FRANKLIN COUNTY ORDINANCE #2017-06

AN ORDINANCE OF FRANKLIN COUNTY, FLORIDA, REGULATING ADULT ENTERTAINMENT; PROVIDING DEFINITIONS AND EXCEPTIONS; PROVIDING AN EFFECTIVE DATE; AND PROVIDING PENALTIES

WHEREAS, the Franklin County Board of County Commissioners finds that public nudity is contrary to the community standards of Franklin County and is regulated by Franklin County Ordinance 2017-04, and

WHEREAS, the Board of County Commissioners have a duty to investigate the feasibility of adopting reasonable regulations to protect the citizens of the County from activities that have adverse effects which are harmful to the health, safety and general welfare of the citizenry; and

WHEREAS, the Board of County Commissioners of Franklin County finds that a substantial need exists to significantly revise the zoning ordinance regarding sexually oriented businesses (referred to as "adult regulated uses" in the zoning ordinance) within the County; and

WHEREAS, Franklin County retained Eric Damian Kelly, FAICP, a nationally known lawyer and planner, to conduct a review and modification of County's regulation of adult entertainment; and

WHEREAS, the services provided by Kelly. Included the following elements:

Consultation with the County Attorney on this issue;

Review of existing ordinances in the Franklin County; and,

Review of studies and litigation concerning sexually oriented businesses in other communities throughout the U.S., with a focus on Florida;

WHEREAS, the United States Supreme Court in *County of Renton v. Playtime Theater, Inc.*, 475 U.S. 41 (1986), held that local governments may rely upon the experiences of other cities as well as on its own studies in enacting local legislation to regulate sexually oriented businesses; and

WHEREAS, in *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425, 438439, 122 S. Ct. 1728, 152 L. Ed. 2d 670 (2002), the Supreme Court reaffirmed its holding in *Renton;* and

WHEREAS, the United States Supreme Court in *Renton* and its progeny has held that a local government may regulate adult entertainment and sexually oriented

businesses so long as said regulations are designed to serve a substantial government interest and are aimed not at the content of protected speech within said establishments but rather at the secondary effects of said establishments on the surrounding communities; and

WHEREAS, it is not the intent of this ordinance or any previously enacted ordinance to suppress or limit any speech activities protected by the First Amendment to the United States Constitution, but to enact a content neutral, reasonable time, place and manner regulation that effectively addresses the harmful secondary effects associated with sexually oriented businesses; and

WHEREAS, the Franklin County respects the First Amendment rights of its citizens, including the right to present certain types of entertainment that may not appeal to the entire population, and through this ordinance, it is the desire of the Franklin County to balance such rights of businesses that present sexually oriented entertainment with the Franklin County's interests in ensuring that the community does not suffer from adverse secondary effects of sexually oriented businesses; and

WHEREAS, the following studies regarding the adverse secondary effects associated with sexually oriented businesses have been provided to the Franklin CountyBoard of County Commissioners:

National Perspectives

Kelly, Eric D. and Connie B. Cooper. 2000. *"Everything you always wanted to know about regulating sex businesses."* Chicago, IL: American Planning Association, Planning Advisory Service Report No. 495/496.

Hecht, Peter R. "Report to the American Center for Law and Justice on the Secondary Impacts of Sex Oriented Businesses." March, 1996.

Weinstein, Alan C. and Richard McCleary. "The Association of Adult Businesses with Secondary Effects: Legal Doctrine, Social Theory, and Empirical Evidence." 2012.

McCleary, Richard and Alan C. Weinstein. "Do 'Off-Site' Adult Businesses Have Secondary Effects? Legal Doctrine, Social Theory, and Empirical Evidence." *Law & Policy*, Vol. 31, No. 2, April 2009.

Cohen, Lawrence E. and Marcus Felson. "Social Change and Crime Rate Trends: A Routine Activity Approach." *American Sociological Review,* 1979, Vol. 44(August):588-608.

Rural, Small Town and County-Focused Studies

McCleary, Richard. "Rural Hot Spots: The Case of Adult Businesses." *Criminal Justice Policy Review*, 2008, 19(2), pp. 153-163.

Duncan Associates. "Regulation of Sexually Oriented Businesses in Alachua County: Field Survey, Analysis and Recommendations." Alachua County, Florida. August 2003.

Quest Genetics. "Analysis Report Conducted by Quest Genetics [Positive tests for semen found on paper towels from video booths]." Alachua, Florida. October and November, 2003.

Palumbo, Gary, Town/Village Planner. "Adult Business Study." Ellicottville [Village of], New York. January 1998.

Duncan Associates and Cooper Consulting. "Study of Sexually Oriented Business." LaPorte County, Indiana. August 2012.

Duncan Associates and Cooper Consulting. "Sexually Oriented Entertainment & Related Businesses." Kenton and Campbell Counties, Kentucky. January 2004.

Planning and Development Department. "Adult Entertainment Business Study for Manatee County." Manatee County, Florida. June 1987.

Planning Department. "Regulation of Adult Entertainment Establishments." Saint Croix County, Wisconsin. September 1993.

Duncan Associates. "Regulation of Sexually Oriented Businesses: An Analysis for Perry County, Indiana." Perry County, Indiana. July 2007.

Dahlgren, Shardlow and Uban, Inc. "Summary of Review and Conclusions Regarding St. Cloud's Regulation of Adult Use Businesses." St. Cloud, Minnesota. December 1994.

Police Department. "A Digest of Research: The Evidence of Relationships between Adult-Oriented Businesses and Community Crime and Disorder." St. Mary's, Georgia. July 1996.

Florida Studies

Duncan Associates and Cooper Consulting, David Kuehl, and Shawn Wilson. "Survey of Florida Appraisers: Effects of Land Uses on Market Values." Palm Beach County, Florida. May 2008.

Duncan Associates. "Regulation of Sexually Oriented Businesses in Alachua County: Field Survey, Analysis and Recommendations." Alachua County, Florida. August 2003. [also listed above]

Quest Genetics. "Analysis Report Conducted by Quest Genetics [Positive tests for semen found on paper towels from video booths]." Alachua, Florida. October and November, 2003 [also listed above]

Planning and Development Department. "Adult Entertainment Business Study for Manatee County." Manatee County, Florida. June 1987 [also listed above].

Other Notable and Often-Cited Studies

Office of Land Development Services. "Report on Adult Oriented Businesses in Austin." Austin, Texas. May 19, 1986.

Zoning Administration, et al, prepared for Denver County Council. "A Report on the Secondary Impact of Adult Use Businesses in Denver." Denver, Colorado, January 1998.

Cooper Consulting and Duncan Associates. "Survey of Appraisers in DFW: Effects of Land Uses on Surrounding Property Values." Fort Worth, Texas. September 2004.

McCleary, Richard, and James W. Meeker. "Final Report to Garden Grove: The Relationship between Crime and Adult Business Operations on Garden Grove Boulevard." Garden Grove, California. October 23, 1991.

Department of Metropolitan Development, Division of Planning. "Adult Entertainment Businesses in Indianapolis: An Analysis." Indianapolis, Florida. 1984.

Minnesota Crime Prevention Center. "An Analysis of the Relationship between Adult Entertainment Establishments, Crime and Housing Values." Minneapolis, Minnesota. October 1980.

Planning Department. "Adult Business Study." Phoenix, Arizona. May 25, 1979.

Department of Planning and Economic Development and Minnesota Crime Control Planning Board. "Effects on Surrounding Area of Adult Entertainment Businesses in St. Paul." St. Paul, Minnesota. June 1978.

Cooper, Connie B., Eric D. Kelly, David C. Kuehl, and Shawn C. Wilson. "Survey of Texas Appraisers: Secondary Effects of Sexually Oriented Businesses on Market Values." Texas, June 2008.

Leverenz, Michael J., Assistant Chief of Police. "Police Memorandum on Adult Entertainment Ordinance." Tucson, Arizona. May 1, 1990.

Planning Department Staff Report to County Planning Commission. "Amendment to Zoning Regulations; Adult Business in C-Z Zone with Conditional Use Permit." Whittier, California. January 1978.

WHEREAS, in *Peek-a-Boo Lounge of Bradenton, Inc. v. Manatee County*, 630 F.3d 1346 (11th Cir. Fla. 2011), cert. den. 563 U.S. 1033, 131 S. Ct. 2973, 180 L. Ed. 2d 247 (2011), the Eleventh Circuit affirmed a federal court in upholding Manatee County ordinances regulating sexually oriented businesses and restricting public nudity, citing a "voluminous record" that referred to many of the studies here but that also included live testimony that the Board, like the Eleventh Circuit and the federal district court, finds is both credible and relevant to the ordinance that it here adopts:

The County conducted a four-hour public hearing at which experts testified both for and against the ordinance. In support of the County's proposal, Richard McCleary, Ph.D., a professor of criminology, and Shawn Wilson, a real estate appraiser, testified about the adverse secondary effects associated with sexually oriented businesses. In opposition, the Plaintiffs offered the testimony of four experts: Randy D. Fisher, Ph.D., an associate professor of psychology; Terry A. Danner, Ph.D., a professor of criminal justice; Judith Lynne Hanna, Ph.D., a scholar of anthropology and dance; and Richard Schauseil, a licensed real estate agent. We detail the evidential foundation at some length because it stands at the heart of whether the County relied on a sufficient record.

Dr. McCleary testified that much of the evidence supported the County's rationale. He explained that the formal criminological literature revealed consistent findings of significant crime-related hazards caused by sexually oriented businesses. These findings led him to conclude that "the relationship between crime and sexually oriented businesses is . . . a scientific fact." One reason, he offered, is that sexually oriented businesses attract "soft targets," meaning patrons who are easy crime targets because they often come from far away, do not know the neighborhood, try to remain anonymous, and are less likely to report crimes of borderline seriousness because they do not want anyone to know that they are patronizing such businesses. Another reason Dr. McCleary offered is that features of the physical layout of these businesses — including private rooms and narrow corridors — strongly inhibited surveillance and policing.

Dr. McCleary also explained that there were between one and two dozen studies establishing a correlation between sexually oriented businesses and negative secondary effects that were "scientific to some degree." Dr. McCleary highlighted two such studies that supported the County's findings that sexually oriented businesses cause negative secondary effects. In the first one from Garden Grove, California, Dr. McCleary and a colleague examined locations where new sexually oriented businesses had opened up and compared the crime rates one year before and one year after they opened, using existing sexually oriented businesses as controls. They found a far greater increase in crime during that time period surrounding the new sexually oriented businesses than surrounding the existing similar businesses. In the second study drawn from Greensboro, North Carolina, even though the study's authors concluded that sexually oriented businesses did not cause negative secondary effects, Dr. McCleary said that another look at their data showed significantly higher rates of crime in neighborhoods with sexually oriented businesses.

Shawn Wilson, a real estate appraiser, testified about the negative effects of sexually oriented businesses on property value. Ms. Wilson explained that she had examined studies drawn from other cities on the secondary effects associated with sexually oriented businesses and that all of the studies addressing the value of

real estate concluded that there were, in fact, negative secondary effects. Ms. Wilson also looked at the deeds in her own files, spoke with market participants, and met with other real estate appraisers. Although she acknowledged that these conversations amounted to anecdotal evidence, she concluded that there was a palpable fear in the marketplace that sexually oriented businesses, like other undesirable businesses such as flea markets and bowling alleys, would drive away potential customers and adversely affect business.

Dr. Fisher, an associate professor of psychology, testified on behalf of the Plaintiffs that the foreign studies on which the County had relied were flawed. He said that five of the studies were not empirically grounded, six did not actually find evidence of negative secondary effects, and two involved samples that were too small to be considered. He conceded that five of the foreign studies supported the hypothesis that sexually oriented businesses caused negative secondary effects, but he suggested that each of them contained methodological flaws that rendered the results "virtually uninterpretable." Finally, he critiqued two studies Dr. McCleary had personally conducted — the Garden Grove study, as well as a 2004 study of Centralia, Washington. Dr. Fisher argued that Dr. McCleary was not actually measuring crime increases surrounding new sexually oriented businesses, because some of these new businesses had opened near existing sexually oriented businesses.

Dr. Danner, a criminal justice professor, testified that a study he conducted concluded that Manatee County's sexually oriented businesses did not cause increases in crime. He evaluated two kinds of crime data in the County: (1) calls for police service, and (2) crimes known to police. He compared crime data for the neighborhoods surrounding Peek-a-Boo Lounge and Cleopatra's (the name of the adult dancing establishment of the former Plaintiff M.S.) with crime data from other parts of the County. He found that Cleopatra's had significantly fewer incidents of the categories of crime he studied compared to the average for Manatee County, and that Peek-a-Boo had significantly more incidents of those crimes compared to the average. Because Peek-a-Boo had more crime than the County average and Cleopatra's had less crime than the County average, and because he found that other kinds of businesses are also correlated with negative secondary effects, Dr. Danner argued that sexually oriented businesses were not "uniquely criminogenic."

Dr. Hanna, an anthropology and dance scholar, also spoke on the Plaintiffs' behalf. She opined that the ordinance was not content neutral and would suppress speech by depriving dancers of "artistic choice." She offered that nudity and the touching of patrons are essential components of adult dance and that the ordinance "stigmatizes women."

Next, Mr. Schauseil, a real estate agent, testified about a study he had conducted regarding property value. He found that from 2000 to 2004, the majority of

businesses in the neighborhood of Cleopatra's and Peek-a-Boo Lounge saw no change in traffic pattern and the traffic volume had, in fact, increased.

Finally, Robert Miller, a Manatee County resident who had worked at Cleopatra's for two years and at Peek-a-Boo Lounge for eleven years, testified. He claimed that Peek-a-Boo did not tolerate drugs, prostitution, or violence; that there had been few "legal incidents"; that Peek-a-Boo was in good standing with the community; and that the establishment contributed significantly to the economy.

Based on the evidence and testimony, the Board concluded that sexually oriented businesses were correlated with a variety of negative secondary effects, including personal crimes, property crimes, prostitution and other illicit sexual activity, spread of disease, drug use and drug trafficking, sexual assault and exploitation, negative impacts on surrounding properties, and litter. Manatee County, Fla., Code of Ordinances § 2-2.5-1(b)(1). The Board found that the County had a substantial interest in preventing and abating these secondary effects, and therefore adopted the ordinance "to regulate sexually oriented businesses in order to promote the health, safety, and general welfare of the citizens of the County, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented businesses within the County." Id. § 2-2.5-1(a).

Peek-a-Boo Lounge, 630 F.3d at 1351-52.

WHEREAS, the Planning and Zoning Board and Board of County Commissioners of Franklin County recognize that some of the cited studies included bars without sexually oriented entertainment among the businesses studied; Franklin County finds, nevertheless, that addressing nightclubs having live, sexually oriented entertainment is a more critical local issue than that of bars without such entertainment, for these reasons:

Bars in Florida are regulated by the State, and those state regulations directly address many of the concerns that arise with the service of alcohol but not that arising from the activities common in a sexually oriented business; and

The interaction between sexually oriented entertainers who are paid to work with very limited clothing and the customers who pay to see them work in these establishments creates a sexually charged environment and the opportunity to negotiate for the provision of additional services that do not involve dancing or other protected expression and this is unacceptable under the standards of Franklin County and its citizens; and

WHEREAS, at the recommendation of the County Attorney, the Board has retained the assistance of Eric Damian Kelly as a consultant on this matter. The Board finds, based on material provided by the County Attorney that: Dr. Kelly holds a B.A. with honors in Political Economy from Williams College, a Juris Doctor and Master of City Planning from the University of Pennsylvania; and a Ph.D. in Public Policy from The Union

Institute; he is a Professor of Urban Planning at Ball State University in Indiana; he licensed to practice law in Colorado; he has consulted with more than 150 local governments in more than three dozen states on planning and plan implementation; his Florida clients have included Alachua County, the City of Alachua, the City of Gainesville, and Palm Beach County, for all of which he has worked on issues related to adult entertainment, as well as other issues for some of them; he is General Editor of the 10-volume treatise *Zoning and Land Use Controls,* published by Matthew Bender, a LexisNexis Company; he is the author of two books and multiple published technical reports and book chapters; he has co-authored professional reports with Dr. McCleary and Ms. Wilson, both of whose testimony was cited by the Eleventh Circuit in the Manatee County case; and

WHEREAS, the Board finds that Dr. Kelly is an expert in the field of the regulation of sexually oriented businesses and is well qualified to assist it in adopting these regulations; and

WHEREAS, based on the recommendations of Dr. Kelly, as consultant to the County, which are based on its experience in other communities and his review of the studies cited above and other local efforts to address such secondary effects, Franklin County finds that the following principles are essential to effective control of sexually oriented businesses:

- That certain conduct occurring on the premises of sexually oriented businesses is detrimental to the public health, safety and general welfare of the citizens of the County and, therefore, such conduct must be regulated; and
- That regulation of sexually oriented businesses is necessary because in the absence of such regulation, significant criminal activity, including prostitution, illegal drug use and disruptive behavior and high-risk sexual conduct that may result in health hazards, has historically and regularly occurred; and
- That sexually oriented businesses have a deleterious effect on both the existing businesses around them and the surrounding residential areas adjacent to them, causing increased crime and downgrading of property values; these deleterious effects create a legitimate concern of the County to protect property values, business interests and generally protect the County from urban blight associated with sexually oriented businesses; and
- That it is recognized that sexually oriented businesses have serious objectionable operational characteristics, particularly when they are located in close proximity to each other, thereby contributing to blight; and
- That the secondary effects precipitated by establishment of a sexually oriented business can be substantially mitigated by requiring separation of the sexually oriented business from sensitive land uses and places of public assembly and from other sexually oriented businesses; and

- That sexually oriented businesses have the greatest adverse effect on residential neighborhoods and should thus be separated to the maximum extent practicable from residential neighborhoods; and
- That sexually oriented businesses are likely to attract criminal elements that prey on "soft targets," including children, and it is thus important to separate sexually oriented businesses from libraries, and child care, educational, recreational and religious facilities, all of which are places where children are likely to congregate; and
- That because of the tendency of sexually oriented businesses to attract criminal elements that prey on soft targets, it is important to seek locations for such businesses that are not located along pedestrian routes, where young people, old people and others who are vulnerable, are likely to walk in going about their day-to-day business; thus, locations to which the primary access is by automobile minimize the risk of persons going about their daily business encountering persons who are visiting or even loitering around the sexually oriented business; and
- That the types of sexually oriented media shown in sexually oriented video viewing booths are available for viewing, purchase or rental in other types of sexually oriented businesses which are less harmful to the health, safety and welfare of the community, and therefore sexually oriented video viewing booths should be prohibited in favor of other media venues; and
- That experiences in other communities show that uses such as sexually oriented bath houses, sexually oriented body painting studios, sexually oriented encounter centers, sexually oriented massage businesses, sexually oriented motels, sexually oriented modeling/photography studios, and sexually oriented video viewing kiosks, booths or arcades create the opportunity for casual high-risk sexual activity, prostitution, drug use, other criminal activity, and create logistical difficulties and risks of physical endangerment for police officers responsible for policing such businesses; that these highly problematic uses do not involve First Amendment protected speech or such protected speech is available in other venues which are less harmful to the health, safety and welfare of the community, and are associated with deleterious effects; and therefore should be prohibited uses within Franklin County; and
- That experiences in other communities show that private booths, back rooms, "VIP" rooms and other small and private spaces in sexually oriented businesses create the opportunity for high-risk sexual activity, prostitution, drug use, other criminal activity, and create logistical difficulties and risks of physical endangerment for police officers responsible for policing such businesses; that for these reasons, it is essential that movies, performances and other activities at sexually oriented businesses be permitted only in large rooms that are open and visible to management, other patrons, and enforcement code and police officers who may visit the establishment during operating hours.

WHEREAS, Franklin County desires to minimize and control the adverse secondary effects associated with sexually oriented businesses and thereby protect the health, safety and welfare of the citizenry, preserve the quality of life, preserve property values and the character of surrounding neighborhoods and to deter the spread of urban blight; and

WHEREAS, Franklin County finds that amendments to the zoning ordinance are necessary to effectively address allowable uses, location and site design for such sexually oriented businesses; and

WHEREAS, the Franklin County Board of County Commissioners, in order to protect the health, safety and welfare of the people of Franklin County, and promote societal order and morality in Franklin County finds it necessary to regulate adult entertainment, regardless whether it is performed inside of an enclosed commercial building or outside of a commercial building.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF FRANKLIN COUNTY:

1. Definitions. In this ordinance, unless the context otherwise requires:
    a. *Adult cabaret.* An establishment that customarily features adult entertainers providing live adult entertainment or which holds itself out to the public as an establishment where adult entertainment is available, but such definition shall not include any adult regulated uses prohibited by this ordinance. Signs, advertisements or an establishment name including verbal or pictorial allusions to sexual stimulation or gratification or by references to "adult entertainment," "strippers," "showgirls," "exotic dancers," "gentleman's club," "XXX" or similar terms, shall be considered evidence that the establishment holds itself out to the public as providing adult entertainment. The fact that an establishment does not serve alcoholic beverages shall not remove it from classification as an "adult cabaret" if it otherwise falls under this definition.
    b. *Adult encounter center.* A business or enterprise that offers live physical contact between two or more persons when one or more of the persons is in a state of nudity or semi-nudity, for the purpose of engaging in sexually explicit activities or touching specified anatomical areas.
    c. *Adult entertainer.* Any person paid by some form of remuneration to provide live entertainment to customers at an adult regulated use that may consist of dancing, singing, acting, other forms of performing, or individual conversations with customers whereby the entertainer is paid any form of remuneration directly or indirectly for such conversations.
    d. *Adult entertainment.* Any of the following activities, when performed live by an adult entertainer at an adult regulated use: dancing, singing, talking,

touching, gymnastics, acting, other forms of performing, or individual conversations with customers.

e. *Adult media*. Media which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to "sexually explicit activities" or "specified anatomical areas."

f. *Adult motel* means a motel, hotel, or similar commercial establishment which:

   i. Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, other photographic reproductions, or live performances which are characterized by the display of specified sexual activities or specified anatomical areas; and which advertises the availability of such material by means of a sign visible from the public right-of-way, or by means of any on or off-premises advertising, including but not limited to, newspapers, magazines, pamphlets or leaflets, radio or television; or

   ii. Offers a sleeping room for rent for a period of time that is less than ten (10) hours; or

   iii. Allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than ten (10) hours.

g. *Adult motion picture theater* means a commercial establishment that regularly shows films, motion pictures, videocassettes, slides, photographic reproductions, or electronic reproductions, which are characterized by their emphasis upon the display of specified sexual activities or specified anatomical areas or which are advertised as "XXX" or any similar characterization.

h. *Adult novelties.* Instruments, devices, toys, or paraphernalia either designed as representations of human genitals or female breasts or designed or marketed primarily for use in sexual stimulation of specified anatomical areas.

i. *Adult regulated use*. An adult cabaret, adult motion picture theater, adult retail store.

j. *Adult retail store*. A retail establishment that meets any one of the following four tests:

   i. 35 percent or more of the gross public floor area or gross wall display area or stock in trade consists of adult media; or

   ii. Offers for sale items from any two (2) of the following categories: adult media; lingerie; leather goods marketed or presented in a context to suggest their use for sadomasochistic practices; and the

combination of such items comprise more than 10 percent of its gross public floor area or stock in trade; or

iii. More than 10 percent of its gross public floor area or stock in trade consists of adult novelties; or

iv. It is advertised, marketed, or holds itself out in any forum as an "XXX," "adult," or "sex" business.

k. *Adult video arcade*. Any place to which the public is permitted or invited wherein cash-operated, credit-operated, coin-operated or slug-operated or electronically, internet or mechanically controlled still or motion picture machines, projectors or other image producing devices are maintained to show images depicting "sexually explicit activities" or "specified anatomical areas".

l. Art school means a museum or school, college, or university accredited by a national accrediting association.

m. Auditorium means a room designed to accommodate an audience which room shall either comply with the requirements of 1(d)(1) or 1(d)(2):

1. Shall meet each of the following requirements:
   i. The room is not less than 4000 square feet in area;
   ii. The stage shall either (A) be raised not less than three feet above the floor on which the nearest seating is located or (B) be not less than three feet from the nearest seat;
   iii. There shall be only 1 stage;
   iv. Food and beverages are prohibited within the room;
   v. Tables are prohibited within the room for seating of customers or patrons; or
   vi. All seating shall be arranged to the face the same direction.
   vii. All seating shall face the stage.
   viii. No portion of the stage shall be constructed or arranged or used unless it is in front of, and is faced by, all seats.
2. Shall meet each of the following requirements;
   i. The room is not less than 25,000 square feet in area;
   ii. 90% of the seating, excepting for seating areas designed for the handicapped, shall be fixed to the floor and facing the stage.
   iii. No portion of the stage shall have seats on more than one side of the stage unless that portion of the stage is not less than thirty feet across.

n. *Board of county commissioners* means the board of county commissioners of Franklin County, Florida.

o. *Characterized by* means to describe the essential character or quality of an item. As applied in this chapter, no business shall be classified as a sexually oriented business by virtue of showing, selling, or renting materials rated NC-17 or R by the Motion Picture Association of America.

p. *County* means Franklin County, Florida.

q. *Employ, employee*, and *employment* describe and pertain to any person who performs any service on the premises of a sexually oriented business, on a full time, part time, or contract basis, regardless of whether the person is denominated an employee, independent contractor, agent, or otherwise. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.

r. *Establish* or *establishment* shall mean and include any of the following:

   i. The opening or commencement of any sexually oriented business as a new business;

   ii. The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business; or

   iii. The addition of any sexually oriented business to any other existing sexually oriented business.

s. *Licensee* shall mean a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual or individuals listed as an applicant on the application for a sexually oriented business license. In case of an employee, it shall mean the person in whose name the sexually oriented business employee license has been issued.

t. *Nude, nudity* or *state of nudity* means the showing of the human male or female genitals, pubic area, vulva, or anus with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any part of the nipple and areola.

u. *Operate* or *cause to operate* shall mean to cause to function or to put or keep in a state of doing business.

v. *Operator* means any person on the premises of a sexually oriented business who puts or keeps the business in operation or who is authorized to manage the business or exercise overall operational control of the business premises. A person may be found to be an operator of a sexually oriented business regardless of whether that person is an owner, part owner, or licensee of the business.

w. *Person* shall mean individual, proprietorship, partnership, corporation, association, or other legal entity.

x. *Premises* means the real property upon which the sexually oriented business is located, and all appurtenances thereto and buildings thereon, including, but not limited to, the sexually oriented business structure, the grounds, private walkways, parking lots, and/or parking garages adjacent thereto, which are under the ownership, control, or supervision of the licensee, as described in the application for a business license pursuant to_ of this ordinance.

y. *Private room* means a room within a commercial establishment which a customer can rent for the customer's sole use or use with an employee of the establishment, but does not include private quarters.

z. *Private studio* means a studio for an artist or photographer which is lawfully operating under the zoning code and which is not open to the public for any purpose other than for the sale of the artist's or photographer's works. The public shall not be allowed to view any modeling which may occur on the premises nor may the models be made available for the use of anyone other than the owner of the studio or salaried employees of the studio.

aa. *Regularly* means the consistent and repeated doing of the act so described.

bb. *Semi-nude* or *state of semi-nudity* means a condition in which a person is not nude, but is showing a majority of the female breast below a horizontal line across the top of the areola and extending across the width of the breast at that point, or is showing the majority of the male or female buttocks.

cc. *Semi-nude model studio* means a place where persons regularly appear in a state of semi-nudity for money or any form of consideration in order to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons. This definition does not apply to any place where persons appearing in a state of semi-nudity do so in a modeling class operated:

    i. By a college, junior college, or university supported entirely or partly by taxation;

    ii. By a private college or university which maintains and operates educational programs in which credits are transferable to college, junior college, or university supported entirely or partly by taxation;

    iii. In a structure:

        1. Which has no sign visible from the exterior of the structure and no other advertising that indicates a semi-nude person is available for viewing; and

        2. Where, in order to participate in a class a student must enroll at least three (3) days in advance of the class.

dd. *Sexual encounter center* shall mean a business or commercial enterprise that, as one of its principal business purposes, purports to offer for any form of consideration, physical contact in the form of touching, wrestling or tumbling between persons when one or more of the persons is semi-nude.

ee. *Sexually oriented business* means an adult bookstore, an adult video store, an adult cabaret, an adult motel, an adult motion picture theater, a semi-nude model studio, a sexual device shop, or a sexual encounter center.

ff. *Sexually explicit activities.* Acts of human masturbation, sexual intercourse, or sodomy. These activities include, but are not limited to the following: bestiality, erotic or sexual stimulation with objects or mechanical devices, acts of human analingus, cunnilingus, fellatio, flagellation, masturbation, sadism, sadomasochism, sexual intercourse, sodomy, or any excretory functions as part of or in connection with any of the activities set forth above with any person on the premises. This definition shall include apparent sexual stimulation of another person's genitals whether clothed or unclothed.

gg. *Sexually oriented cinema, sexually oriented motion picture theater or sex oriented cinema* means a cinema or motion picture theater that shows sexually explicit movies or other media on more than half the days that it is open during any 90-day period, or that advertises or holds itself out in any forum as offering movies or other media described as adult, XXX or sexually oriented.

hh. *Specified criminal activity* means Any of the following specified crimes for which less than five (5) years elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date:

i. F.S. § 794.011 (Sexual battery);

ii. F.S. § 796.03 through § 796.07 (Prostitution offenses);

iii. F.S. § 800.04 (Lewd or lascivious offenses committed upon or in the presence of persons less than sixteen (16) years of age);

iv. F.S. Ch. 847 (Obscenity offenses);

v. F.S. § 893.13 (Controlled substance offenses);

vi. F.S. Ch. 895 (Offenses concerning racketeering and illegal debts);

vii. Any of the foregoing statutory offenses as amended from time to time; or

viii. Attempt, solicitation, or conspiracy to commit one of the foregoing statutory offenses; or

ix. Any offenses in other jurisdictions that, had the predicate act(s) been committed in Florida, would have constituted any of the foregoing offenses.

x. Notwithstanding anything in this definition of specified criminal activity, a conviction that is later reversed, vacated, overturned or expunged by a court of law shall not be considered a specified criminal activity under this chapter.

ii. *Substantial* means at least thirty-five (35) per cent of the item(s) so modified.

jj. Theatrical performance means a performance which meets each of the following requirements:

i. Audience member are required to pay any fee or charge to watch the performance unless such fee or charge is an admissions fee paid by purchase of an admission ticket;

ii. Audience member are not allowed to pay, directly or indirectly, any tip or other compensation to any performer;

iii. No performer shall request, solicit or accept any top or other compensation from any member of an audience;

iv. No person shall expose or display specified anatomical areas or engage in specified explicit activites except while the person or persons is or are on the stage of an auditorium and where such exposure or activities are part of a script or directions for the performance. ;

kk. *Transfer of ownership or control* of a sexually oriented business shall mean any of the following:

i. The sale, lease, rental, or sublease of the business;

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

ll. *Viewing room* shall mean the room, booth, or area where a patron of sexually oriented business would ordinarily be positioned while watching a film, videocassette, or other visual reproduction.

2. Exceptions from definitions:

a. An adult entertainment establishment shall not include an auditorium where specified anatomical parts are displayed or exposed by performers during a theatrical performance; provided that the exposure or display or specified anatomical parts is incidental to the performance. Notwithstanding any ordinance or ordinance code provision to the contrary, in the event the exception created in this subsection (a) is held or declared invalid or unconstitutional, in whole or part, or if said exception is

held to create an invalidity or unconstitutionality in other section or provision of this chapter, then the entire exception is void and invalid, and no person shall be entitled to such exception.

b. In the event that the exception created in subsection (a) is declared void, invalid, or unconstitutional, then an adult entertainment establishment shall not include an exposed by performers during a theatrical performance. Notwithstanding any ordinance or ordinance code provision to the contrary, in the event the exception created in this subsection (b) is held or declared invalid or unconditional, in whole or part, or if said exception is held to create an invalidity or unconstitutionality in other section or provision of this chapter, then the entire exception is void and invalid, and no person shall be entitled to such exception.

3. Exemptions:
   a. The licensing provisions of this chapter shall not apply to:
      i. A bona fide art class where:
         1. Such class is sponsored by an accredited school, museum or university; and
         2. The teacher or instructor is in the class at any time there is exposure or display of specified anatomical parts by a model; and
         3. No person, other than a model, is permitted to expose or display his or her specified anatomical parts; or
      ii. A private studio where the artist or photographer has an occupational license to engage in his or her profession at that location; or
      iii. An auditorium where specified anatomical parts are displayed or exposed by performers during a theatrical performance; provided, that such exposure or display is incidental to the performance; or
      iv. Any performance produced by an organization registered as a not-for-profit corporation pursuant to Section 501 (c) (3) of the United States Internal Revenue Code.
         1. Notwithstanding any ordinance or ordinance code provision to the contrary, in the event any exemption created in section 3 is held or declared invalid or unconstitutional, in whole or in part, or if one of said exemptions is held to create an invalidity or unconstitutionality in any other section or provision of this chapter, then the entire exemption is void and invalid and no person shall be entitled to such exemption.
         2. In the event that the exception created in subsection (3) is declared void, invalid or unconstitutional, then the licensing provisions of this chapter shall not apply to an auditorium where specified anatomical parts are displayed or exposed

by performers during a theatrical performance. Notwithstanding any ordinance or ordinance code provision to the contrary, in the event an exemption created in Section (3) is held or declared invalid or unconstitutional, in whole or part, or if said exemption is held to create an invalidity or unconstitutionality in other section or provision of this chapter, then the entire exemption is void and invalid, and no person shall be entitled to such exemption.

4.(A) Requirements for Licensed Premises of a commercial establishment located within an enclosed building, which shall be heated and cooled:

General Requirements. In addition to the special requirements contained in this part, unless otherwise exempted, each adult bookstore, adult motion picture theater and adult entertainment establishment, shall meet each of the requirements of this subsection.

a. All premises shall have an entrance room or lobby, i.e., the room which is entered form the outside, and sanitary facilities as set forth in subsection (e). The entrance room or lobby may be as large or as small as the licensee chooses.
b. All other rooms in premises must either:
    i. Be not less than 1,000 square feet in area; or
    ii. Be clearly marked in letters not less than two inches in height "No Customers or Patrons Allowed".
c. Except for sanitary facilities, no doorway or entranceway within any premises shall be locked at any time a customer is anywhere within the premises or at any time the premises are open to the public unless customers or patrons are prohibited at all times form going into the rooms or areas behind such doorways or entranceways and provided such doors are marked as set forth in paragraph (b) (2) above.
d. At least one doorway into or out of the premises shall be unlocked at any time a customer is anywhere within premises or at any time the premises are open to the public.
e. Except for an adult motion picture theater, all rooms open to the public in the premises shall be lighted such that the light intensity at every point thirty inches above the floor is not less than one-half foorcandle.
f. The sheriff shall have access to all rooms at all times any premises are open to the public. Premises are irrebuttably presumed to be open at any time a customer is on the premises. This access shall be for inspection purposes only.

g. No room other than a sanitary facility or a room marked as set forth in (b) (2) shall have any dividers or partitions or any other thing in excess of three feet in height which blocks the view of any portion of the room.
h. Private rooms are prohibited within the premises.
i. Adult motion picture booths are prohibited within the premises.
j. Adult entertainment booths are prohibited within the premises.
k. Nude entertainment booths are prohibited within the premises.
l. No room within the premises shall have its doorway or threshold blocked or obscured by doors, curtains, drapes or any other obstruction unless the room is (1) a sanitary facility (2) the room is an adult motion picture theater in which movies are shown on a screen, or (3) a room marked as set forth in paragraph (b) (2), hereinabove.

5. Fees and charges:
    a. All fees and charges paid by a customer or patron of an escort or escort service hall be paid to the escort before the service begins.
    b. No escort shall accept any tip or other compensation from a customer or patron unless that amount is the amount the customer is told will be charged before the service begins.
    c. No person engaged in nude entertainment shall accept any tip, compensation or other consideration directly from a customer. Any tip, compensation or other consideration shall be paid at the entrance or other central location.
    d. All admissions fees at adult entertainment establishments shall be paid at the entrance before admission to the establishment.

6. Prohibited uses:
    a. The following uses are prohibited in the County:
        i. Adult arcades or arcade booths;
        ii. Any live performance involving the exposure of specified anatomical areas or sexually explicit activities where such performance occurs outside a building;
        iii. Any live performance involving the exposure of specified anatomical areas or sexually explicit activities where such performance occurs in a room of less than 1,000 square feet;
        iv. Any showing of a film or other medium for a fee where such film or medium is characterized by an emphasis on specific anatomical areas or sexually explicit activities and where such showing occurs in a room of less than 1,000 square feet;
        v. Adult encounter centers;
        vi. Nude or semi-nude modeling centers;
        vii. Adult motels

b. In the event the provisions of subsection (a) above are declared invalid or unenforceable, any premises which contains or operates an adult entertainment booth shall be considered to be adult entertainment establishment and such premises shall meet all requirements of this chapter for adult entertainment establishments.

7. Public Nudity Prohibited.
    a. Public nudity is prohibited under a separate ordinance.
    b. In the event the provisions of the public nudity ordinance are declared invalid or unenforceable, any premises which contains or operates public nudity shall be considered to be an adult entertainment establishment and such premises shall meet all requirements of this chapter for adult entertainment establishments.

8. Nude Entertainment Booths Prohibited.
    a. Nude entertainment booths are prohibited.
    b. In the event the provisions of subsection (a) above are declared invalid or unenforceable, any premises which contains or operates as a nude entertainment booth shall be considered to be an adult entertainment establishment and such premises shall meet all requirements of this chapter for adult entertainment establishments.

9. Zoning and Other Location Restrictions
    a. The following lawful adult entertainment uses shall be allowed in the zoning districts and subject to the locational restrictions set forth in this section: adult retail stores; adult motion picture theaters; and adult cabarets.
    b. Such uses shall be allowed in the C-2 zoning district, subject to additional locational restrictions set forth in this section;
    c. No such use shall be located within 500 feet of any other adult retail store, adult motion picture theater or adult cabaret;
    d. No such use shall be located within 200 feet of an operating elementary, middle or high school or of an operating house of worship;
    e. No such use shall be located within 200 feet of an area zoned R-1, R-1A, R-2, R-3 or C-4 (which is a mixed-use district that is predominantly residential in many locations);
    f. For purposes of this section, measurements shall be made by the shortest distance between the property line of the site used or proposed for the adult entertainment use to the nearest property line of the school, house of worship or property zoned for residential use; if the adult entertainment use or proposed adult entertainment use occupies or will occupy part of a multi-tenant property, then the measurement from the adult entertainment

use shall be from the edge of the leased premises to the property line of the other use.

10. Design and Operating Standards
    a. Operating Hours. Adult cabarets, adult motion picture theaters and adult retail stores shall be closed from 2 a.m. to 10 a.m. daily;
    b. Exterior Lighting. Adult cabarets, adult motion picture theaters and adult retail stores shall maintain exterior lighting at entrances and exits, in parking lots and around the buildings that they occupy generally to make it possible for management and for law enforcement officers to observe activity that may take place outside the buildings;
    c. Viewing rooms. The room in which an adult cabaret performance takes place or in which adult motion pictures are shown shall be at least 1,000 square feet. All parts of the room shall be easily visible from the entrance door, without obstructions to visibility such as curtains or partitions. Lighting levels may be appropriately dim for the show but shall be sufficient for a manager or law enforcement officer with ordinary vision to make out figures and their movement within the room.
    d. Private rooms. There shall be no private rooms that are accessible to the public in adult retail stores, adult cabarets and adult motion picture theaters. Other than restrooms, all areas that are accessible to the public shall be easily visible from a manager's station and/or the entrance to the viewing room.
    e. Performances in adult cabaret shall take place on a stage that is elevated at least thirty (30) inches above the floor where patrons are seated; the stage shall have a barrier, either on stage or on the floor, that ensures that patrons maintain a horizontal separation of at least three (3) feet from the nearest edge of the stage.
    f. It shall be the responsibility of operators to ensure that patrons remain in the seating area and not on the stage and that performers in an adult cabaret remain on the stage or outside the viewing room at all times.

11. Conflict with other Laws and Ordinances.

In the event of a conflict between this Ordinance and any other applicable law or ordinance, the more strict ordinance shall apply.

12. License Required
    a. *Business License.* It shall be unlawful for any person to operate an adult cabaret or an adult motion picture theater in the County without a valid sexually oriented business license.
    b. *Application.* An applicant for a sexually oriented business license shall file in person at the office of Planning Services or, if there is no such office, in the

Office of the County Commissioners on a form provided by the County Commissioners or their assigns. A sexually oriented business may designate an individual with influential interest in the business to file its application for a sexually oriented business license in person on behalf of the business. The application shall be signed as required by subsection (3) herein and shall be notarized. An application shall be considered complete when it contains, for each person required to sign the application, the information and/or items required in this subsection (c), accompanied by the appropriate licensing fee:

i. The applicant's full legal name and any other names used by the applicant in the preceding five (5) years.

ii. Current business address or another mailing address for the applicant.

iii. Written proof of age, in the form of a driver's license, a picture identification document containing the applicant's date of birth issued by a governmental agency, or a copy of a birth certificate accompanied by a picture identification document issued by a governmental agency.

iv. The business name, location, legal description, mailing address and phone number of the sexually oriented business.

v. The name and business address of the statutory agent or other agent authorized to receive service of process.

vi. A statement of whether an applicant has been convicted of or has pled guilty or *nolo contendere* to a specified criminal activity as defined in this Ordinance, and if so, each specified criminal activity involved, including the date, place, and jurisdiction of each as well as the dates of conviction and release from confinement, where applicable.

vii. A statement of whether any sexually oriented business in which an applicant has had an influential interest, has, in the previous five (5) years (and at a time during which the applicant had the influential interest):

    1. been declared by a court of law to be a nuisance; or

    2. been subject to a court order of closure or padlocking.

viii. An application for a sexually oriented business license shall be accompanied by a legal description of the property where the business is or will be located and a sketch or diagram showing the configuration of the premises, including a statement of total floor area occupied by the business and a statement of floor area visible or accessible to patrons for any reason, excluding restrooms. The sketch or diagram need not be professionally prepared but shall be drawn to a designated scale or drawn with market dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches. Applicants who are required to comply with the stage, booth, and/or room configuration requirements of this Ordinance shall submit a diagram indicating that the setup and configuration of the premises meets the requirements of

the applicable regulations. The County Commissioners or their assigns may waive the requirements of this subsection (8) for a renewal application if the applicant adopts a legal description and a sketch or diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

c. The information provided pursuant to this subsection (c) shall be supplemented in writing by certified mail, return receipt requested, to the County Commissioners or their assigns within ten (10) working days of a change of circumstances which would render the information originally submitted false or incomplete.

d. *Signature.* If a person who seeks a sexually oriented business license under this section is an individual, he shall sign the application for a license as applicant. If a person who seeks a sexually oriented business license is other than an individual, each person with an influential interest in the sexually oriented business or in a legal entity that controls the sexually oriented business shall sign the application for a license as applicant. Each applicant must be qualified under this Ordinance and each applicant shall be considered a licensee if a license is granted. Each person who files in person either an application for a sexually oriented business license or an application for a sexually oriented business employee license shall also submit, with the application, a set of fingerprints taken by the LaPorte County Sheriff's Department on a form provided by the Sheriff's Department. The LaPorte County Sheriff's Department shall take fingerprints, during normal business hours, within four (4) business hours of receiving a request for such service.

e. The information provided by an applicant in connection with an application for a license under this Ordinance shall be maintained by the office of Planning Services on a confidential basis, and such information may be disclosed only as may be required, and only to the extent required, by governing law or court order. Any information protected by the right to privacy as recognized by state or federal law shall be redacted prior to such disclosure.

14. Issuance of License

a. *Business License.* Upon the filing of a completed application for a sexually oriented business license, the Director of Planning Services shall issue a license within thirty days of receipt of a complete application, together with the required application fee, unless:

   i. An applicant is less than eighteen (18) years of age.

   ii. An applicant has failed to provide information required by this Ordinance for issuance of a license or has falsely answered a question or request for information on the application form.

   iii. The license application fee required by this Ordinance has not been paid.

iv. The sexually oriented business, as defined herein, is not in compliance with the interior configuration requirements of this Ordinance or is not in compliance with locational requirements of the Ordinances of Franklin County.

v. Any sexually oriented business in which an applicant has had an influential interest, has, in the previous five (5) years (and at a time during which the applicant had the influential interest):

1. been declared by a court of law to be a nuisance; or,
2. been subject to an order of closure or padlocking.

vi. An applicant has been convicted of or pled guilty or *nolo contendere* to a specified criminal activity, as defined in this Ordinance.

b. The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the number of the licenses issued to the licensee(s), the expiration date, and, if the license is for a sexually oriented business, the address of the sexually oriented business. The sexually oriented business license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be read at any time that the business is occupied by patrons or is open to the public. A sexually oriented business employee shall keep the employee's license on his or her person or on the premises where the licensee is then working or performing.

15. Fees

a. The initial license and annual renewal fees for sexually oriented business licenses and sexually oriented business employee licenses shall be as follows: One Thousand Dollars ($1,000.00) for the initial and annual renewal fee for a sexually oriented business license; One Hundred Dollars ($100.00) for each employee.

16. Conflict with other Laws and Ordinances.

a. Sexually oriented businesses and sexually oriented business employees shall permit the County Commissioners or their assigns to inspect, from time to time on an occasional basis, the portions of the sexually oriented business premises where patrons are permitted, for the purpose of ensuring compliance with the specific regulations of this Ordinance, during those times when the sexually oriented business is occupied by patrons or is open to the public. This section shall be narrowly construed by the County to authorize reasonable inspections of the licensed premises pursuant to this Ordinance, but not to authorize a harassing or excessive pattern of inspection.

17. Expiration and Renewal of License.

a. Each license shall remain valid for a period of one calendar year from the date of issuance unless otherwise suspended or revoked. Such license may be renewed only by making application and payment of a fee as provided in this Ordinance.

b. Application for renewal of an annual license ~~should~~ shall be made at least ninety (90) days before the expiration date of the current annual license. If an application for renewal is made in less than ninety (90) days prior to the expiration date of the current annual license, then the applicant risks the sole responsibility of the annual license expiring. There shall be no extension of an annual license as a result of application for renewal less than ninety (90) days before license expiration.

18. Suspension.

a. The County Commissioners or their assigns shall issue a written notice of intent to suspend a sexually oriented business license for a period not to exceed thirty (30) days if the sexually oriented business licensee has knowingly or recklessly violated this Ordinance or has knowingly or recklessly allowed an employee or any other person to violate this Ordinance.

b. The County Commissioners or their assigns shall issue a written notice of intent to suspend a sexually oriented business employee license for a period not to exceed thirty (30) days if the employee licensee has knowingly or recklessly violated this Ordinance.

19. Revocation.

a. The County Commissioners shall issue a written notice of intent to revoke a sexually oriented business license or a sexually oriented business employee license, as applicable, if the licensee knowingly or recklessly violates this Ordinance or has knowingly or recklessly allowed an employee or any other person to violate this Ordinance and a suspension of the licensee's license has become effective within the previous twelve (12) month period.

b. The County Commissioners shall issue a written intent to revoke a sexually oriented business license or a sexually oriented employee license, as applicable, if:

i. The licensee has knowingly given false information in the application for the sexually oriented business license or the sexually oriented business employee license;

ii. The licensee has knowingly or recklessly engaged in or allowed possession, use, or sale of controlled substances on the premises of the sexually oriented business;

iii. The licensee has knowingly or recklessly engaged in or allowed prostitution on the premises of the sexually oriented business;

iv. The licensee knowingly or recklessly operated the sexually oriented business during a period of time when the license was finally suspended or revoked;

v. The licensee has knowingly or recklessly engaged in or allowed any specific sexual activity or specified criminal activity to occur in or on the premises of the sexually oriented business;

vi. The licensee has knowingly or recklessly allowed a person under the age of twenty-one (21) years to consume alcohol on the premises of the sexually oriented business; or,

vii. The licensee has knowingly or recklessly allowed a person under the age of eighteen (18) years to appear in a state of semi-nudity or nudity on the premises of the sexually oriented business.

c. The fact that any relevant conviction is being appealed shall have no effect on the revocation of the license, provided that, if any conviction which serves as a basis of a license revocation is overturned or reversed on appeal, that conviction shall be treated as null and of no effect for revocation purposes.

d. When, after the notice and hearing procedure described in this Ordinance, the County revokes a license, the revocation shall continue for one (1) year and the licensee shall not be issued a sexually oriented business license or sexually oriented business employee license for one (1) year from the date the revocation becomes effective.

e. A sexually oriented business license shall not be revoked except for a reason set forth in subsection (a) or (b), above. The County shall not enforce a revocation of a sexually oriented business license or a sexually oriented business employee license, as applicable, unless the revocation is accomplished in accordance with § 20 of this Ordinance.

20. Hearing; License Denial, Suspension, Revocation; Appeal

a. When the County Commissioners or their assigns issues a written notice of intent to deny, suspend, or revoke a license, the County Commissioners or their assigns shall immediately send such notice, which shall include the specific grounds under this Ordinance for such action, to the applicant or licensee (respondent) by personal delivery or certified mail. The notice shall be directed to the most current business address or other mailing address on file with the County Commissioners for the respondent. The notice shall also set forth the following: The respondent shall have ten (10) days after the delivery of the written notice to submit, at the office of the County Commissioners or their assigns a written request for a hearing. If the respondent does not request a hearing within said ten (10) days, the County Commissioners' written notice shall become a final denial, suspension, or revocation, as the case may be, on the thirtieth (30^{th}) day after it is issued, and shall be subject to the provisions of subsection (b) of this section.

b. If the respondent does make a written request for a hearing within said ten (10) days, then the County Commissioners or their assigns shall, within ten (10) days after the submission of the request, send a notice to the respondent indicating the date, time, and place of the hearing. The hearing shall be

conducted not less than ten (10) days nor more than twenty (20) days after the date that the hearing notice is issued. The County shall provide for the hearing to be transcribed.

c. At the hearing, the respondent shall have the opportunity to present all of respondent's arguments and to be represented by counsel, present evidence and witnesses on his or her behalf, and cross-examine any of the County Commissioners' witnesses. The County Commissioners or their assigns shall also be represented by counsel, and shall bear the burden of proving the grounds for denying, suspending, or revoking the license. The hearing shall take no longer than two (2) days, unless extended at the request of the respondent to meet the requirements of due process and proper administration of justice. The Hearing Officer shall issue a final written decision, including specific reasons for the decision pursuant to this Ordinance, to the respondent within five (5) days after the hearing.

d. If the decision is to deny, suspend, or revoke the license, the decision shall advise the respondent of the right to appeal such decision to a court of competent jurisdiction, and the decision shall not become effective until the thirtieth (30^{th}) day after it is rendered. If the Hearing Officer's decision finds that no grounds exist for denial, suspension, or revocation of the license, the Hearing Officer shall, contemporaneously with the issuance of the decision, order the County Commissioners or their assigns to immediately withdraw the intent to deny, suspend, or revoke the license and to notify the respondent in writing by certified mail of such action. If the respondent is not yet licensed, the County Commissioners or their assigns shall contemporaneously therewith issue the license to the applicant.

e. If any court action challenging a licensing decision is initiated, the County shall prepare and transmit to the court a transcript of the hearing within thirty (30) days after receiving written notice of the filing of the court action. The County shall consent to expedited briefing and/or disposition of the action, shall comply with any expedited schedule set by the court, and shall facilitate prompt judicial review of the proceedings. The following shall apply to any sexually oriented business that is lawfully operating as a sexually oriented business, or any sexually oriented business employee that is lawfully employed as a sexually oriented business employee, on the date on which the completed business or employee application, as applicable, is filed with the County Commissioners or his/her assigns: Upon the enforcement of any denial, suspension, or revocation of a Temporary License or annual license, the County Commissioners or their assigns shall immediately issue the respondent a Provisional License. The Provisional License shall allow the respondent to continue operation of the sexually oriented business or to continue employment as a sexually oriented business employee and will expire upon the court's entry of a judgment on the respondent's appeal or other action to restrain or otherwise enjoin the County's enforcement.

21. Transfer of License.

a. A licensee shall not transfer his or her license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the sexually oriented business license application.

22. Penalties.
Any persons violating any of the provisions of this ordinance, and anyone who performs or allows adult entertainment without the license required by this ordinance, shall be prosecuted in the same manner as misdemeanors are prosecuted. Such violations shall be prosecuted in the name of the State of Florida in a court having jurisdiction of misdemeanors by the prosecuting attorney thereof and, upon conviction shall be punished by a fine not to exceed $500 or by imprisonment in the County jail not to exceed 60 days or by both such fine and imprisonment. Each incident or separate occurrence of an act that violates this ordinance shall be deemed a separate offense.

23. Injunctive Relief: In addition to the procedures provided herein, commercial establishments that are not in conformity with these requirements shall be subject to appropriate civil action in the court of appropriate jurisdiction for abatement.

24. Effective Date: This ordinance shall become effective as provided by law.

(SEAL)

Franklin County, a Political
Subdivision of the State of Florida

Joseph A. Parrish, Its Chairman

ATTEST:

Marcia M. Johnson, Clerk of Court

Approved as to form and content

By: _____
Thomas M. Shuler, County Attorney