

ARTICLE III. - ADULT USES

Footnotes:

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Cross reference— *Female nudity in alcoholic beverage establishments, § 6-2; amusements and entertainments, ch. 10; businesses, ch. 26; commercial exploitation of nudity, § 26-176 et seq.; offenses involving public morals, § 86-101 et seq.*

DIVISION 1. - GENERALLY

Sec. 42-51. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Adult arcade means a place to which the public is permitted or invited wherein coin-operated, slug-operated or token-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of specified sexual activities or specified anatomical areas, as defined in this section.

Adult bookstore means an establishment which advertises, sells or rents adult material or offers for sale or rent adult material, unless at the establishment:

- (1) Admission to the establishment is not restricted to adults only;
- (2) All adult material is accessible only by employees;
- (3) The gross income from the sale and/or rental of adult material comprises less than ten percent of the gross income from the sale and rental of the goods or services at the establishment; and
- (4) The individual items of adult material offered for sale, rental or display comprise less than 25 percent of the total individual new items publicly displayed as stock in trade in any of the following categories: books, magazines, periodicals, or other printed matter, or photographs, films, motion pictures, VHS format videotapes, BETA format videotapes, slides, or other visual representations, including, but not limited to, compact discs, CD-ROMs, laser discs, and digital video discs, or recordings, or other audio matter or less than 25 percent of the individual used items publicly displayed at the establishment as stock in trade in the same categories set out above.

Any establishment which has food, beverages, tobacco products or other grocery products as more than 75 percent of its sales shall not be considered an adult bookstore.

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

Adult material means any one or more of the following, regardless of whether it is new or used:

- (1) Books, magazines, periodicals or other printed matter, paintings, drawings, or other publications or graphic media, or photographs, films, motion pictures, videocassettes, or disks, slides, or other visual representations, or recordings, or other audio matter, which have as their primary or dominant theme matter depicting, illustrating, describing or relating to specified sexual activities or specified anatomical areas; or
- (2) Instruments, novelties, devices or paraphernalia which are designed for use in connection with specified sexual activities.

Adult photographic or modeling studio means and includes any business establishment which offers or advertises as its primary business stock in trade, the use of its premises for the purpose of photographing or exhibiting specified sexual activities or specified anatomical areas or the modeling of apparel that exhibits specified anatomical areas.

Adult theater means an enclosed building or an enclosed space within a building, or an open-air area used for presenting either filmed or live plays, dances, or other performances, either by individuals or groups, distinguished or characterized by an emphasis on material depicting, describing, or relating to specified sexual activities or specified anatomical areas as defined in this section for observation by patrons therein. An establishment which has adult booths or an adult arcade is considered to be an "adult theater."

Adult use means any business entity which knowingly, or with reason to know, permits, suffers, or allows private performances as defined under this section. "Adult use" also shall be defined to include the terms adult arcade, adult bookstore, adult booth, adult theater, special cabarets, physical culture establishments, and adult photographic or modeling studios as defined in this section, including any business establishment whose primary business stock in trade is dependent upon the activities relating to specified sexual activities or specified anatomical areas as defined in this section.

Applicant means any business entity or person that has applied for an adult use permit or license.

Business entity means any and all persons, natural or artificial, including any individual, firm, corporation or association operating or proposed to operate for commercial or pecuniary gain.

("Operated for commercial or pecuniary gain" shall not depend upon actual profit or loss. Also, "operated for commercial or pecuniary gain" shall be presumed where the establishment has an occupational license.) "Business entity" includes any enterprise or venture in which a person sells, buys, exchanges, barter, deals or represents the dealing in any thing or article of value, or renders services for compensation.

Certification of compliance/noncompliance means a notice issued by the department of development review services indicating to an applicant that the location proposed for an adult use complies or does not comply with the locational requirements of this article.

Child care facility means any children's center, day nursery, nursery school, kindergarten, or family day care home as defined in Laws of Fla. ch. 61-2681 (compiled in ch. 26, art. II of this Code).

Church means a site or premises, such as a church, synagogue, temple, mosque, cathedral, chapel, tabernacle or similar place, which is used primarily or exclusively for religious worship and related activities.

Conviction means a determination of guilt resulting from plea or trial.

Department means the departments or divisions of county government, including health, development review services, or consumer protection, including the respective director, employees, officers and agents thereof.

Employee means a person who works or performs or provides services in connection with an adult use establishment, irrespective of whether such person is paid a salary or wage, or is an independent contractor, provided such person has a substantial or consistent relationship with the business of or entertainment/services provided by the adult use. "Employee" includes, but is not limited to, performers, managers and assistant managers, stockpersons, tellers, and operators.

Establishment means a site or premises, or portion thereof, upon which certain adult use activities or operations are conducted.

Establishment or commencement of business means and includes any of the following:

- (1) The opening or commencement of any adult use business as a new business;
- (2) The conversion of an existing business, whether or not an adult use business, to any adult use business;
- (3) The addition of any adult use business to any other existing adult use business;
- (4) The relocation of any adult use business; or
- (5) The continuation of an existing adult use business, regardless of whether it is in compliance with the requirements of this article.

For purposes of determining the date of commencement of business under division 5 of this article, evidence in the form of certified certificates of occupancy, affidavits, valid receipts or business records may be utilized. Any decision regarding a given date of commencement may be appealed pursuant to the provisions of section 42-62 of this article.

Information material to the decision means information which, if provided, would result in a denial of a license pursuant to subsection 42-79(c)(1).

Law enforcement officer means any person who is elected, appointed, or employed full-time by the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state.

Licensee means any person whose application for an adult entertainment establishment has been granted and who owns, possesses, operates and controls the establishment.

Material false information means information provided by the applicant which, if false, would result in denial of a license pursuant to subsection 42-79(c)(1).

Misrepresentation, mistake of fact or law relevant to the decision means information which, if not misrepresented or mistaken, would result in a denial of a license pursuant to subsection 42-79(c)(1).

Mixed use zoning district means any parcel located in the incorporated or unincorporated areas of the county, the municipal or county zoning designation of which allows residential use alone or in any combination with commercial or industrial uses.

Nates means the prominence formed by the muscles running from the back of the hip to the back of the leg.

Operator means any person or business entity who engages in or performs any activity which is necessary to or which facilitates the operation of an adult entertainment establishment, including but not limited to, the licensee, manager, owner, doorman, bartender, disc jockey, sales clerk, ticket taker, movie projectionist, performer, employee, or supervisor. This term is not meant to include repairmen, janitorial personnel or the like who are only indirectly involved in facilitating the operation of the adult use.

Patron means and includes any natural person other than an employee, operator, licensee, or governmental officer while performing duties pursuant to this article or other law.

Physical culture establishment means any business establishment which offers or advertises massage, body rubs or physical contact with specified anatomical areas, whether or not licensed. Business establishments which routinely provide medical services by state licensed medical practitioners, and electrolysis treatment by licensed operators of electrolysis equipment shall be excluded from the

definition of adult physical culture establishments.

Private performance means engaging in specified sexual activities or the display of any specified anatomical area by an employee to a person other than another employee while the person is in an area not accessible during such display to all other persons in the establishment, or while the person is in an area in which the person is totally or partially screened or partitioned during such display from the view of all persons outside the area.

Public recreation area means a tract of land within a municipality or unincorporated area which is kept for ornament and/or recreation and which is maintained as public property.

Residential zoned property means any parcel located in the incorporated or unincorporated areas of the county, the municipal or county zoning designation of which allows residential use.

School means and includes a premises or suite upon which there is a nursery school, kindergarten, elementary school, junior high school, middle school, senior high school, or exceptional learning center. However, the term "school" does not include a premises or site upon which there is an institution devoted solely to vocational or professional education or training or an institution of higher education, including, but not limited to, a community college, junior college, four-year college or university.

Special cabarets means any bar, dancehall, restaurant, or other place of business which features dancers, go-go dancers, exotic dancers, strippers, male or female impersonators, or similar entertainers, or waiters or waitresses that engage in specified sexual activities or display specified anatomical areas, or any such business establishment, the advertising for, or a sign or signs identifying which, use the words, "adult," "topless," "nude," "bottomless," or other words of similar import.

Specified anatomical areas means:

- (1) Less than completely covered or opaquely covered:
 - a. Human genitals or pubic regions; or
 - b. Cleavage of the nates of the human buttocks; or
 - c. That portion of the human female breast directly or laterally below a point immediately above the top of the areola; this definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast exhibited by a dress, blouse, shirt, leotard, bathing suit, or other wearing apparel, provided the areola is not so exposed.
- (2) Human male genitals in a discernible turgid state, even if completely and opaquely covered.
- (3) Any covering, tape, pastie, latex spray or paint or other device which simulates or otherwise gives the appearance of the display or exposure of any of the specified

anatomical areas listed in subsections (1) and (2) of this definition.

Specified criminal act means:

- (1) A violation or violations of this article, as amended, sufficient to warrant suspension or revocation of an adult use license under section 42-85(b) and (c);
- (2) An offense under F.S. ch. 794 (sexual battery);
- (3) An offense under F.S. ch. 796 (prostitution);
- (4) An offense under F.S. ch. 800 (lewdness; indecent exposure);
- (5) An offense under F.S. ch. 826 (bigamy; incest);
- (6) An offense under F.S. ch. 847 (obscene literature; profanity); or
- (7) An offense under a statute of a state other than Florida analogous to the offenses listed in subsections (2)—(6) of this definition, or under an analogous ordinance of another county or city which would be sufficient to warrant suspension or revocation of an adult use license under section 42-85(b) and (c).

Specified sexual activity means:

- (1) Human genitals in a state of sexual stimulation, arousal or tumescence;
- (2) Acts of anilingus, bestiality, buggery, cunnilingus, coprophagy, coprophilia, fellatio, flagellation, masochism, masturbation, necrophilia, pederasty, pedophilia, sadism, sadomasochism, sapphism, sexual intercourse, sodomy, urolagnia or zoerasty;
- (3) Fondling or other erotic touching of human genitals, pubic region, buttock, anus or female breast; or
- (4) Excretory functions as part of or in connection with any of the activities set forth in subsections (1) through (3) of this definition.

(Ord. No. 90-65, § 1.7, 7-24-90; Ord. No. 91-8, art. 2, 1-29-91; Ord. No. 92-6, art. I, 2-18-92; Ord. No. 93-89, art. 2, 10-19-93; Ord. No. 97-74, § 1, 9-9-97; Ord. No. 01-79, § 1, 11-13-01)

Cross reference— Definitions generally, § 1-2.

Sec. 42-52. - Penalty for violation of article.

Except as otherwise provided by law or ordinance, a person convicted of a violation of this article shall be punished by a fine not to exceed \$500.00 or by imprisonment in the county jail for a term not exceeding 60 days, or by both such fine and imprisonment. With respect to violations of this Code that are continuous with respect to time, each day the violation continues is a separate offense, except that only a civil penalty shall be imposed for violation of sections 42-138 and 42-139.

(Ord. No. 01-79, § 2, 11-13-01; Ord. No. 06-62, § 2, 8-1-06)

Sec. 42-53. - Construction of article.

The comprehensive adult use regulation ordinance shall be liberally construed to accomplish its purpose of licensing and regulating adult uses and related activities. Unless otherwise indicated, all provisions of this article shall apply equally to all persons, regardless of sex. Masculine pronouns, such as "he," "his" and "him," as employed in this article, 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. No. 90-65, § 1.4, 7-24-90; Ord. No. 91-8, art. 2, 1-29-91; Ord. No. 94-40, art. II, 4-19-94)

Sec. 42-54. - Authority.

The comprehensive adult use regulation ordinance is enacted pursuant to F.S. ch. 125 and under the Home Rule Power of Pinellas County, Florida, in the interest of the health, peace, safety, and general welfare of the people of the county.

(Ord. No. 90-65, § 1.2, 7-24-90; Ord. No. 91-8, art. 2, 1-29-91)

State Law reference— General powers of chartered counties, Fla. Const. art. VIII, § 1(g).

Sec. 42-55. - Territory embraced.

All territory within the legal boundaries of unincorporated Pinellas County, Florida, shall be embraced by the provisions of this article.

(Ord. No. 90-65, § 1.3, 7-24-90; Ord. No. 91-8, art. 2, 1-29-91)

Charter reference— Conflicts between county and municipal ordinances, §§ 2.01, 2.04.

Sec. 42-56. - Purpose and intent.

The intent of the board of county commissioners in adopting the comprehensive adult use regulation ordinance is to establish reasonable and uniform regulations that will protect the health, safety and general welfare of the people of Pinellas County, Florida. The provisions of this article, acting alone or together with other applicable county ordinances, have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including adult material. Similarly, it is not the intent nor effect of this article to restrict or deny access by adults to adult materials or expression protected by the First Amendment, or to deny access by distributors and exhibitors of

adult uses to their intended market.

(Ord. No. 90-65, § 1.5, 7-24-90; Ord. No. 91-8, art. 2, 1-29-91)

Sec. 42-57. - Legislative findings.

(a) With respect to zoning issues:

- (1) The board of county commissioners has considered the following reports, studies, and judicial opinions concerning the adverse secondary effects of adult uses on the community:
 - a. Northend Cinema Inc. v. Seattle, 90 Wash. 2d 709, 585 P.2d 1153 (1978).
 - b. Report On Zoning and Other Methods of Regulating Adult Entertainment in Amarillo (Texas), dated September 12, 1977.
 - c. Regulation of Criminal Activity and Adult Businesses, City of Phoenix, May, 1979.
 - d. Findings of the city planning commission for the City of New York, dated January 26, 1977.
 - e. Detroit's Approach to Regulating the Adult Uses, presented to the American Institute of Planners, Annual Conference, October 10, 1977.
 - f. Report to the city planning commission and city council from the planning department of the City of Beaumont, Texas, dated September 14, 1982.
 - g. Legislative Report on an Ordinance Amending Section 28-73 of the Code of Ordinances of the City of Houston, Texas; Providing for the Regulation of Sexually Oriented Commercial Enterprises, Adult Bookstores, Adult Movie Theaters and Massage Establishments; and Making Various Provisions and Findings Relating to the Subject. Report prepared by the Committee on the Proposed Regulation of Sexually Oriented Businesses and dated 1983.
 - h. Report on Adult Oriented Business in Austin. Report prepared by the special programs division of the office of land development services of the City of Austin, Texas, dated May 19, 1986.
 - i. Adult Entertainment Business in Oklahoma City, A Survey of Real Estate Appraisers. Report Prepared by the community development department of the City of Oklahoma City, Oklahoma, dated March 3, 1986.
 - j. Adult Entertainment Businesses in Indianapolis. An analysis prepared by the department of metropolitan development, dated February, 1984.
 - k. Director's Report: Proposed Land Use Code Text Amendment, Adult Cabarets. A report prepared by the director of the department of construction and land use of the City of

Seattle, Washington, dated March 24, 1989.

- l. Transcription of Pinellas County Sheriff's Department videotape titled Adult Lounges Surveillance. A nine-minute videotape dated June, 1987, which was presented to the board of county commissioners at the June 16, 1987, public hearing during which Ordinance No. 87-45 was adopted.
 - m. Summary and presentation of Pinellas County sheriff's officers' report detailing the criminal activities associated with adult uses in Pinellas County.
 - n. Past reports from Hillsborough County re criminal nature of secondary effects.
 - o. Transcript from the June 16, 1987, public hearing during which Ordinance No. 87-45 was adopted.
 - p. Copies of Hillsborough County Sheriff's Office reports dealing with several adult businesses in the county.
- (2) The board of county commissioners has considered a report by the county sheriff's office which documents in detail the criminal activities which are associated with adult uses in the county.
- (3) The county planning department has conducted a study to determine the amount of available land area within the unincorporated county for adult uses after the adoption of this article. This study has found that given the dense population of Pinellas County, distance requirements greater than 400 feet between adult and certain other land uses would not provide a sufficient area in which adult uses could be located and constitutional strictures to be met.
- The board of county commissioners, therefore, finds that the 400-foot distance requirement is a reasonable balance between the concern for the public health, safety and welfare of the citizens and a need to provide a sufficient area for adult uses to be located.
- (4) The board of county commissioners has determined that a one-year amortization period for nonconforming adult uses is reasonable in that the premises affected by this article are readily adaptable to conforming uses.
- (5) The board of county commissioners recognizes that as adult uses, as defined herein, affect surrounding sites in a deleterious manner, particularly when several adult uses are concentrated, special regulation of these uses is necessary to ensure that these effects will not contribute to the blighting or downgrading of the surrounding neighborhood.
- (6) The board of county commissioners has determined that adult uses should be dispersed rather than concentrated and finds that a minimum distance of 400 feet between adult uses serves an important function in preventing the concentration of adult uses.

- (7) The board of county commissioners has determined that this article is necessary to prevent crime, protect the county's retail trade, maintain property values, and protect and preserve the quality of the county's neighborhoods, commercial districts, and the quality of urban life.
 - (8) The board of county commissioners has received a recommendation from the local planning agency, pursuant to F.S. ch. 163.
- (b) With respect to other regulatory issues at the time of the adoption of Ordinance No. 91-8 (September 29, 1991):
- (1) Adult uses in the county lend themselves to ancillary unlawful and unhealthy activities that are presently uncontrolled by the operators of the establishments. There is presently no mechanism to make the owners of these establishments responsible for the activities that occur on their premises.
 - (2) Sexual acts are a regular occurrence at the adult use establishments, especially in private or semiprivate booths or cubicles for viewing films or live sex shows.
 - (3) Such establishments exist within Pinellas County, Florida:
 - a. Where the superficial tissues of one person are manipulated, rubbed, stroked, kneaded, and/or tapped by a second person, accompanied by the display or exposure of specified anatomical areas;
 - b. Where dancers, entertainers, performers or other individuals, for commercial gain, perform or are presented while displaying or exposing a specified anatomical area.
 - (4) Employees of adult use establishments engage in a higher incidence of certain types of criminal behavior than employees of other establishments.
 - (5) Employees of adult use establishments engage in a higher incidence of certain types of sexual behavior than employees of other establishments, including offering to perform sexual acts.
 - (6) Sexual acts are a regular occurrence at adult use establishments, especially those which provide private or semiprivate booths or cubicles for viewing films or videos, defined under this article as adult theaters.
 - (7) Offering and providing such space, areas and rooms where such activities take place creates conditions that generate prostitution and other crimes as well as unhealthy conditions.
 - (8) Persons frequent certain adult theaters for the purpose of providing sex within the premises of such adult theaters.
 - (9) At least 50 communicable diseases may be spread by activities occurring in adult use establishments, including, but not limited to, syphilis, gonorrhea, human immune

deficiency virus infection (AIDS), genital herpes, hepatitis B, Non A, Non B, amebiasis, salmonella infections and shigella infections.

- (10) Since 1981 and to the present, there have been an increasing cumulative number of reported cases of acquired immunodeficiency syndrome (AIDS) caused by the human immunodeficiency virus (HIV) in the United States: 843 in 1982, 3,064 in 1983, 7,699 in 1984, 15,948 in 1985, 29,003 in 1986, 49,743 in 1987, 82,406 in 1988, 117,781 in 1989, and 157,525 through November, 1990; and in Florida: 110 cases in 1982, 345 in 1983, 778 in 1984, 1,628 in 1985, 2,980 in 1986, 5,228 in 1987, 8,111 in 1988, 11,466 in 1989, and 13,927 through November, 1990.
- (11) Since 1981 and to the present, there has been an increasing cumulative number of reported cases of AIDS caused by HIV in Pinellas County: Six in 1982, eight in 1983, 16 in 1984, 51 in 1985, 116 in 1986, 212 in 1987, 350 in 1988, 496 in 1989, and 638 through November, 1990.
- (12) As of November 30, 1990, there have been 638 reported cases of AIDS in Pinellas County, with 376 deaths being reported, and of such 638 cases, 588 were males and 50 were females.
- (13) The number of cases of primary and secondary syphilis in the United States reported annually has risen with 33,613 cases reported in 1982, 32,698 in 1983, 28,607 in 1984, 27,131 in 1985, 27,883 in 1986, 35,147 in 1987, 40,117 in 1988, 44,540 in 1989, and 45,200 through November, 1990; and in Florida, with 4,149 cases reported in 1982, 4,179 in 1983, 3,876 in 1984, 3,679 in 1985, 4,344 in 1986, 7,440 in 1987, 8,378 in 1988, 7,092 in 1989, and 4,909 through November, 1990.
- (14) The number of cases of primary and secondary syphilis in Pinellas County reported annually has risen with 22 cases reported in 1982, 165 in 1983, 176 in 1984, 117 in 1985, 130 in 1986, 270 in 1987, 396 in 1988, 465 in 1989, and 334 through November, 1990.
- (15) The number of cases of gonorrhea in the United States reported annually remains at a high level with 960,633 civilian cases reported in 1982, 900,435 in 1983, 878,556 in 1984, 911,419 in 1985, 900,868 in 1986, 780,905 in 1987, 719,536 in 1988, 733,151 in 1989 and 611,932 through November, 1990; and in Florida, with 62,702 total cases reported in 1982, 53,370 in 1983, 51,212 in 1984, 57,647 in 1985, 67,443 in 1986, 62,944 in 1987, 60,714 in 1988, 51,236 in 1989, and 40,457 through November, 1990.
- (16) The number of cases of gonorrhea reported annually in Pinellas County remains at a high level with 3,999 total cases reported in 1982, 3,518 in 1983, 3,545 in 1984, 3,604 in 1985, 4,128 in 1986, 4,122 in 1987, 3,993 in 1988, 3,060 in 1989, and 2,333 through November, 1990.

- (17) Of the 2,333 cases of gonorrhea reported in Pinellas County in January through November, 1990, 187 were resistant to penicillin, this number presenting a 34.5 percent increase over the 139 cases reported in the same period in 1989.
- (18) 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.
- (19) According to the best scientific evidence, AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts.
- (20) According to the best scientific evidence, numerous other diseases and infestations, including chlamydia, pelvic inflammatory disease, chancroid, herpes, hepatitis B, lymphogranuloma venereum, granuloma inguinale, genital warts, trichomoniasis, scabies, pediculosis, amebiasis, giardiasis, and others are transmitted by sexual acts.
- (21) Sanitary conditions in some adult theaters are unhealthy, in part because of the unregulated nature of the activities, because of the failure of owners and operators of the facilities to self-regulate those activities, and in part because of the substandard facilities and maintenance of those facilities.
- (22) The United States Centers for Disease Control have issued universal precautions, including housekeeping and disinfection guidelines, for the prevention of transmission of the HIV virus and other diseases, which guidelines should be followed by adult-oriented establishments.
- (23) Sexually transmitted disease clinic patients interviewed by disease intervention specialists of the county health department have admitted sexual contacts with patrons and employees at various adult use establishments.
- (24) Upon inspection by staff members of the county sheriff's office and members of the county health department, semen has been found in the areas of adult use establishments where persons view adult-oriented films or witness sexually explicit live entertainment.
- (25) Mingling and sexual contact between patrons and employees is generally initiated by the exchange of money and may reasonably be expected to serve as an opportunity to solicit for and an inducement to agree to unprotected sexual activity, including prostitution, and thus poses a threat to the health of both groups and promotes the spread of communicable as well as social diseases.
- (26) Unprotected sexual intercourse, especially prostitution, is a major contributing factor to the increase of sexually transmitted diseases and AIDS. Based on interviews of STD clinic patients, who report sexual contacts with patrons and employees at various adult use

establishments, it is reasonable to conclude that the entertainment provided in such establishments is conducive to the arrangement of such liaisons to be later consummated off-premises.

- (27) When the previously described activities characteristic of adult use establishments are present within the county, other activities which are illegal 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, possession, distribution and transportation of obscene materials.
- (28) Adult use establishments are usually constructed, partly or wholly, of substandard material, and are usually maintained in a manner reflecting disregard for the health and safety of the occupants.
- (c) The concerns raised in the foregoing legislative findings in this section relate to substantial and legitimate governmental interests.
- (d) Adult use establishments have operational characteristics which should be reasonably regulated in order to protect those substantial governmental concerns.
- (e) A reasonable and simple licensure procedure is an appropriate mechanism to place the burden of that reasonable regulation on the owners, operators and managers of the adult use establishments. Further, such a licensing procedure will place a heretofore nonexistent incentive on the owner/operator to see that the adult use establishment is run in a manner that is consistent with the health, safety and welfare of its patrons and employees as well as the citizens of the county. It is appropriate to require reasonable assurances that the licensee is the actual owner/operator of the adult use establishment, fully in possession and control of the premises and the activities occurring therein.
- (f) Adult use establishments are a pervasively regulated industry, making reasonable inspections and administrative searches necessary to enforce regulatory standards.
- (g) Removal of doors on adult booths and requiring sufficient lighting in adult theaters advances the substantial governmental interest in curbing the illegal and unsanitary sexual activity occurring at adult theaters.
- (h) The prevention of sexual contact between patrons and employees at adult use establishments is unrelated to the suppression of free expression but serves to address the concerns raised in the findings contained in this section. Although the dancer's erotic message may be slightly less effective from three feet away, the ability to engage in the protected expression is not significantly impaired.
- (i) Separating dancers from patrons and prohibiting dancers and patrons from engaging in sexual

fondling and caressing in adult cabarets would reduce the opportunity for prostitution transactions and thus should deter prostitution.

- (j) Requiring that the facilities of adult theaters be constructed of materials that are easily cleanable, that the facilities be cleaned on a regular basis, and that the employees cleaning the facilities take reasonable precautions to avoid contact with possible disease transmitting media is reasonably related to the protection of both employees and patrons from sexually transmitted diseases.
- (k) Requiring licensees of adult use establishments to keep information regarding current employees and certain past employees 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 in such establishments.
- (l) The disclosure of certain information by those persons ultimately responsible for the day-to-day operation and maintenance of the adult use establishment is beneficial where such information is substantially related to the significant governmental interest in the operation of such uses in such manner as to prevent the spread of sexually transmitted diseases and to reduce or eliminate the criminal activity associated with adult use establishments.
- (m) It is desirable in the prevention of the spread of communicable diseases and in the investigation of criminal activity to obtain a limited amount of information regarding certain employees who either engage in the conduct which this article is designed to prevent or are likely to be witnesses to such activity.
- (n) A substantial rational relationship between sexually oriented businesses and sexually related crimes establishes a compelling justification for barring those persons prone to such crimes from the management of such businesses.
- (o) The fact that an applicant for an adult use license has been convicted of a sexually related crime leads to a rational inference that the applicant is more likely to engage in conduct in contravention of this article.
- (p) The barring of a person from participating in an adult use business may cease when circumstances indicate to the county that offenders are no longer criminally inclined.
- (q) The barring of such individuals from management of adult uses for a period of years serves as a deterrent to and prevents the conduct which leads to the transmission of sexually transmitted diseases and to the promotion of that criminal activity associated with adult uses.
- (r) Because the weight of evidence shows that while adult bookstores which only sell or rent adult material and have no adult booth/theater component have similar secondary effects as other adult uses, such bookstores do not promote the transmission of sexual diseases, an exemption of such limited adult establishments from the licensure requirements, but not the

locational requirements of this article is appropriate.

- (s) Because grocery stores, convenience stores and other similar establishments which may carry some magazines or books containing some adult materials do not have similar secondary effects as other adult uses, they should be exempt from regulations under this section.
- (t) The board of county commissioners has determined that a one-year amortization for presently nonconforming adult use or uses which become nonconforming in the future is reasonable in that the premises affected by this article are readily adoptable to conforming uses.

(Ord. No. 90-65, § 1.6, 7-24-90; Ord. No. 91-8, art. 2, 1-29-91; Ord. No. 93-89, art. 1, 10-19-93; Ord. No. 97-74, §§ 2, 3, 9-9-97)

Sec. 42-58. - Regulation of obscenity subject to state law.

It is not the intent of the board of county commissioners to legislate with respect to matters of obscenity. These matters are regulated by state law, including F.S. ch. 847.

(Ord. No. 90-65, § 1.8, 7-24-90; Ord. No. 91-8, art. 2, 1-29-91)

Sec. 42-59. - Regulation of massage establishments subject to state law.

It is not the intent of the board of county commissioners to legislate with respect to matters of massage establishments. These matters are regulated by state agency, the department of professional regulation, board of massage, and by F.S. ch. 480.

(Ord. No. 90-65, § 1.9, 7-24-90; Ord. No. 91-8, art. 2, 1-29-91)

Sec. 42-60. - Enforcement of article.

- (a) In the event the sheriff learns or finds upon sufficient cause that a licensed adult use establishment is operating contrary to the respective general requirements of section 42-106, or the applicable special requirements of sections 42-107(1)a., b., c., d., h., (2), (3), (4) and (5) and section 42-108, he shall notify the licensee of the violation and shall allow the licensee a 30-day period in which to correct the violation. Subsequent inspections for violations of the foregoing provisions shall not require any notice prior to citation as the licensee and its employees are deemed to have been placed on notice of the requirements of this article by the first notice and cure period. The frequency of citation for these violations, however, shall be no more frequent than every 15 days.
- (b) The filing of an application to the board of adjustment for a variance from subsections 42-107(1)d, e and/or f preclude citation for those provisions until the expiration of such time

as the board of adjustment, in its conditions for any variance, provide for correction of the violation, consistent with the variance. If the licensee fails to so correct the violation before the expiration of the time period provided for by the board of adjustment, the sheriff may issue citations in the same manner as subsequent inspections under subsection (a).

- (c) Whoever violates any section of division 6 of this article may be prosecuted and punished as provided by F.S. § 125.69 (2000), except that a penalty of imprisonment shall not be imposed for violations of sections 42-138 and 42-139. Nothing in this requirement shall be interpreted to bind sheriff's deputies to the requirements of code inspectors under F.S. § 125.69 (2000).
- (d) In addition to the penalties provided for violation of county ordinances in section 1-8, adult bookstores, adult theaters, special cabarets, physical culture establishments or adult photographic or modeling studios not in conformity with the requirements of this article shall be subject to the appropriate civil action, including injunctive relief, in the court of appropriate jurisdiction for their abatement. Except as provided in subsections (a) and (b) of this section, each day that any violation is committed shall constitute a separate offense.
- (e) It is the responsibility of the licensee, owner, employee or operator of an adult use business establishment to ensure compliance with this article, notwithstanding the issuance of an occupational license, building permit, zoning clearance for an alcohol license or any other governmental permit.

(Ord. No. 90-65, § 6.15, 7-24-90; Ord. No. 91-8, art. 7, 1-29-91; Ord. No. 92-6, art. XI, 2-18-92; Ord. No. 93-89, art. 19, 10-19-93; Ord. No. 94-40, art. X, 4-19-94; Ord. No. 97-74, § 4, 9-9-97; Ord. No. 01-79, § 3, 11-13-01)

Sec. 42-61. - Responsibilities of board of commissioners, department of justice and consumer services, departments, and sheriff.

- (a) Ultimate responsibility for the administration and enforcement of this article is vested in the board of county commissioners.
- (b) The department of justice and consumer services is responsible for granting, denying, revoking, renewing, suspending, and canceling adult use licenses for proposed or existing adult use establishments and for ascertaining whether a suspected adult use establishment is licensed. The office of the sheriff is responsible for all enforcement actions brought under division 6 of this article. The health department and the department of justice and consumer services may assist the office of the sheriff in its investigative responsibilities.
- (c) The sheriff is responsible for verifying information contained on an application pursuant to section 42-77(b) for inspecting any proposed, licensed or nonlicensed establishment in order to ascertain whether it is in compliance with applicable local ordinances and criminal statutes,

including the provisions set forth in division 6 of this article.

- (d) The health department is responsible for any licensed establishment in order to review and approve its sanitation procedure required under section 42-107(4).
- (e) The planning department is responsible for ascertaining whether an existing adult use or a proposed establishment for which a license is being applied for complies with all locational requirements of county ordinances, pursuant to section 42-106(4), and if it complies, issuing an approval in the form of a valid adult use permit pursuant to division 5 of this article.
- (f) Any law enforcement officer or employee of the departments referenced in subsections (b), (c) and (d) of this section who is authorized by the head of that department shall, at any reasonable hour, have access to and shall have the right to inspect the premises of all licensees under this article for compliance with any or all of the applicable codes, statutes, ordinances, and regulations in effect in the county and within the responsibilities of their respective department as outlined in subsections (b), (c) and (d) of this section. Such officer or employee shall require strict compliance with the provisions of this article. Reports of violations shall be reported to the department of justice and consumer services.

(Ord. No. 90-65, § 2.1, 7-24-90; Ord. No. 91-8, art. 3, 1-29-91; Ord. No. 93-89, arts. 3, 4, 10-19-93; Ord. No. 94-40, art. II, 4-19-94; Ord. No. 97-74, § 5, 9-9-97)

Sec. 42-62. - Review of decisions by department of justice and consumer services, board of county commissioners or its departments.

Any decision of the department of justice and consumer services, the board of county commissioners or its departments made pursuant to this article may be immediately reviewed as a matter of right by petition for writ of common law certiorari to the Circuit Court for Pinellas County upon the filing of an appropriate pleading by an aggrieved party.

(Ord. No. 90-65, § 7.1, 7-24-90; Ord. No. 91-8, art. 8, 1-29-91; Ord. No. 93-89, art. 20, 10-19-93; Ord. No. 97-74, § 6, 9-9-97)

Sec. 42-63. - Service of notice.

Any notice required under this article shall be accomplished by 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 department of justice and consumer services has been notified otherwise in writing.

(Ord. No. 90-65, § 7.2, 7-24-90; Ord. No. 91-8, art. 8, 1-29-91; Ord. No. 97-74, § 7, 9-9-97)

Sec. 42-64. - Immunity from prosecution.

The county, the sheriff, or any department shall be immune from prosecution, civil or criminal, for reasonable, good faith trespass upon an adult use establishment while acting within the scope of its authority under this article.

(Ord. No. 90-65, § 7.3, 7-24-90; Ord. No. 91-8, art. 8, 1-29-91; Ord. No. 93-89, art. 21, 10-19-93)

Secs. 42-65—42-75. - Reserved.

DIVISION 2. - LICENSE

Sec. 42-76. - Required; classification.

- (a) *Requirement.* No adult use establishment except an adult bookstore operating only as an adult bookstore shall be permitted to operate without having first been granted an adult use license by the department of justice and consumer services under this article.
- (b) *Classifications.* Any adult use shall be classified as an adult bookstore, adult theater, adult photographic or modeling studio, physical culture establishment, or special cabaret, or any combination of these uses, based on the information in the application subject to subsequent inspection for verification.

(Ord. No. 90-65, § 2.2, 7-24-90; Ord. No. 91-8, art. 3, 1-29-91; Ord. No. 92-6, art. II, 2-18-92; Ord. No. 97-74, § 8, 9-9-97)

Sec. 42-77. - Application required; contents; fee; rejection of incomplete application; consent by applicant.

- (a) *Required.* Any person desiring to operate an adult use establishment shall file with the department of justice and consumer services a sworn license application on a standard application form supplied by the department of justice and consumer services.
- (b) *Contents of application.* The completed application required by this section shall contain the following information and shall be accompanied by the following documents:
 - (1) If the applicant is:
 - a. An individual, the individual shall state his legal name and any aliases and submit satisfactory proof that he is at least 18 years of age;
 - b. A partnership, the partnership shall state its complete name, the names of all partners having either direct, managerial, supervisory or advisory responsibilities for day-to-day operations of the adult use, and whether the partnership is general or limited;

- c. A corporation, the corporation shall state its complete name, the date of its incorporation, evidence that the corporation is in good standing, the names and capacity of all officers, directors, and stockholders having either direct, managerial, supervisory or advisory responsibilities for day-to-day operations of the adult use and, if applicable, the name of the registered corporate agent and the legal street address of the registered office for service of process.
- (2) If the applicant intends to conduct the establishment under a name other than that of the applicant, the establishment's fictitious name and a certified copy of the applicant's registration with the division of corporations of the department of state under F.S. § 865.09 (1990).
- (3) Whether the applicant or any of the other individuals listed pursuant to subsection (b)(1) of this section has, within the five-year period immediately preceding the date of the application, been convicted of a specified criminal act and, if so, the specified criminal act involved, the date of conviction, and the place of conviction, and whether there exist any charges of a specified criminal act pending at the time of the application and, if so, the specified criminal act involved and the name and location of the court in which the charges are pending.
- (4) Whether the applicant or any of the other individuals listed pursuant to subsection (b)(1) of this section has had a previous license or permit, under this article or any other ordinance regulating adult uses, suspended or revoked, or by court order required to cease operation, 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, and whether the applicant or any other individuals listed pursuant to subsection (b)(1) of this section has been a partner in a partnership or an officer, director or principal stockholder of a corporation whose license under this article or any other ordinance regulating adult uses 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.
- (5) Whether the applicant or any other individuals listed pursuant to subsection (b)(1) of this section holds any other licenses under this article and, if so, the names and locations of such other licensed establishments.
- (6) The general nature of the type of adult use for which the applicant is seeking a license, including a statement concerning the degree to which the anticipated activities at the adult use meet the definitions of the enumerated adult use classifications listed in section 42-76(b). Such a characterization shall serve as an initial basis for the permitted activities allowed under the license issued.

- (7) The location of the proposed establishment, including a legal description of the property site, and a legal street address.
- (8) The names of the employees for the proposed establishment, if known, or if presently unknown, a statement to that effect.
- (9) The name, legal mailing address and street address of any business entity which holds a contract to manage or operate the adult use establishment, and the names of all employees of that business entity.
- (10) The applicant's legal mailing address, residential street address, and residential telephone number, if any.
- (11) A site plan of the proposed or existing establishment. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each site plan should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches. The site plan shall include, but not be limited to, the following:
 - a. All property lines, rights-of-way, and the location of buildings, parking areas and spaces, curb cuts, and driveways;
 - b. All windows, doors, entrances and exits, fixed structural features, walls, stages, partitions, projection booths, admission booths, adult booths, concession booths, stands, food service equipment, counters and similar structures;
 - c. All proposed improvements or enlargements to be made, which shall be indicated and calculated in terms of percentage of increase in floor size;
 - d. A designation of any portion of the premises in which patrons will not be permitted;
 - e. If a proposed establishment is constructed in a manner that varies from the site plan submitted, a supplemental site plan showing the existing facility shall be provided, once the certificate of occupancy or final building permit inspection is completed.
- (12) A recent photograph of the individuals listed pursuant to subsection (b)(1) of this section.
- (13) Either the driver's license number or the state or federally issued identification card number of the individuals listed pursuant to subsection (b)(1) of this section.
- (14) A valid adult use permit signed by the director of the county department of development review services or his designee pursuant to division 5 of this article.
- (15) A sworn statement attesting to the accuracy of the information provided in the application and to the fact that the applicant, as licensee, will own, possess, operate and exercise control over the proposed or existing adult use establishment.

(c) *Application fees.*

- (1) Any adult use establishment shall pay to the county department of development review services, prior to application for a license, that fee in an amount to cover the expenses of the zoning review necessary to obtain an adult use permit pursuant to division 5 of this article. The amount of such fee shall be established by resolution of the board of county commissioners. Such fee shall be paid only one time for any proposed adult use location unless the proposal is to expand the dimensions of a permitted adult use.
- (2) Each application for an adult use license shall be accompanied by a nonrefundable fee in an amount required to offset the cost of processing the application as set by resolution of the board of county commissioners. If the application for a license is approved and a license is granted, the fee shall be applied as a credit towards the annual license fee required for the first year pursuant to section 42-81.

(d) *Incomplete application.*

- (1) In the event the department of justice and consumer services determines that the applicant has not properly completed the application for a proposed establishment pursuant to the requirements of this section, the department shall promptly notify the applicant of such fact and the time period for granting or denying a license under section 42-79 shall be stayed during the period in which the applicant is allowed an opportunity to respond to the notice. Failure to respond to a request for information necessary to complete the application within 15 days shall result in a denial of the application on the basis of abandonment and the applicant shall be refunded that portion of the fee applicable to the background investigations if the investigations did not occur. This denial shall be without prejudice to the applicant's right to reapply.
- (2) If the applicant denies that the application is incomplete with respect to subsections (b)(1) through (b)(14) of this section, the department of justice and consumer services shall treat the application as abandoned and deny the application pursuant to subsection (d)(2) of this section.

(Ord. No. 90-65, § 2.3, 7-24-90; Ord. No. 91-8, art. 3, 1-29-91; Ord. No. 92-6, art. IV, 2-18-92; Ord. No. 93-89, arts. 5, 6, 10-19-93; Ord. No. 94-40, art. IV, 4-19-94; Ord. No. 97-74, § 9, 9-9-97)

Sec. 42-78. - Reserved.

Editor's note— Ord. No. 01-79, § 4, adopted Nov. 13, 2001, repealed § 42-78, which pertained to investigation of application and derived from Ord. No. 90-65, § 2.4, adopted July 24, 1990; Ord. No. 91-8, art. 3, adopted Jan. 29, 1991; Ord. No. 94-40, art. IV, adopted April 19, 1994; and Ord. No. 97-74, § 10, adopted Sept. 9, 1997.

Sec. 42-79. - Grant; denial.

(a) *Time period for granting or denying license.*

- (1) The department of justice and consumer services shall grant or deny an application for a new, renewal or transfer license under this article within 30 days from the date of its proper filing. Any denial shall state the reasons for the denial. Upon the expiration of the 30th day, the applicant may, at the applicant's discretion, begin operating the establishment for which a license is sought, without benefit of a license, unless and until the department of justice and consumer services notifies the applicant of a denial of the application and states the reason(s) for that denial. Failure to timely grant or deny an application for a license, and the revisions of this section allowing operation without benefit of a license, shall not serve as a granting of the license.
- (2) Failure to timely grant or deny an application for a license under this article shall serve to ripen an appropriate action to compel a decision on the application. The county will cooperate with the applicant to assure his entitlement to prompt judicial review of the county's failure to timely grant or deny the application. All operations of the establishment under this special provision shall conform to the provisions of division 5 and sections 42-138 (d), (e), 42-139, 42-146 and 42-148.

(b) *Granting of application for license.* If there is no basis for denial of a license under this article, pursuant to subsection (c) of this section, the department of justice and consumer services shall grant the application, notify the applicant of the granting, and issue the license to the applicant upon payment of the appropriate annual license fee provided in section 42-81, with credit as provided in section 42-77.

(c) *Denying of application for license.*

- (1) The department of justice and consumer services shall deny the application for a license under this article for any of the following reasons:
 - a. The application contains material false information, or information material to the decision was omitted; failure to list an individual required to be listed, pursuant to subsection 42-77(b)(1), and whose listing would result in a denial pursuant to subsections (c)(1)b and (c)(1)d of this section, is presumed to be a material false information for purposes of denial of the application; the certification that the licensee

owns, possesses, operates and exercises control over the proposed or existing adult use establishment is a material representation for purposes of this section.

- b. The applicant or any of the other individuals listed pursuant to subsection 42-77(b)(1) holds or has held a license under this article, or any other ordinance regulating adult uses, which has been suspended or revoked for reasons which would be sufficient to warrant suspension or revocation under this article and from which less than ten years have elapsed since the date of revocation or from which less than two years have elapsed since the date of suspension.
 - c. The granting of the application would violate a statute, ordinance, or an order from a court of law.
 - d. An applicant or any of the other individuals listed pursuant to subsection 42-77(b)(1) has been convicted of a specified criminal act:
 1. For which:
 - i. Less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;
 - ii. Less than five years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a felony offense; or
 - iii. Less than five years have elapsed since the date of the last conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the convictions are of two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any 24-month period.
 2. The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant.
 3. An applicant who has been convicted of a specified criminal act may qualify for an adult use license only when the time period required by subsection (c)(1)d.1(i)—(iii) of this section has elapsed.
 - e. Abandonment of the application pursuant to section 42-77(d).
- (2) If the department of justice and consumer services denies the application, it shall notify the applicant of the denial, and state the reason(s) for the denial.
- (3) If a person applies for a license at a particular location within a period of six months from the date of denial of a previous application for a license at the location, and there has not been an intervening change in the circumstances material to the decision regarding the former reason(s) for denial, the application shall not be accepted for consideration.

- (d) *Compliance required.* The granting of a license under this article does not act as a certification that the proposed adult use establishment meets all provisions of this article or of any health or zoning statute, code, ordinance, or regulation. The existing adult use establishment and any proposed adult use establishment, once established, must meet all code provisions required of all regulated businesses, including the provisions of this article.

(Ord. No. 90-65, § 2.5, 7-24-90; Ord. No. 91-8, art. 3, 1-29-91; Ord. No. 92-6, art. IV, 2-18-92; Ord. No. 93-89, arts. 7—9, 10-19-93; Ord. No. 94-40, arts. V, VI, 4-19-94; Ord. No. 97-74, § 11, 9-9-97)

Sec. 42-80. - Contents of license; term; renewals; expiration; cancellation.

- (a) *Contents.* An adult use license shall state on its face:

- (1) The name of the licensee;
- (2) The legal mailing address of the licensee;
- (3) The name of the establishment;
- (4) The legal street address of the establishment;
- (5) The classifications of the license;
- (6) The date of issuance; and
- (7) The date of expiration.

- (b) *Term.* All licenses issued under this article shall be annual licenses which shall commence from the date of issue.

- (c) *Renewals.*

- (1) Adult use licenses shall be renewed annually. Subject to the requirements of this article, a licensee under this article shall be entitled to a renewal of his annual license from year to year, as a matter of course, prior to expiration of the license by presenting the license for the previous year, paying the appropriate license fee and completing a renewal application on a form provided by the department of justice and consumer services.
- (2) An application for renewal of an adult use license may be denied if updated information provided in the renewal application indicates that one or more of the individuals required to be listed pursuant to subsection 42-77(b)(1) were not listed in the original application and their existence in the original application would have resulted in a denial of the application pursuant to subsections 42-79(c)(1)b and d. Removal of that individual(s) from the application for renewal will allow approval of the application for renewal.
- (3) An application for renewal of an adult use license may not be denied where the individuals required to be listed pursuant to subsection 42-77(b)(1) were listed in the original application and, subsequent to issuance of the license, were convicted of an offense which

would have resulted in a denial of the application pursuant to subsections 4279(c)(1)b and d. Such convictions are to be accommodated through the suspension and revocation procedures of sections 42-85 and 42-86.

(d) *Expiration.* A license that is not renewed under this article shall expire. An expired license may be renewed within 30 days of expiration upon presentation of an affidavit stating that no adult entertainment activity has taken place at the establishment subsequent to expiration, upon payment of the appropriate license fee, upon completion of the renewal application, and upon payment of a penalty of ten percent of the appropriate license fee for the first 30 days after expiration of the license, or fraction thereof. Without presentation of the affidavit, the establishment seeking to renew the license must apply for a new license.

(e) *Cancellation.* All expired adult use licenses not renewed within 30 days of expiration shall be canceled summarily by the department of justice and consumer services.

(Ord. No. 90-65, § 2.6, 7-24-90; Ord. No. 91-8, art. 3, 1-29-91; Ord. No. 93-89, art. 10, 10-19-93; Ord. No. 97-74, § 12, 9-9-97)

Sec. 42-81. - Annual licensing regulatory fees; levy of; regulatory in nature.

(a) *Levy of license fees.*

- (1) In order to cover the administrative and enforcement costs associated with this article, there are hereby levied annual licensing regulatory fees under this article for an adult entertainment establishment in amounts set by resolution of the board of county commissioners.
- (2) An establishment proposing to operate or operating only as an adult cabaret shall pay a licensing regulatory fee.
- (3) An establishment proposing to operate or operating only as an adult photographic studio shall pay a licensing regulatory fee.
- (4) An establishment proposing to operate or operating only as a physical culture establishment shall pay a licensing regulatory fee.
- (5) An establishment proposing to operate or operating only as an adult use which cannot be categorized according to the above-referenced categories shall be assessed at the rate applicable to the adult use most closely resembling the proposed or existing use.
- (6) An establishment proposing to operate or operating as two of the above-referenced classifications shall pay a licensing regulatory fee.
- (7) An establishment proposing to operate or operating as three of the above-referenced classifications shall pay a licensing regulatory fee.
- (8) An establishment proposing to operate or operating as four or more of the above-

referenced classifications shall pay a licensing regulatory fee.

- (b) *License fees are regulatory in nature.* The annual license fees collected under this article are declared to be regulatory fees which are collected for the purpose of examination and inspection of adult uses under this article and the administration thereof. These regulatory fees are in addition to and not in lieu of building permit, zoning, and food establishment fees, or other fees imposed by other sections of this Code.

(Ord. No. 90-65, § 2.7, 7-24-90; Ord. No. 91-8, art. 3, 1-29-91; Ord. No. 92-6, art. VI, 2-18-92; Ord. No. 97-74, § 13, 9-9-97)

Sec. 42-82. - Records and reports; consent by licensee.

- (a) *Records and reports.*

- (1) Each licensee shall keep such records and make such reports as are required under this article.
- (2) Whenever the information required by or provided under subsection 42-77(b) has changed, the licensee shall provide the department of justice and consumer services with the changed information within 15 days of occurrence of the change.

- (b) *Consent.* By holding a license under this article, the licensee shall be deemed to have consented to the provisions of this article and to the exercise by the department of justice and consumer services, the sheriff, and the departments administering this article of their respective responsibilities under this article.

(Ord. No. 90-65, § 2.8, 7-24-90; Ord. No. 91-8, art. 3, 1-29-91; Ord. No. 93-89, art. 11, 10-19-93; Ord. No. 97-74, § 14, 9-9-97)

Sec. 42-83. - Transfer of license.

- (a) *Requirements for transfer.* A licensee under this article shall not transfer his license or control, operation or management of the licensed adult use establishment to another business entity or person, and thereby surrender ownership, possession, control, and operation of the licensed establishment to such other business entity or person, unless and until such other business entity or person satisfies the following requirements:

- (1) Obtains a new license from the department of justice and consumer services, valid for one year from the date of issue, which indicates the new licensee, which new license may be obtained only upon completion and proper filing of an application with the department of justice and consumer services setting forth the information called for under subsection 42-77(b)(1) through (14), with respect to the new applicant, and that application has been granted by the department of justice and consumer services pursuant to section 42-79;

and

(2) Pays the application fee and the appropriate annual license fee.

(b) *Effect of suspension or revocation procedures.* No license may be transferred pursuant to subsection (a) of this section when the department of justice and consumer services has notified the licensee that suspension or revocation proceedings have been or will be brought against the licensee.

(c) *No transfer to different location.* A licensee shall not transfer his license under this article to another location.

(Ord. No. 90-65, § 2.9, 7-24-90; Ord. No. 91-8, art. 3, 1-29-91; Ord. No. 97-74, § 15, 9-9-97)

Sec. 42-84. - Changing name of establishment.

No licensee may change the name of an adult use establishment unless and until he satisfies each of the following requirements:

(1) Gives the department of justice and consumer services 30 days' notice in writing of the proposed name change;

(2) Pays the department of justice and consumer services a change of name fee of \$3.00; and

(3) Complies with F.S. § 865.09 (1990).

(Ord. No. 90-65, § 2.10, 7-24-90; Ord. No. 91-8, art. 3, 1-29-91; Ord. No. 97-74, § 16, 9-9-97)

Sec. 42-85. - Suspension of license.

(a) *Illegal transfer.* In the event the licensee is convicted of a license transfer contrary to section 42-83, the department of justice and consumer services shall notify the licensee of its intent to suspend the license. The suspension, once effective, shall remain in effect until the requirements of section 42-83 have been met.

(b) *Conviction for violations of division 6 of this article.* The two-year period referenced in this subsection applies to the dates of the specified criminal acts and violation of division 6 of this article, regardless of the date of conviction.

(1) In the event three or more violations of a specified criminal act, violations of division 6 of this article, violations of section 6-2 of this Code, or violations of chapter 26, article V of this Code, occur at an adult use establishment within a two-year period, and convictions result from at least three of the violations of either the licensee, the licensee's operators or employees, or of any of the other individuals listed pursuant to subsection 42-77(b)(1), the department of justice and consumer services shall, upon the date of the third conviction, notify the licensee of its intent to suspend the license. The suspension, once effective, shall

remain in effect for a period of 30 days. For purposes of this subsection (b)(1) only, in the event that a single occurrence of enforcement results in more than one conviction, the total number of convictions shall be combined into a single violation. "Single occurrences of enforcement" are enforcement actions occurring at the same location and less than four hours apart. Enforcement actions occurring more than four hours apart or at different locations resulting in convictions are separate violations for purposes of this subsection. All violations for operation without a valid license shall be separate violations not to be included with other cited violations as part of a single occurrence of enforcement.

- (2) In the event one or more violations of a specified criminal act, a violation of division 6 of this article, a violation of section 6-2 of this Code, or a violation of chapter 26, article V of this Code, occurs at the adult use establishment within a period of two years and 30 days from the date the most recent conviction which was the basis of the suspension for 30 days under subsection (b)(1) of this section, and a conviction results from one or more of the violations, of either the licensee, the licensee's operators or employees, or of any of the other individuals listed pursuant to subsection 42-77(b)(1), the department of justice and consumer services shall, upon the date of the first conviction, notify the licensee of its intent to suspend the license. The suspension, once effective, shall remain in effect for a period of 90 days.
 - (3) In the event that one or more violations of a specified criminal act or violations of division 6 of this article occurs within a period of two years and 90 days from the most recent conviction which was the basis for the suspension for 90 days under subsection (b)(2) of this section, and a conviction results from one or more of the violations, of either the licensee, the licensee's operator or employee, or of or any of the other individual listed pursuant to subsection 42-77(b)(1), the department of justice and consumer services shall, upon the date of the first conviction, notify the licensee of its intent to suspend the license. The suspension, once effective, shall remain in effect for a period of 180 days.
 - (4) The transfer or renewal of a license pursuant to this article shall not defeat the terms of subsections (b)(1) through (b)(3) of this section.
- (c) *Effective date of suspension.* All periods of suspension shall begin 35 days after the date the department of justice and consumer services mails the notice of suspension to the licensee or on the date the licensee delivers his license to the department of justice and consumer services, whichever happens first. The licensee shall have the right to request a hearing before the director of the department of justice and consumer services or her designee. This hearing shall be commenced within 30 days of the date of the request for the hearing. In the event that the suspension decision is appealed pursuant to section 42-62, subsequent to the hearing before the director of the department of justice and consumer services, the effective date of

suspension shall begin upon issuance of the mandate of the court having jurisdiction over the appeal.

(Ord. No. 90-65, § 2.11, 7-24-90; Ord. No. 91-8, art. 12, 1-29-91; Ord. No. 92-6, art. VI, 2-18-92; Ord. No. 94-40, art. VII, 4-19-94; Ord. No. 97-74, § 17, 9-9-97; Ord. No. 01-79, § 5, 11-13-01)

Sec. 42-86. - Cancellation or revocation of license.

- (a) *False information.* In the event the department of justice and consumer services learns or finds upon sufficient cause that a license was granted based upon material false information, misrepresentation, mistake of fact or law relevant to the decision, or omission of information material to the decision, it shall notify the licensee and shall provide no more than 30 days during which the licensee may correct or explain the reason for the false, omitted, misrepresented, or mistaken information. If the licensee cannot correct the application to conform with the requirements of this article, the licensee will be subject to citation for violation of this article. A law enforcement officer may issue a citation for violation of this subsection. The licensee will be subject to all fines and penalties as provided in section 1-8 and under this article. In the event that the licensee is convicted or found guilty of a violation of this provision, he shall also be subject to cancellation of the license as provided in subsections (b)(3) and (b)(4) of this section.
- (b) *Convictions for violations of division 6 of this article.*
- (1) If the licensee, the licensee's operator or employee, or any other individual listed pursuant to subsection 42-77(b)(1), is convicted for one or more specified criminal acts or for a violation of division 6 of this article and the conviction(s) was (were) for activities that occurred at an adult use establishment which has had a license suspended for a period of 180 days pursuant to subsection 42-85(b)(3), and the conviction(s) occur(s) within a period of 2½ years after the license was suspended for 180 days pursuant to subsection 42-85(b)(3), the licensee will be in violation of this provision and will be subject to revocation of his license.
 - (2) The 2½-year time frame during which the licensee is subject to revocation proceedings under subsection (b)(1), above, shall begin to run from the first day upon which the 180-day suspension of the license takes effect.
 - (3) Upon discovery of a violation as defined in subsection (b)(1) of this section, the department of justice and consumer services shall notify the licensee of its intent to revoke the license. The licensee shall have 35 days from the date of mailing the aforementioned notice upon which to request a hearing before the director of the department of justice and consumer services or her designee. Such hearing shall be commenced within 30 days of the date of

the request for hearing. The director of the department of justice and consumer services shall revoke the license if he or she finds that the licensee is in violation of this provision.

(4) In the event that the licensee fails to make a timely request for hearing, the department of justice and consumer services shall revoke the license and notify the licensee of the revocation and the reasons therefor.

(5) The transfer or renewal of a license pursuant to this article shall not defeat the terms of subsection (b)(1) of this section.

(6) The decision of the director of the department of justice and consumer services shall constitute final agency action, and may be appealed pursuant to section 42-62.

(c) *Loss of a permit.* If the underlying adult use permit is revoked pursuant to § 42-122, the license shall be cancelled. Loss of a license under this provision shall not serve as a basis for denial of a future license request.

(d) *Effect of revocation.* If a license is revoked, the licensee shall not be allowed to obtain another adult use license for a period of ten years.

(e) *Effective date of revocation.* The revocation of a license under this article shall take effect 35 days after the date the department of justice and consumer services mails the notice of revocation to the licensee or on the date the licensee delivers his license to the department of justice and consumer services, whichever occurs first. In the event that the revocation decision is appealed pursuant to section 42-62, the effective date of revocation shall begin upon issuance of the mandate of the court having jurisdiction over the appeal.

(Ord. No. 90-65, § 2.12, 7-24-90; Ord. No. 91-8, art. 3, 1-29-91; Ord. No. 93-89, art. 13, 10-19-93; Ord. No. 94-40, art. VIII, 4-19-94; Ord. No. 97-74, § 18, 9-9-97)

Secs. 42-87—42-95. - Reserved.

DIVISION 3. - EMPLOYEE RESTRICTIONS AND REQUIREMENTS

Sec. 42-96. - Records for employees.

(a) The licensee of an adult use establishment is responsible for keeping a record of all employees who are currently employed by the establishment, and of all former employees who were employed by the establishment during the preceding one-year period. The record shall contain the current or former employee's full legal name, including any aliases, date of birth, and photographic picture, which shall be updated annually.

(b) The original records required by subsection (a) of this section, or true and exact photocopies

thereof, shall be kept at the adult use establishment at all times.

- (c) Any operator of an adult use establishment shall be responsible for knowing the location of the original records required by this section, or the true and exact photocopies thereof.
- (d) Any operator of an adult use establishment shall, upon request by a law enforcement officer, health department official, or a representative of the department of justice and consumer services, make available for inspection the original records, or the true and exact photocopies thereof, required by this section while the establishment is open for business.

(Ord. No. 90-65, § 3.1, 7-24-90; Ord. No. 91-8, art. 4, 1-29-91; Ord. No. 92-6, art. VII, 2-18-92; Ord. No. 93-89, art. 14, 10-19-93; Ord. No. 97-74, § 19, 9-9-97; Ord. No. 98-38, § 1, 3-10-98)

Secs. 42-97—42-105. - Reserved.

DIVISION 4. - OPERATIONAL REQUIREMENTS FOR ESTABLISHMENTS

Sec. 42-106. - Requirements for all establishments.

Each adult use establishment shall, regardless of whether it is licensed, observe the following general requirements:

- (1) Conform to all applicable building statutes, codes, ordinances and regulations, whether federal, state or local.
- (2) Conform to all applicable fire statutes, codes, ordinances, and regulations, whether federal, state or local.
- (3) Conform to all applicable health statutes, codes, ordinances, and regulations, whether federal, state or local.
- (4) Conform to all applicable zoning regulations and land use laws, whether state or local.
- (5) Keep the adult use license posted in a conspicuous place at the adult use establishment at all times, which license shall be available for inspection upon request at all times by the public. Adult bookstores, operating only as an adult bookstore, shall keep the adult use permit posted in a conspicuous place at the adult bookstore at all times, which permit shall be available for inspection upon request by the public at all times.
- (6) Opaquely cover each nonopaque area through which a person outside the establishment may otherwise see inside the establishment. All activities of adult uses involving the display of specified anatomical areas or involving specified sexual activities must be inside the establishment and not visible to a person outside the establishment.

(7) Maintain a continuously updated compilation of the records required in section 42-96. (Ord. No. 90-65, § 4.1, 7-24-90; Ord. No. 91-8, art. 5, 1-29-91; Ord. No. 92-6, art. VIII, 2-18-92; Ord. No. 93-89, art. 5, 10-19-93)

Sec. 42-107. - Adult theaters.

In addition to the general requirements for an adult use establishment contained in section 42-106 and the special requirements of section 42-108, an adult theater shall, regardless of whether it is licensed, observe the following special requirements:

- (1) If the adult theater contains a hall or auditorium area, the area shall comply with each of the following provisions:
 - a. Have individual, separate seats, not couches, benches, or the like, to accommodate the maximum number of persons who may occupy the area.
 - b. Have a continuous main aisle alongside of the seating areas in order that each person seated in the areas shall be visible from the aisle at all times.
 - c. Have a sign posted in a conspicuous place at or near each entranceway to the hall or auditorium area which lists the maximum number of persons who may occupy the hall or auditorium area, which number shall not exceed the number of seats within the hall or auditorium area.
 - d. The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than one (1.0) footcandle as measured at floor level.
 - e. It shall be the duty of the licensee, the owners, and operator, and it shall also be the duty of any agents and employees present in the premises, to ensure that the illumination described in subsection (1)d, above, is maintained at all times that any patron is present in the premises.
- (2) If the adult theater contains adult booths, each adult booth shall comply with each of the following provisions:
 - a. Have a sign posted in a conspicuous place at or near the entranceway which states the maximum number of persons who may occupy the booth, which number shall correlate with the number of seats in the booth.
 - b. Have a permanently open entranceway not less than two feet wide and/or less than six feet high, which entranceway shall not have any curtain rods, hinges, rails or the like which would allow the entranceway to be closed or partially closed by any curtain, door, or other partition.

- c. Have individual, separate seats, not couches, benches or the like, which correlate with the maximum number of persons who may occupy the booth.
 - d. Have a continuous main aisle alongside the booth in order that each person situated in the booth shall be visible from the aisle as well as from the manager's station at all times.
 - e. Have, except for the entranceway, walls or partitions of solid construction without any holes or openings in such walls or partitions.
- (3) Refurbishing of adult theaters.
- a. Each adult theater subject to this article shall cover the floors of areas accessible to patrons with smooth and nonpermeable flooring material which can withstand frequent effective cleaning with industrial strength cleaning agents. Carpeting of any type is prohibited.
 - b. Each adult theater subject to this article shall use smooth and nonpermeable upholstery material which can withstand frequent cleaning with industrial strength cleaning agents to cover furniture permitted by this article for the use of patrons.
 - c. Each adult theater subject to this article shall have, in areas accessible to patrons, interior wall surfaces which can withstand frequent cleaning with industrial strength cleaning agents.
 - d. Each adult theater subject to this article shall use only those shades, blinds and vertical blinds which can withstand frequent cleaning with industrial strength cleaning agents. Draperies are prohibited.
- (4) Sanitation.
- a. All areas of each adult theater subject to this article accessible to patrons shall be maintained in a clean and sanitary condition. The surfaces of all floors, furniture, countertops, shades, blinds, vertical blinds, doors and walls of areas accessible to patrons shall be cleaned and sanitized a minimum of one time each 24 hours with an industrial strength cleaner.
 - b. All floors, furniture, countertops, shades, blinds, vertical blinds, doors and walls of areas accessible to patrons of adult theaters subject to this article shall be renovated or be replaced as needed. All furniture must be kept free from holes and rips.
 - c. Any individual cleaning or sanitizing the areas accessible to patrons shall utilize an appropriate and effective adaptation of the U.S. Centers for Disease Control's universal precautions for the prevention of transmission of the HIV virus and other diseases. Such procedure shall be reviewed and approved by the county health department. A copy of the approved procedure shall be kept on file at the adult theater and a copy

shall be provided to each person cleaning or sanitizing the areas accessible to patrons. Each such individual shall certify that he has read and understood the procedures by signing a copy of the procedure. Such signed copy shall be kept as a part of the records of the adult theater and open for inspection by the health department, sheriff, or the department of justice and consumer services.

- (5) If the adult theater is designed to permit outdoor viewing by persons seated in automobiles, it shall have the motion picture screen so situated, or the perimeter of the establishment so fenced, that the material to be seen by such persons may not be seen from any public right-of-way, residential zoned property, mixed use zoning district, church, school, child care facility or public recreation area.

(Ord. No. 90-65, § 4.2, 7-24-90; Ord. No. 91-8, art. 5, 1-29-91; Ord. No. 93-89, arts. 16, 17, 10-19-93; Ord. No. 94-40, art. IX, 4-19-94; Ord. No. 97-74, § 20, 9-9-97; Ord. No. 98-8, § 3, 1-6-98; Ord. No. 01-79, §§ 6, 7, 11-13-01)

Sec. 42-108. - Special cabarets, adult photographic or modeling studios, and adult theaters.

In addition to the general requirements for an adult use establishment contained in section 42-106, a special cabaret, an adult photographic or modeling studio, and an adult theater, regardless of whether it is licensed, shall observe the following special requirements:

- (1) A stage shall be provided for the display or exposure of any specified anatomical area by an employee to a person other than another employee consisting of a permanent platform or other similar permanent structure raised a minimum of 18 inches above the surrounding floor and encompassing an area of at least 100 square feet.
- (2) The stage shall be at least three feet from the nearest table, chair or other accommodation where food or drink is served or consumed.
- (3) Any area in which a private performance occurs shall:
 - a. Have a permanently open entranceway not less than two feet wide and not less than six feet high, which entranceway shall not have any curtain rods, hinges, rails, or the like which would allow the entranceway to be closed or partially closed by any curtain, door, or other partition; or
 - b. 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 employee from the person viewing the display.

(Ord. No. 90-65, § 4.3, 7-24-90; Ord. No. 91-8, art. 5, 1-29-91; Ord. No. 92-6, art. IX, 2-18-92; Ord. No. 97-74, § 21, 9-9-97; Ord. No. 01-79, § 8, 11-13-01)

Secs. 42-109—42-120. - Reserved.

DIVISION 5. - LOCATION RESTRICTIONS

Sec. 42-121. - Location of adult use establishments.

- (a) No adult use establishment, including an adult bookstore operating only as an adult bookstore, may be located within 400 feet of any residential zoned property, or any portion of a mixed use zoning district developed and utilized as residential, nor within 400 feet of any church, school, child care facility or public recreation area which is validly located or has previously received legal authority to so locate.
- (b) No adult use business establishment may be located within 400 feet of any other adult use.
- (c) The distance requirements under subsections (a) and (b) of this section shall be measured along a straight line from the nearest residential zoning district or the nearest property line of the church, school, child care facility, public recreation area or adult use to the closest property line of the adult use. In a multitenant or multiuser building, such as a shopping center, such distance requirement shall be measured from the unit or closest portion of the building or structure utilized by and containing or being utilized by any facet of the adult use establishment.
- (d) Nothing in this section shall be construed to permit the operation of any business or the performance of any activity prohibited under any other section of this article. Additionally, nothing in this article shall be construed to authorize, allow or permit the establishment of any business, the performance of any activity, or the possession of any item, which is obscene under the judicially established definition of obscenity.

(Ord. No. 90-65, § 5.1, 7-24-90; Ord. No. 91-8, art. 6, 1-29-91)

Sec. 42-122. - Adult use permits.

- (a) No adult use establishment shall be allowed to commence or continue to operate without first obtaining a valid adult use permit. Any business entity or person desiring to locate, operate or continue the operation of any adult use shall be required to obtain an adult use permit from the director of the department of development review services before the establishment or commencement of business as an adult use. Adult uses which have been established or have commenced business at their existing locations prior to the effective date of the ordinance from which this article derives shall be required to obtain an adult use permit from the director of the department of development review services within three months of the

adoption of such ordinance.

- (b) In order to obtain an adult use permit, the applicant shall provide, in addition to a fee determined by the board of county commissioners to be reasonably calculated to cover the costs of administering this permitting requirement, the following information:
- (1) Name, mailing address and telephone number.
 - (2) Street address and a legal description of the property containing the proposed or existing adult use.
 - (3) A site plan of the proposed establishment. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each site plan should be oriented to the north or to some designated street or object and shall be drawn to a designated scale or with marked dimensions sufficient to show the various dimensions of the site including property dimensions, building sizes, and locations and sizes of the portions of the building containing the adult use. Multitenant buildings shall show interior and exterior locations and sizes of the areas proposed to be occupied by all facets of the adult business use, and all setbacks from property lines.
 - (4) Known locations of any churches, schools, child care facilities, public recreation facilities or other existing or proposed adult uses within approximately 400 feet of the proposed or existing adult use location for which the adult use permit is being sought.
 - (5) If the applicant's proposed location is that of an already established adult use, the date of commencement of operations as an adult use, including documentation of commencement if available.
 - (6) If the applicant is not the record owner of the subject parcel, the application must include a letter, with the notarized signature of the record owner, purporting to be the record owner, stating that the applicant is authorized to seek an adult use permit for the premises.
- (c) Upon receipt of a completed application for an adult use permit, the director of the department of development review services, his designee, or any person designated by the county administrator shall inspect the proposed location of the adult use and, within nine days, provide notice to the applicant of a certification of compliance or noncompliance. The director of the department of development review services may extend such period of time, at the request of the applicant, for purposes of clarification of issues raised by the review but in no event for a period of time in excess of 20 days.
- (1) *Certification of noncompliance.*
 - a. Where it is found that the location proposed in the application does not meet the distance requirements of section 42-121(a) or is one where a valid adult use exists or is

one where a valid adult use permit or valid certification of compliance has been issued for another adult use, the location of which is within the distance requirements of section 42-121(b) from the proposed location, the applicant shall be notified of the certification of noncompliance of the proposed location with the locational requirements of this article.

- b. Upon receipt of the certification of noncompliance, the applicant shall have ten days to appeal the decision on noncompliance pursuant to the provisions of section 42-122(d)(3).

(2) *Certification of compliance.*

- a. Where it is found that the applicant's proposed location meets the distance requirements of section 42-121(a) and where no valid adult use exists or where no valid adult use permit or valid certification of compliance has been issued for another adult use, the location of which is within the distance requirements of section 42-121(b) from the proposed location the applicant shall be notified of the certification of compliance of the proposed location with the locational requirements of subsections (a) and (b) of this section.
- b. Upon notification, the applicant shall have 20 days to obtain the adult use permit, signed by the director of the department of development review services or his designee. Failure to obtain such permit within the 20-day time period invalidates the certification of compliance and the applicant must reapply.

(3) *Conflicting applications.*

- a. The board of county commissioners recognizes the potential of creating nonconformities by granting adult use permits that conflict. The director of the department of development review services shall develop a system for tracking potentially conflicting applications and for ranking them by date and time of application/date of establishment.

Between two applications being processed at the same time, which individually qualify under subsections 42-121(a) and (b), but would violate the provisions of subsection 42-121(b) if both were to receive permits, the application which was completed at the earliest date, as provided for in subsection (b) of this section, shall be notified that his proposed location has been certified in compliance pursuant to the provisions of subsection (c)(2) of this section.

The conflicting applicant shall be notified of his application's certification of noncompliance pursuant to the provisions of this subsection (c)(3) with a notation that the noncompliance was due to the earlier submittal of a conflicting application.

- b. The first applicant who has received the certification of compliance shall have 20 days to secure the adult use permit, signed by the director of the department of development review services. Upon lapse of the period of validity of the certification of compliance, pursuant to the provisions of subsection (c)(2)b of this section, the applicant must reapply.
- c. Any applicant who has received a certification of noncompliance pursuant to the provisions of this subsection (c)(3) may use his prior application date in a resubmission for the purposes of establishing priority if the original application was made no more than seven months previous. Otherwise, he must reapply.

(d) *Continuing validity of adult use permit.*

- (1) The adult use permit signed by the director of the department of development review services or his designee shall be valid for a period of six months after issuance, during which time the applicant's adult use business must apply for an adult use license pursuant to division 2 of this article. The validity of such a permit may be extended by the director of the department of development review services one time for 90 days for good cause. Any decision to deny such an extension may be appealed pursuant to the provisions of section 42-62.
- (2) Once legally established, the adult use permit shall remain valid unless revoked pursuant to the provisions of section 42-123 or terminated sooner for any reason, including failure to have a valid adult use license, or unless voluntarily discontinued for a period of 30 days or more. Upon receipt of a notice of abandonment, the applicant shall have ten days to appeal the decision on noncompliance pursuant to the provisions of section 42-122(d)(3).
- (3) If the department of development review services decides to certify as noncompliant or to revoke an otherwise valid adult use permit, the applicant/permittee shall have the right to request a hearing before the director of the department of development review services or his/her designee. This hearing shall be commenced within 30 days of the date of the request for the hearing. Decisions by the director of the department of development review services to certify as non-compliant or to revoke an otherwise valid adult use permit may be reviewed pursuant to the provisions of section 42-62.

(Ord. No. 90-65, § 5.2, 7-24-90; Ord. No. 91-8, art. 6, 1-29-91; Ord. No. 97-74, § 22, 9-9-97)

Sec. 42-123. - Variances.

- (a) If an applicant receives a certification of noncompliance because the location of the proposed adult use is in violation of the locational requirements of this article, then the applicant may,

not later than ten calendar days after receiving notice of the certification of noncompliance, file with the department of development review services a written request for a variance from the locational restrictions of section 42-121. The filing of such a request shall preserve the pending status of the application for purposes of the review of conflicting applications.

- (b) If the written request for a variance from the locational requirements of this article is filed with the department of development review services within the ten-day limit provided in subsection (a) above, he shall schedule a hearing before the board of adjustment, which body shall consider the request for a variance. The director of the department of development review services shall set a date for the hearing within 60 days from the date the written request is received.
- (c) The board of adjustment shall hear and consider evidence offered by any interested person in a public hearing scheduled with public notice. Public notice shall be given pursuant to the requirements of section 138-79(b) and shall include property owners of record by the property appraiser within 400 feet of the proposed location instead of 200 feet. The board of adjustment may, in its discretion, grant a variance, with reasonable conditions, from the locational restrictions of section 42-121 if it makes the following findings:
 - (1) That a sufficient physical barrier separates the adult use establishment, for which a variance is being sought, from the land use(s), which has (have) caused the adult use not to be in compliance with the distance requirement of this article, so as to substantially fulfill the purpose of the distance requirement. Such physical barriers include, but are not limited to, limited access streets or highways, walls, and natural or manmade waterways.
 - (2) That the strict application of the provisions of this article will work an undue hardship unique to the applicant for a particular location.
 - (3) That all other applicable provisions of this article will be observed.
 - (4) That the property is at least 200 feet from any property with the uses set forth in section 42-121.
- (d) The board of adjustment may only grant a variance to the provisions of this article by a majority vote. Failure to reach a majority vote shall result in a denial of the variance. The decision of the board of adjustment is final.
- (e) If the board of adjustment denies the request for exemption from the requirements of this article, the applicant may not reapply for an exemption until at least six months have elapsed since the date of the board of adjustment's action.
- (f) The grant of a variance under this section does not exempt the applicant from any other provisions of this article, other than the locational restrictions of section 42-121, as conditioned by the board of adjustment.

(Ord. No. 90-65, § 5.4, 7-24-90; Ord. No. 91-8, art. 6, 1-29-91; Ord. No. 97-74, § 23, 9-9-97)

Secs. 42-124—42-135. - Reserved.

DIVISION 6. - MISCELLANEOUS PROHIBITIONS

Sec. 42-136. - Affirmative defenses.

In prosecutions for violations of section 42-139, 42-144 or 42-145 of this article, it is a rebuttable presumption, where relevant, that the person with whom the charged individual is alleged to have performed the prohibited act is not an employee. It is an affirmative defense, where applicable, that the individual involved in the alleged violation is an employee with whom the otherwise prohibited act is allowed.

(Ord. No. 90-65, § 6.16, 7-24-90; Ord. No. 92-6, art. XII, 2-18-92; Ord. No. 94-40, art. XI, 4-19-94)

Sec. 42-137. - Operation of adult use without valid adult use license.

It shall be a violation of this article for any business entity or licensee to operate or for any person to be an operator or employee of an adult use establishment where the business entity, licensee or person knows or should know that:

- (1) The establishment does not have an adult use permit or adult use license for any applicable classification;
- (2) The adult use establishment has a license which is under suspension;
- (3) The adult use establishment has a license which has been revoked; or
- (4) The adult use establishment has a license which has expired or been cancelled.

(Ord. No. 90-65, § 6.1, 7-24-90; Ord. No. 91-8, art. 7, 1-29-91)

Sec. 42-138. - Prohibited operations.

- (a) It shall be a violation of this article for any business entity or licensee to operate or for any person to be an operator or employee of an adult use establishment which does not satisfy all of the general requirements of subsections 42-106(5), (6) and (7).
- (b) It shall be a violation of this article for any business entity or licensee to operate or for any person to be an operator or employee of an adult theater which does not satisfy all of the special requirements of sections 42-107 and 42-108 of this article.
- (c) It shall be a violation of this article for any business entity or licensee to operate or for any

person to be an operator or employee of an adult cabaret or adult theater which does not satisfy all of the special requirements of section 42-108 of this article.

- (d) It shall be a violation of this article for any business entity or licensee to operate or for any person to be an operator or employee of an adult use establishment and to knowingly, or with reason to know, permit, suffer, or allow the entrance or exit of the adult use establishment to be locked when a person other than an employee is inside the establishment.
- (e) It shall be a violation of this article for any business entity or licensee to operate or for any person to be an operator or employee of an adult use which does not comply with the provisions of section 6-2 or chapter 26, article V.
- (f) It shall be a violation of this article to transfer a license or control, operation or management of an adult use establishment without satisfying all of the provisions of section 42-82 of this article.

(Ord. No. 90-65, § 6.2, 7-24-90; Ord. No. 91-8, art. 7, 1-29-91; Ord. No. 97-74, § 24, 9-9-97)

Sec. 42-139. - Allowing employee to engage in prohibited acts.

- (a) It shall be a violation of this article for any business entity, licensee or for any operator of an adult use establishment, regardless of whether licensed under this article, to knowingly, or with reason to know, permit, suffer, or allow any employee to:
 - (1) Engage in any specified sexual activity at the adult use establishment;
 - (2) Display or expose any specified anatomical area at the adult use establishment, unless such employee is continuously positioned in an area as described in subsections 42-108(1) and (2), and where applicable, subsection 42-108(3);
 - (3) Display or expose any specified anatomical area while simulating any specified sexual activity with any other person at the adult use establishment, including with another employee;
 - (4) Engage in a private performance unless such employee is in an area which complies with the special requirements of subsections 42-108(3)a and b;
 - (5) While engaged in the display or exposure of any specified anatomical area, to intentionally touch, either directly or through a medium, any person, except another employee, at the adult use establishment, excluding, for purposes of passing a gratuity, that part of the person's arm distal to the wrist, commonly referred to as the hand, provided the person maintains a distance of two feet from the employee. It shall be a violation of this article for any gratuity to pass through any bodily contact other than from the hand of the person to the hand of the employee;
 - (6) Intentionally straddle the legs of an employee over any part of the body of a person other

than another employee at the establishment, regardless of whether there is a touch or touching; or

- (7) While engaged in the display or exposure of any specified anatomical areas, to voluntarily be within three feet of any person other than another employee unless a gratuity is being passed, in which case the requirements of 42-139(5) must be met.

(b) It is a violation of this article for any business entity, licensee or operator to suffer, permit or allow a patron of the adult use establishment to commit a violation of section 42-145.

(Ord. No. 90-65, § 6.3, 7-24-90; Ord. No. 91-8, art. 7, 1-29-91; Ord. No. 97-74, § 25, 9-9-97; Ord. No. 98-38, § 3, 3-10-98; Ord. No. 01-79, § 9, 11-13-01)

Sec. 42-140. - Advertising prohibited activity.

It shall be a violation of this article for an operator of an adult use establishment, regardless of whether it is licensed under this article, to advertise the presentation of any activity prohibited by any applicable state statute or local ordinance.

(Ord. No. 90-65, § 6.4, 7-24-90; Ord. No. 91-8, art. 7, 1-29-91)

Sec. 42-141. - Minors prohibited.

It shall be a violation of this article for an operator of an adult use establishment, regardless of whether it is licensed under this article, to knowingly, or with reason to know, permit, suffer, or allow:

- (1) Admittance to the adult use establishment of a person under 18 years of age;
- (2) A person under 18 years of age to remain at the adult use establishment;
- (3) A person under 18 years of age to purchase goods or services at the adult use establishment; or
- (4) A person to work at the adult use establishment as an employee who is under 18 years of age.

(Ord. No. 90-65, § 6.5, 7-24-90; Ord. No. 91-8, art. 7, 1-29-91)

Sec. 42-142. - Working at unlicensed establishment.

It shall be a violation of this article for any person to act as an employee of an adult use establishment that he knows or should know is not licensed under this article, or which has a license which is under suspension, has been revoked or cancelled, or has expired.

(Ord. No. 90-65, § 6.6, 7-24-90; Ord. No. 91-8, art. 7, 1-29-91)

Sec. 42-143. - Employee records.

It shall be a violation of this article to be an operator of an adult use establishment, regardless of whether it is licensed under this article, at which the records for employees required by section 42-96 have not been compiled, are not maintained or are not available for inspection.

(Ord. No. 90-65, § 6.7, 7-24-90; Ord. No. 91-8, art. 7, 1-29-91; Ord. No. 92-6, art. X, 2-18-92)

Sec. 42-144. - Engaging in prohibited activity.

- (a) It shall be a violation of this article for any employee of an adult use establishment, regardless of whether it is licensed under this article, to:
- (1) Engage in any specified sexual activity at the adult use establishment;
 - (2) Display or expose any specified anatomical area at the adult use establishment, unless such employee is continuously positioned in an area as described in subsections 42-108(1) and (2), and where applicable, subsection 42-108(3).
 - (3) Display or expose any specified anatomical area while simulating any specified sexual activity with any other person at the adult use establishment, including with another employee;
 - (4) Engage in a private performance unless such employee is in an area which complies with the special requirements of subsections 42-108(3)a and b;
 - (5) While engaged in the display or exposure of any specified anatomical area, to intentionally touch, either directly or through a medium, any person, except another employee, at the adult use establishment, excluding, for purposes of passing a gratuity, that part of the person's arm distal to the wrist, commonly referred to as the hand, provided the person maintains a distance of two feet from the employee. It shall be a violation of this article for any gratuity to pass through any bodily contact other than from the hand of the person to the hand of the employee;
 - (6) Intentionally straddle the legs of an employee over any part of the body of a person other than another employee at the establishment, regardless of whether there is a touch or touching; or
 - (7) While engaged in the display or exposure of any specified anatomical areas, to voluntarily be within three feet of any person other than another employee, unless a gratuity is being passed, in which case the requirements of 42-144(5) must be met.
- (b) It is a violation of this article for any business entity, licensee or operator to suffer, permit or allow a patron of the adult use establishment to commit a violation of section 42-145.

(Ord. No. 90-65, § 6.8, 7-24-90; Ord. No. 91-8, art. 7, 1-29-91; Ord. No. 98-38, § 4, 3-10-98; Ord. No. 01-79,

§ 10, 11-13-01)

Sec. 42-145. - Touching of employee by patron.

- (a) Except for the minimal touching allowed and as regulated in subsection 42-139(5) involving the passing of a gratuity, it shall be a violation of this article for any person in an adult use establishment, other than another employee, to intentionally touch, either directly or through a medium, an employee who is displaying or exposing any specified anatomical area at the adult entertainment establishment.
- (b) It shall be a violation of this article for any person in an adult use establishment, other than another employee, to intentionally touch, either directly or through a medium, the clothed or unclothed breast of any employee, or to touch, either directly or through a medium, the clothed body of any employee at any point below the waist and above the knee of the employee.
- (c) Except involving the minimal touching of an employee's hand allowed in subsection 42-139(5) involving the passing of a gratuity, it shall be a violation of this article for any person, except another employee, to voluntarily be within three feet of any employee displaying or exposing any specified anatomical area at the adult use establishment.

(Ord. No. 90-65, § 6.9, 7-24-90; Ord. No. 91-8, art. 7, 1-29-91)

Sec. 42-146. - Exceeding occupancy limit of adult booth.

It shall be a violation of this article for any person to occupy an adult booth in which booth there are more people than that specified on the posted sign required by section 42-107.

(Ord. No. 90-65, § 6.10, 7-24-90; Ord. No. 91-8, art. 7, 1-29-91)

Sec. 42-147. - Use of restrooms or dressing rooms.

Notwithstanding any provision indicating to the contrary, it shall not be a violation of this article for any employee of an adult use establishment, regardless of whether it is licensed under this article, to expose any specified anatomical area during the employee's bona fide use of a restroom, or during the employee's bona fide use of a dressing room which is accessible only to employees.

(Ord. No. 90-65, § 6.11, 7-24-90; Ord. No. 91-8, art. 7, 1-29-91)

Sec. 42-148. - Hours of operation.

- (a) It shall be a violation of this article for any operator of an adult use establishment to allow such adult use establishment to remain open for business, or to permit any employee 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 3:00 a.m. and 8:00 a.m. of any particular day.

(b) It shall be a violation of this article for any employee of an adult use establishment 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 3:00 a.m. and 8:00 a.m. of any particular day.

(c) The provisions of subsections (a) and (b) of this section apply regardless of whether employees are no longer participating in the sale or rental of adult material, the display of specified anatomical areas, or are engaged in specified sexual activities after 3:00 a.m. An adult use establishment, licensed or permitted as such, will be considered an adult use at all times and is subject to all provisions of this article until such time as the adult use license or permit is suspended, canceled, revoked or voluntarily terminated.

(Ord. No. 90-65, § 6.12, 7-24-90; Ord. No. 91-8, art. 7, 1-29-91; Ord. No. 93-89, art. 18, 10-19-93; Ord. No. 11-11, § 1, 4-12-11)

Sec. 42-149. - Alteration of license.

It shall be a violation of this article for any person to alter or otherwise change the contents of an adult use license without the written permission of the department of justice and consumer services.

(Ord. No. 90-65, § 6.13, 7-24-90; Ord. No. 91-8, art. 7, 1-29-91; Ord. No. 98-8, § 3, 1-6-98)

Sec. 42-150. - False statement or false information in applying for license.

It shall be a violation of this article for any person applying for an adult use 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. No. 90-65, § 6.14, 7-24-90; Ord. No. 91-8, art. 7, 1-29-91)

Secs. 42-151—42-170. - Reserved.