

534. Sexually oriented businesses.

534.1 Purpose, construction. It is the purpose of this section to regulate the location of sexually oriented businesses so as to prevent the adverse secondary effects on the public health, safety, and welfare, which, as the Supreme Court recognized in the case of *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000), are "caused by the presence of even one such establishment." This section is designed to eliminate or lessen such adverse secondary effects by maintaining minimum distances between such sexually oriented businesses and certain other uses and land zoned for office or residential use and allowing sexually oriented businesses to locate in appropriate areas of the county only. This section is based upon the fundamental zoning principle that certain uses, by the very nature of the adverse secondary effects such uses are recognized to have upon the surrounding community, must be subjected to particular restrictions so that such uses may exist without destroying the value, vitality, or existence of other lawful and reasonable uses. The sole purpose of the legislative body of the county in enacting this section is the desire to preserve and protect the quality of life, public health, safety, and general welfare of the citizens of the county and not to suppress free speech or impair the constitutional rights of any person or group of persons. Nothing herein shall be construed to authorize a commission of any obscenity offense or other criminal defense as proscribed by the laws of the state, the county, or the laws of any local government within the county.

534.2 Definitions. Except for those words expressly defined below, the words used in this section shall have the meanings set forth in this section, and article 200, section 201, of this Code. To the extent not defined in this section or by article 200, section 201, of this Code, such words shall have the meaning as defined by the American Heritage Dictionary, Second College Edition. The following terms, when used in this section, shall have the meanings respectively ascribed to them as set forth below:

A. "Day-care facility" means any facility, whether operated profit or not-for-profit, that provides supervision and care for minors as its primary function.

B. "Minor" means any person under the age of 18 years.

C. "Physical contact establishment" means a site or premises, or portion thereof, upon which any person who is an owner, proprietor, employee, or independent contractor, in exchange for payment, manipulates the superficial tissues of the body of another person, with any portion of the torso, hand, foot, leg, arm, or elbow, whether or not aided by any device. The definition of physical contact establishment does not include the following:

1. Licensed health-care facilities;
2. Licensed physicians or nurses engaged in the practice of their profession;
3. Educational or professional athletic facilities, if massage is a normal and usual practice in such facility;
4. Establishments, exempted under F.S. § 480.024; or
5. Massage establishments licensed under F.S. ch. 480.

D. "Place of religious worship" means any building or structure used primarily and regularly for religious services or education of any denomination, and the title, lease, or rental agreement of such building or structure is owned or held by a not-for-profit organization devoted to religious services or education.

E. "Public park" means a park, playground, swimming pool, reservoir, golf course, or athletic field, within the county, which is under the control, operation, or management of the county, or any other governmental entity.

F. "School" means an educational institution, public or private, offering a curriculum acceptable by local and state educational officials to fulfill legal requirements of education for elementary through high school levels, or any part thereof.

G. "Sexually oriented business" means:

1. Any physical contact establishment;
2. Any premises where members of the public or any person for consideration are offered any live or recorded performance, or any visual images tangibly fixed in any medium, which performance, image, or recording has as its primary or dominant theme subject matter depicting, describing, or relating to specified sexual activities or specified anatomical areas; or
3. Any premises where the presentation or distribution of any performance, recording, or visual image requires the exclusion of minors from the premises pursuant to F.S. ch. 847.

534.3 Locations within authorized zoning district; and distance restrictions. Sexually oriented businesses shall be allowed within in the I-2 general industrial district only, and then only if the following restrictions are met:

A. No sexually oriented business shall be located within 1,000 feet of:

1. Any pre-existing zoning district within the county that is zoned for residential or office use including, but not limited to, residential planned unit development districts and office planned unit development districts;
2. Any lawfully pre-existing:
 - a. Day-care facility;
 - b. Place of religious worship;
 - c. Public park; or
 - d. School;

That is located within jurisdictional boundaries of the county.

B. The distances provided for in section 534.1 of this Code shall be measured in a straight line, without regard to intervening structures or objects, from the nearest portion of any building in which the sexually oriented business is operated to the nearest property line of a parcel:

1. Upon which such a lawfully pre-existing day-care facility, place of religious worship, public park, or school, is located; or
2. Within a district zoned for residential or office use.

534.4 Prohibited conduct. No sexually oriented business shall be conducted in any manner that permits any person on any parcel of property within the county, other than the parcel upon which the sexually oriented business is located, to observe any live or recorded performance, or any visual image tangibly fixed in any medium, which performances, images, or recordings have as their primary or dominant theme subject matter depicting, describing, or relating to specified sexual activities or specified anatomical areas or which performance, recording, or visual image requires the exclusion of minors pursuant to F.S. ch. 847, other than such observation as may occur as a result of the observer's intentional reception of such a performance, recording, or visual image within an enclosed structure.

534.5 No application, license, or permit. With the expressed exception of occupational licenses and permits issued upon purely objective criteria applicable to all businesses within an I-2 zoning district and applications relating to such licenses and permits, no

application or permit shall be required for the establishment of any sexually oriented business.

534.6 No subjective zoning condition, restriction, safeguard, or standard. No sexually oriented business shall be subject to any regulation, zoning condition, restriction, safeguard, or standard that contains subjective criteria.

534.7 No variances, waivers, or special exceptions. No variances, waivers, or special exceptions from the criteria set forth in this section shall be permitted for any reason.

534.8 Appeals of final determination affecting sexually oriented businesses. Any party with standing to appeal the final determination of any county official affecting any sexually oriented business protected by the First Amendment to the United States Constitution shall be entitled, as a matter of right, to seek immediate review of such final determination by filing an appropriate pleading with the circuit court possessing jurisdiction over the county.

534.9 Injunctions authorized. Any party that violates this section shall be subject to an injunction by the county to prevent further violations of this section in addition to any other remedies available to the county as provided by law.

534.10 Nonconforming sexually oriented businesses. Subject to meeting the conditions set forth in this section, any sexually oriented businesses that conducted business as a sexually oriented business at its location and building on December 17, 2002, that is not in conformity with the requirements of section 534.3 of this Code may continue to operate, subject to article 531 of this Code as a legally nonconforming use. However, such sexually oriented business shall not conduct different types of sexually oriented business activities other than those being conducted on December 17, 2002. Sections 531.5 and 531.6 of this Code shall not apply to such legally nonconforming sexually oriented business.

A. Within two months from the effective date of this section, but no later than the close of business on March 14, 2003, the owner of the sexually oriented business must apply to the county's growth management/zoning department for legal nonconforming use status. After the close of business on March 14, 2003, any nonconforming sexually oriented business that has not made an application in conformity with this section shall no longer be eligible to receive legal nonconforming use status.

B. Applications by sexually oriented businesses for legal nonconforming use status shall include:

1. The name, address, and telephone number of the owner of the sexually oriented business.
2. The name, address, and telephone number of the owner of record of the parcel of real property upon which the subject sexually oriented business is situated.
3. A legal description and physical address of the parcel of real property upon which the subject sexually oriented business is situated.
4. Proof that all required occupational licenses have been issued and are in effect, for the subject sexually oriented business both as of December 17, 2002, and through the date of the application.
5. A written statement, signed under penalty of perjury by the owner of the subject sexually oriented business, or such owner's legally authorized representative if the sexually oriented business is not owned by a natural person, that the subject sexually

oriented business was conducting business as a sexually oriented business at its then current location on or before December 17, 2002.

6. Proof of leasehold or ownership interest held in the parcel of real property upon which the subject sexually oriented business is situated by the owner of the subject sexually oriented business both as of December 17, 2002, and as of the date of the application.

7. Proof that the person or entity identified as the owner of record of the parcel of real property upon which the subject sexually oriented business is situated actually owned such parcel of real property both as of December 17, 2002, and as of the date of the applications.

8. A floor plan, drawn at a readable scale, and signed and sealed by a state-registered engineer or surveyor accurately depicting the subject sexually oriented business as of December 17, 2002.

9. A site plan, drawn at a readable scale and signed and sealed by a state-registered engineer or surveyor accurately depicting the subject sexually oriented business as of December 17, 2002.

C. The county's growth management/zoning department shall grant any application meeting requirements set forth above for such applications. The county's growth management/zoning department shall issue a written determination upon any application submitted pursuant to this section within 30 days of the date such application was submitted to the county's growth management/zoning department and shall send a copy of such written determination to the applicant and to any person who owns a parcel of real property located within 1,000 feet of the subject sexually oriented business via certified mail, return receipt requested. Failure of the county's growth management/zoning department to issue such a written determination within the time specified above shall authorize the applicant to continue operating the applicant's business at the location identified in the application, until such time as such a written determination is rendered.

D. The applicant, or any person who owns a parcel of real property located within 1,000 feet of the subject sexually oriented business, as such distance is measured pursuant to section 534.3.B above, has the right to appeal the written determination of the county's growth management/zoning department within 30 days of the date of the written determination, as provided for in section 317 of the land development code. The sole issue to be considered in any such appeal is whether the application which is the subject of such written determination met the requirements of this section.

E. Sexually oriented businesses granted legally nonconforming use rights under this subsection must nonetheless comply with all requirements of this section, except section 534.3 of this Code.

Secs. 535--599. Reserved.