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CHAPTER 180. ADULT ENTERTAINMENT CODE

§ 180.001. 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 fifty (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, 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. 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 twenty-eight (28) states having confidential reporting requirements.
- (10) The number of cases of early (less than one (1) 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 eleven and one-tenths percent (11.1%).
- (11) The number of cases of gonorrhea in the United States reported annually remains at a high level, with over 500,000 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 divisions (B)(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 Chapter 796, F. S., 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 § 166.041, F.S.
- (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.

(Ord. 2007-29, passed 4-30-07)

§ 180.002. 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 Code of Ordinances 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.

(Ord. 2007-29, passed 4-30-07)

§ 180.003. OBSCENITY; INDECENT EXPOSURE UNLAWFUL

As a matter of state and federal law, obscenity is unlawful in the city. 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.

(Ord. 2007-29, passed 4-30-07)

§ 180.004. 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 or her designee has been otherwise notified in writing.

(Ord. 2007-29, passed 4-30-07)

§ 180.005. 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 or she shall serve as the licensing office. The City Manager may modify his or her designation from time to time in writing. When the phrase "City Manager or his or her designee" is used in this chapter, the designee referred to shall be the office designated in writing pursuant to this division.

(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; or
- (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.

(Ord. 2007-29, passed 4-30-07)

§ 180.006. LOCATION GENERALLY

Locations of all sexually-oriented businesses and adult entertainment establishments within the city shall comply with the provisions of this chapter, and all sexually-oriented businesses and adult entertainment establishments shall be subject to the restrictions enumerated in this Code.

(Ord. 2007-29, passed 4-30-07)

§ 180.007. 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 or her designee as set forth in this chapter. Other departments having responsibility under this chapter are as follows:

- (A) The Finance Department is responsible for granting, denying, revoking, renewing, suspending and canceling business tax receipts in accordance with state law.
- (B) 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 or her department will serve as a document repository for inspection of any information by any applicant.
- (C) The Building Official is responsible for inspecting establishments in order to ascertain compliance with all applicable building codes, statutes, ordinances and regulations.
- (D) The Fire Chief is responsible for inspecting establishments and businesses in order to ascertain compliance with all applicable fire codes, statutes, ordinances and regulations.

- (E) 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.

(Ord. 2007-29, passed 4-30-07)

§ 180.008. 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 or her 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.

(Ord. 2007-29, passed 4-30-07)

§ 180.009. 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;
 - (2) One (1) or more of the following applicable phrases:
 - (a) "Adult Bookstore."
 - (b) "Adult Theater."
 - (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; and
- (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.

(Ord. 2007-29, passed 4-30-07)

§ 180.010. 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 \$500 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 or she 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;
 - (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;
 - (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; or
 - (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 § 865.09, F.S., 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 division (B) of this section has had a previous license under this chapter, or Chapter 110 of the Code of Ordinances, 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 division (B) of this section 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 division (B) of this section 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 (1) classification in one (1) 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.

(Ord. 2007-29, passed 4-30-07)

§ 180.011. 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 or her 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.

(Ord. 2007-29, passed 4-30-07)

§ 180.012. 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.

(Ord. 2007-29, passed 4-30-07)

§ 180.013. INVESTIGATION OF APPLICATION

Upon receipt of an application properly filed with the City Manager or his or her 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 or her designee its investigative findings relating to the application and the reasons therefor.

(Ord. 2007-29, passed 4-30-07)

§ 180.014. 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 or her 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 or her designee determines that one (1) or more of the reasons for denial set forth in § 180.022 exist, the application shall be denied, within thirty (30) days of the date that the application is filed, and the City Manager or his or her 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 (5) 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.

(Ord. 2007-29, passed 4-30-07)

§ 180.015. REASONS FOR DENIAL OF APPLICATION OF LICENSE

The application for a license shall be denied if one (1) or more of the following reasons is found:

- (A) 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 § 847.0134, F.S.
- (B) The application contains material false information.
- (C) The applicant or any of the individuals stated in § 180.017 has a license under this chapter which is under suspension.
- (D) The applicant or any of the individuals stated in § 180.017 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.

- (E) The applicant or any of the individuals stated in § 180.017 had a license under this chapter which had been revoked within the preceding two (2) years.
- (F) The applicant or any of the individuals stated in § 180.017 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.

(Ord. 2007-29, passed 4-30-07)

§ 180.016. 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 different decision regarding the former reason(s) for denial.

(Ord. 2007-29, passed 4-30-07)

§ 180.017. 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, three hundred dollars (\$300.00);
- (2) Adult theater, three hundred dollars (\$300.00);
- (3) Adult performance establishments, three hundred fifty dollars (\$350.00);
- (4) Adult motel, three hundred dollars (\$300.00);
- (5) Commercial bodily contact establishment, three hundred dollars (\$300.00); and
- (6) Escort service, three hundred dollars (\$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.

(Ord. 2007-29, passed 4-30-07)

§ 180.018. 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 (1/2) 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.

(Ord. 2007-29, passed 4-30-07)

§ 180.019. RECORDS AND REPORTS

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

(Ord. 2007-29, passed 4-30-07)

§ 180.020. 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.

(Ord. 2007-29, passed 4-30-07)

§ 180.021. 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 or her designee is given thirty (30) days' notice in writing of the proposed name change;
- (2) The change of name fee in the amount of three dollars (\$3.00) is paid;
- (3) The licensee has complied with § 865.09, F.S.;
- (4) The licensee has complied with the provisions of Chapter 607, F.S.; and
- (5) The licensee has complied with the provisions of Chapter 620, F.S.

(Ord. 2007-29, passed 4-30-07)

§ 180.022. SUSPENSION AND REVOCATION OF LICENSE

The City Manager or designee shall suspend a license when he or she or designee determines that any one (1) of the following has occurred:

- (A) 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 Chapters 561, 562, 563, 564, 565, 794, 796, 800, 826, 827, 847, 893 or 895, and § 775.21, F.S., or an analogous federal statute.
- (B) Inspection of records and premises. In the event that the City Manager or his or 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 or her designee may suspend the license for a period not to exceed thirty (30) days.

(C) Illegal activity/suspension:

- (1) In the event three (3) or more violations occur within a two-year period, and convictions result from at least three (3) of the violations, the City Manager or his or 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.
- (2) 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 division (C)(1) above, but not including any time during which the license was effectively suspended, and a conviction results from one (1) or more of the violations, the City Manager or his or 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.
- (3) 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 division (C)(2) above, but not including any time during which the license was effectively suspended, and a conviction results from one (1) or more of the violations, the City Manager or his or 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.

(D) Revocation. The City Manager or his or her designee shall revoke a license when he or she or designee determines that any one (1) of the following has occurred:

- (1) There has been one (1) 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 division (C)(3) of this section, but not including any time during which the license was effectively suspended, and a conviction results from one (1) or more of the violations, the City Manager or his or 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.
- (2) The licensee or any person on its or his or her behalf or any person listed on the application pursuant to § 180.017 gave false or misleading information in the material submitted during the application process.
- (3) The licensee or any person on its or his or her behalf or any person listed on the application pursuant to § 180.017 has knowingly allowed possession, use, or sale of controlled substances on the premises of the establishment or business or when with a customer.

- (4) The licensee or any person on its or his or her behalf or any person listed on the application pursuant to § 180.017 has knowingly allowed prostitution on the premises of the establishment or business or when with a customer.
- (5) The licensee or any person on its or his or her behalf or any person listed on the application pursuant to § 180.017 knowingly operated the adult entertainment establishment or sexually-oriented business during a period when the licensee's license was suspended.
- (6) Except in the case of an adult motel, the licensee or any person on its or his or her behalf or any person listed on the application pursuant to § 180.017 has knowingly allowed any specified sexual activities to occur on the premises of the establishment or business.

(E) Effective dates of suspensions and revocations.

- (1) 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 or 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.
- (2) 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.
- (3) 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 (2) years running from the date the revocation actually takes effect after all abatement periods have lapsed.
- (4) If an adult entertainment establishment or sexually-oriented business license held by any of the entities or individuals listed in § 180.017 is revoked for the second time and the license is held by any one (1) 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 (4) years running from the date the revocation actually takes effect after all abatement periods have lapsed.
- (5) If an adult entertainment establishment or sexually-oriented business license held by any of the entities or individuals listed in § 180.017 is revoked for a third time and the license is held by any one (1) 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 (6) years running from the date the revocation actually takes effect after all abatement periods have lapsed.

(F) 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 and the United States.

(Ord. 2007-29, passed 4-30-07)

§ 180.023. SUSPENSION AND REVOCATION PROCEEDINGS

- (A) Challenge to suspension or revocation. If the City Manager or his or her designee notifies a licensee in writing of the pending suspension or revocation of a license as provided in § 180.021, 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 or 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 or 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, 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 (10) 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 or her, 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 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 or her designee and any witnesses of the City Manager or his or 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 or 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 or her designee, the order of presentation of testimony and evidence shall be as follows:
 - (a) The City Manager or his or her designee and any witnesses of the City Manager or his or her designee.
 - (b) The licensee and any witnesses of the licensee.

- (c) Rebuttal witnesses from the City Manager or his or her designee.
 - (d) Rebuttal witnesses from the licensee.
 - (e) Summation by the City Manager or his or 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) 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 or 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 or her designee and the 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 or 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 or her designee or surrender the revoked license, upon demand, to a member of the Police Department.

(Ord. 2007-29, passed 4-30-07)

§ 180.024. 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 (2) years from the date the worker is separated from employment.
- (B) The original records required by division (A) of this section 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 or her 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.

(Ord. 2007-29, passed 4-30-07)

§ 180.025. 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:

- (A) 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.
- (B) 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 or her designee, when the establishment or business is open for business.
- (C) 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.
- (D) Provide to any law enforcement officer and the City Manager or his or 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.
- (E) 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.
- (F) 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.
- (G) Not employ or provide goods or services to any person under eighteen (18) years of age.
- (H) Not provide, offer or engage in any services to any person when not licensed to do so under this chapter.
- (I) Not operate when a license issued pursuant to this chapter has been suspended, revoked or canceled or when the license is expired.
- (J) Not permit any animal except seeing-eye dogs accompany a worker or customer when services are provided or performed.
- (K) 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.
- (L) Not advertise the presentation of any activity prohibited by any law, rule or regulation whether federal, state or local.
- (M) 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.

- (N) Ensure that at least one (1) 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.
 - (O) Ensure that at least one (1) operator is situated in each manager's station, when required by this chapter, at all times that any customer is present inside the premises.
 - (P) 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.
 - (Q) Not alter or otherwise change the contents of an adult entertainment establishment or sexually-oriented business license.
 - (R) 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.
 - (S) Establish, create and maintain worker records as required by this chapter.
 - (T) 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.
- (Ord. 2007-29, passed 4-30-07)

§ 180.026. 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:

- (A) 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.
- (B) 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.
- (C) Create, establish and maintain a daily register in a format provided by the City Manager, or his or 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.
- (D) 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.

(E) Maintain all customer contracts and daily registers for a period of two (2) years following the customer's date of service.

(Ord. 2007-29, passed 4-30-07)

§ 180.027. 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:

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

- (1) 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;
- (2) 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;
- (3) 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
- (4) 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.

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

- (1) 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;
- (2) 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;
- (3) 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;
- (4) 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;
- (5) Have an illuminated and continuous main aisle in which workers and customers can be seen from one end to the other; and

- (6) Have, except for the entrance, walls or partitions of solid construction without any holes or openings in such walls or partitions.
 - (C) Have one (1) or more manager's stations.
 - (D) 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.
 - (E) If the premises have two (2) 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 (1) of the manager's stations. The view required in this division shall be by direct line of sight from the manager's station.
 - (F) 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.
 - (G) 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.
 - (H) 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.
 - (I) Have, in areas accessible to customers, interior wall surfaces which can withstand frequent cleaning with industrial strength cleaning agents.
 - (J) Use only those shades and blinds which can withstand frequent cleaning with industrial strength cleaning agents. (Draperies are prohibited.)
 - (K) Maintain areas accessible to customers in a clean and sanitary condition.
 - (L) Keep all furniture upholstery material free from holes and rips.
 - (M) 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.
- (Ord. 2007-29, passed 4-30-07)

§ 180.028. 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 division (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 (3) 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.

(Ord. 2007-29, passed 4-30-07)

§ 180.029. 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:

- (A) Operate only from a fixed physical location which is set forth on its sexually-oriented business license and all required business tax receipts.
- (B) Not advertise, offer or provide any other service other than services which are posted.
- (C) 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 (1) customer and then discarded into a sanitary receptacle.
- (D) Store clean linen, towels and other materials used in connection with providing commercial bodily contact in closed cabinets.
- (E) Disinfect and sterilize non-disposable instruments after each use on a customer.

- (F) 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.
- (G) Not encourage, allow or permit any customer to consume food or beverages in the business.
- (H) 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.
- (I) 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.
- (J) 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.
- (K) 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.
- (L) Not provide services at any place other than a physical location licensed to provide commercial bodily contact under the provisions of this chapter.
- (M) 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.

(Ord. 2007-29, passed 4-30-07)

§ 180.030. 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:

- (A) Not advertise, offer or perform any other service than services which are posted.
- (B) 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.
- (C) 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.
- (D) 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.
- (E) If offering or providing escorts or escort service within the city, each escort service shall notify the Police Chief and the City Manager or his or 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.
- (F) Include in all advertising or promotional literature posted, placed, published, or distributed within the city 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.

- (G) 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 or 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 or 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.
- (H) 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.

(Ord. 2007-29, passed 4-30-07)

§ 180.031. 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 §§ 180.060 et seq.
 - (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 §§ 180.060 et seq., to the view of a worker.

(Ord. 2007-29, passed 4-30-07)

§ 180.032. 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, himself or herself 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 §§ 180.060 et seq., 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 §§ 180.060 et seq., 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 §§ 180.060 et seq., 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, himself or herself 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.

(Ord. 2007-29, passed 4-30-07)

§ 180.033. OPERATION WITHOUT LICENSE

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:

- (A) That the establishment or business does not have an adult entertainment establishment or sexually-oriented business license for the applicable classification.
- (B) That the establishment or business has a license which is under suspension.
- (C) That the establishment or business has a license which has been revoked, canceled or has expired.

(Ord. 2007-29, passed 4-30-07)

§ 180.034. 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 §§ 180.032 and 180.033 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 §§ 180.032 and 180.033 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 §§ 180.032 and 180.033 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 §§ 180.032, 180.033 and 180.037 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 §§ 180.032 and 180.036 regardless of whether the establishment is licensed thereunder.

(Ord. 2007-29, passed 4-30-07)

§ 180.035. 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 §§ 180.060 et seq., 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.

(Ord. 2007-29, passed 4-30-07)

§ 180.036. 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:

- (A) Admittance to the establishment or business of a person under eighteen (18) years of age when the establishment or business is open for business.
- (B) A person under eighteen (18) years of age to remain at the establishment or business when the establishment or business is open for business.
- (C) A person under eighteen (18) years of age to purchase goods or services from the establishment or a worker at the establishment or business.
- (D) A person under eighteen (18) years of age to be a worker at or for the establishment or business.

(Ord. 2007-29, passed 4-30-07)

§ 180.037. 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 or 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 section when requested by a law enforcement officer or the City Manager or his or her designee when the establishment or business is open for business.

(Ord. 2007-29, passed 4-30-07)

§ 180.038. 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 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 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.

(Ord. 2007-29, passed 4-30-07)

§ 180.039. 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:

- (A) 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:
 - (1) The time of arrival and estimated time of departure;
 - (2) A copy of the escort service's sexually-oriented business license and, if applicable, the escort's business tax receipt;
 - (3) The name of the escort, the escort service and the customer being met/served; and
 - (4) The location of the meeting or service within the structure including the room number.
 - (B) To require, entice or solicit any customer to remove any article of clothing.
 - (C) To display or expose any specified anatomical area to a customer.
 - (D) 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.
 - (E) 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.
 - (F) 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.
 - (G) 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.
 - (H) To accept any compensation or payment except that which is provided in the customer contract.
- (Ord. 2007-29, passed 4-30-07)

§ 180.040. 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:

- (A) 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.

- (B) To display or expose any specified anatomical area except in accordance with §§ 180.060 et seq., to a customer.
- (C) To allow a customer to expose or display the customer's specified anatomical areas except in accordance with §§ 180.060 et seq., in the presence of a worker.
- (D) To allow a customer to engage in any specified sexual activity with him or herself, another customer or with a worker.
- (E) To perform or provide commercial bodily contact except at the premises of a commercial bodily contact establishment licensed under this chapter.
- (F) To engage in or offer to engage in private modeling or the activities of an escort with any customer.
- (G) To provide commercial bodily contact or service to a customer without first executing a customer contract as required by this chapter.
- (H) To intentionally touch, fondle, manipulate or massage the specified anatomical area of any customer.
- (I) 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.
- (J) To remain in the presence of any customer who is displaying, exposing, intentionally touching, fondling or manipulating any specified anatomical area.
- (K) 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.
- (L) To solicit or require a customer to remove any item of clothing as a prerequisite to providing commercial bodily contact.
- (M) To accept or solicit any tip, remuneration, consideration or gratuity in excess of the fee provided in the executed customer contract.
- (N) To accept or solicit any tip, remuneration, consideration or gratuity in exchange for any enhanced service.
- (O) 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.
- (P) To engage in or offer to engage in any private performance or act as an adult model.

(Ord. 2007-29, passed 4-30-07)

§ 180.041. 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 division (A) above, in the event that division (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 division (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.

(Ord. 2007-29, passed 4-30-07)

§ 180.042. BUSINESS TAX RECEIPT; HOME OCCUPATIONS

(A) The Finance Department 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 chapter.

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

(Ord. 2007-29, passed 4-30-07)

§ 180.043. 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.

(Ord. 2007-29, passed 4-30-07)

§ 180.044. 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.

(Ord. 2007-29, passed 4-30-07)

§ 180.045. PENALTY

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 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 § 62.22, F. S. 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.

(Ord. 2007-29, passed 4-30-07; Am. Ord. 2007-31, passed 4-30-07)