

tion pictures, videocassettes, slides or other visual representation or recordings; novelties; and devices, which have, as their primary or dominant theme, matter depicting, illustrating, describing or relating to specified sexual activities or specified anatomical areas; or

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

Adult motion picture booth means an enclosed area designed or used for the viewing by one or two persons of motion pictures, films, videocassettes, 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. For the purposes of this article, an adult motion picture booth is included within the definition of an adult motion picture theater.

Adult motion picture theater means an enclosed building or a portion or part of an enclosed building or an open air theater designed to permit viewing by patrons seated in automobiles, used to present on a regular basis, for any form of consideration, film material which has, as its primary or dominant theme, matters depicting, illustrating or relating to specified sexual activities for observation by adult persons thereof, and includes any hotel or motel, boardinghouse, roominghouse or other lodging for transient customers which advertises the presentation of such film material. For the purposes of this article, an adult motion picture theater includes both an adult arcade and an adult motion picture booth.

Alcoholic beverage means all beverages containing more than one percent alcohol by weight.

Commercial means for pecuniary gain, which shall be presumed for any establishment which has received an occupational license. For purposes of this article, operation for pecuniary gain shall not depend on actual profit or loss.

Commercial establishment means any business location, place of business conducting or allowing to be conducted on its premises any commercial activity.

Employee means a person who works or performs in a commercial establishment, irrespective of whether the person is paid a salary or wage by the owner or manager of the premises.

Establishment means a physical plant or location or the commercial activities or operations being conducted or both together, as the context of this article may require.

Inspector means an employee of the public health department or the building department or the zoning department or the fire marshal to inspect premises licensed under this article and to take or require the actions authorized by this article for violations being found on licensed premises, and also to inspect premises seeking to be licensed under this article and to require corrections of unsatisfactory conditions found on the premises.

Licensed premises means not only rooms and areas where adult materials regulated under this article or adult activities where any form of adult entertainment is presented, but also all other areas within 500 feet of the room or area where adult materials or adult activities are regulated and over which the licensee has some dominion and control and to which customers or patrons may pass, and the term includes all of the floor or land areas embraced within the plan appearing on or attached to the application for the license involved and designated as such on the plan.

Massage establishment means a site or premises or portion thereof upon which any person, who is an employee, manipulates the superficial tissues of the body of another person with any portion of the hand, foot, leg, arm or elbow, but not including the following: licensed health care facilities; licensed physicians or nurses engaged in the practice of their professions; educational athletic facilities, if the massage is a normal and usual practice in such facilities; or establishments exempt under F.S. § 480.034.

Personal advertising means any communication on the part of an employee of an adult entertainment establishment that is designed to encourage a prospective patron to enter the establishment and is performed by repeatedly speaking in a raised tone of voice; by making prominent

physical gestures, such as waving or repeatedly pointing; or by holding signs or other written statements. Personal advertising shall not include oral or physical references to an adult entertainment established by patrons or spectators.

Premises means not only the rooms and areas physically occupied by a commercial establishment or where alcoholic beverages are sold, dispensed, offered, presented or consumed, but also includes all areas within 500 feet of the rooms and areas physically occupied by a commercial establishment or where alcoholic beverages are sold, dispensed, offered, presented or consumed over which the owner or management of the premises has some dominion and control and to which customers or patrons may pass.

Principal stockholder means any individual, partnership or corporation that owns or controls, legally or beneficially, ten percent or more of a corporation's capital stock, and includes the officers, directors and principal stockholders of a corporation that is a principal stockholder under this article; if no stockholder of a corporation owns or controls, legally or beneficially, at least ten percent of the capital stock, all stockholders shall be considered principal stockholders. If a corporation is registered with the Securities and Exchange Commission or pursuant to F.S. ch. 517 and its stock is for sale to the general public, it shall not be considered to have any principal stockholders.

Religious institution means a building which is used primarily for religious worship and related religious activities.

Residential zoning district, when used in the discussion of adult entertainment establishments, includes any area outside the city legally zoned in a manner primarily intended for dwellings and any area inside the city which is included in any of the following zoning districts; R-1A, R-1, R-2, R-3, R-NC and PUD, if the particular PUD is primarily intended for dwellings.

School means an institution of learning for minors, whether public or private, which offers instruction in those courses of study required by F.S. ch. 233 or which is maintained pursuant to

standards set by the state board of education. This definition includes a nursery school, kindergarten, elementary school, junior high school, senior high school or any special institution of learning under the jurisdiction of the state department of education, but it does not include a vocational or professional institution or an institution of higher education, including a community or junior college, college or university.

Specified anatomical areas means:

- (1) Less than completely and opaquely covered:
 - a. Human genitals or pubic region.
 - b. Human buttocks.
 - c. That portion of the human female breast encompassed within an area falling below the horizontal line one would have to draw to intersect a point immediately above the top of the areola (the colored ring around the nipple). This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast exhibited by a dress, blouse, shirt, leotard, bathing suit, or other wearing apparel, provided the areola is not so exposed.
- (2) Human male genitals in a discernible turgid state, even if completely and opaquely covered.

Specified anatomical areas of the human body means:

- (1) Less than completely and opaquely covered:
 - a. Human genitals, pubic region;
 - b. Buttocks; or
 - c. Female breasts below a point immediately above the top of the areola; and
- (2) Human male genitals in a discernible turgid state, even if completely and opaquely covered.

Specified criminal act means a violation of this article; an offense under F.S. ch. 880; an offense under F.S. § 806.01, 806.10, 806.11 or 806.13(2)(c); an offense under F.S. ch. 796; an offense under F.S. § 847.013 or 847.014; an offense under F.S. § 893.13; or an offense under F.S. § 849.09(2), 849.10 or 849.25(3);

Specified sexual activities means:

- (1) Human genitals in a state of sexual stimulation or arousal.
- (2) Acts of human masturbation, sexual intercourse or sodomy.
- (3) Fondling or other erotic touching of human genitals, pubic region, buttocks or female breasts.

Straddle dance, also known as a lap dance or face dance, means the use by an employee, whether clothed or not, of any part of his body to massage, rub, stroke, knead, caress or fondle the genital or pubic area of a patron, while on the premises, or the placing of the genital or pubic area of an employee in contact with the face of a patron, while on the premises.

Substantially enlarged, when used in the discussion of adult entertainment establishments, means increasing the size of the permitted or license premises by more than ten percent of the original permitted or licensed premises.

Violation of this article means a violation of any section of this article as found by a jury or any other trier of fact. All violations occurring on the same day prior to an arrest or the issuance of a notice to appear shall be considered as a single violation.

(Code 1988, § 2.5-4)

Cross reference—Definitions generally, § 1-2.

Sec. 10-30. Penalties.

Any person who violates any section of this article shall be prosecuted and punished in accordance with section 1-15 and additionally shall be subject to suspension or revocation of any license or permit, as provided in this article or as provided in other sections of this Code.

(Code 1988, § 2.5-5)

Sec. 10-31. Immunity of city officers and employees.

All city officers and employees who are acting within the scope of their authority and duties under this article shall be immune from prosecution, civil and criminal, for trespass upon real property.

(Code 1988, § 2.5-6)

Secs. 10-32—10-60. Reserved.

DIVISION 2. LICENSING

Sec. 10-61. Responsibility.

Ultimate responsibility for the administration of this article is vested in the city commission. The city clerk is responsible for issuing all licenses. The police chief is responsible for verifying information contained on an application. The building department is responsible for the inspection of licensed premises and premises for which application is made for a license in order to pass upon the construction and physical configuration of the premises involved. The fire chief is responsible for the inspection of licensed premises and premises for which application is made for a license to ascertain compliance with all fire prevention codes, statutes or ordinances in effect in the city. The public health department is responsible for the inspection of licensed premises and premises for which application is made for a license to ascertain compliance with city health codes, county health codes and applicable state laws and regulations. The zoning department is responsible for ascertaining compliance with all locational requirements of this article, all zoning regulations and all other applicable land use laws.

(Code 1988, § 2.5-21)

Sec. 10-62. Power of administrative agencies.

When a section of this article gives the city clerk, the police chief, the public health department, the building department, the zoning department or the fire chief the authority or duty to act, the authority or duty vests in the city clerk, the police chief, the public health officer, the head of

the building department, the head of the zoning department or the fire chief or any inspector or employee who is given the authority or duty to act in accordance with the administrative procedures of the agency or office concerned.
(Code 1988, § 2.5-22)

Sec. 10-63. License—Required.

(a) *Generally.* No adult bookstore, massage establishment, adult motion picture theater or adult dancing establishment shall be permitted to do business without having first obtained a license under this article.

(b) *Classification.* Licenses referred to in this article shall be classified as follows:

- (1) Adult bookstore;
- (2) Adult motion picture theater, which shall include adult arcades, places or buildings having adult motion picture booths, places or buildings having a hall or auditorium for the presentation of film material, places designated to permit viewing by patrons seated in automobiles and places or buildings having a combination of any or all of such;
- (3) Massage establishment; and
- (4) Adult dancing establishment.

(c) *Application generally.* Each application for a license shall state the classification and location for which it is to be issued. A license may be issued in only one classification and for only one location, but this shall not prohibit an applicant or multiple applicants from filing separate applications for licenses in two or more classifications at the same location.

(d) *Commercial establishments advertising adult entertainment.* Any commercial establishment that displays within 100 feet of its premises a sign or other form of advertisement capable of leading a reasonable person to believe that the establishment engages in an activity required by this article to be licensed shall obtain an adult entertainment license for the activity.
(Code 1988, §§ 2.5-23, 2.5-72)

Sec. 10-64. Same—Disqualification.

(a) *Noncompliance of premises.* No license required under this division shall be issued if the city clerk, as a result of investigations by the building department, the zoning department, the public health department and the fire chief, determines that the proposed license premises does not meet each and every one of the general and special requirements for the type of license applied for as established in this article, or if the proposed licensed premises fails to satisfy all applicable building, zoning, health and fire codes, ordinances, statutes or regulations, whether federal, state or local, nor shall any license be issued on false information given in the application for the license.

(b) *Effect of suspension of license.* No license shall be issued to:

- (1) Any individual, partnership or corporation whose license under this article is suspended;
- (2) Any partnership, a partner of which has a license suspended under this article;
- (3) Any corporation, an officer, director or principal stockholder of which has a license under this article suspended; or
- (4) Any individual who is or was at the time of suspension a partner in a partnership or an officer, director or principal stockholder of a corporation, whose license under this article is suspended.

(c) *Violation of law or court order.* No license shall be issued when its issuance would violate a statute, ordinance, law or when an order from a court of law prohibits the applicant from obtaining an adult entertainment or occupational license in the city or the county.
(Code 1988, § 2.5-24)

Sec. 10-65. Same—Application; fee.

(a) *Required information and documents.* Any person desiring to engage in the business of operating an adult bookstore, massage establishment, adult motion picture theater or adult dancing establishment shall file with the city clerk a sworn application on forms supplied by the city

clerk. The application shall contain the following information and shall be accompanied by the following documents:

- (1) If the applicant is:
 - a. An individual, his legal name and all aliases used by him;
 - b. A partnership, the full name;
 - c. A corporation, the exact corporate name, the date of incorporation, evidence that the corporation is in good standing, and the names and capacity of all the officers, directors and principal stockholders;
- (2) If the business is to be conducted under a name other than that of the applicant, the business name and the county of registration under F.S. § 865.09;
- (3) Whether the applicant or any of the other individual listed pursuant to subsection (a)(1) of this section has, within the five-year period immediately preceding the date of the application, been convicted of a specified criminal act and, if so, the particular criminal act involved and the place of conviction;
- (4) Whether the applicant or any of the other individuals listed pursuant to subsection (a)(1) of this section has had the license under this article previously suspended or revoked or has been a partner in a partnership or an officer, director or principal stockholder of a corporation whose license under this article has previously been suspended or revoked, including the date of the suspension or revocation;
- (5) The classification of the license for which the application is being filed;
- (6) Whether the applicant holds any other licenses in the classification for which the application is being filed and, if so, the number and locations of such licensed premises;
- (7) The proposed location of the business;
- (8) The names of the employees, if known; if unknown or there will be no employees, a statement to that effect; and

- (9) 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 of the proposed licensed premises. The term "fixed structural features" shall include walls, stages, immovable partitions, projection booths, admission booths, concession booths or stands, immovable counters and similar structures that are intended to be permanent.

(b) *Application fee.* Each application shall be accompanied by a nonrefundable application process fee of \$500.00 payable at the time the application is filed. If an applicant applies for more than one license for the same premises and submits the applications at the same time, he shall submit a nonrefundable fee of \$500.00 per license application.

(Code 1988, § 2.5-25)

Sec. 10-66. Same—Investigation.

Upon receipt of an application for a license required under this division that is properly filed with the city clerk and upon payment of the application fee, the police chief shall verify the information required by section 10-65. The public health department, the building department, the zoning department and the fire chief shall investigate the premises for compliance with this article and other applicable laws and regulations relating to construction, safety, fire protection, zoning and public health. At the conclusion of its investigation, each administrative agency shall endorse on the application the results and findings thereof, recommending either approval or disapproval of the application.

(Code 1988, § 2.5-26)

Sec. 10-67. Same—Issuance; denial; revocation.

(a) *Approval and issuance.* Upon the completion of the investigation of an application for a license required under this division by the police chief, the building department, the zoning department and the fire chief, the city clerk shall approve or disapprove the application. If approved,

the city clerk shall issue the license upon the payment of the appropriate license fee provided in section 10-75.

(b) *Disapproval and denial.* If the police chief, the public health department, the building department, the zoning department or the fire chief recommends disapproval, the reason therefor shall be indicated upon the application or in a separate writing, and the city clerk shall deny the application. If the application is disapproved, the city clerk shall notify the applicant of the disapproval and the reasons therefor. Notification shall be by certified mail and shall be sent to the address on the license application, which shall be considered the correct address. Notwithstanding any other section of this article, the city clerk shall deny any application for a license in which the applicant has supplied false or untrue information. The city clerk shall approve or disapprove every application within 90 days from the date of completed application has been submitted. Upon the expiration of 90 days the applicant shall be permitted to initiate operating the adult entertainment establishment for which a license was sought, unless the city clerk notifies the applicant of a preliminary denial of the application. A preliminary denial shall specify the reasons for denial and shall be sent to the address on the license application, which shall be considered the correct address.

(c) *Revocation.* If a license is issued as a result of false information, misrepresentation of fact, or mistake of fact, it shall be revoked. If the application is revoked, the city clerk shall notify the licensee of the revocation and the reasons therefor. Notification shall be by certified mail and shall be sent to the address on the license application, which shall be considered the correct address.

(d) *Appeal.* Within 15 days after the mailing of either a notice of denial or preliminary denial of an application for a license or a notification of the revocation of a license, the applicant or licensee may take an appeal to the city commission as provided in this article. If the commission finds that the application should be approved, it shall so order and, upon payment of the appropriate license fee provided in this article of \$500.00, the

city clerk shall issue the license. If the commission finds the license should not have been revoked, it shall notify the city clerk who shall reissue the license.

(Code 1988, § 2.5-27)

Sec. 10-68. Limitation on licenses and licensed premises.

There shall be no limitation on the number of licenses issued under this division, but licensed premises shall observe the locational restrictions contained in this article. A licensed premises may be owned by the licensee or may be leased by the licensee from a person not a licensee under this article. However, a licensee who is a tenant or lessee may not surrender his tenancy or lease to the owner or lessor if by so doing the owner or lessor will take possession, control and operation of the licensed premises and the business licensed under this division, unless the license is transferred as provided in this division. A licensee who is the owner of the licensed premises may not lease or otherwise give up possession, control and operation of the licensed premises and the business licensed under this division to any other individual, partnership or corporation, unless the license is transferred as provided in this division. (Code 1988, § 2.5-28)

Sec. 10-69. Display of license.

Every person licensed under this division shall display the license in a conspicuous places on the licensed premises in a clear, transparent cover or frame. The license shall be available for inspection at all times by the public. No person shall mutilate, cover, obstruct or remove a license so displayed.

(Code 1988, § 2.5-29)

Sec. 10-70. Term of license; renewals.

(a) *Term.* All licenses issued under this division, except new licenses, shall be annual licenses which shall be paid for on or before October 1 and shall expire on September 30 of the following year. A licensee beginning business after October 1 and before April 1 may obtain a new license upon application therefor and the payment of the appropriate license fee, and such license shall

expire on the following September 30. A licensee beginning business after March 31 and before October 1 may obtain a new license upon application therefor and the payment of one-half of the appropriate license fee required for the annual license, and such license shall expire on September 30 of the same year. This subsection shall not affect any other section of this article.

(b) *Renewals.* A licensee under this article shall be entitled to a renewal of his annual license from year to year, as a matter of course, on or before October 1 by presenting the license for the previous year or satisfactory evidence of its loss or destruction to the city clerk and by paying the appropriate license fee. A license that is not renewed by October 1 of each year shall be considered delinquent and, in addition to the regular license fee, subject to a delinquency penalty of ten percent of the license fee for the month of October and any additional month or fraction thereof of delinquency until paid, provided that the total delinquency penalty shall not exceed 25 percent of one license fee. All licenses not renewed within 30 days of September 30 will be revoked by the city clerk, unless such license is involved in litigation.

(Code 1988, § 2.5-30)

Sec. 10-71. Transfer of license.

When a licensee shall have made a bona fide sale of the business which he is licensed under this division to conduct, he may obtain a transfer of the license issued under this division to the purchaser of the business, but only if, before the transfer, the application of the purchaser shall be approved by the city clerk in accord with the same procedure provided in this division for issuance of new licenses. Before the issuance of any transfer of a license, the transferee shall pay a transfer fee of \$250.00. Licenses issued under this division shall not be transferable in any other way than provided in this section.

(Code 1988, § 2.5-31)

Sec. 10-72. Licensee moving to new location; changing name of business.

(a) *New location.* A person licensed under this division may not move his licensed premises to a new location and operate at the new location

without first following the same procedure for the issuance of new licenses in this division and payment of the application fee of \$500.00. The licensee shall submit to the city clerk an application for a change of location, accompanied by an application fee of \$500.00 at the time the application is filed. The application will contain or have attached to it a plan drawn to appropriate scale of the licensed premises at the new location indicating the area to be included in the new licensed premises; all windows, doors, entrances and exits; and the fixed structures features of the new licensed premises. If more than one license has been issued to the licensed premises at the old location, the licensee shall state in his application for a change of location which of the licenses is being moved to the proposed new location. Upon approval of the application, there shall be issued to the licensee a license for the new location.

(b) *Change of name.* No licensee may change the name of the business located at his licensed premises without first giving the city clerk 30 days' notice in writing by certified mail of such change and without first making payment to the city clerk of a change-of-name fee of \$10.00.

(Code 1988, § 2.5-32)

Sec. 10-73. Suspension of license.

(a) *Violation of health, building, zoning or fire provisions.* If a premises licensed under this division is found in violation of health, building, zoning or fire provision of this article, the appropriate agency shall notify the licensee of the violation according to the standard procedures of the agency and shall follow its normal agency procedures for correcting the violations and shall grant the licensee the right to exhaust applicable administrative remedies. If the licensee fails either to correct the violation or to obtain an administrative reversal of the agency finding, the appropriate agency shall notify the city clerk, who shall forthwith initiate procedures for suspension of the license.

(b) *Other violations.* If a jury or other trier of fact in a court of law finds that a licensee has violated any section of this article, whether or not

an adjudication of guilt has been entered, the city clerk shall forthwith initiate procedures for suspension of license.

(c) *Procedure.*

- (1) *Generally.* Upon receiving notice that a licensee has violated a section of this article, as provided in subsections (a) and (b) of this section, or any other county, state, federal or city statute, ordinance or resolution, the city clerk shall suspend all licenses issued for the premises where the violations occurred, unless otherwise provided in this subsection (c), and shall notify the licensee of his action. Notification shall be by certified mail or hand delivery and shall be sent to the address on the license application, which shall be considered the correct address.
- (2) *Periods of suspension.* A single violation by a licensee of this article shall result in suspension of the adult entertainment license for 30 days. Upon a second violation of this article within in a period of two years from the date of a prior violation of this article, but not including any time during which the license was suspended, the license shall be terminated permanently. Upon a third violation of this article within a period of two years from the first of three violations, but not including any time during which the license was suspended, the license shall be revoked. All periods of suspension shall begin on the 15th day from the date the city clerk mails a notice of suspension to the licensee or on the date the licensee delivers his license to the city clerk, whichever comes first.
- (3) *Surrender of license required.* If a licensee, after having been mailed notice of the suspension of his license in the manner provided in this subsection, fails to surrender his license to the city clerk within 15 days or fails otherwise to account for the license to the satisfaction of the city clerk, the license shall be terminated forthwith.

(d) *Reissuance.* When a license is suspended for a violation of a health, building, zoning or fire provision of this article, as described in subsection (a) of this section, the license shall not be reissued until the violation is corrected.
(Code 1988, § 2.5-33)

Sec. 10-74. Appeals.

(a) Appeals alleging error in the denial, suspension or revocation of a license or permit issued under this article shall be by petition for a formal hearing before the city commission.

(b) A notice of intent to appeal shall be filed with the city clerk within 15 days of the mailing of a notice of denial, suspension or revocation of a license or permit. Thereafter, and upon payment of a fee of \$100.00 to cover administrative costs, a hearing will be scheduled within 30 days. The city clerk shall give the petitioning party at least ten days' written notice of the time and place for the hearing.

(Code 1988, § 2.5-34)

Sec. 10-75. License fees.

(a) *Levied.* Under this article the following annual license fees are levied:

- (1) Adult bookstore, \$500.00.
- (2) Massage establishment, \$500.00.
- (3) Adult motion picture theaters, as follows:
 - a. Having only adult motion picture booths, \$100.00 for each booth;
 - b. Having only a hall or auditorium, \$3.50 for each seat or place;
 - c. Seated in automobiles, \$3.50 for each speaker or parking space; or
 - d. Having a combination of any of subsections (a)(3)a through (a)(3)c of this section, the license fee applicable to each under subsections (a)(3)a through (a)(3)c of this section.
- (4) Adult dancing establishment, \$500.00.
- (5) Two or more licenses in any of the categories in this subsection, except a massage establishment, to a single premises, \$1,000.00.