his or her body to touch the genital or pubic area of another person, or the touching of the genital or pubic area of any worker by another person; or the straddling of the legs of a worker over any part of the body of a customer at the establishment, regardless of whether there is a touch or touching; or the use by a worker, of any part of his or her body to touch the genital, pubic region, buttock, anus or female breast of another person while at the establishment, or the touching of the genital, pubic region, buttock, anus or female breast of any worker by a customer while at the establishment.

(2) Conduct shall be a "straddle dance" regardless of whether the "touch" or "touching" occurs while the worker is displaying or exposing any specified anatomical area.

(3) Conduct shall also be a "straddle dance" regardless of whether the "touch" or "touching" is direct or through a medium.

(4) The terms "lap dance," "table dance," and "face dance" are included within the term "straddle dance".

WORKER. A person who works, performs, or provides services at an adult entertainment establishment or at or for a sexually-oriented business, irrespective of whether said person is paid a salary or wage and shall include, but is not limited to, employees, independent contractors, subcontractors, lessees, or sub-lessees who work or perform at an adult entertainment establishment or at or for a sexually-oriented business. An operator is a type of worker.

Section 5. NOTICE.

Any notice required under this Chapter shall, unless otherwise provided in this Chapter, be accomplished by posting upon the subject premises and sending a written notification by certified mail to the mailing address set forth on the application for the license or a permit. This mailing address shall be considered the correct mailing address unless the City Manager or his designee has been otherwise notified in writing.

Section 6. PENALTIES/REMEDIES/RELIEF.

Any person violating any of the provisions of this Chapter shall be prosecuted in the same manner as misdemeanors are prosecuted. Such violations shall be prosecuted in the name of the State of Florida in a court having jurisdiction of misdemeanors by the

prosecuting attorney thereof and, upon conviction, shall be punished by a fine not to exceed five hundred dollars (\$500.00) or by imprisonment in the county jail not to exceed sixty (60) days or by both fine and imprisonment as provided in Section 62.22, Florida Statutes. Each incident or separate occurrence of any act that violates this Chapter shall be deemed a separate offense. In addition to the penalties provided under this Section, violators of this Chapter shall be subject to any other appropriate civil or criminal action provided by law in a court of competent jurisdiction, including, but not limited to, injunctive relief.

Section 7. LICENSE REQUIRED.

(A) Requirement. It is unlawful for any person to operate or to be an operator of or worker at a sexually-oriented business or an adult entertainment establishment which has not first obtained a license which is applicable for said establishment or business pursuant to this Chapter; or to continue to operate or be an operator of or worker at a sexually-oriented business or an adult entertainment establishment where that person knows or has reason to know that the license of the establishment or business is under suspension, has been revoked or has lapsed. The operation of a sexually-oriented business or an adult entertainment establishment without a valid license, where applicable, is unlawful and shall be grounds for the closing of the establishment or business upon a finding of fact by a court or other body with proper jurisdiction that the establishment does not have a valid license.

(B) Licensing office. Unless the City Manager designates in writing an office to administer the provisions of this Chapter, he shall serve as the licensing office. The City Manager may modify his designation from time to time in writing. When the phrase "City Manager or his designee" is used in this Chapter, the designee referred to shall be the office designated in writing pursuant to this subsection.

(C) Classifications. Adult entertainment establishment and sexually-oriented business licenses referred to in this Chapter shall be classified as follows:

- (1) Adult bookstore/adult video store;
- (2) Adult performance establishment;
- (3) Adult motel;
- (4) Adult theater;
- (5) Commercial Bodily Contact Establishment;
- (6) Escort Service.

(D) Single license/single classification of license. Only one (1) license may be issued for a location and only under a single classification.

Section 8. LOCATION GENERALLY.

Locations of all sexually-oriented businesses and adult entertainment establishments within the City shall comply with the provisions of Chapter 173, Adult Entertainment Code, Palm Bay Code of Ordinances, and all sexually-oriented businesses and adult entertainment establishments shall be subject to the restrictions enumerated in this Code.

Section 9. RESPONSIBILITIES OF OTHER OFFICES AND DEPARTMENTS.

The City Council is the legislative branch of the City of Palm Bay government. Ultimate responsibility for the administration of this Chapter is vested in the City Manager or his designee as set forth in this Chapter. Other departments having responsibility under this Chapter are as follows:

(1) The Finance Department is responsible for granting, denying, revoking, renewing, suspending and canceling business tax receipts in accordance with State law.

(2) The Police Chief is responsible for verifying information contained on applications for inspecting proposed or existing adult entertainment establishments and sexually-oriented businesses in order to ascertain compliance with applicable criminal statutes and ordinances including, but not limited to, those set forth in this Chapter, for determining whether license applicants have been convicted of a felony or a specified criminal act within the previous five (5) years and for enforcing applicable criminal statutes and ordinances including, but not limited to, those set forth in this Chapter. The Police Chief is responsible for keeping all information processed by each application and his department will serve as a document repository for inspection of any information by any applicant.

(3) The Building Official is responsible for inspecting establishments in order to ascertain compliance with all applicable building codes, statutes, ordinances and regulations.

(4) The Fire Chief is responsible for inspecting establishments and businesses in order to ascertain compliance with all applicable fire codes, statutes, ordinances and regulations.

(5) The Growth Management Department is responsible for ascertaining whether the location of proposed sexually-oriented businesses or adult entertainment establishments comply with all separation, distance, zoning and location requirements of the Land Development Regulations of the City of Palm Bay and whether compliance with all applicable zoning regulations and land use laws is maintained.

Section 10. LICENSE APPLICATION AND APPLICATION FEE.

Any person desiring to engage in the business of operating an adult entertainment establishment or a sexually-oriented business shall file with the City Manager or his designee a sworn application on forms supplied by the City. The application shall contain the information and documents as provided in this Chapter and shall be accompanied by an application fee as established in this Chapter. The application shall be signed by the applicant and verified by the applicant before an officer authorized to take oaths and acknowledgments.

Section 11. ADVERTISING.

(A) Advertisements, displays or other promotional materials for any adult entertainment establishments, except as authorized and described within this Section, shall not be shown or exhibited so as to be visible to the public from any street, sidewalk or other public place.

(B) This shall not prohibit the use of a sign displaying the name of the business on the business premises as regulated by this Section.

(C) Except as provided in this Section, such signs shall be subject to any sign ordinance currently existing in the City.

(D) A sign shall not contain any flashing lights, photographs, silhouettes, drawings or pictorial representations of any type or manner and shall be limited in content as follows:

(1) The name of the establishment, and/or

(2) One or more of the following applicable phrases:

(a) "Adult Bookstore."

(b) "Adult Theatre."

(c) "Adult Dancing Establishment."

(d) "Adult Motel."

(e) "Adult Entertainment."

(f) "Movie Titles Posted Within Premises."

(g) Food or drink specials, show times, welcome notices, and names of entertainers.

(3) No sign shall include the words "nude," "nudity," "naked," "topless," "go-go" or "dancers," or words including slang substitutes or materials depicting, describing or relating to "specified anatomical areas of the human body" or "specified sexual activities" as defined in this Chapter.

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

(5) Any changeable copy sign or portable or temporary advertisement for an adult entertainment establishment shall be brought into immediate compliance with the restrictions of this Section.

Section 12. CONTENTS OF APPLICATION.

(A) The completed application shall be accompanied by the following documents and shall be accompanied by a non-refundable application fee of four hundred dollars (\$400.00) which shall be used to defray the costs of the application review process by various offices and departments; provided, however, that the unused portion of the fee after deducting the costs associated with processing the fee shall be applied as a credit toward the annual license fee for licensing under this Chapter.

(B) If the applicant is:

(1) An individual, the individual shall state his or her legal name to include any and all aliases, residential street address, residential telephone number, an address where all correspondence from the City should be mailed, and submit proof that he is eighteen (18) years of age or older by providing a copy of a valid driver's license, voter's registration card or another State issued identification card; or a certified copy of a birth certificate; or

(2) A partnership or trust, the partnership or trust shall state its complete name, and the names, residential street addresses, and telephone numbers of all partners, whether the partnership is general or limited or trustees, the name and residential street address of at least one (1) person authorized to accept service of process and, if in existence, a copy of the partnership agreement; or

(3) A corporation, the corporation shall provide a copy of its articles of incorporation stating its complete name, the date of its incorporation, evidence that the corporation is in good standing, the names, residential street addresses, telephone numbers and capacity of all officers, directors and principal stockholders, and the name of the registered corporate agent and the legal street address of the registered office for service of process.

(4) A limited liability company, the company shall provide a copy of its articles of organization stating its complete name, the date of its organization, evidence that the company is in good standing, the names, residential street addresses, telephone numbers and capacity of all members, including its managing member(s), and the name of the registered corporate agent and the legal street address of the registered office for service of process.

(5) Any other entity, the entity shall state its complete name, the date of formation, the names, residential address, telephone numbers and capacity of all principal

owners, and the name and residential street address of one (1) person authorized to accept service of process.

(C) If the applicant intends to conduct activities in the establishment or business under a name other than that of the applicant, the applicant shall state the establishment's or business' fictitious name or names and the county of registration under section 865.09, Florida Statutes or its successor and all business names and telephone numbers to be used by the establishment or business.

(D) The applicant shall state whether the applicant or any of the other individuals listed on the application has, within the five (5) year period immediately preceding the date of the application, been convicted of a specified criminal act, and, if so, the specified criminal act involved, the date of conviction and the place of conviction.

(E) The applicant shall state whether the applicant or any of the other individuals listed pursuant to Subsection (B) has had a previous license under this Chapter or Chapter 110 suspended or revoked including the name and location of the establishment for which the license was suspended or revoked, the date of the suspension or revocation, and whether the applicant or any other individuals listed pursuant to Subsection (B) has been a partner in a partnership or an officer, director or principal stockholder of a corporation, or a managing member or member of a limited liability company whose license under this Chapter has previously been suspended or revoked including the name and location of the establishment for which the license was suspended or revoked, or has been a member, officer, director or managing member of a limited liability company whose license under this Chapter has previously been suspended or revoked including the name and location of the establishment for which the license was suspended or revoked, as well as the date of the suspension or revocation.

(F) The applicant shall state whether the applicant or any other individuals listed pursuant to Subsection (B) holds any other licenses under this Chapter and, if so, the names and locations of such other licensed establishments.

(G) The applicant shall state the single classification of license for which the applicant is filing.

(H) The applicant shall state the location of the proposed establishment or business including a street address, the name and address of the real property owner of the site, a notarized statement of consent from the real property owner authorizing a sexually-oriented business or adult entertainment establishment on the site, and a legal description of the property on which the establishment is to be located.

(I) The applicant shall provide the names of the workers for the proposed establishment or business, if known, or, if presently unknown a statement to that effect.

(J) The applicant shall submit a plan drawn to appropriate scale of the proposed licensed premises indicating the areas to be covered by the license, all windows, doors, entrances and exits and the fixed structural features, walls, stages, partitions, projection booths, admission booths, adult booths, concession booths, stands, counters and similar structures of the establishment or business to which the proposed license pertains. The term "fixed structural features" shall include immovable partitions and counters and similar structures that are intended to be permanent.

(K) The applicant shall provide a mailing address, and, if different, a designated return address where all future correspondence from the City may be sent and the applicant's telephone number where communications and inquiries can be made.

(L) The applicant shall provide a recent color photograph of the applicant in passport size if an individual and of each officer, director and principal stockholder if a partnership, corporation or other similar entity.

(M) The applicant shall provide the weight, height, color of eyes, date of birth and gender of the applicant if an individual and of each officer, director and principal stockholder or owner if a partnership, corporation or other similar entity.

(N) The applicant shall provide the applicant's social security account number or employer's tax identification number and either the applicant's drivers license number or the number of a Federal or State issued identification card if an individual and of each officer, director and principal stockholder or owner if a partnership, corporation or other similar entity.

(O) The applicant shall provide a complete set of the applicant's fingerprints if an individual and of each officer, director and principal stockholder or owner if a partnership, corporation or other similar entity.

(P) The applicant shall provide a copy of the most recent lease or deed of conveyance, whichever is applicable, indicating the applicant's interest in the proposed establishment.

(Q) The applicant shall provide a statement of the hours of operations of the establishment or business.

(R) The applicant shall provide a notarized statement that the applicant has complied with the applicable laws of Florida relating to corporations, partnerships and fictitious names.

(S) It is unlawful for any person applying for an adult entertainment establishment or sexually-oriented business license to make a false statement which is intended to facilitate the issuance of a license or to provide false information which is intended to facilitate the issuance of a license.

Section 13. CONTINUING DUTY/FALSE OR MISLEADING INFORMATION.

(A) Each applicant shall be under a continuing duty and obligation to disclose to the City Manager or his designee any and all changes or alterations in the information or disclosures required by this Chapter. It is the duty of each applicant to correct changed, false or erroneous information provided in an application. It is unlawful for an applicant to fail to disclose changes in information provided or to fail to correct false or erroneous information given in an application immediately upon the applicant knowing or being in such a position that he or she should have known that the information provided has changed or was false or erroneous when provided.

(B) It is unlawful for any person applying for an adult entertainment establishment or sexually-oriented business license to make a false or misleading statement or provide false or misleading information which is intended to facilitate the issuance of a license.

Section 14. CONSENT.

By applying for a license under this Chapter, the applicant shall be deemed to have been provided a copy of this Chapter, to understand it by having the opportunity to have consulted with counsel or otherwise, and to have consented to the provisions of this Chapter.

Section 15. INVESTIGATION OF APPLICATION.

Upon receipt of an application properly filed with the City Manager or his designee and upon payment of the non-refundable application fee, the application shall be time and date stamped and a copy of the application shall be forwarded to the Police Chief, the Fire Chief, the Building Official, and the Growth Management Department. Each recipient entity shall promptly conduct an investigation of the applicant, application and the proposed establishment within fifteen (15) days from the date that the application was filed. At the conclusion of its investigation, each recipient entity shall indicate to the City Manager or his designee its investigative findings relating to the application and the reasons therefor.

Section 16. ISSUANCE OR DENIAL OF LICENSE.

(A) Upon the completion of the investigation and a review of the application as required, upon determination that the applicant meets the requirements of this Chapter, and upon payment of the appropriate license fee by the applicant, the City Manager or his designee shall within thirty (30) days of the application being filed issue the license.

(B) If after review and investigation as provided herein the City Manager or his designee determines that one or more of the reasons for denial set forth in Section 17 exist, the application shall be denied, within thirty (30) days of the date that the application

is filed, and the City Manager or his designee shall issue a written and dated notice of the denial and the reasons therefor. A copy of the notice shall be sent to the applicant by certified mail to the designated return address on the application within five days of the date of denial.

(C) The denial of an application shall be final. No further exhaustion of administrative remedies shall be necessary for judicial review of the administrative action.

(D) An applicant whose application is denied may immediately appeal as a matter of right to a court of competent jurisdiction, which court shall promptly review said application.

Section 17. REASONS FOR DENIAL OF APPLICATION OF LICENSE.

A. The application for a license shall be denied if one or more of the following reasons is found:

(1) The application does not comply with the requirements of this Chapter and/or statutes expressly made applicable to adult entertainment establishments and sexually-oriented businesses such as section 847.0134, Florida Statutes.

(2) The application contains material false information.

(3) The applicant or any of the individuals stated in Section 12 of this Chapter has a license under this Chapter which is under suspension.

(4) The applicant or any of the individuals stated in Section 12 of this Chapter is or was at the time of suspension an officer, director, managing member, or majority stockholder in an entity who has a license under this Chapter which is under suspension.

(5) The applicant or any of the individuals stated in Section 12 of this Chapter had a license under this Chapter which had been revoked within the preceding two years.

(6) The applicant or any of the individuals stated in Section 12 of this Chapter is or was at the time of suspension an officer, director, managing member, or principal stockholder in an entity who had a license under this Chapter which had been revoked within the preceding two (2) years.

Section 18. REAPPLICATION AFTER DENIAL.

The applicant may not reapply for a license for a period of nine (9) months from the date of denial unless there has been an intervening change in the circumstances which may lead to a difference decision regarding the former reason(s) for denial.

Section 19. ANNUAL LICENSE FEE.

(A) There shall be collected under this Chapter annual license fees for the following classifications of adult entertainment establishments and sexually-oriented businesses:

- (1) Adult bookstore/adult video store, \$200.00;
- (2) Adult theater, \$200.00;
- (3) Adult performance establishments, \$200.00;
- (4) Adult motel, \$200.00;
- (5) Commercial bodily contact establishment, \$200.00; and
- (6) Escort Service, \$200.00.

(B) The annual license fees are declared regulatory in nature, collected for the purpose of examination and inspection of adult entertainment establishments and sexually-oriented businesses under this Chapter and the administration thereof. These regulatory fees are in addition to, and not in lieu of, the business taxes imposed by the Palm Bay City Code or State law and other land development regulations or regulatory fees associated with general commercial activities and locations.

Section 20. CONTENTS OF LICENSE, TERM OF LICENSE, RENEWALS, EXPIRATION, LAPSE.

(A) Contents. An adult entertainment establishment or sexually-oriented business license shall state on its face the name of the licensee, the name of the establishment, the street address of the establishment, the classification of the license, the date of issuance, and the date of expiration.

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

(C) Expiration/renewal/lapse. Each license shall expire on September 30 of each year and may be renewed only by making an application for a license in accordance with the provisions of this Chapter. Applications for renewal shall be made at least thirty (30) days before the expiration date of the license. Failure to make application at least thirty (30) days before the expiration date will not suspend the expiration of the license. If the application for a renewal is denied, the applicant may immediately appeal to a court of competent jurisdiction, which court shall provide prompt judicial review of said appeal.

(D) Currently licensed establishments. An adult entertainment establishment licensed by the City of Palm Bay on the effective date of this chapter may continue to operate under its current license until September 30, 2007, but shall apply for a new license on or before August 31, 2007, and shall be immediately subject to all requirements and provisions of this Chapter upon the effective date of this subchapter.

Section 21. RECORDS AND REPORTS.

Each licensee shall keep such records and make such reports as may be required by this Chapter.

Section 22. TRANSFER OF LICENSE.

It is unlawful for a licensee to transfer his, her or its license to another person or entity or surrender possession, control, and operation of the licensed establishment to such other person or entity unless the licensee and the transferee have fully complied with the licensing and all other provisions of this Chapter.

Section 23. ESTABLISHMENT NAME CHANGE.

(A) It is unlawful for a licensee to change the name of an adult entertainment establishment or sexually-oriented business unless and until the following requirements are satisfied:

- (1) The City Manager or his designee is given thirty (30) days' notice in writing of the proposed name change; and
- (2) The change of name fee in the amount of three dollars (\$3.00) is paid; and
- (3) The licensee has complied with Section 865.09, Florida Statutes; and
- (4) The licensee has complied with the provisions of Florida Statutes, Chapter 607; and
- (5) The licensee has complied with the provisions of Florida Statutes, Chapter 620.

Section 24. SUSPENSION AND REVOCATION OF LICENSE.

The City Manager or designee shall suspend a license when he/she or designee determines that any one of the following has occurred:

(1) For purposes of this section, the term "violation" shall mean an incident having occurred at, or by, an adult entertainment establishment or sexually-oriented business which is prohibited by the provisions of this Chapter or made unlawful by Florida Statutes, Chapters 561, 562, 563, 564, 565, 794, 796, 800, 826, 827, 847, 893 or 895, or an analogous federal statute.

(2) Inspection of records and premises. In the event that the City Manager or his/her designee determines that the licensee or an operator at or of the licensee has refused to allow any inspection of records or premises as required by this Chapter, the City Manager or his/her designee may suspend the license for a period not to exceed thirty (30) days.

(3) Illegal activity/suspension:

(a) In the event three (3) or more violations occur within a two-year period, and convictions result from at least three of the violations, the City Manager or his/her designee shall, upon the date of the third conviction, notify the licensee that the license shall be suspended for a period of thirty (30) days unless good cause is shown in accordance with this Chapter, that the violations have not occurred. For purposes of calculating this two (2) year period, the two (2) year period shall be deemed to be those twenty-four (24) months occurring immediately prior to the violation occurrence date for which the thirty (30) day suspension is sought.

(b) In the event one (1) or more violations occur within a two (2) year period from the date of the last violation occurrence date from which the conviction resulted in a thirty (30) day suspension pursuant to paragraph (3)(a) above, but not including any time during which the license was effectively suspended, and a conviction results from one or more of the violations, the City Manager or his/her designee shall, upon the date of the latest conviction, provide notice to the licensee that the license shall be suspended for a period of ninety (90) days unless good cause is shown in accordance with this Chapter that the violation has not occurred.

(c) In the event one (1) or more violations occur within a two (2) year period from the date of the last violation occurrence date from which the conviction resulted in a ninety (90) day suspension pursuant to paragraph (3)(b) above, but not including any time during which the license was effectively suspended, and a conviction results from one or more of the violations, the City Manager or his/her designee shall, upon the date of the latest conviction, provide notice to the licensee that the license shall be suspended for a period of one hundred eighty (180) days unless good cause is shown in accordance with this Chapter that the violation has not occurred.

(4) Revocation. The City Manager or his/her designee shall revoke a license when he/she or designee determines that any one of the following has occurred:

(a) There has been one or more violations that have occurred within a two (2) year period from the date the last violation occurrence date from which the conviction resulted in a one hundred eighty (180) days suspension pursuant to paragraph

(3)(c) above, but not including any time during which the license was effectively suspended, and a conviction results from one or more of the violations, the City Manager or his/her designee shall, upon the date of the latest conviction, provide notice to the licensee that the license shall be revoked unless good cause is shown in accordance with this part that the violation has not occurred.

(b) The licensee or any person on its or his/her behalf or any person listed on the application pursuant to Section 12 of this Chapter gave false or misleading information in the material submitted during the application process.

(c) The licensee or any person on its or his/her behalf or any person listed on the application pursuant to Section 12 of this Chapter has knowingly allowed possession, use, or sale of controlled substances on the premises of the establishment or business or when with a customer.

(d) The licensee or any person on its or his/her behalf or any person listed on the application pursuant to Section 12 of this Chapter has knowingly allowed prostitution on the premises of the establishment or business or when with a customer.

(e) The licensee or any person on its or his/her behalf or any person listed on the application pursuant to Section 12 of this Chapter knowingly operated the adult entertainment establishment or sexually-oriented business during a period when the licensee's license was suspended.

(f) Except in the case of an adult motel, the licensee or any person on its or his/her behalf or any person listed on the application pursuant to Section 12 of this Chapter has knowingly allowed any specified sexual activities to occur on the premises of the establishment or business.

(5) Effective dates of suspensions and revocations.

(a) Except as otherwise provided in this Chapter, all periods of suspension and revocation shall become effective fifteen (15) days after the City Manager or his/her designee posts the notice of suspension or revocation at the licensee's establishment, or on the date that the licensee turns in his, her or its license, whichever happens first.

(b) The suspension or revocation shall be abated in the event that the licensee files a timely challenge to the suspension or revocation in accordance with the procedures set forth in this Chapter or upon order of a court of competent jurisdiction.

(c) If an adult entertainment establishment or sexually-oriented business license is revoked for the first time, the licensee shall not be issued another adult entertainment establishment or sexually-oriented business license for a period of two years running from the date the revocation actually takes effect after all abatement periods have lapsed.

(d) If an adult entertainment establishment or sexually-oriented business license held by any of the entities or individuals listed in Section 12 of this Chapter is revoked for the second time and the license is held by any one or more of the entities or individuals holding the prior license, the licensee shall not be issued another adult entertainment establishment or sexually-oriented business license for a period of four years

running from the date the revocation actually takes effect after all abatement periods have lapsed.

(e) If an adult entertainment establishment or sexually-oriented business license held by any of the entities or individuals listed in Section 12 of this Chapter is revoked for a third time and the license is held by any one or more of the entities or individuals holding the prior license, the licensee shall not be issued another adult entertainment establishment or sexually-oriented business license for a period of six years running from the date the revocation actually takes effect after all abatement periods have lapsed.

(6) Other remedies. Notwithstanding the provisions of this section, the City may pursue any and all other available remedies through any and all other available processes and procedures available to correct violations of City codes. Included within such remedies are the enforcement actions set forth in this Chapter, actions in a court of competent jurisdiction for injunctive or other appropriate relief, criminal prosecution, code enforcement proceedings, the issuance of citations, the suspension or revocation of permits relating to health or safety matters, and any and all other remedies available under the laws of the State of Florida and the United States.

Section 25. SUSPENSION AND REVOCATION PROCEEDINGS.

(A) Challenge to suspension or revocation. If the City Manager or his/her designee notifies a licensee in writing of the pending suspension or revocation of a license as provided in Section 16 of this Chapter, then the suspension or revocation shall become final and effective fifteen (15) days after mailing to the licensee's record address, posting at the licensed establishment, or actual delivery of the notice to the licensee, unless within fifteen (15) days of the date of the notice of suspension or revocation the licensee first files with the City Manager or his/her designee a written response stating the reasons why the suspension or revocation is alleged to be in error or inappropriate and a written notice of intent to challenge the suspension or revocation requesting a hearing to determine whether the suspension or revocation will become effective. The suspension or revocation shall be abated in the event that a licensee files a timely challenge to the suspension or revocation in accordance with the procedures of this Chapter or upon an order of a court of competent jurisdiction. A suspension or revocation already in effect, but not previously challenged in a suspension or revocation hearing, may be challenged in the same manner but is not abated during the proceedings.

(B) Hearing on suspension or revocation. When a licensee files a written response and notice of intent to challenge a pending or existing suspension or revocation then a public hearing to determine if the pending suspension or revocation will become effective and final shall be held by a hearing officer appointed by the City Council. The City Manager or his/her designee shall notify the City Attorney and any appropriate City officers who shall schedule and provide notice of the hearing date and time.

(1) Appointment, term and compensation of hearing officer:

(a) Three (3) hearing officers shall be appointed by the City Council, and they shall be attorneys duly licensed to practice law in the State of Florida, who have practiced in the State for at least five (5) years.

(b) Hearing officers shall be subject to removal with or without cause, by the City Council. Hearing officers shall not be considered to be City employees, although they may receive compensation for their services and also may be reimbursed for such travel, mileage and per diem expenses as may be authorized.

(c) Because only attorneys may hold the position of hearing officer, the City Council shall not be required to retain an attorney to represent the hearing officer.

(d) It shall be unlawful for a hearing officer to act as an agent or an attorney for a party involved in a determination under the provisions of this Section or to be otherwise involved with any matter arising under this Section which will come before the City during the term of the hearing officer's appointment. Further, a hearing officer shall not initiate or consider *ex parte* communications or other communications with any party of interest to a hearing officer concerning the substance of any proceeding to be heard by a hearing officer. However, the foregoing does not prohibit discussions between the hearing officer and City staff that pertain solely to scheduling and other administrative matters unrelated to the merits of the application. If a person engages in an *ex parte* communication with the hearing officer, the hearing officer shall place on the record of the pending case all *ex parte* written communications received, all written responses to such communications, a memorandum stating the substance of all oral communications received, and all oral responses made, and shall advise all parties that such matters have been placed on the record. Any party desiring to rebut the *ex parte* communication shall be entitled to do so but only if such party requests the opportunity for rebuttal within ten days after notice of such communication. If he or she deems it necessary due to the effect of an *ex parte* communication received by him, the hearing officer may withdraw from the case and the City Council shall appoint another hearing officer to handle the case.

(e) Selection of hearing officer. The City Manager and licensee shall each have the right to eliminate one (1) of the three (3) hearing officers selected by the City Council. The one (1) hearing officer not eliminated by either party shall act as the hearing officer for the license revocation hearing. In the event licensee objects to all three (3) hearing officers, then the City Council shall choose the hearing officer from the list of three (3) hearing officers absent a showing of clear prejudice by the licensee.

(2) The hearing officer shall have the power to:

(a) Adopt rules for the conduct of the hearing;

(b) Subpoena licensees and witnesses to its hearings. Subpoenas may be served by the Palm Bay Police Department and/or other law enforcement agencies with jurisdiction to serve subpoenas;

(c) Subpoena evidence to its hearings;

(d) Administer oaths and take testimony under oath; and
(e) Issue an order having the force of law suspending or revoking the license.

(3) The suspension or revocation hearing shall be held within thirty (30) days of the City Manager's receipt of a written challenge and request for a hearing by the aggrieved licensee.

(4) The participants before the hearing officer shall be the licensee, any witnesses of the licensee, the City Manager or his/her designee and any witnesses of the City Manager or his/her designee. All witnesses shall provide their legal name, mailing addresses and telephone number.

(5) The procedures used shall be those typically used in a civil case with the City Manager or his/her designee having the burden of proof by clear and convincing evidence.

(6) Testimony and evidence may be submitted by any witness but shall be limited to matters directly relating to the grounds for suspension or revocation. Irrelevant, immaterial, or unduly repetitious testimony or evidence shall be excluded.

(7) All testimony shall be under oath. The hearing officer shall decide all questions of evidence, procedure and standing. All hearings shall be open to the public. Minutes shall be kept at all hearings. Unless otherwise mutually agreed to between the licensee and the City Manager or his/her designee, the order of presentation of testimony and evidence shall be as follows:

- (a) The City Manager or his/her designee and any witnesses of the City Manager or his/her designee.
- (b) The licensee and any witnesses of the licensee.
- (c) Rebuttal witnesses from the City Manager or his/her designee.
- (d) Rebuttal witnesses from the licensee.
- (e) Summation by the City Manager or his/her designee.
- (f) Summation by the licensee.

(8) The hearing officer may also call and question witnesses or request additional evidence as the hearing officer deems necessary and appropriate.

(9) The City shall provide a hearing room and clerical staff as may be reasonably required by the hearing officer to conduct hearings and perform his or her duties.

(10) Each party to the hearing shall have the right to call and examine witnesses, introduce exhibits, cross-examine opposing witnesses, impeach witnesses and rebut evidence.

(11) The licensee has the right, at his or her own expense, to be represented by an attorney at any hearing.

(12) All testimony before the hearing officer shall be under oath and shall be recorded. The licensee or the City may cause a verbatim record of the proceedings to be made.

(13) If the hearing officer comes to believe that any facts, claims, or allegations necessitate additional review or response by either the licensee or the City Manager or his/her designee, then the hearing officer may order the hearing continued until an announced date certain, not to exceed thirty (30) days from the date of continuance. The hearing officer shall render a final decision on the appeal within sixty (60) days of the City Manager's receipt of licensee's written notice of challenge.

(14) Hearing officers may allow the parties to submit written proposed findings of fact and conclusions of law following the hearing and shall advise the parties of the timetable for so doing, if allowed.

(15) At the conclusion of the hearing, the hearing officer shall issue an order setting forth findings of fact, based on evidence of record, and issue conclusions of law regarding whether the suspension or revocation will become or remain effective, and shall render relief in the order affording the proper relief consistent with powers granted in this Section.

(C) Filing of decision. The original of the written decision of the hearing officer shall be filed with the City Clerk and copies shall be delivered or mailed to the licensee, the City Manager or his/her designee and the City Police Department.

(D) Judicial review. Any person who participated in a suspension or revocation hearing before the hearing officer and who is aggrieved by the decision of the hearing officer may immediately challenge the decision in any court of competent jurisdiction pursuant to the Rules of Procedure of that court. The record of the hearing shall consist of the complete record of the proceedings before the hearing officer. The hearing officer's decision shall be promptly reviewed by the court.

(E) Requirement of exhaustion procedures. Judicial review of a suspension or revocation, or related hearing or appeal proceedings, shall be available only after the administrative procedures and remedies set forth in this Section have been exhausted.

(F) Notice of final suspension or revocation. If no response or request for a suspension or revocation hearing is filed within fifteen (15) days of the notice of a pending suspension or revocation, or if the licensee who requested the hearing does not appear at the suspension or revocation hearing after notice, or if the hearing officer decides after a hearing that a pending suspension or revocation will become final, then the City Manager or

his/her designee shall issue to the licensee notice of final suspension or revocation of the adult entertainment license and mail or arrange delivery of the notice to the licensee's record address.

(G) Effective date of suspension or revocation. The suspension or revocation of a license shall take effect the day after delivery of a notice of final suspension or revocation to the licensee in person, by posting on the licensed establishment, or by mail to the licensee's record address, or on the date the licensee surrenders the license, whichever happens first. The licensee shall immediately return and surrender a revoked license to the City Manager or his/her designee or surrender the revoked license, upon demand, to a member of the Police Department.

Section 26. WORKER RECORDS.

(A) Each adult entertainment establishment and sexually-oriented business, regardless of whether it is licensed under this Chapter, shall create, establish and maintain a record of all workers of the establishment or business. The record shall contain the worker's full legal name and any aliases and all past or current aliases of the worker; his or her date of birth; his or her residential address; his or her residential telephone number (if any) and all pager numbers and other similar numbers used; his or her driver's license number and a photocopy of the license; his or her state or federally issued identification card number including the worker's social security account number; the employment status of the worker including, but not limited to, whether the worker is a salaried employee, an independent contractor, a lessee, a sub-lessee, a subcontractor allowed to work at the establishment, or such other arrangement as may be in place; whether income taxes are withheld for the worker; and a recent passport type photograph of the worker as of the date of association with the establishment which accurately reflects the date on which the photograph was taken. Said records shall be maintained for a period of no less than two years from the date the worker is separated from employment.

(B) The original records required by Subsection (A) or true and exact photocopies thereof, shall be kept at the adult entertainment establishment or sexually-oriented business at all times including clear photographs.

(C) All operators of an adult entertainment establishment or sexually-oriented business shall be responsible for knowing the location of the original records, or the true and exact photocopies thereof.

(D) All operators of an adult entertainment establishment or sexually-oriented business shall, upon request by a law enforcement officer or the City Manager or his designee, make available for immediate inspection the original records or the true and exact photocopies thereof at any time when the establishment or business is open for business.

Section 27. GENERAL REQUIREMENTS FOR ALL ADULT ENTERTAINMENT ESTABLISHMENTS AND SEXUALLY-ORIENTED BUSINESSES.

Each adult entertainment establishment and sexually-oriented business, regardless of whether it is licensed under this Chapter, shall observe the following general requirements:

(1) Conform to, comply with and abide by all applicable safety, employer related, building, fire, health, zoning or land use statutes, codes, ordinances, rules and regulations, whether Federal, State or local.

(2) Keep the adult entertainment establishment or sexually-oriented business license posted and prominently displayed in a conspicuous place at the establishment or business at all times, which license shall be available for inspection upon request at all times by the public, any law enforcement officer and the City Manager, or his/her designee, when the establishment or business is open for business.

(3) Opaquely cover each non-opaque area where a person outside the adult entertainment establishment or sexually-oriented business may otherwise see inside the establishment or business.

(4) Provide to any law enforcement officer and the City Manager or his/her designee, during all hours of operation or when an operator is present at the establishment, access through the main entrance and into all areas of the establishment where customers are permitted without the necessity of using a key, computer entry, password or seeking clearance from a worker or customer to obtain entry through an electronically operated door or entryway.

(5) Install, construct, keep, maintain or allow only those signs at the establishment or building exterior which comply with the provisions relating to signage in the Land Development Regulations of the City of Palm Bay.

(6) Not allow any person under eighteen (18) years of age to be present when services are provided to or performed for a customer or when the establishment or business is open for business.

(7) Not employ or provide goods or services to any person under eighteen (18) years of age.

(8) Not provide, offer or engage in any services to any person when not licensed to do so under this Chapter.

(9) Not operate when a license issued pursuant to this Chapter has been suspended, revoked or canceled or when the license is expired.

(10) Not permit any animal except seeing-eye dogs accompany a worker or customer when services are provided or performed.

(11) Not place, operate or contain video cameras, transmitting or taping equipment anywhere on the premises except where customers are advised in advance by posted notice.

(12) Not advertise the presentation of any activity prohibited by any law, rule or regulation whether Federal, State or local.

(13) Ensure that the view areas specified in this Chapter remain unobstructed by any doors, walls, merchandise, display racks or other materials at all times that any customer is present in the premises so as to ensure that no customer is permitted access to any area of the premises which has been designated as an area in which non-workers will not be permitted.

(14) Ensure that at least one operator is on duty and present at the establishment or business when the establishment or business is open for business who is responsible and knows the whereabouts of all records required by this Chapter. Said operator's name shall be conspicuously posted on the premises at all times the business or establishment is open for business.

(15) Ensure that at least one operator is situated in each manager's station, when required by this Chapter, at all times that any customer is present inside the premises.

(16) Ensure that the premises are equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which customers are permitted access at an illumination of not less than 15--20 average maintained foot candles as measured thirty-five (35) inches above the floor level. The light shall be maintained at all times any customer is present in the premises.

(17) Not alter or otherwise change the contents of an adult entertainment establishment or sexually-oriented business license.

(18) Ensure that each exterior entrance and exit door for use by customers and interior doors which permit entrance to the interior and exit to the interior from any interior foyer area shall remain unlocked when any person who is not a worker is inside the establishment.

(19) Establish, create and maintain worker records as required by this Chapter.

(20) Ensure that no alcoholic beverages shall be consumed on the premises of any adult entertainment establishment or sexually-oriented business.

Section 28. SEXUALLY-ORIENTED BUSINESS REGULATIONS.

In addition to the general requirements for adult entertainment establishments and sexually-oriented businesses contained in this Chapter, a sexually-oriented business shall, regardless of whether it is licensed thereunder, comply with the following general requirements:

(1) Post in an open and conspicuous place a list of services provided by the sexually-oriented business which services shall be described clearly in the English language along with a specification as to the cost of each service.

(2) Provide each customer, in advance of any service being provided, with a written customer contract, written clearly in the English language, setting forth the service or services to be rendered, the cost of such service or services, the actual full name of the worker providing the service and actual full name, address and date of birth of the customer as reflected on a State or Federally issued identification card or drivers license and the customer's telephone number.

(3) Create, establish and maintain a daily register in a format provided by the City Manager, or his/her designee, containing the actual full names and addresses of all customers as reflected on a State or Federally issued identification card or drivers license, the services performed, the time expended, the mode of payment and the full name of the worker providing the service.

(4) Not allow any worker of the sexually-oriented business to accept any tip or gratuity, directly or indirectly, from a customer in addition to the service fee specified in the customer contract.

(5) Maintain all customer contracts and daily registers for a period of two years following the customer's date of service.

Section 29. ADULT THEATER REGULATIONS.

In addition to the general requirements relating to adult entertainment establishments and sexually-oriented businesses contained in this Chapter, an adult theater, regardless of whether it is licensed under this Chapter, shall:

(1) If the adult theater contains an auditorium or hall, comply with each of the following provisions:

(a) Have individual and separate seats (not couches, benches, or other seating configurations allowing or providing for the seating of multiple persons on the same

item of furniture) to accommodate the maximum number of persons who may occupy the area;

(b) Have a continuous main aisle alongside of the seating areas in order that each person seated in the areas shall be visible from the aisle at all times;

(c) Have a sign posted in a conspicuous place at or near each entrance to the auditorium or hall which lists the maximum number of persons who may occupy the auditorium or hall area, which number shall not exceed the number of seats within the hall or auditorium area; and

(d) Be illuminated at an illumination of not less than 15--20 foot candles average maintained as measured at thirty (35) inches above the floor level and shall maintain the light at all times so that any customer present in the hall or auditorium may be seen.

(2) If the adult theater contains adult booths, each adult booth shall comply with each of the following provisions:

(a) Have a sign posted in a conspicuous place at or near the entrance which states the maximum number of persons who may occupy the booth, which number shall correlate with the number of seats in the booth;

(b) Have a permanently open entrance not less than three (3) feet wide and not less than six (6) feet high, not capable of being closed or partially closed by any curtain, door, or other partition which would be capable of wholly or partially obscuring any person situated in the booth; provided, however, that the requirements of all building and related codes shall also be complied with;

(c) Have individual, separate seats (which are not couches, benches, or other seating configurations allowing or providing for the seating of multiple persons on the same item of furniture) which correlate with the maximum number of persons who may occupy the booth;

(d) Have a continuous main aisle alongside the booth in order that each person situated in the booth shall be visible from the aisle at all times;

(e) Have an illuminated and continuous main aisle in which workers and customers can be seen from one end to the other; and

(f) Have, except for the entrance, walls or partitions of solid construction without any holes or openings in such walls or partitions.

(3) Have one or more manager's stations.

(4) Configure the interior of the premises in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any customer is permitted access for any purpose excluding restrooms.

(5) If the premises have two or more manager's stations designated, configure the interior of the premises in such a manner that there is an unobstructed view of each area of the premises to which any customer is permitted access for any purposes

from at least one of the manager's stations. The view required in this Subsection shall be by direct line of sight from the manager's station.

(6) If the adult theater is designed to permit outdoor viewing by persons seated in automobiles, cause the motion picture screen so situated, or the perimeter of the establishment so fenced, such that the material to be seen by those persons may not be seen from any public right of way, property assigned a residential zoning classification or assigned a residential land use designation, any religious institution or church, any educational institution or school, or from a park.

(7) Cover the floors of areas accessible to customers with smooth and non-permeable flooring material which can withstand frequent effective cleaning with industrial strength cleaning agents. Carpeting of any type is prohibited.

(8) Use smooth and non-permeable upholstery material, which can withstand frequent cleaning with industrial strength cleaning agents, to cover furniture permitted by this Chapter for the use of customers.

(9) Have, in areas accessible to customers, interior wall surfaces which can withstand frequent cleaning with industrial strength cleaning agents.

(10) Use only those shades and blinds which can withstand frequent cleaning with industrial strength cleaning agents. (Draperies are prohibited.)

(11) Maintain areas accessible to customers in a clean and sanitary condition.

(12) Keep all furniture upholstery material free from holes and rips.

(13) Utilize an appropriate and effective adaptation of the U.S. Center for Disease Controls universal precautions for the storage and transmission of the HIV virus and other diseases when cleaning or sanitizing the establishment.

Section 30. ADULT PERFORMANCE ESTABLISHMENT REGULATIONS.

(A) In addition to the general requirements for adult entertainment establishments and sexually-oriented businesses contained in this Chapter, an adult performance establishment shall, regardless of whether it is licensed under this Chapter, have a stage provided for the expressive display or exposure of any worker's specified anatomical areas to a customer consisting of a permanent platform (or other similar permanent structure) raised a minimum of eighteen (18) inches above the surrounding floor and encompassing an area of at least one hundred (100) square feet. The stage shall be located at least three (3) feet from the nearest table, chair, area or other accommodation where customers are seated or otherwise located; provided, however, that a table at which any customer is seated or served shall not be used as a stage.

(B) Notwithstanding the stage requirement in Subsection (A) above, an adult performance establishment may also have smaller stages for the expressive display or exposure of a worker's specified anatomical areas to a customer consisting of permanent or removable platforms raised a minimum of eighteen (18) inches above the surrounding floor from where customers are seated or located; provided, however, that a table at which any customer is seated or served shall not be used as a stage.

(C) In addition to the general requirements for adult entertainment establishments and sexually-oriented businesses contained in this Chapter, an adult performance establishment shall, regardless of whether it is licensed under this Chapter:

(1) In any area in which a private performance occurs, have a permanently open entrance not less than three feet wide and not less than six (6) feet high, which entrance shall not have any curtain rods, hinges, rails or the like which would allow the entrance to be closed or partially closed by any curtain, door, or other partition; provided, however, that the requirements of all building and related codes shall also be complied with; and

(2) In any area in which a private performance occurs, have a wall to wall, floor to ceiling partition of solid construction without any holes or openings, which partition may be completely or partially transparent, and which partition separates the worker from the person viewing the displays.

(3) Post a sign which is clearly legible and located in a conspicuous place setting forth that straddle dancing is strictly prohibited.

(4) Not place or permit the placement of a bed or mattress in the establishment.

Section 31. COMMERCIAL BODILY CONTACT ESTABLISHMENT REGULATIONS.

In addition to all general requirements of this Chapter pertaining to adult entertainment establishments and sexually-oriented businesses, a commercial bodily contact establishment, regardless of whether it is licensed under this Chapter, shall:

(1) Operate only from a fixed physical location which is set forth on its sexually-oriented business license and all required business tax receipts.

(2) Not advertise, offer or provide any other service other than services which are posted.

(3) Provide clean linen and towels for each customer when towels and linens are used during the course of providing services to a customer; provided, however, that

heavy white paper may be substituted for sheets if such paper is used for only one customer and then discarded into a sanitary receptacle.

(4) Store clean linen, towels and other materials used in connection with providing commercial bodily contact in closed cabinets.

(5) Disinfect and sterilize non-disposable instruments after each use on a customer.

(6) Cause all workers to conceal their specified anatomical areas with an opaque covering at all times when on the premises of the business by wearing an opaque surgical type gown.

(7) Not encourage, allow or permit any customer to consume food or beverages in the business.

(8) Provide commercial bodily contact in an area wherein such area is visible at all times from common areas in the establishment. No contact may occur in a separate or individual cubicle, room, booth or area which is not visible from common areas of the establishment and a receptionist area; provided, however, that if male and female customers are provided services at the same time, separate work areas shall be established for each gender.

(9) Not advertise, display, publish, exhibit, place, distribute or promote on any advertising matter or signage services that are not posted or a suggestion that services not posted will be provided.

(10) Not advertise, display, publish, exhibit, place, distribute or promote on any advertising matter or signage any suggestion that workers will be dressed in any manner other than as required in this Chapter.

(11) Not begin a meeting or service with a customer between 10:00 p.m. of any day of the week and 9:00 a.m. the following day.

(12) Not provide services at any place other than a physical location licensed to provide commercial bodily contact under the provisions of this Chapter.

(13) Not place or permit the placement of any bed, mattress or sofa at the business; provided, however, that a sofa may be placed in the reception area open to the public at the main entrance of the business and cots or padded mats may be used when providing commercial bodily contact.

Section 32. ESCORT SERVICE REGULATIONS.

In addition to all general provisions of this Chapter pertaining to adult entertainment establishments and sexually-oriented businesses, an escort service, regardless of whether licensed under this Chapter, shall:

(1) Not advertise, offer or perform any other service than services which are posted.

(2) Cause all workers and escorts to conceal their specified anatomical areas with an opaque covering at all times when on the premises of the escort service.

(3) Not advertise, display, publish, exhibit, place, distribute or promote on any advertising matter or signage services that are not posted or a suggestion that services not posted will be provided.

(4) Not begin a meeting or service with a customer between 10:00 p.m. of any day of the week and 9:00 a.m. the following day.

(5) If offering or providing escorts or escort service within the City of Palm Bay, each escort service shall notify the Police Chief and the City Manager or his/her designee of an authorized physical location, which may or may not be within the City, from where the escort service operates and dispatches escorts.

(6) Include in all advertising or promotional literature posted, placed, published, or distributed within the City of Palm Bay the number of a valid sexually-oriented business license issued by the City unless the escort service does not refer, send, or dispatch escorts to any location within the jurisdictional limits of the City of Palm Bay.

(7) Each escort service shall ensure that every escort and worker of the escort service is provided with a copy of the escort service's license and carries it while working as an escort for the service, and displays said license upon the request of any law enforcement officer or the City Manager or his/her designee. In addition to a copy of the escort service's license, each escort service shall ensure that each escort has obtained a business tax receipt to engage in the occupation of escort within the City and that they carry said license while working, and displays said license upon the request of any law enforcement officer or the City Manager or his/her designee. Notwithstanding the foregoing, an escort or worker of an escort service who is a paid employee for whom taxes and social security payments are withheld and paid by the licensed escort service and who is not an independent contractor may substitute and carry a copy of the sexually-oriented business/escort service license of the employing escort service only, provided that worker records as required by this Chapter are created and maintained by the licensed escort service.

(8) If a meeting with or the service of a customer occurs at a location not open to the public, then the escort shall check in with the on duty manager of the premises in person where the meeting or service occurs or begins prior to meeting or servicing a

customer and advise the manager of the following: names of the escort(s), the escort service and customer(s); the escort's time of arrival and estimated time of departure; and a copy of the escort service's sexually-oriented business license and the escort's own business tax receipt, if applicable, and the location of the meeting within the structure.

Section 33. ENGAGING IN PROHIBITED ACTIVITY-- CUSTOMERS.

(A) It is unlawful for any customer in or for an adult entertainment establishment or sexually-oriented business regardless of whether licensed pursuant to this Chapter to do any of the following acts:

(1) To engage or participate in a straddle dance at the establishment or business.

(2) To offer, contract or otherwise agree to engage or participate in a straddle dance with a person at the establishment or business.

(3) To engage or participate in any specified sexual activity at the establishment or business or while in the presence of a worker.

(4) To display or expose while in the presence of a worker or when at the establishment or business any specified anatomical area.

(5) To offer or deliver a tip or gratuity to any worker of an establishment or business before, during or after the provision of services except at an adult performance establishment.

(6) If a worker is a female, to intentionally touch, fondle or manipulate her on her clothed or unclothed breast(s), either directly or through a medium.

(7) To intentionally touch, fondle, massage, or manipulate any specified anatomical area of a worker, a customer, or himself or herself, whether clothed or unclothed, on the premises of the establishment or business.

(8) To intentionally touch, fondle, massage or manipulate a worker on any specified anatomical area when at or receiving services from the adult entertainment establishment or sexually-oriented business.

(9) To intentionally touch, fondle, massage or manipulate the clothed or unclothed breast(s) of a female worker, or to touch the clothed or unclothed body of a worker at any point below the waist and above the knee of the worker when at an adult entertainment establishment or sexually-oriented business.

(10) To occupy an adult booth in which booth there are more people than that specified on the posted sign required by this Chapter.

(11) To otherwise violate or aid or abet a violation of this Chapter.

(12) To encourage or solicit any worker to engage in any specified sexual activity.

(13) To consume alcoholic beverages on the premises of any adult entertainment establishment or sexually-oriented business.

(B) It is unlawful for any customer at or of a sexually-oriented business to do any of the following acts regardless of whether the establishment is licensed pursuant to this Chapter:

(1) To intentionally touch, massage or manipulate, directly or indirectly or through a medium while on the premises of the establishment or when with a worker, the customer's specified anatomical areas.

(2) To solicit any worker to provide a service not posted.

(3) To solicit or receive any service not indicated and contracted for in the written customer contract.

(4) To provide to the worker providing the service either directly, indirectly or through a medium, any tip, gratuity or other consideration beyond the fee specified in the customer contract.

(5) To expose any specified anatomical area to the view of a worker.

Section 34. ENGAGING IN PROHIBITED ACTIVITY – WORKERS/OPERATORS.

(A) It is unlawful for any worker of an adult entertainment establishment or sexually-oriented business, regardless of whether licensed under this Chapter, to do any of the following acts or for an operator of an adult entertainment establishment or sexually-oriented business, regardless of whether licensed hereunder, to knowingly permit, suffer, aid, allow or encourage any worker to do any of the following acts:

(1) To engage or participate in a straddle dance with a customer at the establishment or business.

(2) To offer, contract or otherwise agree with a customer to engage or participate in a straddle dance with a person at the establishment or business.

(3) To engage or participate in any specified sexual activity or activities at the establishment or business with a customer, him or her self or a worker.

(4) To display or expose at the establishment or business specified anatomical areas except in accordance with the provisions of this Chapter and other applicable law.

(5) To request or accept a tip or gratuity from a customer except at an adult performance establishment.

(6) To work in an adult entertainment establishment or sexually-oriented business that he or she knows or should know is not licensed under this Chapter, or which has a license which is under suspension, has been revoked or canceled, or has expired, regardless of whether he, she or it has applied for and obtained a license under this Chapter.

(7) To display or expose specified anatomical areas while engaging in personal advertising, pandering, or solicitation, whether passive or otherwise, on behalf of the worker, any other worker, or the establishment or business while situated outside any structure at the establishment or business, or at a place at the establishment or business where the worker is visible from any public right-of-way or sidewalk. "Personal advertising" means encouraging or enticing, by whatever direct or indirect means, potential customers outside the doors of the establishment or business to enter the establishment or business.

(8) To suffer, permit, or allow any door of the business or establishment that is visible from a public right-of-way or sidewalk to be opened or remain opened except when a person is entering or exiting the establishment or business.

(9) To allow or encourage a customer to intentionally touch or fondle, either directly or through a medium, any specified anatomical area of the customer, a worker or another customer.

(10) If the worker is a female, to allow herself to be intentionally touched on her clothed or unclothed breast(s) by a customer.

(11) If a worker is a female, to allow herself to be intentionally touched by a customer on any portion of her body below the waist and above the knee.

(12) To display or expose any specified anatomical area unless and only to the extent permitted by this Chapter, and the stage on which the worker is located is not located between the legs of a customer.

(13) To provide or engage in any private performance unless and only to the extent permitted by this Chapter.

(14) To remain in the presence of a customer who is exposing specified anatomical areas at the establishment or in the presence of a worker or another customer.

(15) To violate or aid or abet in a violation of the provisions of this Chapter.

(16) To encourage or knowingly permit any customer to intentionally touch, fondle, massage or manipulate, either directly or indirectly through a medium, any of the customer's specified anatomical areas on the premises of the establishment or when in the presence of another customer or worker.

(17) To encourage or solicit any customer to engage in any specified sexual activity.

(18) To intentionally touch, fondle, massage or manipulate any customer on the customer's clothed or unclothed body between the waist and above the knee.

(19) To provide or serve alcoholic beverages to any customer or worker for consumption on the premises of any adult entertainment establishment or sexually-oriented business.

(B) It is unlawful for any worker of a sexually-oriented business, regardless of whether it is licensed under this Chapter, to do any of the following acts, or for an operator of a sexually-oriented business, regardless of whether it is licensed under this Chapter, to knowingly or with reason to know permit suffer or allow any worker to commit any of the following acts:

(1) To accept a tip or gratuity from or on behalf of a customer in addition to the service fee stated in the written customer contract.

(2) To begin a meeting or service, continue a meeting or service, solicit a meeting or service or make or solicit a sale between the hours of 10:00 p.m. of any particular day and 9:00 a.m. the following day.

(3) Provide commercial bodily contact except at the physical structure of the establishment which has a commercial bodily contact establishment license.

(4) To provide any service not posted as required by this Chapter.

(5) To provide any service without first executing a customer contract.

(C) It is unlawful for any worker of an adult entertainment establishment or sexually-oriented business, regardless of whether licensed pursuant to this Chapter, to knowingly permit, suffer, aid, allow or encourage any customer to do any of the following acts:

(1) To intentionally touch, fondle, massage or manipulate, either directly or indirectly through a medium, any of the customer's specified anatomical areas when at the establishment or business or while in the presence of a worker or another customer.

(2) To intentionally touch, fondle, massage or manipulate, either directly or indirectly through a medium, any specified anatomical area of another customer or a worker when at the establishment or business or while in the presence of a worker or customer.

(3) To engage in any specified sexual activities at the establishment or business with a worker, customer, him or her self or with another customer.

(4) To expose the customer's specified anatomical areas at the establishment or business or when receiving services or when in the presence of a worker or another customer.

(5) To engage or participate in a straddle dance.

(6) To intentionally touch, fondle, massage or manipulate a worker at any point below the waist and above the knee.

(7) To intentionally touch a female worker on the clothed or unclothed breast.

Section 35. OPERATION WITHOUT LICENSE.

(A) It is unlawful for any person to be an operator of or at or to be a worker for an adult entertainment establishment or sexually-oriented business where the person knows or should know:

(1) That the establishment or business does not have an adult entertainment establishment or sexually-oriented business license for the applicable classification.

(2) That the establishment or business has a license which is under suspension.

(3) That the establishment or business has a license which has been revoked, canceled or has expired.

Section 36. OPERATION CONTRARY TO OPERATIONAL REQUIREMENTS.

(A) It is unlawful for any person to be an operator of an adult entertainment establishment or sexually-oriented business which does not satisfy all of the general requirements of this Chapter, regardless of whether the establishment is licensed thereunder.

(B) It is unlawful for any person to be an operator of a sexually-oriented business which does not satisfy all of the general requirements of Sections 27 and 28 of this Chapter regardless of whether the establishment is licensed thereunder.

(C) It is unlawful for any person to be an operator of an adult performance establishment which does not satisfy all of the special requirements of Sections 27 and 30 this Chapter regardless of whether licensed thereunder.

(D) It is unlawful for any person to be an operator of an adult theater which does not satisfy all of the special requirements of Sections 27 and 29 of this Chapter regardless of whether the establishment is licensed thereunder.

(E) It is unlawful for any person to be an operator of an escort service which does not satisfy all of the special requirements of Sections 27, 28, and 32 of this Chapter regardless of whether licensed thereunder.

(F) It is unlawful for any person to be an operator of a commercial bodily contact establishment which does not satisfy all of the special requirements of Sections 27 and 31 of this Chapter regardless of whether the establishment is licensed thereunder.

Section 37. USE OF RESTROOMS OR DRESSING ROOMS.

(A) Notwithstanding any provision in this Chapter indicating to the contrary, it is not unlawful for any worker of an adult entertainment establishment or sexually-oriented business, regardless of whether it is licensed under this Chapter, to expose any specified anatomical area during the worker's bona fide use of a dressing room or bathroom which is occupied at the time only by workers of the same sex.

(B) Notwithstanding any provision in this Chapter indicating to the contrary, it shall not be unlawful for any customer of an adult entertainment establishment or sexually-oriented business, regardless of whether it is licensed under this Chapter, to expose any specified anatomical area during the customer's bona fide use of a bathroom which is occupied at the time only by customers of the same sex.

(C) It is unlawful to be an operator of an adult performance establishment that has a dressing room for use by its workers that is also accessible to customers.

(D) It is unlawful to be an operator of a sexually-oriented business which has a dressing room for use by its customers that is accessible to workers.

(E) Notwithstanding any provision of this Chapter to the contrary, a worker engaged in the work of a restroom attendant or valet may occupy a restroom which is also occupied by customers provided that the valet or attendant does not expose any specified anatomical area to the view of a customer and is of the same sex of the customer occupying the restroom.

(F) Notwithstanding any provision of this Chapter to the contrary, it is not unlawful for a worker or customer to touch their own specified anatomical areas during their bona fide

use of a restroom, dressing room or bathroom when such touching is necessary and inherent to the activity of changing clothes or excretory functions.

Section 38. UNLAWFUL ACTIVITIES -- MINORS.

It is unlawful for an operator or worker of an adult entertainment establishment or sexually-oriented business regardless of whether licensed under this Chapter, to knowingly or with reason to know, permit, suffer or allow:

(1) Admittance to the establishment or business of a person under eighteen (18) years of age when the establishment or business is open for business.

(2) A person under eighteen (18) years of age to remain at the establishment or business when the establishment or business is open for business.

(3) A person under eighteen (18) years of age to purchase goods or services from the establishment or a worker at the establishment or business.

(4) A person under eighteen (18) years of age to be a worker at or for the establishment or business.

Section 39. UNLAWFUL ACTIVITIES -- RECORDS.

(A) It is unlawful to be an operator or worker of an adult entertainment establishment or sexually-oriented business, regardless of whether it is licensed under this Chapter, if the current and valid adult entertainment establishment or sexually-oriented business license is not conspicuously displayed on the premises of the establishment or business.

(B) It is unlawful to be an operator of an adult entertainment establishment or sexually-oriented business, regardless of whether licensed under this Chapter, which does not create, establish and compile worker records, maintain worker records or where such records are not produced for inspection by a law enforcement officer upon request when the establishment or business is open for business.

(C) It is unlawful to be an operator of a sexually-oriented business, regardless of whether it is licensed under this Chapter, at which customer contracts, daily registers and a list of services have not been compiled, maintained or are not produced for inspection by a law enforcement officer upon request when the establishment or business is open for business.

(D) It is unlawful for a worker at or of an adult entertainment establishment or sexually-oriented business, regardless of whether licensed under this Chapter, to fail to obtain, carry or produce for inspection by a law enforcement officer upon request, a business tax receipt for the occupation in which the worker is engaged; provided, however, that a worker of an adult entertainment establishment or sexually-oriented business who is a paid employee for whom income taxes and social security payments are withheld and paid by the establishment and who is not an independent contractor shall not be required to obtain a business tax receipt or their own adult entertainment establishment/sexually-oriented business license.

(E) It is unlawful for an escort, regardless of whether they are a paid employee for whom income taxes and social security payments are withheld and paid by the escort service, to fail to carry and produce for inspection by a law enforcement officer a copy of the sexually-oriented business license of the employing escort service when working as an escort or providing the services of escort.

(F) It is unlawful for any person or any person on their behalf applying for a license under this Chapter to make a false or misleading statement or provide false or misleading information which is intended to facilitate the issuance of a license.

(G) It is unlawful for any worker, customer or operator to provide false or misleading information in any worker record, customer contract or daily register required by this Chapter.

(H) It is unlawful to be an operator or worker at an adult entertainment establishment or sexually-oriented business which does not have conspicuously posted the name of the operator on duty while the establishment is open for business.

(I) It is unlawful for an operator of an adult entertainment establishment to fail to produce for inspection any worker record required by this Chapter, when requested by a law enforcement officer or the City Manager or his/her designee when the establishment or business is open for business.

(J) It is unlawful for an operator of a sexually-oriented business to fail to produce for inspection any worker record, customer contract or daily register required by this subchapter when requested by a law enforcement officer or the City Manager or his designee when the establishment or business is open for business.

Section 40. UNLAWFUL ACTIVITIES -- HOURS OF OPERATION.

(A) It is unlawful for any operator of an adult entertainment establishment, regardless of whether licensed pursuant to this Chapter, to allow such establishment to remain open for business or to knowingly allow any worker to engage in a performance, solicit a performance, make a sale, solicit a sale, provide a service or solicit a service between the hours of 2:00 a.m. and 9:00 a.m. of any particular day.

(B) It is unlawful for any operator of a sexually-oriented business, regardless of whether licensed pursuant to this Chapter, to allow such business to remain open for business or to permit any worker to engage in a performance, solicit a performance, make a sale, solicit a sale, begin, continue or provide a service or solicit a service between the hours of 10:00 p.m. and 9:00 a.m. of any particular day.

(C) It is unlawful for any worker of an adult entertainment establishment, regardless of whether licensed pursuant to this Chapter, to engage in a performance, solicit a performance, make a sale, solicit a sale, provide a service or solicit a service between the hours of 2:00 a.m. and 9:00 a.m. of any particular day.

(D) It is unlawful for any worker of sexually-oriented business, regardless of whether licensed pursuant to this Chapter, to provide a service, solicit a service, engage in a performance, solicit a performance, make a sale, solicit a sale, begin a service or continue a service between the hours of 10:00 p.m. and 9:00 a.m. of any particular day.

Section 41. UNLAWFUL ACTIVITIES -- SPECIAL PROHIBITIONS RELATING TO ESCORTS AND ESCORT SERVICES.

It is unlawful for any escort, escort service or worker of an escort service, regardless of whether licensed under this Chapter, to commit any of the following acts or for an operator of an escort service regardless of whether licensed thereunder, to knowingly permit, suffer, aid, assist or allow any escort or escort service worker to commit any of the following acts:

(1) To enter a hotel, motel or other place of temporary lodging for the purpose of meeting or providing services to a customer without immediately upon entering such hotel, motel or other place and prior to meeting the customer making personal face-to-face contact with the on duty manager at the front desk or reception area and providing that person with the following information:

- (a) The time of arrival and estimated time of departure;
- (b) A copy of the escort service's sexually-oriented business license and, if applicable, the escort's business tax receipt;
- (c) The name of the escort, the escort service and the customer being met/served; and
- (d) The location of the meeting or service within the structure including the room number.

(2) To require, entice or solicit any customer to remove any article of clothing.

(3) To display or expose any specified anatomical area to a customer.

(4) To begin a meeting or service without first meeting the customer in a public place such as a bar or restaurant before accompanying the customer to any place not open to the public such as a hotel room or residence.

(5) To meet with or provide services to a customer in any place not open to the public such as a hotel room, motel room or residence without first executing the customer contract as required by this Chapter.

(6) To provide services to a customer even in a public place without first executing the customer contract as required by this Chapter, immediately following the meeting of the customer.

(7) To solicit a tip or gratuity from a customer in exchange for a promise or suggestion that any act or service not contracted for in the customer contract will be performed.

(8) To accept any compensation or payment except that which is provided in the customer contract.

Section 42. UNLAWFUL ACTIVITIES -- SPECIAL PROHIBITIONS RELATED TO COMMERCIAL BODILY CONTACT.

It is unlawful for a worker of a commercial bodily contact establishment, regardless of whether licensed pursuant to this Chapter, to commit any of the following acts or for the operator of a commercial bodily contact establishment, regardless of whether licensed thereunder, to knowingly or with reason to know, permit, suffer, aid, assist or allow any worker to commit any of the following acts:

(1) To provide commercial bodily contact or to be present at the premises of the business when open for business unless covering their specified anatomical areas by wearing an opaque surgical type gown.

(2) To display or expose any specified anatomical area to a customer.

(3) To allow a customer to expose or display the customer's specified anatomical areas in the presence of a worker.

(4) To allow a customer to engage in any specified sexual activity with him or herself, another customer or with a worker.

(5) To perform or provide commercial bodily contact except at the premises of a commercial bodily contact establishment licensed under this Chapter.

(6) To engage in or offer to engage in private modeling or the activities of an escort with any customer.

(7) To provide commercial bodily contact or service to a customer without first executing a customer contract as required by this Chapter.

(8) To intentionally touch, fondle, manipulate or massage the specified anatomical area of any customer.

(9) To allow any customer to intentionally touch, fondle, manipulate or massage any specified anatomical area of any worker or the body of any worker below the waist and above the knee, directly, indirectly or through a medium.

(10) To remain in the presence of any customer who is displaying, exposing, intentionally touching, fondling or manipulating any specified anatomical area.

(11) To allow any customer to intentionally touch, massage or manipulate any specified anatomical area while on the premises of the business or when in the presence of a worker.

(12) To solicit or require a customer to remove any item of clothing as a prerequisite to providing commercial bodily contact.

(13) To accept or solicit any tip, remuneration, consideration or gratuity in excess of the fee provided in the executed customer contract.

(14) To accept or solicit any tip, remuneration, consideration or gratuity in exchange for any enhanced service.

(15) To fail to require a customer to cover such customers' specified anatomical areas with a towel, robe, undergarment, bathing suit or other similar fully opaque material while on the premises of the business.

(16) To engage in or offer to engage in any private performance or act as an adult model.

Section 43. COMMERCIAL BODILY CONTACT ESTABLISHMENTS PROHIBITED; SAVINGS PROVISION.

(A) Notwithstanding any provision of this Chapter, it is unlawful to operate, or be a worker for or at a commercial bodily contact establishment which engages in commercial bodily contact.

(B) Notwithstanding the provisions of Subsection (A) above, in the event that Subsection (A), prohibiting commercial bodily contact establishments is found to be unconstitutional, or otherwise invalid by a court of competent jurisdiction or should an injunction be issued relative to the enforcement of Subsection (A), then all provisions set forth this Chapter applicable to commercial bodily contact establishments and sexually-

oriented business shall apply to businesses and establishments engaged in commercial bodily contact.

Section 44. BUSINESS TAX RECEIPT; HOME OCCUPATIONS.

(A) The Finance Department of the City of Palm Bay may take such steps as may be necessary to ensure that the business tax is paid by only such individuals and entities that are lawfully permitted in accordance with the provisions of this subchapter.

(B) Adult entertainment establishments and sexually-oriented businesses shall not be approved as home occupations.

Section 45. SEXUAL ENCOUNTER BUSINESSES PROHIBITED; PROHIBITED ACTS; UNLAWFUL PROVISIONS.

(A) It is unlawful to be an operator of or be a worker at a sexual encounter business.

(B) It is unlawful to cause, encourage, or allow a person under eighteen (18) years of age to be present at a sexual encounter business.

(C) It is unlawful to aid or abet a person causing, encouraging or allowing a person under eighteen (18) years of age to be present at a sexual encounter business.

Section 46. IMMUNITY FROM PROSECUTION.

The City and any and all of its officers, departments or agents and any law enforcement officer shall be immune from prosecution, civil or criminal, for the reasonable, good-faith trespass upon an adult entertainment establishment or sexually-oriented business while acting within the scope of the authority set forth in this Chapter.”

SECTION 2. Ordinances in Conflict. There exists a settlement stipulation between “Your Dreams, Inc.” et al., Plaintiffs, and the City of Palm Bay, Defendant, Case No 94-14589-CA-D, and an agreement between “Your Dreams, Inc.” and the City of Palm Bay, said stipulation having been executed on October 18, 1995, and adopted by a court order on October 25, 1995, and said agreement being executed on May 15, 1992. The aforementioned settlement stipulation, court order, and agreement are still in full force and effect as regards to the aforementioned settlement agreement, court order, and agreement,

and the ordinances or the parts of the ordinances referred to in the settlement stipulation and agreement are not hereby repealed as regards to the business referred to in the settlement stipulation, court order, and agreement. Other than the foregoing specific limitation, all ordinances or parts of ordinances in conflict herewith are hereby repealed and all ordinances or parts of ordinances not in conflict herewith are hereby continued in full force and effect.

SECTION 3. Codification. It is the intention of the City Council of the City of Palm Bay that the provisions of this Ordinance shall be made a part of the City of Palm Bay Code of Ordinances and the sections may be renumbered to accomplish such intention.

SECTION 4. Severability. If any portion, clause, phrase, sentence or classification of this ordinance is held or declared to be either unconstitutional, invalid, inapplicable, inoperative or void, then such declaration shall not be construed to affect other portions of the ordinance; it is hereby declared to be the express opinion of the City Council of the City of Palm Bay that any such unconstitutional, invalid, inapplicable, inoperative or void portion or portions of this ordinance did not induce its passage, and that without the inclusion of any such portion or portions of this ordinance, the City Council would have enacted the valid constitutional portions thereof.

SECTION 5. Effective Date. The provisions within this ordinance shall take effect immediately upon the enactment date.

Read in title only at Meeting No. 2007-12, held on April 19, 2007; and read in title only and duly passed and enacted at Meeting No. 2007- , held on , 2007.

John J. Mazziotti, MAYOR

ATTEST:

Alice Passmore, CITY CLERK

CC:

ORDINANCE NO. 2007-30

AN ORDINANCE OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, PROVIDING FOR LOCATIONAL REQUIREMENTS FOR ADULT ENTERTAINMENT ESTABLISHMENTS AND SEXUALLY-ORIENTED BUSINESSES; MAKING FINDINGS; SETTING FORTH LOCATIONAL AND DISTANCE REQUIREMENTS; PROVIDING FOR THE REPEAL OF ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR INCLUSION IN THE CITY OF PALM BAY CODE OF ORDINANCES; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Palm Bay has determined it to be in the best interest of the general health, safety, and welfare of the residents of the City to provide locational requirements for all adult entertainment establishments and sexually-oriented businesses as hereinafter defined, and

WHEREAS, the City Council of the City of Palm Bay has reason to believe and believes that (a) when the possession, display, exhibition, distribution and sale of books, magazines, motion pictures, prints, photographs, periodicals, records, novelties and devices that depict, illustrate, describe or relate to specified sexual activities and/or (b) with the operation and maintenance of places where parts of one person are treated or encountered by rubbing, stroking, kneading or tapping by a second person, accompanied by the exposure or display of specified anatomical areas, other activities tend to accompany them that are illegal, immoral or unhealthful, and

WHEREAS, such other activities include, but are not limited to, prostitution, pandering, solicitation for prostitution, obscene, lewd and lascivious behavior, exposing minors to harmful materials, sale or possession of controlled substances, and violent crimes against persons and property, and

WHEREAS, illegal, immoral or unhealthy activities tend to concentrate around and be aggravated by the presence of the activities detailed above, and

WHEREAS, the buildings and establishments in which the activities and business operations described above take place are conducive to and may be used for the commission of immoral, lewd, indecent or illegal acts, and

WHEREAS, the business operations and activities detailed above frequently occur in commercial establishments either selling or allowing consumption of alcoholic beverages on the premises, and

WHEREAS, there is a direct relationship between the concurrent consumption of alcoholic beverages and the activities described above and an increase in criminal activities, degradation and disturbances of the peace and good order of the community, and

WHEREAS, certain studies have shown the concurrence of the sale and consumption of alcoholic beverages with the activities described above is hazardous to the health and safety of those persons in attendance, and tends to depreciate the value of adjoining property, harm the economic welfare of the community as a whole and adversely affect the public's interest in the quality of life, tone of commerce, and total community environment of the City, and

WHEREAS, to preserve the public peace and good order, and to safeguard the health, safety and welfare of the community and the citizens thereof, it is necessary and advisable to regulate and restrict the sale and consumption of alcoholic beverages in

commercial establishments where the business operations and activities described above occur, and

WHEREAS, to preserve the public peace and good order, and to safeguard the health, safety and welfare of the community and the citizens thereof, it is necessary and advisable to regulate and restrict the conduct of owners, operators, agents, employees, entertainers, performers, patrons, and persons on the premises of commercial establishments where the activities described above occur, and

WHEREAS, the business operations and activities described above are commercial ventures, operated for the purpose of making a profit, and as such are proper subjects for regulation by the City in the interest of the health, safety and welfare of the public, and

WHEREAS, in order to preserve and safeguard the good order, health, morals, safety, and general welfare of the people of the City it is necessary and advisable for the City to regulate the location of adult entertainment establishments and sexually-oriented businesses, and

WHEREAS, the potential dangers to the health, safety, and welfare of the citizens of Palm Bay posed by permitting adult entertainment establishments and sexually-oriented businesses to operate without first meeting the requirements of this ordinance are so great as to require the inspection and examination of the location of such establishments and businesses prior to permitting them to initiate operations and thereafter, and

WHEREAS, prohibiting adult entertainment establishments and sexually-oriented businesses from operating within set distances of educational institutions, religious institutions, residence areas zoned or designated for residential use, and parks at which

minors are customarily found, will serve to protect minors from the adverse affects of the activities that accompany such establishments and businesses, and

WHEREAS, there is a higher incidence of criminal activity among the employees of commercial establishments that permit the concurrence of the consumption of alcoholic beverages and adult entertainment than among the employees of other commercial establishments, and

WHEREAS, the City, through its police power and the twenty-first Amendment of the United States Constitution, has the right to regulate the time, place and manner of the selling consumption of alcohol, and

WHEREAS, the City Council of the City of Palm Bay has been presented with case law from the United States Supreme Court, the Eleventh Circuit Court of Appeals, the Federal District for Middle District of Florida and studies validating and supporting the predicate clauses set forth hereinabove, and

WHEREAS, the Planning and Zoning Board, sitting as the Local Planning Agency, hereby finds this Ordinance to be consistent with the Palm Bay Comprehensive Plan, and

WHEREAS, the City Council hereby adopts the findings of the Local Planning Agency as to consistency with the Comprehensive Plan.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, as follows:

SECTION 1. Sale of alcoholic beverages for consumption on premises.

The sale of alcohol for consumption on premises shall require a conditional use in the following cases: Private clubs and lodges; all drinking establishments not associated

with a restaurant, excluding cocktail lounges associated with a hotel or motel; and all recreational establishments including, but not limited to, golf courses, marinas, tennis clubs, and racquetball complexes. However, no sale of alcohol for consumption on premises shall be permitted within five hundred (500) feet of an adult entertainment establishment or sexually-oriented business as defined in the Adult Entertainment Code, Chapter 173, of the City of Palm Bay Code of Ordinances. All measurements herein shall be made in accordance with Section 2, Subsection C, of this Ordinance.

SECTION 2. Location of adult entertainment establishments and sexually-oriented businesses; restrictions.

A. Definitions. Where applicable, words or phrases used in this section shall be as defined in Chapter 173, Adult Entertainment Code, of the City of Palm Bay Code of Ordinances.

B. Permissible Locations. All adult entertainment establishments or sexually-oriented business as defined in Chapter 173, Adult Entertainment Code, of the City of Palm Bay Code of Ordinances, must be located as specified on Exhibit "A" of this Ordinance, as attached hereto.

C. Measurement of Distance. The distance between any adult entertainment establishment or sexually-oriented business and any establishment serving alcoholic beverages for consumption on premises shall be measured in a straight line, without regard to intervening structures, from the closest exterior structural wall of the adult entertainment establishment or sexually-oriented business to the closest property line of the establishment serving alcoholic beverages for consumption on premises.

D. Non-Conforming Establishments - Distance Requirements. Any adult entertainment establishments or sexually-oriented businesses existing and operating as of the effective date of this Ordinance which are not located within the permissible locations identified in Subsection B above shall be classified as non-conforming. If any such non-conforming adult entertainment establishment or sexually-oriented business voluntarily ceases to do business for a period of ninety (90) consecutive days, then it shall be deemed abandoned and thereafter shall not reopen except in conformance with these location, distance, and dispersal standards. A non-conforming adult entertainment establishment or sexually-oriented business shall not expand the square footage or cubic footage of the establishment or business beyond its existing dimensions.

SECTION 3. Distances between religious institutions, schools, public parks and residential zoning districts or uses and an adult entertainment establishment and the adult entertainment district.

Subsequent to the passage of this Ordinance, no person or entity shall cause or permit the establishment of a public or private school within one thousand five hundred (1,500) feet of an adult entertainment establishment or sexually-oriented business as defined in Chapter 173, Adult Entertainment Code, Code of Ordinances, or within one thousand five hundred (1,500) feet of the adult entertainment district as described in Section 2, Subsection B, of this Ordinance. Subsequent to the passage of this Ordinance, no person or entity shall cause or permit the establishment of a religious institution, public park, or residential zoning district or use within one thousand (1,000) feet of an adult entertainment establishment or sexually-oriented business or the adult entertainment district. No person or entity shall cause or permit the foundation of an establishment

serving alcoholic beverages for consumption on premises within five hundred (500) feet of an adult entertainment establishment or sexually-oriented business or the adult entertainment district. All measurements herein shall be made in accordance with Section 2, Subsection C, of this Ordinance.

SECTION 4. All ordinances or parts of ordinances in conflict herewith are hereby repealed and all ordinances or parts of ordinances not in conflict herewith are hereby continued in full force and effect.

SECTION 5. It is the intention of the City Council of the City of Palm Bay that the provisions of this Ordinance shall be made a part of Chapter 173, Adult Entertainment Code, of the City of Palm Bay Code of Ordinances and the sections renumbered to accomplish such intention.

SECTION 6. If any portion, clause, phrase, sentence or classification of this ordinance is held or declared to be either unconstitutional, invalid, inapplicable, inoperative or void, then such declaration shall not be construed to affect other portions of the ordinance; it is hereby declared to be the express opinion of the City Council of the City of Palm Bay that any such unconstitutional, invalid, inapplicable, inoperative or void portion or portions of this ordinance did not induce its passage, and that without the inclusion of any such portion or portions of this ordinance, the City Council would have enacted the valid constitutional portions thereof.

SECTION 7. The provisions within this ordinance shall take effect immediately upon the enactment date.

Read in title only at Meeting No. 2007- held on 2007; and read in title
only and duly passed and enacted at Meeting No. 2007- , held on , 2007.

John J. Mazziotti, MAYOR

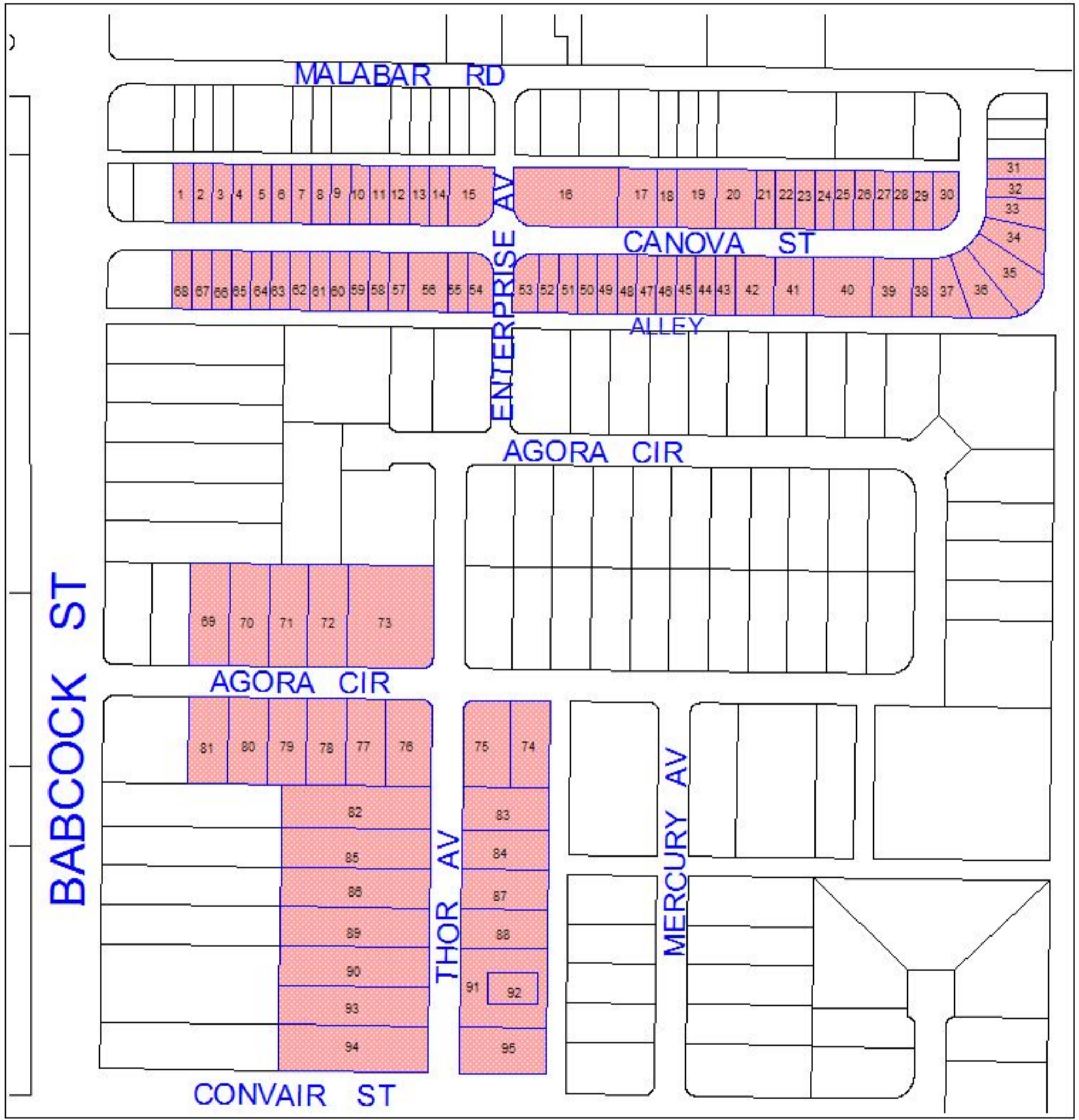
ATTEST:

Alice Passmore, CITY CLERK

CC:



PARCEL MAP



ADULT ENTERTAINMENT ZONE

ORDINANCE NO. 2007-31

AN ORDINANCE OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, TO BE KNOWN AS THE "PALM BAY PUBLIC NUDITY ORDINANCE"; STATING THE INTENT OF THE ORDINANCE; PROVIDING FOR THE DEFINITION OF NUDITY AS PROHIBITED BY THIS ORDINANCE AND PROVIDING FOR OTHER DEFINITIONS; PROVIDING FOR LEGISLATIVE FINDINGS; PROHIBITING NUDITY AND SEXUAL CONDUCT OR THE SIMULATION THEREOF; PROHIBITING NUDITY IN PUBLIC PLACES; PROVIDING FOR ENFORCEMENT AND PENALTIES FOR THE VIOLATION OF THIS ORDINANCE; PROVIDING FOR INJUNCTIVE RELIEF; PROVIDING FOR EFFECTIVENESS IN THE ENTIRETY OF THE CITY LIMITS OF PALM BAY IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE VIII, SECTION (1)(g), CONSTITUTION OF THE STATE OF FLORIDA; PROVIDING FOR THE REPEAL OF ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR INCLUSION IN THE CITY OF PALM BAY CODE OF ORDINANCES; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, local governments may prohibit the exposure of certain body parts, see *Geaneas v. Willets*, 911 F. 2d 579 (11th Cir. 1990), *certiorari denied*, 499 U.S. 955, 111 S. Ct. 1431, 113 L. Ed. 2d 484 (1991), and

WHEREAS, efforts by the State and Federal governments to apply Florida criminal statutes have been rejected by the courts because, under certain of Florida's criminal laws, nudity alone cannot be prosecuted without proof of lewd and lascivious conduct, and

WHEREAS, local governments for other counties have successfully passed and defended regulations relating to public nudity, and

WHEREAS, the citizens of Palm Bay wish to regulate nudity and sexual conduct, and the citizens of Palm Bay believe that nudity and sexual conduct begets undesirable behavior, and that adverse secondary effects such as, but not limited to, prostitution,

attempted rape, rape, and assault may occur and have the potential for occurring where nude and sexual conduct is permitted, and

WHEREAS, the citizens of Palm Bay wish to protect against similar conditions to the end that they not occur in Palm Bay, and

WHEREAS, the citizens of Palm Bay desire to prohibit the public display of nudity and sexual behavior or the simulation thereof, and

WHEREAS, the citizens of Palm Bay believe that there are increasing incidents of nudity in public places and in other places readily visible to the public, and

WHEREAS, the citizens of Palm Bay believe that persons who choose to appear nude in public places are engaging in conduct which often serves to impose their nudity on others who did not seek it out, who are not able to reasonably avoid observing it, and who may be offended or distressed thereby, and

WHEREAS, appearing nude in public places was a criminal offense at common law and was considered an act *malum en se* (a wrong in itself) and appearing nude in a public place which is not a public place provided or set apart for nudity has been considered improper see *Moffett v. State*, 340 So. 2d 1155, 1156 n.3 (Fla. 1977), and

WHEREAS, the citizens of Palm Bay desire to protect and preserve the wholesome character of Palm Bay as a family oriented community with a high quality of life offered for families, tourists and businesses, and

WHEREAS, the citizens of Palm Bay believe that appearing nude in public places is still contrary to the general societal disapproval that the people of Palm Bay have of persons appearing nude among strangers in public places, and

WHEREAS, the citizens of Palm Bay believe that the appearance of persons in the nude in public places generally increases adverse secondary effects such as, but not limited to, incidents of prostitution, unhealthy environment for minors, other citizens and tourists, sexual assaults and batteries, attracts other criminal activity to the community, and encourages degradation of women and other activities which break down societal and family structures, and

WHEREAS, the citizens of Palm Bay believe that without regulation public nudity constitutes harmful conduct and occurs in a manner which is incompatible with the normal primary activity of a particular place at a particular time, and

WHEREAS, the citizens of Palm Bay sole intent in enacting this ordinance is to prohibit the conduct of being nude in public places and to suppress the adverse secondary effects such nudity generates, and

WHEREAS, it is the intent of the citizens of Palm Bay to protect and preserve the good order, public health, safety, welfare and morals of Palm Bay by restricting, to the fullest extent allowed by the United States Constitution and Florida Constitution, the act of being nude to places which are readily visible to the public, and

WHEREAS, the City Council's sole intent in enacting this ordinance is to prohibit the conduct of being nude in public places and to suppress the adverse secondary effects such nudity generates, the City Council nevertheless recognizes that there may be instances wherein appearing nude in a public place may be expressive conduct incidental to and a necessary part of the freedom of expression that is protected by United States or Florida constitutional provisions, and

WHEREAS, the citizens of Palm Bay believe that Palm Bay is a city that is, and desires very much to continue to be, a community that contains and is known for traditional and wholesome public recreational activities, natural features and resources and historic facilities, and

WHEREAS, the citizens of Palm Bay believe that the average person applying contemporary community standards would find that the public nudity prohibited by this Ordinance, if allowed, when taken as a whole: (i) appeals to the prurient interests, and (ii) lacks serious literary, artistic, political, and scientific value, and

WHEREAS, the citizens of Palm Bay believe that the absence of regulation of persons appearing nude in public places within Palm Bay encourages persons and entities to advertise outside of Palm Bay and the State of Florida by billboard, radio, print and other media the availability of nudity in public places within Palm Bay and thus encourages the influx into Palm Bay of persons seeking: (i) to observe and/or participate in such nudity, and (ii) to participate in the disorderly, unhealthy, harmful, and illegal conduct that is associated therewith, thereby increasing injuries and damages to the citizens of the Palm Bay who will be victims of such increased disorderly, harmful, and unlawful conduct and thereby working directly against Palm Bay's economic development and tourism development activities, and

WHEREAS, the citizens of Palm Bay believe that commercial advertising and/or exploitation of nudity encourages escalation of nude and lewd conduct within the competing commercial establishments exploiting such conduct and thereby increases the adverse effects upon public order and the public health, and

WHEREAS, the citizens of Palm Bay believe that the prohibitions contained herein

are the most reasonable and minimal restrictions required so as to regulate conduct which is adverse to public order, health, safety, morality, and decency within Palm Bay when such conduct takes place at locations where the public is present or is likely to be present, or where such conduct would be readily visible to the public, and

WHEREAS, the citizens of Palm Bay believe that the passage of this Ordinance is necessary to preserve the basic character of Palm Bay, and

WHEREAS, States may regulate the conduct of appearing nude in public places, see *Barnes v. Glen Theater, Inc.*, 501 U.S. 560, 111 S. Ct. 2456 115 L. Ed. 2d 504 (1991), and *Café 207, Inc. vs. St. Johns City*, 856 F. supp. 641 (M.D. Fla. 1994), aff'd, 989 F. 2d 1136 (11th Cir. 1995), and

WHEREAS, the citizens of Palm Bay are not hereby prohibiting nudity in private places or prohibiting nudity which is protected by the United States Constitution or Florida Constitution, and

WHEREAS, the citizens of Palm Bay believe that the express exemptions contained in this Ordinance provide adequate protection to persons who, without such express exemptions, might otherwise be prevented or discouraged by this Ordinance from exercising constitutionally protected rights, and

WHEREAS, this Ordinance is intended to regulate conduct, not speech; and not an ordinance that affects the use of land as contemplated by Section 125.66, Florida Statutes.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, as follows:

SECTION 1. Title. This Ordinance shall be known as the "Palm Bay Public Nudity

Ordinance".

SECTION 2. Intent.

A. It is the intent of this Ordinance to protect and preserve the good order, health, safety, welfare, and morals of the citizens of Palm Bay by prohibiting a person from intentionally or recklessly appearing or being nude, or causing another person to appear or be nude, in a public place and in other places which may reasonably be expected to be observed by the public within Palm Bay in other places than those establishments regulated by the Palm Bay Adult Entertainment Code or as defined in Section 3, *PLACES APPROVED OR SET APART FOR NUILITY*.

B. It is the further intention of this Ordinance to accomplish those intents and purposes expressed in the recitals ("**Whereas**" clauses) of this Ordinance, each of which are incorporated by reference in this Section.

SECTION 3. Definitions.

BREAST. A portion of the human female mammary gland (commonly referred to as the female breast) including the nipple and areola (the darker colored area of the breast surrounding the nipple) and an outside area of such gland wherein such outside area is (i) reasonably compact and contiguous to the areola, and (ii) contains at least the nipple and the areola and 1/4 of the outside surface area of such gland.

BUTTOCKS. (For a short general description, see the last sentence of this definition.) The area at the rear of the human body (sometimes referred to as the gluteus maximus) which lies between two imaginary straight lines running parallel to the ground when a person is standing, the first or top such line being ½ inch below the top of the vertical cleavage of the nates (i.e., the prominence formed by the muscles running from the back of the hip to the back of the leg) and the second or bottom such line being ½ inch above the lowest point of the curvature of the fleshy protuberance (sometimes referred to as the gluteal fold), and between two imaginary straight lines, one on each side of the body (the "outside lines"), which outside lines are perpendicular to the ground and to the horizontal lines described above and which perpendicular outside lines pass through the outermost point (s) at which each nate meets the other side of leg. Notwithstanding the above, buttocks shall not include the leg, the hamstring muscle below the gluteal fold, the

tensor fasciae latae muscle or any of the above-described portion of the human body that is between either: (i) the left inside perpendicular line and the left outside perpendicular line, or (ii) the right inside perpendicular line and the right outside perpendicular line. For the purpose of the previous sentence the left inside perpendicular line shall be an imaginary straight line on the left side of the anus: (i) that is perpendicular to the ground and to the horizontal lines described above, (ii) that is 1/3 of the distance from the anus to the left outside line, and the right inside perpendicular line shall be an imaginary straight line on the right side of the anus (i) that is perpendicular to the ground and to the horizontal lines described above, and (ii) that is 1/3 of the distance from the anus to the right outside line. (The above description can generally be described as covering 1/3 of the buttocks centered over the cleavage for the length of the cleavage.)

ENTITY. Any proprietorship, partnership, corporation, association, business trust, joint venture, joint-stock company or other for profit and/or not for profit organization.

NUDE. Any person insufficiently clothed in any manner or that any of the following body parts are not entirely covered with a fully opaque covering:

- (1) the male or female genitals, or
- (2) the pubic area, or
- (3) the vulva, or
- (4) the penis, or
- (5) the female breast (each female person may determine which 1/4 of her breast surface area (see definition of breast) contiguous to and containing the nipple and the areola is to be covered), or
- (6) the anus, or
- (7) the anal cleft, or
- (8) the anal cleavage, or
- (9) the buttocks. Attire which is insufficient to comply with this requirement includes, but is not limited to, G-Strings, T-Backs, dental floss and thongs.
- (10) For the purposes of this section, body paint, body dyes, tattoos, liquid latex whether wet or dried, string and dental floss and similar substance shall not be considered an "opaque covering".

PERSON. Any live human being aged ten (10) years of age or older.

PLACES APPROVED or SET APART FOR NUDITY. Enclosed single sex public restrooms, enclosed single sex functional shower, single sex locker and/or dressing room facilities, enclosed motel rooms and hotel rooms designed and intended for sleeping accommodations, doctor's offices, portions of hospitals, the yard areas of private residences, and similar places in which nudity or exposure is necessarily and customarily expected outside of the home and the sphere of privacy constitutionally protected therein. The aforementioned places approved or set apart for nudity shall not be deemed to include places where a person's conduct of being nude is used for his or her profit or where being

nude is used for the promotion of business or is otherwise for commercial gain which are regulated and governed by the Palm Bay Adult Entertainment Regulatory Ordinance, codified within Chapter 173 of the Palm Bay Code of Ordinances.

PUBLIC PLACE. Any location frequented by the public, or where the public is present or likely to be present, or where a person may reasonably be expected to be observed by members of the public. Public places include, but are not limited to, streets, sidewalks, parks, beaches, business and commercial establishments (whether for profit or not for profit and whether open to the public at large or where entrance is limited by a cover charge or membership requirement or membership fee), bottle clubs, hotels, motels, restaurants, night clubs, country clubs, cabarets, and meeting facilities utilized by any religious, social, fraternal or similar organization. Premises, or portions thereof such as motel or hotel rooms, used solely as a private residence, whether permanent or temporary in nature, shall not be deemed to be a public place.

SECTION 4. Findings. In addition and supplemental to the findings and determinations contained in the recitals ("Whereas" clauses) of this Ordinance which are incorporated by reference into this Section, it is the intent of the citizens of Palm Bay to regulate the conduct of appearing nude in public places for the purpose of regulating nudity and other conduct, that considering what has happened in other communities, the acts prohibited in Section 5 herein below encourage or create the potential for the conduct of adverse secondary effects such as, but not limited to, prostitution, attempted rape, rape, assault, and the spread of sexually communicable diseases; that actual and simulated nudity and sexual conduct in public places, begets and has the potential for begetting undesirable and unlawful behavior; that sexual, lewd, lascivious, and salacious conduct results in violation of law and creates dangers to the health, safety, morals, and welfare of the public and those who engage in such conduct; and, it is the intent of Section 5 of this Ordinance to specifically prohibit nudity, gross sexuality and the simulation thereof.

SECTION 5. Nudity, Sexual Conduct Prohibited.

A. No person shall knowingly, intentionally or recklessly appear, or cause another person to appear NUDE, as defined in Section 3, or expose to public view his or her genitals, vulva, penis, pubic area, or buttocks, or any simulation thereof.

B. No person shall knowingly, intentionally or recklessly expose, or cause a female person to expose her breasts or any simulation thereof to public view.

C. No person or entity maintaining, owning, or operating a public place shall encourage, allow or permit any person to appear nude or to expose to public view his or her genitals, pubic area, vulva, penis, anus, or any portion of the buttocks or simulation thereof. This Section shall be violated if any portion of the buttocks is visible from any vantage point.

D. No person shall engage in and no person or entity maintaining, owning, or operating a public place shall encourage, allow or permit any sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, lap dancing, straddle dancing, any sexual act which is prohibited by law, touching, caressing, or fondling of the breasts, buttocks, anus, or genitals, or the simulation thereof.

E. Each female person may determine which 1/4 of her breast surface area (see definition of breast) contiguous to and containing the areola is to be covered.

F. This section shall not be deemed to address photographs, movies, video presentations, or other non live performances.

SECTION 6. Nudity Prohibited in Public Places. It shall be unlawful for any person to knowingly, intentionally, or recklessly appear, or cause another person to appear NUDE, as defined in Section 3, in a public place or in any other place which is readily

visible to the public, except as provided in Section 7. It shall also be unlawful for any person or entity maintaining, owning, or operating any public place to encourage, suffer or allow any person to appear nude in such public place, except as provided in Section 7.

SECTION 7. Exemptions.

A. The prohibitions of Section 5 of this Ordinance shall not apply:

1. When a person appears nude in a place provided or set apart for nudity, as defined by this Ordinance, provided:

- a. Such person is nude for the sole purpose of performing the legal function(s) that is/are customarily intended to be performed within such place provided or set apart for nudity, and
- b. Such person is not nude for the purpose of obtaining money or other financial gain for such person or for another person or entity.

2. When the conduct of being nude cannot legally be prohibited by this Ordinance because:

- a. It constitutes a part of a *bona fide* live communication, demonstration or performance by a person wherein such nudity is expressive conduct incidental to and necessary for the conveyance or communication of a genuine message or public expression and is not a mere guise or pretense utilized to exploit the conduct of being nude for profit or commercial gain (see for instance *Board of City Commissioners v. Dexterhouse*, 348 So. 2d 916 (Fla. 2nd DCA 1977), and as such is protected by the United States Constitution or Florida Constitution, or
- b. It is otherwise protected by the United States Constitution or Florida Constitution.

B. A mother's breast feeding of her baby does not under any circumstance violate the provisions of this ordinance.

C. In establishments or businesses denominated as Adult Entertainment

Establishments or Sexually-Oriented Businesses and regulated by the Palm Bay Adult Entertainment Code.

SECTION 8. Enforcement and Penalties. Any person or entity violating any of the provisions of this Ordinance shall be prosecuted in the same manner as misdemeanors are prosecuted. Such violations shall be prosecuted in the name of the State of Florida in a court having jurisdiction of misdemeanors by the prosecuting attorney thereof and, upon conviction, shall be punished by a fine not to exceed Five Hundred Dollars (\$500.00) or by imprisonment not to exceed sixty (60) days or by both such fine and imprisonment as provided in Florida Statutes or other applicable law. Each incident or separate occurrence of an act that violates this Ordinance shall be deemed a separate offense.

SECTION 9. Injunctive Relief. In addition to the procedures provided herein, persons and entities that are not in conformity with these requirements shall be subject to appropriate civil action in the court of appropriate jurisdiction for abatement.

SECTION 10. Area of Effectiveness. In accordance with the provisions of Article VIII, Section (1) (g), Constitution of the State of Florida, this Ordinance shall have citywide effect within the borders of Palm Bay, Florida.

SECTION 11. All ordinances or parts of ordinances in conflict herewith are hereby repealed and all ordinances or parts of ordinances not in conflict herewith are hereby continued in full force and effect.

SECTION 12. It is the intention of the City Council of the City of Palm Bay that the provisions of this Ordinance shall be made a part of Chapter 173, Adult Entertainment Code, of the City of Palm Bay Code of Ordinances, and the sections renumbered to

accomplish such intention.

SECTION 13. If any portion, clause, phrase, sentence or classification of this ordinance is held or declared to be either unconstitutional, invalid, inapplicable, inoperative or void, then such declaration shall not be construed to affect other portions of the ordinance; it is hereby declared to be the express opinion of the City Council of the City of Palm Bay that any such unconstitutional, invalid, inapplicable, inoperative or void portion or portions of this ordinance did not induce its passage, and that without the inclusion of any such portion or portions of this ordinance, the City Council would have enacted the valid constitutional portions thereof.

SECTION 14. The provisions within this ordinance shall take effect immediately upon the enactment date.

Read in title only at Meeting No. 2007- held on 2007; and read in title only and duly passed and enacted at Meeting No. 2007- , held on , 2007.

John J. Mazziotti, MAYOR

ATTEST:

Alice Passmore, CITY CLERK

CC:

ORDINANCE NO. 2007-29

AN ORDINANCE OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES, TITLE XVII, LAND DEVELOPMENT CODE, BY REPEALING CHAPTER 173, ADULT ENTERTAINMENT CODE, AND SUBSTITUTING IN ITS PLACE AND STEAD A NEW CHAPTER TITLED "ADULT ENTERTAINMENT CODE"; MAKING FINDINGS; STATING THE INTENT OF THE ORDINANCE; PROVIDING DEFINITIONS; PROVIDING FOR CLASSIFICATIONS OF ADULT ENTERTAINMENT ESTABLISHMENTS AND SEXUALLY-ORIENTED BUSINESSES; REQUIRING THE LICENSING OF ADULT BOOKSTORES AND ADULT VIDEO STORES, ADULT PERFORMANCE ESTABLISHMENTS, ADULT MOTELS, ADULT THEATERS, COMMERCIAL BODILY CONTACT ESTABLISHMENTS AND ESCORT SERVICES, AS DEFINED; PROVIDING REQUIREMENTS AND PROCEDURES FOR LICENSE APPLICATION, ISSUANCE, RENEWAL, SUSPENSION AND REVOCATION; PROVIDING FOR A LICENSE APPLICATION FEE; IMPOSING SPECIAL ADVERTISING RESTRICTIONS; PROVIDING FOR ANNUAL LICENSE FEES; REGULATING THE TRANSFER OF LICENSES AND CHANGE IN NAME OF A LICENSED ESTABLISHMENT; PROVIDING HEARING PROCEDURES FOR SUSPENSION AND REVOCATION OF LICENSES; PROVIDING FOR PROMPT JUDICIAL REVIEW OF SUSPENSION AND REVOCATION DECISIONS; PROVIDING GENERAL REGULATIONS FOR ALL ADULT ENTERTAINMENT ESTABLISHMENTS AND SEXUALLY-ORIENTED BUSINESSES; PROVIDING SPECIFIC REGULATIONS FOR SEXUALLY-ORIENTED BUSINESSES, ADULT THEATERS, ADULT PERFORMANCE ESTABLISHMENTS, COMMERCIAL BODILY CONTACT ESTABLISHMENTS, AND ESCORT SERVICES; PROHIBITING CUSTOMERS OF ADULT ENTERTAINMENT ESTABLISHMENTS AND SEXUALLY-ORIENTED BUSINESSES FROM ENGAGING IN CERTAIN ACTS; PROHIBITING WORKERS AND OPERATORS OF ADULT ENTERTAINMENT ESTABLISHMENTS AND SEXUALLY-ORIENTED BUSINESSES FROM ENGAGING IN CERTAIN ACTS; PROHIBITING ADULT ENTERTAINMENT ESTABLISHMENTS AND SEXUALLY-ORIENTED BUSINESSES FROM OPERATING WITHOUT A LICENSE OR OPERATING CONTRARY TO THE APPLICABLE REGULATIONS; PROVIDING FOR AN EXCEPTION FROM REGULATIONS FOR BONA FIDE USE OF REST ROOMS; PROHIBITING OPERATORS OF ADULT ENTERTAINMENT ESTABLISHMENTS AND SEXUALLY-ORIENTED BUSINESSES FROM ALLOWING MINORS TO ENTER, REMAIN, OR WORK AT ANY SUCH ESTABLISHMENT OR BUSINESS DURING HOURS OF OPERATION; PROHIBITING OPERATORS OF SUCH

ESTABLISHMENTS AND BUSINESSES FROM OPERATING WITHOUT COMPLYING WITH THE REQUIREMENTS FOR MAINTAINING RECORDS, POSTING LICENSES AND OTHER INFORMATION OR THE REQUIREMENTS CONCERNING HOURS OF OPERATION; PROVIDING SPECIAL PROHIBITIONS RELATING TO ESCORTS AND ESCORT SERVICES AND COMMERCIAL BODILY CONTACT ESTABLISHMENTS; PROVIDING A SAVINGS PROVISION; PROVIDING THAT BUSINESS TAXES LEVIED IN ACCORDANCE WITH THIS ORDINANCE AND THAT ADULT ENTERTAINMENT ESTABLISHMENTS AND SEXUALLY-ORIENTED BUSINESSES SHALL NOT BE APPROVED AS HOME OCCUPATIONS; PROHIBITING SEXUAL ENCOUNTER BUSINESSES; PROVIDING FOR IMMUNITY FROM PROSECUTION FOR TRESPASS WHILE ENFORCING THIS ORDINANCE; PROVIDING PENALTIES FOR VIOLATIONS OF THIS CODE; PROVIDING FOR THE REPEAL OF ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR INCLUSION IN THE CITY OF PALM BAY CODE OF ORDINANCES; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Palm Bay, Florida, has determined it to be in the best interest of the general health, safety and welfare of the residents of the City to provide regulatory, as well as locational, requirements for all adult entertainment establishments and sexually-oriented businesses as hereinafter defined, and

WHEREAS, the City Council of the City of Palm Bay, Florida, has reason to believe and believes that (a) when the possession, display, exhibition, distribution and sale of books, magazines, motion pictures, prints, photographs, periodicals, records, novelties and devices that depict, illustrate, describe or relate to specified sexual activities and/or (b) with the operation and maintenance of places where parts of one person are treated or encountered by rubbing, stroking, kneading or tapping by a second person, accompanied by the exposure or display of specified anatomical areas, other activities tend to

accompany them that are illegal, immoral or unhealthy, and

WHEREAS, such other activities include, but are not limited to, prostitution, pandering, solicitation for prostitution, obscene, lewd and lascivious behavior, exposing minors to harmful materials, exposing citizens to an unsanitary and/or unhealthy environment, sale or possession of controlled substances, and violent crimes against persons and property, and

WHEREAS, illegal, immoral or unhealthful activities tend to concentrate around and be aggravated by the presence of the activities detailed above, and

WHEREAS, the buildings and establishments in which the activities and business operations described above take place are conducive to and may be used for the commission of immoral, lewd, indecent or illegal acts, and

WHEREAS, the business operations and activities detailed above frequently occur in commercial establishments either selling or allowing consumption of alcoholic beverages on the premises, and

WHEREAS, there is a direct relationship between the concurrent consumption of alcoholic beverages and the activities described above and an increase in criminal activities, degradation and disturbances of the peace and good order of the community, and

WHEREAS, certain studies have shown the concurrence of the sale and consumption of alcoholic beverages with the activities described above is hazardous to the health and safety of those persons in attendance, and tends to depreciate the value of adjoining property, harm the economic welfare of the community as a whole and adversely affect the public's interest in the quality of life, tone of commerce, and total community

environment of the City, and

WHEREAS, to preserve the public peace and good order, and to safeguard the health, safety and welfare of the community and the citizens thereof, it is necessary and advisable to regulate adult entertainment establishments and sexually-oriented businesses within the city limits of Palm Bay where the activities described above occur, and

WHEREAS, the business operations and activities described above are commercial ventures, operated for the purpose of making a profit, and as such are proper subjects for regulation by the City in the interest of the health, safety and welfare of the public, and

WHEREAS, the potential dangers to the health, safety, and welfare of the citizens of Palm Bay posed by permitting a sexually-oriented business or an adult entertainment establishment to operate without first meeting the requirements of this ordinance are so great as to require the inspection and licensing of said establishments prior to permitting them to initiate operations and thereafter, and

WHEREAS, there is a higher incidence of criminal activity among the employees of commercial establishments that permit the concurrence of the consumption of alcoholic beverages and adult entertainment than among the employees of other commercial establishments, and

WHEREAS, the City, through its police power and the Twenty-First Amendment of the United States Constitution, has the right to regulate the time, place and manner of the selling and consumption of alcohol, and

WHEREAS, sexually-oriented businesses and adult entertainment establishments lend themselves to ancillary unlawful and unhealthy activities that are presently uncontrolled or not adequately controlled by the operators of the establishments or

businesses. Further, there are presently no mechanisms or inadequate mechanisms to make the owners of these businesses or establishments responsible for the activities that occur on their premises, and

WHEREAS, certain workers of certain sexually-oriented businesses and adult entertainment establishments defined in this Ordinance engage in a higher incidence of certain types of illicit sexual behavior than workers of other business establishments, and

WHEREAS, sexual acts, including masturbation, and oral and anal sex, occur at sexually-oriented businesses and adult entertainment establishments, especially those which provide private or semi-private areas, booths or cubicles for viewing films, videos, live sex shows and those having physical interaction between workers and customers, and

WHEREAS, offering and providing such private spaces encourages such previously mentioned activities, which create unhealthy conditions, and

WHEREAS, persons frequent certain adult theaters, adult arcades, and other sexually-oriented businesses and adult entertainment establishments for the purpose of engaging in sex within the premises of such businesses and establishments, and

WHEREAS, at least 50 communicable diseases may be spread by activities occurring in sexually-oriented businesses and adult entertainment establishments, 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, and

WHEREAS, since 1981 and to the present, there has been an increasing cumulative number of reported cases of AIDS caused by the human immunodeficiency virus (HIV) in the United States 600 in 1982, 2,200 in 1983, 4,600 in 1984, 8,555 in 1985 and 253,448

through December 31, 1992, and currently there are 1,400,000 people infected with the disease nationally with 40,000 people becoming infected annually, and

WHEREAS, as of December 31, 1995, there have been 51,838 reported cases of AIDS in the State of Florida with over 100,000 AIDS cases being reported in the State of Florida from 1983 - 2005 and Florida ranks third in cumulative AIDS cases in the United States and has the second highest AIDS rate in the United States, and

WHEREAS, from 1981 to June 1996, the number of living persons testing positive for the HIV antibody with AIDS symptoms has risen to 73,217 in the 28 states having confidential reporting requirements, and

WHEREAS, the number of cases of early (less than one year) syphilis in the United States reported annually has risen, with 33,613 cases reported in 1982 and 45,200 through November of 1990, and between 2004 and 2005, the national syphilis rate increased 11.1 per cent, and

WHEREAS, the number of cases of gonorrhea in the United States reported annually remains at a high level, with over one-half million cases being reported in 1990, and currently 350,000 cases of gonorrhea are reported annually with Florida reporting over 20,000 cases of gonorrhea annually, and

WHEREAS, the Surgeon General of the United States, in his report of October 22, 1986, has advised the American public that AIDS and HIV infection may be transmitted through sexual contact, intravenous drug abuse, exposure to infected blood and blood components, and from an infected mother to her newborn, and

WHEREAS, according to the best scientific evidence, AIDS and HIV infection, as

well as syphilis and gonorrhea, are principally transmitted by sexual acts, and

WHEREAS, sanitary conditions in some sexually-oriented businesses and adult entertainment establishments 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 owners and operators of the facilities to self-regulate those activities and maintain those facilities, and

WHEREAS, numerous studies and reports have determined that semen is found in the areas of sexually-oriented businesses and adult entertainment establishments where persons view "adult" oriented films which causes many concerns of Palm Bay citizens including but not limited to health and aesthetic concerns, and

WHEREAS, the findings noted above and as set forth hereinafter raise substantial governmental concerns, and

WHEREAS, sexually-oriented businesses and adult entertainment establishments should be reasonably regulated in order to protect those substantial governmental concerns, and

WHEREAS, commercial establishments exist or may exist within the City and other nearby cities and counties in Florida where adult entertainment material is possessed, displayed, exhibited, distributed and/or sold for commercial purposes in the form of books, magazines, periodicals or other printed material, or photographs, films, motion pictures, prints, videotapes, slides, DVDs, computer digital graphic representations or other visual representations or recordings, or recordings or other audio matter, or instruments,

novelties, devices, or paraphernalia which depict, illustrate, describe or relate to specified sexual activities or specified anatomical areas, and

WHEREAS, commercial establishments exist or may exist within the City or other nearby cities or counties in Florida where adult entertainment and sexually-oriented commercial activities in the form of semi-nude, or topless dancers, entertainers, performers, or other individuals, who, for commercial gain, perform or are presented while displaying or exposing specified anatomical areas; or engage in straddle dancing or touching with customers, and

WHEREAS, commercial sexually-oriented businesses exist or operate or may exist or operate within the City or other nearby cities or counties in Florida where sexually-oriented services are offered for commercial or pecuniary gain in the form of commercial physical contact, escort services and other services providing sexual encounters. The workers of such sexually-oriented businesses operating in Florida engage in physical contact or touching with customers including, but not limited to, acts of prostitution, or encourage or entice the customers to engage in lewdness, and

WHEREAS, the activities occurring at sexually-oriented businesses and adult entertainment establishments occur at establishments and businesses which operate primarily for the purpose of making a profit and, as such, their locations are subject to regulation by the City in the interest of the good order, health, safety, economy, property values, and general welfare of the people, businesses and industries of the City. A major industry which is important to the community's economic welfare is tourism by persons seeking to bring children to visit Palm Bay and environs who wish to stay in a community with a family atmosphere not dominated by commercialized sexual themes, and

WHEREAS, when the activities occurring at sexually-oriented businesses and adult entertainment establishments are present in establishments and businesses, other activities which are illegal, unsafe, or unhealthy tend to accompany them, concentrate around them, and be aggravated by them. Such other activities include, but are not limited to, prostitution, pandering, solicitation for prostitution, lewd and lascivious behavior, exposing minors to harmful materials and unhealthy environments, exposing other citizens to unhealthy environments, possession, distribution and transportation of obscene materials, sale or possession of controlled substances, and violent crimes against persons and property, and

WHEREAS, when the activities occurring at sexually-oriented businesses and adult entertainment establishments are competitively exploited in establishments and businesses, they tend to attract an undesirable number of transients, lower real property values, promote the particular crimes described above, discourage tourism and, ultimately, lead residents to move to other locations, and

WHEREAS, sexually-oriented businesses and adult entertainment establishments often have exterior signs or exterior appearance that are aesthetically displeasing and incongruous with surrounding business signage, lower the surrounding property values and contribute to urban decline, and

WHEREAS, the activities occurring at sexually-oriented businesses and adult entertainment establishments sometimes occur in establishments and businesses concurrent with the sale and consumption of alcoholic beverages which concurrence leads to a further increase in criminal activity, unsafe activity, and disturbances of the peace and order of the surrounding community and creates additional hazards to the health and safety

of customers and workers and further depreciates the value of adjoining real property harming the economic welfare of the surrounding community and adversely affecting the quality of life, commerce, and community environment, and

WHEREAS, physical contact or touching within sexually-oriented businesses and adult entertainment establishments between workers exhibiting specified anatomical areas and customers poses a threat to the health of both and promotes the spread of communicable and social diseases, and

WHEREAS, in order to preserve and safeguard the good order, health, morals, safety, and general welfare of the people of the City it is necessary and advisable for the City to regulate sexually-oriented businesses and adult entertainment establishments, and

WHEREAS, the potential dangers to the good order, health, safety, and general welfare of the people of the City posed by permitting a sexually-oriented business or adult entertainment establishment to operate without first meeting the requirements under this Chapter are so great as to require the inspection and examination of such establishments prior to their being permitted to operate, and

WHEREAS, straddle dancing is primarily conduct rather than communication or expression, and

WHEREAS, straddle dancing, unregulated private performances, and enclosed adult booths in sexually-oriented businesses and adult entertainment establishments have resulted in indiscriminate commercial sex between individuals and poses a threat to the health of the participants and promotes the spread of communicable sexually transmitted diseases, and

WHEREAS, workers at sexually-oriented businesses and adult entertainment establishments engage in a higher incidence of certain types of unhealthy or criminal behavior than workers of other establishments and businesses including, but not limited to, a very high incidence of illegal prostitution or engaging in lewdness in violation of Florida Statutes, Chapter 796, operation without business tax receipts and illegal and unlicensed massage, and

WHEREAS, physical contact or touching between workers of sexually-oriented businesses and adult entertainment establishments and customers poses a threat to the health of both and promotes the spread of communicable and sexually transmissible diseases, and

WHEREAS, the practice of not paying or underpaying workers at sexually-oriented businesses and requiring them to earn their entire income from tips or gratuities from their customers who are predisposed to want sexual activity has resulted in a high incidence of prostitution and crimes related to lewdness by workers, and

WHEREAS, sexually-oriented businesses involve some activities that are pure conduct engaged in for the purpose of making a profit, rather than speech or expressive activity and, therefore, are subject to and require increased regulation to protect the health, good order, morals, welfare and safety of the community, and

WHEREAS, the general welfare, health, good order, morals and safety of the citizens of the City will be promoted by the enactment of this Ordinance, and

WHEREAS, the City Council of the City of Palm Bay has been presented with case law from the United States Supreme Court, the Eleventh Circuit Court of Appeals, the

Federal District Court for Middle District of Florida, and studies, and other evidence validating and supporting the predicate clauses set forth hereinabove.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, as follows:

SECTION 1. Other than specifically provided for herein, the City of Palm Bay Code of Ordinances, Title XVII, Land Development Code, is hereby amended by repealing Chapter 173, Adult Entertainment Code, and substituting in its place and stead a new chapter titled “Adult Entertainment Code”, which language shall read as follows:

“CHAPTER 173: ADULT ENTERTAINMENT CODE

GENERAL PROVISIONS

Section 1. PURPOSE, FINDINGS, INTENT, AND INCORPORATION OF RECITALS.

(A) Purpose. It is the purpose of this chapter to regulate sexually-oriented businesses and adult entertainment establishments in order to promote and protect the public health, safety, good order, morals and general welfare of the citizens of the City, to establish reasonable and uniform regulations of adult entertainment establishments and sexually-oriented businesses within the City. The provisions of this Chapter have neither the purpose nor effect of imposing an unreasonable limitation or unreasonable restriction on the content of any lawful communicative materials including sexually-oriented materials. Similarly, it is neither the intent nor effect of this Chapter to unreasonably 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 protected by the First Amendment to their intended market. Neither is it the intent nor effect of this subchapter to condone or legitimize the distribution of obscene or otherwise illegal material.

(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 Council, and on findings incorporated in Supreme Court cases presented for consideration by the City Council in the record supporting this Chapter, including but not limited to City of Renton v. Playtime Theaters, Inc., 475 U.S. 41 (1986); Young v. American Mini Theaters, 427 U.S. 50 (1976); Barnes v. Glen Theater, Inc., 501 U.S. 560 (1991), on materials made of record relating to the St. Johns County Public Nudity Ordinance, and on the substance of and findings made or incorporated in studies accomplished in other communities and ordinances enacted in other communities, including, but not limited to, New York, New

York; City of Houston Ordinance Number 97-75; Senate Bill Number 232, as passed by the Kansas State Legislature; Phoenix, Arizona; Tucson, Arizona; St. Paul, Minnesota; Minneapolis, Minnesota; Houston, Texas; Indianapolis, Indiana; Amarillo, Texas; Garden Grove, California; Los Angeles, California; Austin, Texas; Macon-Bibb County, Georgia; Palm Beach County, Florida; Manatee County, Florida; the findings of the Attorney General of the State of Minnesota; the report of United States Attorney General's Commission on Pornography (1986); Jacksonville, Florida; Detroit, Michigan; and "A Summary of a National Survey of Real Estate Appraisers Regarding the Effect of Adult Bookstores on Property Values," conducted by the Division of Planning, Department of Metropolitan Development, Indianapolis, January 1984; the publication entitled "Protecting Communities From Sexually-Oriented Businesses" (Southwest Legal Press, Inc.); the publication entitled "Local Regulation Of Adult Businesses" (Clark, Boardman and Callaghan); publications prepared by the Florida Family Association, Inc. (Tampa, Florida) relating to the regulation of sexually-oriented businesses and adverse secondary effects of sexually-oriented businesses; the "Report to: The American Center for Law and Justice on the Secondary Impacts of Sex Oriented Businesses", Peter R. Hecht, Ph.D. (1996); and the findings of fact relating to the Adult Entertainment Code of Orange County, Florida, and the findings of fact relating to the Sexually-Oriented Business and Adult Entertainment Establishment Ordinance of Seminole County, Florida, matters and materials submitted at the public hearings relating to this Ordinance and other matters and documents relating to all of the above; the City Council finds:

(1) Sexually-oriented businesses and adult entertainment establishments lend themselves to ancillary unlawful and unhealthy activities that are presently uncontrolled or not adequately controlled by the operators of the establishments or businesses. Further, there are presently no mechanisms or inadequate mechanisms to make the owners of these businesses or establishments responsible for the activities that occur on their premises.

(2) Certain workers of certain sexually-oriented businesses and adult entertainment establishments defined in this Chapter engage in a higher incidence of certain types of illicit sexual behavior than workers of other business establishments.

(3) Sexual acts, including masturbation, and oral and anal sex, occur at sexually-oriented businesses and adult entertainment establishments, especially those which provide private or semi-private areas, booths or cubicles for viewing films, videos, live sex shows and those having physical interaction between workers and customers.

(4) Offering and providing such private spaces encourages such previously mentioned activities, which create unhealthy conditions.

(5) Persons frequent certain adult theaters, adult arcades, and other sexually-oriented businesses and adult entertainment establishments for the purpose of engaging in sex within the premises of such businesses and establishments.

(6) At least 50 communicable diseases may be spread by activities occurring in sexually-oriented businesses and adult entertainment establishments, 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.

(7) Since 1981 and to the present, there has been an increasing cumulative number of reported cases of AIDS caused by the human immunodeficiency virus (HIV) in the United States 600 in 1982, 2,200 in 1983, 4,600 in 1984, 8,555 in 1985, and 253,448 through December 31, 1992 and currently there are 1,400,000 people infected with the disease nationally with 40,000 people becoming infected annually.

(8) As of December 31, 1995, there have been 51,838 reported cases of AIDS in the State of Florida with over 100,000 AIDS cases being reported in the State of Florida from 1983 - 2005 and Florida ranks third in cumulative AIDS cases in the United States and has the second highest AIDS rate in the United States.

(9) From 1981 to June 1996, the number of living persons testing positive for the HIV antibody with AIDS symptoms has risen to 73,217 in the 28 states having confidential reporting requirements.

(10) The number of cases of early (less than one year) syphilis in the United States reported annually has risen, with 33,613 cases reported in 1982 and 45,200 through November of 1990 and between 2004 and 2005, the national syphilis rate increased 11.1 per cent.

(11) The number of cases of gonorrhea in the United States reported annually remains at a high level, with over one-half million cases being reported in 1990 and currently 350,000 cases of gonorrhea are reported annually with Florida reporting over 20,000 cases of gonorrhea annually.

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

(13) According to the best scientific evidence, AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts.

(14) Sanitary conditions in some sexually-oriented businesses and adult entertainment establishments 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 owners and operators of the facilities to self-regulate those activities and maintain those facilities.

(15) Numerous studies and reports have determined that semen is found in

the areas of sexually-oriented businesses and adult entertainment establishments where persons view "adult" oriented films which gives rise to health and aesthetic concerns.

(16) The findings noted in paragraphs (1) through (15) above and as set forth hereinafter raise substantial governmental concerns.

(17) Sexually-oriented businesses and adult entertainment establishments have operational characteristics that should be reasonably regulated in order to protect those substantial governmental concerns.

(18) 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 and adult entertainment establishments. Further, such a licensing procedure will place a heretofore nonexistent incentive on the operators to see that the business or establishment is run in a manner consistent with the good order, health, safety and welfare of its patrons and workers, as well as the citizens of the City. It is appropriate to require reasonable assurances that the licensee is the actual operator of the business or establishment, fully in possession and control of the premises and activities occurring therein.

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

(20) Requiring licensees of sexually-oriented businesses and adult entertainment establishments to keep information regarding current workers and certain past workers will help reduce the incidence of certain types of criminal behavior by facilitating the identification of potential witnesses or suspects and by preventing minors from working at such businesses and establishments.

(21) The disclosure of certain information by those persons ultimately responsible for the day-to-day operation and maintenance of the sexually-oriented business and adult entertainment establishments, 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.

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

(23) The fact that an applicant for an adult entertainment establishment or sexually-oriented business license has been convicted of a sexually related crime leads to the rational assumption that the applicant may engage in that conduct in contravention of this Chapter.

(24) Commercial establishments exist or may exist within the City and other

nearby cities and counties in central Florida where adult entertainment material is possessed, displayed, exhibited, distributed and/or sold for commercial purposes in the form of books, magazines, periodicals or other printed material, or photographs, films, motion pictures, prints, videotapes, slides, computer digital graphic recordings or other visual representations or recordings, or recordings or other audio matter, or instruments, novelties, devices, or paraphernalia which depict, illustrate, describe or relate to specified sexual activities or specified anatomical areas.

(25) Commercial establishments exist or may exist within the City and other nearby cities or counties in Florida where adult entertainment and sexually-oriented commercial activities in the form of nude, semi-nude, or topless dancers, entertainers, performers, or other individuals, who, for commercial gain, perform or are presented while displaying or exposing specified anatomical areas; or engage in straddle dancing or touching with customers.

(26) Commercial sexually-oriented businesses exist or operate or may exist or operate within the City or other nearby cities or counties in Florida where sexually-oriented services are offered for commercial or pecuniary gain in the form of commercial physical contact, escort services and other services providing sexual encounters. The workers of such sexually-oriented businesses operating in Florida engage in physical contact or touching with customers including, but not limited to, acts of prostitution, or encourage or entice the customers to engage in lewdness.

(27) The activities occurring at sexually-oriented businesses and adult entertainment establishments occur at establishments and businesses which operate primarily for the purpose of making a profit and, as such, are subject to regulation by the City in the interest of the good order, health, safety, economy, property values, morals and general welfare of the people, businesses and industries of the City. A major industry which is important to the community's economic welfare is tourism by persons seeking to bring children to visit Palm Bay who wish to stay in a community with a family atmosphere not dominated by commercialized sexual themes.

(28) When the activities occurring at sexually-oriented businesses and adult entertainment establishments are present in establishments and businesses, other activities which are illegal, unsafe, or unhealthful tend to accompany them, concentrate around them, and be aggravated by them. Such other activities include, but are not limited to, prostitution, pandering, solicitation for prostitution, lewd and lascivious behavior, exposing minors to harmful materials and an unhealthy and unsanitary environment, possession, distribution and transportation of obscene materials, sale or possession of controlled substances, and violent crimes against persons and property.

(29) When the activities occurring at sexually-oriented businesses and adult entertainment establishments are competitively exploited in establishments and businesses, they tend to attract an undesirable number of transients, blight neighborhoods, discourage wholesome tourism, adversely affect neighboring businesses, lower real property values, promote the particular crimes described above and, ultimately, lead

residents and businesses to move to other locations.

(30) Sexually-oriented businesses and adult entertainment establishments often have exterior signs or exterior appearance that are incongruous with other business signage, lower the surrounding property values and contribute to urban decline.

(31) The activities occurring at sexually-oriented businesses and adult entertainment establishments sometimes occur in establishments and businesses concurrent with the sale and consumption of alcoholic beverages which concurrence leads to a further increase in criminal activity, unsafe activity, and disturbances of the peace and order of the surrounding community and creates additional hazards to the health and safety of customers and workers and further depreciates the value of adjoining real property harming the economic welfare of the surrounding community and adversely affecting the quality of life, commerce, and community environment.

(32) Physical contact or touching within sexually-oriented businesses and adult entertainment establishments between workers exhibiting specified anatomical areas and customers poses a threat to the health of both and promotes the spread of communicable and social diseases.

(33) In order to preserve and safeguard the good order, health, morals, safety, and general welfare of the people of the City it is necessary and advisable for the City to regulate the conduct of owners, managers, operators, agents, workers, entertainers, performers, and customers at sexually-oriented businesses and adult entertainment establishments.

(34) The potential dangers to the good order, morals, health, safety, and general welfare of the people of the City posed by permitting a sexually-oriented business or adult entertainment establishment to operate without first meeting the requirements for obtaining a license under this Chapter are so great as to require the licensure of such establishments prior to their being permitted to operate.

(35) Requiring operators of sexually-oriented businesses and adult entertainment establishments to keep records of information concerning workers and certain recent past workers as well as customer contracts and other matters and materials will help reduce the incidence of certain types of criminal behavior by facilitating the identification of potential witnesses or suspects and by making it difficult for minors to work at or be customers in such establishments.

(36) Prohibiting sexually-oriented businesses and adult entertainment establishments from operating within set distances of educational institutions, religious institutions, residences, areas zoned or designated for residential use, and parks at which minors are customarily found, will serve to protect minors from the adverse affects of the activities that accompany such establishments and businesses.

(37) Straddle dancing, unregulated private performances, and enclosed adult

booths in sexually-oriented businesses and adult entertainment establishments have resulted in indiscriminate commercial sex between individuals and poses a threat to the health of the participants and promotes the spread of communicable sexually transmitted diseases. Straddle dancing is primarily conduct rather than communication or expression.

(38) Workers at sexually-oriented businesses and adult entertainment establishments engage in a higher incidence of certain types of unhealthy or criminal behavior than workers of other establishments and businesses including, but not limited to, a very high incidence of illegal prostitution or engaging in lewdness in violation of Florida Statutes Chapter 796, operation without business tax receipts and illegal and unlicensed massage.

(39) Physical contact or touching between workers of sexually-oriented businesses and adult entertainment establishments and customers poses a threat to the health of both and promotes the spread of communicable and sexually transmittable diseases.

(40) The practice of not paying or underpaying workers at sexually-oriented businesses and adult entertainment establishments and requiring them to earn their entire income from tips or gratuities from their customers who are predisposed to want sexual activity has resulted in a high incidence of prostitution and crimes related to lewdness by workers.

(41) Sexually-oriented businesses and adult entertainment establishments involve some activities that are pure conduct engaged in for the purpose of making a profit, rather than speech or expressive activity and, therefore, are subject to and require increased regulation to protect the health, good order, morals, welfare and safety of the community.

(42) Requiring sexually-oriented businesses to post a listing of services provided and restrict services to those listed as well as maintaining a customer contract and transaction record in a daily register will discourage incidents of criminal behavior such as lewdness and prostitution thereby further safeguarding the health of both workers and customers and will assist facilitating the identification of potential witnesses or suspects if criminal acts do occur.

(43) The general welfare, health, good order, morals and safety of the citizens of the City will be promoted by the enactment of this Chapter.

(C) Intent. It is the intent of this Chapter to protect and preserve the good order, health, peace, morals, safety, and welfare of the citizens of the City of Palm Bay. This Chapter regulates conduct and is not an ordinance that affects the use of land as contemplated by Section 166.041, Florida Statutes.

(D) Authority. This Chapter is enacted under the constitutionally derived home rule

power of the City of Palm Bay in the interest of the good order, health, morals, peace, safety, and general welfare of the people of the City.

(E) Recitals. It is the City Council's further intention to accomplish those intents and purposes expressed by the City Council in the recitals of the ordinance from which this Section derives, each of which are incorporated by reference into this section.

(F) Speech protection. Nothing herein shall be construed to prohibit constitutionally protected expression or speech. This Chapter is intended to reasonably regulate the adult entertainment industry and sexually-oriented businesses which engage in commercial activities involving acts or services of a sexually explicit nature or which involve acts or services involving matters which are sexual in nature.

Section 2. CONSTRUCTION.

(A) This Chapter shall be liberally construed to accomplish its purpose of reasonably regulating sexually-oriented businesses and adult entertainment establishments in order to reduce or eliminate adverse secondary effects of such businesses and establishments. See for example and not by way of limitation *Barnes v. Glen Theater, Inc.*, 501 U.S. 560, 111 S. Ct. 2456, 115 L.Ed. 2d 504 (1991), *Cafe 207, Inc. v. St. Johns County*, 856 F. Supp. 641 (M.D. Fla. 1994); affirmed, *Cafe 207, Inc. v. St. Johns County*, 66 F. 3d 272 (11th Cir. 1995); cert. denied, 134 L Ed. 2d.647 (U.S. April 22, 1996). This Chapter shall not be construed to authorize any illegal act under Federal law, State law or City ordinance. This Chapter is intended to reasonably regulate such matters in order to reduce or eliminate the adverse secondary effects of commercial establishments and businesses. The regulation of alcoholic beverage establishments is also addressed in the City Code of the City of Palm Bay and other provisions of law.

(B) Unless otherwise indicated, all provisions of this Chapter shall apply equally to all persons, regardless of sex. Masculine pronouns, such as "he," "his," and "him," as employed in this Chapter, shall also be construed to apply to feminine pronouns and neutral pronouns, unless the context suggests otherwise. Words used in the singular number shall include the plural number, unless the context suggests otherwise.

REGULATORY PROVISIONS

Section 3. OBSCENITY/INDECENT/EXPOSURE UNLAWFUL.

As a matter of State and Federal law, obscenity is unlawful in the City of Palm Bay. Likewise, State law prohibits indecent exposure. Nothing in this Chapter shall be construed to allow or permit the possession, distribution and transportation of obscene materials; to

authorize the exposing of persons under eighteen (18) years of age to motion pictures, exhibitions, shows, representations and presentations of specified sexual activities or persons displaying or exhibiting specified anatomical areas; or the indecent exposure of a

person as prohibited by State law.

Section 4. DEFINITIONS.

The following words and phrases defined in this section and used in this chapter shall have the meaning herein prescribed, unless the context clearly suggests otherwise.

ADULT BOOKSTORE/ADULT VIDEO STORE.

(1) An establishment which, as its principal business purpose, sells or rents adult material or which offers adult materials for sale or rent as a significant portion of its stock and trade as defined more particularly herein below.

(2) Any establishment in which any one or more of the following five elements occur shall be presumed to be an adult bookstore/adult video store:

(a) That the adult material is accessible to customers; "accessible to customers" means that the item can be physically touched, picked up, handled by a customer before being transferred from the control of a worker, or is visually displayed so that an adult or child present in the store can view substantially more than its name alone; or

(b) That the individual items of adult material offered for sale and/or rental comprise more than ten percent (10%) of the unused individual items publicly displayed at the establishment as stock in trade in the following categories: books, magazines, periodicals, other printed matter, slides, photographs, films, motion pictures, videotapes, compact disks, DVDs, computer digital graphic recordings, other visual representations, audio recordings and other audio matter, ~~and more than twenty-five percent (25%) of the total used items publicly displayed at the establishments as stock in trade in each of the same categories set out above;~~ or

(c) The gross income each month from the sale and rental of adult material comprises more than ten percent (10%) of that month's gross income from the sale and rental of the goods and material at the establishment; or

(d) The floor area used to display adult material comprises more than ten percent (10%) of the floor area used for display of all goods and material at the establishment; or

(e) The establishment uses any of the following terms in advertisements or any other promotional activities relating to the adult material: "XXX," "XX," "X," or any series of the letter "X" whether or not interspersed with other letters, figures or characters; "erotic" or deviations of that word; "adult entertainment," "adult books," "adult videos" or similar phrases; "sexual acts" or similar phrases; "nude" or "nudies" or similar phrases which letters, words or phrases a reasonable person would believe to be promotional of the purchase or rental of adult material.

(3) In recognition of the provisions of sections 847.013 and 847.0133, Florida

Statutes which protects minors from exposure to obscene material, any business which is an adult bookstore/adult video store shall have in place at each entrance to such business a sign, no greater than one square foot in size, stating "Persons under 18 years of age not permitted."

ADULT BOOTH. A separate booth inside an adult entertainment establishment accessible to any person, regardless of whether a fee is charged for access. The term "adult booth" includes, but is not limited to, a "peep show" booth or arcade, or other booth used to view "adult material." The term "adult booth" does not include a foyer through which any person can enter or exit the establishment or a rest room.

ADULT ENTERTAINMENT.

(1) The display or exposure of any specified anatomical area by a worker to a customer **to the extent permitted by the Palm Bay Public Nudity Ordinance, as codified,** regardless of whether the worker actually engages in performing or dancing or where workers wear or display to a customer any covering, tape, pastie, or other device which simulates or otherwise gives the appearance of the display or exposure of any specified anatomical areas regardless of whether the worker actually engages in performing or dancing; or

(2) Providing adult material for commercial or pecuniary gain; or

(3) The offering, soliciting or contracting to dance or perform by a worker with or for a customer with the acceptance of any consideration, tip, remuneration or compensation from or on behalf of that customer; or

(4) The dancing or performing by a worker ~~with~~ at or within three (3) feet of a customer with the acceptance of any consideration, tip, remuneration, or compensation from or on behalf of that customer.

ADULT ENTERTAINMENT ESTABLISHMENT. An adult performance establishment, adult bookstore/adult video store, adult motel, or adult theater as those terms are defined herein, which is operated for commercial or pecuniary gain. An establishment with an adult entertainment license shall be presumed to be an adult entertainment establishment.

ADULT MATERIAL. One or more of the following, regardless of whether it is new or used:

(1) Books, magazines, periodicals, or other printed matter, photographs, films, motion pictures, DVDs, videotapes, video cassettes, slides, computer digital graphic recordings, or other visual representations, tape recordings, disks or other audio matter, which have as their primary or dominant theme matters depicting, illustrating, describing or relating to specified sexual activities or specified anatomical areas; or

(2) Instruments, novelties, devices or paraphernalia which are designed for use in connection with specified sexual activities, excluding bona fide birth control devices.

ADULT MODEL. Any person who, for commercial or pecuniary gain, offers, suggests, or agrees to engage in a private performance, modeling or display of male or female lingerie, bathing suits, under garments, or specified anatomical areas **to the extent permitted by the Palm Bay Public Nudity Ordinance** to the view of a customer.

ADULT MOTEL. Any motel, hotel, boarding house, rooming house or similar commercial establishment which offers accommodations to the public for any form of consideration whose advertisements or business name includes the word "adult" or which advertises to the public outside of the premises of the establishment and visible from a public right-of-way the presentation of closed-circuit television transmissions, films, motion pictures, video tapes, DVDs, video cassettes, slides or other photographic reproductions, which have as their primary or dominant theme matters depicting, illustrating or relating to specified sexual activities or specified anatomical areas. The term "adult motel" is included within the definition of "adult theater."

ADULT PERFORMANCE ESTABLISHMENT.

(1) Any establishment where any worker:

(a) Engages in a private performance, acts as an adult model, or displays or exposes any specified anatomical areas to a customer, regardless of whether the worker engages in dancing or any particular activity; or

(b) Wears and displays to a customer any covering, tape, pastie, or other device which simulates or otherwise gives the appearance of the display or exposure of any specified anatomical areas, regardless of whether the worker actually engages in performing or dancing; or

(c) Offers, solicits, or contracts to dance or perform with or for a customer and accepts any consideration, tip, remuneration or compensation from or on behalf of that customer; or

(d) Dances or performs **with at** or within three (3) feet of a customer and accepts any consideration, tip, remuneration, or compensation from or on behalf of that customer.

(2) A bona fide private club whose membership as a whole engages in social nudism or naturalism as in a nudist resort or camp and at which specified sexual activities do not occur shall be presumed not to be an adult performance establishment.

ADULT THEATER. An establishment which consists of an enclosed building, or a portion or part of an enclosed building, or an open-air area used for viewing by persons of films, motion pictures, DVDs, video cassettes, video tapes, slides, computer digital graphic

recordings, or other photographic reproductions which have as their primary or dominant theme, matters depicting, illustrating or relating to specified sexual activities or specified anatomical areas. "Adult motels," and "adult booths" are included within the definition of "adult theater."

ADULT VIDEO STORE. See "ADULT BOOKSTORE"

ALCOHOLIC BEVERAGES. All distilled spirits and all beverages containing one-half (1/2) of one (1) percent (.005) or more alcohol by volume. It shall be prima-facie evidence that a beverage is an alcoholic beverage if there is proof that the beverage in question was or is known as beer, wine, whiskey, moonshine whiskey, moonshine, shine, rum, gin, tequila, bourbon, vodka, scotch, scotch whiskey, brandy, malt liquor, or by any other similar name or names, or was contained in a bottle or can labeled as any of the above names, or a name similar thereto, and the bottle or can bears the manufacturer's insignia, name, or trademark. Any person who, by experience in the handling of alcoholic beverages, or who by taste, smell, or drinking of such alcoholic beverages has knowledge of the alcoholic nature thereof, may testify as to his opinion about whether such beverage is an alcoholic beverage.

CITY COUNCIL. The City Council of the City of Palm Bay, Florida.

COMMERCIAL BODILY CONTACT.

(1) The manipulation, washing, scrubbing, stroking, or touching, for commercial or pecuniary gain, of the body of another person directly, or indirectly through a medium or using any object, instrument, substance, or device between a worker and a customer.

(2) The following persons engaged in the bona fide performance of the following activities shall not be deemed to be engaging in commercial bodily contact for the purposes of this Chapter when they are engaged in the bona fide practice of their occupation or profession:

(a) Persons licensed as a massage therapist or apprentice massage therapist pursuant to Florida Statutes, Chapter 480, when providing massage services in an establishment licensed under Florida Statutes, Chapter 480.

(b) Persons licensed under the laws of the State of Florida to practice medicine, surgery, osteopathy, chiropractic, naturopathy, or podiatry.

(c) Persons licensed under the laws of the State of Florida as a physician's assistant or nurse.

(d) Persons holding a drugless practitioner's certificate under the laws of the State of Florida.

(e) Persons licensed as barbers or cosmetologists under the laws of the State of Florida.

(f) Persons performing authorized services in a hospital, nursing home,

sanitarium, adult congregate living facility, group home, day care center, or similar place of business when owned and operated in accordance with the laws of the State of Florida.

(g) Persons who are instructors, coaches, or athletic trainers employed by, or on behalf of, any professional, amateur, Olympic, or similar athletic team engaging in bona fide athletic events, or when employed by a governmental entity or a bona fide educational institution.

(h) Persons licensed as physical therapists under the laws of the State of Florida.

COMMERCIAL BODILY CONTACT ESTABLISHMENT. Any establishment, business, or place operated for commercial or pecuniary gain or where for any form of consideration workers or customers engage in commercial bodily contact or any establishment, business or place any portion of which is set aside, advertised, promoted or used as a place where commercial bodily contact occurs or which is described or depicted as a "body scrub salon," "body wash salon," or "body relaxation salon."

COMMERCIAL or PECUNIARY GAIN. Operated for commercial or pecuniary gain shall be presumed for any establishment which has received a business tax receipt. For the purposes of this Chapter, operation for commercial or pecuniary gain shall not depend on actual profit or loss. An establishment which has a business tax receipt or an establishment which advertises itself as a type of adult entertainment establishment shall be presumed to be "operated for commercial or pecuniary gain".

COMMERCIAL ESTABLISHMENT. Any business, location, or place which conducts or allows to be conducted on its premises any activity for commercial or pecuniary gain.

CONVICTION. A determination of guilt resulting from plea or trial, regardless of whether adjudication was withheld or whether imposition of sentence was suspended.

CUSTOMER.

(1) Any person present at an adult entertainment establishment or sexually-oriented business, other than operators or workers, regardless of whether the person has given or paid any consideration to be present at the adult entertainment establishment or sexually-oriented business and regardless of whether the person has paid any money for goods or services at or to the adult entertainment establishment or sexually-oriented business; or

(2) Any person, excluding a worker or operator, who has paid, or has offered, agreed, been solicited, or had someone else offer or agree on that person's behalf to pay any consideration, fee, or tip to an operator or worker of an adult entertainment establishment or sexually-oriented business.

EDUCATIONAL INSTITUTION. A premises or site upon which there is an institution of learning for minors, whether public or private, which conducts regular classes

and/or courses of study required for eligibility to certification by, accreditation to, or membership in the State Department of Education of Florida, Southern Association of Colleges and Secondary Schools, or the Florida Council of Dependent Schools. The term "educational institution" includes a premises or site upon which there is a nursery school, kindergarten, elementary school, junior high school, senior high school, Charter school, or any special institution of learning, a vocational institution, professional institution, an institution of higher education, a community college, junior college, four (4) year college or university.

ENTITY. Any proprietorship, partnership, corporation, limited liability company, association, business trust, joint venture, joint-stock company or other for profit and/not for profit organization by whatever name, title or description.

ESCORT. Any person who, for commercial or pecuniary gain, compensation or tips, agrees to, offers to go, or goes to any place, including, but not limited to, a business, hotel, motel, residence, boat, vessel, motor vehicle, or other mode of transportation to do any of the following acts:

- (1) Act as a companion or date for, or converse with a customer;
- (2) Engage in commercial bodily contact with another person;
- (3) Engage in a private performance;
- (4) Engage in adult modeling or act as an adult model;
- (5) Display specified anatomical areas, strip naked, or go topless; or
- (6) Engage in any specified sexual activity.

Nothing in this definition shall be construed to legalize prostitution or other conduct prohibited by this Code or other law. Workers of a licensed adult-performance establishment for whom worker records are maintained pursuant to this Chapter are excluded from the definition of escort when engaged in the expressive display of specified anatomical areas at a licensed adult-performance establishment.

An escort who is a paid employee type worker of an escort service for whom taxes and social security payments are withheld and paid by the escort service, and who is not an independent contractor, is not required to obtain his or her own sexually-oriented business license for activities conducted pursuant to employment with the escort service.

ESCORT SERVICE. A person, business, establishment, or place operated for commercial or pecuniary gain, which advertises as an "escort", "escort service" or "escort agency" or otherwise offers or advertises that it can furnish escorts, a private performance, or adult models; or offers or actually provides, arranges, dispatches, or refers workers or

themselves to act as an escort or engage in a private performance for a customer. An affirmative defense to an allegation that any person, business or establishment or entity is acting as an escort service is that it is a bona fide dating or matching service which arranges social matches or dates for two persons who each wish to meet a compatible companion when neither of said persons solicits, accepts, or receives any financial gain or any monetary tip, consideration, or compensation for the meeting or date is not an escort service.

ESTABLISHMENT. Any place, site, or premises, or portion thereof, upon which any person, corporation, or business entity of any type conducts activities or operations for commercial or pecuniary gain including, but not limited to, any place, site or premises from where an escort service dispatches or refers workers to other locations or at which an escort service receives business calls from customers.

LAW ENFORCEMENT OFFICER. An officer who is on official duty for any law enforcement agency.

LICENSEE. Any person, corporation, partnership, or other entity whose application for an adult entertainment establishment or sexually-oriented business license has been granted and any person, corporation, partnership or other entity who owns or operates or controls the establishment or business.

OPERATOR. Any person who engages in or performs any activity which is necessary to or which facilitates the operation of a sexually-oriented business or an adult entertainment establishment including, but not limited to, the licensee, manager, owner, doorman, bouncer, bartender, disc jockey, sales clerk, ticket taker, movie projectionist, DVD operator, dispatcher, receptionist, attendant or supervisor.

PARK. A tract of land within any jurisdiction which is kept for ornament or recreation and which is maintained as public property including, but not limited to, a playground, nature trails, swimming pool, reservoir, athletic field, basketball or tennis courts, pedestrian/bicycle paths, wilderness areas or other similar public land.

PERSON. Includes, but is not limited to, an individual, associations, joint ventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, limited liability companies and any and all other similar entities and all officers, directors and principal stockholders of such associations, joint ventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations or other similar entities.

PRIVATE PERFORMANCE. Modeling, posing, or the display or exposure of any specified anatomical area by a worker to a customer while the customer is in an area not accessible during such display to all other persons in the establishment or, while the customer or worker is in an area which is not on the premises of the establishment, or in which the customer or worker is totally or partially screened or partitioned during such display from the view of persons outside of the area.

SEXUAL ENCOUNTER BUSINESS.

(1) Any person or entity which for any form of consideration or remuneration or which charges an admission fee and provides a place for the purpose of providing, encouraging or allowing three (3) or more persons to engage in any specified sexual activity among themselves or with other persons.

(2) The following shall be presumed not to be a sexual encounter business:

(a) A bona fide private club whose membership as a whole engages in social nudism or naturalism as in a nudist resort or camp and at which specified sexual activities do not occur.

(b) A State licensed sexual therapist.

(c) A bona fide hotel or motel licensed by the State.

SEXUALLY-ORIENTED BUSINESS. A commercial bodily contact establishment, escort service, or sexual encounter business. A business shall be a sexually-oriented business, whether services are provided on the premises of an establishment or on an out call basis at any other place and regardless of whether such business is licensed under this Chapter. A business with a sexually-oriented business license shall be presumed to be a sexually-oriented business. An individual operating a sexually-oriented business is subject to the provisions of this Chapter notwithstanding the fact that services are being provided at or from a residence, motor vehicle, vessel or any other location and a license pursuant to this Chapter is required unless the individual is a paid employee for whom taxes and social security payments are withdrawn and paid by the licensed establishment, worker records are maintained, and the individual is not an independent contractor.

POLICE CHIEF. The Chief of Police of the City of Palm Bay, Florida.

SPECIFIED ANATOMICAL AREAS.

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

(1) Any of the following: ~~in a state that is less than completely and opaquely covered:~~

- (a) The male or female genitals;
- (b) The male or female pubic area;
- (c) The vulva;
- (d) The anus;
- (e) The penis;

- (f) The scrotum;
- (g) The cleavage of the buttocks;

(h) The buttocks;
(i) The anal cleft;
(j) The anal cleavage;
(k) The areola on the breast of a female;
(l) The nipple on the breast of a female;
(m) The female breast below a line immediately above the top of the areola said line running horizontal across the top of the entire breast, but shall not include any portion of the cleavage between the human female breasts typically exhibited by a dress, blouse, shirt, leotard, bathing suit, or other wearing apparel, provided that the areola is not exposed;

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

(2) Body paint, body dyes, tattoos, liquid latex whether wet or dried, dental floss, G-Strings, thongs, and similar coverings shall not be considered an opaque covering.

SPECIFIED CRIMINAL ACT.

- (1) A violation of this chapter;
- (2) Any felony not otherwise specified in this definition;
- (3) An offense under Florida Statutes, Chapter 794, (Sexual Battery);
- (4) An offense under Florida Statutes, Chapter 796, (Prostitution);
- (5) An offense under Florida Statutes, Chapter 800, (Lewdness; Indecent Exposure);
- (6) An offense under Florida Statutes, Chapter 826, (Bigamy; Incest);
- (7) An offense under Florida Statutes, Chapter 847, (Obscene Literature; Profanity); ~~or~~
- (8) ~~An offense under Florida Statutes, Chapter 775, Section 775.21 et.seq. (Sexual Predators Act); or~~
- (9) An offense against an analogous Federal statute.

SPECIFIED SEXUAL ACTIVITIES.

Editor's note: The sources of definitions of terms used below are (1) Taber's Cyclopedic Medical Dictionary, T.A. Davis Co., Philadelphia, 1997 (ed. 18); (2) Oxford Dictionary of the English Language (multi-volume); (3) Florida Statutes. The definitions of terms are a material part of this Chapter and apply to the use of the term each time it is used.

- (1) Human genitals in a state of sexual stimulation, arousal or tumescence; or
- (2) Acts of human anilingus, bestiality, buggery, cunnilingus, coprophagy, coprophilia, fellatio, flagellation, masochism, masturbation, necrophilia, pederasty, pedophilia, sadism, sadomasochism, sapphism, sexual intercourse, sodomy, urolagnia, or zoerasty; or
- (3) Fondling or other touching of human genitals, pubic region, any part of the buttocks, anus or female breast; or
- (4) Oral, anal, or vaginal penetration by, or union with, the sexual organ or any other part of the body of another;
- (5) Anal or vaginal penetration of another or oneself with any object; or
- (6) The handling or fondling of the sexual organ of another for the purpose of masturbation directly or through a medium; or
- (7) Excretory functions as part of or in connection with any of the activities set forth in paragraphs (1) through (6) above.

STRADDLE DANCE.

- (1) The use by a worker of any part of his or her body to touch the genital or pubic area of another person, or the touching of the genital or pubic area of any worker by another person; or the straddling of the legs of a worker over any part of the body of a customer at the establishment, regardless of whether there is a touch or touching; or the use by a worker, of any part of his or her body to touch the genital, pubic region, buttock, anus or female breast of another person while at the establishment, or the touching of the genital, pubic region, buttock, anus or female breast of any worker by a customer while at the establishment.
- (2) Conduct shall be a "straddle dance" regardless of whether the "touch" or "touching" occurs while the worker is displaying or exposing any specified anatomical area.
- (3) Conduct shall also be a "straddle dance" regardless of whether the "touch" or "touching" is direct or through a medium.
- (4) The terms "lap dance," "table dance," and "face dance" are included within the term "straddle dance".

WORKER. A person who works, performs, or provides services at an adult entertainment establishment or at or for a sexually-oriented business, irrespective of whether said person is paid a salary or wage and shall include, but is not limited to, employees, independent contractors, subcontractors, lessees, or sub-lessees who work or perform at an adult entertainment establishment or at or for a sexually-oriented business.

An operator is a type of worker.

Section 5. NOTICE.

Any notice required under this Chapter shall, unless otherwise provided in this Chapter, be accomplished by posting upon the subject premises and sending a written notification by certified mail to the mailing address set forth on the application for the license or a permit. This mailing address shall be considered the correct mailing address unless the City Manager or his designee has been otherwise notified in writing.

Section 6. PENALTIES/REMEDIES/RELIEF.

Any person violating any of the provisions of this Chapter shall be prosecuted in the same manner as misdemeanors are prosecuted. Such violations shall be prosecuted in the name of the State of Florida in a court having jurisdiction of misdemeanors by the prosecuting attorney thereof and, upon conviction, shall be punished by a fine not to exceed five hundred dollars (\$500.00) or by imprisonment in the county jail not to exceed sixty (60) days or by both fine and imprisonment as provided in Section 62.22, Florida Statutes. Each incident or separate occurrence of any act that violates this Chapter shall be deemed a separate offense. In addition to the penalties provided under this Section, violators of this Chapter shall be subject to any other appropriate civil or criminal action provided by law in a court of competent jurisdiction, including, but not limited to, injunctive relief.

Section 7. LICENSE REQUIRED.

(A) Requirement. It is unlawful for any person to operate or to be an operator of or worker at a sexually-oriented business or an adult entertainment establishment which has not first obtained a license which is applicable for said establishment or business pursuant to this Chapter; or to continue to operate or be an operator of or worker at a sexually-oriented business or an adult entertainment establishment where that person knows or has reason to know that the license of the establishment or business is under suspension, has been revoked or has lapsed. The operation of a sexually-oriented business or an adult entertainment establishment without a valid license, where applicable, is unlawful and shall be grounds for the closing of the establishment or business upon a finding of fact by a court or other body with proper jurisdiction that the establishment does not have a valid license.

(B) Licensing office. Unless the City Manager designates in writing an office to administer the provisions of this Chapter, he shall serve as the licensing office. The City Manager may modify his designation from time to time in writing. When the phrase "City Manager or his designee" is used in this Chapter, the designee referred to shall be the office designated in writing pursuant to this subsection.

(C) Classifications. Adult entertainment establishment and sexually-oriented business licenses referred to in this Chapter shall be classified as follows:

- (1) Adult bookstore/adult video store;

- (2) Adult performance establishment;
- (3) Adult motel;
- (4) Adult theater;
- (5) Commercial Bodily Contact Establishment;
- (6) Escort Service.

(D) Single license/single classification of license. Only one (1) license may be issued for a location and only under a single classification.

Section 8. LOCATION GENERALLY.

Locations of all sexually-oriented businesses and adult entertainment establishments within the City shall comply with the provisions of Chapter 173, Adult Entertainment Code, Palm Bay Code of Ordinances, and all sexually-oriented businesses and adult entertainment establishments shall be subject to the restrictions enumerated in this Code.

Section 9. RESPONSIBILITIES OF OTHER OFFICES AND DEPARTMENTS.

The City Council is the legislative branch of the City of Palm Bay government. Ultimate responsibility for the administration of this Chapter is vested in the City Manager or his designee as set forth in this Chapter. Other departments having responsibility under this Chapter are as follows:

(1) The Finance Department is responsible for granting, denying, revoking, renewing, suspending and canceling business tax receipts in accordance with State law.

(2) The Police Chief is responsible for verifying information contained on applications for inspecting proposed or existing adult entertainment establishments and sexually-oriented businesses in order to ascertain compliance with applicable criminal statutes and ordinances including, but not limited to, those set forth in this Chapter, for determining whether license applicants have been convicted of a felony or a specified criminal act within the previous five (5) years and for enforcing applicable criminal statutes and ordinances including, but not limited to, those set forth in this Chapter. The Police Chief is responsible for keeping all information processed by each application and his department will serve as a document repository for inspection of any information by any applicant.

(3) The Building Official is responsible for inspecting establishments in order to ascertain compliance with all applicable building codes, statutes, ordinances and regulations.

(4) The Fire Chief is responsible for inspecting establishments and businesses in order to ascertain compliance with all applicable fire codes, statutes,

ordinances and regulations.

(5) The Growth Management Department is responsible for ascertaining whether the location of proposed sexually-oriented businesses or adult entertainment establishments comply with all separation, distance, zoning and location requirements of the Land Development Regulations of the City of Palm Bay and whether compliance with all applicable zoning regulations and land use laws is maintained.

Section 10. LICENSE APPLICATION AND APPLICATION FEE.

Any person desiring to engage in the business of operating an adult entertainment establishment or a sexually-oriented business shall file with the City Manager or his designee a sworn application on forms supplied by the City. The application shall contain the information and documents as provided in this Chapter and shall be accompanied by an application fee as established in this Chapter. The application shall be signed by the applicant and verified by the applicant before an officer authorized to take oaths and acknowledgments.

Section 11. ADVERTISING.

(A) Advertisements, displays or other promotional materials for any adult entertainment establishments, except as authorized and described within this Section, shall not be shown or exhibited so as to be visible to the public from any street, sidewalk or other public place.

(B) This shall not prohibit the use of a sign displaying the name of the business on the business premises as regulated by this Section.

(C) Except as provided in this Section, such signs shall be subject to any sign ordinance currently existing in the City.

(D) A sign shall not contain any flashing lights, photographs, silhouettes, drawings or pictorial representations of any type or manner and shall be limited in content as follows:

(1) The name of the establishment, and/or

(2) One or more of the following applicable phrases:

(a) "Adult Bookstore."

(b) "Adult Theatre."

(c) "Adult Dancing Establishment."

(d) "Adult Motel."

(e) "Adult Entertainment."

(f) "Movie Titles Posted Within Premises."

(g) Food or drink specials, show times, welcome notices, and names of

entertainers.

(3) No sign shall include the words "nude," "nudity," "naked," "topless," "go-go" or "dancers," or words including slang substitutes or materials depicting, describing or relating to "specified anatomical areas of the human body" or "specified sexual activities" as defined in this Chapter.

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

(5) Any changeable copy sign or portable or temporary advertisement for an adult entertainment establishment shall be brought into immediate compliance with the restrictions of this Section.

Section 12. CONTENTS OF APPLICATION.

(A) The completed application shall be accompanied by the following documents and shall be accompanied by a non-refundable application fee of ~~four~~ five hundred dollars (\$500.00) which shall be used to defray the costs of the application review process by various offices and departments; provided, however, that the unused portion of the fee after deducting the costs associated with processing the fee shall be applied as a credit toward the annual license fee for licensing under this Chapter.

(B) If the applicant is:

(1) An individual, the individual shall state his or her legal name to include any and all aliases, residential street address, residential telephone number, an address where all correspondence from the City should be mailed, and submit proof that he is eighteen (18) years of age or older by providing a copy of a valid driver's license, voter's registration card or another State issued identification card; or a certified copy of a birth certificate; or

(2) A partnership or trust, the partnership or trust shall state its complete name, and the names, residential street addresses, and telephone numbers of all partners, whether the partnership is general or limited or trustees, the name and residential street address of at least one (1) person authorized to accept service of process and, if in existence, a copy of the partnership agreement; or

(3) A corporation, the corporation shall provide a copy of its articles of incorporation stating its complete name, the date of its incorporation, evidence that the corporation is in good standing, the names, residential street addresses, telephone numbers and capacity of all officers, directors and principal stockholders, and the name of the registered corporate agent and the legal street address of the registered office for service of process.

(4) A limited liability company, the company shall provide a copy of its articles of organization and operating agreement stating its complete name, the date of its organization, evidence that the company is in good standing, the names, residential street

addresses, telephone numbers and capacity of all members, including its managing member(s), and the name of the registered corporate agent and the legal street address of the registered office for service of process.

(5) Any other entity, the entity shall state its complete name, the date of formation, the names, residential address, telephone numbers and capacity of all principal owners, and the name and residential street address of one (1) person authorized to accept service of process.

(C) If the applicant intends to conduct activities in the establishment or business under a name other than that of the applicant, the applicant shall state the establishment's or business' fictitious name or names and the county of registration under section 865.09, Florida Statutes or its successor and all business names and telephone numbers to be used by the establishment or business.

(D) The applicant shall state whether the applicant or any of the other individuals listed on the application has, within the five (5) year period immediately preceding the date of the application, been convicted of a specified criminal act, and, if so, the specified criminal act involved, the date of conviction and the place of conviction.

(E) The applicant shall state whether the applicant or any of the other individuals listed pursuant to Subsection (B) has had a previous license under this Chapter or Chapter 110 suspended or revoked including the name and location of the establishment for which the license was suspended or revoked, the date of the suspension or revocation, and whether the applicant or any other individuals listed pursuant to Subsection (B) has been a partner in a partnership or an officer, director or principal stockholder of a corporation, or a managing member or member of a limited liability company whose license under this Chapter has previously been suspended or revoked including the name and location of the establishment for which the license was suspended or revoked, or has been a member, officer, director or managing member of a limited liability company whose license under this Chapter has previously been suspended or revoked including the name and location of the establishment for which the license was suspended or revoked, as well as the date of the suspension or revocation.

(F) The applicant shall state whether the applicant or any other individuals listed pursuant to Subsection (B) holds any other licenses under this Chapter and, if so, the names and locations of such other licensed establishments.

(G) The applicant shall state the single classification of license for which the applicant is filing. **No applicant shall apply for more than one classification in one location.**

(H) The applicant shall state the location of the proposed establishment or business including a street address, the name and address of the real property owner of the site, a notarized statement of consent from the real property owner authorizing a sexually-oriented business or adult entertainment establishment on the site, and a legal description of the property on which the establishment is to be located.

(I) The applicant shall provide the names of the workers for the proposed establishment or business, if known, or, if presently unknown a statement to that effect.

(J) The applicant shall submit a plan drawn to appropriate scale of the proposed licensed premises indicating the areas to be covered by the license, all windows, doors, entrances and exits and the fixed structural features, walls, stages, partitions, projection booths, admission booths, adult booths, concession booths, stands, counters and similar structures of the establishment or business to which the proposed license pertains. The term "fixed structural features" shall include immovable partitions and counters and similar structures that are intended to be permanent.

(K) The applicant shall provide a mailing address, and, if different, a designated return address where all future correspondence from the City may be sent and the applicant's telephone number where communications and inquiries can be made.

(L) The applicant shall provide a recent color photograph of the applicant in passport size if an individual and of each officer, director and principal stockholder if a partnership, corporation or other similar entity.

(M) The applicant shall provide the weight, height, color of eyes, date of birth and gender of the applicant if an individual and of each officer, director and principal stockholder or owner if a partnership, corporation or other similar entity.

(N) The applicant shall provide the applicant's social security account number or employer's tax identification number and either the applicant's drivers license number or the number of a Federal or State issued identification card if an individual and of each officer, director and principal stockholder or owner if a partnership, corporation or other similar entity.

(O) The applicant shall provide a complete set of the applicant's fingerprints if an individual and of each officer, director and principal stockholder or owner if a partnership, corporation or other similar entity.

(P) The applicant shall provide a copy of the most recent lease or deed of conveyance, whichever is applicable, indicating the applicant's interest in the proposed establishment.

(Q) The applicant shall provide a statement of the hours of operations of the establishment or business.

(R) The applicant shall provide a notarized statement that the applicant has complied with the applicable laws of Florida relating to corporations, partnerships and fictitious names.

(S) It is unlawful for any person applying for an adult entertainment establishment or sexually-oriented business license to make a false statement which is intended to facilitate

the issuance of a license or to provide false information which is intended to facilitate the issuance of a license.

Section 13. CONTINUING DUTY/FALSE OR MISLEADING INFORMATION.

(A) Each applicant shall be under a continuing duty and obligation to disclose to the City Manager or his designee any and all changes or alterations in the information or disclosures required by this Chapter. It is the duty of each applicant to correct changed, false or erroneous information provided in an application. It is unlawful for an applicant to fail to disclose changes in information provided or to fail to correct false or erroneous information given in an application immediately upon the applicant knowing or being in such a position that he or she should have known that the information provided has changed or was false or erroneous when provided.

(B) It is unlawful for any person applying for an adult entertainment establishment or sexually-oriented business license to make a false or misleading statement or provide false or misleading information which is intended to facilitate the issuance of a license.

Section 14. CONSENT.

By applying for a license under this Chapter, the applicant shall be deemed to have been provided a copy of this Chapter, to understand it by having the opportunity to have consulted with counsel or otherwise, and to have consented to the provisions of this Chapter.

Section 15. INVESTIGATION OF APPLICATION.

Upon receipt of an application properly filed with the City Manager or his designee and upon payment of the non-refundable application fee, the application shall be time and date stamped and a copy of the application shall be forwarded to the Police Chief, the Fire Chief, the Building Official, and the Growth Management Department. Each recipient entity shall promptly conduct an investigation of the applicant, application and the proposed establishment within fifteen (15) days from the date that the application was filed. At the conclusion of its investigation, each recipient entity shall indicate to the City Manager or his designee its investigative findings relating to the application and the reasons therefor.

Section 16. ISSUANCE OR DENIAL OF LICENSE.

(A) Upon the completion of the investigation and a review of the application as required, upon determination that the applicant meets the requirements of this Chapter, and upon payment of the appropriate license fee by the applicant, the City Manager or his designee shall within thirty (30) days of the application being filed issue the license.

(B) If after review and investigation as provided herein the City Manager or his designee determines that one or more of the reasons for denial set forth in Section 17 exist, the application shall be denied, within thirty (30) days of the date that the application

is filed, and the City Manager or his designee shall issue a written and dated notice of the denial and the reasons therefor. A copy of the notice shall be sent to the applicant by certified mail to the designated return address on the application within five days of the date of denial.

(C) The denial of an application shall be final. No further exhaustion of administrative remedies shall be necessary for judicial review of the administrative action.

(D) An applicant whose application is denied may immediately appeal as a matter of right to a court of competent jurisdiction, which court shall promptly review said application.

Section 17. REASONS FOR DENIAL OF APPLICATION OF LICENSE.

(A) The application for a license shall be denied if one or more of the following reasons is found:

(1) The application does not comply with the requirements of this Chapter and/or statutes expressly made applicable to adult entertainment establishments and sexually-oriented businesses such as section 847.0134, Florida Statutes.

(2) The application contains material false information.

(3) The applicant or any of the individuals stated in Section 12 of this Chapter has a license under this Chapter which is under suspension.

(4) The applicant or any of the individuals stated in Section 12 of this Chapter is or was at the time of suspension an officer, director, managing member, or majority stockholder in an entity who has a license under this Chapter which is under suspension.

(5) The applicant or any of the individuals stated in Section 12 of this Chapter had a license under this Chapter which had been revoked within the preceding two years.

(6) The applicant or any of the individuals stated in Section 12 of this Chapter is or was at the time of suspension an officer, director, managing member, or principal stockholder in an entity who had a license under this Chapter which had been revoked within the preceding two (2) years.

Section 18. REAPPLICATION AFTER DENIAL.

The applicant may not reapply for a license for a period of nine (9) months from the date of denial unless there has been an intervening change in the circumstances which may lead to a difference decision regarding the former reason(s) for denial.

Section 19. ANNUAL LICENSE FEE.

(A) There shall be collected under this Chapter annual license fees for the following classifications of adult entertainment establishments and sexually-oriented businesses:

- (1) Adult bookstore/adult video store, ~~\$200.00~~ \$300.00;
- (2) Adult theater, ~~\$200.00~~ \$300.00;
- (3) Adult performance establishments, ~~\$200.00~~ \$350.00;
- (4) Adult motel, ~~\$200.00~~ \$300.00;
- (5) Commercial bodily contact establishment, ~~\$200.00~~ \$300.00; and
- (6) Escort Service, ~~\$200.00~~ \$300.00.

(B) The annual license fees are declared regulatory in nature, collected for the purpose of examination and inspection of adult entertainment establishments and sexually-oriented businesses under this Chapter and the administration thereof. These regulatory fees are in addition to, and not in lieu of, the business taxes imposed by the Palm Bay City Code or State law and other land development regulations or regulatory fees associated with general commercial activities and locations.

Section 20. CONTENTS OF LICENSE, TERM OF LICENSE, RENEWALS, EXPIRATION, LAPSE.

(A) Contents. An adult entertainment establishment or sexually-oriented business license shall state on its face the name of the licensee, the name of the establishment, the street address of the establishment, the classification of the license, the date of issuance, and the date of expiration.

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

(C) Expiration/renewal/lapse. Each license shall expire on September 30 of each year and may be renewed only by making an application for a license in accordance with the provisions of this Chapter. Applications for renewal shall be made at least thirty (30) days before the expiration date of the license. Failure to make application at least thirty (30) days before the expiration date will not suspend the expiration of the license. If the application for a renewal is denied, the applicant may immediately appeal to a court of

competent jurisdiction, which court shall provide prompt judicial review of said appeal.

~~(D) Currently licensed establishments. An adult entertainment establishment licensed by the City of Palm Bay on the effective date of this chapter may continue to operate under its current license until September 30, 2007, but shall apply for a new license on or before August 31, 2007, and shall be immediately subject to all requirements and provisions of this Chapter upon the effective date of this subchapter.~~

Section 21. RECORDS AND REPORTS.

Each licensee shall keep such records and make such reports as may be required by this Chapter.

Section 22. TRANSFER OF LICENSE.

It is unlawful for a licensee to transfer his, her or its license to another person or entity or surrender possession, control, and operation of the licensed establishment to such other person or entity unless the licensee and the transferee have fully complied with the licensing and all other provisions of this Chapter.

Section 23. ESTABLISHMENT NAME CHANGE.

(A) It is unlawful for a licensee to change the name of an adult entertainment establishment or sexually-oriented business unless and until the following requirements are satisfied:

- (1) The City Manager or his designee is given thirty (30) days' notice in writing of the proposed name change; and
- (2) The change of name fee in the amount of three dollars (\$3.00) is paid; and
- (3) The licensee has complied with Section 865.09, Florida Statutes; and
- (4) The licensee has complied with the provisions of Florida Statutes, Chapter 607; and
- (5) The licensee has complied with the provisions of Florida Statutes, Chapter 620.

Section 24. SUSPENSION AND REVOCATION OF LICENSE.

The City Manager or designee shall suspend a license when he/she or designee determines that any one of the following has occurred:

- (1) For purposes of this section, the term "violation" shall mean an incident having occurred at, or by, an adult entertainment establishment or sexually-oriented

business which is prohibited by the provisions of this Chapter or made unlawful by Florida Statutes, Chapters 561, 562, 563, 564, 565, 775.21, 794, 796, 800, 826, 827, 847, 893 or 895, or an analogous federal statute.

(2) Inspection of records and premises. In the event that the City Manager or his/her designee determines that the licensee or an operator at or of the licensee has refused to allow any inspection of records or premises as required by this Chapter, the City Manager or his/her designee may suspend the license for a period not to exceed thirty (30) days.

(3) Illegal activity/suspension:

(a) In the event three (3) or more violations occur within a two-year period, and convictions result from at least three of the violations, the City Manager or his/her designee shall, upon the date of the third conviction, notify the licensee that the license shall be suspended for a period of thirty (30) days unless good cause is shown in accordance with this Chapter, that the violations have not occurred. For purposes of calculating this two (2) year period, the two (2) year period shall be deemed to be those twenty-four (24) months occurring immediately prior to the violation occurrence date for which the thirty (30) day suspension is sought.

(b) In the event one (1) or more violations occur within a two (2) year period from the date of the last violation occurrence date from which the conviction resulted in a thirty (30) day suspension pursuant to paragraph (3)(a) above, but not including any time during which the license was effectively suspended, and a conviction results from one or more of the violations, the City Manager or his/her designee shall, upon the date of the latest conviction, provide notice to the licensee that the license shall be suspended for a period of ninety (90) days unless good cause is shown in accordance with this Chapter that the violation has not occurred.

(c) In the event one (1) or more violations occur within a two (2) year period from the date of the last violation occurrence date from which the conviction resulted in a ninety (90) day suspension pursuant to paragraph (3)(b) above, but not including any time during which the license was effectively suspended, and a conviction results from one or more of the violations, the City Manager or his/her designee shall, upon the date of the latest conviction, provide notice to the licensee that the license shall be suspended for a period of one hundred eighty (180) days unless good cause is shown in accordance with this Chapter that the violation has not occurred.

(4) Revocation. The City Manager or his/her designee shall revoke a license when he/she or designee determines that any one of the following has occurred:

(a) There has been one or more violations that have occurred within a two (2) year period from the date the last violation occurrence date from which the conviction resulted in a one hundred eighty (180) days suspension pursuant to paragraph (3)(c) above, but not including any time during which the license was effectively suspended, and a conviction results from one or more of the violations, the City Manager or his/her designee shall, upon the date of the latest conviction, provide notice to the licensee that the

license shall be revoked unless good cause is shown in accordance with this part that the violation has not occurred.

(b) The licensee or any person on its or his/her behalf or any person listed on the application pursuant to Section 12 of this Chapter gave false or misleading information in the material submitted during the application process.

(c) The licensee or any person on its or his/her behalf or any person listed on the application pursuant to Section 12 of this Chapter has knowingly allowed possession, use, or sale of controlled substances on the premises of the establishment or business or when with a customer.

(d) The licensee or any person on its or his/her behalf or any person listed on the application pursuant to Section 12 of this Chapter has knowingly allowed prostitution on the premises of the establishment or business or when with a customer.

(e) The licensee or any person on its or his/her behalf or any person listed on the application pursuant to Section 12 of this Chapter knowingly operated the adult entertainment establishment or sexually-oriented business during a period when the licensee's license was suspended.

(f) Except in the case of an adult motel, the licensee or any person on its or his/her behalf or any person listed on the application pursuant to Section 12 of this Chapter has knowingly allowed any specified sexual activities to occur on the premises of the establishment or business.

(5) Effective dates of suspensions and revocations.

(a) Except as otherwise provided in this Chapter, all periods of suspension and revocation shall become effective fifteen (15) days after the City Manager or his/her designee posts the notice of suspension or revocation at the licensee's establishment, or on the date that the licensee turns in his, her or its license, whichever happens first.

(b) The suspension or revocation shall be abated in the event that the licensee files a timely challenge to the suspension or revocation in accordance with the procedures set forth in this Chapter or upon order of a court of competent jurisdiction.

(c) If an adult entertainment establishment or sexually-oriented business license is revoked for the first time, the licensee shall not be issued another adult entertainment establishment or sexually-oriented business license for a period of two years running from the date the revocation actually takes effect after all abatement periods have lapsed.

(d) If an adult entertainment establishment or sexually-oriented business license held by any of the entities or individuals listed in Section 12 of this Chapter is revoked for the second time and the license is held by any one or more of the entities or individuals holding the prior license, the licensee shall not be issued another adult entertainment establishment or sexually-oriented business license for a period of four years running from the date the revocation actually takes effect after all abatement periods have lapsed.

(e) If an adult entertainment establishment or sexually-oriented business license held by any of the entities or individuals listed in Section 12 of this Chapter is revoked for a third time and the license is held by any one or more of the entities or

individuals holding the prior license, the licensee shall not be issued another adult entertainment establishment or sexually-oriented business license for a period of six years running from the date the revocation actually takes effect after all abatement periods have lapsed.

(6) Other remedies. Notwithstanding the provisions of this section, the City may pursue any and all other available remedies through any and all other available processes and procedures available to correct violations of City codes. Included within such remedies are the enforcement actions set forth in this Chapter, actions in a court of competent jurisdiction for injunctive or other appropriate relief, criminal prosecution, code enforcement proceedings, the issuance of citations, the suspension or revocation of permits relating to health or safety matters, and any and all other remedies available under the laws of the State of Florida and the United States.

Section 25. SUSPENSION AND REVOCATION PROCEEDINGS.

(A) Challenge to suspension or revocation. If the City Manager or his/her designee notifies a licensee in writing of the pending suspension or revocation of a license as provided in Section 16 of this Chapter, then the suspension or revocation shall become final and effective fifteen (15) days after mailing to the licensee's record address, posting at the licensed establishment, or actual delivery of the notice to the licensee, unless within fifteen (15) days of the date of the notice of suspension or revocation the licensee first files with the City Manager or his/her designee a written response stating the reasons why the suspension or revocation is alleged to be in error or inappropriate and a written notice of intent to challenge the suspension or revocation requesting a hearing to determine whether the suspension or revocation will become effective. The suspension or revocation shall be abated in the event that a licensee files a timely challenge to the suspension or revocation in accordance with the procedures of this Chapter or upon an order of a court of competent jurisdiction. A suspension or revocation already in effect, but not previously challenged in a suspension or revocation hearing, may be challenged in the same manner but is not abated during the proceedings.

(B) Hearing on suspension or revocation. When a licensee files a written response and notice of intent to challenge a pending or existing suspension or revocation then a public hearing to determine if the pending suspension or revocation will become effective and final shall be held by a hearing officer appointed by the City Council. The City Manager or his/her designee shall notify the City Attorney and any appropriate City officers who shall schedule and provide notice of the hearing date and time.

(1) Appointment, term and compensation of hearing officer:

(a) Three (3) hearing officers shall be appointed by the City Council, and they shall be attorneys duly licensed to practice law in the State of Florida, who have practiced in the State for at least five (5) years.

(b) Hearing officers shall be subject to removal with or without cause, by the City Council. Hearing officers shall not be considered to be City employees, although

they may receive compensation for their services and also may be reimbursed for such travel, mileage and per diem expenses as may be authorized.

(c) Because only attorneys may hold the position of hearing officer, the City Council shall not be required to retain an attorney to represent the hearing officer.

(d) It shall be unlawful for a hearing officer to act as an agent or an attorney for a party involved in a determination under the provisions of this Section or to be otherwise involved with any matter arising under this Section which will come before the City during the term of the hearing officer's appointment. Further, a hearing officer shall not initiate or consider *ex parte* communications or other communications with any party of interest to a hearing officer concerning the substance of any proceeding to be heard by a hearing officer. However, the foregoing does not prohibit discussions between the hearing officer and City staff that pertain solely to scheduling and other administrative matters unrelated to the merits of the application. If a person engages in an *ex parte* communication with the hearing officer, the hearing officer shall place on the record of the pending case all *ex parte* written communications received, all written responses to such communications, a memorandum stating the substance of all oral communications received, and all oral responses made, and shall advise all parties that such matters have been placed on the record. Any party desiring to rebut the *ex parte* communication shall be entitled to do so but only if such party requests the opportunity for rebuttal within ten days after notice of such communication. If he or she deems it necessary due to the effect of an *ex parte* communication received by him, the hearing officer may withdraw from the case and the City Council shall appoint another hearing officer to handle the case.

(e) Selection of hearing officer. The City Manager and licensee shall each have the right to eliminate one (1) of the three (3) hearing officers selected by the City Council. The one (1) hearing officer not eliminated by either party shall act as the hearing officer for the license revocation hearing. In the event licensee objects to all three (3) hearing officers, then the City Council shall choose the hearing officer from the list of three (3) hearing officers absent a showing of clear prejudice by the licensee.

(2) The hearing officer shall have the power to:

(a) Adopt rules for the conduct of the hearing;
(b) Subpoena licensees and witnesses to its hearings. Subpoenas may be served by the Palm Bay Police Department and/or other law enforcement agencies with jurisdiction to serve subpoenas;
(c) Subpoena evidence to its hearings;
(d) Administer oaths and take testimony under oath; and
(e) Issue an order having the force of law suspending or revoking the license.

(3) The suspension or revocation hearing shall be held within thirty (30) days of the City Manager's receipt of a written challenge and request for a hearing by the aggrieved licensee.

(4) The participants before the hearing officer shall be the licensee, any witnesses of the licensee, the City Manager or his/her designee and any witnesses of the City Manager or his/her designee. All witnesses shall provide their legal name, mailing addresses and telephone number.

(5) The procedures used shall be those typically used in a civil case with the City Manager or his/her designee having the burden of proof by clear and convincing evidence.

(6) Testimony and evidence may be submitted by any witness but shall be limited to matters directly relating to the grounds for suspension or revocation. Irrelevant, immaterial, or unduly repetitious testimony or evidence shall be excluded.

(7) All testimony shall be under oath. The hearing officer shall decide all questions of evidence, procedure and standing. All hearings shall be open to the public. Minutes shall be kept at all hearings. Unless otherwise mutually agreed to between the licensee and the City Manager or his/her designee, the order of presentation of testimony and evidence shall be as follows:

(a) The City Manager or his/her designee and any witnesses of the City Manager or his/her designee.

(b) The licensee and any witnesses of the licensee.

(c) Rebuttal witnesses from the City Manager or his/her designee.

(d) Rebuttal witnesses from the licensee.

(e) Summation by the City Manager or his/her designee.

(f) Summation by the licensee.

(8) The hearing officer may also call and question witnesses or request additional evidence as the hearing officer deems necessary and appropriate.

(9) The City shall provide a hearing room and clerical staff as may be reasonably required by the hearing officer to conduct hearings and perform his or her duties.

(10) Each party to the hearing shall have the right to call and examine witnesses, introduce exhibits, cross-examine opposing witnesses, impeach witnesses and rebut evidence.

(11) The licensee has the right, at his or her own expense, to be represented by an attorney at any hearing.

(12) All testimony before the hearing officer shall be under oath and shall be recorded. The licensee or the City may cause a verbatim record of the proceedings to be made.

(13) If the hearing officer comes to believe that any facts, claims, or allegations necessitate additional review or response by either the licensee or the City Manager or his/her designee, then the hearing officer may order the hearing continued until an announced date certain, not to exceed thirty (30) days from the date of continuance. The hearing officer shall render a final decision on the appeal within sixty (60) days of the City Manager's receipt of licensee's written notice of challenge.

(14) Hearing officers may allow the parties to submit written proposed findings of fact and conclusions of law following the hearing and shall advise the parties of the timetable for so doing, if allowed.

(15) At the conclusion of the hearing within the time prescribed herein, the hearing officer shall issue an order setting forth findings of fact, based on evidence of record, and issue conclusions of law regarding whether the suspension or revocation will become or remain effective, and shall render relief in the order affording the proper relief consistent with powers granted in this Section.

(C) Filing of decision. The original of the written decision of the hearing officer shall be filed with the City Clerk and copies shall be delivered or mailed to the licensee, the City Manager or his/her designee and the City Police Department.

(D) Judicial review. Any person who participated in a suspension or revocation hearing before the hearing officer and who is aggrieved by the decision of the hearing officer may immediately challenge the decision in any court of competent jurisdiction pursuant to the Rules of Procedure of that court. The record of the hearing shall consist of the complete record of the proceedings before the hearing officer. The hearing officer's decision shall be promptly reviewed by the court.

(E) Requirement of exhaustion procedures. Judicial review of a suspension or revocation, or related hearing or appeal proceedings, shall be available only after the administrative procedures and remedies set forth in this Section have been exhausted.

(F) Notice of final suspension or revocation. If no response or request for a suspension or revocation hearing is filed within fifteen (15) days of the notice of a pending suspension or revocation, or if the licensee who requested the hearing does not appear at the suspension or revocation hearing after notice, or if the hearing officer decides after a hearing that a pending suspension or revocation will become final, then the City Manager or his/her designee shall issue to the licensee notice of final suspension or revocation of the adult entertainment license and mail or arrange delivery of the notice to the licensee's record address.

(G) Effective date of suspension or revocation. The suspension or revocation of a license shall take effect the day after delivery of a notice of final suspension or revocation to the licensee in person, by posting on the licensed establishment, or by mail to the licensee's record address, or on the date the licensee surrenders the license, whichever

happens first. The licensee shall immediately return and surrender a revoked license to the City Manager or his/her designee or surrender the revoked license, upon demand, to a member of the Police Department.

Section 26. WORKER RECORDS.

(A) Each adult entertainment establishment and sexually-oriented business, regardless of whether it is licensed under this Chapter, shall create, establish and maintain a record of all workers of the establishment or business. The record shall contain the worker's full legal name and any aliases and all past or current aliases of the worker; his or her date of birth; his or her residential address; his or her email address; his or her residential telephone number (if any) and all pager numbers, cell phone numbers, and other similar numbers used; his or her driver's license number and a photocopy of the license; his or her state or federally issued identification card number including the worker's social security account number; the employment status of the worker including, but not limited to, whether the worker is a salaried employee, an independent contractor, a lessee, a sub-lessee, a subcontractor allowed to work at the establishment, or such other arrangement as may be in place; whether income taxes are withheld for the worker; and a recent passport type photograph of the worker as of the date of association with the establishment which accurately reflects the date on which the photograph was taken. Said records shall be maintained for a period of no less than two years from the date the worker is separated from employment.

(B) The original records required by Subsection (A) or true and exact photocopies thereof, shall be kept at the adult entertainment establishment or sexually-oriented business at all times including clear photographs.

(C) All operators of an adult entertainment establishment or sexually-oriented business shall be responsible for knowing the location of the original records, or the true and exact photocopies thereof.

(D) All operators of an adult entertainment establishment or sexually-oriented business shall, upon request by a law enforcement officer or the City Manager or his designee, make available for immediate inspection the original records or the true and exact photocopies thereof at any time when the establishment or business is open for business.

Section 27. GENERAL REQUIREMENTS FOR ALL ADULT ENTERTAINMENT ESTABLISHMENTS AND SEXUALLY-ORIENTED BUSINESSES.

Each adult entertainment establishment and sexually-oriented business, regardless of whether it is licensed under this Chapter, shall observe the following general requirements:

(1) Conform to, comply with and abide by all applicable safety, employer related, building, fire, health, zoning or land use statutes, codes, ordinances, rules and regulations, whether Federal, State or local.

(2) Keep the adult entertainment establishment or sexually-oriented business license posted and prominently displayed in a conspicuous place at the establishment or business at all times, which license shall be available for inspection upon request at all times by the public, any law enforcement officer and the City Manager, or his/her designee, when the establishment or business is open for business.

(3) Opaquely cover each non-opaque area where a person outside the adult entertainment establishment or sexually-oriented business may otherwise see inside the establishment or business.

(4) Provide to any law enforcement officer and the City Manager or his/her designee, during all hours of operation or when an operator is present at the establishment, access through the main entrance and into all areas of the establishment where customers are permitted without the necessity of using a key, computer entry, password or seeking clearance from a worker or customer to obtain entry through an electronically operated door or entryway.

(5) Install, construct, keep, maintain or allow only those signs at the establishment or building exterior which comply with the provisions relating to signage in the Land Development Regulations of the City of Palm Bay.

(6) Not allow any person under eighteen (18) years of age to be present when services are provided to or performed for a customer or when the establishment or business is open for business.

(7) Not employ or provide goods or services to any person under eighteen (18) years of age.

(8) Not provide, offer or engage in any services to any person when not licensed to do so under this Chapter.

(9) Not operate when a license issued pursuant to this Chapter has been suspended, revoked or canceled or when the license is expired.

(10) Not permit any animal except seeing-eye dogs accompany a worker or customer when services are provided or performed.

(11) Not place, operate or contain video cameras, transmitting or taping equipment anywhere on the premises except where customers are advised in advance by posted notice.

(12) Not advertise the presentation of any activity prohibited by any law, rule or regulation whether Federal, State or local.

(13) Ensure that the view areas specified in this Chapter remain unobstructed by any doors, walls, merchandise, display racks or other materials at all times that any customer is present in the premises so as to ensure that no customer is permitted access to any area of the premises which has been designated as an area in which non-workers will not be permitted.

(14) Ensure that at least one operator is on duty and present at the establishment or business when the establishment or business is open for business who is responsible and knows the whereabouts of all records required by this Chapter. Said operator's name shall be conspicuously posted on the premises at all times the business or establishment is open for business.

(15) Ensure that at least one operator is situated in each manager's station, when required by this Chapter, at all times that any customer is present inside the premises.

(16) Ensure that the premises are equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which customers are permitted access at an illumination of not less than 15--20 average maintained foot candles as measured thirty-five (35) inches above the floor level. The light shall be maintained at all times any customer is present in the premises.

(17) Not alter or otherwise change the contents of an adult entertainment establishment or sexually-oriented business license.

(18) Ensure that each exterior entrance and exit door for use by customers and interior doors which permit entrance to the interior and exit to the interior from any interior foyer area shall remain unlocked when any person who is not a worker is inside the establishment.

(19) Establish, create and maintain worker records as required by this Chapter.

(20) Ensure that no alcoholic beverages shall be bought, sold, given away or consumed on the premises of any adult entertainment establishment or sexually-oriented business.

Section 28. SEXUALLY-ORIENTED BUSINESS REGULATIONS.

In addition to the general requirements for adult entertainment establishments and sexually-oriented businesses contained in this Chapter, a sexually-oriented business shall, regardless of whether it is licensed thereunder, comply with the following general requirements:

(1) Post in an open and conspicuous place a list of services provided by the sexually-oriented business which services shall be described clearly in the English language along with a specification as to the cost of each service.

(2) Provide each customer, in advance of any service being provided, with a written customer contract, written clearly in the English language, setting forth the service or services to be rendered, the cost of such service or services, the actual full name of the worker providing the service and actual full name, address and date of birth of the customer as reflected on a State or Federally issued identification card or drivers license and the customer's telephone number.

(3) Create, establish and maintain a daily register in a format provided by the City Manager, or his/her designee, containing the actual full names and addresses of all customers as reflected on a State or Federally issued identification card or drivers license, the services performed, the time expended, the mode of payment and the full name of the worker providing the service.

(4) Not allow any worker of the sexually-oriented business to accept any tip or gratuity, directly or indirectly, from a customer in addition to the service fee specified in the customer contract.

(5) Maintain all customer contracts and daily registers for a period of two years following the customer's date of service.

Section 29. ADULT THEATER REGULATIONS.

In addition to the general requirements relating to adult entertainment establishments and sexually-oriented businesses contained in this Chapter, an adult theater, regardless of whether it is licensed under this Chapter, shall:

(1) If the adult theater contains an auditorium or hall, comply with each of the following provisions:

(a) Have individual and separate seats (not couches, benches, or other seating configurations allowing or providing for the seating of multiple persons on the same item of furniture) to accommodate the maximum number of persons who may occupy the area;

(b) Have a continuous main aisle alongside of the seating areas in order that each person seated in the areas shall be visible from the aisle at all times;

(c) Have a sign posted in a conspicuous place at or near each entrance to the auditorium or hall which lists the maximum number of persons who may occupy the auditorium or hall area, which number shall not exceed the number of seats within the hall or auditorium area; and

(d) Be illuminated at an illumination of not less than 15--20 foot candles average maintained as measured at thirty (35) inches above the floor level and shall maintain the light at all times so that any customer present in the hall or auditorium may be

seen.

(2) If the adult theater contains adult booths, each adult booth shall comply with each of the following provisions:

(a) Have a sign posted in a conspicuous place at or near the entrance which states the maximum number of persons who may occupy the booth, which number shall correlate with the number of seats in the booth;

(b) Have a permanently open entrance not less than three (3) feet wide and not less than six (6) feet high, not capable of being closed or partially closed by any curtain, door, or other partition which would be capable of wholly or partially obscuring any person situated in the booth; provided, however, that the requirements of all building and related codes shall also be complied with;

(c) Have individual, separate seats (which are not couches, benches, or other seating configurations allowing or providing for the seating of multiple persons on the same item of furniture) which correlate with the maximum number of persons who may occupy the booth;

(d) Have a continuous main aisle alongside the booth in order that each person situated in the booth shall be visible from the aisle at all times;

(e) Have an illuminated and continuous main aisle in which workers and customers can be seen from one end to the other; and

(f) Have, except for the entrance, walls or partitions of solid construction without any holes or openings in such walls or partitions.

(3) Have one or more manager's stations.

(4) Configure the interior of the premises in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any customer is permitted access for any purpose excluding restrooms.

(5) If the premises have two or more manager's stations designated, configure the interior of the premises in such a manner that there is an unobstructed view of each area of the premises to which any customer is permitted access for any purposes from at least one of the manager's stations. The view required in this Subsection shall be by direct line of sight from the manager's station.

(6) If the adult theater is designed to permit outdoor viewing by persons seated in automobiles, cause the motion picture screen so situated, or the perimeter of the establishment so fenced, such that the material to be seen by those persons may not be seen from any public right of way, property assigned a residential zoning classification or assigned a residential land use designation, any religious institution or church, any educational institution or school, or from a park.

(7) Cover the floors of areas accessible to customers with smooth and non-permeable flooring material which can withstand frequent effective cleaning with industrial strength cleaning agents. Carpeting of any type is prohibited.

(8) Use smooth and non-permeable upholstery material, which can withstand frequent cleaning with industrial strength cleaning agents, to cover furniture permitted by this Chapter for the use of customers.

(9) Have, in areas accessible to customers, interior wall surfaces which can withstand frequent cleaning with industrial strength cleaning agents.

(10) Use only those shades and blinds which can withstand frequent cleaning with industrial strength cleaning agents. (Draperies are prohibited.)

(11) Maintain areas accessible to customers in a clean and sanitary condition.

(12) Keep all furniture upholstery material free from holes and rips.

(13) Utilize an appropriate and effective adaptation of the U.S. Center for Disease Controls universal precautions for the storage and transmission of the HIV virus and other diseases when cleaning or sanitizing the establishment.

Section 30. ADULT PERFORMANCE ESTABLISHMENT REGULATIONS.

(A) In addition to the general requirements for adult entertainment establishments and sexually-oriented businesses contained in this Chapter, an adult performance establishment shall, regardless of whether it is licensed under this Chapter, have a stage provided for the expressive display or exposure of any worker's specified anatomical areas to a customer consisting of a permanent platform (or other similar permanent structure) raised a minimum of eighteen (18) inches above the surrounding floor and encompassing an area of at least one hundred (100) square feet. The stage shall be located at least three (3) feet from the nearest table, chair, area or other accommodation where customers are seated or otherwise located; provided, however, that a table at which any customer is seated or served shall not be used as a stage.

(B) Notwithstanding the stage requirement in Subsection (A) above, an adult performance establishment may also have smaller stages for the expressive display or exposure of a worker's specified anatomical areas to a customer consisting of permanent or removable platforms raised a minimum of eighteen (18) inches above the surrounding floor from where customers are seated or located; provided, however, that a table at which any customer is seated or served shall not be used as a stage.

(C) In addition to the general requirements for adult entertainment establishments and sexually-oriented businesses contained in this Chapter, an adult performance establishment shall, regardless of whether it is licensed under this Chapter:

(1) In any area in which a private performance occurs, have a permanently open entrance not less than three feet wide and not less than six (6) feet high, which entrance shall not have any curtain rods, hinges, rails or the like which would allow the entrance to be closed or partially closed by any curtain, door, or other partition; provided,

however, that the requirements of all building and related codes shall also be complied with; and

(2) In any area in which a private performance occurs, have a wall to wall, floor to ceiling partition of solid construction without any holes or openings, which partition may be completely or partially transparent, and which partition separates the worker from the person viewing the displays.

(3) Post a sign which is clearly legible and located in a conspicuous place setting forth that straddle dancing is strictly prohibited.

(4) Not place or permit the placement of a bed or mattress in the establishment.

Section 31. COMMERCIAL BODILY CONTACT ESTABLISHMENT REGULATIONS.

In addition to all general requirements of this Chapter pertaining to adult entertainment establishments and sexually-oriented businesses, a commercial bodily contact establishment, regardless of whether it is licensed under this Chapter, shall:

(1) Operate only from a fixed physical location which is set forth on its sexually-oriented business license and all required business tax receipts.

(2) Not advertise, offer or provide any other service other than services which are posted.

(3) Provide clean linen and towels for each customer when towels and linens are used during the course of providing services to a customer; provided, however, that heavy white paper may be substituted for sheets if such paper is used for only one customer and then discarded into a sanitary receptacle.

(4) Store clean linen, towels and other materials used in connection with providing commercial bodily contact in closed cabinets.

(5) Disinfect and sterilize non-disposable instruments after each use on a customer.

(6) Cause all workers to conceal their specified anatomical areas with an opaque covering at all times when on the premises of the business by wearing an opaque surgical type gown.

(7) Not encourage, allow or permit any customer to consume food or beverages in the business.

(8) Provide commercial bodily contact in an area wherein such area is visible

at all times from common areas in the establishment. No contact may occur in a separate or individual cubicle, room, booth or area which is not visible from common areas of the establishment and a receptionist area; provided, however, that if male and female customers are provided services at the same time, separate work areas shall be established for each gender.

(9) Not advertise, display, publish, exhibit, place, distribute or promote on any advertising matter or signage services that are not posted or a suggestion that services not posted will be provided.

(10) Not advertise, display, publish, exhibit, place, distribute or promote on any advertising matter or signage any suggestion that workers will be dressed in any manner other than as required in this Chapter.

(11) Not begin a meeting or service with a customer between 10:00 p.m. of any day of the week and 9:00 a.m. the following day.

(12) Not provide services at any place other than a physical location licensed to provide commercial bodily contact under the provisions of this Chapter.

(13) Not place or permit the placement of any bed, mattress or sofa at the business; provided, however, that a sofa may be placed in the reception area open to the public at the main entrance of the business and cots or padded mats may be used when providing commercial bodily contact.

Section 32. ESCORT SERVICE REGULATIONS.

In addition to all general provisions of this Chapter pertaining to adult entertainment establishments and sexually-oriented businesses, an escort service, regardless of whether licensed under this Chapter, shall:

(1) Not advertise, offer or perform any other service than services which are posted.

(2) Cause all workers and escorts to conceal their specified anatomical areas with an opaque covering at all times when on the premises of the escort service.

(3) Not advertise, display, publish, exhibit, place, distribute or promote on any advertising matter or signage services that are not posted or a suggestion that services not posted will be provided.

(4) Not begin a meeting or service with a customer between 10:00 p.m. of any day of the week and 9:00 a.m. the following day.

(5) If offering or providing escorts or escort service within the City of Palm

Bay, each escort service shall notify the Police Chief and the City Manager or his/her designee of an authorized physical location, which may or may not be within the City, from where the escort service operates and dispatches escorts.

(6) Include in all advertising or promotional literature posted, placed, published, or distributed within the City of Palm Bay the number of a valid sexually-oriented business license issued by the City unless the escort service does not refer, send, or dispatch escorts to any location within the jurisdictional limits of the City of Palm Bay.

(7) Each escort service shall ensure that every escort and worker of the escort service is provided with a copy of the escort service's license and carries it while working as an escort for the service, and displays said license upon the request of any law enforcement officer or the City Manager or his/her designee. In addition to a copy of the escort service's license, each escort service shall ensure that each escort has obtained a business tax receipt to engage in the occupation of escort within the City and that they carry said license while working, and displays said license upon the request of any law enforcement officer or the City Manager or his/her designee. Notwithstanding the foregoing, an escort or worker of an escort service who is a paid employee for whom taxes and social security payments are withheld and paid by the licensed escort service and who is not an independent contractor may substitute and carry a copy of the sexually-oriented business/escort service license of the employing escort service only, provided that worker records as required by this Chapter are created and maintained by the licensed escort service.

(8) If a meeting with or the service of a customer occurs at a location not open to the public, then the escort shall check in with the on duty manager of the premises in person where the meeting or service occurs or begins prior to meeting or servicing a customer and advise the manager of the following: names of the escort(s), the escort service and customer(s); the escort's time of arrival and estimated time of departure; and a copy of the escort service's sexually-oriented business license and the escort's own business tax receipt, if applicable, and the location of the meeting within the structure.

Section 33. ENGAGING IN PROHIBITED ACTIVITY-- CUSTOMERS.

(A) It is unlawful for any customer in or for an adult entertainment establishment or sexually-oriented business regardless of whether licensed pursuant to this Chapter to do any of the following acts:

(1) To engage or participate in a straddle dance at the establishment or business.

(2) To offer, contract or otherwise agree to engage or participate in a straddle dance with a person at the establishment or business.

(3) To engage or participate in any specified sexual activity at the

establishment or business or while in the presence of a worker.

(4) To display or expose while in the presence of a worker or when at the establishment or business any specified anatomical area except in accordance with the Palm Bay Public Nudity Ordinance, as codified.

(5) To offer or deliver a tip or gratuity to any worker of an establishment or business before, during or after the provision of services except at an adult performance establishment.

(6) If a worker is a female, to intentionally touch, fondle or manipulate her on her clothed or unclothed breast(s), either directly or through a medium.

(7) To intentionally touch, fondle, massage, or manipulate any specified anatomical area of a worker, a customer, or himself or herself, whether clothed or unclothed, on the premises of the establishment or business.

(8) To intentionally touch, fondle, massage or manipulate a worker on any specified anatomical area when at or receiving services from the adult entertainment establishment or sexually-oriented business.

(9) To intentionally touch, fondle, massage or manipulate the clothed or unclothed breast(s) of a female worker, or to touch the clothed or unclothed body of a worker at any point below the waist and above the knee of the worker when at an adult entertainment establishment or sexually-oriented business.

(10) To occupy an adult booth in which booth there are more people than that specified on the posted sign required by this Chapter.

(11) To otherwise violate or aid or abet a violation of this Chapter.

(12) To encourage or solicit any worker to engage in any specified sexual activity.

(13) To consume, or purchase alcoholic beverages on the premises of any adult entertainment establishment or sexually-oriented business.

(B) It is unlawful for any customer at or of a sexually-oriented business to do any of the following acts regardless of whether the establishment is licensed pursuant to this Chapter:

(1) To intentionally touch, massage or manipulate, directly or indirectly or through a medium while on the premises of the establishment or when with a worker, the customer's specified anatomical areas.

(2) To solicit any worker to provide a service not posted.

(3) To solicit or receive any service not indicated and contracted for in the written customer contract.

(4) To provide to the worker providing the service either directly, indirectly or through a medium, any tip, gratuity or other consideration beyond the fee specified in the customer contract.

(5) To expose any specified anatomical area except in accordance with the Palm Bay Public Nudity Ordinance, as codified, to the view of a worker.

Section 34. ENGAGING IN PROHIBITED ACTIVITY -- WORKERS/OPERATORS.

(A) It is unlawful for any worker of an adult entertainment establishment or sexually-oriented business, regardless of whether licensed under this Chapter, to do any of the following acts or for an operator of an adult entertainment establishment or sexually-oriented business, regardless of whether licensed hereunder, to knowingly permit, suffer, aid, allow or encourage any worker to do any of the following acts:

(1) To engage or participate in a straddle dance with a customer at the establishment or business.

(2) To offer, contract or otherwise agree with a customer to engage or participate in a straddle dance with a person at the establishment or business.

(3) To engage or participate in any specified sexual activity or activities at the establishment or business with a customer, him or her self or a worker.

(4) To display or expose at the establishment or business specified anatomical areas except in accordance with the provisions of this Chapter and other applicable law.

(5) To request or accept a tip or gratuity from a customer except at an adult performance establishment.

(6) To work in an adult entertainment establishment or sexually-oriented business that he or she knows or should know is not licensed under this Chapter, or which has a license which is under suspension, has been revoked or canceled, or has expired, regardless of whether he, she or it has applied for and obtained a license under this Chapter.

(7) To display or expose specified anatomical areas except in accordance

with the Palm Bay Public Nudity Ordinance, as codified, while engaging in personal advertising, pandering, or solicitation, whether passive or otherwise, on behalf of the worker, any other worker, or the establishment or business while situated outside any structure at the establishment or business, or at a place at the establishment or business where the worker is visible from any public right-of-way or sidewalk. "Personal advertising" means encouraging or enticing, by whatever direct or indirect means, potential customers outside the doors of the establishment or business to enter the establishment or business.

(8) To suffer, permit, or allow any door of the business or establishment that is visible from a public right-of-way or sidewalk to be opened or remain opened except when a person is entering or exiting the establishment or business.

(9) To allow or encourage a customer to intentionally touch or fondle, either directly or through a medium, any specified anatomical area of the customer, a worker or another customer.

(10) If the worker is a female, to allow herself to be intentionally touched on her clothed or unclothed breast(s) by a customer.

(11) If a worker is a female, to allow herself to be intentionally touched by a customer on any portion of her body below the waist and above the knee.

(12) To display or expose any specified anatomical area unless and only to the extent permitted by the Palm Bay Public Nudity Ordinance, as codified, Chapter, and the stage on which the worker is located is not located between the legs of a customer.

(13) To provide or engage in any private performance unless and only to the extent permitted by this Chapter.

(14) To remain in the presence of a customer who is exposing specified anatomical areas less covered than permitted by the Palm Bay Public Nudity Ordinance, as codified, at the establishment or in the presence of a worker or another customer.

(15) To violate or aid or abet in a violation of the provisions of this Chapter.

(16) To encourage or knowingly permit any customer to intentionally touch, fondle, massage or manipulate, either directly or indirectly through a medium, any of the customer's specified anatomical areas on the premises of the establishment or when in the presence of another customer or worker.

(17) To encourage or solicit any customer to engage in any specified sexual activity.

(18) To intentionally touch, fondle, massage or manipulate any customer on the customer's clothed or unclothed body between the waist and above the knee.

(19) To provide or serve alcoholic beverages to any customer or worker for consumption on the premises of any adult entertainment establishment or sexually-oriented business.

(B) It is unlawful for any worker of a sexually-oriented business, regardless of whether it is licensed under this Chapter, to do any of the following acts, or for an operator of a sexually-oriented business, regardless of whether it is licensed under this Chapter, to knowingly or with reason to know permit suffer or allow any worker to commit any of the following acts:

(1) To accept a tip or gratuity from or on behalf of a customer in addition to the service fee stated in the written customer contract.

(2) To begin a meeting or service, continue a meeting or service, solicit a meeting or service or make or solicit a sale between the hours of 10:00 p.m. of any particular day and 9:00 a.m. the following day.

(3) Provide commercial bodily contact except at the physical structure of the establishment which has a commercial bodily contact establishment license.

(4) To provide any service not posted as required by this Chapter.

(5) To provide any service without first executing a customer contract.

(C) It is unlawful for any worker of an adult entertainment establishment or sexually-oriented business, regardless of whether licensed pursuant to this Chapter, to knowingly permit, suffer, aid, allow or encourage any customer to do any of the following acts:

(1) To intentionally touch, fondle, massage or manipulate, either directly or indirectly through a medium, any of the customer's specified anatomical areas when at the establishment or business or while in the presence of a worker or another customer.

(2) To intentionally touch, fondle, massage or manipulate, either directly or indirectly through a medium, any specified anatomical area of another customer or a worker when at the establishment or business or while in the presence of a worker or customer.

(3) To engage in any specified sexual activities at the establishment or business with a worker, customer, him or her self or with another customer.

(4) To expose the customer's specified anatomical areas at the establishment or business or when receiving services or when in the presence of a worker or another customer.

(5) To engage or participate in a straddle dance.

(6) To intentionally touch, fondle, massage or manipulate a worker at any point below the waist and above the knee.

(7) To intentionally touch a female worker on the clothed or unclothed breast.

Section 35. OPERATION WITHOUT LICENSE.

(A) It is unlawful for any person to be an operator of or at or to be a worker for an adult entertainment establishment or sexually-oriented business where the person knows or should know:

(1) That the establishment or business does not have an adult entertainment establishment or sexually-oriented business license for the applicable classification.

(2) That the establishment or business has a license which is under suspension.

(3) That the establishment or business has a license which has been revoked, canceled or has expired.

Section 36. OPERATION CONTRARY TO OPERATIONAL REQUIREMENTS.

(A) It is unlawful for any person to be an operator of an adult entertainment establishment or sexually-oriented business which does not satisfy all of the general requirements of this Chapter, regardless of whether the establishment is licensed thereunder.

(B) It is unlawful for any person to be an operator of a sexually-oriented business which does not satisfy all of the general requirements of Sections 27 and 28 of this Chapter regardless of whether the establishment is licensed thereunder.

(C) It is unlawful for any person to be an operator of an adult performance establishment which does not satisfy all of the special requirements of Sections 27 and 30 this Chapter regardless of whether licensed thereunder.

(D) It is unlawful for any person to be an operator of an adult theater which does not satisfy all of the special requirements of Sections 27 and 29 of this Chapter regardless of whether the establishment is licensed thereunder.

(E) It is unlawful for any person to be an operator of an escort service which does not satisfy all of the special requirements of Sections 27, 28, and 32 of this Chapter regardless of whether licensed thereunder.

(F) It is unlawful for any person to be an operator of a commercial bodily contact

establishment which does not satisfy all of the special requirements of Sections 27 and 31 of this Chapter regardless of whether the establishment is licensed thereunder.

Section 37. USE OF RESTROOMS OR DRESSING ROOMS.

(A) Notwithstanding any provision in this Chapter indicating to the contrary, it is not unlawful for any worker of an adult entertainment establishment or sexually-oriented business, regardless of whether it is licensed under this Chapter, to expose any specified anatomical area during the worker's bona fide use of a dressing room or bathroom which is occupied at the time only by workers of the same sex.

(B) Notwithstanding any provision in this Chapter indicating to the contrary, it shall not be unlawful for any customer of an adult entertainment establishment or sexually-oriented business, regardless of whether it is licensed under this Chapter, to expose any specified anatomical area during the customer's bona fide use of a bathroom which is occupied at the time only by customers of the same sex.

(C) It is unlawful to be an operator of an adult performance establishment that has a dressing room for use by its workers that is also accessible to customers.

(D) It is unlawful to be an operator of a sexually-oriented business which has a dressing room for use by its customers that is accessible to workers.

(E) Notwithstanding any provision of this Chapter to the contrary, a worker engaged in the work of a restroom attendant or valet may occupy a restroom which is also occupied by customers provided that the valet or attendant does not expose any specified anatomical area **except in accordance with the Palm Bay Public Nudity Ordinance, as codified,** to the view of a customer and is of the same sex of the customer occupying the restroom.

(F) Notwithstanding any provision of this Chapter to the contrary, it is not unlawful for a worker or customer to touch their own specified anatomical areas during their bona fide use of a restroom, dressing room or bathroom when such touching is necessary and inherent to the activity of changing clothes or excretory functions.

Section 38. UNLAWFUL ACTIVITIES -- MINORS.

It is unlawful for an operator or worker of an adult entertainment establishment or sexually-oriented business regardless of whether licensed under this Chapter, to knowingly or with reason to know, permit, suffer or allow:

(1) Admittance to the establishment or business of a person under eighteen (18) years of age when the establishment or business is open for business.

(2) A person under eighteen (18) years of age to remain at the establishment

or business when the establishment or business is open for business.

(3) A person under eighteen (18) years of age to purchase goods or services from the establishment or a worker at the establishment or business.

(4) A person under eighteen (18) years of age to be a worker at or for the establishment or business.

Section 39. UNLAWFUL ACTIVITIES -- RECORDS.

(A) It is unlawful to be an operator or worker of an adult entertainment establishment or sexually-oriented business, regardless of whether it is licensed under this Chapter, if the current and valid adult entertainment establishment or sexually-oriented business license is not conspicuously displayed on the premises of the establishment or business.

(B) It is unlawful to be an operator of an adult entertainment establishment or sexually-oriented business, regardless of whether licensed under this Chapter, which does not create, establish and compile worker records, maintain worker records or where such records are not produced for inspection by a law enforcement officer upon request when the establishment or business is open for business.

(C) It is unlawful to be an operator of a sexually-oriented business, regardless of whether it is licensed under this Chapter, at which customer contracts, daily registers and a list of services have not been compiled, maintained or are not produced for inspection by a law enforcement officer upon request when the establishment or business is open for business.

(D) It is unlawful for a worker at or of an adult entertainment establishment or sexually-oriented business, regardless of whether licensed under this Chapter, to fail to obtain, carry or produce for inspection by a law enforcement officer upon request, a business tax receipt for the occupation in which the worker is engaged; provided, however, that a worker of an adult entertainment establishment or sexually-oriented business who is a paid employee for whom income taxes and social security payments are withheld and

paid by the establishment and who is not an independent contractor shall not be required to obtain a business tax receipt or their own adult entertainment establishment/sexually-oriented business license.

(E) It is unlawful for an escort, regardless of whether they are a paid employee for whom income taxes and social security payments are withheld and paid by the escort service, to fail to carry and produce for inspection by a law enforcement officer a copy of the sexually-oriented business license of the employing escort service when working as an escort or providing the services of escort.

(F) It is unlawful for any person or any person on their behalf applying for a license under this Chapter to make a false or misleading statement or provide false or misleading information which is intended to facilitate the issuance of a license.

(G) It is unlawful for any worker, customer or operator to provide false or misleading information in any worker record, customer contract or daily register required by this Chapter.

(H) It is unlawful to be an operator or worker at an adult entertainment establishment or sexually-oriented business which does not have conspicuously posted the name of the operator on duty while the establishment is open for business.

(I) It is unlawful for an operator of an adult entertainment establishment to fail to produce for inspection any worker record required by this Chapter, when requested by a law enforcement officer or the City Manager or his/her designee when the establishment or business is open for business.

(J) It is unlawful for an operator of a sexually-oriented business to fail to produce for inspection any worker record, customer contract or daily register required by this subchapter when requested by a law enforcement officer or the City Manager or his designee when the establishment or business is open for business.

Section 40. UNLAWFUL ACTIVITIES -- HOURS OF OPERATION.

(A) It is unlawful for any operator of an adult entertainment establishment, regardless of whether licensed pursuant to this Chapter, to allow such establishment to remain open for business or to knowingly allow any worker to engage in a performance, solicit a performance, make a sale, solicit a sale, provide a service or solicit a service between the hours of ~~midnight~~ 2:00 a.m. and 9:00 a.m. of any particular day.

(B) It is unlawful for any operator of a sexually-oriented business, regardless of whether licensed pursuant to this Chapter, to allow such business to remain open for business or to permit any worker to engage in a performance, solicit a performance, make a sale, solicit a sale, begin, continue or provide a service or solicit a service between the hours of 10:00 p.m. and 9:00 a.m. of any particular day.

(C) It is unlawful for any worker of an adult entertainment establishment, regardless of whether licensed pursuant to this Chapter, to engage in a performance, solicit a performance, make a sale, solicit a sale, provide a service or solicit a service between the hours of **midnight 2:00 a.m.** and 9:00 a.m. of any particular day.

(D) It is unlawful for any worker of sexually-oriented business, regardless of whether licensed pursuant to this Chapter, to provide a service, solicit a service, engage in a performance, solicit a performance, make a sale, solicit a sale, begin a service or continue a service between the hours of 10:00 p.m. and 9:00 a.m. of any particular day.

Section 41. UNLAWFUL ACTIVITIES -- SPECIAL PROHIBITIONS RELATING TO ESCORTS AND ESCORT SERVICES.

It is unlawful for any escort, escort service or worker of an escort service, regardless of whether licensed under this Chapter, to commit any of the following acts or for an operator of an escort service regardless of whether licensed thereunder, to knowingly permit, suffer, aid, assist or allow any escort or escort service worker to commit any of the following acts:

(1) To enter a hotel, motel or other place of temporary lodging for the purpose of meeting or providing services to a customer without immediately upon entering such hotel, motel or other place and prior to meeting the customer making personal face-to-face contact with the on duty manager at the front desk or reception area and providing that person with the following information:

- (a) The time of arrival and estimated time of departure;
- (b) A copy of the escort service's sexually-oriented business license and, if applicable, the escort's business tax receipt;
- (c) The name of the escort, the escort service and the customer being met/served; and
- (d) The location of the meeting or service within the structure including the room number.

(2) To require, entice or solicit any customer to remove any article of clothing.

(3) To display or expose any specified anatomical area to a customer.

(4) To begin a meeting or service without first meeting the customer in a public place such as a bar or restaurant before accompanying the customer to any place not open to the public such as a hotel room or residence.

(5) To meet with or provide services to a customer in any place not open to the public such as a hotel room, motel room or residence without first executing the customer contract as required by this Chapter.

(6) To provide services to a customer even in a public place without first executing the customer contract as required by this Chapter, immediately following the meeting of the customer.

(7) To solicit a tip or gratuity from a customer in exchange for a promise or suggestion that any act or service not contracted for in the customer contract will be performed.

(8) To accept any compensation or payment except that which is provided in the customer contract.

Section 42. UNLAWFUL ACTIVITIES -- SPECIAL PROHIBITIONS RELATED TO COMMERCIAL BODILY CONTACT.

It is unlawful for a worker of a commercial bodily contact establishment, regardless of whether licensed pursuant to this Chapter, to commit any of the following acts or for the operator of a commercial bodily contact establishment, regardless of whether licensed thereunder, to knowingly or with reason to know, permit, suffer, aid, assist or allow any worker to commit any of the following acts:

(1) To provide commercial bodily contact or to be present at the premises of the business when open for business unless covering their specified anatomical areas by wearing an opaque surgical type gown.

(2) To display or expose any specified anatomical area except in accordance with the Palm Bay Public Nudity Ordinance, as codified, to a customer.

(3) To allow a customer to expose or display the customer's specified anatomical areas except in accordance with the Palm Bay Public Nudity Ordinance, as codified, in the presence of a worker.

(4) To allow a customer to engage in any specified sexual activity with him or herself, another customer or with a worker.

(5) To perform or provide commercial bodily contact except at the premises of a commercial bodily contact establishment licensed under this Chapter.

(6) To engage in or offer to engage in private modeling or the activities of an escort with any customer.

(7) To provide commercial bodily contact or service to a customer without first executing a customer contract as required by this Chapter.

(8) To intentionally touch, fondle, manipulate or massage the specified anatomical area of any customer.

(9) To allow any customer to intentionally touch, fondle, manipulate or massage any specified anatomical area of any worker or the body of any worker below the waist and above the knee, directly, indirectly or through a medium.

(10) To remain in the presence of any customer who is displaying, exposing, intentionally touching, fondling or manipulating any specified anatomical area.

(11) To allow any customer to intentionally touch, massage or manipulate any specified anatomical area while on the premises of the business or when in the presence of a worker.

(12) To solicit or require a customer to remove any item of clothing as a prerequisite to providing commercial bodily contact.

(13) To accept or solicit any tip, remuneration, consideration or gratuity in excess of the fee provided in the executed customer contract.

(14) To accept or solicit any tip, remuneration, consideration or gratuity in exchange for any enhanced service.

(15) To fail to require a customer to cover such customers' specified anatomical areas with a towel, robe, undergarment, bathing suit or other similar fully opaque material while on the premises of the business.

(16) To engage in or offer to engage in any private performance or act as an adult model.

Section 43. COMMERCIAL BODILY CONTACT ESTABLISHMENTS PROHIBITED; SAVINGS PROVISION.

(A) Notwithstanding any provision of this Chapter, it is unlawful to operate, or be a worker for or at a commercial bodily contact establishment which engages in commercial bodily contact.

(B) Notwithstanding the provisions of Subsection (A) above, in the event that Subsection (A), prohibiting commercial bodily contact establishments is found to be unconstitutional, or otherwise invalid by a court of competent jurisdiction or should an injunction be issued relative to the enforcement of Subsection (A), then all provisions set forth this Chapter applicable to commercial bodily contact establishments and sexually-oriented business shall apply to businesses and establishments engaged in commercial bodily contact.

Section 44. BUSINESS TAX RECEIPT; HOME OCCUPATIONS.

(A) The Finance Department of the City of Palm Bay may take such steps as may be necessary to ensure that the business tax is paid by only such individuals and entities that are lawfully permitted in accordance with the provisions of this subchapter.

(B) Adult entertainment establishments and sexually-oriented businesses shall not be approved as home occupations.

Section 45. SEXUAL ENCOUNTER BUSINESSES PROHIBITED; PROHIBITED ACTS; UNLAWFUL PROVISIONS.

(A) It is unlawful to be an operator of or be a worker at a sexual encounter business.

(B) It is unlawful to cause, encourage, or allow a person under eighteen (18) years of age to be present at a sexual encounter business.

(C) It is unlawful to aid or abet a person causing, encouraging or allowing a person under eighteen (18) years of age to be present at a sexual encounter business.

Section 46. IMMUNITY FROM PROSECUTION.

The City and any and all of its officers, departments or agents and any law enforcement officer shall be immune from prosecution, civil or criminal, for the reasonable, good-faith trespass upon an adult entertainment establishment or sexually-oriented business while acting within the scope of the authority set forth in this Chapter.”

SECTION 2. Ordinances in Conflict. There exists a settlement stipulation between “Your Dreams, Inc.” et al., Plaintiffs, and the City of Palm Bay, Defendant, Case No 94-14589-CA-D, and an agreement between “Your Dreams, Inc.” and the City of Palm Bay, said stipulation having been executed on October 18, 1995, and adopted by a court order on October 25, 1995, and said agreement being executed on May 15, 1992. The aforementioned settlement stipulation, court order, and agreement are still in full force and effect as regards to the business named and described in the aforementioned settlement agreement, court order, and agreement. The ordinances or the parts of the ordinances referred to in the settlement stipulation and agreement are not hereby repealed as regards

to the business referred to in the settlement stipulation, court order, and agreement. Other than the foregoing specific limitation, all ordinances or parts of ordinances in conflict herewith are hereby repealed and all ordinances or parts of ordinances not in conflict herewith are hereby continued in full force and effect.

SECTION 3. Codification. It is the intention of the City Council of the City of Palm Bay that the provisions of this Ordinance shall be made a part of the City of Palm Bay Code of Ordinances and the sections may be renumbered to accomplish such intention.

SECTION 4. Severability. If any portion, clause, phrase, sentence or classification of this ordinance is held or declared to be either unconstitutional, invalid, inapplicable, inoperative or void, then such declaration shall not be construed to affect other portions of the ordinance; it is hereby declared to be the express opinion of the City Council of the City of Palm Bay that any such unconstitutional, invalid, inapplicable, inoperative or void portion or portions of this ordinance did not induce its passage, and that without the inclusion of any such portion or portions of this ordinance, the City Council would have enacted the valid constitutional portions thereof.

SECTION 5. Effective Date. The provisions within this ordinance shall take effect immediately upon the enactment date.

Read in title only at Meeting No. 2007-12, held on April 19, 2007; and read in title only and duly passed and enacted at Meeting No. 2007- , held on , 2007.

John J. Mazziotti, MAYOR

ATTEST:

Alice Passmore, CITY CLERK

ORDINANCE NO. 2007-31

AN ORDINANCE OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, TO BE KNOWN AS THE "PALM BAY PUBLIC NUDITY ORDINANCE"; STATING THE INTENT OF THE ORDINANCE; PROVIDING FOR THE DEFINITION OF NUDITY AS PROHIBITED BY THIS ORDINANCE AND PROVIDING FOR OTHER DEFINITIONS; PROVIDING FOR LEGISLATIVE FINDINGS; PROHIBITING NUDITY AND SEXUAL CONDUCT OR THE SIMULATION THEREOF; PROHIBITING NUDITY IN PUBLIC PLACES; PROVIDING FOR ENFORCEMENT AND PENALTIES FOR THE VIOLATION OF THIS ORDINANCE; PROVIDING FOR INJUNCTIVE RELIEF; PROVIDING FOR EFFECTIVENESS IN THE ENTIRETY OF THE CITY LIMITS OF PALM BAY IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE VIII, ~~SECTION (1)(g)~~ SECTION 2, CONSTITUTION OF THE STATE OF FLORIDA; PROVIDING FOR THE REPEAL OF ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING FOR INCLUSION IN THE CITY OF PALM BAY CODE OF ORDINANCES; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, local governments may prohibit the exposure of certain body parts, see *Geaneas v. Willets*, 911 F. 2d 579 (11th Cir. 1990), *certiorari denied*, 499 U.S. 955, 111 S. Ct. 1431, 113 L. Ed. 2d 484 (1991), and see *Barnes v. Glen Theater*, 501 U.S. 560 (1991), and

WHEREAS, efforts by the State and Federal governments to apply Florida criminal statutes have been rejected by the courts because, under certain of Florida's criminal laws, nudity alone cannot be prosecuted without proof of lewd and lascivious conduct, and

WHEREAS, local governments for other counties have successfully passed and defended regulations relating to public nudity, and

WHEREAS, the citizens of Palm Bay wish to regulate nudity and sexual conduct, and the citizens of Palm Bay believe that nudity and sexual conduct begets undesirable behavior, and that adverse secondary effects such as, but not limited to, prostitution,

attempted rape, rape, and assault may occur and have the potential for occurring where nude and sexual conduct is permitted, and

WHEREAS, the citizens of Palm Bay wish to protect against similar conditions to the end that they not occur in Palm Bay, and

WHEREAS, the citizens of Palm Bay desire to prohibit the public display of nudity and sexual behavior or the simulation thereof, and

WHEREAS, the citizens of Palm Bay believe that there are increasing incidents of nudity in public places and in other places readily visible to the public, and

WHEREAS, the citizens of Palm Bay believe that persons who choose to appear nude in public places are engaging in conduct which often serves to impose their nudity on others who did not seek it out, who are not able to reasonably avoid observing it, and who may be offended or distressed thereby, and

WHEREAS, appearing nude in public places was a criminal offense at common law and was considered an act *malum en se* (a wrong in itself) and appearing nude in a public place which is not a public place provided or set apart for nudity has been considered improper see *Moffett v. State*, 340 So. 2d 1155, 1156 n.3 (Fla. 1977), and

WHEREAS, the citizens of Palm Bay desire to protect and preserve the wholesome character of Palm Bay as a family oriented community with a high quality of life offered for families, tourists and businesses, and

WHEREAS, the citizens of Palm Bay believe that appearing nude in public places is still contrary to the general societal disapproval that the people of Palm Bay have of persons appearing nude among strangers in public places, and

WHEREAS, the citizens of Palm Bay believe that the appearance of persons in the nude in public places generally increases adverse secondary effects such as, but not limited to, incidents of prostitution, unhealthy environment for minors, other citizens and tourists, sexual assaults and batteries, attracts other criminal activity to the community, and encourages degradation of women and other activities which break down societal and family structures, and

WHEREAS, the citizens of Palm Bay believe that without regulation public nudity constitutes harmful conduct and occurs in a manner which is incompatible with the normal primary activity of a particular place at a particular time, and

WHEREAS, the citizens of Palm Bay sole intent in enacting this ordinance is to prohibit the conduct of being nude in public places and to suppress the adverse secondary effects such nudity generates, and

WHEREAS, it is the intent of the citizens of Palm Bay to protect and preserve the good order, public health, safety, welfare and morals of Palm Bay by restricting, to the fullest extent allowed by the United States Constitution and Florida Constitution, the act of being nude to places which are readily visible to the public, and

WHEREAS, the City Council's sole intent in enacting this ordinance is to prohibit the conduct of being nude in public places and to suppress the adverse secondary effects such nudity generates, the City Council nevertheless recognizes that there may be instances wherein appearing nude in a public place may be expressive conduct incidental to and a necessary part of the freedom of expression that is protected by United States or Florida constitutional provisions, and

WHEREAS, the citizens of Palm Bay believe that Palm Bay is a city that is, and desires very much to continue to be, a community that contains and is known for traditional and wholesome public recreational activities, natural features and resources and historic facilities, and

WHEREAS, the citizens of Palm Bay believe that the average person applying contemporary community standards would find that the public nudity prohibited by this Ordinance, if allowed, when taken as a whole: (i) appeals to the prurient interests, and (ii) lacks serious literary, artistic, political, and scientific value, and

WHEREAS, the citizens of Palm Bay believe that the absence of regulation of persons appearing nude in public places within Palm Bay encourages persons and entities to advertise outside of Palm Bay and the State of Florida by billboard, radio, print and other media the availability of nudity in public places within Palm Bay and thus encourages the influx into Palm Bay of persons seeking: (i) to observe and/or participate in such nudity, and (ii) to participate in the disorderly, unhealthy, harmful, and illegal conduct that is associated therewith, thereby increasing injuries and damages to the citizens of the Palm Bay who will be victims of such increased disorderly, harmful, and unlawful conduct and thereby working directly against Palm Bay's economic development and tourism development activities, and

WHEREAS, the citizens of Palm Bay believe that commercial advertising and/or exploitation of nudity encourages escalation of nude and lewd conduct within the competing commercial establishments exploiting such conduct and thereby increases the adverse effects upon public order and the public health, and

WHEREAS, the citizens of Palm Bay believe that the prohibitions contained herein are the most reasonable and minimal restrictions required so as to regulate conduct which

is adverse to public order, health, safety, morality, and decency within Palm Bay when such conduct takes place at locations where the public is present or is likely to be present, or where such conduct would be readily visible to the public, and

WHEREAS, the citizens of Palm Bay believe that the passage of this Ordinance is necessary to preserve the basic character of Palm Bay, and

WHEREAS, States may regulate the conduct of appearing nude in public places, see *Barnes v. Glen Theater, Inc.*, 501 U.S. 560, 111 S. Ct. 2456 115 L. Ed. 2d 504 (1991), and *Café 207, Inc. vs. St. Johns City*, 856 F. supp. 641 (M.D. Fla. 1994), aff'd, 989 F. 2d 1136 (11th Cir. 1995), and

WHEREAS, the citizens of Palm Bay are not hereby prohibiting nudity in private places or prohibiting nudity which is protected by the United States Constitution or Florida Constitution, and

WHEREAS, the citizens of Palm Bay believe that the express exemptions contained in this Ordinance provide adequate protection to persons who, without such express exemptions, might otherwise be prevented or discouraged by this Ordinance from exercising constitutionally protected rights, and

WHEREAS, this Ordinance is intended to regulate conduct, not speech; and not an ordinance that affects the use of land as contemplated by Section 125.66, Florida Statutes.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, as follows:

SECTION 1. Title. This Ordinance shall be known as the "Palm Bay Public Nudity Ordinance".

SECTION 2. Intent.

A. It is the intent of this Ordinance to protect and preserve the good order, health, safety, welfare, and morals of the citizens of Palm Bay by prohibiting a person from intentionally or recklessly appearing or being nude, or causing another person to appear or be nude, in a public place and in other places which may reasonably be expected to be observed by the public within Palm Bay in other places than those establishments **regulated by the Palm Bay Adult Entertainment Code or as** defined in Section 3, *PLACES APPROVED OR SET APART FOR NUDITY*.

B. It is the further intention of this Ordinance to accomplish those intents and purposes expressed in the recitals ("**Whereas**" clauses) of this Ordinance, each of which are incorporated by reference in this Section.

SECTION 3. Definitions.

BREAST. A portion of the human female mammary gland (commonly referred to as the female breast) including the nipple and areola (the darker colored area of the breast surrounding the nipple) and an outside area of such gland wherein such outside area is (i) reasonably compact and contiguous to the areola, and (ii) contains at least the nipple and the areola and 1/4 of the outside surface area of such gland.

BUTTOCKS. (For a short general description, see the last sentence of this definition.) The area at the rear of the human body (sometimes referred to as the gluteus maximus) which lies between two imaginary straight lines running parallel to the ground when a person is standing, the first or top such line being ½ inch below the top of the vertical cleavage of the nates (i.e., the prominence formed by the muscles running from the back of the hip to the back of the leg) and the second or bottom such line being ½ inch above the lowest point of the curvature of the fleshy protuberance (sometimes referred to as the gluteal fold), and between two imaginary straight lines, one on each side of the body (the "outside lines"), which outside lines are perpendicular to the ground and to the horizontal lines described above and which perpendicular outside lines pass through the outermost point (s) at which each nate meets the other side of leg. Notwithstanding the above, buttocks shall not include the leg, the hamstring muscle below the gluteal fold, the tensor fasciae latae muscle or any of the above-described portion of the human body that is between either: (i) the left inside perpendicular line and the left outside perpendicular line, or (ii) the right inside perpendicular line and the right outside perpendicular line. For the purpose of the previous sentence the left inside perpendicular line shall be an imaginary straight line on the left side of the anus: (i) that is perpendicular to the ground and to the horizontal lines described above, (ii) that is 1/3 of the distance from the anus to the left

outside line, and the right inside perpendicular line shall be an imaginary straight line on the right side of the anus (i) that is perpendicular to the ground and to the horizontal lines described above, and (ii) that is 1/3 of the distance from the anus to the right outside line. (The above description can generally be described as covering 1/3 of the buttocks centered over the cleavage for the length of the cleavage.)

ENTITY. Any proprietorship, partnership, corporation, association, business trust, joint venture, joint-stock company or other for profit and/or not for profit organization.

NUDE. Any person insufficiently clothed in any manner or that any of the following body parts are not entirely covered with a fully opaque covering:

- (1) the male or female genitals, or
- (2) the pubic area, or
- (3) the vulva, or
- (4) the penis, or
- (5) the female breast (each female person may determine which 1/4 of her breast surface area (see definition of breast) contiguous to and containing the nipple and the areola is to be covered), or
- (6) the anus, or
- (7) the anal cleft, or
- (8) the anal cleavage, or
- (9) the buttocks. Attire which is insufficient to comply with this requirement includes, but is not limited to, G-Strings, T-Backs, dental floss and thongs.
- (10) For the purposes of this section, body paint, body dyes, tattoos, liquid latex whether wet or dried, string and dental floss and similar substance shall not be considered an "opaque covering".

PERSON. Any live human being aged ten (10) years of age or older.

PLACES APPROVED or SET APART FOR NUDITY. Enclosed single sex public restrooms, enclosed single sex functional shower, single sex locker and/or dressing room facilities, enclosed motel rooms and hotel rooms designed and intended for sleeping accommodations, doctor's offices, portions of hospitals, the yard areas of private residences, and similar places in which nudity or exposure is necessarily and customarily expected outside of the home and the sphere of privacy constitutionally protected therein. The aforementioned places approved or set apart for nudity shall not be deemed to include places where a person's conduct of being nude is used for his or her profit or where being nude is used for the promotion of business or is otherwise for commercial gain, which are regulated and governed by the Palm Bay Adult Entertainment Regulatory Ordinance, codified within Chapter 173 of the Palm Bay Code of Ordinances.

PUBLIC PLACE. Any location frequented by the public, or where the public is present or likely to be present, or where a person may reasonably be expected to be observed by members of the public. Public places include, but are not limited to, streets, sidewalks, parks, beaches, business and commercial establishments (whether for profit or

not for profit and whether open to the public at large or where entrance is limited by a cover charge or membership requirement or membership fee), bottle clubs, hotels, motels, restaurants, night clubs, country clubs, cabarets, and meeting facilities utilized by any religious, social, fraternal or similar organization. Premises, or portions thereof such as motel or hotel rooms, used solely as a private residence, whether permanent or temporary in nature, shall not be deemed to be a public place.

SECTION 4. Findings. In addition and supplemental to the findings and determinations contained in the recitals ("Whereas" clauses) of this Ordinance which are incorporated by reference into this Section, it is the intent of the citizens of Palm Bay to regulate the conduct of appearing nude in public places for the purpose of regulating nudity and other conduct, that considering what has happened in other communities, the acts prohibited in Section 5 herein below encourage or create the potential for the conduct of adverse secondary effects such as, but not limited to, prostitution, attempted rape, rape, assault, and the spread of sexually communicable diseases; that actual and simulated nudity and sexual conduct in public places, begets and has the potential for begetting undesirable and unlawful behavior; that sexual, lewd, lascivious, and salacious conduct results in violation of law and creates dangers to the health, safety, morals, and welfare of the public and those who engage in such conduct; and, it is the intent of Section 5 of this Ordinance to specifically prohibit nudity, gross sexuality and the simulation thereof.

SECTION 5. Nudity, Sexual Conduct Prohibited.

A. No person shall knowingly, intentionally or recklessly appear, or cause another person to appear NUDE, as defined in Section 3, or expose to public view his or her genitals, vulva, penis, pubic area, or buttocks, or any simulation thereof.

B. No person shall knowingly, intentionally or recklessly expose, or cause a female person to expose her breasts or any simulation thereof to public view.

C. No person or entity maintaining, owning, or operating a public place shall encourage, allow or permit any person to appear nude or to expose to public view his or her genitals, pubic area, vulva, penis, anus, or any portion of the buttocks or simulation thereof. This Section shall be violated if any portion of the buttocks is visible from any vantage point.

D. No person shall engage in and no person or entity maintaining, owning, or operating a public place shall encourage, allow or permit any sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, lap dancing, straddle dancing, any sexual act which is prohibited by law, touching, caressing, or fondling of the breasts, buttocks, anus, or genitals, or the simulation thereof.

E. Each female person may determine which 1/4 of her breast surface area (see definition of breast) contiguous to and containing the areola is to be covered.

F. This section shall not be deemed to address photographs, movies, video presentations, or other non live performances.

SECTION 6. Nudity Prohibited in Public Places. It shall be unlawful for any person to knowingly, intentionally, or recklessly appear, or cause another person to appear NUDE, as defined in Section 3, in a public place or in any other place which is readily visible to the public, except as provided in Section 7. It shall also be unlawful for any

person or entity maintaining, owning, or operating any public place to encourage, suffer or allow any person to appear nude in such public place, except as provided in Section 7.

SECTION 7. Exemptions.

A. The prohibitions of Section 5 of this Ordinance shall not apply:

1. When a person appears nude in a place provided or set apart for nudity, as defined by this Ordinance, provided:

a. Such person is nude for the sole purpose of performing the legal function(s) that is/are customarily intended to be performed within such place provided or set apart for nudity, and

b. Such person is not nude for the purpose of obtaining money or other financial gain for such person or for another person or entity.

2. When the conduct of being nude cannot legally be prohibited by this Ordinance because:

a. It constitutes a part of a *bona fide* live communication, demonstration or performance by a person wherein such nudity is expressive conduct incidental to and necessary for the conveyance or communication of a genuine message or public expression and is not a mere guise or pretense utilized to exploit the conduct of being nude for profit or commercial gain (see for instance *Board of City Commissioners v. Dexterhouse*, 348 So. 2d 916 (Fla. 2nd DCA 1977), and as such is protected by the United States Constitution or Florida Constitution, or

b. It is otherwise protected by the United States Constitution or Florida Constitution.

B. A mother's breast feeding of her baby does not under any circumstance violate the provisions of this ordinance.

C. In establishments or businesses denominated as Adult Entertainment Establishments or Sexually-Oriented Businesses and regulated by the Palm Bay Adult Entertainment Code.

SECTION 8. Enforcement and Penalties. Any person or entity violating any of the provisions of this Ordinance shall be prosecuted in the same manner as misdemeanors are prosecuted. Such violations shall be prosecuted in the name of the State of Florida in a court having jurisdiction of misdemeanors by the prosecuting attorney thereof and, upon conviction, shall be punished by a fine not to exceed Five Hundred Dollars (\$500.00) or by imprisonment not to exceed sixty (60) days or by both such fine and imprisonment as provided in Florida Statutes or other applicable law. Each incident or separate occurrence of an act that violates this Ordinance shall be deemed a separate offense.

SECTION 9. Injunctive Relief. In addition to the procedures provided herein, persons and entities that are not in conformity with these requirements shall be subject to appropriate civil action in the court of appropriate jurisdiction for abatement.

SECTION 10. Area of Effectiveness. In accordance with the provisions of Article VIII, Section (1) (g), Constitution of the State of Florida, this Ordinance shall have citywide effect within the borders of Palm Bay, Florida.

SECTION 11. Ordinances in Conflict. All ordinances or parts of ordinances in conflict herewith are hereby repealed and all ordinances or parts of ordinances not in conflict herewith are hereby continued in full force and effect.

SECTION 12. Codification. It is the intention of the City Council of the City of Palm Bay that the provisions of this Ordinance shall be made a part of Chapter 173, Adult Entertainment Code, of the City of Palm Bay Code of Ordinances, and the sections renumbered to accomplish such intention.

SECTION 13. Severability. If any portion, clause, phrase, sentence or classification of this ordinance is held or declared to be either unconstitutional, invalid, inapplicable,

inoperative or void, then such declaration shall not be construed to affect other portions of the ordinance; it is hereby declared to be the express opinion of the City Council of the City of Palm Bay that any such unconstitutional, invalid, inapplicable, inoperative or void portion or portions of this ordinance did not induce its passage, and that without the inclusion of any such portion or portions of this ordinance, the City Council would have enacted the valid constitutional portions thereof.

SECTION 14. Adoption; Effective Date. The provisions within this ordinance shall take effect immediately upon the enactment date.

Read in title only at Meeting No. 2007-12, held on April 19, 2007; and read in title only and duly passed and enacted at Meeting No. 2007- , held on , 2007.

John J. Mazziotti, MAYOR

ATTEST:

Alice Passmore, CITY CLERK

CC:

Potential Adult Entertainment Locational Criteria
General Notes

1. MAJOR ROADS

EXPRESSWAYS:

Interstate 95

ARTERIALS:

Babcock Street

Dixie Highway (U.S. #1)

Malabar Road

Minton Road

Palm Bay Parkway (proposed roadway)

Palm Bay Road

R. J. Conlan Boulevard

COLLECTORS:

Americana Boulevard

Bayside Lakes Boulevard

Bombardier Boulevard

Cogan Drive

Community College Parkway

Culver Drive

DeGroot Boulevard

Eldron Boulevard

Emerson Drive

Fallon Boulevard

Foundation Park Boulevard

Garvey Road

Harper Boulevard

Hield Road

Hollywood Boulevard

Hurley Boulevard

Jupiter Boulevard

Krassner Drive

Lamplighter Drive

Lipscomb Street

Mariposa Drive

Port Malabar Boulevard

Riviera Drive

San Filippo Drive

St. Andre Boulevard

Treeland Boulevard

Troutman Boulevard

Potential Adult Entertainment Locational Criteria
General Notes

COLLECTORS (cont.):

Waco Boulevard
Walden Boulevard
Wichita Boulevard
Wyoming Drive

2. ISSUES TO CONSIDER WITH CORRIDORS:

- A. Distance from the right of way.
- B. Frontage roads (examples are Georgia Street and Harris Boulevard)
- C. Combined lots (where rear lot is owned with frontage lots)

3. SCHOOLS:

ELEMENTARY SCHOOLS:

Columbia
Discovery
Jupiter
Lockmar
McAuliffe
Palm Bay
Port Malabar
Riviera
Sunrise
Turner
Westside

MIDDLE/JUNIOR HIGH SCHOOLS:

Southwest

HIGH SCHOOLS:

Bayside
School CCC (proposed new high school)

CHARTER SCHOOLS:

Academy
Odyssey
Palm Bay Academy
Palm Bay Community
Space Coast Montessori

Potential Adult Entertainment Locational Criteria
General Notes

4. ISSUES TO CONSIDER WITH SCHOOLS:

- A. Several Charter Schools are located inside commercially zoned areas.
- B. Student routes to schools (school crossings and sidewalk paths)
- C. Type of School (elementary, middle, high or charter)

5. CHURCHES:

- A. Churches are permitted in most commercial zones.
- B. Difference between a “store front” church property and a property tax-exempt church property.
- C. Distance criteria will be limited to allow sufficient AE sites.

6. DAY CARE CENTERS:

- A. Located through out the commercially zoned areas.
- B. Ownership versus rental situations.
- C. Distance criteria will be very limited to allow sufficient AE sites.

7. RESIDENTIAL LANDS:

- A. Abut most commercially zoned lands.
- B. Different types of residential (single family, mobile home, apartments, condominiums and townhomes).
- C. Distance criteria will be very limited to allow sufficient AE sites.

8. PARKS:

- A. Only a few near commercially zoned lands.
- B. May consider not including “open space” only sites since buffers are open space uses.
- C. Need to clearly identify what is a “park”.